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SECOND REPRINT

A.B. 125

ASSEMBLY BILL NO. 125—ASSEMBLYMEN

NEAL, FLORES, FUMO AND MCCURDY

FEBRUARY 11, 2019

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing bail. (BDR 14-542)

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; prohibiting modification of bail in certain circumstances; revising provisions governing conditions of bail; revising provisions governing the consequences for failing to comply with conditions of bail; making various other changes concerning the manner in which bail is determined, the amount of bail and modifications to bail; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

The Nevada Constitution and existing law requires all persons arrested for offenses other than murder of the first degree to be admitted to bail unless certain circumstances apply. (Nev. Const. Art. 1, § 7; NRS 178.484) This bill makes various changes relating to the manner in which bail is carried out.

Existing law authorizes the court in which an indictment or information is presented for a felony charge to increase a defendant's bail and order the defendant to be committed to actual custody if the defendant does not pay the increased amount. (NRS 173.175) **Section 4** of this bill prohibits the State from seeking a modification of the original bail determination if a court has made a determination of bail based on a criminal complaint, the State has elected to present the same case before a grand jury and an indictment has been returned, except in certain circumstances.

Existing law authorizes a court, before releasing a person arrested for a crime, to impose such reasonable conditions on the person as it deems necessary to protect the health, safety and welfare of the community and to ensure that the person will appear at all times and places ordered by the court. Existing law also sets forth a nonexclusive list of conditions of bail that the court is allowed to impose. (NRS 178.484) **Section 5** of this bill provides that: (1) unless a defendant is automatically released pursuant to an administrative order adopted by the court, a magistrate is required to review the custody status of a defendant in accordance



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with certain procedures as soon as practicable after a defendant is taken into custody, but not later than 48 hours, including nonjudicial days, after the defendant is taken into custody; (2) each court is required to adopt an administrative order that provides for the release of defendants who are arrested without a warrant before holding a review of their custody status; and (3) each court is required to adopt and make available to the public an order containing written policies and procedures concerning reviews of the custody status of defendants. **Section 5** also sets forth a priority for conditions of release in the following order: (1) own recognizance release with no additional conditions other than the promise of good behavior and the promise to appear in court as required; (2) own recognizance release with nonfinancial conditions; and (3) release with secured financial conditions. Additionally, **section 5** provides that during any proceeding in which the court reviews the custody status of a defendant, there is a rebuttable presumption that the defendant should be released on his or her own recognizance and that monetary bail should be imposed as a condition of release only when the magistrate determines that no other conditions of release will reasonably ensure that the defendant will appear in court as required.

Section 5 further removes certain specified amounts of monetary bail in existing law for certain offenses involving domestic violence and for violating certain temporary or extended orders for protection. (See NRS 178.484)

Existing law authorizes a court, after providing the person with reasonable notice and an opportunity for a hearing, to deem failure to comply with a condition of bail as a contempt or increase the amount of bail. (NRS 178.484) **Section 5** authorizes the court to also modify any condition of release, require any additional condition of release or set or increase the amount of monetary bail after conducting a review of the custody status of a defendant.

Existing law requires notice to the bail agent of a surety bond before releasing the defendant for whom it was issued when the defendant was charged with the commission of a category A or B felony and after being admitted to bail on the surety bond is taken into custody in the same jurisdiction, charged with another such felony and ordered to be released from custody without bail. (NRS 178.4855) **Section 6** of this bill removes the requirement of notice to the bond agent and instead requires, under such circumstances, the defendant to have his or her custody status reviewed which may result in the addition or modification of conditions of release.

If a defendant released on bail commits a felony during the period of release, existing law allows the defendant's bail to be revoked following a hearing. Pending the hearing, the defendant may be held without bail on the new felony charge. (NRS 178.487) **Section 7** of this bill requires the magistrate under such circumstances to conduct a review of the custody status of the defendant as soon as practicable and within 48 hours, excluding nonjudicial days, to the extent possible. The defendant must not be released until that review of the custody status of the defendant is held.

Existing law sets forth factors a magistrate is required to consider in setting the amount of bail. (NRS 178.498) **Section 8** of this bill provides that: (1) a magistrate may only impose monetary bail or a secured bond if no nonmonetary conditions will ensure reasonably the appearance of a defendant and the safety of the community; (2) the amount of the monetary bail or secured bond must be based on the financial resources of the defendant and must be set as necessary to ensure reasonably the appearance of the defendant and the safety of the community; and (3) the magistrate must make findings as to the reasoning underlying the specific amount set and the relationship of that amount to ensuring reasonably the appearance of the defendant and the safety of the community. **Section 8** also prohibits detaining a defendant who is eligible for pretrial release solely because



the defendant is financially incapable of paying the amount of any monetary bail or secured bond.

Existing law provides that: (1) a district court or justice court may, at any time after setting bail and before acquittal or conviction, increase the amount of the defendant's bail for good cause shown; and (2) if the defendant has been released from custody, the defendant must pay the increased bail or return to custody. (NRS 178.499) **Section 9** of this bill instead allows a magistrate to consider a modification of bail upon notice and a showing of good cause, including, without limitation, the addition, modification, suspension or cancellation of any condition or combination of conditions of bail.

Sections 2, 3 and 10-14 of this bill make conforming changes.

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

Section 1. (Deleted by amendment.)

Sec. 2. NRS 171.178 is hereby amended to read as follows:

171.178 1. Except as otherwise provided in subsections 5 and 6, a peace officer making an arrest under a warrant issued upon a complaint or without a warrant shall take the arrested person without unnecessary delay before the magistrate who issued the warrant or the nearest available magistrate empowered to commit persons charged with offenses against the laws of the State of Nevada.

2. A private person making an arrest without a warrant shall deliver the arrested person without unnecessary delay to a peace officer. Except as otherwise provided in subsections 5 and 6 and NRS 171.1772, the peace officer shall take the arrested person without unnecessary delay before the nearest available magistrate empowered to commit persons charged with offenses against the laws of the State of Nevada.

3. If an arrested person is not brought before a magistrate within 72 hours after arrest, excluding nonjudicial days, the magistrate:

(a) Shall give the prosecuting attorney an opportunity to explain the circumstances leading to the delay; and

(b) May release the arrested person if the magistrate determines that the person was not brought before a magistrate without unnecessary delay.

