

ASSEMBLY BILL NO. 227—ASSEMBLYWOMEN
MUNK; AND KRASNER

FEBRUARY 25, 2019

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing sexual assault.
(BDR 15-837)

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 sexual assault; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law defines the crime of sexual assault and provides, in part, that a
2 person is guilty of sexual assault when the person subjects another person to sexual
3 penetration, or forces another person to make a sexual penetration on himself or
4 herself or another, or on a beast, against the will of the victim or under conditions
5 in which the perpetrator knows or should know that the victim is mentally or
6 physically incapable of resisting or understanding the nature of his or her conduct.
7 (NRS 200.366) **Section 1** of this bill, which is patterned, in part, after existing
8 California law, defines when a sexual penetration is “against the will of the victim
9 or under conditions in which the perpetrator knows or should know that the victim
10 is mentally or physically incapable of resisting or understanding the nature of his or
11 her conduct.” **Sections 2-4** of this bill make conforming changes.

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

1 **Section 1.** NRS 200.366 is hereby amended to read as follows:
2 200.366 1. A person is guilty of sexual assault if he or she:
3 (a) Subjects another person to sexual penetration, or forces
4 another person to make a sexual penetration on himself or herself or
5 another, or on a beast, against the will of the victim or under
6 conditions in which the perpetrator knows or should know that the



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1 victim is mentally or physically incapable of resisting or
2 understanding the nature of his or her conduct; or

3 (b) Commits a sexual penetration upon a child under the age of
4 14 years or causes a child under the age of 14 years to make a sexual
5 penetration on himself or herself or another, or on a beast.

6 2. *For the purposes of subsection 1, “against the will of the*
7 *victim or under conditions in which the perpetrator knows or*
8 *should know that the victim is mentally or physically incapable of*
9 *resisting or understanding the nature of his or her conduct”*
10 *means circumstances in which:*

11 (a) *The sexual penetration is accomplished against the will of*
12 *the victim by means of force, violence, duress, menace or fear of*
13 *immediate and unlawful bodily injury on the victim or another*
14 *person. As used in this paragraph:*

15 (1) *“Duress” means a direct or implied threat of force,*
16 *violence, danger or retribution sufficient to coerce a reasonable*
17 *person of ordinary susceptibilities to perform an act which*
18 *otherwise would not have been performed or to acquiesce in an act*
19 *to which one otherwise would not have submitted. The total*
20 *circumstances, including, without limitation, the age of the victim*
21 *and his or her relationship to the perpetrator, are factors to*
22 *consider in appraising the existence of duress.*

23 (2) *“Menace” means any threat, declaration or act which*
24 *shows an intention to inflict an injury upon another.*

25 (b) *The victim is incapable of giving legal consent or prevented*
26 *from resisting because the victim:*

27 (1) *Has a mental disorder or developmental or physical*
28 *disability;*

29 (2) *Is intoxicated or under the influence of a controlled*
30 *substance or anesthetic substance; or*

31 (3) *Is unconscious of the nature of the act. As used in this*
32 *subparagraph, “unconscious of the nature of the act” means*
33 *incapable of resisting because the victim meets any of the*
34 *following conditions:*

35 (I) *Was unconscious or asleep.*

36 (II) *Was not aware, knowing, perceiving or cognizant*
37 *that the act occurred.*

38 (III) *Was not aware, knowing, perceiving or cognizant*
39 *of the essential characteristics of the act because of the*
40 *perpetrator’s fraud in fact.*

41 (IV) *Was not aware, knowing, perceiving or cognizant*
42 *of the essential characteristics of the act because of the*
43 *perpetrator’s fraudulent representation that the sexual penetration*
44 *served a professional purpose when the sexual penetration*
45 *actually served no professional purpose.*



3. Except as otherwise provided in subsections ~~[3]~~ 4 and ~~[4]~~ 5, a person who commits a sexual assault is guilty of a category A felony and shall be punished:

(a) If substantial bodily harm to the victim results from the actions of the defendant committed in connection with or as a part of the sexual assault, by imprisonment in the state prison:

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

(2) For life with the possibility of parole, with eligibility for parole beginning when a minimum of 15 years has been served.

(b) If no substantial bodily harm to the victim results, by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served.

~~[3]~~ 4. Except as otherwise provided in subsection ~~[4]~~ 5, a person who commits a sexual assault against a child under the age of 16 years is guilty of a category A felony and shall be punished:

(a) If the crime results in substantial bodily harm to the child, by imprisonment in the state prison for life without the possibility of parole.

(b) Except as otherwise provided in paragraph (c), if the crime does not result in substantial bodily harm to the child, by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 25 years has been served.

(c) If the crime is committed against a child under the age of 14 years and does not result in substantial bodily harm to the child, by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 35 years has been served.

