

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 present ability to understand the nature and purpose of the court proceedings or to assist his counsel with a reasonable degree of rational understanding.

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



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consider and make findings concerning each of the factors for determining whether a person meets the definition of incompetent. (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 present ability 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.~~ *at any time during the proceedings with a reasonable degree of rational understanding.*

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 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



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

11 ~~—(a) Whether~~ *whether* the person ~~is of sufficient mentality~~ *has*
12 *the present ability to understand* :

13 (a) *Understand* the nature of the offense charged;

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

16 (c) ~~Whether the person is of sufficient mentality to aid~~ *Aid* and
17 assist *his* counsel ~~in the defense of the offense charged, or to show~~
18 ~~cause why judgment should not be pronounced; and~~

19 ~~(e)~~ *in the defense at any time during the proceedings with a*
20 *reasonable degree of rational understanding.*

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

30 ~~2.~~ 3. A copy of the report must be:

31 (a) Maintained by the Administrator of the Division of Mental
32 Health and Developmental Services or his designee and
33 incorporated in the medical record of the person; and

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

36 ~~3.~~ 4. In the case of a person charged with or convicted of a
37 misdemeanor, the judge shall, upon receipt of the report set forth in
38 NRS 178.450 from the Administrator of the Division of Mental
39 Health and Developmental Services or his designee:

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

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



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

Sec. 4. 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 report by the Administrator of the Division of Mental Health and Developmental Services of the Department of Health and Human Services 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 treatment team on their 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 Health and Human Services 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~~ 10 days after the 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 can receive treatment to competency and 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.

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 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.

(b) Incompetent, but there is a substantial probability that he can receive treatment to competency and 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 and may order the involuntary administration of medication for the purpose of treatment to competency.



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

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

16 5. No person who is committed under the provisions of this
17 chapter may be held in the custody of the Administrator of the
18 Division of Mental Health and Developmental Services of the
19 Department of Health and Human Services or his designee longer
20 than the longest period of incarceration provided for the crime or
21 crimes with which he is charged or 10 years, whichever period is
22 shorter. Upon expiration of the applicable period, the defendant
23 must be returned to the committing court for a determination as to
24 whether or not involuntary commitment pursuant to chapter 433A of
25 NRS is required.