4. When a person arrested without a warrant is brought before a magistrate, a complaint must be filed forthwith.

5. Except as otherwise provided in NRS 178.484 and 178.487, ~~where~~ **if** the defendant can be admitted to bail without appearing personally before a magistrate ~~it~~ **pursuant to an administrative order adopted by the court pursuant to NRS 178.484,** the defendant



1 must be so admitted with the least possible delay, and required to
2 appear before a magistrate at the earliest convenient time thereafter.

3 6. A peace officer may immediately release from custody
4 without any further proceedings any person the peace officer arrests
5 without a warrant if the peace officer is satisfied that there are
6 insufficient grounds for issuing a criminal complaint against the
7 person arrested. Any record of the arrest of a person released
8 pursuant to this subsection must also include a record of the release.
9 A person so released shall be deemed not to have been arrested but
10 only detained.

11 **Sec. 3.** NRS 171.1845 is hereby amended to read as follows:

12 171.1845 1. If a person is brought before a magistrate under
13 the provisions of NRS 171.178 or 171.184, and it is discovered that
14 there is a warrant for the person's arrest outstanding in another
15 county of this State, the magistrate may release the person in
16 accordance with the provisions of NRS 178.484 ~~for 178.4851~~ if:

17 (a) The warrant arises out of a public offense which constitutes a
18 misdemeanor; and

19 (b) The person provides a suitable address where the magistrate
20 who issued the warrant in the other county can notify the person of a
21 time and place to appear.

22 2. If a person is released under the provisions of this section,
23 the magistrate who releases the person shall transmit the cash, bond,
24 notes or agreement submitted under the provisions of NRS ~~178.484~~
25 ~~or 178.502~~ , ~~for 178.4851,~~ together with the person's address, to
26 the magistrate who issued the warrant. Upon receipt of the cash,
27 bonds, notes or agreement and address, the magistrate who issued
28 the warrant shall notify the person of a time and place to appear.

29 3. Any bail set under the provisions of this section must be in
30 addition to and apart from any bail set for any public offense with
31 which a person is charged in the county in which a magistrate is
32 setting bail. In setting bail under the provisions of this section, a
33 magistrate shall set the bail in an amount which is sufficient to
34 induce a reasonable person to travel to the county in which the
35 warrant for the arrest is outstanding.

36 4. A person who fails to appear in the other county as ordered
37 is guilty of failing to appear and shall be punished as provided in
38 NRS 199.335. A sentence of imprisonment imposed for failing to
39 appear in violation of this section must be imposed consecutively to
40 a sentence of imprisonment for the offense out of which the warrant
41 arises.

42 **Sec. 4.** NRS 173.175 is hereby amended to read as follows:

43 173.175 ~~When the indictment or information is for a felony~~
44 ~~and the defendant before the filing thereof has given bail for the~~
45 ~~defendant's appearance to answer the charge, the court in which the~~



~~indictment or information is presented, or in which it is pending, may order the defendant to be committed to actual custody unless the defendant gives bail in an increased amount, to be specified in the order.}~~

1. Except as otherwise provided in subsection 2, if a court has made a determination of bail based on a criminal complaint, the State has elected to present the same case before a grand jury and an indictment has been returned, the State may not seek a modification of the original determination of bail unless:

(a) Before filing a motion to modify the bail in the district court in which the indictment is presented or pending, the State files notice of the intent to file a motion to modify the bail;

(b) The State files a motion to modify the bail in the district court in which the indictment is presented or pending; and

(c) The motion to modify the bail is based upon new or different reasons that were unknown at the time that the original determination of bail was made.

2. The court may modify the amount of bail if the indictment includes new or additional charges.

Sec. 5. NRS 178.484 is hereby amended to read as follows:

~~178.484 1. [Except as otherwise provided in this section, a person arrested for an offense other than murder of the first degree must be admitted to bail.~~

~~—2. A person arrested for a felony who has been released on probation or parole for a different offense must not be admitted to bail unless:~~

~~—(a) A court issues an order directing that the person be admitted to bail;~~

~~—(b) The State Board of Parole Commissioners directs the detention facility to admit the person to bail; or~~

~~—(c) The Division of Parole and Probation of the Department of Public Safety directs the detention facility to admit the person to bail.~~

~~—3. A person arrested for a felony whose sentence has been suspended pursuant to NRS 4.373 or 5.055 for a different offense or who has been sentenced to a term of residential confinement pursuant to NRS 4.3762 or 5.076 for a different offense must not be admitted to bail unless:~~

~~—(a) A court issues an order directing that the person be admitted to bail; or~~

~~—(b) A department of alternative sentencing directs the detention facility to admit the person to bail.~~

~~—4. A person arrested for murder of the first degree may be admitted to bail unless the proof is evident or the presumption great by any competent court or magistrate authorized by law to do so in~~



the exercise of discretion, giving due weight to the evidence and to the nature and circumstances of the offense.

~~5. A person arrested for a violation of NRS 484C.110, 484C.120, 484C.130, 484C.430, 488.410, 488.420 or 488.425 who is under the influence of intoxicating liquor must not be admitted to bail or released on the person's own recognizance unless the person has a concentration of alcohol of less than 0.04 in his or her breath. A test of the person's breath pursuant to this subsection to determine the concentration of alcohol in his or her breath as a condition of admission to bail or release is not admissible as evidence against the person.~~

~~6. A person arrested for a violation of NRS 484C.110, 484C.120, 484C.130, 484C.430, 488.410, 488.420 or 488.425 who is under the influence of a controlled substance, is under the combined influence of intoxicating liquor and a controlled substance, or inhales, ingests, applies or otherwise uses any chemical, poison or organic solvent, or any compound or combination of any of these, to a degree which renders the person incapable of safely driving or exercising actual physical control of a vehicle or vessel under power or sail must not be admitted to bail or released on the person's own recognizance sooner than 12 hours after arrest.~~

~~7. A person arrested for a battery that constitutes domestic violence pursuant to NRS 33.018 must not be admitted to bail sooner than 12 hours after arrest. If the person is admitted to bail more than 12 hours after arrest, without appearing personally before a magistrate or without the amount of bail having been otherwise set by a magistrate or a court, the amount of bail must be:~~

