

Amendment No. 362

Assembly Amendment to Assembly Bill No. 369

(BDR 14-1155)

Proposed by: Assembly Committee on Judiciary**Amends:** Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold* is newly added transitory language.

BFG/RBL



Date: 4/16/2007

A.B. No. 369—Makes various changes to provisions governing the civil commitment of a person found not guilty by reason of insanity.
(BDR 14-1155)



ASSEMBLY BILL NO. 369—ASSEMBLYMEN HORNE, PARKS, ALLEN, ATKINSON, BOBZIEN, CARPENTER, DENIS, GERHARDT, KIHUEN, KOIVISTO, MARVEL, MCCLAIN, OHRENSCHALL, PIERCE, SEGERBLUM, 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:

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 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.]~~

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

➤ 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~~

1 as of a person committed because he is incompetent to stand trial pursuant to NRS
2 ~~[178.400] [178.399 to 178.460, inclusive, and section 2 of this act, except as~~
3 ~~otherwise provided in section 2] sections 4 to 13, inclusive, of this act, and~~
4 ~~except that the determination to be made by the Administrator and the district judge~~
5 ~~on the question of release is whether the person has recovered from his mental~~
6 ~~illness or has improved to such an extent that he is no longer a mentally ill person.]~~

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

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

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

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

15 Sec. 2. ~~[Chapter 178 of NRS is hereby amended by adding thereto a new~~
16 ~~section to read as follows:~~

17 ~~1. The Administrator of the Division of Mental Health and Developmental~~
18 ~~Services of the Department of Health and Human Services or his designee shall~~
19 ~~keep each mentally ill person committed to his custody pursuant to NRS 175.539~~
20 ~~under observation.~~

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

31 ~~(a) There is a substantial probability that the person may receive treatment~~
32 ~~and recover from his mental illness or improve to such an extent that he is no~~
33 ~~longer a mentally ill person in the foreseeable future; and~~

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

35 ~~3. A person committed to the custody of the Administrator pursuant to NRS~~
36 ~~175.539 may petition the court for an order for conditional release if the~~
37 ~~Administrator or his designee has determined in the report submitted to the court~~
38 ~~pursuant to subsection 2 that the person is no longer mentally ill or does not~~
39 ~~present a danger to himself or to society.~~

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

45 ~~5. When a person is conditionally released pursuant to subsection 4:~~

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

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

51 ~~6. When a person is conditionally released pursuant to subsection 4, the~~
52 ~~court shall order the Division to conduct an evaluation of the person as often as~~
53 ~~is deemed necessary to determine whether the person:~~

~~(a) Has complied with the conditions of his release; or~~
~~(b) Presents a clear and present danger of harm to himself or others as described in NRS 433A.115.~~

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

~~(a) Violates any condition of his release; or~~
~~(b) Presents a clear and present danger of harm to himself or others as described in NRS 433A.115.~~

~~8. As used in this section:~~

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

~~(b) "Mentally ill person" has the meaning ascribed to it in NRS 433A.115.]~~

(Deleted by amendment.)

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

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

Sec. 5. "Administrator" means the Administrator of the Division.

Sec. 6. "Division" means the Division of Mental Health and Developmental Services of the Department of Health and Human Services.

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

Sec. 8. "Mental disorder" means a mental illness that results from a psychiatric or neurological disorder that so substantially impairs the mental or emotional functioning of the person as to make care or treatment necessary or advisable for the welfare of the person or for the safety of the person or property of another and includes, without limitation, mental retardation and related conditions.

Sec. 9. "Mentally ill person" means a person who has a mental disorder.

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

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

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

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

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

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

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

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

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

7 3. Not later than 21 days before the date of the hearing held pursuant to
8 paragraph (a) of subsection 1 and annually thereafter, the Administrator or his
9 designee shall prepare a written report stating whether, in his opinion, upon
10 medical consultation, the person who was committed to the custody of the
11 Administrator has recovered from his mental disorder or has improved to such an
12 extent that he is no longer a mentally ill person. If the Administrator or his
13 designee determines that the person has not recovered from his mental disorder
14 or has not improved to such an extent that he is no longer a mentally ill person,
15 the Administrator or his designee shall include in the report his opinion
16 concerning whether:

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

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

21 4. Within the period prescribed in subsection 3, the Administrator or his
22 designee shall provide a copy of the report to:

23 (a) The person committed to the custody of the Administrator and his
24 attorney;

25 (b) The prosecuting attorney; and

26 (c) The court.

27 Sec. 12. 1. A person committed to the custody of the Administrator
28 pursuant to NRS 175.539 may petition the court for discharge or conditional
29 release not sooner than 1 year after the person is committed to the custody of the
30 Administrator and not more than once each year thereafter.

31 2. The Division may file a petition for the discharge or conditional release
32 of a person committed to the custody of the Administrator pursuant to NRS
33 175.539 at any time if the petition is accompanied by an affidavit of a physician
34 or licensed psychologist which states that the mental disorder of the person has
35 improved since the date of the most recent hearing concerning the discharge or
36 conditional release of the person such that the physician or licensed psychologist
37 recommends the discharge or conditional release of the person.

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

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

43 (b) Providing a copy of the petition to the Division and the prosecuting
44 attorney.

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

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

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

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

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

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

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

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

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

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

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

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

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

19 ~~[Sec. 3.]~~ Sec. 14. NRS 178.399 is hereby amended to read as follows:

20 178.399 As used in NRS ~~[178.400]~~ 178.399 to 178.460, inclusive, ~~and~~
21 ~~section 2 of this act,~~ unless the context otherwise requires, "treatment to
22 competency" means treatment provided to a defendant to attempt to cause him to
23 attain competency to stand trial or receive pronouncement of judgment.

24 Sec. 15. The amendatory provisions of this act concerning the discharge
25 or conditional release of a person committed to the custody of the
26 Administrator of the Division of Mental Health and Developmental Services of
27 the Department of Health and Human Services pursuant to NRS 175.539 apply
28 to any such person who is in the custody of the Administrator on or after
29 October 1, 2007.