

## Amendment No. 724

Assembly Amendment to Senate Bill No. 47 First Reprint (BDR 23-306)

**Proposed by:** Assembly Committee on Corrections, Parole, and Probation**Amends:** Summary: No Title: No 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/RRY



Date: 5/15/2009

S.B. No. 47—Authorizes the Department of Corrections to perform random drug and alcohol testing on certain employees. (BDR 23-306)



SENATE BILL NO. 47—COMMITTEE ON LEGISLATIVE  
OPERATIONS AND ELECTIONS

(ON BEHALF OF THE DEPARTMENT OF CORRECTIONS)

PREFILED DECEMBER 5, 2008

Referred to Committee on Legislative Operations and Elections

SUMMARY—Authorizes the Department of Corrections to perform random drug and alcohol testing on certain employees. (BDR 23-306)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: Contains Appropriation included in Executive Budget.

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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 state personnel; authorizing the Director of the Department of Corrections to request that certain employees of the Department submit to random drug and alcohol screening tests; authorizing a state law enforcement agency to establish a substantially similar program of testing; providing that an employee's refusal to submit to such a screening test may result in his dismissal or in other disciplinary action being taken against him; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Under existing law, appointing authorities at the state level are prohibited from hiring an applicant for a position of employment that affects the public safety unless the appointing authority first requires the applicant to submit to a screening test to detect the presence of a controlled substance. (NRS 284.4066) Existing law also authorizes such an appointing authority to request that an employee submit to a screening test to detect the presence of alcohol or drugs if: (1) the appointing authority reasonably believes, based upon objective facts, that the employee is under the influence of alcohol or drugs which are impairing his ability to perform his duties safely and efficiently; or (2) the employee has performed certain acts relating to the discharge of a firearm or the operation of a motor vehicle. (NRS 284.4065) The provisions of existing law do not currently authorize an appointing authority at the state level to conduct random screening tests of its employees to detect the presence of alcohol or drugs.

**Section 5** of this bill authorizes the Director of the Department of Corrections to request that an employee of the Department who is in a position that may affect public safety or security in the workplace submit to a screening test to detect the presence of alcohol or drugs and allows the Director to select the employee at random for the purpose of such testing. An employee of the Department may refuse to submit to such a screening test, but the refusal may result in his dismissal or in other disciplinary action being taken against him. *An employee of the Department who submits to such a screening test and who tests positive for alcohol or drugs for the first time is not subject to dismissal or other disciplinary action if he*

21 accepts a referral to an employee assistance program and successfully completes a  
22 treatment plan. The Department is required to pay the cost of such testing except for  
23 independent testing that an employee may elect to undergo at his own expense. **Section 4** of  
24 this bill authorizes any state law enforcement agency to establish a program of testing that is  
25 substantially similar to the program of the Department of Corrections described in **section 5**.

26 The United States Supreme Court has held that a program which compels governmental  
27 employees to submit to drug screening tests is a "search" within the meaning of the Fourth  
28 Amendment of the United States Constitution (see also Nev. Const. Art. 1, § 18) because drug  
29 screening invades an employee's reasonable expectation of privacy. (*National Treasury*  
30 *Employees Union v. Von Raab*, 489 U.S. 656, 665, 109 S. Ct. 1384, 1390 (1989); *Skinner v.*  
31 *Railway Labor Executives' Association*, 489 U.S. 602, 617-18, 109 S. Ct. 1402, 1413 (1989))  
32 However, so long as drug screening serves a special governmental interest beyond the need  
33 for law enforcement, the intrusion on an employee's right to privacy is justified without a  
34 warrant, probable cause or individualized suspicion. (*Von Raab*, 489 U.S. at 665-66, 109 S.  
35 Ct. at 1390-91; *Skinner*, 489 U.S. at 620-21, 109 S. Ct. at 1415) Various courts have upheld  
36 the random drug testing of employees which served the government's interest in preserving  
37 public and workplace safety in contexts such as the testing of employees who: (1) are  
38 correctional officers (*Taylor v. O'Grady*, 888 F.2d 1189 (7th Cir. 1989)); (2) work in a  
39 nuclear facility (*International Brotherhood of Electrical Workers, Local 1245 v. United States*  
40 *Nuclear Regulatory Commission*, 966 F.2d 521 (9th Cir. 1992)); or (3) are civilian workers of  
41 the Navy who had access to classified information (*AFGE Local 1533 v. Cheney*, 944 F.2d  
42 503 (9th Cir. 1993)).

