

Supreme Court of Nevada

MEMORANDUM

TO: Assemblyman Jason Frierson, Chair, Legislative Committee on Child Welfare and Juvenile Justice (*Nevada Revised Statutes* 218E.705)

FROM: Justice James W. Hardesty and Justice Nancy M. Saitta, Co-chairs, Nevada Supreme Court Commission on Statewide Juvenile Justice Reform

COPY: Members of the Supreme Court Commission on Statewide Juvenile Justice Reform

DATE: July 7, 2014

SUBJECT: Legislative Recommendations

The Nevada Supreme Court's Commission on Statewide Juvenile Justice Reform unanimously approved making the following recommendations to create a new statute on juvenile competency and to adopt amendments to Nevada Revised Statutes 392.466 and 392.910:

Juvenile Competency Statute – New Statute

1. Adopt the draft juvenile competency statute as a new section Nevada Revised Statute under Title 5 – Juvenile Justice. The attached draft juvenile competency statute outlines the process of determining competency in juvenile proceedings including the appointment of experts, competency evaluations, hearings on competency, and findings and orders of the court.

School Discipline

2. Amend NRS 392.466 subsections (1) and (3) to allow the superintendent of schools the discretion to allow a modification to the expulsion requirement for:
 - a. Battery
 - b. Sale or distribution of controlled substance
 - c. Status as a habitual disciplinary problem

The current statute does allow the superintendent of schools the discretion to allow a modification to the expulsion requirement if any pupil is found in possession of a firearm or a dangerous weapon while on public school property, “The superintendent of schools of a school district may, for good cause shown in a particular case in that school district, allow a modification to the expulsion requirement of this subsection if such modification is set forth in writing.”

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3. Amend NRS 392.910 removing language from section 1, which makes the use of vile or indecent language within the school a misdemeanor. The amendment would also insert references to the definition for assault, maliciously, and school employee.

Exhibit A

Recommendation Number 1

A new section is hereby added to Nevada Revised Statute Chapter 62; Juvenile Competency

1. A child may not be adjudicated a delinquent child, placed on a supervision and consent decree pursuant to NRS 62C.230, or adjudicated a child in need of supervision while incompetent.
2. At any time after petition is filed, and prior to the imposition of a final order of disposition, if doubt arises as to the competence of the child, the court shall, except as otherwise provided in this statute, suspend the proceeding until the question of competence is determined.
 - A. All dispositional time requirements of [NRS 62D.310](#) are tolled pending the determination of competence subject to periodic review by the court pursuant to Section 9.
 - B. During the pendency of the determination of competency, the court shall consider, and may order the appropriate placement of the child and/or any services and other care necessary for the well-being of the child, or necessary for public safety.
3. *Limited Used of Competency Evidence.*
 - A. Any information presented to the court relevant to the determination of competency, and any information elicited from the child pursuant to this statute, may only be considered by the court for the determination of competency and the disposition of the case.
 - B. The child waives the restrictions in subsection 3(A) by presenting said information to the court for a purpose other than that provided for in subsection 3(A).
4. *Motion.*
 - A. A motion for examination of a child shall be certified by the moving party that the motion is made in good faith and on reasonable grounds to believe that the child is incompetent to proceed, and shall recite specific facts supporting the motion, including any non-privileged observations of the child and non-privileged statements of the child.
5. *Appointment of Experts.*
 - A. Upon suspension of any proceeding when the issue of competency is raised, the court shall appoint an expert or experts who shall include either a psychiatrist, or psychologist, certified pursuant to subparagraph (E), to examine the child and provide a written report to the court and the parties.
 - B. The appointment of experts by the court shall not preclude the state or the child from calling other expert witnesses to testify at the adjudicatory hearing, hearing on violation of juvenile probation, or at the hearing to determine the competence of the child. Any party's expert shall be able to examine the child and all relevant records and documents.
 - C. Any person appointed to examine the child must be certified pursuant to subparagraph (E).
 - D. Any person appointed to examine the child must prepare and provide a written report to the court and the parties within 14 days of the order of the court, which may be extended for good cause shown.

- E. Before appointing a person to evaluate and report on the competency of the child, the court shall consider the following factors to determine the ability and qualification of the person to provide such evaluation and report:
 - 1)The training and experience of the person in child psychology or psychiatry with forensic specialization;
 - 2)The licensure or professional certification of the person; and
 - 3)Any other factors the court deems appropriate in making the appointment.

