

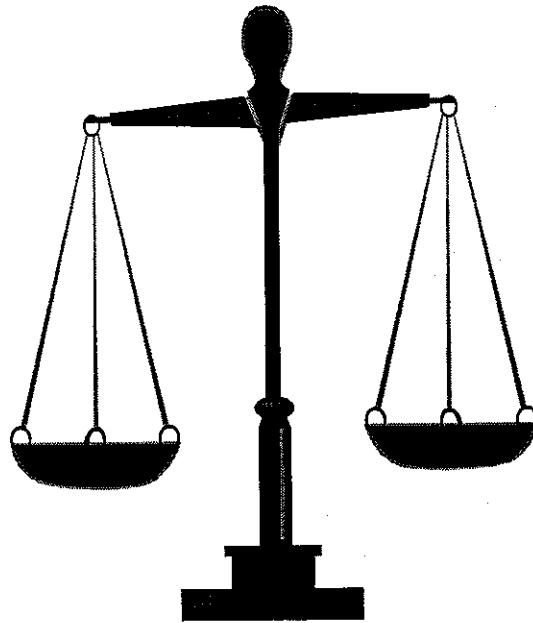
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# **Criminal Law**

## **Jurisdiction & Procedure**

**Ben Graham, Chief Deputy District Attorney**  
**Clark County District Attorney's Office**  
**Las Vegas, Nevada**  
**January 2003**

**ARREST**, is taking a person into custody to answer to a court of law for a criminal violation for which, if convicted one is subject to punishment. An arrest, without a warrant, may be made for the commission of a misdemeanor in your presence or upon probable cause for a felony.

## **COURTS:**

**Municipal Court**, criminal jurisdiction within the municipality for misdemeanors;

**Justice Court**, criminal jurisdiction for misdemeanors committed within the township, excluding the municipality. Additional jurisdiction to hold preliminary hearings for gross misdemeanors and felonies committed within the township.

**District Court**, criminal jurisdiction for gross misdemeanors and felonies committed within the territorial jurisdiction of the particular District. District Judge can also hear cases from other districts if a change of venue is warranted.

# CLASSIFICATION OF CRIMES:

## Misdemeanor:

Penalty, 0 to 6 months in jail and/or \$1000 fine.

No right to court-appointed attorney, unless jail time is intended upon conviction.

No right to jury trial because a "petty offense" at common law.

Municipal and Justice Court jurisdiction.

Conviction appealable to District Court.

## Gross Misdemeanor:

Penalty, 0 to 12 months in jail and/or \$2000 fine, formal probation possible.

Entitled to Court appointed attorney, if indigent at all stages of the proceedings.

Entitled to preliminary hearing in Justice Court.

If probable cause found at Justice Court level the defendant is bound over to District Court where he is entitled to a jury trial, appealable to the State Supreme Court.

## Felony:

Felonies are categorized A through E in Nevada commensurate with the seriousness of the offense.

Penalty one year to life in prison, possible death penalty and/or fines.

Entitled to preliminary hearing in Justice Court and appointed attorney in District Court. (Indictment exception)

Entitled to jury trial in District Court. If acquitted, defendant

## Felony (Continued)

goes home; if convicted, Judge will require presentence investigation and report by Division of Parole and Probation before sentencing. Optional in gross misdemeanor cases.

Appealable to the State Supreme Court.

## Habitual Criminals:

In 1995 two additions were made to the habitual criminal provision. A Nevada version of "Three Strikes" was added for repeat offenders committing violent offenses. Discretion on the part of the prosecution and courts was limited. An enhancement was added for defendants who repeatedly victimized the senior citizen with economic scams.

Two prior felonies or three prior misdemeanors or gross misdemeanors can bring an additional 10 to 20 years in prison.

In 1997, the legislature deleted language from the statute making it no longer necessary for the instant offense to be a felony of force or violence to qualify for the "large" habitual criminal enhancement under NRS 207.010(1)(b). It is now possible to seek the "large" habitual criminal against a felon of any category, as long as the prior convictions consist of at least three felonies, five misdemeanors or gross misdemeanors of which fraud or the intent to defraud is an element, or five petit larcenies.

