

ASSEMBLY BILL NO. 341—ASSEMBLYMAN OHRENSCHALL

MARCH 20, 2017

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing juvenile justice. (BDR 5-964)

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; authorizing an attorney who represents a child in juvenile proceedings to consult with and seek appointment of certain persons; requiring a peace officer or probation officer who interviews or interrogates a child during juvenile proceedings to make a recording of the interview or interrogation; requiring a child to be represented by an attorney during certain interviews or interrogations; requiring a juvenile court to presume a child is indigent for the purpose of appointing an attorney to represent the child; urging the Nevada Supreme Court to adopt certain court rules relating to juvenile justice; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

- 1 Existing law provides a procedure for adjudicating a child who is alleged to be
- 2 delinquent or in need of supervision under certain circumstances. (NRS 62D.010)
- 3 **Section 1** of this bill authorizes an attorney who represents a child in such juvenile
- 4 proceedings to consult with and seek appointment of certain persons.
- 5 **Section 2** of this bill requires a peace officer or probation officer who
- 6 interviews or interrogates a child in juvenile proceedings to make a digital, video or
- 7 magnetic recording of the interview or interrogation. **Section 2** also requires a child
- 8 be represented by an attorney during such an interview or interrogation.
- 9 Existing law requires a juvenile court to advise the child and the parent or
- 10 guardian of the child that the child is entitled to be represented by an attorney at all
- 11 stages of the proceedings. Existing law also: (1) authorizes a parent or guardian, if
- 12 he or she is indigent, of a child to request the appointment of an attorney to
- 13 represent the child; and (2) requires the juvenile court to appoint an attorney for a
- 14 child if the parent or guardian of the child does not retain an attorney for the child



15 and is not likely to retain such an attorney. (NRS 62D.030) **Section 3** of this bill
16 requires the juvenile court to presume a child is indigent for the purpose of
17 appointing an attorney in juvenile proceedings.

18 **Section 4** of this bill urges the Nevada Supreme Court to adopt court rules for
19 attorneys who represent juveniles in juvenile proceedings.

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

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

3 *Each attorney who represents a child in proceedings pursuant*
4 *to the provisions of this title may consult with and seek*
5 *appointment of, without limitation and when appropriate:*

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

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

10 3. *Any educator; and*

11 4. *Any other expert the attorney deems appropriate.*

12 **Sec. 2.** NRS 62D.010 is hereby amended to read as follows:

13 62D.010 1. Each proceeding conducted pursuant to the
14 provisions of this title:

15 (a) Is not criminal in nature.

16 (b) Must be heard separately from the trial of cases against
17 adults.

18 (c) Must be heard without a jury.

19 (d) May be conducted in an informal manner.

20 (e) May be held at a facility for the detention of children or
21 elsewhere at the discretion of the juvenile court.

22 (f) Does not require stenographic notes or any other transcript of
23 the proceeding unless ordered by the juvenile court.

24 2. Except as otherwise provided in this subsection, each
25 proceeding conducted pursuant to the provisions of this title must be
26 open to the public. If the juvenile court determines that all or part of
27 the proceeding must be closed to the public because the closure is in
28 the best interests of the child or the public:

29 (a) The public must be excluded; and

30 (b) The juvenile court may order that only those persons who
31 have a direct interest in the case may be admitted. The juvenile court
32 may determine that a victim or any member of the victim's family is
33 a person who has a direct interest in the case and may be admitted.

34 3. *A peace officer or probation officer who interviews or*
35 *interrogates a child pursuant to the provisions of this title shall*



1 *make a digital, video or magnetic recording of the interview or*
2 *interrogation.*

3 *4. If a child is interviewed or interrogated by a peace officer*
4 *or probation officer, the child must be represented by an attorney.*

5 **Sec. 3.** NRS 62D.030 is hereby amended to read as follows:

6 62D.030 1. If a child is alleged to be delinquent or in need of
7 supervision, the juvenile court shall ~~advise~~ :

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

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

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

16 ~~3.;~~ ;

17 (c) *Not require the child to submit an affidavit concerning the*
18 *child's financial disability; and*

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

23 ~~4.~~ 3. A child may waive the right to be represented by an
24 attorney if:

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

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

31 ~~5.~~ 4. Except as otherwise provided in subsection ~~6.~~ 5 and
32 NRS 424.085, if the juvenile court appoints an attorney to represent
33 a child and:

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

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

40 ~~6.~~ 5. For the purposes of paragraph (b) of subsection ~~5.~~ 4,
41 the juvenile court shall find that the parent or guardian of the child is
42 indigent if:

43 (a) The parent or guardian:

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



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

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

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

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

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

16 ~~7.1~~ 6. Each attorney, other than a public defender, who is
17 appointed under the provisions of this section is entitled to the same
18 compensation and expenses from the county as is provided in NRS
19 7.125 and 7.135 for attorneys appointed to represent persons
20 charged with criminal offenses.

21 **Sec. 4.** The Legislature hereby finds and declares that:

22 1. In the case of *In re Gault*, 387 U.S. 1 (1967), the United
23 States Supreme Court guaranteed a juvenile's constitutional right to
24 due process under the Fourteenth Amendment, including, without
25 limitation, the right to counsel and the privilege against
26 self-incrimination.

27 2. Under the existing Nevada Supreme Court Rules:

28 (a) Rules 205-215 govern the State of Nevada Board of
29 Continuing Legal Education whose powers and duties include,
30 without limitation, providing for programs of continuing legal
31 education.

32 (b) Rule 250 provides minimum requirements required for
33 defense counsel in cases in which the death penalty is or may be
34 sought or has been imposed, including proceedings for
35 postconviction relief from a judgment of conviction and sentence of
36 death.

37 3. The Nevada Supreme Court Rules, however, do not specify
38 minimum requirements for attorneys who represent juveniles in
39 proceedings related to juvenile justice.

40 4. Therefore the Legislature urges the Nevada Supreme Court
41 to adopt appropriate rules for attorneys who represent juveniles to
42 ensure effective assistance of counsel in proceedings related to
43 juvenile justice. These requirements may include, without
44 limitation:



1 (a) Minimum requirements for courses, programs and
2 continuing legal education in order to provide effective
3 representation of juveniles;

4 (b) Standards for professional conduct specific to juvenile
5 justice; and

6 (c) Minimum requirements for attorneys who represent juveniles
7 and are employed by the State Public Defender.

8 **Sec. 5.** This act becomes effective upon passage and approval.

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