

Assembly Bill No. 53–Assemblyman Carpenter

CHAPTER.....

AN ACT relating to public safety; providing for an increased penalty for felonies committed under certain circumstances that threaten the safety of pupils and school employees; revising certain provisions governing the definition of first degree murder; establishing for the purposes of the death penalty an aggravating circumstance relating to murders committed under certain circumstances that threaten the safety of pupils and school employees; revising various provisions relating to juveniles who commit certain unlawful acts; making various other changes concerning the safety of pupils and school employees; 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:

Section 1. NRS 193.161 is hereby amended to read as follows:

193.161 1. Except as otherwise provided in *subsection 2 and* NRS 193.169, any person who commits a felony on the property of a public or private school, at an activity sponsored by a public or private school or on a school bus while the bus is engaged in its official duties shall be punished by imprisonment in the state prison for a term equal to and in addition to the term of imprisonment prescribed by statute for the crime. The sentence prescribed by this section must run consecutively with the sentence prescribed by statute for the crime.

2. ~~{This section}~~ *Unless a greater penalty is provided by specific statute and except as otherwise provided in NRS 193.169, in lieu of an additional term of imprisonment as provided pursuant to subsection 1, if a felony that resulted in death or substantial bodily harm to the victim was committed on the property of a public or private school when pupils or employees of the school were present or may have been present, at an activity sponsored by a public or private school or on a school bus while the bus was engaged in its official duties, and the person who committed the felony intended to create a great risk of death or substantial bodily harm to more than one person by means of a weapon, device or course of action that would normally be hazardous to the lives of more than one person, the felony may be deemed a category A felony and the person who committed the felony may be punished by imprisonment in the state prison:*

- (a) For life without the possibility of parole;*
- (b) For life with the possibility of parole, with eligibility for parole beginning when a minimum of 20 years has been served; or*
- (c) For a definite term of 50 years, with eligibility for parole beginning when a minimum of 20 years has been served.*

3. *Subsection 1* does not create ~~{any}~~ a separate offense but provides an additional penalty for the primary offense, ~~{whose}~~ the imposition of which is contingent upon the finding of the prescribed fact. *Subsection 2 does not*

create a separate offense but provides an alternative penalty for the primary offense, the imposition of which is contingent upon the finding of the prescribed fact.

~~[3.]~~ 4. For the purposes of this section, “school bus” has the meaning ascribed to it in NRS 483.160.

Sec. 2. NRS 193.169 is hereby amended to read as follows:

193.169 1. A person who is sentenced to an additional term of imprisonment pursuant to the provisions of *subsection 1 of* NRS 193.161, NRS 193.162, 193.163, 193.165, 193.167, 193.1675, 193.168 or 453.3345 must not be sentenced to an additional term of imprisonment pursuant to any of the other listed sections even if the person’s conduct satisfies the requirements for imposing an additional term of imprisonment pursuant to another one or more of those sections.

2. *A person who is sentenced to an alternative term of imprisonment pursuant to subsection 2 of NRS 193.161 must not be sentenced to an additional term of imprisonment pursuant to subsection 1 of NRS 193.161, NRS 193.162, 193.163, 193.165, 193.167, 193.1675, 193.168 or 453.3345 even if the person’s conduct satisfies the requirements for imposing an additional term of imprisonment pursuant to another one or more of those sections.*

3. This section does not:

(a) Affect other penalties or limitations upon probation or suspension of a sentence contained in the sections listed in subsection 1 ~~[1]~~ *or 2.*

(b) Prohibit alleging in the alternative in the indictment or information that the person’s conduct satisfies the requirements of more than one of the sections listed in subsection 1 *or 2* and introducing evidence to prove the alternative allegations.

Sec. 3. NRS 200.030 is hereby amended to read as follows:

200.030 1. Murder of the first degree is murder which is:

(a) Perpetrated by means of poison, lying in wait ~~[, torture or child abuse,]~~ *or torture, or* by any other kind of willful, deliberate and premeditated killing;

(b) Committed in the perpetration or attempted perpetration of sexual assault, kidnapping, arson, robbery, burglary, invasion of the home, sexual abuse of a child, ~~[or]~~ sexual molestation of a child under the age of 14 years ~~[;]~~ *or child abuse;*

(c) Committed to avoid or prevent the lawful arrest of any person by a peace officer or to effect the escape of any person from legal custody ~~[;]~~ *or*

(d) Committed on the property of a public or private school, at an activity sponsored by a public or private school or on a school bus while the bus was engaged in its official duties by a person who intended to create a great risk of death or substantial bodily harm to more than one person by means of a weapon, device or course of action that would normally be hazardous to the lives of more than one person.

