

ASSEMBLY BILL NO. 146—ASSEMBLYMEN HORNE AND FRIERSON

FEBRUARY 18, 2013

JOINT SPONSORS: SENATORS ATKINSON; AND FORD

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing servitude of a minor.
(BDR 15-752)

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; establishing the crime of involuntary servitude of a minor; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law establishes the crime of holding a person in involuntary servitude and provides that a person who holds another person in involuntary servitude is guilty of a category B felony. If a victim held in involuntary servitude suffers substantial bodily harm while held in involuntary servitude or in attempted escape or escape therefrom, the person who held the victim in involuntary servitude is punished by imprisonment in the state prison for a minimum term of not less than 7 years and a maximum term of not more than 20 years, and may be further punished by a fine of not more than \$50,000. If the victim suffers no substantial bodily harm as a result of being held in involuntary servitude, the person who held the victim in involuntary servitude is punished by imprisonment in the state prison for a minimum term of not less than 5 years and a maximum term of not more than 20 years, and may be further punished by a fine of not more than \$50,000. (NRS 200.463)

Section 2 of this bill establishes the crime of holding a minor in involuntary servitude and provides that a person who holds a minor in involuntary servitude is guilty of a category A felony and is punished by life imprisonment with the possibility of parole when a minimum of 15 years has been served. **Sections 3, 4, 8 and 14** of this bill provide that a person found guilty of holding a minor in involuntary servitude is subject to the greater penalty for that crime if the act of holding the minor in involuntary servitude could subject the person to a lesser punishment under another statute. **Sections 1, 6, 7 and 9-11** of this bill add references to **section 2** so that the crime of holding a minor in involuntary servitude is treated the same as the crime of holding a person in involuntary servitude for



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certain purposes, including, without limitation, the habitual felon statute and civil forfeiture. **Section 13** of this bill adds the crime of holding a minor in involuntary servitude to the list of offenses that constitute a crime against a child, thereby requiring a person convicted of holding a minor in involuntary servitude to register with law enforcement as an offender convicted of a crime against a child.

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

Section 1. NRS 193.1675 is hereby amended to read as follows:

193.1675 1. Except as otherwise provided in NRS 193.169, any person who willfully violates any provision of NRS 200.280, 200.310, 200.366, 200.380, 200.400, 200.460 to 200.465, inclusive, *and section 2 of this act*, paragraph (b) of subsection 2 of NRS 200.471, NRS 200.508, 200.5099 or subsection 2 of NRS 200.575 because the actual or perceived race, color, religion, national origin, physical or mental disability or sexual orientation of the victim was different from that characteristic of the perpetrator may, in addition to the term of imprisonment prescribed by statute for the crime, be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 20 years. In determining the length of any additional penalty imposed, the court shall consider the following information:

- (a) The facts and circumstances of the crime;
- (b) The criminal history of the person;
- (c) The impact of the crime on any victim;
- (d) Any mitigating factors presented by the person; and
- (e) Any other relevant information.

➔ The court shall state on the record that it has considered the information described in paragraphs (a) to (e), inclusive, in determining the length of any additional penalty imposed.

2. A sentence imposed pursuant to this section:

- (a) Must not exceed the sentence imposed for the crime; and
- (b) Runs consecutively with the sentence prescribed by statute for the crime.

3. This section does not create a separate offense but provides an additional penalty for the primary offense, whose imposition is contingent upon the finding of the prescribed fact.

Sec. 2. Chapter 200 of NRS is hereby amended by adding thereto a new section to read as follows:

1. A person who has physical custody of a minor, allows a minor to reside in his or her residence, is in a position of authority over a minor or provides care for any length of time to a minor and who knowingly:



1 (a) *Obtains labor or services from the minor by causing or*
2 *threatening to cause serious harm to the minor or by engaging in*
3 *a pattern of conduct that results in physical injury to the minor,*
4 *sexual abuse of the minor or sexual assault of the minor pursuant*
5 *to NRS 200.366; or*

6 (b) *Benefits, financially or by receiving anything of value*
7 *other than sexual gratification from the labor or services obtained*
8 *by the conduct specified in paragraph (a),*

9 ↳ *is guilty of holding a minor in involuntary servitude.*

10 2. *A person who is found guilty of holding a minor in*
11 *involuntary servitude is guilty of a category A felony and shall be*
12 *punished by imprisonment in the state prison for life with the*
13 *possibility of parole, with eligibility for parole beginning when a*
14 *minimum of 15 years has been served, and may be further*
15 *punished by a fine of at least \$50,000.*

