

SENATE BILL NO. 367—SENATORS CANNIZZARO;
DONATE, DONDERO LOOP AND PAZINA

MARCH 23, 2023

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to public safety.
(BDR 15-942)

FISCAL NOTE: Effect on Local Government: No.
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 public safety; prohibiting a person from using, carrying or possessing a firearm under certain circumstances related to the commission of certain drug offenses; prescribing the unit of prosecution for certain crimes involving dangerous weapons; authorizing a juvenile justice agency, the juvenile court and an agency which provides child welfare services to release certain information and records for the purpose of conducting a background check relating to the sale or transfer of a firearm; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Federal law provides that using or carrying a firearm during and in relation to a drug trafficking crime or possessing a firearm in furtherance of the commission of a drug trafficking crime is a separate criminal offense from the underlying drug trafficking crime. (18 U.S.C. § 924(c)) **Section 2** of this bill enacts provisions based on this federal law which prohibit a person from: (1) using or carrying a firearm during and in relation to the commission of certain drug offenses; and (2) possessing a firearm in furtherance of the commission of certain drug offenses. **Section 2** provides that a person who violates this prohibition is guilty of a category B felony.

Existing law prohibits a person who has been convicted of a felony from owning or possessing “any firearm,” unless the person has received a pardon. (NRS 202.360) The Nevada Supreme Court has held that the State may only charge a defendant with one count of being a felon in possession of a firearm for each such incident, regardless of the number of firearms that the defendant possessed at one time, in one place. (*State v. Fourth Jud. Dist. Court*, 137 Nev. 37 (2021)) **Section 3** of this bill clarifies the Legislature’s intent with regard to certain prohibitions



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against the ownership, possession, manufacture or sale of certain dangerous weapons or metal-penetrating bullets by certain persons. Specifically, **section 3** provides that, for purposes of prosecuting a violation of any such prohibition, each dangerous weapon or bullet owned, possessed, manufactured or sold by a person constitutes a separate violation. **Section 4** of this bill makes a conforming change to indicate the proper placement of **section 3** in the Nevada Revised Statutes.

The Brady Handgun Violence Prevention Act requires that a background check be conducted on any person wishing to purchase or redeem a firearm to determine whether the person is prohibited from purchasing or possessing a firearm pursuant to federal or state law. (Pub. L. No. 103-159, 107 Stat. 1536) Among other requirements, the Bipartisan Safer Communities Act requires any background check conducted on a prospective buyer who is less than 21 years of age to include a review of certain information and records to determine whether the person is disqualified from purchasing or possessing a firearm under federal or state law. (Pub. L. No. 117-159, 136 Stat. 1313) **Sections 5-8** of this bill authorize a juvenile justice agency, the juvenile court and an agency which provides child welfare services to release certain information and records for the purpose of performing a background check to determine whether a person is eligible to purchase or possess a firearm under federal or state law.

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

Section 1. Chapter 202 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. 1. A person shall not:

(a) Use or carry a firearm during and in relation to the commission of any act in violation of NRS 453.321, 453.322, 453.337, 453.3385 or 453.401; or

(b) Possess a firearm in furtherance of the commission of any act in violation of NRS 453.321, 453.322, 453.337, 453.3385 or 453.401.

2. A person who violates the provisions of subsection 1 is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years, and may be further punished by a fine of not more than \$5,000.

Sec. 3. 1. For purposes of prosecuting a violation of NRS 202.257, 202.260, 202.262, 202.273 to 202.277, inclusive, 202.300, 202.350 or 202.360 or section 2 of this act, each dangerous weapon or metal-penetrating bullet owned, possessed, manufactured, sold, disposed of, handled, used or carried by or otherwise under the custody or control of a person constitutes a separate violation.

