
ASSEMBLY BILL NO. 44—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE NEVADA SUPREME COURT)

PREFILED JANUARY 26, 2007

Referred to Committee on Judiciary

SUMMARY—Requires a criminal defendant to be present at the preliminary hearing under certain circumstances. (BDR 14-658)

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; requiring a criminal defendant to be present at the preliminary hearing under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

- 1 This bill revises existing law to require a criminal defendant to be present at the
2 preliminary hearing under certain circumstances. (NRS 178.388)

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** NRS 178.388 is hereby amended to read as follows:
2 178.388 1. Except as otherwise provided in this title, the
3 defendant must be present at the arraignment, ***at the preliminary***
4 ***hearing,*** at every stage of the trial including the impaneling of the
5 jury and the return of the verdict, and at the imposition of sentence.
6 A corporation may appear by counsel for all purposes.
7 2. In prosecutions for offenses not punishable by death:



(a) *The defendant's voluntary absence after the preliminary hearing has been commenced in his presence must not prevent continuing the preliminary hearing to its conclusion.*

(b) The defendant's voluntary absence after the trial has been commenced in his presence must not prevent continuing the trial to and including the return of the verdict.

~~(b)~~ (c) If the defendant was present at the trial through the time he pleads guilty or is found guilty but at the time of his sentencing is incarcerated in another jurisdiction, he may waive his right to be present at the sentencing proceedings and agree to be sentenced in this State in his absence. The defendant's waiver is valid only if it is:

(1) Made knowingly, intelligently and voluntarily after consulting with an attorney licensed to practice in this State;

(2) Signed and dated by the defendant and notarized by a notary public or judicial officer; and

(3) Signed and dated by his attorney after it has been signed by the defendant and notarized.

3. In prosecutions for offenses punishable by fine or by imprisonment for not more than 1 year, or both, the court, with the written consent of the defendant, may permit arraignment, *preliminary hearing*, plea, trial and imposition of sentence in the defendant's absence, if the court determines that the defendant was fully aware of his applicable constitutional rights when he gave his consent.

4. The presence of the defendant is not required at the arraignment or any preceding stage if the court has provided for the use of a closed-circuit television to facilitate communication between the court and the defendant during the proceeding. If closed-circuit television is provided for, members of the news media may observe and record the proceeding from both locations unless the court specifically provides otherwise.

5. The defendant's presence is not required at the settling of jury instructions.

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