Additionally, the foregoing crimes can bring life without the possibility of parole, life with the possibility of parole, or a definite term of 25 years. If life with or definite term of 25 years is imposed, 10 years mandated prior to parole eligibility.

It is within the discretion of the prosecuting attorney whether to include a count under this section. The trial judge may, at his discretion, dismiss a count under this section.

## **Habitual Felons:**

A twice-convicted felon shall have a count added under this section by the district attorney and a trial judge may not dismiss the count. A conviction under this statute 207.012, can also bring life without the possibility of parole, life with the possibility of parole, or a definite term of 25 years. If life with or definite term of 25 years is imposed, 10 years mandated prior to parole eligibility.

## **PROCEDURE**

### **Preliminary Examination:**

After an arrest, in Justice Court for Gross Misdemeanors and Felonies.

State has the burden of establishing PROBABLE CAUSE, "facts and information sufficient to establish that a crime has probably been committed and that the defendant has probably committed the crime". Seldom does a defendant present evidence at this time.

If probable cause, (P/C), has been shown the defendant is bound over to answer to the charge in District Court. The charging document in District Court is an Information.

### **Grand Jury/Indictment:**

State presents evidence and occasionally a potential defendant will participate.

Basic task is the same as the preliminary hearing. State presents evidence to establish probable cause. State obligated to present exculpatory evidence as well.

If members of the Grand Jury find probable cause, a true bill will issue and the defendant is held to answer in District Court on an Indictment.

## **Burden of Proof the Prosecution Must Show:**

Probable cause for arrest, search and seizure, preliminary examination and indictments.

Beyond a reasonable doubt in all criminal trials.

## **Juvenile Court (Part of District Court):**

The 1995 and 1997 Session of the Nevada Legislature made significant changes to address a growing concern for the serious juvenile offender. Ages for treatment as adults, penalties and public access to the juvenile process were broadened significantly.

Section 62.040, subsection 2(a) - Exclusive jurisdiction over young people to 16 years of age except if charged with murder or attempted murder.

Section 2(b) – Sexual assault or threatened sexual assault involving use or threat of force or violence.

Section 2(c) – Use or threatened use of firearm if the juvenile had been adjudicated as delinquent.

Section 2 (d) – Felony resulting in death or substantial bodily harm committed on school property, at school activity or on school bus with use of a weapon.

Delinquent acts by a person 14 years or older, which would be a felony if committed by an adult, may result in certification to the adult court. NRS 62.080.

