

SENATE BILL NO. 50—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED NOVEMBER 18, 2020

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to warrants.
(BDR 14-405)

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 a magistrate from issuing a no-knock arrest warrant or search warrant except under certain circumstances; requiring an arrest warrant or a search warrant to specify whether it is a no-knock warrant; establishing provisions relating to the manner of execution of a no-knock arrest warrant or search warrant; revising provisions relating to the circumstances under which a summons may be issued instead of an arrest warrant; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires a magistrate to issue a warrant for the arrest of a defendant if, based on an affidavit or affidavits filed with a complaint or certain citations, there is probable cause to believe that an offense has been committed and that the defendant has committed the offense, unless a district attorney requests the issuance of a summons, in which case the magistrate must issue a summons. (NRS 171.106) If the affidavit or affidavits are filed with an application for an arrest warrant, **section 1.1** of this bill maintains the existing default standard of issuing an arrest warrant, or a summons upon the request of a district attorney; however, if the affidavit or affidavits are filed with certain citations, **section 1.1** authorizes a magistrate to issue an arrest warrant or a summons.

Section 1.1 also establishes additional requirements for the issuance of a no-knock warrant. Specifically, **section 1.1** prohibits a magistrate from issuing a no-knock warrant for the arrest of a defendant unless an affidavit, sworn to before the magistrate: (1) demonstrates that the underlying offense is punishable as a felony and involves a significant and imminent threat to public safety; (2) demonstrates that identifying the presence of the peace officer before entering the premises is



likely to create an imminent threat of significant bodily harm to the peace officer or another person; (3) describes factual circumstances that demonstrate that there are no reasonable alternatives to effectuating the arrest of the person other than in the manner prescribed by the no-knock arrest warrant; (4) states whether the no-knock arrest warrant can be executed during the day and, if it cannot, the reasoning behind such a determination; and (5) certifies that the no-knock arrest warrant will be executed under the guidance of a peace officer trained in executing warrants of arrest.

Existing law requires an arrest warrant to include certain information. (NRS 171.108) In addition to the existing requirements, **section 1.2** of this bill requires the arrest warrant to specify whether it is a no-knock arrest warrant. **Section 1.3** of this bill makes a conforming change in order to maintain the existing requirements relating to the contents of a summons.

Existing law sets forth the manner of executing arrest warrants. (NRS 171.122) In addition to the existing requirements, **section 1.4** of this bill requires peace officers involved in the execution of the no-knock arrest warrant to: (1) make certain determinations before executing the no-knock arrest warrant; and (2) take certain actions in the execution of the no-knock arrest warrant, including making certain disclosures and wearing a portable event recording device. **Section 1.5** of this bill makes a conforming change relating to the execution of arrest warrants.

Existing law also authorizes a magistrate to issue a search warrant to search a place or person for any property: (1) that is stolen or embezzled; (2) that is designed or intended for use or which is or has been used as the means of committing a criminal offense; or (3) when the property consists of any item or constitutes any evidence which tends to show that a criminal offense has been committed or that a particular person has committed a criminal offense. (NRS 179.035) **Section 2** of this bill sets forth requirements for the issuance of a no-knock search warrant that are identical to those described in **section 1.1** for no-knock arrest warrants.

Existing law requires search warrants to contain certain information. (NRS 179.045) In addition to the existing requirements, **section 3.3** of this bill requires the search warrant to specify whether it is a no-knock search warrant.

Existing law sets forth various requirements relating to the manner of executing a search warrant. (NRS 179.075, 179.077) In addition to the existing requirements, **section 2.5** of this bill sets forth requirements concerning the execution of no-knock search warrants that are identical to those described in **section 1.4** for no-knock arrest warrants.

Sections 1 and 1.9 of this bill define the term “no-knock warrant” for the purposes of arrest warrants and search warrants, respectively. **Sections 1.8, 3 and 3.7** of this bill make conforming changes relating to no-knock warrants.

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

Section 1. Chapter 171 of NRS is hereby amended by adding thereto a new section to read as follows:

As used in sections 171.102 to 171.122, inclusive, unless the context otherwise requires, “no-knock warrant” means a warrant for the arrest of a defendant which authorizes a peace officer to enter a premises without first:



1 1. Knocking on the door or ringing the doorbell and
2 identifying the presence of the peace officer; or

3 2. Identifying the presence of the peace officer and stating
4 the intended purpose of the peace officer for entering the
5 premises.

