

ASSEMBLY BILL NO. 221—ASSEMBLYMEN ANDERSON, MANENDO, BUCKLEY, SEGERBLOM, THOMAS, EVANS, BACHE, FREEMAN, PARNELL, KOIVISTO, MCCLAIN, CLABORN, MORTENSON, DE BRAGA, CHOWNING, HUMKE, GIUNCHIGLIANI, GOLDWATER, LESLIE, BROWER, BEERS, NOLAN, HETTRICK, CEGAVSKE, PERKINS, LEE, NEIGHBORS, BERMAN, GIBBONS, PRICE, OHRENSCHALL, VON TOBEL, PARKS, WILLIAMS AND DINI

FEBRUARY 12, 1999

Referred to Committee on Judiciary

SUMMARY—Requires certain actions to be taken against child who commits offense involving firearm or cruelty to animals. (BDR 5-187)

FISCAL NOTE: Effect on Local Government: Yes.
Effect on the State or on Industrial Insurance: 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 children; providing that a child who commits an offense involving a firearm must be taken into custody, detained for certain periods and psychologically evaluated; requiring the juvenile court to order counseling or other psychological treatment for a child who commits an offense involving cruelty to an animal; providing penalties; 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 62 of NRS is hereby amended by adding thereto
2 the provisions set forth as sections 2 and 3 of this act.
3 **Sec. 2. 1. *If a peace officer or probation officer has probable***
4 ***cause to believe that a child is committing or has committed an offense***
5 ***that involves the possession, use or threatened use of a firearm, the***
6 ***officer shall take the child into custody.***
7 **2. *If a child is taken into custody for an offense described in***
8 ***subsection 1:***
9 ***(a) The child must not be released pursuant to NRS 62.170;***

1 (b) Except as otherwise provided in subsection 3, the child must be
2 detained at a facility for the detention of juveniles; and

3 (c) If the child is taken into custody without a warrant or court order,
4 a judicial officer must determine whether there is probable cause to
5 believe that the child has committed the offense as soon as reasonably
6 practicable but not later than 72 hours after the child is taken into
7 custody. For the purposes of this paragraph:

8 (1) Any intervening Saturday, Sunday or holiday must be included
9 in calculating the period of 72 hours.

10 (2) The judicial officer may be a judge or master of the juvenile
11 court or may be any other judicial officer who is authorized pursuant to
12 Title 14 of NRS to determine whether there is probable cause to believe
13 that an adult has committed an offense.

14 (3) The judicial officer may determine whether there is probable
15 cause to believe that the child has committed the offense based upon any
16 evidence and pursuant to any procedures that satisfy the provisions of the
17 Constitution of the United States and the constitution of this state, as
18 those provisions are applied to a child who is alleged to be delinquent.

19 (4) When the determination of probable cause is made by the
20 judicial officer, the child is not entitled to any right or process other than
21 those rights and procedures that are required for such a determination
22 pursuant to the provisions of the Constitution of the United States and
23 the constitution of this state, as those provisions are applied to a child
24 who is alleged to be delinquent.

25 3. If a child is taken into custody for an offense described in
26 subsection 1, the child may be detained initially at a police station,
27 lockup, jail, prison or other facility in which adults are detained or
28 confined, if the detention of the child in such a facility complies with the
29 provisions of subsection 6 of NRS 62.170 and the child is transferred to a
30 facility for the detention of juveniles:

31 (a) In a county whose population is less than 100,000, within 24 hours
32 after the commencement of detention at the police station, lockup, jail,
33 prison or other facility in which adults are detained or confined; or

34 (b) In a county whose population is 100,000 or more, within 6 hours
35 after the commencement of detention at the police station, lockup, jail,
36 prison or other facility in which adults are detained or confined.

37 4. If a judicial officer determines that there is probable cause to
38 believe that a child has committed an offense described in subsection 1 or
39 if a child is taken into custody pursuant to a warrant or court order for
40 an offense described in subsection 1, the child must be:

41 (a) Detained at a facility for the detention of juveniles until a judge or
42 master conducts a detention hearing pursuant to this section; and

1 (b) Evaluated by a qualified professional before the detention hearing
2 is conducted pursuant to this section.

