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SENATE COMMITTEE
ON
HUMAN RESOURCES AND FACILITIES

WORK SESSION DOCUMENT

March 26, 2003

Prepared by

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Research Division

SENATE BILL 118 (REQUESTED BY SENATE COMMITTEE ON GOVERNMENT AFFAIRS)
HEARINGS 3/5/03 AND 3/12/03

Revises provisions governing ability of State Fire Marshal to regulate construction, maintenance and safety of buildings and structures in certain counties. (BDR 42-850)

Senate Bill 118 includes amendments proposed by:

1. Ron Lynn (Nevada Organization of Building Officials), to change Section 1, subsection 11 (page 4, line 1), to revise the language concerning who is authorized to request the services of the State Fire Marshal, changing it from the chief of the fire department in the jurisdiction to state that the request may be made by the chief executive officer of that jurisdiction. A copy of his mock up is included.

2. The school districts request that the bill be amended to carve out an exemption for school districts from the changes made by the bill – i.e., school districts would continue to be authorized to "contract" with the State Fire Marshal to conduct the inspections they require.

Fiscal Note: The Fire Marshal was not able to estimate the potential impact of this measure.

SENATE BILL NO. 118–COMMITTEE ON GOVERNMENT AFFAIRS

FEBRUARY 13, 2003

Referred to Committee on Human Resources and Facilities

SUMMARY—Revises provisions governing ability of State Fire Marshal to regulate construction, maintenance and safety of buildings and structures in certain counties. (BDR 42-850)

FISCAL NOTE: Effect on Local Government: No.
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.
Green numbers along left margin indicate location on the printed bill (e.g., 5-15 indicates page 5, line 15).

AN ACT relating to county building codes; providing that the regulations of the State Fire Marshal concerning building codes do not apply in a county whose population is 100,000 or more or which has been converted into a consolidated municipality under certain circumstances; and providing other matters properly relating thereto.

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

Section 1. NRS 477.030 is hereby amended to read as follows:

477.030 1. Except as otherwise provided in this section, the State Fire Marshal shall enforce all laws and adopt regulations relating to:

(a) The prevention of fire.

(b) The storage and use of:

(1) Combustibles, flammables and fireworks; and

(2) Explosives in any commercial construction, but not in mining or the control of avalanches,

under those circumstances that are not otherwise regulated by the Division of Industrial Relations of the Department of Business and Industry pursuant to NRS 618.890.

(c) The safety, access, means and adequacy of exit in case of fire from mental and penal institutions, facilities for the care of children,

foster homes, residential facilities for groups, facilities for intermediate care, nursing homes, hospitals, schools, all buildings, except private residences, which are occupied for sleeping purposes, buildings used for public assembly and all other buildings where large numbers of persons work, live or congregate for any purpose. As used in this paragraph, "public assembly" means a building or a portion of a building used for the gathering together of 50 or more persons for purposes of deliberation, education, instruction, worship, entertainment, amusement or awaiting transportation, or the gathering together of 100 or more persons in establishments for drinking or dining.

(d) The suppression and punishment of arson and fraudulent claims or practices in connection with fire losses.

~~[The]~~ *Except as otherwise provided in subsection 11, the* regulations of the State Fire Marshal apply throughout the State, but, except with respect to state-owned or state-occupied buildings, his authority to enforce them or conduct investigations under this chapter does not extend to a county whose population is 100,000 or more or which has been converted into a consolidated municipality, except in those local jurisdictions in those counties where he is requested to exercise that authority by the chief officer of the organized fire department of that jurisdiction.

2. The State Fire Marshal may set standards for equipment and appliances pertaining to fire safety or to be used for fire protection within this state, including the threads used on fire hose couplings and hydrant fittings.

3. The State Fire Marshal shall cooperate with the State Forester Firewarden in the preparation of regulations relating to standards for fire retardant roofing materials pursuant to paragraph (c) of subsection 1 of NRS 472.040.

