

SENATE BILL NO. 240—SENATORS ROBERSON, HARDY, BROWER,
LIPPARELLI, FARLEY; GUSTAVSON, HAMMOND, HARRIS,
KIECKHEFER AND SETTELMEYER

MARCH 10, 2015

JOINT SPONSORS: ASSEMBLYMEN WHEELER,
DICKMAN AND PAUL ANDERSON

Referred to Committee on Judiciary

SUMMARY—Makes certain changes relating to public safety.
(BDR 14-955)

FISCAL NOTE: Effect on Local Government: No.
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 public safety; requiring a court to transmit within 5 business days certain records of adjudication concerning a person's mental health to the Central Repository for Nevada Records of Criminal History for certain purposes relating to the purchase or possession of a firearm; authorizing the inclusion, correction and removal of the information in such records in each appropriate database of the National Crime Information Center; requiring each agency of criminal justice to submit information relating to records of criminal history within 60 days after the date of the conviction; requiring the Central Repository, upon request, to conduct a background check without charge on a person who wishes to acquire a firearm; prohibiting certain persons from having possession, custody or control of a firearm; prohibiting certain persons from selling a firearm under certain circumstances; revising the functions of the Department of Health and Human Services; requiring a mental health professional to notify certain persons when a patient makes certain explicit threats of imminent serious physical harm or death; providing penalties; and providing other matters properly relating thereto.



Legislative Counsel's Digest:

Existing law requires a court to transmit to the Central Repository for Nevada Records of Criminal History a record of any court order, judgment, plea or verdict concerning the involuntary admission of a person to a mental health facility, the appointment of a guardian for a person with a mental defect, a finding that a person is incompetent to stand trial, a verdict acquitting a defendant by reason of insanity or a plea or finding of guilty but mentally ill, along with a statement that the record is being transmitted for inclusion in all appropriate databases of the National Instant Criminal Background Check System. (NRS 159.0593, 174.035, 175.533, 175.539, 178.425, 433A.310) **Sections 1-4, 13 and 17** of this bill require such records to be transmitted to the Central Repository within 5 business days.

Existing law requires the inclusion, correction and removal of information in records of criminal history in each appropriate database of the National Instant Criminal Background Check System. (NRS 179A.163, 179A.165, 179A.167, 433A.310) **Sections 8-10 and 17** of this bill also authorize or require, as appropriate, the inclusion, correction and removal of such information in each appropriate database of the National Crime Information Center. **Section 5** of this bill defines "National Crime Information Center" to mean the computerized information system created and maintained by the Federal Bureau of Investigation pursuant to 28 U.S.C. § 534.

Existing law requires each agency of criminal justice to submit information relating to records of criminal history within the period described by the Director of the Department of Public Safety. (NRS 179A.075) **Section 7** of this bill requires the submission of such information within 60 days after the date of the conviction.

Existing law authorizes a private person who wishes to transfer a firearm to another person to request the Central Repository to perform a background check on the person who wishes to acquire the firearm. (NRS 202.254) **Section 14** of this bill prohibits the Central Repository from charging a fee to perform a background check for such a transfer. **Section 14** further provides immunity from civil and criminal liability to a person who does not request a background check or who requests a background check for any act or omission that was taken in good faith and without malicious intent. Finally, **section 14** allows the Director of the Department of Public Safety to request an allocation from the Contingency Account in the State General Fund if necessary to cover the cost of providing background checks without the imposition of a fee.

Existing law prohibits a person who has been adjudicated as mentally ill, has been committed to any mental health facility or is illegally or unlawfully in the United States from possessing or having custody or control of a firearm. (NRS 202.360) **Section 15** of this bill also prohibits a person who has entered a plea of guilty but mentally ill, has been found guilty but mentally ill or has been acquitted by reason of insanity from possessing or having custody or control of a firearm.

Existing law prohibits a person from selling or otherwise disposing of any firearm or ammunition to another person if he or she has actual knowledge that the other person: (1) is under indictment for, or has been convicted of, a felony; (2) is a fugitive from justice; (3) has been adjudicated as mentally ill or has been committed to a mental health facility; or (4) is illegally or unlawfully in the United States. (NRS 202.362) **Section 16** of this bill prohibits a person from selling, transferring or otherwise disposing of any firearm or ammunition to another person or purchasing a firearm on behalf of or for another person with the intent to transfer the firearm to that person if he or she has reasonable cause to believe that the other person meets any of those listed conditions, if the other person is otherwise prohibited from possessing a firearm or if the other person is a member of a criminal gang.

Existing law provides that a patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications between the



patient and the patient's psychologist or doctor. (NRS 49.209, 49.225) **Sections 11 and 12** of this bill provide exceptions to the privilege for certain determinations which are now required pursuant to this bill.

Existing law: (1) designates the Department of Health and Human Services as the official state agency for developing and administering outpatient mental health services; and (2) requires the Department to perform certain functions relating to mental health. (NRS 433C.130) **Section 18** of this bill requires the Department to also assist and consult with local governments and all local law enforcement agencies in this State in providing community mental health services.

