

Amendment No. 161

Assembly Amendment to Assembly Bill No. 279

(BDR 14-518)

Proposed by: Assembly Committee on Corrections, Parole, and Probation**Amends:** Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold dashed underlining* is newly added transitory language.

NCA/BAW



Date: 4/5/2009

A.B. No. 279—Makes various changes relating to certain convicted persons.
(BDR 14-518)



ASSEMBLY BILL NO. 279—ASSEMBLYMEN ANDERSON, HORNE, OHRENSCHALL;
ATKINSON, DENIS, DONDERO LOOP, HAMBRICK, KIHUEN, LESLIE,
MANENDO, MORTENSON, MUNFORD, OCEGUERA, PARNELL, SEGERBLOM,
SMITH AND SPIEGEL

MARCH 10, 2009

Referred to Committee on Corrections, Parole, and Probation

SUMMARY—Makes various changes relating to certain convicted persons.
(BDR 14-518)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
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; requiring the preservation of certain biological evidence under certain circumstances; ~~providing for certain postconviction petitions pertaining to certain biological evidence;~~ authorizing certain persons to be committed to the Department of Corrections for evaluation; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 2 of this bill provides that upon the conviction of a defendant for ~~murder or a felony that is a sexual offense,~~ **a category A or B felony,** an agency of criminal justice that possesses any biological evidence secured in connection with the investigation or prosecution of the defendant is required to preserve such evidence until the expiration of any sentence imposed on the defendant.

~~Existing law authorizes a person under a sentence of death to file a postconviction petition requesting genetic marker analysis of evidence within the possession of the State that resulted in the conviction and sentence of death. (NRS 176.0918) Section 2 of this bill similarly authorizes a person convicted of murder or a felony that is a sexual offense to petition the court to request genetic marker testing for biological evidence in the possession of the State. If the court denies the petition, the petitioner may pay for such genetic marker testing himself.~~

Sections 4, 6, 7, 9 and 10 of this bill ~~reenact statutory provisions that were repealed in 1997 and~~ authorize a court to commit **before sentencing or as a condition of probation,** offenders who have never been sentenced to imprisonment for more than 6 months as adults to the Department of Corrections ~~for an initial evaluation period of 120 days. (Chapter 257, Statutes of Nevada 1997, p. 905)~~ **or a local detention center for certain periods of evaluation. Such evaluations may be completed in conjunction with the Department of Health and Human Services.** Upon conclusion of the evaluation period of such an offender, the Department of Corrections is required to report its results and **the** recommendations **of the Department of Health and Human Services** to the court to assist the court in determining whether to grant probation or impose a sentence of imprisonment.

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

1 **Section 1.** Chapter 176 of NRS is hereby amended by adding thereto the
2 provisions set forth as sections 2, 3 and 4 of this act.

3 **Sec. 2.** *1. Except as otherwise provided in this section, upon the*
4 *conviction of a defendant for ~~murder or a felony that is a sexual offense,~~ a*
5 *category A or B felony, an agency of criminal justice that has in its possession or*
6 *custody any biological evidence secured in connection with the investigation or*
7 *prosecution of the defendant shall preserve such evidence until the expiration of*
8 *any sentence imposed on the defendant.*

9 *2. Biological evidence subject to the requirements of this section may be*
10 *consumed for testing upon ~~the approval of~~ notice to the defendant.*

11 *3. An agency of criminal justice may establish procedures for:*

12 *(a) Retaining probative samples of biological evidence subject to the*
13 *requirements of this section; and*

14 *(b) Disposing of bulk evidence that does not affect the suitability of such*
15 *probative samples for testing.*

16 *4. The provisions of this section must not be construed to restrict or limit an*
17 *agency of criminal justice from establishing procedures for the retention,*
18 *preservation and disposal of biological evidence secured in connection with other*
19 *criminal cases.*

20 *5. As used in this section:*

21 *(a) "Agency of criminal justice" has the meaning ascribed to it in*
22 *NRS 179A.030.*

23 *(b) "Biological evidence" means any semen, blood, saliva, hair, skin tissue or*
24 *other identified biological material removed from physical evidence.*

25 *(c) "Sexual offense" has the meaning ascribed to it in NRS 179D.097.*

26 **Sec. 3.** ~~*1. Except as otherwise provided in subsection 12, a person*~~
27 ~~*convicted of murder or a felony that is a sexual offense who meets the*~~
28 ~~*requirements of this section may file a postconviction petition requesting a*~~
29 ~~*genetic marker analysis of evidence within the possession or custody of the State*~~
30 ~~*which may contain genetic marker information relating to the investigation or*~~
31 ~~*prosecution that resulted in the conviction.*~~

