

ASSEMBLY BILL NO. 193—COMMITTEE ON JUDICIARY

FEBRUARY 26, 2015

Referred to Committee on Judiciary

SUMMARY—Makes various changes relating to criminal procedure. (BDR 14-911)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: No.

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to criminal procedure; revising provisions governing the waiver of a preliminary examination; revising provisions regarding the introduction of evidence at a preliminary examination or grand jury proceeding; revising the provisions governing the use of a witness's affidavit at a preliminary examination or grand jury proceeding; revising provisions relating to the use of audiovisual technology to present live witness testimony at a preliminary examination or grand jury proceeding; revising provisions relating to a finding of probable cause at a preliminary hearing or grand jury proceeding; eliminating the ability for a defendant to submit certain evidentiary statements to a grand jury; making various changes concerning notice given to a person whose indictment is being considered by a grand jury; revising the provisions pertaining to the filing of trial-related motions in criminal proceedings; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

- 1 Existing law authorizes a defendant to waive his or her right to a preliminary  
2 examination to determine whether probable cause exists to hold the defendant for  
3 trial for an alleged criminal offense. If the defendant waives the preliminary  
4 examination, the defendant is bound over for trial. (NRS 171.196) **Section 1** of this  
5 bill requires a magistrate to ask the defendant whether he or she is waiving the  
6 preliminary examination in order to face the original charges or as part of a plea  
7 agreement. If the waiver is part of a plea agreement, **section 1** further requires that:  
8 (1) the magistrate hold the defendant to answer all the charges; (2) the parties



\* A B 1 9 3 \*

9 execute a written plea agreement; (3) the defendant is pleading guilty to the  
10 criminal charges contained in the information; and (4) the magistrate ensures that  
11 the defendant entered into the plea agreement voluntarily and with knowledge of  
12 the consequences of his or her plea. If the magistrate accepts the plea agreement,  
13 **section 1** further requires the case to be referred to the Division of Parole and  
14 Probation of the Department of Public Safety to make a presentence investigation  
15 and set a trial date, unless an exception applies. **Section 1** also limits evidence  
16 admitted in a preliminary examination to evidence relevant to the existence of  
17 probable cause and authorizes hearsay evidence to be used in such examination.

18 Under existing law, if a witness resides outside of Nevada or more than 100  
19 miles from where the preliminary examination is held, a district attorney may use  
20 the witness's affidavit at a preliminary hearing or a grand jury proceeding if it is  
21 necessary to establish: (1) property ownership; and (2) that the defendant did not  
22 have permission to enter or possess the property. (NRS 171.197, 172.137) **Sections**  
23 **2 and 6** of this bill require that a witness's affidavit offered at a preliminary hearing  
24 or grand jury proceeding may also provide an opinion as to the value or the real or  
25 personal property at issue. Existing law also allows a witness to testify at a  
26 preliminary examination or before a grand jury through the use of audiovisual  
27 technology under certain circumstances by filing a request, subject to an objection  
28 by the opposing party and court approval, before the preliminary examination or  
29 grand jury proceeding. (NRS 171.1975, 172.138) **Sections 3 and 7** of this bill  
30 require the court to allow a witness to testify at a preliminary examination or before  
31 a grand jury through the use of audiovisual technology under certain circumstances.

32 Existing law requires a magistrate to hold a defendant to answer in district court  
33 or a grand jury to find an indictment if the evidence offered at the preliminary  
34 examination or grand jury proceeding shows that there is probable cause to believe  
35 the defendant committed the offense. (NRS 171.206, 172.155) Existing law also  
36 sets forth the types of evidence a grand jury can receive. (NRS 172.135) **Section 5**  
37 of this bill allows hearsay evidence to be offered before a grand jury, and **sections 4**  
38 **and 9** of this bill allow a finding of probable cause to be based solely on hearsay  
39 evidence.

