

Amendment No. 965

Senate Amendment to Assembly Bill No. 422 Second Reprint (BDR 14-1096)

Proposed by: Senator Cannizzaro

Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date		
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

NCA



Date: 5/24/2019

A.B. No. 422—Revises provisions governing criminal procedure. (BDR 14-1096)



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.

~

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 ~~to a judge or~~
~~magistrate requiring certain bail if a person fails to appear as a~~
material ~~witness;~~ **witnesses**; 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~~ **Section 2**: (1) requires a material witness who is a victim of domestic violence or sexual assault to appear before a **judge or** magistrate not later than 24 hours after being detained; ~~and~~ (2) authorizes such a determination to be made by telephone for such material witnesses ~~and~~ **; and (3) requires the judge or magistrate to appoint an attorney for such a witness under certain circumstances.**

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.)

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

2 178.494 1. If it appears by affidavit that the testimony of a person is
3 material in any criminal proceeding and if it is shown that it may become
4 impracticable to secure the person's presence by subpoena, the magistrate may
5 require bail for the person's appearance as a witness, in an amount fixed by the
6 magistrate. If the person fails to give bail the magistrate may:

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

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

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

12 2. ~~Every Upon requiring bail for the person's appearance as a material~~
13 ~~witness, the magistrate shall appoint an attorney to represent the person and~~
14 ~~provide the attorney;~~

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

16 ~~(b) Notice of every proceeding;~~

17 ~~3.~~ *Except as otherwise provided in subsection ~~4.~~ 3., every* person detained
18 as a material witness must be brought before a judge or magistrate ~~within~~ *as soon*
19 *as practicable, but not later than* 72 hours after the beginning of the detention. The
20 judge or magistrate shall *consider the least restrictive means to secure the*
21 *person's presence* and make a determination whether:

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

24 (b) The detention of the material witness should continue. *If the court*
25 *determines that detention of the material witness should continue, the court must*
26 *make written findings stating why detention should continue.*

27 ~~4.~~ *3. A person detained as a material witness pursuant to this section who*
28 *is a victim of domestic violence or sexual assault:*

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

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

33 (c) ~~[To the extent practicable, must]~~ *Must have [the] an attorney appointed*
34 ~~[pursuant to subsection 2] by the judge or magistrate, who, to the extent~~
35 ~~practicable, shall participate in any determination regarding detention pursuant~~
36 ~~to this section.~~

37 ~~5.~~ *4. The judge or magistrate shall [set].:*

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

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

42 ~~6.~~ *5. As used in this section:*

43 (a) *"Domestic violence" means the commission of any act described in NRS*
44 *33.018.*

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

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

47 50.205 ~~It is~~

48 1. In case of failure of a witness to attend, the court or officer issuing the
49 subpoena, upon proof of the service thereof and of the failure of the witness, may
50 issue a warrant to the sheriff of the county to arrest the witness and bring the
51 witness before the court or officer where the attendance of the witness was
52 required.

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

- 4 (a) *With the last known contact information of the witness; and*
5 (b) *Notice of every proceeding.*

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

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

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

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

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

22 5. *The court or officer shall:*

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

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

27 6. *As used in this section:*

28 (a) *“Domestic violence” means the commission of any act described in NRS*
29 *33.018.*

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