

SENATE BILL NO. 36—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED NOVEMBER 16, 2022

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to psychosexual evaluations for sexual offenses and other crimes. (BDR 14-424)

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; requiring the Division of Parole and Probation of the Department of Public Safety to make a presentence investigation and report to the court that includes a psychosexual evaluation in certain circumstances; requiring the Division to arrange a psychosexual evaluation in certain circumstances when the defendant and prosecuting attorney make a joint request; requiring certain defendants to be certified as not representing a high risk to reoffend before the court may grant probation to or suspend the sentence of the defendant; making an appropriation; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing law provides that a person who solicits a child for prostitution is guilty
2 of a felony. (NRS 201.354) Existing law: (1) requires a defendant convicted of
3 certain sexual offenses punished as a felony to undergo a psychosexual evaluation
4 as part of the presentence investigation and report to the court prepared by the
5 Division of Parole and Probation of the Department of Public Safety; (2) requires
6 the Division to arrange for the psychosexual evaluation of the defendant; and (3)
7 prohibits the court from granting probation to or suspending the sentence of a
8 person convicted of certain sexual offenses, unless the person who conducts the
9 psychosexual evaluation certifies that the person convicted of the sexual offense
10 does not represent a high risk to reoffend. (NRS 176.133, 176.135, 176.139,
11 176A.110) **Sections 1 and 4** of this bill add solicitation of a child for prostitution to
12 the list of sexual offenses which require a psychosexual evaluation and a



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certification that the person convicted does not represent a high risk to reoffend. **Sections 2 and 3** of this bill require the Division to arrange for a psychosexual evaluation of the defendant and make a presentence investigation and report to the court that includes the evaluation if: (1) the defendant is convicted of a felony other than a sexual offense or a gross misdemeanor; (2) the defendant and prosecuting attorney submit to the court a joint request for a presentence investigation and report to the court that includes a psychosexual evaluation; and (3) the original charge against the defendant in the complaint, information or indictment was for a sexual offense. **Section 4.5** of this bill makes an appropriation to the Division for the costs of conducting psychosexual evaluations.

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

Section 1. NRS 176.133 is hereby amended to read as follows:
176.133 As used in NRS 176.133 to 176.161, inclusive, unless
the context otherwise requires:

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

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

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

(c) A social worker holding a master's degree in social work and
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) Open or gross lewdness pursuant to NRS 201.210, if punished as a felony;

(h) Indecent or obscene exposure pursuant to NRS 201.220, if punished as a felony;

(i) Lewdness with a child pursuant to NRS 201.230;

(j) *Soliciting a child for prostitution pursuant to NRS 201.354;*

(k) Sexual penetration of a dead human body pursuant to NRS 201.450;

~~(l)~~ (l) Sexual conduct between certain employees of a school or volunteers at a school and a pupil pursuant to NRS 201.540;

~~(m)~~ (m) Sexual conduct between certain employees of a college or university and a student pursuant to NRS 201.550;

~~(n)~~ (n) Luring a child or a person with mental illness pursuant to NRS 201.560, if punished as a felony;

~~(o)~~ (o) An attempt to commit an offense listed in paragraphs (a) to ~~(m)~~ (n), inclusive, if punished as a felony; or

~~(p)~~ (p) An offense that is determined to be sexually motivated pursuant to NRS 175.547 or 207.193.

Sec. 2. NRS 176.135 is hereby amended to read as follows:

176.135 1. Except as otherwise provided in this section and NRS 176.151, the Division shall make a presentence investigation and report to the court on each defendant who pleads guilty, guilty but mentally ill or nolo contendere to, or is found guilty or guilty but mentally ill of, a felony.

2. If a defendant is convicted of a felony that is a sexual offense, the presentence investigation and report:

(a) Must be made before the imposition of sentence or the granting of probation; and

(b) If the sexual offense is an offense for which the suspension of sentence or the granting of probation is permitted, must include a psychosexual evaluation of the defendant.