## **Herewith find attached:**

Flow Chart of Basic Criminal Procedure

NRS 193.120 – Classification of crimes

NRS 193.140 – Punishment of gross misdemeanors

NRS 171.206 – Procedure following preliminary examination

NRS 172.155 – Degree of evidence to warrant indictment

NRS 172.255 – Finding and return of presentation or indictment

NRS 207.010 – Habitual Criminal statute

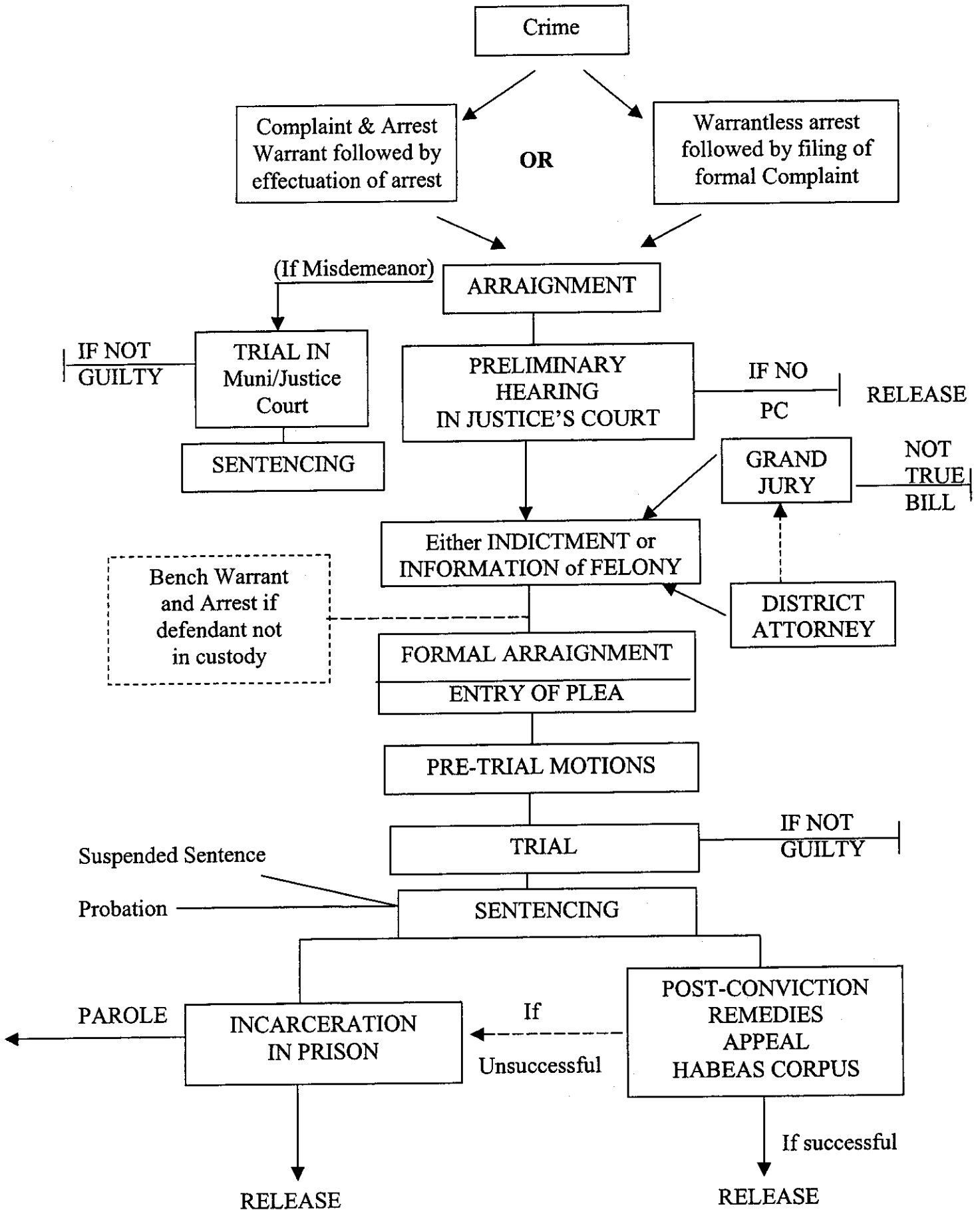
Reasonable Doubt Instruction

NRS 62.040 and 62.080 on Juvenile matters

Bill of Rights



# FLOW CHART FOR BASIC CRIMINAL PROCEDURE



# NEVADA REVISED STATUTES

## CHAPTER 193 GENERAL PROVISIONS

### **NRS 193.120 Classification of crimes.**

1. A crime is an act or omission forbidden by law and punishable upon conviction by death, imprisonment, fine or other penal discipline.

2. Every crime which may be punished by death or by imprisonment in the state prison is a felony.

3. Every crime punishable by a fine of not more than \$1,000, or by imprisonment in a county jail for not more than 6 months, is a misdemeanor.

4. Every other crime is a gross misdemeanor.

[1911 C&P § 1; RL § 6266; NCL § 9950]—(NRS A 1981, 651)

# NEVADA REVISED STATUTES

## CHAPTER 193 GENERAL PROVISIONS

### **NRS 193.140 Punishment of gross misdemeanors.**

Every person convicted of a gross misdemeanor shall be punished by imprisonment in the county jail for not more than 1 year, or by a fine of not more than \$2,000, or by both fine and imprisonment, unless the statute in force at the time of commission of such gross misdemeanor prescribed a different penalty.

