

SENATE BILL NO. 179—COMMITTEE ON HUMAN
RESOURCES AND FACILITIES

(ON BEHALF OF THE DEPARTMENT OF HUMAN RESOURCES,
MENTAL HEALTH AND DEVELOPMENTAL SERVICES DIVISION)

FEBRUARY 20, 2003

Referred to Committee on Human Resources and Facilities

SUMMARY—Makes various changes related to mental health.
(BDR 39-480)

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 mental health; revising the definition of “mental illness” for certain purposes; clarifying the period that a person may be detained in a public or private mental health facility or hospital under an emergency admission for evaluation, observation and treatment; requiring the transportation of an allegedly mentally ill person to a public or private mental health facility under an emergency admission for evaluation, observation and treatment and the examination of the person that is required before the transportation to be conducted in compliance with certain federal and state laws; authorizing a court to establish a program for the treatment of mental retardation to which it may assign a defendant in a criminal action; authorizing a court, in determining the competency of a defendant in a criminal action, to consider evidence related to treatment to competency; authorizing a court to order the involuntary administration of medication to a defendant in a criminal action under certain circumstances; and providing other matters properly relating thereto.



* S B 1 7 9 R 1 *

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

- 1 **Section 1.** Chapter 433 of NRS is hereby amended by adding
2 thereto a new section to read as follows:
3 *“Treatment to competency” means treatment provided to a*
4 *person who is a defendant in a criminal action or proceeding to*
5 *attempt to cause him to attain competency to stand trial or receive*
6 *pronouncement of judgment.*
7 **Sec. 2.** NRS 433.005 is hereby amended to read as follows:
8 433.005 As used in this title, unless the context otherwise
9 requires, or except as otherwise defined by specific statute, the
10 words and terms defined in NRS 433.014 to 433.224, inclusive, *and*
11 *section 1 of this act* have the meanings ascribed to them in those
12 sections.
13 **Sec. 3.** NRS 433.044 is hereby amended to read as follows:
14 433.044 “Client” means any person who seeks, on his own or
15 another’s initiative, and can benefit from , care, treatment and
16 training provided by the Division ~~[]~~ , *or from treatment to*
17 *competency provided by the Division.*
18 **Sec. 4.** NRS 433.164 is hereby amended to read as follows:
19 433.164 “Mental illness” means ~~[any mental disfunction~~
20 ~~leading to impaired ability to maintain oneself and function~~
21 ~~effectively in one’s life situation without external support.] a~~
22 *clinically significant disorder of thought, mood, perception,*
23 *orientation, memory or behavior which:*
24 1. *Is listed in the most recent edition of the clinical manual of*
25 *the International Classification of Diseases, ICD-9-CM, code*
26 *range 295 to 302.9, inclusive, 306 to 309.9, inclusive, or 311 to*
27 *316, inclusive, or the corresponding code in the most recent*
28 *edition of the American Psychiatric Association’s Diagnostic and*
29 *Statistical Manual of Mental Disorders, DSM-IV, Axis I; and*
30 2. *Seriously limits the capacity of a person to function in the*
31 *primary aspects of daily living, including, without limitation,*
32 *personal relations, living arrangements, employment and*
33 *recreation.*
34 **Sec. 5.** NRS 433.431 is hereby amended to read as follows:
35 433.431 As used in this section and NRS 433.434, 433.444 and
36 433.454, unless the context otherwise requires:
37 1. “Client” means any person who seeks, on his own or
38 another’s initiative, and can benefit from , care, treatment ,
39 *treatment to competency* or training in a division facility.
40 2. “Division facility” means any unit or subunit operated by:
41 (a) The Division of Mental Health and Developmental Services
42 of the Department for the care, treatment and training of clients; or



