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- 2 facilities in Nevada
  - Lake's Crossing-Reno
    - 53 beds
    - 25 Annex
    - **78 beds total**
  - Stein Hospital-LAS
    - 110 beds

Total number of beds statewide = 188

\*\*Except... there are 30 178.461 defendants statewide decreasing that number of beds to 158 "ish"

Both are state run facilities specifically intended to provide treatment to competency.

## Forensic Treatment

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- In Clark County
  - In 2005 the Chief Judge assigned the determination of all competency matters to one specific department.
  - Efficiency
  - Consistency
  - Accuracy

## Eighth Judicial

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- Second Judicial District Court recently moved to a similar process.

## **Second Judicial**

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## **Typical Process**

- Doubt is raised NRS 178.405
  - Order/referral is signed
    - Language for jail docs/records
  - A date is given for 3 weeks in Competency Court
  - Referral goes to CC Coordinator
    - Docs are assigned from list of NRS 178.417 qualified.
  - Reports
    - Split decision
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- In a series of cases 2006-2009 the NSC confirmed that attorneys may provide additional information to the competency doctors
    - Fergusen v State, 124 Nev. 795
    - Sims v Eighth, 125 Nev. 126
    - Calvin v State, 122 Nev. 1178
    - Scarbo v Eighth, 125 Nev. 118
  - May speak with the doctors
    - Burden is on both defense counsel and the doctors
    - Doctors may reach out- Failure to respond noted in reports
  - May provide the court with additional evaluations and additional evidence.
    - Calvin Evidence
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- **Findings**
  - Competent
    - Return to the originating courtroom to proceed with underlying charges
  - Incompetent
    - Transferred to the custody of the Sheriff for transport to Lakes/Stein for further treatment and restoration to competency
  - Incompetent Without Probability
    - NRS 178.461
  - If there is a tie... a third evaluation is required.

## Hearing

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Some defendants may refuse to participate.

Division no longer providing competency evaluations.

Admonish

In courtroom evaluations

Use affidavits/Calvin evidence to allow the court to make findings.

## **Refusals/Non-participation**

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- The Division makes decisions as to which facility a particular defendant may be sent.
- Forensic staff diagnose, treat, evaluate and inform the court regarding defendant's competency.
- As part of their treatment program defendants participate in a Legal Process class.
  - The class lasts for six weeks
  - It is a continuous loop till they pass
  - Teach them what they need to know to pass the competency questions
- **Out Patient Restoration**
- There are out of custody treatments at both facilities
  - Class in Southern Nevada
    - Equal Protection Clause issues

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- Attorneys may challenge the findings of the initial competency determinations **and** the Division's findings.
  - Witnesses-additional evaluations
  - Aiding/Assisting
    - Speak with attorney
    - Observe interaction if necessary

Promptly- as reports get stale

Recall that it takes two evaluations for the court to make findings pursuant to NRS 178.425

## Challenges

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- Incompetent without probability- NRS 178.461
    - Court makes findings
    - No substantial probability that they will attain competency within the foreseeable future.
    - Foreseeable future
    - Charges are dismissed
    - State may seek civil commitment for up to 10 years on A felonies and some B felonies.
  - 30 defendants are in on 178.461
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## Issues

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- 70-120 day delay
- A Defendant is to receive prompt restorative treatment that provides them with a realistic opportunity to be cured or improve the condition for which they are confined and to become competent to stand trial and to assist in their own defense.
- In 2 separate cases in Federal court, the Division agreed and acknowledged that prompt restorative treatment is defined as providing appropriate treatment within seven (7) days upon receipt of the court order.
  - Nevada Disability Advocacy and Law Center v Brandenburg 2005
  - Eric Burnside v Richard Whitley 2013

## Delays

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- Mtns to Dismiss have been filed for failure to transport for prompt restorative treatment.
- In Clark County- the court is making findings as the delay, typically allowing the Division 7 days to transport the defendant for prompt restorative treatment and holding the Division contempt assessing \$500 a day for each day of delay.
- In Washoe County, 2<sup>nd</sup> Judicial District....

