

ASSEMBLY BILL NO. 193—COMMITTEE ON JUDICIARY

FEBRUARY 26, 2015

Referred to Committee on Judiciary

SUMMARY—Makes various changes relating to criminal procedure. (BDR 14-911)

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 criminal procedure; revising provisions relating to the introduction of evidence at a preliminary examination or grand jury proceeding; revising provisions relating to the use of audiovisual technology to present live witness testimony at a preliminary examination or grand jury proceeding; revising provisions relating to notice given to a person whose indictment is being considered by a grand jury; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

- 1 Existing law sets forth the requirements for conducting a preliminary
- 2 examination. (NRS 171.196) **Section 1** of this bill authorizes the use of certain
- 3 hearsay evidence in a preliminary examination under certain circumstances.
- 4 Existing law allows a witness to testify at a preliminary examination or before a
- 5 grand jury through the use of audiovisual technology under certain circumstances
- 6 by filing a request, subject to an objection by the opposing party and court
- 7 approval, before the preliminary examination or grand jury proceeding. (NRS
- 8 171.1975, 172.138) **Sections 3 and 7** of this bill require the court to allow a witness
- 9 to testify at a preliminary examination or before a grand jury through the use of
- 10 audiovisual technology under certain circumstances.
- 11 Existing law sets forth the types of evidence a grand jury can receive. (NRS
- 12 172.135) **Section 5** of this bill: (1) allows certain hearsay evidence to be offered
- 13 before a grand jury in certain circumstances; and (2) provides that a statement made
- 14 by a witness at any time that is inconsistent with the testimony of the witness before
- 15 the grand jury may be presented to the grand jury as evidence.
- 16 Existing law requires that a district attorney or peace officer serve reasonable
- 17 notice upon a person whose indictment is being considered by a grand jury. (NRS
- 18 172.241) **Section 10** of this bill authorizes a person to testify before the grand jury



19 if his or her notice of the proceeding was not adequate and requires the grand jury  
20 to redeliberate on the indictment if the person does testify.

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

1       **Section 1.** NRS 171.196 is hereby amended to read as follows:

2       171.196 1. If an offense is not triable in the Justice Court, the  
3 defendant must not be called upon to plead. If the defendant waives  
4 preliminary examination, the magistrate shall immediately hold the  
5 defendant to answer in the district court.

6       2. If the defendant does not waive examination, the magistrate  
7 shall hear the evidence within 15 days, unless for good cause shown  
8 the magistrate extends such time. Unless the defendant waives  
9 counsel, reasonable time must be allowed for counsel to appear.

10       3. Except as otherwise provided in this subsection, if the  
11 magistrate postpones the examination at the request of a party, the  
12 magistrate may order that party to pay all or part of the costs and  
13 fees expended to have a witness attend the examination. The  
14 magistrate shall not require a party who requested the postponement  
15 of the examination to pay for the costs and fees of a witness if:

16       (a) It was not reasonably necessary for the witness to attend the  
17 examination; or

18       (b) The magistrate ordered the extension pursuant to  
19 subsection 4.

20       4. If application is made for the appointment of counsel for an  
21 indigent defendant, the magistrate shall postpone the examination  
22 until:

23       (a) The application has been granted or denied; and

24       (b) If the application is granted, the attorney appointed or the  
25 public defender has had reasonable time to appear.

26       5. The defendant may cross-examine witnesses against him or  
27 her and may introduce evidence in his or her own behalf.

28       6. *Hearsay evidence consisting of a statement made by the*  
29 *alleged victim of the offense is admissible at a preliminary*  
30 *examination conducted pursuant to this section only if the*  
31 *defendant is charged with one or more of the following offenses:*

32       (a) *A sexual offense committed against a child who is under*  
33 *the age of 16 years if the offense is punishable as a felony. As used*  
34 *in this paragraph, "sexual offense" has the meaning ascribed to it*  
35 *in NRS 179D.097.*

36       (b) *Abuse of a child pursuant to NRS 200.508 if the offense is*  
37 *committed against a child who is under the age of 16 years and the*  
38 *offense is punishable as a felony.*



1 (c) *An act which constitutes domestic violence pursuant to*  
2 *NRS 33.018, which is punishable as a felony and which resulted*  
3 *in substantial bodily harm to the alleged victim.*

4 **Sec. 2.** (Deleted by amendment.)