32 ~~*2. Such a petition must be filed with the clerk of the district court for the*~~
33 ~~*county in which the petitioner was convicted on a form prescribed by the*~~
34 ~~*Department of Corrections. A copy of the petition must be served by registered*~~
35 ~~*mail upon:*~~

36 ~~*(a) The Attorney General; and*~~

37 ~~*(b) The district attorney in the county in which the petitioner was convicted.*~~

38 ~~*3. If a petition is filed pursuant to this section, the court shall determine*~~
39 ~~*which person or agency has possession or custody of the evidence and shall*~~
40 ~~*immediately issue an order requiring, during the pendency of the proceeding,*~~
41 ~~*each person or agency in possession or custody of the evidence to:*~~

42 ~~*(a) Preserve all evidence within the possession or custody of the person or*~~
43 ~~*agency that may be subjected to genetic marker analysis pursuant to this section;*~~

44 ~~*(b) Within 30 days, prepare an inventory of all evidence within the*~~
45 ~~*possession or custody of the person or agency that may be subjected to genetic*~~
46 ~~*marker analysis pursuant to this section; and*~~

47 ~~*(c) Within 30 days, submit a copy of the inventory to the petitioner, the*~~
48 ~~*prosecuting attorney and the court.*~~

~~4. Within 30 days after the inventory of all evidence is prepared pursuant to subsection 3, the prosecuting attorney may file a written response to the petition with the court.~~

~~5. The court shall hold a hearing on a petition filed pursuant to this section.~~

~~6. The court shall order a genetic marker analysis if the court finds that:~~

~~(a) A reasonable possibility exists that the petitioner would not have been prosecuted or convicted if exculpatory results had been obtained through a genetic marker analysis of the evidence identified in the petition;~~

~~(b) The evidence to be analyzed exists; and~~

~~(c) The evidence was not previously subjected to:~~

~~(1) A genetic marker analysis involving the petitioner; or~~

~~(2) The method of analysis requested in the petition, and the method of additional analysis may resolve an issue not resolved by a previous analysis.~~

~~7. If the court orders a genetic marker analysis pursuant to subsection 6, the court shall:~~

~~(a) Order the analysis to be conducted promptly under reasonable conditions designed to protect the interest of the State and the petitioner in the integrity of the evidence and the analysis process;~~

~~(b) Select a forensic laboratory to conduct or oversee the analysis. The forensic laboratory selected by the court must:~~

~~(1) Be operated by this State or one of its political subdivisions, when possible; and~~

~~(2) Satisfy the standards for quality assurance that are established for forensic laboratories by the Federal Bureau of Investigation;~~

~~(c) Order the forensic laboratory selected pursuant to paragraph (b) to perform a genetic marker analysis of evidence. The analysis to be performed and evidence to be analyzed must:~~

~~(1) Be specified in the order; and~~

~~(2) Include such analysis, testing and comparison of genetic marker information contained in the evidence and the genetic marker information of the petitioner as the court determines appropriate under the circumstances.~~

~~(d) Order the production of any reports that are prepared by a forensic laboratory in connection with the analysis and any data and notes upon which the report is based.~~

~~(e) Order the preservation of evidence used in a genetic marker analysis performed pursuant to this section for purposes of a subsequent proceeding or analysis, if any.~~

~~8. If the results of a genetic marker analysis performed pursuant to this section are favorable to the petitioner:~~

~~(a) The petitioner may bring a motion for a new trial based on the ground of newly discovered evidence pursuant to NRS 176.515; and~~

~~(b) The restriction on the time for filing the motion set forth in subsection 3 of NRS 176.515 is not applicable.~~

~~9. The court shall dismiss a petition filed pursuant to this section if:~~

~~(a) The requirements for ordering a genetic marker analysis pursuant to this section are not satisfied; or~~

~~(b) The results of a genetic marker analysis performed pursuant to this section are not favorable to the petitioner.~~

~~10. For the purposes of a genetic marker analysis pursuant to this section, a person who files a petition pursuant to this section shall be deemed to consent to the:~~

~~(a) Submission of a biological specimen by him to determine his genetic marker information; and~~

~~(b) Release and use of genetic marker information concerning the petitioner.~~
~~11. The expense of an analysis ordered pursuant to this section is a charge against the Department of Corrections and must be paid upon approval by the Board of State Prison Commissioners as other claims against the State are paid.~~

~~12. If the court dismisses a petition pursuant to subsection 9, the petitioner is entitled to have a genetic marker analysis performed at his own expense.~~

~~13. This section does not apply to a person who has filed a petition pursuant to NRS 176.0918.~~

~~14. The remedy provided by this section is in addition to, is not a substitute for and is not exclusive of any other remedy, right of action or proceeding available to a person convicted of murder or a felony that is a sexual offense.~~

~~15. As used in this section, "sexual offense" has the meaning ascribed to it in NRS 179D.007.~~ (Deleted by amendment.)

