

ASSEMBLY BILL NO. 369—ASSEMBLYWOMAN GIUNCHIGLIANI

MARCH 23, 2005

Referred to Committee on Health and Human Services

SUMMARY—Establishes certain procedures and requirements for admission of children who are in custody of agencies which provide child welfare services to mental health facilities. (BDR 38-717)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
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 children; requiring a court which is hearing a petition for the involuntary admission to a public or private mental health facility of a child who is in the custody of an agency which provides child welfare services to place the child in a less restrictive environment under certain circumstances; establishing a maximum period of 60 days for which such children may be involuntarily admitted to a mental health facility; establishing certain rights for such children who are admitted to mental health facilities; 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 432B of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 to 11, inclusive, of this
3 act.

4 **Sec. 2.** *As used in sections 2 to 11, inclusive, of this act,*
5 *unless the context otherwise requires, the words and terms defined*
6 *in sections 3 and 4 of this act have the meanings ascribed to them*
7 *in those sections.*

8 **Sec. 3.** *“Facility” means a public or private mental health*
9 *facility in the State of Nevada, including, without limitation, any*



1 unit or subunit operated by the Division of Mental Health and
2 Developmental Services of the Department of Human Resources
3 for the care, treatment and training of a child who seeks, on his
4 own or another's initiative, and can benefit from, care, treatment
5 or training provided by the Division of Mental Health and
6 Developmental Services.

7 **Sec. 4.** "Treatment" has the meaning ascribed to it in
8 NRS 433.224.

9 **Sec. 5. 1.** If a court which receives a petition filed pursuant
10 to NRS 433A.200 for the involuntary court-ordered admission to a
11 facility of a child who is in the custody of an agency which
12 provides child welfare services determines pursuant to subsection
13 3 of NRS 433A.310 that the child could be treated effectively in a
14 less restrictive appropriate environment than a facility, the court
15 must order the placement of the child in a less restrictive
16 appropriate environment. In making such a determination, the
17 court may consider any information provided to the court,
18 including, without limitation, any information provided pursuant
19 to subsection 2 and any suggestions of psychologists, psychiatrists
20 or other physicians who have evaluated the child concerning the
21 appropriate environment for the child.

22 **2.** If a petition for the involuntary court-ordered admission of
23 a child who is in the custody of an agency which provides child
24 welfare services is filed pursuant to NRS 433A.200:

25 (a) Any person, including, without limitation, the child, may
26 oppose the petition for the involuntary court-ordered admission of
27 the child by filing a written opposition with the court; and

28 (b) The agency which provides child welfare services must
29 present information to the court concerning whether:

30 (1) A facility is the appropriate environment to provide
31 treatment to the child; or

32 (2) A less restrictive appropriate environment is available to
33 serve the needs of the child.

34 **Sec. 6.** Not later than 5 days after a child who is in the
35 custody of an agency which provides child welfare services has
36 been involuntarily admitted to a facility pursuant to NRS
37 433A.310, the agency which provides child welfare services shall
38 inform the child of his rights pursuant to NRS 433.472 and, if the
39 child or the child's attorney desires, assist the child in obtaining a
40 second examination by an evaluation team that includes persons
41 other than the persons who performed the examination pursuant
42 to NRS 433A.240 and other than persons who have a contractual
43 relationship with or a financial interest in the facility or the
44 agency which provides child welfare services. The examination
45 must:



1 1. Include, without limitation, an evaluation concerning
2 whether the child should remain in the facility and a
3 recommendation concerning the appropriate placement of the
4 child which must be provided to the facility; and

5 2. Be paid for by the governmental entity that is responsible
6 for the agency which provides child welfare services, if such
7 payment is not otherwise provided by the State Plan for Medicaid.

8 **Sec. 7.** In determining pursuant to NRS 433A.310 whether to
9 issue or renew an order for the involuntary admission of a child
10 who is in the custody of an agency which provides child welfare
11 services to a facility, the court shall consider:

12 1. The reports of any examinations or evaluations of a child
13 by any psychologist, psychiatrist or other physician;

14 2. Any information concerning the child provided to the court
15 by a social worker or teacher who is knowledgeable about the
16 child or a guardian ad litem appointed for the child pursuant to
17 NRS 432B.500;

18 3. The wishes of the child concerning his care, treatment and
19 training and placement in a facility;

20 4. The best interests of the child, including, without
21 limitation, whether the court believes the child might experience
22 any psychological trauma from involuntary admission;

23 5. Any alternative care, treatment or training options; and

24 6. Any other information the court deems relevant
25 concerning the child.

