

ASSEMBLY BILL NO. 440—ASSEMBLYMAN YEAGER

MARCH 27, 2017

Referred to Committee on Health and Human Services

SUMMARY—Revises provisions governing involuntary commitment proceedings. (BDR 39-997)

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 mental health; authorizing a proceeding for the involuntary court-ordered admission of a criminal defendant to a program of community-based or outpatient services to be commenced by the district court or by motion of the defendant or the district attorney under certain circumstances; requiring the court to dismiss the charges against the defendant if the defendant successfully completes such a program to the satisfaction of the court; requiring certain judges to hear proceedings for involuntary court-ordered admission; requiring a district court to request an evaluation of a person alleged to be a person with mental illness by an evaluation team; revising requirements concerning courses of instruction for certain judges; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law provides that a proceeding for an involuntary court-ordered
2 admission of a person may be commenced by the filing of a petition for the
3 involuntary admission to a mental health facility or to a program of community-
4 based or outpatient services with the clerk of the district court of the county where
5 the person resides. (NRS 433A.200) **Section 1** of this bill additionally authorizes a
6 proceeding for the involuntary court-ordered admission of a person who is the
7 defendant in a criminal proceeding in the district court to a program of community-
8 based or outpatient services to be commenced by the district court, on its own
9 motion, or by motion of the defendant or the district attorney if certain conditions
10 are met. **Section 4.3** of this bill specifies the circumstances under which the court
11 may suspend the criminal proceedings against a defendant and order the defendant
12 to a program of community-based or outpatient services. Under **section 4.3**, if the



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13 defendant successfully completes a program of community-based or outpatient
14 services, the district court shall dismiss the criminal charges against the defendant
15 with prejudice. **Sections 2-4** of this bill make conforming changes. **Section 2**
16 provides that, if the Chief Judge of a district court has designated a district court
17 judge or hearing master to preside over involuntary commitment hearings, that
18 district court judge or hearing master must preside over such hearings.

19 Existing law requires district judges assigned to the family court for a period of
20 90 or more days to attend instruction at the National Council of Juvenile and
21 Family Court Judges in Reno, Nevada. (NRS 3.0105) **Section 4.5** of this bill
22 exempts a district judge or hearing master specifically assigned to hear certain
23 involuntary commitment proceedings from the requirement to attend such
24 instruction.

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

1 **Section 1.** NRS 433A.200 is hereby amended to read as
2 follows:

3 433A.200 1. Except as otherwise provided in *subsection 3*
4 *and* NRS 432B.6075, a proceeding for an involuntary court-ordered
5 admission of any person in the State of Nevada may be commenced
6 by the filing of a petition for the involuntary admission to a mental
7 health facility or to a program of community-based or outpatient
8 services with the clerk of the district court of the county where the
9 person who is to be treated resides. The petition may be filed by the
10 spouse, parent, adult children or legal guardian of the person to be
11 treated or by any physician, physician assistant, psychologist, social
12 worker or registered nurse, by an accredited agent of the Department
13 or by any officer authorized to make arrests in the State of Nevada.
14 The petition must be accompanied:

15 (a) By a certificate of a physician, a licensed psychologist, a
16 physician assistant under the supervision of a psychiatrist, a clinical
17 social worker who has the psychiatric training and experience
18 prescribed by the Board of Examiners for Social Workers pursuant
19 to NRS 641B.160, an advanced practice registered nurse who has
20 the psychiatric training and experience prescribed by the State
21 Board of Nursing pursuant to NRS 632.120 or an accredited agent
22 of the Department stating that he or she has examined the person
23 alleged to be a person with mental illness and has concluded that the
24 person has a mental illness and, because of that illness, is likely to
25 harm himself or herself or others if allowed his or her liberty or if
26 not required to participate in a program of community-based or
27 outpatient services; or

28 (b) By a sworn written statement by the petitioner that:

29 (1) The petitioner has, based upon the petitioner's personal
30 observation of the person alleged to be a person with mental illness,



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1 probable cause to believe that the person has a mental illness and,
2 because of that illness, is likely to harm himself or herself or others
3 if allowed his or her liberty or if not required to participate in a
4 program of community-based or outpatient services; and

5 (2) The person alleged to be a person with mental illness has
6 refused to submit to examination or treatment by a physician,
7 psychiatrist or licensed psychologist.

8 2. Except as otherwise provided in NRS 432B.6075, if the
9 person to be treated is a minor and the petitioner is a person other
10 than a parent or guardian of the minor, ~~the~~ a petition *submitted*
11 *pursuant to subsection 1* must, in addition to the certificate or
12 statement required by ~~subsection 1,~~ that subsection, include a
13 statement signed by a parent or guardian of the minor that the parent
14 or guardian does not object to the filing of the petition.

