

Involuntary Court-Ordered Admissions

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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

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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.

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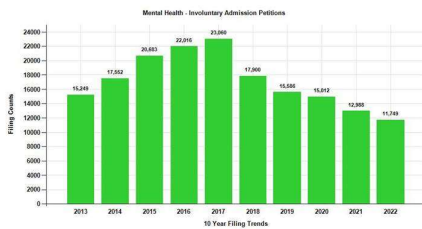
What is not included?

- 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

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Clark County statistics

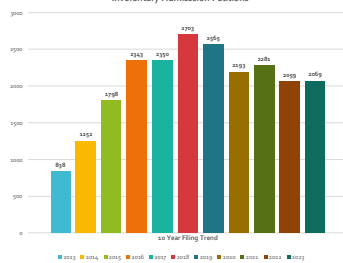
MHC PCOA CASE EVENT FILINGS by "PCOA Case Event Filing Year"



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Washoe County statistics

Mental Health - Involuntary Admission Petitions



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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 the time of detention 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	Physician
Registered nurse	Social worker
Parent	Physician's assistant
Adult child	Psychologist
Legal guardian	Marriage and Family therapist

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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

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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

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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




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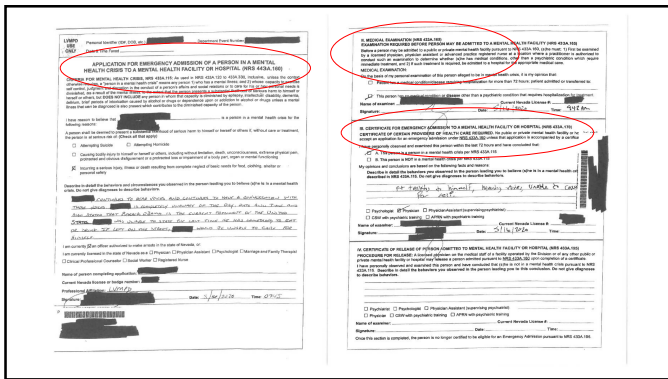
What must the petition include?

The medical clearance

Copy of the hold form

Certificate

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Emergency Admission NRS 433A.160 and 433A.165

What if the patient is not medically cleared within the 72 hours?

File a Petition under 433A.165

Hearing is placed "on hold" until patient is medically cleared

File a Notice of Update every 7 days

Ideally, a psychiatric professional should continue to reassess

When patient is medically cleared, hearing date is set and Court Doctors evaluate patient in preparation for hearing

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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 with 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

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Due Process

- 5th and 14th Amendments of the Constitution
 - Prohibits the government from taking away "life, liberty or property, without due process of law"
- Guarantee of basic fairness
 - SUBSTANTIVE due process (WHAT is contained in the law)
 - PROCEDURAL due process (HOW the law is applied)

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Substantive Due Process

The law is narrowly tailored to serve a significant government purpose

Restrictions on Freedom

Consider least restrictive treatment which is in the best interest of the person

Maximum time of 6 months unless a petition is filed for renewal

(NRS 433A.310)



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Procedural Due Process

- Requires the government to follow fair procedures before depriving a person of life, liberty, or property
- Civil Commitment (involuntary admission) deprives a citizen of their LIBERTY

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Procedural Due Process

Notice

Hearing

Impartial Tribunal

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Burden of Proof for Evidence

CLEAR AND CONVINCING

BURDENS OF PROOF

Beyond a Reasonable Doubt	Requires elimination of every reasonable doubt.
Clear and Convincing Evidence	Firm belief or conviction.
Preponderance	More likely than not.
Probable Cause	Facts and circumstances lead an ordinary person to believe.
Reasonable Suspicion	Specific and articulable facts.

Why a pyramid? | As the level of proof required rises, the fewer number of cases meet the level of proof.

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Procedural Due Process – Impartial Tribunal

- A neutral judge
- Independent court doctor evaluations is best practice
- A decision based on the evidence presented
- Written Findings of Fact and reasons for the court's decision

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Patient has the right to be present and provide testimony <small>NRS 433A.290</small>	District Attorney presents evidence in support of the petition	Patient's Attorney
Hear from any witnesses, including the two court doctor evaluators <small>NRS 433A.280</small>	Best practice to hear from any legal guardian or advanced directive power of attorney	Arrange for court interpreter for the patient when needed
What happens at the confidential hearing? <small>NRS 433A.270</small>		

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Right to Counsel for patient NRS 433A.270

- Patient has right to retain to counsel
- If the patient refuses to obtain counsel or refuses to be represented, NRS 433A.270(1) allows the Court to appoint counsel over the patient's refusal

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Hearing 433A.310

What if the patient refuses to come to Court?