Existing law imposes various requirements and duties on certain health care professionals. (Chapter 629 of NRS) **Section 19** of this bill provides that if a patient of a mental health professional makes an explicit threat of imminent serious physical harm or death to a person, and the mental health professional believes the patient has the intent and ability to carry out the threat, the mental health professional must notify the threatened person and the appropriate law enforcement agency. A mental health professional who exercises reasonable care in determining whether or not to provide notice of such a threat is not subject to civil or criminal liability or disciplinary action by a professional licensing board for disclosing confidential or privileged information or for any damages caused by the actions of a patient.

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

Section 1. NRS 174.035 is hereby amended to read as follows:

174.035 1. A defendant may plead not guilty, guilty, guilty but mentally ill or, with the consent of the court, nolo contendere. The court may refuse to accept a plea of guilty or guilty but mentally ill.

2. If a plea of guilty or guilty but mentally ill is made in a written plea agreement, the agreement must be in substantially the form prescribed in NRS 174.063. If a plea of guilty or guilty but mentally ill is made orally, the court shall not accept such a plea or a plea of nolo contendere without first addressing the defendant personally and determining that the plea is made voluntarily with understanding of the nature of the charge and consequences of the plea.

3. With the consent of the court and the district attorney, a defendant may enter a conditional plea of guilty, guilty but mentally ill or nolo contendere, reserving in writing the right, on appeal from the judgment, to a review of the adverse determination of any specified pretrial motion. A defendant who prevails on appeal must be allowed to withdraw the plea.

4. A plea of guilty but mentally ill must be entered not less than 21 days before the date set for trial. A defendant who has entered a plea of guilty but mentally ill has the burden of establishing the defendant's mental illness by a preponderance of the evidence. Except as otherwise provided by specific statute, a



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defendant who enters such a plea is subject to the same criminal, civil and administrative penalties and procedures as a defendant who pleads guilty.

5. The defendant may, in the alternative or in addition to any one of the pleas permitted by subsection 1, plead not guilty by reason of insanity. A plea of not guilty by reason of insanity must be entered not less than 21 days before the date set for trial. A defendant who has not so pleaded may offer the defense of insanity during trial upon good cause shown. Under such a plea or defense, the burden of proof is upon the defendant to establish by a preponderance of the evidence that:

(a) Due to a disease or defect of the mind, the defendant was in a delusional state at the time of the alleged offense; and

(b) Due to the delusional state, the defendant either did not:

(1) Know or understand the nature and capacity of his or her act; or

(2) Appreciate that his or her conduct was wrong, meaning not authorized by law.

6. If a defendant refuses to plead or if the court refuses to accept a plea of guilty or guilty but mentally ill or if a defendant corporation fails to appear, the court shall enter a plea of not guilty.

7. A defendant may not enter a plea of guilty or guilty but mentally ill pursuant to a plea bargain for an offense punishable as a felony for which:

(a) Probation is not allowed; or

(b) The maximum prison sentence is more than 10 years,

↪ unless the plea bargain is set forth in writing and signed by the defendant, the defendant's attorney, if the defendant is represented by counsel, and the prosecuting attorney.

8. If the court accepts a plea of guilty but mentally ill pursuant to this section, the court shall cause, **within 5 business days after acceptance of the plea**, on a form prescribed by the Department of Public Safety, a record of that plea to be transmitted to the Central Repository for Nevada Records of Criminal History along with a statement indicating that the record is being transmitted for inclusion in each appropriate database of the National Instant Criminal Background Check System.

9. As used in this section:

(a) "Disease or defect of the mind" does not include a disease or defect which is caused solely by voluntary intoxication.

(b) "National Instant Criminal Background Check System" has the meaning ascribed to it in NRS 179A.062.



Sec. 2. NRS 175.533 is hereby amended to read as follows:

175.533 1. During a trial, upon a plea of not guilty by reason of insanity, the trier of fact may find the defendant guilty but mentally ill if the trier of fact finds all of the following:

(a) The defendant is guilty beyond a reasonable doubt of an offense;

(b) The defendant has established by a preponderance of the evidence that due to a disease or defect of the mind, the defendant was mentally ill at the time of the commission of the offense; and

(c) The defendant has not established by a preponderance of the evidence that the defendant is not guilty by reason of insanity pursuant to subsection 5 of NRS 174.035.

2. Except as otherwise provided by specific statute, a defendant who is found guilty but mentally ill is subject to the same criminal, civil and administrative penalties and procedures as a defendant who is found guilty.

3. If the trier of fact finds a defendant guilty but mentally ill pursuant to subsection 1, the court shall cause, *within 5 business days after the finding*, on a form prescribed by the Department of Public Safety, a record of the finding to be transmitted to the Central Repository for Nevada Records of Criminal History, along with a statement indicating that the record is being transmitted for inclusion in each appropriate database of the National Instant Criminal Background Check System.

4. As used in this section:

(a) "Disease or defect of the mind" does not include a disease or defect which is caused solely by voluntary intoxication.

(b) "National Instant Criminal Background Check System" has the meaning ascribed to it in NRS 179A.062.

Sec. 3. 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 the defendant 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 the defendant were regularly adjudged insane, and the judge must:

(a) Order a peace officer to take the person into protective custody and transport the person to a forensic facility for detention pending a hearing to determine the person's 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.



