

Involuntary Court- Ordered Admissions

Judge Bitá Yeager, 8th JD

Judge Cynthia Lu, 2nd JD

Judge Frank Sullivan, 8th JD

What is an
involuntary
court-ordered
admission?

- An involuntary court-ordered admission to a public or private hospital of a person in a mental health crisis

How is a person in a mental health crisis defined?

NRS 433A.0175

A person in a mental health crisis means any person

- Who has a mental illness and
- 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 the mental illness, to the extent that the person presents a substantial likelihood of serious harm to himself or herself or others

NRS 433A.0195

- A person shall be deemed to present a substantial likelihood of serious harm to himself or herself or others if, without care or treatment, the person is at serious risk of:
 - Attempting suicide or homicide;
 - Causing bodily injury to himself or herself or others, including, without limitation, death, unconsciousness, extreme physical pain, protracted and obvious disfigurement or a protracted loss or impairment of a body part, organ or mental functioning; or
 - Incurring a serious injury, illness or death resulting from complete neglect of basic needs for food, clothing, shelter or personal safety.

What is not included?

- It does not include capacity diminished by epilepsy, intellectual disability, dementia, delirium, brief periods of intoxication, or dependence upon or addiction to alcohol or other substances, unless a mental illness that can be diagnosed is also present, which contributes to the diminished capacity

How does a person in a mental health crisis intersect with the court?

- Most common – mental health crisis hold is placed by a professional
 - law enforcement, MOST team
 - Physician
 - Physician’s assistant
 - Psychologist
 - Marriage and family therapist
 - Clinical professional counselor
 - Social worker
 - Registered nurse

(A mental health crisis hold expires after **72 hours** from time of detainment unless a petition for involuntary court-ordered admission is filed)
- The following can file a petition with the Court to request an order for a mental health crisis hold pursuant to NRS 433A.160 accompanied by a certificate or sworn statement
 - Spouse
 - Registered nurse
 - Parent
 - Adult child
 - Legal guardian
 - Physician
 - Social worker
 - Physician’s assistant
 - Psychologist
 - Marriage and Family therapist

Petitions for Mental Health Crisis Hold

Petition for mental health crisis hold is filed in the district court by:

- (a) law enforcement,
- (b) a physician, physician assistant, psychologist, marriage and family therapist, clinical professional counselor, social worker or registered nurse;
- (c) The spouse, parent, adult child or legal guardian of a person alleged to be a person in a mental health crisis;
- (d) A person who is providing case management, support and supervision to a person who has been conditionally released

Court may issue a decision on the petition alone or hold a hearing with the petitioner (best practice within 24 hours)

Court may issue an order that the person alleged to be in a mental health crisis be placed on a mental health crisis hold by law enforcement and brought to a public or private mental health facility or hospital

Once the person alleged to be in a mental health crisis is detained, the 72-hour hold begins to run

What happens after the person alleged to be in a mental health crisis arrives at the ER?

- If the ER hospital determines the person should still be held after a medical screen, they either transfer the person to a mental health facility or file a petition (NRS 433A.200) for involuntary admission to a mental health facility **before** the 72-hour hold expires
- If the petition is not filed before the 72-hour hold expires, the person must be released
- If the petition is filed after the 72-hour hold expires, the petition should be dismissed

Where can the hospital file the petition?

In the county where the person resides



In a county with a mental health facility willing to treat the person



What must the
petition
include?

The medical clearance

Copy of the hold form

Certificate

What does the Court do with the petition?

- Appoint counsel (NRS 433A.270)
- The person needs to be evaluated by 2 or more authorized medical professionals
 - Best practice: independent and at least one psychiatrist
- Set a hearing within 6 judicial days of the filing of the petition
- Hearing may be continued by stipulation of the parties

Patient has the right to be present
(NRS 433A.290)

District Attorney presents evidence in support of the petition

Patient's Attorney

Hear from any witnesses, including the two evaluators
(NRS 433A.280)

Best practice to hear from any legal guardian or advanced directive power of attorney

What do you do at the confidential hearing?

