

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—Makes various changes concerning actions to be taken when child allegedly commits offense involving firearm or is found to have committed offense involving cruelty to animal. (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 allegedly commits an offense involving a firearm must be taken into custody and detained for certain periods and may be 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, the child must not be released before a detention hearing is*
- 9 *held pursuant to subsection 7 of NRS 62.170.*

1 3. At a detention hearing held pursuant to subsection 7 of NRS
2 62.170 concerning a child who was taken into custody for an offense
3 described in subsection 1, the judge or master shall determine whether to
4 order the child to be evaluated by a qualified professional. If the judge or
5 master orders a child to be evaluated by a qualified professional, the
6 evaluation must be completed within 14 days after the detention hearing.
7 Until the evaluation is completed, the child must be:

- 8 (a) Detained at a facility for the detention of juveniles; or
9 (b) Placed under a program of supervision in his home that may
10 include electronic surveillance of the child.

11 4. If a child is evaluated by a qualified professional pursuant to
12 subsection 3, the statements made by the child to the qualified
13 professional during the evaluation and any evidence directly or indirectly
14 derived from those statements may not be used for any purpose in a
15 proceeding which is conducted to prove that the child committed a
16 delinquent act or criminal offense. The provisions of this subsection do
17 not prohibit the district attorney from proving that the child committed a
18 delinquent act or criminal offense based upon evidence obtained from
19 sources or by means that are independent of the statements made by the
20 child to the qualified professional during the evaluation conducted
21 pursuant to subsection 3.

22 5. As used in this section:

23 (a) "Firearm" has the meaning ascribed to it in subsection 1 of NRS
24 202.253.

25 (b) "Qualified professional" means:

- 26 (1) A psychiatrist licensed to practice medicine in this state and
27 certified by the American Board of Psychiatry and Neurology, Inc.;
28 (2) A psychologist licensed to practice in this state;
29 (3) A social worker holding a master's degree in social work and
30 licensed in this state as a clinical social worker;
31 (4) A registered nurse holding a master's degree in the field of
32 psychiatric nursing and licensed to practice professional nursing in this
33 state; or
34 (5) A marriage and family therapist licensed in this state pursuant
35 to chapter 641A of NRS.

36 Sec. 3. 1. In addition to the options set forth in NRS 62.211 and
37 62.213, if a child is adjudicated delinquent for an act that involves
38 cruelty to or torture of an animal, the court shall order the child to
39 participate in counseling or other psychological treatment.

40 2. The court shall order the parent or guardian of the child, to the
41 extent of his financial ability, to pay the cost of the child to participate in
42 the counseling or other psychological treatment.

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

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

4 62.040 1. Except if the child involved is subject to the exclusive
5 jurisdiction of an Indian tribe, and except as otherwise provided in this
6 chapter, the court has exclusive original jurisdiction in proceedings:

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

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

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

13 (3) Deserts, abandons or runs away from his home or usual place of
14 abode,
15 and is in need of care or rehabilitation. The child must not be considered a
16 delinquent.

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

22 (c) Concerning any child in need of commitment to an institution for the
23 mentally retarded.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 62.128 1. A complaint alleging that a child is delinquent or in need
22 of supervision must be referred to the probation officer of the appropriate
23 county. The probation officer shall conduct a preliminary inquiry to
24 determine whether the best interests of the child or of the public require
25 that a petition be filed or would better be served by placing the child under
26 informal supervision pursuant to NRS 62.129. If judicial action appears
27 necessary, the probation officer may recommend the filing of a petition, but
28 any petition must be prepared and signed by the district attorney before it is
29 filed with the court. The decision of the district attorney on whether to file a
30 petition is final.

31 2. If the probation officer refuses to place the child under informal
32 supervision or recommend the filing of a petition, the complainant must be
33 notified by the probation officer of his right to a review of his complaint by
34 the district attorney. The district attorney, upon request of the complainant,
35 shall review the facts presented by the complainant and after consultation
36 with the probation officer shall prepare, sign and file the petition with the
37 court when he believes the action is necessary to protect the community or
38 the interests of the child.

