SUMMARY—Revises provisions relating to pretrial release hearings. (BDR 14-476)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.

Effect on the State: No.

Effect on the State Highway Fund: No.

AN ACT relating to criminal procedure; requiring an arresting officer to provide certain information relating to a pretrial release hearing to a victim of crime; authorizing a victim to exercise the right to be reasonably heard at a pretrial release hearing in certain manners; authorizing a prosecuting attorney to request certain conditions of release to protect a victim; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

The Nevada Constitution provides that a victim of a crime has the right to be reasonably heard, upon request, at any public proceeding in any court involving release or sentencing. (Nev. Const. Art. 1, § 8A) **Sections 2 and 3** of this bill establish certain requirements and procedures to facilitate the exercise of a victim's constitutional right to be reasonably heard at a pretrial release hearing. Specifically, **section 2** requires an arresting officer to provide each victim with written notification that contains certain information relating to the pretrial release hearing, including when the hearing is expected to be held, the location at which the hearing will be held and how the victim may request to be heard. **Section 2** further provides that the failure of an arresting officer to provide the

required notification: (1) does not constitute a defense to the prosecution of the person arrested; and (2) must not be used to establish negligence or causation in certain civil actions. **Section 3** authorizes a victim to exercise his or her constitutional right to be reasonably heard at a pretrial release hearing in certain specified manners. **Section 4** of this bill makes a conforming change to indicate the proper placement of **sections 2 and 3** in the Nevada Revised Statutes.

The Nevada Constitution further provides that a victim of a crime has the right to have his or her safety and the safety of his or her family considered when a court is fixing the amount of bail and release conditions for a defendant. (Nev. Const. Art. 1, § 8A) Existing law authorizes a court to impose certain conditions on a person who is released pending trial and authorizes a prosecuting attorney to request that the court impose bail or a condition of release, or both. Such conditions may include a condition of release prohibiting contact with a specific person. (NRS 178.484, 178.4851) Existing law also provides that, before making a determination of bail, a court must consider any request by a victim to impose a condition of release prohibiting contact. (NRS 178.4845) **Section 5** of this bill additionally authorizes a prosecuting attorney to request such a condition of release, regardless of whether the victim has requested the condition of release. **Section 6** of this bill provides that a prosecuting attorney may request any condition of release necessary to reasonably protect a victim from the person pending trial, including a condition of release prohibiting contact pursuant to **section 5**.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN

SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 178 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. ***1. As soon as practicable after a person is taken into custody, the arresting officer shall provide each victim of the offense with written notification that includes:***

(a) Information concerning when the pretrial release hearing is expected to be held, including, if known, the date and time of the hearing;

(b) Information concerning the victim's constitutional right to be reasonably heard at the pretrial release hearing;

(c) Instructions regarding how the victim may request to be heard at the pretrial release hearing;

(d) The contact information for the prosecuting agency;

(e) The location of the court at which the pretrial release hearing will be held; and

(f) If available, instructions regarding how the pretrial release hearing may be remotely viewed in real time.

2. The failure of an arresting officer to comply with the requirements of subsection 1:

(a) Does not constitute a defense to the prosecution of the person taken into custody; and

(b) Must not be used to establish negligence or causation in any civil action against the arresting officer, the law enforcement agency that employs the arresting officer or the prosecuting agency.

Sec. 3. ***1. A victim may exercise his or her right under paragraph (h) of subsection 1 of Section 8A of Article 1 of the Nevada Constitution to be reasonably heard at a pretrial release hearing:***

(a) In person;

(b) By remote communication;

(c) In writing;

(d) Through the victim's attorney or personal representative, the prosecuting attorney or a peace officer; or

(e) By any other means deemed appropriate or acceptable to the court.

2. As used in this section, "remote communication" means communication through telephone or videoconferencing.

Sec. 4. NRS 178.483 is hereby amended to read as follows:

178.483 As used in NRS 178.483 to 178.548, inclusive, ***and sections 2 and 3 of this act,*** unless the context otherwise requires, "electronic transmission," "electronically transmit" or "electronically transmitted" means any form or process of communication not directly involving the physical transfer of paper or another tangible medium which:

1. Is suitable for the retention, retrieval and reproduction of information by the recipient; and

2. Is retrievable and reproducible in paper form by the recipient through an automated process used in conventional commercial practice.

