

SENATE BILL NO. 191—SENATOR BROWER

FEBRUARY 25, 2015

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to the return of seized property. (BDR 14-204)

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; revising provisions relating to the return of seized property; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing law sets forth a procedure by which a person who is aggrieved by an
2 unlawful search and seizure of his or her property may move a court for the return
3 of the property and the suppression of its use as evidence. (NRS 179.085) This bill
4 establishes a procedure by which a person who is aggrieved by the seizure and
5 deprivation of property under certain other circumstances may move a court for the
6 return of the property.

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

1 **Section 1.** NRS 179.085 is hereby amended to read as follows:
2 179.085 1. A person aggrieved by an unlawful search and
3 seizure *or the deprivation of property* may move the court having
4 jurisdiction where the property was seized for the return of the
5 property ~~and to suppress for use as evidence anything so obtained~~
6 on the ground that:
7 (a) The property was illegally seized without warrant;
8 (b) The warrant is insufficient on its face;
9 (c) There was not probable cause for believing the existence of
10 the grounds on which the warrant was issued; ~~for~~
11 (d) The warrant was illegally executed ~~for~~ *or*



1 *(e) Retention of the property by law enforcement is not*
2 *reasonable under the totality of the circumstances.*

3 ➔ The judge shall receive evidence on any issue of fact necessary to
4 the decision of the motion.

5 2. If the motion is granted *on a ground set forth in paragraph*
6 *(a), (b), (c) or (d) of subsection 1*, the property ~~{shall}~~ *must* be
7 restored ~~{unless otherwise subject to lawful detention}~~ and it ~~{shall}~~
8 *must* not be admissible evidence at any hearing or trial.

9 3. ~~{The}~~ *If the motion is granted on the ground set forth in*
10 *paragraph (e) of subsection 1, the property must be restored, but*
11 *the court may impose reasonable conditions to protect access to*
12 *the property and its use in later proceedings.*

13 4. A motion to suppress evidence *on any ground set forth in*
14 *paragraphs (a) to (d), inclusive, of subsection 1* may also be made
15 in the court where the trial is to be had. The motion ~~{shall}~~ *must* be
16 made before trial or hearing unless opportunity therefor did not exist
17 or the defendant was not aware of the grounds for the motion, but
18 the court in its discretion may entertain the motion at the trial or
19 hearing.

20 5. *If a motion pursuant to this section is filed when no*
21 *criminal proceeding is pending, the motion must be treated as a*
22 *civil complaint seeking equitable relief.*

