

SENATE BILL NO. 5—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE NEVADA SUPREME COURT)

PREFILED NOVEMBER 14, 2018

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to court rules of practice and procedure. (BDR 1-496)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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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 courts; clarifying and codifying the existing authority of the Supreme Court to adopt rules of practice and procedure; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Under existing law, the Legislature has enacted the Nevada Criminal Procedure
2 Law in Title 14 of NRS to govern procedure in criminal cases, and it has declared
3 that the law is intended to provide for the just determination of every criminal
4 proceeding and must be construed to secure simplicity in procedure, fairness in
5 administration and the elimination of unjustifiable expense and delay. (NRS
6 169.015, 169.025, 169.035) In addition, based on the constitutional separation of
7 powers, the judiciary has inherent power to adopt rules of procedure to govern
8 court proceedings in both civil and criminal cases. (*Whitlock v. Salmon*, 104 Nev.
9 24, 26 (1988); *State v. Second Jud. Dist. Court*, 116 Nev. 953, 959-63 (2000))
10 When the Legislature enacts a procedural statute relating to court practices, “the
11 courts may acquiesce out of comity or courtesy; however, such statutes are merely
12 legislative authorizations of independent rights already belonging to the judiciary.”
13 (*Blackjack Bonding v. City of Las Vegas Mun. Court*, 116 Nev. 1213, 1220 n.4
14 (2000)) Furthermore, when a procedural statute conflicts with a procedural rule, the
15 judiciary attempts to harmonize the conflicting provisions whenever possible, but if
16 there is an irreconcilable conflict, the rule generally takes precedence over the
17 statute to the extent of the conflict, unless the rule abridges, enlarges or modifies
18 any substantive rights. (*State v. Connery*, 99 Nev. 342, 344-46 (1983); *Berkson v.*
19 *LePome*, 126 Nev. 492, 498-500 (2010))
20 Under existing law, the Legislature has enacted statutes codifying the
21 judiciary’s inherent rule-making authority in civil cases. In particular, existing law
22 provides that the Nevada Supreme Court may adopt rules regulating civil practice
23 and procedure to simplify such practice and procedure and to promote the speedy



24 determination of litigation upon its merits. Existing law also provides that the rules:
25 (1) must not abridge, enlarge or modify any substantive right or conflict with the
26 Nevada Constitution; and (2) must be published promptly upon adoption and take
27 effect on a date specified by the Nevada Supreme Court which cannot be less than
28 60 days after entry of the order adopting the rules. (NRS 2.120)

29 With regard to criminal cases, the Legislature has not enacted statutes codifying
30 the judiciary's inherent rule-making authority for such cases, and the Nevada
31 Supreme Court has not exercised its inherent power to adopt state rules of criminal
32 procedure that are similar to the Federal Rules of Criminal Procedure adopted by
33 the United States Supreme Court under federal law. (28 U.S.C. § 2072)
34 Nevertheless, when procedural issues arise in state criminal cases, the Nevada
35 Supreme Court often looks for guidance from federal court decisions interpreting
36 and applying the Federal Rules of Criminal Procedure. (*Stevenson v. State*, 131
37 Nev. Adv. Op. 61, 354 P.3d 1277, 1279-81 (2015); *Cripps v. State*, 122 Nev. 764,
38 767-70 (2006); *Middleton v. State*, 114 Nev. 1089, 1107-08 (1998); *Standen v.*
39 *State*, 99 Nev. 76, 78-80 (1983))

40 **Section 1** of this bill clarifies and codifies the existing authority of the Nevada
41 Supreme Court to adopt rules of civil or criminal practice and procedure, including
42 the Nevada Rules of Civil Procedure, Nevada Rules of Criminal Procedure and
43 Nevada Rules of Appellate Procedure. (NRS 2.120) **Section 1** further provides that
44 the rules: (1) must not abridge, enlarge or modify any substantive right or conflict
45 with the Nevada Constitution; and (2) must be published promptly upon adoption
46 and take effect on a date specified by the Nevada Supreme Court which cannot be
47 less than 60 days after entry of the order adopting the rules. Finally, **section 1**
48 provides that, to the extent possible, any statutory provisions that regulate civil or
49 criminal practice and procedure are intended to supplement the rules adopted by the
50 Nevada Supreme Court, and the statutory provisions must be given effect to the
51 extent that those provisions do not conflict with the provisions of the rules.
52 However, **section 1** states that if there is a conflict between the statutory provisions
53 and the provisions of the rules, the provisions of the rules take precedence and
54 control.