3. ~~Except as otherwise provided in subsection 5, if~~ a defendant is convicted of a felony other than a sexual offense, the presentence investigation and report must be made before the imposition of sentence or the granting of probation unless:

(a) A sentence is fixed by a jury; or

(b) Such an investigation and report on the defendant has been made by the Division within the 5 years immediately preceding the date initially set for sentencing on the most recent offense.

4. Upon request of the court, the Division shall make presentence investigations and reports on defendants who plead guilty, guilty but mentally ill or nolo contendere to, or are found guilty or guilty but mentally ill of, gross misdemeanors.

5. *If a defendant is convicted of a felony other than a sexual offense or of a gross misdemeanor and the conviction is of an*



offense for which the suspension of sentence or the granting of probation is permitted, the Division shall, before the imposition of sentence or the granting of probation, make a presentence investigation and report to the court that includes a psychosexual evaluation of the defendant if the defendant and the prosecuting attorney submit to the court a joint request for a presentence investigation and report that includes a psychosexual evaluation of the defendant. The provisions of this subsection apply only to a conviction where the original charge in the complaint, information or indictment was for a sexual offense, as defined in NRS 176.133 or 179D.097.

6. Each court in which a report of a presentence investigation can be made must ensure that each judge of the court receives training concerning the manner in which to use the information included in a report of a presentence investigation for the purpose of imposing a sentence. Such training must include, without limitation, education concerning behavioral health needs and intellectual or developmental disabilities.

Sec. 3. NRS 176.139 is hereby amended to read as follows:

176.139 1. If a defendant is convicted of a sexual offense for which the suspension of sentence or the granting of probation is permitted ~~or~~ *or if a joint request is submitted to the Division pursuant to subsection 5 of NRS 176.135*, the Division shall arrange for a psychosexual evaluation of the defendant as part of the Division's presentence investigation and report to the court.

2. The psychosexual evaluation of the defendant must be conducted by a person professionally qualified to conduct psychosexual evaluations.

3. The person who conducts the psychosexual evaluation of the defendant must use diagnostic tools that are generally accepted as being within the standard of care for the evaluation of sex offenders, and the psychosexual evaluation of the defendant must include:

(a) A comprehensive clinical interview with the defendant; and
(b) A review of all investigative reports relating to the defendant's sexual offense *or other offense* and all statements made by victims of that offense.

4. The psychosexual evaluation of the defendant may include:

(a) A review of records relating to previous criminal offenses committed by the defendant;
(b) A review of records relating to previous evaluations and treatment of the defendant;
(c) A review of the defendant's records from school;
(d) Interviews with the defendant's parents, the defendant's spouse or other persons who may be significantly involved with the



defendant or who may have relevant information relating to the defendant's background; and

(e) The use of psychological testing, polygraphic examinations and arousal assessment.

5. The person who conducts the psychosexual evaluation of the defendant must be given access to all records of the defendant that are necessary to conduct the evaluation, and the defendant shall be deemed to have waived all rights of confidentiality and all privileges relating to those records for the limited purpose of the evaluation.

6. The person who conducts the psychosexual evaluation of the defendant shall:

(a) Prepare a comprehensive written report of the results of the evaluation;

(b) Include in the report all information that is necessary to carry out the provisions of NRS 176A.110; and

(c) Provide a copy of the report to the Division.

7. If a psychosexual evaluation is conducted pursuant to this section, the court shall:

(a) Order the defendant, to the extent of the defendant's financial ability, to pay for the cost of the psychosexual evaluation; or

(b) If the defendant was less than 18 years of age when the sexual offense *or other offense* was committed and the defendant was certified and convicted as an adult, order the parents or guardians of the defendant, to the extent of their financial ability, to pay for the cost of the psychosexual evaluation. For the purposes of this paragraph, the court has jurisdiction over the parents or guardians of the defendant to the extent that is necessary to carry out the provisions of this paragraph.

