

SENATE BILL NO. 45—COMMITTEE ON GOVERNMENT AFFAIRS

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED NOVEMBER 18, 2020

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to crimes. (BDR 18-421)

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 ~~for mitted material~~ is material to be omitted.

AN ACT relating to crimes; changing the name and duties of the Ombudsman for Domestic Violence; changing the duties and composition of the Committee on Domestic Violence; revising the penalty for a battery which constitutes domestic violence against a pregnant person; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law creates the Office of Ombudsman for Victims of Domestic Violence within the Office of the Attorney General and prescribes the qualifications and duties of the Ombudsman. (NRS 228.440, 228.450) This bill revises the name, qualifications and duties of the Ombudsman and the Office to expand the scope of the Ombudsman and the Office to include the crimes of sexual assault and human trafficking and amends corresponding references accordingly.

Section 1 of this bill: (1) renames the Office as the Office of Ombudsman for Victims of Domestic Violence, Sexual Assault and Human Trafficking; and (2) revises the existing qualifications of the Ombudsman to include the requirement to have knowledge regarding sexual assault and human trafficking. (NRS 228.440)

Section 3 of this bill makes a conforming change to reflect the changed name.

Section 2 of this bill: (1) revises the requirement imposed upon the Ombudsman to prepare quarterly reports relating to domestic violence to include sexual assault and human trafficking within the scope of the report; (2) requires the Ombudsman to provide assistance to victims of sexual assault and human trafficking; and (3) requires the Ombudsman to provide education to the public regarding sexual assault and human trafficking. (NRS 228.450)

Existing law creates the Committee on Domestic Violence, whose members are appointed by the Attorney General, and sets forth the duties of the Committee.



(NRS 228.470) **Section 4** of this bill: (1) adds two additional members to the Committee, one of whom is a representative from the Office of the Court Administrator and one of whom is a representative appointed by the Administrator of the Division of Public and Behavioral Health of the Department of Health and Human Services; (2) eliminates the provision that requires the Committee to review programs for the treatment of persons who commit domestic violence and a corresponding subcommittee assigned to perform that review; and (3) requires the Committee to study issues relating to domestic violence.

Existing law provides that if a person is convicted of a first offense of battery which constitutes domestic violence against a victim who was pregnant at the time of the battery, the person is guilty of a gross misdemeanor, punishable by imprisonment in the county jail for not more than 364 days, or by a maximum fine of \$2,000, or by both fine and imprisonment. (NRS 193.140, 200.485) **Section 7** of this bill provides that for such an offense, a person must be imprisoned for not less than 30 days but not more than 6 months in the county jail, may be further punished by a fine of not less than \$500, but not more than \$1,000, and must participate in weekly counseling sessions of not less than 1 1/2 hours per week for not less than 12 months, at his or her expense. **Section 6** of this bill makes a conforming change to reflect the changes in **section 7**.

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

Section 1. NRS 228.440 is hereby amended to read as follows:
228.440 1. The Office of Ombudsman for Victims of Domestic Violence , *Sexual Assault and Human Trafficking* is hereby created within the Office of the Attorney General.

2. The Attorney General shall appoint a person to serve in the position of Ombudsman for a term of 4 years. The person so appointed:

(a) Must be knowledgeable about the legal and societal aspects of domestic violence *H, sexual assault and human trafficking;*

(b) Is in the unclassified service of the State; and

(c) Is not required to be an attorney.

3. The Attorney General may remove the Ombudsman from office for inefficiency, neglect of duty or malfeasance in office.

Sec. 2. NRS 228.450 is hereby amended to read as follows:

228.450 1. The Ombudsman for Victims of Domestic Violence , *Sexual Assault and Human Trafficking* shall:

(a) Prepare quarterly reports relating to victims of domestic violence , *sexual assault and human trafficking* from information collected from the Central Repository for Nevada Records of Criminal History, if any such information is available.