## **Delays**

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- Oregon Advocacy Ctr. V Mink, 322 F.3d 1101, 117 (9<sup>th</sup> Cir. 2003).
- Morgan v State, 134 Nev. 200 (2018)
- State v Gonzalez 139 Nev. Adv. Op 33 (2023).
- Dept of Health & Human Servs., Div. Of Pub & Behavioral Health v. Eight Judicial District Court (Aliano). 139 Nev. Adv. Op 28 (2023).

## **Relevant Decisions**

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- A defendant can only be kept by the Division for the potential length of their sentence.
  - Misdemeanors are up to 6 months (minus 30-60 days)
  - Gross misdemeanors up to 1 year. (minus 90 days)
- As result of lack of space (predated Stein) program to divert misdemeanants.

## Misdemeanor Diversion

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- Misdemeanor Diversion Program
    - Created to lessen the demand on the wait list/beds
    - Incompetent defendants
      - Agreement of DA/Defense Counsel
    - Transferred to treatment/follow up
    - Goals
      - Break the cycle of treatment resistant loopers
      - Hold both Division/Def accountable
      - Charges are typically dismissed if defendants have stayed out of trouble
      - Difficulty in the rurals
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- How Rurals might do MDP
  - Discuss issue with your local clinic.
  - Dini-Townsend for some counties
  - Perhaps talk to local medical providers if no clinic is close.

## **Misdo Diversion**

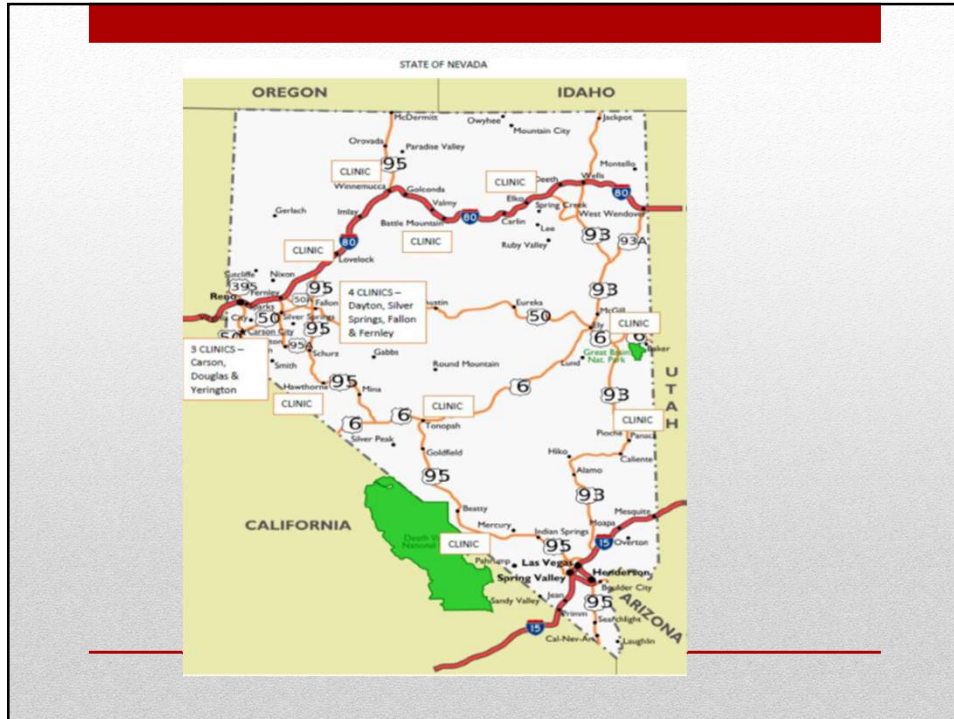
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## **Rural Issues**

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**Location of Rural Clinics By County**

- Carson City•Carson City Clinic
- Clark(SNAMHS)  
Mesquite Clinic  
•Laughlin Clinic
- Douglas•Douglas Clinic
- Esmerelda
- Humboldt•Winnemucca Clinic
- Lincoln•Panaca Clinic
- Lyon•  
Dayton Clinic  
Fernley Clinic  
Silver Springs Clinic  
Yerington Clinic
- Mineral•Hawthorne Clinic
- Pershing•Lovelock Clinic
- White Pine•Ely Clinic
- Churchill•Fallon Clinic
- Elko•Elko Clinic
- Eureka
- Lander•Battle Mountain Clinic
- Nye•Pahrump Clinic•Tonopah Clinic
- Storey•Washoe(NNAMHS)

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**RURAL CLINICS  
IMMEDIATE MENTAL HEALTH  
CARE  
TEAM**

**1-877-283-2437**  
Telephone Triage open 24/7  
CARE Team response hours 9am-6pm 7 days a week, excluding holidays  
**Rural Clinics Immediate Mental Health CARE Team supports adults anywhere in Rural Nevada who need immediate mental health care.**

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**TELEPHONE TRIAGE:** Crisis staff are available to provide support over the phone and assist in gathering information to determine how to help. If staff are assisting other callers, leave a message and they will call you back within minutes.

