

Assembly Bill No. 582—Committee on Judiciary

CHAPTER.....

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:

Section 1. NRS 178.425 is hereby amended to read as follows:

178.425 1. If the court finds the defendant incompetent, and that he is dangerous to himself or to society or that commitment is required for a determination of his ability to attain competence, the judge shall order the sheriff to convey him forthwith, together with a copy of the complaint, the commitment and the physicians' certificate, if any, into the custody of the administrator of the division of mental health and developmental services of the department of human resources *or his designee* for detention and treatment at a secure facility operated by that division.

2. The defendant must be held in such custody until a court orders his release or until he is returned for trial or judgment as provided in NRS 178.450 to ~~178.465,~~ *178.460*, inclusive.

3. If the court finds the defendant incompetent but not dangerous to himself or to society, and finds that commitment is not required for a determination of the defendant's ability to attain competence, the judge shall order the defendant to report to the administrator *or his designee* as an outpatient for treatment, if it might be beneficial, and for a determination of his ability to attain competence. The court may require the defendant to give bail for his periodic appearances before the administrator ~~or his designee.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

178.455 1. ~~The judge, upon receiving the written notice of the administrator of the division of mental health and developmental services of the department of human resources that the defendant is of sufficient mentality to be placed upon trial or receive pronouncement of judgment, or that he is not of sufficient mentality and there is no substantial probability that he will attain competency to stand trial or receive pronouncement of judgment in the foreseeable future, shall, except as otherwise provided in subsection 4, within a period not to exceed 20 days, impanel a sanity commission composed of three persons, each of whom is a psychiatrist or psychologist, but not including members of the medical staff of the division of mental health and developmental services, who, in the opinion~~

~~of the judge, are qualified to examine the person with respect to his mental condition.~~

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

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

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

(c) If the person is not of sufficient mentality pursuant to paragraphs (a) and (b) to be placed upon trial or receive pronouncement of judgment, whether there is a substantial probability that he will attain competency in the foreseeable future.

~~3. Members of the sanity commission shall report individually. Copies of the reports~~

2. A copy of the report must be ~~sent to~~ :

(a) Maintained by the administrator of the division of mental health and developmental services ~~to be~~ or his designee and incorporated in the medical record of the person ~~H~~ ; and

(b) Sent to the office of the district attorney ~~H~~ and to the counsel for the outpatient or person committed.

~~4~~ *3. In the case of a person charged with or convicted of a misdemeanor, the judge shall, upon receipt of the ~~notice~~ report set forth in NRS 178.450 from the administrator of the division of mental health and developmental services ~~H~~ or his designee:*

(a) Send a copy of the ~~administrator's notice~~ report by the administrator or his designee to the prosecuting attorney and to the defendant's counsel;

(b) ~~Without the assistance of a sanity commission, hold~~ Hold a hearing, if one is requested within 10 days after the ~~notice~~ report is sent pursuant to paragraph (a), at which the attorneys may examine the administrator or his designee or the members of the defendant's treatment team on ~~this determination;~~ the determination of the report; and

(c) Within 10 days after the hearing, if any, or 20 days after the ~~notice~~ *report* is sent if no hearing is requested, enter his finding of competence or incompetence in the manner set forth in subsection ~~3~~ *4* of NRS 178.460.

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

178.460 1. If requested by the district attorney or counsel for the defendant within 10 days after the ~~reports of the sanity commission are~~ *report by the administrator or his designee is* sent to them, the judge shall hold a hearing within 10 days after the request at which the district attorney and the defense counsel may examine the members of the ~~sanity commission~~ *treatment team* on their ~~reports~~ *report*.

2. *If the judge orders the appointment of a licensed psychiatrist or psychologist who is not employed by the division of mental health and developmental services of the department of human resources to perform an additional evaluation and report concerning the defendant, the cost of the additional evaluation and report is a charge against the county.*

3. Within 10 days after the hearing or 20 days after the ~~reports are~~ *report is* sent, if no hearing is requested, the judge shall make and enter his finding of competence or incompetence, and if he finds the defendant to be incompetent:

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

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

~~3~~ *4*. If the judge finds the defendant:

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

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

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

(d) Incompetent, with no substantial probability of attaining competency in the foreseeable future, the judge shall order the defendant released from custody or if the defendant is an outpatient, released from his

obligations as an outpatient if, within 10 days, a petition is not filed to commit the person pursuant to NRS 433A.200. After the initial 10 days, the defendant may remain an outpatient or in custody under the provisions of this chapter only as long as the petition is pending unless the defendant is involuntarily committed pursuant to chapter 433A of NRS.

~~44~~ 5. No person who is committed under the provisions of this chapter may be held in the custody of the administrator of the division of mental health and developmental services of the department of human resources *or his designee* longer than the longest period of incarceration provided for the crime or crimes with which he is charged. Upon expiration of the period, the defendant must be returned to the committing court for a determination as to whether or not involuntary commitment pursuant to chapter 433A of NRS is required.

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

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

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

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

(b) The payment of claims which are obligations of the state pursuant to:

(1) Chapter 472 of NRS arising from operations of the division of forestry of the state department of conservation and natural resources directly involving the protection of life and property; and

(2) NRS 7.155, 34.750, 176A.640, ~~178.465~~ 179.225, 213.153 and 293B.210,

but the claims must be approved for the respective purposes listed in this paragraph only when the money otherwise appropriated for those purposes has been exhausted;

(c) The payment of claims which are obligations of the state pursuant to NRS 41.0349 and 41.037, but only to the extent that the money in the fund for insurance premiums is insufficient to pay the claims; and

(d) The payment of claims which are obligations of the state pursuant to NRS 535.030 arising from remedial actions taken by the state engineer when the condition of a dam becomes dangerous to the safety of life or property.

Sec. 7. NRS 178.465 is hereby repealed.

Sec. 8. This act becomes effective upon passage and approval.