

ASSEMBLY BILL NO. 453—ASSEMBLYMAN YEAGER

MARCH 27, 2017

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to pleas in criminal cases. (BDR 14-1065)

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; establishing certain requirements and rights relating to written plea agreements in criminal cases; revising the contents of the suggested form of a written plea agreement; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 **Section 1** of this bill provides that when a prosecuting attorney enters into a
2 written plea agreement with a defendant, the court must either accept the agreement
3 without modification or reject the agreement. **Section 1** provides that if the court
4 rejects the agreement, the defendant may withdraw all pleas included in the
5 agreement and proceed to trial on the applicable charges. **Section 1** also provides
6 that a written plea agreement is void if the defendant violates the agreement.
7 Existing law sets forth suggested contents and form of a written plea
8 agreement. (NRS 174.063) **Section 2** of this bill revises the contents of that form to
9 include the provisions of **section 1** in a defendant’s acknowledgment of his or her
10 understanding of the terms of the agreement.

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

1 **Section 1.** Chapter 174 of NRS is hereby amended by adding
2 thereto a new section to read as follows:
3 *1. If a prosecuting attorney enters into a written plea*
4 *agreement with a defendant, the court may either:*
5 *(a) Accept the agreement without modification and enter an*
6 *order consistent with the terms of the agreement; or*
7 *(b) Reject the agreement.*



1 **2. If the court rejects the agreement, the defendant has the**
2 **right to withdraw all pleas that the defendant entered pursuant to**
3 **the agreement and proceed to trial on the charges for which the**
4 **defendant entered those pleas.**

5 **3. If the defendant violates the written plea agreement**
6 **entered into pursuant to subsection 1, the agreement is void.**

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

8 174.063 1. If a plea of guilty or guilty but mentally ill is
9 made in a written plea agreement, the agreement must be
10 substantially in the following form:

11
12 Case No.
13 Dept. No.
14

15 IN THE JUDICIAL DISTRICT COURT OF THE
16 STATE OF NEVADA IN AND FOR THE COUNTY
17 OF.....,
18

19 The State of Nevada,
20 PLAINTIFF,
21

22 v.
23

24 (Name of defendant),
25 DEFENDANT.
26

27 GUILTY OR GUILTY BUT MENTALLY ILL PLEA
28 AGREEMENT

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

33 My decision to plead guilty or guilty but mentally ill is
34 based upon the plea agreement in this case which is as
35 follows:

36 (State the terms of the agreement.)
37

38 CONSEQUENCES OF THE PLEA

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

42 I understand that as a consequence of my plea of guilty or
43 guilty but mentally ill I may be imprisoned for a period of not
44 more than (maximum term of imprisonment) and that I (may
45 or will) be fined up to (maximum amount of fine). I



1 understand that the law requires me to pay an administrative
2 assessment fee.

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

10 I understand that I (am or am not) eligible for probation
11 for the offense to which I am pleading guilty or guilty but
12 mentally ill. (I understand that, except as otherwise provided
13 by statute **H** *or the recommendation of the State of Nevada*
14 *as set forth in this agreement*, the question of whether I
15 receive probation is in the discretion of the sentencing judge,
16 or I understand that I must serve a mandatory minimum term
17 of (term of imprisonment) or pay a minimum mandatory fine
18 of (amount of fine) or serve a mandatory minimum term
19 (term of imprisonment) and pay a minimum mandatory fine
20 of (amount of fine).)

21 I understand that if more than one sentence of
22 imprisonment is imposed and I am eligible to serve the
23 sentences concurrently, the sentencing judge has the
24 discretion to order the sentences served concurrently or
25 consecutively **H** , *except as otherwise provided by the*
26 *recommendation of the State of Nevada as set forth in this*
27 *agreement.*

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

31 I have not been promised or guaranteed any particular
32 sentence by anyone. I know that my sentence is to be
33 determined by the court within the limits prescribed by statute
34 ~~I understand that if my attorney or the State of Nevada or~~
35 ~~both recommend any specific punishment to the court, the~~
36 ~~court is not obligated to accept the recommendation.~~ *and the*
37 *recommendation of the State of Nevada as set forth in this*
38 *agreement.*

39 I understand that the Division of Parole and Probation of
40 the Department of Public Safety may or will prepare a report
41 for the sentencing judge before sentencing. This report will
42 include matters relevant to the issue of sentencing, including
43 my criminal history. I understand that this report may contain
44 hearsay information regarding my background and criminal
45 history. My attorney (if represented by counsel) and I will



1 each have the opportunity to comment on the information
2 contained in the report at the time of sentencing.

3 *I understand that if the court rejects this agreement, I*
4 *have the right to withdraw all pleas which I entered*
5 *pursuant to this agreement and proceed to trial on the*
6 *charges for which I entered those pleas. I understand that if*
7 *I violate this agreement, the agreement is void.*
8

9 WAIVER OF RIGHTS

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

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

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

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

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

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

28 6. The right to appeal the conviction, with the assistance
29 of an attorney, either appointed or retained, unless the appeal
30 is based upon reasonable constitutional, jurisdictional or other
31 grounds that challenge the legality of the proceedings and
32 except as otherwise provided in subsection 3 of
33 NRS 174.035.
34

35 VOLUNTARINESS OF PLEA

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

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

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



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

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

7 I am signing this agreement voluntarily, after consultation
8 with my attorney (if represented by counsel) and I am not
9 acting under duress or coercion or by virtue of any promises
10 of leniency, except for those set forth in this agreement.

11 I am not now under the influence of intoxicating liquor, a
12 controlled substance or other drug which would in any
13 manner impair my ability to comprehend or understand this
14 agreement or the proceedings surrounding my entry of this
15 plea.

16 My attorney (if represented by counsel) has answered all
17 my questions regarding this guilty or guilty but mentally ill
18 plea agreement and its consequences to my satisfaction and I
19 am satisfied with the services provided by my attorney.
20

21 Dated: This day of the month of of the
22 year

23
24
25 Defendant.

26
27 Agreed to on this day of the month of of the
28 year

29
30
31 Deputy District Attorney.
32

33 2. If the defendant is represented by counsel, the written plea
34 agreement must also include a certificate of counsel that is
35 substantially in the following form:
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37 CERTIFICATE OF COUNSEL

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

40 1. I have fully explained to the defendant the allegations
41 contained in the charges to which guilty or guilty but
42 mentally ill pleas are being entered.

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



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

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

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

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

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

Dated: This day of the month of of the year

.....
Attorney for defendant.

