

Amendment No. 761

Senate Amendment to Assembly Bill No. 253 First Reprint	(BDR 39-688)
Proposed by: Senate Committee on Health and Human Services	
Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

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

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

EWR/JWP



Date: 5/21/2017

A.B. No. 253—Revises provisions relating to adjudications of mental health.
(BDR 39-688)



ASSEMBLY BILL NO. 253—COMMITTEE ON JUDICIARY

MARCH 3, 2017

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to adjudications of mental health.
(BDR 39-688)

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 mental health; requiring the court to conduct a hearing as soon as practicable on an application for a writ of habeas corpus relating to a person with mental illness or who is alleged to be a person with mental illness; **if the application is made before the initial hearing on a petition for the involuntary court-ordered admission of the person;** expanding the definition of “person with mental illness”; revising provisions governing the examination and evaluation by a physician or licensed psychologist of a person alleged to be a person with mental illness; requiring a court to transmit an order for involuntary admission to a law enforcement agency under certain circumstances; establishing a procedure for certain hospitals and mental health facilities to request a copy of a court order for involuntary admission; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Section 1 of this bill requires the court to conduct a hearing as soon as practicable on an application for a writ of habeas corpus by, or on behalf of, a person who is alleged to be a person with mental illness or who has been found to be a person with mental illness; **if the application is made before the initial hearing on the petition for the involuntary court-ordered admission of the person to a mental health facility or to a program of community-based or outpatient services.**

Existing law defines a person with mental illness to include a person whose capacity is diminished as a result of mental illness to the extent that the person presents a clear and present danger of harm to himself or herself. A person presents a clear and present danger of harm to himself or herself if there exists a reasonable probability that the person will harm himself or herself unless the person is admitted to a mental health facility. (NRS 433A.115)

Section 1.3 of this bill revises this definition to provide that the person presents a clear and present danger of harm to himself or herself if there exists a reasonable probability that the person will harm himself or herself unless the person is required to participate in a program of community-based or outpatient services.

Existing law requires that, after the filing of a petition to involuntarily admit a person alleged to be a person with mental illness to a mental health facility or certain other services, the court shall cause two or more physicians or licensed psychologists, one of whom must always be a physician, to examine the person. A physician or psychologist who examines the

person must submit to the court a written summary of his or her findings and evaluation not later than 24 or 48 hours before the hearing on the petition, depending on the circumstances of the admission. (NRS 433A.240) **Section 1.7** of this bill revises these provisions to require the physician or psychologist to submit the written summary of findings and evaluation not later than 24 hours before the hearing on the petition.

Existing law requires that if the court issues an order involuntarily admitting a person with mental illness to a mental health facility or certain other programs of services, the court is required to transmit a record of the order to the Central Repository for Nevada Records of Criminal History. (NRS 433A.310) **Section 2** of this bill requires the court to transmit a record of the order to each law enforcement agency of this State with which the court has entered into an agreement for such transmission for inclusion in certain databases.

Existing law requires a court to seal all court records relating to the admission and mental health treatment of certain persons and establishes procedures by which certain entities may be granted an opportunity to inspect the records. (NRS 433A.715) **Section 3** of this bill establishes a procedure by which a public or private hospital or a mental health facility may request and obtain a copy of a court order of involuntary admission which relates to a person alleged to be a person with mental illness who has been admitted to the hospital or facility.