2. As used in this section:

(a) "Dangerous weapon" means:

(1) An explosive or incendiary device;



(2) *A short-barreled rifle, short-barreled shotgun, pistol, revolver or other firearm;*

(3) *An explosive substance, other than ammunition or any components thereof; or*

(4) *A machete.*

(b) *“Metal-penetrating bullet” has the meaning ascribed to it in NRS 202.273.*

Sec. 4. NRS 202.253 is hereby amended to read as follows:

202.253 As used in NRS 202.253 to 202.369, inclusive ~~H~~ , *and section 3 of this act:*

1. “Antique firearm” has the meaning ascribed to it in 18 U.S.C. § 921(a)(16).

2. “Explosive or incendiary device” means any explosive or incendiary material or substance that has been constructed, altered, packaged or arranged in such a manner that its ordinary use would cause destruction or injury to life or property.

3. “Firearm” means any device designed to be used as a weapon from which a projectile may be expelled through the barrel by the force of any explosion or other form of combustion.

4. “Firearm capable of being concealed upon the person” applies to and includes all firearms having a barrel less than 12 inches in length.

5. “Firearms importer or manufacturer” means a person licensed to import or manufacture firearms pursuant to 18 U.S.C. Chapter 44.

6. “Machine gun” means any weapon which shoots, is designed to shoot or can be readily restored to shoot more than one shot, without manual reloading, by a single function of the trigger.

7. “Motor vehicle” means every vehicle that is self-propelled.

8. “Semiautomatic firearm” means any firearm that:

(a) Uses a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next shell or round;

(b) Requires a separate function of the trigger to fire each cartridge; and

(c) Is not a machine gun.

9. “Unfinished frame or receiver” means a blank, a casting or a machined body that is intended to be turned into the frame or lower receiver of a firearm with additional machining and which has been formed or machined to the point at which most of the major machining operations have been completed to turn the blank, casting or machined body into a frame or lower receiver of a firearm even if the fire-control cavity area of the blank, casting or machined body is still completely solid and unmachined.



Sec. 5. NRS 62H.025 is hereby amended to read as follows:

62H.025 1. Juvenile justice information is confidential and may only be released in accordance with the provisions of this section or as expressly authorized by other federal or state law.

2. For the purpose of ensuring the safety, permanent placement, rehabilitation, educational success and well-being of a child or the safety of the public, a juvenile justice agency may release juvenile justice information to:

(a) A director of juvenile services or his or her designee;

(b) The Chief of the Youth Parole Bureau or his or her designee;

(c) The Chief Parole and Probation Officer or his or her designee;

(d) The Director of the Department of Corrections or his or her designee;

(e) A district attorney or his or her designee;

(f) An attorney representing the child;

(g) The director, chief or sheriff of a state or local law enforcement agency or his or her designee;

(h) The director of a state or local agency which administers juvenile justice or his or her designee;

(i) A director of a state or local facility for the detention of children or regional facility for the treatment and rehabilitation of children or his or her designee;

(j) The director of an agency which provides child welfare services or his or her designee;

(k) The director of an agency which provides mental health services or his or her designee;

(l) A guardian ad litem or court appointed special advocate who represents the child;

(m) A parent or guardian of the child;

(n) The child to whom the juvenile justice information pertains if the child has reached the age of majority, or a person who presents a release that is signed by the child who has reached the age of majority and which specifies the juvenile justice information to be released and the purpose for the release;

(o) A school district, if the juvenile justice agency and the school district have entered into a written agreement to share juvenile justice information and data from an educational record of a child maintained by the school district for a purpose consistent with the purposes of this section;

(p) A person or organization who has entered into a written agreement with the juvenile justice agency to provide assessments or juvenile justice services;

(q) A person engaged in bona fide research that may be used to improve juvenile justice services or secure additional funding for



juvenile justice services if the juvenile justice information is provided in the aggregate and without any personal identifying information;

(r) A person who is authorized by a court order to receive the juvenile justice information, if the juvenile justice agency was provided with notice and opportunity to be heard before the issuance of the order; ~~for~~

(s) A law enforcement agency in the course of a criminal investigation, a delinquency proceeding conducted pursuant to the provisions of this title or a situation involving a child who is subject to the jurisdiction of the juvenile court and who poses a threat to himself or herself or to the safety or well-being of others ~~for~~; or

(t) A federal, state or local governmental entity, or an agency of such an entity, that needs access to the information to perform a background check to determine whether a person who is less than 21 years of age is eligible to purchase and possess firearms under state and federal law.

