

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 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



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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.

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.

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 ~~§~~ *or 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;

(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 NRS 62D.180 *or section 1 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 NRS 62D.180 *or section 1 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 NRS 62D.140 to 62D.190, inclusive, 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 a hearing to consider the best interests of the child and the safety of



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

41 433B.130 1. The Administrator shall:

42 (a) Administer, in accordance with the policies established by
43 the Commission, the programs of the Division for the mental health
44 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 this act*, 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. 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.

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



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

