

Amendment No. 389

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| Assembly Amendment to Assembly Bill No. 148  | (BDR 14-121) |
| <b>Proposed by:</b> Assembly Committee on Judiciary                                |              |
| <b>Amends:</b> Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: No |              |

| 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.

BAW



Date: 4/14/2019

A.B. No. 148—Revises provisions governing plea agreements. (BDR 14-121)





## ASSEMBLY BILL NO. 148—ASSEMBLYMAN FUMO

FEBRUARY 15, 2019

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing plea agreements. (BDR 14-121)

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 plea agreements; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law establishes the types of pleas that a criminal defendant may enter and the procedure for entering any such plea. (NRS 174.035) **Section 1** of this bill provides that if a defendant and the district attorney enter into a stipulated agreement as a result of any negotiations between the defendant and the district attorney, such an agreement must be treated as a conditional plea agreement that is subject to acceptance by the court.

Existing law also provides that if a plea of guilty or guilty but mentally ill is made in a written plea agreement, the agreement is required to be substantially in a certain form. (NRS 174.063) **Section 2** of this bill provides that such an agreement must not contain any information other than the information required by law.

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

**Section 1.** NRS 174.035 is hereby amended to read as follows:

174.035 1. A defendant may plead not guilty, guilty, guilty but mentally ill or, with the consent of the court, nolo contendere. The court may refuse to accept a plea of guilty or guilty but mentally ill.

2. If a plea of guilty or guilty but mentally ill is made in a written plea agreement, the agreement must be in ~~substantially~~ the form prescribed in NRS 174.063. If a plea of guilty or guilty but mentally ill is made orally, the court shall not accept such a plea or a plea of nolo contendere without first addressing the defendant personally and determining that the plea is made voluntarily with understanding of the nature of the charge and consequences of the plea.

3. With the consent of the court and the district attorney, a defendant may enter a conditional plea of guilty, guilty but mentally ill or nolo contendere, reserving in writing the right, on appeal from the judgment, to a review of the adverse determination of any specified pretrial motion. A defendant who prevails on appeal must be allowed to withdraw the plea.

4. Upon an unconditional waiver of a preliminary hearing, a defendant and the district attorney may enter into a written conditional plea agreement, subject to the court accepting the recommended sentence pursuant to the agreement.

*5. If a defendant and the district attorney enter into a stipulated plea agreement as a result of any negotiations between the defendant and the district attorney, such an agreement must be treated as a conditional plea agreement that is subject to the court accepting the recommended sentence pursuant to the agreement.*

6. A plea of guilty but mentally ill must be entered not less than 21 days before the date set for trial. A defendant who has entered a plea of guilty but mentally ill has the burden of establishing the defendant's mental illness by a preponderance of the evidence. Except as otherwise provided by specific statute, a defendant who enters such a plea is subject to the same criminal, civil and administrative penalties and procedures as a defendant who pleads guilty.

~~6.7~~ 7. The defendant may, in the alternative or in addition to any one of the pleas permitted by subsection 1, plead not guilty by reason of insanity. A plea of not guilty by reason of insanity must be entered not less than 21 days before the date set for trial. A defendant who has not so pleaded may offer the defense of insanity during trial upon good cause shown. Under such a plea or defense, the burden of proof is upon the defendant to establish by a preponderance of the evidence that:

(a) Due to a disease or defect of the mind, the defendant was in a delusional state at the time of the alleged offense; and

(b) Due to the delusional state, the defendant either did not:

(1) Know or understand the nature and capacity of his or her act; or

(2) Appreciate that his or her conduct was wrong, meaning not authorized by law.

~~7.7~~ 8. If a defendant refuses to plead or if the court refuses to accept a plea of guilty or guilty but mentally ill or if a defendant corporation fails to appear, the court shall enter a plea of not guilty.

~~8.7~~ 9. A defendant may not enter a plea of guilty or guilty but mentally ill pursuant to a plea bargain for an offense punishable as a felony for which:

(a) Probation is not allowed; or

(b) The maximum prison sentence is more than 10 years, unless the plea bargain is set forth in writing and signed by the defendant, the defendant's attorney, if the defendant is represented by counsel, and the prosecuting attorney.

~~9.7~~ 10. If the court accepts a plea of guilty but mentally ill pursuant to this section, the court shall cause, within 5 business days after acceptance of the plea, on a form prescribed by the Department of Public Safety, a record of that plea 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.

