

ASSEMBLY BILL NO. 36—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 relating to competency hearings for certain criminal defendants. (BDR 14-294)

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 certain procedures governing competency hearings and the treatment of certain criminal defendants; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law provides that: (1) a person may not be tried or adjudged to punishment for a public offense while incompetent; and (2) any time after the arrest of a defendant, if doubt arises as to the competence of the defendant, the court must suspend the proceedings, the trial or the pronouncing of the judgment until the question of competence is determined. (NRS 178.400, 178.405) Existing law also provides that: (1) for a defendant who is accused of a felony or gross misdemeanor, the court must appoint two psychiatrists, two psychologists, or one psychiatrist and one psychologist, to examine the defendant; and (2) for a defendant who is accused of a misdemeanor, the court must appoint a psychiatric social worker, an advanced practice registered nurse who has certain psychiatric training and experience or other person who is especially qualified by the Division of Public and Behavioral Health of the Department of Health and Human Services, to examine the defendant. (NRS 178.415) Section 1 of this bill requires the person appointed to examine a defendant who is accused of a misdemeanor to consider whether the defendant meets the criteria to be considered competent or incompetent and needs to be considered for involuntary commitment.

Existing law provides that: (1) if a defendant is found incompetent, and dangerous to himself or herself or to society and that commitment is required for a determination of the defendant’s ability to receive treatment to competency and to attain competence, the defendant must be committed for detention and treatment at



21 a secure facility; and (2) the defendant must be held there until a court orders the  
22 defendant's release or until the defendant is returned for trial or judgment. If the  
23 court finds the defendant incompetent but not dangerous to himself or herself or to  
24 society, and finds that commitment is not required for a determination of the  
25 defendant's ability to receive treatment to competency and to attain competence,  
26 the defendant must undergo outpatient treatment, if beneficial. (NRS 178.425)  
27 **Sections 2-5** of this bill establish a different procedure for a defendant who is  
28 charged with or convicted of a misdemeanor. **Sections 2 and 5** of this bill provide  
29 that if a defendant who is charged with or convicted of a misdemeanor is found to  
30 be incompetent, the court must dismiss the charges against the defendant and order  
31 the defendant released unless a petition for involuntary commitment is filed within  
32 10 days after the order of the court.

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

1 **Section 1.** NRS 178.415 is hereby amended to read as follows:  
2 178.415 1. Except as otherwise provided in ~~[this]~~ subsection  
3 ~~[1]~~ 2, the court shall appoint two psychiatrists, two psychologists, or  
4 one psychiatrist and one psychologist to examine the defendant.  
5 2. If the defendant is accused of a misdemeanor, the court of  
6 jurisdiction shall appoint a psychiatric social worker, advanced  
7 practice registered nurse who has the psychiatric training and  
8 experience prescribed by the State Board of Nursing pursuant to  
9 NRS 632.120 or other person who is especially qualified by the  
10 Division, to examine the defendant. *The person appointed to  
11 examine the defendant shall consider whether the defendant meets  
12 the criteria prescribed in this chapter to be considered competent  
13 or incompetent and needs to be considered for involuntary  
14 commitment pursuant to chapter 433A of NRS.*  
15 ~~[2]~~ 3. Except as otherwise provided in this subsection, at a  
16 hearing in open court, the court that orders the examination must  
17 receive the report of the examination. If a justice court orders the  
18 examination of a defendant who is charged with a gross  
19 misdemeanor or felony, the district court must receive the report of  
20 the examination.  
21 ~~[3]~~ 4. The court that receives the report of the examination  
22 shall permit counsel for both sides to examine the person or persons  
23 appointed to examine the defendant. The prosecuting attorney and  
24 the defendant may:  
25 (a) Introduce other evidence including, without limitation,  
26 evidence related to treatment to competency and the possibility of  
27 ordering the involuntary administration of medication; and  
28 (b) Cross-examine one another's witnesses.  
29 ~~[4]~~ 5. A prosecuting attorney may not seek an indictment of  
30 the defendant for any offense during the period in which the court is



1 considering whether the defendant is competent or incompetent  
2 except upon application by the prosecuting attorney to the chief  
3 judge of the district court, or his or her designee, and with leave of  
4 the court. The prosecuting attorney must demonstrate that adequate  
5 cause exists for the court to grant leave to seek an indictment on the  
6 grounds that the availability or unavailability of a witness, or any  
7 other objective factor, significantly impacts the ability of the State to  
8 prosecute the matter in the absence of such leave. The prosecuting  
9 attorney must give notice of an application made pursuant to this  
10 subsection to the attorney for the defendant not less than 24 hours  
11 before the hearing on the application.

