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MARCH 18, 2003

presented in
Senate 4/16/03
Jud. Com.

RE: AB 60, JUVI-STATE APPEAL OF DENIAL OF CERTIFICATION AS AN ADULT

TO: CHAIRMAN BERNIE ANDERSON, MEMBERS OF THE ASSEMBLY

OVER THE YEARS WE HAVE SEEN A DRAMATIC CHANGE IN THE SEVERITY OF CRIMINAL ACTIVITY OF CERTAIN "CHILDREN".

THE JUVENILE COURT SYSTEM DOES EVERYTHING POSSIBLE TO SEE THAT YOUNG PEOPLE COMMITTING AN OFFENSE ARE GIVEN ALL OF THE OPPORTUNITIES TO SET THEIR LIFE ON A PROPER COURSE.

CLARK COUNTY HAD MORE THAN 8,000 YOUNG PEOPLE IN THE JUVENILE JUSTICE SYSTEM IN 2002. THERE WERE 36 "CHILDREN IN AGE ONLY" THAT THE DISTRICT ATTORNEY FELT THAT THE TIME HAD RAN OUT ON WHAT THE JUVENILE SYSTEM HAD TRIED AND FAILED. IT WAS THE FEELING OF THE DISTRICT ATTORNEY THAT THE STATE OF NEVADA AND THE "CHILD" WOULD BE BETTER SERVED IN THE ADULT SYSTEM WHERE RESOURCES WERE AVAILABLE TO DEAL WITH THE SOPHISTICATION OF THE CHRONIC VIOLATOR.

ONCE A PERSON IS CERTIFIED UP TO ADULT COURT THAT PERSON MAY APPEAL THAT DECISION TO THE NEVADA SUPREME COURT. ON THE OTHER HAND IF THE CERTIFICATION IS DENIED THE PEOPLE OF NEVADA HAVE TO LIVE WITH WHAT IS OFTEN AN ILL CONCEIVED DECISION WITH NO APPEAL.

AB 60 WOULD GRANT AN EQUAL RIGHT OF THE STATE TO APPEAL WHAT IT BELIEVES IS AN INAPPROPRIATE DECISION, JUST AS A PERSON CERTIFIED MAY APPEAL THE DECISION TO CERTIFY.

HEREWITH IS A DETAILED MEMO FROM CLARK COUNTY CHIEF DEPUTY DISTRICT ATTORNEY OF THE JUVENILE DIVISION WHICH HOPEFULLY WILL ANSWER ANY CONCERN YOU MAY HAVE ABOUT SUPPORTING AB 60.

THANK YOU FOR YOUR CONSIDERATION. IF YOU HAVE QUESTIONS PLEASE GIVE KRISTEN ERICKSON A CALL AT 232-1510 OR BEN GRAHAM AT 702-528-2677. NEVADA DISTRICT ATTORNEYS ASSOCIATION

Ben Graham
Kristen Erickson

EXHIBIT C Senate Committee on Judiciary

Date: 4/16/03 Page 1 of 8

Subm. Held in
Senate Com. 4/16/03 Ben Graham
Jud.

MEMORANDUM

OFFICE OF THE DISTRICT ATTORNEY

DAVID ROGER
DISTRICT ATTORNEY

JUVENILE DIVISION

601 North Pecos Road
Las Vegas, Nevada 89101-2417

ROBERT W. TEUTON

Chief Deputy
455-5320
455-5878 (Fax)

TO: Ben Graham, Chief Deputy

FROM: Bob Teuton, Chief Deputy

SUBJECT: AB 60 - State's Appeal of Denial of Certification Motion

DATE: March 12, 2003

I have attached the memo I wrote last month setting forth the fundamental reason that we requested this bill: in virtually every other case in our justice system (civil and criminal), a litigant who loses an issue (other than a factual finding of not guilty by a judge or jury) has one right of review by an appellate court. The only exception to this rule that I know of is the one that this bill addresses: if a juvenile judge denies a motion to certify then the State has no appellate recourse. The situations in which we would pursue an appeal would most likely be limited to errors of law because in most cases the decision not to certify, based on the facts of the case, is discretionary with the court. However, under current law, even if a court were to misinterpret the law we would not have the ability to appeal that decision to the Supreme Court.

