

Assembly Bill No. 294--Assemblyman Bache

CHAPTER.....

AN ACT relating to juveniles; providing that juveniles who are adjudicated delinquent for committing certain acts that would be crimes if committed by an adult may not have their records automatically sealed; making various other changes related to sealing of juvenile records; 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 62.2115 is hereby amended to read as follows:

62.2115 Any decree or order entered by a judge or master of a juvenile court, district court, justice's court or municipal court concerning a child within the purview of this chapter must contain, for the benefit of the child, an explanation of the contents of NRS ~~62.345,~~ 62.370 and, if applicable, NRS 62.600.

Sec. 2. NRS 62.350 is hereby amended to read as follows:

62.350 1. The fingerprints of a child must be taken if the child is in custody for an act that, if committed by an adult:

(a) Would be a felony, a gross misdemeanor or a sexual offense; or

(b) Would be a misdemeanor, and the act involved:

(1) The use or threatened use of force or violence against the victim;

or

(2) The possession, use or threatened use of a firearm or a deadly weapon.

2. The fingerprints of a child who is in custody but who is not subject to the provisions of subsection 1 may be taken if a law enforcement officer finds latent fingerprints during the investigation of an offense and the officer has reason to believe that the latent fingerprints are those of the child. The officer shall use the fingerprints taken from the child ~~for the purpose of making~~ *to make* an immediate comparison with the latent fingerprints. If the comparison is:

(a) Negative, the fingerprint card and other copies of the fingerprints taken may be immediately destroyed or may be retained for future use.

(b) Positive, the fingerprint card and other copies of the fingerprints:

(1) Must be delivered to the court for disposition if the child is referred to court.

(2) May be immediately destroyed or may be retained for future use if the child is not referred to court.

3. Fingerprints that are taken from a child pursuant to the provisions of this section:

(a) May be retained in a local file or a local system for the automatic retrieval of fingerprints if they are retained under special security measures that limit inspection of the fingerprints to law enforcement officers who are conducting criminal investigations. If the child from whom the fingerprints are taken subsequently is not adjudicated delinquent, the parent or guardian of the child or, when the child becomes at least 18 years of age, the child ~~+~~ may petition the court for the removal of the fingerprints from any such local file or local system.

(b) Must be submitted to the central repository for Nevada records of criminal history if the child is adjudicated delinquent for an act that, if

committed by an adult, would be a felony or sexual offense, and may be submitted to the central repository for any other act. Any such fingerprints submitted to the central repository must be submitted with a description of the child and the unlawful act, if any, that the child committed. The central repository shall retain the fingerprints and such information of the child under special security measures that limit inspection of the fingerprints and such information to law enforcement officers who are conducting criminal investigations and to officers and employees of the central repository who are assisting law enforcement officers with criminal investigations or who are conducting research or performing a statistical analysis.

(c) Must not be submitted to the Federal Bureau of Investigation unless the child is adjudicated delinquent for an act that, if committed by an adult, would be a felony or a sexual offense.

4. A child who is in custody must be photographed for the purpose of identification. Except as otherwise provided in this subsection, the photographs of the child must be kept in the file pertaining to the child under special security measures which provide that the photographs may be inspected only to conduct criminal investigations and photographic lineups. If a court subsequently determines that the child is not delinquent, the court shall order the photographs to be destroyed.

5. Any person who willfully violates any provision of this section is guilty of a misdemeanor.

6. *As used in this section, "sexual offense" means:*

(a) *Sexual assault pursuant to NRS 200.366;*

(b) *Statutory sexual seduction pursuant to NRS 200.368;*

(c) *Battery with intent to commit sexual assault pursuant to NRS 200.400;*

(d) *An offense involving pornography and a minor pursuant to NRS 200.710 to 200.730, inclusive;*

(e) *Incest pursuant to NRS 201.180;*

(f) *Solicitation of a minor to engage in acts constituting the infamous crime against nature pursuant to NRS 201.195;*