2. Murder of the second degree is all other kinds of murder

3. The jury before whom any person indicted for murder is tried shall, if they find him guilty thereof, designate by their verdict whether he is guilty of murder of the first or second degree.

4. A person convicted of murder of the first degree is guilty of a category A felony and shall be punished:

(a) By death, only if one or more aggravating circumstances are found and any mitigating circumstance or circumstances which are found do not outweigh the aggravating circumstance or circumstances; or

(b) By imprisonment in the state prison:

(1) For life without the possibility of parole;

(2) For life with the possibility of parole, with eligibility for parole beginning when a minimum of 20 years has been served; or

(3) For a definite term of 50 years, with eligibility for parole beginning when a minimum of 20 years has been served.

A determination of whether aggravating circumstances exist is not necessary to fix the penalty at imprisonment for life with or without the possibility of parole.

5. A person convicted of murder of the second degree is guilty of a category A felony and shall be punished by imprisonment in the state prison:

(a) For life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served; or

(b) For a definite term of 25 years, with eligibility for parole beginning when a minimum of 10 years has been served.

6. As used in this section:

(a) "Child abuse" means physical injury of a nonaccidental nature to a child under the age of 18 years;

(b) *"School bus" has the meaning ascribed to it in NRS 483.160;*

(c) "Sexual abuse of a child" means any of the acts described in NRS 432B.100; and

~~(c)~~ (d) "Sexual molestation" means any willful and lewd or lascivious act, other than acts constituting the crime of sexual assault, upon or with the body, or any part or member thereof, of a child under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions or sexual desires of the perpetrator or of the child.

Sec. 4. NRS 200.033 is hereby amended to read as follows:

200.033 The only circumstances by which murder of the first degree may be aggravated are:

1. The murder was committed by a person under sentence of imprisonment.

2. The murder was committed by a person who, at any time before a penalty hearing is conducted for the murder pursuant to NRS 175.552, is or has been convicted of:

(a) Another murder and the provisions of subsection 12 do not otherwise apply to that other murder; or

(b) A felony involving the use or threat of violence to the person of another and the provisions of subsection 4 do not otherwise apply to that felony.

For the purposes of this subsection, a person shall be deemed to have been convicted at the time the jury verdict of guilt is rendered or upon pronouncement of guilt by a judge or judges sitting without a jury.

3. The murder was committed by a person who knowingly created a great risk of death to more than one person by means of a weapon, device or course of action which would normally be hazardous to the lives of more than one person.

4. The murder was committed while the person was engaged, alone or with others, in the commission of or an attempt to commit or flight after committing or attempting to commit, any robbery, arson in the first degree, burglary, invasion of the home or kidnaping in the first degree, and the person charged:

(a) Killed or attempted to kill the person murdered; or

(b) Knew or had reason to know that life would be taken or lethal force used.

5. The murder was committed to avoid or prevent a lawful arrest or to effect an escape from custody.

6. The murder was committed by a person, for himself or another, to receive money or any other thing of monetary value.

7. The murder was committed upon a peace officer or fireman who was killed while engaged in the performance of his official duty or because of an act performed in his official capacity, and the defendant knew or reasonably should have known that the victim was a peace officer or fireman. For the purposes of this subsection, "peace officer" means:

(a) An employee of the department of prisons who does not exercise general control over offenders imprisoned within the institutions and facilities of the department but whose normal duties require him to come into contact with those offenders, when carrying out the duties prescribed by the director of the department.

(b) Any person upon whom some or all of the powers of a peace officer are conferred pursuant to NRS 289.150 to 289.360, inclusive, when carrying out those powers.

8. The murder involved torture or the mutilation of the victim.

9. The murder was committed upon one or more persons at random and without apparent motive.

10. The murder was committed upon a person less than 14 years of age.

11. The murder was committed upon a person because of the actual or perceived race, color, religion, national origin, physical or mental disability or sexual orientation of that person.