After the hearing before the Assembly Judiciary Committee on February 19, I went back and researched what our practices have been in Clark County regarding certification of juveniles to the adult system. The following table reflects the number of delinquency petitions we have filed, 2000 to 2002, the number of petitions to certify that we have filed, and the outcome of the certification petitions.

Year	Total Petitions Filed	Certification Petitions	Granted	Denied	Withdrawn
2000	7,757	27	7	17	3
2001	7,810	43	25	11	7
2002	8,184	36	21	10	5

Generally speaking, a juvenile whom we decide to petition for certification is detained and we must file the petition alleging delinquency within 8 days of their arrest. We must also, during that

8 day period, make a preliminary decision on whether or not to seek certification. The actual hearing on the petition to certify is usually held 30 to 45 days after the arrest - sufficient time for the probation department to conduct an investigation of the crime, the youth's background, familial, emotional and psychological issues of the youth, etc. Our decision to withdraw the petition to certify is based upon the results of that investigation (effectively removing the issue from consideration by the court) and is typically based upon emotional, psychological or substance abuse problems of the youth which we believed may mitigate the "free will" aspects of the offense, as well as the greater probability that these issues could be successfully resolved in the juvenile court arena. The decision to withdraw certification was made irrespective of the seriousness of the offenses, as shown in the following table, and is based on the fact that we truly believe juvenile court services can rehabilitate wayward youth:

Case Number	Charges Pending at time Certification Petition Withdrawn (2002)
79581	Burglary & Robbery
71958	Robbery and Conspiracy to Commit
71637	Burglary, Grand Larceny and Robbery (20 counts)
61471	Poss. Stolen Vehicle, Poss. Cont. Sub., Sale Cont. Sub.
67318	Robbery, Burglary, Conspiracy to Commit
40517	Grand Larceny, Poss. Stolen Vehicle, Poss. Cont. Sub.
30483	Burglary & Sexual Assault

There are a number of reasons why we petition to certify youth in the first instance: community protection and seriousness of the offenses are the primary, legal reasons to certify. One of the primary reasons I believe select youth should be certified is because their individual history has demonstrated that they will not respond to our rehabilitative efforts. As we all well know, we have limited resources to deal with these youth, and we try to guard those resources as best we can to help as many youth as possible. Every juvenile who is not certified would be consuming resources that would otherwise be available for other youth whom we might still be able to rehabilitate. Here are some examples of the type of youth that we have certified:

Case Number	Certified Charges	Petition #	Prior Adjudications	Prior Services
73071	Burglary (3 counts) Robbery (3 counts) Kidnapping (2 counts)	7	Take Vehicle, Affray, Consume Alcohol, Curfew, Felony Coercion, Resist Arrest,	Over the course of 4 years, this young man was on Formal Probation a number of times, committed

Case Number	Certified Charges	Petition #	Prior Adjudications	Prior Services
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73071 (cont)			Discharge Firearm to endanger others.	to DCFS (Elko), was paroled, again committed to DCFS, again Paroled and committed these offenses while on parole.
73254	Home Invasion, Burglary, Robbery with Deadly Weapon, Kidnapping (3 counts)	10	Burglary, Violation of Probation, Battery by Prisoner, Poss. Stole Veh., Battery, Burglary	Over the course of 3 ½ years, Informal Supervision, Formal Probation, Commit to Spring Mountain Youth Camp, Commitment to DCFS, and parole services.
79526	Kidnapping (3 counts), Robbery with Deadly Weapon (2 counts), Sexual Assault (6 counts)	2	None	None (this juvenile, his brother and an adult friend kidnap- ped a young woman as she left a commercial gym, forced her into the trunk of a car, drove her to the mountains where all three repeatedly sexually assaulted her in every orifice).