1 2. If the court finds, after the hearing:

2 (a) That there is not clear and convincing evidence that the
3 person is a person with mental illness, the court must order the
4 person's discharge; or

5 (b) That there is clear and convincing evidence that the person is
6 a person with mental illness, the court must order that the person be
7 committed to the custody of the Administrator of the Division of
8 Public and Behavioral Health of the Department of Health and
9 Human Services until the person is discharged or conditionally
10 released therefrom in accordance with NRS 178.467 to 178.471,
11 inclusive.

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

14 3. The Administrator shall make the reports and the court shall
15 proceed in the manner provided in NRS 178.467 to 178.471,
16 inclusive.

17 4. If the court accepts a verdict acquitting a defendant by
18 reason of insanity pursuant to this section, the court shall cause,
19 *within 5 business days after accepting the verdict*, on a form
20 prescribed by the Department of Public Safety, a record of that
21 verdict to be transmitted to the Central Repository for Nevada
22 Records of Criminal History, along with a statement indicating that
23 the record is being transmitted for inclusion in each appropriate
24 database of the National Instant Criminal Background Check
25 System.

26 5. As used in this section, unless the context otherwise
27 requires:

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

30 (b) "Forensic facility" means a secure facility of the Division of
31 Public and Behavioral Health of the Department of Health and
32 Human Services for offenders and defendants with mental disorders.
33 The term includes, without limitation, Lakes Crossing Center.

34 (c) "National Instant Criminal Background Check System" has
35 the meaning ascribed to it in NRS 179A.062.

36 (d) "Person with mental illness" has the meaning ascribed to it
37 in NRS 178.3986.

38 **Sec. 4.** NRS 178.425 is hereby amended to read as follows:

39 178.425 1. If the court finds the defendant incompetent, and
40 dangerous to himself or herself or to society and that commitment is
41 required for a determination of the defendant's ability to receive
42 treatment to competency and to attain competence, the judge shall
43 order the sheriff to convey the defendant forthwith, together with a
44 copy of the complaint, the commitment and the physicians'
45 certificate, if any, into the custody of the Administrator or the



1 Administrator's designee for detention and treatment at a division
2 facility that is secure. The order may include the involuntary
3 administration of medication if appropriate for treatment to
4 competency.

5 2. The defendant must be held in such custody until a court
6 orders the defendant's release or until the defendant is returned for
7 trial or judgment as provided in NRS 178.450, 178.455
8 and 178.460.

9 3. If the court finds the defendant incompetent but not
10 dangerous to himself or herself or to society, and finds that
11 commitment is not required for a determination of the defendant's
12 ability to receive treatment to competency and to attain competence,
13 the judge shall order the defendant to report to the Administrator or
14 the Administrator's designee as an outpatient for treatment, if it
15 might be beneficial, and for a determination of the defendant's
16 ability to receive treatment to competency and to attain competence.
17 The court may require the defendant to give bail for any periodic
18 appearances before the Administrator or the Administrator's
19 designee.

20 4. Except as otherwise provided in subsection 5, proceedings
21 against the defendant must be suspended until the Administrator or
22 the Administrator's designee or, if the defendant is charged with a
23 misdemeanor, the judge finds the defendant capable of standing trial
24 or opposing pronouncement of judgment as provided in
25 NRS 178.400.

26 5. Whenever the defendant has been found incompetent, with
27 no substantial probability of attaining competency in the foreseeable
28 future, and released from custody or from obligations as an
29 outpatient pursuant to paragraph (d) of subsection 4 of NRS
30 178.460, the proceedings against the defendant which were
31 suspended must be dismissed. No new charge arising out of the
32 same circumstances may be brought after a period, equal to the
33 maximum time allowed by law for commencing a criminal action
34 for the crime with which the defendant was charged, has lapsed
35 since the date of the alleged offense.

36 6. If a defendant is found incompetent pursuant to this section,
37 the court shall cause, **within 5 business days after the finding**, on a
38 form prescribed by the Department of Public Safety, a record of that
39 finding to be transmitted to the Central Repository for Nevada
40 Records of Criminal History, along with a statement indicating that
41 the record is being transmitted for inclusion in each appropriate
42 database of the National Instant Criminal Background Check
43 System.



7. As used in this section, "National Instant Criminal Background Check System" has the meaning ascribed to it in NRS 179A.062.

Sec. 5. Chapter 179A of NRS is hereby amended by adding thereto a new section to read as follows:

"National Crime Information Center" means the computerized information system created and maintained by the Federal Bureau of Investigation pursuant to 28 U.S.C. § 534.

Sec. 6. NRS 179A.010 is hereby amended to read as follows:

179A.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 179A.020 to 179A.073, inclusive, *and section 5 of this act* have the meanings ascribed to them in those sections.

Sec. 7. NRS 179A.075 is hereby amended to read as follows:

179A.075 1. The Central Repository for Nevada Records of Criminal History is hereby created within the General Services Division of the Department.

2. Each agency of criminal justice and any other agency dealing with crime or delinquency of children shall:

(a) Collect and maintain records, reports and compilations of statistical data required by the Department; and

(b) Submit the information collected to the Central Repository in the manner approved by the Director of the Department.

