

Amendment No. 863

Senate Amendment to Senate Bill No. 361 First Reprint

(BDR 53-775)

Proposed by: Senator Cannizzaro

Amends: Summary: No 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) variations of green bold underlining is language proposed to be added 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 proposed to be retained in this amendment.

VG/NCA



Date: 5/21/2017

S.B. No. 361—Revises provisions related to domestic violence. (BDR 53-775)



SENATE BILL NO. 361—SENATORS CANNIZZARO, SEGERBLOM, MANENDO, RATTI, FARLEY; ATKINSON, CANCELA, DENIS, PARKS, SPEARMAN AND WOODHOUSE

MARCH 20, 2017

Referred to Committee on Commerce, Labor and Energy

SUMMARY—Revises provisions related to domestic violence. (BDR 53-775)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.
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 domestic violence; providing under certain circumstances for ~~14 days~~ **hours** of leave if an employee is a victim of an act which constitutes domestic violence; prohibiting the Administrator of the Employment Security Division of the Department of Employment, Training and Rehabilitation from disqualifying certain persons from receiving unemployment benefits under certain circumstances; prohibiting employers from conditioning employment in certain circumstances; increasing the penalty for violating certain orders for protection; increasing the penalty for a battery which constitutes domestic violence in certain circumstances; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law sets forth certain unlawful acts which constitute domestic violence when committed against certain specified persons. (NRS 33.018) **Section 1** of this bill requires an employer to provide certain ~~14 days~~ **hours** of leave to an employee who has been employed by the employer for at least ~~160~~ **90** days and who is a victim of an act which constitutes domestic violence, or such an employee whose family or household member is a victim of an act which constitutes domestic violence. ~~and the employee is not the alleged perpetrator.~~ **Section 1** specifically requires that such an employee is entitled to ~~120 days~~ **160 hours** of leave during a 12-month period. Such leave: (1) may be paid or unpaid; (2) must be used within the 12 months immediately following the date on which the act which constitutes domestic violence occurred; (3) may be used consecutively or intermittently; and (4) under certain circumstances, must be deducted from leave permitted by the Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601 et seq. **Section 1** authorizes an employee to use the leave for purposes related to a person who is a victim of an act which constitutes domestic violence. **Section 1** additionally requires an employer to maintain a record of the use of the ~~14 days~~ **hours** of leave for each employee for a ~~2-year~~ **2-year** period and to make those records available for inspection by the Labor Commissioner. Finally, **section 1** requires the Labor

Commissioner to prepare a bulletin setting forth the right to these benefits and requires employers to post the bulletin in the workplace.

Section 4 of this bill prohibits the Administrator of the Employment Security Division of the Department of Employment, Training and Rehabilitation from disqualifying a person from receiving unemployment compensation benefits if: (1) the person left employment to protect himself or herself, or his or her family or household member, from an act which constitutes domestic violence; and (2) the person actively engaged in an effort to preserve employment.

Section 4 also authorizes the Administrator to request evidence from the person to support a claim for benefits.

Section 6 of this bill requires an employer to provide reasonable accommodations which will not create an undue hardship for an employee who is a victim of an act which constitutes domestic violence or whose family or household member is a victim of an act which constitutes domestic violence.

Section 7 of this bill prohibits an employer from conditioning the employment of an employee or prospective employee or taking certain employment actions because: (1) the employee is a victim of an act which constitutes domestic violence; (2) the employee's family or household member is a victim of an act which constitutes domestic violence; or (3) of other circumstances related to being a victim of an act which constitutes domestic violence.

Existing law authorizes a court to issue a temporary or extended order for protection to protect a person from domestic violence. (NRS 33.020, 33.030) Further, existing law provides that a person who intentionally violates a temporary or extended order for protection against domestic violence is guilty of a misdemeanor unless a more severe penalty is prescribed for the act. **Section 8** of this bill instead makes the intentional violation of: (1) a temporary order a gross misdemeanor; and (2) an extended order a category C felony punishable by the penalties applicable to other category C felonies.

Existing law establishes the acts which constitute domestic violence, including committing a battery against a person with whom the aggressor has a certain relationship. (NRS 33.018) Under existing law, a person who is convicted of a third or subsequent offense of battery which constitutes domestic violence within 7 years is guilty of a category C felony. Additionally, if a person is convicted of a battery which constitutes domestic violence that is committed by strangulation, the person is guilty of a category C felony. (NRS 200.485)

Section 9 of this bill makes it a category B felony punishable by a minimum term of imprisonment of 2 years and a maximum term of 15 years, and a fine of not less than \$2,000 but not more than \$5,000, to commit a battery which constitutes domestic violence if the person has previously been convicted of: (1) a felony in this State for committing battery which constitutes domestic violence; or (2) a violation of the law of any other jurisdiction that prohibits conduct that is the same or similar to a felony in this State for committing a battery which constitutes domestic violence.