Many of these offenses were certified because, since legislation passed in 1995, any youth who commits a forceful sexual assault or an offense involving the use of a firearm must be certified unless there is clear and convincing evidence that the conduct was, in some way, caused by emotional, psychological or substance abuse issues which may be addressed through the juvenile court (I can only point out that, even if the legislative criteria were met, if a judge nevertheless refused to certify the youth, we would have no appellate recourse unless the pending legislation is passed).

As I indicated in my February memo, the number of cases that we would appeal, if we had the opportunity, is likely to be very small. The best example of the type of case that we would appeal, if we had the opportunity, is that of Brian L. Brian's record consists of the following:

Petition #	Charges	Outcome
11	Battery by Prisoner	Re-Committed DCFS - Elko *

10	Robbery & Attempt Robbery (3 counts) & Burglary	Re-Committed DCFS - Elko *
9	Attempt Taking Vehicle	Probation (6/8/2000)
8	Possession of Marijuana	Referred to Parole Officer
7	Under the Influence of Controlled Substance Violation of Parole	Committed DCFS - Elko (4/29/1999)
6	Taking Vehicle; Obstruct Police Officer	Re-Committed SMYC (11/17/1998)
5	Possession of Stolen Property (3 counts)	Committed SMYC (8/7/1997)
4	Carry Concealed Weapon	Formal Probation (5/21/1997)
3	Burglary	Formal Probation (5/21/1997)
2	Attempt Burglary	Formal Probation (12/12/1996)
1	Burglary	Informal Supervision (4/28/1993)

* After Motion to Certify was denied by court with no ability to appeal.

Brian L. turned 18 in November, 2001. He is currently incarcerated in the Clark County Detention Center, and has been since he was arrested in January of this year, on robbery charges. He has plead guilty to Larceny from a Person and is scheduled to be sentenced in April. Not only did retaining him in the juvenile system not rehabilitate him, we also deprived another youth of an opportunity to benefit from placement in a juvenile treatment facility.

MEMORANDUM

OFFICE OF THE DISTRICT ATTORNEY

**DAVID ROGER
DISTRICT ATTORNEY**

JUVENILE DIVISION

601 North Pecos Road
Las Vegas, Nevada 89101-2417

ROBERT W. TEUTON
Chief Deputy
455-5320
455-5878 (Fax)

TO: Ben Graham, Chief Deputy District Attorney

FROM: Robert W. Teuton
RE: AB 60 - Appeal by Prosecution of Denial of Certification
DATE: February 13, 2003

The impetus for this bill stems from an unpublished decision by the State Supreme Court which, while acknowledging that the defense may appeal to the Supreme Court decisions to certify children, held that the State has no right to appeal and must accept the outcome that the child will remain in the juvenile system without recourse. The decision of the State Supreme Court seems to be totally unfair to the State and victims of juvenile crimes. This bill is merely designed to address this inequity in treatment and to bring Nevada in line with other states, as well as Federal Courts, which provide that the State can appeal from the decision to deny certification.

CURRENT LAW:

NRS 62.291 provides:

Appeals from the orders of the court may be taken to the supreme court in the same manner as appeals in civil cases are taken.

This language is consistent with the historical philosophy that the juvenile court is a civil court. Indeed, other sections of Chapter 62 specifically state that the disposition of matters in the juvenile court is not criminal in nature, e.g., NRS 62.295 (adjudication is not conviction and does not impose civil disabilities). The general rule of law in civil cases is that an appeal may not be taken from interim orders, but only from final decisions which dispose of the case. The Supreme Court applied this reasoning when it found that the decision to certify a child for adult prosecution was a "final decision" of the Juvenile Court and therefore could be immediately appealed to the Supreme Court. Castillo v. State, 106 Nev. 249 (1990).

