

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.

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 any other*
37 *sexual offense against a child; or*

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



1 **5. For the purpose of this section, “other sexual offense**
2 **against a child” means any act committed by an adult upon a child**
3 **constituting:**

- 4 (a) **Incest pursuant to NRS 201.180;**
- 5 (b) **Lewdness with a child pursuant to NRS 201.230;**
- 6 (c) **Sado-masochistic abuse pursuant to NRS 201.262;**
- 7 (d) **Open or gross lewdness pursuant to NRS 201.210; or**
- 8 (e) **Luring a child using a computer, system or network**
9 **pursuant to NRS 201.560, if punished as a felony.**

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

11 201.230 **1.** A person who willfully and lewdly commits any
12 lewd or lascivious act, other than acts constituting the crime of
13 sexual assault, upon or with the body, or any part or member
14 thereof, of a child under the age of 14 years, with the intent of
15 arousing, appealing to, or gratifying the lust or passions or sexual
16 desires of that person or of that child, is guilty of **lewdness with a**
17 **child.**

18 **2. Except as otherwise provided in subsection 3, a person who**
19 **commits lewdness with a child is guilty of a** category A felony and
20 **shall be punished by imprisonment in the state prison for** ~~Life~~ **:**

21 (a) **Life** with the possibility of parole, with eligibility for parole
22 beginning when a minimum of 10 years has been served, and may
23 be further punished by a fine of not more than \$10,000 ~~+~~ **;** **or**

24 (b) **A definite term of 20 years, with eligibility for parole after**
25 **a minimum of 2 years has been served, and may further be**
26 **punished by a fine of not more than \$10,000.**

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

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

31 (b) **An offense committed in another jurisdiction that, if**
32 **committed in this state, would constitute lewdness with a child**
33 **pursuant to this section or any other sexual offense against a**
34 **child,**

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

38 **4. For the purpose of this section, “other sexual offense**
39 **against a child” has the meaning ascribed to it in subsection 5 of**
40 **NRS 200.366.**

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

42 176A.100 **1.** Except as otherwise provided in this section and
43 NRS 176A.110 and 176A.120, if a person is found guilty in a
44 district court upon verdict or plea of:



1 (a) Murder of the first or second degree, kidnapping in the first
2 degree, sexual assault, attempted sexual assault of a child who is
3 less than 16 years of age, *lewdness with a child pursuant to NRS*
4 *201.230*, an offense for which the suspension of sentence or the
5 granting of probation is expressly forbidden, or if the person is
6 found to be a habitual criminal pursuant to NRS 207.010, a
7 habitually fraudulent felon pursuant to NRS 207.014 or a habitual
8 felon pursuant to NRS 207.012, the court shall not suspend the
9 execution of the sentence imposed or grant probation to the person.

10 (b) A category E felony, except as otherwise provided in this
11 paragraph, the court shall suspend the execution of the sentence
12 imposed and grant probation to the person. The court may, as it
13 deems advisable, decide not to suspend the execution of the
14 sentence imposed and grant probation to the person if, at the time
15 the crime was committed, the person:

16 (1) Was serving a term of probation, whether in this state or
17 elsewhere, for a felony conviction;

18 (2) Had previously had his probation revoked, whether in
19 this state or elsewhere, for a felony conviction; or

20 (3) Had previously been two times convicted, whether in this
21 state or elsewhere, of a crime that under the laws of the situs of the
22 crime or of this state would amount to a felony.

23 If the person denies the existence of a previous conviction, the court
24 shall determine the issue of the previous conviction after hearing all
25 relevant evidence presented on the issue by the prosecution and the
26 person. At such a hearing, the person may not challenge the validity
27 of a previous conviction. For the purposes of this paragraph, a
28 certified copy of a felony conviction is prima facie evidence of
29 conviction of a prior felony.

30 (c) Another felony, a gross misdemeanor or a misdemeanor, the
31 court may suspend the execution of the sentence imposed and grant
32 probation as the court deems advisable.

