

(REPRINTED WITH ADOPTED AMENDMENTS)
SECOND REPRINT **S.B. 548**

SENATE BILL NO. 548—COMMITTEE ON JUDICIARY

(ON BEHALF OF DEPARTMENT OF MOTOR VEHICLES AND
PUBLIC SAFETY—DIRECTORS OFFICE)

MARCH 26, 2001

Referred to Committee on Judiciary

SUMMARY—Makes various changes concerning sex offenders and other persons convicted of crimes. (BDR 14-512)

FISCAL NOTE: Effect on Local Government: Yes.
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.

AN ACT relating to offenders; revising the provisions relating to psychosexual evaluations and the process of certifying whether certain offenders may be granted probation; revising provisions relating to the restoration of civil rights of certain offenders who are honorably discharged from probation; revising the provisions relating to the process of certifying whether certain offenders may be released on parole; and providing other matters properly relating thereto.

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

- 1 **Section 1.** NRS 176.139 is hereby amended to read as follows:
2 176.139 1. If a defendant is convicted of a sexual offense for which
3 the suspension of sentence or the granting of probation is permitted, the
4 division shall arrange for a psychosexual evaluation of the defendant as
5 part of the division's presentence investigation and report to the court.
6 2. The psychosexual evaluation of the defendant must be conducted by
7 a person professionally qualified to conduct psychosexual evaluations.
8 3. The person who conducts the psychosexual evaluation of the
9 defendant must use diagnostic tools that are generally accepted as being
10 within the standard of care for the evaluation of sex offenders, and the
11 psychosexual evaluation of the defendant must include:
12 (a) A comprehensive clinical interview with the defendant; and
13 (b) A review of all investigative reports relating to the defendant's
14 sexual offense and all statements made by victims of that offense.
15 4. The psychosexual evaluation of the defendant may include:
16 (a) A review of records relating to previous criminal offenses
17 committed by the defendant;



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1 (b) A review of records relating to previous evaluations and treatment
2 of the defendant;

3 (c) A review of the defendant's records from school;

4 (d) Interviews with the defendant's parents, the defendant's spouse or
5 other persons who may be significantly involved with the defendant or who
6 may have relevant information relating to the defendant's background; and

7 (e) The use of psychological testing, polygraphic examinations and
8 arousal assessment.

9 5. The person who conducts the psychosexual evaluation of the
10 defendant must be given access to all records of the defendant that are
11 necessary to conduct the evaluation, and the defendant shall be deemed to
12 have waived all rights of confidentiality and all privileges relating to those
13 records for the limited purpose of the evaluation.

14 6. The person who conducts the psychosexual evaluation of the
15 defendant shall ~~prepare~~ :

16 (a) *Prepare* a comprehensive written report of the results of the
17 evaluation ~~and shall provide~~ ;

18 (b) *Include in the report all information that is necessary to carry out*
19 *the provisions of NRS 176A.110; and*

20 (c) *Provide* a copy of ~~that~~ *the* report to the division.

21 7. If a psychosexual evaluation is conducted pursuant to this section,
22 the court shall:

23 (a) Order the defendant, to the extent of his financial ability, to pay for
24 the cost of the psychosexual evaluation; or

25 (b) If the defendant was less than 18 years of age when the sexual
26 offense was committed and the defendant was certified and convicted as an
27 adult, order the parents or guardians of the defendant, to the extent of their
28 financial ability, to pay for the cost of the psychosexual evaluation. For the
29 purposes of this paragraph, the court has jurisdiction over the parents or
30 guardians of the defendant to the extent that is necessary to carry out the
31 provisions of this paragraph.

32 **Sec. 2.** NRS 176.145 is hereby amended to read as follows:

33 176.145 1. The report of any presentence investigation must contain:

34 (a) Any prior criminal record of the defendant;

35 (b) Information concerning the characteristics of the defendant, his
36 financial condition, the circumstances affecting his behavior and the
37 circumstances of his offense that may be helpful in imposing sentence, in
38 granting probation or in the correctional treatment of the defendant;

39 (c) Information concerning the effect that the offense committed by the
40 defendant has had upon the victim, including, without limitation, any
41 physical or psychological harm or financial loss suffered by the victim, to
42 the extent that such information is available from the victim or other
43 sources, but the provisions of this paragraph do not require any particular
44 examination or testing of the victim, and the extent of any investigation or
45 examination is solely at the discretion of the court or the division and the
46 extent of the information to be included in the report is solely at the
47 discretion of the division;