16 3. *Consent of the victim to the performance of any labor or*
17 *services is not a valid defense to a prosecution conducted pursuant*
18 *to this section.*

19 4. *Nothing in this section shall be construed to prohibit a*
20 *parent or guardian of a child from requiring his or her child to*
21 *perform common household chores under the threat of the*
22 *reasonable exercise of discipline by the parent or guardian of the*
23 *child.*

24 5. *For the purposes of this section:*

25 (a) *"Physical injury" includes, without limitation:*

26 (1) *A sprain or dislocation;*

27 (2) *Damage to cartilage;*

28 (3) *A fracture of a bone or the skull;*

29 (4) *An injury causing an intracranial hemorrhage or injury*
30 *to another internal organ;*

31 (5) *Permanent or temporary disfigurement, including,*
32 *without limitation, a burn, scalding, cut, laceration, puncture or*
33 *bite; or*

34 (6) *Permanent or temporary loss or impairment of a part or*
35 *organ of the body.*

36 (b) *"Serious harm" means any harm, whether physical or*
37 *nonphysical, including, without limitation, psychological,*
38 *financial or reputational harm, that is sufficiently serious, under*
39 *the circumstances, to compel a reasonable person of the same*
40 *background and in the same circumstances as the victim to*
41 *perform or to continue to provide labor or services to avoid*
42 *incurring that harm.*

43 (c) *"Sexual abuse" includes acts upon a child constituting:*

44 (1) *Lewdness with a child pursuant to NRS 201.230;*

45 (2) *Sado-masochistic abuse pursuant to NRS 201.262;*



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(3) *Sexual assault pursuant to NRS 200.366;*
(4) *Open or gross lewdness pursuant to NRS 201.210; and*
(5) *Mutilation of the genitalia of a female child, aiding, abetting, encouraging or participating in the mutilation of the genitalia of a female child, or removal of a female child from this State for the purpose of mutilating the genitalia of the child pursuant to NRS 200.5083.*

Sec. 3. NRS 200.463 is hereby amended to read as follows:

200.463 1. A person who knowingly subjects, or attempts to subject, another person to forced labor or services by:

- (a) Causing or threatening to cause physical harm to any person;
 - (b) Physically restraining or threatening to physically restrain any person;
 - (c) Abusing or threatening to abuse the law or legal process;
 - (d) Knowingly destroying, concealing, removing, confiscating or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of the person;
 - (e) Extortion; or
 - (f) Causing or threatening to cause financial harm to any person,
- ➔ is guilty of holding a person in involuntary servitude.

2. ~~1A~~ *Unless a greater penalty is provided in section 2 of this act,* a person who is found guilty of holding a person in involuntary servitude is guilty of a category B felony and shall be punished:

(a) Where the victim suffers substantial bodily harm while held in involuntary servitude or in attempted escape or escape therefrom, by imprisonment in the state prison for a minimum term of not less than 7 years and a maximum term of not more than 20 years, and may be further punished by a fine of not more than \$50,000.

(b) Where the victim suffers no substantial bodily harm as a result of being held in involuntary servitude, by imprisonment in the state prison for a minimum term of not less than 5 years and a maximum term of not more than 20 years, and may be further punished by a fine of not more than \$50,000.

Sec. 4. NRS 200.464 is hereby amended to read as follows:

200.464 Unless a greater penalty is provided pursuant to NRS 200.468, *or section 2 of this act,* a person who knowingly:

1. Recruits, entices, harbors, transports, provides or obtains by any means, or attempts to recruit, entice, harbor, transport, provide or obtain by any means, another person, intending or knowing that the person will be held in involuntary servitude; or

2. Benefits, financially or by receiving anything of value, from participating in a violation of NRS 200.463 ~~1A~~ *or section 2 of this act,*



1 ➡ is guilty of a category B felony and shall be punished by
2 imprisonment in the state prison for a minimum term of not less
3 than 1 year and a maximum term of not more than 15 years, and
4 may be further punished by a fine of not more than \$50,000.

5 **Sec. 5.** NRS 200.468 is hereby amended to read as follows:

6 200.468 1. A person shall not transport, procure
7 transportation for or assist in the transportation of or procurement of
8 transportation for another person into the State of Nevada whom the
9 person knows or has reason to know does not have the legal right to
10 enter or remain in the United States with the intent to:

11 (a) Subject the person to involuntary servitude or any other act
12 prohibited pursuant to NRS 200.463 or 200.465 ~~or~~ *or section 2 of*
13 *this act;*

14 (b) Violate any state or federal labor law, including, without
15 limitation, 8 U.S.C. § 1324a; or

16 (c) Commit any other crime which is punishable by not less than
17 1 year imprisonment in the state prison.

