

SENATE BILL NO. 403—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE DEPARTMENT OF ADMINISTRATION)

MARCH 24, 2003

Referred to Committee on Judiciary

SUMMARY—Requires certification of persons who provide reports or evaluations to courts regarding competency of defendants. (BDR 14-1245)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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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; requiring persons who provide reports or evaluations to the court concerning the competency of a defendant to stand trial or receive pronouncement of judgment to be certified by the Division of Mental Health and Developmental Services of the Department of Human Resources; requiring the Division to adopt regulations concerning the certification of such persons; and providing other matters properly relating thereto.

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

1 **Section 1.** Chapter 178 of NRS is hereby amended by adding
2 thereto a new section to read as follows:

3 *1. No person shall provide a report or an evaluation*
4 *concerning the competency of a defendant to stand trial or receive*
5 *pronouncement of judgment pursuant to NRS 178.400 to 178.465,*
6 *inclusive, unless the person is certified by the Division of Mental*
7 *Health and Developmental Services of the Department of Human*
8 *Resources for that purpose.*

9 *2. The Division of Mental Health and Developmental*
10 *Services shall adopt regulations to establish:*



1 (a) *Requirements for certification of a person who provides*
2 *reports and evaluations concerning the competency of a defendant*
3 *pursuant to NRS 178.400 to 178.465, inclusive;*

4 (b) *Reasonable fees for issuing and renewing such certificates;*
5 *and*

6 (c) *Requirements for continuing education for the renewal of*
7 *a certificate.*

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

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

10 (b) *Pay any other expenses incurred by the Division of Mental*
11 *Health and Developmental Services in carrying out its duties*
12 *pursuant to this section.*

13 4. *The Division of Mental Health and Developmental*
14 *Services shall establish and administer examinations to determine*
15 *the eligibility of any person who applies for certification. An*
16 *applicant is entitled to certification upon satisfaction of the*
17 *requirements of the Division of Mental Health and Developmental*
18 *Services. The Division of Mental Health and Developmental*
19 *Services may enter into a contract with another person,*
20 *organization or agency to carry out or assist in carrying out the*
21 *provisions of this subsection.*

22 **Sec. 2.** NRS 178.415 is hereby amended to read as follows:

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

31 2. At a hearing in open court, the judge shall receive the report
32 of the examination and shall permit counsel for both sides to
33 examine the person or persons appointed to examine the defendant.
34 The prosecuting attorney and the defendant may introduce other
35 evidence and cross-examine one another's witnesses.

36 3. The court shall then make and enter its finding of
37 competence or incompetence.

38 4. *The court shall not appoint a person to provide a report or*
39 *an evaluation pursuant to this section, unless the person is*
40 *certified by the Division of Mental Health and Developmental*
41 *Services pursuant to section 1 of this act.*

42 **Sec. 3.** NRS 178.455 is hereby amended to read as follows:

43 178.455 1. Except as otherwise provided for persons charged
44 with or convicted of a misdemeanor, the Administrator of the
45 Division of Mental Health and Developmental Services of the



1 Department of Human Resources or his designee shall appoint a
2 licensed psychiatrist and a licensed psychologist from the treatment
3 team *who is certified pursuant to section 1 of this act* to evaluate
4 the defendant. The Administrator or his designee shall also appoint a
5 third evaluator who must be a licensed psychiatrist or psychologist ,
6 *must be certified pursuant to section 1 of this act* and *must not be* a
7 member of the treatment team. Upon the completion of the
8 evaluation and treatment of the defendant, the Administrator or his
9 designee shall report to the court in writing his specific findings and
10 opinion upon:

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

13 (b) Whether the person is of sufficient mentality to aid and assist
14 counsel in the defense of the offense charged, or to show cause why
15 judgment should not be pronounced; and

16 (c) If the person is not of sufficient mentality pursuant to
17 paragraphs (a) and (b) to be placed upon trial or receive
18 pronouncement of judgment, whether there is a substantial
19 probability that he will attain competency in the foreseeable future.

20 2. A copy of the report must be:

21 (a) Maintained by the Administrator of the Division of Mental
22 Health and Developmental Services or his designee and
23 incorporated in the medical record of the person; and

24 (b) Sent to the office of the district attorney and to the counsel
25 for the outpatient or person committed.

26 3. In the case of a person charged with or convicted of a
27 misdemeanor, the judge shall, upon receipt of the report set forth in
28 NRS 178.450 from the Administrator of the Division of Mental
29 Health and Developmental Services or his designee:

30 (a) Send a copy of the report by the Administrator or his
31 designee to the prosecuting attorney and to the defendant's counsel;

32 (b) Hold a hearing, if one is requested within 10 days after the
33 report is sent pursuant to paragraph (a), at which the attorneys may
34 examine the Administrator or his designee or the members of the
35 defendant's treatment team on the determination of the report; and

36 (c) Within 10 days after the hearing, if any, or 20 days after the
37 report is sent if no hearing is requested, enter his finding of
38 competence or incompetence in the manner set forth in subsection 4
39 of NRS 178.460.

40 **Sec. 4.** The Division of Mental Health and Developmental
41 Services of the Department of Human Resources shall adopt
42 regulations pursuant to section 1 of this act by not later than
43 December 31, 2003, and shall begin administering examinations to
44 determine eligibility for certification to provide reports and
45 evaluations concerning the competency of a defendant pursuant to



1 NRS 178.400 to 178.465, inclusive, but not later than March 1,
2 2004.

3 **Sec. 5.** 1. This section and section 4 of this act become
4 effective on July 1, 2003.

5 2. Section 1 of this act becomes effective on July 1, 2003, for
6 the purpose of adopting regulations and on July 1, 2004, for all other
7 purposes.

8 3. Sections 2 and 3 of this act become effective on July 1,
9 2004.

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