~~[4]~~ 5. A person who commits a sexual assault against a child under the age of 16 years and who has been previously convicted of:

(a) A sexual assault pursuant to this section or any other sexual offense against a child; or

(b) An offense committed in another jurisdiction that, if committed in this State, would constitute a sexual assault pursuant to this section or any other sexual offense against a child,

is guilty of a category A felony and shall be punished by imprisonment in the state prison for life without the possibility of parole.

~~[5]~~ 6. The provisions of this section do not apply to a person who is less than 18 years of age and who commits any of the acts described in paragraph (b) of subsection 1 if the person is not more than 2 years older than the person upon whom the act was committed unless:



(a) The person committing the act uses force or threatens the use of force; or

(b) The person committing the act knows or should know that the victim is mentally or physically incapable of resisting or understanding the nature of his or her conduct.

~~6-1~~ 7. For the purpose of this section, "other sexual offense against a child" means any act committed by an adult upon a child constituting:

(a) Incest pursuant to NRS 201.180;

(b) Lewdness with a child pursuant to NRS 201.230;

(c) Sado-masochistic abuse pursuant to NRS 201.262; or

(d) Luring a child using a computer, system or network pursuant to NRS 201.560, if punished as a felony.

Sec. 2. NRS 201.230 is hereby amended to read as follows:

201.230 1. A person is guilty of lewdness with a child if he or she:

(a) Is 18 years of age or older and willfully and lewdly commits any lewd or lascivious act, other than acts constituting the crime of sexual assault, upon or with the body, or any part or member thereof, of a child under the age of 16 years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of that child; or

(b) Is under the age of 18 years and willfully and lewdly commits any lewd or lascivious act, other than acts constituting the crime of sexual assault, upon or with the body, or any part or member thereof, of a child under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of that child.

2. Except as otherwise provided in subsections 4 and 5, a person who commits lewdness with a child under the age of 14 years is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served, and may be further punished by a fine of not more than \$10,000.

3. Except as otherwise provided in subsection 4, a person who commits lewdness with a child who is 14 or 15 years of age 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 1 year and a maximum term of not more than 10 years and may be further punished by a fine of not more than \$10,000.

4. Except as otherwise provided in subsection 5, a person who commits lewdness with a child and who has been previously convicted of:



(a) Lewdness with a child pursuant to this section or any other sexual offense against a child; or

(b) An offense committed in another jurisdiction that, if committed in this State, would constitute lewdness with a child pursuant to this section or any other sexual offense against a child, is guilty of a category A felony and shall be punished by imprisonment in the state prison for life without the possibility of parole.

5. A person who is under the age of 18 years and who commits lewdness with a child under the age of 14 years commits a delinquent act.

6. For the purpose of this section, "other sexual offense against a child" has the meaning ascribed to it in subsection ~~6~~ 7 of NRS 200.366.

Sec. 3. NRS 178.5698 is hereby amended to read as follows:

178.5698 1. The prosecuting attorney, sheriff or chief of police shall, upon the request of a victim or witness, inform the victim or witness:

(a) When the defendant is released from custody at any time before or during the trial, including, without limitation, when the defendant is released pending trial or subject to electronic supervision;

(b) If the defendant is so released, the amount of bail required, if any; and

(c) Of the final disposition of the criminal case in which the victim or witness was directly involved.

2. A request for information pursuant to subsection 1 must be made:

(a) In writing; or

(b) By telephone through an automated or computerized system of notification, if such a system is available.

3. If an offender is convicted of a sexual offense or an offense involving the use or threatened use of force or violence against the victim, the court shall provide:

(a) To each witness, documentation that includes:

(1) A form advising the witness of the right to be notified pursuant to subsection 5;

(2) The form that the witness must use to request notification in writing; and

(3) The form or procedure that the witness must use to provide a change of address after a request for notification has been submitted.

(b) To each person listed in subsection 4, documentation that includes:



(1) A form advising the person of the right to be notified pursuant to subsection 5 or 6 and NRS 176.015, 176A.630, 178.4715, 209.392, 209.3925, 209.521, 213.010, 213.040, 213.095 and 213.131 or NRS 213.10915;

(2) The forms that the person must use to request notification; and

(3) The forms or procedures that the person must use to provide a change of address after a request for notification has been submitted.

4. The following persons are entitled to receive documentation pursuant to paragraph (b) of subsection 3:

(a) A person against whom the offense is committed.

(b) A person who is injured as a direct result of the commission of the offense.

(c) If a person listed in paragraph (a) or (b) is under the age of 18 years, each parent or guardian who is not the offender.

(d) Each surviving spouse, parent and child of a person who is killed as a direct result of the commission of the offense.

(e) A relative of a person listed in paragraphs (a) to (d), inclusive, if the relative requests in writing to be provided with the documentation.

5. Except as otherwise provided in subsection 6, if the offense was a felony and the offender is imprisoned, the warden of the prison shall, if the victim or witness so requests in writing and provides a current address, notify the victim or witness at that address when the offender is released from the prison.

