

ASSEMBLY BILL NO. 33—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED DECEMBER 5, 2008

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing subsequent convictions of battery which constitutes domestic violence. (BDR 15-261)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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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 crimes; providing a specific penalty for certain subsequent convictions of battery which constitutes domestic violence without regard to the period between such convictions; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 **Section 1** of this bill makes it a category B felony punishable by a minimum
2 term of imprisonment of 2 years, a maximum term of imprisonment of 15 years,
3 and a fine of not less than \$2,000 or more than \$5,000 to commit a battery which
4 constitutes domestic violence if the person has been previously convicted of: (1) a
5 felony in this State for committing battery which constitutes domestic violence at
6 least three times within a 7-year period; or (2) three or more violations of the law of
7 any other jurisdiction that prohibits conduct that is the same or similar to a battery
8 which constitutes domestic violence in this State.

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

1 **Section 1.** NRS 200.485 is hereby amended to read as follows:
2 200.485 1. Unless a greater penalty is provided pursuant to
3 NRS 200.481 ~~H~~ *and except as otherwise provided in subsection 2,*
4 a person convicted of a battery which constitutes domestic violence
5 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. *Unless a greater penalty is provided pursuant to NRS 200.481, a person who has previously been convicted of:*

(a) *A battery which constitutes domestic violence pursuant to NRS 33.018 that is punishable as a felony pursuant to paragraph (c) of subsection 1; or*

(b) *Three or more violations of the law of any other jurisdiction that prohibits the same or similar conduct as a battery which constitutes domestic violence pursuant to NRS 33.018,*

➔ and who commits a battery which constitutes domestic violence pursuant to NRS 33.018 is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 15 years, and shall be further punished by a fine of not less than \$2,000 or more than \$5,000.

3. 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) Except as otherwise provided in this subsection, 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



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

3 (b) Except as otherwise provided in this subsection, for the
4 second offense within 7 years, require him to participate in weekly
5 counseling sessions of not less than 1 1/2 hours per week for 12
6 months, at his expense, in a program for the treatment of persons
7 who commit domestic violence that has been certified pursuant to
8 NRS 228.470.

9 ➔ If the person resides more than 70 miles from the nearest location
10 at which counseling services are available, the court may allow the
11 person to participate in counseling sessions in a program for the
12 treatment of persons who commit domestic violence that has been
13 certified pursuant to NRS 228.470 every other week for the number
14 of months required pursuant to paragraph (a) or (b) so long as the
15 number of hours of counseling is not less than 6 hours per month. If
16 the person resides in this State but the nearest location at which
17 counseling services are available is in another state, the court may
18 allow the person to participate in counseling in the other state in a
19 program for the treatment of persons who commit domestic violence
20 that has been certified pursuant to NRS 228.470.

21 ~~[3.—An]~~

22 *4. Except as otherwise provided in this subsection, an* offense
23 that occurred within 7 years immediately preceding the date of the
24 principal offense or after the principal offense constitutes a prior
25 offense for the purposes of this section when evidenced by a
26 conviction, without regard to the sequence of the offenses and
27 convictions. *An offense which is listed in paragraph (a) or (b) of*
28 *subsection 2 that occurred on any date preceding the date of the*
29 *principal offense or after the principal offense constitutes a prior*
30 *offense for the purposes of this section when evidenced by a*
31 *conviction, without regard for the sequence of the offenses and*
32 *convictions.* The facts concerning a prior offense must be alleged in
33 the complaint, indictment or information, must not be read to the
34 jury or proved at trial but must be proved at the time of sentencing
35 and, if the principal offense is alleged to be a felony, must also be
36 shown at the preliminary examination or presented to the grand jury.

37 ~~[4.]~~ 5. In addition to any other fine or penalty, the court shall
38 order such a person to pay an administrative assessment of \$35. Any
39 money so collected must be paid by the clerk of the court to the
40 State Controller on or before the fifth day of each month for the
41 preceding month for credit to the Account for Programs Related to
42 Domestic Violence established pursuant to NRS 228.460.

43 ~~[5.]~~ 6. In addition to any other penalty, the court may require
44 such a person to participate, at his expense, in a program of
45 treatment for the abuse of alcohol or drugs that has been certified by



1 the Health Division of the Department of Health and Human
2 Services.

3 ~~[6-]~~ 7. If it appears from information presented to the court that
4 a child under the age of 18 years may need counseling as a result of
5 the commission of a battery which constitutes domestic violence
6 pursuant to NRS 33.018, the court may refer the child to an agency
7 which provides child welfare services. If the court refers a child to
8 an agency which provides child welfare services, the court shall
9 require the person convicted of a battery which constitutes domestic
10 violence pursuant to NRS 33.018 to reimburse the agency for the
11 costs of any services provided, to the extent of his ability to pay.

12 ~~[7-]~~ 8. If a person is charged with committing a battery which
13 constitutes domestic violence pursuant to NRS 33.018, a
14 prosecuting attorney shall not dismiss such a charge in exchange for
15 a plea of guilty, guilty but mentally ill or nolo contendere to a lesser
16 charge or for any other reason unless he knows, or it is obvious, that
17 the charge is not supported by probable cause or cannot be proved at
18 the time of trial. A court shall not grant probation to and, except as
19 otherwise provided in NRS 4.373 and 5.055, a court shall not
20 suspend the sentence of such a person.