40 At a grand jury proceeding, existing law authorizes a defendant to submit a  
41 statement to the grand jury providing whether a preliminary hearing was held and,  
42 if so, that the evidence presented at the preliminary hearing was considered  
43 insufficient to warrant holding the defendant for trial. (NRS 172.145) **Section 8** of  
44 this bill removes the provision which authorizes the defendant to submit such a  
45 statement. Existing law also requires that a district attorney or peace officer serve  
46 reasonable notice upon a person whose indictment is being considered by a grand  
47 jury. (NRS 172.241) **Section 10** of this bill authorizes a person to testify before the  
48 grand jury if his or her notice of the proceeding was not adequate and requires the  
49 grand jury to redeliberate on the indictment if the person does testify.

50 **Section 11** of this bill provides that in a criminal prosecution of an offense that  
51 is a gross misdemeanor or felony, any motion on a trial-related issue may be made  
52 only in the district court and, therefore, a justice court may not hear a motion to  
53 suppress evidence before or during the preliminary examination for such an  
54 offense. In a criminal prosecution of an offense that is a misdemeanor, **section 11**  
55 provides that any motion on a trial-related issue may be made only in the justice  
56 court.



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

- 1     **Section 1.** NRS 171.196 is hereby amended to read as follows:  
2     171.196 1. ~~If an offense is not triable in the Justice Court,~~  
3     ~~the defendant must not be called upon to plead.~~ If the defendant  
4     waives preliminary examination, the magistrate shall immediately  
5     *address the defendant personally to determine if the defendant is*  
6     *waiving his or her preliminary examination in order to face the*  
7     *original charges in the criminal complaint or as part of a plea*  
8     *agreement. If the defendant is waiving the preliminary*  
9     *examination to face the original charges, the magistrate shall hold*  
10    the defendant to answer in the district court. *If the defendant is*  
11    *waiving the preliminary examination as part of a plea agreement:*  
12    (a) *The magistrate shall hold the defendant to answer on all*  
13    *charges;*  
14    (b) *The parties shall execute a written plea agreement in*  
15    *substantially the form prescribed in NRS 174.063;*  
16    (c) *The criminal complaint serves as the information if the*  
17    *defendant is pleading guilty to the charges in the criminal*  
18    *complaint, except if the defendant is pleading guilty to different*  
19    *charges, an amended criminal complaint must be filed to serve as*  
20    *the information; and*  
21    (d) *The magistrate shall address the defendant personally to*  
22    *determine if the defendant entered into the plea agreement freely*  
23    *and voluntarily with understanding of the nature of the charges*  
24    *and consequences of the plea.*  
25    2. *If a magistrate accepts a plea agreement:*  
26    (a) *Except as otherwise provided in paragraph (b), the*  
27    *magistrate must request the Division of Parole and Probation of*  
28    *the Department of Public Safety to make a presentence*  
29    *investigation and report; and*  
30    (b) *A sentencing date must be set in district court, unless:*  
31    (1) *The defendant is pleading guilty to a gross*  
32    *misdemeanor and the parties are stipulating to waive the*  
33    *presentence investigation and report by requesting the imposition*  
34    *of a sentence by the magistrate; or*  
35    (2) *The parties are stipulating to waive the presentence*  
36    *investigation and report by using a previously prepared report of a*  
37    *presentence investigation.*  
38    3. If the defendant does not waive examination ~~H~~ *pursuant to*  
39    *subsection 1*, the magistrate shall hear the evidence within 15 days,  
40    unless for good cause shown the magistrate extends such time.  
41    Unless the defendant waives counsel, reasonable time must be  
42    allowed for counsel to appear.



~~13-1~~ 4. Except as otherwise provided in this subsection, if the magistrate postpones the examination at the request of a party, the magistrate may order that party to pay all or part of the costs and fees expended to have a witness attend the examination. The magistrate shall not require a party who requested the postponement of the examination to pay for the costs and fees of a witness if:

(a) It was not reasonably necessary for the witness to attend the examination; or

(b) The magistrate ordered the extension pursuant to subsection ~~4-1~~ 5.