3. Each agency of criminal justice shall submit the information relating to records of criminal history that it creates, ~~for~~ issues ~~it~~ *or collects*, and any information in its possession relating to the DNA profile of a person from whom a biological specimen is obtained pursuant to NRS 176.09123 or 176.0913, to the Division. The information must be submitted to the Division:

(a) Through an electronic network;

(b) On a medium of magnetic storage; or

(c) In the manner prescribed by the Director of the Department, ~~within the period prescribed by the Director of the Department.~~ *60 days after the date of the disposition of the case.* If an agency

has submitted a record regarding the arrest of a person who is later determined by the agency not to be the person who committed the particular crime, the agency shall, immediately upon making that determination, so notify the Division. The Division shall delete all references in the Central Repository relating to that particular arrest.

4. The Division shall, in the manner prescribed by the Director of the Department:

(a) Collect, maintain and arrange all information submitted to it relating to:

(1) Records of criminal history; and



(2) The DNA profile of a person from whom a biological specimen is obtained pursuant to NRS 176.09123 or 176.0913.

(b) When practicable, use a record of the personal identifying information of a subject as the basis for any records maintained regarding him or her.

(c) Upon request, provide the information that is contained in the Central Repository to the State Disaster Identification Team of the Division of Emergency Management of the Department.

(d) Upon request, provide, in paper or electronic form, the information that is contained in the Central Repository to a multidisciplinary team to review the death of the victim of a crime that constitutes domestic violence organized or sponsored by the Attorney General pursuant to NRS 228.495.

5. The Division may:

(a) Disseminate any information which is contained in the Central Repository to any other agency of criminal justice;

(b) Enter into cooperative agreements with repositories of the United States and other states to facilitate exchanges of information that may be disseminated pursuant to paragraph (a); and

(c) Request of and receive from the Federal Bureau of Investigation information on the background and personal history of any person whose record of fingerprints the Central Repository submits to the Federal Bureau of Investigation and:

(1) Who has applied to any agency of the State of Nevada or any political subdivision thereof for a license which it has the power to grant or deny;

(2) With whom any agency of the State of Nevada or any political subdivision thereof intends to enter into a relationship of employment or a contract for personal services;

(3) Who has applied to any agency of the State of Nevada or any political subdivision thereof to attend an academy for training peace officers approved by the Peace Officers' Standards and Training Commission;

(4) For whom such information is required to be obtained pursuant to NRS 62B.270, 62G.223, 62G.353, 424.031, 432A.170, 432B.198, 433B.183, 449.123 and 449.4329; or

(5) About whom any agency of the State of Nevada or any political subdivision thereof is authorized by law to have accurate personal information for the protection of the agency or the persons within its jurisdiction.

➔ To request and receive information from the Federal Bureau of Investigation concerning a person pursuant to this subsection, the Central Repository must receive the person's complete set of fingerprints from the agency or political subdivision and submit the fingerprints to the Federal Bureau of Investigation for its report.



6. The Central Repository shall:

(a) Collect and maintain records, reports and compilations of statistical data submitted by any agency pursuant to subsection 2.

(b) Tabulate and analyze all records, reports and compilations of statistical data received pursuant to this section.

(c) Disseminate to federal agencies engaged in the collection of statistical data relating to crime information which is contained in the Central Repository.

(d) Investigate the criminal history of any person who:

(1) Has applied to the Superintendent of Public Instruction for the issuance or renewal of a license;

(2) Has applied to a county school district, charter school or private school for employment; or

(3) Is employed by a county school district, charter school or private school,

➤ and notify the superintendent of each county school district, the governing body of each charter school and the Superintendent of Public Instruction, or the administrator of each private school, as appropriate, if the investigation of the Central Repository indicates that the person has been convicted of a violation of NRS 200.508, 201.230, 453.3385, 453.339 or 453.3395, or convicted of a felony or any offense involving moral turpitude.

(e) Upon discovery, notify the superintendent of each county school district, the governing body of each charter school or the administrator of each private school, as appropriate, by providing the superintendent, governing body or administrator with a list of all persons:

(1) Investigated pursuant to paragraph (d); or

(2) Employed by a county school district, charter school or private school whose fingerprints were sent previously to the Central Repository for investigation,

➤ who the Central Repository's records indicate have been convicted of a violation of NRS 200.508, 201.230, 453.3385, 453.339 or 453.3395, or convicted of a felony or any offense involving moral turpitude since the Central Repository's initial investigation. The superintendent of each county school district, the governing body of a charter school or the administrator of each private school, as applicable, shall determine whether further investigation or action by the district, charter school or private school, as applicable, is appropriate.

(f) Investigate the criminal history of each person who submits fingerprints or has fingerprints submitted pursuant to NRS 62B.270, 62G.223, 62G.353, 424.031, 432A.170, 432B.198, 433B.183, 449.122, 449.123 or 449.4329.



(g) On or before July 1 of each year, prepare and present to the Governor a printed annual report containing the statistical data relating to crime received during the preceding calendar year. Additional reports may be presented to the Governor throughout the year regarding specific areas of crime if they are approved by the Director of the Department.

(h) On or before July 1 of each year, prepare and submit to the Director of the Legislative Counsel Bureau for submission to the Legislature, or to the Legislative Commission when the Legislature is not in regular session, a report containing statistical data about domestic violence in this State.