12 ~~{5.}~~ 6. The court that receives the report of the examination  
13 shall then make and enter its finding of competence or  
14 incompetence.

15 ~~{6.}~~ 7. The court shall not appoint a person to provide a report  
16 or an evaluation pursuant to this section, unless the person is  
17 certified by the Division pursuant to NRS 178.417.

18 **Sec. 2.** NRS 178.425 is hereby amended to read as follows:

19 178.425 1. If the court finds ~~{the}~~ a defendant *who is*  
20 *charged with or convicted of a gross misdemeanor or felony*  
21 incompetent, and dangerous to himself or herself or to society and  
22 that commitment is required for a determination of the defendant's  
23 ability to receive treatment to competency and to attain competence,  
24 the judge shall order the sheriff to convey the defendant forthwith,  
25 together with a copy of the complaint, the commitment and the  
26 physicians' certificate, if any, into the custody of the Administrator  
27 or the Administrator's designee for detention and treatment at a  
28 division facility that is secure. The order may include the  
29 involuntary administration of medication if appropriate for treatment  
30 to competency.

31 2. The defendant must be held in such custody until a court  
32 orders the defendant's release or until the defendant is returned for  
33 trial or judgment as provided in NRS 178.450, 178.455 and  
34 178.460.

35 3. If the court finds ~~{the}~~ a defendant *who is charged with or*  
36 *convicted of a gross misdemeanor or felony* incompetent but not  
37 dangerous to himself or herself or to society, and finds that  
38 commitment is not required for a determination of the defendant's  
39 ability to receive treatment to competency and to attain competence,  
40 the judge shall order the defendant to report to the Administrator or  
41 the Administrator's designee as an outpatient for treatment, if it  
42 might be beneficial, and for a determination of the defendant's  
43 ability to receive treatment to competency and to attain competence.  
44 The court may require the defendant to give bail for any periodic



1 appearances before the Administrator or the Administrator's  
2 designee.

3 4. *If the court finds a defendant who is charged with or*  
4 *convicted of a misdemeanor incompetent, the court shall dismiss*  
5 *the charges against the defendant and order the defendant*  
6 *released unless a petition for involuntary commitment pursuant to*  
7 *chapter 433A of NRS is filed within 10 days after the order of the*  
8 *court.*

9 5. Except as otherwise provided in ~~[subsection 5.]~~ *subsections*  
10 *4 and 6*, proceedings against the defendant must be suspended until  
11 the Administrator or the Administrator's designee ~~[or, if the~~  
12 ~~defendant is charged with a misdemeanor, the judge]~~ finds the  
13 defendant capable of standing trial or opposing pronouncement of  
14 judgment as provided in NRS 178.400.

15 ~~[5.]~~ 6. Whenever the defendant has been found incompetent,  
16 with no substantial probability of attaining competency in the  
17 foreseeable future, and released from custody or from obligations as  
18 an outpatient pursuant to paragraph (d) of subsection 4 of NRS  
19 178.460, the proceedings against the defendant which were  
20 suspended must be dismissed. No new charge arising out of the  
21 same circumstances may be brought except upon application by the  
22 prosecuting attorney to the chief judge of the district court, or his or  
23 her designee, and with leave of the court where:

24 (a) The State has a good faith belief, based on articulable facts,  
25 that the defendant has attained competency;

26 (b) The State has a compelling interest in bringing charges  
27 again; and

28 (c) The period, equal to the maximum time allowed by law for  
29 commencing a criminal action for the crime with which the  
30 defendant was charged, has not lapsed since the date of the alleged  
31 offense.

32 ↪ The prosecuting attorney must give notice of an application made  
33 pursuant to this subsection to the attorney for the defendant not less  
34 than 24 hours before the hearing on the application.

