PROPOSED NEVADA RULES OF CRIMINAL PROCEDURE

Incorporation of Statutory Provisions Into Rules With Footnotes

MARCH 8, 2018

ELEVENTH JUDICIAL DISTRICT COURT
P.O. Box H, Lovelock, NV 89419

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Rule 1 General Provisions and Scope

(a) **General Provisions.**

1. *Title.* This chapter shall be known and may be cited as the "Nevada Rules of Criminal Procedure" and may referenced as "Nev. Rules of Crim. Pro." and cited to as "NRCRP".
2. *Intended Purpose.* These rules shall govern the procedure in all criminal cases in the courts of this state except juvenile court cases. These rules are intended and shall be construed to secure simplicity in procedure, fairness in administration, and the elimination of unnecessary expense and delay.
3. *Effective.* These rules shall take effect on July 1, 2019. Thereafter, they shall govern all criminal proceedings commenced and, so far as just and practicable, all proceedings then pending. All statutes and rules in conflict therewith are repealed.

(b) **Scope.**

1. *In General.* These rules govern the procedure in all criminal proceedings in the Municipal Courts, Justice Courts, District Courts, Court of Appeals, and Supreme Court of the State of Nevada.
2. *Excluded Proceedings:* Proceedings not governed by these rules include:
    i. The extradition and rendition of a fugitive (governed by NRS);
    ii. Civil property forfeiture for violating a state or local law;
    iii. Juvenile delinquency and dependency proceedings; and
    iv. Other civil proceedings.

Rule 2 Interpretation

These rules are to be interpreted to provide for the just determination of every criminal proceeding, to secure simplicity in procedure and fairness in administration, and to eliminate unjustifiable expense and delay.

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Rule 3 Preliminary Provisions

(a) **"Bonds and undertakings in criminal actions."**[1] In all criminal actions or proceedings, the following provisions apply:

1. Where a bond or other undertaking is required by the provisions of the Nevada Revised Statutes or by the Nevada Rules of Civil Procedure or the Nevada Rules of Appellate Procedure, the bond or undertaking shall be presented to the clerk, of the court in which the action or proceeding is pending, for the clerk's approval before being filed or deposited.
2. The clerk of the court may refuse approval of a surety for any bond or other undertaking if a power of attorney-in-fact, which covers the agent whose signature appears on the bond or other undertaking, is not on file with the clerk of the court.

(b) **"Jurisdiction over criminal offenses."** These rules do not attempt to define jurisdiction of criminal offenses. Jurisdictional requirements are governed by the Nevada Revised Statutes.[2]

(c) **"Signature by mark."** When a signature of a person is required by this title, the mark of a person, if the person cannot write, shall be deemed sufficient, the name of the person making the mark being written near it, and the mark being witnessed by a person who writes his or her own name as a witness.[3]

(d) **"Statutes of Limitation."** These rules do not govern the Statutes of Limitations for bringing a criminal action. Statutes of Limitation are governed by the Nevada Revised Statutes.[4]

(e) **"Statutory Revisions."** Superseding of criminal law is not a bar to punishment unless specifically expressed. The superseding of any law creating a criminal offense shall not be held to constitute a bar to the prosecution and punishment of a crime already committed, or to bar the trial and punishment of a crime where a prosecution has been already begun, for a violation of the law so superseded, unless the intention to bar such prosecution and punishment, or trial and punishment where a prosecution has been already begun is expressly declared in the superseding act.[5]

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[1] NRS 169.245
[2] *E.g., see* NRS 171.010-171.020
[3] NRS 169.225
[4] *E.g., see* NRS 171.080-171.100
[5] NRS 169.235

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Rule 4 [Reserved]

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Rule 5 [Reserved]

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TITLE II. PRELIMINARY PROCEEDINGS

Rule 6 Prosecution Upon Citation

(a) **Filing of Citation.**[6] The filing of a citation in the justice's court or municipal court initiates a criminal action for only misdemeanor offense(s). The citation shall be issued and served in conformance with the requirements of NRS 171.1771 *et. seq.*

(b) **Citation filed with court deemed complaint for purpose of prosecution.**[7] If the form of citation:

1. Includes information whose truthfulness is attested as required for a complaint charging commission of the offense alleged in the citation to have been committed; or
2. Is prepared electronically, then the citation when filed with a court of competent jurisdiction shall be deemed to be a lawful complaint for the purpose of prosecution.

(c) **Electronic Filing.**[8] A court clerk may accept a citation filed pursuant to this chapter that is filed electronically. The following governs the filing of an electronic Complaint in a criminal proceeding:

1. A citation that is filed electronically must contain an image of the signature of the law enforcement officer who issued the citation.
2. If a court clerk accepts a citation that is filed electronically pursuant to subsection 1, the court clerk shall acknowledge receipt of the citation by an electronic time stamp and shall electronically return the citation with the electronic time stamp to the prosecuting attorney.
3. A citation that is filed and time-stamped electronically pursuant to this section may be converted into a printed document and shall be treated in the same manner as a citation that is not filed electronically.

[6] The issuance of a citation is governed by NRS 171.177
[7] NRS 171.1778.
[8] NRS 171.103.

