

ASSEMBLY BILL NO. 77—COMMITTEE ON JUDICIARY

FEBRUARY 6, 2007

Referred to Committee on Judiciary

SUMMARY—Makes various changes concerning the competency of defendants. (BDR 14-801)

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 provisions for determining whether a defendant is competent to stand trial or be punished for a criminal offense; requiring all other departments of the court which has suspended a trial to determine competency of a defendant to suspend any other proceedings related to the defendant; reducing the time by which a court must determine competency when a trial is not requested; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law provides that a person may not be tried or punished for a criminal offense while he is incompetent and defines the term “incompetent.” (NRS 178.400) **Section 1** of this bill revises the definition of “incompetent” to include a person who does not have the capacity to understand the nature and purpose of the court proceedings.

Existing law requires the court to suspend proceedings if a question arises as to the competency of a criminal defendant until the question of competence is resolved. (NRS 178.405) **Section 2** of this bill clarifies that competency may be determined at any time after the arrest of a defendant. **Section 2** also requires the suspension of any other proceedings relating to the defendant once the question of competency is raised until the defendant is determined to be competent.

In certain circumstances, existing law requires the Administrator of the Division of Mental Health and Developmental Services of the Department of Health and Human Services to evaluate the competency of certain criminal defendants and to send a written report of his findings and opinions regarding the competency of the defendant to the court. (NRS 178.455) **Section 3** of this bill requires the Administrator, in evaluating the competency of a defendant, to



consider, among other factors, whether the defendant is of sufficient mentality to understand the nature and purpose of the court proceedings. (NRS 178.455)

Existing law provides that the district attorney or counsel for the defendant may request a hearing on the report prepared by the Administrator. Sections 3 and 4 of this bill revise the time by which the court, when no hearing is requested, is required to make and enter its finding of competence or incompetence of the defendant from within 20 days to within 10 days after the Administrator sends the court the report required pursuant to NRS 178.455. (NRS 178.455, 178.460)

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

Section 1. NRS 178.400 is hereby amended to read as follows:

178.400 1. A person may not be tried or adjudged to punishment for a public offense while he is incompetent.

2. For the purposes of this section, "incompetent" means that the person ~~is not of sufficient mentality to be able to understand~~ *does not have the capacity to:*

(a) *Understand* the nature of the criminal charges against him ~~and because of that insufficiency, is not able to aid~~ ;

(b) *Understand the nature and purpose of the court proceedings; or*

(c) *Aid* and assist his counsel in the defense interposed upon the trial or against the pronouncement of the judgment thereafter.

Sec. 2. NRS 178.405 is hereby amended to read as follows:

178.405 1. Any time *after the arrest of a defendant, including, without limitation, proceedings* before trial, ~~or~~ *during trial*, when upon conviction the defendant is brought up for judgment ~~or~~ *or when a defendant who has been placed on probation or whose sentence has been suspended is brought before the court*, if doubt arises as to the competence of the defendant, the court shall suspend the *proceedings, the* trial or the pronouncing of the judgment, as the case may be, until the question of competence is determined.

2. *If the proceedings, the trial or the pronouncing of the judgment are suspended, the court must notify any other departments of the court of the suspension in writing. Upon receiving such notice, the other departments of the court shall suspend any other proceedings relating to the defendant until the defendant is determined to be competent.*

Sec. 3. NRS 178.455 is hereby amended to read as follows:

178.455 1. 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 Health and Human Services or his designee shall appoint a licensed psychiatrist and a licensed psychologist from the



1 treatment team who is certified pursuant to NRS 178.417 to evaluate
2 the defendant. The Administrator or his designee shall also appoint a
3 third evaluator who must be a licensed psychiatrist or psychologist,
4 must be certified pursuant to NRS 178.417 and must not be a
5 member of the treatment team. Upon the completion of the
6 evaluation and treatment of the defendant, the Administrator or his
7 designee shall report to the court in writing his specific findings and
8 opinion upon:

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

11 (b) *Whether the person is of sufficient mentality to understand*
12 *the nature and purpose of the court proceedings;*

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

16 ~~((e))~~ (d) If the person is not of sufficient mentality pursuant to
17 paragraphs (a) , ~~and~~ (b) *and* (c) to be placed upon trial or receive
18 pronouncement of judgment, whether there is a substantial
19 probability that he can receive treatment to competency and will
20 attain competency in the foreseeable future.

