

ASSEMBLY BILL NO. 138—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE LEGISLATIVE COMMITTEE ON
CHILD WELFARE AND JUVENILE JUSTICE)

FEBRUARY 11, 2015

Referred to Committee on Judiciary

SUMMARY—Enacts a juvenile competency standard.
(BDR 5-188)

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; requiring the juvenile court to suspend a case if doubt arises as to whether a child is competent; requiring the juvenile court to appoint certain experts to evaluate a child and provide a written report on the competence of the child if the juvenile court suspends a case to determine whether the child is competent; requiring the juvenile court to hold an expedited hearing to determine whether a child is competent upon receipt of the written reports of all appointed experts; providing that a statement made by a child during an evaluation by an appointed expert is not admissible as evidence in certain proceedings unless the child introduces the statement as evidence first; requiring the juvenile court to conduct a periodic review of a child determined to be incompetent; authorizing the juvenile court to terminate its jurisdiction in certain circumstances if a child has not attained competence and will be unable to attain competence in the foreseeable future; providing that a child determined to be incompetent may not be adjudicated a delinquent child or a child in need of supervision or placed under the supervision of the juvenile court during the period that the child remains incompetent; and providing other matters properly relating thereto.



* A B 1 3 8 R 3 *

Legislative Counsel's Digest:

This bill enacts a juvenile competency standard. **Section 3** of this bill provides that any time after a petition is filed and before the final disposition of a case, if doubt arises as to whether a child is competent, the juvenile court is required to suspend the case until the question of competence is determined. **Section 4** of this bill requires a person who makes a motion for the evaluation of a child for the purpose of determining whether the child is competent to: (1) certify that the motion is being made in good faith and is based on reasonable grounds to believe that the child is incompetent; and (2) specify facts that support the motion. **Section 5** of this bill provides that if the juvenile court suspends a case to determine whether a child is competent, the juvenile court must appoint one or more able and qualified experts, at least one of whom is a psychologist or psychiatrist, to evaluate the child and provide a written report on the competence of the child. **Section 6** of this bill sets forth certain considerations an expert must take into account as part of his or her evaluation, as well as certain other considerations an expert must take into account if appropriate, and **section 7** of this bill sets forth certain requirements relating to the written report of an expert.

Section 8 of this bill requires the juvenile court to hold an expedited hearing to determine whether a child is competent upon receipt of the required written reports from all experts appointed by the juvenile court. **Section 9** of this bill authorizes the juvenile court to consider information relevant to the determination of the competence of a child and information elicited from the child only for certain purposes. **Section 9** also provides that any statement made by a child during the course of an evaluation by an expert appointed by the juvenile court is not admissible as evidence: (1) on the issue of guilt in a delinquency proceeding, unless the child introduces the statement as evidence on the issue of guilt first; or (2) in any criminal proceeding, unless the child introduces the statement as evidence first. Under **section 10** of this bill, after the juvenile court considers the written reports of the appointed experts, any additional written reports, and testimony and other evidence presented at the hearing, the juvenile court must determine whether the child is competent. If the juvenile court determines that the child is incompetent, the juvenile court is required to make certain additional determinations and issue all necessary and appropriate recommendations and orders.

Section 11 of this bill requires that if the juvenile court determines that a child is incompetent, the juvenile court must conduct a periodic review to determine whether the child has attained competence. After a periodic review is conducted, if the juvenile court determines that the child: (1) has attained competence, the juvenile court is required to proceed with the case; (2) has not attained competence, the juvenile court is required to order appropriate treatment; and (3) has not attained competence and will be unable to attain competence in the foreseeable future, the juvenile court is required to hold a hearing to consider the best interests of the child and the safety of the community and determine whether to dismiss any petitions pending before the juvenile court and terminate its jurisdiction.

Section 12 of this bill provides that if the juvenile court determines that a child is incompetent, the child may not, during the period that the child remains incompetent, be: (1) adjudicated a delinquent child or a child in need of supervision; or (2) placed under the supervision of the juvenile court.



* A B 1 3 8 R 3 *

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 the provisions set forth as sections 2 to 13, inclusive, of this
3 act.

