

ASSEMBLY BILL NO. 423—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE ADVISORY COMMISSION
ON THE ADMINISTRATION OF JUSTICE)

MARCH 25, 2013

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing reports of presentence investigations. (BDR 14-741)

FISCAL NOTE: Effect on Local Government: No.
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 criminal procedure; establishing certain time limitations regarding the disclosure of the factual content of reports of presentence investigations, the objections to such reports and the submission of such reports to a court; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the Division of Parole and Probation of the Department of Public Safety to disclose to the prosecuting attorney, the counsel for the defendant and the defendant the factual content of the report of any: (1) presentence investigation made by the Division and the recommendations of the Division; and (2) general investigation made by the Division. The Division is also required to give each party an opportunity to object to any factual errors in any such report and to comment on any recommendations. (NRS 176.156)

Section 1 of this bill requires the Division to disclose the factual content of the report of any presentence investigation made by the Division and the recommendations of the Division to the prosecuting attorney, the counsel for the defendant, the defendant and the court not later than 21 days before the defendant will be sentenced, unless the defendant waives this minimum period. Within 7 days after receiving the report, the parties must state in writing any objections to the content of the report. The Division may revise the report and must submit the report and any addendum to the report to the parties and to the court not later than 7 days before the defendant will be sentenced. At the time of sentencing, the court is required to verify that the defendant and his or her counsel have read and discussed the report and any addendum to the report, and may allow a party to make a new objection before the sentence is imposed. **Section 1** further provides that if a party



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20 fails to object to the accuracy of a report of a presentence investigation before a
21 sentence is imposed, the matter shall be deemed to be waived.

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
2 thereto a new section to read as follows:

3 1. *Except as otherwise provided in this subsection, the*
4 *Division shall disclose to the prosecuting attorney, the counsel for*
5 *the defendant, the defendant and the court, not later than 21 days*
6 *before the defendant will be sentenced, the factual content of the*
7 *report of any presentence investigation made pursuant to NRS*
8 *176.135 and the recommendations of the Division. The defendant*
9 *may waive the minimum period required by this subsection.*

10 2. *Within 7 days after receiving the report of a presentence*
11 *investigation from the Division pursuant to subsection 1, the*
12 *parties shall state in writing any objection to the content of the*
13 *report, including, without limitation, any objection to material*
14 *information contained in the report and any policy statement*
15 *contained in or omitted from the report. Any party who objects to*
16 *the content of the report shall provide a copy of the objection to*
17 *the opposing party and to the Division.*

18 3. *After receiving any objection pursuant to subsection 2, the*
19 *Division may meet with the parties to discuss the objection. The*
20 *Division may further investigate and, if appropriate, revise the*
21 *report.*

22 4. *Not later than 7 days before the defendant will be*
23 *sentenced, the Division shall submit to the court and to the parties*
24 *the final report of a presentence investigation and, if applicable,*
25 *an addendum containing:*

26 (a) *Any unresolved objections and the grounds therefor.*

27 (b) *The Division's comments regarding any such unresolved*
28 *objections.*

29 5. *At the time of sentencing, the court shall:*

30 (a) *Verify that the defendant and the counsel for the defendant*
31 *have read and discussed the final report and any addendum to the*
32 *final report.*

33 (b) *Allow the prosecuting attorney and the counsel for the*
34 *defendant to comment on the determinations of the Division and*
35 *other matters relating to an appropriate sentence. The court may,*
36 *for good cause, allow a party to make a new objection at any time*
37 *before the sentence is imposed.*

38 (c) *For any disputed portion of the final report or other*
39 *controverted matter:*



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1 (1) *Set forth written findings of fact or conclusions of law*
2 *regarding the dispute, which the court shall include in the final*
3 *report or any addendum to the final report; or*

4 (2) *Determine that a ruling is unnecessary because the*
5 *dispute will not affect the sentencing of the defendant or the court*
6 *will not consider the matter when sentencing the defendant.*