6 **Sec. 1.1.** NRS 171.106 is hereby amended to read as follows:

7 171.106 1. If it appears ~~from the complaint or a citation~~
8 ~~issued pursuant to NRS 484A.730, 488.920 or 501.386, or~~ from an
9 affidavit or affidavits filed with ~~the complaint or citation~~ **an**
10 **application for a warrant** that there is probable cause to believe that
11 an offense, triable within the county, has been committed and that
12 the defendant has committed it, a warrant for the arrest of the
13 defendant ~~shall~~ **must** be issued by the magistrate to any peace
14 officer. Upon the request of the district attorney, a summons instead
15 of a warrant ~~shall issue.~~ **must be issued.**

16 2. **If it appears from an affidavit or affidavits filed with a**
17 **complaint or citation issued pursuant to NRS 484A.730, 488.920**
18 **or 501.386 that there is probable cause to believe that an offense,**
19 **triable within the county, has been committed and that the**
20 **defendant has committed it, the magistrate may issue to any peace**
21 **officer:**

22 (a) A warrant; or

23 (b) A summons.

24 3. **A magistrate may not issue a warrant that is a no-knock**
25 **warrant pursuant to subsection 1 or 2 unless an affidavit filed with**
26 **the application, complaint or citation, as applicable:**

27 (a) **Demonstrates that:**

28 (1) **The underlying offense:**

29 (I) **Is punishable as a felony; and**

30 (II) **Involves a significant and imminent threat to public**
31 **safety; and**

32 (2) **Identifying the presence of the peace officer before**
33 **entering the premises is likely to create an imminent threat of**
34 **substantial bodily harm to the peace officer or another person;**

35 (b) **Describes with specificity the factual circumstances as to**
36 **why there are no reasonable alternatives to effectuate the arrest of**
37 **the defendant other than in the manner prescribed by the no-**
38 **knock warrant;**

39 (c) **States whether the no-knock warrant can be executed**
40 **during the day and, if it cannot, describes with specificity the**
41 **factual circumstances that preclude the no-knock warrant from**
42 **being executed during the day; and**

43 (d) **Certifies that the no-knock warrant will be executed under**
44 **the guidance of a peace officer who is trained in the execution of**
45 **warrants.**



4. More than one warrant or summons may ~~issue~~ *be issued* on the same *application*, complaint or citation.

5. If a defendant fails to appear in response to ~~the~~ *a* summons, a warrant ~~shall issue.~~ *must be issued for the arrest of the defendant.*

6. *A no-knock warrant issued pursuant to subsection 3 is void if:*

(a) *A peace officer deliberately misrepresents a material fact or deliberately omits material information in an affidavit in support of an application for the no-knock warrant; and*

(b) *When the misrepresented material fact is excluded or the omitted material information is included, the affidavit does not meet the criteria set forth in paragraphs (a) to (d), inclusive, of subsection 3.*

Sec. 1.2. NRS 171.108 is hereby amended to read as follows:

171.108 ~~The~~ *A* warrant of arrest is an order in writing in the name of the State of Nevada which ~~shall;~~ *must:*

1. Be signed by the magistrate with the magistrate's name of office;

2. Contain the name of the defendant or, if the defendant's name is unknown, any name or description by which the defendant can be identified with reasonable certainty;

3. State the date of its issuance, and the county, city or town where it was issued;

4. ~~Describe~~ *State* the offense ~~charged~~ *described* in ~~the complaint; and~~ *NRS 171.106;*

5. Command that the defendant be arrested and brought before the nearest available magistrate ~~;~~ *and*

6. *State whether the warrant is a no-knock warrant.*

Sec. 1.3. NRS 171.112 is hereby amended to read as follows:

171.112 ~~The~~

1. *A summons is an order in writing in the name of the State of Nevada which shall be in the same form as the warrant except that it shall summon must:*

(a) *Include the information described in subsections 1 to 4, inclusive, of NRS 171.108; and*

(b) *Summon* the defendant to appear before a magistrate at a stated time and place.

2. Upon a complaint against a corporation, the magistrate must issue a summons, signed by the magistrate, with the magistrate's name of office, requiring the corporation to appear before the magistrate at a specified time and place to answer the charge, the time to be not less than 10 days after the issuing of the summons.



Sec. 1.4. NRS 171.122 is hereby amended to read as follows:

171.122 1. Except as otherwise provided in subsection ~~2~~ 3, the warrant must be executed by the arrest of the defendant. The *peace* officer need not have the warrant in the *peace* officer's possession at the time of the arrest, but upon request the *peace* officer must show the warrant to the defendant as soon as possible. If the *peace* officer does not have a warrant in the *peace* officer's possession at the time of the arrest, the *peace* officer shall then inform the defendant of the *peace* officer's intention to arrest the defendant, of the offense charged, the authority to make it and of the fact that a warrant has or has not been issued. The defendant must not be subjected to any more restraint than is necessary for the defendant's arrest and detention. If the defendant either flees or forcibly resists, the *peace* officer may, except as otherwise provided in NRS 171.1455, use only the amount of reasonable force necessary to effect the arrest.

