

ASSEMBLY BILL NO. 161—ASSEMBLYMAN MORTENSON

FEBRUARY 12, 2009

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to domestic violence.
(BDR 14-490)

FISCAL NOTE: Effect on Local Government: No.
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 domestic violence; revising the provisions relating to the mandatory arrest of a person for battery which constitutes domestic violence; revising the provisions relating to plea bargaining of a charge for battery which constitutes domestic violence; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 **Section 1** of this bill deletes from existing law the provision that a peace officer
2 shall not base his decision regarding whether to arrest a person for battery
3 constituting domestic violence on the peace officer's perception of the willingness
4 of a victim or a witness to the incident to testify or otherwise participate in related
5 judicial proceedings. (NRS 171.137) Unless "mitigating circumstances" exist, a
6 peace officer is required by existing law to arrest a person when the peace officer
7 has probable cause to believe that the person has committed battery constituting
8 domestic violence within the preceding 24 hours. (NRS 171.137) **Section 1** also
9 defines the term "mitigating circumstances" to include, without limitation: (1) the
10 reasonable belief of the peace officer that a victim will be protected from further
11 injury; (2) the desire of a victim or witness to recant a prior statement regarding the
12 incident; or (3) the willingness of a victim or witness to testify or participate in
13 related judicial proceedings.

14 **Section 2** of this bill provides that instead of being generally prohibited from
15 dismissing a charge of battery constituting domestic violence in exchange for a plea
16 to a lesser charge, a prosecuting attorney is required, in determining whether to
17 dismiss such a charge in exchange for a plea, to consider, among other appropriate
18 factors, the desire of a victim or witness to recant a prior statement regarding the
19 incident and the willingness of a victim or witness to testify or engage in related
20 judicial proceedings. (NRS 200.485)



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

1 **Section 1.** NRS 171.137 is hereby amended to read as follows:
2 171.137 1. Except as otherwise provided in subsection 2,
3 whether or not a warrant has been issued, a peace officer shall,
4 unless mitigating circumstances exist, arrest a person when he has
5 probable cause to believe that the person to be arrested has, within
6 the preceding 24 hours, committed a battery upon his spouse, former
7 spouse, any other person to whom he is related by blood or
8 marriage, a person with whom he is or was actually residing, a
9 person with whom he has had or is having a dating relationship, a
10 person with whom he has a child in common, the minor child of any
11 of those persons or his minor child.

12 2. If the peace officer has probable cause to believe that a
13 battery described in subsection 1 was a mutual battery, he shall
14 attempt to determine which person was the primary physical
15 aggressor. If the peace officer determines that one of the persons
16 who allegedly committed a battery was the primary physical
17 aggressor involved in the incident, the peace officer is not required
18 to arrest any other person believed to have committed a battery
19 during the incident. In determining whether a person is a primary
20 physical aggressor for the purposes of this subsection, the peace
21 officer shall consider:

- 22 (a) Prior domestic violence involving either person;
23 (b) The relative severity of the injuries inflicted upon the
24 persons involved;
25 (c) The potential for future injury;
26 (d) Whether one of the alleged batteries was committed in self-
27 defense; and
28 (e) Any other factor that may help the peace officer decide
29 which person was the primary physical aggressor.

30 3. ~~{A peace officer shall not base his decision regarding~~
31 ~~whether to arrest a person pursuant to this section on his perception~~
32 ~~of the willingness of a victim or a witness to the incident to testify~~
33 ~~or otherwise participate in related judicial proceedings.~~

34 —4.1 As used in this section {, “dating” :

35 (a) **“Dating relationship”** means frequent, intimate associations
36 primarily characterized by the expectation of affectional or sexual
37 involvement. The term does not include a casual relationship or an
38 ordinary association between persons in a business or social context.

39 (b) **“Mitigating circumstances” includes, without limitation:**

40 (1) ***The reasonable belief of the peace officer that a victim***
41 ***of the incident will be protected from further injury;***



(2) The desire of a victim or a witness to the incident to recant a prior statement made to the peace officer or another person regarding the incident; or

(3) The willingness of a victim or a witness to the incident to testify or participate in related judicial proceedings.

Sec. 2. NRS 200.485 is hereby amended to read as follows:

200.485 1. Unless a greater penalty is provided pursuant to NRS 200.481, a person convicted of a battery which constitutes domestic violence pursuant to NRS 33.018:

(a) For the first offense within 7 years, is guilty of a misdemeanor and shall be sentenced to:

(1) Imprisonment in the city or county jail or detention facility for not less than 2 days, but not more than 6 months; and

(2) Perform not less than 48 hours, but not more than 120 hours, of community service.

