

SENATE BILL NO. 218—SENATORS CANNIZZARO, SPEARMAN;
ATKINSON, BROOKS, DENIS, DONDERO LOOP, PARKS,
SCHEIBLE AND WOODHOUSE

FEBRUARY 18, 2019

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to domestic violence.
(BDR 3-316)

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; revising provisions relating
to temporary and extended orders for protection against
domestic violence; revising provisions relating to the
crime of battery which constitutes domestic violence;
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 persons. (NRS 33.018) Existing law authorizes a court to grant a temporary or extended order for protection against domestic violence. (NRS 33.020) **Section 1** of this bill prohibits a court, when determining whether to grant such an order, from considering any factor other than whether a petitioner was the victim of domestic violence or a threat thereof.

Existing law provides that a person is guilty of a misdemeanor for intentionally violating a temporary or extended order for protection against domestic violence. (NRS 33.100) **Section 3** of this bill makes intentionally violating: (1) a temporary order for protection against domestic violence a gross misdemeanor; and (2) an extended order for protection against domestic violence a category C felony.

Existing law 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; (2) a battery which constitutes domestic violence that is committed by strangulation; or (3) 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. (NRS 200.485) **Section 7** of this bill additionally provides that if such a person commits a battery which constitutes domestic violence and the person has previously been convicted of a battery with the use of a deadly weapon against a person who would otherwise qualify as a victim of domestic violence, the person is guilty of such 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. **Sections 2 and 4-6** of this bill make conforming changes.

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

Section 1. NRS 33.020 is hereby amended to read as follows:
33.020 1. If it appears to the satisfaction of the court from specific facts shown by a verified application that an act of domestic violence has occurred or there exists a threat of domestic violence, the court may grant a temporary or extended order. *A court shall only consider whether the act of domestic violence or the threat thereof satisfies the requirements of NRS 33.018 without considering any other factor in its determination to grant the temporary or extended order.*

2. A temporary or extended order must not be granted to the applicant or the adverse party unless the applicant or the adverse party has requested the order and has filed a verified application that an act of domestic violence has occurred or there exists a threat of domestic violence.

~~{2-}~~ 3. The court may require the applicant or the adverse party, or both, to appear before the court before determining whether to grant the temporary or extended order.

~~{3-}~~ 4. A temporary order may be granted with or without notice to the adverse party. An extended order may only be granted after notice to the adverse party and a hearing on the application.

~~{4-}~~ 5. A hearing on an application for an extended order must be held within 45 days after the date on which the application for the extended order is filed. If the adverse party has not been served pursuant to NRS 33.060 or 33.065 and fails to appear at the hearing, the court may, upon a showing that law enforcement, after due diligence, has been unable to serve the adverse party or that the adverse party has sought to avoid service by concealment, set a date for a second hearing which must be held within 90 days after the date on which the first hearing was scheduled.

~~{5-}~~ 6. If the adverse party has not been served pursuant to NRS 33.060 or 33.065 and fails to appear on the date set for a second hearing on an application for an extended order pursuant to subsection ~~{4-}~~ 5, the court may, upon a showing that law



enforcement, after due diligence, has been unable to serve the adverse party or that the adverse party has sought to avoid service by concealment, set a date for a third hearing which must be held within 90 days after the date on which the second hearing was scheduled.

~~16-1~~ 7. The court shall rule upon an application for a temporary order within 1 judicial day after it is filed.

~~17-1~~ 8. If it appears to the satisfaction of the court from specific facts communicated by telephone to the court by an alleged victim that an act of domestic violence has occurred and the alleged perpetrator of the domestic violence has been arrested and is presently in custody pursuant to NRS 171.137, the court may grant a temporary order. Before approving an order under such circumstances, the court shall confirm with the appropriate law enforcement agency that the applicant is an alleged victim and that the alleged perpetrator is in custody. Upon approval by the court, the signed order may be transmitted to the facility where the alleged perpetrator is in custody by electronic or telephonic transmission to a facsimile machine. If such an order is received by the facility holding the alleged perpetrator while the alleged perpetrator is still in custody, the order must be personally served by an authorized employee of the facility before the alleged perpetrator is released. The court shall mail a copy of each order issued pursuant to this subsection to the alleged victim named in the order and cause the original order to be filed with the court clerk on the first judicial day after it is issued.