21 2. A copy of the report must be:

22 (a) Maintained by the Administrator of the Division of Mental
23 Health and Developmental Services or his designee and
24 incorporated in the medical record of the person; and

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

27 3. In the case of a person charged with or convicted of a
28 misdemeanor, the judge shall, upon receipt of the report set forth in
29 NRS 178.450 from the Administrator of the Division of Mental
30 Health and Developmental Services or his designee:

31 (a) Send a copy of the report by the Administrator or his
32 designee to the prosecuting attorney and to the defendant's counsel;

33 (b) Hold a hearing, if one is requested within 10 days after the
34 report is sent pursuant to paragraph (a), at which the attorneys may
35 examine the Administrator or his designee or the members of the
36 defendant's treatment team on the determination of the report; and

37 (c) Within 10 days after the hearing, if any, or ~~120~~ 10 days after
38 the report is sent if no hearing is requested, enter his finding of
39 competence or incompetence in the manner set forth in subsection 4
40 of NRS 178.460.

41 **Sec. 4.** NRS 178.460 is hereby amended to read as follows:

42 178.460 1. If requested by the district attorney or counsel for
43 the defendant within 10 days after the report by the Administrator of
44 the Division of Mental Health and Developmental Services of the
45 Department of Health and Human Services or his designee is sent to



1 them, the judge shall hold a hearing within 10 days after the request
2 at which the district attorney and the defense counsel may examine
3 the members of the treatment team on their report.

4 2. If the judge orders the appointment of a licensed psychiatrist
5 or psychologist who is not employed by the Division of Mental
6 Health and Developmental Services of the Department of Health
7 and Human Services to perform an additional evaluation and report
8 concerning the defendant, the cost of the additional evaluation and
9 report is a charge against the county.

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

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

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

20 4. If the judge finds the defendant:

21 (a) Competent, the judge shall, within 10 days, forward his
22 finding to the prosecuting attorney and counsel for the defendant.
23 Upon receipt thereof, the prosecuting attorney shall notify the
24 sheriff of the county or chief of police of the city that the defendant
25 has been found competent and prearrange with the facility for the
26 return of the defendant to that county or city for trial upon the
27 offense there charged or the pronouncement of judgment, as the case
28 may be.

29 (b) Incompetent, but there is a substantial probability that he can
30 receive treatment to competency and will attain competency to stand
31 trial or receive pronouncement of judgment in the foreseeable future
32 and finds that he is dangerous to himself or to society, the judge
33 shall recommit the defendant and may order the involuntary
34 administration of medication for the purpose of treatment to
35 competency.

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

42 (d) Incompetent, with no substantial probability of attaining
43 competency in the foreseeable future, the judge shall order the
44 defendant released from custody or if the defendant is an outpatient,
45 released from his obligations as an outpatient if, within 10 days, a



1 petition is not filed to commit the person pursuant to NRS
2 433A.200. After the initial 10 days, the defendant may remain an
3 outpatient or in custody under the provisions of this chapter only as
4 long as the petition is pending unless the defendant is involuntarily
5 committed pursuant to chapter 433A of NRS.

6 5. No person who is committed under the provisions of this
7 chapter may be held in the custody of the Administrator of the
8 Division of Mental Health and Developmental Services of the
9 Department of Health and Human Services or his designee longer
10 than the longest period of incarceration provided for the crime or
11 crimes with which he is charged or 10 years, whichever period is
12 shorter. Upon expiration of the applicable period, the defendant
13 must be returned to the committing court for a determination as to
14 whether or not involuntary commitment pursuant to chapter 433A of
15 NRS is required.

