

ASSEMBLY BILL NO. 582—COMMITTEE ON JUDICIARY

(ON BEHALF OF DEPARTMENT OF HUMAN RESOURCES—MENTAL  
HEALTH AND DEVELOPMENTAL SERVICES)

MARCH 26, 2001

Referred to Committee on Judiciary

SUMMARY—Revises provisions pertaining to competency of defendants. (BDR 14-345)

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 provisions pertaining to the competency of defendants; eliminating the sanity commission; and providing other matters properly relating thereto.

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

- 1     **Section 1.** NRS 178.425 is hereby amended to read as follows:  
2     178.425 1. If the court finds the defendant incompetent, and that he  
3     is dangerous to himself or to society or that commitment is required for a  
4     determination of his ability to attain competence, the judge shall order the  
5     sheriff to convey him forthwith, together with a copy of the complaint, the  
6     commitment and the physicians' certificate, if any, into the custody of the  
7     administrator of the division of mental health and developmental services  
8     of the department of human resources *or his designee* for detention and  
9     treatment at a secure facility operated by that division.  
10    2. The defendant must be held in such custody until a court orders his  
11    release or until he is returned for trial or judgment as provided in NRS  
12    178.450 to ~~178.465~~ *178.460*, inclusive.  
13    3. If the court finds the defendant incompetent but not dangerous to  
14    himself or to society, and finds that commitment is not required for a  
15    determination of the defendant's ability to attain competence, the judge  
16    shall order the defendant to report to the administrator *or his designee* as  
17    an outpatient for treatment, if it might be beneficial, and for a  
18    determination of his ability to attain competence. The court may require the  
19    defendant to give bail for his periodic appearances before the administrator  
20    ~~or his designee.~~



1 4. Except as otherwise provided in subsection 5, proceedings against  
2 the defendant must be suspended until the ~~{sanity — commission}~~  
3 *administrator or his designee* or, if the defendant is charged with a  
4 misdemeanor, the judge finds him capable of standing trial or opposing  
5 pronouncement of judgment as provided in NRS 178.400.

6 5. Whenever the defendant has been found incompetent, with no  
7 substantial probability of attaining competency in the foreseeable future,  
8 and released from custody or from obligations as an outpatient pursuant to  
9 paragraph (d) of subsection ~~{3}~~ 4 of NRS 178.460, the proceedings against  
10 the defendant which were suspended must be dismissed. No new charge  
11 arising out of the same circumstances may be brought after a period, equal  
12 to the maximum time allowed by law for commencing a criminal action for  
13 the crime with which the defendant was charged, has lapsed since the date  
14 of the alleged offense.

15 **Sec. 2.** NRS 178.435 is hereby amended to read as follows:

16 178.435 The expenses of the examination and of the transportation of  
17 the defendant to and from the custody of the administrator of the division  
18 of mental health and developmental services of the department of human  
19 resources *or his designee* are in the first instance chargeable to the county  
20 or city from which he has been sent. But the county or city may recover the  
21 money from the estate of the defendant, from a relative legally bound to  
22 care for him or from the county or city of which he is a resident.

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

24 178.450 1. The administrator of the division of mental health and  
25 developmental services of the department of human resources *or his*  
26 *designee* shall keep each defendant committed to his custody under NRS  
27 178.425 or 178.460 under observation and shall have each defendant who  
28 has been ordered to report to him as an outpatient under those sections  
29 evaluated periodically.

