



Criminal Procedure in Nevada's Courts

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ADMINISTRATIVE OFFICE OF THE COURTS

Criminal Court Jurisdiction

- ❖ Municipal Court: misdemeanor criminal jurisdiction in incorporated municipalities.
- ❖ Justice Court: misdemeanor criminal jurisdiction in its township (excluding municipalities), and jurisdiction to conduct preliminary hearings for gross misdemeanors and felonies committed within the township.
- ❖ District Court: felony and gross misdemeanor criminal jurisdiction in the district.
- ❖ Court of Appeals: jurisdiction over criminal appeals from district court pushed down to it via Supreme Court Rule.
- ❖ Supreme Court: jurisdiction over all criminal appeals from district court. The Supreme Court hears all death penalty appeals.

Offense Classifications

- ❖ Misdemeanor (NRS 193.150):
 - Maximum penalty is up to 6 mos. in jail and \$1,000 fine + administrative assessments.
 - No right to counsel unless jail time (loss of liberty) is intended upon conviction.
 - Convictions appealable to district court.

- ❖ Gross Misdemeanor (NRS 193.140):
 - Maximum Penalty is up to 364 days in jail and \$2,000 fine. Eligible for formal probation.
 - Right to counsel at all stages of proceeding.
 - Preliminary hearing in justice court.
 - Convictions appealable to Supreme Court/Court of Appeals.

- ❖ Felony (193.130)
 - Categorized A through E depending on severity.
 - Penalties range from 1 year in state prison to death.
 - Right to counsel at all stages of proceeding.
 - Preliminary hearing in justice court.
 - Convictions appealable to Supreme Court/Court of Appeals.



Arrest

- ❖ Upon a warrantless arrest, stemming from an arrest occurring in the officer's presence, the arresting officer must file a probable cause (PC) declaration with the court. The court must review the declaration within 48 hours to determine if there was PC for the arrest. The court can conduct this review in camera. If the court finds PC, detention may continue; if no PC is found, the arrestee must be released.
- ❖ An in-custody defendant must be brought before a magistrate within 72 hours of arrest (warrant or warrantless) for his or her initial appearance (arraignment). Bail/release conditions can be set at initial appearance.
- ❖ Right to counsel attaches at initial appearance.
- ❖ Arrest may be made by warrant issued upon complaint or a summons may be issued.

Grand Jury

- ❖ A grand jury is empaneled by the district court in the same way that a regular jury is in terms of jury pool, etc.
- ❖ A grand jury hears evidence presented by the prosecutor to determine if a person should be indicted (charged) with an offense. The prosecutor is obligated to present any exculpatory evidence as well.
- ❖ If 12 or more grand jurors find probable cause and true bill will issue and the defendant will be indicted.
- ❖ Grand jury process can be used in lieu of a preliminary hearing or in addition to a preliminary hearing if the defendant was not bound over.

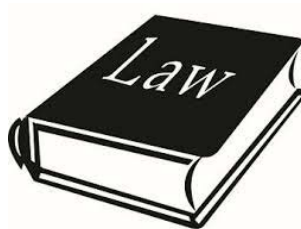
Arraignment

- ❖ An arraignment is the first time in a criminal prosecution when a defendant is brought before the court to hear the charge(s) against him or her and to enter a plea.
- ❖ Gross misdemeanor and felony defendants will have a formal arraignment in front of the district court upon bind over.



Self-Representation

- ❖ The right to counsel applies to all defendants who face a loss of liberty. A defendant can voluntarily waive his or her right to counsel, however, the court must complete a *Faretta* Canvas to make sure the defendant is knowingly, voluntarily, and intelligently waiving his or her right to counsel.



Preliminary Hearing

- ❖ A preliminary hearing takes place in justice court when an individual is charged with a gross misdemeanor or felony. The purpose of this hearing is for a justice of the peace to determine if probable cause (PC) exists to believe the offense was committed and that the defendant committed the offense. If the justice of peace finds PC, the defendant will be bound over to district court to face the charge(s).
- ❖ A defendant may waive his or her right to a preliminary hearing. If the hearing is waived the case is bound over to district court.
- ❖ The same rules of evidence apply in a preliminary hearing as apply in trial. The defendant has the right to cross-examine the witnesses against him or her.
- ❖ Preliminary hearings in death penalty cases must be recorded by a court reporter, all other preliminary hearings can be recorded using electronic means.

Misdemeanor Trial

- ❖ Misdemeanor trials occur in justice or municipal courts and are bench trials.
- ❖ In a bench trial there is no jury and the judge is finder of fact who makes a determination as to the verdict.
- ❖ There is no right to jury trial when the penalties are de minimis (\leq 6 mos. in jail).
- ❖ In FY17, 1% of non-traffic misdemeanors were disposed through bench trial.
- ❖ 0.2% of traffic misdemeanors were disposed by bench trial in FY17.

Gross Misdemeanor and Felony Trials

- ❖ Gross misdemeanor and felony trials take place in district court and are jury trials.
- ❖ A defendant may waive his or her right to a jury trial only if both the court and the prosecutor consent.
- ❖ In Nevada in Fiscal Year 17, 1.3% of felonies were disposed via jury trial, and 0.3% of gross misdemeanors were disposed through jury trial.

Juries

- ❖ In Nevada, a defendant and the prosecution each get the following peremptory challenges:
 - Death penalty or imprisonment for life: 8 peremptory challenges.
 - All other cases: 4 peremptory challenges.
- ❖ Challenges for cause afforded to either party.
- ❖ Juries are made of up 12 people and the court may direct the selection of not more than six alternate jurors.
- ❖ No uniform jury instructions in Nevada.