7 6. *If a party fails to object to the accuracy of a report of a*
8 *presentence investigation before a sentence is imposed, the matter*
9 *shall be deemed to be waived.*

10 7. *Unless otherwise ordered by a court, upon request, the*
11 *Division shall disclose the content of a report of a presentence*
12 *investigation to a law enforcement agency of this State or a*
13 *political subdivision thereof and to a law enforcement agency of*
14 *the Federal Government for the limited purpose of performing*
15 *their duties, including, without limitation, conducting hearings*
16 *that are public in nature.*

17 8. *Unless otherwise ordered by a court, upon request, the*
18 *Division shall disclose the content of a report of a presentence*
19 *investigation to the Division of Mental Health and Developmental*
20 *Services of the Department of Health and Human Services for the*
21 *limited purpose of performing its duties, including, without*
22 *limitation, evaluating and providing any report or information to*
23 *the Division concerning the mental health of:*

24 (a) *A sex offender as defined in NRS 213.107; or*

25 (b) *An offender who has been determined to be mentally ill.*

26 9. *Unless otherwise ordered by a court, upon request, the*
27 *Division shall disclose the content of a report of a presentence*
28 *investigation to the State Gaming Control Board for the limited*
29 *purpose of performing its duties in the administration of the*
30 *provisions of chapters 462 to 467, inclusive, of NRS.*

31 10. *Except for the disclosures required by subsections 1, 7, 8*
32 *and 9, a report of a presentence investigation and the sources of*
33 *information for such a report are confidential and must not be*
34 *made a part of any public record.*

35 **Sec. 2.** NRS 176.133 is hereby amended to read as follows:

36 176.133 As used in NRS 176.133 to 176.161, inclusive, **and**
37 **section 1 of this act**, unless the context otherwise requires:

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

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

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

44 (c) A social worker holding a master's degree in social work and
45 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. 3. NRS 176.156 is hereby amended to read as follows:

176.156 1. The Division shall disclose to the prosecuting attorney, the counsel for the defendant and the defendant the factual content of the report of ~~†~~

~~—(a) Any presentence investigation made pursuant to NRS 176.135 and the recommendations of the Division.~~

~~—(b) Any†~~ **any** general investigation made pursuant to NRS 176.151.



1 ~~{→}~~ The Division shall afford an opportunity to each party to object
2 to factual errors in any such report and to comment on any
3 recommendations.

4 2. Unless otherwise ordered by a court, upon request, the
5 Division shall disclose the content of a report of a ~~{presentence~~
6 ~~investigation or}~~ general investigation to a law enforcement agency
7 of this State or a political subdivision thereof and to a law
8 enforcement agency of the Federal Government for the limited
9 purpose of performing their duties, including, without limitation,
10 conducting hearings that are public in nature.

11 3. Unless otherwise ordered by a court, upon request, the
12 Division shall disclose the content of a report of a ~~{presentence~~
13 ~~investigation or}~~ general investigation to the Division of Mental
14 Health and Developmental Services of the Department of Health
15 and Human Services for the limited purpose of performing its
16 duties, including, without limitation, evaluating and providing any
17 report or information to the Division concerning the mental health
18 of:

19 (a) A sex offender as defined in NRS 213.107; or

20 (b) An offender who has been determined to be mentally ill.

21 4. Unless otherwise ordered by a court, upon request, the
22 Division shall disclose the content of a report of a ~~{presentence~~
23 ~~investigation or}~~ general investigation to the State Gaming Control
24 Board for the limited purpose of performing its duties in the
25 administration of the provisions of chapters 462 to 467, inclusive, of
26 NRS.

27 5. Except for the disclosures required by subsections 1 to 4,
28 inclusive, a report of a ~~{presentence investigation or}~~ general
29 investigation and the sources of information for such a report are
30 confidential and must not be made a part of any public record.

31 **Sec. 4.** The amendatory provisions of this act apply to a report
32 of any presentence investigation that is made on or after July 1,
33 2013.

34 **Sec. 5.** This act becomes effective on July 1, 2013.