3. A juvenile justice agency may deny a request for juvenile justice information if:

(a) The request does not, in accordance with the purposes of this section, demonstrate good cause for the release of the information; or

(b) The release of the information would cause material harm to the child or would prejudice any court proceeding to which the child is subject.

➤ A denial pursuant to this subsection must be made in writing to the person requesting the information not later than 5 business days after receipt of the request.

4. Any juvenile justice information provided pursuant to this section may not be used to deny a child access to any service for which the child would otherwise be eligible, including, without limitation:

- (a) Educational services;
- (b) Social services;
- (c) Mental health services;
- (d) Medical services; or
- (e) Legal services.

5. Except as otherwise provided in this subsection, any person who is provided with juvenile justice information pursuant to this section and who further disseminates the information or makes the information public is guilty of a gross misdemeanor. This subsection does not apply to:

(a) A district attorney who uses the information solely for the purpose of initiating legal proceedings; ~~for~~



(b) A person or organization described in subsection 2 who provides a report concerning juvenile justice information to a court or other party pursuant to this title or chapter 432B of NRS ~~H~~; or

(c) A federal, state or local governmental entity, or an agency of such an entity, that uses the information to perform a background check to determine whether a person who is less than 21 years of age is eligible to purchase and possess firearms under state and federal law.

6. As used in this section:

(a) “Juvenile justice agency” means the Youth Parole Bureau or a director of juvenile services.

(b) “Juvenile justice information” means any information which is directly related to a child in need of supervision, a delinquent child or any other child who is otherwise subject to the jurisdiction of the juvenile court.

Sec. 6. NRS 62H.030 is hereby amended to read as follows:

62H.030 1. The juvenile court shall make and keep records of all cases brought before the juvenile court.

2. Except as otherwise provided in this section and NRS 217.110, records of any case brought before the juvenile court may be opened to inspection only by court order to persons who have a legitimate interest in the records.

3. The following records and information may be opened to inspection without a court order:

(a) Records of traffic violations which are being forwarded to the Department of Motor Vehicles;

(b) Records which have not been sealed and which are required by the Division of Parole and Probation for preparation of presentence investigations and reports pursuant to NRS 176.135 or general investigations and reports pursuant to NRS 176.151;

(c) Records which have not been sealed and which are to be used, pursuant to chapter 179D of NRS, by:

(1) The Central Repository;

(2) The Division of Parole and Probation; or

(3) A person who is conducting an assessment of the risk of recidivism of an adult or juvenile sex offender;

(d) Regardless of whether or not they have been sealed, records which are to be used for the purpose of conducting a background check to determine whether a person who is less than 21 years of age is eligible to purchase and possess firearms under state and federal law;

(e) Information maintained in the standardized system established pursuant to NRS 62H.200; and

~~(e)~~ *(f)* Information that must be collected by the Division of Child and Family Services pursuant to NRS 62H.220.



4. The clerk of the court shall prepare and cause to be printed forms for social and legal records and other papers as may be required.

Sec. 7. NRS 62H.170 is hereby amended to read as follows:

62H.170 1. Except as otherwise provided in this section, if the records of a person are sealed:

(a) All proceedings recounted in the records are deemed never to have occurred; and

(b) The person may reply accordingly to any inquiry concerning the proceedings and the acts which brought about the proceedings.