4 **Sec. 2.** *As used in sections 2 to 13, inclusive, of this act,*
5 *unless the context otherwise requires, "incompetent" means a*
6 *child does not have the present ability to:*

7 1. *Understand the nature of the allegations of delinquency or,*
8 *if the child is a child in need of supervision, the allegations*
9 *against the child;*

10 2. *Understand the nature and purpose of the court*
11 *proceedings; or*

12 3. *Aid and assist the child's counsel in the defense at any*
13 *time during the proceedings with a reasonable degree of rational*
14 *understanding.*

15 **Sec. 3.** 1. *Any time after a petition is filed and before the*
16 *final disposition of a case, if doubt arises as to the competence of a*
17 *child, the juvenile court shall suspend the case until the question*
18 *of competence is determined.*

19 2. *During the period when the competence of a child is being*
20 *determined, the juvenile court shall consider the appropriate*
21 *placement of the child and any services or other care to be*
22 *provided to the child that are necessary for the well-being of the*
23 *child or for public safety, and may issue any necessary orders.*

24 3. *The period in which the juvenile court is required to make*
25 *its final disposition of a case, as set forth in NRS 62D.310, is tolled*
26 *during the period when the competence of a child is being*
27 *determined.*

28 **Sec. 4.** *A person who makes a motion for the evaluation of a*
29 *child for the purpose of determining whether the child is*
30 *incompetent shall:*

31 1. *Certify that the motion is being made in good faith and is*
32 *based on reasonable grounds to believe that the child is*
33 *incompetent and cannot proceed in the case; and*

34 2. *Specify facts that support the motion, including, without*
35 *limitation, any nonprivileged observations of or statements made*
36 *by the child.*

37 **Sec. 5.** 1. *If the juvenile court suspends a case pursuant to*
38 *section 3 of this act, the juvenile court shall appoint one or more*
39 *experts, at least one of whom is a psychologist or psychiatrist, to*
40 *evaluate the child and report on the competence of the child.*

41 2. *Before appointing an expert to evaluate and report on the*
42 *competence of the child, the juvenile court shall consider the*



1 following factors to determine the ability and qualification of
2 the expert to provide such an evaluation and report:

3 (a) The training and experience of the expert in child
4 psychology, child and adolescent psychiatry or child forensic
5 psychiatry;

6 (b) The licensure or professional certification of the expert;
7 and

8 (c) Any other factor the juvenile court deems appropriate in
9 making the appointment.

10 3. An expert appointed by the juvenile court to evaluate and
11 report on the competence of a child must:

12 (a) Be deemed by the juvenile court to be able and qualified to
13 evaluate and report on the competence of the child pursuant to
14 subsection 2; and

15 (b) Prepare and provide a written report to the juvenile court
16 and the parties not later than 14 days after the juvenile court
17 enters an order appointing the expert, unless the juvenile
18 court provides an extension for good cause shown.

19 4. The appointment of an expert pursuant to this section does
20 not preclude the district attorney or the child from calling any
21 other expert witness to testify concerning the competence of the
22 child at an adjudicatory hearing, a hearing on a violation of
23 juvenile probation or parole or a hearing to determine whether the
24 child is incompetent. Any such expert witness must be allowed to
25 evaluate the child and examine all relevant records and
26 documents.

27 **Sec. 6.** 1. An expert who is appointed by the juvenile court
28 pursuant to section 5 of this act shall evaluate the child as
29 specified in the court order appointing the expert.

30 2. An expert shall consider as part of his or her evaluation
31 the child's ability to:

32 (a) Appreciate the allegations against the child;

33 (b) Appreciate the range and nature of possible penalties that
34 may be imposed upon the child, if applicable;

35 (c) Understand the adversary nature of the legal process;

36 (d) Disclose to the child's counsel facts pertinent to the case;

37 (e) Display appropriate courtroom behavior; and

38 (f) Testify regarding relevant issues.