30 2. The administrator *or his designee* shall ~~{notify}~~ *report* in writing *to*  
31 a judge of the court which committed the person and the prosecuting  
32 attorney of the county or city to which the person may be returned for  
33 further court action whether, in his opinion, upon medical consultation, the  
34 defendant is of sufficient mentality to be able to understand the nature of  
35 the criminal charge against him and, by reason thereof, is able to aid and  
36 assist his counsel in the defense interposed upon the trial or against the  
37 pronouncement of the judgment thereafter. The administrator *or his*  
38 *designee* shall submit such a ~~{notification}~~ *report*, in the case of a person  
39 charged or convicted of a misdemeanor, within 3 months after the order for  
40 commitment or treatment and evaluation as an outpatient or for  
41 recommitment pursuant to paragraph (b) of subsection ~~{3}~~ 4 of NRS  
42 178.460, and at monthly intervals thereafter. In all other cases, the initial  
43 ~~{notification}~~ *report* must be submitted within 6 months after the order and  
44 at 6-month intervals thereafter. If the ~~{administrator's}~~ *opinion of the*  
45 *administrator or his designee* about the defendant is that he is not of  
46 sufficient mentality to understand the nature of the charge against him and  
47 assist in his own defense, the administrator *or his designee* shall also  
48 include in the ~~{notice}~~ *report* his opinion whether:



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1 (a) There is a substantial probability that the defendant will attain  
2 competency to stand trial or receive pronouncement of judgment in the  
3 foreseeable future; and

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

5 3. The ~~notice may be informal, but~~ **report** must contain:

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

8 (b) The circumstances under which he was committed to the custody of  
9 the administrator **or his designee** and the duration of his hospitalization, or  
10 the circumstances under which he was ordered to report to the  
11 administrator **or his designee** as an outpatient.

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

13 178.455 1. ~~{The judge, upon receiving the written notice of the~~  
14 ~~administrator of the division of mental health and developmental services~~  
15 ~~of the department of human resources that the defendant is of sufficient~~  
16 ~~mentality to be placed upon trial or receive pronouncement of judgment, or~~  
17 ~~that he is not of sufficient mentality and there is no substantial probability~~  
18 ~~that he will attain competency to stand trial or receive pronouncement of~~  
19 ~~judgment in the foreseeable future, shall, except as otherwise provided in~~  
20 ~~subsection 4, within a period not to exceed 20 days, impanel a sanity~~  
21 ~~commission composed of three persons, each of whom is a psychiatrist or~~  
22 ~~psychologist, but not including members of the medical staff of the~~  
23 ~~division of mental health and developmental services, who, in the opinion~~  
24 ~~of the judge, are qualified to examine the person with respect to his mental~~  
25 ~~condition.~~

26 ~~—2.— The sanity commission shall, within 20 days, examine the person~~  
27 ~~designated by the judge in the order impaneling the commission, at such~~  
28 ~~convenient place as the commission may direct. Upon the completion of~~  
29 ~~the examination, the commission shall return to the judge its reports in~~  
30 ~~writing, which must be signed by the respective members of the~~  
31 ~~commission and contain, without limitation, specific findings and opinion~~  
32 ~~upon.} **Except as otherwise provided for persons charged with or**~~  
33 ~~**convicted of a misdemeanor, the administrator of the division of mental**~~  
34 ~~**health and developmental services of the department of human resources**~~  
35 ~~**or his designee shall appoint a licensed psychiatrist and a licensed**~~  
36 ~~**psychologist from the treatment team to evaluate the defendant. The**~~  
37 ~~**administrator or his designee shall also appoint a third evaluator who**~~  
38 ~~**must be a licensed psychiatrist or psychologist and not a member of the**~~  
39 ~~**treatment team. Upon the completion of the evaluation and treatment of**~~  
40 ~~**the defendant, the administrator or his designee shall report to the court**~~  
41 ~~**in writing his specific findings and opinion upon:**~~

42 (a) Whether the person is of sufficient mentality to understand the  
43 nature of the offense charged;

44 (b) Whether the person is of sufficient mentality to aid and assist  
45 counsel in the defense of the offense charged, or to show cause why  
46 judgment should not be pronounced; and

47 (c) If the person is not of sufficient mentality pursuant to paragraphs (a)  
48 and (b) to be placed upon trial or receive pronouncement of judgment,



