

SENATE BILL NO. 9—COMMITTEE ON JUDICIARY

(ON BEHALF OF CLARK COUNTY)

PREFILED NOVEMBER 15, 2016

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to presentence and general investigations and reports. (BDR 14-437)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to criminal procedure; authorizing a county to enter into an agreement with the Division of Parole and Probation of the Department of Public Safety regarding the preparation of presentence or general investigations and reports; authorizing a county to assume the duty of preparing presentence or general investigations and reports from the Division; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law requires a presentence investigation and report to be prepared by
2 the Division of Parole and Probation of the Department of Public Safety before
3 sentencing a person convicted of committing a category A, B, C or D felony or,
4 when requested by the court, a gross misdemeanor. (NRS 176.135) Similarly,
5 existing law requires a general investigation and report to be prepared by the
6 Division before sentencing a person convicted of committing one or more category
7 E felonies. (NRS 176.151) Under existing law, these investigations and reports
8 provide a sentencing judge with certain relevant information, including, without
9 limitation: (1) the criminal record, financial condition and background of the
10 defendant; (2) the effect of the offense on the victim; and (3) a recommended
11 term of imprisonment or fine, or both. (NRS 176.145) Existing law requires a
12 county to pay to the Division 70 percent of the cost of the investigation and report.
13 (NRS 176.161)

14 **Section 1** of this bill authorizes a county to enter into an agreement with the
15 Division to pay all or a portion of the total cost of the county’s presentence or
16 general investigations and reports. **Section 1** also requires that such an agreement
17 include, without limitation: (1) a requirement that the Division use the money
18 provided by a county for the expenses related to the presentence or general



19 investigations and reports prepared for the county; (2) a specific time by which
20 such investigations and reports must be completed by the Division; and (3) a
21 requirement for an annual report to be prepared by the Division which identifies the
22 specific manner in which the money provided by the county was used. **Section 1**
23 further authorizes a county, at its own expense, to assume the duty of preparing a
24 presentence or general investigation and report from the Division. **Section 1** also
25 requires such a duty assumed by a county to be carried out by employees of that
26 county.

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

1 **Section 1.** NRS 176.161 is hereby amended to read as follows:
2 176.161 1. ~~Seventy~~ *Except as otherwise provided in this*
3 *section, 70* percent of the expense of any presentence or general
4 investigation and report made by the Division pursuant to NRS
5 176.135 or 176.151, other than the expense of a psychosexual
6 evaluation conducted pursuant to NRS 176.139, must be paid by the
7 county in which the indictment was found or the information filed.
8 2. Each county shall pay to the Division all expenses required
9 pursuant to subsection 1 according to a schedule established by the
10 Division, which must require payment on at least a quarterly basis.
11 3. *A county may enter into an agreement with the Division in*
12 *accordance with the provisions of NRS 277.080 to 277.180,*
13 *inclusive, whereby:*
14 (a) *The county agrees to pay all or a portion of the total cost of*
15 *the presentence or general investigations and reports made by the*
16 *Division pursuant to NRS 176.135 or 176.151, other than the*
17 *expense of a psychosexual evaluation conducted pursuant to NRS*
18 *176.139; and*
19 (b) *The Division agrees to use the money provided by the*
20 *county pursuant to paragraph (a) only for expenses related to the*
21 *preparation of presentence or general investigations and reports*
22 *prepared for the county and to complete such an investigation and*
23 *report for the county within a specified amount of time set forth in*
24 *the agreement. The agreement must require the Division to*
25 *provide the county with an annual report which identifies the*
26 *specific manner in which the money that was provided by the*
27 *county pursuant to paragraph (a) was used.*
28 4. *A county may notify the Division that the county will*
29 *assume the duties of the Division set forth in NRS 176.135 or*
30 *176.151, as applicable, with respect to a presentence or general*
31 *investigation and report required to be made by the Division*
32 *pursuant to NRS 176.135 or 176.151 and that any expenses related*
33 *thereto will be paid by the county, except the expense of a*
34 *psychosexual evaluation conducted pursuant to NRS 176.139*



1 *which remains the responsibility of the Division, if applicable. If*
2 *so notified, notwithstanding any provision of law to the contrary,*
3 *the Division is not responsible for making such an investigation*
4 *and report and the county must:*

