

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:

**Section 1.** Chapter 432B of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 11, inclusive, of this act.

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

**Sec. 3.** *“Facility” has the meaning ascribed to it in NRS 433.461.*



1     **Sec. 4.** *"Treatment" has the meaning ascribed to it in*  
2 *NRS 433.224.*

3     **Sec. 5.** 1. *If a court which receives a petition filed pursuant*  
4 *to NRS 433A.200 for the involuntary court-ordered admission to a*  
5 *facility of a child who is in the custody of an agency which*  
6 *provides child welfare services determines pursuant to subsection*  
7 *3 of NRS 433A.310 that the child could be treated effectively in a*  
8 *less restrictive appropriate environment than a facility, the court*  
9 *must order the placement of the child in a less restrictive*  
10 *appropriate environment. In making such a determination, the*  
11 *court may consider any information provided to the court,*  
12 *including, without limitation:*

13     (a) *Any information provided pursuant to subsection 2;*

14     (b) *Any suggestions of psychologists, psychiatrists or other*  
15 *physicians who have evaluated the child concerning the*  
16 *appropriate environment for the child; and*

17     (c) *Any suggestions of licensed clinical social workers or other*  
18 *professionals who have interacted with the child and have*  
19 *information concerning the appropriate environment for the child.*

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

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

26     (b) *The agency which provides child welfare services must*  
27 *present information to the court concerning whether:*

28         (1) *A facility is the appropriate environment to provide*  
29 *treatment to the child; or*

30         (2) *A less restrictive appropriate environment would serve*  
31 *the needs of the child.*

32     3. *An agency which provides child welfare services shall not*  
33 *place a child who is in the custody of the agency in a facility, other*  
34 *than under an emergency admission, unless the agency has*  
35 *petitioned a court for the involuntary court-ordered admission of*  
36 *the child to a facility.*

37     **Sec. 6.** 1. *Not later than 5 days after a child who is in the*  
38 *custody of an agency which provides child welfare services has*  
39 *been involuntarily admitted to a facility pursuant to NRS*  
40 *433A.310, the agency which provides child welfare services shall*  
41 *inform the child of his rights pursuant to NRS 433.472 and, if the*  
42 *child or the child's attorney desires, assist the child in requesting*  
43 *the court to authorize a second examination by an evaluation team*  
44 *that includes persons other than the persons who performed the*  
45 *examination pursuant to NRS 433A.240 and other than persons*



1 *who have a contractual relationship with or a financial interest in*  
2 *the facility or the agency which provides child welfare services.*

3 2. *If the court authorizes a second examination of the child,*  
4 *the examination must:*

5 (a) *Include, without limitation, an evaluation concerning*  
6 *whether the child should remain in the facility and a*  
7 *recommendation concerning the appropriate placement of the*  
8 *child which must be provided to the facility; and*

9 (b) *Be paid for by the governmental entity that is responsible*  
10 *for the agency which provides child welfare services, if such*  
11 *payment is not otherwise provided by the State Plan for Medicaid.*

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

16 1. *The reports of any examinations or evaluations of a child*  
17 *by any psychologist, psychiatrist or other physician;*

18 2. *Any information concerning the child provided to the court*  
19 *by a social worker or teacher who is knowledgeable about the*  
20 *child or a guardian ad litem appointed for the child pursuant to*  
21 *NRS 432B.500;*

22 3. *The wishes of the child concerning his care, treatment and*  
23 *training and placement in a facility;*

24 4. *The best interests of the child, including, without*  
25 *limitation, whether the court believes the child might experience*  
26 *any psychological trauma from involuntary admission;*

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

28 6. *Any other information the court deems relevant*  
29 *concerning the child.*

30 **Sec. 8.** 1. *If the court issues an order for the involuntary*  
31 *admission to a facility of a child who is in the custody of an*  
32 *agency which provides child welfare services pursuant to NRS*  
33 *433A.310, the involuntary admission automatically expires at the*  
34 *end of 90 days if not terminated previously by the facility as*  
35 *provided for in subsection 2 of NRS 433A.390.*

36 2. *At the end of the court-ordered period of treatment, the*  
37 *agency which provides child welfare services, the Division of Child*  
38 *and Family Services or any facility may petition to renew the*  
39 *detention of the child for additional periods not to exceed 60 days*  
40 *each.*

41 3. *For each renewal, the petition must set forth the specific*  
42 *reasons why further treatment in the facility would be in the best*  
43 *interests of the child.*

44 **Sec. 9.** *A facility which provides care, treatment or training*  
45 *to a child who is in the custody of an agency which provides child*



1 *welfare services and who is involuntarily admitted to the facility*  
2 *pursuant to NRS 433A.310 shall develop a plan, in consultation*  
3 *with the child, for the continued care, treatment and training of*  
4 *the child upon discharge from the facility. The plan must:*

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

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

10 *3. Include, without limitation:*

11 *(a) The anticipated date of discharge of the child from the*  
12 *facility;*

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

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

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

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

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

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

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

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

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



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

2       433A.310 1. ~~HF~~ *Except as otherwise provided in section 5*  
3 *of this act, if* the district court finds, after proceedings for the  
4 involuntary court-ordered admission of a person to a public or  
5 private mental health facility:

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

12       (b) That there is clear and convincing evidence that the person  
13 with respect to whom the hearing was held is a mentally ill person  
14 and, because of that illness, is likely to harm himself or others if  
15 allowed his liberty, the court may order the involuntary admission of  
16 the person for the most appropriate course of treatment. The order of  
17 the court must be interlocutory and must not become final if, within  
18 30 days after the involuntary admission, the person is  
19 unconditionally released pursuant to NRS 433A.390.


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

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

39       **Sec. 13.** NRS 433A.380 is hereby amended to read as follows:

40       433A.380 1. Except as otherwise provided in subsection 4,  
41 any person involuntarily admitted by a court may be conditionally  
42 released from a public or private mental health facility when, in the  
43 judgment of the medical director of the facility, the conditional  
44 release is in the best interest of the person and will not be  
45 detrimental to the public welfare. The medical director or his



1 designee of the facility shall prescribe the period for which the  
2 conditional release is effective. The period must not extend beyond  
3 the last day of the court-ordered period of treatment pursuant to  
4 NRS 433A.310  or section 8 of this act.

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

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

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

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

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



7. The provisions of subsection 5 do not apply if the period of 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.



