

ASSEMBLY BILL NO. 53—ASSEMBLYMAN CARPENTER

PREFILED JANUARY 22, 1999

Referred to Committee on Judiciary

SUMMARY—Makes various changes concerning safety of children and schools. (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 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:

- 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 the
7 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***
13 ***a felony that resulted in death or substantial bodily harm to the victim***
14 ***was committed on the property of a public or private school when pupils***

1 *or employees of the school were present or may have been present, at an*
2 *activity sponsored by a public or private school or on a school bus while*
3 *the bus was engaged in its official duties, and the person who committed*
4 *the felony intended to create a great risk of death or substantial bodily*
5 *harm to more than one person by means of a weapon, device or course of*
6 *action that would normally be hazardous to the lives of more than one*
7 *person, the felony may be deemed a category A felony and the person who*
8 *committed the felony may be punished by imprisonment in the state*
9 *prison:*

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

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

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

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

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

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

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

- 39 (a) Affect other penalties or limitations upon probation or suspension of
40 a sentence contained in the sections listed in subsection 1 ~~1.~~ **or 2.**
41 (b) Prohibit alleging in the alternative in the indictment or information
42 that the person’s conduct satisfies the requirements of more than one of the

1 sections listed in subsection 1 **or 2** and introducing evidence to prove the
2 alternative allegations.

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

4 200.030 1. Murder of the first degree is murder which is:

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

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

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

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

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

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

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

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

30 (b) By imprisonment in the state prison:

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

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

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

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

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

42 (a) For life with the possibility of parole, with eligibility for parole
43 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

~~(d)~~ (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.

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

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

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

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

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

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

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

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

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

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

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

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

39 (b) "Sexual penetration" means cunnilingus, fellatio or any intrusion,
40 however slight, of any part of the victim's body or any object manipulated
41 or inserted by a person, alone or with others, into the genital or anal
42 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 (1) The person was 16 years of age or older when the sexual assault or
2 attempted sexual assault was committed; and

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

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

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

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

17 (d) *A felony resulting in death or substantial bodily harm to the victim*
18 *and any other related offense arising out of the same facts as the felony,*
19 *regardless of the nature of the related offense, if:*

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

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

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

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

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

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

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

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

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

3 **Section 1.** (Deleted by amendment.)

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

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

7 62.170 1. Except as otherwise provided in NRS 62.175 and
8 section 2 of *Assembly Bill No. 221 of this {act,} session*, a peace
9 officer or probation officer may take into custody any child:

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

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

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

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

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

23 **(1) *Notify*** a probation officer; and

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

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

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

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

41 (1) The court;

or

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

4 (b) Pending further disposition of the case, the court may order
5 that the child be:

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

8 (2) Detained in such place as is designated by the court,
9 subject to further order of the court; or

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

13 4. Except as otherwise provided in section 2 of *Assembly Bill*
14 *No. 221 of this ~~act,~~ session*, if a child is alleged to be delinquent
15 or in need of supervision, the child must not, before disposition of
16 the case, be detained in a facility for the secure detention of
17 juveniles unless there is probable cause to believe that:

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

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

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

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

26 5. If a child is not alleged to be delinquent or in need of
27 supervision, the child must not, at any time, be confined or detained
28 in:

29 (a) A facility for the secure detention of juveniles; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (c) Is accused of violating the terms of his supervision and
33 consent decree.

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

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

1 pursuant to subsection 9, if the court holds a detention hearing and
2 determines the child:

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

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

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

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

14 11. During the pendency of a criminal or quasi-criminal charge
15 of a crime excluded from the original jurisdiction of the juvenile
16 court pursuant to NRS 62.040, a child may petition the juvenile
17 court for temporary placement in a facility for the detention of
18 juveniles.

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

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

26 **Sec. 3.** This act becomes effective at 12:01 a.m. on October 1,
27 1999.

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

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