

Amendment No. 214

Senate Amendment to Senate Bill No. 366	(BDR 5-498)
Proposed by: Senate Committee on Judiciary	
Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date		
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.



SENATE BILL NO. 366—COMMITTEE ON JUDICIARY

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

MARCH 25, 2021

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to juvenile competency. (BDR 5-498)

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 a juvenile court to order a child who has been found incompetent ~~for the purpose of certification for criminal proceedings as an adult~~ to receive treatment at certain facilities operated by the Division of Child and Family Services of the Department of Health and Human Services; requiring such a facility to accept such a child for treatment; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

~~Existing~~ **Subject to the jurisdiction of the juvenile court, in a case to determine the competence of a child, existing** law requires a juvenile court to ~~certify a child for criminal proceedings as an adult under certain circumstances. However, existing law prohibits a juvenile court from certifying a child for criminal proceedings as an adult if the juvenile court finds by clear and convincing evidence that: (1) the child is developmentally or mentally incompetent to understand the situation and the proceedings of the court or to aid the child's attorney in those proceedings; or (2) the child has a substance use disorder or emotional or behavioral problems and the substance use disorder or emotional or behavioral problems may be appropriately treated through the jurisdiction of the juvenile court. (NRS 62B.390)~~ **Section 1 of this bill suspend the case until the question of competence is determined if doubt arises as to the competence of the child. (NRS 62D.145)** Existing law requires a juvenile court which has determined a child to be developmentally or mentally incompetent ~~for the purpose of certification for criminal proceedings as an adult~~ to determine: (1) whether the child is a danger to himself or herself or society; (2) whether providing services to the child will assist the child in attaining competence and further the state policy goals for the juvenile justice system; and (3) the best form of any services to be provided to the child, including whether such services would be best provided to the child as an outpatient or inpatient. **Existing law requires the juvenile court to issue all necessary and appropriate recommendations and orders after making such determinations. (NRS 62D.180) Existing law also prohibits the commitment of a child by court order to a facility of the Division of Child and Family Services of the Department of Health and Human Services if the administrative officer of the facility or the administrative officer's designee determines that the treatment available at the facility is not appropriate or necessary for the child's health and welfare. (NRS 433B.320)**

~~Section 1.3 of this bill authorizes a juvenile court to issue an order to join any governmental entity or other person as a party to enforce a legal obligation of the entity or person to the child who is the subject of the proceeding if, before issuing the order, the court provides notice and an opportunity to be heard to the entity or person. Section 1.7 of this bill authorizes the juvenile court to order a facility of the Division of Child and Family Services of the Department of Health and Human Services to accept and provide services to a child who has been determined to be incompetent. (For the purpose of certification for criminal proceedings as an adult.) Section 3 of this bill requires a facility of the Division to accept and provide services to a child who has been determined to be incompetent (for the purpose of certification for criminal proceedings as an adult) when ordered pursuant to section 1.7 or 2 of this bill. Section 4 of this bill : (1) exempts an admission to a facility of the Division ordered pursuant to section 1.7 or 2 from the requirement that admission to such a facility is only authorized after consultation with and approval by the administrative officer of the facility or the administrative officer's designee; and (2) requires the administrative officer of the facility or the administrative officer's designee to assist the juvenile court in identifying an alternative facility if the administrative officer or the administrative officer's designee determines that the treatment available at the facility is not appropriate or necessary for the child's health and welfare.~~ (NRS 433B.320)

~~[Section 2 of this bill makes a conforming change that] Existing law requires the juvenile court to conduct a periodic review to determine whether a child who has been determined to be incompetent (for the purpose of certification for criminal proceedings as an adult) has attained competence. [Section 1 requires] Existing law requires a juvenile court which has determined (for the purpose of certification for criminal proceedings as an adult) that a child has not attained competence and is unlikely to attain competence in the foreseeable future to (1) dismiss the motion for certification for criminal proceedings as an adult; and (2) hold a hearing to consider the best interest of the child and the safety of the community and determine whether to dismiss any proceedings against the child and terminate its jurisdiction. (NRS 62D.185) Section 2: (1) requires the juvenile court to issue all necessary and appropriate recommendations and orders; and (2) authorizes the juvenile court to order a facility of the Division to accept and provide services to the child.~~

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

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

~~1. If the juvenile court finds that a child is developmentally or mentally incompetent pursuant to paragraph (a) of subsection 3 of NRS 62B.390, 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 are best 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.~~

~~2. After the juvenile court makes the determinations set forth in subsection 1, the juvenile court shall issue all necessary and appropriate recommendations and orders. The juvenile court may order a division facility to accept and provide services to the child. As used in this subsection, "division facility" has the meaning ascribed to it in NRS 433B.070.~~

~~3. 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.~~

~~4. The juvenile court shall conduct a periodic review to determine whether the child has attained competence pursuant to NRS 62D.185. If the juvenile court determines that the child has not attained competence and is unlikely to attain competence in the foreseeable future, the juvenile court shall:~~

~~(a) Dismiss the motion for certification for criminal proceedings as an adult; and~~

~~(b) Determine whether to dismiss any petitions pending before the juvenile court and terminate the jurisdiction of the juvenile court pursuant to paragraph (c) of subsection 3 of NRS 62D.185. (Deleted by amendment.)~~

Sec. 1.3. Chapter 62D of NRS is hereby amended by adding thereto a new section to read as follows:

In each proceeding conducted pursuant to the provisions of this title, the juvenile court may issue an order to join any governmental entity or other person as a party to enforce a legal obligation of the entity or person to the child who is the subject of the proceeding if, before issuing the order, the court provides notice and an opportunity to be heard to the governmental entity or person.

