

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