(i) Identify and review the collection and processing of statistical data relating to criminal justice and the delinquency of children by any agency identified in subsection 2 and make recommendations for any necessary changes in the manner of collecting and processing statistical data by any such agency.

7. The Central Repository may:

(a) In the manner prescribed by the Director of the Department, disseminate compilations of statistical data and publish statistical reports relating to crime or the delinquency of children.

(b) Charge a reasonable fee for any publication or special report it distributes relating to data collected pursuant to this section. The Central Repository may not collect such a fee from an agency of criminal justice, any other agency dealing with crime or the delinquency of children which is required to submit information pursuant to subsection 2 or the State Disaster Identification Team of the Division of Emergency Management of the Department. All money collected pursuant to this paragraph must be used to pay for the cost of operating the Central Repository.

(c) In the manner prescribed by the Director of the Department, use electronic means to receive and disseminate information contained in the Central Repository that it is authorized to disseminate pursuant to the provisions of this chapter.

8. As used in this section:

(a) “Personal identifying information” means any information designed, commonly used or capable of being used, alone or in conjunction with any other information, to identify a person, including, without limitation:

(1) The name, driver’s license number, social security number, date of birth and photograph or computer-generated image of a person; and

(2) The fingerprints, voiceprint, retina image and iris image of a person.

(b) “Private school” has the meaning ascribed to it in NRS 394.103.



Sec. 8. NRS 179A.163 is hereby amended to read as follows:

179A.163 1. Upon receiving a record transmitted pursuant to NRS 159.0593, 174.035, 175.533, 175.539, 178.425 or 433A.310, the Central Repository ~~{shall}~~ :

(a) *Shall* take reasonable steps to ensure that the information reported in the record is included in each appropriate database of the National Instant Criminal Background Check System ~~{H}~~ ; and

(b) *May take reasonable steps to ensure that the information reported in the record is included in each appropriate database of the National Crime Information Center.*

2. Except as otherwise provided in subsection 3, if the Central Repository receives a record described in subsection 1, the person who is the subject of the record may petition the court for an order declaring that:

(a) The basis for the adjudication reported in the record no longer exists;

(b) The adjudication reported in the record is deemed not to have occurred for purposes of 18 U.S.C. § 922(d)(4) and (g)(4) and NRS 202.360; and

(c) The information reported in the record must be removed from the National Instant Criminal Background Check System ~~{H}~~ *and the National Crime Information Center.*

3. To the extent authorized by federal law, if the record concerning the petitioner was transmitted to the Central Repository pursuant to NRS 159.0593, 174.035, 175.533, 175.539, 178.425 or 433A.310, the petitioner may not file a petition pursuant to subsection 2 until 3 years after the date of the order transmitting the record to the Central Repository.

4. A petition filed pursuant to subsection 2 must be:

(a) Filed in the court which made the adjudication or finding pursuant to NRS 159.0593, 174.035, 175.533, 175.539, 178.425 or 433A.310; and

(b) Served upon the district attorney for the county in which the court described in paragraph (a) is located.

5. The Nevada Rules of Civil Procedure govern all proceedings concerning a petition filed pursuant to subsection 2.

6. The court shall grant the petition and issue the order described in subsection 2 if the court finds that the petitioner has established that:

(a) The basis for the adjudication or finding made pursuant to NRS 159.0593, 174.035, 175.533, 175.539, 178.425 or 433A.310 concerning the petitioner no longer exists;

(b) The petitioner's record and reputation indicate that the petitioner is not likely to act in a manner dangerous to public safety; and



(c) Granting the relief requested by the petitioner pursuant to subsection 2 is not contrary to the public interest.

7. Except as otherwise provided in this subsection, the petitioner must establish the provisions of subsection 6 by a preponderance of the evidence. If the adjudication or finding concerning the petitioner was made pursuant to NRS 159.0593 or 433A.310, the petitioner must establish the provisions of subsection 6 by clear and convincing evidence.

8. The court, upon entering an order pursuant to this section, shall cause, on a form prescribed by the Department of Public Safety, a record of the order to be transmitted to the Central Repository.

9. Within 5 business days after receiving a record of an order transmitted pursuant to subsection 8, the Central Repository shall take reasonable steps to ensure that information concerning the adjudication or finding made pursuant to NRS 159.0593, 174.035, 175.533, 175.539, 178.425 or 433A.310 is removed from the National Instant Criminal Background Check System ~~H~~ *and the National Crime Information Center, if applicable.*

10. If the Central Repository fails to remove a record as provided in subsection 9, the petitioner may bring an action to compel the removal of the record. If the petitioner prevails in the action, the court may award the petitioner reasonable attorney's fees and costs incurred in bringing the action.

11. If a petition brought pursuant to subsection 2 is denied, the person who is the subject of the record may petition for a rehearing not sooner than 2 years after the date of the denial of the petition.