4. The State Fire Marshal shall cooperate with the Division of Child and Family Services of the Department of Human Resources in establishing reasonable minimum standards for overseeing the safety of and directing the means and adequacy of exit in case of fire from family foster homes and group foster homes.

5. The State Fire Marshal shall coordinate all activities conducted pursuant to 15 U.S.C. §§ 2201 et seq. and receive and distribute money allocated by the United States pursuant to that act.

6. Except as otherwise provided in subsection 10, the State Fire Marshal shall:

(a) Investigate any fire which occurs in a county other than one whose population is 100,000 or more or which has been converted into a consolidated municipality, and from which a death results or which is of a suspicious nature.

(b) Investigate any fire which occurs in a county whose population is 100,000 or more or which has been converted into a consolidated municipality, and from which a death results or which is of a suspicious nature, if requested to do so by the chief officer of the fire department in whose jurisdiction the fire occurs.

(c) Cooperate with the Commissioner of Insurance, the Attorney General and the Fraud Control Unit established pursuant to NRS 228.412 in any investigation of a fraudulent claim under an insurance policy for any fire of a suspicious nature.

(d) Cooperate with any local fire department in the investigation of any report received pursuant to NRS 629.045.

(e) Provide specialized training in investigating the causes of fires if requested to do so by the chief officer of an organized fire department.

7. The State Fire Marshal shall put the National Fire Incident Reporting System into effect throughout the State and publish at least annually a summary of data collected under the system.

8. The State Fire Marshal shall provide assistance and materials to local authorities, upon request, for the establishment of programs for public education and other fire prevention activities.

9. The State Fire Marshal shall:

(a) Assist in checking plans and specifications for construction;

(b) Provide specialized training to local fire departments; and

(c) Assist local governments in drafting regulations and ordinances,

on request or as he deems necessary.

10. In a county other than one whose population is 100,000 or more or which has been converted into a consolidated municipality, the State Fire Marshal shall, upon request by a local government, delegate to the local government by interlocal agreement all or a portion of his authority or duties if the local government's personnel and programs are, as determined by the State Fire Marshal, equally qualified to perform those functions. If a local government fails to maintain the qualified personnel and programs in accordance with such an agreement, the State Fire Marshal shall revoke the agreement.

11. The regulations of the State Fire Marshal concerning matters relating to building codes, including, without limitation, matters relating to the construction, maintenance and safety of buildings, structures and property, do not apply, except with respect to state-owned or state-occupied buildings, in a county whose population is 100,000 or more or which has been converted into a consolidated municipality, except in those local jurisdictions in those counties where he is requested to apply or enforce the

regulations by the chief executive officer of [redacted]
that jurisdiction.

Sec. 2. NRS 477.110 is hereby amended to read as follows:

477.110 After May 15, 1981, the governing body of a local government may not adopt an ordinance requiring changes to existing structures to enhance the safety of occupants from fire if the ordinance is:

1. Less stringent than this chapter; or
2. ~~[More]~~ *Except as otherwise provided in this subsection, more* stringent than this chapter unless the governing body has sought and obtained approval of the ordinance from the State Board of Examiners. *The provisions of this subsection do not apply in a county whose population is 100,000 or more or which has been converted into a consolidated municipality.*

Sec. 3. NRS 244.3673 is hereby amended to read as follows:

244.3673 The board of county commissioners of any county whose population is 100,000 or more or which has been converted into a consolidated municipality may provide by ordinance for the investigation of fires in which a death has occurred or which are of a suspicious origin, and for the enforcement of *any* regulations adopted by the State Fire Marshal~~[.]~~ *which apply to the county.*

Sec. 4. This act becomes effective on July 1, 2003.