2. The juvenile court may order the inspection of records that are sealed if:

(a) The person who is the subject of the records petitions the juvenile court to permit the inspection of the records by the persons named in the petition;

(b) An agency charged with the medical or psychiatric care of the person who is the subject of the records petitions the juvenile court to permit the inspection of the records by the agency;

(c) A prosecuting attorney or a defendant in a criminal action petitions the juvenile court to permit the inspection of the records to obtain information relating to the persons, including the defendant, who were involved in the acts detailed in the records;

(d) The person who is the subject of the records has committed an act which subjects the person to the jurisdiction of the juvenile court and which may form the basis of a civil action and a person who, in good faith, intends to bring or has brought the civil action, or any other person who is a party to the civil action, petitions the juvenile court to permit the inspection of the records to obtain information relating to the person who is the subject of the records; or

(e) The juvenile court determines that the inspection of the records is necessary to:

(1) Perform bona fide outcome and recidivism studies, which may include, without limitation, using personal identifying information from sealed juvenile records to perform criminal background checks on persons who were adjudicated pursuant to this title;

(2) Further bona fide research to determine the effectiveness of juvenile justice services;

(3) Improve the delivery of juvenile justice services; or

(4) Obtain additional resources for the delivery of juvenile justice services.

↳ Personal identifying information contained in records inspected or obtained from criminal background checks pursuant to this



paragraph must remain confidential in a manner consistent with any applicable laws and regulations.

3. Upon its own order, any court of this State may inspect records that are sealed if the records relate to a person who is less than 21 years of age and who is to be sentenced by the court in a criminal proceeding.

4. A federal, state or local governmental entity, or an agency of such an entity, may inspect or release records or information used to perform a background check to determine whether a person who is less than 21 years of age is eligible to purchase and possess firearms under state and federal law.

Sec. 8. NRS 432B.290 is hereby amended to read as follows:

432B.290 1. Information maintained by an agency which provides child welfare services must be maintained by the agency which provides child welfare services as required by federal law as a condition of the allocation of federal money to this State.

2. Except as otherwise provided in this section and NRS 432B.165, 432B.175 and 432B.513, information maintained by an agency which provides child welfare services may, at the discretion of the agency which provides child welfare services, be made available only to:

(a) A physician, if the physician has before him or her a child who the physician has reasonable cause to believe has been abused or neglected;

(b) A person authorized to place a child in protective custody, if the person has before him or her a child who the person has reasonable cause to believe has been abused or neglected and the person requires the information to determine whether to place the child in protective custody;

(c) An agency, including, without limitation, an agency in another jurisdiction, responsible for or authorized to undertake the care, treatment or supervision of:

(1) The child; or

(2) The person responsible for the welfare of the child;

(d) A district attorney or other law enforcement officer who requires the information in connection with an investigation or prosecution of the abuse or neglect of a child;

(e) Except as otherwise provided in paragraph (f), a court other than a juvenile court, for in camera inspection only, unless the court determines that public disclosure of the information is necessary for the determination of an issue before it;

(f) A court, as defined in NRS 159A.015, to determine whether a guardian or successor guardian of a child should be appointed pursuant to chapter 159A of NRS or NRS 432B.466 to 432B.468, inclusive;



(g) A person engaged in bona fide research or an audit, but information identifying the subjects of a report must not be made available to the person;

(h) The attorney and the guardian ad litem of the child, if the information is reasonably necessary to promote the safety, permanency and well-being of the child;

(i) A person who files or intends to file a petition for the appointment of a guardian or successor guardian of a child pursuant to chapter 159A of NRS or NRS 432B.466 to 432B.468, inclusive, if the identity of the person responsible for reporting the abuse or neglect of the child to a public agency is kept confidential and the information is reasonably necessary to promote the safety, permanency and well-being of the child;