- The patient should be informed that they could be involuntarily admitted to the hospital for up to 6 months
 - *Due Process
- If there is also a Motion for Forced Medication (DOR) on the calendar, the patient should be told that they could be forcibly medicated
 - *Due Process
- The Court must have a record that the patient has knowingly and voluntarily chosen not to come to court
 - *Due Process

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Possible decisions after hearing

- Patient meets criteria, but decision to involuntarily admit (commit) is postponed, the court date is continued and the patient remains on hold while working with treatment team. Status check court date set.
- Patient does not meet criteria, petition is denied and case is closed.
 - Hospital has 24 hours to release patient
 - *Due Process
- Patient meets criteria and is involuntarily admitted (committed) for up to 6 months.
 - (Clark) Use of hearing master requires recommendation to be served on the patient with the time of service for 24- hour objection period
 - *Due Process

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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

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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(4)(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

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Motion for Forced Medication or Denial of Rights (DOR)

- Patient must be admitted to hospital first
- NRS 433.534 states the rights of the patient against forced medication can only be denied to protect the patient's health and safety or the health and safety of others, or both
- Washington v. Harper, 494 U.S. 210, 110 S.Ct. 1028, 108 L.Ed.2d 178 (1990)
- Patients must first be involuntarily admitted to the hospital prior to an order for forced medication (can be ordered at the same hearing)
- State hospitals have their own DOR process, and if so, they should not be filing motions with the court. Motions will normally be from private hospitals without an in-house DOR process

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Motion for Forced Medication hearing


- Treating physician is sworn in as a witness
- State asks questions, although they are not the moving party
- Patient's attorney cross examines witness
 - Due Process
- Patient is given an opportunity to be heard
 - Due Process
- Court makes a decision with written findings
 - Due Process
 - Due to use of hearing master, recommendation must be served on the patient with the time of service for 24-hour objection period (Clark)
 - Due Process

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Witness must be familiar with the patient's behaviors and medication during their time in the hospital

- Noncompliance with medication
- Incidents which have required Pro Re Nata (PRNs)
- Incidents which have required restraints
- Self-harming behaviors
- Incidents where the patient has been aggressive or injurious to others

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How Does a Court 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

NRS 433A.310(5) states after a court issues an order for involuntary admission, that court *shall not* transfer the case to another court

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Process to transfer the case to another county

- The Court **sua sponte** issues an order for transfer as the statute does not require a motion to be filed by the hospital.
- The hospital should file a notice to the court if the patient has been transferred to another hospital on the legal hold
- If the petition has been filed for 24 hours, the originating court can no longer transfer the case and will need to hold a petition hearing by virtual means
- If the Court has involuntarily admitted the individual to a hospital in another county, the Court retains jurisdiction (because the patient is a resident in that county) in the case for any further hearings or renewal petitions

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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.

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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.

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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.

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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.

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Involuntary admission to Assisted Outpatient Treatment (AOT) NRS 433A.310

- For patients with frequent hospitalizations, repeated incarcerations, or failed residential placements due to MI, where lesser restrictive options have failed, the law allows for commitment to outpatient treatment
- In Nevada, both Clark and Washoe Counties have an Assisted Outpatient Treatment program through Nevada Division of Public and Behavioral Health

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AOT Criteria
NRS 433A.335

- Person of 18 years of age or older
- Person has a mental illness
- Demonstrated history of noncompliance with mental health treatment resulting in one of these circumstances
 - Two hospitalizations in the past 48 months
 - Two incarcerations in the past 48 months
 - Committing or attempting to commit or threaten to commit serious harm to themselves or others in the past 48 months
 - Being hospitalized, incarcerated, or detained for a cumulative period of six months and about to be released in 30 days or released in the 60 days prior to filing a petition

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Court findings
NRS 433A.310

- AOT must be the least restrictive treatment which is in the best interest of the patient
- Be capable of surviving safely in the community with available supervision
- Needs to be in AOT to prevent further disability or deterioration which would likely result in harm to themselves or others
- Has a limited or negated ability to make informed treatment decision because of their mental illness

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Court order

- Order person to receive AOT services
- Order person to comply with treatment plan
- Specify services the person must receive
- Specify the medications and purpose of the medications the person is to receive if administration of medication is required
- Order cannot exceed 6 months unless renewed or extended (NRS 433A-345)
- Order becomes a final order after 30 days and reported to Central Repository for Nevada Records of Criminal History (NRS 433A-343(6))


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AOT process

- Referral process through Southern Nevada Adult Mental Health Services in Clark and Northern Nevada Adult Mental Health Services in Washoe
- Any hospital or individual can submit a referral
- Housing component
- Assigned a case manager to assist with medication compliance
- Six-month renewable commitment to outpatient treatment (best practice is at least one year in the program)
- Frequent status check on progress with the court
- Currently has funding for 75 spots in Clark County and 50 spots in Washoe County

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“People with mental illness are our neighbours. They are members of our congregation, members of our families. They are everywhere. If we ignore their cries for help, we participate in the anguish from which those cries come. A problem of this magnitude will not ‘go away.’ And because it will not go away, we are compelled to take action.”
- Rosalynn Carter



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