

SENATE BILL NO. 355—SENATORS DENIS AND KIHUEN

MARCH 21, 2011

JOINT SPONSORS: ASSEMBLYMEN FLORES, BUSTAMANTE ADAMS,
BENITEZ-THOMPSON, BROOKS, CARRILLO; AND DIAZ

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to criminal procedure.
(BDR 14-390)

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; prohibiting a peace officer from inquiring about a person's immigration status under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes a peace officer to issue a citation in lieu of executing a warrant of arrest under certain circumstances. (NRS 171.122) **Section 1** of this bill provides that a peace officer shall not inquire about or require proof of a defendant's immigration status when issuing such a citation.

Existing law authorizes a peace officer to temporarily detain a person suspected of criminal behavior or of violating the conditions of the person's parole or probation. (NRS 171.123) **Section 2** of this bill prohibits a peace officer from: (1) inquiring about a person's immigration status under certain circumstances; and (2) detaining a person solely to inquire about a person's immigration status.

Existing law requires a peace officer to take a person before a magistrate when the person has been detained for a violation punishable as a misdemeanor and the person fails to furnish evidence of identity or when the peace officer has reasonable and probable grounds to believe that the person will disregard a promise to appear in court. (NRS 171.1771) **Section 3** of this bill provides that a peace officer must not base his or her belief that a person will disregard a promise to appear in court solely on a person's immigration status.



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

Section 1. NRS 171.122 is hereby amended to read as follows:

171.122 1. Except as otherwise provided in subsection 2, the warrant must be executed by the arrest of the defendant. The officer need not have the warrant in the officer's possession at the time of the arrest, but upon request the officer must show the warrant to the defendant as soon as possible. If the officer does not have a warrant in the officer's possession at the time of the arrest, the officer shall then inform the defendant of the officer's intention to arrest the defendant, of the offense charged, the authority to make it and of the fact that a warrant has or has not been issued. The defendant must not be subjected to any more restraint than is necessary for the defendant's arrest and detention. If the defendant either flees or forcibly resists, the officer may, except as otherwise provided in NRS 171.1455, use all necessary means to effect the arrest.

2. In lieu of executing the warrant by arresting the defendant, a peace officer may issue a citation as provided in NRS 171.1773 if:

(a) The warrant is issued upon an offense punishable as a misdemeanor;

(b) The officer has no indication that the defendant has previously failed to appear on the charge reflected in the warrant;

(c) The defendant provides satisfactory evidence of his or her identity to the peace officer;

(d) The defendant signs a written promise to appear in court for the misdemeanor offense; and

(e) The officer has reasonable grounds to believe that the defendant will keep a written promise to appear in court.

↪ For purposes of paragraph (c), the officer shall not inquire about or require any proof of a person's immigration status, including, without limitation, requesting the social security number of the person.

3. The summons must be served upon a defendant by delivering a copy to the defendant personally, or by leaving it at the defendant's dwelling house or usual place of abode with some person then residing in the house or abode who is at least 16 years of age and is of suitable discretion, or by mailing it to the defendant's last known address. In the case of a corporation, the summons must be served at least 5 days before the day of appearance fixed in the summons, by delivering a copy to an officer or to a managing or general agent or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the corporation's last known



1 address within the State of Nevada or at its principal place of
2 business elsewhere in the United States.

3 **Sec. 2.** NRS 171.123 is hereby amended to read as follows:

4 171.123 1. Any peace officer may detain any person whom
5 the officer encounters under circumstances which reasonably
6 indicate that the person has committed, is committing or is about to
7 commit a crime.

8 2. Any peace officer may detain any person the officer
9 encounters under circumstances which reasonably indicate that the
10 person has violated or is violating the conditions of the person's
11 parole or probation.

12 3. The officer may detain the person pursuant to this section
13 only to ascertain the person's identity and the suspicious
14 circumstances surrounding the person's presence abroad. Any
15 person so detained shall identify himself or herself, but may not be
16 compelled to answer any other inquiry of any peace officer. *To*
17 *ascertain a person's identity, a peace officer shall not inquire*
18 *about or require any proof of a person's immigration status,*
19 *including, without limitation, requesting the social security*
20 *number of the person.*

21 4. *A peace officer shall not detain any person solely to*
22 *inquire about or require any proof of a person's immigration*
23 *status, including, without limitation, requesting the social security*
24 *number of the person.*

25 5. *In conducting any investigation pursuant to this section, a*
26 *peace officer shall not inquire about or require any proof of:*

27 (a) *The immigration status of a victim or witness, including,*
28 *without limitation, requesting the social security number of the*
29 *victim or witness.*

30 (b) *The immigration status of a person being investigated,*
31 *including, without limitation, requesting the social security*
32 *number of the person, unless and until:*

33 (1) *The person is booked into a county or city jail or*
34 *detention facility; or*

35 (2) *The person is arrested for a crime punishable pursuant*
36 *to the laws of this State and the immigration status of the person is*
37 *pertinent to the criminal investigation.*

38 6. A person must not be detained longer than is reasonably
39 necessary to effect the purposes of this section, and in no event
40 longer than 60 minutes. The detention must not extend beyond the
41 place or the immediate vicinity of the place where the detention was
42 first effected, unless the person is arrested.

43 **Sec. 3.** NRS 171.1771 is hereby amended to read as follows:

44 171.1771 Whenever any person is detained by a peace officer
45 for any violation of a county, city or town ordinance or a state law



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1 which is punishable as a misdemeanor and the person is not required
2 to be taken before a magistrate, the person shall, in the discretion of
3 the peace officer, either be given a misdemeanor citation, or be
4 taken without unnecessary delay before the proper magistrate. Any
5 such person shall be taken before the magistrate when the person
6 does not furnish satisfactory evidence of identity or when the peace
7 officer has reasonable and probable grounds , *which must not be*
8 *based solely on a person's immigration status*, to believe the
9 person will disregard a written promise to appear in court.