5 **Sec. 3.** NRS 171.1975 is hereby amended to read as follows:

6 171.1975 1. If a witness resides more than ~~[500]~~ **100** miles  
7 from the place of a preliminary examination, ~~[or]~~ is unable to attend  
8 the preliminary examination because of a medical condition ~~[, a~~  
9 ~~party may, not later than 14 days before the preliminary~~  
10 ~~examination, file a request that]~~ *or if good cause otherwise exists,*  
11 the magistrate **must** allow the witness to testify at the preliminary  
12 examination through the use of audiovisual technology. ~~[A party~~  
13 ~~who requests that the magistrate allow a witness to testify through~~  
14 ~~the use of audiovisual technology shall provide written notice of the~~  
15 ~~request to the opposing party at or before the time of filing the~~  
16 ~~request.]~~

17 2. ~~[Not later than 7 days after receiving notice of a request that~~  
18 ~~the magistrate allow a witness to testify at the preliminary~~  
19 ~~examination through the use of audiovisual technology, the~~  
20 ~~opposing party may file an objection to the request. If the opposing~~  
21 ~~party fails to file a timely objection to the request, the opposing~~  
22 ~~party shall be deemed to have consented to the granting of the~~  
23 ~~request.~~

24 ~~—3.— Regardless of whether or not the opposing party files an~~  
25 ~~objection to a request that the magistrate allow a witness to testify at~~  
26 ~~the preliminary examination through the use of audiovisual~~  
27 ~~technology, the magistrate may allow the witness to testify at the~~  
28 ~~preliminary examination through the use of audiovisual technology~~  
29 ~~only if the magistrate finds that good cause exists to grant the~~  
30 ~~request based upon the specific facts and circumstances of the case.~~

31 ~~—4.] If [the magistrate allows] a witness [to testify] **testifies** at~~  
32 ~~the preliminary examination through the use of audiovisual~~  
33 ~~technology:~~

34 (a) The testimony of the witness must be ~~[~~

35 ~~—(1) Taken by a certified videographer who is in the physical~~  
36 ~~presence of the witness. The certified videographer shall sign a~~  
37 ~~written declaration, on a form provided by the magistrate, which~~  
38 ~~states that the witness does not have in his or her possession any~~  
39 ~~notes or other materials to assist in the witness's testimony.~~

40 ~~—(2) Recorded and preserved through the use of a videotape or~~  
41 ~~other means of audiovisual recording technology.~~

42 ~~—(3) Transcribed]~~ **transcribed** by a certified court reporter ~~[;]~~ ;  
43 **and**

44 (b) Before giving testimony, the witness must be sworn and  
45 must sign a written declaration, on a form provided by the



1 magistrate, which acknowledges that the witness understands that he  
2 or she is subject to the jurisdiction of the courts of this state and may  
3 be subject to criminal prosecution for the commission of any crime  
4 in connection with his or her testimony, including, without  
5 limitation, perjury, and that the witness consents to such  
6 jurisdiction.

7 ~~[(c) During the preliminary examination, the witness must not~~  
8 ~~be asked to identify the defendant, but the witness may be asked to~~  
9 ~~testify regarding the facts and circumstances surrounding any~~  
10 ~~previous identification of the defendant.~~

11 ~~—(d) The original recorded testimony of the witness must be filed~~  
12 ~~with the district court, and copies of the recorded testimony of the~~  
13 ~~witness must be provided to each party.~~

14 ~~—(e) The testimony of the witness may not be used by any party~~  
15 ~~upon the trial of the cause or in any proceeding therein in lieu of the~~  
16 ~~direct testimony of the witness, but the court may allow the~~  
17 ~~testimony of the witness to be used for any other lawful purpose.~~

18 ~~—5.] 3.~~ Audiovisual technology used pursuant to this section  
19 must ensure that the witness may be:

- 20 (a) Clearly heard and seen; and
- 21 (b) Examined and cross-examined.