[1911 C&P § 19; RL § 6284; NCL § 9968]—(NRS A 1967, 459; 1981, 652)

# NEVADA REVISED STATUTES

## CHAPTER 171 PROCEEDINGS TO COMMITMENT PROCEEDINGS BEFORE MAGISTRATE

### **NRS 171.206 Procedure following preliminary examination.**

If from the evidence it appears to the magistrate that there is probable cause to believe that an offense has been committed and that the defendant has committed it, the magistrate shall forthwith hold him to answer in the district court; otherwise the magistrate shall discharge him. The magistrate shall admit the defendant to bail as provided in this Title. After concluding the proceeding the magistrate shall transmit forthwith to the clerk of the district court all papers in the proceeding and any bail taken by him.

(Added to NRS by 1967, 1407)

# NEVADA REVISED STATUTES

## CHAPTER 172 PROCEEDINGS AFTER COMMITMENT AND BEFORE INDICTMENT POWERS AND DUTIES OF GRAND JURY

### **NRS 172.155 Degree of evidence to warrant indictment; objection.**

1. The grand jury ought to find an indictment when all the evidence before them, taken together, establishes probable cause to believe that an offense has been committed and that the defendant has committed it.

2. The defendant may object to the sufficiency of the evidence to sustain the indictment only by application for a writ of habeas corpus.

(Added to NRS by 1967, 1409; A 1979, 331)

# NEVADA REVISED STATUTES

## CHAPTER 172 PROCEEDINGS AFTER COMMITMENT AND BEFORE INDICTMENT POWERS AND DUTIES OF GRAND JURY

### **NRS 172.255 Finding and return of presentment or indictment; effect of failure to indict.**

1. A presentment or indictment may be found only upon the concurrence of 12 or more jurors.

2. The jurors shall vote separately on each person and each count included in a presentment or indictment.

3. The presentment or indictment must be returned by the grand jury to a judge in open court or, in the absence of the judge, to the clerk of the court in open court, who shall determine that 12 or more jurors concurred in finding a presentment or indictment. If the defendant has been held to answer and 12 jurors do not concur in finding a presentment or indictment, the foreman shall so report to the court in writing forthwith.

4. The failure to indict does not prevent the same charge from being again submitted to a grand jury if resubmission is approved by the court.

(Added to NRS by 1967, 1411; A 1971, 208; 1985, 1030)

# NEVADA REVISED STATUTES

## CHAPTER 207 MISCELLANEOUS CRIMES HABITUAL CRIMINALS, HABITUAL FELONS AND HABITUALLY FRAUDULENT FELONS

### **NRS 207.010 Habitual criminals: Definition; punishment.**

1. Unless the person is prosecuted pursuant to NRS 207.012 or 207.014, a person convicted in this state of:

(a) Any crime of which fraud or intent to defraud is an element, or of petit larceny, or of any felony, who has previously been two times convicted, whether in this state or elsewhere, of any crime which under the laws of the situs of the crime or of this state would amount to a felony, or who has previously been three times convicted, whether in this state or elsewhere, of petit larceny, or of any misdemeanor or gross misdemeanor of which fraud or intent to defraud is an element, is a habitual criminal and shall be punished for a category B felony by imprisonment in the state prison for a minimum term of not less than 5 years and a maximum term of not more than 20 years.

(b) Any felony, who has previously been three times convicted, whether in this state or elsewhere, of any crime which under the laws of the situs of the crime or of this state would amount to a felony, or who has previously been five times convicted, whether in this state or elsewhere, of petit larceny, or of any misdemeanor or gross misdemeanor of which fraud or the intent to defraud is an element, is a habitual

**NRS 207.010 Habitual criminals: Definition; punishment. (Con't)**

criminal and shall be punished for a category A felony by imprisonment in the state prison:

(1) For life without the possibility of parole;

(2) For life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served; or

(3) For a definite term of 25 years, with eligibility for parole beginning when a minimum of 10 years has been served.

2. It is within the discretion of the prosecuting attorney whether to include a count under this section in any information or file a notice of habitual criminality if an indictment is found. The trial judge may, at his discretion, dismiss a count under this section which is included in any indictment or information.

