

SENATE BILL NO. 28—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE DIVISION OF MENTAL HEALTH
AND DEVELOPMENTAL SERVICES)

PREFILED DECEMBER 14, 2010

Referred to Committee on Judiciary

SUMMARY—Revises certain provisions relating to the psychological or psychiatric examinations used in determining the competence of a defendant. (BDR 14-449)

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

~

EXPLANATION – Matter in **bolded italics** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to criminal procedure; revising certain provisions relating to the psychological or psychiatric examinations used in determining the competence of a defendant; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, if a court must determine whether a defendant who is accused of any crime except a misdemeanor is competent to stand trial or to receive pronouncement of judgment, the court must appoint two psychiatrists, two psychologists, or one psychiatrist and one psychologist to examine the defendant. (NRS 178.415) **Section 1** of this bill specifies that such a requirement applies to a defendant who is charged with a category A felony or certain category B felonies. **Section 1** also reduces the number of these required examinations for a defendant who is not charged with a category A felony or certain category B felonies and requires that such a defendant be examined only once by a psychiatrist or psychologist.

Existing law further provides that if the court determines that the defendant is incompetent, the court must place the defendant into a facility of the Division of Mental Health and Developmental Services of the Department of Health and Human Services to receive treatment. After the defendant has been placed in such a facility, the defendant must undergo additional examinations: one by a psychiatrist and one by a psychologist who are both members of the defendant's treatment team, and a third by a psychiatrist or psychologist who is not a member of the defendant's treatment team. (NRS 178.425, 178.455) **Section 2** of this bill eliminates the third examination of the defendant.



* S B 2 8 *

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

1 **Section 1.** NRS 178.415 is hereby amended to read as follows:
2 178.415 1. ~~{Except as otherwise provided in this subsection,~~
3 ~~the} The~~ court shall appoint ~~{two}~~ :

4 (a) *Two* psychiatrists, two psychologists, or one psychiatrist and
5 one psychologist, to examine the defendant ~~{-If}~~ *if* the defendant is
6 ~~{accused of a misdemeanor, the court of jurisdiction shall appoint a}~~
7 *charged with a category A felony or any of the following category*
8 *B felonies:*

9 (1) *Voluntary manslaughter pursuant to NRS 200.050.*

10 (2) *Mayhem pursuant to NRS 200.280.*

11 (3) *Kidnapping in the second degree pursuant to*
12 *NRS 200.330.*

13 (4) *Assault with a deadly weapon pursuant to NRS 200.471.*

14 (5) *Battery with a deadly weapon pursuant to NRS 200.481.*

15 (6) *Aggravated stalking pursuant to NRS 200.575.*

16 (7) *First degree arson pursuant to NRS 205.010.*

17 (8) *Burglary with a deadly weapon pursuant to*
18 *NRS 205.060.*

19 (9) *Invasion of the home with a deadly weapon pursuant to*
20 *NRS 205.067.*

21 (10) *Any category B felony involving the use of a firearm.*

22 (11) *Any attempt to commit a category A felony.*

23 (b) *One psychiatrist or one psychologist to examine the*
24 *defendant if the defendant is charged with any felony other than a*
25 *category A felony or a category B felony listed in paragraph (a).*

26 (c) *One* psychiatric social worker, or other person who is
27 especially qualified by the Division, to examine the defendant ~~{-If}~~ *if*
28 *the defendant is charged with a misdemeanor.*

29 2. Except as otherwise provided in this subsection, at a hearing
30 in open court, the court that orders the examination must receive the
31 report of the examination. If a justice court orders the examination
32 of a defendant who is charged with a gross misdemeanor or felony,
33 the district court must receive the report of the examination.

34 3. The court that receives the report of the examination shall
35 permit counsel for both sides to examine the person or persons
36 appointed to examine the defendant. The prosecuting attorney and
37 the defendant may:

38 (a) Introduce other evidence including, without limitation,
39 evidence related to treatment to competency and the possibility of
40 ordering the involuntary administration of medication; and



* S B 2 8 *

(b) Cross-examine one another's witnesses.

4. The court that receives the report of the examination shall then make and enter its finding of competence or incompetence.

5. The court shall not appoint a person to provide a report or an evaluation pursuant to this section, unless the person is certified by the Division pursuant to NRS 178.417.

Sec. 2. 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 or the Administrator's designee shall appoint a licensed psychiatrist and a licensed psychologist from the treatment team who is certified pursuant to NRS 178.417 to evaluate the defendant. ~~¶The Administrator or the Administrator's designee shall also appoint a third evaluator who must be a licensed psychiatrist or psychologist, must be certified pursuant to NRS 178.417 and must not be a member of the treatment team.¶~~ Upon the completion of the evaluation and treatment of the defendant, the Administrator or the Administrator's designee shall report to the court in writing his or her specific findings and opinion upon whether the person has the present ability to:

(a) Understand the nature of the offense charged;

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

(c) Aid and assist the person's counsel in the defense at any time during the proceedings with a reasonable degree of rational understanding.

2. If the Administrator or the Administrator's designee finds that the person does not have the present ability pursuant to paragraph (a), (b) or (c) of subsection 1 to understand or to aid and assist counsel during the court proceedings, the Administrator or the Administrator's designee shall include in the written report the reasons for the finding and whether there is a substantial probability that the person can receive treatment to competency and will attain competency in the foreseeable future.

3. A copy of the report must be:

(a) Maintained by the Administrator or the Administrator's designee and incorporated in the medical record of the person; and

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

4. In the case of a person charged with or convicted of a misdemeanor, the judge shall, upon receipt of the report set forth in NRS 178.450 from the Administrator or the Administrator's designee:



1 (a) Send a copy of the report by the Administrator or the
2 Administrator's designee to the prosecuting attorney and to the
3 defendant's counsel;

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

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

13 **Sec. 3.** This act becomes effective upon passage and approval.