1 (b) The Division of Child and Family Services of the
2 Department pursuant to NRS 433B.010 to 433B.350, inclusive.
3 **Sec. 6.** NRS 433.554 is hereby amended to read as follows:
4 433.554 1. An employee of a public or private mental health
5 facility or any other person, except a client, who:
6 (a) Has reason to believe that a client of the Division or of a
7 private facility offering mental health services has been or is being
8 abused or neglected and fails to report it;
9 (b) Brings intoxicating beverages or a controlled substance into
10 any division facility occupied by clients unless specifically
11 authorized to do so by the administrative officer or a staff physician
12 of the facility;
13 (c) Is under the influence of liquor or a controlled substance
14 while employed in contact with clients, unless in accordance with a
15 lawfully issued prescription;
16 (d) Enters into any transaction with a client involving the
17 transfer of money or property for personal use or gain at the expense
18 of the client; or
19 (e) Contrives the escape, elopement or absence of a
20 client,
21 is guilty of a misdemeanor, in addition to any other penalties
22 provided by law.
23 2. In addition to any other penalties provided by law, an
24 employee of a public or private mental health facility or any other
25 person, except a client, who willfully abuses or neglects a client:
26 (a) For a first violation that does not result in substantial bodily
27 harm to the client, is guilty of a gross misdemeanor.
28 (b) For a first violation that results in substantial bodily harm to
29 the client, is guilty of a category B felony.
30 (c) For a second or subsequent violation, is guilty of a category
31 B felony.
32 A person convicted of a category B felony pursuant to this section
33 shall be punished by imprisonment in the state prison for a
34 minimum term of not less than 1 year and a maximum term of not
35 more than 6 years, or by a fine of not more than \$5,000, or by both
36 fine and imprisonment.
37 3. A person who is convicted pursuant to this section is
38 ineligible for 5 years for appointment to or employment in a position
39 in the state service and, if he is an officer or employee of the State,
40 he forfeits his office or position.
41 4. A conviction pursuant to this section is, when applicable,
42 grounds for disciplinary action against the person so convicted and
43 the facility where the violation occurred. The Division may
44 recommend to the appropriate agency or board the suspension or



1 revocation of the professional license, registration, certificate or
2 permit of a person convicted pursuant to this section.

3 5. For the purposes of this section:

4 (a) "Abuse" means any willful and unjustified infliction of pain,
5 injury or mental anguish upon a client, including, but not limited to:

6 (1) The rape, sexual assault or sexual exploitation of the
7 client;

8 (2) The use of any type of aversive intervention;

9 (3) Except as otherwise provided in NRS 433.5486, a
10 violation of NRS 433.549; and

11 (4) The use of physical, chemical or mechanical restraints or
12 the use of seclusion in violation of federal law.

13 Any act which meets the standard of practice for care and treatment
14 does not constitute abuse.

15 (b) "Client" includes any person who seeks, on his own or
16 others' initiative, and can benefit from , care, treatment and training
17 in a public or private institution or facility offering mental health
18 services ~~H~~, *or from treatment to competency in a public or private*
19 *institution or facility offering mental health services*. The term
20 includes a client of the Division of Child and Family Services of the
21 Department.

22 (c) "Neglect" means any omission to act which causes injury to
23 a client or which places the client at risk of injury, including, but not
24 limited to, the failure to follow:

25 (1) An appropriate plan of treatment to which the client has
26 consented; and

27 (2) The policies of the facility for the care and treatment of
28 clients.

29 Any omission to act which meets the standard of practice for care
30 and treatment does not constitute neglect.

31 (d) "Standard of practice" means the skill and care ordinarily
32 exercised by prudent professional personnel engaged in health care.

33 **Sec. 7.** NRS 433.459 is hereby amended to read as follows:

34 433.459 "Client" means any person who seeks, on his own or
35 others' initiative, and can benefit from , care, treatment and training
36 in any facility ~~H~~, *or from treatment to competency in any facility*.

37 **Sec. 8.** NRS 433.538 is hereby amended to read as follows:

38 433.538 As used in NRS 433.538 to 433.543, inclusive, unless
39 the context otherwise requires:

40 1. "Administrative officer" means a person with overall
41 executive and administrative responsibility for a division facility.

42 2. "Client" means any person who seeks, on his own or
43 another's initiative, and can benefit from , care, treatment ,
44 *treatment to competency* or training in a division facility.

45 3. "Division facility" means any unit or subunit operated by:



1 (a) The Division of Mental Health and Developmental Services
2 of the Department for the care, treatment and training of clients; or
3 (b) The Division of Child and Family Services of the
4 Department pursuant to NRS 433B.010 to 433B.350, inclusive.

5 **Sec. 9.** NRS 433A.014 is hereby amended to read as follows:
6 433A.014 "Client" means any person who seeks, on his own or
7 another's initiative, and can benefit from , care, treatment ,
8 *treatment to competency* or training provided by the Division.