- 1 (d) Information concerning whether the defendant has an obligation for
2 the support of a child, and if so, whether he is in arrears in payment on that
3 obligation;
- 4 (e) Data or information concerning reports and investigations thereof
5 made pursuant to chapter 432B of NRS that relate to the defendant and are
6 made available pursuant to NRS 432B.290;
- 7 (f) The results of the evaluation of the defendant conducted pursuant to
8 NRS 484.3796, if such an evaluation is required pursuant to that section;
- 9 (g) A recommendation of a minimum term and a maximum term of
10 imprisonment or other term of imprisonment authorized by statute, or a
11 fine, or both;
- 12 (h) A recommendation, if the division deems it appropriate, that the
13 defendant undergo a program of regimental discipline pursuant to NRS
14 176A.780;
- 15 (i) ~~1A) If a psychosexual evaluation of the defendant is required~~
16 ~~pursuant to NRS 176.139, a~~ written report of the results of ~~1a) the~~
17 psychosexual evaluation of the defendant ~~1, if such an evaluation is~~
18 ~~required pursuant to NRS 176.139;~~ and *all information that is necessary*
19 *to carry out the provisions of NRS 176A.110; and*
- 20 (j) Such other information as may be required by the court.
- 21 2. The division may include in the report any additional information
22 that it believes may be helpful in imposing a sentence, in granting
23 probation or in correctional treatment.
- 24 **Sec. 3.** NRS 176A.110 is hereby amended to read as follows:
- 25 176A.110 1. The court shall not grant probation to or suspend the
26 sentence of a person convicted of an offense listed in subsection 3 unless :
- 27 (a) *If a psychosexual evaluation of the person is required pursuant to*
28 *NRS 176.139, the person who conducts the psychosexual evaluation*
29 *certifies in the report prepared pursuant to NRS 176.139 that the person*
30 *convicted of the offense does not represent a high risk to reoffend based*
31 *upon a currently accepted standard of assessment; or*
- 32 (b) *If a psychosexual evaluation of the person is not required*
33 *pursuant to NRS 176.139, a psychologist licensed to practice in this state*
34 *who is trained to conduct psychosexual evaluations or a psychiatrist*
35 *licensed to practice medicine in this state who is certified by the American*
36 *Board of Psychiatry and Neurology and is trained to conduct*
37 *psychosexual evaluations certifies in a written report to the court that the*
38 *person* ~~is not a menace to the health, safety or morals of others.~~ *convicted*
39 *of the offense does not represent a high risk to reoffend based upon a*
40 *currently accepted standard of assessment.*
- 41 2. This section does not create a right in any person to be certified or *to*
42 continue to be certified. ~~and not~~ *No* person may bring a cause of action
43 against the state, its political subdivisions, *or the* agencies, boards,
44 commissions, departments, officers or employees *of the state or its*
45 *political subdivisions* for not certifying *a person pursuant to this section*
46 or *for* refusing to consider a person for certification pursuant to this
47 section.
- 48 3. The provisions of this section apply to a person convicted of any of
49 the following offenses:



- 1 (a) Attempted sexual assault of a person who is 16 years of age or older
2 pursuant to NRS 200.366.
3 (b) Statutory sexual seduction pursuant to NRS 200.368.
4 (c) Battery with intent to commit sexual assault pursuant to NRS
5 200.400.
6 (d) Abuse or neglect of a child pursuant to NRS 200.508.
7 (e) An offense involving pornography and a minor pursuant to NRS
8 200.710 to 200.730, inclusive.
9 (f) Incest pursuant to NRS 201.180.
10 (g) Solicitation of a minor to engage in acts constituting the infamous
11 crime against nature pursuant to NRS 201.195.
12 (h) Open or gross lewdness pursuant to NRS 201.210.
13 (i) Indecent or obscene exposure pursuant to NRS 201.220.
14 (j) Lewdness with a child pursuant to NRS 201.230.
15 (k) Sexual penetration of a dead human body pursuant to NRS 201.450.
16 (l) A violation of NRS 207.180.
17 (m) An attempt to commit an offense listed in paragraphs (b) to (l),
18 inclusive.
19 (n) Coercion or attempted coercion that is determined to be sexually
20 motivated pursuant to NRS 207.193.
21 **Sec. 4.** NRS 176A.850 is hereby amended to read as follows:
22 176A.850 1. A person who:
23 (a) Has fulfilled the conditions of his probation for the entire period
24 thereof;
25 (b) Is recommended for earlier discharge by the division; or
26 (c) Has demonstrated his fitness for honorable discharge but because of
27 economic hardship, verified by a parole and probation officer, has been
28 unable to make restitution as ordered by the court,
29 may be granted an honorable discharge from probation by order of the
30 court.
31 2. Any amount of restitution remaining unpaid constitutes a civil
32 liability arising upon the date of discharge.
33 3. A person honorably discharged from probation ~~is~~ :
34 (a) *Is* free from the terms and conditions of his probation ; and
35 (b) *If he meets the requirements of NRS 176A.860*, may apply to the
36 ~~court, in person or by attorney, pursuant to NRS 176A.860, for the~~
37 *division to request a* restoration of his civil rights. ~~He~~ *The person* must
38 be informed of ~~this privilege~~ *the provisions of this section and NRS*
39 *176A.860* in his probation papers.
40 4. A person honorably discharged from probation who has had his civil
41 rights restored by the court:
42 (a) Is exempt from the requirements of chapter 179C of NRS, but is not
43 exempt from the requirements of chapter 179D of NRS.
44 (b) May vote, hold office or serve as a juror.
45 (c) Shall disclose the conviction to a gaming establishment and *to* the
46 state ~~H~~ *and* its agencies, departments, boards, commissions and political
47 subdivisions, if required in an application for employment, license or other
48 permit. As used in this paragraph, "establishment" has the meaning
49 ascribed to it in NRS 463.0148.



