

Amendment No. 1042

Senate Amendment to Senate Bill No. 380 First Reprint (BDR 14-279)

Proposed by: Senate Committee on Finance

Amends: Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

Adoption of this amendment will ADD an appropriation where one does not currently exist in S.B. 380.

| ASSEMBLY ACTION | | | Initial and Date | SENATE ACTION | | | Initial and Date |
|-----------------|--------------------------|------|--------------------------------|---------------|--------------------------|------|--------------------------------|
| Adopted | <input type="checkbox"/> | Lost | <input type="checkbox"/> _____ | Adopted | <input type="checkbox"/> | Lost | <input type="checkbox"/> _____ |
| Concurred In | <input type="checkbox"/> | Not | <input type="checkbox"/> _____ | Concurred In | <input type="checkbox"/> | Not | <input type="checkbox"/> _____ |
| Receded | <input type="checkbox"/> | Not | <input type="checkbox"/> _____ | Receded | <input type="checkbox"/> | Not | <input type="checkbox"/> _____ |

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold* is newly added transitory language.

BFG/RBL



Date: 5/30/2007

S.B. No. 380—Makes various changes concerning defendants in criminal actions.
(BDR 14-279)



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 ~~[in criminal actions;]~~ **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; ~~[authorizing a plea and verdict of guilty but mentally ill under certain circumstances; establishing the requirements for determining whether a person is insane for purposes of the plea of not guilty by reason of insanity and for the insanity defense; revising provisions governing the commitment to and the discharge or 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 a criminal defendant following an acquittal based on the insanity defense; revising provisions governing]~~ **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 ~~[other]~~ criminal defendants ~~[who]~~ **whom** the court finds to be incompetent; **making an appropriation;** and providing other matters properly relating thereto.

Legislative Counsel's Digest:

~~[— In 1995, the Legislature enacted Senate Bill No. 314 which abolished the insanity defense in criminal cases and instead authorized the plea of guilty but mentally ill. In 2001, the Nevada Supreme Court interpreted the provisions of Senate Bill No. 314 and ruled that the federal and state constitutions require the State to provide to criminal defendants the option of raising the insanity defense for crimes that require an element of intent. Based on this reasoning and because the Court did not believe the Legislature would wish to preserve the plea of guilty but mentally ill under these circumstances, the Court struck Senate Bill No. 314 in its entirety and reinstated the insanity defense as it existed before Senate Bill No. 314. (Finger v. State, 117 Nev. 548, 575 (2001)) In response to Finger, the Legislature enacted legislation in 2002, Assembly Bill No. 156, which statutorily abolished the plea of guilty but mentally ill and reinstated the insanity defense.]~~

~~Section 4 of this bill reinstates the plea of guilty but mentally ill as an additional plea. Section 4 also provides that a defendant who pleads guilty but mentally ill bears the burden of establishing his mental illness by a preponderance of the evidence and that generally such a defendant is subject to the same penalties and procedures as a defendant who pleads guilty. (NRS 174.035)~~

~~Section 10 of this bill authorizes the verdict of guilty but mentally ill under certain circumstances. Specifically, section 10 authorizes a judge or jury to find a defendant guilty but mentally ill if the defendant entered a plea of not guilty by reason of insanity and the judge or jury finds that the defendant: (1) is guilty of the offense; (2) has proven that he was mentally ill at the time the offense was committed; and (3) has not established that he was insane for the purposes of the defense of insanity. Generally, a defendant who is found guilty but mentally ill is subject to the same penalties and procedures as a defendant who is found guilty.~~

~~Section 18 of this bill provides the types of sentences a court may impose upon a defendant who pleads or is found guilty but mentally ill. Regardless of whether a defendant is mentally ill at the time of sentencing, the court is required to impose any sentence available to the court for a defendant who pleads or is found guilty of the same offense. However, if the defendant is mentally ill at the time of sentencing, the court is also required, under certain circumstances, to direct the Department of Corrections to provide to the defendant such treatment as is available for his mental illness during his confinement or probation. This bill contains many of the same provisions that were included in Senate Bill No. 314 of the 1995 Legislative Session, as well as many new sections that were included to provide for the plea and verdict of guilty but mentally ill.~~