~~(a) Three thousand dollars, if the person has no previous convictions of battery that constitute domestic violence pursuant to NRS 33.018 and there is no reason to believe that the battery for which the person has been arrested resulted in substantial bodily harm or was committed by strangulation;~~

~~(b) Five thousand dollars, if the person has:~~

~~(1) No previous convictions of battery that constitute domestic violence pursuant to NRS 33.018, but there is reason to believe that the battery for which the person has been arrested resulted in substantial bodily harm or was committed by strangulation; or~~

~~(2) One previous conviction of battery that constitutes domestic violence pursuant to NRS 33.018, but there is no reason to believe that the battery for which the person has been arrested resulted in substantial bodily harm or was committed by strangulation; or~~

~~(c) Fifteen thousand dollars, if the person has:~~



~~(1) One previous conviction of battery that constitutes domestic violence pursuant to NRS 33.018 and there is reason to believe that the battery for which the person has been arrested resulted in substantial bodily harm or was committed by strangulation; or~~

~~(2) Two or more previous convictions of battery that constitute domestic violence pursuant to NRS 33.018.~~

~~➤ The provisions of this subsection do not affect the authority of a magistrate or a court to set the amount of bail when the person personally appears before the magistrate or the court, or when a magistrate or a court has otherwise been contacted to set the amount of bail. For the purposes of this subsection, a person shall be deemed to have a previous conviction of battery that constitutes domestic violence pursuant to NRS 33.018 if the person has been convicted of such an offense in this State or has been convicted of violating a law of any other jurisdiction that prohibits the same or similar conduct.~~

~~8. A person arrested for violating a temporary or extended order for protection against domestic violence issued pursuant to NRS 33.017 to 33.100, inclusive, or for violating a restraining order or injunction that is in the nature of a temporary or extended order for protection against domestic violence issued in an action or proceeding brought pursuant to title 11 of NRS, or for violating a temporary or extended order for protection against stalking, aggravated stalking or harassment issued pursuant to NRS 200.591, or for violating a temporary or extended order for protection against sexual assault pursuant to NRS 200.378 must not be admitted to bail sooner than 12 hours after arrest if:~~

~~(a) The arresting officer determines that such a violation is accompanied by a direct or indirect threat of harm;~~

~~(b) The person has previously violated a temporary or extended order for protection of the type for which the person has been arrested; or~~

~~(c) At the time of the violation or within 2 hours after the violation, the person has:~~

~~(1) A concentration of alcohol of 0.08 or more in the person's blood or breath; or~~

~~(2) An amount of a prohibited substance in the person's blood or urine, as applicable, that is equal to or greater than the amount set forth in subsection 3 or 4 of NRS 484C.110.~~

~~9. If a person is admitted to bail more than 12 hours after arrest, pursuant to subsection 8, without appearing personally before a magistrate or without the amount of bail having been otherwise set by a magistrate or a court, the amount of bail must be:~~



1 ~~—(a) Three thousand dollars, if the person has no previous~~
2 ~~convictions of violating a temporary or extended order for~~
3 ~~protection against domestic violence issued pursuant to NRS 33.017~~
4 ~~to 33.100, inclusive, or of violating a restraining order or injunction~~
5 ~~that is in the nature of a temporary or extended order for protection~~
6 ~~against domestic violence issued in an action or proceeding brought~~
7 ~~pursuant to title 11 of NRS, or of violating a temporary or extended~~
8 ~~order for protection against stalking, aggravated stalking or~~
9 ~~harassment issued pursuant to NRS 200.591, or of violating a~~
10 ~~temporary or extended order for protection against sexual assault~~
11 ~~pursuant to NRS 200.378;~~

12 ~~—(b) Five thousand dollars, if the person has one previous~~
13 ~~conviction of violating a temporary or extended order for protection~~
14 ~~against domestic violence issued pursuant to NRS 33.017 to 33.100,~~
15 ~~inclusive, or of violating a restraining order or injunction that is in~~
16 ~~the nature of a temporary or extended order for protection against~~
17 ~~domestic violence issued in an action or proceeding brought~~
18 ~~pursuant to title 11 of NRS, or of violating a temporary or extended~~
19 ~~order for protection against stalking, aggravated stalking or~~
20 ~~harassment issued pursuant to NRS 200.591, or of violating a~~
21 ~~temporary or extended order for protection against sexual assault~~
22 ~~pursuant to NRS 200.378; or~~

23 ~~—(c) Fifteen thousand dollars, if the person has two or more~~
24 ~~previous convictions of violating a temporary or extended order for~~
25 ~~protection against domestic violence issued pursuant to NRS 33.017~~
26 ~~to 33.100, inclusive, or of violating a restraining order or injunction~~
27 ~~that is in the nature of a temporary or extended order for protection~~
28 ~~against domestic violence issued in an action or proceeding brought~~
29 ~~pursuant to title 11 of NRS, or of violating a temporary or extended~~
30 ~~order for protection against stalking, aggravated stalking or~~
31 ~~harassment issued pursuant to NRS 200.591, or of violating a~~
32 ~~temporary or extended order for protection against sexual assault~~
33 ~~pursuant to NRS 200.378.~~

34 ~~➔ The provisions of this subsection do not affect the authority of a~~
35 ~~magistrate or a court to set the amount of bail when the person~~
36 ~~personally appears before the magistrate or the court or when a~~
37 ~~magistrate or a court has otherwise been contacted to set the amount~~
38 ~~of bail. For the purposes of this subsection, a person shall be~~
39 ~~deemed to have a previous conviction of violating a temporary or~~
40 ~~extended order for protection against domestic violence issued~~
41 ~~pursuant to NRS 33.017 to 33.100, inclusive, or of violating a~~
42 ~~restraining order or injunction that is in the nature of a temporary or~~
43 ~~extended order for protection against domestic violence issued in an~~
44 ~~action or proceeding brought pursuant to title 11 of NRS, or of~~
45 ~~violating a temporary or extended order for protection against~~



