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:

Existing law provides a procedure for adjudicating a child who is alleged to be delinquent or in need of supervision under certain circumstances. (NRS 62D.010) **Section 1** of this bill authorizes an attorney who represents a child in such juvenile proceedings to consult with and seek appointment of certain persons.

Section 2 of this bill requires a peace officer or probation officer who interviews or interrogates a child in juvenile proceedings to make a digital, video or magnetic recording of the interview or interrogation. **Section 2** also requires a child be represented by an attorney during such an interview or 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 3** of this bill requires the juvenile court to presume a child is indigent for the purpose of appointing an attorney in juvenile proceedings.

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

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

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

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

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

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

(a) Is not criminal in nature.

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

(c) Must be heard without a jury.

(d) May be conducted in an informal manner.

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

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

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

(a) The public must be excluded; and

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

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

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

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

Sec. 3. 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 child's financial disability; 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.]~~ ***3.*** 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.]~~ ***4.*** Except as otherwise provided in subsection ~~[6]~~ ***5*** 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.

~~[6.]~~ ***5.*** For the purposes of paragraph (b) of subsection ~~[5,]~~ ***4,*** 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.

~~[7.]~~ ***6.*** 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. 4. The Legislature hereby finds and declares that:

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

2. Under the existing Nevada Supreme Court Rules:

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

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

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

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

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

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

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

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

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