21 ~~[8-]~~ 9. As used in this section:

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

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

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

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

30 200.485 1. Unless a greater penalty is provided pursuant to
31 NRS 200.481 ~~[H]~~ *and except as otherwise provided in subsection 2,*
32 a person convicted of a battery which constitutes domestic violence
33 pursuant to NRS 33.018:

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

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

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

40 ➔ The person shall be further punished by a fine of not less than
41 \$200, but not more than \$1,000. A term of imprisonment imposed
42 pursuant to this paragraph may be served intermittently at the
43 discretion of the judge or justice of the peace, except that each
44 period of confinement must be not less than 4 consecutive hours and



1 must occur at a time when the person is not required to be at his
2 place of employment or on a weekend.

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

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

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

9 ➔ The person shall be further punished by a fine of not less than
10 \$500, but not more than \$1,000.

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

14 2. *Unless a greater penalty is provided pursuant to NRS*
15 *200.481, a person who has previously been convicted of:*

16 (a) *A battery which constitutes domestic violence pursuant to*
17 *NRS 33.018 that is punishable as a felony pursuant to paragraph*
18 *(c) of subsection 1; or*

19 (b) *Three or more violations of the law of any other*
20 *jurisdiction that prohibits the same or similar conduct as a battery*
21 *which constitutes domestic violence pursuant to NRS 33.018,*

22 ➔ *and who commits a battery which constitutes domestic violence*
23 *pursuant to NRS 33.018 is guilty of a category B felony and shall*
24 *be punished by imprisonment in the state prison for a minimum*
25 *term of not less than 2 years and a maximum term of not more*
26 *than 15 years, and shall be further punished by a fine of not less*
27 *than \$2,000 or more than \$5,000.*

28 3. In addition to any other penalty, if a person is convicted of a
29 battery which constitutes domestic violence pursuant to NRS
30 33.018, the court shall:

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

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

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



~~[3. - An]~~

4. *Except as otherwise provided in this subsection, an offense that occurred within 7 years immediately preceding the date of the principal offense or after the principal offense constitutes a prior offense for the purposes of this section when evidenced by a conviction, without regard to the sequence of the offenses and convictions. An offense which is listed in paragraph (a) or (b) of subsection 2 that occurred on any date preceding the date of the principal offense or after the principal offense constitutes a prior offense for the purposes of this section when evidenced by a conviction, without regard for the sequence of the offenses and convictions.* The facts concerning a prior offense must be alleged in the complaint, indictment or information, must not be read to the jury or proved at trial but must be proved at the time of sentencing and, if the principal offense is alleged to be a felony, must also be shown at the preliminary examination or presented to the grand jury.

~~[4.]~~ 5. In addition to any other fine or penalty, the court shall order such a person to pay an administrative assessment of \$35. Any money so collected must be paid by the clerk of the court to the State Controller on or before the fifth day of each month for the preceding month for credit to the Account for Programs Related to Domestic Violence established pursuant to NRS 228.460.

~~[5.]~~ 6. In addition to any other penalty, the court may require such a person to participate, at his expense, in a program of treatment for the abuse of alcohol or drugs that has been certified by the Health Division of the Department of Health and Human Services.

~~[6.]~~ 7. If it appears from information presented to the court that a child under the age of 18 years may need counseling as a result of the commission of a battery which constitutes domestic violence pursuant to NRS 33.018, the court may refer the child to an agency which provides child welfare services. If the court refers a child to an agency which provides child welfare services, the court shall require the person convicted of a battery which constitutes domestic violence pursuant to NRS 33.018 to reimburse the agency for the costs of any services provided, to the extent of his ability to pay.

~~[7.]~~ 8. If a person is charged with committing a battery which constitutes domestic violence pursuant to NRS 33.018, a prosecuting attorney shall not dismiss such a charge in exchange for a plea of guilty, guilty but mentally ill or nolo contendere to a lesser charge or for any other reason unless he knows, or it is obvious, that the charge is not supported by probable cause or cannot be proved at the time of trial. A court shall not grant probation to and, except as otherwise provided in NRS 4.373 and 5.055, a court shall not suspend the sentence of such a person.



1 ~~18-1~~ 9. As used in this section:

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

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

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

9 **Sec. 3.** NRS 432B.640 is hereby amended to read as follows:

10 432B.640 1. Upon receiving a referral from a court pursuant
11 to subsection ~~6~~ 7 of NRS 200.485, an agency which provides child
12 welfare services may, as appropriate, conduct an assessment to
13 determine whether a psychological evaluation or counseling is
14 needed by a child.

15 2. If an agency which provides child welfare services conducts
16 an assessment pursuant to subsection 1 and determines that a
17 psychological evaluation or counseling would benefit the child, the
18 agency may, with the approval of the parent or legal guardian of the
19 child:

20 (a) Conduct the evaluation or counseling; or

21 (b) Refer the child to a person that has entered into an agreement
22 with the agency to provide those services.

23 **Sec. 4.** 1. This section and sections 1 and 3 of this act
24 become effective upon passage and approval.

25 2. Section 1 of this act expires by limitation on June 30, 2009.

26 3. Section 2 of this act becomes effective on July 1, 2009.

