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ASSEMBLY BILL NO. 78—ASSEMBLYMEN MCCLEARY, CONKLIN,  
CLABORN, CHOWNING, ANGLE, ATKINSON, CHRISTENSEN,  
GEDDES, GRIFFIN, HETTRICK, HORNE, MANENDO,  
MARVEL AND WEBER

FEBRUARY 11, 2003

Referred to Committee on Judiciary

SUMMARY—Revises penalty for certain sexual offenses committed against children and prohibits suspension of sentence or granting of probation to person convicted of lewdness with child. (BDR 15-1031)

FISCAL NOTE: Effect on Local Government: No.  
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.

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AN ACT relating to sexual offenses; revising the penalty for a sexual assault against a child under the age of 16 years; revising the penalty for lewdness with a child; prohibiting the suspension of sentence or granting of probation to a person convicted of lewdness with a child; and providing other matters properly relating thereto.

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 who subjects another person to sexual  
3 penetration, or who forces another person to make a sexual  
4 penetration on himself or another, or on a beast, against the will of  
5 the victim or under conditions in which the perpetrator knows or  
6 should know that the victim is mentally or physically incapable of  
7 resisting or understanding the nature of his conduct, is guilty of  
8 sexual assault.  
9     2. Except as otherwise provided in ~~[subsection 3,]~~ *subsections*  
10 *3 and 4*, a person who commits a sexual assault is guilty of a  
11 category A felony and shall be punished:



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

- 4 (1) For life without the possibility of parole;  
5 (2) For life with the possibility of parole, with eligibility for  
6 parole beginning when a minimum of 15 years has been served; or  
7 (3) For a definite term of 40 years, with eligibility for parole  
8 beginning when a minimum of 15 years has been served.

9 (b) If no substantial bodily harm to the victim results, by  
10 imprisonment in the state prison:

- 11 (1) For life, with the possibility of parole, with eligibility for  
12 parole beginning when a minimum of 10 years has been served; or  
13 (2) For a definite term of 25 years, with eligibility for parole  
14 beginning when a minimum of 10 years has been served.

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

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

21 (b) Except as otherwise provided in paragraph (c), if the crime  
22 does not result in substantial bodily harm to the child, by  
23 imprisonment in the state prison:

- 24 (1) For life with the possibility of parole, with eligibility for  
25 parole beginning when a minimum of 20 years has been served; or  
26 (2) For a definite term of ~~[20]~~ 40 years, with eligibility for  
27 parole beginning when a minimum of ~~[5]~~ 15 years has been served.

28 (c) If the crime is committed against a child under the age of 14  
29 years and does not result in substantial bodily harm to the child, by  
30 imprisonment in the state prison for life with the possibility of  
31 parole, with eligibility for parole beginning when a minimum of 20  
32 years has been served.

33 4. *A person who commits a sexual assault against a child*  
34 *under the age of 16 years and who has been previously convicted*  
35 *of:*

- 36 (a) *A sexual assault pursuant to this section; or*  
37 (b) *An offense committed in another jurisdiction that, if*  
38 *committed in this state, would constitute a sexual assault pursuant*  
39 *to this section,*  
40 *is guilty of a category A felony and shall be punished by*  
41 *imprisonment in the state prison for life without the possibility of*  
42 *parole.*

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

44 201.230 1. A person who willfully and lewdly commits any  
45 lewd or lascivious act, other than acts constituting the crime of



1 sexual assault, upon or with the body, or any part or member  
2 thereof, of a child under the age of 14 years, with the intent of  
3 arousing, appealing to, or gratifying the lust or passions or sexual  
4 desires of that person or of that child, is guilty of *lewdness with a*  
5 *child*.