SENATE BILL 179 (REQUESTED BY DIVISION OF MENTAL HEALTH AND DEVELOPMENTAL SERVICES) HEARING 3/10/03

Senate Bill 179 makes various changes related to mental health. (BDR 39-480)

Senate Bill 179 includes:

A series of amendments proposed by Ed Irvin, Deputy Attorney General for MH/DS that, in summary:

1. Restore provisions deleted in the bill requiring the medical exam for allegedly mentally ill persons be conducted by a licensed physician, a physician assistance, or an advanced practitioner of nursing;

2. Require that the exam and any transfer for medically unstable persons with emergency health conditions must be conducted in accordance with state and federal anti-dumping statutes; and

3. Provide for the court-ordered involuntary administration of medication, as appropriate, to attain legal competency for court proceedings.

   (The complete set of Mr. Irvin's proposed amendments [in color], are included.)

James Vilt and Lynne Bigley, representing Nevada Disability Advocacy and Law Center, propose:

4. That the 72-hour time frame referenced in *Nevada Revised Statutes* 433A.150 (for release from custody of allegedly mentally ill persons, unless a petition for involuntary commitment is filed) should commence as soon as the person is deprived of his or her freedom versus the current provisions concerning being admitted to a facility; and

5. Provide for procedural due process protections for pretrial detainees, including the right to appear, cross-examine witnesses, and testify at proceedings that consider the involuntary administration of medications, as described in the bill.

   (The complete set of Mr. Vilt and Ms. Bigley's proposed amendments are included.)

Proposed Amendment to S.B. 179

Sec. 11. NRS 433A.165 is hereby amended to read as follows:

433A.165 1. Before an allegedly mentally ill person may be transported to a public or private mental health facility pursuant to NRS 433A.160, ~~[he]~~ ***the person*** must:

(a) First be examined ~~[by a licensed Physician or Physician Assistant or an Advanced Practitioner of Nursing]~~ ***by a licensed Physician or Physician Assistant or an Advanced Practitioner of Nursing*** to determine whether the person has a medical problem, other than a psychiatric problem, which requires immediate treatment; and

(b) If such treatment is required, be admitted to a hospital for the appropriate medical care.

2. ***The examination and any transfer of the person from a facility when the person has an emergency medical condition and has not been stabilized must be conducted in compliance with:***

(a) The requirements of 42 U.S.C. § 1395dd and any regulations adopted pursuant thereto, and must involve a person authorized pursuant to federal law to conduct such an examination or certify such a transfer; and

(b) The provisions of NRS 439B.410.

3. The cost of the examination must be paid by the county in which the allegedly mentally ill person resides if services are

provided at a county hospital located in that county or a hospital designated by that county, unless the cost is voluntarily paid by the allegedly mentally ill person or on his behalf, by his insurer or by a state or federal program of medical assistance.

~~[3.]~~ *4.* The county may recover all or any part of the expenses paid by it, in a civil action against:

(a) The person whose expenses were paid;

(b) The estate of that person; or

(c) A responsible relative as prescribed in NRS 433A.610, to the extent that financial ability is found to exist.

~~[4.]~~ *5.* The cost of treatment, including hospitalization, for an indigent must be paid pursuant to NRS 428.010 by the county in which the allegedly mentally ill person resides.

Sec. 21. NRS 178.425 is hereby amended to read as follows:

178.425 1. If the court finds the defendant incompetent, and that he is dangerous to himself or to society ~~[or]~~ ***and*** that commitment is required for a determination of his ability to ***receive treatment to competency and to*** attain competence, the judge shall order the sheriff to convey ~~[him]~~ ***the defendant*** forthwith, together with a copy of the complaint, the commitment and the physicians' certificate, if any, into the custody of the Administrator of the

Division of Mental Health and Developmental Services of the Department of Human Resources or his designee for detention and treatment at a secure facility operated by that Division. ***The order may include the involuntary administration of medication if appropriate for treatment to competency.***

2. The defendant must be held in such custody until a court orders his release or until he is returned for trial or judgment as provided in NRS 178.450 ~~[to 178.460, inclusive.]~~ ***, 178.455 and 178.460.***

3. If the court finds the defendant incompetent but not dangerous to himself or to society, and finds that commitment is not required for a determination of the defendant's ability to ***receive treatment to competency and to*** attain competence, the judge shall order the defendant to report to the Administrator or his designee as an outpatient for treatment, if it might be beneficial, and for a determination of his ability to ***receive treatment to competency and to*** attain competence. The court may require the defendant to give bail for his periodic appearances before the Administrator or his designee.