~~18-1~~ 9. In a county whose population is 52,000 or more, the court shall be available 24 hours a day, 7 days a week, including nonjudicial days and holidays, to receive communications by telephone and for the issuance of a temporary order pursuant to subsection ~~17-1~~ 8.

~~19-1~~ 10. In a county whose population is less than 52,000, the court may be available 24 hours a day, 7 days a week, including nonjudicial days and holidays, to receive communications by telephone and for the issuance of a temporary order pursuant to subsection ~~17-1~~ 8.

~~110-1~~ 11. The clerk of the court shall inform the protected party upon the successful transfer of information concerning the registration to the Central Repository for Nevada Records of Criminal History as required pursuant to NRS 33.095.

Sec. 2. NRS 33.080 is hereby amended to read as follows:

33.080 1. A temporary order expires within such time, not to exceed 30 days, as the court fixes. If an application for an extended order is filed within the period of a temporary order or at the same



time that an application for a temporary order is filed, the temporary order remains in effect until:

(a) The hearing on the extended order is held; or

(b) If the court schedules a second or third hearing pursuant to subsection ~~4~~ 5 or ~~5~~ 6 of NRS 33.020, the date on which the second or third hearing on an application for an extended order is held.

2. On 2 days' notice to the party who obtained the temporary order, the adverse party may appear and move its dissolution or modification, and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

3. An extended order expires within such time, not to exceed 1 year, as the court fixes. A temporary order may be converted by the court, upon notice to the adverse party and a hearing, into an extended order effective for not more than 1 year.

Sec. 3. NRS 33.100 is hereby amended to read as follows:

33.100 ~~{A}~~ *Unless a more severe penalty is prescribed by law for an act that constitutes a violation of an order, any person who intentionally violates {a} :*

1. A temporary ~~{or}~~ 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. 4. NRS 1.130 is hereby amended to read as follows:

1.130 1. No court except a justice court or a municipal court shall be opened nor shall any judicial business be transacted except by a justice court or municipal court on Sunday, or on any day declared to be a legal holiday according to the provisions of NRS 236.015, except for the following purposes:

(a) To give, upon their request, instructions to a jury then deliberating on their verdict.

(b) To receive a verdict or discharge a jury.

(c) For the exercise of the power of a magistrate in a criminal action or in a proceeding of a criminal nature.

(d) To receive communications by telephone and for the issuance of a temporary order pursuant to subsection ~~7~~ 8 of NRS 33.020.

(e) For the issue of a writ of attachment, which may be issued on each and all of the days above enumerated upon the plaintiff, or some person on behalf of the plaintiff, setting forth in the affidavit required by law for obtaining the writ the additional averment as follows:



That the affiant has good reason to believe, and does believe, that it will be too late for the purpose of acquiring a lien by the writ to wait until subsequent day for the issuance of the same.

All proceedings instituted, and all writs issued, and all official acts done on any of the days above specified, under and by virtue of this section, shall have all the validity, force and effect of proceedings commenced on other days, whether a lien be obtained or a levy made under and by virtue of the writ.