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

Section 1. Chapter 608 of NRS is hereby amended by adding thereto a new section to read as follows:

~~1. Every employer shall provide days of leave as follows:~~
~~(a) An employee who has been employed by an employer for at least 60 90~~
~~days and who is a victim of an act which constitutes domestic violence, or whose~~
~~family or household member is a victim of an act which constitutes domestic~~
~~violence, and the employee is not the alleged perpetrator, is entitled to not less~~
~~more than 120 days 160 hours of leave in one 12-month period. Days Hours of~~
~~leave provided pursuant to this paragraph subsection:~~
~~(1) (a) May be paid or unpaid by the employer;~~
~~(2) (b) Must be used within the 12 months immediately following the~~
~~date on which the act which constitutes domestic violence occurred;~~
~~(3) (c) May be used consecutively or intermittently; and~~

~~((4))~~ (d) If used for a reason for which leave may also be taken pursuant to the Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601 et seq., must be deducted from the amount of leave the employee is entitled to take pursuant to this section and from the amount of leave the employee is entitled to take pursuant to the Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601 et seq.

~~— (b) If an employee is rehired by the employer after separation from that employer, any previously accrued unused days of leave must be reinstated if the time allowed to use the days of leave pursuant to subparagraph (2) of paragraph (a) has not expired. In that case, such days of leave must be used within the time allowed pursuant to subparagraph (2) of paragraph (a). —~~

2. An employee may use the ~~(days)~~ hours of leave pursuant to subsection 1 as follows:

(a) An employee may use the ~~(days)~~ hours of leave only:

(1) For the diagnosis, care or treatment of a health condition related to an act which constitutes domestic violence committed against the employee or family or household member of the employee;

(2) To obtain counseling or assistance related to an act which constitutes domestic violence committed against the employee or family or household member of the employee;

(3) To participate in any court proceedings related to an act which constitutes domestic violence committed against the employee or family or household member of the employee; or

(4) To establish a safety plan, including, without limitation, any action to increase the safety of the employee or the family or household member of the employee from a future act which constitutes domestic violence.

(b) After taking any ~~(days)~~ hours of leave upon the occurrence of the act which constitutes domestic violence, an employee shall give not less than 48 hours' advance notice to his or her employer of the need to use additional ~~(days)~~ hours of leave for any purpose listed in paragraph (a).

3. An employer shall not:

(a) Deny an employee the right to use ~~(days)~~ hours of leave in accordance with the conditions of this section;

(b) Require an employee to find a replacement worker as a condition of using ~~(days)~~ hours of leave; or

(c) Retaliate against an employee for using ~~(days)~~ hours of leave.

4. The employer of an employee who takes ~~(days)~~ hours of leave pursuant to this section may require the employee to provide to the employer documentation that confirms or supports the reason the employee provided for requesting leave. Such documentation may include, without limitation, a police report, a copy of an application for an order for protection, an affidavit from an organization which provides services to victims of domestic violence or documentation from a physician. Any documentation provided to an employer pursuant to this subsection is confidential and must ~~not~~ be retained by the employer ~~— in a manner consistent with the requirements of the Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601 et seq.~~

5. The Labor Commissioner shall prepare a bulletin which clearly sets forth the right to the benefits created by this section. The Labor Commissioner shall post the bulletin on the Internet website maintained by the Office of Labor Commissioner, if any, and shall require all employers to post the bulletin in a conspicuous location in each workplace maintained by the employer. The bulletin may be included in any printed abstract posted by the employer pursuant to NRS 608.013.

6. An employer shall maintain a record of the ~~days~~ hours of leave taken pursuant to this section for each employee for a ~~13-year~~ 2-year period following the entry of such information in the record and, upon request, shall make those records available for inspection by the Labor Commissioner. The employer shall exclude the names of the employees from the records, unless a request for a record is for the purpose of an investigation.

7. The provisions of this section do not:

(a) Limit or abridge any other rights, remedies or procedures available under the law.

(b) Negate any other rights, remedies or procedures available to an aggrieved party.

(c) Prohibit, preempt or discourage any contract or other agreement that provides a more generous leave benefit or paid leave benefit.

8. As used in this section:

(a) "Domestic violence" has the meaning ascribed to it in NRS 33.018.

(b) "Family or household member" means a ~~spouse, or~~ :

(1) Spouse;

(2) Domestic partner;

(3) Minor child ~~of a parent~~ ; or

(4) Parent or other adult person who is related within the first degree of consanguinity or affinity to the employee, or other adult person who is or was actually residing with the employee at the time of the act which constitutes domestic violence.

Sec. 2. NRS 608.180 is hereby amended to read as follows:

608.180 The Labor Commissioner or the representative of the Labor Commissioner shall cause the provisions of NRS 608.005 to 608.195, inclusive, and section 1 of this act to be enforced, and upon notice from the Labor Commissioner or the representative:

1. The district attorney of any county in which a violation of those sections has occurred;

2. The Deputy Labor Commissioner, as provided in NRS 607.050;

3. The Attorney General, as provided in NRS 607.160 or 607.220; or

4. The special counsel, as provided in NRS 607.065,

shall prosecute the action for enforcement according to law.