1 ~~stalking, aggravated stalking or harassment issued pursuant to NRS~~
2 ~~200.591, or of violating a temporary or extended order for~~
3 ~~protection against sexual assault pursuant to NRS 200.378, if the~~
4 ~~person has been convicted of such an offense in this State or has~~
5 ~~been convicted of violating a law of any other jurisdiction that~~
6 ~~prohibits the same or similar conduct.~~

7 ~~— 10. The court may, before releasing a person arrested for an~~
8 ~~offense punishable as a felony, require the surrender to the court of~~
9 ~~any passport the person possesses.~~

10 ~~— 11. Before releasing a person arrested for any crime, the court~~
11 ~~may impose such reasonable conditions on the person as it deems~~
12 ~~necessary to protect the health, safety and welfare of the community~~
13 ~~and to ensure that the person will appear at all times and places~~
14 ~~ordered by the court, including, without limitation:~~

15 ~~— (a) Requiring the person to remain in this State or a certain~~
16 ~~county within this State;~~

17 ~~— (b) Prohibiting the person from contacting or attempting to~~
18 ~~contact a specific person or from causing or attempting to cause~~
19 ~~another person to contact that person on the person's behalf;~~

20 ~~— (c) Prohibiting the person from entering a certain geographic~~
21 ~~area; or~~

22 ~~— (d) Prohibiting the person from engaging in specific conduct~~
23 ~~that may be harmful to the person's own health, safety or welfare, or~~
24 ~~the health, safety or welfare of another person.~~

25 ~~➤ In determining whether a condition is reasonable, the court shall~~
26 ~~consider the factors listed in NRS 178.4853.~~

27 ~~— 12. If a person fails to comply with a condition imposed~~
28 ~~pursuant to subsection 11, the court may, after providing the person~~
29 ~~with reasonable notice and an opportunity for a hearing:~~

30 ~~— (a) Deem such conduct a contempt pursuant to NRS 22.010; or~~

31 ~~— (b) Increase the amount of bail pursuant to NRS 178.499.~~

32 ~~— 13. An order issued pursuant to this section that imposes a~~
33 ~~condition on a person admitted to bail must include a provision~~
34 ~~ordering any law enforcement officer to arrest the person if the~~
35 ~~officer has probable cause to believe that the person has violated a~~
36 ~~condition of bail.~~

37 ~~— 14. Before a person may be admitted to bail, the person must~~
38 ~~sign a document stating that:~~

39 ~~— (a) The person will appear at all times and places as ordered by~~
40 ~~the court releasing the person and as ordered by any court before~~
41 ~~which the charge is subsequently heard;~~

42 ~~— (b) The person will comply with the other conditions which~~
43 ~~have been imposed by the court and are stated in the document; and~~



1 ~~—(c) If the person fails to appear when so ordered and is taken~~
2 ~~into custody outside of this State, the person waives all rights~~
3 ~~relating to extradition proceedings.~~

4 ~~➔ The signed document must be filed with the clerk of the court of~~
5 ~~competent jurisdiction as soon as practicable, but in no event later~~
6 ~~than the next business day.~~

7 ~~—15. If a person admitted to bail fails to appear as ordered by a~~
8 ~~court and the jurisdiction incurs any cost in returning the person to~~
9 ~~the jurisdiction to stand trial, the person who failed to appear is~~
10 ~~responsible for paying those costs as restitution.~~

11 ~~—16. For the purposes of subsections 8 and 9, an order or~~
12 ~~injunction is in the nature of a temporary or extended order for~~
13 ~~protection against domestic violence if it grants relief that might be~~
14 ~~given in a temporary or extended order issued pursuant to NRS~~
15 ~~33.017 to 33.100, inclusive.~~

16 ~~—17. Unless a defendant is automatically released pursuant to~~
17 ~~an administrative order adopted by the court pursuant to this~~
18 ~~section, a magistrate shall review the custody status of a defendant~~
19 ~~pursuant to the procedures set forth in this section as soon as~~
20 ~~practicable after a defendant is taken into custody, but not later~~
21 ~~than 48 hours, including nonjudicial days, after the defendant is~~
22 ~~taken into custody.~~

23 *2. During any hearing in which a magistrate reviews the*
24 *custody status of a defendant, regardless of when the hearing is*
25 *held, whether the hearing is held in chambers or open court or*
26 *whether the defendant is present at or absent from the hearing:*

27 *(a) There is a rebuttable presumption that the defendant*
28 *should be released on his or her own recognizance.*

29 *(b) Monetary bail should be imposed as a condition of release*
30 *only when the magistrate determines that no other conditions of*
31 *release will reasonably ensure that the defendant will appear in*
32 *court as required.*

33 *3. Except as otherwise provided in this section, a person*
34 *arrested for an offense other than murder of the first degree must*
35 *be released pending trial with the least restrictive conditions that*
36 *the court deems necessary to:*

37 *(a) Protect the health, safety and welfare of the defendant and*
38 *the community;*

39 *(b) Reasonably protect an alleged victim and the family of an*
40 *alleged victim from the defendant; and*

41 *(c) Reasonably ensure that the person will appear at all times*
42 *and places ordered by the court.*

43 *4. Each court in this State shall, after consulting with*
44 *interested groups, organizations and persons in the jurisdiction,*
45 *adopt an administrative order that provides for the release, under*



1 certain circumstances, of defendants who are arrested without a
2 warrant, before a review of the custody status of a defendant is
3 conducted and without the imposition of any conditions of release
4 other than the promise of good behavior and the promise to
5 appear in court as required. Such an administrative order must:

6 (a) Consider the provisions of paragraphs (a) and (b) of
7 subsection 2.

8 (b) Provide for the release of a defendant who is charged with
9 a misdemeanor that does not involve the use or threatened use of
10 force or violence against an alleged victim.

11 (c) Provide for the release of a defendant without any
12 conditions if the defendant is not charged with any crime greater
13 than a gross misdemeanor and is not charged with a crime listed
14 in paragraph (d).

15 (d) Not provide for the release without conditions of any
16 defendant who is charged with a felony or gross misdemeanor
17 that:

18 (1) Involves the use or threatened use of force or violence
19 against an alleged victim; or

20 (2) Is a sexual offense as defined in NRS 179D.097.