9 **Sec. 10.** NRS 433A.150 is hereby amended to read as follows:
10 433A.150 1. Any person alleged to be a mentally ill person
11 may, upon application pursuant to NRS 433A.160 and subject to the
12 provisions of subsection 2, be detained in a public or private mental
13 health facility or hospital under an emergency admission for
14 evaluation, observation and treatment.

15 2. Except as otherwise provided in subsection 3, a person
16 admitted to a mental health facility or hospital under subsection 1
17 must be released within 72 hours, including weekends and holidays,
18 from the time of his admission *to that facility or hospital* unless
19 within that period a written petition for an involuntary court-ordered
20 admission is filed with the clerk of the district court pursuant to
21 NRS 433A.200, including, without limitation, the documents
22 required pursuant to NRS 433A. 210, or the status of the person is
23 changed to a voluntary admission.

24 3. If the period specified in subsection 2 expires on a day on
25 which the office of the clerk of the district court is not open, the
26 written petition must be filed on or before the close of the business
27 day next following the expiration of that period.

28 **Sec. 11.** NRS 433A.165 is hereby amended to read as follows:
29 433A.165 1. Before an allegedly mentally ill person may be
30 transported to a public or private mental health facility pursuant to
31 NRS 433A.160, ~~he~~ *the person* must:

32 (a) First be examined by a licensed physician or physician
33 assistant or an advanced practitioner of nursing to determine
34 whether the person has a medical problem, other than a psychiatric
35 problem, which requires immediate treatment; and

36 (b) If such treatment is required, be admitted to a hospital for the
37 appropriate medical care.

38 2. *The examination and any transfer of the person from a*
39 *facility when the person has an emergency medical condition and*
40 *has not been stabilized must be conducted in compliance with:*

41 (a) *The requirements of 42 U.S.C. § 1395dd and any*
42 *regulations adopted pursuant thereto, and must involve a person*
43 *authorized pursuant to federal law to conduct such an*
44 *examination or certify such a transfer; and*

45 (b) *The provisions of NRS 439B.410.*



1 **3.** The cost of the examination must be paid by the county in
2 which the allegedly mentally ill person resides if services are
3 provided at a county hospital located in that county or a hospital
4 designated by that county, unless the cost is voluntarily paid by the
5 allegedly mentally ill person or on his behalf, by his insurer or by a
6 state or federal program of medical assistance.

7 ~~3-1~~ **4.** The county may recover all or any part of the expenses
8 paid by it, in a civil action against:

- 9 (a) The person whose expenses were paid;
- 10 (b) The estate of that person; or
- 11 (c) A responsible relative as prescribed in NRS 433A.610, to the
12 extent that financial ability is found to exist.

13 ~~4-1~~ **5.** The cost of treatment, including hospitalization, for an
14 indigent must be paid pursuant to NRS 428.010 by the county in
15 which the allegedly mentally ill person resides.

16 **Sec. 12.** NRS 433A.360 is hereby amended to read as follows:

17 433A.360 1. A clinical record for each client must be
18 diligently maintained by any division facility or private institution
19 or facility offering mental health services. The record must include
20 information pertaining to the client's admission, legal status,
21 treatment and individualized plan for habilitation. The clinical
22 record is not a public record and no part of it may be released,
23 except:

24 (a) The record must be released to physicians, attorneys and
25 social agencies as specifically authorized in writing by the client, his
26 parent, guardian or attorney.

27 (b) The record must be released to persons authorized by the
28 order of a court of competent jurisdiction.

29 (c) The record or any part thereof may be disclosed to a
30 qualified member of the staff of a division facility, an employee of
31 the Division or a member of the staff of an agency in Nevada which
32 has been established pursuant to the Developmental Disabilities
33 Assistance and Bill of Rights Act (42 U.S.C. §§ 6041 et seq.) or the
34 Protection and Advocacy for Mentally Ill Individuals Act of 1986
35 (42 U.S.C. §§ 10801 et seq.) when the Administrator deems it
36 necessary for the proper care of the client.

37 (d) Information from the clinical records may be used for
38 statistical and evaluative purposes if the information is abstracted in
39 such a way as to protect the identity of individual clients.

