



## The Nevada Success Story

### Nevada Raises Age at Which Child May Be Presumptively Certified as an Adult

Nevada Assembly Bill 237, enacted May 11, 2009, raises the threshold age at which a child may be certified as an adult under presumptive certification from 14 years of age to 16 years of age. Prior to the passage of this bill, the juvenile court was required to certify for adult court any juvenile 14 years of age or older who had committed certain enumerated offenses, unless the child proved that the crime was committed as a *result of* substance abuse or emotional or behavioral problems. The Nevada Supreme Court found that this exception was unconstitutional under the Fifth Amendment privilege against self-incrimination because it required the child to admit to the crime in order for the exception to apply.

Assembly Bill 237 modifies the exception to presumptive certification that was found unconstitutional by the Nevada Supreme Court. The bill also went one step further and raised the presumptive age of certification to 16 and allows the juvenile court to consider age as a mitigating factor. A new exception, approved in Assembly Bill 237, provides that the juvenile court is not required to certify the child as an adult if the child has substance abuse or emotional or behavioral problems that may be appropriately treated through the jurisdiction of the juvenile court – whether or not those problems caused the child to commit a crime.<sup>1</sup>

March 2011

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## ***References***

<sup>1</sup> A.B. 237, 2009 Gen. Sess. (Nevada 2009); *In the Matter of William M.*, 124 Nev. 95 (2008)

CHAPTER.....

AN ACT relating to juveniles; revising the provisions governing the certification of certain juveniles as adults for criminal proceedings; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

Existing law provides for the certification of a child as an adult for criminal proceedings under certain circumstances. (NRS 62B.390) Under the concept that is commonly referred to as “presumptive certification,” the juvenile court is required to certify a child for criminal proceedings as an adult if the child is charged with certain offenses and was 14 years of age or older at the time of allegedly committing the offense, unless an exception applies. (NRS 62B.390) One such exception to presumptive certification is when the juvenile court specifically finds by clear and convincing evidence that the actions of the child were substantially the result of the substance abuse or emotional or behavioral problems of the child. The Nevada Supreme Court recently ruled that this exception to presumptive certification violates a child’s right against self-incrimination under the Fifth Amendment to the United States Constitution by requiring the child to admit to criminal conduct to challenge certification. (*In re William M.*, 124 Nev. Adv. Op. No. 95 (2008)) This bill eliminates the exception to presumptive certification that was found unconstitutional by the Nevada Supreme Court and provides instead that the juvenile court is not required to certify the child as an adult if the child has substance abuse or emotional or behavioral problems that may be appropriately treated through the jurisdiction of the juvenile court. This bill also raises the threshold age at which a child may be certified as an adult under presumptive certification from 14 years of age to 16 years of age.

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

**Section 1.** NRS 62B.390 is hereby amended to read as follows:

62B.390 1. Except as otherwise provided in subsection 2 and NRS 62B.400, upon a motion by the district attorney and after a full investigation, the juvenile court may certify a child for proper criminal proceedings as an adult to any court that would have jurisdiction to try the offense if committed by an adult, if the child:

(a) Is charged with an offense that would have been a felony if committed by an adult; and

(b) Was 14 years of age or older at the time the child allegedly committed the offense.

2. Except as otherwise provided in subsection 3, upon a motion by the district attorney and after a full investigation, the juvenile court shall certify a child for proper criminal proceedings as an adult



to any court that would have jurisdiction to try the offense if committed by an adult, if the child:

(a) Is charged with:

(1) A sexual assault involving the use or threatened use of force or violence against the victim; or

(2) An offense or attempted offense involving the use or threatened use of a firearm; and

(b) Was ~~H4~~ 16 years of age or older at the time the child allegedly committed the offense.

3. The juvenile court shall not certify a child for criminal proceedings as an adult pursuant to subsection 2 if the juvenile court specifically finds by clear and convincing evidence that:

(a) The child is developmentally or mentally incompetent to understand his situation and the proceedings of the court or to aid his attorney in those proceedings; or

(b) ~~[The actions of the child were substantially the result of the substance abuse or emotional or behavioral problems of the child]~~ *The child has substance abuse or emotional or behavioral problems* and the substance abuse or emotional or behavioral problems may be appropriately treated through the jurisdiction of the juvenile court.

4. If a child is certified for criminal proceedings as an adult pursuant to subsection 1 or 2, the juvenile court shall also certify the child for criminal proceedings as an adult for any other related offense arising out of the same facts as the offense for which the child was certified, regardless of the nature of the related offense.

5. If a child has been certified for criminal proceedings as an adult pursuant to subsection 1 or 2 and the child's case has been transferred out of the juvenile court:

(a) The court to which the case has been transferred has original jurisdiction over the child;

(b) The child may petition for transfer of the case back to the juvenile court only upon a showing of exceptional circumstances; and

(c) If the child's case is transferred back to the juvenile court, the juvenile court shall determine whether the exceptional circumstances warrant accepting jurisdiction.

**Sec. 2.** (Deleted by amendment.)

**Sec. 3.** This act becomes effective upon passage and approval.