(g) *Open or gross lewdness pursuant to NRS 201.210;*

(h) *Indecent or obscene exposure pursuant to NRS 201.220;*

(i) *Lewdness with a child pursuant to NRS 201.230;*

(j) *Sexual penetration of a dead human body pursuant to NRS 201.450;*

(k) *Annoyance or molestation of a minor pursuant to NRS 207.260;*

(l) *An attempt to commit an offense listed in paragraphs (a) to (k), inclusive; or*

(m) *An offense that is determined to be sexually motivated pursuant to NRS 175.547.*

Sec. 3. NRS 62.370 is hereby amended to read as follows:

62.370 1. Except as otherwise provided in *this section and* NRS ~~{62.345 and}~~ 62.600, if a child is taken into custody by a peace officer, is taken before a probation officer, or appears before a judge or master of a juvenile court, district court, justice's court or municipal court, the child or a probation officer on his behalf may petition for the sealing of all records relating to the child, including records of arrest, but not including records relating to misdemeanor traffic violations, in the custody of the juvenile

court, district court, justice's court or municipal court, probation officer, law enforcement agency, or any other agency or public official, if:

(a) Three years or more have elapsed ~~{after termination of the jurisdiction of the juvenile}~~ *since the child was declared a ward of the court;* or

(b) Three years or more have elapsed since the child was last referred to the juvenile court and the child has never been declared a ward of the court.

2. ~~{The}~~ *Except as otherwise provided in subsection 3 and NRS 62.600, all records relating to a child must be automatically sealed when the child reaches 21 years of age.*

3. *If a child is adjudicated delinquent for an act that, if committed by an adult, would be punishable as sexual assault pursuant to NRS 200.366, battery with intent to commit sexual assault pursuant to NRS 200.400 or lewdness with a child pursuant to NRS 201.230, or for an act involving the use or threatened use of force or violence that, if committed by an adult, would be punishable as a felony, any records pertaining to that act must not be automatically sealed when the child reaches 21 years of age.*

4. *Except as otherwise provided in NRS 62.600, a child whose record has not been automatically sealed pursuant to subsection 2 may petition for the sealing of all records relating to the child after the child reaches 30 years of age.*

5. *If a petition is filed pursuant to subsection 1, the court shall notify the district attorney of the county and the probation officer, if he is not the petitioner. If a petition is filed pursuant to subsection 4, the court shall notify the district attorney of the county.* The district attorney, a probation officer, any of their deputies or any other persons having relevant evidence may testify at the hearing on the petition.

~~{3-}~~ 6. If, after ~~{the hearing,}~~ *a hearing on a petition filed pursuant to subsection 1,* the court finds that, ~~{since such termination of jurisdiction,}~~ *during the applicable 3-year period,* the child has not been convicted of a felony or of any misdemeanor involving moral turpitude and that rehabilitation has been attained to the satisfaction of the court, it shall order all records, papers and exhibits in the ~~{juvenile's}~~ *child's* case in the custody of the juvenile court, district court, justice's court, municipal court, probation officer, law enforcement agency or any other agency or public official sealed. Other records relating to the case, in the custody of such other agencies and officials as are named in the order, must also be ordered sealed.

~~{4-}~~ *Except as otherwise provided in NRS 62.345 and 62.600, all records relating to a child must be automatically sealed when the child reaches 24 years of age.*

~~{5-}~~ 7. *If, after a hearing on a petition filed pursuant to subsection 4, the court finds that, in the period since the child reached 21 years of age, the child has not been convicted of any offense, except for minor moving or standing traffic violations, the court may order sealed all records, papers and exhibits in the child's case in the custody of the juvenile court, district court, justice's court, municipal court, probation officer, law enforcement agency or any other agency or public official. Other*

records relating to the case, in the custody of such other agencies and officials as are named in the order, may also be ordered sealed.

