

Amendment No. 395

Assembly Amendment to Assembly Bill No. 207

(BDR 3-51)

Proposed by: Assembly Committee on Judiciary

Amends: Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/> _____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/> _____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/> _____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/> _____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/> _____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/> _____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold underlining* is newly added transitory language.

SSH/KCP



Date: 4/19/2013

A.B. No. 207—Revises provisions relating to juveniles. (BDR 3-51)



ASSEMBLY BILL NO. 207—ASSEMBLYMAN OHRENSCHALL

MARCH 5, 2013

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to juveniles. (BDR ~~(3-51)~~ **5-51**)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 juveniles; ~~revising the definition of an act of~~ **providing for certain prosecutorial discretion regarding a child taken into custody for a battery constituting** domestic violence ~~as it relates to a person who is less than 18 years of age; or any other battery offense;~~ establishing a maximum period of time for which a juvenile court may order an adult who has been placed on probation by the juvenile court or released on parole to be placed in county jail for a violation of probation or parole; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that certain unlawful acts constitute domestic violence when committed against certain specified persons. (NRS 33.018) ~~(Section 1 of this bill provides that a person who is less than 18 years of age does not commit an act constituting domestic violence unless he or she commits certain unlawful acts against or upon: (1) his or her spouse; (2) any other person with whom he or she has had or is having a dating relationship; (3) any other person with whom he or she has a child in common; (4) his or her minor child or the minor child of any of those other persons; or (5) any other person specified in existing law relating to domestic violence if it is established by clear and convincing evidence that the person committing the act engaged in a pattern of abusive behavior toward the other person for the purpose of establishing or maintaining power and control over the other person.) In addition, existing law provides that if a person is charged with committing a battery that constitutes domestic violence, a prosecuting attorney has limited discretion and may not negotiate any plea agreement for a different or lesser charge unless the domestic violence charge is not supported by probable cause or cannot be proved at the time of trial. (NRS 200.485)~~

Section 2 of this bill specifies that when a child is taken into custody for a battery that constitutes domestic violence or any other battery offense, the prosecuting attorney has greater discretion in determining the charge and in negotiating any plea agreement for a different or lesser charge based on certain factors, including: (1) the nature and type of relationship between the child and victim; (2) the nature and severity of the alleged offense; and (3) whether the child engaged in a pattern of abusive behavior toward the victim to establish or maintain power and control over the victim.

Existing law provides that a juvenile court may order a child who is less than 18 years of age to be placed in a facility for the detention of children for not more than 30 days for the violation of probation. Under existing law, if a person who is at least 18 years of age but less

than 21 years of age is subject to the jurisdiction of the juvenile court because he or she has been placed on probation by the juvenile court or released on parole from a juvenile detention facility, the juvenile court may order the person to be placed in county jail for the violation of probation or parole. (NRS 62E.710) ~~Section 124.3~~ **Section 3** of this bill limits to 30 days the period for which the juvenile court may order such a person to be placed in county jail.

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

Section 1. ~~NRS 33.018 is hereby amended to read as follows:~~

~~33.018. 1. [Domestic] Except as otherwise provided in subsection 2, domestic violence occurs when a person commits one of the following acts against or upon the person's spouse or former spouse, any other person to whom the person is related by blood or marriage, any other person with whom the person is or was actually residing, any other person with whom the person has had or is having a dating relationship, any other person with whom the person has a child in common, the minor child of any of those persons, the person's minor child or any other person who has been appointed the custodian or legal guardian for the person's minor child:~~

- ~~(a) A battery;~~
- ~~(b) An assault;~~
- ~~(c) Compelling the other person by force or threat of force to perform an act from which the other person has the right to refrain or to refrain from an act which the other person has the right to perform;~~
- ~~(d) A sexual assault;~~
- ~~(e) A knowing, purposeful or reckless course of conduct intended to harass the other person. Such conduct may include, but is not limited to:~~
 - ~~(1) Stalking;~~
 - ~~(2) Arson;~~
 - ~~(3) Trespassing;~~
 - ~~(4) Larceny;~~
 - ~~(5) Destruction of private property;~~
 - ~~(6) Carrying a concealed weapon without a permit;~~
 - ~~(7) Injuring or killing an animal;~~
- ~~(f) A false imprisonment;~~
- ~~(g) Unlawful entry of the other person's residence, or forcible entry against the other person's will if there is a reasonably foreseeable risk of harm to the other person from the entry.~~

