

ASSEMBLY BILL NO. 437—ASSEMBLYMEN OHRENSCHALL, ANDERSON, CARPENTER, CLABORN, KOIVISTO, MANENDO, MCCLAIN AND OCEGUERA

MARCH 19, 2001

Referred to Committee on Judiciary

SUMMARY—Makes various changes related to sentencing of certain offenders and community notification of sex offenders. (BDR 14-1285)

FISCAL NOTE: Effect on Local Government: Yes. Effect on the State: Yes.

CONTAINS UNFUNDED MANDATE (§§ 1, 4, 7) (NOT REQUESTED BY AFFECTED LOCAL GOVERNMENT)

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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 public safety; requiring certification by a psychologist or psychiatrist before certain offenders may be released to serve suspended sentences, probation or residential confinement; making offenders convicted of certain sex offenses that are misdemeanors or gross misdemeanors subject to the provisions governing community notification of sex offenders; 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 176A.110 is hereby amended to read as follows:
- 2 176A.110 1. The court shall not grant probation to or suspend the
- 3 sentence of a person convicted of an offense listed in subsection ~~3~~ 4
- 4 unless a psychologist licensed to practice in this state or a psychiatrist
- 5 licensed to practice medicine in this state certifies that the person is not a
- 6 menace to the health, safety or morals of others.
- 7 2. *If a person is charged with an offense listed in subsection 4 and*
- 8 *the person is not convicted of that offense but is convicted of any other*
- 9 *offense arising out of the same facts, the court shall not grant probation*
- 10 *to or suspend the sentence of the person unless a psychologist licensed to*
- 11 *practice in this state or a psychiatrist licensed to practice medicine in this*
- 12 *state certifies that the person is not a menace to the health, safety or*
- 13 *morals of others.*
- 14 3. This section does not create a right in any person to be certified or *to*
- 15 continue to be certified. ~~and no~~ No person may bring a cause of action



1 against the state, its political subdivisions, *or the* agencies, boards,
2 commissions, departments, officers or employees *of the state or its*
3 *political subdivisions* for not certifying *a person pursuant to this section*
4 or *for* refusing to consider a person for certification pursuant to this
5 section.

6 ~~3-~~ 4. The provisions of this section apply to a person convicted of
7 any of the following offenses:

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

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

11 (c) Battery with intent to commit sexual assault pursuant to NRS
12 200.400.

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

14 (e) An offense involving pornography and a minor pursuant to NRS
15 200.710 to 200.730, inclusive.

16 (f) Incest pursuant to NRS 201.180.

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

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

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

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

22 (k) Sexual penetration of a dead human body pursuant to NRS 201.450.

23 (l) A violation of NRS 207.180.

24 (m) *Annoyance or molestation of a minor pursuant to NRS 207.260.*

25 (n) An attempt to commit an offense listed in paragraphs (b) to ~~(l)~~;

26 ~~inclusive.~~

27 ~~—(n)~~ (m), inclusive.

28 (o) Coercion or attempted coercion that is determined to be sexually

29 motivated pursuant to NRS 207.193.

30 **Sec. 2.** NRS 179D.620 is hereby amended to read as follows:

31 179D.620 “Sexual offense” means any of the following offenses:

32 1. Murder of the first degree committed in the perpetration or
33 attempted perpetration of sexual assault or of sexual abuse or sexual
34 molestation of a child less than 14 years of age pursuant to paragraph (b) of
35 subsection 1 of NRS 200.030.

36 2. Sexual assault pursuant to NRS 200.366.

37 3. Statutory sexual seduction pursuant to NRS 200.368 . ~~if punished~~
38 ~~as a felony.~~

39 4. Battery with intent to commit sexual assault pursuant to NRS
40 200.400.

41 5. An offense involving the administration of a drug to another person
42 with the intent to enable or assist the commission of a felony pursuant to
43 NRS 200.405, if the felony is an offense listed in this section.

44 6. An offense involving the administration of a controlled substance to
45 another person with the intent to enable or assist the commission of a crime
46 of violence pursuant to NRS 200.408, if the crime of violence is an offense
47 listed in this section.