15 3. *A proceeding for the involuntary court-ordered admission*
16 *of a person who is the defendant in a criminal proceeding in the*
17 *district court to a program of community-based or outpatient*
18 *services may be commenced by the district court, on its own*
19 *motion, or by motion of the defendant or the district attorney if:*

20 (a) *The defendant has been examined in accordance with*
21 *NRS 178.415;*

22 (b) *The defendant is not eligible for commitment to the custody*
23 *of the Administrator pursuant to NRS 178.461; and*

24 (c) *The Division makes a clinical determination that placement*
25 *in a program of community-based or outpatient services is*
26 *appropriate.*

27 **Sec. 2.** NRS 433A.220 is hereby amended to read as follows:

28 433A.220 1. Immediately after the clerk of the district court
29 receives any petition filed pursuant to NRS 433A.200 or 433A.210,
30 the clerk shall transmit the petition to the appropriate district judge,
31 who shall set a time, date and place for its hearing. *Immediately*
32 *after a motion is made pursuant to subsection 3 of NRS 433A.200,*
33 *the district judge shall set a time, date and place for its hearing.*
34 The date must be within 5 judicial days after the date on which the
35 petition is received by the clerk ~~H~~ *or the motion is made, as*
36 *applicable. If the Chief Judge, if any, of the district court has*
37 *assigned a district court judge or hearing master to preside over*
38 *such hearings, that judge or hearing master must preside over the*
39 *hearing.*

40 2. The court shall give notice of the petition *or motion* and of
41 the time, date and place of any proceedings thereon to the subject of
42 the petition ~~H~~ *or motion*, his or her attorney, if known, the person's
43 legal guardian, the petitioner, *if applicable*, the district attorney of
44 the county in which the court has its principal office, the local office
45 of an agency or organization that receives money from the Federal



1 Government pursuant to 42 U.S.C. §§ 10801 et seq., to protect and
2 advocate the rights of persons with mental illness and the
3 administrative office of any public or private mental health facility
4 in which the subject of the petition *or motion* is detained.

5 3. The provisions of this section do not preclude a facility from
6 discharging a person before the time set pursuant to this section for
7 the hearing concerning the person, if appropriate. If the person has a
8 legal guardian, the facility shall notify the guardian prior to
9 discharging the person from the facility. The legal guardian has
10 discretion to determine where the person will be released, taking
11 into consideration any discharge plan proposed by the facility
12 assessment team. If the legal guardian does not inform the facility as
13 to where the person will be released within 3 days after the date of
14 notification, the facility shall discharge the person according to its
15 proposed discharge plan.

16 **Sec. 3.** NRS 433A.240 is hereby amended to read as follows:

17 433A.240 1. After the filing of a petition to commence
18 proceedings for the involuntary court-ordered admission of a person
19 pursuant to NRS 433A.200 or 433A.210, the court shall promptly
20 cause two or more physicians or licensed psychologists, one of
21 whom must always be a physician, to examine the person alleged to
22 be a person with mental illness, or request an evaluation by an
23 evaluation team from the Division of the person alleged to be a
24 person with mental illness.

25 2. *After the filing of a motion pursuant to subsection 3 of*
26 *NRS 433A.200, the court shall promptly request an evaluation by*
27 *an evaluation team from the Division of the person alleged to be a*
28 *person with mental illness.*

29 3. To conduct the examination of a person who is not being
30 detained at a mental health facility or hospital under emergency
31 admission pursuant to an application made pursuant to NRS
32 433A.160, the court may order a peace officer to take the person
33 into protective custody and transport the person to a mental health
34 facility or hospital where the person may be detained until a hearing
35 is had upon the petition *or motion, as applicable.*

36 ~~3-~~ 4. If the person is not being detained under an emergency
37 admission pursuant to an application made pursuant to NRS
38 433A.160, the person may be allowed to remain in his or her home
39 or other place of residence pending an ordered examination or
40 examinations and to return to his or her home or other place of
41 residence upon completion of the examination or examinations. The
42 person may be accompanied by one or more of his or her relations
43 or friends to the place of examination.

44 ~~4-~~ 5. Each physician and licensed psychologist who
45 examines a person pursuant to subsection 1 *or 2* shall, in conducting



1 such an examination, consider the least restrictive treatment
2 appropriate for the person.