Sec. 9. NRS 179A.165 is hereby amended to read as follows:

179A.165 1. Any record described in NRS 179A.163 is confidential and is not a public book or record within the meaning of NRS 239.010. A person may not use the record for any purpose other than for *a purpose related to criminal justice, including, without limitation,* inclusion in the appropriate database of the National Instant Criminal Background Check System ~~H~~ *and the National Crime Information Center, if applicable. The Central Repository may disclose the record to any agency of criminal justice.*

2. If a person or governmental entity is required to transmit, report or take any other action concerning a record pursuant to NRS 159.0593, 174.035, 175.533, 175.539, 178.425, 179A.163 or 433A.310, no action for damages may be brought against the person or governmental entity for:

(a) Transmitting or reporting the record or taking any other required action concerning the record;



(b) Failing to transmit or report the record or failing to take any other required action concerning the record;

(c) Delaying the transmission or reporting of the record or delaying in taking any other required action concerning the record; or

(d) Transmitting or reporting an inaccurate or incomplete version of the record or taking any other required action concerning an inaccurate or incomplete version of the record.

Sec. 10. NRS 179A.167 is hereby amended to read as follows:

179A.167 1. The Central Repository shall permit a person who is or believes he or she may be the subject of information relating to records of mental health held by the Central Repository to inspect and correct any information contained in such records.

2. The Central Repository shall adopt regulations and make available necessary forms to permit inspection, review and correction of information relating to records of mental health by those persons who are the subjects thereof. The regulations must specify:

(a) The requirements for proper identification of the persons seeking access to the records; and

(b) The reasonable charges or fees, if any, for inspecting records.

3. The Director of the Department shall adopt regulations governing:

(a) All challenges to the accuracy or sufficiency of information or records of mental health by the person who is the subject of the allegedly inaccurate or insufficient record;

(b) The correction of any information relating to records of mental health found by the Director to be inaccurate, insufficient or incomplete in any material respect;

(c) The dissemination of corrected information to those persons or agencies which have previously received inaccurate or incomplete information; and

(d) A reasonable time limit within which inaccurate or insufficient information relating to records of mental health must be corrected and the corrected information disseminated.

4. As used in this section, “information relating to records of mental health” means information contained in a record:

(a) Transmitted to the Central Repository pursuant to NRS 159.0593, 174.035, 175.533, 175.539, 178.425 or 433A.310; or

(b) Transmitted to the National Instant Criminal Background Check System *or the National Crime Information Center* pursuant to NRS 179A.163.



1 **Sec. 11.** NRS 49.213 is hereby amended to read as follows:
2 49.213 There is no privilege pursuant to NRS 49.209
3 or 49.211:

4 1. For communications relevant to an issue in a proceeding to
5 hospitalize the patient for mental illness, if the psychologist in the
6 course of diagnosis or treatment has determined that the patient
7 requires hospitalization.

8 2. For communications relevant to *any determination made*
9 *pursuant to NRS 202.360.*

10 3. *For communications relevant to* an issue of the treatment of
11 the patient in any proceeding in which the treatment is an element of
12 a claim or defense.

13 ~~13.1~~ 4. If disclosure is otherwise required by state or federal
14 law.

15 ~~14.1~~ 5. For communications relevant to an issue in a
16 proceeding to determine the validity of a will of the patient.

17 ~~15.1~~ 6. If there is an immediate threat that the patient will harm
18 himself or herself or other persons.

19 ~~16.1~~ 7. For communications made in the course of a court-
20 ordered examination of the condition of a patient with respect to the
21 specific purpose of the examination unless the court orders
22 otherwise.

23 ~~17.1~~ 8. For communications relevant to an issue in an
24 investigation or hearing conducted by the Board of Psychological
25 Examiners if the treatment of the patient is an element of that
26 investigation or hearing.

27 ~~18.1~~ 9. For communications relevant to an issue in a
28 proceeding relating to the abuse or neglect of a person with a
29 disability or a person who is legally incompetent.

30 **Sec. 12.** NRS 49.245 is hereby amended to read as follows:

31 49.245 There is no privilege under NRS 49.225 or 49.235:

32 1. For communications relevant to an issue in proceedings to
33 hospitalize the patient for mental illness, if the doctor in the course
34 of diagnosis or treatment has determined that the patient is in need
35 of hospitalization.

36 2. *For communications relevant to any determination made*
37 *pursuant to NRS 202.360.*

38 3. As to communications made in the course of a court-ordered
39 examination of the condition of a patient with respect to the
40 particular purpose of the examination unless the court orders
41 otherwise.

42 ~~13.1~~ 4. As to written medical or hospital records relevant to an
43 issue of the condition of the patient in any proceeding in which the
44 condition is an element of a claim or defense.



~~14.1~~ 5. In a prosecution or mandamus proceeding under chapter 441A of NRS.

~~15.1~~ 6. As to any information communicated to a physician in an effort unlawfully to procure a dangerous drug or controlled substance, or unlawfully to procure the administration of any such drug or substance.

~~16.1~~ 7. As to any written medical or hospital records which are furnished in accordance with the provisions of NRS 629.061.

~~17.1~~ 8. As to records that are required by chapter 453 of NRS to be maintained.

~~18.1~~ 9. If the services of the physician are sought or obtained to enable or aid a person to commit or plan to commit fraud or any other unlawful act in violation of any provision of chapter 616A, 616B, 616C, 616D or 617 of NRS which the person knows or reasonably should know is fraudulent or otherwise unlawful.

