

ASSEMBLY BILL NO. 53—ASSEMBLYMAN CARPENTER

PREFILED JANUARY 22, 1999

Referred to Committee on Judiciary

SUMMARY—Makes various changes concerning unlawful death or substantial bodily harm committed on school property or school bus. (BDR 15-127)

FISCAL NOTE: Effect on Local Government: No.
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 crimes; providing for an increased penalty for certain felonies resulting in death or substantial bodily injury that are committed on the property of a public or private school or on a school bus; providing that murder committed on the property of a public or private school or on a school bus is first degree murder; providing that a person convicted of such a murder shall be punished by life imprisonment or death; providing that a juvenile court does not have jurisdiction over persons charged with certain felonies resulting in death or substantial bodily injury that are committed on the property of a public or private school or on a school bus; 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 193.161 is hereby amended to read as follows:
2 193.161 1. Except as otherwise provided in ***subsection 2 and*** NRS
3 193.169, any person who commits a felony on the property of a public or
4 private school, at an activity sponsored by a public or private school or on a
5 school bus while the bus is engaged in its official duties shall be punished
6 by imprisonment in the state prison for a term equal to and in addition to
7 the term of imprisonment prescribed by statute for the crime. The sentence
8 prescribed by this section must run consecutively with the sentence
9 prescribed by statute for the crime.
10 2. ~~[This section]~~ ***Unless a greater penalty is provided by specific***
11 ***statute and except as otherwise provided in NRS 193.169, in lieu of an***
12 ***additional term of imprisonment as provided pursuant to subsection 1, if a***
13 ***felony that is committed on the property of a public or private school***
14 ***when pupils or employees of the school are present or may be present or***

1 *on a school bus while the bus is engaged in its official duties results in*
2 *death or substantial bodily harm to the victim, and the person who*
3 *committed the felony intended to create a great risk of death or*
4 *substantial bodily harm to more than one person by means of a weapon,*
5 *device or course of action that would normally be hazardous to the lives*
6 *of more than one person, the felony may be deemed a category A felony*
7 *and the person who committed the felony may be punished by*
8 *imprisonment in the state prison:*

9 (a) *For life without the possibility of parole;*

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

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

14 **3.** *Subsection 1* does not create ~~any~~ a separate offense but provides
15 an additional penalty for the primary offense, ~~whose~~ the imposition of
16 *which* is contingent upon the finding of the prescribed fact. *Subsection 2*
17 *does not create a separate offense but provides an alternative penalty for*
18 *the primary offense, the imposition of which is contingent upon the*
19 *finding of the prescribed fact.*

20 ~~3.~~ **4.** For the purposes of this section, “school bus” has the meaning
21 ascribed to it in NRS 483.160.

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

23 193.169 1. A person who is sentenced to an additional term of
24 imprisonment pursuant to the provisions of *subsection 1 of* NRS 193.161,
25 *NRS* 193.162, 193.163, 193.165, 193.167, 193.1675, 193.168 or 453.3345
26 must not be sentenced to an additional term of imprisonment pursuant to
27 any of the other listed sections even if the person’s conduct satisfies the
28 requirements for imposing an additional term of imprisonment pursuant to
29 another one or more of those sections.

30 2. *A person who is sentenced to an alternative term of imprisonment*
31 *pursuant to subsection 2 of NRS 193.161 must not be sentenced to an*
32 *additional term of imprisonment pursuant to subsection 1 of NRS*
33 *193.161, NRS 193.162, 193.163, 193.165, 193.167, 193.1675, 193.168 or*
34 *453.3345 even if the person’s conduct satisfies the requirements for*
35 *imposing an additional term of imprisonment pursuant to another one or*
36 *more of those sections.*

37 **3.** This section does not:

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

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

allegations.

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

2 200.030 1. Murder of the first degree is murder which is:

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

5 (b) Committed in the perpetration or attempted perpetration of sexual
6 assault, kidnaping, arson, robbery, burglary, invasion of the home, sexual
7 abuse of a child or sexual molestation of a child under the age of 14 years;

8 ~~for~~

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

11 or

12 ***(d) Committed on the property of a public or private school, at an***
13 ***activity sponsored by a public or private school or on a school bus while***
14 ***the bus is engaged in its official duties.***

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

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

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

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

24 (b) By imprisonment in the state prison:

25 (1) For life without the possibility of parole;

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

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

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

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

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

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

40 6. As used in this section:

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

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

1 (c) "Sexual abuse of a child" means any of the acts described in NRS
2 432B.100; and

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

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

9 200.033 The only circumstances by which murder of the first degree
10 may be aggravated are:

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

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

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

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

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

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

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

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

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

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

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

40 7. The murder was committed upon a peace officer or fireman who was
41 killed while engaged in the performance of his official duty or because of
42 an act performed in his official capacity, and the defendant knew or

1 reasonably should have known that the victim was a peace officer or
2 fireman. For the purposes of this subsection, "peace officer" means:

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

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

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

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

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

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

19 12. The defendant has, in the immediate proceeding, been convicted of
20 more than one offense of murder in the first or second degree. For the
21 purposes of this subsection, a person shall be deemed to have been
22 convicted of a murder at the time the jury verdict of guilt is rendered or
23 upon pronouncement of guilt by a judge or judges sitting without a jury.

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

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

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

39 ***14. The murder was committed on the property of a public or private***
40 ***school, at an activity sponsored by a public or private school or on a***
41 ***school bus while the bus was engaged in its official duties. For the***
42 ***purposes of this subsection, "school bus" has the meaning ascribed to it***
43 ***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

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

5 (d) *A felony that results in death or substantial bodily harm to the*
6 *victim which is committed on the property of a public or private school*
7 *when pupils or employees of the school are present or may be present or*
8 *on a school bus while the bus is engaged in its official duties if the person*
9 *who committed the felony intended to create a great risk of death or*
10 *substantial bodily harm to more than one person by means of a weapon,*
11 *device or course of action that would normally be hazardous to the lives*
12 *of more than one person. For the purposes of this paragraph, "school*
13 *bus" has the meaning ascribed to it in NRS 483.160.*

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

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

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

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

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

26 **Sec. 6.** The amendatory provisions of this act do not apply to offenses
27 which are committed before October 1, 1999.