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

1 **Section 1.** NRS 284.4063 is hereby amended to read as follows:

2 284.4063 Except as otherwise provided in **subsections 3 and 6 of section 4 of**  
3 **this act, subsections 3 and 6 of section 5 of this act and** subsection 5 of NRS  
4 284.4065, an employee who:

5 1. Fails to notify his supervisor as soon as possible after consuming any drug  
6 which could interfere with the safe and efficient performance of his duties;

7 2. Fails or refuses to submit to a screening test as requested by ~~that~~:

8 (a) A state agency pursuant to subsection 1 or 2 of NRS 284.4065; ~~that~~

9 (b) **The chief administrator of a state law enforcement agency pursuant to**  
10 **section 4 of this act; or**

11 (c) **The Director of the Department of Corrections pursuant to section 5 of**  
12 **this act; or**

13 3. After taking a screening test which indicates the presence of a controlled  
14 substance, fails to provide proof, within 72 hours after being requested by his  
15 appointing authority, that he had taken the controlled substance as directed pursuant  
16 to a current and lawful prescription issued in his name,

17 ~~is~~ is subject to disciplinary action.

18 **Sec. 2.** NRS 284.4065 is hereby amended to read as follows:

19 284.4065 1. Except as otherwise provided in subsection 2 ~~that~~ **and sections 4**  
20 **and 5 of this act**, an appointing authority may request **that** an employee ~~that~~ submit  
21 to a screening test only if the appointing authority:

22 (a) Reasonably believes, based upon objective facts, that the employee is under  
23 the influence of alcohol or drugs which are impairing his ability to perform his  
24 duties safely and efficiently;

25 (b) Informs the employee of the specific facts supporting its belief pursuant to  
26 paragraph (a), and prepares a written record of those facts; and

27 (c) Informs the employee in writing:

(1) Of whether the test will be for alcohol or drugs, or both;  
(2) That the results of the test are not admissible in any criminal proceeding against him; and

(3) That he may refuse the test, but that his refusal may result in his dismissal or in other disciplinary action being taken against him.

2. An appointing authority may request *that* an employee ~~to~~ submit to a screening test if the employee:

(a) Is a law enforcement officer and, during the performance of his duties, he discharges a firearm, other than by accident; or

(b) During the performance of his duties, drives a motor vehicle in such a manner as to cause bodily injury to himself or another person or substantial damage to property.

➤ For the purposes of this subsection, the Commission shall, by regulation, define the term "substantial damage to property."

3. An appointing authority may place an employee who submits to a screening test *pursuant to subsection 1 or 2* on administrative leave with pay until the appointing authority receives the results of the test.

4. An appointing authority shall:

(a) Within a reasonable time after an employee submits to a screening test to detect the general presence of a controlled substance or any other drug, allow the employee to obtain at his expense an independent test of his urine or blood from a laboratory of his choice which is certified by the United States Department of Health and Human Services.

(b) Within a reasonable time after an employee submits to a screening test to detect the general presence of alcohol, allow the employee to obtain at his expense an independent test of his blood from a laboratory of his choice.

(c) Provide the employee with the written results of his screening test within 3 working days after it receives those results.

5. An employee is not subject to disciplinary action for testing positive in a screening test or refusing to submit to a screening test if the appointing authority fails to comply with the provisions of this section.

6. An appointing authority shall not use a screening test to harass an employee.

**Sec. 3.** NRS 284.4068 is hereby amended to read as follows:

284.4068 Except as otherwise provided in NRS 239.0115, the results of a screening test taken pursuant to *section 4 or 5 of this act or* NRS 284.4061 to 284.407, inclusive, are confidential and:

1. Are not admissible in a criminal proceeding against the person tested;

2. Must be securely maintained by the appointing authority or his designated representative separately from other files concerning personnel; and

3. Must not be disclosed to any person, except:

(a) Upon the written consent of the person tested;

(b) As required by medical personnel for the diagnosis or treatment of the person tested ~~if~~ if he is physically unable to give his consent to the disclosure;

(c) As required pursuant to a properly issued subpoena;

(d) When relevant in a formal dispute between the appointing authority and the person tested; or

(e) As required for the administration of a plan of benefits for employees.

