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FIRST REPRINT

S.B. 218

SENATE BILL NO. 218—SENATORS CANNIZZARO, SPEARMAN;
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:

1 Existing law sets forth certain unlawful acts which constitute domestic violence
2 when committed against certain persons. (NRS 33.018) Existing law authorizes a
3 court to grant a temporary or extended order for protection against domestic
4 violence. (NRS 33.020) **Section 1** of this bill prohibits a court, when determining
5 whether to grant such an order, from considering any factor other than whether a
6 petitioner was the victim of domestic violence or a threat thereof.

7 Existing law provides that a person is guilty of a misdemeanor for intentionally
8 violating a temporary or extended order for protection against domestic violence.
9 (NRS 33.100) **Section 3** of this bill provides that a person who intentionally
10 violates an extended order for protection against domestic violence and who has not
11 previously violated such an order is guilty of a misdemeanor. **Section 3** increases
12 the penalty for intentionally violating such an extended order to: (1) a gross
13 misdemeanor if the person has previously violated such an order one time; or (2) a
14 category D felony if the person has previously violated such an order two or more
15 times. **Section 5** of this bill makes conforming changes.

16 Existing law makes it a category B felony, punishable by a minimum term of
17 imprisonment of 2 years and a maximum term of 15 years and a fine of not less
18 than \$2,000 but not more than \$5,000, to commit a battery which constitutes



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19 domestic violence if the person has previously been convicted of: (1) a felony in
20 this State for committing battery which constitutes domestic violence; (2) a battery
21 which constitutes domestic violence that is committed by strangulation; or (3) a
22 violation of the law of any other jurisdiction that prohibits conduct that is the same
23 or similar to a felony in this State for committing a battery which constitutes
24 domestic violence. (NRS 200.485) **Section 7** of this bill additionally provides that
25 if such a person commits a battery which constitutes domestic violence and the
26 person has previously been convicted of a battery with the use of a deadly weapon
27 against a person who would otherwise qualify as a victim of domestic violence, the
28 person is guilty of such a category B felony punishable by a minimum term of
29 imprisonment of 2 years and a maximum term of 15 years, and a fine of not less
30 than \$2,000 but not more than \$5,000. **Sections 2 and 4-6** of this bill make
31 conforming changes.

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

1 **Section 1.** NRS 33.020 is hereby amended to read as follows:

2 33.020 1. If it appears to the satisfaction of the court from
3 specific facts shown by a verified application that an act of domestic
4 violence has occurred or there exists a threat of domestic violence,
5 the court may grant a temporary or extended order. *A court shall*
6 *only consider whether the act of domestic violence or the threat*
7 *thereof satisfies the requirements of NRS 33.018 without*
8 *considering any other factor in its determination to grant the*
9 *temporary or extended order.*

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

15 ~~{2-}~~ 3. The court may require the applicant or the adverse party,
16 or both, to appear before the court before determining whether to
17 grant the temporary or extended order.

18 ~~{3-}~~ 4. A temporary order may be granted with or without
19 notice to the adverse party. An extended order may only be granted
20 after notice to the adverse party and a hearing on the application.

21 ~~{4-}~~ 5. A hearing on an application for an extended order must
22 be held within 45 days after the date on which the application for the
23 extended order is filed. If the adverse party has not been served
24 pursuant to NRS 33.060 or 33.065 and fails to appear at the hearing,
25 the court may, upon a showing that law enforcement, after due
26 diligence, has been unable to serve the adverse party or that the
27 adverse party has sought to avoid service by concealment, set a date
28 for a second hearing which must be held within 90 days after the
29 date on which the first hearing was scheduled.



1 ~~[5.]~~ 6. If the adverse party has not been served pursuant to NRS
2 33.060 or 33.065 and fails to appear on the date set for a second
3 hearing on an application for an extended order pursuant to
4 subsection ~~[4.]~~ 5, the court may, upon a showing that law
5 enforcement, after due diligence, has been unable to serve the
6 adverse party or that the adverse party has sought to avoid service
7 by concealment, set a date for a third hearing which must be held
8 within 90 days after the date on which the second hearing was
9 scheduled.