[1911 C&P § 27; RL § 6292; NCL § 9976]—(NRS A 1961, 446; 1965, 250; 1967, 217, 516; 1971, 173; 1977, 360; 1981, 1647; 1985, 1026, 1643; 1995, 856, 1238, 1358, 2392; 1997, 1184)



## REASONABLE DOUBT INSTRUCTION

The defendant is presumed innocent until the contrary is proved. This presumption places upon the State the burden of proving beyond a reasonable doubt every material element of the crime charged and that the defendant is the person who committed the offense.

A reasonable doubt is one based on reason. It is not mere possible doubt, but is such a doubt as would govern or control a person in the more weighty affairs of life. If the minds of the jurors, after the entire comparison and consideration of all the evidence, are in such a condition that they can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt to be reasonable must be actual, not merely possibility or speculation.

If you have a reasonable doubt as to the guilt of the defendant, he is entitled to a verdict of not guilty.

# NEVADA REVISED STATUTES

## CHAPTER 62 JUVENILE COURTS ORGANIZATION Jurisdiction

### **NRS 62.040 Exclusive original jurisdiction of court; procedure regarding minor traffic offenses.**

1. Except if the child involved is subject to the exclusive jurisdiction of an Indian tribe, and except as otherwise provided in this chapter, the court has exclusive original jurisdiction in proceedings:

(a) Concerning any child living or found within the county who is in need of supervision because he:

(1) Is a child who is subject to compulsory school attendance and is a habitual truant from school;

(2) Habitually disobeys the reasonable and lawful demands of his parents, guardian or other custodian, and is unmanageable; or

(3) Deserts, abandons or runs away from his home or usual place of abode, and is in need of care or rehabilitation. The child must not be considered a delinquent.

(b) Concerning any child living or found within the county who has committed a delinquent act. A child commits a delinquent act if he violates a county or municipal ordinance or any rule or regulation having the force of law, or he commits an act designated a crime under the law of the State of Nevada.

(c) Concerning any child in need of commitment to an institution for the mentally retarded.

**NRS 62.040 Exclusive original jurisdiction of court; procedure regarding minor traffic offenses. (Con't Pg 2)**

2. For the purposes of subsection 1, each of the following acts shall be deemed not to be a delinquent act, and the court does not have jurisdiction of a person who is charged with committing such an act:

(a) Murder or attempted murder and any other related offense arising out of the same facts as the murder or attempted murder, regardless of the nature of the related offense.

(b) Sexual assault or attempted sexual assault involving the use or threatened use of force or violence against the victim and any other related offense arising out of the same facts as the sexual assault or attempted sexual assault, regardless of the nature of the related offense, if:

(1) The person was 16 years of age or older when the sexual assault or attempted sexual assault was committed; and

(2) Before the sexual assault or attempted sexual assault was committed, the person previously had been adjudicated delinquent for an act that would have been a felony if committed by an adult.

(c) An offense or attempted offense involving the use or threatened use of a firearm and any other related offense arising out of the same facts as the offense or attempted offense involving the use or threatened use of a firearm, regardless of the nature of the related offense, if:

(1) The person was 16 years of age or older when the offense or attempted offense involving the use or threatened use of a firearm was committed; and

**NRS 62.040 Exclusive original jurisdiction of court; procedure regarding minor traffic offenses. (Con't Pg 3)**

(2) Before the offense or attempted offense involving the use or threatened use of a firearm was committed, the person previously had been adjudicated delinquent for an act that would have been a felony if committed by an adult.

(d) A felony resulting in death or substantial bodily harm to the victim and any other related offense arising out of the same facts as the felony, regardless of the nature of the related offense, if:

(1) The felony was committed on the property of a public or private school when pupils or employees of the school were present or may have been present, at an activity sponsored by a public or private school or on a school bus while the bus was engaged in its official duties; and

(2) The person intended to create a great risk of death or substantial bodily harm to more than one person by means of a weapon, device or course of action that would normally be hazardous to the lives of more than one person.

(e) Any other offense if, before the offense was committed, the person previously had been convicted of a criminal offense.

