

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 **bold 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
3 than 5 judicial days before trial or at such other time as the court ~~may~~
4 ~~direct;~~ ***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
8 a 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)***~~ ***(2)*** The prosecuting attorney shall file and serve upon the
12 defendant a written notice containing the names and last known addresses
13 of all witnesses the prosecuting attorney intends to call during the case in
14 chief of the state.
15 ***(b) If the defendant will not be tried for any offenses that are***
16 ***punishable as a gross misdemeanor or felony:***
17 ***(1)*** ***The defendant shall file and serve upon the prosecuting***
18 ***attorney a written notice containing the name and last known address of***

1 *any witness the defendant intends to call during the case in chief of the*
2 *defendant whose name and last known address have not otherwise been*
3 *provided to the prosecuting attorney pursuant to NRS 174.245; and*

4 *(2) The prosecuting attorney shall file and serve upon the*
5 *defendant a written notice containing the name and last known address*
6 *or place of employment of any witness the prosecuting attorney intends to*
7 *call during the case in chief of the state whose name and last known*
8 *address or place of employment have not otherwise been provided to the*
9 *defendant pursuant to NRS 171.1965 or 174.235.*

10 2. If *the defendant will be tried for one or more offenses that are*
11 *punishable as a gross misdemeanor or felony and* a witness that a party
12 intends to call during the case in chief of the state or during the case in
13 chief of the defendant is expected to offer testimony as an expert witness,
14 the party who intends to call that witness shall file and serve upon the
15 opposing party, not less than 21 days before trial or at such other time as
16 the court ~~may direct,~~ *directs*, a written notice containing:

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

19 (b) A copy of the curriculum vitae of the expert witness; and

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

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

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

33 (b) Any information relating to an expert witness that is required to be
34 disclosed pursuant to subsection 2. A party shall provide information
35 pursuant to this paragraph as soon as practicable after the party obtains that
36 information. The court shall prohibit the party from introducing that
37 information in evidence or shall prohibit the expert witness from testifying
38 if the court determines that the party acted in bad faith by not timely
39 disclosing that information pursuant to subsection 2.

40 4. *Each party has a continuing duty to file and serve upon the*
41 *opposing party any change in the last known address, or, if applicable,*
42 *last known place of employment, of any witness that the party intends to*

1 *call during the case in chief of the state or during the case in chief of the*
2 *defendant as soon as practicable after the party obtains that information.*

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

11 ~~5.1~~ 6. In addition to the sanctions and protective orders otherwise
12 provided in subsections 3 and ~~4.1~~ 5, the court may upon the request of a
13 party:

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

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

18 ~~6.1~~ 7. A party is not entitled, pursuant to the provisions of this
19 section, to the disclosure of the name or address of a witness or any other
20 type of item or information that is privileged or protected from disclosure
21 or inspection pursuant to the constitution or laws of this state or the
22 Constitution of the United States.

23 **Sec. 2.** This act becomes effective upon passage and approval.