48 7. Abuse of a child pursuant to NRS 200.508, if the abuse involved
49 sexual abuse or sexual exploitation . ~~and is punished as a felony.~~



- 1 8. An offense involving pornography and a minor pursuant to NRS
2 200.710 to 200.730, inclusive.
- 3 9. Incest pursuant to NRS 201.180.
- 4 10. Solicitation of a minor to engage in acts constituting the infamous
5 crime against nature pursuant to NRS 201.195 . ~~†, if punished as a felony.†~~
- 6 11. Open or gross lewdness pursuant to NRS 201.210 . ~~†, if punished
7 as a felony.†~~
- 8 12. Indecent or obscene exposure pursuant to NRS 201.220 . ~~†, if
9 punished as a felony.†~~
- 10 13. Lewdness with a child pursuant to NRS 201.230.
- 11 14. Sexual penetration of a dead human body pursuant to NRS
12 201.450.
- 13 15. Annoyance or molestation of a minor pursuant to NRS 207.260 . ~~†
14 if punished as a felony.†~~
- 15 16. An attempt to commit an offense listed in subsections 1 to 15,
16 inclusive . ~~†, if punished as a felony.†~~
- 17 17. An offense that is determined to be sexually motivated pursuant to
18 NRS 175.547 or 207.193.
- 19 18. An offense committed in another jurisdiction that, if committed in
20 this state, would be an offense listed in this section. This subsection
21 includes, but is not limited to, an offense prosecuted in:
 - 22 (a) A tribal court.
 - 23 (b) A court of the United States or the Armed Forces of the United
24 States.
 - 25 19. An offense of a sexual nature committed in another jurisdiction ,
26 ~~†and punished as a felony.†~~ whether or not the offense would be an offense
27 listed in this section, if the person who committed the offense resides or
28 has resided or is or has been a student or worker in any jurisdiction in
29 which the person is or has been required by the laws of that jurisdiction to
30 register as a sex offender because of the offense. This subsection includes,
31 but is not limited to, an offense prosecuted in:
 - 32 (a) A tribal court.
 - 33 (b) A court of the United States or the Armed Forces of the United
34 States.
 - 35 (c) A court having jurisdiction over juveniles.
- 36 **Sec. 3.** NRS 179D.750 is hereby amended to read as follows:
37 179D.750 1. Except as otherwise provided in subsection 5 of NRS
38 179D.720, if a sex offender has been assigned a level of notification
39 pursuant to NRS 179D.600 to 179D.800, inclusive, and the sex offender:
 - 40 (a) Is convicted of an offense that poses a threat to the safety or well-
41 being of others;
 - 42 (b) Annoys, harasses, threatens or intimidates a victim of one of his
43 sexual offenses; or
 - 44 (c) Commits an overt act which is sexually motivated or involves the
45 use or threatened use of force or violence and which causes harm or creates
46 a reasonable apprehension of harm,
 - 47 the level of notification assigned to the sex offender may be changed in
48 accordance with the guidelines and procedures established by the attorney
49 general pursuant to NRS 179D.600 to 179D.800, inclusive.



1 2. As used in this section ~~f~~
2 ~~—(a) “Sexual offense” includes, but is not limited to, a sexual offense~~
3 ~~punishable as a misdemeanor or gross misdemeanor.~~

4 ~~—(b) “Sexually”~~, “sexually motivated” means that one of the purposes
5 for which the person committed the act was his sexual gratification.

6 **Sec. 4.** Chapter 4 of NRS is hereby amended by adding thereto a new
7 section to read as follows:

8 *1. If a person is convicted of an offense listed in subsection 4 of NRS*
9 *176A.110 that is within the jurisdiction of the justice’s court, the justice*
10 *of the peace shall not suspend the sentence of the person or sentence the*
11 *person to a term of residential confinement unless a psychologist*
12 *licensed to practice in this state or a psychiatrist licensed to practice*
13 *medicine in this state certifies that the person is not a menace to the*
14 *health, safety or morals of others.*

15 *2. If a person is charged with an offense listed in subsection 4 of*
16 *NRS 176A.110 that is within the jurisdiction of the justice’s court and the*
17 *person is not convicted of that offense but is convicted of any other*
18 *offense arising out of the same facts, the justice of the peace shall not*
19 *suspend the sentence of the person or sentence the person to a term of*
20 *residential confinement unless a psychologist licensed to practice in this*
21 *state or a psychiatrist licensed to practice medicine in this state certifies*
22 *that the person is not a menace to the health, safety or morals of others.*

