

ASSEMBLY BILL NO. 194—ASSEMBLYMEN HORNE, PARKS, ANDERSON, ARBERRY, ATKINSON, BOBZIEN, CARPENTER, CONKLIN, DENIS, GERHARDT, GRADY, KIHUEN, KOIVISTO, LESLIE, MABEY, MARVEL, MCCLAIN, MORTENSON, MUNFORD, OHRENSCHALL, PIERCE, SEGERBLUM AND WOMACK (BY REQUEST)

FEBRUARY 27, 2007

JOINT SPONSORS: SENATORS HORSFORD, COFFIN,
LEE, TITUS, WIENER AND WOODHOUSE

Referred to Committee on Judiciary

SUMMARY—Makes various changes to provisions regarding victims of domestic violence and sexual assault. (BDR 3-1055)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to victims of crime; prohibiting an adverse party named in an extended order for protection against domestic violence from possessing or having under his custody or control a firearm; making various changes to provisions regarding orders for protection against domestic violence; expanding the persons against whom domestic violence may be committed; revising provisions regarding the testing of certain persons accused of committing certain crimes for exposure to the human immunodeficiency virus and commonly contracted sexually transmitted diseases; providing a penalty; and providing other matters properly relating thereto.



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Legislative Counsel's Digest:

Existing law sets forth certain unlawful acts which constitute domestic violence when committed against certain specified persons. (NRS 33.018) Existing law authorizes a court to issue a temporary or extended order for protection to protect a person listed in that statute from domestic violence. (NRS 33.020, 33.030) **Section 5** of this bill expands the list of persons against whom domestic violence may be committed to include a person who has been appointed the custodian or legal guardian of a child.

Section 2 of this bill authorizes the court, when issuing an extended order, to include a requirement that the adverse party surrender any firearms possessed by him or under his custody or control and that he not possess or have under his custody or control any firearm while the order is in effect. **Section 2** requires the court to consider certain factors in deciding whether to include such provisions in an extended order and provides for a limited exception that may be granted if the adverse party can establish that the use or possession of a firearm is an integral part of his employment and that the employer will provide for the storage of any such firearm during any period that the adverse party is not working. **Section 3** of this bill establishes the procedures governing the surrender, sale or transfer of any firearm possessed or under the custody or control of an adverse party subject to such an extended order. **Section 2** makes it a gross misdemeanor for an adverse party to violate those provisions of an extended order.

Section 6 of this bill authorizes a court, when granting an extended order, to provide for the support of a minor child for whom a guardian has been appointed or who has been placed in protective custody and to pay compensation to the applicant for lost earnings and expenses incurred by the applicant in attending any hearing concerning an application for an extended order. (NRS 33.030)

Section 7 of this bill requires a law enforcement officer to inform an adverse party who violates an order for protection against domestic violence of the date and time set for a hearing on an application for an extended order in certain circumstances. (NRS 33.070)

Existing federal law requires, as a condition to receiving certain federal grants, that states provide by law for certain procedures concerning the testing of a defendant who is arrested for certain crimes involving sexual conduct. (42 U.S.C. § 3796hh(d)) **Section 9** of this bill revises the procedures for testing certain alleged criminals who commit a sexual assault and victims of sexual assault for the human immunodeficiency virus and other commonly contracted sexually transmitted diseases to comply with those federal requirements. (NRS 441A.320)

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 33 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. 1. A court may include in an extended order issued pursuant to NRS 33.030:

(a) A requirement that the adverse party surrender, sell or transfer any firearm in his possession or under his custody or control in the manner set forth in section 3 of this act; and

(b) A prohibition on the adverse party against possessing or having under his custody or control any firearm while the order is in effect.



2. In determining whether to include the provisions set forth in subsection 1 in an extended order, the court must consider, without limitation, whether the adverse party:

- (a) Has a documented history of domestic violence;
- (b) Has used or threatened to use a firearm to injure or harass the applicant, a minor child or any other person; and
- (c) Has used a firearm in the commission or attempted commission of any crime.

3. If a court includes the provisions set forth in subsection 1 in an extended order, the court may include a limited exception from the prohibition to possess or have under his custody or control any firearm if the adverse party establishes that:

(a) The adverse party is employed by an employer who requires the adverse party to use or possess a firearm as an integral part of his employment; and

(b) The employer will provide for the storage of any such firearm during any period when the adverse party is not working.