(j) The proposed guardian or proposed successor guardian of a child over whom a guardianship is sought pursuant to chapter 159A of NRS or NRS 432B.466 to 432B.468, inclusive, if the identity of the person responsible for reporting the abuse or neglect of the child to a public agency is kept confidential and the information is reasonably necessary to promote the safety, permanency and well-being of the child;

(k) A grand jury upon its determination that access to these records and the information is necessary in the conduct of its official business;

(l) A federal, state or local governmental entity, or an agency of such an entity, or a juvenile court, that needs access to the information to ~~carry~~ :

(1) Carry out its legal responsibilities to protect children from abuse and neglect; or

(2) Perform a background check to determine whether a person who is less than 21 years of age is eligible to purchase and possess firearms under state and federal law;

(m) A person or an organization that has entered into a written agreement with an agency which provides child welfare services to provide assessments or services and that has been trained to make such assessments or provide such services;

(n) A team organized pursuant to NRS 432B.350 for the protection of a child;

(o) A team organized pursuant to NRS 432B.405 to review the death of a child;

(p) A multidisciplinary team, as defined in NRS 432B.4014;

(q) A parent or legal guardian of the child and an attorney of a parent or guardian of the child, including, without limitation, the parent or guardian of a child over whom a guardianship is sought pursuant to chapter 159A of NRS or NRS 432B.466 to 432B.468, inclusive, if the identity of the person responsible for reporting the



1 abuse or neglect of the child to a public agency is kept confidential
2 and the information is reasonably necessary to promote the safety,
3 permanency and well-being of the child and is limited to
4 information concerning that parent or guardian;

5 (r) The child over whom a guardianship is sought pursuant to
6 chapter 159A of NRS or NRS 432B.466 to 432B.468, inclusive, if:

7 (1) The child is 14 years of age or older; and

8 (2) The identity of the person responsible for reporting the
9 abuse or neglect of the child to a public agency is kept confidential
10 and the information is reasonably necessary to promote the safety,
11 permanency and well-being of the child;

12 (s) The persons or agent of the persons who are the subject of a
13 report, if the information is reasonably necessary to promote the
14 safety, permanency and well-being of the child and is limited to
15 information concerning those persons;

16 (t) An agency that is authorized by law to license foster homes
17 or facilities for children or to investigate persons applying for
18 approval to adopt a child, if the agency has before it an application
19 for that license or is investigating an applicant to adopt a child;

20 (u) Upon written consent of the parent, any officer of this State
21 or a city or county thereof or Legislator authorized by the agency or
22 department having jurisdiction or by the Legislature, acting within
23 its jurisdiction, to investigate the activities or programs of an agency
24 which provides child welfare services if:

25 (1) The identity of the person making the report is kept
26 confidential; and

27 (2) The officer, Legislator or a member of the family of the
28 officer or Legislator is not the person alleged to have committed the
29 abuse or neglect;

30 (v) The Division of Parole and Probation of the Department of
31 Public Safety for use pursuant to NRS 176.135 in making a
32 presentence investigation and report to the district court or pursuant
33 to NRS 176.151 in making a general investigation and report;

34 (w) Any person who is required pursuant to NRS 432B.220 to
35 make a report to an agency which provides child welfare services or
36 to a law enforcement agency;

37 (x) A local advisory board to expedite proceedings for the
38 placement of children created pursuant to NRS 432B.604;

39 (y) The panel established pursuant to NRS 432B.396 to evaluate
40 agencies which provide child welfare services;

41 (z) An employer in accordance with subsection 3 of
42 NRS 432.100;

43 (aa) A team organized or sponsored pursuant to NRS 217.475 or
44 228.495 to review the death of the victim of a crime that constitutes
45 domestic violence;



(bb) The Committee on Domestic Violence appointed pursuant to NRS 228.470; or

(cc) The Committee to Review Suicide Fatalities created by NRS 439.5104.