10 ~~[6.]~~ 7. The court shall rule upon an application for a temporary
11 order within 1 judicial day after it is filed.

12 ~~[7.]~~ 8. If it appears to the satisfaction of the court from specific
13 facts communicated by telephone to the court by an alleged victim
14 that an act of domestic violence has occurred and the alleged
15 perpetrator of the domestic violence has been arrested and is
16 presently in custody pursuant to NRS 171.137, the court may grant a
17 temporary order. Before approving an order under such
18 circumstances, the court shall confirm with the appropriate law
19 enforcement agency that the applicant is an alleged victim and that
20 the alleged perpetrator is in custody. Upon approval by the court, the
21 signed order may be transmitted to the facility where the alleged
22 perpetrator is in custody by electronic or telephonic transmission to
23 a facsimile machine. If such an order is received by the facility
24 holding the alleged perpetrator while the alleged perpetrator is still
25 in custody, the order must be personally served by an authorized
26 employee of the facility before the alleged perpetrator is released.
27 The court shall mail a copy of each order issued pursuant to this
28 subsection to the alleged victim named in the order and cause the
29 original order to be filed with the court clerk on the first judicial day
30 after it is issued.

31 ~~[8.]~~ 9. In a county whose population is 52,000 or more, the
32 court shall be available 24 hours a day, 7 days a week, including
33 nonjudicial days and holidays, to receive communications by
34 telephone and for the issuance of a temporary order pursuant to
35 subsection ~~[7.]~~ 8.

36 ~~[9.]~~ 10. In a county whose population is less than 52,000, the
37 court may be available 24 hours a day, 7 days a week, including
38 nonjudicial days and holidays, to receive communications by
39 telephone and for the issuance of a temporary order pursuant to
40 subsection ~~[7.]~~ 8.

41 ~~[10.]~~ 11. The clerk of the court shall inform the protected party
42 upon the successful transfer of information concerning the
43 registration to the Central Repository for Nevada Records of
44 Criminal History as required pursuant to NRS 33.095.



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

2 33.080 1. A temporary order expires within such time, not to
3 exceed 30 days, as the court fixes. If an application for an extended
4 order is filed within the period of a temporary order or at the same
5 time that an application for a temporary order is filed, the temporary
6 order remains in effect until:

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

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

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

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

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

22 33.100 A person who intentionally violates ~~{a}~~:

23 1. A temporary ~~{or extended}~~ order is guilty of a misdemeanor .
24 ~~{, unless a more severe penalty is prescribed by law for the act that~~
25 ~~constitutes the violation of the order.}~~

26 2. *An extended order and:*

27 (a) *Who has not previously violated an extended order is guilty*
28 *of a misdemeanor;*

29 (b) *Who has previously violated an extended order one time is*
30 *guilty of a gross misdemeanor; or*

31 (c) *Who has previously violated an extended order two or more*
32 *times is guilty of a category D felony and shall be punished as*
33 *provided in NRS 193.130.*

34 ↳ *Each act that constitutes a violation of the temporary or*
35 *extended order may be prosecuted as a separate violation of the*
36 *order.*

37 **Sec. 4.** NRS 1.130 is hereby amended to read as follows:

38 1.130 1. No court except a justice court or a municipal court
39 shall be opened nor shall any judicial business be transacted except
40 by a justice court or municipal court on Sunday, or on any day
41 declared to be a legal holiday according to the provisions of NRS
42 236.015, except for the following purposes:

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

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



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

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

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

11
12 That the affiant has good reason to believe, and does
13 believe, that it will be too late for the purpose of acquiring a
14 lien by the writ to wait until subsequent day for the issuance
15 of the same.

16
17 All proceedings instituted, and all writs issued, and all official acts
18 done on any of the days above specified, under and by virtue of this
19 section, shall have all the validity, force and effect of proceedings
20 commenced on other days, whether a lien be obtained or a levy
21 made under and by virtue of the writ.

