
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; 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; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

- 1 Existing law provides that: (1) a person may not be tried or adjudged to
2 punishment for a public offense while incompetent; and (2) any time after the arrest
3 of a defendant, if doubt arises as to the competence of the defendant, the court must
4 suspend the proceedings, the trial or the pronouncing of the judgment until the
5 question of competence is determined. (NRS 178.400, 178.405) **Section 1** of this
6 bill provides that a prosecuting attorney may not seek an indictment of the
7 defendant for any offense during the period in which the court is considering
8 whether the defendant is competent or incompetent.
9 Existing law provides that, under certain circumstances, when a criminal
10 defendant has been found incompetent, the proceedings against the defendant must
11 be dismissed. (NRS 178.425) **Section 2** of this bill provides for the refileing of
12 charges arising out of the same circumstances in cases in which the prosecuting
13 attorney has a good faith belief, based on articulable facts, that the defendant has
14 regained competency.



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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 court shall appoint two psychiatrists, two psychologists,
4 or one psychiatrist and one psychologist, to examine the defendant.
5 If the defendant is accused of a misdemeanor, the court of
6 jurisdiction shall appoint a psychiatric social worker, or other person
7 who is especially qualified by the Division, to examine the
8 defendant.

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

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

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

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

23 4. *A prosecuting attorney may not seek an indictment of the*
24 *defendant for any offense during the period in which the*
25 *court is considering whether the defendant is competent or*
26 *incompetent.*

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

29 ~~6.~~ 6. The court shall not appoint a person to provide a report
30 or an evaluation pursuant to this section, unless the person is
31 certified by the Division pursuant to NRS 178.417.

32 **Sec. 2.** NRS 178.425 is hereby amended to read as follows:

33 178.425 1. If the court finds the defendant incompetent, and
34 dangerous to himself or herself or to society and that commitment is
35 required for a determination of the defendant's ability to receive
36 treatment to competency and to attain competence, the judge shall
37 order the sheriff to convey the defendant forthwith, together with a
38 copy of the complaint, the commitment and the physicians'
39 certificate, if any, into the custody of the Administrator or the
40 Administrator's designee for detention and treatment at a division
41 facility that is secure. The order may include the involuntary



1 administration of medication if appropriate for treatment to
2 competency.

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

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

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

24 5. Whenever the defendant has been found incompetent, with
25 no substantial probability of attaining competency in the foreseeable
26 future, and released from custody or from obligations as an
27 outpatient pursuant to paragraph (d) of subsection 4 of NRS
28 178.460, the proceedings against the defendant which were
29 suspended must be dismissed. No new charge arising out of the
30 same circumstances may be brought ~~after~~:

31 *(a) Unless the prosecuting attorney has a good faith belief,*
32 *based on articulable facts, that the defendant has attained*
33 *competency.*

34 *(b) After* a period, equal to the maximum time allowed by law
35 for commencing a criminal action for the crime with which the
36 defendant was charged, has lapsed since the date of the alleged
37 offense.

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



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

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