6. *Competency Evaluation.*

- A. For the purposes of this chapter, “incompetent” means that the child does not have the present ability to:
 - 1) Understand the nature of the delinquency or child in need of supervision allegations against him or her;
 - 2) Understand the nature and purpose of the court proceedings; or
 - 3) Aid or assist his or her counsel in the defense at any time during the proceedings with a reasonable degree of rational understanding.
- B. Examination by Expert(s). On appointment by the court, the expert(s) shall examine the child with respect to the issue of competence to proceed as specified by the court in its order appointing the experts.
 - 1) In considering the competence of the child to proceed, the experts shall consider and include in their written reports the child’s capacity to:
 - a. Appreciate the allegations against the child;
 - b. Appreciate the range and nature of possible penalties that may be imposed in the proceedings against the child, if applicable;
 - c. Understand the adversary nature of the legal process;
 - d. Disclose to counsel facts pertinent to the proceedings at issue;
 - e. Display appropriate courtroom behavior; and
 - f. Testify relevantly.
 - 2) In addition to the factors set forth in section 6 (A-B), in determining competency, in proceedings pursuant to NRS 62 A-I, inclusive, the expert shall consider the following as appropriate to the circumstances of the child:
 - a. The age and developmental maturity of the child;
 - b. Whether the child suffers from mental illness or a developmental disorder, including mental disability;
 - c. Whether the child has any other disability that affects the child’s competence; and
 - d. Any other factor that affects the child’s competence.
- C. Written Findings. A written report submitted by the experts shall:
 - 1) Identify the specific matters referred for evaluation;
 - 2) Describe the procedures, techniques, and tests used in the examination and the purposes of each;

- 3) State the expert's clinical observations, findings, and opinions, if any, on each issue referred for evaluation by the court and indicate specifically those issues, if any, on which the expert could not give an opinion; and
- 4) Identify the sources of information used by the expert and present the factual basis for the expert's clinical findings and opinions.
- 5) If an expert finds that the child is incompetent to proceed, the expert shall report on any recommended treatment for the child to attain competence to proceed, the likelihood of the child attaining competence under the treatment or education recommended, an assessment of the probable duration of the treatment required to attain or restore competence, and the probability that the child will attain competence to proceed in the foreseeable future. If the expert is recommending treatment to attain competence, the report shall include a recommendation as to whether services can best be provided on an outpatient basis, in-patient basis, or through placement to a secure treatment facility.
- 6) If so ordered by the court, the expert shall also report on any counseling, treatment, education or therapy to assist the child with behavioral, emotional, psychological or psychiatric issues.

7. Hearing on Competency.

- A. Upon receipt of all required reports, the juvenile court shall hold a hearing to determine whether the child is competent to proceed. The parties may waive the presence of witnesses and submit the issue on the written reports of the experts.
- B. The parties may:
 - 1) Introduce other evidence including, without limitation, evidence related to treatment, competency, and the possibility of ordering the involuntary administration of medication; and
 - 2) Cross-examine witnesses.
- C. The burden of proof is upon the moving party to rebut the presumption of competence by a preponderance of the evidence.
- D. The parties shall disclose all witnesses, reports and documents 10 days prior to the hearing unless the parties stipulate or the court orders otherwise.
- E. The court shall expedite any such hearing.

8. Findings and Orders of the Court.

- A. Upon due consideration of the reports, and any testimony, additional reports or other evidence admitted at the hearing, the juvenile court shall enter findings on the question of competence.
- B. If the court finds that the child is incompetent to proceed, the court shall make the following findings:
 - 1) Whether the child is a danger to himself/herself or to society;
 - 2) Whether the provision of services will assist the child in attaining competence and whether those services can be best provided on an outpatient basis, in-patient basis, or through placement to a secure

treatment facility pursuant to [NRS 62E.160](#), or as otherwise allowed by law.