4. An adverse party who violates any provision included in an extended order pursuant to this section concerning the surrender, sale, transfer, possession, custody or control of a firearm is guilty of a gross misdemeanor. If the court includes any such provision in an extended order, the court must include in the order a statement that violation of such a provision in the order is a gross misdemeanor.

Sec. 3. 1. If a court orders an adverse party to surrender any firearm pursuant to section 2 of this act, the adverse party shall, not later than 24 hours after service of the order:

(a) Surrender any firearm in his possession or under his custody or control to the appropriate local law enforcement agency designated by the court in the order;

(b) Surrender any firearm in his possession or under his custody or control to a person designated by the court in the order; or

(c) Sell or transfer any firearm in his possession or under his custody or control to a licensed firearm dealer.

2. If the court orders the adverse party to surrender any firearm to a local law enforcement agency pursuant to paragraph

(a) of subsection 1, the law enforcement agency shall provide the adverse party with a receipt which includes a description of each firearm surrendered and the adverse party shall, not later than 72 hours or 1 business day, whichever is later, after surrendering any such firearm, provide the receipt to the court.

3. If the court orders the adverse party to surrender any firearm to a person designated by the court pursuant to paragraph (b) of subsection 1, the adverse party shall, not later than 72 hours



1 *or 1 business day, whichever is later, after he surrenders any*
2 *firearm to such person, provide to the court and the appropriate*
3 *local law enforcement agency the name and address of the person*
4 *designated in the order and a written description of each firearm*
5 *surrendered to such person.*

6 *4. If the adverse party sells or transfers any firearm to a*
7 *licensed firearm dealer that is subject to an order pursuant to*
8 *paragraph (c) of subsection 1, the adverse party shall, not later*
9 *than 72 hours or 1 business day, whichever is later, after such sale*
10 *or transfer, provide to the court and the appropriate local law*
11 *enforcement agency a receipt of such sale or transfer and a*
12 *written description of each firearm sold or transferred.*

13 *5. If there is probable cause to believe that the adverse party*
14 *has not surrendered, sold or transferred any firearm in his*
15 *possession or under his custody or control within 24 hours after*
16 *service of the order, the court may issue and deliver to any law*
17 *enforcement officer a search warrant which authorizes the law*
18 *enforcement officer to enter and search any place where there is*
19 *probable cause to believe any firearm is located and seize the*
20 *firearm.*

21 *6. A local law enforcement agency may charge and collect a*
22 *fee from the adverse party for the collection and storage of a*
23 *firearm pursuant to this section. The fee must not exceed the cost*
24 *incurred by the local law enforcement agency to provide the*
25 *service.*

26 **Sec. 4.** NRS 33.017 is hereby amended to read as follows:

27 33.017 As used in NRS 33.017 to 33.100, inclusive, *and*
28 *sections 2 and 3 of this act*, unless the context otherwise requires:

29 1. "Extended order" means an extended order for protection
30 against domestic violence.

31 2. "Temporary order" means a temporary order for protection
32 against domestic violence.

33 **Sec. 5.** NRS 33.018 is hereby amended to read as follows:

34 33.018 1. Domestic violence occurs when a person commits
35 one of the following acts against or upon his spouse, former spouse,
36 any other person to whom he is related by blood or marriage, a
37 person with whom he is or was actually residing, a person with
38 whom he has had or is having a dating relationship, a person with
39 whom he has a child in common, the minor child of any of those
40 persons , ~~or~~ his minor child ~~or~~ *or any person who has been*
41 *appointed the custodian or legal guardian for his minor child:*

42 (a) A battery.

43 (b) An assault.



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(c) Compelling the other by force or threat of force to perform an act from which he has the right to refrain or to refrain from an act which he has the right to perform.

(d) A sexual assault.

(e) A knowing, purposeful or reckless course of conduct intended to harass the other. Such conduct may include, but is not limited to:

(1) Stalking.

(2) Arson.

(3) Trespassing.

(4) Larceny.

(5) Destruction of private property.

(6) Carrying a concealed weapon without a permit.

(f) A false imprisonment.

(g) Unlawful entry of the other's residence, or forcible entry against the other's will if there is a reasonably foreseeable risk of harm to the other from the entry.

2. As used in this section, "dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement. The term does not include a casual relationship or an ordinary association between persons in a business or social context.