**Sec. 4.** Chapter 289 of NRS is hereby amended by adding thereto a new section to read as follows:

*1. If a state law enforcement agency elects to establish a program as described in this section, the chief administrator of the agency may:*

1 (a) Request that an employee of the agency submit to a screening test if the  
2 employee is in a position that, as determined in accordance with regulations  
3 adopted by the chief administrator, may affect public safety or safety in the  
4 workplace; and

5 (b) Use a method of random selection to determine which such employees of  
6 the agency will be subject to a request to submit to a screening test. Any method  
7 of random selection so used must be developed ~~for supervised, or both, by the~~  
8 ~~Department of Information Technology~~ and conducted by a reputable business  
9 to ensure the integrity of the selection process.

10 2. If a chief administrator requests that an employee submit to a screening  
11 test pursuant to this section, the chief administrator shall inform the employee in  
12 writing:

13 (a) Of whether the test will be for alcohol or drugs, or both;

14 (b) That the results of the test are not admissible in any criminal proceeding  
15 against him; and

16 (c) That he may refuse to submit to the test, but that, except as otherwise  
17 provided in subsections 3 and 6, his refusal may result in his dismissal or in other  
18 disciplinary action being taken against him.

19 3. An employee of a state law enforcement agency who is asked to submit to  
20 a screening test pursuant to this section may, without cause, refuse to submit to  
21 the test. However, the refusal of an employee to submit to a screening test as  
22 described in this subsection:

23 (a) May be exercised by the employee only one time during the period in  
24 which he is employed by the agency; and

25 (b) May result in disciplinary action being taken against him unless he  
26 accepts a referral to ~~and successfully completes~~ an employee assistance  
27 program, ~~and~~ and successfully completes any recommended treatment plan. The  
28 employee must provide proof of completion of the treatment plan to his employing  
29 agency.

30 4. A chief administrator may place an employee who submits to a screening  
31 test pursuant to this section on administrative leave with pay until the applicable  
32 state law enforcement agency receives the results of the test.

33 5. A chief administrator shall:

34 (a) Within a reasonable time after an employee submits to a screening test to  
35 detect the general presence of a controlled substance or any other drug, allow the  
36 employee to obtain at his expense an independent test of his urine or blood from  
37 a laboratory of his choice which is certified by the United States Department of  
38 Health and Human Services.

39 (b) Within a reasonable time after an employee submits to a screening test to  
40 detect the general presence of alcohol, allow the employee to obtain at his  
41 expense an independent test of his blood from a laboratory of his choice.

42 (c) Provide the employee with the written results of his screening test within  
43 3 working days after the chief administrator receives those results.

44 6. An employee is not subject to disciplinary action for testing positive in a  
45 screening test or refusing to submit to a screening test if the applicable chief  
46 administrator fails to comply with the provisions of this section.

47 7. An employee testing positive in a screening test for the first time shall not  
48 be subject to dismissal or other disciplinary action being taken against him if the  
49 employee accepts a referral to an employee assistance program and successfully  
50 completes any recommended treatment plan. The employee must provide proof of  
51 completion of the treatment plan to his employing agency.

52 8. A chief administrator shall not use a screening test to harass an  
53 employee.

~~9.1~~ 9. The provisions of NRS 284.4067 apply to a screening test requested by a chief administrator pursuant to this section. In addition to the requirements set forth in NRS 284.4067, the chief administrator shall ensure that the handling and laboratory work related to any screening test requested pursuant to this section are carried out by a reputable business that specializes in the analysis of blood and urine.

~~9.2~~ 10. Except as otherwise provided in paragraphs (a) and (b) of subsection 5 and subsection 3 of NRS 284.4067, a state law enforcement agency shall pay for all screening tests conducted pursuant to this section.

~~10.1~~ 11. The provisions of this section do not alter, limit or otherwise affect the duty or authority of a chief administrator or a state law enforcement agency to cause screening tests to be conducted pursuant to NRS 284.406 to 284.407, inclusive.

~~11.1~~ 12. The chief administrator of a state law enforcement agency that elects to establish a program as described in this section:

(a) Shall adopt regulations setting forth the classifications of employees who may be subject to screening tests requested by the chief administrator pursuant to subsection 1.