6 **2. Except as otherwise provided in subsection 3, a person who**  
7 **commits lewdness with a child is guilty of:**

8 (a) A category A felony and shall be punished by imprisonment  
9 in the state prison for life with the possibility of parole, with  
10 eligibility for parole beginning when a minimum of 10 years has  
11 been served, and may be further punished by a fine of not more than  
12 \$10,000 ~~+~~; or

13 (b) A category B felony and shall be punished by  
14 imprisonment in the state prison for a minimum term of not less  
15 than 2 years and a maximum term of not more than 20 years and  
16 may be further punished by a fine of not more than \$10,000.

17 **3. A person who commits lewdness with a child and who has**  
18 **been previously convicted of:**

19 (a) *Lewdness with a child pursuant to this section; or*

20 (b) *An offense committed in another jurisdiction that, if*  
21 *committed in this state, would constitute lewdness with a child*  
22 *pursuant to this section,*  
23 *is guilty of a category A felony and shall be punished by*  
24 *imprisonment in the state prison for life without the possibility of*  
25 *parole.*

26 **Sec. 3.** NRS 176A.100 is hereby amended to read as follows:

27 176A.100 1. Except as otherwise provided in this section and  
28 NRS 176A.110 and 176A.120, if a person is found guilty in a  
29 district court upon verdict or plea of:

30 (a) Murder of the first or second degree, kidnapping in the first  
31 degree, sexual assault, attempted sexual assault of a child who is  
32 less than 16 years of age, *lewdness with a child pursuant to NRS*  
33 *201.230*, an offense for which the suspension of sentence or the  
34 granting of probation is expressly forbidden, or if the person is  
35 found to be a habitual criminal pursuant to NRS 207.010, a  
36 habitually fraudulent felon pursuant to NRS 207.014 or a habitual  
37 felon pursuant to NRS 207.012, the court shall not suspend the  
38 execution of the sentence imposed or grant probation to the person.

39 (b) A category E felony, except as otherwise provided in this  
40 paragraph, the court shall suspend the execution of the sentence  
41 imposed and grant probation to the person. The court may, as it  
42 deems advisable, decide not to suspend the execution of the  
43 sentence imposed and grant probation to the person if, at the time  
44 the crime was committed, the person:



1 (1) Was serving a term of probation, whether in this state or  
2 elsewhere, for a felony conviction;  
3 (2) Had previously had his probation revoked, whether in  
4 this state or elsewhere, for a felony conviction; or  
5 (3) Had previously been two times convicted, whether in this  
6 state or elsewhere, of a crime that under the laws of the situs of the  
7 crime or of this state would amount to a felony.  
8 If the person denies the existence of a previous conviction, the court  
9 shall determine the issue of the previous conviction after hearing all  
10 relevant evidence presented on the issue by the prosecution and the  
11 person. At such a hearing, the person may not challenge the validity  
12 of a previous conviction. For the purposes of this paragraph, a  
13 certified copy of a felony conviction is prima facie evidence of  
14 conviction of a prior felony.  
15 (c) Another felony, a gross misdemeanor or a misdemeanor, the  
16 court may suspend the execution of the sentence imposed and grant  
17 probation as the court deems advisable.  
18 2. In determining whether to grant probation to a person, the  
19 court shall not consider whether the person has the financial ability  
20 to participate in a program of probation secured by a surety bond  
21 established pursuant to NRS 176A.300 to 176A.370, inclusive.  
22 3. The court shall consider the standards adopted pursuant to  
23 NRS 213.10988 and the recommendation of the Chief Parole and  
24 Probation Officer, if any, in determining whether to grant probation  
25 to a person.  
26 4. If the court determines that a person is otherwise eligible for  
27 probation but requires more supervision than would normally be  
28 provided to a person granted probation, the court may, in lieu of  
29 sentencing him to a term of imprisonment, grant him probation  
30 pursuant to the Program of Intensive Supervision established  
31 pursuant to NRS 176A.440.  
32 5. Except as otherwise provided in this subsection, if a person  
33 is convicted of a felony and the Division is required to make a  
34 presentence investigation and report to the court pursuant to NRS  
35 176.135, the court shall not grant probation to the person until the  
36 court receives the report of the presentence investigation from the  
37 Chief Parole and Probation Officer. The Chief Parole and Probation  
38 Officer shall submit the report of the presentence investigation to  
39 the court not later than 45 days after receiving a request for a  
40 presentence investigation from the county clerk. If the report of the  
41 presentence investigation is not submitted by the Chief Parole and  
42 Probation Officer within 45 days, the court may grant probation  
43 without the report.  
44 6. If the court determines that a person is otherwise eligible for  
45 probation, the court shall, when determining the conditions of that