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

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

25 125.560 **1.** A person who *intentionally* violates a restraining
26 order or injunction ~~[-~~

27 ~~—1.—That] that~~ is in the nature of a temporary or extended order
28 for protection against domestic violence ~~[-]~~ and

29 ~~[2.—That] that~~ is issued in an action or proceeding brought
30 pursuant to this title ~~[-~~

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

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

37 (b) *Where the order or injunction is in the nature of an*
38 *extended order for protection against domestic violence and:*

39 (1) *The person has not previously violated an extended*
40 *order for protection against domestic violence, for a misdemeanor;*

41 (2) *The person has previously violated an extended order*
42 *for protection against domestic violence one time, for a gross*
43 *misdemeanor; or*

44 (3) *The person has previously violated an extended order*
45 *for protection against domestic violence two or more times, for a*



1 *category D felony and shall be punished as provided in*
2 *NRS 193.130.*

3 2. For the purposes of this section, an order or injunction is in
4 the nature of a temporary or extended order for protection against
5 domestic violence if it grants relief that might be given in a
6 temporary or extended order issued pursuant to NRS 33.017 to
7 33.100, inclusive.

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

9 171.136 1. If the offense charged is a felony or gross
10 misdemeanor, the arrest may be made on any day, and at any time of
11 day or night.

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

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

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

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

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

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

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

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

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

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

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

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

37 200.485 1. Unless a greater penalty is provided pursuant to
38 subsection 2 or 3 or NRS 200.481, a person convicted of a battery
39 which constitutes domestic violence pursuant to NRS 33.018:

40 (a) For the first offense within 7 years, is guilty of a
41 misdemeanor and shall be sentenced to:

42 (1) Imprisonment in the city or county jail or detention
43 facility for not less than 2 days, but not more than 6 months; and

44 (2) Perform not less than 48 hours, but not more than 120
45 hours, of community service.



1 ↪ The person shall be further punished by a fine of not less than
2 \$200, 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 be not less than 4 consecutive hours and
6 must occur at a time when the person is not required to be at his or
7 her place of employment or on a weekend.

8 (b) For the second offense within 7 years, is guilty of a
9 misdemeanor and shall be sentenced to:

10 (1) Imprisonment in the city or county jail or detention
11 facility for not less than 10 days, but not more than 6 months; and

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

14 ↪ The person shall be further punished by a fine of not less than
15 \$500, but not more than \$1,000.

16 (c) For the third offense within 7 years, is guilty of a category C
17 felony and shall be punished as provided in NRS 193.130.

18 2. Unless a greater penalty is provided pursuant to subsection 3
19 or NRS 200.481, a person convicted of a battery which constitutes
20 domestic violence pursuant to NRS 33.018, if the battery is
21 committed by strangulation as described in NRS 200.481, is guilty
22 of a category C felony and shall be punished as provided in NRS
23 193.130 and by a fine of not more than \$15,000.

24 3. Unless a greater penalty is provided pursuant to NRS
25 200.481, a person who has been previously convicted of:

26 (a) A battery which constitutes domestic violence pursuant to
27 NRS 33.018 that is punishable as a felony pursuant to paragraph (c)
28 of subsection 1 or subsection 2; ~~or~~

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

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

34 ↪ and who commits a battery which constitutes domestic violence
35 pursuant to NRS 33.018 is guilty of a category B felony and shall be
36 punished by imprisonment in the state prison for a minimum term of
37 not less than 2 years and a maximum term of not more than 15
38 years, and shall be further punished by a fine of not less than
39 \$2,000, but not more than \$5,000.

40 4. In addition to any other penalty, if a person is convicted of a
41 battery which constitutes domestic violence pursuant to NRS
42 33.018, the court shall:

43 (a) For the first offense within 7 years, require the person to
44 participate in weekly counseling sessions of not less than 1 1/2
45 hours per week for not less than 6 months, but not more than 12



1 months, at his or her expense, in a program for the treatment of
2 persons who commit domestic violence that has been certified
3 pursuant to NRS 439.258.

