

Appendix J – Criminal Jury Trial

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Case Law

Pursuant to the following case law, Nevada’s Limited Jurisdiction Courts are not required to conduct criminal jury trials:

[*Amezcuca v. Eighth Jud. Dist. Ct., 130 Nev., Advance Opinion 7 \(2014\)*](#) – The Nevada Supreme held that first offense domestic battery is not a serious offense and a defendant is not entitled to a jury trial.

[*United States v. Nachtigal*, 507 U.S. 1, 3–5 \(1993\)](#) – The U.S. Supreme Court held since DUI is a petty offense, this case is governed by *Blanton* and there is no right to a jury trial.

[*Blanton v. North Las Vegas*, 489 U.S. 538, 541–43 \(1989\)](#) – The U.S. Supreme Court held that there is no Sixth Amendment right to a trial by jury for persons charged under Nevada law with DUI.

Blanton v. North Las Vegas Mun. Ct., 103 Nev. 623, 634, 748 P.2d 494, 500 (1987) – The Nevada Supreme Court held that there is no right to jury trial on charge of driving while under the influence of alcohol.

Request for a Jury Trial

A defendant is not entitled to a trial by jury unless the crime charged carries a potential sentence of greater than six months in jail. It is in the court's sole discretion whether or not to permit a defendant to have a trial by jury. In limited jurisdiction courts, a case is tried by a jury only if the defendant makes a written request thirty (30) days before trial. [NRS 175.011](#). Unlike cases in District Court, no canvass for waiver of jury trial needs to be made.

Pre-Trial Procedure

Note: Some provision of NRS Ch. 174 apply only to trials for gross misdemeanors and felonies, however, absent guidance regarding misdemeanor trials, the information herein is offered to assist limited jurisdiction judges.

Both the defendant and the prosecutor must provide each other with a list of all witnesses he or she intends to call, including name and last known address. [NRS 174.234](#). Except as otherwise specified by law, at the request of the either party, that party shall allow the requesting party to inspect and copy tangible and documentary evidence. [NRS 174.235](#); [NRS 174.245](#). Depositions may be taken and subpoenas issued.

Conduct of Trial

The basic elements of a jury trial are:

- Calling jury panel/jury roll call
- Voir dire
- Selection/impaneling jury
- Swearing in/Oath administration
- Trial process
- Opening statements
- Case presentation
- Closing arguments
- Jury deliberation instructions
- Jury deliberation
- Verdict

Reporting of Trial

Except as provided in [NRS 4.390](#) and [NRS 4.400](#), if a case is tried by a jury, a certified court reporter must be present to report the trial. [NRS 175.011](#). In appropriate circumstances, the court may permit the reporter to use voice writing.

Trial

See Dialog for Criminal Jury Trial, Appendix K

Juries***Jury Selection Procedure***

Criminal jury trials in limited jurisdiction courts consist of six jurors. [NRS 175.021](#). Fourteen potential jurors will be selected from the jury pool. If, after the exercise of all peremptory challenges or challenges for cause, the resulting jury panel is greater than six members, the first six members called will constitute the jury panel.

Jury Pool

Every qualified elector of the State, whether registered or not, who has sufficient knowledge of the English language, and who has not been convicted of treason, a felony, or other infamous crime, and who is not rendered incapable by reason of physical or mental infirmity, is a qualified potential juror of the county in which the person resides. A person who has been convicted of a felony is not a qualified potential juror of the county in which the person resides until the person's civil right to serve as a juror has been restored. [NRS 6.010](#).

Certain persons are exempted from jury service including: legislators and staff during Session, peace officers, persons using the fictitious address program at the Secretary of State's Office, persons over the age of 65 in certain circumstances, and persons over 70 years old in certain circumstances. [NRS 6.020](#). Grounds for excusing potential jurors are listed in [NRS 6.030](#), and include: illness or disability, a serious illness or death in the family, undue hardship, and public necessity.

Either side may challenge a prospective juror for cause. Challenges for cause shall be tried by the court and are in the discretion of the court. [NRS 175.036](#). Each side shall be allowed to strike 4 jurors by peremptory challenge. Peremptory challenges shall be exercised alternately by each side and waived if not exercised in order. [NRS 175.051](#).

The court may direct up to six alternate jurors be selected. The alternate juror shall replace a juror who, prior to the time the jury retires to consider its verdict, becomes or is found to be unable or disqualified to perform his or her duties. The alternate juror shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities, and privileges as the regular jurors. If an alternate juror is needed to replace a juror after the jury has retired, the court will reconvene court and resubmit the matter to the new jury. Each side may exercise one additional peremptory challenge for every two additional alternates selected. [NRS 175.061](#).

Voir dire

The court must first ask voir dire questions to determine whether the jurors know the parties or have any biases or reasons they cannot be fair and impartial. Each side should be permitted the opportunity to question jurors as the right of the parties to question potential jurors shall not be unreasonably restricted. [NRS 175.031](#).

There are no model criminal voir dire questions in Nevada; however, a number of states, including New Jersey, have uniform questions. See **Appendix U** for sample questions.

Challenges for cause and peremptory challenges should be allowed outside the hearing of the jurors.

Administering Juror Oath

Per [NRS 175.111](#), once the jury has been impaneled, the court shall administer the oath.

See Dialog for Criminal Jury Trial, Appendix K

Taking Notes

Before any evidence has been introduced, the judge may inform the jury that they may individually take notes during the trial, but he shall further caution them not to rely upon their respective notes in case of conflict among them, because the reporter's notes contain the complete and authentic record of the trial. [NRS 175.131](#).

