

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; revising provisions relating to a judge or magistrate requiring certain bail if a person fails to appear as a material witness; revising provisions relating to a court or officer issuing certain warrants for arrest if a person fails to appear as a witness; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

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 requires a judge or magistrate to appoint an attorney when bail is required for such a material witness and requires such an attorney to be present, when practicable. **Section 2** also prescribes certain requirements for making a determination whether a material witness should be detained or continue to be detained, including requiring the material witness to appear before a magistrate as soon as practicable but not later than 72 hours after being detained. Finally, **section 2**: (1) requires a material witness who is a victim of domestic violence or sexual assault to appear before a magistrate not later than 24 hours after being detained; and (2) authorizes such a determination to be made by telephone for such material witnesses.

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) Upon such an arrest, **section 3** of this bill requires a court or officer to appoint an attorney to represent the witness. **Section 3** also prescribes certain requirements for making a determination whether a witness should be detained or continue to be detained, including requiring the witness to appear before a court or officer as soon as practicable but not later than 72 hours after being detained. Finally, **section 3**: (1) requires a witness who is a victim of domestic violence or sexual assault to appear before a court or officer not later than 24 hours after being detained; and (2) authorizes such a determination to be made by telephone for such witnesses.



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

Section 1. (Deleted by amendment.)

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

178.494 1. 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~~ *Upon requiring bail for the person's appearance as a material witness, the magistrate shall appoint an attorney to represent the person and provide the attorney:*

(a) With the last known contact information of the person; and

(b) Notice of every proceeding.

3. *Except as otherwise provided in subsection 4, every person detained as a material witness must be brought before a judge or magistrate ~~within~~ as soon as practicable, but not later than 72 hours after the beginning of the detention. The judge or magistrate shall consider the least restrictive means to secure the person's presence and 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. *If the court determines that detention of the material witness should continue, the court must make written findings stating why detention should continue.*

4. *A person detained as a material witness pursuant to this section who is a victim of domestic violence or sexual assault:*

(a) Must be brought before a judge or magistrate, as soon as practicable, but not later than 24 hours after the beginning of the detention:

(b) May be detained or continue detention pursuant to a determination by telephone; and

(c) To the extent practicable, must have the attorney appointed pursuant to subsection 2 participate in any determination pursuant to this section.

~~5.~~ 5. The judge or magistrate shall ~~set~~:



(a) *Set* a schedule for the periodic review of whether the amount of bail required should be modified and whether detention should continue ~~H~~; and

(b) *Schedule the case in which the material witness will testify to take place as soon as possible if substantial rights of the defendant are not prejudiced.*

6. *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 ~~H~~

1. *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. *Upon the arrest of a witness pursuant to subsection 1, the court or officer issuing the warrant shall appoint an attorney to represent the witness and provide the attorney:*

(a) *With the last known contact information of the witness; and*

(b) *Notice of every proceeding.*

3. *Except as otherwise provided in subsection 4, every witness detained pursuant to a warrant issued pursuant to this section must be brought before the court or officer as soon as practicable but not later than 72 hours after the beginning of the detention. The court or officer shall consider the least restrictive means to secure the presence of the witness and make a determination whether the detention of the witness should continue. If the court determines that the detention of the witness should continue, the court must make written findings stating why detention should continue.*

4. *A person detained as a witness pursuant to this section who is a victim of domestic violence or sexual assault:*

(a) *Must be brought before the court or officer as soon as practicable but not later than 24 hours after the beginning of the detention;*

(b) *May be detained or continue detention pursuant to a determination by telephone; and*

(c) *To the extent practicable, must have the attorney appointed pursuant to subsection 2 participate in any determination pursuant to this section.*

5. *The court or officer shall:*



1 (a) *Set a schedule for the periodic review of whether detention*
2 *should continue; and*

3 (b) *Schedule the case in which the witness will testify to take*
4 *place as soon as possible if substantial rights of the defendant are*
5 *not prejudiced.*

6 6. *As used in this section:*

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

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