Sec. 1.7. NRS 62D.180 is hereby amended to read as follows:

62D.180 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. The juvenile court may order a division facility to accept and provide services to the child. As used in this subsection, "division facility" has the meaning ascribed to it in NRS 433B.070.

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. 2. NRS 62D.185 is hereby amended to read as follows:

62D.185 1. If the juvenile court determines that a child is incompetent pursuant to NRS 62D.180 ~~for section 1 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;

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

2 (d) After a person ordered by the juvenile court to provide services to the child
3 pursuant to NRS 62D.180 ~~for section 1 of this act~~ determines that the child has
4 attained competence or will never attain competence; or

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

6 2. Before a periodic review is conducted pursuant to subsection 1, any person
7 ordered by the juvenile court to provide services to a child pursuant to NRS
8 62D.180 ~~for section 1 of this act~~ must provide a written report to the juvenile
9 court, the parties, and the department of juvenile services or Youth Parole Bureau,
10 as applicable.

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

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

15 (b) Has not attained competence, the juvenile court shall order appropriate
16 treatment, including, without limitation, residential or nonresidential placement in
17 accordance with NRS 62D.140 to 62D.190, inclusive, commitment to an institution
18 for persons with intellectual disabilities or mental illness pursuant to NRS 62E.160,
19 or as otherwise allowed by law.

20 (c) Has not attained competence and will be unable to attain competence in the
21 foreseeable future, the juvenile court shall hold a hearing to consider the best
22 interests of the child and the safety of the community and shall issue all necessary
23 and appropriate recommendations and orders. The juvenile court may, without
24 limitation, order a division facility to accept and provide services to the child or
25 determine whether to dismiss any petitions pending before the juvenile court and
26 terminate the jurisdiction of the juvenile court. In determining whether to dismiss a
27 petition and terminate its jurisdiction pursuant to this paragraph, the juvenile court
28 shall consider:

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

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

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

34 (4) The extent to which the child has received counseling, therapy or
35 treatment, and the response of the child to any such counseling, therapy or
36 treatment;

37 (5) The extent to which the child has received education, services or
38 treatment relating to remediating, restoring or attaining competence and the
39 response of the child to any such education, services or treatment;

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

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

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

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

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

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

52 (12) Whether the child has had positive psychological and social
53 evaluations; and

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

4. As used in this section, "division facility" has the meaning ascribed to it in NRS 433B.070.

Sec. 3. NRS 433B.130 is hereby amended to read as follows:

433B.130 1. The Administrator shall:

(a) Administer, in accordance with the policies established by the Commission, the programs of the Division for the mental health of children.

(b) Establish appropriate policies to ensure that children in division facilities have timely access to clinically appropriate psychotropic medication that are consistent with the provisions of NRS 432B.197 and NRS 432B.4681 to 432B.469, inclusive, and the policies adopted pursuant thereto.

(c) Upon an order of a juvenile court pursuant to ~~section 1 of this act~~, NRS 62D.180 or 62D.185, accept and provide services to a child who has been determined to be incompetent by the juvenile court. ~~for the purpose of certification for criminal proceedings as an adult.~~

2. The Administrator may:

(a) Appoint the administrative personnel necessary to operate the programs of the Division for the mental health of children.

(b) Delegate to the administrative officers the power to appoint medical, technical, clerical and operational staff necessary for the operation of any division facilities.

3. If the Administrator finds that it is necessary or desirable that any employee reside at a facility operated by the Division or receive meals at such a facility, perquisites granted or charges for services rendered to that person are at the discretion of the Director of the Department.

4. The Administrator may enter into agreements with the Administrator of the Division of Public and Behavioral Health of the Department or with the Administrator of the Aging and Disability Services Division of the Department for the care and treatment of consumers of the Division of Child and Family Services at any facility operated by the Division of Public and Behavioral Health or the Aging and Disability Services Division, as applicable.

Sec. 4. NRS 433B.320 is hereby amended to read as follows:

433B.320 1. In any case involving commitment by court order, except a case where commitment was ordered by a juvenile court pursuant to ~~section 1 of this act~~, NRS 62D.180 or 62D.185, admission to a treatment facility may be only after consultation with and approval by the administrative officer of the facility or the administrative officer's designee, who shall determine whether the treatment available at the facility is appropriate or necessary for the child's health and welfare.

2. ~~At~~ In a case where commitment to a treatment facility was ordered by a juvenile court pursuant to NRS 62D.180 or 62D.185, if the administrative officer of the facility or the administrative officer's designee has determined that the treatment available at the facility is not appropriate or necessary for the child's health and welfare, the administrative officer or the administrative officer's designee shall assist the court with identifying a facility that has the appropriate or necessary treatment.

3. Except in a case where commitment was ordered by a juvenile court pursuant to NRS 62D.180 or 62D.185, a child committed by court order must not be released from a treatment facility until the administrative officer determines that treatment in the facility is no longer beneficial to the child.

1 **Sec. 5.** Notwithstanding the provisions of NRS 218D.430 and 218D.435, a
2 committee, other than the Assembly Standing Committee on Ways and Means and
3 the Senate Standing Committee on Finance, may vote on this act before the
4 expiration of the period prescribed for the return of a fiscal note in NRS 218D.475.
5 This section applies retroactively from and after March 22, 2021.

6 **Sec. 6.** This act becomes effective on July 1, 2021.