

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; prescribing the unit of prosecution for certain crimes involving the ownership or possession of a firearm by certain prohibited persons; authorizing a juvenile justice agency and the juvenile court to release certain information and records for the purpose of conducting a background check relating to the sale or transfer of a firearm; requiring a court to transmit to the Central Repository for Nevada Records of Criminal History certain records relating to the court-ordered admission to certain mental health facilities of certain children with an emotional disturbance for certain purposes relating to the purchase or possession of a firearm; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law prohibits certain persons from owning or having in their possession or under their custody or control “any firearm.” (NRS 202.360) The Nevada Supreme Court has held that the State may only charge a defendant with one count of being a prohibited person 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 this prohibition by providing that, for purposes of prosecuting a violation of the prohibition, each firearm owned, possessed or under the custody or control of 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.



* S B 3 6 7 R 1 *

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 5-7** of this bill authorize a juvenile justice agency and the juvenile court 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.

Existing law requires a court to transmit certain records of adjudication concerning a person's mental health to the Central Repository for Nevada Records of Criminal History, along with a statement that the record is being transmitted for inclusion in all appropriate databases of the National Instant Criminal Background Check System. (NRS 159.0593, 174.035, 175.533, 175.539, 178.425, 433A.310, 433A.343) **Section 8.5** of this bill requires a court to transmit to the Central Repository certain records relating to the court-ordered admission to certain mental health facilities of certain children with an emotional disturbance who are in the custody of an agency which provides child welfare services. **Section 7.7** of this bill provides that no action for damages may be brought against the court or an employee of the court for transmitting a record pursuant to **section 8.5**.

Existing law requires the inclusion, correction and removal of certain records in each appropriate database of the National Instant Background Check System for certain purposes relating to the purchase or possession of a firearm. (NRS 179A.163, 179A.165, 179A.167, 433A.310) **Section 7.5** of this bill requires the inclusion, correction and removal of certain records transmitted pursuant to **section 8.5** in each appropriate database of the National Instant Criminal Background Check System for the same purpose. **Section 7.5** also requires the Central Repository to take reasonable steps to ensure that the information contained in a record transmitted pursuant to **section 8.5** is removed from the National Instant Criminal Background Check System when the person who is the subject of the record reaches 21 years of age.

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. (Deleted by amendment.)

Sec. 3. 1. For purposes of prosecuting a violation of NRS 202.360, each firearm owned, possessed or under the custody or control of a person constitutes a separate violation.

2. As used in this section, "firearm" includes any firearm that is loaded or unloaded and operable or inoperable.

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

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



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

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

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

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

13 5. "Firearms importer or manufacturer" means a person
14 licensed to import or manufacture firearms pursuant to 18 U.S.C.
15 Chapter 44.

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

19 7. "Motor vehicle" means every vehicle that is self-propelled.

20 8. "Semiautomatic firearm" means any firearm that:

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

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

25 (c) Is not a machine gun.

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

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

35 62H.025 1. Juvenile justice information is confidential and
36 may only be released in accordance with the provisions of this
37 section or as expressly authorized by other federal or state law.

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

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

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

44 (c) The Chief Parole and Probation Officer or his or her
45 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. 7.5. NRS 179A.163 is hereby amended to read as follows:

179A.163 1. Upon receiving a record transmitted pursuant to NRS 159.0593, 174.035, 175.533, 175.539, 178.425, **432B.6076**, 433A.310 or 433A.343, the Central Repository:

(a) Shall take reasonable steps to ensure that the information reported in the record is included in each appropriate database of the National Instant Criminal Background Check System; and

(b) May take reasonable steps to ensure that the information reported in the record is included in each appropriate database of the National Crime Information Center.

2. Except as otherwise provided in subsection 3, if the Central Repository receives a record described in subsection 1, the person who is the subject of the record may petition the court for an order declaring that:

(a) The basis for the adjudication reported in the record no longer exists;

(b) The adjudication reported in the record is deemed not to have occurred for purposes of 18 U.S.C. § 922(d)(4) and (g)(4) and NRS 202.360; and

(c) The information reported in the record must be removed from the National Instant Criminal Background Check System and the National Crime Information Center.

3. To the extent authorized by federal law, if the record concerning the petitioner was transmitted to the Central Repository pursuant to NRS 159.0593, 174.035, 175.533, 175.539, 178.425, **432B.6076**, 433A.310 or 433A.343, the petitioner may not file a petition pursuant to subsection 2 until 3 years after the date of the order transmitting the record to the Central Repository.

4. A petition filed pursuant to subsection 2 must be:

(a) Filed in the court which made the adjudication or finding pursuant to NRS 159.0593, 174.035, 175.533, 175.539, 178.425, 433A.310 or 433A.343; and

(b) Served upon the district attorney for the county in which the court described in paragraph (a) is located.

5. The Nevada Rules of Civil Procedure govern all proceedings concerning a petition filed pursuant to subsection 2.

6. The court shall grant the petition and issue the order described in subsection 2 if the court finds that the petitioner has established that:

(a) The basis for the adjudication or finding made pursuant to NRS 159.0593, 174.035, 175.533, 175.539, 178.425, **432B.6076**, 433A.310 or 433A.343 concerning the petitioner no longer exists;



(b) The petitioner's record and reputation indicate that the petitioner is not likely to act in a manner dangerous to public safety; and

(c) Granting the relief requested by the petitioner pursuant to subsection 2 is not contrary to the public interest.

