

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.

~

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 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; requiring the submittal of certain data and information relating to the competency of children; requiring the development and submittal of a plan for the structure of services for the competency of children; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

- 1 Subject to the jurisdiction of the juvenile court, in a case to determine the
- 2 competence of a child, existing law requires a juvenile court to suspend the case
- 3 until the question of competence is determined if doubt arises as to the competence
- 4 of the child. (NRS 62D.145) Existing law requires a juvenile court which has
- 5 determined a child to be developmentally or mentally incompetent to determine: (1)
- 6 whether the child is a danger to himself or herself or society; (2) whether providing
- 7 services to the child will assist the child in attaining competence and further the
- 8 state policy goals for the juvenile justice system; and (3) the best form of any
- 9 services to be provided to the child, including whether such services would be best



* S B 3 6 6 R 2 *

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 to accept and provide services to a child who has been determined to be incompetent. **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 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)

Existing law requires the juvenile court to conduct a periodic review to determine whether a child who has been determined to be incompetent has attained competence. Existing law requires a juvenile court which has determined that a child has not attained competence and is unlikely to attain competence in the foreseeable future to 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.

Existing law provides that a child found to be incompetent may not be adjudicated delinquent or in need of supervision 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 and unable to attain competence in the foreseeable future to request that his or her records be sealed. **Section 2.7** of this bill makes a conforming change to reflect the change regarding the sealing of records in **section 2.3**.

Section 2.5 of this bill requires each department of juvenile services and the Youth Parole Bureau of the Division to submit data and information relating to any proceeding to determine the competency of a child to the Division. **Section 4.3** of this bill requires the Division to: (1) review any current services being provided for the competency of children; (2) develop a plan for the structure of services for competency of children; and (3) submit the plan to Legislative Committee on Child Welfare and Juvenile Justice.



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

Section 1. (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 consistent with the provisions of NRS 433B.320. 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, the juvenile court shall conduct a periodic review to determine whether the child has



1 attained competence. Unless the juvenile court terminates its
2 jurisdiction pursuant to paragraph (c) of subsection 3, such a
3 periodic review must be conducted:

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

8 (b) After any period of extended treatment;

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

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

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

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

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

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

24 (b) Has not attained competence, the juvenile court shall order
25 appropriate treatment, including, without limitation, residential or
26 nonresidential placement in accordance with NRS 62D.140 to
27 62D.190, inclusive, commitment to an institution for persons with
28 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
31 competence in the foreseeable future, the juvenile court shall hold a
32 hearing to consider the best interests of the child and the safety of
33 the community and *shall issue all necessary and appropriate*
34 *recommendations and orders. The juvenile court may, without*
35 *limitation, order a division facility to accept and provide services*
36 *to the child consistent with the provisions of NRS 433B.320 or*
37 *determine whether to dismiss any petitions pending before the*
38 *juvenile court and terminate the jurisdiction of the juvenile court. In*
39 *determining whether to dismiss a petition and terminate its*
40 *jurisdiction pursuant to this paragraph, the juvenile court shall*
41 *consider:*

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



(2) The date the act was allegedly committed by the child;
(3) The number of times the child has allegedly committed the act;

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

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

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

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

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

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:

~~H-I~~ **(a)** Adjudicated a delinquent child or a child in need of supervision; ~~for~~

~~—2-I~~ **(b)** Placed under the supervision of the juvenile court pursuant to a supervision and consent decree pursuant to NRS 62C.230 ~~H-I~~; 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. 2.5. Chapter 62H of NRS is hereby amended by adding thereto a new section to read as follows:

1. Not later than December 1 of each year, each department of juvenile services and the Youth Parole Bureau shall submit data and information relating to any proceeding to determine the competency of a child to the Division of Child and Family Services. The information must include, without limitation, for the immediately preceding 12 months:

(a) The number of children evaluated for competency;

(b) The number of children determined not competent to proceed and the nature of the cause for the lack of competency;

(c) The demographic information for each child evaluated for competency; and

(d) Any other data or information which is necessary, as determined by the Division of Child and Family Services.