(b) Provide necessary assistance to victims of domestic violence *H, sexual assault and human trafficking.*

(c) Provide education to the public concerning domestic violence, *sexual assault and human trafficking*, including, without limitation, the prevention of domestic violence, *sexual assault and*



human trafficking, available assistance to victims of domestic violence, *sexual assault and human trafficking*, and available treatment for persons who commit domestic violence ~~H~~, *sexual assault and human trafficking*.

(d) Perform such other tasks as are necessary to carry out the duties and functions of his or her office.

2. Except as otherwise provided in this subsection, information collected pursuant to paragraph (a) of subsection 1 is confidential and must not be disclosed to any person under any circumstances, including, without limitation, pursuant to a subpoena, search warrant or discovery proceeding. Such information may be used for statistical purposes if the identity of the person is not discernible from the information disclosed.

3. Any grant received by the Office of the Attorney General for assistance to victims of domestic violence, *sexual assault and human trafficking* may be used to compensate the Ombudsman for Victims of Domestic Violence ~~H~~, *Sexual Assault and Human Trafficking*.

Sec. 3. NRS 228.460 is hereby amended to read as follows:

228.460 1. The Account for Programs Related to Domestic Violence is hereby created in the State General Fund. Any fee imposed and collected pursuant to NRS 176.094 must be deposited with the State Controller for credit to the Account.

2. The Ombudsman for Victims of Domestic Violence ~~H~~, *Sexual Assault and Human Trafficking*:

(a) Shall administer the Account for Programs Related to Domestic Violence; and

(b) May expend money in the Account only to pay for expenses related to:

(1) The Committee;

(2) Training law enforcement officers, attorneys and members of the judicial system about domestic violence;

(3) Assisting victims of domestic violence and educating the public concerning domestic violence; and

(4) Carrying out the duties and functions of his or her office.

3. All claims against the Account for Programs Related to Domestic Violence must be paid as other claims against the State are paid.

Sec. 4. NRS 228.470 is hereby amended to read as follows:

228.470 1. The ~~{Attorney General shall appoint a}~~ Committee on Domestic Violence *is hereby created. The Committee is* comprised of the Attorney General or a designee of the Attorney General and:

(a) *The following members appointed by the Attorney General:*



(1) One staff member of a program for victims of domestic violence;

~~(b)~~ (2) One staff member of a program for the treatment of persons who commit domestic violence;

~~(c)~~ (3) One representative from an office of the district attorney with experience in prosecuting criminal offenses;

~~(d)~~ (4) One representative from an office of the city attorney with experience in prosecuting criminal offenses;

~~(e)~~ (5) One law enforcement officer;

~~(f)~~ (6) One provider of mental health care;

~~(g)~~ (7) Two ~~victims~~ survivors of domestic violence;

~~(h)~~ (8) One justice of the peace or municipal judge;

(9) *One representative from the Office of Court Administrator;* and

~~(i)~~ (10) Any other person appointed by the Attorney General.

(b) One member who is a representative of the Division of Public and Behavioral Health of the Department of Health and Human Services, who is appointed by the Administrator of the Division and who has experience related to the certification of programs for the treatment of persons who commit domestic violence.

➔ Each appointed member serves a term of 2 years. Members may be reappointed for additional terms of 2 years. At least two members of the Committee must be residents of a county whose population is less than 100,000.

2. The Committee shall:

(a) Increase awareness of the existence and unacceptability of domestic violence in this State;

~~(b) Review programs for the treatment of persons who commit domestic violence and make recommendations to the Division of Public and Behavioral Health of the Department of Health and Human Services for the certification of such programs pursuant to NRS 439.258;~~

~~(c)~~ Review and evaluate existing programs provided to peace officers for training related to domestic violence and make recommendations to the Peace Officers' Standards and Training Commission regarding such training;

~~(d)~~ (c) To the extent that money is available, provide financial support to programs for the prevention of domestic violence in this State;

~~(e)~~ (d) Study and review all appropriate issues related to the administration of the criminal justice system in rural Nevada with respect to offenses involving domestic violence, including, without limitation, the availability of counseling services; ~~and~~



