

Amendment No. 738

Senate Amendment to Assembly Bill No. 244 First Reprint (BDR 54-819)

Proposed by: Senate Committee on Commerce and Labor

Amendment Box: Replaces Amendment No. 639.

Amends: Summary: Yes Title: Yes 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.

BJF



Date: 5/25/2023

A.B. No. 244—Revises provisions relating to certain mental or physical examinations. (BDR 54-819)



ASSEMBLY BILL NO. 244—ASSEMBLYWOMAN TORRES

MARCH 3, 2023

Referred to Committee on Judiciary

SUMMARY—~~[Revises provisions relating to]~~ **Establishes certain rights of persons compelled to submit 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 ~~(+) in certain circumstances~~; 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, with certain exceptions, 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,~~ **examiner**, make certain recordings of the examination. **Section 1** further provides that the testimony or reports of the ~~person conducting the examination,~~ **examiner** 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~~ **, if notice of the alleged violation is provided to that person not later than 7 days before the action is commenced. The person compelled to submit to a mental or physical examination may** 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.

Finally, section 1 exempts from the requirements of section 1 certain compelled mental or physical examinations, including, without limitation, such an examination conducted by an examiner with whom the person compelled to submit to the examination has a preexisting relationship as a patient or will have a future relationship as a patient.

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 and except as otherwise provided in this section, 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,~~ examiner, 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~~ an examiner 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~~ An examiner may suspend the examination of a person compelled to submit to a mental or physical examination pursuant to subsection 1 if an observer attending the examination disrupts or attempts to participate in the examination.

4. 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 ~~for~~, if notice of the alleged violation is provided to the person who allegedly violated this section not later than 7 days before the action is commenced:

(a) Attorney's fees;

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

(c) Injunctive relief;

(d) Protective relief; or

(e) An order prohibiting the use of any information gathered at the examination in any judicial or administrative proceeding.

~~4.5.~~ 5. The provisions of subsection 1 do not apply to a person compelled to submit to a mental or physical examination pursuant to titles 5, 14, ~~and~~ 15 and 39 of NRS and chapter 432B of NRS.

~~5.5.~~ 6. As used in this section ~~for~~, "mental":

(a) "Examiner" means a person conducting a mental or physical examination.

(b) "Mental or physical examination" does not include any evaluation made:

(1) Made with respect to a child custody proceeding, as defined in NRS 125A.055; or

(2) Conducted by an examiner with whom the person compelled to submit to the examination has a preexisting relationship as a patient or will have a future relationship as a patient.

Sec. 1.5. 1. The amendatory provisions of this act ~~do not~~ apply only to a mental or physical examination conducted ~~before October 1, 2023,~~ on or after the effective date of this act.

2. As used in this section, "mental or physical examination" has the meaning ascribed to it in section 1 of this act.

Sec. 2. NRS 52.380 is hereby repealed.

Sec. 3. This act becomes effective upon passage and approval.

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.