2. The data and information submitted pursuant to subsection 1 must be submitted in a format determined by the Division of Child and Family Services.

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, ~~or~~ placed under the supervision of the juvenile court pursuant to NRS 62C.230 ~~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



1 applicable 3-year period, the child has not been convicted of a
2 felony or of any misdemeanor involving moral turpitude and the
3 child has been rehabilitated to the satisfaction of the juvenile court,
4 the juvenile court:

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

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

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

12 (a) The age of the child;

13 (b) The nature of the offense and the role of the child in the
14 commission of the offense;

15 (c) The behavior of the child after the child was last adjudicated
16 in need of supervision or adjudicated delinquent, placed under the
17 informal supervision of a probation officer pursuant to NRS
18 62C.200 or placed under the supervision of the juvenile court
19 pursuant to NRS 62C.230;

20 (d) The response of the child to any treatment or rehabilitation
21 program;

22 (e) The education and employment history of the child;

23 (f) The statement of the victim;

24 (g) The nature of any criminal offense for which the child was
25 convicted;

26 (h) Whether the sealing of the record would be in the best
27 interest of the child and the State; and

28 (i) Any other circumstance that may relate to the rehabilitation
29 of the child.

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

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

38 433B.130 1. The Administrator shall:

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

42 (b) Establish appropriate policies to ensure that children in
43 division facilities have timely access to clinically appropriate
44 psychotropic medication that are consistent with the provisions of



1 NRS 432B.197 and NRS 432B.4681 to 432B.469, inclusive, and the
2 policies adopted pursuant thereto.

3 *(c) Upon an order of a juvenile court pursuant to NRS*
4 *62D.180 or 62D.185, accept and provide services to a child who*
5 *has been determined to be incompetent by the juvenile court.*

6 2. The Administrator may:

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

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

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

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

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

26 433B.320 1. In any case involving commitment by court
27 order, *except a case where commitment was ordered by a juvenile*
28 *court pursuant to NRS 62D.180 or 62D.185*, admission to a
29 treatment facility may be only after consultation with and approval
30 by the administrative officer of the facility or the administrative
31 officer's designee, who shall determine whether the treatment
32 available at the facility is appropriate or necessary for the child's
33 health and welfare.

34 2. ~~1A~~ *In a case where commitment to a treatment facility was*
35 *ordered by a juvenile court pursuant to NRS 62D.180 or 62D.185,*
36 *if the administrative officer of the facility or the administrative*
37 *officer's designee has determined that the treatment available at*
38 *the facility is not appropriate or necessary for the child's health*
39 *and welfare and for the protection of the community, the*
40 *administrative officer or the administrative officer's designee shall*
41 *assist the court with identifying a facility that has the appropriate*
42 *or necessary treatment.*

43 3. *Except in a case where commitment was ordered by a*
44 *juvenile court pursuant to NRS 62D.180 or 62D.185, a child*
45 *committed by court order must not be released from a treatment*



1 facility until the administrative officer determines that treatment in
2 the facility is no longer beneficial to the child.

3 **Sec. 4.3.** The Division of Child and Family Services of the
4 Department of Health and Human Services shall review any current
5 services being provided for the competency of children and develop
6 a plan for the structure of services for the competency of children.
7 The plan must be submitted to the Legislative Committee on Child
8 Welfare and Juvenile Justice created by NRS 218E.705 not later
9 than October 1, 2022.

10 **Sec. 4.7.** The provisions of subsection 1 of NRS 218D.380 do
11 not apply to any provision of this act which adds or revises a
12 requirement to submit a report to the Legislature.

13 **Sec. 5.** Notwithstanding the provisions of NRS 218D.430 and
14 218D.435, a committee, other than the Assembly Standing
15 Committee on Ways and Means and the Senate Standing Committee
16 on Finance, may vote on this act before the expiration of the period
17 prescribed for the return of a fiscal note in NRS 218D.475. This
18 section applies retroactively from and after March 22, 2021.

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