4. Except as otherwise provided in subsection 5, proceedings against the defendant must be suspended until the Administrator or his designee or, if the defendant is charged with a misdemeanor, the judge finds him capable of standing trial or opposing pronouncement of judgment as provided in NRS 178.400.

5. Whenever the defendant has been found incompetent, with

no substantial probability of attaining competency in the foreseeable future, and released from custody or from obligations as an outpatient pursuant to paragraph (d) of subsection 4 of NRS 178.460, the proceedings against the defendant which were suspended must be dismissed. No new charge arising out of the same circumstances may be brought after a period, equal to the maximum time allowed by law for commencing a criminal action for the crime with which the defendant was charged, has lapsed since the date of the alleged offense.

TESTIMONY ON SENATE BILL No. 179
TO THE SENATE COMMITTEE ON HUMAN RESOURCES AND FACILITIES
By
James J. Vilt, Esq. and Lynne P. Bigley, Esq.
of the
Nevada Disability Advocacy & Law Center

March 10, 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).

NDALC's testimony today is directed towards two issues addressed by SB 179; (1) the time frame in which individuals alleged to be a "mentally ill person" may be detained before a facility must either release them or file a petition for their civil commitment and (2) the procedure and standard by which mentally ill pretrial detainees may be medicated against their will.

1. Time Limitation on Emergency Detentions of "Mentally Ill Persons"

That no person may be deprived of life, liberty or property without due process of law is a principle which is fundamental to our system of jurisprudence and the very concept of being an American. It is well settled that civil confinement constitutes "a massive curtailment of liberty." Vitek v. Jones, 445 U.S. 480, 491 (1980) (quoting Humphrey v. Cady, 405 U.S. 504, 509 (1972). As a result, persons subject to detention are entitled to procedural due process[1].

As a general rule, the Due Process Clause requires that "an individual be given the opportunity for a hearing ***before*** he is deprived of any significant [liberty] interest." See Boddie v. Connecticut, 401 U.S. 371, 379 (1971). However, the law dispenses with the pre-deprivation hearing when justified by an emergency situation.

In Nevada, we have made provisions for the ***emergency*** detention and admission, without a prior hearing, of an individual who is alleged to be a "mentally ill person" as that term is defined in NRS 433A.115. This is essentially a person who presents a clear and present danger of harm to himself or others as a result of a mental illness.

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[1] As the Supreme Court has recognized, "[t]here can be no doubt that involuntary commitment to a mental hospital, like involuntary confinement of an individual for any reason, is a deprivation of liberty which the State cannot accomplish without due process of law." O'Connor v. Donaldson, 422 U.S. 563, 580 (1975).

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State law currently provides that anyone alleged to be a mentally ill person may be "be detained in a public or private mental health facility or hospital under an emergency admission for evaluation, observation, and treatment." See NRS 433A.150(1). However, a person so detained must be released ***within 72 hours*** unless a petition for his or her involuntary court-ordered admission is filed with the court. NRS 433A.150(2).

The 72 hour period, then, is a critical limitation on the amount of time an allegedly mentally ill person may lawfully be held without being accorded due process. The Legislature deemed 72 hours as a sufficient period of time in which to make the determination whether further detention of a person is necessary.

SB 179 seeks to "clarify" the law so that the 72 hour time period is not deemed to begin until a person is actually "***admitted***" to a mental health facility or hospital. This would be of little import if it were not for the fact that, in Southern Nevada, it can take several days before an allegedly mentally ill person is admitted anywhere. NDALC submits that the interpretation urged by SB 179 makes the 72 hour time limitation largely meaningless.