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

29 **Sec. 5.** NRS 4.373 is hereby amended to read as follows:

30 4.373 1. Except as otherwise provided in subsection 2, NRS
31 211A.127 , *section 4 of this act* or another specific statute, or unless the
32 suspension of a sentence is expressly forbidden, a justice of the peace may
33 suspend, for not more than 1 year, the sentence of a person convicted of a
34 misdemeanor. When the circumstances warrant, the justice of the peace
35 may order as a condition of suspension that the offender:

- 36 (a) Make restitution to the owner of any property that is lost, damaged
37 or destroyed as a result of the commission of the offense;
- 38 (b) Engage in a program of work for the benefit of the community, for
39 not more than 200 hours;
- 40 (c) Actively participate in a program of professional counseling at the
41 expense of the offender;
- 42 (d) Abstain from the use of alcohol and controlled substances;
- 43 (e) Refrain from engaging in any criminal activity;
- 44 (f) Engage or refrain from engaging in any other conduct deemed
45 appropriate by the justice of the peace;
- 46 (g) Submit to a search and seizure by the chief of a department of
47 alternative sentencing, an assistant alternative sentencing officer or any
48 other law enforcement officer at any time of the day or night without a
49 search warrant; and



1 (h) Submit to periodic tests to determine whether the offender is using a
2 controlled substance or consuming alcohol.

3 2. ~~HH~~ *Except as otherwise provided in section 4 of this act, if*
4 a person is convicted of a misdemeanor that constitutes domestic violence
5 pursuant to NRS 33.018, the justice of the peace may, after the person has
6 served any mandatory minimum period of confinement, suspend the
7 remainder of the sentence of the person for not more than 3 years upon the
8 condition that the person actively participate in:

9 (a) A program of treatment for the abuse of alcohol or drugs which is
10 certified by the bureau of alcohol and drug abuse in the department of
11 human resources;

12 (b) A program for the treatment of persons who commit domestic
13 violence that has been certified pursuant to NRS 228.470; or

14 (c) Both programs set forth in paragraphs (a) and (b),
15 and that he comply with any other condition of suspension ordered by the
16 justice of the peace.

17 3. The justice of the peace may order reports from a person whose
18 sentence is suspended at such times as he deems appropriate concerning
19 the compliance of the offender with the conditions of suspension. If the
20 offender complies with the conditions of suspension to the satisfaction of
21 the justice of the peace, the sentence may be reduced to not less than the
22 minimum period of confinement established for the offense.

23 4. The justice of the peace may issue a warrant for the arrest of an
24 offender who violates or fails to fulfill a condition of suspension.

25 **Sec. 6.** NRS 4.3762 is hereby amended to read as follows:
26 4.3762 1. Except as otherwise provided in subsection 7 ~~H~~ *and*
27 *section 4 of this act*, in lieu of imposing any punishment other than a
28 minimum sentence required by statute, a justice of the peace may sentence
29 a person convicted of a misdemeanor to a term of residential confinement.
30 In making this determination, the justice of the peace shall consider the
31 criminal record of the convicted person and the seriousness of the crime
32 committed.

33 2. In sentencing a convicted person to a term of residential
34 confinement, the justice of the peace shall:

35 (a) Require the convicted person to be confined to his residence during
36 the time he is away from his employment, public service or other activity
37 authorized by the justice of the peace; and

38 (b) Require intensive supervision of the convicted person, including,
39 without limitation, electronic surveillance and unannounced visits to his
40 residence or other locations where he is expected to be to determine
41 whether he is complying with the terms of his sentence.

42 3. In sentencing a convicted person to a term of residential
43 confinement, the justice of the peace may, when the circumstances warrant,
44 require the convicted person to submit to:

45 (a) A search and seizure by the chief of a department of alternative
46 sentencing, an assistant alternative sentencing officer or any other law
47 enforcement officer at any time of the day or night without a search
48 warrant; and



1 (b) Periodic tests to determine whether the offender is using a controlled
2 substance or consuming alcohol.