18 2. A person who violates the provisions of subsection 1 is
19 guilty of trafficking in persons for illegal purposes and shall be
20 punished for a category B felony by imprisonment in the state prison
21 for a minimum term of not less than 1 year and a maximum term of
22 not more than 20 years, and may be further punished by a fine of not
23 more than \$50,000.

24 **Sec. 6.** NRS 207.012 is hereby amended to read as follows:

25 207.012 1. A person who:

26 (a) Has been convicted in this State of a felony listed in
27 subsection 2; and

28 (b) Before the commission of that felony, was twice convicted
29 of any crime which under the laws of the situs of the crime or of this
30 State would be a felony listed in subsection 2, whether the prior
31 convictions occurred in this State or elsewhere,

32 ➡ is a habitual felon and shall be punished for a category A felony
33 by imprisonment in the state prison:

34 (1) For life without the possibility of parole;

35 (2) For life with the possibility of parole, with eligibility for
36 parole beginning when a minimum of 10 years has been served; or

37 (3) For a definite term of 25 years, with eligibility for parole
38 beginning when a minimum of 10 years has been served.

39 2. The district attorney shall include a count under this section
40 in any information or shall file a notice of habitual felon if an
41 indictment is found, if each prior conviction and the alleged offense
42 committed by the accused constitutes a violation of subparagraph
43 (1) of paragraph (a) of subsection 1 of NRS 193.330, NRS 199.160,
44 199.500, 200.030, 200.310, 200.340, 200.366, 200.380, 200.390,
45 subsection 3 or 4 of NRS 200.400, NRS 200.410, subsection 3 of



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1 NRS 200.450, subsection 5 of NRS 200.460, NRS 200.463,
2 200.464, 200.465, 200.467, 200.468, subsection 1, paragraph (a) of
3 subsection 2 or subparagraph (2) of paragraph (b) of subsection 2 of
4 NRS 200.508, NRS 200.710, 200.720, 201.230, 201.450, 202.170,
5 subsection 2 of NRS 202.780, paragraph (b) of subsection 2 of NRS
6 202.820, paragraph (b) of subsection 1 or subsection 2 of NRS
7 202.830, NRS 205.010, subsection 4 of NRS 205.060, subsection 4
8 of NRS 205.067, NRS 205.075, 207.400, paragraph (a) of
9 subsection 1 of NRS 212.090, NRS 453.3325, 453.333, 484C.130,
10 484C.430 or 484E.010 **H** or *section 2 of this act*.

11 3. The trial judge may not dismiss a count under this section
12 that is included in an indictment or information.

13 **Sec. 7.** NRS 41.690 is hereby amended to read as follows:

14 41.690 1. A person who has suffered injury as the proximate
15 result of the willful violation of the provisions of NRS 200.280,
16 200.310, 200.366, 200.380, 200.400, 200.460, 200.463, 200.464,
17 200.465, 200.467, 200.468, 200.471, 200.481, 200.508, 200.5099,
18 200.571, 200.575, 203.010, 203.020, 203.030, 203.060, 203.080,
19 203.090, 203.100, 203.110, 203.119, 206.010, 206.040, 206.140,
20 206.200, 206.310, 207.180, 207.200 or 207.210 *or section 2 of this*
21 *act* by a perpetrator who was motivated by the injured person's
22 actual or perceived race, color, religion, national origin, physical or
23 mental disability or sexual orientation may bring an action for the
24 recovery of his or her actual damages and any punitive damages
25 which the facts may warrant. If the person who has suffered injury
26 prevails in an action brought pursuant to this subsection, the court
27 shall award the person costs and reasonable attorney's fees.

28 2. The liability imposed by this section is in addition to any
29 other liability imposed by law.

30 **Sec. 8.** NRS 127.300 is hereby amended to read as follows:

31 127.300 1. Except as otherwise provided in NRS 127.275,
32 127.285, 200.463, 200.464 and 200.465, *and section 2 of this act*, a
33 person who, without holding a valid license to operate a child-
34 placing agency issued by the Division, requests or receives, directly
35 or indirectly, any compensation or thing of value for placing,
36 arranging the placement of, or assisting in placing or arranging the
37 placement of any child for adoption or permanent free care is guilty
38 of a category D felony and shall be punished as provided in
39 NRS 193.130.