3 ~~H~~ 6. Except as otherwise provided in this subsection, each
4 physician and licensed psychologist who examines a person
5 pursuant to subsection 1 shall, not later than 48 hours before the
6 hearing set pursuant to NRS 433A.220, submit to the court in
7 writing a summary of his or her findings and evaluation regarding
8 the person alleged to be a person with mental illness. If the person
9 alleged to be a person with mental illness is admitted under an
10 emergency admission pursuant to an application made pursuant to
11 NRS 433A.160, the written findings and evaluation must be
12 submitted to the court not later than 24 hours before the hearing set
13 pursuant to subsection 1 of NRS 433A.220.

14 **Sec. 4.** NRS 433A.280 is hereby amended to read as follows:

15 433A.280 In proceedings for involuntary court-ordered
16 admission, the court shall hear and consider all relevant testimony,
17 including, but not limited to, the testimony of examining personnel
18 who participated in the evaluation of the person alleged to be a
19 person with mental illness and the certificates of physicians or
20 certified psychologists accompanying the petition ~~H~~, *if applicable*.
21 The court may consider testimony relating to any past actions of the
22 person alleged to be a person with mental illness if such testimony is
23 probative of the question of whether the person is presently mentally
24 ill and presents a clear and present danger of harm to himself or
25 herself or others.

26 **Sec. 4.3.** NRS 433A.310 is hereby amended to read as
27 follows:

28 433A.310 1. Except as otherwise provided in *subsection 2*
29 *and* NRS 432B.6076 and 432B.6077, if the district court finds, after
30 proceedings for the involuntary court-ordered admission of a
31 person:

32 (a) That there is not clear and convincing evidence that the
33 person with respect to whom the hearing was held has a mental
34 illness or exhibits observable behavior such that the person is likely
35 to harm himself or herself or others if allowed his or her liberty or if
36 not required to participate in a program of community-based or
37 outpatient services, the court shall enter its finding to that effect and
38 the person must not be involuntarily admitted to a public or private
39 mental health facility or to a program of community-based or
40 outpatient services.

41 (b) That there is clear and convincing evidence that the person
42 with respect to whom the hearing was held has a mental illness and,
43 because of that illness, is likely to harm himself or herself or others
44 if allowed his or her liberty or if not required to participate in a
45 program of community-based or outpatient services, the court may



1 order the involuntary admission of the person for the most
2 appropriate course of treatment, including, without limitation,
3 admission to a public or private mental health facility or
4 participation in a program of community-based or outpatient
5 services. The order of the court must be interlocutory and must not
6 become final if, within 30 days after the involuntary admission, the
7 person is unconditionally released pursuant to NRS 433A.390.

8 2. *If the district court finds, after proceedings for the*
9 *involuntary court-ordered admission of a defendant in a criminal*
10 *proceeding pursuant to subsection 3 of NRS 433A.200:*

11 (a) *That there is not clear and convincing evidence that the*
12 *defendant with respect to whom the hearing was held has a mental*
13 *illness or exhibits observable behavior such that the defendant is*
14 *likely to harm himself or herself or others if allowed his or her*
15 *liberty or if not required to participate in a program of*
16 *community-based or outpatient services, the court shall enter its*
17 *finding to that effect and the person must not be involuntarily*
18 *admitted to a program of community-based or outpatient services.*

19 (b) *That there is clear and convincing evidence that the*
20 *defendant with respect to whom the hearing was held has a mental*
21 *illness and, because of that illness, is likely to harm himself or*
22 *herself or others if allowed his or her liberty or if not required to*
23 *participate in a program of community-based or outpatient*
24 *services, except as otherwise provided in this paragraph, the court*
25 *shall order the involuntary admission of the defendant for*
26 *participation in a program of community-based or outpatient*
27 *services and suspend further proceedings in the criminal*
28 *proceeding against the defendant until the defendant completes or*
29 *is removed from the program. If the offense allegedly committed*
30 *by the defendant is a category A or B felony or involved the use or*
31 *threatened use of force or violence, the court may not order the*
32 *involuntary admission of the defendant for participation in a*
33 *program pursuant to this paragraph unless the prosecuting*
34 *attorney stipulates to the assignment. The order of the court must*
35 *be interlocutory and must not become final if, within 30 days after*
36 *the involuntary admission, the person is unconditionally released*
37 *pursuant to NRS 433A.390. If the defendant successfully*
38 *completes a program of community-based or outpatient services to*
39 *the satisfaction of the court, the court shall dismiss the criminal*
40 *charges against the defendant with prejudice.*

41 3. *If, pursuant to NRS 176A.400, the district court issues an*
42 *order granting probation to a defendant in a criminal proceeding*
43 *with a condition that the defendant submit to mental health*
44 *treatment and comply with instructions, admission to a program of*
45 *community-based or outpatient services may be used to satisfy*