**CARE Team RESPONSE:** Once crisis staff determine you are safe, then they connect you with a licensed CARE Team clinician. The CARE Team clinician will contact you within minutes. The Clinician will provide immediate mental health help. This is done by video, wherever you are located. If you are not able to connect via video then services will be done by phone.

**STABILIZATION:** A short-term, mental health intervention. It is designed to assess, manage, monitor, stabilize and support your wellbeing. The CARE Team may develop an individualized safety plan with you to help support you. We also have a crisis case manager who will help you find resources in your community.

**AFTER CARE:** The CARE Team is available to follow up with you to ensure there is a smooth transition to needed supports and services in your community.

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In a perfect world.. mental health services would be accessible, affordable, available, and stigma-free for all.

Of course, it is not a perfect world

Rural communities often face challenges with the provision of mental health services to those in need.

Providing mental health services via telehealth, sometimes referred to as telemental health or telebehavioral health, has shown promise in helping to alleviate the lack of mental health services in rural areas.

Barriers to **accessibility** of care for serious mental illness in rural and remote areas include  
difficulty finding or affording transportation;  
lack of reliable childcare;  
economic disparities impacting those with SMI such as homelessness or low-paying jobs; and issues with broadband..

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- Potential solutions,
    - Offering mobile mental health services.
    - Utilizing telehealth and telepsychiatry, provided that broadband internet infrastructure is also prioritized or use of audio-only telehealth is available.
    - Establishing hotlines and warmlines to connect those in crisis with services
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## ACA

The Affordable Care Act of 2010, created an optional Medicaid State Plan benefit for states to establish Health Homes to coordinate care for people with Medicaid who have chronic conditions.

Many states have used Section 2703 to create Behavioral Health Homes to integrate primary care providers with behavioral health providers, and thus address both the behavioral health and other health conditions of adults with serious mental illnesses.

This model can be used in rural areas to integrate care and help treat the whole person. Michigan and Minnesota have leveraged Medicaid to fund Behavioral Health Homes to provide integrated care to individuals with behavioral health needs throughout their states.

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A variety of academic partnerships and programs exist that help train residents and future behavioral health providers on service delivery in rural areas.

By introducing students and residents to rural practices, the chances of them staying on to work in rural areas after graduation increase significantly.

A study in Texas found that 75 percent of primary care residents trained in rural parts of the state stayed there to start their professional careers.

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The Western Interstate Commission for Higher Education's (WICHE) Behavioral Health Program's Psychology Internship Consortia supports the development of the behavioral health workforce in seven rural states – Alaska, Hawaii, Idaho, Nevada, Oregon, Utah, and New Mexico. WICHE contracts with agencies in each of these states to develop and support an internship program for students at local universities to pursue training in psychology, thereby enhancing the behavioral health workforce in each of these states.

WICHE helps to ensure that the internship programs meet accreditation standards set forth by the American Psychological Association and helps universities with the accreditation process. Annual award amounts for each of the states participating in the consortium range from \$25,000 to just over \$637,000 as of 2019 (WICHE, 2020).

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During the 2013 legislative session, Nevada lawmakers granted nurse practitioners full practice autonomy as healthcare professionals to address the physician and mental health provider shortage gap in rural regions.

Since legislative passage, the Nevada State Board of Nursing has seen an expansion in psychiatric mental health nurse practitioners. This workforce increase improved access to care for many rural communities.

In 2015, Nevada legislators passed a parity law requiring telehealth to be covered and reimbursed under private insurance, Medicaid, and worker's compensation plans to further improve health care access.

The expansion of reimbursement for telehealth services allows psychiatric mental health nurse practitioners to expand into rural regions that would otherwise have limited access to mental health specialists.