~~Sections 15 and 31-37.5 of this bill establish the procedures governing the discharge or conditional release from custody of a person who is committed to the custody of the Administrator of the Division of Mental Health and Developmental Services of the Department of Health and Human Services following an acquittal by reason of insanity. Section 15 amends the provisions governing the insanity defense to provide that a defendant who is acquitted by reason of insanity must be committed to the custody of the Division until he is eligible for discharge or conditional release. Section 34 provides that such a person is eligible for discharge or conditional release from custody if he establishes by a preponderance of the evidence that he would not be a danger, as a result of any mental disorder, to himself or others. Section 35 provides the procedure for the initial hearing to determine whether a person is eligible for discharge or conditional release. Section 36 provides that the court must enter an order within 15 days after the conclusion of such a hearing. Section 37 provides that if a person is not discharged or conditionally released from the custody of the Administrator following his initial hearing, the person may petition annually for a discharge or conditional release. Section 37 further provides that the Division may petition for a discharge or conditional release at any time if the petition is accompanied by the affidavit of a physician or licensed psychologist which states that the person's mental condition has improved since the most recent hearing concerning the discharge or conditional release of the person.~~

~~Under existing case law in Nevada, a defendant in a criminal case who asserts the insanity defense must prove his insanity at the time of the alleged crime by proving: (1) that he was in a delusional state due to a disease or defect of the mind; and (2) that he did not understand the nature or capacity of his act or appreciate that his act was wrong, meaning that the act is not authorized by law. (Finger, 117 Nev. at 576) This standard for establishing insanity is commonly referred to as the "M'Naghten Rule." The Nevada Supreme Court has recognized that the Legislature may determine that legal insanity be proven by the defendant by any one of the established standards, including the M'Naghten Rule. (Finger, 117 Nev. at 575) Section 4 of this bill codifies the M'Naghten Rule, as stated above, as the standard for establishing insanity for purposes of the insanity defense. (NRS 174.035)~~

~~Sections 38-45 of this bill establish the procedures for commitment to and conditional release from the custody of the Administrator of a defendant if: (1) the court finds the defendant to be incompetent to stand trial or receive pronouncement of judgment, with no substantial probability of attaining competency in the foreseeable future; and (2) based on such a finding of incompetency, the court ordered the dismissal of the criminal proceedings brought against him.~~

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

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

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

Section 129.5 of this bill makes an appropriation to the Division of Mental Health and Developmental Services of the Department of Health and Human 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:

Section 1-29. (Deleted by amendment.)

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

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

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

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

Sec. 40. (Deleted by amendment.)

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

1 Sec. 42. 1. If the proceedings against a defendant who is charged with a
2 category A or category B felony are ~~required to be~~ dismissed pursuant to
3 subsection 5 of NRS 178.425, the prosecuting attorney may, within ~~30~~ 10
4 judicial days after the dismissal, file a motion with the court for a hearing to
5 determine ~~if the court should retain jurisdiction over the defendant,~~ whether to
6 commit the person to the custody of the Administrator of the Division pursuant to
7 subsection 2. The court shall hold the hearing within ~~30~~ 10 judicial days after
8 the motion is filed with the court.

9 2. At a hearing held pursuant to subsection 1, if the court finds by clear and
10 convincing evidence that the ~~defendant committed the crime with which the~~
11 ~~defendant is charged and that the defendant suffers from~~ person has a mental
12 ~~disorder~~ and that he is a danger to himself or others, the court must order:

13 (a) ~~A peace officer.~~ The sheriff to take the ~~defendant~~ person into protective
14 custody and transport him to a secure facility operated by the Division; and

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

19 3. The length of commitment of a ~~defendant~~ person pursuant to
20 subsection 2 must not exceed ~~the longest period of incarceration provided for the~~
21 ~~crime or crimes with which the defendant is charged,~~ 10 years, including any
22 time that the person has been on conditional release pursuant to section 43 of this
23 act.

