

Amendment No. 440

Senate Amendment to Senate Bill No. 366	(BDR 5-498)
<b>Proposed by:</b> Senator Ohrenschall	
<b>Amendment Box:</b> Consistent with Amendment No. 214.	
<b>Amends:</b> 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; prohibiting a child found to be incompetent from being committed to the custody of a correctional facility; allowing a child found to be incompetent to petition to seal his or her record; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

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 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. **Section 1** also 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. Section 4** of this bill exempts an admission to a facility of the Division ordered pursuant to **section 1** 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. (NRS 433B.320)

**Section 2** of this bill makes a conforming change that 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 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) determine whether to dismiss any proceedings against the child and terminate its jurisdiction.

Existing law provides that a child found to be incompetent may not be adjudicated delinquent or placed under the supervision of a juvenile court. (NRS 62D.190) Section 2.3 of this bill provides that a child found to be incompetent may not be committed to the custody of a correctional facility. Additionally, section 2.3 authorizes a child found to be incompetent to request that his or her records be sealed. Section 2.7 of this bill makes conforming changes to reflect the change regarding the sealing of records in section 2.3.

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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.*

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

2       62D.185 1. If the juvenile court determines that a child is incompetent  
3 pursuant to NRS 62D.180 ~~§~~ *or section 1 of this act*, the juvenile court shall  
4 conduct a periodic review to determine whether the child has attained competence.  
5 Unless the juvenile court terminates its jurisdiction pursuant to paragraph (c) of  
6 subsection 3, such a periodic review must be conducted:

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

10       (b) After any period of extended treatment;

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

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

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

16       2. Before a periodic review is conducted pursuant to subsection 1, any person  
17 ordered by the juvenile court to provide services to a child pursuant to NRS  
18 62D.180 *or section 1 of this act* must provide a written report to the juvenile court,  
19 the parties, and the department of juvenile services or Youth Parole Bureau, as  
20 applicable.

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

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

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

30       (c) Has not attained competence and will be unable to attain competence in the  
31 foreseeable future, the juvenile court shall hold a hearing to consider the best  
32 interests of the child and the safety of the community and determine whether to  
33 dismiss any petitions pending before the juvenile court and terminate the  
34 jurisdiction of the juvenile court. In determining whether to dismiss a petition and  
35 terminate its jurisdiction pursuant to this paragraph, the juvenile court shall  
36 consider:

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

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

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

42       (4) The extent to which the child has received counseling, therapy or  
43 treatment, and the response of the child to any such counseling, therapy or  
44 treatment;

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

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

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

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

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

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

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

(12) Whether the child has had positive psychological and social 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.

**Sec. 2.3. NRS 62D.190 is hereby amended to read as follows:**

62D.190 1. If the juvenile court determines that a child is incompetent pursuant to NRS 62D.180, during the period that the child remains incompetent, the child may not be:

~~1.1~~ (a) Adjudicated a delinquent child or a child in need of supervision; ~~for~~

~~2.1~~ (b) Placed under the supervision of the juvenile court pursuant to a supervision and consent decree pursuant to NRS 62C.230 ~~1.1~~; or

(c) Committed to the custody of a correctional facility.

2. If the juvenile court determines that a child is incompetent and unable to attain competence in the foreseeable future pursuant to subsection 3 of NRS 62D.185, the child may petition to have his or her records sealed pursuant to NRS 62H.130.

**Sec. 2.7. NRS 62H.130 is hereby amended to read as follows:**

62H.130 1. If a child is less than 21 years of age, the child or a probation or parole officer on behalf of the child may petition the juvenile court for an order sealing all records relating to the child. Except as otherwise provided in NRS 62E.275, the petition may be filed:

(a) Not earlier than 3 years after the child was last adjudicated in need of supervision, adjudicated delinquent ~~1.1~~ placed under the supervision of the juvenile court pursuant to NRS 62C.230 ~~1.1~~ or determined to be incompetent and unlikely to attain competence in the foreseeable future pursuant to subsection 3 of NRS 62D.185; and

(b) If, at the time the petition is filed, the child does not have any delinquent or criminal charges pending.

2. If a petition is filed pursuant to this section, the juvenile court shall notify the district attorney and, if a probation or parole officer is not the petitioner, the chief probation officer or the Chief of the Youth Parole Bureau.

3. The district attorney and the chief probation officer or any of their deputies, the Chief of the Youth Parole Bureau or his or her designee, or any other person who has evidence that is relevant to consideration of the petition may testify at the hearing on the petition.

4. Except as otherwise provided in subsection 6, after the hearing on the petition, if the juvenile court finds that during the applicable 3-year period, the child has not been convicted of a felony or of any misdemeanor involving moral turpitude and the child has been rehabilitated to the satisfaction of the juvenile court, the juvenile court:

(a) May enter an order sealing all records relating to the child if the child is less than 18 years of age; and

(b) Shall enter an order sealing all records relating to the child if the child is 18 years of age or older.

5. In determining whether a child has been rehabilitated to the satisfaction of the juvenile court pursuant to subsection 4, the juvenile court may consider:

- (a) The age of the child;
- (b) The nature of the offense and the role of the child in the commission of the offense;
- (c) The behavior of the child after the child was last adjudicated in need of supervision or adjudicated delinquent, placed under the informal supervision of a probation officer pursuant to NRS 62C.200 or placed under the supervision of the juvenile court pursuant to NRS 62C.230;
- (d) The response of the child to any treatment or rehabilitation program;
- (e) The education and employment history of the child;
- (f) The statement of the victim;
- (g) The nature of any criminal offense for which the child was convicted;
- (h) Whether the sealing of the record would be in the best interest of the child and the State; and
- (i) Any other circumstance that may relate to the rehabilitation of the child.

6. If the juvenile court retains jurisdiction over a civil judgment and a person against whom the civil judgment was entered pursuant to NRS 62B.420, the case caption, case number and order entering the civil judgment must not be sealed until the civil judgment is satisfied or expires. After the civil judgment is satisfied or expires, the child or a person named as a judgment debtor may file a petition to seal such information.

**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, 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*

1 *this act*, admission to a treatment facility may be only after consultation with and  
2 approval by the administrative officer of the facility or the administrative officer's  
3 designee, who shall determine whether the treatment available at the facility is  
4 appropriate or necessary for the child's health and welfare.

5 2. A child committed by court order must not be released from a treatment  
6 facility until the administrative officer determines that treatment in the facility is no  
7 longer beneficial to the child.

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

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