

# Preparing a Legal Case Using NRS 458A

*Presented by:*

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# Preparing for “The Ask”

- ◎ 1. Assessment and Report
  - a. Qualified mental health professional under NRS 458A.057
  - b. Identification as a “problem gambler”
  - c. Connection to underlying offense
  - d. Likelihood of rehabilitation
  - e. Good candidate

# Preparing for “The Ask”

## ◎ 2. Indicia

- a. “Coin In/Coin Out” Reports
- b. Win/loss statements
- c. ATM receipts (location, frequency, time)
- d. Cash advance records (casino cage/payday)
- e. Overdue notices/late fees
- f. Large cash movement (IRA, retirement)
- g. Pawn receipts
- h. Frequent W-2G
- i. Affidavits from friends, family, gaming personnel

# Reasonable Belief of the Court

- ⦿ 1. Low threshold
- ⦿ 2. Persistent & recurrent maladaptive behavior (NRS 641C.110)
- ⦿ 3. Anticipated “related” offenses
  - a. Theft, Embezzlement, Conversion, Forgery
  - b. Any other property or financial crimes
- ⦿ 4. Limited input from the State (if any)

# The Hearing:

## What Comes In / What Stays Out

- ⦿ 1. What is the standard?
- ⦿ 2. Is it a presumption? (NRS 47.180)
  - a. Preponderance of evidence
  - b. Clear and convincing
- ⦿ 3. Is it a mere abuse of discretion?

# The Hearing:

## What Comes In / What Stays Out

- ◎ 1. General purpose of the hearing
  - a. Furtherance or result
  - b. Advisability of permitting treatment
  - c. (Likelihood of rehabilitation) – NRS 458A.230
  - d. (Good candidate for treatment) – NRS 458A.230

# The Hearing:

## What Comes In / What Stays Out

- ◎ 2. The State's presentation of evidence
  - a. Limited to furtherance and advisability
  - b. Evidentiary limitations (hearsay, impalpable)
  - c. The role of victim impact
  - d. The effort to debunk Defense evidence
    - i. Player's cards
    - ii. Supermarket gambling, etc.
    - iii. Financial records
    - iv. Affidavits (backdoor victim impact)

# The Role of Restitution

- ⦿ 1. Agree to pay vs. Ability to pay
- ⦿ 2. Amendment rejected by Legislature
- ⦿ 3. No requirement to pay fees
- ⦿ 4. Burke v. State, 96 Nev. 449 (1980)



# Convincing the Court

- ⦿ 1. Offer to Elect vs. Conditions of Diversion vs. Supervisory Powers
- ⦿ 2. Getting the court to articulate reasons for denial if it looks bad
- ⦿ 3. Cassenelli v. State, 131 Nev. Adv. Op. 62 (2015)
  - a. Humility
  - b. Likelihood of rehabilitation
  - c. Type of offense
  - d. Concerns from the Dissent
- ⦿ 4. Supplemental report? NRS 458A.230(1)