24 4. At least once every 12 months, the court shall review the eligibility of the
25 defendant for conditional release.

26 Sec. 43. 1. A ~~defendant~~ person who is committed to the custody of the
27 Administrator of the Division pursuant to section 42 of this act is eligible for
28 conditional release only after:

29 (a) ~~A~~ The Division has completed a comprehensive risk assessment ~~has~~
30 been completed by the Division, concerning the person;

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

36 (c) The court which committed the ~~defendant~~ person has approved the
37 conditional release.

38 2. ~~If the court which ordered the commitment of the defendant pursuant to~~
39 ~~section 42 of this act is located in a judicial district that has established a~~
40 ~~program pursuant to NRS 176A.250, the court shall assign the defendant to the~~
41 ~~program.~~

42 3. ~~Unless the defendant is assigned to a program established pursuant to~~
43 ~~NRS 176A.250, the court which ordered the commitment of the defendant~~
44 ~~pursuant to section 42 of this act shall supervise the conditional release of the~~
45 ~~defendant.~~

46 4. ~~If the defendant has been assigned to a program established pursuant to~~
47 ~~NRS 176A.250, the court which assigned the defendant to the program shall~~
48 ~~supervise the conditional release of the defendant, subject to the completion of~~
49 ~~the terms and conditions established by the program.~~

50 5. ~~The conditions imposed by the court for the release of the defendant from~~
51 ~~commitment must include intensive supervision by a forensic assertive~~
52 ~~community treatment team. The forensic assertive community treatment team~~
53 ~~shall at least once every 6 months provide a report concerning the progress of the~~

~~defendant to the court which ordered the commitment of the defendant or the court which supervises the conditional release of the defendant pursuant to subsection 4, as applicable.~~ If a person is serving a period of conditional release pursuant to this section, the court must, at least once every 12 months, review the eligibility of the defendant for discharge from conditional release. If, at the conclusion of the review required by this subsection, the court finds by clear and convincing evidence that the person no longer has a mental disorder and that he is not a danger to himself or others, the court must discharge the person from conditional release.

3. The length of the period of conditional release must not exceed 10 years, including any time that the person has been committed to the custody of the Administrator of the Division pursuant to sections 42 and 44 of this act.

Sec. 44. 1. The ~~forensic assertive community treatment team~~ required to supervise a defendant who is conditionally released from commitment pursuant to section 43 of this act, Division shall notify the court which ordered the commitment of the ~~defendant or the court which supervises the conditional release of the defendant pursuant to subsection 4 of section 43 of this act, as applicable,~~ person pursuant to section 42 of this act if the ~~defendant~~ person violates a condition of his release from commitment.

2. If the court is notified pursuant to subsection 1 of a violation, the court shall consult with the ~~forensic assertive community treatment team,~~ Division, the counsel for the ~~defendant~~ person and the prosecuting attorney concerning the potential risk to the community that is posed by the noncompliance of the ~~defendant~~ person with the conditions of release from commitment.

3. After consulting with the persons required by subsection 2 ~~and~~ and considering the risks to the community, the court may issue a temporary order of detention to commit the ~~defendant~~ person to ~~the~~ custody ~~of the Administrator of the Division for evaluation,~~ pending the hearing described in subsection 4. If the court issues such an order, the court must:

(a) Order ~~a peace officer~~ the sheriff to take the ~~defendant into~~ person:
(1) Into protective custody and transport him to a forensic facility operated by the Division; or

(2) To a jail where the person must remain in protective custody; and
(b) ~~Order that the defendant be committed to the custody of the Administrator for evaluation; and~~

~~(c) Provide a copy of the order to the counsel for the ~~defendant~~ person and the prosecuting attorney.~~