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1 whether there is a substantial probability that he will attain competency in  
2 the foreseeable future.  
3 ~~{3. Members of the sanity commission shall report individually.~~  
4 ~~Copies of the reports}~~  
5 2. A copy of the report must be ~~{sent to}~~ :  
6 (a) Maintained by the administrator of the division of mental health and  
7 developmental services ~~{to be}~~ or his designee and incorporated in the  
8 medical record of the person ~~{}~~ ; and  
9 (b) Sent to the office of the district attorney ~~{}~~ and to the counsel for the  
10 outpatient or person committed.  
11 ~~{4.}~~ 3. In the case of a person charged with or convicted of a  
12 misdemeanor, the judge shall, upon receipt of the ~~{notice}~~ report set forth  
13 in NRS 178.450 from the administrator of the division of mental health and  
14 developmental services ~~{}~~ or his designee:  
15 (a) Send a copy of the ~~{administrator's notice}~~ report by the  
16 administrator or his designee to the prosecuting attorney and to the  
17 defendant's counsel;  
18 (b) ~~{Without the assistance of a sanity commission, hold}~~ Hold a  
19 hearing, if one is requested within 10 days after the ~~{notice}~~ report is sent  
20 pursuant to paragraph (a), at which the attorneys may examine the  
21 administrator or his designee or the members of the defendant's  
22 treatment team on ~~{his determination}~~ the determination of the report;  
23 and  
24 (c) Within 10 days after the hearing, if any, or 20 days after the ~~{notice}~~  
25 report is sent if no hearing is requested, enter his finding of competence or  
26 incompetence in the manner set forth in subsection ~~{3}~~ 4 of NRS 178.460.  
27 Sec. 5. NRS 178.460 is hereby amended to read as follows:  
28 178.460 1. If requested by the district attorney or counsel for the  
29 defendant within 10 days after the ~~{reports of the sanity commission are}~~  
30 report by the administrator or his designee is sent to them, the judge shall  
31 hold a hearing within 10 days after the request at which the district attorney  
32 and the defense counsel may examine the members of the ~~{sanity}~~  
33 ~~commission}~~ treatment team on their ~~{reports}~~ report.  
34 2. If the judge orders the appointment of a licensed psychiatrist or  
35 psychologist who is not employed by the division of mental health and  
36 developmental services of the department of human resources to perform  
37 an additional evaluation and report concerning the defendant, the cost of  
38 the additional evaluation and report is a charge against the county.  
39 3. Within 10 days after the hearing or 20 days after the ~~{reports are}~~  
40 report is sent, if no hearing is requested, the judge shall make and enter his  
41 finding of competence or incompetence, and if he finds the defendant to be  
42 incompetent:  
43 (a) Whether there is substantial probability that the defendant will attain  
44 competency to stand trial or receive pronouncement of judgment in the  
45 foreseeable future; and  
46 (b) Whether the defendant is at that time a danger to himself or to  
47 society.  
48 ~~{3.}~~ 4. If the judge finds the defendant:



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1 (a) Competent, the judge shall, within 10 days, forward his finding to  
2 the prosecuting attorney and counsel for the defendant. Upon receipt  
3 thereof, the prosecuting attorney shall notify the sheriff of the county or  
4 chief of police of the city that the defendant has been found competent and  
5 ~~arrange~~ *prearrange with the facility* for the return of the defendant to that  
6 county or city for trial upon the offense there charged or the  
7 pronouncement of judgment, as the case may be. ~~[The defendant must not~~  
8 ~~be returned more than 30 days before the date set for the trial or~~  
9 ~~pronouncement of judgment which must be within 60 days after the receipt~~  
10 ~~of the findings of the sanity commission, or if the case is a misdemeanor,~~  
11 ~~within 60 days after the judge received the notice from the administrator~~  
12 ~~pursuant to subsection 1 of NRS 178.455.]~~

13 (b) Incompetent, but there is a substantial probability that he will attain  
14 competency to stand trial or receive pronouncement of judgment in the  
15 foreseeable future and finds that he is dangerous to himself or to society,  
16 the judge shall recommit the defendant.