2. *In addition to the requirements described in subsection 1, if the warrant is a no-knock warrant, the peace officers involved in the execution of the no-knock warrant shall:*

(a) Before executing the no-knock warrant, determine whether the circumstances necessitate that the arrest of the defendant be effectuated in the manner prescribed by the no-knock warrant and, if they do not, the peace officers shall not effectuate the arrest of the defendant in such a manner; and

(b) In executing the no-knock warrant:

(1) Wear prominent insignia that renders the peace officers readily identifiable as peace officers;

(2) Wear a portable event recording device in accordance with the requirements described in NRS 289.830;

(3) Use only the amount of force reasonably necessary to enter the premises; and

(4) As soon as practicable after entering the premises, identify the presence of the peace officers and state the purpose of the peace officers for entering the premises.

3. In lieu of executing ~~the~~ a warrant by arresting the defendant, a peace officer may issue a citation as provided in NRS 171.1773 if:

(a) The warrant is issued upon an offense punishable as a misdemeanor;

(b) The *peace* officer has no indication that the defendant has previously failed to appear on the charge reflected in the warrant;

(c) The defendant provides satisfactory evidence of his or her identity to the peace officer;

(d) The defendant signs a written promise to appear in court for the misdemeanor offense; and



(e) The *peace* officer has reasonable grounds to believe that the defendant will keep a written promise to appear in court.

~~{3.—The}~~

4. A summons must be served upon a defendant by delivering a copy to the defendant personally, or by leaving it at the defendant's dwelling house or usual place of abode with some person then residing in the house or abode who is at least 16 years of age and is of suitable discretion, or by mailing it to the defendant's last known address. In the case of a corporation, the summons must be served at least 5 days before the day of appearance fixed in the summons, by delivering a copy to an officer or to a managing or general agent or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the corporation's last known address within the State of Nevada or at its principal place of business elsewhere in the United States.

Sec. 1.5. NRS 171.152 is hereby amended to read as follows:

171.152 1. The peace officer executing a warrant by arrest shall make return thereof to the magistrate before whom the defendant is brought pursuant to NRS 171.178 and 171.184. At the request of the district attorney any unexecuted warrant must be returned to the magistrate by whom it was issued and must be cancelled.

2. The peace officer executing a warrant by issuance of a citation pursuant to subsection ~~{2}~~ 3 of NRS 171.122 shall:

(a) Record on the warrant the number assigned to the citation issued thereon;

(b) Attach the warrant to the citation issued thereon; and

(c) Return the warrant and citation to the magistrate before whom the defendant is scheduled to appear.

3. On or before the return day the person to whom a summons was delivered for service shall make return thereof to the magistrate before whom the summons is returnable.

4. At the request of the district attorney made at any time while the complaint is pending, a warrant returned unexecuted and not cancelled or a summons returned unserved or a duplicate thereof may be delivered by the magistrate to a peace officer for execution or service.

Sec. 1.7. Chapter 179 of NRS is hereby amended by adding thereto the provisions set forth as sections 1.8 to 2.5, inclusive, of this act.

Sec. 1.8. *As used in NRS 179.015 to 179.115, inclusive, and sections 1.8 to 2.5, inclusive, of this act, the words and terms defined in NRS 179.015 and section 1.9 of this act have the meanings ascribed to them in those sections.*



Sec. 1.9. *“No-knock warrant” means a search warrant which authorizes a peace officer to enter a premises without first:*

1. Knocking on the door or ringing the doorbell and identifying the presence of the peace officer; or

2. Identifying the presence of the peace officer and stating the intended purpose of the peace officer for entering the premises.

Sec. 2. *1. A magistrate shall not issue a no-knock warrant to search the person or place named in the search warrant unless an affidavit sworn to before the magistrate:*

(a) Demonstrates that:

(1) The underlying offense:

(I) Is punishable as a felony; and

(II) Involves a significant and imminent threat to public safety; and

(2) Identifying the presence of the peace officer before entering the premises is likely to create an imminent threat of substantial bodily harm to the peace officer or another person;

(b) Describes with specificity the factual circumstances as to why there are no reasonable alternatives to effectuate the search of the place or person other than in the manner prescribed by the no-knock warrant;

(c) States whether the no-knock warrant can be executed during the day and, if it cannot, describes with specificity the factual circumstances that preclude the no-knock warrant from being executed during the day; and

(d) Certifies that the no-knock warrant will be executed under the guidance of a peace officer who is trained in the execution of search warrants.

2. A no-knock warrant issued pursuant to subsection 1 is void if:

(a) A peace officer deliberately misrepresents a material fact or deliberately omits material information in an affidavit in support of an application for the no-knock warrant; and

(b) When the misrepresented material fact is excluded or the omitted material information is included, the affidavit does not meet the criteria set forth in paragraphs (a) to (d), inclusive, of subsection 1.

