

SENATE BILL NO. 398—COMMITTEE ON JUDICIARY
(ON BEHALF OF THE NEVADA SUPREME COURT)

MARCH 21, 2003

Referred to Committee on Judiciary

SUMMARY—Makes various changes to provisions concerning certain protective orders. (BDR 3-611)

FISCAL NOTE: Effect on Local Government: Yes.
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 protective orders; providing for the sealing of records relating to temporary and extended orders for protection against domestic violence, harassment in the workplace and stalking; revising the penalties for violation of certain temporary and extended orders; 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.** Chapter 33 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 and 3 of this act.
3 **Sec. 2. 1. *Five years after the date of the expiration or***
4 ***rescission of a temporary or extended order issued pursuant to***
5 ***NRS 33.020 or 33.270, the adverse party to the order may petition***
6 ***the court in which the order was obtained to seal all records***
7 ***relating to the order.***
8 **2. *A petition filed pursuant to subsection 1 must:***
9 ***(a) Be accompanied by current, verified records of the***
10 ***criminal history of the petitioner from:***
11 ***(1) The Central Repository for Nevada Records of Criminal***
12 ***History; and***
13 ***(2) The local law enforcement agency of the city or county***
14 ***in which the order for protection was obtained;***



1 (b) Include a list of any other public or private agency,
2 company, official or other custodian of records that is reasonably
3 known to the petitioner to have possession of records of the
4 temporary or extended order and to whom the order to seal
5 records, if issued, will be directed; and

6 (c) Include information that, to the best knowledge and belief
7 of the petitioner, accurately and completely identifies the records
8 to be sealed.

9 3. Upon receiving a petition pursuant to this section, the
10 court shall notify the prosecuting attorney for the county in which
11 the temporary or extended order was obtained. The prosecuting
12 attorney and any person having relevant evidence may testify and
13 present evidence at the hearing on the petition.

14 4. If the court finds during the hearing that, during the
15 5-year period prescribed in subsection 1, the petitioner has not
16 been charged with any offense that is pending or convicted of any
17 offense, except for minor traffic violations, the court may order
18 sealed all records of the temporary or extended order which are in
19 the custody of the court, of another court in this state or of a
20 public or private agency, company or official in this state.

21 **Sec. 3.** 1. If the court orders sealed a record pursuant to
22 section 2 of this act, a copy of the order to seal records must be
23 sent to:

24 (a) The Central Repository for Nevada Records of Criminal
25 History; and

26 (b) Each public or private agency, company or official named
27 in the order to seal records.

28 2. Each public or private agency, company or official
29 receiving a copy of an order to seal records shall:

30 (a) Seal the records in its custody as directed by the order to
31 seal records;

32 (b) Advise the court of compliance with the order to seal
33 records; and

34 (c) Seal the copy of the order to seal records.

35 **Sec. 4.** NRS 33.100 is hereby amended to read as follows:

36 33.100 1. A person who intentionally violates ~~{a temporary~~
37 ~~or extended}~~ :

38 (a) A temporary order is guilty of a gross misdemeanor ~~{}~~; or

39 (b) An extended order is guilty of a category C felony and shall
40 be punished as provided in NRS 193.130,

41 unless a more severe penalty is prescribed by law for the act that
42 constitutes the violation of the order. ~~{If the violation is~~
43 ~~accompanied by a violent physical act by the adverse party against a~~
44 ~~person protected by the order, the court shall:~~



- 1 ~~—(a) Impose upon the adverse party a fine of \$1,000 or require~~
- 2 ~~him to perform a minimum of 200 hours of community service;~~
- 3 ~~—(b) Sentence him to imprisonment for not fewer than 5 days nor~~
- 4 ~~more than 6 months;~~
- 5 ~~—(c) Order him to reimburse}~~

6 **2. The court shall, in addition to any other penalty, order a**
 7 **person who intentionally violated a temporary or extended order**
 8 **to:**

9 **(a) Reimburse** the applicant, in an amount determined by the
 10 court, for all costs and attorney’s fees incurred by the applicant in
 11 seeking to enforce the temporary or extended order ~~{,}~~ and for ~~{all}~~
 12 **any** medical expenses of the applicant and any minor child incurred
 13 as a result of ~~{the}~~ **any** violent physical act; and

14 ~~{(d) Order him to participate}~~
 15 **(b) Participate** in and complete a program of professional
 16 counseling, at his own expense, if such counseling is available.