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

Section 1. Chapter 433A of NRS is hereby amended by adding thereto a new section to read as follows:

~~Upon the filing of~~ *If an application for a writ of habeas corpus is made by, or on behalf of, a person with mental illness or who is alleged to be a person with mental illness, before the initial hearing on a petition for the involuntary court-ordered admission of the person to a mental health facility or a program of community-based or outpatient services, the court shall conduct a hearing on the application as soon as practicable.*

Sec. 1.3. NRS 433A.115 is hereby amended to read as follows:

433A.115 1. As used in NRS 433A.115 to 433A.330, inclusive, *and section 1 of this act*, unless the context otherwise requires, “person with mental illness” means any person whose capacity to exercise self-control, judgment and discretion in the conduct of the person’s affairs and social relations or to care for his or her personal needs is diminished, as a result of a mental illness, to the extent that the person presents a clear and present danger of harm to himself or herself or others, but does not include any person in whom that capacity is diminished by epilepsy, intellectual disability, dementia, delirium, brief periods of intoxication caused by alcohol or drugs, or dependence upon or addiction to alcohol or drugs, unless a mental illness that can be diagnosed is also present which contributes to the diminished capacity of the person.

2. A person presents a clear and present danger of harm to himself or herself if, within the immediately preceding 30 days, the person has, as a result of a mental illness:

(a) Acted in a manner from which it may reasonably be inferred that, without the care, supervision or continued assistance of others, the person will be unable to satisfy his or her need for nourishment, personal or medical care, shelter, self-protection or safety, and if there exists a reasonable probability that the person’s death, serious bodily injury or physical debilitation will occur within the next following 30 days unless he or she is admitted to a mental health facility *or required to participate in a program of community-based or outpatient services* pursuant to the provisions of NRS 433A.115 to 433A.330, inclusive, *and section 1 of this act*, and adequate treatment is provided to the person;

(b) Attempted or threatened to commit suicide or committed acts in furtherance of a threat to commit suicide, and if there exists a reasonable probability that the person will commit suicide unless he or she is admitted to a mental health facility *or required to participate in a program of community-based or outpatient services* pursuant to the provisions of NRS 433A.115 to 433A.330, inclusive, *and section 1 of this act*, and adequate treatment is provided to the person; or

(c) Mutilated himself or herself, attempted or threatened to mutilate himself or herself or committed acts in furtherance of a threat to mutilate himself or herself, and if there exists a reasonable probability that he or she will mutilate himself or herself unless the person is admitted to a mental health facility *or required to participate in a program of community-based or outpatient services* pursuant to the provisions of NRS 433A.115 to 433A.330, inclusive, *and section 1 of this act*, and adequate treatment is provided to the person.

3. A person presents a clear and present danger of harm to others if, within the immediately preceding 30 days, the person has, as a result of a mental illness, inflicted or attempted to inflict serious bodily harm on any other person, or made threats to inflict harm and committed acts in furtherance of those threats, and if there exists a reasonable probability that he or she will do so again unless the person is admitted to a mental health facility *or required to participate in a program of community-based or outpatient services* pursuant to the provisions of NRS 433A.115 to 433A.330, inclusive, *and section 1 of this act*, and adequate treatment is provided to him or her.

Sec. 1.7. NRS 433A.240 is hereby amended to read as follows:

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

2. To conduct the examination of a person who is not being detained at a mental health facility or hospital under emergency admission pursuant to an application made pursuant to NRS 433A.160, the court may order a peace officer to take the person into protective custody and transport the person to a mental health facility or hospital where the person may be detained until a hearing is had upon the petition.

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

4. Each physician and licensed psychologist who examines a person pursuant to subsection 1 shall, in conducting such an examination, consider the least restrictive treatment appropriate for the person.

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

~~must be submitted to the court not later than 24 hours before the hearing set pursuant to subsection 1 of NRS 433A.220.~~

Sec. 2. 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 the order becomes final pursuant to this section, on a form prescribed by the Department of Public Safety, a record of the order to be transmitted to ~~the~~ :

(a) 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 ~~+~~ ; and

(b) Each law enforcement agency of this State with which the court has entered into an agreement for such transmission, along with a statement indicating that the record is being transmitted for inclusion in each of this State's appropriate databases of information relating to crimes.

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

Sec. 3. NRS 433A.715 is hereby amended to read as follows:

433A.715 1. A court shall seal all court records relating to the admission and treatment of any person who was admitted, voluntarily or as the result of a noncriminal proceeding, to a public or private hospital, a mental health facility or a program of community-based or outpatient services in this State for the purpose of obtaining mental health treatment.

