

SENATE BILL NO. 10—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE LEGISLATIVE COMMITTEE  
ON HEALTH CARE)

PREFILED DECEMBER 19, 2014

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to incompetent defendants. (BDR 14-68)

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; allowing the Division of Public and Behavioral Health of the Department of Health and Human Services to establish a program to provide certain services to a criminal defendant while the criminal defendant is incarcerated; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

1 Existing law allows a court to order a psychiatric examination of a criminal  
2 defendant and requires the evaluation of criminal defendants found incompetent to  
3 stand trial at certain intervals to determine whether the defendant has attained  
4 competency. (NRS 178.415, 178.450, 178.455) Existing law also allows a court to  
5 order a defendant who is found incompetent, but not dangerous to himself or  
6 herself or society, to undergo outpatient treatment. (NRS 178.425, 178.460) This  
7 bill allows the Division of Public and Behavioral Health of the Department of  
8 Health and Human Services to establish a program to allow certain defendants  
9 declared incompetent to receive treatment to competency while incarcerated in jail  
10 or prison. If the program allows for the use of the forcible administration of  
11 medication, this bill requires certain determinations to be made and that appropriate  
12 access to a court be provided to allow for the challenge of such determinations.  
13 (See *Sell v. United States*, 539 U.S. 166 (2003).) In addition, this bill requires the  
14 Division to determine the appropriate staffing for a jail or prison to participate in  
15 the program. If such a program is established, this bill allows the Division to enter  
16 into a contract with a person, organization or agency to carry out or assist in  
17 carrying out the program.



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

1       **Section 1.** NRS 178.417 is hereby amended to read as follows:

2       178.417 1. A person may not provide a report or an  
3 evaluation concerning the competency of a defendant to stand trial  
4 or receive pronouncement of judgment pursuant to this section and  
5 NRS 178.400 to 178.460, inclusive, unless the person is certified by  
6 the Division for that purpose.

7       2. The Division shall adopt regulations to establish:

8       (a) Requirements for certification of a person who provides  
9 reports and evaluations concerning the competency of a defendant  
10 pursuant to this section and NRS 178.400 to 178.460, inclusive;

11       (b) Reasonable fees for issuing and renewing such certificates;  
12 and

13       (c) Requirements for continuing education for the renewal of a  
14 certificate.

15       3. The fees so collected must be used only to:

16       (a) Defray the cost of issuing and renewing certificates; and

17       (b) Pay any other expenses incurred by the Division in carrying  
18 out its duties pursuant to this section.

19       4. The Division shall establish and administer examinations to  
20 determine the eligibility of any person who applies for certification.  
21 An applicant is entitled to certification upon satisfaction of the  
22 requirements of the Division. The Division may enter into a contract  
23 with another person, organization or agency to carry out or assist in  
24 carrying out the provisions of this subsection.

25       5. *The Division may adopt regulations to establish a program*  
26 *that allows certain defendants who are determined to be*  
27 *incompetent to stand trial or receive pronouncement of judgment*  
28 *pursuant to NRS 178.400 to 178.460, inclusive, but who are*  
29 *determined not to be dangerous to themselves or to society to*  
30 *receive treatment to competency while incarcerated in jail or*  
31 *prison.*

32       6. *If the Division establishes a program described in*  
33 *subsection 5, the Division must specify in the regulations:*

34       (a) *The qualifications for participation in the program.*

35       (b) *The type of treatment that may be provided to such*  
36 *defendants. If such treatment includes the forcible administration*  
37 *of medication, the regulations must require a determination to be*  
38 *made, and appropriate access to a court be provided to challenge*  
39 *the determination, that the medication is:*

40           (1) *Medically appropriate;*

41           (2) *Unlikely to have side effects that may undermine the*  
42 *fairness of trial; and*



1           (3) *Necessary to significantly further important*  
2 *governmental interests after taking into account other available*  
3 *alternatives.*

4           (c) *The required staffing that must be available at a jail or*  
5 *prison to participate in the program.*

6           (d) *That the program must be independently monitored and*  
7 *the manner in which the program will be monitored and held*  
8 *accountable.*

9           7. *The Division may enter into a contract with another*  
10 *person, organization or agency to carry out or assist in carrying*  
11 *out a program established pursuant to subsection 5.*

12       **Sec. 2.** This act becomes effective upon passage and approval.

