

ASSEMBLY BILL NO. 65—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE NEVADA DISTRICT
ATTORNEYS ASSOCIATION)

PREFILED FEBRUARY 2, 2007

Referred to Committee on Judiciary

SUMMARY—Revises the provisions pertaining to the filing of motions to suppress evidence in criminal proceedings. (BDR 14-319)

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; revising the provisions pertaining to the filing of motions to suppress evidence in criminal proceedings; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that a justice court has jurisdiction in a criminal prosecution in which the offense charged is a misdemeanor. (NRS 4.370) In a criminal prosecution in which the offense charged is a gross misdemeanor or felony, a justice court conducts a preliminary examination to determine whether a defendant should be bound over for trial in the district court, which has jurisdiction over offenses that are gross misdemeanors and felonies. (Nev. Const. Art. 6, § 6; NRS 171.196-171.206) Existing law does not explicitly confer upon a justice court the authority to hear a motion to suppress evidence during a preliminary examination, but does provide that the State may appeal to the district court from an order of a justice court that granted a motion to suppress evidence before or during a preliminary examination. (NRS 189.120)

Section 1 of this bill provides that in a criminal prosecution of an offense that is a gross misdemeanor or felony, a motion to suppress evidence may be made only in the district court, and, therefore, a justice court may not hear a motion to suppress evidence before or during the preliminary examination for such an offense. In a criminal prosecution of an offense that is a misdemeanor, **section 1** provides that a motion to suppress evidence may be made only in the justice court.



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

1 **Section 1.** NRS 174.125 is hereby amended to read as follows:

2 174.125 1. All motions in a criminal prosecution to suppress
3 evidence, for a transcript of former proceedings, for a preliminary
4 hearing, for severance of joint defendants, for withdrawal of
5 counsel, and all other motions which by their nature, if granted,
6 delay or postpone the time of trial must be made before trial, unless
7 an opportunity to make such a motion before trial did not exist or
8 the moving party was not aware of the grounds for the motion
9 before trial.

10 2. In any judicial district in which a single judge is provided:

11 (a) All motions subject to the provisions of subsection 1 must be
12 made in writing, with not less than 10 days' notice to the opposite
13 party unless good cause is shown to the court at the time of trial why
14 the motion could not have been made in writing upon the required
15 notice.

16 (b) The court may, by written order, shorten the notice required
17 to be given to the opposite party.

18 3. In any judicial district in which two or more judges are
19 provided:

20 (a) All motions subject to the provisions of subsection 1 must be
21 made in writing not less than 15 days before the date set for trial,
22 except that if less than 15 days intervene between entry of a plea and
23 the date set for trial, such a motion may be made within 5 days after
24 entry of the plea.

25 (b) The court may, if a defendant waives hearing on the motion
26 or for other good cause shown, permit the motion to be made at a
27 later date.

28 4. Grounds for making such a motion after the time provided or
29 at the trial must be shown by affidavit.

30 **5. *In a criminal prosecution of an offense that is:***

31 **(a) *A gross misdemeanor or felony, a motion to suppress***
32 ***evidence may be made only in the district court.***

33 **(b) *A misdemeanor, a motion to suppress evidence may be***
34 ***made only in the justice court.***

35 **Sec. 2.** NRS 189.120 is hereby amended to read as follows:

36 189.120 1. The State may appeal to the district court from an
37 order of a justice court granting the motion of a defendant to
38 suppress evidence.

39 2. Such an appeal ~~shall~~ **must** be taken:

40 (a) Within 2 days after the rendition of such an order during a
41 trial. ~~[for preliminary examination.]~~



- 1 (b) Within 5 days after the rendition of such an order before a
2 trial . ~~for preliminary examination.~~
3 3. Upon perfecting such an appeal:
4 (a) After the commencement of a trial , ~~for preliminary~~
5 ~~examination,~~ further proceedings in the trial ~~shall~~ **must** be stayed
6 pending the final determination of the appeal.
7 (b) Before trial , ~~for preliminary examination,~~ the time
8 limitation within which a defendant ~~shall~~ **must** be brought to trial
9 ~~shall~~ **must** be extended for the period necessary for the final
10 determination of the appeal.