55 **Section 8** of this bill provides that the Nevada Supreme Court shall: (1) as soon
56 as practicable, adopt the initial Nevada Rules of Criminal Procedure to the extent
57 that it determines to be necessary or advisable; and (2) upon adoption of the initial
58 Nevada Rules of Criminal Procedure, transmit the rules to the Director of the
59 Legislative Counsel Bureau for transmittal to the Legislature. **Sections 2-6** of this
60 bill make conforming changes, which become effective on the date that the initial
61 Nevada Rules of Criminal Procedure first take effect. (NRS 49.015, 51.065,
62 169.025, 169.245, 239A.070)

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

1 **Section 1.** NRS 2.120 is hereby amended to read as follows:

2 2.120 1. The Supreme Court may make rules not inconsistent
3 with the Constitution and laws of the State for its own government,
4 the government of the district courts, and the government of the
5 State Bar of Nevada. Such rules ~~[shall]~~ **must** be published promptly
6 upon adoption and take effect on a date specified by the Supreme
7 Court which ~~[in no event shall]~~ **cannot** be less than 30 days after
8 entry of an order adopting such rules.



1 2. The Supreme Court, by rules adopted and published from
2 time to time, shall regulate ~~[original]~~:

3 (a) *Original* and appellate civil practice and procedure,
4 including, without limitation, pleadings, motions, writs, notices and
5 forms of process, in judicial proceedings in all courts of the State ~~[]~~
6 for the purpose of simplifying the same and ~~[of]~~ promoting the
7 speedy determination of litigation upon its merits. ~~[Such]~~

8 (b) *Original and appellate criminal practice and procedure in*
9 *judicial proceedings in all courts of the State for the purpose of*
10 *providing for the just determination of every criminal proceeding*
11 *and securing simplicity in procedure, fairness in administration*
12 *and the elimination of unjustifiable expense and delay.*

13 3. The rules ~~[shall]~~ adopted by the Supreme Court pursuant to
14 subsection 2:

15 (a) *Must* not abridge, enlarge or modify any substantive right .
16 ~~[and shall]~~

17 (b) *Must* not be inconsistent with the Constitution of the State of
18 Nevada. ~~[Such rules shall]~~

19 (c) *Must* be published promptly upon adoption and take effect
20 on a date specified by the Supreme Court which ~~[in no event shall]~~
21 *cannot* be less than 60 days after entry of an order adopting ~~[such]~~
22 *the* rules.

23 (d) *May include, without limitation:*

24 (1) *The Nevada Rules of Civil Procedure.*

25 (2) *The Nevada Rules of Criminal Procedure.*

26 (3) *The Nevada Rules of Appellate Procedure.*

27 4. *To the extent possible, any statutory provisions that*
28 *regulate civil or criminal practice and procedure in judicial*
29 *proceedings in the courts of the State are intended to supplement*
30 *the rules adopted by the Supreme Court pursuant to subsection 2,*
31 *and such statutory provisions must be given effect to the extent*
32 *that those provisions do not conflict with the provisions of the*
33 *rules. If there is a conflict between such statutory provisions and*
34 *the provisions of the rules, the provisions of the rules take*
35 *precedence and control.*

36 **Sec. 2.** NRS 49.015 is hereby amended to read as follows:

37 49.015 1. Except as otherwise required by the Constitution of
38 the United States or of the State of Nevada, and except as otherwise
39 provided in this title or title 14 of NRS, or NRS 41.071 or 463.120
40 or any other specific statute, *and except as otherwise provided in*
41 *the Nevada Rules of Criminal Procedure or the Nevada Rules of*
42 *Civil Procedure*, no person has a privilege to:

43 (a) Refuse to be a witness;

44 (b) Refuse to disclose any matter;

45 (c) Refuse to produce any object or writing; or



1 (d) Prevent another from being a witness or disclosing any
2 matter or producing any object or writing.

3 2. This section does not:

4 (a) Impair any privilege created by title 14 of NRS , *the Nevada*
5 *Rules of Criminal Procedure* or ~~by~~ the Nevada Rules of Civil
6 Procedure which is limited to a particular stage of the proceeding; or

7 (b) Extend any such privilege to any other stage of a proceeding.

8 **Sec. 3.** NRS 51.065 is hereby amended to read as follows:

9 51.065 1. Hearsay is inadmissible except as provided in this
10 chapter, title 14 of NRS , *the Nevada Rules of Criminal Procedure*
11 and the Nevada Rules of Civil Procedure.

12 2. This section constitutes the hearsay rule.

