

Amendment No. 78

Senate Amendment to Senate Bill No. 9	(BDR 14-437)
Proposed by: Senate Committee on Judiciary	
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) variations of green bold underlining is language proposed to be added 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 proposed to be retained in this amendment.

VG/NCA



Date: 4/9/2017

S.B. No. 9—Revises provisions relating to presentence and general investigations and reports. (BDR 14-437)



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:

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

Section 1 of this bill authorizes a county to enter into an agreement with the Division to pay all or a portion of the total cost of the county's presentence or general investigations and reports. **Section 1** also requires that such an agreement include, without limitation: (1) a requirement that the Division use the money provided by a county for the expenses related to the presentence or general investigations and reports prepared for the county; (2) a specific time by which such investigations and reports must be completed by the Division; and (3) a requirement for an annual report to be prepared by the Division which identifies the specific manner in which the money provided by the county was used. **Section 1** further authorizes a county, at its own expense, to assume the duty of preparing a presentence or general investigation and report from the Division. **Section 1 also requires such a duty assumed by a county to be carried out by employees of that county.**

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

Section 1. NRS 176.161 is hereby amended to read as follows:

176.161 1. ~~Seventy~~ *Except as otherwise provided in this section, 70*
percent of the expense of any presentence or general investigation and report made
by the Division pursuant to NRS 176.135 or 176.151, other than the expense of a
psychosexual evaluation conducted pursuant to NRS 176.139, must be paid by the
county in which the indictment was found or the information filed.

2. Each county shall pay to the Division all expenses required pursuant to
subsection 1 according to a schedule established by the Division, which must
require payment on at least a quarterly basis.

3. *A county may enter into an agreement with the Division in accordance
with the provisions of NRS 277.080 to 277.180, inclusive, whereby:*

(a) *The county agrees to pay all or a portion of the total cost of the
presentence or general investigations and reports made by the Division pursuant
to NRS 176.135 or 176.151, other than the expense of a psychosexual evaluation
conducted pursuant to NRS 176.139; and*

(b) *The Division agrees to use the money provided by the county pursuant to
paragraph (a) only for expenses related to the preparation of presentence or
general investigations and reports prepared for the county and to complete such
an investigation and report for the county within a specified amount of time set
forth in the agreement. The agreement must require the Division to provide the
county with an annual report which identifies the specific manner in which the
money that was provided by the county pursuant to paragraph (a) was used.*

4. *A county may notify the Division that the county will assume the duties of
the Division set forth in NRS 176.135 or 176.151, as applicable, with respect to a
presentence or general investigation and report required to be made by the
Division pursuant to NRS 176.135 or 176.151 and that any expenses related
thereto will be paid by the county, except the expense of a psychosexual
evaluation conducted pursuant to NRS 176.139 which remains the responsibility
of the Division, if applicable. If so notified, notwithstanding any provision of law
to the contrary, the Division is not responsible for making such an investigation
and report and the county must:*

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

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

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

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

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

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

(a) Murder of the first or second degree, kidnapping in the first degree, sexual
assault, attempted sexual assault of a child who is less than 16 years of age,
lewdness with a child pursuant to NRS 201.230, an offense for which the

1 suspension of sentence or the granting of probation is expressly forbidden, or if the
2 person is found to be a habitual criminal pursuant to NRS 207.010, a habitually
3 fraudulent felon pursuant to NRS 207.014 or a habitual felon pursuant to NRS
4 207.012, the court shall not suspend the execution of the sentence imposed or grant
5 probation to the person.

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

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

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

15 (3) Had previously been assigned to a program of treatment and
16 rehabilitation pursuant to NRS 453.580 and failed to successfully complete that
17 program; or

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

21 ➤ If the person denies the existence of a previous conviction, the court shall
22 determine the issue of the previous conviction after hearing all relevant evidence
23 presented on the issue by the prosecution and the person. At such a hearing, the
24 person may not challenge the validity of a previous conviction. For the purposes of
25 this paragraph, a certified copy of a felony conviction is prima facie evidence of
26 conviction of a prior felony.

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

30 2. In determining whether to grant probation to a person, the court shall not
31 consider whether the person has the financial ability to participate in a program of
32 probation secured by a surety bond established pursuant to NRS 176A.300 to
33 176A.370, inclusive.