~~4-1~~ 5. If application is made for the appointment of counsel for an indigent defendant, the magistrate shall postpone the examination until:

(a) The application has been granted or denied; and

(b) If the application is granted, the attorney appointed or the public defender has had reasonable time to appear.

~~5-1~~ 6. *At the examination, only evidence that is relevant to the existence of probable cause may be admitted. Any party may cross-examine witnesses, but may not object to evidence offered on the ground that it was unlawfully acquired or that it is hearsay.* The defendant ~~may cross-examine witnesses against him or her and~~ may introduce evidence *pursuant to this subsection* in his or her own behalf.

*7. Hearsay evidence is admissible at a preliminary examination conducted pursuant to this section.*

*8. Except as otherwise provided in this title, the defendant must be present at his or her preliminary hearing.*

*9. The magistrate may not entertain a motion to suppress based on evidence offered pursuant to this section.*

**Sec. 2.** NRS 171.197 is hereby amended to read as follows:

171.197 1. If a witness resides outside this State or more than 100 miles from the place of a preliminary examination, the witness's affidavit may be used at the preliminary examination if it ~~is~~:

(a) *Offers an opinion as to the value of real or personal property; or*

(b) *Is* necessary for the district attorney to establish as an element of any offense that:

~~(a)~~ (1) The witness was the owner, possessor or occupant of real or personal property; and

~~(b)~~ (2) The defendant did not have the permission of the witness to enter, occupy, possess or control the real or personal property of the witness.

2. If a financial institution does not maintain any principal or branch office within this State or if a financial institution that maintains a principal or branch office within this State does not



1 maintain any such office within 100 miles of the place of a  
2 preliminary examination, the affidavit of a custodian of the records  
3 of the financial institution or the affidavit of any other qualified  
4 person of the financial institution may be used at the preliminary  
5 examination if it is necessary for the district attorney to establish as  
6 an element of any offense that:

7 (a) When a check or draft naming the financial institution as  
8 drawee was drawn or passed, the account or purported account upon  
9 which the check or draft was drawn did not exist, was closed or held  
10 insufficient money, property or credit to pay the check or draft in  
11 full upon its presentation; or

12 (b) When a check or draft naming the financial institution as  
13 drawee was presented for payment to the financial institution, the  
14 account or purported account upon which the check or draft was  
15 drawn did not exist, was closed or held insufficient money, property  
16 or credit to pay the check or draft in full.

17 3. The district attorney shall provide either written or oral  
18 notice to the defendant, not less than 10 days before the scheduled  
19 preliminary examination, that the district attorney intends to use an  
20 affidavit described in this section at the preliminary examination.

21 4. If, at or before the time of the preliminary examination, the  
22 defendant establishes that:

23 (a) There is a substantial and bona fide dispute as to the facts in  
24 an affidavit described in this section; and

25 (b) It is in the best interests of justice that the person who signed  
26 the affidavit be cross-examined,

27 ➔ the magistrate may order the district attorney to produce the  
28 person who signed the affidavit and may continue the examination  
29 for any time it deems reasonably necessary in order to receive such  
30 testimony.

31 **Sec. 3.** NRS 171.1975 is hereby amended to read as follows:

32 171.1975 1. If a witness resides more than 500 miles from  
33 the place of a preliminary examination , ~~for~~ is unable to attend the  
34 preliminary examination because of a medical condition ~~or if~~  
35 ~~good cause otherwise exists, a party may, not later than 14 days~~  
36 ~~before the preliminary examination, file a request that~~ the  
37 magistrate **must** allow the witness to testify at the preliminary  
38 examination through the use of audiovisual technology. ~~A party~~  
39 ~~who requests that the magistrate allow a witness to testify through~~  
40 ~~the use of audiovisual technology shall provide written notice of the~~  
41 ~~request to the opposing party at or before the time of filing the~~  
42 ~~request.~~

43 2. ~~Not later than 7 days after receiving notice of a request that~~  
44 ~~the magistrate allow a witness to testify at the preliminary~~  
45 ~~examination through the use of audiovisual technology, the~~



opposing party may file an objection to the request. If the opposing party fails to file a timely objection to the request, the opposing party shall be deemed to have consented to the granting of the request.