2. Except as otherwise provided in subsections 4 ~~and 5,~~ , 5 and 6, a person or governmental entity that wishes to inspect records that are sealed pursuant to this section must file a petition with the court that sealed the records. Upon the filing of a petition, the court shall fix a time for a hearing on the matter. The petitioner must provide notice of the hearing and a copy of the petition to the person who is the subject of the records. If the person who is the subject of the records wishes to oppose the petition, the person must appear before the court at the hearing. If the person appears before the court at the hearing, the court must provide the person an opportunity to be heard on the matter.

3. After the hearing described in subsection 2, the court may order the inspection of records that are sealed pursuant to this section if:

(a) A law enforcement agency must obtain or maintain information concerning persons who have been admitted to a public or private hospital, a mental health facility or a program of community-based or outpatient services in this State pursuant to state or federal law;

(b) A prosecuting attorney or an attorney who is representing the person who is the subject of the records in a criminal action requests to inspect the records; or

(c) The person who is the subject of the records petitions the court to permit the inspection of the records by a person named in the petition.

4. A governmental entity is entitled to inspect court records that are sealed pursuant to this section without following the procedure described in subsection 2 if:

(a) The governmental entity has made a conditional offer of employment to the person who is the subject of the records;

(b) The position of employment conditionally offered to the person concerns public safety, including, without limitation, employment as a firefighter or peace officer;

(c) The governmental entity is required by law, rule, regulation or policy to obtain the mental health records of each individual conditionally offered the position of employment; and

(d) An authorized representative of the governmental entity presents to the court a written authorization signed by the person who is the subject of the records and notarized by a notary public or judicial officer in which the person who is the subject of the records consents to the inspection of the records.

5. *Upon the request of a public or private hospital or a mental health facility to which a person has been admitted in this State, the court shall:*

(a) Authorize the release of a copy of any order which was entered by the court pursuant to paragraph (b) of subsection 1 of NRS 433A.310 if:

(1) The request is in writing and includes the name and date of birth of the person who is the subject of the requested order; and

(2) The hospital or facility certifies that:

(I) The person who is the subject of the requested order is, at the time of the request, admitted to the hospital or facility and is being treated for an alleged mental illness; and

(II) The requested order is necessary to improve the care which is being provided to the person who is the subject of the order.

(b) Place the request in the record under seal.

6. Upon its own order, any court of this State may inspect court records that are sealed pursuant to this section without following the procedure described in subsection 2 if the records are necessary and relevant for the disposition of a matter pending before the court. The court may allow a party in the matter to inspect the records without following the procedure described in subsection 2 if the court deems such inspection necessary and appropriate.

~~6-1~~ 7. Following the sealing of records pursuant to this section, the admission of the person who is the subject of the records to the public or private hospital, mental health facility or program of community-based or outpatient services, is deemed never to have occurred, and the person may answer accordingly any question related to its occurrence, except in connection with:

(a) An application for a permit to carry a concealed firearm pursuant to the provisions of NRS 202.3653 to 202.369, inclusive;

(b) A transfer of a firearm; or

(c) An application for a position of employment described in subsection 4.

~~7-1~~ 8. As used in this section:

(a) "Firefighter" means a person who is a salaried employee of a fire-fighting agency and whose principal duties are to control, extinguish, prevent and suppress fires. As used in this paragraph, "fire-fighting agency" means a public fire department, fire protection district or other agency of this State or a political subdivision of this State, the primary functions of which are to control, extinguish, prevent and suppress fires.

(b) "Peace officer" has the meaning ascribed to it in NRS 289.010.

1 (c) "Seal" means placing records in a separate file or other repository not
2 accessible to the general public.

3 **Sec. 4.** This act becomes effective on July 1, 2017.