Sec. 6. NRS 33.030 is hereby amended to read as follows:

33.030 1. The court by a temporary order may:

(a) Enjoin the adverse party from threatening, physically injuring or harassing the applicant or minor child, either directly or through an agent;

(b) Exclude the adverse party from the applicant's place of residence;

(c) Prohibit the adverse party from entering the residence, school or place of employment of the applicant or minor child and order him to stay away from any specified place frequented regularly by them;

(d) If it has jurisdiction under chapter 125A of NRS, grant temporary custody of the minor child to the applicant; and

(e) Order such other relief as it deems necessary in an emergency situation.

2. The court by an extended order may grant any relief enumerated in subsection 1 and:

(a) Specify arrangements for visitation of the minor child by the adverse party and require supervision of that visitation by a third party if necessary; and

(b) Order the adverse party to:

(1) Avoid or limit communication with the applicant or minor child;



(2) Pay rent or make payments on a mortgage on the applicant's place of residence ~~for pay~~;

(3) *Pay for the support of the applicant or minor child, including, without limitation, support of a minor child for whom a guardian has been appointed pursuant to chapter 159 of NRS or a minor child who has been placed in protective custody pursuant to chapter 432B of NRS, if he is found to have a duty to support the applicant or minor child; ~~and~~*

~~(3)~~ (4) Pay all costs and fees incurred by the applicant in bringing the action ~~and~~; and

(5) *Pay monetary compensation to the applicant for lost earnings and expenses incurred as a result of the applicant attending any hearing concerning an application for an extended order.*

3. If an extended order is issued by a justice court, an interlocutory appeal lies to the district court, which may affirm, modify or vacate the order in question. The appeal may be taken without bond, but its taking does not stay the effect or enforcement of the order.

4. A temporary or extended order must specify, as applicable, the county and city, if any, in which the residence, school, child care facility or other provider of child care, and place of employment of the applicant or minor child are located.

5. A temporary or extended order must provide notice that a person who is arrested for violating the order will not be admitted to bail sooner than 12 hours after his arrest if the arresting officer determines that such a violation is accompanied by a direct or indirect threat of harm.

Sec. 7. NRS 33.070 is hereby amended to read as follows:

33.070 1. Every temporary or extended order must include a provision ordering any law enforcement officer to arrest an adverse party if the officer has probable cause to believe that the adverse party has violated any provision of the order. The law enforcement officer may make an arrest with or without a warrant and regardless of whether the violation occurs in his presence.

2. If a law enforcement officer cannot verify that the adverse party was served with a copy of the application and order, he shall:

(a) Inform the adverse party of the specific terms and conditions of the order;

(b) Inform the adverse party that he now has notice of the provisions of the order and that a violation of the order will result in his arrest; ~~and~~

(c) Inform the adverse party of the location of the court that issued the original order and the hours during which the adverse party may obtain a copy of the order ~~and~~; and



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1 (d) *Inform the adverse party of the date and time set for a*
2 *hearing on an application for an extended order, if any.*

3 3. Information concerning the terms and conditions of the
4 order, the date and time of the notice provided to the adverse party
5 and the name and identifying number of the officer who gave the
6 notice must be provided in writing to the applicant and noted in the
7 records of the law enforcement agency and the court.

8 **Sec. 8.** NRS 441A.220 is hereby amended to read as follows:

9 441A.220 All information of a personal nature about any
10 person provided by any other person reporting a case or suspected
11 case of a communicable disease, or by any person who has a
12 communicable disease, or as determined by investigation of the
13 health authority, is confidential medical information and must not be
14 disclosed to any person under any circumstances, including pursuant
15 to any subpoena, search warrant or discovery proceeding, except as
16 follows:

17 1. For statistical purposes, provided that the identity of the
18 person is not discernible from the information disclosed.

19 2. In a prosecution for a violation of this chapter.

20 3. In a proceeding for an injunction brought pursuant to this
21 chapter.

22 4. In reporting the actual or suspected abuse or neglect of a
23 child or elderly person.

24 5. To any person who has a medical need to know the
25 information for his own protection or for the well-being of a patient
26 or dependent person, as determined by the health authority in
27 accordance with regulations of the Board.

28 6. If the person who is the subject of the information consents
29 in writing to the disclosure.

30 7. Pursuant to subsection ~~(2)~~ 4 of NRS 441A.320 or
31 NRS 629.069.

