

CHAPTER.....

AN ACT relating to children; authorizing an agency which provides child welfare services to file a petition for the court-ordered admission to certain facilities of a child who is alleged to be an emotionally disturbed child and who is in the custody of the agency; requiring a court which is hearing such a petition to place the child in a less restrictive environment under certain circumstances; establishing a maximum period of days for which such children may be ordered by a court to be admitted to certain facilities; establishing certain rights for such children who are admitted to certain facilities; establishing procedures for the conditional and unconditional release of such children under certain circumstances; 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 17, inclusive, of this act.

Sec. 2. *As used in sections 2 to 17, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 6, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 3. *“Emotionally disturbed child” has the meaning ascribed to it in NRS 433B.080.*

Sec. 4. *“Facility” means a psychiatric hospital or facility which provides residential treatment for mental illness that has a unit in the hospital or facility capable of being locked to prevent an emotionally disturbed child from leaving the hospital or facility.*

Sec. 5. *“Person professionally qualified in the field of psychiatric mental health” has the meaning ascribed to it in NRS 433A.018.*

Sec. 6. *“Treatment” has the meaning ascribed to it in NRS 433.224.*

Sec. 7. *A proceeding for a court-ordered admission of a child alleged to be an emotionally disturbed child who is in the custody of an agency which provides child welfare services to a facility may be commenced by the filing of a petition with the clerk of the court which has jurisdiction in proceedings concerning the child. The petition may be filed by the agency which provides child welfare services without the consent of a parent of the child. The petition must be accompanied:*

1. *By a certificate of a physician, psychiatrist or licensed psychologist stating that he has examined the child alleged to be emotionally disturbed and has concluded that the child is emotionally disturbed and, because of that condition is likely to harm himself or others if allowed his liberty; or*

2. *By a sworn written statement by the petitioner that:*

(a) *The petitioner has, based upon his personal observation of the child alleged to be emotionally disturbed, probable cause to believe that the child is emotionally disturbed and, because of that condition is likely to harm himself or others if allowed his liberty; and*

(b) *The child alleged to be emotionally disturbed has refused to submit to examination or treatment by a physician, psychiatrist or licensed psychologist.*

Sec. 8. 1. *Except as otherwise provided in section 9 of this act, if the court finds, after proceedings for the court-ordered admission of a child alleged to be an emotionally disturbed child who is in the custody of an agency which provides child welfare services to a facility:*

(a) *That there is not clear and convincing evidence that the child with respect to whom the hearing was held exhibits observable behavior such that he is likely to harm himself or others if allowed his liberty, the court shall enter its finding to that effect and the child must not be admitted to a facility.*

(b) *That there is clear and convincing evidence that the child with respect to whom the hearing was held is in need of treatment in a facility and is likely to harm himself or others if allowed his liberty, the court may order the admission of the child for the most appropriate course of treatment. The order of the court must be interlocutory and must not become final if, within 30 days after the admission, the child is unconditionally released from the facility pursuant to section 16 of this act.*

2. *Before issuing an order for admission or a renewal thereof, the court shall explore other alternative courses of treatment within the least restrictive appropriate environment as suggested by the evaluation team who evaluated the child, or other persons professionally qualified in the field of psychiatric mental health, which, the court believes may be in the best interests of the child.*

Sec. 9. 1. *An agency which provides child welfare services shall not place a child who is in the custody of the agency in a facility, other than under an emergency admission, unless the agency has petitioned the court for the court-ordered admission of the child to a facility pursuant to section 7 of this act.*

2. *If a petition for the court-ordered admission of a child filed pursuant to section 7 of this act is accompanied by the information*

described in subsection 2 of section 7 of this act, the court shall order a psychological evaluation of the child.

3. If a court which receives a petition filed pursuant to section 7 of this act for the court-ordered admission to a facility of a child who is in the custody of an agency which provides child welfare services determines pursuant to subsection 2 of section 8 of this act that the child could be treated effectively in a less restrictive appropriate environment than a facility, the court must order the placement of the child in a less restrictive appropriate environment. In making such a determination, the court may consider any information provided to the court, including, without limitation:

(a) Any information provided pursuant to subsection 4;

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

(c) Any suggestions of licensed clinical social workers or other professionals or any adult caretakers who have interacted with the child and have information concerning the appropriate environment for the child.