35 ~~[6.]~~ 7. If a defendant is found incompetent pursuant to this  
36 section, the court shall cause, within 5 business days after the  
37 finding, on a form prescribed by the Department of Public Safety, a  
38 record of that finding to be transmitted to the Central Repository for  
39 Nevada Records of Criminal History, along with a statement  
40 indicating that the record is being transmitted for inclusion in each  
41 appropriate database of the National Instant Criminal Background  
42 Check System.

43 ~~[7.]~~ 8. As used in this section, "National Instant Criminal  
44 Background Check System" has the meaning ascribed to it in  
45 NRS 179A.062.



1     **Sec. 3.** NRS 178.450 is hereby amended to read as follows:

2     178.450 1. The Administrator or the Administrator's  
3     designee shall keep each defendant committed to custody under  
4     NRS 178.425 or 178.460 under observation and shall have each  
5     defendant who has been ordered to report to the Administrator as an  
6     outpatient under those sections evaluated periodically.

7     2. The Administrator or the Administrator's designee shall  
8     report in writing to a judge of the court which committed the person  
9     and the prosecuting attorney of the county or city to which the  
10    person may be returned for further court action whether, in his or  
11    her opinion, upon medical consultation, the defendant is of  
12    sufficient mentality to be able to understand the nature of the  
13    criminal charge against the defendant and, by reason thereof, is able  
14    to aid and assist counsel in the defense interposed upon the trial or  
15    against the pronouncement of the judgment thereafter. The  
16    Administrator or the Administrator's designee shall submit such a  
17    report ~~[, in the case of a person charged or convicted of a~~  
18    ~~misdemeanor, within 3 months after the order for commitment or~~  
19    ~~treatment and evaluation as an outpatient or for recommitment~~  
20    ~~pursuant to paragraph (b) of subsection 4 of NRS 178.460, and at~~  
21    ~~monthly intervals thereafter. In all other cases, the initial report must~~  
22    ~~be submitted]~~ within 6 months after the order *for commitment or*  
23    *treatment and evaluation as an outpatient* and at 6-month intervals  
24    thereafter. If the opinion of the Administrator or the Administrator's  
25    designee is that the defendant is not of sufficient mentality to  
26    understand the nature of the charge against the defendant and assist  
27    in the defendant's own defense, the Administrator or the  
28    Administrator's designee shall also include in the report his or her  
29    opinion whether:

30    (a) There is a substantial probability that the defendant can  
31    receive treatment to competency and will attain competency to stand  
32    trial or receive pronouncement of judgment in the foreseeable  
33    future; and

34    (b) The defendant is at that time a danger to himself or herself or  
35    to society.

36    3. The report must contain:

37    (a) The name of the defendant and the county or city to which  
38    the defendant may be returned for further court action.

39    (b) The circumstances under which the defendant was  
40    committed to the custody of the Administrator or the  
41    Administrator's designee and the duration of the defendant's  
42    hospitalization, or the circumstances under which the defendant was  
43    ordered to report to the Administrator or the Administrator's  
44    designee as an outpatient.



1       **Sec. 4.** NRS 178.455 is hereby amended to read as follows:

2       178.455 1. ~~{Except as otherwise provided for persons~~  
3 ~~charged with or convicted of a misdemeanor, the}~~ *The*  
4 Administrator or the Administrator's designee shall appoint a  
5 licensed psychiatrist and a licensed psychologist from the treatment  
6 team who is certified pursuant to NRS 178.417 to evaluate the  
7 defendant. The Administrator or the Administrator's designee shall  
8 also appoint a third evaluator who must be a licensed psychiatrist or  
9 psychologist, must be certified pursuant to NRS 178.417 and must  
10 not be a member of the treatment team. Upon the completion of the  
11 evaluation and treatment of the defendant, the Administrator or the  
12 Administrator's designee shall report to the court in writing his or  
13 her specific findings and opinion upon whether the person has the  
14 present ability to:

- 15       (a) Understand the nature of the offense charged;  
16       (b) Understand the nature and purpose of the court proceedings;  
17       and  
18       (c) Aid and assist the person's counsel in the defense at any time  
19 during the proceedings with a reasonable degree of rational  
20 understanding.

21       2. If the Administrator or the Administrator's designee finds  
22 that the person does not have the present ability pursuant to  
23 paragraph (a), (b) or (c) of subsection 1 to understand or to aid and  
24 assist counsel during the court proceedings, the Administrator or the  
25 Administrator's designee shall include in the written report the  
26 reasons for the finding and whether there is a substantial probability  
27 that the person can receive treatment to competency and will attain  
28 competency in the foreseeable future.