5 *(a) Make the investigation and report; and*

6 *(b) Carry out any responsibilities of the Division set forth in*
7 *NRS 176.133 to 176.161, inclusive, in the manner provided in*
8 *those sections for the Division, except the psychosexual evaluation*
9 *conducted pursuant to NRS 176.139, if applicable.*

10 *5. An assumption of duties by a county pursuant to*
11 *subsection 4 must be carried out by employees of the county.*

12 *6. An agreement entered into by a county and the Division*
13 *pursuant to subsection 3 or an assumption of duties by a county*
14 *pursuant to subsection 4 are exempt from any regulations adopted*
15 *by the Committee on Local Government Finance pursuant to*
16 *NRS 353.203.*

17 **Sec. 2.** NRS 176A.100 is hereby amended to read as follows:

18 176A.100 1. Except as otherwise provided in this section and
19 NRS 176A.110 and 176A.120, if a person is found guilty in a
20 district court upon verdict or plea of:

21 (a) Murder of the first or second degree, kidnapping in the first
22 degree, sexual assault, attempted sexual assault of a child who is
23 less than 16 years of age, lewdness with a child pursuant to NRS
24 201.230, an offense for which the suspension of sentence or the
25 granting of probation is expressly forbidden, or if the person is
26 found to be a habitual criminal pursuant to NRS 207.010, a
27 habitually fraudulent felon pursuant to NRS 207.014 or a habitual
28 felon pursuant to NRS 207.012, the court shall not suspend the
29 execution of the sentence imposed or grant probation to the person.

30 (b) A category E felony, except as otherwise provided in this
31 paragraph, the court shall suspend the execution of the sentence
32 imposed and grant probation to the person. The court may, as it
33 deems advisable, decide not to suspend the execution of the
34 sentence imposed and grant probation to the person if, at the time of
35 sentencing, it is established that the person:

36 (1) Was serving a term of probation or was on parole at the
37 time the crime was committed, whether in this State or elsewhere,
38 for a felony conviction;

39 (2) Had previously had the person's probation or parole
40 revoked, whether in this State or elsewhere, for a felony conviction;

41 (3) Had previously been assigned to a program of treatment
42 and rehabilitation pursuant to NRS 453.580 and failed to
43 successfully complete that program; or



1 (4) Had previously been two times convicted, whether in this
2 State or elsewhere, of a crime that under the laws of the situs of the
3 crime or of this State would amount to a felony.

4 ➔ If the person denies the existence of a previous conviction, the
5 court shall determine the issue of the previous conviction after
6 hearing all relevant evidence presented on the issue by the
7 prosecution and the person. At such a hearing, the person may not
8 challenge the validity of a previous conviction. For the purposes of
9 this paragraph, a certified copy of a felony conviction is prima facie
10 evidence of conviction of a prior felony.

11 (c) Another felony, a gross misdemeanor or a misdemeanor, the
12 court may suspend the execution of the sentence imposed and grant
13 probation as the court deems advisable.

14 2. In determining whether to grant probation to a person, the
15 court shall not consider whether the person has the financial ability
16 to participate in a program of probation secured by a surety bond
17 established pursuant to NRS 176A.300 to 176A.370, inclusive.

18 3. The court shall consider the standards adopted pursuant to
19 NRS 213.10988 and the recommendation of the Chief Parole and
20 Probation Officer, if any, in determining whether to grant probation
21 to a person.

22 4. If the court determines that a person is otherwise eligible for
23 probation but requires more supervision than would normally be
24 provided to a person granted probation, the court may, in lieu of
25 sentencing the person to a term of imprisonment, grant probation
26 pursuant to the Program of Intensive Supervision established
27 pursuant to NRS 176A.440.

28 5. Except as otherwise provided in this subsection, if a person
29 is convicted of a felony and the Division is required to make a
30 presentence investigation and report to the court pursuant to NRS
31 176.135, the court shall not grant probation to the person until the
32 court receives the report of the presentence investigation from the
33 Chief Parole and Probation Officer **or the county if the county**
34 **assumes the duty of the Division pursuant to NRS 176.161, as**
35 **applicable.** The Chief Parole and Probation Officer **or the county,**
36 **as applicable,** shall submit the report of the presentence
37 investigation to the court not later than 45 days after receiving a
38 request for a presentence investigation from the county clerk. If the
39 report of the presentence investigation is not submitted by the Chief
40 Parole and Probation Officer **or the county, as applicable,** within 45
41 days, the court may grant probation without the report.