In 1990 we had a number of cases in which the Juvenile Judge refused to certify juvenile's charged with serious offenses. For example, one juvenile (Shawn K), at the age of 15, was arrested and charged with multiple counts of Grand Larceny Auto, Burglary, and Possession of Stolen Property. He was ordered held in detention because he had a lengthy record, including having previously been on probation for Burglary and Possession of Stolen Property and having previously been committed to the Spring Mountain Youth Camp. He escaped from detention and, in the course of the escape, broke a probation officer's jaw. He locked the probation officer in a room and took her purse and car keys, and was charged with the additional offenses of Kidnaping, Robbery, Escape and Battery on a Peace Officer with Substantial Bodily Harm. The State moved to certify him to adult status and our motion was denied. Later that same year the same District Court judge denied another certification, this time involving a 17 year old (Brian L) who was charged with Burglary, Robbery with use of a Firearm and Attempted Robbery with use of a Firearm. It was the 10th petition against this juvenile. His prior record included commitments to Spring Mountain Youth Camp and the Nevada Youth Training Center at Elko, Nevada. His prior

record included multiple counts of Burglary, Possession of Stolen Property, Obstructing a Police Officer, and Under the Influence of Controlled Substance. When our motion to certify was denied, we filed an appeal to the Nevada Supreme Court. The Supreme Court denied the appeal, stating that the decision to deny certification was not a "final" order of the Juvenile Court and therefore, under the rules of civil procedure, was not appealable.

The only problem with waiting until there is a "final order" under the rules of civil procedure is that the "final order" requires either an admission by the juvenile or the taking of evidence at trial. An appeal from this "final order" would be meaningless as we are barred, both by our state statute and by the United States Constitution, from retrying the juvenile.

NRS 62.195(2) provides

Criminal proceedings and other juvenile proceedings based upon the offense alleged in the petition alleging delinquency or an offense based upon the same conduct are barred if the court has begun taking evidence or has accepted a child's admission of the facts alleged in the petition. No child may be prosecuted first as a juvenile and later as an adult, or in two juvenile court hearings for the same offense.

This statute follows the dictates of the United States Supreme Court in Breed v. Jones, 95 S.Ct. 1779 (1975) which held that the Double Jeopardy Clause of the 5th Amendment prevented a juvenile from being tried as an adult after a finding was made in the juvenile court that he had committed the delinquent act.

Other States and Federal Courts have recognized the fundamental unfairness in allowing a juvenile to appeal the decision to certify him for adult prosecution while not allowing, based on the literal reading of rules of civil procedure, the State to appeal the decision not to certify the juvenile.

In In Interest of McCord, 664 A.2d 1046(Pa.Super 1995), the Pennsylvania court noted:

[t]he practical effect of not allowing the Commonwealth to immediately appeal the transfer order would be to render the trial court's "interlocutory order," a final order without any right of appeal. Thus, we conclude that an order denying certification of the juvenile defendant as an adult effectively terminates the criminal prosecution of the juvenile.

The Tenth Circuit Court of Appeals stated the problem this way:

The government ... has an important interest in trying as adults those individuals under the age of eighteen who meet the standards for adult status under the Federal Delinquency Act ... Because the Double Jeopardy Clause prohibits a second prosecution for the same offense ... the government will forever lose the opportunity to try a particular defendant as an adult if it cannot immediately appeal the denial of a motion to transfer.

United States v. Leon, 132 F.3d 583, 589 (10th Cir. 1997). The Tenth Circuit concluded that the decision to deny certification was, for all practical purposes, a final order of the juvenile court and should therefore be subject to immediate appeal. The Second and Ninth Circuit Courts of Appeal have also concluded that the decision to deny certification is immediately appealable. United States v. Juvenile Male No. 1, 47 F.3d 68 (2d. Cir. 1995); United States v. Doe, 94 F.3d 532 (9th Cir. 1996).

The proposed amendment to NRS 62.291 contained in AB 60, simply applies the logic of these cases to certification proceedings in the State of Nevada:

For the purposes of this section, a decision to deny certification of a child for criminal proceedings as an adult is a final judgement from which an appeal may be taken.