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

37 4. If the court determines that a person is otherwise eligible for probation but
38 requires more supervision than would normally be provided to a person granted
39 probation, the court may, in lieu of sentencing the person to a term of
40 imprisonment, grant probation pursuant to the Program of Intensive Supervision
41 established pursuant to NRS 176A.440.

42 5. Except as otherwise provided in this subsection, if a person is convicted of
43 a felony and the Division is required to make a presentence investigation and report
44 to the court pursuant to NRS 176.135, the court shall not grant probation to the
45 person until the court receives the report of the presentence investigation from the
46 Chief Parole and Probation Officer ~~or the county~~ *or the county if the county assumes the duty
47 of the Division pursuant to NRS 176.161, as applicable.* The Chief Parole and
48 Probation Officer *or the county, as applicable,* shall submit the report of the
49 presentence investigation to the court not later than 45 days after receiving a
50 request for a presentence investigation from the county clerk. If the report of the
51 presentence investigation is not submitted by the Chief Parole and Probation
52 Officer *or the county, as applicable,* within 45 days, the court may grant probation
53 without the report.

6. If the court determines that a person is otherwise eligible for probation, the court shall, when determining the conditions of that probation, consider the imposition of such conditions as would facilitate timely payments by the person of an obligation, if any, for the support of a child and the payment of any such obligation which is in arrears.

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

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

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

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

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

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

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

(1) The Central Repository;

(2) The Division of Parole and Probation; or

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

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

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

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

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

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

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

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

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

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

(1) The child; or

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

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

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

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

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

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

16 (i) A person who files or intends to file a petition for the appointment of a
17 guardian or successor guardian of a child pursuant to chapter 159 of NRS or NRS
18 432B.466 to 432B.468, inclusive, if the identity of the person responsible for
19 reporting the abuse or neglect of the child to a public agency is kept confidential
20 and the information is reasonably necessary to promote the safety, permanency and
21 well-being of the child;

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

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

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

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

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

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

38 (p) A parent or legal guardian of the child and an attorney of a parent or
39 guardian of the child, including, without limitation, the parent or guardian of a child
40 over whom a guardianship is sought pursuant to chapter 159 of NRS or NRS
41 432B.466 to 432B.468, inclusive, if the identity of the person responsible for
42 reporting the abuse or neglect of the child to a public agency is kept confidential
43 and the information is reasonably necessary to promote the safety, permanency and
44 well-being of the child and is limited to information concerning that parent or
45 guardian;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) A copy of:

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

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

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

4. Except as otherwise provided by subsection 6, before releasing any information maintained by an agency which provides child welfare services pursuant to this section, an agency which provides child welfare services shall take whatever precautions it determines are reasonably necessary to protect the identity and safety of any person who reports child abuse or neglect and to protect any other person if the agency which provides child welfare services reasonably believes that disclosure of the information would cause a specific and material harm to an investigation of the alleged abuse or neglect of a child or the life or safety of any person.

5. The provisions of this section must not be construed to require an agency which provides child welfare services to disclose information maintained by the

1 agency which provides child welfare services if, after consultation with the attorney
2 who represents the agency, the agency determines that such disclosure would cause
3 a specific and material harm to a criminal investigation.

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

20 7. If an agency which provides child welfare services receives any
21 information that is deemed confidential by law, the agency which provides child
22 welfare services shall maintain the confidentiality of the information as prescribed
23 by applicable law.

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

28 9. An agency which provides child welfare services may provide a summary
29 of the outcome of an investigation of the alleged abuse or neglect of a child to the
30 person who reported the suspected abuse or neglect.

31 10. Except as otherwise provided in this subsection, any person who is
32 provided with information maintained by an agency which provides child welfare
33 services and who further disseminates the information or makes the information
34 public is guilty of a gross misdemeanor. This subsection does not apply to:

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

37 (b) An employee of the Division of Parole and Probation of the Department of
38 Public Safety, *or an employee of a county if the county has assumed the duty of*
39 *the Division of Parole and Probation pursuant to NRS 176.161, as applicable,*
40 making a presentence investigation and report to the district court pursuant to NRS
41 176.135 or making a general investigation and report pursuant to NRS 176.151; or

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

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

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

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

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