—3.— Regardless of whether or not the opposing party files an objection to a request that the magistrate allow a witness to testify at the preliminary examination through the use of audiovisual technology, the magistrate may allow the witness to testify at the preliminary examination through the use of audiovisual technology only if the magistrate finds that good cause exists to grant the request based upon the specific facts and circumstances of the case.

—4.— If ~~the magistrate allows~~ a witness ~~to testify~~ *testifies* at the preliminary examination through the use of audiovisual technology:

(a) The testimony of the witness must be ~~+~~

—(1) ~~Taken by a certified videographer who is in the physical presence of the witness. The certified videographer shall sign a written declaration, on a form provided by the magistrate, which states that the witness does not have in his or her possession any notes or other materials to assist in the witness's testimony.~~

—(2) ~~Recorded and preserved through the use of a videotape or other means of audiovisual recording technology.~~

—(3) ~~Transcribed~~ *transcribed* by a certified court reporter ~~+~~ ;  
*and*

(b) Before giving testimony, the witness must be sworn and must sign a written declaration, on a form provided by the magistrate, which acknowledges that the witness understands that he or she is subject to the jurisdiction of the courts of this state and may be subject to criminal prosecution for the commission of any crime in connection with his or her testimony, including, without limitation, perjury, and that the witness consents to such jurisdiction.

~~—(c) During the preliminary examination, the witness must not be asked to identify the defendant, but the witness may be asked to testify regarding the facts and circumstances surrounding any previous identification of the defendant.~~

—(d) ~~The original recorded testimony of the witness must be filed with the district court, and copies of the recorded testimony of the witness must be provided to each party.~~

—(e) ~~The testimony of the witness may not be used by any party upon the trial of the cause or in any proceeding therein in lieu of the direct testimony of the witness, but the court may allow the testimony of the witness to be used for any other lawful purpose.~~

—5.— **3.** Audiovisual technology used pursuant to this section must ensure that the witness may be:



(a) Clearly heard and seen; and

(b) Examined and cross-examined.

~~16-1~~ 4. As used in this section, "audiovisual technology" includes, without limitation, closed-circuit video and videoconferencing.

**Sec. 4.** NRS 171.206 is hereby amended to read as follows:

171.206 1. If from the evidence it appears to the magistrate that there is probable cause to believe that an offense has been committed and that the defendant has committed it, *or the defendant has pleaded guilty or guilty but mentally ill*, the magistrate shall forthwith hold the defendant to answer in the district court; otherwise the magistrate shall discharge the defendant. The magistrate shall admit the defendant to bail as provided in this title. After concluding the proceeding the magistrate shall transmit forthwith to the clerk of the district court all papers in the proceeding and any bail.

*2. A finding of probable cause pursuant to subsection 1 may rest solely on hearsay evidence.*

**Sec. 5.** NRS 172.135 is hereby amended to read as follows:

172.135 1. In the investigation of a charge, for the purpose of either presentment or indictment, the grand jury can receive no other evidence than such as is given by witnesses produced and sworn before them or furnished by legal documentary evidence or by the deposition of witnesses taken as provided in this title, except that the grand jury may receive any of the following:

(a) An affidavit or declaration from an expert witness or other person described in NRS 50.315 in lieu of personal testimony or a deposition.

(b) An affidavit of an owner, possessor or occupant of real or personal property or other person described in NRS 172.137 in lieu of personal testimony or a deposition.

2. The grand jury can receive ~~none but legal evidence, and the best evidence in degree, to the exclusion of~~ hearsay ~~for secondary~~ evidence.

