

ASSEMBLY BILL NO. 369—ASSEMBLYMEN HORNE, PARKS, ALLEN,
ATKINSON, BOBZIEN, CARPENTER, DENIS, GERHARDT,
KIHUEN, KOIVISTO, MARVEL, MCCLAIN, OHRENSCHALL,
PIERCE, SEGERBLOM, SETTELMAYER, WEBER AND
WOMACK

MARCH 15, 2007

JOINT SPONSORS: SENATORS BEERS, MCGINNESS, RHOADS,
SCHNEIDER, WIENER AND WOODHOUSE

Referred to Committee on Judiciary

SUMMARY—Makes various changes to provisions governing the
civil commitment of a person found not guilty by
reason of insanity. (BDR 14-1155)

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; providing for annual
evaluations and the conditional release of a person who is
committed to the custody of the Administrator of the
Division of Mental Health and Developmental Services of
the Department of Health and Human Services after an
acquittal by reason of insanity in certain circumstances;
and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires a court to order a person who is acquitted by reason of
insanity committed to the custody of the Administrator of the Division of Mental
Health and Developmental Services of the Department of Health and Human
Services if the court determines that there is clear and convincing evidence that the
person is mentally ill. (NRS 175.539) Existing law provides that such a person
committed to the custody of the Administrator is generally subject to the same
procedures upon commitment as a person who is committed to the custody of the
Administrator because he is incompetent to stand trial. (NRS 175.539, 178.400-
178.460)

Section 2 of this bill requires the Administrator or his designee to conduct
annual evaluations of a person who is acquitted by reason of insanity while he is in



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the custody of the Administrator. **Section 2** allows a person who is committed after an acquittal by reason of insanity to petition the court for conditional release if the Administrator reports that the person is no longer mentally ill or does not present a danger to himself or others. The court may order the conditional release of the person if, after a hearing on the petition, the court determines that conditional release is in the best interest of the person and will not be detrimental to the public welfare. The Division must conduct periodic evaluations of a person granted conditional release as specified by the court. **Section 2** authorizes the court to return a person to the custody of the Administrator if the person violates any condition of his release or if the court determines that the person presents a clear and present danger of harm to himself or others.

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

Section 1. NRS 175.539 is hereby amended to read as follows:
175.539 1. Where on a trial a defense of insanity is interposed by the defendant and he is acquitted by reason of that defense, the finding of the jury pending the judicial determination pursuant to subsection 2 has the same effect as if he were regularly adjudged insane, and the judge must:

(a) Order a peace officer to take the person into protective custody and transport him to a forensic facility for detention pending a hearing to determine his mental health;

(b) Order the examination of the person by two psychiatrists, two psychologists, or one psychiatrist and one psychologist who are employed by a division facility; and

(c) At a hearing in open court, receive the report of the examining advisers and allow counsel for the State and for the person to examine the advisers, introduce other evidence and cross-examine witnesses.

2. If the court finds, after the hearing:

(a) That there is not clear and convincing evidence that the person is a mentally ill person, the court must order his discharge; or

(b) That there is clear and convincing evidence that the person is a mentally ill person, the court must order that he be committed to the custody of the Administrator of the Division of Mental Health and Developmental Services of the Department of Health and Human Services until he is regularly discharged therefrom in accordance with law.

➤ The court shall issue its finding within 90 days after the defendant is acquitted.

3. The Administrator shall make the same reports and the court shall proceed in the same manner in the case of a person committed to the custody of the Division of Mental Health and Developmental Services pursuant to this section as of a person committed because



1 he is incompetent to stand trial pursuant to NRS ~~178.400~~ 178.399
2 to 178.460, inclusive, *and section 2 of this act*, except *as otherwise*
3 *provided in section 2 of this act and except* that the determination
4 to be made by the Administrator and the district judge on the
5 question of release is whether the person has recovered from his
6 mental illness or has improved to such an extent that he is no longer
7 a mentally ill person.

