

SENATE BILL NO. 380—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE NEVADA DISTRICT ATTORNEYS ASSOCIATION)

MARCH 19, 2007

Referred to Committee on Judiciary

SUMMARY—Makes various changes concerning certain defendants who are found to be incompetent. (BDR 14-279)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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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; establishing procedures for the commitment to and conditional release from the custody of the Administrator of the Division of Mental Health and Developmental Services of the Department of Health and Human Services of certain criminal defendants whom the court finds to be incompetent; making an appropriation; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that if a court finds that a defendant is incompetent to stand trial or to receive punishment for a crime and that there is not a substantial probability the defendant will attain competency in the foreseeable future, the court must dismiss the proceedings against the defendant. (NRS 178.425) Moreover, if the court has dismissed the proceedings against the defendant, the court must release the defendant from custody if a petition to involuntarily commit the defendant is not filed within 10 days. (NRS 178.460)

This bill establishes procedures for the commitment to and conditional release from the custody of the Administrator of the Division of Mental Health and Developmental Services of the Department of Health and Human Services of certain defendants. Under **section 42** of this bill, if a court dismisses the proceedings against a defendant who is charged with a category A or category B felony because the court finds that the defendant is incompetent with no substantial probability of attaining competence in the foreseeable future, the prosecuting attorney may file a motion to determine whether the court should commit the person to the custody of the Administrator. If the court finds that the person has a mental disorder and is a danger to himself or others, the court must order that the



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18 person be committed to the custody of the Administrator until he is eligible for
19 conditional release or 10 years has passed, whichever is shorter. At least once every
20 12 months, the court must review the person's eligibility for conditional release.

21 **Section 43** of this bill provides the manner for determining eligibility for
22 conditional release of a person committed to the custody of the Administrator
23 pursuant to **section 42**. **Section 43** further provides that the court must review the
24 person's eligibility for discharge from conditional release at least once every 12
25 months. If, at the conclusion of this review, the court finds that the defendant no
26 longer has a mental disorder and is not a danger to himself or others, the court is
27 required to discharge the person from conditional release.

28 **Section 44** of this bill requires the Division to notify the court if the defendant
29 violates a condition of his release. After receiving such a notification, the court
30 must consult with the defendant's attorney, the prosecuting attorney and the
31 Division concerning the risk the defendant poses to the community and the court
32 may order the defendant to be taken into protective custody or to jail. Within 10
33 days after such an order, the court must hold a hearing to determine whether the
34 court should continue, modify or terminate the conditional release of the defendant.

35 **Section 129.5** of this bill makes an appropriation to the Division of Mental
36 Health and Developmental Services of the Department of Health and Human
37 Services for the costs associated with implementing the provisions of this bill.

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

1 **Sections 1-29.** (Deleted by amendment.)

2 **Sec. 30.** Chapter 178 of NRS is hereby amended by adding
3 thereto the provisions set forth as sections 31 to 45, inclusive, of this
4 act.

5 **Secs. 31-37.5.** (Deleted by amendment.)

6 **Sec. 38.** *As used in NRS 178.399 to 178.460, inclusive, and*
7 *sections 38 to 45, inclusive, of this act, unless the context*
8 *otherwise requires, the words and terms defined in NRS 178.399*
9 *and sections 39, 40 and 41 of this act have the meanings ascribed*
10 *to them in those sections.*

11 **Sec. 39.** *"Division" means the Division of Mental Health and*
12 *Developmental Services of the Department of Health and Human*
13 *Services.*

14 **Sec. 40.** (Deleted by amendment.)

15 **Sec. 41.** *"Mental disorder" means a mental illness that*
16 *results from a psychiatric or neurological disorder that so*
17 *substantially impairs the mental or emotional functioning of a*
18 *person as to make care or treatment necessary or advisable for the*
19 *welfare of the person or for the safety of the person or property of*
20 *another and includes, without limitation, mental retardation and*
21 *related conditions.*

22 **Sec. 42. 1.** *If the proceedings against a defendant who is*
23 *charged with a category A or category B felony are dismissed*
24 *pursuant to subsection 5 of NRS 178.425, the prosecuting attorney*



1 *may, within 10 judicial days after the dismissal, file a motion with*
2 *the court for a hearing to determine whether to commit the person*
3 *to the custody of the Administrator of the Division pursuant to*
4 *subsection 2. The court shall hold the hearing within 10 judicial*
5 *days after the motion is filed with the court.*

6 2. *At a hearing held pursuant to subsection 1, if the court*
7 *finds by clear and convincing evidence that the person has a*
8 *mental disorder and that he is a danger to himself or others, the*
9 *court must order:*

10 (a) *The sheriff to take the person into protective custody and*
11 *transport him to a secure facility operated by the Division; and*