17 ~~{2.}~~ **3.** The adverse party shall comply with the order for
 18 reimbursement of the applicant before paying a fine imposed
 19 pursuant to this section.

20 **Sec. 5.** NRS 33.270 is hereby amended to read as follows:

21 33.270 1. The court may issue a temporary order for
 22 protection against harassment in the workplace if it appears to the
 23 satisfaction of the court from specific facts shown by a verified
 24 application filed pursuant to NRS 33.250 that harassment in the
 25 workplace has occurred.

26 2. Except as otherwise provided in subsection 4, a temporary
 27 order for protection against harassment in the workplace must not be
 28 issued without notice to the person who allegedly committed the
 29 harassment. A temporary order for protection against harassment in
 30 the workplace must not be issued without the giving of security by
 31 the employer in an amount determined by the court to be sufficient
 32 to pay for such costs and damages as may be incurred or suffered by
 33 the person who allegedly committed the harassment if the person
 34 who allegedly committed the harassment is found to have been
 35 wrongfully enjoined or restrained.

36 3. The court may require the employer or the person who
 37 allegedly committed the harassment, or both, to appear before the
 38 court before determining whether to issue the temporary order for
 39 protection against harassment in the workplace.

40 4. A court may issue a temporary order for protection against
 41 harassment in the workplace without written or oral notice to the
 42 person who allegedly committed the harassment or his attorney only
 43 if:

44 (a) A verified application is accompanied by an affidavit that
 45 contains specific facts which clearly show that immediate and



1 irreparable injury, loss or damage will result to the employer, an
2 employee of the employer while the employee performs the duties
3 of his employment or a person who is present at the workplace of
4 the employer before the person who allegedly committed the
5 harassment or his attorney can be heard in opposition; and

6 (b) The employer and the employer's attorney, if any, set forth
7 in the affidavit:

8 (1) The efforts, if any, that have been made to give notice to
9 the person who allegedly committed the harassment; and

10 (2) The facts supporting waiver of notice requirements.

11 5. A temporary order for protection against harassment in the
12 workplace that is granted, with or without notice, must expire not
13 later than 15 days after the date on which the order is issued, unless
14 extended pursuant to subsections 6 and 7.

15 6. If a temporary order for protection against harassment in the
16 workplace is granted, with or without notice, the employer or his
17 authorized agent may apply for an extended order for protection
18 against harassment in the workplace by filing a verified application
19 for an extended order for protection against harassment in the
20 workplace. ~~[Such]~~ *If such an application is filed, the temporary
21 order remains in effect until the hearing on the application for an
22 extended order is held. The application* must:

23 (a) In addition to the information required by subsection 2 of
24 NRS 33.250, set forth the facts that provide the basis for granting an
25 extended order for protection against harassment in the workplace;

26 (b) Be filed before the expiration of the temporary order for
27 protection against harassment in the workplace;

28 (c) Be heard as soon as reasonably possible and not later than 10
29 days after the date on which the application is filed with the court
30 unless the court determines that there are compelling reasons to hold
31 the hearing at a later date; and

32 (d) Be dismissed if the court finds that the temporary order for
33 protection against harassment in the workplace which is the basis of
34 the application has been dissolved or has expired.

35 7. At the hearing on an application filed pursuant to subsection
36 6, the employer must present evidence sufficient to support the
37 granting of the application for an extended order for protection
38 against harassment in the workplace. At the hearing, the court may:

39 (a) Dissolve or modify the temporary order for protection
40 against harassment in the workplace; or

41 (b) Grant an extended order for protection against harassment in
42 the workplace.

