

SENATE BILL NO. 37—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE NEVADA DISTRICT
ATTORNEYS ASSOCIATION)

PREFILED JANUARY 26, 2007

Referred to Committee on Judiciary

SUMMARY—Makes various changes to provisions governing the testimony and evidence of a witness who is granted immunity in a criminal proceeding. (BDR 14-278)

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; providing that evidence that is derived from the testimony or evidence of a witness who is granted immunity may be introduced in another proceeding if the evidence is obtained from an independent source; clarifying the duties of a witness to whom immunity is granted; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing law provides that an order of immunity provides what is commonly
2 referred to as “transactional immunity” to a witness who is compelled to testify
3 pursuant to the order such that the witness cannot be prosecuted for any offense
4 revealed by his testimony except for perjury committed in giving the testimony.
5 (NRS 178.574) **Section 2** of this bill revises the provisions relating to the
6 prosecution of a witness who has been granted immunity to provide that an order of
7 immunity only provides what is commonly referred to as “use or derivative use
8 immunity.” Under this type of immunity, a witness is immune from the State using
9 any of the witness’s testimony or other evidence obtained pursuant to the order of
10 immunity in any future prosecution against the witness, unless the State is
11 prosecuting the witness for perjury committed in giving the testimony or the person
12 who offers evidence or testimony against the witness demonstrates that the
13 evidence against the witness was obtained from an independent source. **Section 3**
14 of this bill requires a witness to whom immunity is granted to testify or produce all



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15 evidence compelled by the order of immunity regardless of whether the testimony
16 or evidence may tend to incriminate the witness or subject him to a penalty or
17 forfeiture. (NRS 178.576)

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

1 **Section 1.** NRS 178.572 is hereby amended to read as follows:
2 178.572 1. In any investigation before a grand jury, or any
3 preliminary examination or trial in any court of record, the court on
4 motion of the State may order that any material witness be released
5 from all liability to be prosecuted or punished on account of any
6 testimony or other evidence he may be required to produce ~~and~~
7 *pursuant to the order.*

8 2. Any motion, hearing or order regarding the immunity of a
9 grand jury witness must not be made public before an indictment or
10 presentment is issued in the case.

11 **Sec. 2.** NRS 178.574 is hereby amended to read as follows:

12 178.574 ~~{Such}~~

13 1. *Except as otherwise provided in subsection 2, an* order of
14 immunity ~~{shall forever be a bar to prosecution against the witness~~
15 ~~for any offense shown in whole or in part by such}~~ *issued pursuant*
16 *to NRS 178.572 forever bars the State from using any* testimony or
17 other evidence ~~{except}~~ *obtained pursuant to the order of immunity*
18 *in any prosecution against the witness, other than a prosecution*
19 *against the witness* for perjury committed in the giving of such
20 testimony.

21 2. *Evidence that is discovered as a result of, or otherwise*
22 *derived from, testimony or evidence compelled by an order issued*
23 *pursuant to NRS 178.572 is not admissible in a proceeding against*
24 *the witness to whom immunity was granted unless it is obtained*
25 *from a source that is independent from the testimony or evidence*
26 *provided by the witness to whom immunity was granted. If there is*
27 *an objection to the admissibility of such evidence, the person*
28 *offering the evidence must establish by clear and convincing*
29 *evidence that the evidence offered was obtained from that*
30 *independent source.*

31 **Sec. 3.** NRS 178.576 is hereby amended to read as follows:

32 178.576 1. *If the court issues an order and grants immunity*
33 *to a witness pursuant to NRS 178.572, the witness shall testify or*
34 *produce all evidence compelled by the order, regardless of whether*
35 *the testimony or evidence may tend to incriminate him or subject*
36 *him to a penalty or forfeiture.*



- 1 2. Any witness ~~{who having}~~ *to whom such immunity has*
- 2 been granted ~~{immunity}~~ *who* refuses to testify or produce other
- 3 evidence is in contempt of court.

