

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 discharge or 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:

- 1 Existing law requires a court to order a person who is acquitted by reason of
- 2 insanity committed to the custody of the Administrator of the Division of Mental
- 3 Health and Developmental Services of the Department of Health and Human
- 4 Services if the court determines that there is clear and convincing evidence that the
- 5 person is mentally ill. (NRS 175.539) Existing law provides that such a person
- 6 committed to the custody of the Administrator is generally subject to the same
- 7 procedures upon commitment as a person who is committed to the custody of the
- 8 Administrator because he is incompetent to stand trial. (NRS 175.539, 178.400-
- 9 178.460)



Sections 4-13 of this bill establish the procedures governing the discharge or conditional release of a person who is committed to the custody of the Administrator following an acquittal by reason of insanity. **Section 10** provides that such a person is eligible for discharge or conditional release from custody if he establishes by a preponderance of the evidence that he would not be a danger, as a result of any mental disorder, to himself or others. **Section 11** provides that an initial hearing to determine whether a person is eligible for discharge or conditional release must be held not later than 60 days after the person has been committed to the custody of the Administrator, except in certain circumstances. Not later than 21 days before this hearing and annually thereafter, the Administrator shall prepare a report concerning the condition of the person and provide a copy of it to the person, his attorney, the prosecuting attorney and the court. The opinion of the Administrator included in the report concerning whether or not the person should be discharged or conditionally released may be challenged by either the person committed to the custody of the Administrator or the district attorney. **Section 12** provides that if a person is not discharged or conditionally released from the custody of the Administrator following his initial hearing, the person may petition annually for a discharge or conditional release. **Section 12** further provides that the Division may petition for a discharge or conditional release at any time if the petition is accompanied by the affidavit of a physician or licensed psychologist which states that the person's mental condition has improved since the most recent hearing concerning the discharge or conditional release of the person.

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



1 and Developmental Services of the Department of Health and
2 Human Services until he is ~~[regularly]~~ discharged *or conditionally*
3 *released* therefrom in accordance with ~~[law.]~~ *sections 4 to 13,*
4 *inclusive, of this act.*

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

7 3. The Administrator shall make the ~~[same]~~ reports and the
8 court shall proceed in the ~~[same]~~ manner ~~[in the case of a person~~
9 ~~committed to the custody of the Division of Mental Health and~~
10 ~~Developmental Services pursuant to this section as of a person~~
11 ~~committed because he is incompetent to stand trial pursuant to NRS~~
12 ~~178.400 to 178.460, inclusive, except]~~ *provided in sections 4 to 13,*
13 *inclusive, of this act.* ~~[that the determination to be made by the~~
14 ~~Administrator and the district judge on the question of release is~~
15 ~~whether the person has recovered from his mental illness or has~~
16 ~~improved to such an extent that he is no longer a mentally ill~~
17 ~~person.]~~

18 4. As used in this section, unless the context otherwise
19 requires:

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

22 (b) "Forensic facility" means a secure facility of the Division of
23 Mental Health and Developmental Services of the Department of
24 Health and Human Services for mentally disordered offenders and
25 defendants. The term includes, without limitation, Lakes Crossing
26 Center.

27 (c) "Mentally ill person" has the meaning ascribed to it in
28 ~~[NRS 433A.115.]~~ *section 9 of this act.*

29 **Sec. 2.** (Deleted by amendment.)

30 **Sec. 3.** Chapter 178 of NRS is hereby amended by adding
31 thereto the provisions set forth as sections 4 to 13, inclusive, of this
32 act.

33 **Sec. 4.** *As used in sections 4 to 13, inclusive, of this act,*
34 *unless the context otherwise requires, the words and terms defined*
35 *in sections 5 to 9, inclusive, of this act have the meanings ascribed*
36 *to them in those sections.*

37 **Sec. 5.** *"Administrator" means the Administrator of the*
38 *Division.*

39 **Sec. 6.** *"Division" means the Division of Mental Health and*
40 *Developmental Services of the Department of Health and Human*
41 *Services.*

42 **Sec. 7.** *"Division facility" has the meaning ascribed to it in*
43 *NRS 433.094.*

44 **Sec. 8.** *"Mental disorder" means a mental illness that results*
45 *from a psychiatric or neurological disorder that so substantially*



1 *impairs the mental or emotional functioning of the person as to*
2 *make care or treatment necessary or advisable for the welfare of*
3 *the person or for the safety of the person or property of another*
4 *and includes, without limitation, mental retardation and related*
5 *conditions.*

6 **Sec. 9.** *“Mentally ill person” means a person who has a*
7 *mental disorder.*

8 **Sec. 10.** 1. *The Administrator or his designee shall keep*
9 *each mentally ill person committed to his custody pursuant to NRS*
10 *175.539 under observation.*

11 2. *A person committed to the custody of the Administrator*
12 *pursuant to NRS 175.539 is eligible for:*

13 (a) *Discharge from commitment if the person establishes by a*
14 *preponderance of the evidence that he would not be a danger, as a*
15 *result of any mental disorder, to himself or to the person or*
16 *property of another if discharged; or*

17 (b) *Conditional release from commitment if the person*
18 *establishes by a preponderance of the evidence that he would not*
19 *be a danger, as a result of any mental disorder, to himself or to the*
20 *person or property of another if released from commitment with*
21 *conditions imposed by the court in consultation with the Division.*

22 3. *If a person who is conditionally released from the custody*
23 *of the Administrator fails to comply with any condition imposed by*
24 *the court, the court shall issue an order to have the person*
25 *recommitted to the custody of the Administrator.*

26 **Sec. 11.** 1. *Except as otherwise provided in this section, a*
27 *court must hold a hearing not later than 60 days after:*

