

ASSEMBLY BILL NO. 264—ASSEMBLYWOMAN LESLIE

MARCH 9, 2009

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to defendants who are incompetent. (BDR 14-995)

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 relating to 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; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing law provides that if a court dismisses the proceedings against a
2 defendant who is charged with a category A or category B felony because the court
3 finds that the defendant is incompetent with no substantial probability of attaining
4 competence in the foreseeable future, the prosecuting attorney is authorized to file a
5 motion with the court for a hearing to determine whether to commit the person to
6 the custody of the Administrator of the Division of Mental Health and
7 Developmental Services of the Department of Health and Human Services. **Section**
8 **4** of this bill amends existing law to provide that a prosecuting attorney may file
9 such a motion if a court dismisses the proceedings against a defendant who is
10 charged with any category A felony or certain listed category B felonies, rather
11 than a defendant who is charged with any category A or any category B felony.
12 **Section 4** also: (1) requires a prosecuting attorney who files such a motion to
13 request the Division to provide a comprehensive risk assessment which indicates
14 whether the person requires the level of security provided by a forensic facility; and
15 (2) requires the Division to provide the comprehensive risk assessment to the court,
16 the prosecuting attorney and the person's counsel. (NRS 178.461)

17 Existing law also provides that if the court finds by clear and convincing
18 evidence that the person has a mental disorder and is a danger to himself or others,
19 the court is required to order that the person be committed to the custody of the
20 Administrator until he is eligible for conditional release or after 10 years have



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passed, whichever period is shorter. **Section 4** of this bill amends existing law to: (1) add that the person's dangerousness is required to be at a level that requires placement of the person at a forensic facility as a prerequisite to the court committing the person to the custody of the Administrator; and (2) authorize, rather than require, the court to commit a person to the custody of the Administrator in those circumstances. (NRS 178.461) **Section 1** of this bill defines the term "forensic facility" for the purposes of those provisions.

Existing law provides the manner for determining eligibility for conditional release of a person committed to the custody of the Administrator pursuant to **section 4** of this bill. **Section 5** of this bill authorizes the Division or a person who is committed to the custody of the Administrator to petition the court which committed the person for conditional release. (NRS 178.463)

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

Section 1. Chapter 178 of NRS is hereby amended by adding thereto a new section to read as follows:

"Forensic facility" has the meaning ascribed to it in NRS 175.539.

Sec. 2. NRS 178.3981 is hereby amended to read as follows:

178.3981 As used in NRS 178.3981 to 178.471, inclusive, unless the context otherwise requires, the words and terms defined in NRS 178.3982 to 178.399, inclusive, ***and section 1 of this act*** have the meanings ascribed to them in those sections.

Sec. 3. 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 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 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 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



* A B 2 6 4 R 1 *

(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.

(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 NRS 178.461 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 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 person is committed to the custody of the Administrator pursuant to NRS 178.461 or involuntarily committed pursuant to chapter 433A of NRS.

5. Except as otherwise provided in subsection ~~3~~ 4 of NRS 178.461, no person who is committed under the provisions of this chapter may be held in the custody of the Administrator 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 provided in this section, subsection ~~3~~ 4 of NRS 178.461 or subsection ~~3~~ 4 of NRS 178.463, the person must be returned to the committing



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1 court for a determination as to whether or not involuntary
2 commitment pursuant to chapter 433A of NRS is required.

3 **Sec. 4.** NRS 178.461 is hereby amended to read as follows:

4 178.461 1. If the proceedings against a defendant who is
5 charged with ~~any~~ **any** category A **felony** or **a** category B felony **listed**
6 **in subsection 6** are dismissed pursuant to subsection 5 of NRS
7 178.425, the prosecuting attorney may, within 10 judicial days after
8 the dismissal, file a motion with the court for a hearing to determine
9 whether to commit the person to the custody of the Administrator
10 pursuant to subsection ~~2.3~~ **3**. The court shall hold the hearing within
11 10 judicial days after the motion is filed with the court.

12 2. ***If the prosecuting attorney files a motion pursuant to***
13 ***subsection 1, the prosecuting attorney shall, not later than the date***
14 ***on which he files the motion, request from the Division a***
15 ***comprehensive risk assessment which indicates whether the***
16 ***person requires the level of security provided by a forensic facility.***
17 ***The Division shall provide the requested comprehensive risk***
18 ***assessment to the court, the prosecuting attorney and counsel for***
19 ***the person not later than three judicial days before the hearing.***

20 3. At a hearing held pursuant to subsection 1, if the court finds
21 by clear and convincing evidence that the person has a mental
22 disorder, ~~and~~ that ~~he~~ **the person** is a danger to himself or others
23 ~~and that the person's dangerousness is such that he requires~~
24 **placement at a forensic facility**, the court ~~must~~ **may** order:

25 (a) The sheriff to take the person into protective custody and
26 transport him to a ~~division facility that is secure;~~ **forensic facility;**
27 and

28 (b) That the person be committed to the custody of the
29 Administrator and kept under observation until the person is eligible
30 for conditional release pursuant to NRS 178.463 or until the
31 maximum length of commitment described in subsection ~~3.4~~ **4** has
32 expired.

33 ~~3.4~~ **4.** The length of commitment of a person pursuant to
34 subsection ~~2.3~~ **3** must not exceed 10 years, including any time that
35 the person has been on conditional release pursuant to
36 NRS 178.463.

37 ~~4.4~~ **5.** At least once every 12 months, the court shall review the
38 eligibility of the defendant for conditional release.

39 **6. The provisions of subsection 1 apply to any of the**
40 **following category B felonies:**

- 41 (a) **Voluntary manslaughter pursuant to NRS 200.050;**
- 42 (b) **Mayhem pursuant to NRS 200.280;**
- 43 (c) **Kidnapping in the second degree pursuant to NRS 200.330;**
- 44 (d) **Assault with a deadly weapon pursuant to NRS 200.471;**
- 45 (e) **Battery with a deadly weapon pursuant to NRS 200.481;**



- (f) *Aggravated stalking pursuant to NRS 200.575;*
- (g) *First degree arson pursuant to NRS 205.010;*
- (h) *Burglary with a deadly weapon pursuant to NRS 205.060;*
- (i) *Invasion of the home with a deadly weapon pursuant to NRS 205.067;*
- (j) *Any category B felony involving the use of a firearm; and*
- (k) *Any attempt to commit a category A felony.*

Sec. 5. NRS 178.463 is hereby amended to read as follows:

178.463 1. *The Division or a person who is committed to the custody of the Administrator pursuant to NRS 178.461 may petition the court which committed the person for conditional release.*

2. A person who is committed to the custody of the Administrator pursuant to NRS 178.461 is eligible for conditional release only after:

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

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

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

~~12-1~~ 3. 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.

~~13-1~~ 4. 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 pursuant to NRS 178.461 and 178.464.

Sec. 6. NRS 178.464 is hereby amended to read as follows:

178.464 1. The Division shall notify the court which ordered the commitment of the person pursuant to NRS 178.461 if the 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 Division, the counsel for the person and the prosecuting attorney concerning the potential risk to the community that is posed by the noncompliance of the person with the conditions of release from commitment.



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

(a) Order the sheriff to take the 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) Provide a copy of the order to the counsel for the person and the prosecuting attorney.

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

~~[5.—As used in this section, “forensic facility” has the meaning ascribed to it in NRS 175.539.]~~