Jury instructions

At the close of both cases, the court should meet with the attorneys or both sides to settle any jury instructions not previously approved by the court. The court may give the instructions before argument by the counsel, unless counsel requests that the instructions be given after argument. However, counsel should know what instructions are going to be given prior to argument so that they can mention the instructions in their argument.

The court may hold the discussion about the instructions in chambers. [NRS 175.161](#). The court reconvenes outside the presence of the jury and with the court reporter (if one has been retained by a party in this action). If reported, the court should make a statement on the record that the instructions are being considered, indicate whether the instruction is objected to, refused, or accepted.

An original and one copy of each instruction requested by any party must be tendered to the court. The copies must be numbered and indicate who tendered them. Copies of instructions given on the court's own motion or modified by the court must be so identified. When requested instructions are refused, the judge shall write on the margin of the original the word “refused” and initial or sign the notation. The instructions given to the jury must be firmly bound together and the judge shall write the word “given” at the conclusion thereof and sign the last of the instructions to signify that all have been given. After the instructions are given, the judge may not clarify, modify or in any manner explain them to the jury except in writing unless the parties agree to oral instructions. [NRS 175.161](#).

If the court refuses an instruction or modifies it, the court must so indicate in the margin of the instruction and sign the refused or changed instruction.

After the jury has reached a verdict and been discharged, the originals of all instructions, whether given, modified or refused, must be preserved by the clerk as part of the proceedings. [NRS 175.161](#). All instructions, whether given or refused become a part of the record, even though only the accepted instructions are read and provided to the jurors.

Reading Instructions to the Jurors

After both sides have completed argument (or before argument at the request of counsel), the court reads the instructions to the jury.

Defining Reasonable Doubt for the Jurors

See Dialog for Criminal Jury Trial, Appendix K

Argument

The plaintiff goes first, then the defendant, and then the plaintiff again. Their arguments are part of the two hours they are given, unless the court permits them to have additional time.

Admonition upon Adjourning

See Dialog for Criminal Jury Trial, Appendix K

Jury Deliberation Materials

Per [NRS 175.441](#), upon retiring for deliberation, the jury may take with them all papers and other items and materials which have been received as evidence in the case, with the except of depositions or copies of such public records or private documents given in evidence as ought not, in the opinion of the court, to be taken from the person having them in possession. Additionally, jurors may take with them the written instructions given, and notes of the testimony or other proceedings on the trial, taken by themselves or any of them, but none taken by any other person.

Questions from the Jury

After the jury has been taken to the deliberation room, if there is any disagreement among them as to any part of the testimony, or if they desire to be informed on any point of law arising in the case, they must state their problem in writing and give that note to the bailiff to deliver to the court. The court shall inform the parties or attorneys of the written request. If the court decides to provide an answer to the jury, the court will advise both parties/attorneys of the response and will make the response a part of the record. The court may give such a response in open court with the jury reconvened for that purpose. [NRS 175.451](#).

Return of the Jury

When the jury has reached a verdict, it will be brought back into court with all parties and attorneys present. The court will have the clerk read the roll of jurors. The verdict must be unanimous. [NRS 175.481](#).

Either party may request that the jury be polled. If such a request is made, the clerk calls the roll and asks each juror if this is his or her verdict. If the number of jurors stating “yes,” is insufficient to meet the requirements for the verdict, the court may send the jury out for further deliberation.

The judge signs the judgment and files it with the court. No judgment is final or effective until it is signed and filed. [NRS 176.125](#) and [JCRCP 58](#).

Special Rules if Court Believes Defendant Must be Acquitted

If, at any time after the evidence on either side is closed, the court deems the evidence insufficient to warrant a conviction, it may advise the jury to acquit the defendant, but the jury is not bound by such advice.

The court may, on a motion of a defendant or on its own motion, which is made after the jury returns a verdict of guilty, set aside the verdict and enter a judgment of acquittal if the evidence is insufficient to sustain a conviction. The motion for a judgment of acquittal must be made within 7 days after the jury is discharged or within such further time as the court may fix during that period.

If a motion for a judgment of acquittal after a verdict of guilty pursuant to this section is granted, the court shall also determine whether any motion for a new trial should be granted if the judgment of acquittal is thereafter vacated or reversed. The court shall specify the grounds for that determination. If the motion for a new trial is granted conditionally, the order thereon does not affect the finality of the judgment. If the motion for a new trial is granted conditionally and the judgment is reversed on appeal, the new trial must proceed unless the appellate court has otherwise ordered. If the motion is denied conditionally, the

defendant on appeal may assert error in that denial, and if the judgment is reversed on appeal, subsequent proceedings must be in accordance with the order of the appellate court. [NRS 175.381](#).

Canvass of Witness

In the limited jurisdiction court, if the defendant pleads guilty, the court may, before entering such a plea or pronouncing judgment, examine witnesses to ascertain the gravity of the offense committed. If it appears to the court that a higher offense has been committed than the offense charged in the complaint, the court may order the defendant to be committed or admitted to bail or to answer any indictment that may be found against him or any information which may be filed by the district attorney. [NRS 174.055](#).

Canvass of Defendant

A defendant may choose to plead guilty, because of the serious consequences that attach to a plea of guilty, it is important that the court canvasses the defendant thoroughly before accepting the plea.

See Dialog for Taking a Plea, Appendix H

Sentence

Following a judgment of conviction, the judge shall impose sentence.

See Dialog for Sentencing, Appendix I

If the judgment be imprisonment, or a fine and imprisonment until it is satisfied, the defendant must forthwith be committed to the custody of the proper officer, and by him detained until the judgment is complied with. [NRS 176.305](#).