(b) May adopt any other regulations that he deems necessary or convenient to carry out the provisions of this section.

~~12.1~~ 13. As used in this section:

(a) "Chief administrator" means the executive and administrative head of a state law enforcement agency.

(b) "Screening test" has the meaning ascribed to it in NRS 284.4061.

(c) "State law enforcement agency" means an agency, office or bureau of this State, the primary duty of which is to enforce the law. The term includes, without limitation, the Department of Public Safety.

**Sec. 5.** Chapter 209 of NRS is hereby amended by adding thereto a new section to read as follows:

**1.** The Director may:

(a) Request that an employee of the Department submit to a screening test if the employee is in a position that, as determined in accordance with regulations adopted by the Director, may affect public safety or safety in the workplace; and

(b) Use a method of random selection to determine which such employees of the Department of Corrections will be subject to a request to submit to a screening test. Any method of random selection so used must be developed ~~for supervised, or both, by the Department of Information Technology~~ and conducted by a reputable business to ensure the integrity of the selection process.

**2.** If the Director requests that an employee submit to a screening test pursuant to this section, the Director shall inform the employee in writing:

(a) Of whether the test will be for alcohol or drugs, or both;

(b) That the results of the test are not admissible in any criminal proceeding against him; and

(c) That he may refuse to submit to the test, but that, except as otherwise provided in subsections 3 and 6, his refusal may result in his dismissal or in other disciplinary action being taken against him.

**3.** An employee of the Department who is asked to submit to a screening test pursuant to this section may, without cause, refuse to submit to the test. However, the refusal of an employee to submit to a screening test as described in this subsection:

(a) May be exercised by the employee only one time during the period in which he is employed by the Department; and

(b) May result in disciplinary action being taken against him unless he accepts a referral to ~~and successfully completes~~ an employee assistance program. ~~and successfully completes any recommended treatment plan.~~ The employee must provide proof of completion of the treatment plan to the Department.

4. The Director may place an employee who submits to a screening test pursuant to this section on administrative leave with pay until the Department receives the results of the test.

5. The Director shall:

(a) Within a reasonable time after an employee submits to a screening test to detect the general presence of a controlled substance or any other drug, allow the employee to obtain at his expense an independent test of his urine or blood from a laboratory of his choice which is certified by the United States Department of Health and Human Services.

(b) Within a reasonable time after an employee submits to a screening test to detect the general presence of alcohol, allow the employee to obtain at his expense an independent test of his blood from a laboratory of his choice.

(c) Provide the employee with the written results of his screening test within 3 working days after the Director receives those results.

6. An employee is not subject to disciplinary action for testing positive in a screening test or refusing to submit to a screening test if the Director fails to comply with the provisions of this section.

7. An employee testing positive in a screening test for the first time shall not be subject to dismissal or other disciplinary action being taken against him if the employee accepts a referral to an employee assistance program and successfully completes any recommended treatment plan. The employee must provide proof of completion of the treatment plan to the Department.

8. The Director shall not use a screening test to harass an employee.

~~8.~~ 9. The provisions of NRS 284.4067 apply to a screening test requested by the Director pursuant to this section. In addition to the requirements set forth in NRS 284.4067, the Director shall ensure that the handling and laboratory work related to any screening test requested pursuant to this section are carried out by a reputable business that specializes in the analysis of blood and urine.

~~9.~~ 10. Except as otherwise provided in paragraphs (a) and (b) of subsection 5 and subsection 3 of NRS 284.4067, the Department shall pay for all screening tests conducted pursuant to this section.

~~10.~~ 11. The provisions of this section do not alter, limit or otherwise affect the duty or authority of the Director or the Department to cause screening tests to be conducted pursuant to NRS 284.406 to 284.407, inclusive.

~~11.~~ 12. The Director:

(a) Shall adopt regulations setting forth the classifications of employees who may be subject to screening tests requested by the Director pursuant to subsection 1.

(b) May adopt any other regulations that he deems necessary or convenient to carry out the provisions of this section.

~~12.~~ 13. As used in this section, "screening test" has the meaning ascribed to it in NRS 284.4061.

Sec. 6. This act becomes effective on July 1, 2009.