*3. A statement made by a witness at any time that is inconsistent with the testimony of the witness before the grand jury may be presented to the grand jury as evidence.*

**Sec. 6.** NRS 172.137 is hereby amended to read as follows:

172.137 1. If a witness resides outside this State or more than 100 miles from the place of a grand jury proceeding, the witness's affidavit may be used at the proceeding if it ~~is~~:

(a) *Offers an opinion as to the value of the real or personal property; or*

(b) *Is* necessary for the district attorney to establish as an element of any offense that:



~~1 (a)~~ (1) The witness was the owner, possessor or occupant of  
2 real or personal property; and

~~3 (b)~~ (2) The defendant did not have the permission of the  
4 witness to enter, occupy, possess or control the real or personal  
5 property of the witness.

6 2. If a financial institution does not maintain any principal or  
7 branch office within this State or if a financial institution that  
8 maintains a principal or branch office within this State does not  
9 maintain any such office within 100 miles of the place of a grand  
10 jury proceeding, the affidavit of a custodian of the records of the  
11 financial institution or the affidavit of any other qualified person of  
12 the financial institution may be used at the proceeding if it is  
13 necessary for the district attorney to establish as an element of any  
14 offense that:

15 (a) When a check or draft naming the financial institution as  
16 drawee was drawn or passed, the account or purported account upon  
17 which the check or draft was drawn did not exist, was closed or held  
18 insufficient money, property or credit to pay the check or draft in  
19 full upon its presentation; or

20 (b) When a check or draft naming the financial institution as  
21 drawee was presented for payment to the financial institution, the  
22 account or purported account upon which the check or draft was  
23 drawn did not exist, was closed or held insufficient money, property  
24 or credit to pay the check or draft in full.

~~25 [3. If the defendant has been subpoenaed to appear before the  
26 grand jury or if the defendant has requested to testify pursuant to  
27 NRS 172.241, the district attorney shall provide either written or  
28 oral notice to the defendant, within a reasonable time before the  
29 scheduled proceeding of the grand jury, that an affidavit described  
30 in this section will be used at the proceeding.~~

~~31 — 4. If, at or before the time of the proceeding, the defendant  
32 establishes that:~~

~~33 — (a) There is a substantial and bona fide dispute as to the facts in  
34 an affidavit described in this section; and~~

~~35 — (b) It is in the best interests of justice that the person who signed  
36 the affidavit be examined or cross-examined;~~

~~37 — the grand jury may request that the district attorney produce the  
38 person who signed the affidavit and may continue the proceeding  
39 for any time it deems reasonably necessary in order to receive such  
40 testimony.]~~

41 **Sec. 7.** NRS 172.138 is hereby amended to read as follows:

42 172.138 1. If a witness resides more than 500 miles from the  
43 place of a grand jury proceeding, ~~for~~ is unable to attend the grand  
44 jury proceeding because of a medical condition ~~[, upon the request  
45 of the district attorney,]~~ or if good cause otherwise exists, the



1 district judge supervising the proceedings of the grand jury ~~may~~  
2 **must** allow a witness to testify before the grand jury through the use  
3 of audiovisual technology.

4 2. ~~{The district judge supervising the proceedings of the grand~~  
5 ~~jury may allow a witness to testify before the grand jury through the~~  
6 ~~use of audiovisual technology only if the district judge finds that~~  
7 ~~good cause exists to grant the request based upon the specific facts~~  
8 ~~and circumstances of the grand jury proceeding-~~

9 ~~—3-} If {the district judge supervising the proceedings of the~~  
10 ~~grand jury allows} a witness {to testify} **testifies** at the grand jury~~  
11 ~~proceeding through the use of audiovisual technology:~~

12 (a) The testimony of the witness must be ~~+~~

13 ~~—(1) Taken by a certified videographer who is in the physical~~  
14 ~~presence of the witness. The certified videographer shall sign a~~  
15 ~~written declaration, on a form provided by the district judge, which~~  
16 ~~states that the witness does not possess any notes or other materials~~  
17 ~~to assist in the witness's testimony.~~