21 5. If a defendant has been arrested without a warrant, no
22 conditions of release other than the promise of good behavior and
23 the promise to appear in court as required may be imposed,
24 through an administrative order adopted pursuant to subsection 4
25 or through the use of any standard bail schedule, unless and until
26 the magistrate conducts a review of the custody status of the
27 defendant pursuant to this section.

28 6. Each court shall, after consulting with interested groups,
29 organizations and persons in the jurisdiction, adopt and make
30 available to the public an order containing written policies and
31 procedures concerning reviews of the custody status of a
32 defendant that must be conducted pursuant to this section. Such
33 policies and procedures may provide that the initial review of the
34 custody status of a defendant pursuant to subsection 1 may take
35 place in chambers, during a public proceeding in open court or
36 any combination thereof and may be conducted at the same time
37 as the initial appearance of a defendant pursuant to NRS 171.178
38 or at the time of arraignment, but regardless of whether a criminal
39 complaint is filed, must require that if the defendant remains in
40 custody, an individualized review of the custody status of the
41 defendant, with the defendant present, must be conducted within
42 72 hours after arrest, excluding nonjudicial days, pursuant to
43 NRS 171.178. The order must specify the times at which the court
44 will conduct such reviews of the custody status of defendants. If
45 the court decides to change the policies and procedures adopted



pursuant to this subsection, the court shall provide notice of the changes to the public at least 30 days before the changes take effect.

7. At any hearing to review the custody status of a defendant, the magistrate shall consider the release of a defendant in the following order of priority:

(a) Own recognizance release with no additional conditions other than the promise of good behavior and the promise to appear in court as required.

(b) Own recognizance release with nonfinancial conditions.

(c) Release with secured financial conditions, in accordance with the provisions of NRS 178.498.

↪ The magistrate may use a different order of priority for release only if requested by the defendant.

8. At any hearing to review the custody status of a defendant, the magistrate:

(a) Shall include in every release order that the release of the defendant is conditioned upon his or her promise of good behavior and promise to appear at all times and places ordered by the court.

(b) Shall consider the provisions of paragraphs (a) and (b) of subsection 2.

(c) May consider any or all of the following factors relating to the defendant, to the extent that information about the factor is available and reasonably reliable:

(1) Length of residence in the community.

(2) Status and history of employment.

(3) Relationships with any spouse, children, parents, family members or close friends.

(4) The identity of responsible members of the community who would attest to the reliability of the defendant.

(5) The nature of the offense with which the defendant is charged, the apparent probability of conviction and the likely sentence, insofar as these factors relate to the risk of the defendant not appearing.

(6) The nature and seriousness of the danger to an alleged victim, the family of an alleged victim, any other person or the community that would be posed by the release of the defendant.

(7) The likelihood of more criminal activity by the defendant after release.

(8) Any other factors concerning the defendant's ties to the community or bearing on the risk that the defendant may willfully fail to appear.

(d) Shall use its discretion to consider the possible types of release described in subsection 7. In considering whether nonfinancial conditions should be imposed, the magistrate shall



1 *consider the relation of such conditions to the charges against the*
2 *defendant, the likelihood that the defendant will willfully fail to*
3 *appear and the safety of an alleged victim and the community. If*
4 *the magistrate determines that a nonfinancial condition is*
5 *necessary, the magistrate shall impose the least restrictive*
6 *condition necessary.*

7 *(e) Shall make findings as to the reasoning underlying the*
8 *decision whether to release the defendant and the conditions of*
9 *release to be imposed.*

10 *9. If a magistrate imposes upon a defendant nonmonetary*
11 *conditions of release, the defendant is unable to satisfy all such*
12 *nonmonetary conditions and the defendant remains in custody 3*
13 *days after the issuance of the release order, the defendant, on his*
14 *or her own motion, or on the court's own motion to review the*
15 *conditions of release, is entitled to a hearing on that motion to be*
16 *held not later than 3 judicial days after the date of the filing of the*
17 *motion.*

18 *10. A defendant arrested for a felony who has been released*
19 *on probation or parole for a different offense must not be admitted*
20 *to bail unless:*

21 *(a) A court issues an order directing the defendant to be*
22 *admitted to bail;*

23 *(b) The State Board of Parole Commissioners directs the*
24 *detention facility to admit the defendant to bail; or*

25 *(c) The Division of Parole and Probation of the Department of*
26 *Public Safety directs the detention facility to admit the defendant*
27 *to bail.*

28 *11. A defendant arrested for murder of the first degree may*
29 *be admitted to bail unless the proof of guilt is evident or the*
30 *presumption of guilt is great by any competent court or magistrate*
31 *authorized by law to do so in the exercise of discretion, giving due*
32 *weight to the evidence and to the nature and circumstances of the*
33 *offense.*

34 *12. A defendant arrested for a violation of NRS 484C.110,*
35 *484C.120, 484C.130, 484C.430, 488.410, 488.420 or 488.425 who*
36 *is under the influence of intoxicating liquor must not be admitted*
37 *to bail or released on his or her own recognizance unless the*
38 *defendant has a concentration of alcohol of less than 0.04 in his*
39 *or her breath. A test of the defendant's breath pursuant to this*
40 *subsection to determine the concentration of alcohol in his or her*
41 *breath as a condition of admission to bail or release is not*
42 *admissible as evidence against the defendant.*

43 *13. A defendant arrested for a violation of NRS 484C.110,*
44 *484C.120, 484C.130, 484C.430, 488.410, 488.420 or 488.425 who*
45 *is under the influence of a controlled substance, is under the*



combined influence of intoxicating liquor and a controlled substance or inhales, ingests, applies or otherwise uses any chemical, poison or organic solvent, or any compound or combination of any of these, to a degree which renders the defendant incapable of safely driving or exercising actual physical control of a vehicle or vessel under power or sail must not be admitted to bail or released on his or her own recognizance sooner than 12 hours after arrest.