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Jail based treatment.  
Jail based restoration.

Find ways to collaborate across stakeholder groups, including local elected officials, behavioral health providers, medical doctors/treatment providers and law enforcement. This creates a relationship where each stakeholder can rely on another to ensure that available resources are utilized efficiently, and there is not one stakeholder group bearing the burden of care.

Through these relationships, law enforcement can better understand where people can be diverted to care, while reducing the burden on their limited resources.

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Expand the accessibility of community services, and ensure officers have an available crisis center to which they can bring individuals experiencing a mental health emergency. »

Train jail staff on the administration Mental Health First Aid, which enables jail staff to converse with and decrease imminent threats for at-risk individuals.

Suspend, rather than terminate Medicaid benefits during incarceration. This helps to ensure that individuals, upon release, can re-engage with community mental health services. Currently, only 15 states offer this as an option (Washington, Oregon, California, Colorado, New Mexico, Texas, Minnesota, Iowa, Illinois, Florida, Ohio, North Carolina, Maryland, New York, and Massachusetts).

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Be creative with co-location.

What is frequently missing for law enforcement in rural areas is a place to take someone other than jail when a person is in crisis.

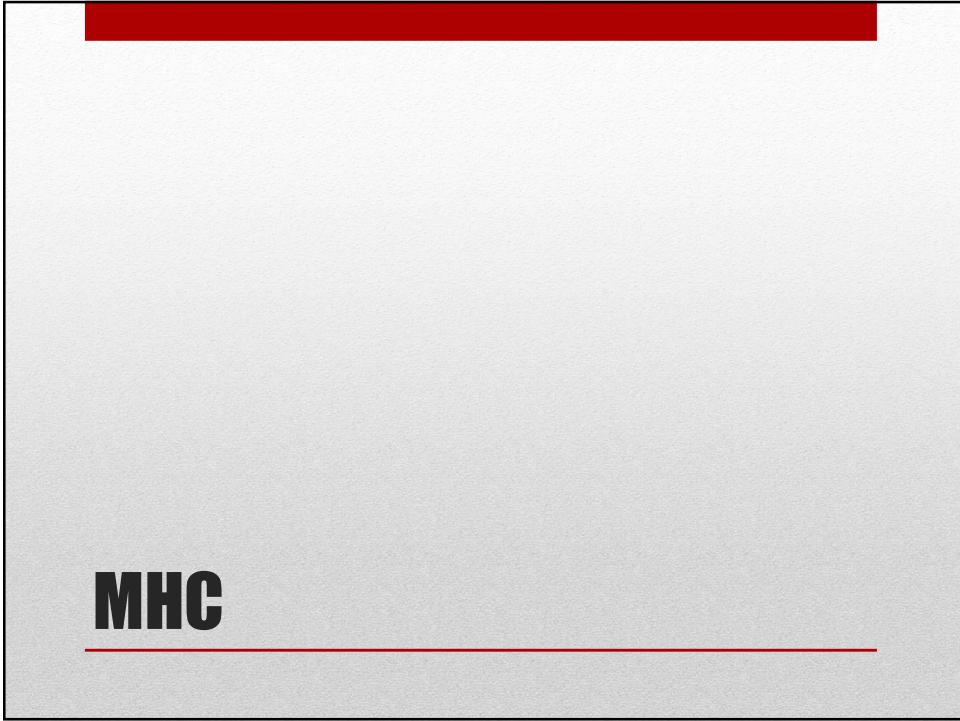
For example, in Texas, some mental health care providers share office space in law enforcement stations for screening and assessment to prevent someone from being booked.

Start a community conversation about medical clearance to maximize law enforcement's time. Frequently, law enforcement officers get tied up waiting in emergency room for medical clearance. Some states implement an algorithm that allow law enforcement officers to directly admit to facilities and bypass emergency rooms.