3 5. A qualified professional who evaluates a child pursuant to
4 subsection 4 shall prepare a written report concerning his conclusions
5 whether the child is likely to commit an offense that is dangerous to
6 himself or the community if the child is released. The qualified
7 professional shall provide a copy of the written report to:

8 (a) The judge or master who conducts the detention hearing;

9 (b) The prosecuting attorney and the probation officer who are
10 assigned to the case; and

11 (c) The attorney for the child or, if the child is not represented by an
12 attorney, the parent, guardian or custodian of the child.

13 6. A judge or master shall conduct a detention hearing concerning a
14 child who is alleged to have committed an offense described in subsection
15 1 not later than 10 days after the date on which the child is taken into
16 custody. Any intervening Saturday, Sunday or holiday must be included
17 in calculating the period of 10 days. At the detention hearing:

18 (a) If a petition alleging delinquency has not been filed, the judge or
19 master shall order that the child be released.

20 (b) If a petition alleging delinquency has been filed, the judge or
21 master shall order that the child, pending disposition of the case, be:

22 (1) Detained at a facility for the secure detention of juveniles if
23 there is probable cause to believe that the child:

24 (I) Is likely to commit an offense that is dangerous to himself or
25 the community if the child is released;

26 (II) Will run away or be taken away so as to be unavailable for
27 proceedings of the court or to its officers; or

28 (III) Is a fugitive from another jurisdiction; or

29 (2) If the provisions of subparagraph (1) do not otherwise apply:

30 (I) Detained at a facility for the detention of juveniles or such
31 other place as is designated by the court;

32 (II) Conditionally released for supervised detention at the home
33 of the child in lieu of detention at a facility for the detention of juveniles;
34 or

35 (III) Released to the custody of a parent or other person
36 appointed by the court.

37 7. If a child is evaluated by a qualified professional pursuant to
38 subsection 4, the statements made by the child to the qualified
39 professional during the evaluation and any evidence directly or indirectly
40 derived from those statements may not be used for any purpose in a
41 proceeding which is conducted to prove that the child committed a
42 delinquent act or criminal offense. The provisions of this subsection do
43 not prohibit the district attorney from proving that the child committed a

delinquent act or criminal offense based upon evidence obtained from sources or by means that are independent of the statements made by the child to the qualified professional during the evaluation conducted pursuant to subsection 4.

8. As used in this section, "qualified professional" means:

(a) A psychiatrist licensed to practice medicine in this state and certified by the American Board of Psychiatry and Neurology, Inc.;

(b) A psychologist licensed to practice in this state;

(c) A social worker holding a master's degree in social work and licensed in this state as a clinical social worker;

(d) A registered nurse holding a master's degree in the field of psychiatric nursing and licensed to practice professional nursing in this state; or

(e) A marriage and family therapist licensed in this state pursuant to chapter 641A of NRS.

Sec. 3. 1. *In addition to the options set forth in NRS 62.211 and 62.213, if a child is adjudicated delinquent for an act that involves cruelty to or torture of an animal, the court shall order the child to participate in counseling or other psychological treatment.*

2. *As used in this section, "animal," "cruelty" and "torture" have the meanings ascribed to them in NRS 574.050.*

Sec. 4. NRS 62.040 is hereby amended to read as follows:

62.040 1. Except if the child involved is subject to the exclusive jurisdiction of an Indian tribe, and except as otherwise provided in this chapter, the court has exclusive original jurisdiction in proceedings:

(a) Concerning any child living or found within the county who is in need of supervision because he:

(1) Is a child who is subject to compulsory school attendance and is a habitual truant from school;

(2) Habitually disobeys the reasonable and lawful demands of his parents, guardian or other custodian, and is unmanageable; or

(3) Deserts, abandons or runs away from his home or usual place of abode,

and is in need of care or rehabilitation. The child must not be considered a delinquent.

(b) Concerning any child living or found within the county who has committed a delinquent act. A child commits a delinquent act if he violates a county or municipal ordinance or any rule or regulation having the force of law, or he commits an act designated a crime under the law of the State of Nevada.