Sec. 13. NRS 159.0593 is hereby amended to read as follows:

159.0593 1. If the court orders a general guardian appointed for a proposed ward, the court shall determine, by clear and convincing evidence, whether the proposed ward is a person with a mental defect who is prohibited from possessing a firearm pursuant to 18 U.S.C. § 922(d)(4) or (g)(4). If a court makes a finding pursuant to this section that the proposed ward is a person with a mental defect, the court shall include the finding in the order appointing the guardian and cause , *within 5 business days after issuing the order*, a record of the order to be transmitted to the Central Repository for Nevada Records of Criminal History, along with a statement indicating that the record is being transmitted for inclusion in each appropriate database of the National Instant Criminal Background Check System.

2. As used in this section:

(a) “National Instant Criminal Background Check System” has the meaning ascribed to it in NRS 179A.062.

(b) “Person with a mental defect” means a person who, as a result of marked subnormal intelligence, mental illness, incompetence, condition or disease, is:

(1) A danger to himself or herself or others; or

(2) Lacks the capacity to contract or manage his or her own affairs.

Sec. 14. NRS 202.254 is hereby amended to read as follows:

202.254 1. A private person who wishes to transfer a firearm to another person may, before transferring the firearm, request that the Central Repository for Nevada Records of Criminal History perform a background check on the person who wishes to acquire the firearm.



2. The person who requests the information pursuant to subsection 1 shall provide the Central Repository with identifying information about the person who wishes to acquire the firearm.

3. Upon receiving a request from a private person pursuant to subsection 1 and the identifying information required pursuant to subsection 2, the Central Repository shall within 5 business days after receiving the request:

(a) Perform a background check on the person who wishes to acquire the firearm; and

(b) Notify the person who requests the information whether the information available to the Central Repository indicates that the receipt of a firearm by the person who wishes to acquire the firearm would violate a state or federal law.

4. If the person who requests the information does not receive notification from the Central Repository regarding the request within 5 business days after making the request, the person may presume that the receipt of a firearm by the person who wishes to acquire the firearm would not violate a state or federal law.

5. The Central Repository may **not** charge a ~~reasonable~~ fee for performing a background check and notifying a person of the results of the background check pursuant to this section.

~~6. [The failure of a person to request the Central Repository to perform a background check pursuant to this section before transferring a firearm to another person does not give rise to any civil cause of action.]~~ *A private person who transfers a firearm to another person is immune from civil liability for failing to request a background check pursuant to this section or for any act or omission relating to a background check requested pursuant to this section if the act or omission was taken in good faith and without malicious intent.*

7. The Director of the Department of Public Safety may request an allocation from the Contingency Account pursuant to NRS 353.266, 353.268 and 353.269 to cover the costs incurred by the Department to carry out the provisions of subsection 5 of this section.

Sec. 15. NRS 202.360 is hereby amended to read as follows:

202.360 1. A person shall not own or have in his or her possession or under his or her custody or control any firearm if the person:

(a) Has been convicted of a felony in this or any other state, or in any political subdivision thereof, or of a felony in violation of the laws of the United States of America, unless the person has received a pardon and the pardon does not restrict his or her right to bear arms;

(b) Is a fugitive from justice; ~~for~~



(c) Is an unlawful user of, or addicted to, any controlled substance ~~[-]; or~~

(d) Is otherwise prohibited by federal law from having a firearm in his or her possession or under his or her custody or control.

➤ A person who violates the provisions of this subsection is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years, and may be further punished by a fine of not more than \$5,000.

2. A person shall not own or have in his or her possession or under his or her custody or control any firearm if the person:

(a) Has been adjudicated as mentally ill or has been committed to any mental health facility ~~[-or]~~ *by a court of this State, any other state or the United States;*

(b) *Has entered a plea of guilty but mentally ill in a court of this State, any other state or the United States;*

(c) *Has been found guilty but mentally ill in a court of this State, any other state or the United States;*

(d) *Has been acquitted by reason of insanity in a court of this State, any other state or the United States; or*

(e) Is illegally or unlawfully in the United States.

➤ A person who violates the provisions of this subsection is guilty of a category D felony and shall be punished as provided in NRS 193.130.

3. As used in this section:

(a) "Controlled substance" has the meaning ascribed to it in 21 U.S.C. § 802(6).

(b) "Firearm" includes any firearm that is loaded or unloaded and operable or inoperable.

Sec. 16. NRS 202.362 is hereby amended to read as follows:

202.362 1. Except as otherwise provided in subsection 3, a person within this State shall not sell, *transfer* or otherwise dispose of any firearm or ammunition to another person *or purchase a firearm on behalf of or for another person with the intent to transfer the firearm to that person* if he or she has ~~[actual knowledge]~~ *reasonable cause to believe* that the other person:

(a) Is under indictment for, or has been convicted of, a felony in this or any other state, or in any political subdivision thereof, or of a felony in violation of the laws of the United States of America, unless the other person has received a pardon and the pardon does not restrict his or her right to bear arms;

(b) Is ~~[-a fugitive from justice;~~

~~—(c) Has been adjudicated as mentally ill or has been committed to any mental health facility; or~~



~~—(d) Is illegally or unlawfully in the United States.] prohibited from possessing a firearm pursuant to NRS 202.360; or~~

~~(c) Is a known member of a criminal gang as defined in NRS 193.168.~~

2. A person who violates the provisions of subsection 1 is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 10 years, and may be further punished by a fine of not more than \$10,000.

