SENATE BILL NO. 368–SENATORS FORD, ATKINSON, SPEARMAN, CANCELA AND DENIS

MARCH 20, 2017

JOINT SPONSORS: ASSEMBLYMEN NEAL, FRIERSON, THOMPSON, MONROE-MORENO, MILLER; AND MCCURDY II

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to search and seizure. (BDR 14-113)

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 search and seizure; providing for the return and inadmissibility as evidence of property which is seized as a result of certain unlawful stops or seizures and subsequent arrests and searches; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Generally, the exclusionary rule requires courts to exclude evidence that law enforcement obtains in violation of the Fourth Amendment of the United States Constitution, which bars unreasonable searches and seizures. The United States Supreme Court and the Nevada Supreme Court recognized an exception to the exclusionary rule under the "attenuation doctrine," holding that "when [a] constitutional violation is far enough removed from the acquisition of the evidence, the violation is sufficiently 'attenuated [so] as to dissipate the taint' of the illegality and the evidence may be admitted." (*Torres v. State*, 131 Nev. Adv. Op. 2, 341 P.3d 652 (2015), citing *Wong Sun v. United States*, 171 U.S. 471, 491 (1993)) However, the Nevada Supreme Court in *Torres* held that the discovery of a warrant of arrest does not purge the taint from an illegal seizure and that the attenuation doctrine does not apply under such circumstances. *See Torres*, 131 Nev. Adv. Op. 2, at 11, 341 P.3d at 658.

In 2016, the United States Supreme Court extended the attenuation doctrine to admit evidence seized in situations in which a law enforcement officer makes an unconstitutional investigatory stop, discovers during the stop that the person stopped is the subject of an outstanding arrest warrant, arrests the person and seizes evidence in a search conducted incident to the arrest. (*Utah v. Strieff*, 579 U.S. ___,

136 S.Ct. 2056 (2016)) Pursuant to the decision of the United States Supreme Court in *Strieff*, the judgment of the Nevada Supreme Court in *Torres* was vacated and the attenuation doctrine was extended to allow the admissibility of evidence seized under such circumstances. (*State v. Torres*, 136 S.Ct. 2505 (2016)) This bill provides that the attenuation doctrine is not extended to permit the admissibility of evidence seized under such circumstances.

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

Section 1. NRS 179.085 is hereby amended to read as follows:

179.085 1. A person aggrieved by an unlawful search and seizure or the deprivation of property may move the court having jurisdiction where the property was seized for the return of the property on the ground that:

(a) The property was illegally seized without warrant;

(b) The warrant is insufficient on its face;

(c) There was not probable cause for believing the existence of the grounds on which the warrant was issued;

(d) The warrant was illegally executed; or

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

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

2. If the motion is granted on a ground set forth in paragraph (a), (b), (c) or (d) of subsection 1, the property must be restored and it must not be admissible evidence at any hearing or trial.

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

4. ***If a peace officer:***

(a) Makes an unlawful stop or seizure of a person;

(b) Discovers that there is an outstanding warrant for the arrest of the person;

(c) Arrests the person pursuant to the outstanding warrant of arrest;

(d) Conducts a search pursuant to that arrest; and

(e) Seizes property which is discovered during that search,

➥ a person aggrieved by the seizure or the deprivation of the property may move the court having jurisdiction where the property was seized for the return of the property on the ground that the property was seized as the result of an unlawful stop or seizure. The judge shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted,

the property must be restored and it must not be admissible evidence at any hearing or trial. For the purposes of this subsection, the discovery of an outstanding warrant of arrest shall be deemed not to purge the taint of an unlawful stop or seizure and not to attenuate the connection between the unlawful stop or seizure and the seizure of property during a search incident to an arrest pursuant to the outstanding warrant of arrest.

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

~~[5.]~~ ***6.*** If a motion pursuant to this section is filed when no criminal proceeding is pending, the motion must be treated as a civil complaint seeking equitable relief.

Sec. 2. This act becomes effective upon passage and approval.

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