3 4. Except as otherwise provided in subsection 5, an electronic device
4 may be used to supervise a convicted person sentenced to a term of
5 residential confinement. The device must be minimally intrusive and
6 limited in capability to recording or transmitting information concerning
7 the presence of the person at his residence, including, but not limited to, the
8 transmission of still visual images which do not concern the activities of
9 the person while inside his residence. A device which is capable of
10 recording or transmitting:

11 (a) Oral or wire communications or any auditory sound; or

12 (b) Information concerning the activities of the person while inside his
13 residence,
14 must not be used.

15 5. An electronic device must be used in the manner set forth in
16 subsection 4 to supervise a person who is sentenced pursuant to paragraph
17 (b) of subsection 1 of NRS 484.3792 for a second violation within 7 years
18 of driving under the influence of intoxicating liquor or a controlled
19 substance.

20 6. A term of residential confinement, together with the term of any
21 minimum sentence required by statute, may not exceed the maximum
22 sentence which otherwise could have been imposed for the offense.

23 7. The justice of the peace shall not sentence a person convicted of
24 committing a battery which constitutes domestic violence pursuant to NRS
25 33.018 to a term of residential confinement in lieu of imprisonment unless
26 the justice of the peace makes a finding that the person is not likely to pose
27 a threat to the victim of the battery.

28 8. The justice of the peace may issue a warrant for the arrest of a
29 convicted person who violates or fails to fulfill a condition of residential
30 confinement.

31 **Sec. 7.** Chapter 5 of NRS is hereby amended by adding thereto a new
32 section to read as follows:

33 *1. If a person is convicted of a misdemeanor for violating an*
34 *ordinance that prohibits the same or similar conduct as a misdemeanor*
35 *listed in subsection 4 of NRS 176A.110, the municipal judge shall not*
36 *suspend the sentence of the person or sentence the person to a term of*
37 *residential confinement unless a psychologist licensed to practice in this*
38 *state or a psychiatrist licensed to practice medicine in this state certifies*
39 *that the person is not a menace to the health, safety or morals of others.*

40 *2. If a person is charged with a misdemeanor for violating an*
41 *ordinance that prohibits the same or similar conduct as a misdemeanor*
42 *listed in subsection 4 of NRS 176A.110 and the person is not convicted of*
43 *that offense but is convicted of any other offense arising out of the same*
44 *facts, the municipal judge shall not suspend the sentence of the person or*
45 *sentence the person to a term of residential confinement unless a*
46 *psychologist licensed to practice in this state or a psychiatrist licensed to*
47 *practice medicine in this state certifies that the person is not a menace to*
48 *the health, safety or morals of others.*



1 **3. This section does not create a right in any person to be certified or**
2 **to continue to be certified. No person may bring a cause of action against**
3 **the state, its political subdivisions, or the agencies, boards, commissions,**
4 **departments, officers or employees of the state or its political subdivisions**
5 **for not certifying a person pursuant to this section or for refusing to**
6 **consider a person for certification pursuant to this section.**

7 **Sec. 8.** NRS 5.055 is hereby amended to read as follows:
8 5.055 1. Except as otherwise provided in subsection 2, NRS
9 211A.127 , **section 7 of this act** or another specific statute, or unless the
10 suspension of a sentence is expressly forbidden, a municipal judge may
11 suspend, for not more than 1 year, the sentence of a person convicted of a
12 misdemeanor. When the circumstances warrant, the municipal judge may
13 order as a condition of suspension that the offender:
14 (a) Make restitution to the owner of any property that is lost, damaged
15 or destroyed as a result of the commission of the offense;
16 (b) Engage in a program of work for the benefit of the community, for
17 not more than 200 hours;
18 (c) Actively participate in a program of professional counseling at the
19 expense of the offender;
20 (d) Abstain from the use of alcohol and controlled substances;
21 (e) Refrain from engaging in any criminal activity;
22 (f) Engage or refrain from engaging in any other conduct deemed
23 appropriate by the municipal judge;
24 (g) Submit to a search and seizure by the chief of a department of
25 alternative sentencing, an assistant alternative sentencing officer or any
26 other law enforcement officer at any time of the day or night without a
27 search warrant; and
28 (h) Submit to periodic tests to determine whether the offender is using
29 any controlled substance or alcohol.

