

SENATE BILL NO. 420—COMMITTEE ON JUDICIARY

MARCH 25, 2013

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to the issuance of subpoenas. (BDR 14-1108)

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; specifying that a prosecuting attorney or an attorney for a defendant may issue subpoenas for witnesses in this State to appear before the court at which a preliminary hearing is to be held; authorizing a peace officer to accept delivery of a subpoena in lieu of service, via electronic means; providing that a person who fails to obey a subpoena of an attorney for a defendant without an adequate excuse is in contempt of court; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes the prosecuting attorney or the attorney for the defendant in a criminal proceeding to issue subpoenas for witnesses within the State to appear before the court at which an indictment, information or criminal complaint is to be tried. (NRS 174.315) **Section 2** of this bill additionally specifies that a prosecuting attorney or an attorney for a defendant may issue subpoenas for such witnesses to appear before the court at which a preliminary hearing is to be held. **Section 2** also provides that a peace officer may accept delivery of a subpoena in lieu of service, via electronic means.

Existing law also provides that a person who, without an adequate excuse, fails to obey a subpoena of a court or a prosecuting attorney that was served upon the person or that was delivered to the person and accepted is in contempt of the court from which the subpoena was issued or in which the investigation is pending or the indictment, information or complaint is to be tried. (NRS 174.385) **Section 3** of this bill provides that a person who fails to obey a subpoena of an attorney for a defendant is also in contempt of court. **Section 3** also specifies that a person who fails to obey a subpoena of a prosecuting attorney or an attorney for a defendant is in contempt of the court in which a preliminary hearing is to be held.



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

Section 1. NRS 172.305 is hereby amended to read as follows:
172.305 A presentment or indictment may not be dismissed on
the ground that the specific subject of the inquiry was not disclosed
to the defendant pursuant to NRS 172.195 or subsection ~~4~~ 5 of
NRS 174.315.

Sec. 2. NRS 174.315 is hereby amended to read as follows:

174.315 1. ~~The~~ A prosecuting attorney may issue
subpoenas subscribed by the prosecuting attorney for witnesses
within the State, in support of the prosecution or whom ~~the~~ a grand
jury may direct to appear before it, upon any investigation pending
before the grand jury.

2. ~~The~~ A prosecuting attorney or ~~the~~ an attorney for ~~the~~ a
defendant may issue subpoenas subscribed by the issuer for:

(a) Witnesses within the State to appear before the court at
which *a preliminary hearing is to be held or* an indictment,
information or criminal complaint is to be tried.

(b) Witnesses already subpoenaed who are required to reappear
in any Justice Court at any time the court is to reconvene in the
same case within 60 days, and the time may be extended beyond 60
days upon good cause being shown for its extension.

3. Witnesses, whether within or outside of the State, may
accept delivery of a subpoena in lieu of service, by a written or oral
promise to appear given by the witness. Any person who accepts an
oral promise to appear shall:

(a) Identify himself or herself to the witness by name and
occupation;

(b) Make a written notation of the date when the oral promise to
appear was given and the information given by the person making
the oral promise to appear identifying the person as the witness
subpoenaed; and

(c) Execute a certificate of service containing the information set
forth in paragraphs (a) and (b).

4. ~~The~~ *A peace officer may accept delivery of a subpoena in
lieu of service, via electronic means, by providing a written
promise to appear that is transmitted electronically by any
appropriate means, including, without limitation, by electronic
mail transmitted through the official electronic mail system of the
law enforcement agency which employs the peace officer.*

5. A prosecuting attorney shall orally inform any witness
subpoenaed as provided in subsection 1 of the general nature of the
grand jury's inquiry before the witness testifies. Such a statement
must be included in the transcript of the proceedings.



1 6. Any subpoena issued by an attorney for a defendant for a
2 witness to appear before the court at which a preliminary hearing
3 is to be held must be calendared by filing a motion that includes a
4 notice of hearing setting the matter for hearing not less than 2 full
5 judicial days after the date on which the motion is filed. A
6 prosecuting attorney may oppose the motion orally in open court.
7 A subpoena that is properly calendared pursuant to this subsection
8 may be served on the witness unless the court quashes the
9 subpoena.

10 Sec. 3. NRS 174.385 is hereby amended to read as follows:

11 174.385 Failure by any person without *an* adequate excuse to
12 obey a subpoena of a court , ~~for~~ a prosecuting attorney *or an*
13 *attorney for a defendant* served upon the person or, in the case of a
14 subpoena issued by a prosecuting attorney ~~for~~ *or an attorney for a*
15 *defendant*, delivered to the person and accepted, shall be deemed a
16 contempt of the court from which the subpoena issued or, in the case
17 of a subpoena issued by a prosecuting attorney ~~for~~ *or an attorney for*
18 *a defendant*, of the court in which ~~the~~ *a preliminary hearing is to*
19 *be held*, an investigation is pending or ~~the~~ *an* indictment,
20 information or complaint is to be tried.