1 *such a condition if the Division makes a clinical determination*
2 *that placement in a program of community-based or outpatient*
3 *services is appropriate.*

4 4. A court shall not admit a person to a program of community-
5 based or outpatient services unless:

6 (a) A program of community-based or outpatient services is
7 available in the community in which the person resides or is
8 otherwise made available to the person;

9 (b) The person is 18 years of age or older;

10 (c) The person has a history of noncompliance with treatment
11 for mental illness;

12 (d) The person is capable of surviving safely in the community
13 in which he or she resides with available supervision;

14 (e) The court determines that, based on the person's history of
15 treatment for mental illness, the person needs to be admitted to a
16 program of community-based or outpatient services to prevent
17 further disability or deterioration of the person which is likely to
18 result in harm to himself or herself or others;

19 (f) The current mental status of the person or the nature of the
20 person's illness limits or negates his or her ability to make an
21 informed decision to seek treatment for mental illness voluntarily or
22 to comply with recommended treatment for mental illness;

23 (g) The program of community-based or outpatient services is
24 the least restrictive treatment which is in the best interest of the
25 person; and

26 (h) The court has approved a plan of treatment developed for the
27 person pursuant to NRS 433A.315.

28 ~~13-1~~ 5. Except as otherwise provided in NRS 432B.608, an
29 involuntary admission pursuant to paragraph (b) of subsection 1 *or*
30 *paragraph (b) of subsection 2* automatically expires at the end of 6
31 months if not terminated previously by the medical director of the
32 public or private mental health facility as provided for in subsection
33 2 of NRS 433A.390 or by the professional responsible for providing
34 or coordinating the program of community-based or outpatient
35 services as provided for in subsection 3 of NRS 433A.390. Except
36 as otherwise provided in NRS 432B.608, at the end of the court-
37 ordered period of treatment, the Division, any mental health facility
38 that is not operated by the Division or a program of community-
39 based or outpatient services may petition to renew the involuntary
40 admission of the person for additional periods not to exceed 6
41 months each. For each renewal, the petition must include evidence
42 which meets the same standard set forth in subsection 1 *or 2* that
43 was required for the initial period of admission of the person to a
44 public or private mental health facility or to a program of
45 community-based or outpatient services.



1 ~~14~~ 6. Before issuing an order for involuntary admission or a
2 renewal thereof, the court shall explore other alternative courses of
3 treatment within the least restrictive appropriate environment,
4 including involuntary admission to a program of community-based
5 or outpatient services, as suggested by the evaluation team who
6 evaluated the person, or other persons professionally qualified in the
7 field of psychiatric mental health, which the court believes may be
8 in the best interests of the person.

9 ~~15~~ 7. If the court issues an order involuntarily admitting a
10 person to a public or private mental health facility or to a program of
11 community-based or outpatient services pursuant to this section, the
12 court shall, notwithstanding the provisions of NRS 433A.715, cause,
13 within 5 business days after the order becomes final pursuant to this
14 section, on a form prescribed by the Department of Public Safety, a
15 record of the order to be transmitted to the Central Repository for
16 Nevada Records of Criminal History, along with a statement
17 indicating that the record is being transmitted for inclusion in each
18 appropriate database of the National Instant Criminal Background
19 Check System.

20 ~~16~~ 8. As used in this section, "National Instant Criminal
21 Background Check System" has the meaning ascribed to it in
22 NRS 179A.062.

23 **Sec. 4.7.** NRS 3.0105 is hereby amended to read as follows:

24 3.0105 1. There is hereby established, in each judicial district
25 that includes a county whose population is 100,000 or more, a
26 family court as a division of the district court.

27 2. If the caseload of the family court so requires, the Chief
28 Judge may assign one or more district judges of the judicial district
29 to act temporarily as judges of the family court.

30 3. If for any reason a judge of the family court is unable to act,
31 any other district judge of the judicial district may be assigned as
32 provided in subsection 2 to act temporarily as judge of the family
33 court.

34 4. A district judge assigned to the family court pursuant to
35 subsection 2 or 3 for a period of 90 or more days, *except for a*
36 *district judge or hearing master assigned to hear proceedings*
37 *brought pursuant to NRS 433A.200 to 433A.330, inclusive,* must
38 attend the instruction required pursuant to subsection 1 of NRS
39 3.028. District judges must not be assigned to the family court
40 pursuant to subsections 2 and 3 on a rotating basis.

41 **Sec. 5.** (Deleted by amendment.)

