

SENATE BILL NO. 163—SENATOR GUSTAVSON

FEBRUARY 16, 2011

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing the procedure upon arrest of a person alleged to have committed a battery constituting domestic violence. (BDR 14-784)

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 crimes; revising provisions governing the procedure upon arrest of a person alleged to have committed a battery constituting domestic violence; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing law generally requires that a person who is arrested for an offense
2 other than first degree murder be admitted to bail. Existing law also specifically
3 requires that a person who is arrested for a battery that constitutes domestic
4 violence not be admitted to bail sooner than 12 hours after his or her arrest. (NRS
5 178.484) This bill specifies that a person arrested for a battery that constitutes
6 domestic violence within 7 days after allegedly committing the battery must not be
7 admitted to bail sooner than 12 hours after his or her arrest.

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



* S B 1 6 3 *

(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 484C.110, 484C.120, 484C.130, 484C.430, 488.410, 488.420 or 488.425 who is under the influence of intoxicating liquor must not be admitted to bail or released on the person's own recognizance unless the person has a concentration of alcohol of less than 0.04 in his or her breath. A test of the person's breath pursuant to this subsection to determine the concentration of alcohol in his or her 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 484C.110, 484C.120, 484C.130, 484C.430, 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 the person 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 the person's own recognizance sooner than 12 hours after arrest.

7. A person arrested for a battery that constitutes domestic violence pursuant to NRS 33.018 *within 7 days after allegedly committing the battery* must not be admitted to bail sooner than 12 hours after arrest. If ~~the~~ a person *arrested for a battery that*



1 *constitutes domestic violence pursuant to NRS 33.018* is admitted
2 to bail ~~{more than 12 hours after arrest,}~~ without appearing
3 personally before a magistrate or without the amount of bail having
4 been otherwise set by a magistrate or a court, the amount of bail
5 must be:

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

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

12 (1) No previous convictions of battery that constitute
13 domestic violence pursuant to NRS 33.018, but there is reason to
14 believe that the battery for which the person has been arrested
15 resulted in substantial bodily harm or was committed by
16 strangulation; or

17 (2) One previous conviction of battery that constitutes
18 domestic violence pursuant to NRS 33.018, but there is no reason to
19 believe that the battery for which the person has been arrested
20 resulted in substantial bodily harm or was committed by
21 strangulation; or

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

23 (1) One previous conviction of battery that constitutes
24 domestic violence pursuant to NRS 33.018 and there is reason to
25 believe that the battery for which the person has been arrested
26 resulted in substantial bodily harm or was committed by
27 strangulation; or

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

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

40 8. A person arrested for violating a temporary or extended
41 order for protection against domestic violence issued pursuant to
42 NRS 33.017 to 33.100, inclusive, or for violating a restraining order
43 or injunction that is in the nature of a temporary or extended order
44 for protection against domestic violence issued in an action or
45 proceeding brought pursuant to title 11 of NRS, or for violating a



1 temporary or extended order for protection against stalking,
2 aggravated stalking or harassment issued pursuant to NRS 200.591,
3 or for violating a temporary or extended order for protection against
4 sexual assault pursuant to NRS 200.378 must not be admitted to bail
5 sooner than 12 hours after arrest if:

6 (a) The arresting officer determines that such a violation is
7 accompanied by a direct or indirect threat of harm;

8 (b) The person has previously violated a temporary or extended
9 order for protection of the type for which the person has been
10 arrested; or

11 (c) At the time of the violation or within 2 hours after the
12 violation, the person has:

13 (1) A concentration of alcohol of 0.08 or more in the
14 person's blood or breath; or

15 (2) An amount of a prohibited substance in the person's
16 blood or urine that is equal to or greater than the amount set forth in
17 subsection 3 of NRS 484C.110.