43 8. If granted, an extended order for protection against
44 harassment in the workplace expires within such time, not to exceed
45 1 year, as the court fixes.



1 9. Upon 2 days' notice to an employer who obtained a
2 temporary order for protection against harassment in the workplace
3 without notice or on such shorter notice to the employer as the court
4 may prescribe, the person who allegedly committed the harassment
5 may appear and move the dissolution or modification of the
6 temporary order for protection against harassment in the workplace.
7 Upon the filing of such a motion, the court shall proceed to hear and
8 determine the motion as expeditiously as the ends of justice require.
9 At the hearing, the court may dissolve, modify or extend the order.

10 10. The court may award costs and reasonable attorney's fees
11 to the prevailing party in a matter brought pursuant to this section.

12 11. If a court issues an extended order for protection against
13 harassment in the workplace, an interlocutory appeal lies to the
14 district court, which may affirm, modify or vacate the order in
15 question. The appeal may be taken without bond, but its taking does
16 not stay the effect or enforcement of the order.

17 **Sec. 6.** NRS 33.350 is hereby amended to read as follows:

18 33.350 1. A person who *intentionally* violates ~~{a temporary~~
19 ~~or extended}~~ :

20 (a) *A temporary* order for protection against harassment in the
21 workplace is guilty of a *gross* misdemeanor ~~{}~~ ; or

22 (b) *An extended order for protection against harassment in the*
23 *workplace is guilty of a category C felony and shall be punished as*
24 *provided in NRS 193.130,*

25 unless a more severe penalty is prescribed by law for the act that
26 constitutes the violation of the order. ~~{If the violation is~~
27 ~~accompanied by a violent physical act by that person against a~~
28 ~~person protected by the order, the court shall:~~

29 ~~—(a) Impose upon the person who violated the order a fine of~~
30 ~~\$1,000 or require him to perform a minimum of 200 hours of~~
31 ~~community service;~~

32 ~~—(b) Sentence the person who violated the order to imprisonment~~
33 ~~for not fewer than 5 days nor more than 6 months;~~

34 ~~—(c) Order}~~

35 2. *The court shall, in addition to any other penalty, order* the
36 person who *intentionally* violated the order to ~~{reimburse}~~ :

37 (a) *Reimburse* the employer, in an amount determined by the
38 court, for all costs and attorney's fees incurred by the employer in
39 seeking to enforce the order ~~{}~~ and for ~~{all}~~ *any* medical expenses of
40 the employer and any person protected by the order that were
41 incurred as a result of ~~{the}~~ *any* violent physical act; and

42 ~~{(d) Order the person who violated the order to participate}~~

43 (b) *Participate* in and complete a program of professional
44 counseling, at his own expense, if such counseling is available.



1 ~~[2.]~~ 3. The person who *intentionally* violates a temporary or
2 extended order for protection against harassment in the workplace
3 shall comply with the order for reimbursement of the employer or
4 any other person protected by the order before paying a fine
5 imposed pursuant to this section.

6 **Sec. 7.** NRS 125.555 is hereby amended to read as follows:

7 125.555 1. A restraining order or injunction that is in the
8 nature of a temporary or extended order for protection against
9 domestic violence which is issued in an action or proceeding
10 brought pursuant to this title must provide notice that a person who
11 is arrested for violating the order or injunction will not be admitted
12 to bail sooner than 12 hours after his arrest if the arresting officer
13 determines that such a violation is accompanied by a direct or
14 indirect threat of harm.

15 2. *Five years after the date of the expiration or rescission of*
16 *such a restraining order or injunction, the adverse party to the*
17 *order or injunction may petition the court in which the order or*
18 *injunction was obtained to seal all records relating to the order or*
19 *injunction. Such records may be sealed in the manner set forth in*
20 *sections 2 and 3 of this act for the sealing of records relating to a*
21 *temporary or extended order for protection against domestic*
22 *violence or against harassment in the workplace.*

23 3. For the purposes of this section, an order or injunction is in
24 the nature of a temporary or extended order for protection against
25 domestic violence if it grants relief that might be given in a
26 temporary or extended order issued pursuant to NRS 33.017 to
27 33.100, inclusive.