~~10.7~~ 11. As used in this section:

(a) "Disease or defect of the mind" does not include a disease or defect which is caused solely by voluntary intoxication.

(b) "National Instant Criminal Background Check System" has the meaning ascribed to it in NRS 179A.062.

**Sec. 2.** NRS 174.063 is hereby amended to read as follows:

174.063 1. If a plea of guilty or guilty but mentally ill is made in a written plea agreement, the agreement must be ~~substantially~~ in the following form:

Case No. ....  
Dept. No. ....

IN THE ..... JUDICIAL DISTRICT COURT OF THE STATE OF  
NEVADA IN AND FOR THE COUNTY OF.....,

The State of Nevada,  
PLAINTIFF,

v.

(Name of defendant),  
DEFENDANT.

**GUILTY OR GUILTY BUT MENTALLY ILL PLEA AGREEMENT**

I hereby agree to plead guilty or guilty but mentally ill to: (List charges to which defendant is pleading guilty or guilty but mentally ill), as more fully alleged in the charging document attached hereto as Exhibit 1.

My decision to plead guilty or guilty but mentally ill is based upon the plea agreement in this case which is as follows:  
(State the terms of the agreement.)

**CONSEQUENCES OF THE PLEA**

I understand that by pleading guilty or guilty but mentally ill I admit the facts which support all the elements of the offenses to which I now plead as set forth in Exhibit 1.

I understand that as a consequence of my plea of guilty or guilty but mentally ill I may be imprisoned for a period of not more than (maximum term of imprisonment) and that I (may or will) be fined up to (maximum amount of fine). I understand that the law requires me to pay an administrative assessment fee.

I understand that, if appropriate, I will be ordered to make restitution to the victim of the offenses to which I am pleading guilty or guilty but mentally ill and to the victim of any related offense which is being dismissed or not prosecuted pursuant to this agreement. I will also be ordered to reimburse the State of Nevada for expenses relating to my extradition, if any.

I understand that I (am or am not) eligible for probation for the offense to which I am pleading guilty or guilty but mentally ill. (I understand that, except as otherwise provided by statute, the question of whether I receive probation is in the discretion of the sentencing judge, or I understand that I must serve a mandatory minimum term of (term of imprisonment) or pay a minimum mandatory fine of (amount of fine) or serve a mandatory minimum term (term of imprisonment) and pay a minimum mandatory fine of (amount of fine).)

I understand that if more than one sentence of imprisonment is imposed and I am eligible to serve the sentences concurrently, the sentencing judge has the discretion to order the sentences served concurrently or consecutively.

I understand that information regarding charges not filed, dismissed charges or charges to be dismissed pursuant to this agreement may be considered by the judge at sentencing.

I have not been promised or guaranteed any particular sentence by anyone. I know that my sentence is to be determined by the court within the limits prescribed by statute. I understand that if my attorney or the State of Nevada or both recommend any specific punishment to the court, the court is not obligated to accept the recommendation.

I understand that the Division of Parole and Probation of the Department of Public Safety may or will prepare a report for the sentencing judge before sentencing. This report will include matters relevant to the issue of sentencing, including my criminal history. I understand that this report may contain hearsay information regarding my background and criminal history. My attorney (if represented by counsel) and I will each have the opportunity to comment on the information contained in the report at the time of sentencing.

#### WAIVER OF RIGHTS

By entering my plea of guilty or guilty but mentally ill, I understand that I have waived the following rights and privileges:

1. The constitutional privilege against self-incrimination, including the right to refuse to testify at trial, in which event the prosecution would not be allowed to comment to the jury about my refusal to testify.

2. The constitutional right to a speedy and public trial by an impartial jury, free of excessive pretrial publicity prejudicial to the defense, at which trial I would be entitled to the assistance of an attorney, either appointed or retained. At trial, the State would bear the burden of proving beyond a reasonable doubt each element of the offense charged.

3. The constitutional right to confront and cross-examine any witnesses who would testify against me.

4. The constitutional right to subpoena witnesses to testify on my behalf.

5. The constitutional right to testify in my own defense.

6. The right to appeal the conviction, with the assistance of an attorney, either appointed or retained, unless the appeal is based upon reasonable constitutional, jurisdictional or other grounds that challenge the legality of the proceedings and except as otherwise provided in subsection 3 of NRS 174.035.