Sec. 4. 1. If a defendant has,

~~(a) Been~~ been convicted of a felony for which he may be sentenced to imprisonment ~~for~~ and

~~(b) Never~~ has never been sentenced to imprisonment as an adult for more than 6 months,

~~for~~ the court may, before sentencing the defendant, commit or as a condition of probation:

(a) Commit him to the custody of the Director of the Department of Corrections for a period of evaluation not more than 120 to exceed 30 days; for
~~The period of commitment may be extended once for another period of 60 days at the request of the Department. During the time for which a defendant is committed to the custody of the Director, the Director may assign the defendant to appropriate programs of rehabilitation to facilitate the evaluation of the defendant required under subsection 2.~~

~~2. The Department shall conduct a complete evaluation of the defendant during the time of commitment under this section, and shall inquire into such matters as his previous delinquency or criminal record, social background and capabilities, his mental, emotional and physical health, and the resources and programs available to suit his needs for rehabilitation.~~

(b) Provide for short-term incarceration in the custody of the local detention center or in the custody of the Director of the Department of Corrections for a period not to exceed 30 days; or

(c) Commit the defendant to the custody of the Director of the Department of Corrections for a period not to exceed 180 days as an intermediate sanction where intensive treatment will be provided under the supervision of the Director of the Department of Health and Human Services.

~~3. The Department of Corrections shall return the defendant to the court not later than the end of the period for which he was committed under this section and provide the court with a report of the results of its evaluation, including any recommendations which it believes will be helpful to the court in determining the proper sentence, ordered under subsection 1, together with any evaluation of the defendant by the Department of Corrections and any recommendations of the Department of Health and Human Services.~~

~~4. During any period prescribed under subsection 1, the defendant may undergo:~~

(a) An intake evaluation, including an evaluation of his dental, medical and mental health, provided by the Department of Corrections or the Department of Health and Human Services;

(b) Substance abuse treatment provided by the Department of Health and Human Services;

(c) Mental health treatment provided by the Department of Health and Human Services; and

(d) Job training and placement provided by the Department of Employment, Training and Rehabilitation.

4. Upon receiving the ~~report~~ evaluation and recommendations, the court shall sentence the defendant to:

(a) An appropriate term of imprisonment, the duration of which must be computed from the date of commitment under subsection 1; or

(b) Probation, a condition of which must be that the defendant serve a number of days in the state prison equal to or greater than the number of days spent in confinement under subsection 1, including the day of commitment.

Sec. 5. NRS 176.0911 is hereby amended to read as follows:

176.0911 As used in NRS 176.0911 to 176.0917, inclusive, ~~and sections 2 and 3~~ section 2 of this act, unless the context otherwise requires, "CODIS" means the Combined DNA Indexing System operated by the Federal Bureau of Investigation.

Sec. 6. NRS 176.105 is hereby amended to read as follows:

176.105 1. If a defendant is found guilty and is ~~sentenced~~ :

(a) To be committed to the custody of the Director of the Department of Corrections pursuant to section 4 of this act, the judgment of conviction must set forth the plea, the verdict or finding and the adjudication.

(b) Sentenced as provided by law, the judgment of conviction must set forth:

~~(a)~~ (1) The plea;

~~(b)~~ (2) The verdict or finding;

~~(c)~~ (3) The adjudication and sentence, including the date of the sentence, any term of imprisonment, the amount and terms of any fine, restitution or administrative assessment, a reference to the statute under which the defendant is sentenced and, if necessary to determine eligibility for parole, the applicable provision of the statute; and

~~(d)~~ (4) The exact amount of credit granted for time spent in confinement before conviction, if any.

2. If the defendant is found not guilty, or for any other reason is entitled to be discharged, judgment must be entered accordingly.

3. The judgment must be signed by the judge and entered by the clerk.

Sec. 7. NRS 176.133 is hereby amended to read as follows:

176.133 As used in NRS 176.133 to 176.159, inclusive, and section 4 of this act, unless the context otherwise requires:

1. "Person professionally qualified to conduct psychosexual evaluations" means a person who has received training in conducting psychosexual evaluations and is:

(a) A psychiatrist licensed to practice medicine in this State and certified by the American Board of Psychiatry and Neurology, Inc.;

(b) A psychologist licensed to practice in this State;

(c) A social worker holding a master's degree in social work and licensed in this State as a clinical social worker;

(d) A registered nurse holding a master's degree in the field of psychiatric nursing and licensed to practice professional nursing in this State;

(e) A marriage and family therapist licensed in this State pursuant to chapter 641A of NRS; or

(f) A clinical professional counselor licensed in this State pursuant to chapter 641A of NRS.

2. "Psychosexual evaluation" means an evaluation conducted pursuant to NRS 176.139.

