

Senate Bill No. 483—Committee on Judiciary

CHAPTER.....

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:

Section 1. NRS 171.197 is hereby amended to read as follows:

171.197 1. If a witness resides outside this state or more than 100 miles from the place of a preliminary examination, his affidavit may be used at the preliminary examination ~~if~~ *if* it is necessary for the district attorney to establish as an element of any offense that:

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

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

2. *If a financial institution does not maintain any principal or branch office within this state or if a financial institution that maintains a principal or branch office within this state does not maintain any such office within 100 miles of the place of a preliminary examination, the affidavit of a custodian of the records of the financial institution or the affidavit of any other qualified person of the financial institution may be used at the preliminary examination if it is necessary for the district attorney to establish as an element of any offense that:*

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

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

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

~~{3.}~~ 4. If , at or before the time of the preliminary examination , the defendant establishes that:

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

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

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

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

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

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

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

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

172.137 1. If a witness resides outside this state or more than 100 miles from the place of a grand jury proceeding, his affidavit may be used at the proceeding ~~{when}~~ *if* it is necessary for the district attorney to establish as an element of any offense that:

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

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

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

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

(b) *When a check or draft naming the financial institution as drawee was presented for payment to the financial institution, the account or*

purported account upon which the check or draft was drawn did not exist, was closed or held insufficient money, property or credit to pay the check or draft in full.

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

~~3.~~ 4. If , at or before the time of the proceeding , the defendant establishes that:

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

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

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

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

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