

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; 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 176.133-176.139, 176A.110)
11 Sections 1 and 4 of this bill add solicitation of a child for prostitution to the list of
12 sexual offenses which require a psychosexual evaluation and a certification that the



13 person convicted does not represent a high risk to reoffend. **Sections 2 and 3** of this
14 bill require the Division to arrange for a psychosexual evaluation of the defendant
15 and make a presentence investigation and report to the court that includes the
16 evaluation if: (1) the defendant is convicted of a felony other than a sexual offense
17 or a gross misdemeanor; and (2) the defendant and prosecuting attorney submit to
18 the court a joint request for a presentence investigation and report to the court that
19 includes a psychosexual evaluation.

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

1 **Section 1.** NRS 176.133 is hereby amended to read as follows:
2 176.133 As used in NRS 176.133 to 176.161, inclusive, unless
3 the context otherwise requires:
4 1. “Person professionally qualified to conduct psychosexual
5 evaluations” means a person who has received training in
6 conducting psychosexual evaluations and is:
7 (a) A psychiatrist licensed to practice medicine in this State and
8 certified by the American Board of Psychiatry and Neurology, Inc.;

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

10 (c) A social worker holding a master’s degree in social work and
11 licensed in this State as a clinical social worker;

12 (d) A registered nurse holding a master’s degree in the field of
13 psychiatric nursing and licensed to practice professional nursing in
14 this State;

15 (e) A marriage and family therapist licensed in this State
16 pursuant to chapter 641A of NRS; or

17 (f) A clinical professional counselor licensed in this State
18 pursuant to chapter 641A of NRS.

19 2. “Psychosexual evaluation” means an evaluation conducted
20 pursuant to NRS 176.139.

21 3. “Sexual offense” means:

22 (a) Sexual assault pursuant to NRS 200.366;

23 (b) Statutory sexual seduction pursuant to NRS 200.368, if
24 punished as a felony;

25 (c) Battery with intent to commit sexual assault pursuant to
26 NRS 200.400;

27 (d) Abuse of a child pursuant to NRS 200.508, if the abuse
28 involved sexual abuse or sexual exploitation and is punished as a
29 felony;

30 (e) An offense involving pornography and a minor pursuant to
31 NRS 200.710 to 200.730, inclusive;

32 (f) Incest pursuant to NRS 201.180;

33 (g) Open or gross lewdness pursuant to NRS 201.210, if
34 punished as a felony;



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

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

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

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

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

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

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

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

15 ~~[(o)]~~ (p) An offense that is determined to be sexually motivated
16 pursuant to NRS 175.547 or 207.193.

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

18 176.135 1. Except as otherwise provided in this section and
19 NRS 176.151, the Division shall make a presentence investigation
20 and report to the court on each defendant who pleads guilty, guilty
21 but mentally ill or nolo contendere to, or is found guilty or guilty but
22 mentally ill of, a felony.

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

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

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

30 3. ~~[(3)]~~ *Except as otherwise provided in subsection 5, if* a
31 defendant is convicted of a felony other than a sexual offense, the
32 presentence investigation and report must be made before the
33 imposition of sentence or the granting of probation unless:

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

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

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

42 5. *If a defendant is convicted of a felony other than a sexual*
43 *offense or of a gross misdemeanor and the conviction is of an*
44 *offense for which the suspension of sentence or the granting of*
45 *probation is permitted, the Division shall, before the imposition of*



1 *sentence or the granting of probation, make a presentence*
2 *investigation and report to the court that includes a psychosexual*
3 *evaluation of the defendant if the defendant and the prosecuting*
4 *attorney submit to the court a joint request for a presentence*
5 *investigation and report that includes a psychosexual evaluation*
6 *of the defendant.*

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

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

15 176.139 1. If a defendant is convicted of a sexual offense for
16 which the suspension of sentence or the granting of probation is
17 permitted ~~§~~ *or if a joint request is submitted to the Division*
18 *pursuant to subsection 5 of NRS 176.135*, the Division shall
19 arrange for a psychosexual evaluation of the defendant as part of the
20 Division's presentence investigation and report to the court.

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

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

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

32 4. The psychosexual evaluation of the defendant may include:

33 (a) A review of records relating to previous criminal offenses
34 committed by the defendant;

35 (b) A review of records relating to previous evaluations and
36 treatment of the defendant;

37 (c) A review of the defendant's records from school;

38 (d) Interviews with the defendant's parents, the defendant's
39 spouse or other persons who may be significantly involved with the
40 defendant or who may have relevant information relating to the
41 defendant's background; and

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

44 5. The person who conducts the psychosexual evaluation of the
45 defendant must be given access to all records of the defendant that



1 are necessary to conduct the evaluation, and the defendant shall be
2 deemed to have waived all rights of confidentiality and all privileges
3 relating to those records for the limited purpose of the evaluation.

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

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

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

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

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

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

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

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

25 176A.110 1. The court shall not grant probation to or
26 suspend the sentence of a person convicted of an offense listed in
27 subsection 3 unless:

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

34 (b) If a psychosexual evaluation of the person is not required
35 pursuant to NRS 176.139, a psychologist licensed to practice in this
36 State who is trained to conduct psychosexual evaluations or a
37 psychiatrist licensed to practice medicine in this State who is
38 certified by the American Board of Psychiatry and Neurology, Inc.,
39 and is trained to conduct psychosexual evaluations certifies in a
40 written report to the court that the person convicted of the offense
41 does not represent a high risk to reoffend based upon a currently
42 accepted standard of assessment.

43 2. This section does not create a right in any person to be
44 certified or to continue to be certified. No person may bring a cause
45 of action against the State, its political subdivisions, or the agencies,



1 boards, commissions, departments, officers or employees of the
2 State or its political subdivisions for not certifying a person pursuant
3 to this section or for refusing to consider a person for certification
4 pursuant to this section.

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

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

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

10 (c) Battery with intent to commit sexual assault pursuant to
11 NRS 200.400.

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

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

15 (f) Incest pursuant to NRS 201.180.

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

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

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

19 (j) Sexual penetration of a dead human body pursuant to
20 NRS 201.450.

21 ~~[(k)]~~ (k) Sexual conduct between certain employees of a school
22 or volunteers at a school and a pupil pursuant to NRS 201.540.

23 ~~[(k)]~~ (l) Sexual conduct between certain employees of a college
24 or university and a student pursuant to NRS 201.550.

25 ~~[(m)]~~ (m) Luring a child or a person with mental illness pursuant
26 to NRS 201.560, if punished as a felony.

27 ~~[(m)]~~ (n) A violation of NRS 207.180.

28 ~~[(n)]~~ (o) An attempt to commit an offense listed in paragraphs
29 (b) to ~~[(m)]~~ (n), inclusive.

30 ~~[(o)]~~ (p) Coercion or attempted coercion that is determined to be
31 sexually motivated pursuant to NRS 207.193.

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