3. This section does not apply to a person who sells or disposes of any firearm or ammunition to:

(a) A licensed importer, licensed manufacturer, licensed dealer or licensed collector who, pursuant to 18 U.S.C. § 925(b), is not precluded from dealing in firearms or ammunition; or

(b) A person who has been granted relief from the disabilities imposed by federal laws pursuant to 18 U.S.C. § 925(c) or NRS 179A.163.

4. For purposes of this section, a person has “reasonable cause to believe” if, in light of all the surrounding facts and circumstances which are known or which reasonably should be known to the person at the time, a reasonable person would believe, under those facts and circumstances, that an act, transaction, event, situation or condition exists, is occurring or has occurred.

Sec. 17. NRS 433A.310 is hereby amended to read as follows:

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

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

(b) That there is clear and convincing evidence that the person with respect to whom the hearing was held has a mental illness and, because of that illness, is likely to harm himself or herself or others if allowed his or her liberty or if not required to participate in a program of community-based or outpatient services, the court may order the involuntary admission of the person for the most appropriate course of treatment, including, without limitation,



admission to a public or private mental health facility or participation in a program of community-based or outpatient services. 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. A court shall not admit a person to a program of community-based or outpatient services unless:

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

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

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

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

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

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

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

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

3. Except as otherwise provided in NRS 432B.608, 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 or by the professional responsible for providing or coordinating the program of community-based or outpatient services as provided for in subsection 3 of NRS 433A.390. Except as otherwise provided in NRS 432B.608, at the end of the court-ordered period of treatment, the Division, any mental health facility that is not operated by the Division or a program of community-based or outpatient services may petition to renew the involuntary admission of the person for additional periods not to exceed 6 months each. For each renewal, the petition must include evidence which meets the same standard set forth in subsection 1 that was required for the initial period of



admission of the person to a public or private mental health facility or to a program of community-based or outpatient services.

4. 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, including involuntary admission to a program of community-based or outpatient services, 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.

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

6. As used in this section, “National Instant Criminal Background Check System” has the meaning ascribed to it in NRS 179A.062.

Sec. 18. NRS 433C.130 is hereby amended to read as follows:

433C.130 The Department is designated as the official state agency responsible for developing and administering preventive and outpatient mental health services. The Department shall function in the following areas:

1. Assisting and consulting with local health authorities , *local governments and all law enforcement agencies in this State* in providing community mental health services, which services may include prevention, rehabilitation, case finding, diagnosis and treatment of persons with mental illness, and consultation and education for groups and individuals regarding mental health.

2. Coordinating mental health functions with other state agencies.

3. Participating in and promoting the development of facilities for training personnel necessary for implementing such services.

4. Collecting and disseminating information pertaining to mental health.

5. Performing such other acts as are necessary to promote mental health in the State.



Sec. 19. Chapter 629 of NRS is hereby amended by adding thereto a new section to read as follows:

1. If a patient communicates to a mental health professional an explicit threat of imminent serious physical harm or death to a clearly identified or identifiable person and, in the judgment of the mental health professional, the patient has the intent and ability to carry out the threat, the mental health professional shall make a reasonable effort to communicate the threat in a timely manner to:

- (a) The person who is the subject of the threat;*
- (b) The law enforcement agency with the closest physical location to the residence of the person; and*
- (c) If the person is a minor, the parent or guardian of the person.*

2. A mental health professional who exercises reasonable care in determining that he or she:

(a) Has a duty to communicate a threat pursuant to subsection 1 is not subject to civil or criminal liability or disciplinary action by a professional licensing board for disclosing confidential or privileged information.

(b) Does not have a duty to communicate a threat pursuant to subsection 1 is not subject to civil or criminal liability or disciplinary action by a professional licensing board for any damages caused by the actions of a patient.

3. The provisions of this section do not:

(a) Limit or affect the duty of the mental health professional to report child abuse or neglect pursuant to NRS 432B.220; or

(b) Modify any duty of a mental health professional to take precautions to prevent harm by a patient:

(1) In the custody of a hospital or other facility where the mental health professional is employed; or

(2) Who is being discharged from such a facility.

4. As used in this section, "mental health professional" includes:

(a) A psychiatrist licensed to practice medicine in this State pursuant to chapter 630 or 633 of NRS;

(b) A psychologist who is licensed to practice psychology in this State pursuant to chapter 641 of NRS;

(c) A social worker who:

(1) Holds a master's degree in social work or a related field;

(2) Is licensed as a clinical social worker pursuant to chapter 641B of NRS; and

(3) Is employed by the Division of Public and Behavioral Health of the Department of Health and Human Services;

(d) A registered nurse who:



- 1 (1) *Is licensed to practice professional nursing in this State;*
2 *and*
3 (2) *Holds a master's degree in psychiatric nursing or a*
4 *related field;*
5 (e) *A marriage and family therapist licensed pursuant to*
6 *chapter 641A of NRS; and*
7 (f) *A clinical professional counselor licensed pursuant to*
8 *chapter 641A of NRS.*