7. Except as otherwise provided in this subsection, the petitioner must establish the provisions of subsection 6 by a preponderance of the evidence. If the adjudication or finding concerning the petitioner was made pursuant to NRS 159.0593 , **432B.6076** or 433A.310, the petitioner must establish the provisions of subsection 6 by clear and convincing evidence.

8. The court, upon entering an order pursuant to this section, shall cause, on a form prescribed by the Department of Public Safety, a record of the order to be transmitted to the Central Repository.

9. ***The Central Repository shall:***

(a) Within 5 business days after receiving a record of an order transmitted pursuant to subsection 8, the Central Repository shall take reasonable steps to ensure that information concerning the adjudication or finding made pursuant to NRS 159.0593, 174.035, 175.533, 175.539, 178.425, **432B.6076**, 433A.310 or 433A.343 is removed from the National Instant Criminal Background Check System and the National Crime Information Center, if applicable.

(b) When a person who is the subject of a record transmitted pursuant to NRS 432B.6076 reaches 21 years of age or at a time reasonably near the date on which the person reaches 21 years of age, take reasonable steps to ensure that information concerning the finding made pursuant to NRS 432B.6076 is removed from the National Instant Criminal Background Check System.

10. If the Central Repository fails to remove a record as provided in subsection 9, the ~~petitioner~~ **person who is the subject of the record** may bring an action to compel the removal of the record. If the ~~petitioner~~ **person** prevails in the action, the court may award the ~~petitioner~~ **person** reasonable attorney's fees and costs incurred in bringing the action.

11. If a petition brought pursuant to subsection 2 is denied, the person who is the subject of the record may petition for a rehearing not sooner than 2 years after the date of the denial of the petition.

Sec. 7.7. NRS 179A.165 is hereby amended to read as follows:

179A.165 1. Any record described in NRS 179A.163 is confidential and is not a public book or record within the meaning of NRS 239.010. A person may not use the record for any purpose other than for a purpose related to criminal justice, including, without limitation, inclusion in the appropriate database of the



1 National Instant Criminal Background Check System and the
2 National Crime Information Center, if applicable. The Central
3 Repository may disclose the record to any agency of criminal
4 justice.

5 2. If a person or governmental entity is required to transmit,
6 report or take any other action concerning a record pursuant to NRS
7 159.0593, 174.035, 175.533, 175.539, 178.425, 179A.163,
8 **432B.6076**, 433A.310 or 433A.343, no action for damages may be
9 brought against the person or governmental entity for:

10 (a) Transmitting or reporting the record or taking any other
11 required action concerning the record;

12 (b) Failing to transmit or report the record or failing to take any
13 other required action concerning the record;

14 (c) Delaying the transmission or reporting of the record or
15 delaying in taking any other required action concerning the record;
16 or

17 (d) Transmitting or reporting an inaccurate or incomplete
18 version of the record or taking any other required action concerning
19 an inaccurate or incomplete version of the record.

20 **Sec. 8.** (Deleted by amendment.)

21 **Sec. 8.5.** NRS 432B.6076 is hereby amended to read as
22 follows:

23 432B.6076 1. Except as otherwise provided in NRS
24 432B.6077, if the court finds, after proceedings for the court-
25 ordered admission of a child alleged to be a child with an emotional
26 disturbance who is in the custody of an agency which provides child
27 welfare services to a facility, including, without limitation, an
28 evidentiary hearing:

29 (a) That there is not clear and convincing evidence that the child
30 with respect to whom the hearing was held exhibits observable
31 behavior such that the child is likely to harm himself or herself or
32 others if allowed liberty, the court shall enter its finding to that
33 effect and the child must not be admitted to a facility.

34 (b) That there is clear and convincing evidence that the child
35 with respect to whom the hearing was held is in need of treatment in
36 a facility and is likely to harm himself or herself or others if allowed
37 liberty, the court may order the admission of the child for the most
38 appropriate course of treatment. The order of the court must be
39 interlocutory and must not become final if, within 30 days after the
40 admission, the child is unconditionally released from the facility
41 pursuant to NRS 432B.6084.

42 2. Before issuing an order for admission or a renewal thereof,
43 the court shall explore other alternative courses of treatment within
44 the least restrictive appropriate environment as suggested by the
45 evaluation team who evaluated the child, or other persons



1 professionally qualified in the field of psychiatric mental health,
2 which the court believes may be in the best interests of the child.

3 *3. Except as otherwise provided in subsection 4, if the court*
4 *issues an order for the admission of a child who is 16 years of age*
5 *or older to a public or private mental health facility pursuant to*
6 *this section, the court must, notwithstanding any other provision*
7 *of law requiring the court to seal a court record relating to a*
8 *proceeding conducted pursuant to NRS 432B.607 to 432B.6085,*
9 *inclusive, cause, within 5 business days after the order becomes*
10 *final pursuant to this section, on a form prescribed by the*
11 *Department of Public Safety, a record of the order to be*
12 *transmitted to the Central Repository for Nevada Records of*
13 *Criminal History, along with a statement indicating that the*
14 *record is being transmitted for inclusion in each appropriate*
15 *database of the National Instant Criminal Background Check*
16 *System.*

17 *4. The provisions of subsection 3 do not apply if the child*
18 *with respect to whom the proceeding was held voluntarily seeks*
19 *treatment and stipulates to his or her admission to a facility.*

20 *5. As used in this section, “National Instant Background*
21 *Check System” has the meaning ascribed to it in NRS 179A.062.*

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