40 2. The natural parents and the adopting parents are not
41 accomplices for the purpose of this section.

42 **Sec. 9.** NRS 128.097 is hereby amended to read as follows:

43 128.097 If a parent of a child:

44 1. Engages in conduct that violates any provision of NRS
45 200.463, 200.464 or 200.465 **H** or *section 2 of this act; or*



2. Voluntarily delivers a child to a provider of emergency services pursuant to NRS 432B.630,
→ the parent is presumed to have abandoned the child.

Sec. 10. NRS 128.106 is hereby amended to read as follows:

128.106 In determining neglect by or unfitness of a parent, the court shall consider, without limitation, the following conditions which may diminish suitability as a parent:

1. Emotional illness, mental illness or mental deficiency of the parent which renders the parent consistently unable to care for the immediate and continuing physical or psychological needs of the child for extended periods of time. The provisions contained in NRS 128.109 apply to the case if the child has been placed outside his or her home pursuant to chapter 432B of NRS.

2. Conduct toward a child of a physically, emotionally or sexually cruel or abusive nature.

3. Conduct that violates any provision of NRS 200.463, 200.464 or 200.465 ~~+~~ *or section 2 of this act.*

4. Excessive use of intoxicating liquors, controlled substances or dangerous drugs which renders the parent consistently unable to care for the child.

5. Repeated or continuous failure by the parent, although physically and financially able, to provide the child with adequate food, clothing, shelter, education or other care and control necessary for the child's physical, mental and emotional health and development, but a person who, legitimately practicing his or her religious beliefs, does not provide specified medical treatment for a child is not for that reason alone a negligent parent.

6. Conviction of the parent for commission of a felony, if the facts of the crime are of such a nature as to indicate the unfitness of the parent to provide adequate care and control to the extent necessary for the child's physical, mental or emotional health and development.

7. Unexplained injury or death of a sibling of the child.

8. Inability of appropriate public or private agencies to reunite the family despite reasonable efforts on the part of the agencies.

Sec. 11. NRS 176.515 is hereby amended to read as follows:

176.515 1. The court may grant a new trial to a defendant if required as a matter of law or on the ground of newly discovered evidence.

2. If trial was by the court without a jury, the court may vacate the judgment if entered, take additional testimony and direct the entry of a new judgment.

3. Except as otherwise provided in NRS 176.0918, a motion for a new trial based on the ground of newly discovered evidence may be made only within 2 years after the verdict or finding of guilt.



4. A motion for a new trial based on any other grounds must be made within 7 days after the verdict or finding of guilt or within such further time as the court may fix during the 7-day period.

5. The court may grant a motion to vacate a judgment if:

(a) The judgment is a conviction for a violation of NRS 201.354, for engaging in prostitution or solicitation for prostitution, provided that the defendant was not alleged to be a customer of a prostitute;

(b) The participation of the defendant in the offense was the result of the defendant having been a victim of:

(1) Trafficking in persons as described in the Trafficking Victims Protection Act of 2000, 22 U.S.C. §§ 7101 et seq.; or

(2) Involuntary servitude as described in NRS 200.463 ~~or~~ *or section 2 of this act*; and

(c) The defendant makes a motion under this subsection with due diligence after the defendant has ceased being a victim of trafficking or involuntary servitude or has sought services for victims of such trafficking or involuntary servitude.

6. In deciding whether to grant a motion made pursuant to subsection 5, the court shall take into consideration any reasonable concerns for the safety of the defendant, family members of the defendant or other victims that may be jeopardized by the bringing of such a motion.

7. If the court grants a motion made pursuant to subsection 5, the court:

(a) Shall vacate the judgment and dismiss the accusatory pleading; and

(b) May take any additional action that the court deems appropriate under the circumstances.

Sec. 12. NRS 179.121 is hereby amended to read as follows:

179.121 1. All personal property, including, without limitation, any tool, substance, weapon, machine, computer, money or security, which is used as an instrumentality in any of the following crimes is subject to forfeiture:

(a) The commission of or attempted commission of the crime of murder, robbery, kidnapping, burglary, invasion of the home, grand larceny or theft if it is punishable as a felony;

(b) The commission of or attempted commission of any felony with the intent to commit, cause, aid, further or conceal an act of terrorism;

(c) A violation of NRS 202.445 or 202.446;

(d) The commission of any crime by a criminal gang, as defined in NRS 213.1263; or

(e) A violation of NRS 200.463 to 200.468, inclusive, *and section 2 of this act*, 201.300 to 201.340, inclusive, 202.265,



1 202.287, 205.473 to 205.513, inclusive, 205.610 to 205.810,
2 inclusive, 370.380, 370.382, 370.395, 370.405 or 465.070 to
3 465.085, inclusive.