2. Nothing herein contained shall affect private transactions of any nature whatsoever.

Sec. 5. NRS 125.560 is hereby amended to read as follows:

125.560 ~~{A}~~

1. Unless a more severe penalty is prescribed by law for an act that constitutes a violation of an order, any person who intentionally violates a restraining order or injunction ~~{~~

~~1. That~~ *that* is in the nature of a temporary or extended order for protection against domestic violence ~~{~~ and ~~{~~

~~2. That~~ *that* is issued in an action or proceeding brought pursuant to this title ~~{~~

~~→ is guilty of a misdemeanor, unless a more severe penalty is prescribed by law for the act that constitutes the violation of the order or injunction.} shall be punished:~~

(a) Where the order or injunction is in the nature of a temporary order for protection against domestic violence, for a gross misdemeanor.

(b) Where the order or injunction is in the nature of an extended order for protection against domestic violence, for a category C felony and shall be punished as provided in NRS 193.130.

2. For the purposes of this section, an order or injunction is in the nature of a temporary or extended order for protection against domestic violence if it grants relief that might be given in a temporary or extended order issued pursuant to NRS 33.017 to 33.100, inclusive.

Sec. 6. NRS 171.136 is hereby amended to read as follows:

171.136 1. If the offense charged is a felony or gross misdemeanor, the arrest may be made on any day, and at any time of day or night.

2. If it is a misdemeanor, the arrest cannot be made between the hours of 7 p.m. and 7 a.m., except:

(a) Upon the direction of a magistrate, endorsed upon the warrant;



(b) When the offense is committed in the presence of the arresting officer;

(c) When the person is found and the arrest is made in a public place or a place that is open to the public and:

(1) There is a warrant of arrest against the person; and

(2) The misdemeanor is discovered because there was probable cause for the arresting officer to stop, detain or arrest the person for another alleged violation or offense;

(d) When the offense is committed in the presence of a private person and the person makes an arrest immediately after the offense is committed;

(e) When the arrest is made in the manner provided in NRS 171.137;

~~(f) [When the offense charged is a violation of a temporary or extended order for protection against domestic violence issued pursuant to NRS 33.017 to 33.100, inclusive;~~

~~—(g)—~~ When the person is already in custody as a result of another lawful arrest; or

~~[(h)]~~ (g) When the person voluntarily surrenders himself or herself in response to an outstanding warrant of arrest.

Sec. 7. 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 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; ~~for~~

(b) *A battery which constitutes domestic violence pursuant to NRS 33.018, if the battery is committed with the use of a deadly weapon as described in NRS 200.481; or*

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

➤ 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 not 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 439.258.

(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 439.258.

➤ 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 439.258.

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:

(a) When evidenced by a conviction; or

(b) If the offense is conditionally dismissed pursuant to NRS 176A.290 or dismissed in connection with successful completion of a diversionary program or specialty court program,

↳ without regard to the sequence of the offenses and convictions.

An offense which is listed in paragraph (a) , ~~(b)~~ (b) or (c) 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.

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.

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.

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.

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. Except as otherwise



provided in this subsection, a court shall not grant probation to or suspend the sentence of such a person. A court may grant probation to or suspend the sentence of such a person:

(a) As set forth in NRS 4.373 and 5.055; or

(b) To assign the person to a program for the treatment of veterans and members of the military pursuant to NRS 176A.290 if the charge is for a first offense punishable as a misdemeanor.

10. In every judgment of conviction or admonishment of rights issued pursuant to this section, the court shall:

(a) Inform the person convicted that he or she is prohibited from owning, possessing or having under his or her custody or control any firearm pursuant to NRS 202.360; and

(b) Order the person convicted to permanently surrender, sell or transfer any firearm that he or she owns or that is in his or her possession or under his or her custody or control in the manner set forth in NRS 202.361.

11. A person who violates any provision included in a judgment of conviction or admonishment of rights issued pursuant to this section concerning the surrender, sale, transfer, ownership, possession, custody or control of a firearm 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 6 years, and may be further punished by a fine of not more than \$5,000. The court must include in the judgment of conviction or admonishment of rights a statement that a violation of such a provision in the judgment or admonishment is 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 6 years, and may be further punished by a fine of not more than \$5,000.

12. 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.