18 ~~—(2) Recorded and preserved through the use of a videotape or~~  
19 ~~other means of audiovisual recording technology.~~

20 ~~—(3) Transcribed} **transcribed** by a certified court reporter~~  
21 ~~appointed pursuant to NRS 172.215 in accordance with the~~  
22 ~~provisions of NRS 172.225 **+** ; and~~

23 (b) Before giving testimony, the witness must be sworn and  
24 must sign a written declaration, on a form provided by the district  
25 judge, which acknowledges that the witness understands that he or  
26 she is subject to the jurisdiction of the courts of this state and may  
27 be subject to criminal prosecution for the commission of any crime  
28 in connection with his or her testimony, including, without  
29 limitation, perjury, and that the witness consents to such  
30 jurisdiction.

31 ~~{(c) The original recorded testimony of the witness must be~~  
32 ~~delivered to the certified court reporter.~~

33 ~~—(d) The testimony of the witness may not be used by any party~~  
34 ~~upon the trial of the cause or in any proceeding therein in lieu of the~~  
35 ~~direct testimony of the witness, but the court may allow the~~  
36 ~~testimony of the witness to be used for any other lawful purpose.~~

37 ~~—4-} 3. Audiovisual technology used pursuant to this section~~  
38 ~~must ensure that the witness may be:~~

39 (a) Clearly heard and seen; and

40 (b) Examined.

41 ~~{5-} 4. As used in this section, "audiovisual technology"~~  
42 ~~includes, without limitation, closed-circuit video and~~  
43 ~~videoconferencing.~~



1     **Sec. 8.** NRS 172.145 is hereby amended to read as follows:

2     172.145 1. The grand jury is not bound to hear evidence for  
3 the defendant . ~~[-except that the defendant is entitled to submit a~~  
4 ~~statement which the grand jury must receive providing whether a~~  
5 ~~preliminary hearing was held concerning the matter and, if so, that~~  
6 ~~the evidence presented at the preliminary hearing was considered~~  
7 ~~insufficient to warrant holding the defendant for trial.]~~ It is their  
8 duty, however, to weigh all evidence submitted to them, and when  
9 they have reason to believe that other evidence within their reach  
10 will explain away the charge, they shall order that evidence to be  
11 produced, and for that purpose may require the district attorney to  
12 issue process for the witnesses.

13     2. If the district attorney is aware of any evidence which will  
14 explain away the charge, the district attorney shall submit it to the  
15 grand jury.

16     3. *The provisions of this section do not require the district*  
17 *attorney to submit to the grand jury exculpatory statements made*  
18 *by the defendant, unless such statements are included in a single*  
19 *statement which contains inculpatory statements submitted to the*  
20 *grand jury by the district attorney.*

21     4. The grand jury may invite any person, without process, to  
22 appear before the grand jury to testify.

23     **Sec. 9.** NRS 172.155 is hereby amended to read as follows:

24     172.155 1. The grand jury ought to find an indictment when  
25 all the evidence before them, taken together, establishes probable  
26 cause to believe that an offense has been committed and that the  
27 defendant has committed it.

28     2. *A finding of probable cause pursuant to subsection 1 may*  
29 *rest solely on hearsay evidence.*

30     3. The defendant may object to the sufficiency of the evidence  
31 to sustain the indictment only by application for a writ of habeas  
32 corpus.

33     **Sec. 10.** NRS 172.241 is hereby amended to read as follows:

34     172.241 1. A person whose indictment the district attorney  
35 intends to seek or the grand jury on its own motion intends to return,  
36 but who has not been subpoenaed to appear before the grand jury,  
37 may testify before the grand jury if the person requests to do so and  
38 executes a valid waiver in writing of the person's constitutional  
39 privilege against self-incrimination.

