

SENATE BILL NO. 192—COMMITTEE ON JUDICIARY

(ON BEHALF OF DISTRICT ATTORNEYS ASSOCIATION)

FEBRUARY 16, 2001

Referred to Committee on Judiciary

SUMMARY—Authorizes magistrate to permit examination of witness if defendant waives preliminary examination. (BDR 14-466)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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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; authorizing a magistrate to permit the examination of a witness if the defendant waives the preliminary examination; 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.** Chapter 171 of NRS is hereby amended by adding thereto a
2 new section to read as follows:
3 ***1. If the defendant waives the preliminary examination pursuant to***
4 ***subsection 1 of NRS 171.196, the defendant or the prosecuting attorney***
5 ***may request that the magistrate permit the examination of a witness to***
6 ***perpetuate the testimony of the witness. If the magistrate finds that good***
7 ***cause exists to permit the examination of the witness, the magistrate shall***
8 ***permit the witness to be examined at the time at which the preliminary***
9 ***examination was scheduled.***
10 ***2. If the magistrate permits a witness to be examined pursuant to this***
11 ***section, the defendant or the prosecuting attorney may cross-examine the***
12 ***witness.***
13 ***3. The magistrate shall employ a certified court reporter to take down***
14 ***the testimony and the proceedings on the examination of a witness***
15 ***pursuant to this section and have that testimony transcribed into***
16 ***typewritten transcript. The compensation for the services of a reporter***
17 ***employed as provided in this section are the same as provided in NRS***
18 ***3.370, to be paid out of the county treasury as other claims against the***
19 ***county are allowed and paid. When the testimony of the witness is taken***
20 ***and transcribed by the reporter, the reporter shall certify to the transcript***



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1 *in the same manner as for a transcript of testimony in the district court,*
2 *and the certificate of the reporter authenticates the transcript for all*
3 *purposes of this Title. Before the date set for trial, either party may move*
4 *the court before which the case is pending to add to, delete from, or*
5 *otherwise correct the transcript to conform with the testimony as given*
6 *and to settle the transcript so altered. Testimony reduced to writing and*
7 *authenticated according to the provisions of this section must be filed*
8 *with the clerk of the district court, and a copy of the transcript must be*
9 *furnished to the defendant and to the prosecuting attorney.*

10 4. *The testimony of a witness examined pursuant to this section may*
11 *be used by the defendant or the prosecuting attorney in the manner*
12 *provided by NRS 174.215 for the use of depositions in criminal*
13 *proceedings.*

14 5. *At the conclusion of all examinations of witnesses pursuant to this*
15 *section, the magistrate shall immediately hold the defendant to answer in*
16 *the district court.*

17 **Sec. 2.** NRS 171.196 is hereby amended to read as follows:

18 171.196 1. If an offense is not triable in the justice's court, the
19 defendant must not be called upon to plead. ~~HH~~ *Except as otherwise*
20 *provided in section 1 of this act, if* the defendant waives *the* preliminary
21 examination, the magistrate shall immediately hold him to answer in the
22 district court.

23 2. If the defendant does not waive *the preliminary* examination, the
24 magistrate shall hear the evidence within 15 days, unless for good cause
25 shown he extends such time. Unless the defendant waives counsel,
26 reasonable time must be allowed for counsel to appear.

27 3. Except as otherwise provided in this subsection, if the magistrate
28 postpones the *preliminary* examination at the request of a party, the
29 magistrate may order that party to pay all or part of the costs and fees
30 expended to have a witness attend the *preliminary* examination. The
31 magistrate shall not require a party who requested the postponement of the
32 *preliminary* examination to pay for the costs and fees of a witness if:

33 (a) It was not reasonably necessary for the witness to attend the
34 *preliminary* examination; or

35 (b) The magistrate ordered the extension pursuant to subsection 4.

36 4. If application is made for the appointment of counsel for an indigent
37 defendant, the magistrate shall postpone the *preliminary* examination until:

38 (a) The application has been granted or denied; and

39 (b) If the application is granted, the attorney appointed or the public
40 defender has had reasonable time to appear.

41 5. The defendant may cross-examine witnesses against him and may
42 introduce evidence in his own behalf.