1 ~~—(f)~~ (e) *Study issues that relate to domestic violence, including,*
2 *without limitation, the intersections between domestic violence and*
3 *sexual assault and domestic violence and human trafficking; and*

4 (f) Submit on or before March 1 of each odd-numbered year a
5 report to the Director of the Legislative Counsel Bureau for
6 distribution to the regular session of the Legislature. In preparing the
7 report, the Committee shall solicit comments and recommendations
8 from district judges, municipal judges and justices of the peace in
9 rural Nevada. The report must include, without limitation:

10 (1) A summary of the work of the Committee and
11 recommendations for any necessary legislation concerning domestic
12 violence; and

13 (2) All comments and recommendations received by the
14 Committee.

15 3. ~~{The Attorney General shall appoint a subcommittee of~~
16 ~~members of the Committee to carry out the duties prescribed in~~
17 ~~paragraph (b) of subsection 2.~~

18 ~~—4.}~~ The Attorney General or the designee of the Attorney
19 General is the Chair of the Committee.

20 ~~{5.}~~ 4. The Committee shall annually elect a Vice Chair ~~{~~
21 ~~Secretary and Treasurer}~~ from among its members.

22 ~~{6.}~~ 5. The Committee shall meet regularly at least three times
23 in each calendar year and may meet at other times upon the call of
24 the Chair. ~~{Any six members of the Committee constitute a quorum.~~
25 ~~A majority vote of the quorum is required to take action with respect~~
26 ~~to any matter.~~

27 ~~—7.}~~ 6. At least one meeting in each calendar year must be held
28 at a location within the Fourth Judicial District, Fifth Judicial
29 District, Sixth Judicial District, Seventh Judicial District or Eleventh
30 Judicial District.

31 ~~{8.}~~ 7. The Attorney General shall provide the Committee with
32 such staff as is necessary to carry out the duties of the Committee.

33 ~~{9.}~~ 8. While engaged in the business of the Committee, each
34 member and employee of the Committee is entitled to receive the
35 per diem allowance and travel expenses provided for state officers
36 and employees generally.

37 ~~{10.}~~ 9. The Committee may adopt regulations necessary to
38 carry out its duties pursuant to NRS 228.470 to 228.497, inclusive.

39 **Sec. 5.** (Deleted by amendment.)

40 **Sec. 6.** NRS 176.094 is hereby amended to read as follows:

41 176.094 In addition to any other fine or penalty, if the court
42 finds that a person is guilty of committing an act which constitutes
43 domestic violence pursuant to NRS 33.018, the court shall:

44 1. Enter a finding of fact in the judgment of conviction.



2. Order the person to pay a fee 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.

3. ~~Require~~ *Except as otherwise provided in subsection 4 of NRS 200.485, require* for the:

(a) First offense within 7 years of any act which constitutes domestic violence, 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; or

(b) Second offense within 7 years of any act which constitutes domestic violence, 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.

Sec. 7. NRS 200.485 is hereby amended to read as follows:

200.485 1. Unless a greater penalty is provided pursuant to subsections 2 to 5, inclusive, 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;~~ *punished by:*

(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 12 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;~~ *punished by:*

(1) Imprisonment in the city or county jail or detention facility for not less than 20 days, but not more than 6 months; and

(2) Perform not less than 100 hours, but not more than 200 hours, of community service.



1 ➡ The person shall be further punished by a fine of not less than
2 \$500, but not more than \$1,000. A term of imprisonment imposed
3 pursuant to this paragraph may be served intermittently at the
4 discretion of the judge or justice of the peace, except that each
5 period of confinement must not be less than 12 consecutive hours
6 and must occur at a time when the person is not required to be at his
7 or her place of employment or on a weekend.

8 (c) For the third offense within 7 years, is guilty of a category B
9 felony and shall be punished by imprisonment in the state prison for
10 a minimum term of not less than 1 year and a maximum term of not
11 more than 6 years, and may be further punished by a fine of not less
12 than \$1,000, but not more than \$5,000.