28 **Sec. 8.** NRS 125.560 is hereby amended to read as follows:

29 125.560 1. A person who *intentionally* violates a restraining
30 order or injunction ~~;~~

31 ~~—(a) That is in the nature of a temporary or extended order for~~
32 ~~protection against domestic violence; and~~

33 ~~—(b) That] that~~ is issued in an action or proceeding brought
34 pursuant to this title ~~;~~ *and that is in the nature of:*

35 *(a) A temporary order for protection against domestic violence*
36 *is guilty of a gross misdemeanor ~~;~~ ; or*

37 *(b) An extended order for protection against domestic violence*
38 *is guilty of a category C felony and shall be punished as provided*
39 *in NRS 193.130,*

40 unless a more severe penalty is prescribed by law for the act that
41 constitutes the violation of the order or injunction. ~~For the purposes~~
42 ~~of this subsection, an order or injunction is in the nature of a~~
43 ~~temporary or extended order for protection against domestic~~
44 ~~violence if it grants relief that might be given in a temporary or~~
45 ~~extended order issued pursuant to NRS 33.017 to 33.100, inclusive.~~



1 ~~2. If the violation is accompanied by a violent physical act~~
2 ~~against a person protected by the order or injunction, the court shall:~~
3 ~~—(a) Impose upon the person committing the act a fine of \$1,000~~
4 ~~or require him to perform a minimum of 200 hours of community~~
5 ~~service;~~
6 ~~—(b) Sentence him to imprisonment for not fewer than 5 days nor~~
7 ~~more than 6 months;~~
8 ~~—(c) Order him to reimburse}~~

9 *2. The court shall, in addition to any other penalty, order the*
10 *person who intentionally violated the restraining order or*
11 *injunction to:*

12 *(a) Reimburse* the person ~~[obtaining]~~ *to whom* the order or
13 injunction ~~[.]~~ *was issued*, in an amount determined by the court, for
14 all costs and attorney’s fees incurred by that person in seeking to
15 enforce the order or injunction ~~[.]~~ and for ~~[all]~~ *any* medical expenses
16 of the person and any minor child incurred as a result of ~~[the]~~ *any*
17 violent physical act; and

18 ~~[(d) Order him to participate]~~

19 *(b) Participate* in and complete a program of professional
20 counseling, at his own expense, if such counseling is available.

21 3. The person committing the violation shall comply with the
22 order for reimbursement of the person obtaining the order or
23 injunction before paying any fine imposed pursuant to this section.

24 *4. For the purposes of this section, an order or injunction is*
25 *in the nature of a temporary or extended order for protection*
26 *against domestic violence if it grants relief that might be given in a*
27 *temporary or extended order issued pursuant to NRS 33.017 to*
28 *33.100, inclusive.*

29 **Sec. 9.** NRS 171.136 is hereby amended to read as follows:

30 171.136 1. If the offense charged is a felony or gross
31 misdemeanor, the arrest may be made on any day, and at any time of
32 day or night.

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

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

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

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

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

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



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

4 (e) When the offense charged is battery that constitutes domestic
5 violence pursuant to NRS 33.018 and the arrest is made in the
6 manner provided in NRS 171.137;

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

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

12 ~~(h)~~ (g) When the person voluntarily surrenders himself in
13 response to an outstanding warrant of arrest.

