

ASSEMBLY BILL NO. 8—ASSEMBLYMAN MANENDO

PREFILED DECEMBER 12, 2006

Referred to Committee on Judiciary

**SUMMARY**—Makes various changes concerning bail or release after an arrest for driving a vehicle or operating a vessel under the influence of intoxicating liquor or certain other substances. (BDR 14-704)

**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 criminal procedure; revising provisions governing the right to bail or release before a conviction for driving a vehicle or operating a vessel under the influence of intoxicating liquor, a controlled substance or certain other substances; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

1 **Section 1** of this bill prohibits a person who is arrested for driving a vehicle or  
2 operating a vessel under the influence of intoxicating liquor from being admitted to  
3 bail or released on his own recognizance until the concentration of alcohol in his  
4 breath is less than 0.04. **Section 1** also prohibits a person who is arrested for driving  
5 a vehicle or operating a vessel under the influence of a controlled substance or  
6 certain other substances from being admitted to bail or released on his own  
7 recognizance for at least 12 hours after his arrest. (NRS 178.484)

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

1 **Section 1.** NRS 178.484 is hereby amended to read as follows:  
2 178.484 1. Except as otherwise provided in this section, a  
3 person arrested for an offense other than murder of the first degree  
4 must be admitted to bail.



2. A person arrested for a felony who has been released on probation or parole for a different offense must not be admitted to bail unless:

(a) A court issues an order directing that the person be admitted to bail;

(b) The State Board of Parole Commissioners directs the detention facility to admit the person to bail; or

(c) The Division of Parole and Probation of the Department of Public Safety directs the detention facility to admit the person to bail.

3. A person arrested for a felony whose sentence has been suspended pursuant to NRS 4.373 or 5.055 for a different offense or who has been sentenced to a term of residential confinement pursuant to NRS 4.3762 or 5.076 for a different offense must not be admitted to bail unless:

(a) A court issues an order directing that the person be admitted to bail; or

(b) A department of alternative sentencing directs the detention facility to admit the person to bail.

4. A person arrested for murder of the first degree may be admitted to bail unless the proof is evident or the presumption great by any competent court or magistrate authorized by law to do so in the exercise of discretion, giving due weight to the evidence and to the nature and circumstances of the offense.

5. *A person arrested for a violation of NRS 484.379, 484.3795, 484.37955, 488.410, 488.420 or 488.425 who is under the influence of intoxicating liquor must not be admitted to bail or released on his own recognizance unless he has a concentration of alcohol of less than 0.04 in his breath. A test of the person's breath pursuant to this subsection to determine the concentration of alcohol in his breath as a condition of admission to bail or release is not admissible as evidence against the person.*

6. *A person arrested for a violation of NRS 484.379, 484.3795, 484.37955, 488.410, 488.420 or 488.425 who is under the influence of a controlled substance, is under the combined influence of intoxicating liquor and a controlled substance, or inhales, ingests, applies or otherwise uses any chemical, poison or organic solvent, or any compound or combination of any of these, to a degree which renders him incapable of safely driving or exercising actual physical control of a vehicle or vessel under power or sail must not be admitted to bail or released on his own recognizance sooner than 12 hours after his arrest.*

7. A person arrested for a battery that constitutes domestic violence pursuant to NRS 33.018 must not be admitted to bail sooner than 12 hours after his arrest. If the person is admitted to bail



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1 more than 12 hours after his arrest, pursuant to subsection 5 of NRS  
2 171.178, without appearing personally before a magistrate, or  
3 without the amount of bail having been otherwise set by a  
4 magistrate or a court, the amount of bail must be:

5 (a) Three thousand dollars, if the person has no previous  
6 convictions of battery that constitute domestic violence pursuant to  
7 NRS 33.018 and there is no reason to believe that the battery for  
8 which he has been arrested resulted in substantial bodily harm;

9 (b) Five thousand dollars, if the person has:

10 (1) No previous convictions of battery that constitute  
11 domestic violence pursuant to NRS 33.018, but there is reason to  
12 believe that the battery for which he has been arrested resulted in  
13 substantial bodily harm; or

14 (2) One previous conviction of battery that constitutes  
15 domestic violence pursuant to NRS 33.018, but there is no reason to  
16 believe that the battery for which he has been arrested resulted in  
17 substantial bodily harm; or

18 (c) Fifteen thousand dollars, if the person has:

19 (1) One previous conviction of battery that constitutes  
20 domestic violence pursuant to NRS 33.018 and there is reason to  
21 believe that the battery for which he has been arrested resulted in  
22 substantial bodily harm; or

23 (2) Two or more previous convictions of battery that  
24 constitute domestic violence pursuant to NRS 33.018.

