

ASSEMBLY BILL NO. 237—COMMITTEE ON JUDICIARY

MARCH 4, 2009

Referred to Committee on Judiciary

SUMMARY—Revises the provisions governing the certification of certain juveniles as adults for criminal proceedings. (BDR 5-825)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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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 juveniles; revising the provisions governing the certification of certain juveniles as adults for criminal proceedings; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides for the certification of a child as an adult for criminal proceedings under certain circumstances. (NRS 62B.390) If a child is charged with an offense that would have been a felony if committed by an adult and the child was 14 years of age or older at the time of allegedly committing the offense, the juvenile court may, but is not required to, certify the child as an adult, which is commonly referred to as "discretionary certification." **Section 1** of this bill raises the threshold age at which a child may be certified as an adult under such discretionary certification from 14 years of age to 16 years of age.

Existing law also provides for "presumptive certification," which requires the juvenile court to certify a child for criminal proceedings as an adult if the child is charged with certain offenses and was 14 years of age or older at the time of allegedly committing the offense, unless an exception applies. (NRS 62B.390) One such exception to presumptive certification is when the juvenile court specifically finds by clear and convincing evidence that the actions of the child were substantially the result of the substance abuse or emotional or behavioral problems of the child. The Nevada Supreme Court recently ruled that this exception to presumptive certification violates a child's right against self-incrimination under the Fifth Amendment to the United States Constitution by requiring the child to admit to criminal conduct to challenge certification. (*In re William M.*, 124 Nev. Adv. Op. No. 95 (2008)) **Section 1** of this bill eliminates the exception to presumptive certification that was found unconstitutional by the Nevada Supreme Court and provides instead that the juvenile court is not required to certify the child as an adult if the child has substance abuse or emotional or behavioral problems that may be appropriately treated through the jurisdiction of the juvenile court.



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Section 1 also raises the threshold age at which a child may be certified as an adult under presumptive certification from 14 years of age to 16 years of age.

Finally, existing law provides for discretionary certification of a child who escapes or attempts to escape from a public or private facility for the detention or correctional care of children and who was 14 years of age or older at the time of escaping or attempting to escape. (NRS 62B.400) **Section 2** of this bill raises the threshold age at which a child may be certified as an adult under such discretionary certification from 14 years of age to 16 years of age.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 62B.390 is hereby amended to read as follows:

62B.390 1. Except as otherwise provided in subsection 2 and NRS 62B.400, upon a motion by the district attorney and after a full investigation, the juvenile court may certify a child for proper criminal proceedings as an adult to any court that would have jurisdiction to try the offense if committed by an adult, if the child:

(a) Is charged with an offense that would have been a felony if committed by an adult; and

(b) Was ~~14~~ 16 years of age or older at the time the child allegedly committed the offense.

2. Except as otherwise provided in subsection 3, upon a motion by the district attorney and after a full investigation, the juvenile court shall certify a child for proper criminal proceedings as an adult to any court that would have jurisdiction to try the offense if committed by an adult, if the child:

(a) Is charged with:

(1) A sexual assault involving the use or threatened use of force or violence against the victim; or

(2) An offense or attempted offense involving the use or threatened use of a firearm; and

(b) Was ~~14~~ 16 years of age or older at the time the child allegedly committed the offense.

3. The juvenile court shall not certify a child for criminal proceedings as an adult pursuant to subsection 2 if the juvenile court specifically finds by clear and convincing evidence that:

(a) The child is developmentally or mentally incompetent to understand his situation and the proceedings of the court or to aid his attorney in those proceedings; or

(b) ~~The actions of the child were substantially the result of the substance abuse or emotional or behavioral problems of the child~~
The child has substance abuse or emotional or behavioral problems and the substance abuse or emotional or behavioral



1 problems may be appropriately treated through the jurisdiction of
2 the juvenile court.

3 4. If a child is certified for criminal proceedings as an adult
4 pursuant to subsection 1 or 2, the juvenile court shall also certify the
5 child for criminal proceedings as an adult for any other related
6 offense arising out of the same facts as the offense for which the
7 child was certified, regardless of the nature of the related offense.

8 5. If a child has been certified for criminal proceedings as an
9 adult pursuant to subsection 1 or 2 and the child's case has been
10 transferred out of the juvenile court:

11 (a) The court to which the case has been transferred has original
12 jurisdiction over the child;

13 (b) The child may petition for transfer of the case back to the
14 juvenile court only upon a showing of exceptional circumstances;
15 and

16 (c) If the child's case is transferred back to the juvenile court,
17 the juvenile court shall determine whether the exceptional
18 circumstances warrant accepting jurisdiction.

19 **Sec. 2.** NRS 62B.400 is hereby amended to read as follows:

20 62B.400 1. A child shall be deemed to be a prisoner who has
21 escaped or attempted to escape from lawful custody in violation of
22 NRS 212.090, and proceedings may be brought against the child
23 pursuant to the provisions of this section, if the child:

24 (a) Is committed to or otherwise is placed in a public or private
25 facility for the detention or correctional care of children, including,
26 but not limited to, all state, regional and local facilities for the
27 detention of children; and

28 (b) Escapes or attempts to escape from such a facility.

29 2. Upon a motion by the district attorney and after a full
30 investigation, the juvenile court may certify the child for criminal
31 proceedings as an adult pursuant to subsection 1 of NRS 62B.390 if
32 the child was ~~14~~ 16 years of age or older at the time of the escape
33 or attempted escape and:

34 (a) The child was committed to or placed in the facility from
35 which the child escaped or attempted to escape because the child
36 had been charged with or had been adjudicated delinquent for an
37 unlawful act that would have been a felony if committed by an
38 adult; or

39 (b) The child or another person aiding the child used a
40 dangerous weapon to facilitate the escape or attempted escape.

41 3. If the child is certified for criminal proceedings as an adult
42 pursuant to subsection 2, the juvenile court shall also certify the
43 child for criminal proceedings as an adult for any other related
44 offense arising out of the same facts as the escape or attempted
45 escape, regardless of the nature of the related offense.



1 4. If the child is not certified for criminal proceedings as an
2 adult pursuant to subsection 2 or otherwise is not subject to the
3 provisions of subsection 2, the escape or attempted escape shall be
4 deemed to be a delinquent act, and proceedings may be brought
5 against the child pursuant to the provisions of this title.

6 **Sec. 3.** This act becomes effective upon passage and approval.