NRS 433A.270

Court Findings

NRS 433A.310

- Standard: Clear and convincing evidence
 - Patient has a mental illness
 - Because the mental illness, their capacity to exercised self-control, judgement and discretion in the conduct of their affairs and social relations or to care for their personal needs is diminished to the extent they
 - Present a substantial likelihood of serious harm to themselves or others
 - Without care or treatment, they are at risk of
 - Attempting suicide or homicide
 - Causing bodily injury to themselves or others
 - Incurring a serious injury, illness or death resulting from complete neglect of basic needs for food, clothing, shelter or personal safety
 - Recommended treatment is involuntary admission to a specific hospital
- OR
- Petition is denied and case is dismissed (order release within 24 hours)

Reporting to the Central Repository for Nevada Records of Criminal History

An order admitting to the hospital is interlocutory and not considered final if, within 30 days after the involuntary admission, the person is unconditionally released. NRS 433A.310(1)(b)

Within 5 business days of the order becoming final (up to 35 days), a record of the order shall be transmitted to the Central Repository for Nevada Records of Criminal History, along with a statement that the record shall be included in the appropriate database of the National Instant Criminal Background Check System. NRS 433A.310(7)

- *If the patient is released within 30 days of the involuntary admission order, the order is **not** a final order and a report is **not** made to the Central Repository*



How do I transfer a case to another county?

If the petition is filed in a county where the examining personnel required by NRS 433A.240 are not available, the court must transfer the case to the nearest county that has examining personnel available

Transfer needs to occur before any hearing and no later than 1 judicial day after the petition was filed

Then the other court needs to set a hearing within 6 calendar days and appoint counsel

The court of the county where the person resides shall be responsible for the entire expense of the petition proceedings

SB 70, Section 43, states after a court issues an order for involuntary admission, that court *shall not* transfer the case to another court

What if the patient is a minor?

- A mental health crisis hold can be placed on a minor without parental consent, but the hospital must attempt to obtain consent prior to placing the hold
- Hospital must attempt to notice the parent or legal guardian within 8 hours of placement of the mental health crisis hold (SB 70)
- If the patient is a minor and the parent is consenting to treatment, the hospital should not file a petition for involuntary court-ordered admission
- If a hospital does file such a petition, the petition should be dismissed if it does not include a signed statement from the parent not objecting to the filing of the petition.

NRS 433B.045 “Child with an Emotional Disturbance” Defined.

- A child whose progressive development of their personality is interfered with by a mental disorder, so that the child shows impairment in the capacity expected of the child for their age and endowment for:
 1. A reasonably accurate perception of the world around them’
 2. Control of their impulses
 3. Satisfying and satisfactory relationships with others;
 4. Learning; or
 5. Any combination of these factors.

Filing a Mental Health Petition for Residential Treatment

NRS 432B.6075

- A child welfare agency (i.e. DFS, DCFS, WCHSA) with custody of a child alleged to have an emotional disturbance may file a petition for residential treatment without the consent of the child's parents.
- A petition filed to continue the placement of a child subject to an **emergency admission** must be filed within 5 days of the initial admission or the child **must** be released.

The Petition Must be Accompanied by:

- A certificate by a medical who has examined the child and has concluded that the child has an emotional disturbance that causes them to be a harm to themselves or others; **OR**
- A sworn statement by the petitioner that they have probable cause to believe that the child has an emotional disturbance and that due to the condition, the child is more likely to harm themselves or others; **and**
- The child has refused to submit to examination or treatment by a physician, psychiatrist, or psychologist.



Court Findings-NRS 432B.6076

Once proceedings for the court-ordered admission of a child in DFS/DCFS/WCHSA custody have begun, the Court will hold an evidentiary hearing where it will determine whether petitioner has provided **clear & convincing evidence** that the child suffers an emotional disturbance and that the disturbance makes the child a threat to themselves or others.

If the Court finds petitioner's evidence falls below the clear and convincing standard, the Court shall enter a finding to that effect and not admit the child to a facility.

If the Court finds the petitioner has shown by clear and convincing evidence the child's emotional disturbance makes them a threat to themselves or others, the Court may order the admission of the child for the most appropriate course of treatment.