39 3. An expert shall also consider as part of his or her
40 evaluation, if appropriate, the following circumstances of a child:

41 (a) The age and developmental maturity of the child;

42 (b) Whether the child has a mental illness or disability or a
43 developmental disorder;

44 (c) Whether the child has any other disability that affects the
45 competence of the child; and



(d) Any other factor that affects the competence of the child.

Sec. 7. 1. A written report submitted by an expert pursuant to subsection 3 of section 5 of this act must:

(a) Identify the specific matters referred to the expert by the juvenile court for evaluation;

(b) Describe the procedures, techniques and tests used in the evaluation of the child and the purposes of each;

(c) Describe the considerations taken into account by the expert pursuant to section 6 of this act;

(d) State any clinical observations, findings and opinions of the expert on each issue referred to the expert for evaluation by the juvenile court and specifically indicate any issues on which the expert was unable to give an opinion;

(e) Identify the sources of information used by the expert and present the factual basis for any clinical observations, findings and opinions of the expert; and

(f) State any recommended counseling, treatment, education or therapy to assist the child with behavioral, emotional, psychological or psychiatric issues, if ordered by the juvenile court to provide such recommendations.

2. In addition to the requirements set forth in subsection 1, if an expert believes that a child is incompetent, the expert shall also include in the report:

(a) Any recommended treatment or education for the child to attain competence;

(b) The likelihood that the child will attain competence under the recommended treatment or education;

(c) An assessment of the probable duration of the treatment or education required to attain competence;

(d) The probability that the child will attain competence in the foreseeable future; and

(e) If the expert recommends treatment for the child to attain competence, a recommendation as to whether services can best be provided to the child as an outpatient or inpatient, or by commitment to an institution for persons with intellectual disabilities or mental illness pursuant to NRS 62E.160.

Sec. 8. 1. Upon receipt of the required written reports from all experts appointed by the juvenile court, the juvenile court shall hold an expedited hearing to determine whether the child is incompetent.

2. The parties may waive the presence of witnesses and submit the issue of competence to the juvenile court on the written reports of the experts who evaluated the child.



3. The party who made the motion to determine whether the child is competent has the burden of proof to rebut the presumption of competence by a preponderance of the evidence.

4. Unless the parties stipulate or the juvenile court orders otherwise, the parties shall disclose all witnesses, reports and documents at least 10 days before the scheduled day of the hearing.

5. During the hearing, the parties may:

(a) Introduce other evidence, including, without limitation, evidence related to treatment, competence and the possibility of ordering the involuntary administration of medicine; and

(b) Cross-examine witnesses.

Sec. 9. 1. Except as otherwise provided in this section, the juvenile court may consider any information that is relevant to the determination of the competence of the child and any information elicited from the child pursuant to sections 2 to 13, inclusive, of this act only for the purpose of:

(a) Determining whether the child is incompetent; and

(b) Making a disposition of the case in juvenile court.

2. The provisions of subsection 1 do not apply if a child whose competence is being determined presents any information to the juvenile court for a purpose other than those set forth in subsection 1.

3. Any statement made by a child during the course of an evaluation by an expert who is appointed by the juvenile court pursuant to section 5 of this act, regardless of whether the child consented to the evaluation, is not admissible as evidence:

(a) On the issue of guilt in a delinquency proceeding, unless the child introduces the statement as evidence on the issue of guilt first; or

(b) In any criminal proceeding, unless the child introduces the statement as evidence first.

Sec. 10. 1. After the juvenile court considers the written reports of all the experts appointed by the juvenile court, any additional written reports, and testimony and other evidence presented at the hearing, the juvenile court shall determine whether the child is incompetent.

2. If the juvenile court determines that the child is competent, the juvenile court shall proceed with the case.

3. If the juvenile court determines that the child is incompetent, the juvenile court shall determine whether:

(a) The child is a danger to himself or herself or society;

(b) Providing services to the child will assist the child in attaining competence and further the policy goals set forth in NRS 62A.360; and



(c) Any services provided to the child can best be provided to the child as an outpatient or inpatient, by commitment to an institution for persons with intellectual disabilities or mental illness pursuant to NRS 62E.160, or as otherwise allowed by law.