26 **Sec. 8. 1.** If the court issues an order for the involuntary
27 admission to a facility of a child who is in the custody of an
28 agency which provides child welfare services pursuant to NRS
29 433A.310, the involuntary admission automatically expires at the
30 end of 90 days if not terminated previously by the facility as
31 provided for in subsection 2 of NRS 433A.390.

32 2. At the end of the court-ordered period of treatment, the
33 agency which provides child welfare services, the Division of
34 Mental Health and Developmental Services of the Department of
35 Human Resources or any facility may petition to renew the
36 detention of the child for additional periods not to exceed 60 days
37 each.

38 3. For each renewal, the petition must set forth the specific
39 reasons why further treatment in the facility would be in the best
40 interests of the child.

41 **Sec. 9.** A facility which provides care, treatment or training
42 to a child who is in the custody of an agency which provides child
43 welfare services and who is involuntarily admitted to the facility
44 pursuant to NRS 433A.310 shall develop a plan, in consultation



1 *with the child, for the continued care, treatment and training of*
2 *the child upon discharge from the facility. The plan must:*

3 *1. Be developed not later than 5 days after the child is*
4 *admitted to the facility;*

5 *2. Be submitted to the court after each period of involuntary*
6 *admission ordered by the court pursuant to NRS 433A.310 in the*
7 *manner set forth in section 8 of this act; and*

8 *3. Include, without limitation:*

9 *(a) The anticipated date of discharge of the child from the*
10 *facility;*

11 *(b) The criteria which must be satisfied before the child is*
12 *discharged from the facility, as determined by the medical*
13 *professional responsible for the care, treatment and training of the*
14 *child in the facility;*

15 *(c) The name of any psychiatrist or psychologist who will*
16 *provide care, treatment or training to the child after the child is*
17 *discharged from the facility, if appropriate;*

18 *(d) A plan for any appropriate care, treatment or training for*
19 *the child for at least 30 days after the child is discharged from the*
20 *facility; and*

21 *(e) The suggested placement of the child after the child is*
22 *discharged from the facility.*

23 **Sec. 10.** *In addition to the personal rights set forth in NRS*
24 *433.482, a child who is in the custody of an agency which provides*
25 *child welfare services and who is admitted to a facility has the*
26 *following personal rights, a list of which must be prominently*
27 *posted in all facilities providing evaluation, treatment or training*
28 *services to such children and must be otherwise brought to the*
29 *attention of the child by such additional means as prescribed by*
30 *regulation:*

31 *1. To receive an education as required by law; and*

32 *2. To receive an allowance from the agency which provides*
33 *child welfare services in an amount equivalent to any allowance*
34 *required to be provided to children who reside in foster homes.*

35 **Sec. 11.** *1. Nothing in this chapter purports to deprive any*
36 *person of any legal rights without due process of law.*

37 *2. Unless the context clearly indicates otherwise, the*
38 *provisions of NRS 433.456 to 433.543, inclusive, and 433.545 to*
39 *433.551, inclusive, and chapters 433A and 433B of NRS and*
40 *sections 2 to 11, inclusive, of this act apply to all children who are*
41 *in the custody of an agency which provides child welfare services.*

42 **Sec. 12.** *NRS 433A.310 is hereby amended to read as follows:*

43 *433A.310 1. ~~§~~ Except as otherwise provided in section 5*
44 *of this act, if the district court finds, after proceedings for the*



1 involuntary court-ordered admission of a person to a public or
2 private mental health facility:

3 (a) That there is not clear and convincing evidence that the
4 person with respect to whom the hearing was held is a mentally ill
5 person or exhibits observable behavior such that he is likely to harm
6 himself or others if allowed his liberty, the court shall enter its
7 finding to that effect and the person must not be involuntarily
8 detained in such a facility.

9 (b) That there is clear and convincing evidence that the person
10 with respect to whom the hearing was held is a mentally ill person
11 and, because of that illness, is likely to harm himself or others if
12 allowed his liberty, the court may order the involuntary admission of
13 the person for the most appropriate course of treatment. The order of
14 the court must be interlocutory and must not become final if, within
15 30 days after the involuntary admission, the person is
16 unconditionally released pursuant to NRS 433A.390.

17 2. ~~{A+}~~ *Except as otherwise provided in section 8 of this act,*
18 *an* involuntary admission pursuant to paragraph (b) of subsection 1
19 automatically expires at the end of 6 months if not terminated
20 previously by the medical director of the public or private mental
21 health facility as provided for in subsection 2 of NRS 433A.390.
22 ~~{A+}~~ *Except as otherwise provided in section 8 of this act, at* the
23 end of the court-ordered period of treatment, the Division or any
24 mental health facility that is not operated by the Division may
25 petition to renew the detention of the person for additional periods
26 not to exceed 6 months each. For each renewal, the petition must set
27 forth to the court specific reasons why further treatment would be in
28 the person's own best interests.