14. A defendant arrested for a felony, for a misdemeanor crime that constitutes domestic violence under NRS 33.018, for violating a temporary or extended order for protection against domestic violence issued pursuant to NRS 33.017 to 33.100, inclusive, for violating a restraining order or injunction that is in the nature of a temporary or extended order for protection against domestic violence issued in an action or proceeding brought pursuant to title 11 of NRS, for violating a temporary or extended order for protection against stalking, aggravated stalking or harassment issued pursuant to NRS 200.591, or for violating a temporary or extended order for protection against sexual assault pursuant to NRS 200.378 or whose sentence has been suspended pursuant to NRS 4.373 or 5.055 for a different offense or who has been sentenced to a term of residential confinement pursuant to NRS 4.3762 or 5.076 for a different offense must not be released unless:

(a) A court issues an order directing that the defendant be released, no sooner than 12 hours after arrest; or

(b) A department of alternative sentencing directs the detention facility to admit the defendant to bail.

15. If a defendant fails to comply with a condition imposed by the court pursuant to this section, the court may, after providing the defendant with reasonable notice and an opportunity for a hearing:

(a) Deem such conduct a contempt pursuant to NRS 22.010;

(b) Modify any condition of release;

(c) Require any additional condition of release; or

(d) After conducting a review of the custody status of the defendant, set or increase the amount of any monetary bail, provided that the amount is reasonable.

16. A release order issued pursuant to this section must be signed and filed with the clerk of the court as soon as practicable. The release order must include a provision ordering any law enforcement officer to arrest the defendant if the officer has probable cause to believe that the defendant has violated a condition of his or her release.



17. Before a defendant may be released, the defendant must sign a document stating that:

(a) The defendant will appear at all times and places as ordered by the court releasing the defendant and as ordered by any other court before which the charge is subsequently heard;

(b) The defendant will comply with the other conditions, if any, which have been imposed by the court and are stated in the document;

(c) If the defendant fails to appear when so ordered and is taken into custody outside of this State, the defendant waives all rights relating to extradition proceedings; and

(d) The defendant understands that any court of competent jurisdiction may revoke the order of release without bail and may order the defendant into custody or require the defendant to furnish bail or otherwise ensure the protection of the health, safety and welfare of the community or the defendant's appearance.

18. For the purposes of this section, an order or injunction is in the nature of a temporary or extended order for protection against domestic violence if it grants relief that might be given in a temporary or extended order issued pursuant to NRS 33.017 to 33.100, inclusive.

19. As used in this section, ~~["strangulation" has the meaning ascribed to it in NRS 200.481.]~~ "own recognizance release" means release upon giving an oral promise to appear with no monetary conditions attached.

Sec. 6. NRS 178.4855 is hereby amended to read as follows:

178.4855 A defendant charged with the commission of a category A or B felony who is admitted to bail on a surety bond and who:

1. While admitted to bail, is taken into custody in the same jurisdiction in which the defendant was admitted to bail and is charged with the commission of another category A or B felony; and

2. Is ordered to be released from custody without bail, ➤ must ~~not be released from custody pursuant to NRS 178.4851 until the law enforcement agency that conducted the initial booking procedure for the defendant for the subsequent felony has notified the bail agent that issued the surety bond of the release of the defendant.]~~ have his or her custody status as described in NRS 178.484 reviewed, which may result in the addition or modification of conditions of release.

Sec. 7. NRS 178.487 is hereby amended to read as follows:

178.487 1. Every release on bail with or without security is conditioned upon the defendant's good behavior while so released, and upon a showing that the proof is evident or the presumption



great that the defendant has committed a ~~felony~~ crime listed in subsection 2 during the period of release, the defendant's bail may be revoked, after ~~a hearing,~~ a review of the custody status of the defendant that follows the requirements set forth in NRS 178.484, by the magistrate who allowed it or by any judge of the court in which the original charge is pending. Pending such revocation, the defendant may be held without bail by order of the magistrate before whom the defendant is brought after an arrest upon the second charge. *The magistrate shall conduct a review of the custody status of the defendant as soon as practicable and within 48 hours, excluding nonjudicial days to the extent possible, but in any case the defendant must not be released until his or her custody status has been so reviewed.*

2. The provisions of this section apply to the following crimes:

(a) A misdemeanor that constitutes domestic violence pursuant to NRS 33.018.

(b) A violation of a temporary or extended order for protection against domestic violence issued pursuant to NRS 33.017 to 33.100, inclusive.

(c) A violation of a restraining order or injunction that is in the nature of a temporary or extended order for protection against domestic violence issued in an action or proceeding brought pursuant to title 11 of NRS. For the purposes of this paragraph, an order or injunction is in the nature of a temporary or extended order for protection against domestic violence if it grants relief that might be given in a temporary or extended order issued pursuant to NRS 33.017 to 33.100, inclusive.

(d) A violation of a temporary or extended order for protection against stalking, aggravated stalking or harassment issued pursuant to NRS 200.591.

(e) A violation of a temporary or extended order for protection against sexual assault pursuant to NRS 200.378.

Sec. 8. NRS 178.498 is hereby amended to read as follows:

178.498 1. If the ~~defendant is admitted to~~ magistrate, in determining bail, ~~the~~ finds pursuant to NRS 178.484 that no nonmonetary conditions reasonably ensure the appearance of the defendant and the safety of the community, the magistrate may direct the defendant to post a monetary bail or secured bond. The monetary bail or secured bond must be set at an amount which in the judgment of the magistrate will reasonably ensure the appearance of the defendant and the safety ~~of other persons and~~ of the community, having regard to:

~~1.-~~ (a) The nature and circumstances of the offense charged;

~~2.-~~ (b) ~~The financial ability of the defendant to give bail;~~



1 ~~—3.]~~ The character of the defendant; and

2 ~~[4.]~~ (c) The factors listed in *subsection 8 of* NRS ~~[178.4853.]~~
3 *178.484.*

4 *2. The amount of any monetary bail or secured bond set*
5 *pursuant to subsection 1 must be based upon the financial*
6 *resources of the defendant and set as necessary to ensure*
7 *reasonably the appearance of the defendant and the safety of the*
8 *community. The magistrate shall make findings as to the*
9 *reasoning underlying the specific amount set and the relationship*
10 *of that amount to ensuring reasonably the appearance of the*
11 *person and the safety of the community.*

12 *3. A defendant who is eligible for pretrial release must not be*
13 *detained solely because the defendant is financially incapable of*
14 *paying the amount of any monetary bail or secured bond.*

15 **Sec. 9.** NRS 178.499 is hereby amended to read as follows:

16 178.499 ~~[1. At any time after a district or Justice Court has~~
17 ~~ordered bail to be set at a specific amount, and before acquittal or~~
18 ~~conviction, the court may upon its own motion or upon motion of~~
19 ~~the district attorney and after notice to the defendant's attorney of~~
20 ~~record or, if none, to the defendant, increase the amount of bail for~~
21 ~~good cause shown.~~

22 ~~—2. If the defendant has been released on bail before the time~~
23 ~~when the motion to increase bail is granted, the defendant shall~~
24 ~~either return to custody or give the additional amount of bail.] Upon~~
25 *notice and a showing of good cause, a magistrate may consider a*
26 *modification of bail, including, without limitation, the addition,*
27 *modification, suspension or cancellation of any condition or*
28 *combination of conditions of bail imposed upon a person charged*
29 *with a public offense.*

30 **Sec. 10.** NRS 178.502 is hereby amended to read as follows:

31 178.502 1. A person *charged with a public offense who is*
32 *required* ~~[or permitted to give]~~ *to pay monetary* bail shall execute a
33 bond for the person's appearance. The magistrate, ~~[or court or judge~~
34 ~~or justice,]~~ having regard to the considerations set forth in NRS
35 178.498, may require one or more sureties or may authorize the
36 acceptance of cash or bonds or notes of the United States in an
37 amount equal to or less than the face amount of the bond.

38 2. Any bond or undertaking for *monetary* bail must provide
39 that the bond or undertaking:

40 (a) Extends to any action or proceeding in a justice court,
41 municipal court or district court:

42 (1) Arising from the charge on which *monetary* bail was first
43 ~~[given]~~ *paid* in any of these courts; and

44 (2) Arising from a later charge, filed before the expiration of
45 the periods provided in subsection 4, which is substantially similar



1 to the charge upon which **monetary** bail was first ~~{given}~~ **paid** and is
2 based upon the same act or omission as that charge; and

3 (b) Remains in effect until exonerated by the court.

4 ➔ This subsection does not require that any bond or undertaking
5 extend to proceedings on appeal.

6 3. If an action or proceeding against a defendant who has been
7 ~~{admitted}~~ **required to pay monetary** bail is transferred to another
8 trial court, the bond or undertaking must be transferred to the clerk
9 of the court to which the action or proceeding has been transferred.

10 4. If the action or proceeding against a defendant who has been
11 ~~{admitted}~~ **required to pay monetary** bail is dismissed, the **monetary**
12 bail must not be exonerated until a period of 30 days has elapsed
13 from the entry of the order of dismissal unless the defendant
14 requests that **the monetary** bail be exonerated before the expiration
15 of the 30-day period. If no formal action or proceeding is instituted
16 against a defendant who has been ~~{admitted}~~ **required to pay**
17 **monetary** bail, the **monetary** bail must not be exonerated until a
18 period of 30 days has elapsed from the day the bond or undertaking
19 is posted unless the defendant requests that **the monetary** bail be
20 exonerated before the expiration of the 30-day period.

21 5. If, within the periods provided in subsection 4, the defendant
22 is charged with a public offense arising out of the same act or
23 omission supporting the charge upon which **monetary** bail was first
24 ~~{given,}~~ **required to be paid**, the prosecuting attorney shall forthwith
25 notify the clerk of the court where the bond was posted, the
26 **monetary** bail must be applied to the public offense later charged,
27 and the bond or undertaking must be transferred to the clerk of the
28 appropriate court. Within 10 days after its receipt, the clerk of the
29 court to whom the **monetary** bail is transferred shall mail or
30 electronically transmit notice of the transfer to the surety on the
31 bond and the bail agent who executed the bond.

32 6. ~~{Bail given}~~ **Monetary bail required to be paid** originally on
33 appeal must be deposited with the magistrate or the clerk of the
34 court from which the appeal is taken.

35 **Sec. 11.** NRS 178.506 is hereby amended to read as follows:

36 178.506 If there is a breach of condition of a bond, the court
37 shall declare a forfeiture of the **monetary** bail, subject to the
38 provisions of NRS 178.508 and 178.509.

39 **Sec. 12.** NRS 178.532 is hereby amended to read as follows:

40 178.532 The court to which the committing magistrate shall
41 return the depositions and statement, or in which an indictment or
42 information or an appeal is pending, or to which a judgment on
43 appeal is remitted to be carried into effect, may, by an order to be
44 entered on its minutes, direct the arrest of the defendant and
45 commitment to the officer to whose custody the defendant was



committed at the time of giving bail, and the defendant's detention until legally discharged, in the following cases:

1. When, by reason of the defendant's failure to appear, the defendant has incurred a forfeiture of *monetary* bail, or of money deposited instead thereof, as provided in NRS 178.506.

2. When it satisfactorily appears to the court that the defendant's bail, or either of them, are dead, or insufficient, or have removed from the State.

3. Upon an indictment being found or information filed ~~in the cases provided in NRS 173.175.1~~ *for a felony and the defendant paid monetary bail before the indictment was found or the information was filed.*

Sec. 13. NRS 178.538 is hereby amended to read as follows:

178.538 1. If the order recites, as the grounds upon which it is made, the failure of the defendant to appear for judgment upon conviction, the defendant must be committed according to the requirement of the order.

2. If the order be made for any other cause, and the offense is bailable, the court may fix the amount of *monetary* bail ~~it~~ and may cause a direction to be inserted in the order that the defendant be admitted to bail in the sum fixed, which ~~it shall~~ *must* be specified in the order.

Sec. 14. NRS 178.5698 is hereby amended to read as follows:

178.5698 1. The prosecuting attorney, sheriff or chief of police shall, upon the request of a victim or witness, inform the victim or witness:

(a) When the defendant is released from custody at any time before or during the trial, including, without limitation, when the defendant is released pending trial or subject to electronic supervision;

(b) If the defendant is so released, the amount of *monetary* bail required, if any; and

(c) Of the final disposition of the criminal case in which the victim or witness was directly involved.

2. A request for information pursuant to subsection 1 must be made:

(a) In writing; or

(b) By telephone through an automated or computerized system of notification, if such a system is available.