Sec. 5. NRS 178.4845 is hereby amended to read as follows:

178.4845 1. Before a court makes a determination of bail concerning a person, a victim ***or prosecuting attorney*** may request that a court issue an order imposing a condition of release prohibiting contact. ***A prosecuting attorney may make such a request regardless of whether the victim has requested the imposition of such a condition of release.***

2. A court shall consider a request described in subsection 1.

3. Upon the issuance of an order imposing a condition of release prohibiting contact, the court shall notify the person subject to the order that violating the order may result in:

(a) The person being charged with a misdemeanor;

(b) The modification or addition of any condition of release;

(c) The revocation of bail and remand of the person to custody; or

(d) The imposition of any other penalty prescribed by law.

4. An order imposing a condition of release prohibiting contact, and any modification thereof, expires within such time, not to exceed 120 calendar days, as the court fixes.

5. The court may, before the expiration of an order imposing a condition of release prohibiting contact and upon motion or at the discretion of the court, after notice and a hearing, renew the order for good cause shown.

6. After the court issues an order imposing, modifying, suspending or canceling a condition of release prohibiting contact, the court shall transmit, as soon as practicable and in a manner

prescribed by the Central Repository for Nevada Records of Criminal History, a copy of the order to the Central Repository.

7. A person who knowingly violates an order imposing a condition of release prohibiting contact is guilty of a misdemeanor.

8. Nothing in this section shall be construed to require a court to receive a request pursuant to subsection 1 before issuing an order imposing a condition of release prohibiting contact.

9. As used in this section:

(a) "Cancel" includes, without limitation, any act that would effectively terminate a condition of release prohibiting contact, including, without limitation:

(1) The dismissal of the action or proceeding against the person;

(2) A prosecuting attorney declining to prosecute the person;

(3) The conviction of the person; or

(4) The acquittal of the person.

(b) "Condition of release prohibiting contact" means a condition placed on a person who is released pending trial that prohibits the person from contacting or attempting to contact a specific person or from causing or attempting to cause another person to contact that person on the person's behalf.

Sec. 6. NRS 178.4851 is hereby amended to read as follows:

178.4851 1. Except as otherwise provided in subsection 4, the court shall only impose bail or a condition of release, or both, on a person as it deems to be the least restrictive means necessary to protect the safety of the community or to ensure that the person will appear at all times and

places ordered by the court, with regard to the factors set forth in NRS 178.4853 and 178.498. Such conditions of release may include, without limitation:

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

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

(c) Prohibiting the person from entering a certain geographic area;

(d) Prohibiting the person from possessing a firearm during the pendency of the case; or

(e) Prohibiting the person from engaging in specific conduct that may be harmful to the person's own health, safety or welfare, or the health, safety or welfare of another person.

2. A prosecuting attorney may request that a court impose bail or a condition of release, or both, on a person. ***A condition of release requested by a prosecuting attorney may include any condition necessary to reasonably protect a victim from the person pending trial, including, without limitation, a condition of release prohibiting contact pursuant to NRS 178.4845.*** If the request includes the imposition of bail, the prosecuting attorney must prove by clear and convincing evidence that the imposition of bail is necessary to protect the safety of the community or to ensure that the person will appear at all times and places ordered by the court, with regard to the factors set forth in NRS 178.4853 and 178.498.

3. If a court imposes bail or any condition of release, or both, other than release on recognizance with no other conditions of release, the court shall make findings of fact for such a determination and state its reasoning on the record, and, if the determination includes the imposition of a condition of release, the findings of fact must include why the condition of release

constitutes the least restrictive means necessary to protect the safety of the community or to ensure that the person will appear at the times and places ordered by the court.

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. The person must sign a document before the person's release 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 safety of the community or the person's appearance, if applicable.

6. The document signed pursuant to subsection 5 must be filed with the clerk of the court of competent jurisdiction and becomes effective upon the signature of the person to be released.

7. If a person fails to comply with a condition of release imposed pursuant to this section, the court may, after providing the person with reasonable notice and an opportunity for a hearing:

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

(b) Impose such additional conditions of release as the court deems necessary to protect the safety of the community or to ensure the person will appear at the times and places ordered by the court;

(c) Increase the amount of bail pursuant to NRS 178.499, if applicable; or

(d) Revoke bail and remand the person into custody.

8. If a person fails to appear as ordered by the court and 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.

9. An order issued pursuant to this section that imposes a condition on a person 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.

10. Nothing in this section shall be construed to require a court to receive the request of a prosecuting attorney before imposing a condition of release.