40 (e) To the extent necessary for a client to make a claim, or for a
41 claim to be made on behalf of a client for aid, insurance or medical
42 assistance to which he may be entitled, information from the records
43 may be released with the written authorization of the client or his
44 guardian.



1 (f) The record must be released without charge to any member
2 of the staff of an agency in Nevada which has been established
3 pursuant to 42 U.S.C. §§ 6041 et seq. or 42 U.S.C. §§ 10801 et seq.
4 if:

5 (1) The client is a client of that office and he or his legal
6 representative or guardian authorizes the release of the record; or

7 (2) A complaint regarding a client was received by the office
8 or there is probable cause to believe that the client has been abused
9 or neglected and the client:

10 (I) Is unable to authorize the release of the record because
11 of his mental or physical condition; and

12 (II) Does not have a guardian or other legal representative
13 or is a ward of the state.

14 (g) The record must be released as provided in NRS 433.332 or
15 433B.200 and in chapter 629 of NRS.

16 2. As used in this section, "client" includes any person who
17 seeks, on his own or others' initiative, and can benefit from , care,
18 treatment and training in a private institution or facility offering
19 mental health services ~~[-]~~ , *or from treatment to competency in a*
20 *private institution or facility offering mental health services.*

21 **Sec. 13.** Chapter 176A of NRS is hereby amended by adding
22 thereto a new section to read as follows:

23 *"Mental retardation" has the meaning ascribed to it in*
24 *NRS 433.174.*

25 **Sec. 14.** NRS 176A.010 is hereby amended to read as follows:

26 176A.010 As used in this chapter, unless the context otherwise
27 requires, the words and terms defined in NRS 176A.020 to
28 176A.080, inclusive, *and section 13 of this act* have the meanings
29 ascribed to them in those sections.

30 **Sec. 15.** NRS 176A.045 is hereby amended to read as follows:

31 176A.045 "Mental illness" ~~[means an organic disorder of the~~
32 ~~brain or a clinically significant disorder of thought, mood,~~
33 ~~perception, orientation, memory or behavior which is listed in the~~
34 ~~most recent edition of the clinical manual of the International~~
35 ~~Classification of Diseases, ICD 9 CM, code range 290 to 302.99,~~
36 ~~inclusive, or 306 to 316, inclusive, or the corresponding code in the~~
37 ~~most recent edition of the American Psychiatric Association's~~
38 ~~Diagnostic and Statistical Manual of Mental Disorders, DSM MD,~~
39 ~~Axes I, II or III, and which seriously limits the capacity of a person~~
40 ~~to function in the primary aspects of daily living, including, without~~
41 ~~limitation, personal relations, living arrangements, employment and~~
42 ~~recreation.] *has the meaning ascribed to it in NRS 433.164.*~~

43 **Sec. 16.** NRS 176A.250 is hereby amended to read as follows:

44 176A.250 A court may establish an appropriate program for
45 the treatment of mental illness *or mental retardation* to which it



1 may assign a defendant pursuant to NRS 176A.260. The assignment
2 must include the terms and conditions for successful completion of
3 the program and provide for progress reports at intervals set by the
4 court to ensure that the defendant is making satisfactory progress
5 towards completion of the program.

6 **Sec. 17.** NRS 176A.255 is hereby amended to read as follows:
7 176A.255 1. A justice's court or a municipal court may, upon
8 approval of the district court, transfer original jurisdiction to the
9 district court of a case involving an eligible defendant.

10 2. As used in this section, "eligible defendant" means a person
11 who:

12 (a) Has not tendered a plea of guilty, guilty but mentally ill or
13 nolo contendere to, or been found guilty of, an offense that is a
14 misdemeanor;

15 (b) Appears to suffer from mental illness ~~or~~ *or to be mentally*
16 *retarded*; and

17 (c) Would benefit from assignment to a program established
18 pursuant to NRS 176A.250.

19 **Sec. 18.** NRS 176A.260 is hereby amended to read as follows:
20 176A.260 1. Except as otherwise provided in subsection 2, if

21 a defendant who suffers from mental illness *or is mentally retarded*
22 tenders a plea of guilty, guilty but mentally ill or nolo contendere to,
23 or is found guilty of, any offense for which the suspension of
24 sentence or the granting of probation is not prohibited by statute,
25 the court may, without entering a judgment of conviction and with
26 the consent of the defendant, suspend further proceedings and place
27 the defendant on probation upon terms and conditions that must
28 include attendance and successful completion of a program
29 established pursuant to NRS 176A.250.