42 6. If the court determines that a person is otherwise eligible for
43 probation, the court shall, when determining the conditions of that
44 probation, consider the imposition of such conditions as would
45 facilitate timely payments by the person of an obligation, if any, for



1 the support of a child and the payment of any such obligation which
2 is in arrears.

3 **Sec. 3.** NRS 62H.030 is hereby amended to read as follows:

4 62H.030 1. The juvenile court shall make and keep records
5 of all cases brought before the juvenile court.

6 2. Except as otherwise provided in this section and NRS
7 217.110, records of any case brought before the juvenile court may
8 be opened to inspection only by court order to persons who have a
9 legitimate interest in the records.

10 3. The following records and information may be opened to
11 inspection without a court order:

12 (a) Records of traffic violations which are being forwarded to
13 the Department of Motor Vehicles;

14 (b) Records which have not been sealed and which are required
15 by the Division of Parole and Probation for preparation of
16 presentence investigations and reports pursuant to NRS 176.135 or
17 general investigations and reports pursuant to NRS 176.151 ~~†~~ *or*
18 *which are required by a county that assumes the duty of the*
19 *Division of Parole and Probation pursuant to NRS 176.161;*

20 (c) Records which have not been sealed and which are to be
21 used, pursuant to chapter 179D of NRS, by:

22 (1) The Central Repository;

23 (2) The Division of Parole and Probation; or

24 (3) A person who is conducting an assessment of the risk of
25 recidivism of an adult or juvenile sex offender;

26 (d) Information maintained in the standardized system
27 established pursuant to NRS 62H.200; and

28 (e) Information that must be collected by the Division of Child
29 and Family Services pursuant to NRS 62H.220.

30 4. The clerk of the court shall prepare and cause to be printed
31 forms for social and legal records and other papers as may be
32 required.

33 **Sec. 4.** NRS 432B.290 is hereby amended to read as follows:

34 432B.290 1. Information maintained by an agency which
35 provides child welfare services must be maintained by the agency
36 which provides child welfare services as required by federal law as a
37 condition of the allocation of federal money to this State.

38 2. Except as otherwise provided in this section and NRS
39 432B.165, 432B.175 and 432B.513, information maintained by an
40 agency which provides child welfare services may, at the discretion
41 of the agency which provides child welfare services, be made
42 available only to:

43 (a) A physician, if the physician has before him or her a child
44 who the physician has reasonable cause to believe has been abused
45 or neglected;



1 (b) A person authorized to place a child in protective custody, if
2 the person has before him or her a child who the person has
3 reasonable cause to believe has been abused or neglected and the
4 person requires the information to determine whether to place the
5 child in protective custody;

6 (c) An agency, including, without limitation, an agency in
7 another jurisdiction, responsible for or authorized to undertake the
8 care, treatment or supervision of:

9 (1) The child; or

10 (2) The person responsible for the welfare of the child;

11 (d) A district attorney or other law enforcement officer who
12 requires the information in connection with an investigation or
13 prosecution of the abuse or neglect of a child;

14 (e) Except as otherwise provided in paragraph (f), a court other
15 than a juvenile court, for in camera inspection only, unless the court
16 determines that public disclosure of the information is necessary for
17 the determination of an issue before it;

18 (f) A court as defined in NRS 159.015 to determine whether a
19 guardian or successor guardian of a child should be appointed
20 pursuant to chapter 159 of NRS or NRS 432B.466 to 432B.468,
21 inclusive;

22 (g) A person engaged in bona fide research or an audit, but
23 information identifying the subjects of a report must not be made
24 available to the person;

25 (h) The attorney and the guardian ad litem of the child, if the
26 information is reasonably necessary to promote the safety,
27 permanency and well-being of the child;

28 (i) A person who files or intends to file a petition for the
29 appointment of a guardian or successor guardian of a child pursuant
30 to chapter 159 of NRS or NRS 432B.466 to 432B.468, inclusive, if
31 the identity of the person responsible for reporting the abuse or
32 neglect of the child to a public agency is kept confidential and the
33 information is reasonably necessary to promote the safety,
34 permanency and well-being of the child;