25 ➤ The provisions of this subsection do not affect the authority of a  
26 magistrate or a court to set the amount of bail when the person  
27 personally appears before the magistrate or the court, or when a  
28 magistrate or a court has otherwise been contacted to set the amount  
29 of bail. For the purposes of this subsection, a person shall be  
30 deemed to have a previous conviction of battery that constitutes  
31 domestic violence pursuant to NRS 33.018 if the person has been  
32 convicted of such an offense in this State or has been convicted of  
33 violating a law of any other jurisdiction that prohibits the same or  
34 similar conduct.

35 ~~[6.]~~ 8. A person arrested for violating a temporary or extended  
36 order for protection against domestic violence issued pursuant to  
37 NRS 33.017 to 33.100, inclusive, or for violating a restraining order  
38 or injunction that is in the nature of a temporary or extended order  
39 for protection against domestic violence issued in an action or  
40 proceeding brought pursuant to title 11 of NRS must not be  
41 admitted to bail sooner than 12 hours after his arrest if the arresting  
42 officer determines that such a violation is accompanied by a direct  
43 or indirect threat of harm. If the person is admitted to bail more than  
44 12 hours after his arrest, pursuant to subsection 5 of NRS 171.178,  
45 without appearing personally before a magistrate, or without the



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1 amount of bail having been otherwise set by a magistrate or a court,  
2 the amount of bail must be:

3 (a) Three thousand dollars, if the person has no previous  
4 convictions of violating a temporary or extended order for  
5 protection against domestic violence issued pursuant to NRS 33.017  
6 to 33.100, inclusive, or of violating a restraining order or injunction  
7 that is in the nature of a temporary or extended order for protection  
8 against domestic violence issued in an action or proceeding brought  
9 pursuant to title 11 of NRS;

10 (b) Five thousand dollars, if the person has one previous  
11 conviction of violating a temporary or extended order for protection  
12 against domestic violence issued pursuant to NRS 33.017 to 33.100,  
13 inclusive, or of violating a restraining order or injunction that is in  
14 the nature of a temporary or extended order for protection against  
15 domestic violence issued in an action or proceeding brought  
16 pursuant to title 11 of NRS; or

17 (c) Fifteen thousand dollars, if the person has two or more  
18 previous convictions of violating a temporary or extended order for  
19 protection against domestic violence issued pursuant to NRS 33.017  
20 to 33.100, inclusive, or of violating a restraining order or injunction  
21 that is in the nature of a temporary or extended order for protection  
22 against domestic violence issued in an action or proceeding brought  
23 pursuant to title 11 of NRS.

24 ➤ The provisions of this subsection do not affect the authority of a  
25 magistrate or a court to set the amount of bail when the person  
26 personally appears before the magistrate or the court, or when a  
27 magistrate or a court has otherwise been contacted to set the amount  
28 of bail. For the purposes of this subsection, a person shall be  
29 deemed to have a previous conviction of violating a temporary or  
30 extended order for protection against domestic violence issued  
31 pursuant to NRS 33.017 to 33.100, inclusive, or of violating a  
32 restraining order or injunction that is in the nature of a temporary or  
33 extended order for protection against domestic violence issued in an  
34 action or proceeding brought pursuant to title 11 of NRS if the  
35 person has been convicted of such an offense in this State or has  
36 been convicted of violating a law of any other jurisdiction that  
37 prohibits the same or similar conduct.

38 ~~[7]~~ 9. The court may, before releasing a person arrested for an  
39 offense punishable as a felony, require the surrender to the court of  
40 any passport the person possesses.