- 3) Whether the provision of services may further the public policy goals set forth in [NRS 62A.360 \(1\) – \(2\)](#) and whether those services can be best provided on an outpatient basis, in-patient basis, or through placement to a treatment facility pursuant to [NRS 62E.160](#), or as otherwise allowed by law.
- C. The court shall issue any and all recommendations and/or orders necessary and appropriate in light of the findings required by subsection 8 (B) (1) – (3) of this statute.
- D. All court-ordered treatment must provide the care, guidance, and control as will be conducive to the child's welfare and the best interests of the State.
- E. If the court finds that the child is competent, the proceedings shall proceed accordingly.
9. *Periodic Review.* A periodic review by the Court shall be held not later than 6 months after the earliest of either the date of placement or the date treatment commenced, or at the end of any period of extended treatment, or at any time the child has completed his court-ordered treatment, or at any time the service provider determines the child has attained competency or will never attain competency, or at such shorter intervals as ordered by the court, the service provider must provide a written report to the Court, the parties, and juvenile services or youth parole, as applicable.
 - A. If the court determines that the child continues to remain incompetent, the court shall order appropriate treatment, including residential or non-residential placement, in conformity with this statute, the applicable provisions of [NRS 62E.160](#), or as otherwise allowed by law.
 - B. If the court determines that the child is unable to attain competency in the foreseeable future, the court, after a hearing to consider the best interest of the child and safety of the community, shall consider the following factors in determining whether to dismiss any pending petitions and terminate jurisdiction of the juvenile court:
 - 1) The number, date, nature, and gravity of the act or acts allegedly committed by the child, including whether the act or acts involved the use of a weapon, violence, or infliction of serious bodily injury;
 - 2) 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;
 - 3) The extent to which the child has received education, services or treatment relating to remediating, restoring or gaining competency and the response of the child to any such education, services or treatment;
 - 4) Whether psychological or psychiatric profiles indicate a risk of recidivism;
 - 5) The behavior of the child while subject to the jurisdiction of the juvenile court, including the behavior of the child during any period of confinement;
 - 6) The extent to which counseling, therapy or treatment is available to the child in the absence of continued juvenile court jurisdiction;

- 7) Any physical conditions that minimize the risk of recidivism, including physical disability or illness;
 - 8) Age, mental attitude, maturity level, emotional stability, family support and positive psychological and social evaluation; and
 - 9) Any other factor that the juvenile court finds relevant to the determination of whether continued juvenile court jurisdiction will be conducive to the child's welfare and the safety of the community.
- C. If the court determines the child to be competent, the court shall enter an order so finding and proceed accordingly.

Exhibit B

Recommendation 2

NRS 392.466 Suspension or expulsion of pupil for battery on employee of school, possession of firearm or dangerous weapon, sale or distribution of controlled substance or status as habitual disciplinary problem; limitations for pupils with disabilities

1. Except as otherwise provided in this section, any pupil who commits a battery which results in the bodily injury of an employee of the school or who sells or distributes any controlled substance while on the premises of any public school, at an activity sponsored by a public school or on any school bus must, for the first occurrence, be suspended or expelled from that school, although the pupil may be placed in another kind of school, for at least a period equal to one semester for that school. For a second occurrence, the pupil must be permanently expelled from that school and:

- (a) Enroll in a private school pursuant to [chapter 394](#) of NRS or be homeschooled; or
- (b) Enroll in a program of independent study provided pursuant to [NRS 389.155](#) for pupils who have been suspended or expelled from public school or a program of distance education provided pursuant to [NRS 388.820](#) to [388.874](#), inclusive, if the pupil qualifies for enrollment and is accepted for enrollment in accordance with the requirements of the applicable program.

↪ The superintendent of schools of a school district may, for good cause shown in a particular case in that school district, allow a modification to the expulsion requirement of this subsection if such modification is set forth in writing.

2. Except as otherwise provided in this section, any pupil who is found in possession of a firearm or a dangerous weapon while on the premises of any public school, at an activity sponsored by a public school or on any school bus must, for the first occurrence, be expelled from the school for a period of not less than 1 year, although the pupil may be placed in another kind of school for a period not to exceed the period of the expulsion. For a second occurrence, the pupil must be permanently expelled from the school and:

- (a) Enroll in a private school pursuant to [chapter 394](#) of NRS or be homeschooled; or
- (b) Enroll in a program of independent study provided pursuant [NRS 389.155](#) for pupils who have been suspended or expelled from public school or a program of distance education provided pursuant to [NRS 388.820](#) to [388.874](#), inclusive, if the pupil qualifies for enrollment and is accepted for enrollment in accordance with the requirements of the applicable program.

↪ The superintendent of schools of a school district may, for good cause shown in a particular case in that school district, allow a modification to the expulsion requirement of this subsection if such modification is set forth in writing.