3. If an offender is convicted of a sexual offense or an offense involving the use or threatened use of force or violence against the victim, the court shall provide:

(a) To each witness, documentation that includes:

(1) A form advising the witness of the right to be notified pursuant to subsection 5;



(2) The form that the witness must use to request notification in writing; and

(3) The form or procedure that the witness must use to provide a change of address after a request for notification has been submitted.

(b) To each person listed in subsection 4, documentation that includes:

(1) A form advising the person of the right to be notified pursuant to subsection 5 or 6 and NRS 176.015, 176A.630, 178.4715, 209.392, 209.3925, 209.521, 213.010, 213.040, 213.095 and 213.131 or NRS 213.10915;

(2) The forms that the person must use to request notification; and

(3) The forms or procedures that the person must use to provide a change of address after a request for notification has been submitted.

4. The following persons are entitled to receive documentation pursuant to paragraph (b) of subsection 3:

(a) A person against whom the offense is committed.

(b) A person who is injured as a direct result of the commission of the offense.

(c) If a person listed in paragraph (a) or (b) is under the age of 18 years, each parent or guardian who is not the offender.

(d) Each surviving spouse, parent and child of a person who is killed as a direct result of the commission of the offense.

(e) A relative of a person listed in paragraphs (a) to (d), inclusive, if the relative requests in writing to be provided with the documentation.

5. Except as otherwise provided in subsection 6, if the offense was a felony and the offender is imprisoned, the warden of the prison shall, if the victim or witness so requests in writing and provides a current address, notify the victim or witness at that address when the offender is released from the prison.

6. If the offender was convicted of a violation of subsection 3 of NRS 200.366 or a violation of subsection 1, paragraph (a) of subsection 2 or subparagraph (2) of paragraph (b) of subsection 2 of NRS 200.508, the warden of the prison shall notify:

(a) The immediate family of the victim if the immediate family provides their current address;

(b) Any member of the victim's family related within the third degree of consanguinity, if the member of the victim's family so requests in writing and provides a current address; and

(c) The victim, if the victim will be 18 years of age or older at the time of the release and has provided a current address,

↪ before the offender is released from prison.



7. The warden must not be held responsible for any injury proximately caused by the failure to give any notice required pursuant to this section if no address was provided to the warden or if the address provided is inaccurate or not current.

8. As used in this section:

(a) "Immediate family" means any adult relative of the victim living in the victim's household.

(b) "Sexual offense" means:

(1) Sexual assault pursuant to NRS 200.366;

(2) Statutory sexual seduction pursuant to NRS 200.368;

(3) Battery with intent to commit sexual assault pursuant to NRS 200.400;

(4) An offense involving pornography and a minor pursuant to NRS 200.710 to 200.730, inclusive;

(5) Incest pursuant to NRS 201.180;

(6) Open or gross lewdness pursuant to NRS 201.210;

(7) Indecent or obscene exposure pursuant to NRS 201.220;

(8) Lewdness with a child pursuant to NRS 201.230;

(9) Sexual penetration of a dead human body pursuant to NRS 201.450;

(10) Sexual conduct between certain employees of a school or volunteers at a school and a pupil pursuant to NRS 201.540;

(11) Sexual conduct between certain employees of a college or university and a student pursuant to NRS 201.550;

(12) Luring a child or a person with mental illness pursuant to NRS 201.560, if punished as a felony;

(13) An offense that, pursuant to a specific statute, is determined to be sexually motivated; or

(14) An attempt to commit an offense listed in this paragraph.

Sec. 15. (Deleted by amendment.)

Sec. 16. (Deleted by amendment.)

Sec. 17. NRS 178.4851 and 178.4853 are hereby repealed.

TEXT OF REPEALED SECTIONS

178.4851 Release without bail; imposition of conditions; arrest for violation of condition.

1. Upon a showing of good cause, a court may release without bail any person entitled to bail if it appears to the court that it can impose conditions on the person that will adequately protect the



health, safety and welfare of the community and ensure that the person will appear at all times and places ordered by the court.

2. In releasing a person without bail, the court may impose such conditions as it deems necessary to protect the health, safety and welfare of the community and to ensure that the person will appear at all times and places ordered by the court, including, without limitation, any condition set forth in subsection 11 of NRS 178.484.

3. Upon a showing of good cause, a sheriff or chief of police may release without bail any person charged with a misdemeanor pursuant to standards established by a court of competent jurisdiction.

4. Before a person may be released without bail, the person must file with the clerk of the court of competent jurisdiction a signed document stating that:

(a) The person will appear at all times and places as ordered by the court releasing the person and as ordered by any court before which the charge is subsequently heard;

(b) The person will comply with the other conditions which have been imposed by the court and are stated in the document;

(c) If the person fails to appear when so ordered and is taken into custody outside of this State, the person waives all rights relating to extradition proceedings; and

(d) The person understands that any court of competent jurisdiction may revoke the order of release without bail and may order the person into custody or require the person to furnish bail or otherwise ensure the protection of the health, safety and welfare of the community or the person's appearance.

5. If a jurisdiction incurs any costs in returning a person to the jurisdiction to stand trial, the person failing to appear is responsible for paying those costs as restitution.

6. An order issued pursuant to this section that imposes a condition on a person who is released without bail must include a provision ordering a law enforcement officer to arrest the person if the law enforcement officer has probable cause to believe that the person has violated a condition of release.

178.4853 Factors considered before release without bail.

In deciding whether there is good cause to release a person without bail, the court at a minimum shall consider the following factors concerning the person:

1. The length of residence in the community;
2. The status and history of employment;
3. Relationships with the person's spouse and children, parents or other family members and with close friends;
4. Reputation, character and mental condition;



5. Prior criminal record, including, without limitation, any record of appearing or failing to appear after release on bail or without bail;

6. The identity of responsible members of the community who would vouch for the reliability of the person;

7. The nature of the offense with which the person is charged, the apparent probability of conviction and the likely sentence, insofar as these factors relate to the risk of not appearing;

8. The nature and seriousness of the danger to the alleged victim, any other person or the community that would be posed by the person's release;

9. The likelihood of more criminal activity by the person after release; and

10. Any other factors concerning the person's ties to the community or bearing on the risk that the person may willfully fail to appear.