29       3. A copy of the report must be:

- 30       (a) Maintained by the Administrator or the Administrator's  
31 designee and incorporated in the medical record of the person; and  
32       (b) Sent to the office of the district attorney and to the counsel  
33 for the outpatient or person committed.

34       ~~{4. In the case of a person charged with or convicted of a~~  
35 ~~misdemeanor, the judge shall, upon receipt of the report set forth in~~  
36 ~~NRS 178.450 from the Administrator or the Administrator's~~  
37 ~~designee:~~

38       ~~—(a) Send a copy of the report by the Administrator or the~~  
39 ~~Administrator's designee to the prosecuting attorney and to the~~  
40 ~~defendant's counsel;~~

41       ~~—(b) Hold a hearing, if one is requested within 10 days after the~~  
42 ~~report is sent pursuant to paragraph (a), at which the attorneys may~~  
43 ~~examine the Administrator or the Administrator's designee or the~~  
44 ~~members of the defendant's treatment team on the determination of~~  
45 ~~the report; and~~



1 ~~—(c) Within 10 days after the hearing, if any, or 10 days after the~~  
2 ~~report is sent if no hearing is requested, enter a finding of~~  
3 ~~competence or incompetence in the manner set forth in subsection 4~~  
4 ~~of NRS 178.460.]~~

5 **Sec. 5.** NRS 178.460 is hereby amended to read as follows:

6 178.460 1. If requested by the district attorney or counsel for  
7 the defendant within 10 days after the report by the Administrator or  
8 the Administrator's designee is sent to them, the judge shall hold a  
9 hearing within 10 days after the request at which the district attorney  
10 and the defense counsel may examine the members of the treatment  
11 team on their report.

12 2. If the judge orders the appointment of a licensed psychiatrist  
13 or psychologist who is not employed by the Division to perform an  
14 additional evaluation and report concerning the defendant, the cost  
15 of the additional evaluation and report is a charge against the  
16 county.

17 3. Within 10 days after the hearing or 10 days after the report is  
18 sent, if no hearing is requested, the judge shall make and enter a  
19 finding of competence or incompetence, and if the judge finds the  
20 defendant to be incompetent:

21 (a) Whether there is substantial probability that the defendant  
22 can receive treatment to competency and will attain competency to  
23 stand trial or receive pronouncement of judgment in the foreseeable  
24 future; and

25 (b) Whether the defendant is at that time a danger to himself or  
26 herself or to society.

27 4. If the judge finds ~~[the]~~ a defendant ~~[:]~~ *who is charged with*  
28 *or convicted of a gross misdemeanor or felony:*

29 (a) Competent, the judge shall, within 10 days, forward the  
30 finding to the prosecuting attorney and counsel for the defendant.  
31 Upon receipt thereof, the prosecuting attorney shall notify the  
32 sheriff of the county or chief of police of the city that the defendant  
33 has been found competent and prearrange with the facility for the  
34 return of the defendant to that county or city for trial upon the  
35 offense there charged or the pronouncement of judgment, as the case  
36 may be.

37 (b) Incompetent, but there is a substantial probability that the  
38 defendant can receive treatment to competency and will attain  
39 competency to stand trial or receive pronouncement of judgment in  
40 the foreseeable future and finds that the defendant is dangerous to  
41 himself or herself or to society, the judge shall recommit the  
42 defendant and may order the involuntary administration of  
43 medication for the purpose of treatment to competency.

44 (c) Incompetent, but there is a substantial probability that the  
45 defendant can receive treatment to competency and will attain



1 competency to stand trial or receive pronouncement of judgment in  
2 the foreseeable future and finds that the defendant is not dangerous  
3 to himself or herself or to society, the judge shall order that the  
4 defendant remain an outpatient or be transferred to the status of an  
5 outpatient under the provisions of NRS 178.425.