30 2. If the offense committed by the defendant involved the use
31 or threatened use of force or violence or if the defendant was
32 previously convicted in this state or in any other jurisdiction of a
33 felony that involved the use or threatened use of force or violence,
34 the court may not assign the defendant to the program unless the
35 prosecuting attorney stipulates to the assignment.

36 3. Upon violation of a term or condition:

37 (a) The court may enter a judgment of conviction and proceed as
38 provided in the section pursuant to which the defendant was
39 charged.

40 (b) Notwithstanding the provisions of paragraph (e) of
41 subsection 2 of NRS 193.130, the court may order the defendant to
42 the custody of the Department of Corrections if the offense is
43 punishable by imprisonment in the state prison.

44 4. Upon fulfillment of the terms and conditions, the court shall
45 discharge the defendant and dismiss the proceedings against him.



1 Discharge and dismissal pursuant to this section is without
2 adjudication of guilt and is not a conviction for purposes of this
3 section or for purposes of employment, civil rights or any statute or
4 regulation or license or questionnaire or for any other public or
5 private purpose, but is a conviction for the purpose of additional
6 penalties imposed for second or subsequent convictions or the
7 setting of bail. Discharge and dismissal restores the defendant, in the
8 contemplation of the law, to the status occupied before the arrest,
9 indictment or information. The defendant may not be held thereafter
10 under any law to be guilty of perjury or otherwise giving a false
11 statement by reason of failure to recite or acknowledge that arrest,
12 indictment, information or trial in response to an inquiry made of
13 him for any purpose.

14 **Sec. 19.** Chapter 178 of NRS is hereby amended by adding
15 thereto a new section to read as follows:

16 *As used in NRS 178.400 to 178.460, inclusive, unless the*
17 *context otherwise requires, "treatment to competency" means*
18 *treatment provided to a defendant to attempt to cause him to attain*
19 *competency to stand trial or receive pronouncement of judgment.*

20 **Sec. 20.** NRS 178.415 is hereby amended to read as follows:

21 178.415 1. Except as otherwise provided in this subsection,
22 the court shall appoint two psychiatrists, two psychologists, or one
23 psychiatrist and one psychologist, to examine the defendant. If the
24 defendant is accused of a misdemeanor, the court of jurisdiction
25 shall appoint a psychiatric social worker, or other person who is
26 especially qualified by the Division of Mental Health and
27 Developmental Services of the Department of Human Resources, to
28 examine the defendant.

29 2. At a hearing in open court, the judge shall receive the report
30 of the examination and shall permit counsel for both sides to
31 examine the person or persons appointed to examine the defendant.
32 The prosecuting attorney and the defendant may ~~introduce~~ :

33 (a) *Introduce* other evidence *including, without limitation,*
34 *evidence related to treatment to competency and the possibility of*
35 *ordering the involuntary administration of medication;* and
36 ~~cross-examine~~

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

38 3. The court shall then make and enter its finding of
39 competence or incompetence.

40 **Sec. 21.** NRS 178.425 is hereby amended to read as follows:

41 178.425 1. If the court finds the defendant incompetent, and
42 that he is dangerous to himself or to society ~~or~~ *and* that
43 commitment is required for a determination of his ability to *receive*
44 *treatment to competency and to* attain competence, the judge shall
45 order the sheriff to convey ~~him~~ *the defendant* forthwith, together



1 with a copy of the complaint, the commitment and the physicians'
2 certificate, if any, into the custody of the Administrator of the
3 Division of Mental Health and Developmental Services of the
4 Department of Human Resources or his designee for detention and
5 treatment at a secure facility operated by that Division. *The order*
6 *may include the involuntary administration of medication if*
7 *appropriate for treatment to competency.*

8 2. The defendant must be held in such custody until a court
9 orders his release or until he is returned for trial or judgment as
10 provided in NRS 178.450 ~~[to 178.460, inclusive.]~~ , 178.455 and
11 178.460.

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

22 4. Except as otherwise provided in subsection 5, proceedings
23 against the defendant must be suspended until the Administrator or
24 his designee or, if the defendant is charged with a misdemeanor, the
25 judge finds him capable of standing trial or opposing
26 pronouncement of judgment as provided in NRS 178.400.