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

1 ~~4. When a child is in detention or shelter~~ care, the child must be
2 immediately released if a petition alleging delinquency or need of
3 supervision is not ~~filed~~ :

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

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

7 ~~5.~~ 4. Upon the filing of the petition, the judge or the master may, in
8 addition to his other powers under this chapter:

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

11 (b) Place a child under the supervision of the court pursuant to a
12 supervision and consent decree without a formal adjudication of
13 delinquency, upon the recommendation of the probation officer, the written
14 approval of the district attorney and the written consent and approval of the
15 child and his parents or guardian, under the terms and conditions provided
16 for in the decree. The petition may be dismissed upon successful
17 completion of the terms and conditions of the supervision and consent
18 decree, and the child may respond to any inquiry concerning the
19 proceedings and events which brought about the proceedings as if they had
20 not occurred. The records concerning a supervision and consent decree may
21 be considered in a subsequent proceeding before the court regarding that
22 child.

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

24 62.170 1. Except as otherwise provided in NRS 62.175 ~~[, any]~~ and
25 *section 2 of this act, a* peace officer or probation officer may take into
26 custody any child ~~[who is found]~~ :

27 *(a) Who the officer has probable cause to believe is* violating *or has*
28 *violated* any law , ~~for~~ ordinance or ~~[whose]~~ *rule or regulation having the*
29 *force of law; or*

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

31 2. Except as otherwise provided in *this section, section 2 of this act*
32 *and* NRS 484.383, ~~[when]~~ *if* a child is taken into custody ~~[, the]~~ :

33 *(a) The* officer shall immediately notify the parent, guardian or
34 custodian of the child, if known, and the probation officer ~~[,]~~ ; *and*

35 *(b) Unless it is impracticable or inadvisable or has been otherwise*
36 *ordered by the court,* ~~[or is otherwise provided in this section,]~~ the child
37 must be released to the custody of his parent or other responsible adult who
38 has signed a written agreement to bring the child to the court at a stated
39 time or at such time as the court may direct. The written agreement must be
40 submitted to the court as soon as possible. If this person fails to produce the
41 child as agreed or upon notice from the court, a writ may be issued for the
42 attachment of the person or of the child requiring that the person or child,
43 or both of them, be brought into the court at a time stated in the writ.

~~[2.—If the]~~

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

(a) The child must be taken without unnecessary delay to ~~[the]~~ :

(1) The court ; or ~~[to the]~~

(2) The place of detention designated by the court, and, as soon as possible thereafter, the fact of detention must be reported to the court ~~[,]~~ ;
and

(b) Pending further disposition of the case , *the court may order that* the child ~~[may be released]~~ be:

(1) *Released* to the custody of the parent or other person appointed by the court ~~[, or may be detained]~~ ;

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

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

~~[3.—A]~~

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

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

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

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

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

~~[4.—A]~~

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

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

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

~~[5.—A child under]~~

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

(a) The child is alleged to be delinquent;

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

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

4 ~~{6. — A}~~

5 **7. If a** child **who is** alleged to be delinquent ~~{who}~~ is taken into custody
6 and detained, **the child** must be given a detention hearing, conducted by
7 the judge or master:

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

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

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

15 (d) Within 72 hours after the commencement of detention at a facility in
16 which adults are not detained or confined,
17 whichever occurs first, excluding Saturdays, Sundays and holidays. A child
18 must not be released after a detention hearing without the written consent of
19 the judge or master.

20 ~~{7.}~~ **8.** If the parent, guardian or custodian of the child appears with or
21 on behalf of the child at a detention hearing, the judge or master shall
22 provide to him a certificate of attendance which he may provide to his
23 employer. The certificate of attendance must set forth the date and time of
24 appearance and the provisions of NRS 62.900. The certificate of attendance
25 must not set forth the name of the child or the offense alleged.

26 ~~{8. — A}~~

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

35 (a) Has threatened to run away from home or from the shelter;

36 (b) Is accused of violent behavior at home; or

37 (c) Is accused of violating the terms of his supervision and consent
38 decree.

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

1 subsection for a total period in excess of 48 hours, excluding Saturdays,
2 Sundays and holidays.

3 ~~{9. —A}~~

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

11 (a) Is a ward of a federal court or held pursuant to federal statute;

12 (b) Has run away from another state and a jurisdiction within the state
13 has issued a want, warrant or request for the child; or

14 (c) Is accused of violating a valid court order.

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

20 ~~{10.}~~ **11.** During the pendency of a criminal or quasi-criminal charge
21 of a crime excluded from the original jurisdiction of the **juvenile** court
22 pursuant to NRS 62.040, a child may petition the juvenile ~~{division}~~ **court**
23 for temporary placement in a facility for the detention of juveniles.

24 ~~{11.}~~ **12.** In determining whether to release a child pursuant to this
25 section to a person other than his parent, guardian or custodian, preference
26 must be given to any person related within the third degree of
27 consanguinity to the child who is suitable and able to provide proper care
28 and guidance for the child.

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

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