28 (a) *A person is committed to the custody of the Administrator*
29 *pursuant to NRS 175.539; or*

30 (b) *The Division or the person committed to the custody of the*
31 *Administrator files a petition for discharge or conditional release*
32 *pursuant to section 12 of this act.*

33 2. *During the hearing held pursuant to subsection 1, the*
34 *court shall consider any relevant information that will enable the*
35 *court to determine whether the person is eligible for discharge or*
36 *conditional release pursuant to section 10 of this act. The court*
37 *may postpone the hearing described in this subsection for good*
38 *cause or upon agreement by the person committed to the custody*
39 *of the Administrator, the court and the Division.*

40 3. *Not later than 21 days before the date of the hearing held*
41 *pursuant to paragraph (a) of subsection 1 and annually thereafter,*
42 *the Administrator or his designee shall prepare a written report*
43 *stating whether, in his opinion, upon medical consultation, the*
44 *person who was committed to the custody of the Administrator has*
45 *recovered from his mental disorder or has improved to such an*



1 *extent that he is no longer a mentally ill person and whether or*
2 *not, in his opinion, the person should be discharged or*
3 *conditionally released. If the Administrator or his designee*
4 *determines that the person has not recovered from his mental*
5 *disorder or has not improved to such an extent that he is no longer*
6 *a mentally ill person, the Administrator or his designee shall*
7 *include in the report his opinion concerning whether:*

8 (a) *There is a substantial probability that the person may*
9 *receive treatment and recover from his mental disorder or improve*
10 *to such an extent that he is no longer a mentally ill person in the*
11 *foreseeable future; and*

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

13 4. *If the opinion of Administrator included in the report*
14 *prepared pursuant to subsection 3 provides that:*

15 (a) *The person committed to his custody should not be*
16 *discharged or conditionally released, the person who is committed*
17 *may overcome the opinion of the Administrator by proving the*
18 *elements necessary for discharge or conditional release pursuant*
19 *to subsection 2 of section 10 of this act by a preponderance of the*
20 *evidence.*

21 (b) *The person committed to his custody should be discharged*
22 *or conditionally released, the district attorney may overcome the*
23 *opinion of the Administrator by proving by a preponderance of the*
24 *evidence that the person continues to be a mentally ill person.*

25 5. *Within the period prescribed in subsection 3, the*
26 *Administrator or his designee shall provide a copy of the report to:*

27 (a) *The person committed to the custody of the Administrator*
28 *and his attorney;*

29 (b) *The prosecuting attorney; and*

30 (c) *The court.*

31 **Sec. 12. 1.** *A person committed to the custody of the*
32 *Administrator pursuant to NRS 175.539 may petition the court for*
33 *discharge or conditional release not sooner than 1 year after the*
34 *person is committed to the custody of the Administrator and not*
35 *more than once each year thereafter.*

36 2. *The Division may file a petition for the discharge or*
37 *conditional release of a person committed to the custody of the*
38 *Administrator pursuant to NRS 175.539 at any time if the petition*
39 *is accompanied by an affidavit of a physician or licensed*
40 *psychologist which states that the mental disorder of the person*
41 *has improved since the date of the most recent hearing concerning*
42 *the discharge or conditional release of the person such that the*
43 *physician or licensed psychologist recommends the discharge or*
44 *conditional release of the person.*



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1 3. A person who is committed to the custody of the
2 Administrator pursuant to NRS 175.539 may apply for discharge
3 or conditional release pursuant to subsection 1 by:

4 (a) Filing a petition for discharge or conditional release with
5 the court that ordered the person committed pursuant to NRS
6 175.539; and

7 (b) Providing a copy of the petition to the Division and the
8 prosecuting attorney.

9 4. The Division may file a petition for discharge or
10 conditional release pursuant to subsection 2 by:

11 (a) Filing the petition with the court that ordered the person
12 committed to the custody of the Administrator pursuant to
13 NRS 175.539;

14 (b) Including with the petition an affidavit of a physician or
15 licensed psychologist pursuant to subsection 2; and

16 (c) Providing a copy of the petition to the person committed to
17 the custody of the Administrator, his attorney and the prosecuting
18 attorney.

19 **Sec. 13.** 1. When a person is conditionally released
20 pursuant to sections 4 to 13, inclusive, of this act:

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

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

26 2. When a person is conditionally released pursuant to
27 sections 4 to 13, inclusive, of this act, the court shall order the
28 Division to conduct an evaluation of the person as often as is
29 deemed necessary to determine whether the person:

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

31 (b) Presents a clear and present danger of harm to himself or
32 others.

33 3. The court may order a person who is conditionally released
34 pursuant to sections 4 to 13, inclusive, of this act returned to the
35 custody of the Administrator if the court determines that the
36 conditional release is no longer appropriate because that person:

37 (a) Has violated a condition of his release; or

38 (b) Presents a clear and present danger of harm to himself or
39 others.

40 **Sec. 14.** NRS 178.399 is hereby amended to read as follows:

41 178.399 As used in NRS ~~178.400~~ 178.399 to 178.460,
42 inclusive, unless the context otherwise requires, "treatment to
43 competency" means treatment provided to a defendant to attempt to
44 cause him to attain competency to stand trial or receive
45 pronouncement of judgment.



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1 **Sec. 15.** The amendatory provisions of this act concerning the
2 discharge or conditional release of a person committed to the
3 custody of the Administrator of the Division of Mental Health and
4 Developmental Services of the Department of Health and Human
5 Services pursuant to NRS 175.539 apply to any such person who is
6 in the custody of the Administrator on or after October 1, 2007.

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