

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 refile charges against a defendant who has been found incompetent except with leave of the court; 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  
6 this 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 except upon the  
9 prosecuting attorney’s application for leave of the court. **Section 1** requires the  
10 prosecuting attorney to: (1) demonstrate that an objective factor significantly  
11 impacts the ability of the State to prosecute the matter in the absence of such leave  
12 of the court; and (2) give at least 24 hours’ notice of the application to the  
13 defendant’s attorney.

14 Existing law provides that, under certain circumstances, when a criminal  
15 defendant has been found incompetent, the proceedings against the defendant must  
16 be dismissed. (NRS 178.425) **Section 2** of this bill provides for the refile of  
17 charges arising out of the same circumstances in cases in which the prosecuting  
18 attorney applies for, and is granted, leave of the court where: (1) the State has a  
19 good faith belief, based on articulable facts, that the defendant has regained  
20 competency; (2) the State has a compelling interest in bringing charges again; and  
21 (3) the period for commencing the criminal action has not lapsed. **Section 2**



\* A B 3 7 7 R 1 \*

22 requires the prosecuting attorney to give at least 24 hours' notice of the application  
23 to the defendant's attorney.

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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 court is*  
25 *considering whether the defendant is competent or incompetent*  
26 *except upon application by the prosecuting attorney to the chief*  
27 *judge of the district court, or his or her designee, and with leave of*  
28 *the court. The prosecuting attorney must demonstrate that*  
29 *adequate cause exists for the court to grant leave to seek an*  
30 *indictment on the grounds that the availability or unavailability of*  
31 *a witness, or any other objective factor, significantly impacts the*  
32 *ability of the State to prosecute the matter in the absence of such*  
33 *leave. The prosecuting attorney must give notice of an application*  
34 *made pursuant to this subsection to the attorney for the defendant*  
35 *not less than 24 hours before the hearing on the application.*  
36       5. The court that receives the report of the examination shall  
37 then make and enter its finding of competence or incompetence.



1 ~~5-~~ 6. The court shall not appoint a person to provide a report  
2 or an evaluation pursuant to this section, unless the person is  
3 certified by the Division pursuant to NRS 178.417.

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

5 178.425 1. If the court finds the defendant incompetent, and  
6 dangerous to himself or herself or to society and that commitment is  
7 required for a determination of the defendant's ability to receive  
8 treatment to competency and to attain competence, the judge shall  
9 order the sheriff to convey the defendant forthwith, together with a  
10 copy of the complaint, the commitment and the physicians'  
11 certificate, if any, into the custody of the Administrator or the  
12 Administrator's designee for detention and treatment at a division  
13 facility that is secure. The order may include the involuntary  
14 administration of medication if appropriate for treatment to  
15 competency.

16 2. The defendant must be held in such custody until a court  
17 orders the defendant's release or until the defendant is returned for  
18 trial or judgment as provided in NRS 178.450, 178.455 and  
19 178.460.

20 3. If the court finds the defendant incompetent but not  
21 dangerous to himself or herself or to society, and finds that  
22 commitment is not required for a determination of the defendant's  
23 ability to receive treatment to competency and to attain competence,  
24 the judge shall order the defendant to report to the Administrator or  
25 the Administrator's designee as an outpatient for treatment, if it  
26 might be beneficial, and for a determination of the defendant's  
27 ability to receive treatment to competency and to attain competence.  
28 The court may require the defendant to give bail for any periodic  
29 appearances before the Administrator or the Administrator's  
30 designee.

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

37 5. Whenever the defendant has been found incompetent, with  
38 no substantial probability of attaining competency in the foreseeable  
39 future, and released from custody or from obligations as an  
40 outpatient pursuant to paragraph (d) of subsection 4 of NRS  
41 178.460, the proceedings against the defendant which were  
42 suspended must be dismissed. No new charge arising out of the  
43 same circumstances may be brought ~~after~~ ***except upon application  
44 by the prosecuting attorney to the chief judge of the district court,  
45 or his or her designee, and with leave of the court where:***



1 (a) *The State has a good faith belief, based on articulable*  
2 *facts, that the defendant has attained competency* ~~††~~ ;

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

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

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

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

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

