

Amendment No. 895

Senate Amendment to Assembly Bill No. 377 First Reprint	(BDR 14-1074)
Proposed by: Senate 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	<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) 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: 5/23/2017

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 except with leave of the court; authorizing the extension of the commitment of a person in a forensic facility under certain circumstances; 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.

Existing law provides that if a court dismisses the proceedings against a defendant who is charged with a category A or certain category B felonies because the court finds that the defendant is incompetent with no substantial probability of attaining competence in the foreseeable future, the prosecuting attorney is authorized to file 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. The maximum length of such commitment is 10 years. (NRS 178.461) Section 4 of this bill revises these provisions to: (1) authorize the Administrator to file a motion to request an extension of the length of commitment for not more than 5 additional years of a person charged with murder or sexual assault under certain circumstances; (2) authorize a court to grant the motion for an extension of commitment after a hearing to determine whether the person meets certain criteria requiring placement at a forensic facility; and (3) provide that a person committed has the right to be represented by counsel at such a hearing and the right to have an attorney appointed for him or her if the person does not have counsel.

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.

~~5.4~~ 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,

1 together with a copy of the complaint, the commitment and the physicians'
2 certificate, if any, into the custody of the Administrator or the Administrator's
3 designee for detention and treatment at a division facility that is secure. The order
4 may include the involuntary administration of medication if appropriate for
5 treatment to competency.

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

9 3. If the court finds the defendant incompetent but not dangerous to himself or
10 herself or to society, and finds that commitment is not required for a determination
11 of the defendant's ability to receive treatment to competency and to attain
12 competence, the judge shall order the defendant to report to the Administrator or
13 the Administrator's designee as an outpatient for treatment, if it might be beneficial,
14 and for a determination of the defendant's ability to receive treatment to
15 competency and to attain competence. The court may require the defendant to give
16 bail for any periodic appearances before the Administrator or the Administrator's
17 designee.

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

23 5. Whenever the defendant has been found incompetent, with no substantial
24 probability of attaining competency in the foreseeable future, and released from
25 custody or from obligations as an outpatient pursuant to paragraph (d) of subsection
26 4 of NRS 178.460, the proceedings against the defendant which were suspended
27 must be dismissed. No new charge arising out of the same circumstances may be
28 brought ~~after a~~ *except upon application by the prosecuting attorney to the chief*
29 *judge of the district court, or his or her designee, and with leave of the court*
30 *where:*

31 *(a) The State has a good faith belief, based on articulable facts, that the*
32 *defendant has attained competency;*

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

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

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

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

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

48 **Sec. 3. NRS 178.460 is hereby amended to read as follows:**

49 178.460 1. If requested by the district attorney or counsel for the defendant
50 within 10 days after the report by the Administrator or the Administrator's designee
51 is sent to them, the judge shall hold a hearing within 10 days after the request at
52 which the district attorney and the defense counsel may examine the members of
53 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 a finding of competence or incompetence, and if the judge 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

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

4. If the judge finds the defendant:

(a) Competent, the judge shall, within 10 days, forward the 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 the defendant can receive treatment to competency and will attain competency to stand trial or receive pronouncement of judgment in the foreseeable future and finds that the defendant is dangerous to himself or herself 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 the defendant can receive treatment to competency and will attain competency to stand trial or receive pronouncement of judgment in the foreseeable future and finds that the defendant is not dangerous to himself or herself 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 any 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~~ subsections 4 and 7 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 the Administrator's designee longer than the longest period of incarceration provided for the crime or crimes with which the person is charged or 10 years, whichever period is shorter. Upon expiration of the applicable period provided in this section, subsection 4 or 7 of NRS 178.461 or subsection 4 of NRS 178.463, the 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.

Sec. 4. 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 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. Except as otherwise provided in subsection 2, 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. If the person was charged with any category A felony other than murder or sexual assault or a category B felony listed in subsection 6 and the comprehensive risk assessment indicates that the person does not require the level of security provided by a forensic facility, the court shall dismiss the motion.

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 *or 7* has expired.

4. ~~That~~ *Except as otherwise provided in subsection 7, 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.

7. If a person is within 6 months of the maximum length of commitment set forth in this subsection or subsection 4, as applicable, and:

(a) Was charged with murder or sexual assault; and

(b) Was committed to the custody of the Administrator pursuant to this subsection or subsection 3,

the Administrator may file a motion to request an extension of the length of commitment for not more than 5 additional years.

1 8. The court may grant a motion for an extension of the length of
2 commitment pursuant to subsection 7 if, at a hearing conducted on the motion,
3 the court finds by clear and convincing evidence that the person is a danger to
4 himself or herself or others and that the person's dangerousness is such that the
5 person requires placement at a forensic facility.

6 9. At a hearing conducted pursuant to subsection 8, a person who is
7 committed has the right to be represented by counsel. If the person does not have
8 counsel, the court shall appoint an attorney to represent the person.

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

10 178.463 1. The Division or a person who is committed to the custody of the
11 Administrator pursuant to NRS 178.461 may petition the court which committed
12 the person for conditional release.

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

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

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

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

23 3. If a person is serving a period of conditional release pursuant to this
24 section, the court must, at least once every 12 months, review the eligibility of the
25 defendant for discharge from conditional release. If, at the conclusion of the review
26 required by this subsection, the court finds by clear and convincing evidence that
27 the person is not a danger to himself or herself or others, the court must discharge
28 the person from conditional release.

29 4. The length of the period of conditional release must not exceed 10 years,
30 including any time that the person has been committed to the custody of the
31 Administrator pursuant to NRS 178.461 and 178.464, except that the length of
32 the period of conditional release may be extended for not more than 5 additional
33 years if the length of the period of commitment has been extended pursuant to
34 subsection 7 of NRS 178.461.