17 (c) Incompetent, but there is a substantial probability that he will attain  
18 competency to stand trial or receive pronouncement of judgment in the  
19 foreseeable future and finds that he is not dangerous to himself or to  
20 society, the judge shall order that the defendant remain an outpatient or be  
21 transferred to the status of an outpatient under the provisions of NRS  
22 178.425.

23 (d) Incompetent, with no substantial probability of attaining  
24 competency in the foreseeable future, the judge shall order the defendant  
25 released from custody or if the defendant is an outpatient, released from his  
26 obligations as an outpatient if, within 10 days, a petition is not filed to  
27 commit the person pursuant to NRS 433A.200. After the initial 10 days,  
28 the defendant may remain an outpatient or in custody under the provisions  
29 of this chapter only as long as the petition is pending unless the defendant  
30 is involuntarily committed pursuant to chapter 433A of NRS.

31 ~~4.1~~ 5. No person who is committed under the provisions of this  
32 chapter may be held in the custody of the administrator of the division of  
33 mental health and developmental services of the department of human  
34 resources *or his designee* longer than the longest period of incarceration  
35 provided for the crime or crimes with which he is charged. Upon expiration  
36 of the period, the defendant must be returned to the committing court for a  
37 determination as to whether or not involuntary commitment pursuant to  
38 chapter 433A of NRS is required.

39 **Sec. 6.** NRS 353.264 is hereby amended to read as follows:

40 353.264 1. The reserve for statutory contingency account is hereby  
41 created in the state general fund.

42 2. The state board of examiners shall administer the reserve for  
43 statutory contingency account, and the money in the account must be  
44 expended only for:

45 (a) The payment of claims which are obligations of the state pursuant to  
46 NRS 41.03435, 41.0347, 176.485, 179.310, 212.040, 212.050, 212.070,  
47 214.040, 281.174, 282.290, 282.315, 288.203, 293.253, 293.405, 353.120,  
48 353.262, 412.154 and 475.235;



- 1 (b) The payment of claims which are obligations of the state pursuant  
2 to:  
3 (1) Chapter 472 of NRS arising from operations of the division of  
4 forestry of the state department of conservation and natural resources  
5 directly involving the protection of life and property; and  
6 (2) NRS 7.155, 34.750, 176A.640, ~~178.465~~, 179.225, 213.153 and  
7 293B.210,  
8 but the claims must be approved for the respective purposes listed in this  
9 paragraph only when the money otherwise appropriated for those purposes  
10 has been exhausted;  
11 (c) The payment of claims which are obligations of the state pursuant to  
12 NRS 41.0349 and 41.037, but only to the extent that the money in the fund  
13 for insurance premiums is insufficient to pay the claims; and  
14 (d) The payment of claims which are obligations of the state pursuant to  
15 NRS 535.030 arising from remedial actions taken by the state engineer  
16 when the condition of a dam becomes dangerous to the safety of life or  
17 property.  
18 **Sec. 7.** NRS 178.465 is hereby repealed.  
19 **Sec. 8.** This act becomes effective upon passage and approval.

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### TEXT OF REPEALED SECTION

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**178.465 Compensation of members of sanity commission.** The members of the sanity commission are only entitled to receive compensation for conducting an examination of and preparing reports regarding the person designated by the judge in the order impaneling the commission. In consultation with the presiding judge of the judicial district from which the order to impanel the commission was issued or, if the district has no presiding judge, a judge designated by mutual consent of the district judges of that district, the administrator of the division of mental health and developmental services of the department of human resources shall fix a reasonable rate of compensation for the members of the commission. The compensation is a charge against and must be paid by the division upon an order therefor signed by the judge who impaneled the commission and submitted to the administrator. The administrator shall submit a claim for payment of the order in the manner provided by law. After the appropriation for this purpose is exhausted, money must be allocated to the division out of the reserve for statutory contingency account upon approval by the state board of examiners, for payment of the compensation.