32 8. If the disclosure is made to the Department of Health and
33 Human Services and the person about whom the disclosure is made
34 has been diagnosed as having acquired immunodeficiency syndrome
35 or an illness related to the human immunodeficiency virus and is a
36 recipient of or an applicant for Medicaid.

37 9. To a firefighter, police officer or person providing
38 emergency medical services if the Board has determined that the
39 information relates to a communicable disease significantly related
40 to that occupation. The information must be disclosed in the manner
41 prescribed by the Board.

42 10. If the disclosure is authorized or required by specific
43 statute.



Sec. 9. NRS 441A.320 is hereby amended to read as follows:
441A.320 1. ~~[As soon as practicable after:~~

~~—(a) A person is arrested for the commission of a crime; or~~
~~—(b) A minor is detained for the commission of an act which, if~~
~~committed by a person other than a minor would have constituted a~~
~~crime,~~

~~→-which]~~ If the *alleged* victim or a witness *to a crime* alleges *that*
the crime involved the sexual penetration of the victim's body, the
health authority shall *perform the tests set forth in subsection 2 as*
soon as practicable after the arrest of the person alleged to have
committed the crime, but not later than 48 hours after the person
is charged with the crime by indictment or information, unless the
person alleged to have committed the crime is a child who will be
adjudicated in juvenile court and then not later than 48 hours
after the petition is filed with the juvenile court alleging that the
child is delinquent for committing such an act.

2. *If the health authority is required to perform tests pursuant*
to subsection 1, it must test a specimen obtained from the arrested
person ~~[or detained minor]~~ for exposure to the human
immunodeficiency virus and any commonly contracted sexually
transmitted disease, regardless of whether he or, if ~~[a detained~~
~~minor,]~~ *the person is a child,* his parent or guardian consents to
providing the specimen. The agency that has custody of the arrested
person ~~[or detained minor]~~ shall obtain the specimen and submit it
to the health authority for testing. The health authority shall perform
the test in accordance with generally accepted medical practices.

~~[2.—The]~~

3. *In addition to the test performed pursuant to subsection 2,*
the health authority shall perform such follow-up tests for the
human immunodeficiency virus as may be deemed medically
appropriate.

4. *As soon as practicable, the* health authority shall disclose
the results of all tests performed pursuant to subsection ~~[4]~~ *2 or 3* to:

(a) The victim or to the victim's parent or guardian if the victim
is a ~~[minor,]~~ *child;* and

(b) The arrested person and, if ~~[a minor is detained,]~~ *the person*
is a child, to his parent or guardian.

~~[3-]~~ 5. If the health authority determines, from the results of a
test performed pursuant to subsection ~~[4,]~~ *2 or 3,* that a victim of
sexual assault may have been exposed to the human
immunodeficiency virus or any commonly contracted sexually
transmitted disease, it shall, at the request of the victim, provide him
with:

(a) An examination for exposure to the human
immunodeficiency virus and any commonly contracted sexually



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1 transmitted disease to which the health authority determines he may
2 have been exposed;

3 (b) Counseling regarding the human immunodeficiency virus
4 and any commonly contracted sexually transmitted disease to which
5 the health authority determines he may have been exposed; and

6 (c) A referral for health care and other assistance,
7 ➤ as appropriate.

8 ~~[4-]~~ 6. If the court in:

9 (a) A criminal proceeding determines that a person has
10 committed a crime; or

11 (b) A proceeding conducted pursuant to title 5 of NRS
12 determines that a ~~[minor]~~ *child* has committed an act which, if
13 committed by ~~[a person other than a minor,]~~ *an adult*, would have
14 constituted a crime,

15 ➤ involving the sexual penetration of a victim's body, the court
16 shall, upon application by the health authority, order that ~~[minor]~~
17 *child* or other person to pay any expenses incurred in carrying out
18 this section with regard to that ~~[minor]~~ *child* or other person and that
19 victim.

20 ~~[5-]~~ 7. The Board shall adopt regulations identifying, for the
21 purposes of this section, sexually transmitted diseases which are
22 commonly contracted.

23 ~~[6-]~~ 8. As used in this section:

24 (a) "Sexual assault" means a violation of NRS 200.366.

25 (b) "Sexual penetration" has the meaning ascribed to it in
26 NRS 200.364.

