

ASSEMBLY BILL NO. 453—ASSEMBLYMAN YEAGER

MARCH 27, 2017

Referred to Committee on Judiciary

SUMMARY—Establishes conditional plea agreements 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 the procedure for a written conditional plea agreement; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

1 Existing law sets forth the types of pleas and the procedure for entering pleas in  
2 criminal proceedings. (NRS 174.035) This bill establishes the procedure for a  
3 defendant and the district attorney to enter into a written conditional plea  
4 agreement.

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

1 **Section 1.** (Deleted by amendment.)  
2 **Sec. 2.** (Deleted by amendment.)  
3 **Sec. 3.** NRS 174.035 is hereby amended to read as follows:  
4 174.035 1. A defendant may plead not guilty, guilty, guilty  
5 but mentally ill or, with the consent of the court, nolo contendere.  
6 The court may refuse to accept a plea of guilty or guilty but  
7 mentally ill.



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

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

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

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

27 ~~15.1~~ 6. The defendant may, in the alternative or in addition to  
28 any one of the pleas permitted by subsection 1, plead not guilty by  
29 reason of insanity. A plea of not guilty by reason of insanity must be  
30 entered not less than 21 days before the date set for trial. A  
31 defendant who has not so pleaded may offer the defense of insanity  
32 during trial upon good cause shown. Under such a plea or defense,  
33 the burden of proof is upon the defendant to establish by a  
34 preponderance of the evidence that:

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

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

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

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

42 ~~16.1~~ 7. If a defendant refuses to plead or if the court refuses to  
43 accept a plea of guilty or guilty but mentally ill or if a defendant  
44 corporation fails to appear, the court shall enter a plea of not guilty.



1 ~~17~~ 8. A defendant may not enter a plea of guilty or guilty but  
2 mentally ill pursuant to a plea bargain for an offense punishable as a  
3 felony for which:

4 (a) Probation is not allowed; or

5 (b) The maximum prison sentence is more than 10 years,

6 ↪ unless the plea bargain is set forth in writing and signed by the  
7 defendant, the defendant's attorney, if the defendant is represented  
8 by counsel, and the prosecuting attorney.

9 ~~18~~ 9. If the court accepts a plea of guilty but mentally ill  
10 pursuant to this section, the court shall cause, within 5 business days  
11 after acceptance of the plea, on a form prescribed by the Department  
12 of Public Safety, a record of that plea to be transmitted to the  
13 Central Repository for Nevada Records of Criminal History along  
14 with a statement indicating that the record is being transmitted for  
15 inclusion in each appropriate database of the National Instant  
16 Criminal Background Check System.

17 ~~19~~ 10. As used in this section:

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

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

22 **Sec. 4.** NRS 175.533 is hereby amended to read as follows:

23 175.533 1. During a trial, upon a plea of not guilty by reason  
24 of insanity, the trier of fact may find the defendant guilty but  
25 mentally ill if the trier of fact finds all of the following:

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

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

31 (c) The defendant has not established by a preponderance of the  
32 evidence that the defendant is not guilty by reason of insanity  
33 pursuant to subsection ~~15~~ 6 of NRS 174.035.

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

38 3. If the trier of fact finds a defendant guilty but mentally ill  
39 pursuant to subsection 1, the court shall cause, within 5 business  
40 days after the finding, on a form prescribed by the Department of  
41 Public Safety, a record of the finding to be transmitted to the Central  
42 Repository for Nevada Records of Criminal History, along with a  
43 statement indicating that the record is being transmitted for  
44 inclusion in each appropriate database of the National Instant  
45 Criminal Background Check System.



- 1 4. As used in this section:
- 2 (a) "Disease or defect of the mind" does not include a disease or
- 3 defect which is caused solely by voluntary intoxication.
- 4 (b) "National Instant Criminal Background Check System" has
- 5 the meaning ascribed to it in NRS 179A.062.

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