13 2. Unless a greater penalty is provided pursuant to subsection 3
14 or NRS 200.481, a person convicted of a battery which constitutes
15 domestic violence pursuant to NRS 33.018, if the battery is
16 committed by strangulation as described in NRS 200.481, is guilty
17 of a category C felony and shall be punished as provided in
18 NRS 193.130.

19 3. Unless a greater penalty is provided pursuant to NRS
20 200.481, a person who has been previously convicted of:

21 (a) A felony that constitutes domestic violence pursuant to
22 NRS 33.018;

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

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

28 ➡ and who commits a battery which constitutes domestic violence
29 pursuant to NRS 33.018 is guilty of a category B felony and shall be
30 punished by imprisonment in the state prison for a minimum term of
31 not less than 2 years and a maximum term of not more than 15
32 years, and shall be further punished by a fine of not less than
33 \$2,000, but not more than \$5,000.

34 4. Unless a greater penalty is provided pursuant to NRS
35 200.481, a person convicted of a battery which constitutes domestic
36 violence pursuant to NRS 33.018, if the battery is committed against
37 a victim who was pregnant at the time of the battery and the person
38 knew or should have known that the victim was pregnant:

39 (a) For the first offense, is guilty of a gross misdemeanor **H and**
40 **shall be punished by imprisonment in the county jail for not less**
41 **than 30 days but not more than 6 months, and may be further**
42 **punished by a fine of not less than \$500, but not more than**
43 **\$1,000. In addition to any other penalty, the court shall require the**
44 **person to participate in weekly counseling sessions of not less than**
45 **1 1/2 hours per week for not less 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. 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.

(b) For the second or any subsequent offense, is guilty of a category B felony and shall be punished by imprisonment in the state prison of 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 less than \$1,000, but not more than \$5,000.

5. 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 causes substantial bodily harm, is guilty of a category B felony and shall be punished by imprisonment in the state prison of 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 less than \$1,000, but not more than \$5,000.

6. In addition to any other penalty, if a person is convicted of a battery which constitutes domestic violence pursuant to NRS 33.018, *other than a battery described in subsection 4*, 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, 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 not less 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.

➤ 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.

7. 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) 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.

8. 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 an alcohol or other substance use disorder that has been certified by the Division of Public and Behavioral Health of the Department of Health and Human Services.

9. 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.

10. 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.



11. 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.

12. 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.

13. 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. 8. 1. Any administrative regulations adopted by an officer or an agency whose name has been changed or whose responsibilities have been transferred pursuant to the provisions of this act to another officer or agency remain in force until amended by the officer or agency to which the responsibility for the adoption of the regulations has been transferred.

2. Any contracts or other agreements entered into by an officer or agency whose name has been changed or whose responsibilities have been transferred pursuant to the provisions of this act to another officer or agency are binding upon the officer or agency to which the responsibility for the administration of the provisions of the contract or other agreement has been transferred. Such contracts and other agreements may be enforced by the officer or agency to



1 which the responsibility for the enforcement of the provisions of the
2 contract or other agreement has been transferred.

3 3. Any action taken by an officer or agency whose name has
4 been changed or whose responsibilities have been transferred
5 pursuant to the provisions of this act to another officer or agency
6 remains in effect as if taken by the officer or agency to which the
7 responsibility for the enforcement of such actions has been
8 transferred.

9 **Sec. 9.** The Legislative Counsel shall:

10 1. In preparing the reprint and supplements to the Nevada
11 Revised Statutes, appropriately change any references to an officer,
12 agency or other entity whose name is changed or whose
13 responsibilities are transferred pursuant to the provisions of this act
14 to refer to the appropriate officer, agency or other entity.

15 2. In preparing supplements to the Nevada Administrative
16 Code, appropriately change any references to an officer, agency or
17 other entity whose name has been changed or whose responsibilities
18 are transferred pursuant to the provisions of this act to refer to the
19 appropriate officer, agency or other entity.

20 **Sec. 10.** The provisions of subsection 1 of NRS 218D.380 do
21 not apply to any provision of this act which adds or revises a
22 requirement to submit a report to the Legislature.