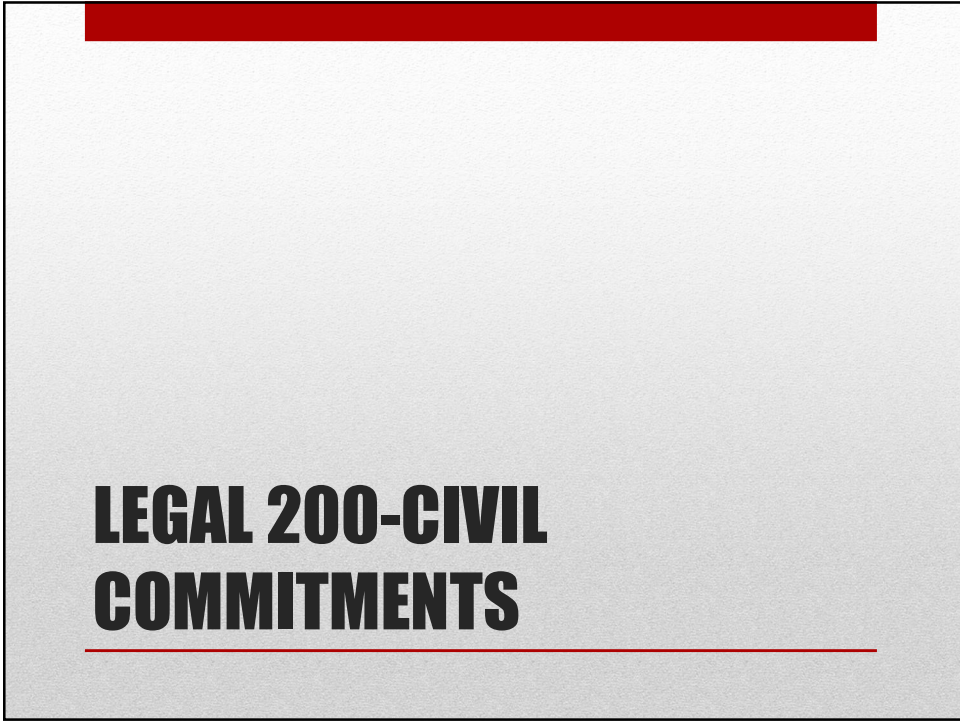
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**AOT/SOT**

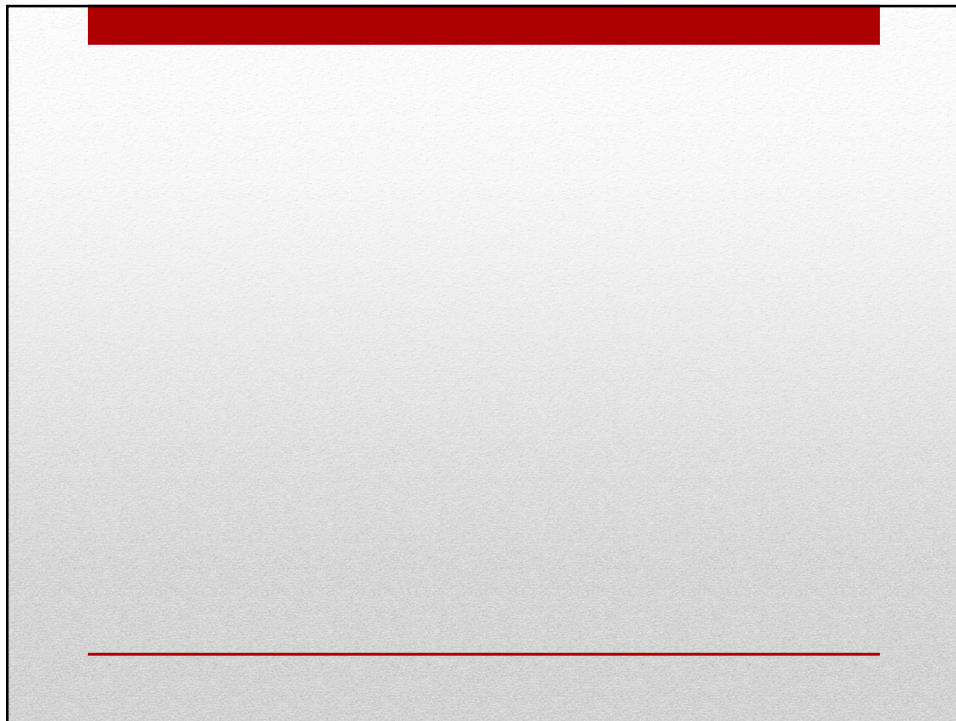
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- Mentally ill but currently competent defendants who request to represent themselves.

**INDIANA V EDWARDS**

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