Sec. 2.5. *In addition to the requirements for the execution of a search warrant described in NRS 179.075 and 179.077, if the search warrant is a no-knock warrant, the peace officers involved in the execution of the no-knock warrant shall:*

1. Before executing the no-knock warrant, determine whether the circumstances necessitate that the search be effectuated in the manner prescribed by the no-knock warrant and, if they do not,



1 *the peace officers shall not effectuate the search in such a*
2 *manner; and*

3 *2. In executing the no-knock warrant:*

4 *(a) Wear prominent insignia that renders the peace officers*
5 *readily identifiable as peace officers;*

6 *(b) Wear a portable event recording device in accordance with*
7 *the requirements described in NRS 289.830;*

8 *(c) Use only the amount of force reasonably necessary to*
9 *enter the premises; and*

10 *(d) As soon as practicable after entering the premises, identify*
11 *the presence of the peace officers and state the purpose of the*
12 *peace officers for entering the premises.*

13 **Sec. 3.** NRS 179.015 is hereby amended to read as follows:

14 179.015 ~~[As used in NRS 179.015 to 179.115, inclusive, the~~
15 ~~term “property”]~~ **“Property”** includes documents, books, papers and
16 any other tangible objects.

17 **Sec. 3.3.** NRS 179.045 is hereby amended to read as follows:

18 179.045 1. A search warrant may issue only on affidavit or
19 affidavits sworn to before the magistrate and establishing the
20 grounds for issuing the warrant or as provided in subsection 3. If the
21 magistrate is satisfied that grounds for the application exist or that
22 there is probable cause to believe that they exist, the magistrate shall
23 issue a warrant identifying the property and naming or describing
24 the person or place to be searched.

25 2. Secure electronic transmission may be used for the
26 submission of an application and affidavit required by subsection 1,
27 and for the issuance of a search warrant by a magistrate. The
28 Nevada Supreme Court may adopt rules not inconsistent with the
29 laws of this State to carry out the provisions of this subsection.

30 3. In lieu of the affidavit required by subsection 1, the
31 magistrate may take an oral statement given under oath, which must
32 be recorded in the presence of the magistrate or in the magistrate’s
33 immediate vicinity by a certified court reporter or by electronic
34 means, transcribed, certified by the reporter if the reporter recorded
35 it, and certified by the magistrate. The statement must be filed with
36 the clerk of the court.

37 4. Upon a showing of good cause, the magistrate may order an
38 affidavit or a recording of an oral statement given pursuant to this
39 section to be sealed. Upon a showing of good cause, a court may
40 cause the affidavit or recording to be unsealed.

41 5. After a magistrate has issued a search warrant, whether it is
42 based on an affidavit or an oral statement given under oath, the
43 magistrate may orally authorize a peace officer to sign the name of
44 the magistrate on a duplicate original warrant. A duplicate original
45 search warrant shall be deemed to be a search warrant. It must be



returned to the magistrate who authorized the signing of it. The magistrate shall endorse his or her name and enter the date on the warrant when it is returned. Any failure of the magistrate to make such an endorsement and entry does not in itself invalidate the warrant.

6. The warrant must ~~{be}~~ :

(a) *Be* directed to a peace officer in the county where the warrant is to be executed ~~{. It must:~~

~~{(a)}~~ ;

(b) State the grounds or probable cause for its issuance and the names of the persons whose affidavits have been taken in support thereof, ~~{;}~~ or

~~{(b) Incorporate}~~ *incorporate* by reference the affidavit or oral statement upon which it is based ~~{.~~

~~{The warrant must command}~~ ;

(c) *Command* the *peace* officer to search forthwith the person or place named for the property specified ~~{.~~

~~{7. The warrant must direct}~~ ;

(d) *Direct* that ~~{it}~~ *the warrant* be served between the hours of 7 a.m. and 7 p.m., unless the magistrate, upon a showing of good cause therefor, inserts a direction that ~~{it}~~ *the warrant* be served at any time ~~{.~~

~~{8. The warrant must designate}~~ ;

(e) *Designate* the magistrate to whom it is to be returned ~~{.~~

~~{9.}~~ ; and

(f) *Indicate whether the search warrant is a no-knock warrant.*

7. As used in this section, "secure electronic transmission" means the sending of information from one computer system to another computer system in such a manner as to ensure that:

(a) No person other than the intended recipient receives the information;

(b) The identity of the sender of the information can be authenticated; and

(c) The information which is received by the intended recipient is identical to the information that was sent.

Sec. 3.7. NRS 179.115 is hereby amended to read as follows:

179.115 NRS 179.015 to 179.115, inclusive, *and sections 1.8 to 2.5, inclusive, of this act* do not modify any other statute regulating search, seizure and the issuance and execution of search warrants in circumstances for which special provision is made.

Sec. 4. The amendatory provisions of this act apply to a warrant or summons issued on or after October 1, 2021.

