

ASSEMBLY BILL NO. 244—ASSEMBLYWOMAN TORRES

MARCH 3, 2023

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to certain mental or physical examinations. (BDR 54-819)

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 health care; establishing the substantive rights of a person compelled to submit to a mental or physical examination under certain circumstances; authorizing a person who has been aggrieved by the violation of certain rights to institute an action for injunctive and other appropriate relief; repealing provisions relating to a mental or physical examination required of certain persons in a civil action; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law authorizes an observer to be present at a mental or physical examination ordered by a court for the purpose of discovery in a civil action. The observer may: (1) be an attorney for the person undergoing the examination; and (2) make an audio or stenographic recording of the examination. (NRS 52.380) In 2021, the Nevada Supreme Court held that such a statute is unconstitutional because it: (1) is a procedural statute that does not create a substantive right; and (2) attempts to abrogate an existing rule of procedure that the court “prescribed under its inherent authority to regulate the judicial process.” (*Lyft, Inc. v. Eighth Jud. Dist. Court*, 137 Nev. Adv. Op. 86, 501 P.3d 994, 1002 (2021); N.R.C.P. 35) **Section 2** of this bill repeals this statute.

Section 1 of this bill provides that a person compelled to submit to a mental or physical examination pursuant to a court order, a contractual obligation or any other type of obligation has the right to: (1) receive notice of the examination at least 21 days before the date of the examination; (2) have an interpreter and certain observers present throughout the examination; (3) take notes or appoint an observer to take notes during the examination; and (4) after providing notice to the person conducting the examination, make certain recordings of the examination. **Section 1** further provides that the testimony or reports of the person conducting the examination are not privileged communications. **Section 1** authorizes a person



compelled to submit to a mental or physical examination to bring an action against a person who has violated the rights established by **section 1** and to obtain certain remedies in that action, including: (1) attorney's fees; (2) actual damages or a fine of \$1,500, whichever is greater; (3) injunctive and protective relief; and (4) an order prohibiting the use of any information gathered during the examination in any judicial or administrative proceeding.

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

Section 1. Chapter 629 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Notwithstanding any other provision of law, a person compelled to submit to a mental or physical examination pursuant to a court order, a contractual obligation or any other type of obligation retains the right to:

(a) Unless otherwise specified or agreed upon by both parties, receive notice of the requesting party's intention to compel the person to submit to a mental or physical examination at least 21 days before the date of the examination;

(b) Have any observer of choice present throughout the examination, including, without limitation, the person's attorney, provider of health care or any other person hired by or on behalf of the person;

(c) Have an interpreter present if the person believes that an interpreter is necessary to facilitate communication with the examiner;

(d) Take notes or appoint an observer to take notes during the examination; and

(e) After providing notice to the person conducting the examination, make an audio, stenographic or video recording of the examination or appoint an observer to make such a recording.

2. The testimony or reports of a person who conducts an examination of a person compelled to submit to a mental or physical examination described in subsection 1 are not privileged communications.

3. A person compelled to submit to a mental or physical examination may bring an action in a court of competent jurisdiction for a violation of this section to seek any or all of the following relief:

(a) Attorney's fees;

(b) Actual damages or a fine of \$1,500, whichever is greater;

(c) Injunctive relief;

(d) Protective relief; or



- 1 *(e) An order prohibiting the use of any information gathered*
2 *at the examination in any judicial or administrative proceeding.*
3 **Sec. 2.** NRS 52.380 is hereby repealed.

TEXT OF REPEALED SECTION

52.380 Attendance by observer.

1. An observer may attend an examination but shall not participate in or disrupt the examination.

2. The observer attending the examination pursuant to subsection 1 may be:

(a) An attorney of an examinee or party producing the examinee; or

(b) A designated representative of the attorney, if:

(1) The attorney of the examinee or party producing the examinee, in writing, authorizes the designated representative to act on behalf of the attorney during the examination; and

(2) The designated representative presents the authorization to the examiner before the commencement of the examination.

3. The observer attending the examination pursuant to subsection 1 may make an audio or stenographic recording of the examination.

4. The observer attending the examination pursuant to subsection 1 may suspend the examination if an examiner:

(a) Becomes abusive towards an examinee; or

(b) Exceeds the scope of the examination, including, without limitation, engaging in unauthorized diagnostics, tests or procedures.

5. An examiner may suspend the examination if the observer attending the examination pursuant to subsection 1 disrupts or attempts to participate in the examination.

6. If the examination is suspended pursuant to subsection 4 or 5, the party ordered to produce the examinee may move for a protective order pursuant to the Nevada Rules of Civil Procedure.

7. As used in this section:

(a) “Examination” means a mental or physical examination ordered by a court for the purpose of discovery in a civil action.

(b) “Examinee” means a person who is ordered by a court to submit to an examination.



(c) “Examiner” means a person who is ordered by a court to conduct an examination.