22 ~~[6.] 4.~~ As used in this section, “audiovisual technology”  
23 includes, without limitation, closed-circuit video and  
24 videoconferencing.

25 **Sec. 4.** (Deleted by amendment.)

26 **Sec. 5.** NRS 172.135 is hereby amended to read as follows:

27 172.135 1. In the investigation of a charge, for the purpose of  
28 either presentment or indictment, the grand jury can receive no other  
29 evidence than such as is given by witnesses produced and sworn  
30 before them or furnished by legal documentary evidence or by the  
31 deposition of witnesses taken as provided in this title, except that the  
32 grand jury may receive any of the following:

33 (a) An affidavit or declaration from an expert witness or other  
34 person described in NRS 50.315 in lieu of personal testimony or a  
35 deposition.

36 (b) An affidavit of an owner, possessor or occupant of real or  
37 personal property or other person described in NRS 172.137 in lieu  
38 of personal testimony or a deposition.

39 2. ~~[The]~~ *Except as otherwise provided in this subsection, the*  
40 *grand jury can receive none but legal evidence, and the best*  
41 *evidence in degree, to the exclusion of hearsay or secondary*  
42 *evidence. The grand jury can receive hearsay evidence consisting*  
43 *of a statement made by the alleged victim of an offense if the*  
44 *defendant is alleged to have committed one or more of the*  
45 *following offenses:*



1 (a) A sexual offense committed against a child who is under  
2 the age of 16 years if the offense is punishable as a felony. As used  
3 in this paragraph, "sexual offense" has the meaning ascribed to it  
4 in NRS 179D.097.

5 (b) Abuse of a child pursuant to NRS 200.508 if the offense is  
6 committed against a child who is under the age of 16 years and the  
7 offense is punishable as a felony.

8 (c) An act which constitutes domestic violence pursuant to  
9 NRS 33.018, which is punishable as a felony and which resulted  
10 in substantial bodily harm to the alleged victim.

11 3. A statement made by a witness at any time that is  
12 inconsistent with the testimony of the witness before the grand  
13 jury may be presented to the grand jury as evidence.

14 **Sec. 6.** (Deleted by amendment.)

15 **Sec. 7.** NRS 172.138 is hereby amended to read as follows:

16 172.138 1. If a witness resides more than ~~{500}~~ 100 miles  
17 from the place of a grand jury proceeding, ~~{or}~~ is unable to attend  
18 the grand jury proceeding because of a medical condition ~~{, upon the~~  
19 ~~request of the district attorney,}~~ or if good cause otherwise exists,  
20 the district judge supervising the proceedings of the grand jury  
21 ~~{may}~~ must allow a witness to testify before the grand jury through  
22 the use of audiovisual technology.

23 2. ~~{The district judge supervising the proceedings of the grand~~  
24 ~~jury may allow a witness to testify before the grand jury through the~~  
25 ~~use of audiovisual technology only if the district judge finds that~~  
26 ~~good cause exists to grant the request based upon the specific facts~~  
27 ~~and circumstances of the grand jury proceeding-~~

28 ~~—3.}~~ If ~~{the district judge supervising the proceedings of the~~  
29 ~~grand jury allows}~~ a witness ~~{to testify}~~ testifies at the grand jury  
30 proceeding through the use of audiovisual technology:

31 (a) The testimony of the witness must be ~~{~~

32 ~~—(1) Taken by a certified videographer who is in the physical~~  
33 ~~presence of the witness. The certified videographer shall sign a~~  
34 ~~written declaration, on a form provided by the district judge, which~~  
35 ~~states that the witness does not possess any notes or other materials~~  
36 ~~to assist in the witness's testimony.~~