27 5. Whenever the defendant has been found incompetent, with
28 no substantial probability of attaining competency in the foreseeable
29 future, and released from custody or from obligations as an
30 outpatient pursuant to paragraph (d) of subsection 4 of NRS
31 178.460, the proceedings against the defendant which were
32 suspended must be dismissed. No new charge arising out of the
33 same circumstances may be brought after a period, equal to the
34 maximum time allowed by law for commencing a criminal action
35 for the crime with which the defendant was charged, has lapsed
36 since the date of the alleged offense.

37 **Sec. 22.** NRS 178.450 is hereby amended to read as follows:

38 178.450 1. The Administrator of the Division of Mental
39 Health and Developmental Services of the Department of Human
40 Resources or his designee shall keep each defendant committed to
41 his custody under NRS 178.425 or 178.460 under observation and
42 shall have each defendant who has been ordered to report to him as
43 an outpatient under those sections evaluated periodically.

44 2. The Administrator or his designee shall report in writing to a
45 judge of the court which committed the person and the prosecuting



1 attorney of the county or city to which the person may be returned
2 for further court action whether, in his opinion, upon medical
3 consultation, the defendant is of sufficient mentality to be able to
4 understand the nature of the criminal charge against him and, by
5 reason thereof, is able to aid and assist his counsel in the defense
6 interposed upon the trial or against the pronouncement of the
7 judgment thereafter. The Administrator or his designee shall submit
8 such a report, in the case of a person charged or convicted of a
9 misdemeanor, within 3 months after the order for commitment or
10 treatment and evaluation as an outpatient or for recommitment
11 pursuant to paragraph (b) of subsection 4 of NRS 178.460, and at
12 monthly intervals thereafter. In all other cases, the initial report must
13 be submitted within 6 months after the order and at 6-month
14 intervals thereafter. If the opinion of the Administrator or his
15 designee about the defendant is that he is not of sufficient mentality
16 to understand the nature of the charge against him and assist in his
17 own defense, the Administrator or his designee shall also include in
18 the report his opinion whether:

19 (a) There is a substantial probability that the defendant *can*
20 *receive treatment to competency and* will attain competency to
21 stand trial or receive pronouncement of judgment in the foreseeable
22 future; and

23 (b) The defendant is at that time a danger to himself or to
24 society.

25 3. The report must contain:

26 (a) The name of the defendant and the county or city to which he
27 may be returned for further court action.

28 (b) The circumstances under which he was committed to the
29 custody of the Administrator or his designee and the duration of his
30 hospitalization, or the circumstances under which he was ordered to
31 report to the Administrator or his designee as an outpatient.

32 **Sec. 23.** NRS 178.455 is hereby amended to read as follows:

33 178.455 1. Except as otherwise provided for persons charged
34 with or convicted of a misdemeanor, the Administrator of the
35 Division of Mental Health and Developmental Services of the
36 Department of Human Resources or his designee shall appoint a
37 licensed psychiatrist and a licensed psychologist from the treatment
38 team to evaluate the defendant. The Administrator or his designee
39 shall also appoint a third evaluator who must be a licensed
40 psychiatrist or psychologist and not a member of the treatment team.
41 Upon the completion of the evaluation and treatment of the
42 defendant, the Administrator or his designee shall report to the court
43 in writing his specific findings and opinion upon:

44 (a) Whether the person is of sufficient mentality to understand
45 the nature of the offense charged;



