

Amendment No. 411

Assembly Amendment to Assembly Bill No. 377	(BDR 14-1074)
Proposed by: Assembly Committee on Judiciary	
Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION		Initial and Date	SENATE ACTION		Initial and Date
Adopted	☐	Lost ☐	Adopted	☐	Lost ☐
Concurred In	☐	Not ☐	Concurred In	☐	Not ☐
Receded	☐	Not ☐	Receded	☐	Not ☐

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added 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 proposed to be retained in this amendment.

DP/BAW



Date: 4/22/2017

A.B. No. 377—Revises provisions relating to the competency of a defendant in a criminal case. (BDR 14-1074)



ASSEMBLY BILL NO. 377—ASSEMBLYMAN OHRENSCHALL

MARCH 20, 2017

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to the competency of a defendant in a criminal case. (BDR 14-1074)

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; prohibiting a prosecuting attorney from seeking an indictment while competency proceedings are pending ~~;~~ ***except with leave of the court;*** prohibiting a prosecuting attorney from refileing charges against a defendant who has been found incompetent ~~unless the prosecuting attorney has a good faith belief, based on articulable facts, that the defendant has attained competency;~~ ***except with leave of the court;*** and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that: (1) a person may not be tried or adjudged to punishment for a public offense while incompetent; and (2) any time after the arrest of a defendant, if doubt arises as to the competence of the defendant, the court must suspend the proceedings, the trial or the pronouncing of the judgment until the question of competence is determined. (NRS 178.400, 178.405) ***Section 1*** of this bill provides that a prosecuting attorney may not seek an indictment of the defendant for any offense during the period in which the court is considering whether the defendant is competent or incompetent ~~;~~ ***except upon the prosecuting attorney's application for leave of the court. Section 1 requires the prosecuting attorney to: (1) demonstrate that an objective factor significantly impacts the ability of the State to prosecute the matter in the absence of such leave of the court; and (2) give at least 24 hours' notice of the application to the defendant's attorney.***

Existing law provides that, under certain circumstances, when a criminal defendant has been found incompetent, the proceedings against the defendant must be dismissed. (NRS 178.425) ***Section 2*** of this bill provides for the refileing of charges arising out of the same circumstances in cases in which the prosecuting attorney ***applies for, and is granted, leave of the court where: (1) the State has a good faith belief, based on articulable facts, that the defendant has regained competency ; (2) the State has a compelling interest in bringing charges again; and (3) the period for commencing the criminal action has not lapsed. Section 2 requires the prosecuting attorney to give at least 24 hours' notice of the application to the defendant's attorney.***

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

Section 1. NRS 178.415 is hereby amended to read as follows:

178.415 1. Except as otherwise provided in this subsection, the court shall appoint two psychiatrists, two psychologists, or one psychiatrist and one psychologist, to examine the defendant. If the defendant is accused of a misdemeanor, the court of jurisdiction shall appoint a psychiatric social worker, or other person who is especially qualified by the Division, to examine the defendant.

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

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

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

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

4. *A prosecuting attorney may not seek an indictment of the defendant for any offense during the period in which the court is considering whether the defendant is competent or incompetent ~~+~~ except upon application by the prosecuting attorney to the chief judge of the district court, or his or her designee, and with leave of the court. The prosecuting attorney must demonstrate that adequate cause exists for the court to grant leave to seek an indictment on the grounds that the availability or unavailability of a witness, or any other objective factor, significantly impacts the ability of the State to prosecute the matter in the absence of such leave. The prosecuting attorney must give notice of an application made pursuant to this subsection to the attorney for the defendant not less than 24 hours before the hearing on the application.*

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

~~5-5~~ 6. 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 178.425 is hereby amended to read as follows:

178.425 1. If the court finds the defendant incompetent, and dangerous to himself or herself or to society and that commitment is required for a determination of the defendant's ability to receive treatment to competency and to attain competence, the judge shall order the sheriff to convey the defendant forthwith, together with a copy of the complaint, the commitment and the physicians' certificate, if any, into the custody of the Administrator or the Administrator's designee for detention and treatment at a division facility that is secure. The order may include the involuntary administration of medication if appropriate for treatment to competency.

2. The defendant must be held in such custody until a court orders the defendant's release or until the defendant is returned for trial or judgment as provided in NRS 178.450, 178.455 and 178.460.

3. If the court finds the defendant incompetent but not dangerous to himself or herself or to society, and finds that commitment is not required for a determination

of the defendant's ability to receive treatment to competency and to attain competence, the judge shall order the defendant to report to the Administrator or the Administrator's designee as an outpatient for treatment, if it might be beneficial, and for a determination of the defendant's ability to receive treatment to competency and to attain competence. The court may require the defendant to give bail for any periodic appearances before the Administrator or the Administrator's designee.

4. Except as otherwise provided in subsection 5, proceedings against the defendant must be suspended until the Administrator or the Administrator's designee or, if the defendant is charged with a misdemeanor, the judge finds the defendant capable of standing trial or opposing pronouncement of judgment as provided in NRS 178.400.

5. Whenever the defendant has been found incompetent, with no substantial probability of attaining competency in the foreseeable future, and released from custody or from obligations as an outpatient pursuant to paragraph (d) of subsection 4 of NRS 178.460, the proceedings against the defendant which were suspended must be dismissed. No new charge arising out of the same circumstances may be brought ~~after~~.

~~(a) Unless~~ except upon application by the prosecuting attorney to the chief judge of the district court, or his or her designee, and with leave of the court where:

(a) The State has a good faith belief, based on articulable facts, that the defendant has attained competency.

~~(b) After~~ at:

(b) The State has a compelling interest in bringing charges again; and

(c) The period, equal to the maximum time allowed by law for commencing a criminal action for the crime with which the defendant was charged, has not lapsed since the date of the alleged offense.

↪ The prosecuting attorney must give notice of an application made pursuant to this subsection to the attorney for the defendant not less than 24 hours before the hearing on the application.

6. If a defendant is found incompetent pursuant to this section, the court shall cause, within 5 business days after the finding, on a form prescribed by the Department of Public Safety, a record of that finding to be transmitted to the Central Repository for Nevada Records of Criminal History, along with a statement indicating that the record is being transmitted for inclusion in each appropriate database of the National Instant Criminal Background Check System.

7. As used in this section, "National Instant Criminal Background Check System" has the meaning ascribed to it in NRS 179A.062.