12. The defendant has, in the immediate proceeding, been convicted of more than one offense of murder in the first or second degree. For the purposes of this subsection, a person shall be deemed to have been

convicted of a murder at the time the jury verdict of guilt is rendered or upon pronouncement of guilt by a judge or judges sitting without a jury.

13. The person, alone or with others, subjected or attempted to subject the victim of the murder to nonconsensual sexual penetration immediately before, during or immediately after the commission of the murder. For the purposes of this subsection:

(a) "Nonconsensual" means against the victim's will or under conditions in which the person knows or reasonably should know that the victim is mentally or physically incapable of resisting, consenting or understanding the nature of his conduct, including, but not limited to, conditions in which the person knows or reasonably should know that the victim is dead.

(b) "Sexual penetration" means cunnilingus, fellatio or any intrusion, however slight, of any part of the victim's body or any object manipulated or inserted by a person, alone or with others, into the genital or anal openings of the body of the victim, whether or not the victim is alive. The term includes, but is not limited to, anal intercourse and sexual intercourse in what would be its ordinary meaning.

14. The murder was committed on the property of a public or private school, at an activity sponsored by a public or private school or on a school bus while the bus was engaged in its official duties by a person who intended to create a great risk of death or substantial bodily harm to more than one person by means of a weapon, device or course of action that would normally be hazardous to the lives of more than one person. For the purposes of this subsection, "school bus" has the meaning ascribed to it in NRS 483.160.

Sec. 5. 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) *A felony resulting in death or substantial bodily harm to the victim and any other related offense arising out of the same facts as the felony, regardless of the nature of the related offense, if:*

(1) The felony was committed on the property of a public or private school when pupils or employees of the school were present or may have been present, at an activity sponsored by a public or private school or on a school bus while the bus was engaged in its official duties; and

(2) The person intended to create a great risk of death or substantial bodily harm to more than one person by means of a weapon, device or course of action that would normally be hazardous to the lives of more than one person.

(e) 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 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.

4. As used in this section, "school bus" has the meaning ascribed to it in NRS 483.160.

Sec. 6. Section 1 of Assembly Bill No. 262 of this session is hereby amended to read as follows:

Section 1. (Deleted by amendment.)

Sec. 7. Section 2 of Assembly Bill No. 262 of this session is hereby amended to read as follows:

Sec. 2. NRS 62.170 is hereby amended to read as follows:

62.170 1. Except as otherwise provided in NRS 62.175 and section 2 of **Assembly Bill No. 221 of this ~~act,~~ session**, a peace officer or probation officer may take into custody any child:

(a) Who the officer has probable cause to believe is violating or has violated any law, ordinance or rule or regulation having the force of law; or

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

2. Except as otherwise provided in this section, section 2 of **Assembly Bill No. 221 of this ~~act,~~ session** and NRS 484.383, if a child is taken into custody:

(a) The officer shall **~~immediately~~, without undue delay, attempt to** notify, **if known**, the parent, guardian or custodian of the child **~~, if known, and the~~** ;

(b) The facility in which the child is detained shall, without undue delay:

(1) Notify a probation officer; and

~~(b)~~ (2) Attempt to notify, if known, the parent, guardian or custodian of the child if such notification was not accomplished pursuant to paragraph (a); and

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

3. Except as otherwise provided in this section and section 2 of **Assembly Bill No. 221 of this ~~act,~~ session**, if a child who is taken into custody is not released pursuant to subsection 2:

(a) The child must be taken without unnecessary delay to

:

(1) The court; or
(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 be:

(1) Released to the custody of the parent or other person appointed by the court;

(2) Detained in such place as is designated by the court, subject to further order 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.

4. Except as otherwise provided in section 2 of *Assembly Bill No. 221* of this ~~act,~~ *session*, 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.

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 facility for the secure detention of juveniles; or

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

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 charged with a crime, unless:

(a) The child is alleged to be delinquent;

(b) An alternative facility is not available; and

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

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

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

;

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

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

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

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

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 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, 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.

10. If a child who is alleged to be in need of supervision is taken into custody and detained, the child need not be released 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.

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 court for temporary placement in a facility for the detention of juveniles.

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

Sec. 8. Assembly Bill No. 262 of this session is hereby amended by adding thereto a new section to read as follows:

Sec. 3. This act becomes effective at 12:01 a.m. on October 1, 1999.

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

Sec. 10. This act becomes effective at 12:02 a.m. on October 1, 1999.