4 (b) For the second offense within 7 years, require the person to
5 participate in weekly counseling sessions of not less than 1 1/2
6 hours per week for 12 months, at his or her expense, in a program
7 for the treatment of persons who commit domestic violence that has
8 been certified pursuant to NRS 439.258.

9 ↪ If the person resides in this State but the nearest location at which
10 counseling services are available is in another state, the court may
11 allow the person to participate in counseling in the other state in a
12 program for the treatment of persons who commit domestic violence
13 that has been certified pursuant to NRS 439.258.

14 5. Except as otherwise provided in this subsection, an offense
15 that occurred within 7 years immediately preceding the date of the
16 principal offense or after the principal offense constitutes a prior
17 offense for the purposes of this section:

18 (a) When evidenced by a conviction; or

19 (b) If the offense is conditionally dismissed pursuant to NRS
20 176A.290 or dismissed in connection with successful completion of
21 a diversionary program or specialty court program,

22 ↪ without regard to the sequence of the offenses and convictions.
23 An offense which is listed in paragraph (a) , ~~(b)~~ (b) *or* (c) of
24 subsection 3 that occurred on any date preceding the date of the
25 principal offense or after the principal offense constitutes a prior
26 offense for the purposes of this section when evidenced by a
27 conviction, without regard to the sequence of the offenses and
28 convictions. The facts concerning a prior offense must be alleged in
29 the complaint, indictment or information, must not be read to the
30 jury or proved at trial but must be proved at the time of sentencing
31 and, if the principal offense is alleged to be a felony, must also be
32 shown at the preliminary examination or presented to the grand jury.

33 6. In addition to any other fine or penalty, the court shall order
34 such a person to pay an administrative assessment of \$35. Any
35 money so collected must be paid by the clerk of the court to the
36 State Controller on or before the fifth day of each month for the
37 preceding month for credit to the Account for Programs Related to
38 Domestic Violence established pursuant to NRS 228.460.

39 7. In addition to any other penalty, the court may require such a
40 person to participate, at his or her expense, in a program of
41 treatment for the abuse of alcohol or drugs that has been certified by
42 the Division of Public and Behavioral Health of the Department of
43 Health and Human Services.

44 8. If it appears from information presented to the court that a
45 child under the age of 18 years may need counseling as a result of



1 the commission of a battery which constitutes domestic violence
2 pursuant to NRS 33.018, the court may refer the child to an agency
3 which provides child welfare services. If the court refers a child to
4 an agency which provides child welfare services, the court shall
5 require the person convicted of a battery which constitutes domestic
6 violence pursuant to NRS 33.018 to reimburse the agency for the
7 costs of any services provided, to the extent of the convicted
8 person's ability to pay.

9 9. If a person is charged with committing a battery which
10 constitutes domestic violence pursuant to NRS 33.018, a
11 prosecuting attorney shall not dismiss such a charge in exchange for
12 a plea of guilty, guilty but mentally ill or nolo contendere to a lesser
13 charge or for any other reason unless the prosecuting attorney
14 knows, or it is obvious, that the charge is not supported by probable
15 cause or cannot be proved at the time of trial. Except as otherwise
16 provided in this subsection, a court shall not grant probation to or
17 suspend the sentence of such a person. A court may grant probation
18 to or suspend the sentence of such a person:

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

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

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

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

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

32 11. A person who violates any provision included in a
33 judgment of conviction or admonishment of rights issued pursuant
34 to this section concerning the surrender, sale, transfer, ownership,
35 possession, custody or control of a firearm is guilty of a category B
36 felony and shall be punished by imprisonment in the state prison for
37 a minimum term of not less than 1 year and a maximum term of not
38 more than 6 years, and may be further punished by a fine of not
39 more than \$5,000. The court must include in the judgment of
40 conviction or admonishment of rights a statement that a violation of
41 such a provision in the judgment or admonishment is a category B
42 felony and shall be punished by imprisonment in the state prison for
43 a minimum term of not less than 1 year and a maximum term of not
44 more than 6 years, and may be further punished by a fine of not
45 more than \$5,000.



1 12. As used in this section:

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

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

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