As you are all likely aware by now, before anyone is admitted to a mental health facility, he must first be medically screened. Because the state's mental health facility does not provide medical screenings, those who must rely on being treated there, generally the poor and/or indigent, must be screened at one of the area's emergency rooms.

This would typically be a relatively prompt process, as the current law clearly contemplates, if it were not for the fact that the number of individuals who are being detained for emergency admission to the state's mental health facility greatly exceeds that facility's capacity to accept more individuals. As a result, individuals alleged to be mentally ill and awaiting transport to the state facility can languish in area emergency rooms for days on end. It is NDALC's understanding that these individuals are not actually "admitted" to those medical facilities for the purpose of the 72 hour time limitation.

I understand that there are efforts underway to attempt to alleviate this situation and, given the scope of SB 179, it probably suffices to acknowledge the problems with which we are faced rather than delving into their underlying causes. Nevertheless, while this "crisis," as it can fairly be termed, may diminish, our mental health laws must change to reflect the realities of the conduct they are designed to govern.

The position that the 72 hour time period does not begin until a person is "admitted" to a mental health facility only serves to sanction, at least under state law, the practice of detaining individuals for days at a time before any of the procedures designed to afford them due process are actually triggered. Because there exist no time limitations with respect to when a person must be "admitted" to a facility the amount of time an individual may remain detained prior to his admission to a facility is limitless. State law would, therefore, seem to allow for indefinite confinement of a mentally ill person, or others simply alleged to be such, so long as no admission has occurred.

Such an interpretation lends itself to the absurd conclusion that the amount of time a person is detained before being admitted to a facility is less meaningful than the amount of time he is confined after his admission. Certainly this initial period is no less a massive curtailment of liberty than any subsequent period and is thus subject to the same constitutional concerns and safeguards. An individual's Constitutional rights are not suspended until the state can simply get around to admitting him to its facility nor is his confinement less meaningful simply because he is mentally ill.

In passing on this issue, I ask this Committee to be aware of the devastating impact these emergency detentions can have on an individual's life. Aside from the deprivation of liberty, these detentions can effect individuals' employment and familial relations as "even a short detention in a mental facility may have long lasting effects on the individuals ability to function in the outside world due to the stigma attached to mental illness." See Lessard v. Schmidt, 349 F.Supp. 1078, 1091 (E.D.Wis.1972).

CONCLUSION

While clarification normally implies an effort to find the law's true purpose and meaning, SB 179 is nothing more than an apparent attempt to legitimize the current illegitimate practice of allowing individuals to remain confined and untreated without being afforded any due process.

NDALC, therefore, submits that the 72 hour time frame referenced in NRS 433A.150 should commence as soon as an individual is deprived of his or her freedom rather than when the state determines that the individual has been "admitted" to a facility. The right to due process should be triggered by the deprivation of liberty, not by the state's ability to timely meet the mental health needs of its populace.

As the state only has an interest in detaining those who are mentally ill and dangerous, it should ensure that all individuals detained based upon an allegation that they are mentally ill persons are evaluated by mental health professionals as soon as possible otherwise there is an intolerably high risk that individuals who do not meet the state's strict statutory definition of a mentally ill person will be detained. [2] This obligation could be fulfilled, in part, by the state's mobile

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[2] "[T]he function of legal process is to minimize the risk of erroneous decisions." Addington, 441 U.S. 418, 425. It must be emphasized that not every individual for whom an emergency admission is applied meets the criteria for that admission. This is, in part, due to the nature of mental illness and the fact that emergency detentions are not necessarily initiated by trained mental health professionals. Any one of a number of individuals may make an application for the emergency admission of a mentally ill person and, *without a warrant*, take an allegedly mentally ill person into custody and transport that person to a hospital. These include law enforcement agents, social works, marriage and family therapists, registered nurses and physicians. The law gives a great deal of deference to these individuals' on-site assessment that there is probable cause to believe that the person is a mentally ill person and that, because of that illness, is likely to harm himself or others if allowed his liberty. While this assessment of probable cause is supposed to arise as a result of personal observation, police in particular, do not always do this.

response team, which would assess the individual prior to his actual "admission" to the state's mental health facility and make a determination whether the individual should be released or whether a petition for civil commitment should be filed. Of course this assumes that the requested funding for such a team is provided.

