

SENATE BILL NO. 353—SENATOR OHRENSCHALL

MARCH 18, 2019

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing juvenile justice.
(BDR 5-32)

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

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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 juvenile justice; requiring the electronic recording of an interrogation of a child under certain circumstances; requiring a child to be represented by an attorney under certain circumstances; requiring a juvenile court to presume a child is indigent for the purpose of appointing an attorney to represent the child; directing the Juvenile Justice Oversight Commission to review and study the effects of certain provisions relating to juvenile justice; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 1 of this bill requires a peace officer or probation officer to make an electronic recording of an interrogation if the peace officer or probation officer interrogates a child under the age of 15 years who is in custody and is suspected of committing certain acts. **Section 1** exempts a peace officer or probation officer from the requirement to make an electronic recording if: (1) exigent circumstances exist which present a serious threat of safety to the child or to the safety of others; or (2) the peace officer or probation officer makes contact with the child in the course of performing certain duties related to the supervision or placement of the child or providing services or other care to the child. Lastly, **section 1** requires a child to be represented by an attorney during the electronic recording of such an interrogation.

Existing law requires a juvenile court to advise the child and the parent or guardian of the child that the child is entitled to be represented by an attorney at all stages of the proceedings. Existing law also: (1) authorizes a parent or guardian, if he or she is indigent, of a child to request the appointment of an attorney to represent the child; and (2) requires the juvenile court to appoint an attorney for a child if the parent or guardian of the child does not retain an attorney for the child and is not likely to retain such an attorney. (NRS 62D.030) **Section 2** of this bill



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requires the juvenile court to presume a child is indigent for the purpose of appointing an attorney in juvenile proceedings. **Section 3** of this bill makes a conforming change.

Existing law provides for the Juvenile Justice Oversight Commission which performs certain functions relating to the juvenile system. (NRS 62B.600) **Section 4** of this bill requires the Commission to review the effectiveness of the juvenile justice system as a result of the provisions enacted and amended in this bill.

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

Section 1. Chapter 62C of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in subsection 2, a peace officer or probation officer who takes a child under the age of 15 years into custody pursuant to NRS 62C.010 shall make an electronic recording of any custodial interrogation if the child is alleged to have committed:

(a) An act deemed not to be a delinquent act pursuant to subsection 3 of NRS 62B.330; or

(b) An offense for which the child may or must be certified for proper criminal proceedings as an adult pursuant to NRS 62B.390.

2. A peace officer or probation officer is not required to make an electronic recording pursuant to subsection 1 if:

(a) Exigent circumstances exist. As used in this paragraph, "exigent circumstances" include, without limitation, a serious and immediate threat to the safety of the child or to the safety of others; or

(b) The peace officer or probation officer makes contact with a child in the course of performing any normal or routine duties related to the supervision or placement of the child or providing services or other care to the child.

3. If a peace officer or probation officer makes an electronic recording of a custodial interrogation pursuant to subsection 1, the child must be represented by an attorney.

4. As used in this section:

(a) "Custodial interrogation" means an interrogation of a child while the child is in custody.

(b) "Electronic recording" means:

(1) If audiovisual recording is feasible, an audiovisual recording; or



(2) *If audiovisual recording is not feasible, an audio-only recording.*

(c) *"Interrogation" means questioning which is initiated by a peace officer or probation officer or any words or actions on the part of a peace officer or probation officer, other than those which are ordinarily attendant to confinement or detention, that the peace officer or probation officer should know are reasonably likely to elicit an incriminating response from the child who is being questioned.*

Sec. 2. NRS 62D.030 is hereby amended to read as follows:

62D.030 1. If a child is alleged to be delinquent or in need of supervision, the juvenile court shall ~~{advise}~~ :

(a) *Advise* the child and the parent or guardian of the child that the child is entitled to be represented by an attorney at all stages of the proceedings ~~;~~

~~—2. If a parent or guardian of a child is indigent, the parent or guardian may request the appointment} ;~~

(b) *Presume the child is indigent for the purpose of appointing* an attorney to represent the child pursuant to the provisions in NRS 171.188 ~~;~~

~~—3.} ;~~

(c) *Not require the child to submit an affidavit concerning the financial disability of the child; and*

(d) Except as otherwise provided in this section, ~~{the juvenile court shall}~~ appoint an attorney for a child if the parent or guardian of the child does not retain an attorney for the child and is not likely to retain an attorney for the child.

~~{4.}~~ 2. A child may waive the right to be represented by an attorney if:

(a) A petition is not filed and the child is placed under informal supervision pursuant to NRS 62C.200; or

(b) A petition is filed and the record of the juvenile court shows that the waiver of the right to be represented by an attorney is made knowingly, intelligently, voluntarily and in accordance with any applicable standards established by the juvenile court.

~~{5.}~~ 3. Except as otherwise provided in subsection ~~{6.}~~ 4 and NRS 424.085, if the juvenile court appoints an attorney to represent a child and:

(a) The parent or guardian of the child is not indigent, the parent or guardian shall pay the reasonable fees and expenses of the attorney.

(b) The parent or guardian of the child is indigent, the juvenile court may order the parent or guardian to reimburse the county or State in accordance with the ability of the parent or guardian to pay.



~~16.1~~ 4. For the purposes of paragraph (b) of subsection ~~15.1~~ 3, the juvenile court shall find that the parent or guardian of the child is indigent if:

(a) The parent or guardian:

(1) Receives public assistance, as that term is defined in NRS 422A.065;

(2) Resides in public housing, as that term is defined in NRS 315.021;

(3) Has a household income that is less than 200 percent of the federally designated level signifying poverty;

(4) Is incarcerated pursuant to a sentence imposed upon conviction of a crime; or

(5) Is housed in a public or private mental health facility; or

(b) After considering the particular circumstances of the parent or guardian, including, without limitation, the seriousness of the charges against the child, the monthly expenses of the parent or guardian and the rates for attorneys in the area in which the juvenile court is located, the juvenile court determines that the parent or guardian is financially unable, without substantial hardship to the parent or guardian or his or her dependents, to obtain qualified and competent legal counsel.

~~17.1~~ 5. Each attorney, other than a public defender, who is appointed under the provisions of this section is entitled to the same compensation and expenses from the county as is provided in NRS 7.125 and 7.135 for attorneys appointed to represent persons charged with criminal offenses.

Sec. 3. NRS 62D.035 is hereby amended to read as follows:

62D.035 Subject to the provisions of subsection ~~17.1~~ 5 of NRS 62D.030 and chapter 260 of NRS, a public defender or any other attorney who represents a child in proceedings pursuant to the provisions of this title may consult with and seek appointment of:

1. Any social worker licensed pursuant to chapter 641B of NRS;

2. Any qualified mental health professional, as defined in NRS 458A.057;

3. Any educator; and

4. Any other expert the attorney deems appropriate.

Sec. 4. 1. The Juvenile Justice Oversight Commission established by NRS 62B.600 shall, during the 2023-2024 interim, review and study the effectiveness of the juvenile justice system as a result of:

(a) The provisions enacted by section 1 of this act.

(b) The provisions of NRS 62D.030, as amended by section 2 of this act.



1 2. The Commission shall hold one or more meetings in
2 connection with the duties prescribed in this section.

3 **Sec. 5.** This act becomes effective on July 1, 2019.