- 1 (b) Whether the person is of sufficient mentality to aid and assist
- 2 counsel in the defense of the offense charged, or to show cause why
- 3 judgment should not be pronounced; and
- 4 (c) If the person is not of sufficient mentality pursuant to
- 5 paragraphs (a) and (b) to be placed upon trial or receive
- 6 pronouncement of judgment, whether there is a substantial
- 7 probability that he *can receive treatment to competency and* will
- 8 attain competency in the foreseeable future.
- 9 2. A copy of the report must be:
- 10 (a) Maintained by the Administrator of the Division of Mental
- 11 Health and Developmental Services or his designee and
- 12 incorporated in the medical record of the person; and
- 13 (b) Sent to the office of the district attorney and to the counsel
- 14 for the outpatient or person committed.
- 15 3. In the case of a person charged with or convicted of a
- 16 misdemeanor, the judge shall, upon receipt of the report set forth in
- 17 NRS 178.450 from the Administrator of the Division of Mental
- 18 Health and Developmental Services or his designee:
- 19 (a) Send a copy of the report by the Administrator or his
- 20 designee to the prosecuting attorney and to the defendant's counsel;
- 21 (b) Hold a hearing, if one is requested within 10 days after the
- 22 report is sent pursuant to paragraph (a), at which the attorneys may
- 23 examine the Administrator or his designee or the members of the
- 24 defendant's treatment team on the determination of the report; and
- 25 (c) Within 10 days after the hearing, if any, or 20 days after the
- 26 report is sent if no hearing is requested, enter his finding of
- 27 competence or incompetence in the manner set forth in subsection 4
- 28 of NRS 178.460.
- 29 **Sec. 24.** NRS 178.460 is hereby amended to read as follows:
- 30 178.460 1. If requested by the district attorney or counsel for
- 31 the defendant within 10 days after the report by the Administrator or
- 32 his designee is sent to them, the judge shall hold a hearing within 10
- 33 days after the request at which the district attorney and the defense
- 34 counsel may examine the members of the treatment team on their
- 35 report.
- 36 2. If the judge orders the appointment of a licensed psychiatrist
- 37 or psychologist who is not employed by the Division of Mental
- 38 Health and Developmental Services of the Department of Human
- 39 Resources to perform an additional evaluation and report concerning
- 40 the defendant, the cost of the additional evaluation and report is a
- 41 charge against the county.
- 42 3. Within 10 days after the hearing or 20 days after the report is
- 43 sent, if no hearing is requested, the judge shall make and enter his
- 44 finding of competence or incompetence, and if he finds the
- 45 defendant to be incompetent:



1 (a) Whether there is substantial probability that the defendant
2 *can receive treatment to competency and* will attain competency to
3 stand trial or receive pronouncement of judgment in the foreseeable
4 future; and

5 (b) Whether the defendant is at that time a danger to himself or
6 to society.

7 4. If the judge finds the defendant:

8 (a) Competent, the judge shall, within 10 days, forward his
9 finding to the prosecuting attorney and counsel for the defendant.
10 Upon receipt thereof, the prosecuting attorney shall notify the
11 sheriff of the county or chief of police of the city that the defendant
12 has been found competent and prearrange with the facility for the
13 return of the defendant to that county or city for trial upon the
14 offense there charged or the pronouncement of judgment, as the case
15 may be.

16 (b) Incompetent, but there is a substantial probability that he *can*
17 *receive treatment to competency and* will attain competency to
18 stand trial or receive pronouncement of judgment in the foreseeable
19 future and finds that he is dangerous to himself or to society, the
20 judge shall recommit the defendant ~~to~~ *and may order the*
21 *involuntary administration of medication for the purpose of*
22 *treatment to competency.*

23 (c) Incompetent, but there is a substantial probability that he *can*
24 *receive treatment to competency and* will attain competency to
25 stand trial or receive pronouncement of judgment in the foreseeable
26 future and finds that he is not dangerous to himself or to society, the
27 judge shall order that the defendant remain an outpatient or be
28 transferred to the status of an outpatient under the provisions of
29 NRS 178.425.

30 (d) Incompetent, with no substantial probability of attaining
31 competency in the foreseeable future, the judge shall order the
32 defendant released from custody or if the defendant is an outpatient,
33 released from his obligations as an outpatient if, within 10 days, a
34 petition is not filed to commit the person pursuant to NRS
35 433A.200. After the initial 10 days, the defendant may remain an
36 outpatient or in custody under the provisions of this chapter only as
37 long as the petition is pending unless the defendant is involuntarily
38 committed pursuant to chapter 433A of NRS.

39 5. No person who is committed under the provisions of this
40 chapter may be held in the custody of the Administrator of
41 the Division of Mental Health and Developmental Services of the
42 Department of Human Resources or his designee longer than the
43 longest period of incarceration provided for the crime or crimes with
44 which he is charged. Upon expiration of the period, the defendant
45 must be returned to the committing court for a determination as to



1 whether or not involuntary commitment pursuant to chapter 433A of
2 NRS is required.
3 **Sec. 25.** This act becomes effective upon passage and
4 approval.

③