3. An agency investigating a report of the abuse or neglect of a child shall, upon request, provide to a person named in the report as allegedly causing the abuse or neglect of the child:

(a) A copy of:

(1) Any statement made in writing to an investigator for the agency by the person named in the report as allegedly causing the abuse or neglect of the child; or

(2) Any recording made by the agency of any statement made orally to an investigator for the agency by the person named in the report as allegedly causing the abuse or neglect of the child; or

(b) A written summary of the allegations made against the person who is named in the report as allegedly causing the abuse or neglect of the child. The summary must not identify the person responsible for reporting the alleged abuse or neglect or any collateral sources and reporting parties.

4. Except as otherwise provided by subsection 6, before releasing any information maintained by an agency which provides child welfare services pursuant to this section, an agency which provides child welfare services shall take whatever precautions it determines are reasonably necessary to protect the identity and safety of any person who reports child abuse or neglect and to protect any other person if the agency which provides child welfare services reasonably believes that disclosure of the information would cause a specific and material harm to an investigation of the alleged abuse or neglect of a child or the life or safety of any person.

5. The provisions of this section must not be construed to require an agency which provides child welfare services to disclose information maintained by the agency which provides child welfare services if, after consultation with the attorney who represents the agency, the agency determines that such disclosure would cause a specific and material harm to a criminal investigation.

6. A person who is the subject of a report of child abuse or neglect made pursuant to this chapter that is assigned a disposition other than substantiated pursuant to NRS 432B.305 and who believes that the report was made in bad faith or with malicious intent may petition a district court to order the agency which provides child welfare services to release information maintained by the agency which provides child welfare services. The petition must specifically set forth the reasons supporting the belief that the report was made in bad faith or with malicious intent. The petitioner shall provide notice to the agency which provides child welfare services



so that the agency may participate in the action through its counsel. The district court shall review the information which the petitioner requests to be released and the petitioner shall be allowed to present evidence in support of the petition. If the court determines that there is a reasonable question of fact as to whether the report was made in bad faith or with malicious intent and that the disclosure of the identity of the person who made the report would not be likely to endanger the life or safety of the person who made the report, the court shall provide a copy of the information to the petitioner and the original information is subject to discovery in a subsequent civil action regarding the making of the report.

7. If an agency which provides child welfare services receives any information that is deemed confidential by law, the agency which provides child welfare services shall maintain the confidentiality of the information as prescribed by applicable law.

8. Pursuant to this section, a person may authorize the release of information maintained by an agency which provides child welfare services about himself or herself, but may not waive the confidentiality of such information concerning any other person.

9. An agency which provides child welfare services may provide a summary of the outcome of an investigation of the alleged abuse or neglect of a child to the person who reported the suspected abuse or neglect.

10. Except as otherwise provided in this subsection, any person who is provided with information maintained by an agency which provides child welfare services and who further disseminates the information or makes the information public is guilty of a gross misdemeanor. This subsection does not apply to:

(a) A district attorney or other law enforcement officer who uses the information solely for the purpose of initiating legal proceedings;

(b) An employee of the Division of Parole and Probation of the Department of Public Safety making a presentence investigation and report to the district court pursuant to NRS 176.135 or making a general investigation and report pursuant to NRS 176.151; ~~for~~

(c) An employee of a juvenile justice agency who provides the information to the juvenile court ~~H~~ ; or

(d) A federal, state or local governmental entity, or an agency of such an entity, that uses the information to perform a background check to determine whether a person who is less than 21 years of age is eligible to purchase and possess firearms under state and federal law.

11. An agency which provides child welfare services may charge a fee for processing costs reasonably necessary to prepare



1 information maintained by the agency which provides child welfare
2 services for release pursuant to this section.

3 12. An agency which provides child welfare services shall
4 adopt rules, policies or regulations to carry out the provisions of this
5 section.

6 13. As used in this section, “juvenile justice agency” means the
7 Youth Parole Bureau or a director of juvenile services.

8 **Sec. 9.** This act becomes effective on July 1, 2023.