In criminal cases, the state's ability to deprive an individual of his or her liberty is tempered with stringent procedural safeguards. We would not dispense with such protections in that context and should not do so here simply because it is the mentally ill we are discussing.

Ultimately it is the state that has the burden of justifying the deprivation of a protected liberty interest by determining that good cause exists for the deprivation. Suzuki v. Yuen, 617 F.2d 173, 176-78 (9th Cir. 1980). The state, through the district attorney's office, is currently responsible for presenting evidence in support of the involuntary court-ordered admission of individuals at civil commitment hearings and should, likewise, be responsible for ensuring that the petitions for these hearings are filed in a timely manner.

In closing, I believe that most of you would agree that our State's mental health delivery system is simply not meeting the needs of its populace. However, NDALC asks this Committee not to allow this to serve as an excuse to simply dispense with individuals' constitutional rights until this problem is remedied.

2. The Involuntary Administration of Medication to Mentally Ill Pretrial Detainees

Senate Bill 179 also includes proposed changes to N.R.S. Chapter 178 which governs procedures relating to criminal defendants subject to evaluation and treatment for competency to stand trial. NDALC's comments are limited to the absence of procedural protections for pretrial detainees subject to proceedings for the involuntary administration of medication under this chapter.

Although these comments are limited to the absence of procedural due process protections, this committee should be aware that the United States Supreme Court, in the case *Sell v. United States*, is currently considering the question of whether or not the government has the power to involuntarily medicate a pretrial defendant solely to render him competent to stand trial for a non-violent offence. The United States Supreme Court decision in the *Sell* case could impact the proposed change in SB 179 in that it would allow for the administration of medication "if appropriate for treatment to competency" without reference to the nature of the offence. N.R.S. 178.425 (1).

SB 179 proposes amendment to N.R.S. 178.415 which would allow for introduction of evidence related to the "possibility of ordering the involuntary administration of medication." There is no proposed language in SB 179 which articulates the right of the defendant to be present and testify at the hearing described in 178.415.

Similarly, the proposed amendment to N.R.S. 178.425 allows for the court to order the involuntary administration of medication but does not articulate the right of the pretrial defendant to be present, testify or cross-examine witnesses prior to issuance of such an order.

Lakes Crossing Center for the Mentally Disordered Offender (LCC) is the only facility in the state of Nevada operated by the Division of Mental Health and Developmental Services (hereinafter "Division") that exists for the purpose of detention and treatment of mentally ill pretrial detainees. Currently, motions are filed on behalf of the state seeking a court order to allow for the involuntary administration of medication for pretrial defendants detained at LCC. Most if not all LCC detainees are not permitted to appear, testify or cross examine witnesses at any hearing on the state's motion to allow for the involuntarily medication of the pretrial detainee.

NDALC contends the current process is constitutionally deficient. In *Washington v. Harper*, 110 S. Ct. 1028 (1990), the United States Supreme Court found that procedures which allowed a convicted prisoner notice, the right to be present at an adversary hearing, and the right to present and cross-examine witnesses at a hearing set to consider whether or not to allow for involuntary administration of medication, satisfied due process. No such protections currently exist in N.R.S. 178 or are otherwise proposed in SB 179.

NDALC requests that SB 179 be amended to include language which articulates a defendant's right to appear, testify, and cross-examine witnesses at any proceeding which considers the involuntary administration of medication.

SENATE BILL 254 (REQUESTED BY SENATOR CEGAVSKE) — HEARING 3/19/03

Authorizes parents of certain pupils to choose which public school pupils will attend. (BDR 34-891)

There were no amendments proposed for this bill.