12 (b) *That the person be committed to the custody of the*
13 *Administrator of the Division and kept under observation until the*
14 *person is eligible for conditional release pursuant to section 43 of*
15 *this act or until the maximum length of commitment described in*
16 *subsection 3 has expired.*

17 3. *The length of commitment of a person pursuant to*
18 *subsection 2 must not exceed 10 years, including any time that the*
19 *person has been on conditional release pursuant to section 43 of*
20 *this act.*

21 4. *At least once every 12 months, the court shall review the*
22 *eligibility of the defendant for conditional release.*

23 **Sec. 43.** 1. *A person who is committed to the custody of the*
24 *Administrator of the Division pursuant to section 42 of this act is*
25 *eligible for conditional release only after:*

26 (a) *The Division has completed a comprehensive risk*
27 *assessment concerning the person;*

28 (b) *A decision to release the person from commitment with*
29 *conditions imposed by the court in consultation with the Division*
30 *has been made based on input from the person's treatment team,*
31 *the prosecuting attorney, the counsel for the person and the team*
32 *that will supervise the person in the community; and*

33 (c) *The court which committed the person has approved the*
34 *conditional release.*

35 2. *If a person is serving a period of conditional release*
36 *pursuant to this section, the court must, at least once every 12*
37 *months, review the eligibility of the defendant for discharge from*
38 *conditional release. If, at the conclusion of the review required by*
39 *this subsection, the court finds by clear and convincing evidence*
40 *that the person no longer has a mental disorder and that he is not*
41 *a danger to himself or others, the court must discharge the person*
42 *from conditional release.*

43 3. *The length of the period of conditional release must not*
44 *exceed 10 years, including any time that the person has been*



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1 committed to the custody of the Administrator of the Division
2 pursuant to sections 42 and 44 of this act.

3 **Sec. 44.** 1. The Division shall notify the court which
4 ordered the commitment of the person pursuant to section 42 of
5 this act if the person violates a condition of his release from
6 commitment.

7 2. If the court is notified pursuant to subsection 1 of a
8 violation, the court shall consult with the Division, the counsel for
9 the person and the prosecuting attorney concerning the potential
10 risk to the community that is posed by the noncompliance of the
11 person with the conditions of release from commitment.

12 3. After consulting with the persons required by subsection 2
13 and considering the risks to the community, the court may issue a
14 temporary order of detention to commit the person to custody,
15 pending the hearing described in subsection 4. If the court issues
16 such an order, the court must:

17 (a) Order the sheriff to take the person:

18 (1) Into protective custody and transport him to a forensic
19 facility operated by the Division; or

20 (2) To a jail where the person must remain in protective
21 custody; and

22 (b) Provide a copy of the order to the counsel for the person
23 and the prosecuting attorney.

24 4. Within 10 days after a person has been committed to the
25 custody of the Administrator for evaluation pursuant to subsection
26 3, the court shall hold a hearing to determine whether to continue,
27 modify or terminate the conditional release of the defendant.

28 5. As used in this section, "forensic facility" has the meaning
29 ascribed to it in NRS 175.539.

30 **Secs. 45-46.** (Deleted by amendment.)

31 **Sec. 47.** NRS 178.399 is hereby amended to read as follows:

32 178.399 ~~[As used in NRS 178.400 to 178.460, inclusive, unless~~
33 ~~the context otherwise requires, "treatment"]~~ "Treatment to
34 competency" means treatment provided to a defendant to attempt to
35 cause him to attain competency to stand trial or receive
36 pronouncement of judgment.

37 **Secs. 48-52.** (Deleted by amendment.)

38 **Sec. 53.** NRS 178.453 is hereby amended to read as follows:

39 178.453 1. The Administrator of the Division ~~[of Mental~~
40 ~~Health and Developmental Services of the Department of Health~~
41 ~~and Human Services]~~ or his designee may request from the
42 Department of Corrections access to any records in its possession
43 which contain information that may assist in evaluating and treating
44 a defendant who previously has served a term of imprisonment
45 under the supervision of the Department of Corrections and who is



1 committed to the custody of or ordered to report to the
2 Administrator or his designee pursuant to NRS 178.425 or 178.460
3 ~~or section 42 or 44 of this act.~~

4 2. Unless otherwise ordered by a court, upon request of the
5 Administrator or his designee for access to records of a defendant
6 pursuant to subsection 1, the Department of Corrections, through the
7 designated medical director, shall provide access to any such
8 records, including, without limitation, relevant medical and mental
9 health records, for the limited purpose of allowing the Administrator
10 or his designee to evaluate and treat the defendant.

11 3. No oral or written consent of the defendant is required for
12 the Administrator or his designee to obtain access to records from
13 the Department of Corrections pursuant to this section.