13 **Sec. 4.** NRS 169.025 is hereby amended to read as follows:

14 169.025 1. ~~This~~ *Except as otherwise provided in the*
15 *Nevada Rules of Criminal Procedure, this* title governs the
16 procedure in the courts of the State of Nevada and before
17 magistrates in all criminal proceedings.

18 2. Except as otherwise provided in NRS 62C.330, this title
19 does not apply to proceedings against children conducted pursuant
20 to title 5 of NRS.

21 **Sec. 5.** NRS 169.245 is hereby amended to read as follows:

22 169.245 1. In all criminal actions or proceedings where a
23 bond or other undertaking is required by the provisions of this title
24 or by *the Nevada Rules of Criminal Procedure*, the Nevada Rules
25 of Civil Procedure or the Nevada Rules of Appellate Procedure, the
26 bond or undertaking ~~shall~~ *must* be presented to the clerk ~~of~~
27 the court in which the action or proceeding is pending ~~of~~ for the clerk's
28 approval before being filed or deposited.

29 2. The clerk of the court may refuse approval of a surety for
30 any bond or other undertaking if a power of attorney-in-fact, which
31 covers the agent whose signature appears on the bond or other
32 undertaking, is not on file with the clerk of the court.

33 **Sec. 6.** NRS 239A.070 is hereby amended to read as follows:

34 239A.070 This chapter does not apply to any subpoena issued
35 pursuant to title 14 or chapters 616A to 617, inclusive, of NRS *or*
36 *the Nevada Rules of Criminal Procedure* or prohibit:

37 1. Dissemination of any financial information which is not
38 identified with or identifiable as being derived from the financial
39 records of a particular customer.

40 2. The Attorney General, State Controller, district attorney,
41 Department of Taxation, Director of the Department of Health and
42 Human Services, Administrator of the Securities Division of the
43 Office of the Secretary of State, public administrator, sheriff or a
44 police department from requesting of a financial institution, and the
45 institution from responding to the request, as to whether a person



1 has an account or accounts with that financial institution and, if so,
2 any identifying numbers of the account or accounts.

3 3. A financial institution, in its discretion, from initiating
4 contact with and thereafter communicating with and disclosing the
5 financial records of a customer to appropriate governmental
6 agencies concerning a suspected violation of any law.

7 4. Disclosure of the financial records of a customer incidental
8 to a transaction in the normal course of business of the financial
9 institution if the director, officer, employee or agent of the financial
10 institution who makes or authorizes the disclosure has no reasonable
11 cause to believe that such records will be used by a governmental
12 agency in connection with an investigation of the customer.

13 5. A financial institution from notifying a customer of the
14 receipt of a subpoena or a search warrant to obtain the customer's
15 financial records, except when ordered by a court to withhold such
16 notification.

17 6. The examination by or disclosure to any governmental
18 regulatory agency of financial records which relate solely to the
19 exercise of its regulatory function if the agency is specifically
20 authorized by law to examine, audit or require reports of financial
21 records of financial institutions.

22 7. The disclosure to any governmental agency of any financial
23 information or records whose disclosure to that particular agency is
24 required by the tax laws of this State.

25 8. The disclosure of any information pursuant to NRS
26 353C.240, 425.393, 425.400 or 425.460.

27 9. A governmental agency from obtaining a credit report or
28 consumer credit report from anyone other than a financial
29 institution.

30 **Sec. 7.** The amendatory provisions of this act relating to the
31 adoption of rules by the Supreme Court pursuant to NRS 2.120, as
32 amended by section 1 of this act, are a legislative pronouncement of
33 already existing law and are intended to clarify and codify rather
34 than change such existing law.

35 **Sec. 8.** 1. As soon as practicable, the Supreme Court, to the
36 extent that it determines to be necessary or advisable, shall adopt the
37 initial Nevada Rules of Criminal Procedure pursuant to NRS 2.120,
38 as amended by section 1 of this act, and any other rules of practice
39 and procedure that are needed to facilitate the adoption of the
40 Nevada Rules of Criminal Procedure.

41 2. Upon adoption of the initial Nevada Rules of Criminal
42 Procedure pursuant to subsection 1, the Supreme Court shall
43 transmit the rules to the Director of the Legislative Counsel Bureau
44 for transmittal to the Legislature.



1 **Sec. 9.** 1. This section and sections 1, 7 and 8 of this act
2 become effective upon passage and approval.

3 2. Sections 2 to 6, inclusive, of this act become effective on the
4 date that the initial Nevada Rules of Criminal Procedure adopted by
5 the Nevada Supreme Court pursuant to NRS 2.120, as amended by
6 section 1 of this act, first take effect.