(c) Concerning any child in need of commitment to an institution for the

mentally retarded.

2. For the purposes of subsection 1, each of the following acts shall be deemed not to be a delinquent act, and the court does not have jurisdiction of a person who is charged with committing such an act:

(a) Murder or attempted murder and any other related offense arising out of the same facts as the murder or attempted murder, regardless of the nature of the related offense.

(b) Sexual assault or attempted sexual assault involving the use or threatened use of force or violence against the victim and any other related offense arising out of the same facts as the sexual assault or attempted sexual assault, regardless of the nature of the related offense, if:

(1) The person was 16 years of age or older when the sexual assault or attempted sexual assault was committed; and

(2) Before the sexual assault or attempted sexual assault was committed, the person previously had been adjudicated delinquent for an act that would have been a felony if committed by an adult.

(c) An offense or attempted offense involving the use or threatened use of a firearm and any other related offense arising out of the same facts as the offense or attempted offense involving the use or threatened use of a firearm, regardless of the nature of the related offense, if:

(1) The person was 16 years of age or older when the offense or attempted offense involving the use or threatened use of a firearm was committed; and

(2) Before the offense or attempted offense involving the use or threatened use of a firearm was committed, the person previously had been adjudicated delinquent for an act that would have been a felony if committed by an adult.

(d) Any other offense if, before the offense was committed, the person previously had been convicted of a criminal offense.

3. If a child is charged with a minor traffic offense, the court may transfer the case and record to a justice's or municipal court if the judge determines that it is in the best interest of the child. If a case is so transferred:

(a) The restrictions set forth in subsection ~~4~~ 5 of NRS 62.170 are applicable in those proceedings; and

(b) The child must be accompanied at all proceedings by a parent or legal guardian.

With the consent of the judge of the juvenile division, the case may be transferred back to the juvenile court.

Sec. 5. NRS 62.128 is hereby amended to read as follows:

62.128 1. A complaint alleging that a child is delinquent or in need of supervision must be referred to the probation officer of the appropriate county. The probation officer shall conduct a preliminary inquiry to determine whether the best interests of the child or of the public require

1 that a petition be filed or would better be served by placing the child under
2 informal supervision pursuant to NRS 62.129. If judicial action appears
3 necessary, the probation officer may recommend the filing of a petition,
4 but any petition must be prepared and signed by the district attorney before
5 it is filed with the court. The decision of the district attorney on whether to
6 file a petition is final.

7 2. If the probation officer refuses to place the child under informal
8 supervision or recommend the filing of a petition, the complainant must be
9 notified by the probation officer of his right to a review of his complaint by
10 the district attorney. The district attorney, upon request of the complainant,
11 shall review the facts presented by the complainant and after consultation
12 with the probation officer shall prepare, sign and file the petition with the
13 court when he believes the action is necessary to protect the community or
14 the interests of the child.

15 3. ~~{When}~~ *Except as otherwise provided in section 2 of this act, if* a
16 child is in detention or shelter ~~{care and the filing of the petition is not~~
17 ~~approved by the district attorney, the child must be immediately released.~~

18 ~~—4.— When a child is in detention or shelter}~~ care, the child must be
19 immediately released if a petition alleging delinquency or need of
20 supervision is not ~~{filed}~~ :

21 *(a) Approved by the district attorney; or*

22 *(b) Filed* within 8 days after the date the complaint was referred to the
23 probation officer.

24 ~~{5.}~~ 4. Upon the filing of the petition, the judge or the master may, in
25 addition to his other powers under this chapter:

26 (a) Dismiss the petition without prejudice and refer a child to the
27 probation officer for informal supervision pursuant to NRS 62.129; or

28 (b) Place a child under the supervision of the court pursuant to a
29 supervision and consent decree without a formal adjudication of
30 delinquency, upon the recommendation of the probation officer, the
31 written approval of the district attorney and the written consent and
32 approval of the child and his parents or guardian, under the terms and
33 conditions provided for in the decree. The petition may be dismissed upon
34 successful completion of the terms and conditions of the supervision and
35 consent decree, and the child may respond to any inquiry concerning the
36 proceedings and events which brought about the proceedings as if they had
37 not occurred. The records concerning a supervision and consent decree
38 may be considered in a subsequent proceeding before the court regarding
39 that child.