40     2. A district attorney or a peace officer shall serve reasonable  
41 notice upon a person whose indictment is being considered by a  
42 grand jury unless the court determines that adequate cause exists to  
43 withhold notice. The notice is adequate if it:

44     (a) Is given to the person, the person's attorney of record or an  
45 attorney who claims to represent the person and gives the person not



1 less than 5 judicial days to submit a request to testify to the district  
2 attorney; and

3 (b) Advises the person that the person may testify before the  
4 grand jury only if the person submits a written request to the district  
5 attorney and includes an address where the district attorney may  
6 send a notice of the date, time and place of the scheduled proceeding  
7 of the grand jury.

8 3. The district attorney may apply to the court for a  
9 determination that adequate cause exists to withhold notice if the  
10 district attorney:

11 (a) Determines that the notice may result in the flight of the  
12 person whose indictment is being considered, on the basis of:

13 (1) A previous failure of the person to appear in matters  
14 arising out of the subject matter of the proposed indictment;

15 (2) The fact that the person is a fugitive from justice arising  
16 from charges in another jurisdiction;

17 (3) Outstanding local warrants pending against the person; or

18 (4) Any other objective factor;

19 (b) Determines that the notice may endanger the life or property  
20 of other persons; or

21 (c) Is unable, after reasonable diligence, to notify the person.

22 4. If a district attorney applies to the court for a determination  
23 that adequate cause exists to withhold notice, the court shall hold a  
24 closed hearing on the matter. Upon a finding of adequate cause, the  
25 court may order that no notice be given.

26 *5. If notice required to be served upon a person pursuant to*  
27 *subsection 2 is not adequate, the person must be given the*  
28 *opportunity to testify before the grand jury. If the person testifies*  
29 *pursuant to this subsection, the grand jury must be instructed to*  
30 *deliberate again on all the charges contained in the indictment*  
31 *following such testimony.*

32 **Sec. 11.** NRS 174.125 is hereby amended to read as follows:

33 174.125 1. All motions in a criminal prosecution to suppress  
34 evidence, for a transcript of former proceedings, for a preliminary  
35 hearing, for severance of joint defendants, for withdrawal of  
36 counsel, and all other motions which by their nature, if granted,  
37 delay or postpone the time of trial must be made before trial, unless  
38 an opportunity to make such a motion before trial did not exist or  
39 the moving party was not aware of the grounds for the motion  
40 before trial.

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

42 (a) All motions subject to the provisions of subsection 1 must be  
43 made in writing, with not less than 10 days' notice to the opposite  
44 party unless good cause is shown to the court at the time of trial why



1 the motion could not have been made in writing upon the required  
2 notice.

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

5 3. In any judicial district in which two or more judges are  
6 provided:

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

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

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

17 *5. A motion described in subsection 1 made in a criminal*  
18 *prosecution for a:*

19 *(a) Gross misdemeanor or felony may only be made in a*  
20 *district court.*

21 *(b) Misdemeanor may only be made in a justice court.*

22 **Sec. 12.** NRS 189.120 is hereby amended to read as follows:

23 189.120 1. The State may appeal to the district court from an  
24 order of a justice court granting the motion of a defendant to  
25 suppress evidence.

26 2. Such an appeal ~~{shall}~~ *must* be taken:

27 (a) Within 2 days after the rendition of such an order during a  
28 trial. ~~{for preliminary examination.}~~

29 (b) Within 5 days after the rendition of such an order before a  
30 trial. ~~{for preliminary examination.}~~

31 3. Upon perfecting such an appeal:

32 (a) After the commencement of a trial, ~~{for preliminary~~  
33 ~~examination.}~~ further proceedings in the trial ~~{shall}~~ *must* be stayed  
34 pending the final determination of the appeal.

35 (b) Before trial, ~~{for preliminary examination.}~~ the time  
36 limitation within which a defendant ~~{shall}~~ *must* be brought to trial  
37 ~~{shall}~~ *must* be extended for the period necessary for the final  
38 determination of the appeal.

