

CHAPTER.....

AN ACT relating to criminal procedure; revising provisions relating to the introduction of evidence 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 notice given to a person whose indictment is being considered by a grand jury; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law sets forth the requirements for conducting a preliminary examination. (NRS 171.196) **Section 1** of this bill authorizes the use of certain hearsay evidence in a preliminary examination under certain circumstances.

Existing law allows a witness to testify at a preliminary examination or before a grand jury through the use of audiovisual technology under certain circumstances by filing a request, subject to an objection by the opposing party and court approval, before the preliminary examination or grand jury proceeding. (NRS 171.1975, 172.138) **Sections 3 and 7** of this bill require the court to allow a witness to testify at a preliminary examination or before a grand jury through the use of audiovisual technology under certain circumstances.

Existing law sets forth the types of evidence a grand jury can receive. (NRS 172.135) **Section 5** of this bill: (1) allows certain hearsay evidence to be offered before a grand jury in certain circumstances; and (2) provides that 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.

Existing law requires that a district attorney or peace officer serve reasonable notice upon a person whose indictment is being considered by a grand jury. (NRS 172.241) **Section 10** of this bill authorizes a person to testify before the grand jury if his or her notice of the proceeding was not adequate and requires the grand jury to redeliberate on the indictment if the person does testify.

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

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

Section 1. NRS 171.196 is hereby amended to read as follows:

171.196 1. If an offense is not triable in the Justice Court, the defendant must not be called upon to plead. If the defendant waives preliminary examination, the magistrate shall immediately hold the defendant to answer in the district court.

2. If the defendant does not waive examination, the magistrate shall hear the evidence within 15 days, unless for good cause shown the magistrate extends such time. Unless the defendant waives counsel, reasonable time must be allowed for counsel to appear.



3. 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.

4. 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. The defendant may cross-examine witnesses against him or her and may introduce evidence in his or her own behalf.

6. Hearsay evidence consisting of a statement made by the alleged victim of the offense is admissible at a preliminary examination conducted pursuant to this section only if the defendant is charged with one or more of the following offenses:

(a) A sexual offense committed against a child who is under the age of 16 years if the offense is punishable as a felony. As used in this paragraph, "sexual offense" has the meaning ascribed to it in NRS 179D.097.

(b) Abuse of a child pursuant to NRS 200.508 if the offense is committed against a child who is under the age of 16 years and the offense is punishable as a felony.

(c) An act which constitutes domestic violence pursuant to NRS 33.018, which is punishable as a felony and which resulted in substantial bodily harm to the alleged victim.

Sec. 2. (Deleted by amendment.)

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

171.1975 1. If a witness resides more than ~~1500~~ 100 miles from the place of a preliminary examination, ~~he~~ is unable to attend the preliminary examination because of a medical condition ~~1. a party may, not later than 14 days before the preliminary examination, file a request that~~ or if good cause otherwise exists, the magistrate *must* allow the witness to testify at the preliminary examination through the use of audiovisual technology. ~~1. A party who requests that the magistrate allow a witness to testify through the use of audiovisual technology shall provide written notice of the~~



~~request to the opposing party at or before the time of filing the request.~~

2. ~~[Not later than 7 days after receiving notice of a request that the magistrate allow a witness to testify at the preliminary 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.~~

~~—5.1~~ 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. (Deleted by amendment.)

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~~ *Except as otherwise provided in this subsection, the grand jury can receive none but legal evidence, and the best evidence in degree, to the exclusion of hearsay or secondary evidence. The grand jury can receive hearsay evidence consisting of a statement made by the alleged victim of an offense if the defendant is alleged to have committed one or more of the following offenses:*

(a) A sexual offense committed against a child who is under the age of 16 years if the offense is punishable as a felony. As used in this paragraph, “sexual offense” has the meaning ascribed to it in NRS 179D.097.

(b) Abuse of a child pursuant to NRS 200.508 if the offense is committed against a child who is under the age of 16 years and the offense is punishable as a felony.



(c) An act which constitutes domestic violence pursuant to NRS 33.018, which is punishable as a felony and which resulted in substantial bodily harm to the alleged victim.

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. (Deleted by amendment.)

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

172.138 1. If a witness resides more than ~~1500~~ 100 miles from the place of a grand jury proceeding, ~~for~~ is unable to attend the grand jury proceeding because of a medical condition ~~upon the request of the district attorney,~~ *or if good cause otherwise exists,* the district judge supervising the proceedings of the grand jury ~~may~~ *must* allow a witness to testify before the grand jury through the use of audiovisual technology.

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

~~—3.—~~ If ~~{the district judge supervising the proceedings of the grand jury allows}~~ a witness ~~{to testify}~~ *testifies* at the grand jury proceeding 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 district judge, which states that the witness does not possess 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 appointed pursuant to NRS 172.215 in accordance with the provisions of NRS 172.225 ~~{~~ *; and*

(b) Before giving testimony, the witness must be sworn and must sign a written declaration, on a form provided by the district judge, 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) The original recorded testimony of the witness must be delivered to the certified court reporter.~~

~~—(d) 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.~~

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

(a) Clearly heard and seen; and

(b) Examined.

~~15.] 4.~~ As used in this section, “audiovisual technology” includes, without limitation, closed-circuit video and videoconferencing.

Secs. 8 and 9. (Deleted by amendment.)

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

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

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

(a) Is given to the person, the person’s attorney of record or an attorney who claims to represent the person and gives the person not less than 5 judicial days to submit a request to testify to the district attorney; and

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

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

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

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

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



- (3) Outstanding local warrants pending against the person; or
- (4) Any other objective factor;
- (b) Determines that the notice may endanger the life or property of other persons; or
- (c) Is unable, after reasonable diligence, to notify the person.

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

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

Secs. 11 and 12. (Deleted by amendment.)