6. If the offender was convicted of a violation of subsection ~~131~~ 4 of NRS 200.366 or a violation of subsection 1, paragraph (a) of subsection 2 or subparagraph (2) of paragraph (b) of subsection 2 of NRS 200.508, the warden of the prison shall notify:

(a) The immediate family of the victim if the immediate family provides their current address;

(b) Any member of the victim's family related within the third degree of consanguinity, if the member of the victim's family so requests in writing and provides a current address; and

(c) The victim, if the victim will be 18 years of age or older at the time of the release and has provided a current address,

↳ before the offender is released from prison.

7. The warden must not be held responsible for any injury proximately caused by the failure to give any notice required pursuant to this section if no address was provided to the warden or if the address provided is inaccurate or not current.

8. As used in this section:

(a) "Immediate family" means any adult relative of the victim living in the victim's household.



(b) "Sexual offense" means:

- (1) Sexual assault pursuant to NRS 200.366;
- (2) Statutory sexual seduction pursuant to NRS 200.368;
- (3) Battery with intent to commit sexual assault pursuant to NRS 200.400;
- (4) An offense involving pornography and a minor pursuant to NRS 200.710 to 200.730, inclusive;
- (5) Incest pursuant to NRS 201.180;
- (6) Open or gross lewdness pursuant to NRS 201.210;
- (7) Indecent or obscene exposure pursuant to NRS 201.220;
- (8) Lewdness with a child pursuant to NRS 201.230;
- (9) Sexual penetration of a dead human body pursuant to NRS 201.450;
- (10) Sexual conduct between certain employees of a school or volunteers at a school and a pupil pursuant to NRS 201.540;
- (11) Sexual conduct between certain employees of a college or university and a student pursuant to NRS 201.550;
- (12) Luring a child or a person with mental illness pursuant to NRS 201.560, if punished as a felony;
- (13) An offense that, pursuant to a specific statute, is determined to be sexually motivated; or
- (14) An attempt to commit an offense listed in this paragraph.

Sec. 4. NRS 213.1255 is hereby amended to read as follows:

213.1255 1. Except as otherwise provided in subsection 4, in addition to any conditions of parole required to be imposed pursuant to NRS 213.1245, as a condition of releasing on parole a prisoner who was convicted of committing an offense listed in subsection 6 against a child under the age of 14 years and who is a Tier 3 offender, the Board shall require that the parolee:

(a) Reside at a location only if the residence is not located within 1,000 feet of any place, or if the place is a structure, within 1,000 feet of the actual structure, that is designed primarily for use by or for children, including, without limitation, a public or private school, a school bus stop, a center or facility that provides day care services, a video arcade, an amusement park, a playground, a park, an athletic field or a facility for youth sports, or a motion picture theater.

(b) As deemed appropriate by the Chief, be placed under a system of active electronic monitoring that is capable of identifying his or her location and producing, upon request, reports or records of his or her presence near or within a crime scene or prohibited area or his or her departure from a specified geographic location.



(c) Pay any costs associated with his or her participation under the system of active electronic monitoring, to the extent of his or her ability to pay.

2. A parolee placed under the system of active electronic monitoring pursuant to subsection 1 shall:

(a) Follow the instructions provided by the Division to maintain the electronic monitoring device in working order.

(b) Report any incidental damage or defacement of the electronic monitoring device to the Division within 2 hours after the occurrence of the damage or defacement.

(c) Abide by any other conditions set forth by the Division with regard to his or her participation under the system of active electronic monitoring.

3. Except as otherwise provided in this subsection, a person who intentionally removes or disables or attempts to remove or disable an electronic monitoring device placed on a parolee pursuant to this section is guilty of a gross misdemeanor. The provisions of this subsection do not prohibit a person authorized by the Division from performing maintenance or repairs to an electronic monitoring device.

4. The Board is not required to impose a condition of parole listed in subsection 1 if the Board finds that extraordinary circumstances are present and the Board states those extraordinary circumstances in writing.

5. In addition to any conditions of parole required to be imposed pursuant to subsection 1 and NRS 213.1245, as a condition of releasing on parole a prisoner who was convicted of committing an offense listed in subsection 6 against a child under the age of 14 years, the Board shall, when appropriate:

(a) Require the parolee to participate in psychological counseling.

(b) Prohibit the parolee from being alone with a child unless another adult who has never been convicted of a sexual offense is present.

6. The provisions of subsections 1 and 5 apply to a prisoner who was convicted of:

(a) Sexual assault pursuant to paragraph (c) of subsection ~~3~~ 4 of NRS 200.366;

(b) Abuse or neglect of a child pursuant to subparagraph (1) of paragraph (a) of subsection 1 or subparagraph (1) of paragraph (a) of subsection 2 of NRS 200.508;

(c) An offense punishable pursuant to subsection 2 of NRS 200.750;

(d) Lewdness with a child pursuant to NRS 201.230;



- 1 (e) Luring a child or a person with mental illness pursuant to
- 2 NRS 201.560, if punished as a felony; or
- 3 (f) Any combination of the crimes listed in this subsection.