3. Except as otherwise provided in this section, if a pupil is deemed a habitual disciplinary problem pursuant to [NRS 392.4655](#), the pupil must be suspended or expelled from the school for a period equal to at least one semester for that school. For the period of the pupil's suspension or expulsion, the pupil must:

- (a) Enroll in a private school pursuant to [chapter 394](#) of NRS or be homeschooled; or
- (b) Enroll in a program of independent study provided pursuant to [NRS 389.155](#) for pupils who have been suspended or expelled from public school or a program of distance education provided pursuant to [NRS 388.820](#) to [388.874](#), inclusive, if the pupil qualifies for enrollment and is accepted for enrollment in accordance with the requirements of the applicable program.

↪ **The superintendent of schools of a school district may, for good cause shown in a particular case in that school district, allow a modification to the suspension or expulsion requirement of this subsection if such modification is set forth in writing.**

4. This section does not prohibit a pupil from having in his or her possession a knife or firearm with the approval of the principal of the school. A principal may grant such approval only in accordance with the policies or regulations adopted by the board of trustees of the school district.

5. Any pupil in grades 1 to 6, inclusive, except a pupil who has been found to have possessed a firearm in violation of subsection 2, may be suspended from school or permanently expelled from school pursuant to this section only after the board of trustees of the school district has reviewed the circumstances and approved this action in accordance with the procedural policy adopted by the board for such issues.

6. A pupil who is participating in a program of special education pursuant to [NRS 388.520](#), other than a pupil who is gifted and talented or who receives early intervening services, may, in accordance with the procedural policy adopted by the board of trustees of the school district for such matters, be:

(a) Suspended from school pursuant to this section for not more than 10 days. Such a suspension may be imposed pursuant to this paragraph for each occurrence of conduct proscribed by subsection 1.

(b) Suspended from school for more than 10 days or permanently expelled from school pursuant to this section only after the board of trustees of the school district has reviewed the circumstances and determined that the action is in compliance with the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 et seq.

7. As used in this section:

(a) "Battery" has the meaning ascribed to it in paragraph (a) of subsection 1 of [NRS 200.481](#).

(b) "Dangerous weapon" includes, without limitation, a blackjack, slungshot, billy, sand-club, sandbag, metal knuckles, dirk or dagger, a nunchaku, switchblade knife or trefoil, as defined in [NRS 202.350](#), a butterfly knife or any other knife described in [NRS 202.350](#), or any other object which is used, or threatened to be used, in such a manner and under such circumstances as to pose a threat of, or cause, bodily injury to a person.

(c) "Firearm" includes, without limitation, any pistol, revolver, shotgun, explosive substance or device, and any other item included within the definition of a "firearm" in 18 U.S.C. § 921, as that section existed on July 1, 1995.

8. The provisions of this section do not prohibit a pupil who is suspended or expelled from enrolling in a charter school that is designed exclusively for the enrollment of pupils with disciplinary problems if the pupil is accepted for enrollment by the charter school pursuant to [NRS 386.580](#). Upon request, the governing body of a charter school must be provided with access to the records of the pupil relating to the pupil's suspension or expulsion in accordance with applicable federal and state law before the governing body makes a decision concerning the enrollment of the pupil.

Exhibit C

Recommendation 3

NRS 392.910 Disturbance of school; assaulting pupil or school employee; interference with persons peaceably assembled within school; penalties.

1. ~~It is unlawful for any person to disturb the peace of any public school by using vile or indecent language within the building or grounds of the school. Any person who violates any of the provisions of this subsection is guilty of a misdemeanor.~~
2. It is unlawful for any person to assault any pupil or school employee:
 - (a) Within the building or grounds of the school;
 - (b) On a bus, van or any other motor vehicle owned, leased or chartered by a school district to transport pupils or school employees; or
 - (c) At a location where the pupil or school employee is involved in an activity sponsored by a public school.
2. Except under circumstances described in paragraph (c) or (d) of subsection 2 of [NRS 200.471](#) *with respect to school employees*, or in [NRS 200.571](#), any person who violates ~~any of the provisions of~~ this subsection is guilty of a misdemeanor.
3. 2. It is unlawful for any person maliciously ~~and purposely~~ in any manner to interfere with or disturb any persons peaceably assembled within a building of a public school for school district purposes. Any person who violates ~~any of the provisions of~~ this subsection is guilty of a misdemeanor.
4. 3. For the purposes of this section:
 - (a) *"Assault" has the meaning ascribed to it in NRS 200.471.*
 - (b) *"Maliciously" has the meaning ascribed to it in NRS 193.0175.*
 - (c) ~~school~~ *"School* employee" means any licensed or unlicensed person employed by a board of trustees of a school district pursuant to [NRS 391.100](#).