Sec. 4. NRS 176A.110 is hereby amended to read as follows:

176A.110 1. The court shall not grant probation to or suspend the sentence of a person convicted of an offense listed in subsection 3 unless:

(a) If a psychosexual evaluation of the person is required pursuant to NRS 176.139, the person who conducts the psychosexual evaluation certifies in the report prepared pursuant to NRS 176.139 that the person convicted of the offense does not represent a high risk to reoffend based upon a currently accepted standard of assessment; or

(b) If a psychosexual evaluation of the person is not required pursuant to NRS 176.139, a psychologist licensed to practice in this State who is trained to conduct psychosexual evaluations or a psychiatrist licensed to practice medicine in this State who is certified by the American Board of Psychiatry and Neurology, Inc., and is trained to conduct psychosexual evaluations certifies in a



1 written report to the court that the person convicted of the offense
2 does not represent a high risk to reoffend based upon a currently
3 accepted standard of assessment.

4 2. This section does not create a right in any person to be
5 certified or to continue to be certified. No person may bring a cause
6 of action against the State, its political subdivisions, or the agencies,
7 boards, commissions, departments, officers or employees of the
8 State or its political subdivisions for not certifying a person pursuant
9 to this section or for refusing to consider a person for certification
10 pursuant to this section.

11 3. The provisions of this section apply to a person convicted of
12 any of the following offenses:

13 (a) Attempted sexual assault of a person who is 16 years of age
14 or older pursuant to NRS 200.366.

15 (b) Statutory sexual seduction pursuant to NRS 200.368.

16 (c) Battery with intent to commit sexual assault pursuant to
17 NRS 200.400.

18 (d) Abuse or neglect of a child pursuant to NRS 200.508.

19 (e) An offense involving pornography and a minor pursuant to
20 NRS 200.710 to 200.730, inclusive.

21 (f) Incest pursuant to NRS 201.180.

22 (g) Open or gross lewdness pursuant to NRS 201.210.

23 (h) Indecent or obscene exposure pursuant to NRS 201.220.

24 (i) *Soliciting a child for prostitution pursuant to NRS 201.354.*

25 (j) Sexual penetration of a dead human body pursuant to
26 NRS 201.450.

27 ~~(k)~~ (k) Sexual conduct between certain employees of a school
28 or volunteers at a school and a pupil pursuant to NRS 201.540.

29 ~~(l)~~ (l) Sexual conduct between certain employees of a college
30 or university and a student pursuant to NRS 201.550.

31 ~~(m)~~ (m) Luring a child or a person with mental illness pursuant
32 to NRS 201.560, if punished as a felony.

33 ~~(n)~~ (n) A violation of NRS 207.180.

34 ~~(o)~~ (o) An attempt to commit an offense listed in paragraphs
35 (b) to ~~(m)~~ (n), inclusive.

36 ~~(p)~~ (p) Coercion or attempted coercion that is determined to be
37 sexually motivated pursuant to NRS 207.193.

38 **Sec. 4.5.** 1. There is hereby appropriated from the State
39 General Fund to the Division of Parole and Probation of the
40 Department of Public Safety for the costs of conducting
41 psychosexual evaluations the following sums:

42 For the Fiscal Year 2023-2024..... \$41,400

43 For the Fiscal Year 2024-2025..... \$41,400

44 2. Any balance of the sums appropriated by subsection 1
45 remaining at the end of the respective fiscal years must not be



1 committed for expenditure after June 30 of the respective fiscal
2 years by the entity to which the appropriation is made or any entity
3 to which money from the appropriation is granted or otherwise
4 transferred in any manner, and any portion of the appropriated
5 money remaining must not be spent for any purpose after
6 September 20, 2024, and September 19, 2025, respectively, by
7 either the entity to which the money was appropriated or the entity
8 to which the money was subsequently granted or transferred, and
9 must be reverted to the State General Fund on or before
10 September 20, 2024, and September 19, 2025, respectively.

11 **Sec. 5.** The amendatory provisions of this act apply to offenses
12 committed on or after October 1, 2023.

13 **Sec. 6.** 1. This section and section 4.5 of this act become
14 effective on July 1, 2023.

15 2. Sections 1 to 4, inclusive, and 5 of this act become effective
16 on October 1, 2023.