35 (j) The proposed guardian or proposed successor guardian of a
36 child over whom a guardianship is sought pursuant to chapter 159 of
37 NRS or NRS 432B.466 to 432B.468, inclusive, if the identity of the
38 person responsible for reporting the abuse or neglect of the child to
39 a public agency is kept confidential and the information is
40 reasonably necessary to promote the safety, permanency and well-
41 being of the child;

42 (k) A grand jury upon its determination that access to these
43 records and the information is necessary in the conduct of its official
44 business;



1 (l) A federal, state or local governmental entity, or an agency of
2 such an entity, or a juvenile court, that needs access to the
3 information to carry out its legal responsibilities to protect children
4 from abuse and neglect;

5 (m) A person or an organization that has entered into a written
6 agreement with an agency which provides child welfare services to
7 provide assessments or services and that has been trained to make
8 such assessments or provide such services;

9 (n) A team organized pursuant to NRS 432B.350 for the
10 protection of a child;

11 (o) A team organized pursuant to NRS 432B.405 to review the
12 death of a child;

13 (p) A parent or legal guardian of the child and an attorney of a
14 parent or guardian of the child, including, without limitation, the
15 parent or guardian of a child over whom a guardianship is sought
16 pursuant to chapter 159 of NRS or NRS 432B.466 to 432B.468,
17 inclusive, if the identity of the person responsible for reporting the
18 abuse or neglect of the child to a public agency is kept confidential
19 and the information is reasonably necessary to promote the safety,
20 permanency and well-being of the child and is limited to
21 information concerning that parent or guardian;

22 (q) The child over whom a guardianship is sought pursuant to
23 chapter 159 of NRS or NRS 432B.466 to 432B.468, inclusive, if:

24 (1) The child is 14 years of age or older; and

25 (2) The identity of the person responsible for reporting the
26 abuse or neglect of the child to a public agency is kept confidential
27 and the information is reasonably necessary to promote the safety,
28 permanency and well-being of the child;

29 (r) The persons or agent of the persons who are the subject of a
30 report, if the information is reasonably necessary to promote the
31 safety, permanency and well-being of the child and is limited to
32 information concerning those persons;

33 (s) An agency that is authorized by law to license foster homes
34 or facilities for children or to investigate persons applying for
35 approval to adopt a child, if the agency has before it an application
36 for that license or is investigating an applicant to adopt a child;

37 (t) Upon written consent of the parent, any officer of this State
38 or a city or county thereof or Legislator authorized by the agency or
39 department having jurisdiction or by the Legislature, acting within
40 its jurisdiction, to investigate the activities or programs of an agency
41 which provides child welfare services if:

42 (1) The identity of the person making the report is kept
43 confidential; and



1 (2) The officer, Legislator or a member of the family of the
2 officer or Legislator is not the person alleged to have committed the
3 abuse or neglect;

4 (u) The Division of Parole and Probation of the Department of
5 Public Safety , *or a county if the county makes an investigation*
6 *and report pursuant to NRS 176.161, as applicable*, for use
7 pursuant to NRS 176.135 in making a presentence investigation and
8 report to the district court or pursuant to NRS 176.151 in making a
9 general investigation and report;

10 (v) Any person who is required pursuant to NRS 432B.220 to
11 make a report to an agency which provides child welfare services or
12 to a law enforcement agency;

13 (w) A local advisory board to expedite proceedings for the
14 placement of children created pursuant to NRS 432B.604;

15 (x) The panel established pursuant to NRS 432B.396 to evaluate
16 agencies which provide child welfare services;

17 (y) An employer in accordance with subsection 3 of
18 NRS 432.100;

19 (z) A team organized or sponsored pursuant to NRS 217.475 or
20 228.495 to review the death of the victim of a crime that constitutes
21 domestic violence; or

22 (aa) The Committee to Review Suicide Fatalities created by
23 NRS 439.5104.

