

SENATE BILL NO. 483—COMMITTEE ON JUDICIARY
(ON BEHALF OF DISTRICT ATTORNEY’S ASSOCIATION)

MARCH 18, 1999

Referred to Committee on Judiciary

SUMMARY—Allows use of certain affidavits at preliminary examination or grand jury proceeding under certain circumstances. (BDR 14-1634)

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; allowing the use of certain affidavits at a preliminary examination or grand jury proceeding under certain circumstances; 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 171.197 is hereby amended to read as follows:
2 171.197 1. If a witness resides outside this state or more than 100
3 miles from the place of a preliminary examination, his affidavit may be
4 used at the preliminary examination ~~when~~ *if* it is necessary for the district
5 attorney to establish as an element of any offense that:
6 (a) The witness was the owner, possessor or occupant of real or personal
7 property; and
8 (b) The defendant did not have the permission of the witness to enter,
9 occupy, possess or control the real or personal property of the witness.
10 2. *If a financial institution does not maintain any principal or*
11 *branch office within this state or if a financial institution that maintains*
12 *a principal or branch office within this state does not maintain any such*
13 *office within 100 miles of the place of a preliminary examination, the*
14 *affidavit of a custodian of the records of the financial institution or the*
15 *affidavit of any other qualified person of the financial institution may be*
16 *used at the preliminary examination if it is necessary for the district*
17 *attorney to establish as an element of any offense that:*

1 (a) *When a check or draft naming the financial institution as drawee*
2 *was drawn or passed, the account or purported account upon which the*
3 *check or draft was drawn did not exist, was closed or held insufficient*
4 *money, property or credit to pay the check or draft in full upon its*
5 *presentation; or*

6 (b) *When a check or draft naming the financial institution as drawee*
7 *was presented for payment to the financial institution, the account or*
8 *purported account upon which the check or draft was drawn did not*
9 *exist, was closed or held insufficient money, property or credit to pay the*
10 *check or draft in full.*

11 3. The district attorney shall provide either written or oral notice to the
12 defendant, not less than 10 days before the scheduled *preliminary*
13 examination, that he intends to use ~~the~~ *an* affidavit *described in this*
14 *section* at the *preliminary* examination.

15 ~~3-~~ 4. If , at or before the time of the preliminary examination , the
16 defendant establishes that:

17 (a) There is a substantial and bona fide dispute as to the facts in ~~the~~
18 ~~affidavit;~~ *an affidavit described in this section;* and

19 (b) It is in the best interests of justice that the ~~witness~~ *person* who
20 signed the affidavit be cross-examined,
21 the magistrate may order the district attorney to produce the ~~witness~~
22 *person who signed the affidavit* and may continue the examination for any
23 time it deems reasonably necessary in order to receive such testimony.

24 **Sec. 2.** NRS 172.135 is hereby amended to read as follows:

25 172.135 1. In the investigation of a charge, for the purpose of either
26 presentment or indictment, the grand jury can receive no other evidence
27 than such as is given by witnesses produced and sworn before them or
28 furnished by legal documentary evidence or by the deposition of witnesses
29 taken as provided in this Title, except that the grand jury may receive ~~an~~
30 *any of the following:*

31 (a) *An* affidavit or declaration from an expert witness or other person
32 described in NRS 50.315 in lieu of his personal testimony or deposition .
33 ~~and may receive an~~

34 (b) *An* affidavit of an owner, possessor or occupant of real or personal
35 property ~~pursuant to~~ *or other person described in* NRS 172.137 in lieu of
36 his personal testimony or deposition.

37 2. The grand jury can receive none but legal evidence, and the best
38 evidence in degree, to the exclusion of hearsay or secondary evidence.

39 **Sec. 3.** NRS 172.137 is hereby amended to read as follows:

40 172.137 1. If a witness resides outside this state or more than 100
41 miles from the place of a grand jury proceeding, his affidavit may be used

1 at the proceeding ~~{when}~~ **if** it is necessary for the district attorney to
2 establish as an element of any offense that:

3 (a) The witness was the owner, possessor or occupant of real or personal
4 property; and

5 (b) The defendant did not have the permission of the witness to enter,
6 occupy, possess or control the real or personal property of the witness.

7 **2. If a financial institution does not maintain any principal or**
8 **branch office within this state or if a financial institution that maintains**
9 **a principal or branch office within this state does not maintain any such**
10 **office within 100 miles of the place of a grand jury proceeding, the**
11 **affidavit of a custodian of the records of the financial institution or the**
12 **affidavit of any other qualified person of the financial institution may be**
13 **used at the proceeding if it is necessary for the district attorney to**
14 **establish as an element of any offense that:**

15 **(a) When a check or draft naming the financial institution as drawee**
16 **was drawn or passed, the account or purported account upon which the**
17 **check or draft was drawn did not exist, was closed or held insufficient**
18 **money, property or credit to pay the check or draft in full upon its**
19 **presentation; or**

20 **(b) When a check or draft naming the financial institution as drawee**
21 **was presented for payment to the financial institution, the account or**
22 **purported account upon which the check or draft was drawn did not**
23 **exist, was closed or held insufficient money, property or credit to pay the**
24 **check or draft in full.**

25 **3.** If the defendant has been subpoenaed to appear before the grand
26 jury or if the defendant has requested to testify pursuant to NRS 172.241,
27 the district attorney shall provide either written or oral notice to the
28 defendant, within a reasonable time before the scheduled proceeding of the
29 grand jury, that ~~{the}~~ **an affidavit described in this section** will be used at
30 the proceeding.

31 ~~{3-}~~ **4.** If , at or before the time of the proceeding , the defendant
32 establishes that:

33 (a) There is a substantial and bona fide dispute as to the facts in ~~{the~~
34 **affidavit;}** **an affidavit described in this section;** and

35 (b) It is in the best interests of justice that the ~~{witness}~~ **person** who
36 signed the affidavit be examined or cross-examined,
37 the grand jury may request that the district attorney produce the ~~{witness}~~
38 **person who signed the affidavit** and may continue the proceeding for any
39 time it deems reasonably necessary in order to receive such testimony.

1 **Sec. 4.** The amendatory provisions of this act apply to any criminal
2 offense that is the subject of a preliminary examination or grand jury
3 proceeding commenced on or after the effective date of this act, regardless
4 of when the offense was committed.

5 **Sec. 5.** This act becomes effective upon passage and approval.

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