40 **Sec. 6.** NRS 62.170 is hereby amended to read as follows:

41 62.170 1. Except as otherwise provided in NRS 62.175 ~~{, any}~~ *and*
42 *section 2 of this act, a* peace officer or probation officer may take into
43 custody any child ~~{who is found}~~ :

1 (a) *Who the officer has probable cause to believe is* violating *or has*
2 *violated* any law , ~~{or}~~ ordinance or ~~{whose}~~ *rule or regulation having the*
3 *force of law; or*

4 (b) *Whose* conduct indicates that he is a child in need of supervision.

5 2. Except as otherwise provided in *this section, section 2 of this act*
6 *and* NRS 484.383, ~~{when}~~ *if* a child is taken into custody ~~{, the}~~ :

7 (a) *The* officer shall immediately notify the parent, guardian or
8 custodian of the child, if known, and the probation officer ~~{,}~~ ; *and*

9 (b) Unless it is impracticable or inadvisable or has been otherwise
10 ordered by the court, ~~{or is otherwise provided in this section,}~~ the child
11 must be released to the custody of his parent or other responsible adult who
12 has signed a written agreement to bring the child to the court at a stated
13 time or at such time as the court may direct. The written agreement must
14 be submitted to the court as soon as possible. If this person fails to produce
15 the child as agreed or upon notice from the court, a writ may be issued for
16 the attachment of the person or of the child requiring that the person or
17 child, or both of them, be brought into the court at a time stated in the writ.

18 ~~{2.—If the}~~

19 3. *Except as otherwise provided in this section and section 2 of this*
20 *act, if a* child *who is taken into custody* is not released ~~{, as provided in~~
21 ~~subsection 1, the}~~ *pursuant to subsection 2:*

22 (a) *The* child must be taken without unnecessary delay to ~~{the}~~ :

23 (1) *The* court ; or ~~{to the}~~

24 (2) *The* place of detention designated by the court, and, as soon as
25 possible thereafter, the fact of detention must be reported to the court ~~{,}~~ ;
26 *and*

27 (b) Pending further disposition of the case , *the court may order that*
28 the child ~~{may be released}~~ *be:*

29 (1) *Released* to the custody of the parent or other person appointed
30 by the court ~~{, or may be detained}~~ ;

31 (2) *Detained* in such place as is designated by the court, subject to
32 further order ~~{, The court may authorize}~~ *of the court; or*

33 (3) *Conditionally released for* supervised detention at the home of
34 the child in lieu of detention at a facility for the detention of juveniles.

35 ~~{3.—A}~~

36 4. *Except as otherwise provided in section 2 of this act, if a* child *is*
37 *alleged to be delinquent or in need of supervision , the child* must not,
38 before disposition of the case, be detained in a facility for the secure
39 detention of juveniles unless there is probable cause to believe that:

40 (a) If the child is not detained, he is likely to commit an offense
41 dangerous to himself or to the community, or likely to commit damage to
42 property;

1 (b) The child will run away or be taken away so as to be unavailable for
2 proceedings of the court or to its officers;

3 (c) The child was brought to the probation officer pursuant to a court
4 order or warrant; or

5 (d) The child is a fugitive from another jurisdiction.

6 ~~[4.—A]~~

7 **5. If a child is** not alleged to be delinquent or in need of supervision ,
8 **the child** must not , at any time , be confined or detained in ~~[a]~~ :

9 (a) A facility for the secure detention of juveniles ; or ~~[any]~~

10 (b) Any police station, lockup, jail, prison or other facility in which
11 adults are detained or confined.

12 ~~[5.—A child under]~~

13 **6. If a child is less than** 18 years of age , **the child** must not , at any
14 time , be confined or detained in any police station, lockup, jail, prison or
15 other facility where the child has regular contact with any adult **who is**
16 **confined or detained therein and who has been** convicted of a crime or
17 ~~[under arrest and]~~ charged with a crime, unless:

18 (a) The child is alleged to be delinquent;

19 (b) An alternative facility is not available; and

20 (c) The child is separated by sight and sound from any adults who are
21 confined or detained therein.

