Amendment No. 425

Assembly Amendment to Assembly Bill No. 440 (BDR 39-997)
Proposed by: Assembly 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 ☐	Lost ☐	_____	Adopted ☐	Lost ☐	_____
Concurred In ☐	Not ☐	_____	Concurred In ☐	Not ☐	_____
Receded ☐	Not ☐	_____	Receded ☐	Not ☐	_____

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.

MKM/BJF Date: 4/21/2017

A.B. No. 440—Revises provisions governing involuntary commitment proceedings. (BDR 39-997)

ASSEMBLY BILL NO. 440–ASSEMBLYMAN YEAGER

MARCH 27, 2017

Referred to Committee on Health and Human Services

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

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets [~~omitted material~~] is material to be omitted.

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

Legislative Counsel's Digest:

Existing law provides that a proceeding for an involuntary court-ordered admission of a person may be commenced by the filing of a petition for the involuntary admission to a mental health facility or to a program of community-based or outpatient services with the clerk of the district court of the county where the person resides. (NRS 433A.200) **Section 1** of this bill additionally authorizes a proceeding for the involuntary court-ordered admission of a person who is the defendant in a criminal proceeding in the district court to a program of community-based or outpatient services to be commenced by the district court, on its own motion, or by motion of the defendant or the district attorney [~~,~~] **if certain conditions are met. Section 4.3 of this bill specifies the circumstances under which the court may suspend the criminal proceedings against a defendant and order the defendant to a program of community-based or outpatient services. Under section 4.3, if the defendant successfully completes a program of community-based or outpatient services, the district court shall dismiss the criminal charges against the defendant with prejudice.** **Sections 2-4** of this bill make conforming changes. **Section 2** provides that, if the Chief Judge of a district court has designated a district court judge or hearing master to preside over involuntary commitment hearings, that district court judge or hearing master must preside over such hearings. [~~Section~~

~~5 of this bill provides that if the Chief Judge has assigned a judge or hearing master who is not a judge or hearing master of the family court to hear such cases, the family court does not have original, exclusive jurisdiction over such cases.~~

~~Upon the filing of a petition to commence involuntary commitment proceedings, existing law requires a district court to: (1) cause two or more physicians or psychologists, one of whom must always be a physician, to examine the person alleged to be a person with mental illness; or (2) request an evaluation by an evaluation team from the Division of Public and Behavioral Health of the Department of Health and Human Services of that person. (NRS 433A.240) Section 3 requires the district court to request an evaluation by such an evaluation team if the person who is the subject of proceedings for involuntary court-ordered admission to a program of community-based or outpatient services is also a criminal defendant.~~

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

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

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

433A.200 1. Except as otherwise provided in ***subsection 3 and*** NRS 432B.6075, 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 for the involuntary admission to a mental health facility or to a program of community-based or outpatient services 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, physician assistant, 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, a licensed psychologist, a physician assistant under the supervision of a psychiatrist, a clinical social worker who has the psychiatric training and experience prescribed by the Board of Examiners for Social Workers pursuant to NRS 641B.160, an advanced practice registered nurse who has the psychiatric training and experience prescribed by the State Board of Nursing pursuant to NRS 632.120 or an accredited agent of the Department stating that he or she has examined the person alleged to be a person with mental illness and has concluded that the person 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; or

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

(1) The petitioner has, based upon the petitioner's personal observation of the person alleged to be a person with mental illness, probable cause to believe that the person 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; and

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

2. Except as otherwise provided in NRS 432B.6075, 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]~~ ***a*** petition ***submitted pursuant to subsection 1*** must, in addition to

the certificate or statement required by ~~[subsection 1,]~~ ***that subsection,*** 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.

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

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

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

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

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

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

2. The court shall give notice of the petition ***or motion*** and of the time, date and place of any proceedings thereon to the subject of the petition ~~[.]~~ ***or motion,*** his or her attorney, if known, the person's legal guardian, the petitioner, ***if applicable,*** the district attorney of the county in which the court has its principal office, the local office of an agency or organization that receives money from the Federal Government pursuant to 42 U.S.C. §§ 10801 et seq., to protect and advocate the rights of persons with mental illness and the administrative office of any public or private mental health facility in which the subject of the petition ***or motion*** is detained.

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

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

433A.240 1. After ~~***[Except as otherwise provided in this subsection, 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. ~~***[If the person who is the subject of a petition for involuntary court-ordered admission to a program of community-based or outpatient services is also a criminal defendant, the court shall request an evaluation by an evaluation team from the Division.]***~~

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

3. 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 ~~[.]~~ ***or motion, as applicable.***

~~[3.]~~ ***4.*** 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.]~~ ***5.*** Each physician and licensed psychologist who examines a person pursuant to subsection 1 ***or 2*** shall, in conducting such an examination, consider the least restrictive treatment appropriate for the person.

