

ASSEMBLY BILL NO. 356—ASSEMBLYWOMAN NEAL

MARCH 20, 2017

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to criminal procedure.
(BDR 14-1155)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
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; authorizing a prosecuting attorney or an attorney for a defendant to issue subpoenas for witnesses in this State to appear at an evidentiary hearing; revising the procedure for giving instructions to the jury; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing law authorizes the prosecuting attorney or the attorney for the
2 defendant in a criminal proceeding to issue subpoenas for witnesses within this
3 State to appear before the court at which a preliminary hearing is to be held or an
4 indictment, information or criminal complaint is to be tried. (NRS 174.315) **Section**
5 **7** of this bill additionally authorizes a prosecuting attorney or an attorney for the
6 defendant to issue subpoenas for such witnesses to appear before the court at which
7 an evidentiary hearing is to be held.

8 Existing law provides for the issuance of a subpoena to produce books, papers,
9 documents or other objects. (NRS 174.335) **Section 8** of this bill allows such a
10 subpoena to request such production in addition or as an alternative to appearing
11 before the court.

12 Existing law requires the court to be given a written charge presented by either
13 party if the court thinks it is correct and pertinent. (NRS 175.161) **Section 9** of this
14 bill additionally requires the court to believe that the charge is an accurate
15 statement of the law.

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

1 **Section 1.** (Deleted by amendment.)

2 **Sec. 2.** (Deleted by amendment.)



1 **Sec. 3.** (Deleted by amendment.)

2 **Sec. 4.** (Deleted by amendment.)

3 **Sec. 5.** (Deleted by amendment.)

4 **Sec. 6.** (Deleted by amendment.)

5 **Sec. 7.** NRS 174.315 is hereby amended to read as follows:

6 174.315 1. A prosecuting attorney may issue subpoenas
7 subscribed by the prosecuting attorney for witnesses within the
8 State, in support of the prosecution or whom a grand jury may direct
9 to appear before it, upon any investigation pending before the grand
10 jury.

11 2. A prosecuting attorney or an attorney for a defendant may
12 issue subpoenas subscribed by the issuer for:

13 (a) Witnesses within the State to appear before the court at
14 which a preliminary hearing is to be held , ~~for~~ an indictment,
15 information or criminal complaint is to be tried ~~for~~ *or an evidentiary*
16 *hearing is to be held.*

17 (b) Witnesses already subpoenaed who are required to reappear
18 in any Justice Court at any time the court is to reconvene in the
19 same case within 60 days, and the time may be extended beyond 60
20 days upon good cause being shown for its extension.

21 3. Witnesses, whether within or outside of the State, may
22 accept delivery of a subpoena in lieu of service, by a written or oral
23 promise to appear given by the witness. Any person who accepts an
24 oral promise to appear shall:

25 (a) Identify himself or herself to the witness by name and
26 occupation;

27 (b) Make a written notation of the date when the oral promise to
28 appear was given and the information given by the person making
29 the oral promise to appear identifying the person as the witness
30 subpoenaed; and

31 (c) Execute a certificate of service containing the information set
32 forth in paragraphs (a) and (b).

33 4. A peace officer may accept delivery of a subpoena in lieu of
34 service, via electronic means, by providing a written promise to
35 appear that is transmitted electronically by any appropriate means,
36 including, without limitation, by electronic mail transmitted through
37 the official electronic mail system of the law enforcement agency
38 which employs the peace officer.

39 5. A prosecuting attorney shall orally inform any witness
40 subpoenaed as provided in subsection 1 of the general nature of the
41 grand jury's inquiry before the witness testifies. Such a statement
42 must be included in the transcript of the proceedings.

43 6. Any subpoena issued by an attorney for a defendant for a
44 witness to appear before the court at which a preliminary hearing is
45 to be held must be calendared by filing a motion that includes a



1 notice of hearing setting the matter for hearing not less than 2 full
2 judicial days after the date on which the motion is filed. A
3 prosecuting attorney may oppose the motion orally in open court. A
4 subpoena that is properly calendared pursuant to this subsection may
5 be served on the witness unless the court quashes the subpoena.

6 **Sec. 8.** NRS 174.335 is hereby amended to read as follows:

7 174.335 1. Except as otherwise provided in NRS 172.139, a
8 subpoena may also command the person to whom it is directed to
9 produce the books, papers, documents or other objects designated
10 therein ~~+~~ *in addition or as an alternative to appearing before the*
11 *court.*

12 2. The court on motion made promptly may quash or modify
13 the subpoena if compliance would be unreasonable or oppressive.

14 3. The court may direct that books, papers, documents or
15 objects designated in the subpoena be produced before the court at a
16 time before the trial or before the time when they are to be offered
17 in evidence and may, upon their production, permit the books,
18 papers, documents or objects or portions thereof to be inspected by
19 the parties and their attorneys.

20 **Sec. 9.** NRS 175.161 is hereby amended to read as follows:

21 175.161 1. Upon the close of the argument, the judge shall
22 charge the jury. The judge may state the testimony and declare the
23 law, but may not charge the jury in respect to matters of fact. The
24 charge must be reduced to writing before it is given, and no charge
25 or instructions may be given to the jury otherwise than in writing,
26 unless by the mutual consent of the parties. If either party requests
27 it, the court must settle and give the instructions to the jury before
28 the argument begins, but this does not prevent the giving of further
29 instructions which may become necessary by reason of the
30 argument.

31 2. In charging the jury, the judge shall state to them all such
32 matters of law the judge thinks necessary for their information in
33 giving their verdict.

34 3. Either party may present to the court any written charge, and
35 request that it be given. If the court ~~thinks it correct and~~ *believes*
36 *that the charge is* pertinent ~~+~~ *and an accurate statement of the*
37 *law, whether or not the charge has been adopted as a model jury*
38 *instruction,* it must be given. ~~+~~ *if not,* ~~+~~ *If the court believes that*
39 *the charge is not pertinent or not an accurate statement of law,*
40 *then* it must be refused.

41 4. An original and one copy of each instruction requested by
42 any party must be tendered to the court. The copies must be
43 numbered and indicate who tendered them. Copies of instructions
44 given on the court's own motion or modified by the court must be
45 so identified. When requested instructions are refused, the judge



1 shall write on the margin of the original the word “refused” and
2 initial or sign the notation. The instructions given to the jury must
3 be firmly bound together and the judge shall write the word “given”
4 at the conclusion thereof and sign the last of the instructions to
5 signify that all have been given. After the instructions are given, the
6 judge may not clarify, modify or in any manner explain them to the
7 jury except in writing unless the parties agree to oral instructions.

8 5. After the jury has reached a verdict and been discharged, the
9 originals of all instructions, whether given, modified or refused,
10 must be preserved by the clerk as part of the proceedings.

11 6. Conferences with counsel to settle instructions must be held
12 out of the presence of the jury and may be held in chambers at the
13 option of the court.

14 7. When the offense charged carries a possible penalty of life
15 without possibility of parole a charge to the jury that such penalty
16 does not exclude executive clemency is a correct and pertinent
17 charge, and must be given upon the request of either party.

18 **Sec. 10.** This act becomes effective on July 1, 2017.

