

Amendment No. 671

Senate Amendment to Assembly Bill No. 8 Second Reprint	(BDR 11-191)
Proposed by: Senate Committee on Judiciary	
Amends: Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION		Initial and Date	SENATE ACTION		Initial and Date
Adopted	☐	Lost ☐	Adopted	☐	Lost ☐
Concurred In	☐	Not ☐	Concurred In	☐	Not ☐
Receded	☐	Not ☐	Receded	☐	Not ☐

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

MKM/BJF



Date: 5/6/2015

A.B. No. 8—Revises provisions relating to children. (BDR 11-191)



ASSEMBLY BILL NO. 8—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE LEGISLATIVE COMMITTEE ON
CHILD WELFARE AND JUVENILE JUSTICE)

PREFILED DECEMBER 19, 2014

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to children. (BDR 11-191)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for
Term of Imprisonment in County or City Jail or Detention
Facility.

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 children; revising provisions concerning advertisements for the placement of children for adoption or permanent free care; prohibiting the use of restraints on children during court proceedings under certain circumstances unless ordered by the court; prohibiting certain transfers of children; prohibiting the trafficking of children; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that any person or organization, other than an agency which provides child welfare services or a licensed child-placing agency, who advertises in any periodical or newspaper, or by radio or other public medium, that the person or organization will place children for adoption or accept, supply, provide or obtain children for adoption is guilty of a misdemeanor. (NRS 127.310) **Section 1** of this bill specifically applies this prohibition to a person or organization who advertises through a computerized communication system, including, without limitation, electronic mail, an Internet website or an Internet account.

Section 3.5 of this bill prohibits the use of an instrument of restraint on a child during a court proceeding, unless ~~if (1)~~ the restraint is necessary to prevent the child from inflicting harm on himself or herself or another person or to prevent the child from escaping the courtroom. ~~if (2) there is not a less restrictive alternative to prevent such harm or escape.~~

Section 3.5 further requires the court to hold a hearing *under certain circumstances* to determine whether the use of an instrument of restraint on a child is necessary and to consider certain factors in making its determination. Under **section 3.5**, the court must make specific findings of fact and conclusions of law to support its determination.

Section 4 of this bill enacts provisions prohibiting the trafficking of children. **Section 4** provides that a person shall not recruit, transport, transfer, harbor, provide, obtain, maintain or solicit a child in furtherance of a transaction, or advertise or facilitate a transaction, pursuant to which a parent of a child or a person with custody of a child places the child in the physical custody of another person who is not related to the child, for the purpose of permanently avoiding or divesting himself or herself of responsibility for the child. **Section 4** further

provides that certain placements of a child are not prohibited, including, without limitation, the placement of a child with a relative or stepparent, the placement of a child with or by a licensed child-placing agency or agency which provides child welfare services and the placement of a child with a person that is approved by a court of competent jurisdiction. A person who violates **section 4** is guilty of a category C felony, and **section 5** of this bill requires a court to order that a person convicted of a violation of **section 4** pay restitution to the victim of the crime.

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

Section 1. NRS 127.310 is hereby amended to read as follows:

127.310 1. Except as otherwise provided in NRS 127.240, 127.283 and 127.285, any person or organization other than an agency which provides child welfare services who, without holding a valid unrevoked license to place children for adoption issued by the Division:

(a) Places, arranges the placement of, or assists in placing or in arranging the placement of, any child for adoption or permanent free care; or

(b) Advertises ~~in any periodical or newspaper, or by radio or other public medium,~~ that he or she will place children for adoption ~~or permanent free care,~~ or accept, supply, provide or obtain children for adoption ~~or permanent free care,~~ or causes any advertisement to be ~~published in or by any public medium~~ *disseminated* soliciting, requesting or asking for any child or children for adoption ~~or permanent free care,~~ is guilty of a misdemeanor.

2. Any person who places, accepts placement of, or aids, abets or counsels the placement of any child in violation of NRS 127.280, 127.2805 and 127.2815 is guilty of a misdemeanor.

3. A periodical, newspaper, radio station, *Internet website* or other public medium is not subject to any criminal penalty or civil liability for ~~publishing or broadcasting~~ *disseminating* an advertisement that violates the provisions of this section.

4. A child-placing agency shall include in any advertisement concerning its services ~~published in any periodical or newspaper or by radio or other public medium~~ a statement which:

(a) Confirms that the child-placing agency holds a valid, unrevoked license issued by the Division; and

(b) Indicates any license number issued to the child-placing agency by the Division.

5. *As used in this section:*

(a) *“Advertise” or “advertisement” means a communication that originates within this State by any public medium, including, without limitation, a newspaper, periodical, telephone book listing, outdoor advertising, sign, radio, television or a computerized communication system, including, without limitation, electronic mail, an Internet website or an Internet account.*

(b) *“Internet account” means an account created within a bounded system established by an Internet-based service that requires a user to input or store information in an electronic device in order to view, create, use or edit the account information, profile, display, communications or stored data of the user.*

Sec. 2. (Deleted by amendment.)

Sec. 3. (Deleted by amendment.)

1 **Sec. 3.5.** Chapter 62D of NRS is hereby amended by adding thereto a new
2 section to read as follows:

3 1. An instrument of restraint may be used on a child during a court
4 proceeding only if ~~it~~:

5 ~~(a) The~~ the restraint is necessary to prevent the child from:

6 ~~(1) (a) Inflicting physical harm on himself or herself or another~~
7 person; or

8 ~~(2) (b) Escaping from the courtroom. ~~it~~ and~~

9 ~~(b) There is not a less restrictive alternative to prevent such physical harm or~~
10 ~~escape from the courtroom, including, without limitation, the presence of court~~
11 ~~personnel, law enforcement officers or bailiffs.~~

12 2. Whenever practical, the judge shall provide the:

13 (a) Child and his or her attorney an opportunity to be heard ~~and contest~~
14 regarding the use of an instrument of restraint before the judge orders the use of
15 an instrument of restraint.