24 3. An agency investigating a report of the abuse or neglect of a
25 child shall, upon request, provide to a person named in the report as
26 allegedly causing the abuse or neglect of the child:

27 (a) A copy of:

28 (1) Any statement made in writing to an investigator for the
29 agency by the person named in the report as allegedly causing the
30 abuse or neglect of the child; or

31 (2) Any recording made by the agency of any statement
32 made orally to an investigator for the agency by the person named in
33 the report as allegedly causing the abuse or neglect of the child; or

34 (b) A written summary of the allegations made against the
35 person who is named in the report as allegedly causing the abuse or
36 neglect of the child. The summary must not identify the person
37 responsible for reporting the alleged abuse or neglect or any
38 collateral sources and reporting parties.

39 4. Except as otherwise provided by subsection 6, before
40 releasing any information maintained by an agency which provides
41 child welfare services pursuant to this section, an agency which
42 provides child welfare services shall take whatever precautions it
43 determines are reasonably necessary to protect the identity and
44 safety of any person who reports child abuse or neglect and to
45 protect any other person if the agency which provides child welfare



1 services reasonably believes that disclosure of the information
2 would cause a specific and material harm to an investigation of the
3 alleged abuse or neglect of a child or the life or safety of any person.

4 5. The provisions of this section must not be construed to
5 require an agency which provides child welfare services to disclose
6 information maintained by the agency which provides child welfare
7 services if, after consultation with the attorney who represents the
8 agency, the agency determines that such disclosure would cause a
9 specific and material harm to a criminal investigation.

10 6. A person who is the subject of an unsubstantiated report of
11 child abuse or neglect made pursuant to this chapter and who
12 believes that the report was made in bad faith or with malicious
13 intent may petition a district court to order the agency which
14 provides child welfare services to release information maintained by
15 the agency which provides child welfare services. The petition must
16 specifically set forth the reasons supporting the belief that the report
17 was made in bad faith or with malicious intent. The petitioner shall
18 provide notice to the agency which provides child welfare services
19 so that the agency may participate in the action through its counsel.
20 The district court shall review the information which the petitioner
21 requests to be released and the petitioner shall be allowed to present
22 evidence in support of the petition. If the court determines that there
23 is a reasonable question of fact as to whether the report was made in
24 bad faith or with malicious intent and that the disclosure of the
25 identity of the person who made the report would not be likely to
26 endanger the life or safety of the person who made the report, the
27 court shall provide a copy of the information to the petitioner and
28 the original information is subject to discovery in a subsequent civil
29 action regarding the making of the report.

30 7. If an agency which provides child welfare services receives
31 any information that is deemed confidential by law, the agency
32 which provides child welfare services shall maintain the
33 confidentiality of the information as prescribed by applicable law.

34 8. Pursuant to this section, a person may authorize the release
35 of information maintained by an agency which provides child
36 welfare services about himself or herself, but may not waive the
37 confidentiality of such information concerning any other person.

38 9. An agency which provides child welfare services may
39 provide a summary of the outcome of an investigation of the alleged
40 abuse or neglect of a child to the person who reported the suspected
41 abuse or neglect.

42 10. Except as otherwise provided in this subsection, any person
43 who is provided with information maintained by an agency which
44 provides child welfare services and who further disseminates the



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1 information or makes the information public is guilty of a gross
2 misdemeanor. This subsection does not apply to:

3 (a) A district attorney or other law enforcement officer who uses
4 the information solely for the purpose of initiating legal
5 proceedings;

6 (b) An employee of the Division of Parole and Probation of the
7 Department of Public Safety , *or an employee of a county if the*
8 *county has assumed the duty of the Division of Parole and*
9 *Probation pursuant to NRS 176.161, as applicable,* making a
10 presentence investigation and report to the district court pursuant to
11 NRS 176.135 or making a general investigation and report pursuant
12 to NRS 176.151; or

13 (c) An employee of a juvenile justice agency who provides the
14 information to the juvenile court.

15 11. An agency which provides child welfare services may
16 charge a fee for processing costs reasonably necessary to prepare
17 information maintained by the agency which provides child welfare
18 services for release pursuant to this section.

19 12. An agency which provides child welfare services shall
20 adopt rules, policies or regulations to carry out the provisions of this
21 section.

22 13. As used in this section, "juvenile justice agency" means the
23 Youth Parole Bureau or a director of juvenile services.

24 **Sec. 5.** This act becomes effective upon passage and approval.