37 ~~—(2) Recorded and preserved through the use of a videotape or~~  
38 ~~other means of audiovisual recording technology.~~

39 ~~—(3) Transcribed}~~ **transcribed** by a certified court reporter  
40 appointed pursuant to NRS 172.215 in accordance with the  
41 provisions of NRS 172.225 ~~{}~~; and

42 (b) Before giving testimony, the witness must be sworn and  
43 must sign a written declaration, on a form provided by the district  
44 judge, which acknowledges that the witness understands that he or  
45 she is subject to the jurisdiction of the courts of this state and may



1 be subject to criminal prosecution for the commission of any crime  
2 in connection with his or her testimony, including, without  
3 limitation, perjury, and that the witness consents to such  
4 jurisdiction.

5 ~~[(e) The original recorded testimony of the witness must be  
6 delivered to the certified court reporter.~~

7 ~~—(d) The testimony of the witness may not be used by any party  
8 upon the trial of the cause or in any proceeding therein in lieu of the  
9 direct testimony of the witness, but the court may allow the  
10 testimony of the witness to be used for any other lawful purpose.~~

11 ~~—4.]~~ 3. Audiovisual technology used pursuant to this section  
12 must ensure that the witness may be:

- 13 (a) Clearly heard and seen; and
- 14 (b) Examined.

15 ~~[5.]~~ 4. As used in this section, “audiovisual technology”  
16 includes, without limitation, closed-circuit video and  
17 videoconferencing.

18 **Sec. 8.** (Deleted by amendment.)

19 **Sec. 9.** (Deleted by amendment.)

20 **Sec. 10.** NRS 172.241 is hereby amended to read as follows:

21 172.241 1. A person whose indictment the district attorney  
22 intends to seek or the grand jury on its own motion intends to return,  
23 but who has not been subpoenaed to appear before the grand jury,  
24 may testify before the grand jury if the person requests to do so and  
25 executes a valid waiver in writing of the person’s constitutional  
26 privilege against self-incrimination.

27 2. A district attorney or a peace officer shall serve reasonable  
28 notice upon a person whose indictment is being considered by a  
29 grand jury unless the court determines that adequate cause exists to  
30 withhold notice. The notice is adequate if it:

31 (a) Is given to the person, the person’s attorney of record or an  
32 attorney who claims to represent the person and gives the person not  
33 less than 5 judicial days to submit a request to testify to the district  
34 attorney; and

35 (b) Advises the person that the person may testify before the  
36 grand jury only if the person submits a written request to the district  
37 attorney and includes an address where the district attorney may  
38 send a notice of the date, time and place of the scheduled proceeding  
39 of the grand jury.

40 3. The district attorney may apply to the court for a  
41 determination that adequate cause exists to withhold notice if the  
42 district attorney:

43 (a) Determines that the notice may result in the flight of the  
44 person whose indictment is being considered, on the basis of:



1 (1) A previous failure of the person to appear in matters  
2 arising out of the subject matter of the proposed indictment;

3 (2) The fact that the person is a fugitive from justice arising  
4 from charges in another jurisdiction;

5 (3) Outstanding local warrants pending against the person; or

6 (4) Any other objective factor;

7 (b) Determines that the notice may endanger the life or property  
8 of other persons; or

9 (c) Is unable, after reasonable diligence, to notify the person.

10 4. If a district attorney applies to the court for a determination  
11 that adequate cause exists to withhold notice, the court shall hold a  
12 closed hearing on the matter. Upon a finding of adequate cause, the  
13 court may order that no notice be given.

14 *5. If notice required to be served upon a person pursuant to*  
15 *subsection 2 is not adequate, the person must be given the*  
16 *opportunity to testify before the grand jury. If the person testifies*  
17 *pursuant to this subsection, the grand jury must be instructed to*  
18 *deliberate again on all the charges contained in the indictment*  
19 *following such testimony.*

20 **Sec. 11.** (Deleted by amendment.)

21 **Sec. 12.** (Deleted by amendment.)