14 4. As used in this section, "designated medical director" means
15 the designated administrative officer of the Department of
16 Corrections who is responsible for the medical treatment of
17 offenders.

18 **Sec. 54.** (Deleted by amendment.)

19 **Sec. 55.** NRS 178.460 is hereby amended to read as follows:

20 178.460 1. If requested by the district attorney or counsel for
21 the defendant within 10 days after the report by the Administrator of
22 the Division ~~[of Mental Health and Developmental Services of the~~
23 ~~Department of Health and Human Services]~~ or his designee is sent
24 to them, the judge shall hold a hearing within 10 days after the
25 request at which the district attorney and the defense counsel may
26 examine the members of the treatment team on their report.

27 2. If the judge orders the appointment of a licensed psychiatrist
28 or psychologist who is not employed by the Division ~~[of Mental~~
29 ~~Health and Developmental Services of the Department of Health~~
30 ~~and Human Services]~~ to perform an additional evaluation and report
31 concerning the defendant, the cost of the additional evaluation and
32 report is a charge against the county.

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

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

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

43 4. If the judge finds the defendant:

44 (a) Competent, the judge shall, within 10 days, forward his
45 finding to the prosecuting attorney and counsel for the defendant.



1 Upon receipt thereof, the prosecuting attorney shall notify the
2 sheriff of the county or chief of police of the city that the defendant
3 has been found competent and prearrange with the facility for the
4 return of the defendant to that county or city for trial upon the
5 offense there charged or the pronouncement of judgment, as the case
6 may be.

7 (b) Incompetent, but there is a substantial probability that he can
8 receive treatment to competency and will attain competency to stand
9 trial or receive pronouncement of judgment in the foreseeable future
10 and finds that he is dangerous to himself or to society, the judge
11 shall recommit the defendant and may order the involuntary
12 administration of medication for the purpose of treatment to
13 competency.

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

20 (d) Incompetent, with no substantial probability of attaining
21 competency in the foreseeable future, the judge shall order the
22 defendant released from custody , or if the defendant is an
23 outpatient, released from his obligations as an outpatient if, within
24 10 *judicial* days, *the prosecuting attorney has not filed a motion*
25 *pursuant to section 42 of this act or if, within 10 judicial days,* a
26 petition is not filed to commit the person pursuant to NRS
27 433A.200. After the initial 10 *judicial* days, the *[defendant] person*
28 may remain an outpatient or in custody under the provisions of this
29 chapter only as long as the *motion or* petition is pending unless the
30 *[defendant] person* is *committed to the custody of the*
31 *Administrator pursuant to section 42 of this act or* involuntarily
32 committed pursuant to chapter 433A of NRS.

33 5. *[No] Except as otherwise provided in subsection 3 of*
34 *section 42 of this act, no* person who is committed under the
35 provisions of this chapter may be held in the custody of the
36 Administrator *[of the Division of Mental Health and Developmental*
37 *Services of the Department of Health and Human Services]* or his
38 designee longer than the longest period of incarceration provided for
39 the crime or crimes with which he is charged or 10 years, whichever
40 period is shorter. Upon expiration of the applicable period *[:]*
41 *provided in this section, subsection 3 of section 42 of this act or*
42 *subsection 3 of section 43 of this act,* the *[defendant] person* must
43 be returned to the committing court for a determination as to
44 whether or not involuntary commitment pursuant to chapter 433A of
45 NRS is required.



Secs. 56-129. (Deleted by amendment.)

Sec. 129.5. 1. There is hereby appropriated from the State General Fund to the Division of Mental Health and Developmental Services of the Department of Health and Human Services the sums of:

For the Fiscal Year 2007-2008.....\$138,607

For the Fiscal Year 2008-2009.....\$133,747

2. Any balance of the sums appropriated by subsection 1 remaining at the end of the respective fiscal years must not be committed for expenditure after June 30 of the respective fiscal years by the entity to which the appropriation is made or any entity to which money from the appropriation is granted or otherwise transferred in any manner, and any portion of the appropriated money remaining must not be spent for any purpose after September 19, 2008, and September 18, 2009, respectively, by either the entity to which the money was appropriated or the entity to which the money was subsequently granted or transferred, and must be reverted to the State General Fund on or before September 19, 2008, and September 18, 2009, respectively.

Sec. 130. 1. This section and section 129.5 of this act become effective on July 1, 2007.

2. The amendatory provisions of sections 30 to 55, inclusive, of this act become effective on October 1, 2007, and apply to a defendant who, on or after October 1, 2007, is found incompetent with no substantial probability of attaining competency in the foreseeable future pursuant to subsection 5 of NRS 178.425.

Sec. 131. (Deleted by amendment.)