16 (b) Prosecuting attorney an opportunity to be heard ~~and argue that~~
17 regarding whether the use of an instrument of restraint is necessary pursuant to
18 subsection 1.

19 3. In making a determination pursuant to subsection 2 as to whether an
20 instrument of restraint is necessary pursuant to subsection 1, the court shall
21 consider the following factors:

22 (a) Any previous escapes or attempted escapes by the child.

23 (b) Evidence of a present plan of escape by the child.

24 (c) A ~~substantiated~~ credible threat by the child to harm himself or herself or
25 another person.

26 (d) A history of self-destructive tendencies by the child.

27 (e) Any ~~substantiated~~ credible threat of ~~a rescue~~ an attempt to escape by a
28 person not in custody.

29 (f) Whether the child is subject to a proceeding ~~for~~ :

30 (1) That is not in the jurisdiction of the juvenile court pursuant to
31 subsection 3 of NRS 62B.330; or

32 (2) For transfer or certification for criminal proceedings as an adult
33 pursuant to NRS 62B.335, 62B.390 ~~it~~ or 62B.400.

34 (g) Any other factor that is relevant in determining whether the use of an
35 instrument of restraint on the child is necessary pursuant to subsection 1.

36 4. The determination of the judge pursuant to subsection 2 must contain
37 specific findings of fact and conclusions of law supporting the determination.

38 5. If an instrument of restraint is used on a child, the restraint must allow
39 the child limited movement of his or her hands to hold any document or writing
40 necessary to participate in the proceeding.

41 6. As used in this section, "instrument of restraint" includes, without
42 limitation, handcuffs, chains, irons and straightjackets.

43 **Sec. 4.** Chapter 200 of NRS is hereby amended by adding thereto a new
44 section to read as follows:

45 1. Except as otherwise provided in this section, a person shall not:

46 (a) Recruit, transport, transfer, harbor, provide, obtain, maintain or solicit a
47 child in furtherance of a transaction, or advertise or facilitate a transaction,
48 pursuant to which a parent of the child or a person with custody of the child
49 places the child in the physical custody of another person who is not a relative of
50 the child, for the purpose of permanently avoiding or divesting himself or herself
51 of responsibility for the child.

1 (b) Sell, transfer or arrange for the sale or transfer of a child to another
2 person for money or anything of value or receive a child in exchange for money
3 or anything of value.

4 2. The provisions of subsection 1 do not apply to:

5 (a) A placement of a child with a relative, stepparent, child-placing agency or
6 an agency which provides child welfare services;

7 (b) A placement of a child by a child-placing agency or an agency which
8 provides child welfare services;

9 (c) A temporary placement of a child with another person by a parent of the
10 child or a person with legal or physical custody of the child, with an intent to
11 return for the child, including, without limitation, a temporary placement of a
12 child while the parent of the child or the person with legal or physical custody of
13 the child is on vacation, incarcerated, serving in the military, receiving medical
14 treatment or incapacitated;

15 (d) A placement of a child in accordance with NRS 127.330, 159.205 or
16 159.215;

17 (e) A placement of a child that is approved by a court of competent
18 jurisdiction; or

19 (f) Delivery of a child to a provider of emergency services pursuant to NRS
20 432B.630.

21 3. A person who violates the provisions of subsection 1 is guilty of
22 trafficking in children and shall be punished for a category C felony as provided
23 in NRS 193.130.

24 4. As used in this section:

25 (a) "Advertise" has the meaning ascribed to it in NRS 127.310.

26 (b) "Agency which provides child welfare services" has the meaning ascribed
27 to it in NRS 432B.030.

28 (c) "Child" means a person who is less than 18 years of age.

29 (d) "Child-placing agency" has the meaning ascribed to it in NRS 127.220.

30 Sec. 5. NRS 200.469 is hereby amended to read as follows:

31 200.469 1. In addition to any other penalty, the court may order a person
32 convicted of violation of any provision of NRS 200.467 or 200.468 *or section 4 of*
33 *this act* to pay restitution to the victim as provided in subsection 2.

34 2. Restitution ordered pursuant to this section may include, without
35 limitation:

36 (a) The cost of medical and psychological treatment, including, without
37 limitation, physical and occupational therapy and rehabilitation;

38 (b) The cost of transportation, temporary housing and child care;

39 (c) The return of property, the cost of repairing damaged property or the full
40 value of the property if it is destroyed or damaged beyond repair;

41 (d) Expenses incurred by a victim in relocating away from the defendant or his
42 or her associates, if the expenses are verified by law enforcement to be necessary
43 for the personal safety of the victim;

44 (e) The cost of repatriation of the victim to his or her home country, if
45 applicable; and

46 (f) Any and all other losses suffered by the victim as a result of the violation of
47 any provision of NRS 200.467 or 200.468 ~~or~~ *or section 4 of this act*.

48 3. The return of the victim to his or her home country or other absence of the
49 victim from the jurisdiction does not prevent the victim from receiving restitution.

50 4. As used in this section, "victim" means any person:

51 (a) Against whom a violation of any provision of NRS 200.467 or 200.468 *or*
52 *section 4 of this act* has been committed; or

53 (b) Who is the surviving child of such a person.