

ASSEMBLY BILL NO. 422—COMMITTEE ON JUDICIARY

MARCH 25, 2019

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing criminal procedure.
(BDR 14-1096)

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; providing that a person who is a victim of domestic violence or sexual assault and who fails to obey a subpoena shall not be deemed a contempt of the court; prohibiting a judge or magistrate from requiring certain bail if a person is a victim of domestic violence or sexual assault; prohibiting a court or officer from issuing certain warrants for arrest if a person is a victim of domestic violence or sexual assault; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes the prosecuting attorney or the attorney for the defendant in a criminal proceeding to issue subpoenas for witnesses within the State to appear before the court at which an indictment, information or criminal complaint is to be tried. (NRS 174.315) Existing law also provides that a person who, without an adequate excuse, fails to obey a subpoena of a court or a prosecuting attorney that was served upon the person, or that was delivered to the person and accepted, is in contempt of the court. (NRS 174.385) **Section 1** of this bill excludes a person who is a victim of domestic violence or sexual assault from such provisions governing contempt.

Existing law authorizes a magistrate to require bail for a person who appears as a witness if such a person is material in a criminal proceeding and it is impracticable to secure the presence of the person by subpoena. (NRS 178.494) **Section 2** of this bill prohibits a judge or magistrate from requiring such bail if a person is a victim of domestic violence or sexual assault.

Existing law authorizes a court or officer to issue a warrant to arrest a witness upon the failure of the witness to appear. (NRS 50.205) **Section 3** of this bill prohibits a court or officer from issuing such a warrant if the witness is a victim of domestic violence or sexual assault.



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

Section 1. NRS 174.385 is hereby amended to read as follows:

174.385 ~~[Failure]~~

1. Except as otherwise provided in subsection 2, failure by any person without an adequate excuse to obey a subpoena of a court, a prosecuting attorney or an attorney for a defendant served upon the person or, in the case of a subpoena issued by a prosecuting attorney or an attorney for a defendant, delivered to the person and accepted, shall be deemed a contempt of the court from which the subpoena issued or, in the case of a subpoena issued by a prosecuting attorney or an attorney for a defendant, of the court in which a preliminary hearing is to be held, an investigation is pending or an indictment, information or complaint is to be tried.

2. The provisions of this section do not apply to a person who is a victim of domestic violence or sexual assault.

3. As used in this section:

(a) "Domestic violence" means the commission of any act described in NRS 33.018.

(b) "Sexual assault" has the meaning ascribed to it in NRS 49.2543.

Sec. 2. NRS 178.494 is hereby amended to read as follows:

178.494 **1. ~~FF~~ Except as otherwise provided in subsection 3, if** it appears by affidavit that the testimony of a person is material in any criminal proceeding and if it is shown that it may become impracticable to secure the person's presence by subpoena, the magistrate may require bail for the person's appearance as a witness, in an amount fixed by the magistrate. If the person fails to give bail the magistrate may:

(a) Commit the person to the custody of a peace officer pending final disposition of the proceeding in which the testimony is needed;

(b) Order the person's release if the person has been detained for an unreasonable length of time; and

(c) Modify at any time the requirement as to bail.

2. Every person detained as a material witness must be brought before a judge or magistrate within 72 hours after the beginning of the detention. The judge or magistrate shall make a determination whether:

(a) The amount of bail required to be given by the material witness should be modified; and

(b) The detention of the material witness should continue.

↪ **The judge or magistrate shall set a schedule for the periodic review of whether the amount of bail required should be modified and whether detention should continue.**



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3. *The provisions of this section do not apply to a person who is a victim of domestic violence or sexual assault.*

4. *As used in this section:*

(a) *“Domestic violence” means the commission of any act described in NRS 33.018.*

(b) *“Sexual assault” has the meaning ascribed to it in NRS 49.2543.*

Sec. 3. NRS 50.205 is hereby amended to read as follows:

50.205 ~~Ha~~

1. *Except as otherwise provided in subsection 2, in case of failure of a witness to attend, the court or officer issuing the subpoena, upon proof of the service thereof and of the failure of the witness, may issue a warrant to the sheriff of the county to arrest the witness and bring the witness before the court or officer where the attendance of the witness was required.*

2. *The provisions of this section do not apply to a person who is a victim of domestic violence or sexual assault.*

3. *As used in this section:*

(a) *“Domestic violence” means the commission of any act described in NRS 33.018.*

(b) *“Sexual assault” has the meaning ascribed to it in NRS 49.2543.*