29 3. Before issuing an order for involuntary admission or a
30 renewal thereof, the court shall explore other alternative courses of
31 treatment within the least restrictive appropriate environment as
32 suggested by the evaluation team who evaluated the person, or other
33 persons professionally qualified in the field of psychiatric mental
34 health, which the court believes may be in the best interests of the
35 person.

36 **Sec. 13.** NRS 433A.380 is hereby amended to read as follows:
37 433A.380 1. Except as otherwise provided in subsection 4,
38 any person involuntarily admitted by a court may be conditionally
39 released from a public or private mental health facility when, in the
40 judgment of the medical director of the facility, the conditional
41 release is in the best interest of the person and will not be
42 detrimental to the public welfare. The medical director or his
43 designee of the facility shall prescribe the period for which the
44 conditional release is effective. The period must not extend beyond



1 the last day of the court-ordered period of treatment pursuant to
2 NRS 433A.310 ~~§~~ *or section 8 of this act.*

3 2. When a person is conditionally released pursuant to
4 subsection 1, the State or any of its agents or employees are not
5 liable for any debts or contractual obligations, medical or otherwise,
6 incurred or damages caused by the actions of the person.

7 3. When a person who has been adjudicated by a court to be
8 incompetent is conditionally released from a mental health facility,
9 the administrative officer of the mental health facility shall petition
10 the court for restoration of full civil and legal rights as deemed
11 necessary to facilitate the incompetent person's rehabilitation.

12 4. A person who was involuntarily admitted by a court because
13 he was likely to harm others if allowed to remain at liberty may be
14 conditionally released only if, at the time of the release, written
15 notice is given to the court which admitted him and to the district
16 attorney of the county in which the proceedings for admission were
17 held.

18 5. Except as otherwise provided in subsection 7, the
19 administrative officer of a public or private mental health facility or
20 his designee shall order a person who is conditionally released from
21 that facility pursuant to this section to return to the facility if a
22 psychiatrist and a member of that person's treatment team who is
23 professionally qualified in the field of psychiatric mental health
24 determine, pursuant to NRS 433A.115, that the conditional release
25 is no longer appropriate because that person presents a clear and
26 present danger of harm to himself or others. Except as otherwise
27 provided in this subsection, the administrative officer or his
28 designee shall, at least 3 days before the issuance of the order to
29 return, give written notice of the order to the court that admitted the
30 person to the facility. If an emergency exists in which the person
31 presents an imminent threat of danger of harm to himself or others,
32 the order must be submitted to the court not later than 1 business
33 day after the order is issued.

34 6. The court shall review an order submitted pursuant to
35 subsection 5 and the current condition of the person who was
36 ordered to return to the facility at its next regularly scheduled
37 hearing for the review of petitions for involuntary court-ordered
38 admissions, but in no event later than 5 judicial days after the person
39 is returned to the facility. The administrative officer or his designee
40 shall give written notice to the person who was ordered to return to
41 the facility and to his attorney, if known, of the time, date and place
42 of the hearing and of the facts necessitating that person's return to
43 the facility.

44 7. The provisions of subsection 5 do not apply if the period of
45 conditional release has expired.



Sec. 14. NRS 433A.390 is hereby amended to read as follows:

433A.390 1. When a client, involuntarily admitted to a mental health facility by court order, is released at the end of the time specified pursuant to NRS 433A.310 ~~§~~ *or section 8 of this act*, written notice must be given to the admitting court at least 10 days before the release of the client. The client may then be released without requiring further orders of the court.

2. An involuntarily court-admitted client may be unconditionally released before the period specified in NRS 433A.310 *or section 8 of this act* when:

(a) An evaluation team established under NRS 433A.250 , *including, without limitation, an evaluation team that conducts an examination pursuant to section 6 of this act*, or two persons professionally qualified in the field of psychiatric mental health, at least one of them being a physician, determines that the client has recovered from his mental illness or has improved to such an extent that he is no longer considered to present a clear and present danger of harm to himself or others; and

(b) Under advisement from the evaluation team or two persons professionally qualified in the field of psychiatric mental health, at least one of them being a physician, the medical director of the mental health facility authorizes the release and gives written notice to the admitting court at least 10 days before the release of the client.

Sec. 15. This act becomes effective on July 1, 2005.



