

SENATE BILL NO. 273—SENATOR NEAL (BY REQUEST)

MARCH 1, 1999

Referred to Committee on Judiciary

SUMMARY—Makes various changes to provisions governing bail. (BDR 14-527)

FISCAL NOTE: Effect on Local Government: Yes.
Effect on the State or on Industrial Insurance: 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; revising the provisions governing the forfeiture of bail and the exoneration of a surety; revising various other provisions governing bail; increasing the penalties for a defendant who fails to appear; 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 171.1845 is hereby amended to read as follows:
2 171.1845 1. If a person is brought before a magistrate under the
3 provisions of NRS 171.178 or 171.184, and it is discovered that there is a
4 warrant for his arrest outstanding in another county of this state, the
5 magistrate may release him in accordance with the provisions of NRS
6 178.484 or 178.4851 if:
7 (a) The warrant arises out of a public offense which constitutes a
8 misdemeanor; and
9 (b) The person provides a suitable address where the magistrate who
10 issued the warrant in the other county can notify him of a time and place to
11 appear.
12 2. If a person is released under the provisions of this section, the
13 magistrate who releases him shall transmit the cash, bond, notes or
14 agreement submitted under the provisions of NRS 178.502 or 178.4851,
15 together with his address, to the magistrate who issued the warrant. Upon
16 receipt of the cash, bonds, notes or agreement and address, the magistrate
17 who issued the warrant shall notify the person of a time and place to
18 appear.

3. Any bail set under the provisions of this section must be in addition to and apart from any bail set for any public offense with which a person is charged in the county in which a magistrate is setting bail. In setting bail under the provisions of this section, a magistrate shall set the bail in an amount which is sufficient to induce a reasonable person to travel to the county in which the warrant for the arrest is outstanding.

~~4. If the public offense out of which the warrant arises is punishable by imprisonment in the county jail, a~~ A person who fails to appear in the other county as ordered is guilty of ~~a misdemeanor.~~ *failing to appear and shall be punished as provided in NRS 199.335.* A sentence of imprisonment imposed ~~under~~ *for failing to appear in violation of* this section must be imposed consecutively to a sentence of imprisonment for the offense out of which the warrant arises.

Sec. 2. Chapter 178 of NRS is hereby amended by adding thereto a new section to read as follows:

If a defendant, while admitted to bail on a surety bond:

1. Is taken into custody in the same jurisdiction in which he was admitted to bail based upon any other offense, other than a minor traffic offense; and

2. Is released from custody without bail after being charged with any other offense, other than a minor traffic offense, the court shall exonerate the surety, unless the surety bond had been forfeited before the date on which the defendant was taken into custody.

Sec. 3. NRS 178.506 is hereby amended to read as follows:

178.506 If there is a breach of condition of a bond, the court shall declare a forfeiture of the bail, subject to the provisions of NRS 178.508 and 178.509 ~~and~~ *and section 2 of this act.*

Sec. 4. NRS 178.508 is hereby amended to read as follows:

178.508 *1.* If the defendant fails to appear when his presence in court is lawfully required, ~~and not excused,~~ the court shall ~~direct the fact of such failure to appear to be entered~~ :

(a) Enter upon its minutes that the defendant failed to appear;

(b) Not later than 30 days after the date on which the defendant failed to appear, issue a warrant for the arrest of the defendant; and

(c) If the undertaking exceeds \$50 or money deposited instead of bail bond exceeds \$500, the court shall direct that the sureties each surety and the local agent of each surety, or the depositor if he is not the defendant, be given notice that the defendant has failed to appear, by certified mail within ~~15~~ 20 days after the failure date on which the defendant failed to appear. and The court shall execute an affidavit of such mailing to be kept as an official public record of the court. The and shall direct that a copy of the notice be transmitted to the district attorney at the same time that notice is given to each surety or the depositor.

2. Except as otherwise provided in subsection 3, NRS 178.509 and section 2 of this act, the undertaking or money deposited instead of bail bond is forfeited ~~upon the expiration of~~ 180 days after the date on which the notice is mailed ~~[-except as otherwise provided in NRS 178.509. A copy of the notice must be transmitted to the district attorney at the time notice is given to the sureties or the depositor.]~~ pursuant to subsection 1.

3. The court may extend the date of the forfeiture for any reasonable period set by the court if the surety or depositor submits to the court:

(a) An application for an extension and the court determines that the surety or the depositor is making reasonable and ongoing efforts to bring the defendant before the court.

(b) An application for an extension on the ground that the defendant is temporarily prevented from appearing before the court because the defendant:

(1) Is ill;

(2) Is insane; or

(3) Is being detained by civil or military authorities, and the court, upon hearing the matter, determines that one or more of the grounds described in this paragraph exist and that the surety or depositor did not in any way cause or aid the absence of the defendant.