1 probation, consider the imposition of such conditions as would  
2 facilitate timely payments by the person of his obligation, if any, for  
3 the support of a child and the payment of any such obligation which  
4 is in arrears.

5 **Sec. 4.** NRS 176A.110 is hereby amended to read as follows:

6 176A.110 1. The court shall not grant probation to or  
7 suspend the sentence of a person convicted of an offense listed in  
8 subsection 3 unless:

9 (a) If a psychosexual evaluation of the person is required  
10 pursuant to NRS 176.139, the person who conducts the  
11 psychosexual evaluation certifies in the report prepared pursuant to  
12 NRS 176.139 that the person convicted of the offense does not  
13 represent a high risk to reoffend based upon a currently accepted  
14 standard of assessment; or

15 (b) If a psychosexual evaluation of the person is not required  
16 pursuant to NRS 176.139, a psychologist licensed to practice in this  
17 state who is trained to conduct psychosexual evaluations or a  
18 psychiatrist licensed to practice medicine in this state who is  
19 certified by the American Board of Psychiatry and Neurology, *Inc.*,  
20 and is trained to conduct psychosexual evaluations certifies in a  
21 written report to the court that the person convicted of the offense  
22 does not represent a high risk to reoffend based upon a currently  
23 accepted standard of assessment.

24 2. This section does not create a right in any person to be  
25 certified or to continue to be certified. No person may bring a cause  
26 of action against the State, its political subdivisions, or the agencies,  
27 boards, commissions, departments, officers or employees of the  
28 State or its political subdivisions for not certifying a person pursuant  
29 to this section or for refusing to consider a person for certification  
30 pursuant to this section.

31 3. The provisions of this section apply to a person convicted of  
32 any of the following offenses:

33 (a) Attempted sexual assault of a person who is 16 years of age  
34 or older pursuant to NRS 200.366.

35 (b) Statutory sexual seduction pursuant to NRS 200.368.

36 (c) Battery with intent to commit sexual assault pursuant to  
37 NRS 200.400.

38 (d) Abuse or neglect of a child pursuant to NRS 200.508.

39 (e) An offense involving pornography and a minor pursuant to  
40 NRS 200.710 to 200.730, inclusive.

41 (f) Incest pursuant to NRS 201.180.

42 (g) Solicitation of a minor to engage in acts constituting the  
43 infamous crime against nature pursuant to NRS 201.195.

44 (h) Open or gross lewdness pursuant to NRS 201.210.

45 (i) Indecent or obscene exposure pursuant to NRS 201.220.



- 1 (j) ~~Lewdness with a child pursuant to NRS 201.230.~~  
2 ~~(k)~~ Sexual penetration of a dead human body pursuant to  
3 NRS 201.450.  
4 ~~(l)~~ (k) Luring a child using a computer, system or network  
5 pursuant to NRS 201.560, if punished as a felony.  
6 ~~(m)~~ (l) A violation of NRS 207.180.  
7 ~~(n)~~ (m) An attempt to commit an offense listed in paragraphs  
8 (b) to ~~(m), inclusive.~~  
9 ~~(o)~~ (l), *inclusive.*  
10 (n) Coercion or attempted coercion that is determined to be  
11 sexually motivated pursuant to NRS 207.193.  
12 **Sec. 5.** The amendatory provisions of this act apply to offenses  
13 committed before October 1, 2003, for the purpose of determining  
14 whether a person is subject to the provisions of subsection 4 of NRS  
15 200.366 or subsection 3 of NRS 201.230, as amended by this act.