Sentencing

- ❖ Hearing.
- ❖ Presentence investigation report provided by Parole and Probation (psychosexual in some cases).
- ❖ Judgment of Conviction:
 - Plea
 - Verdict/finding
 - Date of sentence
 - Term of imprisonment/conditions of sentence
 - Amount and terms of fines, fees, and restitution
 - Reference to statute under which the defendant is sentenced (parole eligibility)
 - Credit for time served prior to conviction
 - Signed by judge

Death Penalty

- ❖ DA must file notice of intent to seek death penalty within 30 days of filing of indictment or information.
- ❖ Penalty hearing in front of a jury.
- ❖ Aggravating and mitigating factors.
- ❖ Automatic appeal.
- ❖ On average a death penalty case costs \$532,000 more than other murder cases.



Enhancements

- ❖ There are number of penalty enhancements for various crimes in Nevada. Some of these enhancements include:
 - Felony committed with assistance of a child – additional 1 to 20 yrs. in prison.
 - Use of a deadly weapon in commission of a crime – additional 1 to 20 yrs. in prison or life with Cat. A.
 - Commission of a crime against an older or vulnerable person – additional 1 to 20 yrs. in prison.
 - Felony committed to promote the activities of a criminal gang – additional 1 to 20 yrs. in prison.

- ❖ There are also offenses for which the penalty increases based upon subsequent re-offenses including:
 - Battery constituting domestic violence – 1st offense = misdemeanor, 2nd offense w/in 7 yrs. = misdemeanor, 3rd offense w/in 7 yrs. = Cat. C felony, DV by strangulation = Cat. C felony.
 - DUI – 1st offense = misdemeanor, 2nd offense w/in 7 yrs. = misdemeanor, 3rd offense w/in 7 yrs. = Cat. B felony.
 - Unlawful operation of a recording device in a movie theater – 1st offense = misdemeanor, 2nd or subsequent = Cat. D felony on time limit.

Appeal and Post Conviction Relief

- ❖ Direct appeal of conviction.
- ❖ Post conviction petition for habeas corpus (writ) which may raise new issues such as ineffective assistance of counsel.
- ❖ Federal court post conviction relief available to state prisoners (habeas).



Plea Bargains

- ❖ Negotiated between defendant (counsel) and prosecuting attorney.
- ❖ Plea of guilty, guilty but mentally ill, or nolo contendere.
- ❖ Usually subjects defendant to lesser offense/punishment that may be possible at trial.
- ❖ Must be entered into by defendant knowingly and voluntarily.
- ❖ Must be accepted by the court.

Bail

- ❖ Defendant MUST be admitted to bail unless charged with first degree murder.
- ❖ Felony parolee/probationer arrested for a different offense must not be admitted to bail.
- ❖ Mandatory 12-hour hold on DUI, DV, and PO violation arrestees.
- ❖ Bail schedules.
- ❖ Bail hearing.
- ❖ Bail by surety/bond.
- ❖ Pre-trial risk assessment.
- ❖ Release upon defendant's own recognizance.



Misdemeanor Citations

- ❖ Misdemeanor citations are issued for minor offenses such as traffic violations and include a court date when the recipient is to appear to answer to the charges (at least 5 days after the citation date). Citations serve as a promise to appear.
- ❖ Citations include a bail amount which may be forfeited (payed) to the court to resolve the ticket. The bail amount is determined by a court bail schedule or provided by statute for some offenses.
- ❖ An individual who receives a citation may, generally, forfeit bail or appear in court and enter a plea.
- ❖ Failure to appear may result in the issuance of a bench warrant, as may failure to pay.
- ❖ Administrative assessments.

Competency

- ❖ Incompetent persons cannot be tried or adjudged to punishment for a crime.
- ❖ At any time after arrest a proceeding may be suspended to determine the competency of the defendant if a question arises.
- ❖ Court appoints two psychiatrists, two psychologists, or one psychiatrist and one psychologist to determine the competency of the defendant. These experts will render a report and the court will determine competency.
- ❖ If a defendant is deemed incompetent he or she must be committed to a state mental health facility and defendant must remain there until a court orders release or the individual is deemed competent and returned to court to face charges.

Juvenile Justice

❖ The Legislature hereby declares that:

1. This title (NRS Title 5) must be liberally construed to the end that:
 - (a) Each child who is subject to the jurisdiction of the juvenile court must receive such care, guidance and control, preferably in the child's own home, as will be conducive to the child's welfare and the best interests of this State; and
 - (b) When a child is removed from the control of the parent or guardian of the child, the juvenile court shall secure for the child a level of care which is equivalent as nearly as possible to the care that should have been given to the child by the parent or guardian.
2. One of the purposes of this title is to promote the establishment, supervision, and implementation of preventive programs that are designed to prevent a child from becoming subject to the jurisdiction of the juvenile court.

AOC Role

- ❖ Provide continuing education to judges regarding criminal procedure and changes in criminal law.
- ❖ Provide case management system for 30+ courts.
- ❖ One-on-one assistance to rural judges.
- ❖ Governmental relations and legislative summaries.
- ❖ Staff reform commissions such as the Committee to Study Evidence Based Pre-Trial Release, the Commission on Statewide Rules of Criminal Procedure, and the Indigent Defense Commission.
- ❖ Assist courts in reporting dispositions and other required information to the Repository.
- ❖ Forms.