8 4. As used in this section, unless the context otherwise
9 requires:

10 (a) "Division facility" has the meaning ascribed to it in
11 NRS 433.094.

12 (b) "Forensic facility" means a secure facility of the Division of
13 Mental Health and Developmental Services of the Department of
14 Health and Human Services for mentally disordered offenders and
15 defendants. The term includes, without limitation, Lakes Crossing
16 Center.

17 (c) "Mentally ill person" has the meaning ascribed to it in
18 NRS 433A.115.

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

21 *1. The Administrator of the Division of Mental Health and*
22 *Developmental Services of the Department of Health and Human*
23 *Services or his designee shall keep each mentally ill person*
24 *committed to his custody pursuant to NRS 175.539 under*
25 *observation.*

26 *2. The Administrator or his designee shall report in writing to*
27 *the court which committed the person whether, in his opinion,*
28 *upon medical consultation, the person has recovered from his*
29 *mental illness or has improved to such an extent that he is no*
30 *longer a mentally ill person. The Administrator or his designee*
31 *shall submit the report to the court within 1 year after the person*
32 *is committed to the custody of the Administrator and annually*
33 *thereafter. If the Administrator or his designee determines that the*
34 *person has not recovered from his mental illness or has not*
35 *improved to such an extent that he is no longer a mentally ill*
36 *person, the Administrator or his designee shall also include in the*
37 *report his opinion concerning whether:*

38 *(a) There is a substantial probability that the person may*
39 *receive treatment and recover from his mental illness or improve*
40 *to such an extent that he is no longer a mentally ill person in the*
41 *foreseeable future; and*

42 *(b) The person is at that time a danger to himself or to society.*

43 *3. A person committed to the custody of the Administrator*
44 *pursuant to NRS 175.539 may petition the court for an order for*
45 *conditional release if the Administrator or his designee has*



1 *determined in the report submitted to the court pursuant to*
2 *subsection 2 that the person is no longer mentally ill or does not*
3 *present a danger to himself or to society.*

4 *4. A person may be conditionally released from a Division*
5 *facility only if the court determines, after a hearing on the petition*
6 *submitted pursuant to subsection 3, that conditional release is in*
7 *the best interest of the person and will not be detrimental to the*
8 *public welfare. The court shall prescribe the period for which the*
9 *conditional release is effective.*

10 *5. When a person is conditionally released pursuant to*
11 *subsection 4:*

12 *(a) The State or any of its agents or employees are not liable*
13 *for any debts or contractual obligations, medical or otherwise,*
14 *incurred or damages caused by the actions of the person; and*

15 *(b) The court shall order the restoration of full civil and legal*
16 *rights as deemed necessary to facilitate the person's rehabilitation.*

17 *6. When a person is conditionally released pursuant to*
18 *subsection 4, the court shall order the Division to conduct an*
19 *evaluation of the person as often as is deemed necessary to*
20 *determine whether the person:*

21 *(a) Has complied with the conditions of his release; or*

22 *(b) Presents a clear and present danger of harm to himself or*
23 *others as described in NRS 433A.115.*

24 *7. The court may order a person who is conditionally released*
25 *pursuant to subsection 4 returned to the custody of the*
26 *Administrator if the court determines that the conditional release*
27 *is no longer appropriate because that person:*

28 *(a) Violates any condition of his release; or*

29 *(b) Presents a clear and present danger of harm to himself or*
30 *others as described in NRS 433A.115.*

31 *8. As used in this section:*

32 *(a) "Division facility" has the meaning ascribed to it in*
33 *NRS 433.094.*

34 *(b) "Mentally ill person" has the meaning ascribed to it in*
35 *NRS 433A.115.*

36 **Sec. 3.** NRS 178.399 is hereby amended to read as follows:

37 178.399 As used in NRS ~~178.400~~ 178.399 to 178.460,
38 inclusive, *and section 2 of this act*, unless the context otherwise
39 requires, "treatment to competency" means treatment provided to a
40 defendant to attempt to cause him to attain competency to stand trial
41 or receive pronouncement of judgment.