#### VOLUNTARINESS OF PLEA

I have discussed the elements of all the original charges against me with my attorney (if represented by counsel) and I understand the nature of these charges against me.

I understand that the State would have to prove each element of the charge against me at trial.

I have discussed with my attorney (if represented by counsel) any possible defenses and circumstances which might be in my favor.

All of the foregoing elements, consequences, rights and waiver of rights have been thoroughly explained to me by my attorney (if represented by counsel).

I believe that pleading guilty or guilty but mentally ill and accepting this plea bargain is in my best interest and that a trial would be contrary to my best interest.

I am signing this agreement voluntarily, after consultation with my attorney (if represented by counsel) and I am not acting under duress or

1 coercion or by virtue of any promises of leniency, except for those set forth  
2 in this agreement.

3 I am not now under the influence of intoxicating liquor, a controlled  
4 substance or other drug which would in any manner impair my ability to  
5 comprehend or understand this agreement or the proceedings surrounding  
6 my entry of this plea.

7 My attorney (if represented by counsel) has answered all my questions  
8 regarding this guilty or guilty but mentally ill plea agreement and its  
9 consequences to my satisfaction and I am satisfied with the services  
10 provided by my attorney.

11  
12 Dated: This ..... day of the month of ..... of the year .....

13 .....  
14 Defendant.

15  
16  
17 Agreed to on this ..... day of the month of ..... of the year .....

18 .....  
19 Deputy District Attorney.

20  
21  
22 2. If the defendant is represented by counsel, the written plea agreement must  
23 also include a certificate of counsel that is substantially in the following form:

24  
25 CERTIFICATE OF COUNSEL

26 I, the undersigned, as the attorney for the defendant named herein and  
27 as an officer of the court hereby certify that:

28 1. I have fully explained to the defendant the allegations contained in  
29 the charges to which guilty or guilty but mentally ill pleas are being  
30 entered.

31 2. I have advised the defendant of the penalties for each charge and  
32 the restitution that the defendant may be ordered to pay.

33 3. All pleas of guilty or guilty but mentally ill offered by the  
34 defendant pursuant to this agreement are consistent with all the facts known  
35 to me and are made with my advice to the defendant and are in the best  
36 interest of the defendant.

37 4. To the best of my knowledge and belief, the defendant:

38 (a) Is competent and understands the charges and the consequences of  
39 pleading guilty or guilty but mentally ill as provided in this agreement.

40 (b) Executed this agreement and will enter all guilty or guilty but  
41 mentally ill pleas pursuant hereto voluntarily.

42 (c) Was not under the influence of intoxicating liquor, a controlled  
43 substance or other drug at the time of the execution of this agreement.

44  
45 Dated: This ..... day of the month of ..... of the year .....

46 .....  
47 Attorney for defendant.

48  
49  
50 ***3. A written plea agreement for a plea of guilty or guilty but mentally ill***  
51 ***must not contain any information other than the information required by this***  
52 ***section.***

**Sec. 3.** NRS 175.533 is hereby amended to read as follows:

175.533 1. During a trial, upon a plea of not guilty by reason of insanity, the trier of fact may find the defendant guilty but mentally ill if the trier of fact finds all of the following:

(a) The defendant is guilty beyond a reasonable doubt of an offense;

(b) The defendant has established by a preponderance of the evidence that due to a disease or defect of the mind, the defendant was mentally ill at the time of the commission of the offense; and

(c) The defendant has not established by a preponderance of the evidence that the defendant is not guilty by reason of insanity pursuant to subsection ~~6~~ 7 of NRS 174.035.

2. Except as otherwise provided by specific statute, a defendant who is found guilty but mentally ill is subject to the same criminal, civil and administrative penalties and procedures as a defendant who is found guilty.

3. If the trier of fact finds a defendant guilty but mentally ill pursuant to subsection 1, the court shall cause, within 5 business days after the finding, on a form prescribed by the Department of Public Safety, a record of the 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.

4. As used in this section:

(a) "Disease or defect of the mind" does not include a disease or defect which is caused solely by voluntary intoxication.

(b) "National Instant Criminal Background Check System" has the meaning ascribed to it in NRS 179A.062.

**Sec. 4.** The amendatory provisions of this act apply to any plea agreement that is entered into on or after ~~July~~ **October** 1, 2019.

**Sec. 5.** ~~[This act becomes effective on July 1, 2019.] (Deleted by amendment.)~~