4. After the juvenile court makes the determinations set forth in subsection 3, the juvenile court shall issue all necessary and appropriate recommendations and orders.

5. Any treatment ordered by the juvenile court must provide the level of care, guidance and control that will be conducive to the child's welfare and the best interests of this State.

Sec. 11. 1. If the juvenile court determines that a child is incompetent pursuant to section 10 of this act, the juvenile court shall conduct a periodic review to determine whether the child has attained competence. Unless the juvenile court terminates its jurisdiction pursuant to paragraph (c) of subsection 3, such a periodic review must be conducted:

(a) Not later than 6 months after the date of commitment to an institution for persons with intellectual disabilities or mental illness pursuant to NRS 62E.160 or the date treatment ordered by the court commenced, whichever is earlier;

(b) After any period of extended treatment;

(c) After the child completes any treatment ordered by the juvenile court;

(d) After a person ordered by the juvenile court to provide services to the child pursuant to section 10 of this act determines that the child has attained competence or will never attain competence; or

(e) At shorter intervals as ordered by the juvenile court.

2. Before a periodic review is conducted pursuant to subsection 1, any person ordered by the juvenile court to provide services to a child pursuant to section 10 of this act must provide a written report to the juvenile court, the parties, and the department of juvenile services or Youth Parole Bureau, as applicable.

3. After a periodic review is conducted pursuant to subsection 1, if the juvenile court determines that the child:

(a) Is competent, the juvenile court shall enter an order accordingly and proceed with the case.

(b) Has not attained competence, the juvenile court shall order appropriate treatment, including, without limitation, residential or nonresidential placement in accordance with sections 2 to 13, inclusive, of this act, commitment to an institution for persons with intellectual disabilities or mental illness pursuant to NRS 62E.160, or as otherwise allowed by law.

(c) Has not attained competence and will be unable to attain competence in the foreseeable future, the juvenile court shall hold



1 a hearing to consider the best interests of the child and the safety
2 of the community and determine whether to dismiss any petitions
3 pending before the juvenile court and terminate the jurisdiction of
4 the juvenile court. In determining whether to dismiss a petition
5 and terminate its jurisdiction pursuant to this paragraph, the
6 juvenile court shall consider:

7 (1) The nature and gravity of the act allegedly committed by
8 the child, including, without limitation, whether the act involved
9 violence, the infliction of serious bodily injury or the use of a
10 weapon;

11 (2) The date the act was allegedly committed by the child;

12 (3) The number of times the child has allegedly committed
13 the act;

14 (4) The extent to which the child has received counseling,
15 therapy or treatment, and the response of the child to any such
16 counseling, therapy or treatment;

17 (5) The extent to which the child has received education,
18 services or treatment relating to remediating, restoring or
19 attaining competence and the response of the child to any such
20 education, services or treatment;

21 (6) Whether any psychological or psychiatric profiles of the
22 child indicate a risk of recidivism;

23 (7) The behavior of the child while he or she is subject to
24 the jurisdiction of the juvenile court, including, without limitation,
25 during any period of confinement;

26 (8) The extent to which counseling, therapy or treatment
27 will be available to the child in the absence of continued juvenile
28 court jurisdiction;

29 (9) Any physical conditions that minimize the risk of
30 recidivism, including, without limitation, physical disability or
31 illness;

32 (10) The age, mental attitude, maturity level and emotional
33 stability of the child;

34 (11) The extent of family support available to the child;

35 (12) Whether the child has had positive psychological and
36 social evaluations; and

37 (13) Any other factor the juvenile court deems relevant to
38 the determination of whether continued juvenile court jurisdiction
39 will be conducive to the welfare of the child and the safety of the
40 community.

41 **Sec. 12.** If the juvenile court determines that a child is
42 incompetent pursuant to section 10 of this act, during the period
43 that the child remains incompetent, the child may not be:

44 1. Adjudicated a delinquent child or a child in need of
45 supervision; or



1 *2. Placed under the supervision of the juvenile court*
2 *pursuant to a supervision and consent decree pursuant to*
3 *NRS 62C.230.*

4 **Sec. 13.** (Deleted by amendment.)