3. "Sexual offense" means:

- (a) Sexual assault pursuant to NRS 200.366;
- (b) Statutory sexual seduction pursuant to NRS 200.368, if punished as a felony;
- (c) Battery with intent to commit sexual assault pursuant to NRS 200.400;
- (d) Abuse of a child pursuant to NRS 200.508, if the abuse involved sexual abuse or sexual exploitation and is punished as a felony;
- (e) An offense involving pornography and a minor pursuant to NRS 200.710 to 200.730, inclusive;
- (f) Incest pursuant to NRS 201.180;
- (g) Solicitation of a minor to engage in acts constituting the infamous crime against nature pursuant to NRS 201.195, if punished as a felony;
- (h) Open or gross lewdness pursuant to NRS 201.210, if punished as a felony;
- (i) Indecent or obscene exposure pursuant to NRS 201.220, if punished as a felony;
- (j) Lewdness with a child pursuant to NRS 201.230;
- (k) Sexual penetration of a dead human body pursuant to NRS 201.450;
- (l) Luring a child or a person with mental illness pursuant to NRS 201.560, if punished as a felony;
- (m) An attempt to commit an offense listed in paragraphs (a) to (l), inclusive, if punished as a felony; or
- (n) An offense that is determined to be sexually motivated pursuant to NRS 175.547 or 207.193.

Sec. 8. ~~[NRS 176.515 is hereby amended to read as follows:~~
~~176.515 1. The court may grant a new trial to a defendant if required as a~~
~~matter of law or on the ground of newly discovered evidence.~~
~~2. If trial was by the court without a jury the court may vacate the judgment if~~
~~entered, take additional testimony and direct the entry of a new judgment.~~
~~3. Except as otherwise provided in NRS 176.0918 [.] and section 3 of this~~
~~act, a motion for a new trial based on the ground of newly discovered evidence may~~
~~be made only within 2 years after the verdict or finding of guilt.~~
~~4. A motion for a new trial based on any other grounds must be made within 7~~
~~days after the verdict or finding of guilt or within such further time as the court may~~
~~fix during the 7-day period.] (Deleted by amendment.)~~

Sec. 9. NRS 209.341 is hereby amended to read as follows:
209.341 The Director shall:

- 1. Establish, with the approval of the Board, a system of initial classification and evaluation for offenders who are *committed to him for evaluation by the Department or* sentenced to imprisonment in the state prison; and
- 2. Assign every person who is *committed to him for evaluation by the Department or* sentenced to imprisonment in the state prison to an appropriate institution or facility of the Department. The assignment must be based on an evaluation of the offender's records, particular needs and requirements for custody.

Sec. 10. NRS 209.385 is hereby amended to read as follows:
209.385 1. Each offender committed to the custody of the department for *evaluation or* imprisonment shall submit to such initial tests as the Director determines appropriate to detect exposure to the human immunodeficiency virus. Each such test must be approved by regulation of the State Board of Health. At the time the offender is committed to custody and after an incident involving the offender:

- (a) The appropriate approved tests must be administered; and
- (b) The offender must receive counseling regarding the virus.

1 2. If the results of an initial test are positive, the offender shall submit to such
2 supplemental tests as the Director determines appropriate. Each such test must be
3 approved for the purpose by regulation of the State Board of Health.

4 3. If the results of a supplemental test are positive, the name of the offender
5 must be disclosed to:

6 (a) The Director;
7 (b) The administrative officers of the Department who are responsible for the
8 classification and medical treatment of offenders;

9 (c) The manager or warden of the facility or institution at which the offender is
10 confined; and

11 (d) Each other employee of the Department whose normal duties involve him
12 with the offender or require him to come into contact with the blood or bodily
13 fluids of the offender.

14 4. The offender must be segregated from every other offender whose test
15 results are negative if:

16 (a) The results of a supplemental test are positive; and

17 (b) The offender engages in behavior that increases the risk of transmitting the
18 virus, such as battery, the infamous crime against nature, sexual intercourse in its
19 ordinary meaning or illegal intravenous injection of a controlled substance or a
20 dangerous drug as defined in chapter 454 of NRS.

21 5. The Director, with the approval of the Board:

22 (a) Shall establish for inmates and employees of the Department an educational
23 program regarding the virus whose curriculum is provided by the Health Division
24 of the Department of Health and Human Services. A person who provides
25 instruction for this program must be certified to do so by the Health Division.

26 (b) May adopt such regulations as are necessary to carry out the provisions of
27 this section.

28 6. As used in this section:

29 (a) "Incident" means an occurrence, of a kind specified by regulation of the
30 State Board of Health, that entails a significant risk of exposure to the human
31 immunodeficiency virus.

32 (b) "Infamous crime against nature" means anal intercourse, cunnilingus or
33 fellatio between natural persons of the same sex.