22 ~~[6.—A]~~

23 **7. Except as otherwise provided in section 2 of this act, if a child who**
24 **is** alleged to be delinquent ~~[who]~~ is taken into custody and detained , **the**
25 **child** must be given a detention hearing, conducted by the judge or master:

26 (a) Within 24 hours after the child submits a written application;

27 (b) In a county whose population is less than 100,000, within 24 hours
28 after the commencement of detention at a police station, lockup, jail,
29 prison or other facility in which adults are detained or confined;

30 (c) In a county whose population is 100,000 or more, within 6 hours
31 after the commencement of detention at a police station, lockup, jail,
32 prison or other facility in which adults are detained or confined; or

33 (d) Within 72 hours after the commencement of detention at a facility in
34 which adults are not detained or confined,

35 whichever occurs first, excluding Saturdays, Sundays and holidays. A
36 child must not be released after a detention hearing without the written
37 consent of the judge or master.

38 ~~[7.]~~ **8.** If the parent, guardian or custodian of the child appears with or
39 on behalf of the child at a detention hearing, the judge or master shall
40 provide to him a certificate of attendance which he may provide to his
41 employer. The certificate of attendance must set forth the date and time of
42 appearance and the provisions of NRS 62.900. The certificate of
43 attendance must not set forth the name of the child or the offense alleged.

~~[8.—A]~~

9. *Except as otherwise provided in subsection 10, if a child who is alleged to be in need of supervision* is taken into custody and detained, *the child* must ~~[, if alleged to be a child in need of supervision,]~~ be released within 24 hours, excluding Saturdays, Sundays and holidays, after his initial contact with a peace officer to his parent, guardian or custodian, to any other person who is able to provide adequate care and supervision, or to shelter care, ~~[except as otherwise provided in subsection 9 or]~~ unless the court holds a detention hearing and determines the child:

- (a) Has threatened to run away from home or from the shelter;
- (b) Is accused of violent behavior at home; or
- (c) Is accused of violating the terms of his supervision and consent decree.

If the court makes such a determination, the child may be detained for an additional 24 hours after the hearing, excluding Saturdays, Sundays and holidays, if needed by the court to make an alternative placement. Such an alternative placement must be in a facility in which there are no physically restraining devices or barriers. A child must not be detained pursuant to this subsection for a total period in excess of 48 hours, excluding Saturdays, Sundays and holidays.

~~[9.—A]~~

10. *If a child who is alleged to be in need of supervision* ~~[who]~~ is taken into custody and detained, *the child* need not be released ~~[within 24 hours, excluding Saturdays, Sundays and holidays, after his initial contact with a peace officer to his parent, guardian or custodian, to any other person who is able to provide adequate care and supervision, or to a shelter for care,]~~ *pursuant to subsection 9*, if the court holds a detention hearing and determines the child:

- (a) Is a ward of a federal court or held pursuant to federal statute;
- (b) Has run away from another state and a jurisdiction within the state has issued a want, warrant or request for the child; or
- (c) Is accused of violating a valid court order.

If the court makes such a determination, the child may be detained for such an additional period as necessary for the court to return the child to the jurisdiction from which he originated or to make an alternative placement. Such an alternative placement must be in a facility in which there are no physically restraining devices or barriers.

~~[10.]~~ 11. During the pendency of a criminal or quasi-criminal charge of a crime excluded from the original jurisdiction of the *juvenile* court pursuant to NRS 62.040, a child may petition the juvenile ~~[division]~~ *court* for temporary placement in a facility for the detention of juveniles.

1 ~~11.1~~ 12. In determining whether to release a child pursuant to this
2 section to a person other than his parent, guardian or custodian, preference
3 must be given to any person related within the third degree of
4 consanguinity to the child who is suitable and able to provide proper care
5 and guidance for the child.

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

9 **Sec. 8.** The amendatory provisions of this act do not apply to offenses
10 that were committed before October 1, 1999.

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