18 9. If a person is admitted to bail more than 12 hours after
19 arrest, pursuant to subsection 8, without appearing personally before
20 a magistrate or without the amount of bail having been otherwise set
21 by a magistrate or a court, the amount of bail must be:

22 (a) Three thousand dollars, if the person has no previous
23 convictions of violating a temporary or extended order for
24 protection against domestic violence issued pursuant to NRS 33.017
25 to 33.100, inclusive, or of violating a restraining order or injunction
26 that is in the nature of a temporary or extended order for protection
27 against domestic violence issued in an action or proceeding brought
28 pursuant to title 11 of NRS, or of violating a temporary or extended
29 order for protection against stalking, aggravated stalking or
30 harassment issued pursuant to NRS 200.591, or of violating a
31 temporary or extended order for protection against sexual assault
32 pursuant to NRS 200.378;

33 (b) Five thousand dollars, if the person has one previous
34 conviction of violating a temporary or extended order for protection
35 against domestic violence issued pursuant to NRS 33.017 to 33.100,
36 inclusive, or of violating a restraining order or injunction that is
37 in the nature of a temporary or extended order for protection against
38 domestic violence issued in an action or proceeding brought
39 pursuant to title 11 of NRS, or of violating a temporary or extended
40 order for protection against stalking, aggravated stalking or
41 harassment issued pursuant to NRS 200.591, or of violating a
42 temporary or extended order for protection against sexual assault
43 pursuant to NRS 200.378; or

44 (c) Fifteen thousand dollars, if the person has two or more
45 previous convictions of violating a temporary or extended order for



1 protection against domestic violence issued pursuant to NRS 33.017
2 to 33.100, inclusive, or of violating a restraining order or injunction
3 that is in the nature of a temporary or extended order for protection
4 against domestic violence issued in an action or proceeding brought
5 pursuant to title 11 of NRS, or of violating a temporary or extended
6 order for protection against stalking, aggravated stalking or
7 harassment issued pursuant to NRS 200.591, or of violating a
8 temporary or extended order for protection against sexual assault
9 pursuant to NRS 200.378.

10 ➤ The provisions of this subsection do not affect the authority of a
11 magistrate or a court to set the amount of bail when the person
12 personally appears before the magistrate or the court or when a
13 magistrate or a court has otherwise been contacted to set the amount
14 of bail. For the purposes of this subsection, a person shall be
15 deemed to have a previous conviction of violating a temporary or
16 extended order for protection against domestic violence issued
17 pursuant to NRS 33.017 to 33.100, inclusive, or of violating a
18 restraining order or injunction that is in the nature of a temporary or
19 extended order for protection against domestic violence issued in an
20 action or proceeding brought pursuant to title 11 of NRS, or of
21 violating a temporary or extended order for protection against
22 stalking, aggravated stalking or harassment issued pursuant to NRS
23 200.591, or of violating a temporary or extended order for
24 protection against sexual assault pursuant to NRS 200.378, if the
25 person has been convicted of such an offense in this State or has
26 been convicted of violating a law of any other jurisdiction that
27 prohibits the same or similar conduct.

28 10. The court may, before releasing a person arrested for an
29 offense punishable as a felony, require the surrender to the court of
30 any passport the person possesses.

31 11. Before releasing a person arrested for any crime, the court
32 may impose such reasonable conditions on the person as it deems
33 necessary to protect the health, safety and welfare of the community
34 and to ensure that the person will appear at all times and places
35 ordered by the court, including, without limitation:

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

38 (b) Prohibiting the person from contacting or attempting to
39 contact a specific person or from causing or attempting to cause
40 another person to contact that person on the person's behalf;

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

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



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

3 12. If a person fails to comply with a condition imposed
4 pursuant to subsection 11, the court may, after providing the person
5 with reasonable notice and an opportunity for a hearing:

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

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

8 13. An order issued pursuant to this section that imposes a
9 condition on a person admitted to bail must include a provision
10 ordering any law enforcement officer to arrest the person if the
11 officer has probable cause to believe that the person has violated a
12 condition of bail.

13 14. Before a person may be admitted to bail, the person must
14 sign a document stating that:

15 (a) The person will appear at all times and places as ordered by
16 the court releasing the person and as ordered by any court before
17 which the charge is subsequently heard;

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

20 (c) If the person fails to appear when so ordered and is taken
21 into custody outside of this State, the person waives all rights
22 relating to extradition proceedings.

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

26 15. If a person admitted to bail fails to appear as ordered by a
27 court and the jurisdiction incurs any cost in returning the person to
28 the jurisdiction to stand trial, the person who failed to appear is
29 responsible for paying those costs as restitution.

30 16. For the purposes of subsections 8 and 9, an order or
31 injunction is in the nature of a temporary or extended order for
32 protection against domestic violence if it grants relief that might be
33 given in a temporary or extended order issued pursuant to NRS
34 33.017 to 33.100, inclusive.

35 17. As used in this section, "strangulation" has the meaning
36 ascribed to it in NRS 200.481.