4 2. Except as otherwise provided for conveyances forfeitable
5 pursuant to NRS 453.301 or 501.3857, all conveyances, including
6 aircraft, vehicles or vessels, which are used or intended for use
7 during the commission of a felony or a violation of NRS 202.287,
8 202.300 or 465.070 to 465.085, inclusive, are subject to forfeiture
9 except that:

10 (a) A conveyance used by any person as a common carrier in the
11 transaction of business as a common carrier is not subject to
12 forfeiture under this section unless it appears that the owner or other
13 person in charge of the conveyance is a consenting party or privy to
14 the felony or violation;

15 (b) A conveyance is not subject to forfeiture under this section
16 by reason of any act or omission established by the owner thereof to
17 have been committed or omitted without the owner's knowledge,
18 consent or willful blindness;

19 (c) A conveyance is not subject to forfeiture for a violation of
20 NRS 202.300 if the firearm used in the violation of that section was
21 not loaded at the time of the violation; and

22 (d) A forfeiture of a conveyance encumbered by a bona fide
23 security interest is subject to the interest of the secured party if the
24 secured party neither had knowledge of nor consented to the felony.
25 If a conveyance is forfeited, the appropriate law enforcement agency
26 may pay the existing balance and retain the conveyance for official
27 use.

28 3. For the purposes of this section, a firearm is loaded if:

29 (a) There is a cartridge in the chamber of the firearm;

30 (b) There is a cartridge in the cylinder of the firearm, if the
31 firearm is a revolver; or

32 (c) There is a cartridge in the magazine and the magazine is in
33 the firearm or there is a cartridge in the chamber, if the firearm is a
34 semiautomatic firearm.

35 4. As used in this section, "act of terrorism" has the meaning
36 ascribed to it in NRS 202.4415.

37 **Sec. 13.** NRS 179D.0357 is hereby amended to read as
38 follows:

39 179D.0357 "Crime against a child" means any of the following
40 offenses if the victim of the offense was less than 18 years of age
41 when the offense was committed:

42 1. Kidnapping pursuant to NRS 200.310 to 200.340, inclusive,
43 unless the offender is the parent or guardian of the victim.

44 2. False imprisonment pursuant to NRS 200.460, unless the
45 offender is the parent or guardian of the victim.



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3. *Involuntary servitude of a child pursuant to section 2 of this act, unless the offender is the parent or guardian of the victim.*

4. An offense involving pandering or prostitution pursuant to NRS 201.300 to 201.340, inclusive.

~~14.1~~ 5. An attempt to commit an offense listed in this section.

~~15.1~~ 6. An offense committed in another jurisdiction that, if committed in this State, would be an offense listed in this section. This subsection includes, without limitation, an offense prosecuted in:

(a) A tribal court.

(b) A court of the United States or the Armed Forces of the United States.

~~16.1~~ 7. An offense against a child committed in another jurisdiction, whether or not the offense would be an offense listed in this section, if the person who committed the offense resides or has resided or is or has been a student or worker in any jurisdiction in which the person is or has been required by the laws of that jurisdiction to register as an offender who has committed a crime against a child because of the offense. This subsection includes, without limitation, an offense prosecuted in:

(a) A tribal court.

(b) A court of the United States or the Armed Forces of the United States.

(c) A court having jurisdiction over juveniles.

Sec. 14. NRS 613.080 is hereby amended to read as follows:

613.080 1. The immigration to this State of all slaves and other people bound by contract to involuntary servitude for a term of years is hereby prohibited.

2. It is unlawful for any company, person or persons to collect the wages or compensation for the labor of the persons described in subsection 1.

3. It is unlawful for any corporation, company, person or persons to pay to any owner or agent of the owner of any such persons mentioned in subsection 1 any wages or compensation for the labor of such slaves or persons so bound by the contract to involuntary servitude.

4. Unless a greater penalty is provided in NRS 200.463, 200.464 or 200.468, *or section 2 of this act*, a violation of any of the provisions of this section is a gross misdemeanor.