4. If a petition for the court-ordered admission of a child who is in the custody of an agency which provides child welfare services is filed pursuant to section 7 of this act:

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

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

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

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

Sec. 10. *1. Not later than 5 days after a child who is in the custody of an agency which provides child welfare services has been admitted to a facility pursuant to section 8 of this act, the agency which provides child welfare services shall inform the child of his legal rights and the provisions of NRS 433.456 to 433.543, inclusive, and 433.545 to 433.551, inclusive, and chapters 433A and 433B of NRS and sections 2 to 17, inclusive, of this act and, if the child or the child's attorney desires, assist the child in requesting the court to authorize a second examination by an evaluation team that includes a physician, psychiatrist or licensed psychologist other than a physician, psychiatrist or licensed psychologist who performed an original examination which authorized the court to order the admission of the child to the facility.*

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

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

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

Sec. 11. *In determining pursuant to sections 8 and 12 of this act whether to issue or renew an order for the admission of a child who is in the custody of an agency which provides child welfare services to a facility, the court shall consider:*

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

2. Any information concerning the child provided to the court by a licensed clinical social worker or other professional or any adult caretaker who is knowledgeable about the child or a guardian ad litem appointed for the child pursuant to NRS 432B.500;

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

4. The best interests of the child, including, without limitation, whether the court believes the child might experience any psychological trauma from court-ordered admission;

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

6. Any other information the court deems relevant concerning the child.

Sec. 12. *1. If the court issues an order for the admission to a facility of a child who is in the custody of an agency which provides child welfare services pursuant to section 8 of this act, the admission automatically expires at the end of 90 days if not terminated previously by the facility as provided for in subsection 2 of section 16 of this act.*

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

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

Sec. 13. *A facility which provides care, treatment or training to a child who is in the custody of an agency which provides child welfare services and who is admitted to the facility pursuant to section 8 of this act shall develop a plan, in consultation with the*

child, for the continued care, treatment and training of the child upon discharge from the facility. The plan must:

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

2. Be submitted to the court after each period of admission ordered by the court pursuant to section 8 of this act in the manner set forth in section 12 of this act; and

3. Include, without limitation:

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

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

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

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

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

Sec. 14. *In addition to the personal rights set forth in NRS 433.456 to 433.543, inclusive, and 433.545 to 433.551, inclusive, and chapters 433A and 433B of NRS and sections 2 to 17, inclusive, of this act, a child who is in the custody of an agency which provides child welfare services and who is admitted to a facility has the following personal rights, a list of which must be prominently posted in all facilities providing evaluation, treatment or training services to such children and must be otherwise brought to the attention of the child by such additional means as prescribed by regulation:*

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

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

Sec. 15. *1. Except as otherwise provided in subsection 3, any child who is admitted to a facility by a court pursuant to section 8 of this act may be conditionally released from the facility when, in the judgment of the medical director of the facility, the conditional release is in the best interest of the child and will not be detrimental to the public welfare. The medical director or his designee of the facility shall prescribe the period for which the conditional release is effective. The period must not extend beyond the last day of the court-ordered period of treatment specified pursuant to section 12 of this act.*

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

3. A child who was admitted by a court because he was likely to harm others if allowed to remain at liberty may be conditionally released only if, at the time of the release, written notice is given to the court which admitted him and to the attorney of the agency which provides child welfare services that initiated the proceedings for admission.

4. Except as otherwise provided in subsection 6, the administrative officer of a facility or his designee shall order a child who is conditionally released from that facility pursuant to this section to return to the facility if a psychiatrist and a member of that child's treatment team who is professionally qualified in the field of psychiatric mental health determine that the conditional release is no longer appropriate because that child presents a clear and present danger of harm to himself or others. Except as otherwise provided in this subsection, the administrative officer or his designee shall, at least 3 days before the issuance of the order to return, give written notice of the order to the court that admitted the child to the facility. If an emergency exists in which the child presents an imminent threat of danger of harm to himself or others, the order must be submitted to the court not later than 1 business day after the order is issued.