~~[5.]~~ ***6.*** Except as otherwise provided in this subsection, each physician and licensed psychologist who examines a person pursuant to subsection 1 shall, not later than 48 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. 4. NRS 433A.280 is hereby amended to read as follows:

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

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

433A.310 1. Except as otherwise provided in ***subsection 2 and*** 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. ***If the district court finds, after proceedings for the involuntary court-ordered admission of a defendant in a criminal proceeding pursuant to subsection 3 of NRS 433A.200:***

(a) That there is not clear and convincing evidence that the defendant with respect to whom the hearing was held has a mental illness or exhibits observable behavior such that the defendant 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 program of community-based or outpatient services.

(b) That there is clear and convincing evidence that the defendant 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, except as otherwise provided in this paragraph, the court shall order the involuntary admission of the defendant for participation in a program of community-based or outpatient services and suspend further proceedings in the criminal proceeding against the defendant until the defendant completes or is removed from the program. If the offense allegedly committed by the defendant is a category A or B felony or involved the use or threatened use of force or violence, the court may not order the involuntary admission of the defendant for participation in a program pursuant to this paragraph unless the prosecuting attorney stipulates to the assignment. 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. If the defendant successfully completes a program of community-based or outpatient services to the satisfaction of the court, the court shall dismiss the criminal charges against the defendant with prejudice.

3. If, pursuant to NRS 176A.400, the district court issues an order granting probation to a defendant in a criminal proceeding with a condition that the defendant submit to mental health treatment and comply with instructions, admission to a program of community-based or outpatient services may be used to satisfy such a condition if the Division makes a clinical determination that placement in a program of community-based or outpatient services is appropriate.

4. 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.]~~ ***5.*** Except as otherwise provided in NRS 432B.608, an involuntary admission pursuant to paragraph (b) of subsection 1 ***or paragraph (b) of subsection 2*** 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 ***or 2*** 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.]~~ ***6.*** 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.]~~ ***7.*** 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 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.]~~ ***8.*** As used in this section, "National Instant Criminal Background Check System" has the meaning ascribed to it in NRS 179A.062.

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

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

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

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

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

Sec. 5. ~~[NRS 3.223 is hereby amended to read as follows:~~

~~3.223 1. Except if the child involved is subject to the jurisdiction of an Indian tribe pursuant to the Indian Child Welfare Act of 1978, 25 U.S.C. §§ 1901 et seq., in each judicial district in which it is established, the family court has original, exclusive jurisdiction in any proceeding:~~

~~(a) Brought pursuant to title 5 of NRS or chapter 31A, 123, 125, 125A, 125B, 125C, 126, 127, 128, 129, 130, 159, 425 or 432B of NRS, except to the extent that a specific statute authorizes the use of any other judicial or administrative procedure to facilitate the collection of an obligation for support.~~

~~(b) Brought pursuant to NRS 442.255 and 442.2555 to request the court to issue an order authorizing an abortion.~~

~~(c) For judicial approval of the marriage of a minor.~~

~~(d) Otherwise within the jurisdiction of the juvenile court.~~

~~(e) To establish the date of birth, place of birth or parentage of a minor.~~

~~(f) To change the name of a minor.~~

~~(g) For a judicial declaration of the sanity of a minor.~~

~~(h) To approve the withholding or withdrawal of life sustaining procedures from a person as authorized by law.~~

~~(i) [Brought] *Except as otherwise provided in subsection 4, brought* pursuant to NRS 433A.200 to 433A.330, inclusive, for an involuntary court ordered admission to a mental health facility.~~

~~(j) Brought pursuant to NRS 441A.510 to 441A.720, inclusive, for an involuntary court ordered isolation or quarantine.~~

~~2. The family court, where established and, except as otherwise provided in paragraph (m) of subsection 1 of NRS 4.370, the justice court have concurrent jurisdiction over actions for the issuance of a temporary or extended order for protection against domestic violence.~~

~~3. The family court, where established, and the district court have concurrent jurisdiction over any action for damages brought pursuant to NRS 41.134 by a person who suffered injury as the proximate result of an act that constitutes domestic violence.~~

~~*4. The family court, where established, does not have original, exclusive jurisdiction over a proceeding brought pursuant to NRS 433A.200 to 433A.330, inclusive, for an involuntary court ordered admission to a mental health facility if the Chief Judge of the district court has assigned a judge or hearing master who is not a judge or hearing master of the family court to hear such cases as described in NRS 433A.220.]*~~ **(Deleted by amendment.)**