14 **Sec. 10.** Chapter 200 of NRS is hereby amended by adding
15 thereto a new section to read as follows:

16 *Five years after the date of the expiration or rescission of a*
17 *temporary or extended order issued pursuant to NRS 200.591, the*
18 *adverse party to the order may petition the court in which the*
19 *order was obtained to seal all records relating to the order. Such*
20 *records may be sealed in the manner set forth in sections 2 and 3*
21 *of this act for the sealing of records relating to a temporary or*
22 *extended order for protection against domestic violence or against*
23 *harassment in the workplace.*

24 **Sec. 11.** NRS 200.591 is hereby amended to read as follows:

25 200.591 1. A person who reasonably believes that the crime
26 of stalking, aggravated stalking or harassment is being committed
27 against him by another person may petition any court of competent
28 jurisdiction for a temporary or extended order directing the person
29 who is allegedly committing the crime to:

30 (a) Stay away from the home, school, business or place of
31 employment of the victim of the alleged crime and any other
32 location specifically named by the court.

33 (b) Refrain from contacting, intimidating, threatening or
34 otherwise interfering with the victim of the alleged crime and any
35 other person ~~[, including]~~ *named in the order who may include,*
36 *without limitation, a member of the family or the household of the*
37 *victim [, specifically named by the court.] of the alleged crime.*

38 (c) *Comply with any other restriction which the court deems*
39 *necessary to protect the victim of the alleged crime or to protect*
40 *any other person named in the order, who may include, without*
41 *limitation, a member of the family or the household of the victim*
42 *of the alleged crime.*

43 2. If a defendant charged with a crime involving harassment,
44 stalking or aggravated stalking is released from custody before trial
45 or is found guilty at the trial, the court may issue a temporary or



1 extended order or provide as a condition of the release or sentence
2 that the defendant:

3 (a) Stay away from the home, school, business or place of
4 employment of the victim of the alleged crime and any other
5 location specifically named by the court.

6 (b) Refrain from contacting, intimidating, threatening or
7 otherwise interfering with the victim of the alleged crime and any
8 other person ~~[-including]~~ *named in the order who may include,*
9 *without limitation,* a member of the family or the household of the
10 victim ~~[-specifically named by the court.]~~ *of the alleged crime.*

11 (c) *Comply with any other restriction which the court deems*
12 *necessary to protect the victim of the alleged crime or to protect*
13 *any other person named in the order, who may include, without*
14 *limitation, a member of the family or the household of the victim*
15 *of the alleged crime.*

16 3. A temporary order may be granted with or without notice to
17 the adverse party. An extended order may be granted only after
18 notice to the adverse party and a hearing on the petition.

19 4. If an extended order is issued by a justice's court, an
20 interlocutory appeal lies to the district court, which may affirm,
21 modify or vacate the order in question. The appeal may be taken
22 without bond, but its taking does not stay the effect or enforcement
23 of the order.

24 5. Any person who intentionally violates:

25 (a) A temporary order is guilty of a gross misdemeanor ~~[-]~~; *or*

26 (b) An extended order is guilty of a category C felony and shall
27 be punished as provided in NRS 193.130 ~~[-]~~,
28 *unless a more severe penalty is prescribed by the law for the act*
29 *that constitutes the violation of the order.*

30 6. *The court shall, in addition to any other penalty, order the*
31 *person who intentionally violated the temporary or extended order*
32 *to:*

33 (a) *Reimburse the victim, in an amount determined by the*
34 *court, for all costs and attorney's fees incurred by the victim in*
35 *seeking to enforce the order and for any medical expenses of the*
36 *victim and any person protected by the order that were incurred as*
37 *a result of any violent physical act; and*

38 (b) *Participate in and complete a program of professional*
39 *counseling, at his own expense, if such counseling is available.*

40 7. *The adverse party shall comply with the order for*
41 *reimbursement of the victim and any other person protected by the*
42 *order before paying a fine imposed pursuant to this section.*

43 8. Any court order issued pursuant to this section must:

44 (a) Be in writing;



- 1 (b) Be personally served on the person to whom it is directed;
- 2 and
- 3 (c) Contain the warning that violation of the order:
 - 4 (1) Subjects the person to immediate arrest.
 - 5 (2) Is a gross misdemeanor if the order is a temporary order.
 - 6 (3) Is a category C felony if the order is an extended order.