8. The court shall send a copy of the order sealing the records of a child to each agency and official named therein. Each agency and official shall, within 5 days after receipt of the order:

- (a) Seal records in its custody, as directed by the order.
- (b) Advise the court of its compliance.
- (c) Seal the copy of the court's order that it or he received.

~~16-1~~ 9. If the court orders the records sealed, all proceedings recounted in the records are deemed never to have occurred, and the person who is the subject of the records may properly reply accordingly to any inquiry concerning the proceedings and the events which brought about the proceedings.

~~17-1~~ 10. The person who is the subject of records sealed pursuant to this section may petition the court to permit inspection of the records by a person named in the petition and the court may order the inspection.

~~18-1~~ 11. The court may, upon the application of a district attorney or an attorney representing a defendant in a criminal action, order an inspection of the records ~~for the purpose of obtaining~~ *to obtain* information relating to persons who were involved in the incident recorded.

~~19-1~~ 12. The court may, upon its own motion and ~~for the purpose of sentencing~~ *to sentence* a convicted adult who is under 21 years of age, inspect any records of that person which are sealed pursuant to this section.

~~110-1~~ 13. An agency charged with the medical or psychiatric care of a person may petition the court to unseal his juvenile records.

~~111-1~~ 14. The provisions of this section do not apply to information maintained in the standardized system established pursuant to NRS 62.910 or information that must be collected by the division of child and family services of the department of human resources pursuant to NRS 62.920.

~~112-1~~ 15. As used in this section, "seal" means placing the records in a separate file or other repository not accessible to the general public.

Sec. 4. NRS 62.560 is hereby amended to read as follows:

62.560 Except as otherwise provided in subsection ~~1-1~~ 2 of NRS 62.600, the provisions of NRS 62.500 to 62.600, inclusive, do not apply to a child who is subject to registration and community notification pursuant to NRS 179D.350 to 179D.800, inclusive, before reaching 21 years of age.

Sec. 5. NRS 62.600 is hereby amended to read as follows:

62.600 1. The records relating to a child must not be sealed pursuant to the provisions of NRS 62.370 while the child is subject to community notification as a juvenile sex offender.

2. ~~Except as otherwise provided in NRS 62.345, if a child is relieved of being subject to community notification as a juvenile sex offender pursuant to NRS 62.590, all records relating to the child must be automatically sealed when the child reaches 24 years of age as provided in subsection 4 of NRS 62.370.~~

~~3-1~~ If a child is deemed to be an adult sex offender pursuant to NRS 62.590, is convicted of a sexual offense, as defined in NRS 179D.410, before reaching 21 years of age or is otherwise subject to registration and community notification pursuant to NRS 179D.350 to 179D.800, inclusive, before reaching 21 years of age:

(a) The records relating to the child must not be sealed pursuant to the provisions of NRS 62.370; and

(b) Each delinquent act committed by the child that would have been a sexual offense, as defined in NRS 179D.410 if committed by an adult, shall be deemed to be a criminal conviction for the purposes of:

(1) Registration and community notification pursuant to NRS 179D.350 to 179D.800, inclusive; and

(2) The statewide registry established within the central repository pursuant to chapter 179B of NRS.

Sec. 6. NRS 179D.035 is hereby amended to read as follows:

179D.035 "Convicted" includes, but is not limited to, an adjudication of delinquency or a finding of guilt by a court having jurisdiction over juveniles if the adjudication of delinquency or the finding of guilt is for the commission of any of the following offenses:

1. A crime against a child that is listed in subsection 6 of NRS 179D.210.

2. A sexual offense that is listed in subsection 19 of NRS 179D.410.

3. A sexual offense that is listed in paragraph (b) of subsection ~~19~~ 2 of NRS 62.600.

Sec. 7. NRS 62.335 and 62.345 are hereby repealed.

Sec. 8. The amendatory provisions of this act apply to any act committed by a child before, on or after July 1, 2001, if the records pertaining to that act have not been sealed pursuant to NRS 62.370 before July 1, 2001.

Sec. 9. This act becomes effective on July 1, 2001.