3. If a child is charged with a minor traffic offense, the court may transfer the case and record to a justice's or municipal court if the judge determines that it is in the best interest of the child. If a case is so transferred:

(a) The restrictions set forth in subsection 7 of NRS 62.170 are applicable in those proceedings; and

**NRS 62.040 Exclusive original jurisdiction of court; procedure regarding minor traffic offenses. (Con't Pg 4)**

(b) The child must be accompanied at all proceedings by a parent or legal guardian.

With the consent of the judge of the juvenile division, the case may be transferred back to the juvenile court.

4. As used in this section, "school bus" has the meaning ascribed to it in NRS 483.160.

[3:63:1949; A 1949, 572; 1943 NCL § 1038.3]—(NRS A 1957, 148; 1963, 500; 1969, 443; 1971, 1333; 1973, 397, 1341; 1975, 1129; 1977, 1270; 1979, 501; 1981, 1892, 2019; 1983, 112; 1985, 1388; 1989, 867, 1806, 1807, 1909; 1993, 1981; 1995, 785, 1342, 1371; 1997, 832; 1999, 717, 722, 1338, 1339, 1342, 2059, 2067, 2070; 2001, 144, 1216)

# NEVADA REVISED STATUTES

## CHAPTER 62 JUVENILE COURTS ORGANIZATION Jurisdiction

### **NRS 62.080 Procedure when child 14 years or older is charged with felony; certification for criminal proceedings required under certain circumstances.**

1. Except as otherwise provided in subsection 2 and NRS 62.081, if:

(a) A child is charged with an offense that would be a felony if committed by an adult; and

(b) The child was 14 years of age or older at the time he allegedly committed the offense,

the juvenile court, upon a motion by the district attorney and after a full investigation, may retain jurisdiction or certify the child for proper criminal proceedings to any court that would have jurisdiction to try the offense if committed by an adult.

2. If a 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 14 years of age or older at the time he allegedly committed the offense,

**NRS 62.080 Procedure when child 14 years or older is charged with felony;  
certification for criminal proceedings required under certain circumstances.  
(Con't)**

the juvenile court, upon a motion by the district attorney and after a full investigation, shall certify the child for proper criminal proceedings to any court that would have jurisdiction to try the offense if committed by an adult, unless the court specifically finds by clear and convincing evidence that the child's actions were substantially the result of his substance abuse or emotional or behavioral problems and such substance abuse or problems may be appropriately treated through the jurisdiction of the juvenile court.

3. If a child is certified for criminal proceedings as an adult pursuant to subsection 1 or 2, the 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.

4. If a child has been certified for criminal proceedings as an adult pursuant to subsection 1 or 2 and his case has been transferred out of the juvenile court, original jurisdiction of his person for that case rests with the court to which the case has been transferred, and the child may petition for transfer of his case back to the juvenile court only upon a showing of exceptional circumstances. If the child's case is transferred back to the juvenile court, the judge of that court shall determine whether the exceptional circumstances warrant accepting jurisdiction.

[7:63:1949; 1943 NCL § 1038.7]—(NRS A 1977, 1272; 1991, 304; 1993, 293; 1995, 1343; 1997, 833; 1999, 423)

# **Bill of Rights**

## **Amendment I**

### **Freedom of Religion, Speech and Press; Peaceful Assemblage; Petition of Grievances**

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

## **Amendment II**

### **Right to Bear Arms**

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

## **Amendment III**

### **Soldiers Denied Quarter in Homes**

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

## **Amendment IV**

### **Search and Seizure**

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

## **Amendment V**

### **Grand Jury Indictment for Capital Crimes; Double Jeopardy; Self-Incrimination; Due Process of Law; Just Compensation for Property**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.



## **Amendment VI**

### **Jury trials for crimes, and procedural rights**

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

## **Amendment VII**

### **Civil Trials**

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

## **Amendment VIII**

### **Excessive Bail, Fines, Punishments**

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

## **Amendment IX**

### **Construction of Enumerated Rights**

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

## **Amendment X**

### **Reserved Powers to State**

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.