

SENATE BILL NO. 8—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE NEVADA ASSOCIATION OF COUNTIES)

PREFILED NOVEMBER 15, 2016

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to presentence and general investigations and reports. (BDR 14-439)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to criminal procedure; reducing the amount paid by a county to the Division of Parole and Probation of the Department of Public Safety for the preparation of presentence or general investigations and reports; authorizing a county to enter into an agreement with the Division 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 reduces the amount required to be paid by a county to the Division for the county's presentence or general investigations and reports to 30 percent of the total cost. **Section 1** also authorizes a county to enter into an



* S B 8 *

17 agreement with the Division to pay the total cost of the county's investigations and
18 reports. **Section 1** requires that such an agreement include, without limitation: (1) a
19 requirement that the Division use the money provided by a county for the expenses
20 related to the presentence or general investigations and reports prepared for the
21 county; (2) a specific time by which such investigations and reports must be
22 completed by the Division; and (3) a requirement for an annual report to be
23 prepared by the Division which identifies the specific manner in which the money
24 provided by the county was used. **Section 1** further authorizes a county, at its own
25 expense, to assume the duty of preparing a presentence or general investigation and
26 report from the Division.

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

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

2 176.161 1. ~~†Seventy†~~ *Except as otherwise provided in this*
3 *section, 30* percent of the expense of any presentence or general
4 investigation and report made by the Division pursuant to NRS
5 176.135 or 176.151, other than the expense of a psychosexual
6 evaluation conducted pursuant to NRS 176.139, must be paid by the
7 county in which the indictment was found or the information filed.

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

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

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

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

27 4. *A county may notify the Division that the county will*
28 *assume the duties of the Division set forth in NRS 176.135 or*
29 *176.151, as applicable, with respect to a presentence or general*
30 *investigation and report required to be made by the Division*
31 *pursuant to NRS 176.135 or 176.151 and that any expenses related*
32 *thereto will be paid by the county, including the expense of a*



* S B 8 *

1 *psychosexual evaluation conducted pursuant to NRS 176.139, if*
2 *applicable. If so notified, notwithstanding any provision of law to*
3 *the contrary, the Division is not responsible for making such an*
4 *investigation and report and the county must:*

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

6 *(b) Carry out any responsibilities of the Division set forth in*
7 *NRS 176.133 to 176.161, inclusive, in the manner provided in*
8 *those sections for the Division.*

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

10 176A.100 1. Except as otherwise provided in this section and
11 NRS 176A.110 and 176A.120, if a person is found guilty in a
12 district court upon verdict or plea of:

13 (a) Murder of the first or second degree, kidnapping in the first
14 degree, sexual assault, attempted sexual assault of a child who is
15 less than 16 years of age, lewdness with a child pursuant to NRS
16 201.230, an offense for which the suspension of sentence or the
17 granting of probation is expressly forbidden, or if the person is
18 found to be a habitual criminal pursuant to NRS 207.010, a
19 habitually fraudulent felon pursuant to NRS 207.014 or a habitual
20 felon pursuant to NRS 207.012, the court shall not suspend the
21 execution of the sentence imposed or grant probation to the person.

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

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

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

33 (3) Had previously been assigned to a program of treatment
34 and rehabilitation pursuant to NRS 453.580 and failed to
35 successfully complete that program; or

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

39 ➤ If the person denies the existence of a previous conviction, the
40 court shall determine the issue of the previous conviction after
41 hearing all relevant evidence presented on the issue by the
42 prosecution and the person. At such a hearing, the person may not
43 challenge the validity of a previous conviction. For the purposes of
44 this paragraph, a certified copy of a felony conviction is prima facie
45 evidence of conviction of a prior felony.



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

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

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

12 4. If the court determines that a person is otherwise eligible for
13 probation but requires more supervision than would normally be
14 provided to a person granted probation, the court may, in lieu of
15 sentencing the person to a term of imprisonment, grant probation
16 pursuant to the Program of Intensive Supervision established
17 pursuant to NRS 176A.440.

18 5. Except as otherwise provided in this subsection, if a person
19 is convicted of a felony and the Division is required to make a
20 presentence investigation and report to the court pursuant to NRS
21 176.135, the court shall not grant probation to the person until the
22 court receives the report of the presentence investigation from the
23 Chief Parole and Probation Officer ~~+~~ *or the county, if the county*
24 *assumes the duty of the Division pursuant to NRS 176.161, as*
25 *applicable.* The Chief Parole and Probation Officer *or the county,*
26 *as applicable,* shall submit the report of the presentence
27 investigation to the court not later than 45 days after receiving a
28 request for a presentence investigation from the county clerk. If the
29 report of the presentence investigation is not submitted by the Chief
30 Parole and Probation Officer *or the county, as applicable,* within 45
31 days, the court may grant probation without the report.

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

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

39 62H.030 1. The juvenile court shall make and keep records
40 of all cases brought before the juvenile court.

41 2. Except as otherwise provided in this section and NRS
42 217.110, records of any case brought before the juvenile court may
43 be opened to inspection only by court order to persons who have a
44 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



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

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

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

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

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

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

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

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

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

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

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

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



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

3 (p) A parent or legal guardian of the child and an attorney of a
4 parent or guardian of the child, including, without limitation, the
5 parent or guardian of a child over whom a guardianship is sought
6 pursuant to chapter 159 of NRS or NRS 432B.466 to 432B.468,
7 inclusive, if the identity of the person responsible for reporting the
8 abuse or neglect of the child to a public agency is kept confidential
9 and the information is reasonably necessary to promote the safety,
10 permanency and well-being of the child and is limited to
11 information concerning that parent or guardian;

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

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

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

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

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

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

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

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

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

43 (v) Any person who is required pursuant to NRS 432B.220 to
44 make a report to an agency which provides child welfare services or
45 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 agency which provides child welfare services if, after consultation with the attorney who represents the agency, the agency determines that such disclosure would cause a specific and material harm to a criminal investigation.

6. A person who is the subject of an unsubstantiated report of child abuse or neglect made pursuant to this chapter and who believes that the report was made in bad faith or with malicious



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

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

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

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

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

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

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



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

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

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

10 13. As used in this section, “juvenile justice agency” means the
11 Youth Parole Bureau or a director of juvenile services.

12 **Sec. 5.** This act becomes effective on January 1, 2018.

