

ASSEMBLY BILL NO. 23—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE DIVISION OF PUBLIC AND BEHAVIORAL HEALTH OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES)

PREFILED NOVEMBER 18, 2020

Referred to Committee on Judiciary

SUMMARY—Revises provisions regarding the procedure to commit an incompetent criminal defendant. (BDR 14-291)

FISCAL NOTE: Effect on Local Government: No. Effect on the State: No.

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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 criminal procedure; revising the procedure for the commitment of certain criminal defendants whom the court finds to be incompetent to the custody of the Administrator of the Division of Public and Behavioral Health of the Department of Health and Human Services; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law provides that if a court dismisses the proceedings against a
2 defendant who is charged with any category A felony or certain category B
3 felonies because the court finds that the defendant is incompetent with no
4 substantial probability of attaining competence in the foreseeable future, the
5 prosecuting attorney is authorized to file a motion with the court for a hearing to
6 determine whether to commit the person to the custody of the Administrator of the
7 Division of Public and Behavioral Health of the Department of Health and Human
8 Services. Existing law requires the hearing to be scheduled within 10 judicial days
9 after the filing of the motion. After the motion is filed, the Division is required to
10 perform a comprehensive risk assessment and provide the assessment to the court,
11 prosecuting attorney and attorney for the defendant at least 3 judicial days before
12 the hearing. (NRS 178.425, 178.461) This bill requires that the Division: (1)
13 complete the comprehensive risk assessment within 40 calendar days after the
14 request for the assessment is received, unless the court grants an extension for
15 good cause shown; and (2) provide the assessment to the court, the prosecuting
16 attorney and the counsel of the person. This bill requires the court to hold a



17 hearing on the motion within 10 judicial days after receipt of the comprehensive
18 risk assessment by the court.

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

1 **Section 1.** NRS 178.461 is hereby amended to read as follows:

2 178.461 1. If the proceedings against a defendant who is
3 charged with any category A felony or a category B felony listed in
4 subsection 6 are dismissed pursuant to subsection 5 of NRS
5 178.425, the prosecuting attorney may, within 10 judicial days after
6 the dismissal, file a motion with the court for a hearing to determine
7 whether to commit the person to the custody of the Administrator
8 pursuant to subsection 3. ~~Except as otherwise provided in~~
9 ~~subsection 2, the court shall hold the hearing within 10 judicial days~~
10 ~~after the motion is filed with the court.~~

11 2. If the prosecuting attorney files a motion pursuant to
12 subsection 1, the prosecuting attorney shall, not later than the date
13 on which the prosecuting attorney files the motion, request from the
14 Division a comprehensive risk assessment which indicates whether
15 the person requires the level of security provided by a forensic
16 facility. The Division shall ~~provide the requested~~, *except as*
17 *otherwise provided in this subsection, complete the* comprehensive
18 risk assessment *within 40 calendar days after receipt of the request*
19 *and provide the comprehensive risk assessment* to the court, the
20 prosecuting attorney and counsel for the person. ~~not later than~~
21 ~~three~~ *The court may grant the Division an extension to complete*
22 *the comprehensive risk assessment upon a showing of good cause.*
23 *Within 10* judicial days ~~before the hearing~~ *after receipt of the*
24 *comprehensive risk assessment, the court shall hold a hearing on*
25 *the motion.* If the person was charged with any category A felony
26 other than murder or sexual assault or a category B felony listed in
27 subsection 6 and the comprehensive risk assessment indicates that
28 the person does not require the level of security provided by a
29 forensic facility, the court shall dismiss the motion.

30 3. At a hearing held pursuant to subsection ~~1~~ 2, if the court
31 finds by clear and convincing evidence that the person has a mental
32 disorder, that the person is a danger to himself or herself or others
33 and that the person's dangerousness is such that the person requires
34 placement at a forensic facility, the court may order:

35 (a) The sheriff to take the person into protective custody and
36 transport the person to a forensic facility; and

37 (b) That the person be committed to the custody of the
38 Administrator and kept under observation until the person is eligible
39 for conditional release pursuant to NRS 178.463 or until the



1 maximum length of commitment described in subsection 4 or 7 has
2 expired.

3 4. Except as otherwise provided in subsection 7, the length of
4 commitment of a person pursuant to subsection 3 must not exceed
5 10 years, including any time that the person has been on conditional
6 release pursuant to NRS 178.463.

7 5. At least once every 12 months, the court shall review the
8 eligibility of the defendant for conditional release.

9 6. The provisions of subsection 1 apply to any of the following
10 category B felonies:

11 (a) Voluntary manslaughter pursuant to NRS 200.050;

12 (b) Mayhem pursuant to NRS 200.280;

13 (c) Kidnapping in the second degree pursuant to NRS 200.330;

14 (d) Assault with a deadly weapon pursuant to NRS 200.471;

15 (e) Battery with a deadly weapon pursuant to NRS 200.481;

16 (f) Aggravated stalking pursuant to NRS 200.575;

17 (g) First degree arson pursuant to NRS 205.010;

18 (h) Residential burglary with a deadly weapon pursuant to
19 NRS 205.060;

20 (i) Invasion of the home with a deadly weapon pursuant to
21 NRS 205.067;

22 (j) Any category B felony involving the use of a firearm; and

23 (k) Any attempt to commit a category A felony.

24 7. If a person is within 6 months of the maximum length of
25 commitment set forth in this subsection or subsection 4, as
26 applicable, and:

27 (a) Was charged with murder or sexual assault; and

28 (b) Was committed to the custody of the Administrator pursuant
29 to this subsection or subsection 3,

30 ➔ the Administrator may file a motion to request an extension of
31 the length of commitment for not more than 5 additional years.

32 8. The court may grant a motion for an extension of the length
33 of commitment pursuant to subsection 7 if, at a hearing conducted
34 on the motion, the court finds by clear and convincing evidence that
35 the person is a danger to himself or herself or others and that the
36 person's dangerousness is such that the person requires placement at
37 a forensic facility.

38 9. At a hearing conducted pursuant to subsection 8, a person
39 who is committed has the right to be represented by counsel. If the
40 person does not have counsel, the court shall appoint an attorney to
41 represent the person.

42 **Sec. 2.** This act becomes effective upon passage and approval.