➔ The person shall be further punished by a fine of not less than \$200, but not more than \$1,000. A term of imprisonment imposed pursuant to this paragraph may be served intermittently at the discretion of the judge or justice of the peace, except that each period of confinement must be not less than 4 consecutive hours and must occur at a time when the person is not required to be at his place of employment or on a weekend.

(b) For the second offense within 7 years, is guilty of a misdemeanor and shall be sentenced to:

(1) Imprisonment in the city or county jail or detention facility for not less than 10 days, but not more than 6 months; and

(2) Perform not less than 100 hours, but not more than 200 hours, of community service.

➔ The person shall be further punished by a fine of not less than \$500, but not more than \$1,000.

(c) For the third and any subsequent offense within 7 years, is guilty of a category C felony and shall be punished as provided in NRS 193.130.

2. In addition to any other penalty, if a person is convicted of a battery which constitutes domestic violence pursuant to NRS 33.018, the court shall:

(a) For the first offense within 7 years, require him to participate in weekly counseling sessions of not less than 1 1/2 hours per week for not less than 6 months, but not more than 12 months, at his expense, in a program for the treatment of persons who commit domestic violence that has been certified pursuant to NRS 228.470.

(b) For the second offense within 7 years, require him to participate in weekly counseling sessions of not less than 1 1/2 hours per week for 12 months, at his expense, in a program for the



1 treatment of persons who commit domestic violence that has been
2 certified pursuant to NRS 228.470.

3 ➔ If the person resides in this State but the nearest location at which
4 counseling services are available is in another state, the court may
5 allow the person to participate in counseling in the other state in a
6 program for the treatment of persons who commit domestic violence
7 that has been certified pursuant to NRS 228.470.

8 3. An offense that occurred within 7 years immediately
9 preceding the date of the principal offense or after the principal
10 offense constitutes a prior offense for the purposes of this section
11 when evidenced by a conviction, without regard to the sequence of
12 the offenses and convictions. The facts concerning a prior offense
13 must be alleged in the complaint, indictment or information, must
14 not be read to the jury or proved at trial but must be proved at the
15 time of sentencing and, if the principal offense is alleged to be a
16 felony, must also be shown at the preliminary examination or
17 presented to the grand jury.

18 4. In addition to any other fine or penalty, the court shall order
19 such a person to pay an administrative assessment of \$35. Any
20 money so collected must be paid by the clerk of the court to the
21 State Controller on or before the fifth day of each month for the
22 preceding month for credit to the Account for Programs Related to
23 Domestic Violence established pursuant to NRS 228.460.

24 5. In addition to any other penalty, the court may require such a
25 person to participate, at his expense, in a program of treatment for
26 the abuse of alcohol or drugs that has been certified by the Health
27 Division of the Department of Health and Human Services.

28 6. If it appears from information presented to the court that a
29 child under the age of 18 years may need counseling as a result of
30 the commission of a battery which constitutes domestic violence
31 pursuant to NRS 33.018, the court may refer the child to an agency
32 which provides child welfare services. If the court refers a child to
33 an agency which provides child welfare services, the court shall
34 require the person convicted of a battery which constitutes domestic
35 violence pursuant to NRS 33.018 to reimburse the agency for the
36 costs of any services provided, to the extent of his ability to pay.

37 7. If a person is charged with committing a battery which
38 constitutes domestic violence pursuant to NRS 33.018, ~~the~~
39 ~~prosecuting attorney shall not~~ **in determining whether to** dismiss
40 such a charge in exchange for a plea of guilty, guilty but mentally ill
41 or nolo contendere to a lesser charge ~~for for any other reason unless~~
42 ~~he knows, or it is obvious, that the charge is not supported by~~
43 ~~probable cause or cannot be proved at the time of trial.]~~ **, the**
44 **prosecuting attorney shall consider, among other appropriate**
45 **factors, the desire of a victim or a witness to the incident to recant**



1 *a prior statement made to a peace officer or another person*
2 *regarding the incident and the willingness of a victim or witness to*
3 *testify or engage in related judicial proceedings.* A court shall not
4 grant probation to and, except as otherwise provided in NRS 4.373
5 and 5.055, a court shall not suspend the sentence of such a person.

6 8. As used in this section:

7 (a) "Agency which provides child welfare services" has the
8 meaning ascribed to it in NRS 432B.030.

9 (b) "Battery" has the meaning ascribed to it in paragraph (a) of
10 subsection 1 of NRS 200.481.

11 (c) "Offense" includes a battery which constitutes domestic
12 violence pursuant to NRS 33.018 or a violation of the law of any
13 other jurisdiction that prohibits the same or similar conduct.