30 **2. ~~##~~ Except as otherwise provided in section 7 of this act, if**
31 **person is convicted of a misdemeanor that constitutes domestic violence**
32 **pursuant to NRS 33.018, the municipal judge may, after the person has**
33 **served any mandatory minimum period of confinement, suspend the**
34 **remainder of the sentence of the person for not more than 3 years upon the**
35 **condition that the person actively participate in:**

36 (a) A program of treatment for the abuse of alcohol or drugs which is
37 certified by the bureau of alcohol and drug abuse in the department of
38 human resources;
39 (b) A program for the treatment of persons who commit domestic
40 violence that has been certified pursuant to NRS 228.470; or
41 (c) Both programs set forth in paragraphs (a) and (b),
42 and that he comply with any other condition of suspension ordered by the
43 municipal judge.

44 3. The municipal judge may order reports from a person whose
45 sentence is suspended at such times as he deems appropriate concerning
46 the compliance of the offender with the conditions of suspension. If the
47 offender complies with the conditions of suspension to the satisfaction of
48 the municipal judge, the sentence may be reduced to not less than the
49 minimum period of confinement established for the offense.



1 4. The municipal judge may issue a warrant for the arrest of an
2 offender who violates or fails to fulfill a condition of suspension.
3 **Sec. 9.** NRS 5.076 is hereby amended to read as follows:
4 5.076 1. Except as otherwise provided in subsection 7 ~~H~~ *and section*
5 *7 of this act*, in lieu of imposing any punishment other than a minimum
6 sentence required by statute, a municipal judge may sentence a person
7 convicted of a misdemeanor to a term of residential confinement. In
8 making this determination, the municipal judge shall consider the criminal
9 record of the convicted person and the seriousness of the crime committed.
10 2. In sentencing a convicted person to a term of residential
11 confinement, the municipal judge shall:
12 (a) Require the convicted person to be confined to his residence during
13 the time he is away from his employment, public service or other activity
14 authorized by the municipal judge; and
15 (b) Require intensive supervision of the convicted person, including,
16 without limitation, electronic surveillance and unannounced visits to his
17 residence or other locations where he is expected to be in order to
18 determine whether he is complying with the terms of his sentence.
19 3. In sentencing a convicted person to a term of residential
20 confinement, the municipal judge may, when the circumstances warrant,
21 require the convicted person to submit to:
22 (a) A search and seizure by the chief of a department of alternative
23 sentencing, an assistant alternative sentencing officer or any other law
24 enforcement officer at any time of the day or night without a search
25 warrant; and
26 (b) Periodic tests to determine whether the offender is using a controlled
27 substance or consuming alcohol.
28 4. Except as otherwise provided in subsection 5, an electronic device
29 may be used to supervise a convicted person sentenced to a term of
30 residential confinement. The device must be minimally intrusive and
31 limited in capability to recording or transmitting information concerning
32 the presence of the person at his residence, including, but not limited to, the
33 transmission of still visual images which do not concern the activities of
34 the person while inside his residence. A device which is capable of
35 recording or transmitting:
36 (a) Oral or wire communications or any auditory sound; or
37 (b) Information concerning the activities of the person while inside his
38 residence,
39 must not be used.
40 5. An electronic device must be used in the manner set forth in
41 subsection 4 to supervise a person who is sentenced pursuant to paragraph
42 (b) of subsection 1 of NRS 484.3792 for a second violation within 7 years
43 of driving under the influence of intoxicating liquor or a controlled
44 substance.
45 6. A term of residential confinement, together with the term of any
46 minimum sentence required by statute, may not exceed the maximum
47 sentence which otherwise could have been imposed for the offense.
48 7. The municipal judge shall not sentence a person convicted of
49 committing a battery which constitutes domestic violence pursuant to NRS



1 33.018 to a term of residential confinement in lieu of imprisonment unless
2 the municipal judge makes a finding that the person is not likely to pose a
3 threat to the victim of the battery.

4 8. The municipal judge may issue a warrant for the arrest of a
5 convicted person who violates or fails to fulfill a condition of residential
6 confinement.

7 **Sec. 10.** The provisions of subsection 1 of NRS 354.599 do not apply
8 to any additional expenses of a local government that are related to the
9 provisions of this act.

10 **Sec. 11.** The amendatory provisions of sections 1 and 4 to 9,
11 inclusive, of this act do not apply to offenses committed before October 1,
12 2001.