Sec. 5. NRS 178.509 is hereby amended to read as follows:

178.509 1. ~~[The]~~ Except as otherwise provided in section 2 of this act, if the defendant fails to appear when his presence in court is lawfully required, the court shall not exonerate the surety before the ~~[expiration of 180 days after mailing the notice of intent to forfeit]~~ date of forfeiture prescribed in NRS 178.508 unless:

(a) The defendant appears before the court and the court, upon hearing the matter, determines that the defendant has presented a satisfactory excuse or that the surety did not in any way cause or aid the absence of the defendant; or

(b) The surety submits an application for exoneration on the ground that the defendant is unable to appear because ~~[-~~

~~(1) He is] the defendant:~~

(1) Is dead;

(2) ~~[He is]~~ Is ill;

(3) ~~[He is insane; or~~

~~(4) He is] Is insane;~~

(4) Is being detained by civil or military authorities ~~[-]~~; or

(5) Has been deported,

and the court, upon hearing the matter, determines that one or more of the grounds described in this paragraph exist and that the surety did not in any way cause or aid the absence of the defendant.

2. If the requirements of subsection 1 are met, the court may exonerate the surety upon such terms as may be just.

~~{3.—The court shall not exclude any period of time from the running of the 180 days following mailing of the notice of intent to forfeit unless the defendant or the surety submits an application for the exclusion of time from that 180-day period on the ground that the defendant is temporarily prevented from appearing before the court because:~~

~~—(a) He is ill;~~

~~—(b) He is insane; or~~

~~—(c) He is being detained by civil or military authorities, and the court, upon hearing the matter, determines that one or more of the grounds described in this subsection exist and that the surety did not in any way cause or aid the absence of the defendant. If the requirements of this subsection are met, the court may exclude from the 180-day period such time as it determines to be necessary and just. The court may include, as part of the total time excluded from the running of the 180 days, a reasonable period for the defendant's return to the court upon termination of the temporary disability if it determines that the additional period is necessary.}~~

Sec. 6. NRS 178.512 is hereby amended to read as follows:

178.512 The court shall not set aside a forfeiture unless:

1. The surety submits an application to set it aside on the ground that the defendant:

(a) Has appeared before the court since the date of the forfeiture and has presented a satisfactory excuse for his absence;

(b) Was dead before the date of the forfeiture but the surety did not know and could not reasonably have known of his death before that date;

(c) Was unable to appear before the court before the date of the forfeiture because of his illness or his insanity, but the surety did not know and could not reasonably have known of his illness or insanity before that date; ~~or~~

(d) Was unable to appear before the court before the date of the forfeiture because he was being detained by civil or military authorities, but the surety did not know and could not reasonably have known of his detention before that date ~~or~~ ; or

(e) Was unable to appear before the court before the date of the forfeiture because he was deported, but the surety did not know and could not reasonably have known of his deportation before that date,

and the court, upon hearing the matter, determines that one or more of the grounds described in this subsection exist and that the surety did not in any way cause or aid the absence of the defendant; and

2. The court determines that justice does not require the enforcement of the forfeiture.

Sec. 7. NRS 178.526 is hereby amended to read as follows:

178.526 **1.** For the purpose of surrendering a defendant, a surety, at any time before ~~he~~ **the defendant** is finally discharged, and at any place within ~~the~~ **this** state, may, by ~~a~~ **:**

(a) Written authorization for the arrest of the defendant attached to a copy of the undertaking; or

(b) A written authority endorsed on a certified copy of the undertaking,

cause the defendant to be arrested by a bail agent or bail enforcement agent who is licensed pursuant to chapter 697 of NRS.

2. A bail agent or bail enforcement agent who arrests a defendant in this state or any other jurisdiction is not acting for or on behalf of this state or any of its political subdivisions.

Sec. 8. NRS 199.335 is hereby amended to read as follows:

199.335 ~~[A person who is]~~

1. If a person:

(a) Is admitted to bail, whether provided by deposit ~~[]~~ **or** surety , or ~~[upon his own recognizance, and who is]~~ **released without bail;**

(b) Is not recommitted to custody ~~[who fails]~~ **; and**

(c) Fails to appear at the time and place required by the order admitting him to bail or **releasing him without bail, or** any modification thereof, **the person is guilty of failing to appear and shall be punished pursuant to the provisions of this section,** unless ~~he~~ **the person** surrenders himself ~~[within]~~ **not later than** 30 days ~~[or is excused by the court, shall be punished;~~

~~—1.— For]~~ **after the date on which the person was required to appear.**

2. If a person who fails to appear in violation of subsection 1 was admitted to bail or released without bail incident to prosecution for:

(a) One or more felonies, the person is guilty of a category D felony **and shall be punished** as provided in NRS 193.130.

~~[2.— For a misdemeanor, if admitted incident to prosecution for a misdemeanor or gross misdemeanor.]~~

(b) One or more gross misdemeanors but no felonies, the person is guilty of:

(1) A gross misdemeanor; or

(2) If the person left this state with the intent to avoid prosecution, a category D felony and shall be punished as provided in NRS 193.130.

(c) One or more misdemeanors but no felonies or gross misdemeanors, the person is guilty of:

1 ***(1) A misdemeanor; or***

2 ***(2) If the person left this state with the intent to avoid prosecution, a***
3 ***category D felony and shall be punished as provided in NRS 193.130.***

4 **Sec. 9.** The amendatory provisions of this act do not apply to:

5 1. A defendant who is admitted to bail before October 1, 1999;

6 2. A surety who provides the bail bond or undertaking for a defendant
7 who is admitted to bail before October 1, 1999; or

8 3. A depositor who provides money instead of a bail bond for a
9 defendant who is admitted to bail before October 1, 1999.

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