

ASSEMBLY BILL NO. 272—ASSEMBLYMEN FLORES, OHRENSCHALL,
BROOKS; BENITEZ-THOMPSON, FRIERSON AND MUNFORD

MARCH 15, 2011

Referred to Committee on Judiciary

SUMMARY—Makes various changes relating to juvenile justice.
(BDR 5-1032)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

~

EXPLANATION – Matter in **bolded italics** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to juveniles; excluding certain crimes from the jurisdiction of the juvenile court; revising the provisions governing the certification of certain juveniles as adults for criminal proceedings; providing for the detention of a child during certain proceedings; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, the juvenile court does not have jurisdiction over certain offenses that are committed by juveniles, such as murder, attempted murder and other serious offenses. (NRS 62B.330) **Section 1** of this bill excludes from the jurisdiction of the juvenile court the act of murder, attempted murder or any other related offense arising out of the murder or attempted murder if the person was 16 years of age or older when the murder or attempted murder was committed.

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 2** of this bill increases 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 16 years of age or older at the time of allegedly committing the offense, unless an exception applies. (NRS 62B.390) **Section 2** of this bill removes presumptive certification.

Under existing law, a child who is excluded from the jurisdiction of the juvenile court may petition the court during the pendency of the proceeding for temporary placement in a facility for the detention of children. (NRS 62C.030)



* A B 2 7 2 *

23 **Section 4** of this bill requires a child who is excluded from the jurisdiction of the
24 juvenile court or certified for criminal proceedings as an adult to be placed in a
25 facility for the detention of children during the pendency of the proceeding unless
26 the child is a threat to the safety of others.

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

1 **Section 1.** NRS 62B.330 is hereby amended to read as
2 follows:

3 62B.330 1. Except as otherwise provided in this title, the
4 juvenile court has exclusive original jurisdiction over a child living
5 or found within the county who is alleged or adjudicated to have
6 committed a delinquent act.

7 2. For the purposes of this section, a child commits a
8 delinquent act if the child:

9 (a) Violates a county or municipal ordinance;

10 (b) Violates any rule or regulation having the force of law; or

11 (c) Commits an act designated a criminal offense pursuant to the
12 laws of the State of Nevada.

13 3. For the purposes of this section, each of the following acts
14 shall be deemed not to be a delinquent act, and the juvenile court
15 does not have jurisdiction over a person who is charged with
16 committing such an act:

17 (a) Murder or attempted murder and any other related offense
18 arising out of the same facts as the murder or attempted murder,
19 regardless of the nature of the related offense ~~H~~, *if the person was*
20 *16 years of age or older when the murder or attempted murder was*
21 *committed.*

22 (b) Sexual assault or attempted sexual assault involving the use
23 or threatened use of force or violence against the victim and any
24 other related offense arising out of the same facts as the sexual
25 assault or attempted sexual assault, regardless of the nature of the
26 related offense, if:

27 (1) The person was 16 years of age or older when the sexual
28 assault or attempted sexual assault was committed; and

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

32 (c) An offense or attempted offense involving the use or
33 threatened use of a firearm and any other related offense arising out
34 of the same facts as the offense or attempted offense involving the
35 use or threatened use of a firearm, regardless of the nature of the
36 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

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

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

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

(2) The person 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.

(e) A category A or B felony and any other related offense arising out of the same facts as the category A or B felony, regardless of the nature of the related offense, if the person was at least 16 years of age but less than 18 years of age when the offense was committed, and:

(1) The person is not identified by law enforcement as having committed the offense and charged before the person is at least 20 years, 3 months of age, but less than 21 years of age; or

(2) The person is not identified by law enforcement as having committed the offense until the person reaches 21 years of age.

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

Sec. 2. 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 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 the situation and the proceedings of the court or to aid the child's attorney in those proceedings; or~~

~~—(b) The child has substance abuse or emotional or behavioral problems and the substance abuse or emotional or behavioral problems may be appropriately treated through the jurisdiction of the juvenile court.~~

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

{5-} 3. If a child has been certified for criminal proceedings as an adult pursuant to subsection 1 **{or 2}** and the child's case has been transferred out of the juvenile court:

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

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

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

Sec. 3. NRS 62B.400 is hereby amended to read as follows:

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

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

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



* A B 2 7 2 *

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

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

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

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

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

Sec. 4. NRS 62C.030 is hereby amended to read as follows:

62C.030 1. If a child is not alleged to be delinquent or in need of supervision, the child must not, at any time, be confined or detained in:

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

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

2. If a child is alleged to be delinquent or in need of supervision, the child must not, before disposition of the case, be detained in a facility for the secure detention of children unless there is probable cause to believe that:

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

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

(c) The child was taken into custody and brought before a probation officer pursuant to a court order or warrant; or

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

3. If a child is less than 18 years of age, the child must not, at any time, be confined or detained in any police station, lockup, jail, prison or other facility where the child has regular contact with any adult who is confined or detained in the facility and who has been



* A B 2 7 2 *

1 convicted of a criminal offense or charged with a criminal offense,
2 unless:

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

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

5 (c) The child is separated by sight and sound from any adults
6 who are confined or detained in the facility.

7 4. During the pendency of a proceeding involving a criminal
8 offense excluded from the original jurisdiction of the juvenile court
9 pursuant to NRS 62B.330 ~~H~~ *or a criminal offense for which* a
10 child ~~may petition the juvenile court for temporary placement~~ *is*
11 *certified for criminal proceedings pursuant to NRS 62B.390, the*
12 *child must be placed* in a facility for the detention of children ~~H~~ ,
13 *unless the juvenile court determines after a hearing that the child*
14 *is a threat to the security or safety of the other children detained in*
15 *the facility or the staff of the facility, in which case the juvenile*
16 *court may transfer the child to a police station, lockup, jail, prison*
17 *or other facility in which adults are detained or confined.*