33 2. In determining whether to grant probation to a person, the
34 court shall not consider whether the person has the financial ability
35 to participate in a program of probation secured by a surety bond
36 established pursuant to NRS 176A.300 to 176A.370, inclusive.

37 3. The court shall consider the standards adopted pursuant to
38 NRS 213.10988 and the recommendation of the Chief Parole and
39 Probation Officer, if any, in determining whether to grant probation
40 to a person.

41 4. If the court determines that a person is otherwise eligible for
42 probation but requires more supervision than would normally be
43 provided to a person granted probation, the court may, in lieu of
44 sentencing him to a term of imprisonment, grant him probation



1 pursuant to the Program of Intensive Supervision established
2 pursuant to NRS 176A.440.

3 5. Except as otherwise provided in this subsection, if a person
4 is convicted of a felony and the Division is required to make a
5 presentence investigation and report to the court pursuant to NRS
6 176.135, the court shall not grant probation to the person until the
7 court receives the report of the presentence investigation from the
8 Chief Parole and Probation Officer. The Chief Parole and Probation
9 Officer shall submit the report of the presentence investigation to
10 the court not later than 45 days after receiving a request for a
11 presentence investigation from the county clerk. If the report of the
12 presentence investigation is not submitted by the Chief Parole and
13 Probation Officer within 45 days, the court may grant probation
14 without the report.

15 6. If the court determines that a person is otherwise eligible for
16 probation, the court shall, when determining the conditions of that
17 probation, consider the imposition of such conditions as would
18 facilitate timely payments by the person of his obligation, if any, for
19 the support of a child and the payment of any such obligation which
20 is in arrears.

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

22 176A.110 1. The court shall not grant probation to or
23 suspend the sentence of a person convicted of an offense listed in
24 subsection 3 unless:

25 (a) If a psychosexual evaluation of the person is required
26 pursuant to NRS 176.139, the person who conducts the
27 psychosexual evaluation certifies in the report prepared pursuant to
28 NRS 176.139 that the person convicted of the offense does not
29 represent a high risk to reoffend based upon a currently accepted
30 standard of assessment; or

31 (b) If a psychosexual evaluation of the person is not required
32 pursuant to NRS 176.139, a psychologist licensed to practice in this
33 state who is trained to conduct psychosexual evaluations or a
34 psychiatrist licensed to practice medicine in this state who is
35 certified by the American Board of Psychiatry and Neurology, *Inc.*,
36 and is trained to conduct psychosexual evaluations certifies in a
37 written report to the court that the person convicted of the offense
38 does not represent a high risk to reoffend based upon a currently
39 accepted standard of assessment.

40 2. This section does not create a right in any person to be
41 certified or to continue to be certified. No person may bring a cause
42 of action against the State, its political subdivisions, or the agencies,
43 boards, commissions, departments, officers or employees of the
44 State or its political subdivisions for not certifying a person pursuant



1 to this section or for refusing to consider a person for certification
2 pursuant to this section.

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

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

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

8 (c) Battery with intent to commit sexual assault pursuant to
9 NRS 200.400.

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

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

13 (f) Incest pursuant to NRS 201.180.

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

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

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

18 (j) ~~Lewdness with a child pursuant to NRS 201.230.~~

19 ~~(k)}~~ Sexual penetration of a dead human body pursuant to
20 NRS 201.450.

21 ~~(l)}~~ (k) Luring a child using a computer, system or network
22 pursuant to NRS 201.560, if punished as a felony.

23 ~~(m)}~~ (l) A violation of NRS 207.180.

24 ~~(n)}~~ (m) An attempt to commit an offense listed in paragraphs
25 (b) to ~~(m), inclusive.~~

26 ~~(o)}~~ (l), *inclusive.*

27 (n) Coercion or attempted coercion that is determined to be
28 sexually motivated pursuant to NRS 207.193.

29 **Sec. 5.** The amendatory provisions of this act apply to offenses
30 committed before October 1, 2003, for the purpose of determining
31 whether a person is subject to the provisions of subsection 4 of NRS
32 200.366 or subsection 3 of NRS 201.230, as amended by this act.