6 (d) Incompetent, with no substantial probability of attaining  
7 competency in the foreseeable future, the judge shall order the  
8 defendant released from custody or, if the defendant is an outpatient,  
9 released from any obligations as an outpatient if, within 10 judicial  
10 days, the prosecuting attorney has not filed a motion pursuant to  
11 NRS 178.461 or if, within 10 judicial days, a petition is not filed to  
12 commit the person pursuant to NRS 433A.200. After the initial 10  
13 judicial days, the person may remain an outpatient or in custody  
14 under the provisions of this chapter only as long as the motion or  
15 petition is pending unless the person is committed to the custody of  
16 the Administrator pursuant to NRS 178.461 or involuntarily  
17 committed pursuant to chapter 433A of NRS.

18 5. *If the court finds a defendant who is charged with or*  
19 *convicted of a misdemeanor incompetent, the court shall dismiss*  
20 *the charges and order the defendant released unless a petition for*  
21 *involuntary commitment pursuant to chapter 433A of NRS is filed*  
22 *within 10 days after the order of the court.*

23 6. Except as otherwise provided in subsections 4 and 7 of NRS  
24 178.461, no person who is committed under the provisions of this  
25 chapter may be held in the custody of the Administrator or the  
26 Administrator's designee longer than the longest period of  
27 incarceration provided for the crime or crimes with which the  
28 person is charged or 10 years, whichever period is shorter. Upon  
29 expiration of the applicable period provided in this section,  
30 subsection 4 or 7 of NRS 178.461 or subsection 4 of NRS 178.463,  
31 the person must be returned to the committing court for a  
32 determination as to whether or not involuntary commitment  
33 pursuant to chapter 433A of NRS is required.

34 **Sec. 6.** NRS 178.461 is hereby amended to read as follows:

35 178.461 1. If the proceedings against a defendant who is  
36 charged with any category A felony or a category B felony listed in  
37 subsection 6 are dismissed pursuant to subsection ~~5~~ 6 of NRS  
38 178.425, the prosecuting attorney may, within 10 judicial days after  
39 the dismissal, file a motion with the court for a hearing to determine  
40 whether to commit the person to the custody of the Administrator  
41 pursuant to subsection 3. Except as otherwise provided in subsection  
42 2, the court shall hold the hearing within 10 judicial days after the  
43 motion is filed with the court.

44 2. If the prosecuting attorney files a motion pursuant to  
45 subsection 1, the prosecuting attorney shall, not later than the date





1 on which the prosecuting attorney files the motion, request from the  
2 Division a comprehensive risk assessment which indicates whether  
3 the person requires the level of security provided by a forensic  
4 facility. The Division shall provide the requested comprehensive  
5 risk assessment to the court, the prosecuting attorney and counsel  
6 for the person not later than three judicial days before the hearing. If  
7 the person was charged with any category A felony other than  
8 murder or sexual assault or a category B felony listed in subsection  
9 6 and the comprehensive risk assessment indicates that the person  
10 does not require the level of security provided by a forensic facility,  
11 the court shall dismiss the motion.

12 3. At a hearing held pursuant to subsection 1, if the court finds  
13 by clear and convincing evidence that the person has a mental  
14 disorder, that the person is a danger to himself or herself or others  
15 and that the person's dangerousness is such that the person requires  
16 placement at a forensic facility, the court may order:

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

19 (b) That the person be committed to the custody of the  
20 Administrator and kept under observation until the person is eligible  
21 for conditional release pursuant to NRS 178.463 or until the  
22 maximum length of commitment described in subsection 4 or 7 has  
23 expired.

24 4. Except as otherwise provided in subsection 7, the length of  
25 commitment of a person pursuant to subsection 3 must not exceed  
26 10 years, including any time that the person has been on conditional  
27 release pursuant to NRS 178.463.

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

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

32 (a) Voluntary manslaughter pursuant to NRS 200.050;

33 (b) Mayhem pursuant to NRS 200.280;

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

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

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

37 (f) Aggravated stalking pursuant to NRS 200.575;

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

39 (h) Residential burglary with a deadly weapon pursuant to  
40 NRS 205.060;

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

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

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



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

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

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

7 ↪ the Administrator may file a motion to request an extension of  
8 the length of commitment for not more than 5 additional years.

9 8. The court may grant a motion for an extension of the length  
10 of commitment pursuant to subsection 7 if, at a hearing conducted  
11 on the motion, the court finds by clear and convincing evidence that  
12 the person is a danger to himself or herself or others and that the  
13 person's dangerousness is such that the person requires placement at  
14 a forensic facility.

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