~~2. A person who is less than 18 years of age does not commit domestic violence unless the person commits an act listed in subsection 1 against or upon:~~

- ~~(a) His or her spouse or former spouse;~~
- ~~(b) Any other person with whom he or she has had or is having a dating relationship;~~
- ~~(c) Any other person with whom he or she has a child in common;~~
- ~~(d) His or her minor child or the minor child of any person described in paragraph (a), (b) or (c); or~~
- ~~(e) Any other person described in subsection 1 only if it is established by clear and convincing evidence that the person committing the act engaged in a pattern of abusive behavior toward the other person for the purpose of establishing or maintaining power and control over the other person.~~

~~3. As used in this section, "dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional or sexual~~

involvement. The term does not include a casual relationship or an ordinary association between persons in a business or social context. (Deleted by amendment.)

Sec. 2. Chapter 62C of NRS is hereby amended by adding thereto a new section to read as follows:

1. Notwithstanding the provisions of subsection 8 of NRS 200.485, if a child is taken into custody for committing a battery that constitutes domestic violence pursuant to NRS 33.018 or any other battery offense, the district attorney may, after considering the factors set forth in subsection 2, determine whether to:

(a) File a petition alleging a different or lesser offense arising out of the same facts;

(b) Negotiate or enter into an agreement whereby the child admits to a different or lesser offense arising out of the same facts; or

(c) Take or approve any other actions authorized by this title, including, without limitation, informal supervision or dismissal.

2. In exercising his or her prosecutorial discretion pursuant to this section, the district attorney shall consider, without limitation:

(a) The nature and type of relationship between the child and the victim of the alleged offense;

(b) The nature and severity of the alleged offense; and

(c) Whether the facts show that the child engaged in a pattern of abusive behavior toward the victim of the alleged offense for the purpose of establishing or maintaining power and control over the victim.

~~Sec. 2.~~ **Sec. 3. NRS 62E.710 is hereby amended to read as follows:**

62E.710 The juvenile court may order any child who is:

1. Less than 18 years of age and who has been adjudicated delinquent and placed on probation by the juvenile court to be placed in a facility for the detention of children for not more than 30 days for the violation of probation.

2. At least 18 years of age but less than 21 years of age and who has been placed on probation by the juvenile court or who has been released on parole to be placed in a county jail **for not more than 30 days** for the violation of probation or parole.

Sec. 4. NRS 200.485 is hereby amended to read as follows:

200.485 1. Unless a greater penalty is provided pursuant to subsection 2 or 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 or her 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 convicted of a battery which constitutes domestic violence pursuant to NRS 33.018, if the battery is committed by strangulation as described in NRS 200.481, is guilty of a category C felony and shall be punished as provided in NRS 193.130 and by a fine of not more than \$15,000.

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

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

4. 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. 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.

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.

6. In addition to any other penalty, the court may require such a person to participate, at his or her 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.

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 the convicted person's ability to pay.

8. ~~HH~~ *Except as otherwise provided in section 2 of this act*, if a person is charged with committing a battery which constitutes domestic violence pursuant to

1 NRS 33.018, a prosecuting attorney shall not dismiss such a charge in exchange for
2 a plea of guilty, guilty but mentally ill or nolo contendere to a lesser charge or for
3 any other reason unless the prosecuting attorney knows, or it is obvious, that the
4 charge is not supported by probable cause or cannot be proved at the time of trial. A
5 court shall not grant probation to and, except as otherwise provided in NRS 4.373
6 and 5.055, a court shall not suspend the sentence of such a person.

7 9. As used in this section:

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

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

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