

SENATE BILL NO. 55—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED DECEMBER 20, 2014

Referred to Committee on Judiciary

**SUMMARY**—Revises provisions governing waiver of the right of a criminal defendant to be present during sentencing proceedings. (BDR 14-432)

**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 governing the waiver of the right of a criminal defendant to be present during sentencing proceedings; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

Existing law requires a criminal defendant to be present during certain criminal proceedings but allows a defendant to waive the right to be present for sentencing proceedings if the offense is not punishable by death and the defendant is incarcerated in another jurisdiction at the time of sentencing. For such a waiver to be valid, it must be made in a certain manner and meet certain requirements. (NRS 178.388) This bill adds the requirement that such a waiver be accompanied by the defendant’s waiver of all procedures related to extradition from the other jurisdiction. By waiving these procedures, the defendant will be returned without a warrant to complete any portion of the sentence left to be served in this State upon release from incarceration in the other state.

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

**Section 1.** NRS 178.388 is hereby amended to read as follows:  
178.388 1. Except as otherwise provided in this title, the defendant must be present at the arraignment, at every stage of the trial including the impaneling of the jury and the return of



1 the verdict, and at the imposition of sentence. A corporation may  
2 appear by counsel for all purposes.

3 2. In prosecutions for offenses not punishable by death:

4 (a) The defendant's voluntary absence after the trial has been  
5 commenced in the defendant's presence must not prevent continuing  
6 the trial to and including the return of the verdict.

7 (b) If the defendant was present at the trial through the time the  
8 defendant pleads guilty or guilty but mentally ill or is found guilty  
9 or guilty but mentally ill but at the time of sentencing is incarcerated  
10 in another jurisdiction, the defendant may waive the right to be  
11 present at the sentencing proceedings and agree to be sentenced in  
12 this State in his or her absence. The defendant's waiver is valid only  
13 if it is:

14 (1) Made knowingly, intelligently and voluntarily after  
15 consulting with an attorney licensed to practice in this State;

16 (2) Signed and dated by the defendant and notarized by a  
17 notary public or judicial officer; ~~and~~

18 (3) Signed and dated by the defendant's attorney after it has  
19 been signed by the defendant and notarized ~~H~~; and

20 (4) *Accompanied by a waiver of the issuance and service of*  
21 *a warrant of arrest and all other procedures incidental to*  
22 *extradition proceedings.*

23 3. In prosecutions for offenses punishable by fine or by  
24 imprisonment for not more than 1 year, or both, the court, with the  
25 written consent of the defendant, may permit arraignment, plea, trial  
26 and imposition of sentence in the defendant's absence, if the court  
27 determines that the defendant was fully aware of the applicable  
28 constitutional rights when the defendant gave consent.

29 4. The presence of the defendant is not required at the  
30 arraignment or any preceding stage if the court has provided for the  
31 use of a closed-circuit television to facilitate communication  
32 between the court and the defendant during the proceeding. If  
33 closed-circuit television is provided for, members of the news media  
34 may observe and record the proceeding from both locations unless  
35 the court specifically provides otherwise.

36 5. The defendant's presence is not required at the settling of  
37 jury instructions.