5. The court shall review an order submitted pursuant to subsection 4 and the current condition of the child who was ordered to return to the facility at its next regularly scheduled hearing for the review of petitions for court-ordered admissions, but in no event later than 5 judicial days after the child is returned to the facility. The administrative officer or his designee shall give written notice to the agency which provides child welfare services, the child who was ordered to return to the facility and to the child's attorney of the time, date and place of the hearing and of the facts necessitating that child's return to the facility.

6. The provisions of subsection 4 do not apply if the period of conditional release has expired.

Sec. 16. 1. When a child who is admitted to a facility by a court pursuant to section 8 of this act is released at the end of the court-ordered period of treatment specified pursuant to section 12 of this act, written notice must be given to the admitting court at least 10 days before the release of the child. The child may then be released without requiring further orders of the court.

2. A child who is admitted to a facility by a court pursuant to section 8 of this act may be unconditionally released before the

court-ordered period of treatment specified in section 12 of this act when:

(a) An evaluation team, including, without limitation, an evaluation team that conducts an examination pursuant to section 10 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 child has recovered from his emotional disturbance 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 facility authorizes the release and gives written notice to the admitting court at least 10 days before the release of the child.

Sec. 17. 1. *Nothing in this chapter purports to deprive any person of any legal rights without due process of law.*

2. Unless the context clearly indicates otherwise, the provisions of NRS 433.456 to 433.543, inclusive, and 433.545 to 433.551, inclusive, and chapters 433A and 433B of NRS and sections 2 to 17, inclusive, of this act apply to all children who are in the custody of an agency which provides child welfare services.

Sec. 18. NRS 433A.200 is hereby amended to read as follows:

433A.200 1. ~~[A]~~ *Except as otherwise provided in section 7 of this act, a* proceeding for an involuntary court-ordered admission of any person in the State of Nevada may be commenced by the filing of a petition with the clerk of the district court of the county where the person who is to be treated resides. The petition may be filed by the spouse, parent, adult children or legal guardian of the person to be treated or by any physician, psychologist, social worker or registered nurse, by an accredited agent of the Department or by any officer authorized to make arrests in the State of Nevada. The petition must be accompanied:

(a) By a certificate of a physician, psychiatrist or licensed psychologist stating that he has examined the person alleged to be mentally ill and has concluded that the person is a mentally ill person and, because of that illness is likely to harm himself or others if allowed his liberty; or

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

(1) The petitioner has, based upon his personal observation of the person alleged to be mentally ill, probable cause to believe that the person is a mentally ill person and, because of that illness is likely to harm himself or others if allowed his liberty; and

(2) The person alleged to be mentally ill has refused to submit to examination or treatment by a physician, psychiatrist or licensed psychologist.

2. ~~HH~~ *Except as otherwise provided in section 7 of this act, if* the person to be treated is a minor and the petitioner is a person other than a parent or guardian of the minor, the petition must, in addition to the certificate or statement required by subsection 1, include a statement signed by a parent or guardian of the minor that the parent or guardian does not object to the filing of the petition.

Sec. 19. NRS 433A.310 is hereby amended to read as follows:

433A.310 1. ~~HH~~ *Except as otherwise provided in sections 8 and 9 of this act, if* the district court finds, after proceedings for the involuntary court-ordered admission of a person to a public or private mental health facility:

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

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

2. ~~AA~~ *Except as otherwise provided in section 12 of this act,* an involuntary admission pursuant to paragraph (b) of subsection 1 automatically expires at the end of 6 months if not terminated previously by the medical director of the public or private mental health facility as provided for in subsection 2 of NRS 433A.390. ~~AA~~ *Except as otherwise provided in section 12 of this act, at* the end of the court-ordered period of treatment, the Division or any mental health facility that is not operated by the Division may petition to renew the detention of the person for additional periods not to exceed 6 months each. For each renewal, the petition must set forth to the court specific reasons why further treatment would be in the person's own best interests.

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

Sec. 20. This act becomes effective on July 1, 2005.

