

SENATE BILL NO. 54—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE DIVISION OF PUBLIC
AND BEHAVIORAL HEALTH)

PREFILED DECEMBER 20, 2014

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing the commitment and release of incompetent criminal defendants. (BDR 14-334)

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 governing the commitment and release of incompetent criminal defendants; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that if criminal proceedings against a defendant who is charged with any category A felony or certain category B felonies are dismissed because the defendant has been: (1) found incompetent, with no substantial probability of attaining competency in the foreseeable future; and (2) released from custody or from obligations as an outpatient, the prosecuting attorney may file, within 10 judicial days after such dismissal, a motion with the court for a hearing to determine whether to commit the person to the custody of the Administrator of the Division of Public and Behavioral Health of the Department of Health and Human Services. (NRS 178.425, 178.461) **Section 1** of this bill changes the applicable crimes with which such a defendant is charged from any category A felony or certain category B felonies to murder or sexual assault.

Existing law also provides that the Division or a person who is committed to the custody of the Administrator of the Division may petition the court which committed the person for conditional release. If such a person serves a period of conditional release, the court is required to review the eligibility of the person for discharge from conditional release at least once every 12 months. The court must discharge the person from conditional release if, at the conclusion of such a review, the court finds by clear and convincing evidence that the person: (1) no longer has a mental disorder; and (2) is not a danger to himself or herself or others.



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(NRS 178.463) **Section 2** of this bill removes the requirement that the court find by clear and convincing evidence that the person no longer has a mental disorder.

Section 3 of this bill provides that the amendatory provisions of **section 1** apply retroactively to a person who is charged with any category A felony or a category B felony listed in subsection 6 of NRS 178.461, as that subsection existed before the effective date of this bill, if: (1) the proceedings against the person were dismissed before the effective date of this bill; and (2) on the effective date of this bill, the court has not yet ordered the commitment of the person to the custody of the Administrator of the Division.

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

Section 1. NRS 178.461 is hereby amended to read as follows:

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

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

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

(a) The sheriff to take the person into protective custody and transport the person to a forensic facility; and

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

4. The length of commitment of a person pursuant to subsection 3 must not exceed 10 years, including any time that the person has been on conditional release pursuant to NRS 178.463.



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

~~[6. The provisions of subsection 1 apply to any of the following category B felonies:~~

- ~~—(a) Voluntary manslaughter pursuant to NRS 200.050;~~
- ~~—(b) Mayhem pursuant to NRS 200.280;~~
- ~~—(c) Kidnapping in the second degree pursuant to NRS 200.330;~~
- ~~—(d) Assault with a deadly weapon pursuant to NRS 200.471;~~
- ~~—(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. 2. 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.

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 the person is not a danger to himself or herself or others, the court must discharge the person from conditional release.

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.



1 **Sec. 3.** 1. The amendatory provisions of section 1 of this act
2 apply:

3 (a) To a person who is charged with murder or sexual assault
4 and against whom, on or after the effective date of this act,
5 proceedings are dismissed pursuant to subsection 5 of NRS 178.425.

6 (b) Retroactively to a person who is charged with any category
7 A felony or a category B felony listed in subsection 6 of NRS
8 178.461, as that subsection existed before the effective date of this
9 act, if:

10 (1) The proceedings against the person were dismissed
11 pursuant to subsection 5 of NRS 178.425 before the effective date of
12 this act; and

13 (2) On the effective date of this act, the court has not yet
14 ordered the commitment of the person to the custody of the
15 Administrator of the Division of Public and Behavioral Health of
16 the Department of Health and Human Services pursuant to
17 subsection 3 of NRS 178.461.

18 2. The amendatory provisions of section 2 of this act apply to a
19 review conducted by a court pursuant to subsection 3 of NRS
20 178.463 that is concluded after the effective date of this act.

21 **Sec. 4.** This act becomes effective upon passage and approval.

