

SENATE BILL NO. 173—COMMITTEE ON JUDICIARY

(ON BEHALF OF ATTORNEY GENERAL)

FEBRUARY 11, 1999

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing discovery in criminal cases. (BDR 14-465)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~for omitted material~~ is material to be omitted.

AN ACT relating to criminal procedure; revising the provisions governing discovery in criminal cases; and providing other matters properly relating thereto.

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

- 1 **Section 1.** NRS 174.234 is hereby amended to read as follows:
2 174.234 1. Except as otherwise provided in this section, not less than
3 5 judicial days before trial or at such other time as the court ~~{may direct;}~~
4 ***directs:***
5 (a) ***If the defendant will be tried for one or more offenses that are***
6 ***punishable as a gross misdemeanor or felony:***
7 ***(1)*** The defendant shall file and serve upon the prosecuting attorney a
8 written notice containing the names and last known addresses of all
9 witnesses the defendant intends to call during the case in chief of the
10 defendant; and
11 ~~{(b) The}~~
12 ***(2) Except as otherwise provided in this subparagraph, the***
13 prosecuting attorney shall file and serve upon the defendant a written notice
14 containing the names and last known addresses of all witnesses the
15 prosecuting attorney intends to call during the case in chief of the state. ***If***
16 ***an information has been filed against the defendant, the prosecuting***
17 ***attorney is not required to include in the written notice filed and served***
18 ***upon the defendant pursuant to this subparagraph the name and last***

1 *known address of any witness whose name and last known address were*
2 *endorsed upon the information in accordance with subsection 2 of NRS*
3 *173.045.*

4 *(b) If the defendant will not be tried for any offenses that are*
5 *punishable as a gross misdemeanor or felony:*

6 *(1) The defendant shall file and serve upon the prosecuting attorney*
7 *a written notice containing the name and last known address of any*
8 *witness the defendant intends to call during the case in chief of the*
9 *defendant whose name and last known address have not otherwise been*
10 *provided to the prosecuting attorney pursuant to NRS 174.245; and*

11 *(2) The prosecuting attorney shall file and serve upon the defendant*
12 *a written notice containing the name and last known address of any*
13 *witness the prosecuting attorney intends to call during the case in chief*
14 *of the state whose name and last known address have not otherwise been*
15 *provided to the defendant pursuant to NRS 171.1965 or 174.235.*

16 2. If a witness that a party intends to call during the case in chief of the
17 state or during the case in chief of the defendant is expected to offer
18 testimony as an expert witness, the party who intends to call that witness
19 shall ~~file and~~ serve upon the opposing party, not less than 21 days before
20 trial or at such other time as the court ~~may direct,~~ **directs**, a written notice
21 containing:

22 (a) A brief statement regarding the subject matter on which the expert
23 witness is expected to testify and the substance of his testimony;

24 (b) ~~[A]~~ **If requested by the opposing party in writing, a** copy of the
25 curriculum vitae of the expert witness; and

26 (c) A copy of all reports made by or at the direction of the expert
27 witness.

28 3. After complying with the provisions of subsections 1 and 2, each
29 party has a continuing duty to ~~file and~~ serve upon the opposing party:

30 (a) Written notice of the names and last known addresses of any
31 additional witnesses that the party intends to call during the case in chief of
32 the state or during the case in chief of the defendant. A party shall file and
33 serve written notice pursuant to this paragraph as soon as ~~practicable after~~
34 the party determines that he intends to call an additional witness during the
35 case in chief of the state or during the case in chief of the defendant. ~~[The~~
36 ~~court shall prohibit an additional witness from testifying if the court~~
37 ~~determines that the party acted in bad faith by not including the witness on~~
38 ~~the written notice required pursuant to subsection 1.]~~

39 (b) Any information relating to an expert witness that is required to be
40 disclosed pursuant to subsection 2. A party shall provide information
41 pursuant to this paragraph as soon as ~~practicable after~~ the party obtains
42 that information. The court shall prohibit the party from introducing that
43 information in evidence or shall prohibit the expert witness from testifying

1 if the court determines that the party acted in bad faith by not timely
2 disclosing that information pursuant to subsection 2.

3 4. Upon a motion by either party or the witness, the court shall prohibit
4 disclosure to the other party of the address of the witness if the court
5 determines that disclosure of the address would create a substantial threat
6 to the witness of bodily harm, intimidation, coercion or harassment. If the
7 court prohibits disclosure of an address pursuant to this subsection, the
8 court shall, upon the request of a party, provide the party or his attorney or
9 agent with an opportunity to interview the witness in an environment that
10 provides for protection of the witness.

11 5. *If, during the case in chief of the state or the case in chief of the*
12 *defendant, a party calls a witness whose name and last known address*
13 *were not timely provided to the opposing party in accordance with this*
14 *section or any order of the court entered pursuant to NRS 174.275 or*
15 *subsection 2 of NRS 174.295, the court shall upon the request of the*
16 *opposing party:*

17 (a) *Continue the trial and provide the opposing party, before the*
18 *witness testifies, with an opportunity to interview the witness and to*
19 *prepare for cross-examination of the witness; or*

20 (b) *Prohibit the witness from testifying.*

21 6. In addition to the sanctions and protective orders otherwise provided
22 in **or required by** subsections 3 ~~and 4,~~ **4 and 5**, the court may upon the
23 request of a party:

24 (a) Order that disclosure pursuant to this section be denied, restricted or
25 deferred pursuant to the provisions of NRS 174.275; or

26 (b) Impose sanctions pursuant to subsection 2 of NRS 174.295 for the
27 failure to comply with the provisions of this section.

28 ~~16.]~~ 7. A party is not entitled, pursuant to the provisions of this section,
29 to the disclosure of the name or address of a witness or any other type of
30 item or information that is privileged or protected from disclosure or
31 inspection pursuant to the constitution or laws of this state or the
32 Constitution of the United States.