4. Within 10 days after a ~~defendant~~ person has been committed to the custody of the Administrator for evaluation pursuant to subsection 3, the court shall hold a hearing ~~to consider any relevant information that will enable the court to determine whether the~~ to continue, modify or terminate the conditional release of the defendant. ~~It should be continued, modified or terminated.~~

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

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

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

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

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

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

2 178.453 1. The Administrator of the Division ~~{of Mental Health and~~
3 ~~Developmental Services of the Department of Health and Human Services}~~ or his
4 designee may request from the Department of Corrections access to any records in
5 its possession which contain information that may assist in evaluating and treating a
6 defendant who previously has served a term of imprisonment under the supervision
7 of the Department of Corrections and who is committed to the custody of or
8 ordered to report to the Administrator or his designee pursuant to NRS 178.425 or
9 178.460 ~~{}~~ **or section 42 or 44 of this act.**

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

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

19 4. As used in this section, "designated medical director" means the designated
20 administrative officer of the Department of Corrections who is responsible for the
21 medical treatment of offenders.

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

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

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

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

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

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

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

42 4. If the judge finds the defendant:

43 (a) Competent, the judge shall, within 10 days, forward his finding to the
44 prosecuting attorney and counsel for the defendant. Upon receipt thereof, the
45 prosecuting attorney shall notify the sheriff of the county or chief of police of the
46 city that the defendant has been found competent and prearrange with the facility
47 for the return of the defendant to that county or city for trial upon the offense there
48 charged or the pronouncement of judgment, as the case may be.

49 (b) Incompetent, but there is a substantial probability that he can receive
50 treatment to competency and will attain competency to stand trial or receive
51 pronouncement of judgment in the foreseeable future and finds that he is dangerous
52 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.

(c) 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 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 judicial days, the prosecuting attorney has not filed a motion pursuant to section 42 of this act or if, within 10 judicial days, a petition is not filed to commit the person pursuant to NRS 433A.200. After the initial 10 judicial days, the ~~defendant~~ person may remain an outpatient or in custody under the provisions of this chapter only as long as the motion or petition is pending unless the ~~defendant~~ person is committed to the custody of the Administrator pursuant to section 42 ~~for 45 of this act or~~ involuntarily committed pursuant to chapter 433A of NRS.

5. ~~[No] Except as otherwise provided in subsection 3 of section 42 of this act, no~~ person who is committed under the provisions of this chapter may be held in the custody of the Administrator ~~for the Division of Mental Health and Developmental Services of the Department of Health and Human Services~~ or his designee longer than the longest period of incarceration provided for the crime or crimes with which he is charged or 10 years, whichever period is shorter. Upon expiration of the applicable period ~~for provided in this section for~~ subsection 3 of section 42 of this act for or subsection 3 of section 43 of this act, the ~~defendant~~ person 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.

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. ~~[The amendatory provisions of sections 15 and 21 to 27.5, inclusive, of this act concerning the discharge or conditional release of a person committed to the custody of the Administrator of the Division of Mental Health and Developmental Services of the Department of Health and Human Services pursuant to NRS 175.529 apply to any such person who is in the custody of the Administrator on or after October 1, 2007.] This section and section 129.5 of this act become effective on July 1, 2007.~~

1 2. The amendatory provisions of sections ~~{38}~~ 30 to ~~{45}~~ 55, inclusive, of this
2 act ~~{concerning the commitment and conditional release of a person committed to~~
3 ~~the custody of the Administrator pursuant to NRS 178.400 to 178.460, inclusive,}~~
4 **become effective on October 1, 2007, and** apply to ~~{any such person who is in the~~
5 ~~custody of the Administrator}~~ **a defendant who, on or after October 1, 2007 ~~{}~~, is**
6 **found incompetent with no substantial probability of attaining competency in**
7 **the foreseeable future pursuant to subsection 5 of NRS 178.425.**

8 **Sec. 131. (Deleted by amendment.)**