Sec. 3. NRS 608.195 is hereby amended to read as follows:

608.195 1. Except as otherwise provided in NRS 608.0165, any person who violates any provision of NRS 608.005 to 608.195, inclusive, and section 1 of this act, or any regulation adopted pursuant thereto, is guilty of a misdemeanor.

2. In addition to any other remedy or penalty, the Labor Commissioner may impose against the person an administrative penalty of not more than \$5,000 for each such violation.

Sec. 4. Chapter 612 of NRS is hereby amended by adding thereto a new section to read as follows:

1. The Administrator shall not deny any otherwise eligible person benefits if the Administrator finds that:

(a) The person left employment to protect himself or herself, or a family or household member, from an act which constitutes domestic violence; and

(b) The person actively engaged in an effort to preserve employment.

2. The Administrator may request the person to furnish evidence satisfactory to support the person's claim for benefits.

3. As used in this section:

(a) "Domestic violence" has the meaning ascribed to it in NRS 33.018.

(b) "Family or household member" means a ~~spouse, or~~ :

(1) Spouse;
(2) Domestic partner;
(3) Minor child ~~of a parent~~ ; or
(4) Parent or other adult person who is related within the first degree of consanguinity or affinity to the employee, or other adult person who is or was actually residing with the employee at the time of the act which constitutes domestic violence.

Sec. 5. Chapter 613 of NRS is hereby amended by adding thereto the provisions set forth as sections 6 and 7 of this act.

Sec. 6. 1. An employer must make reasonable accommodations ~~which will not create an undue hardship~~ for an employee who is a victim of an act which constitutes domestic violence or whose family or household member is a victim of an act which constitutes domestic violence. The employer may provide such accommodations, including, without limitation, as:

(a) A transfer or reassignment;

(b) A modified schedule;

(c) A new telephone number for work; or

(d) Any other reasonable accommodations ~~which will not create an undue hardship~~ deemed necessary to ensure the safety of the employee, the workplace, the employer or other employees.

2. An employer may require an employee to provide to the employer documentation that confirms or supports the reason the employee requires the reasonable accommodations.

3. As used in this section:

(a) "Domestic violence" has the meaning ascribed to it in NRS 33.018.

(b) "Family or household member" has the meaning ascribed to it in section 4 of this act.

Sec. 7. 1. It is unlawful for any employer in this State to discharge, discipline, discriminate against in any manner or deny employment or promotion to, or threaten to take any such action against, an employee because:

(a) The employee requested to use ~~days~~ hours of leave pursuant to section 1 of this act;

(b) The employee participated ~~as a witness or interested party~~ in court proceedings related to an act which constitutes domestic violence ~~++~~ which triggered the use of leave pursuant to section 1 of this act.

(c) The employee requested an accommodation pursuant to section 6 of this act; or

(d) A person who allegedly committed an act which constitutes domestic violence commits an act which constitutes domestic violence in the workplace of the employee.

2. As used in this section, "domestic violence" has the meaning ascribed to it in NRS 33.018.

Sec. 8. NRS 33.100 is hereby amended to read as follows:

33.100 ~~++~~ Unless a more severe penalty is prescribed by law for the act that constitutes the violation of the order, any person who intentionally violates ++:

1. A temporary ~~++~~ order is guilty of a gross misdemeanor;

2. An extended order is guilty of a ~~misdemeanor, unless a more severe penalty is prescribed by law for the act that constitutes the violation of the order.~~ category C felony and shall be punished as provided in NRS 193.130.

Sec. 9. NRS 200.485 is hereby amended to read as follows:

200.485 1. Unless a greater penalty is provided pursuant to subsection 2 or 3 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 **subsection 3 or** 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. ***Unless a greater penalty is provided pursuant to NRS 200.481, a person who has been previously 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 subsection 2; or

(b) A violation of the law of any other jurisdiction that prohibits the same or similar conduct set forth in paragraph (a),

↪ 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 but more than \$5,000.

4. 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. A.1.~~

5. 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 3 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 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.

~~5.1~~ **6.** 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.

~~6.1~~ **7.** 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 Division of Public and Behavioral Health of the Department of Health and Human Services.

~~7.1~~ **8.** 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.

~~8.1~~ **9.** 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 the prosecuting attorney 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.

~~9.1~~ **10.** As used in this section:

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

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

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

Sec. 10. NRS 432B.640 is hereby amended to read as follows:

432B.640 1. Upon receiving a referral from a court pursuant to subsection ~~7.1~~ **8** of NRS 200.485, an agency which provides child welfare services may, as

1 appropriate, conduct an assessment to determine whether a psychological
2 evaluation or counseling is needed by a child.

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

7 (a) Conduct the evaluation or counseling; or

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

10 **Sec. 11.** This act becomes effective;

11 1. Upon passage and approval for the purpose of adopting any regulations and
12 performing any other preparatory administrative tasks necessary to carry out the
13 provisions of this act; and

14 2. On January 1, 2018, for all other purposes.