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(d) Except as otherwise provided in paragraph (c), need not disclose the conviction to an employer or prospective employer.

5. The prior conviction of a person whose civil rights have been restored or who has been honorably discharged from probation may be used for purposes of impeachment. In any subsequent prosecution of the person who has had his civil rights restored or who has been honorably discharged from probation, the prior conviction may be pleaded and proved if otherwise admissible.

Sec. 5. NRS 176A.860 is hereby amended to read as follows:

176A.860 ~~{A convicted person who}~~

1. If a person is granted an honorable discharge from probation, ~~{who has}~~ **not sooner than 6 months after his honorable discharge, the person may apply to the division to request a restoration of his civil rights if the person:**

(a) Has not previously been restored to his civil rights ~~{, and who is}~~ ; **and**

(b) Has not **been** convicted of any offense greater than a traffic violation ~~{within 6 months after the discharge, may apply}~~ **after his honorable discharge.**

2. If a person applies to the division to request a restoration of his civil rights ~~{The application must be accompanied by}~~ , **the person must submit with his application** a current, certified record of ~~{the applicant's}~~ **his** criminal history received from the central repository for Nevada records of criminal history. If the division determines after an investigation that the ~~{applicant}~~ **person** meets the requirements of this section, ~~{if}~~ **the division** shall petition the court in which the ~~{applicant}~~ **person** was convicted for an order granting the restoration ~~{of his civil rights}~~ . If the division refuses to submit such a petition, the ~~{applicant}~~ **person** may, after notice to the division, directly petition the court for **an order granting the restoration of his civil rights.**

Sec. 6. NRS 213.1214 is hereby amended to read as follows:

213.1214 1. The board shall not release on parole a prisoner convicted of an offense listed in subsection 5 unless a panel consisting of:

(a) The administrator of the division of mental health and developmental services of the department of human resources or his designee;

(b) The director of the department of prisons or his designee; and

(c) A psychologist licensed to practice in this state or a psychiatrist licensed to practice medicine in this state, certifies that the prisoner was under observation while confined in an institution of the department of prisons and ~~{is not a menace to the health, safety or morals of others}~~ **does not represent a high risk to reoffend based upon a currently accepted standard of assessment.**

2. A prisoner who has been certified pursuant to subsection 1 and who returns for any reason to the custody of the department of prisons may not be paroled unless a panel recertifies him in the manner set forth in subsection 1.

3. The panel may revoke the certification of a prisoner certified pursuant to subsection 1 at any time.



1 4. This section does not create a right in any prisoner to be certified or
2 *to* continue to be certified. No prisoner may bring a cause of action against
3 the state, its political subdivisions, *or the* agencies, boards, commissions,
4 departments, officers or employees *of the state or its political subdivisions*
5 for not certifying *a prisoner pursuant to this section* or *for* refusing to
6 place a prisoner before a panel for certification pursuant to this section.

7 5. The provisions of this section apply to a prisoner convicted of any
8 of the following offenses:

- 9 (a) Sexual assault pursuant to NRS 200.366.
10 (b) Statutory sexual seduction pursuant to NRS 200.368.
11 (c) Battery with intent to commit sexual assault pursuant to
12 NRS 200.400.
13 (d) Abuse or neglect of a child pursuant to NRS 200.508.
14 (e) An offense involving pornography and a minor pursuant to
15 NRS 200.710 to 200.730, inclusive.
16 (f) Incest pursuant to NRS 201.180.
17 (g) Solicitation of a minor to engage in acts constituting the infamous
18 crime against nature pursuant to NRS 201.195.
19 (h) Open or gross lewdness pursuant to NRS 201.210.
20 (i) Indecent or obscene exposure pursuant to NRS 201.220.
21 (j) Lewdness with a child pursuant to NRS 201.230.
22 (k) Sexual penetration of a dead human body pursuant to NRS 201.450.
23 (l) An attempt to commit an offense listed in paragraphs (a) to ~~(j)~~ *(k)*,
24 inclusive.
25 (m) Coercion or attempted coercion that is determined to be sexually
26 motivated pursuant to NRS 207.193.

27 **Sec. 7.** 1. The amendatory provisions of sections 1, 2 and 3 of this
28 act apply to any person who is given a psychosexual evaluation pursuant to
29 NRS 176.139 or who is subject to the provisions of NRS 176A.110 on or
30 after October 1, 2001, whether or not the person was convicted before, on
31 or after October 1, 2001.

32 2. The amendatory provisions of sections 4 and 5 of this act apply to
33 any person who applies to the division of parole and probation of the
34 department of motor vehicles and public safety to request a restoration of
35 his civil rights pursuant to NRS 176A.860 on or after October 1, 2001,
36 whether or not the person was convicted before, on or after October 1,
37 2001.

38 3. The amendatory provisions of section 6 of this act apply to any
39 person who is subject to the provisions of NRS 213.1214 on or after
40 October 1, 2001, whether or not the person was convicted before, on or
41 after October 1, 2001.