41 ~~[8]~~ 10. Before releasing a person arrested for any crime, the  
42 court may impose such reasonable conditions on the person as it  
43 deems necessary to protect the health, safety and welfare of the  
44 community and to ensure that the person will appear at all times and  
45 places ordered by the court, including, without limitation:



(a) Requiring the person to remain in this State or a certain county within this State;

(b) Prohibiting the person from contacting or attempting to contact a specific person or from causing or attempting to cause another person to contact that person on his behalf;

(c) Prohibiting the person from entering a certain geographic area; or

(d) Prohibiting the person from engaging in specific conduct that may be harmful to his own health, safety or welfare, or the health, safety or welfare of another person.

➤ In determining whether a condition is reasonable, the court shall consider the factors listed in NRS 178.4853.

~~19.1~~ **11.** If a person fails to comply with a condition imposed pursuant to subsection ~~18.1~~ **10**, the court may, after providing the person with reasonable notice and an opportunity for a hearing:

(a) Deem such conduct a contempt pursuant to NRS 22.010; or

(b) Increase the amount of bail pursuant to NRS 178.499.

~~10.1~~ **12.** An order issued pursuant to this section that imposes a condition on a person admitted to bail must include a provision ordering any law enforcement officer to arrest the person if he has probable cause to believe that the person has violated a condition of his bail.

~~11.1~~ **13.** Before a person may be admitted to bail, he must sign a document stating that:

(a) He will appear at all times and places as ordered by the court releasing him and as ordered by any court before which the charge is subsequently heard;

(b) He will comply with the other conditions which have been imposed by the court and are stated in the document; and

(c) If he fails to appear when so ordered and is taken into custody outside of this State, he waives all his rights relating to extradition proceedings.

➤ The signed document must be filed with the clerk of the court of competent jurisdiction as soon as practicable, but in no event later than the next business day.

~~12.1~~ **14.** If a person admitted to bail fails to appear as ordered by a court and the jurisdiction incurs any cost in returning the person to the jurisdiction to stand trial, the person who failed to appear is responsible for paying those costs as restitution.

~~13.1~~ **15.** For the purposes of subsection ~~16.1~~ **8**, an order or injunction is in the nature of a temporary or extended order for protection against domestic violence if it grants relief that might be given in a temporary or extended order issued pursuant to NRS 33.017 to 33.100, inclusive.



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**Sec. 2.** NRS 178.4851 is hereby amended to read as follows:

178.4851 1. Upon a showing of good cause, a court may release without bail any person entitled to bail if it appears to the court that it can impose conditions on the person that will adequately protect the health, safety and welfare of the community and ensure that he will appear at all times and places ordered by the court.

2. In releasing a person without bail, the court may impose such conditions as it deems necessary to protect the health, safety and welfare of the community and to ensure that he will appear at all times and places ordered by the court, including, without limitation, any condition set forth in subsection ~~8~~ 10 of NRS 178.484.

3. Upon a showing of good cause, a sheriff or chief of police may release without bail any person charged with a misdemeanor pursuant to standards established by a court of competent jurisdiction.

4. Before a person may be released without bail, he must file with the clerk of the court of competent jurisdiction a signed document stating that:

(a) He will appear at all times and places as ordered by the court releasing him and as ordered by any court before which the charge is subsequently heard;

(b) He will comply with the other conditions which have been imposed by the court and are stated in the document;

(c) If he fails to appear when so ordered and is taken into custody outside of this State, he waives all his rights relating to extradition proceedings; and

(d) He understands that any court of competent jurisdiction may revoke the order of release without bail and may order him into custody or require him to furnish bail or otherwise ensure the protection of the health, safety and welfare of the community or his appearance.

5. If a jurisdiction incurs any costs in returning a person to the jurisdiction to stand trial, the person failing to appear is responsible for paying those costs as restitution.

6. An order issued pursuant to this section that imposes a condition on a person who is released without bail must include a provision ordering a law enforcement officer to arrest the person if he has probable cause to believe that the person has violated a condition of his release.

