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**TESTIMONY OF JAMES J. VILT, ESQ.  
OF THE NEVADA DISABILITY ADVOCACY & LAW CENTER TO THE  
ASSEMBLY COMMITTEE ON WAYS AND MEANS  
REGARDING ASSEMBLY BILL NO. 238**

**MARCH 12, 2003**

This testimony is submitted on behalf of Nevada Disability Advocacy & Law Center (NDALC), Nevada's federally mandated, governor designated protection and advocacy system for individuals with disabilities. See the Protection and Advocacy for Mentally Ill Individuals Act of 1986 (42 U.S.C. §10801 et seq); the Developmental Disabilities Assistance and Bill of Rights Act of 1975 (42 U.S.C. §6041 et seq); and the Protection and Advocacy for Individual Rights Program of the Rehabilitation Act of 1973 (29 U.S.C. §794e).

The mental health court proposed by AB 238 is an important recognition that criminal sanctions are neither an effective nor appropriate response to criminal acts that are largely attributable to an individual's mental illness. It is a waste of this state's money to finance expensive and ineffective incarceration instead of community mental health resources and supports.

But it must be recognized that mental health courts will not, in and of themselves, solve the underlying systemic problems that cause mentally ill individuals to be incarcerated in disproportionate numbers. Criminalization of individuals with mental illness often is a result of the failure of mental health programs to reach and effectively address the needs of those at risk of arrest<sup>1</sup>.

As this Committee surely understands, criminal diversion efforts will only be successful if the essential services and supports that those with serious mental illnesses need to live in the community are available. This Committee is likewise aware that these services do not currently exist for all who need them and NDALC submits that these scarce supports should not be withdrawn from, or simply not provided to, others in need so that they may be redirected towards those who have come into contact with the criminal justice system.

While acknowledging that not every crime committed by a mentally ill individual is a result of the failure of Nevada's public mental health system, NDALC would like to ensure that mental health courts are not viewed in a vacuum but as part of a comprehensive plan to address the underlying failures of our service delivery system. An approach that fails to address the causes underlying the Criminalization of the mentally ill and waits until people hit rock bottom before interventions are undertaken will do little to alleviate the symptoms with which mental health courts will be dealing.

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<sup>1</sup> This should include programs to reintegrate into the community those leaving jail or prison.

Moreover, mental health court should be just one of a range of choices available to our criminal justice system and should work in conjunction with other types of diversion programs so the mental health court is not inundated with minor misdemeanors. Diverting minor criminal acts before they reach mental health court is an important means by which to ensure that mental health court will not encourage arrests as a strategy for accessing mental health services that are not otherwise available. NDALC is confident that the Las Vegas Metropolitan Police Department's Crisis Intervention Team (CIT) will play a critical role in ensuring that fewer interactions between the police and individuals with mental illness result in arrest, much less incarceration.

There also exist a number of procedural protections NDALC submits should be utilized by the mental health court so that it is able to meet its goals of diverting those with mental illness from the criminal justice system and makes services available in a non-discriminatory manner.

As a preliminary matter, it must be recognized that the decision to participate in a mental health court is essentially a waiver of the right to a trial, therefore transfer must be voluntary. Voluntary transfer requires that defense attorneys are assigned to the person as soon as that person is identified as a potential candidate for mental health court to help them make an informed decision so that they are made to truly understand all of the potential outcomes related to their participation in mental health court.

It is critical that defense attorneys have a background and understanding of mental health issues and in communicating with individuals who may very well be in a crisis. It is likewise important that the attorney have an understanding of the area's public mental health system and a sufficient educational framework in which to enable him or her to participate in the development of a treatment plan. Defense counsel should also have sufficient time to devote towards the defendant.

While defense counsel will also play a key role in limiting the amount of potentially privileged treatment and medical information that is disclosed in open court, the court should have rules that keep medical information out of the public record. This can easily be achieved through the discussion of such information in chambers or sidebars.

Individuals should also have the right to withdraw from mental health court and have their cases heard in criminal court *without prejudice*. Moreover, the consequences of a person's failure to comply with the conditions of their diversion must be made clear before they make the decision to participate. Non-compliance should not result in automatic jail time especially when it is not clear that it was willful. Noncompliance may simply be a symptom of the mental illness or signal the need to adjust the treatment plan.

Furthermore court supervision should not exceed the typical sentence and probationary period for the underlying criminal charge. Certainly, long term care and support may be required but court supervision of such services beyond the typical period of supervision of the underlying offense is inappropriate and discriminatory.

Finally, mental health court should also not require a guilty plea as a condition to participation. A guilty or no contest plea can adversely impact an individual's ability to get or keep housing and employment and may very well serve to defeat the court's goal of long-term diversion.

NDALC is, of course, interested in assisting policymakers in working towards the development of a comprehensive community based mental health system that minimizes the interactions between the criminal justice system and those in law enforcement. NDALC would, likewise, make staff available to assist court personnel in developing a mental health court and diversion system that takes into account the rights and dignity of those with mental illness while achieving its treatment and safety goals.