Rule 7 Prosecution By Complaint

(a) **Filing of Complaint.**[9] The filing of a Complaint in the Justice's Court or Municipal Court initiates a criminal action for a misdemeanor, gross misdemeanor, and/or felony offense(s). The Complaint shall:

1. Be signed by a prosecuting attorney;
2. Be made upon: Oath before a magistrate or a notary public; or By Declaration which is made subject to the penalty for perjury;
3. Set forth facts that establish that probable cause exists to believe that an act was committed by the defendant which is a public offense under the laws of the State of Nevada.

(b) **Electronic Filing.**[10] A court clerk may accept a complaint filed pursuant to this chapter that is filed electronically. The following governs the filing of an electronic Complaint in a criminal proceeding:

1. A complaint that is filed electronically must contain an image of the signature of the prosecuting attorney.
2. If a court clerk accepts a complaint that is filed electronically pursuant to subsection 1, the court clerk shall acknowledge receipt of the complaint by an electronic time stamp and shall electronically return the complaint with the electronic time stamp to the prosecuting attorney.
3. A complaint that is filed and time-stamped electronically pursuant to this section may be converted into a printed document and served upon a defendant in the same manner as a complaint that is not filed electronically.

[9] NRS 171.102.
[10] NRS 171.103.

Rule 8 Charged Multiple Offenses - To Be Filed In Single Court

(a) **Filed in Single Court.** Unless otherwise provided by law, complaints, citations, or informations charging multiple offenses, which may include violations of state laws, county ordinances, or municipal ordinances and arising from a single criminal episode, shall be filed in a single court that has jurisdiction of the charged offense with the highest possible penalty of all the offenses charged.

(b) **When separation may occur.** The offenses within the filed complaint, citation, or information may not be separated except by order of the court and for good cause shown.

(c) **Jurisdiction.** For purposes of this section, the court that is adjudicating the complaint, citation, or information has jurisdiction over all the offenses charged, and a single prosecutorial entity shall prosecute the offenses.

Rule 9 Warrants, Summons & Arrest

(a) **Issuance of Warrant or Summons.**[11] If it appears from the complaint or a citation issued pursuant to NRS 484A.730, 488.920 or 501.386, or from an affidavit or affidavits filed with the complaint or citation that there is probable cause to believe that an offense, triable within the county, has been committed and that the defendant has committed it, a warrant for the arrest of the defendant shall be issued by the magistrate to any peace officer. Upon the request of the district attorney a summons instead of a warrant shall issue. More than one warrant or summons may issue on the same complaint or citation. If a defendant fails to appear in response to the summons, a warrant shall issue.

(b) **Content of Warrant:**[12] The warrant of arrest is an order in writing in the name of the State of Nevada which shall:

1. Be signed by the magistrate with the magistrate's name of office;
2. Contain the name of the defendant or, if the defendant's name is unknown, any name or description by which the defendant can be identified with reasonable certainty;
3. State the date of its issuance, and the county, city or town where it was issued;
4. Describe the offense charged in the complaint; and
5. Command that the defendant be arrested and brought before the nearest available magistrate.

(c) **Content of Summons:**[13] The summons shall be in the same form as the warrant except that it shall summon the defendant to appear before a magistrate at a stated time and place. Upon a complaint against a corporation, the magistrate must issue a summons, signed by the magistrate, with the magistrate's name of office, requiring the corporation to appear before the magistrate at a specified time and place to answer the charge, the time to be not less than 10 days after the issuing of the summons.

(d) **Execution and Service of Warrant or Summons.** The execution and service of a warrant is governed by NRS 171.114 *et. seq.*

(e) **Magistrate may order arrest for committing or attempting to commit offense in magistrate's presence.**[14] A magistrate may orally order a peace officer or private person to arrest anyone committing or attempting to commit a public offense in the presence of the magistrate, and may thereupon proceed as if the offender had been brought before the magistrate on a warrant of arrest.

(f) **Warrant of arrest by telegram authorized.**[15]

1. A warrant of arrest may be transmitted by telegram. A copy of a warrant transmitted by telegram may be sent to one or more peace officers, and the copy is as effectual in the

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[11] NRS 171.106
[12] NRS 171.108
[13] NRS 171.112
[14] NRS 171.128
[15] NRS 171.148

hands of any officer, and the officer must proceed in the same manner under it, as though the officer held an original warrant issued by the magistrate before whom the original complaint in the case was laid.

2. Every officer causing a warrant to be transmitted by telegram pursuant to subsection 1 must certify as correct a copy of the warrant and endorsement thereon, and must return the original with a statement of the officer's action thereunder.
3. As used in this section, "telegram" includes every method of electric or electronic communication by which a written as distinct from an oral message is transmitted.

(g) **Return of warrant after execution by arrest or issuance of citation; return of summons after service; cancellation by district attorney before execution or service; reissuance.**

1. The peace officer executing a warrant by arrest shall make return thereof to the magistrate before whom the defendant is brought pursuant to NRS 171.178 and 171.184. At the request of the district attorney any unexecuted warrant must be returned to the magistrate by whom it was issued and must be cancelled.
2. The peace officer executing a warrant by issuance of a citation pursuant to subsection 2 of NRS 171.122 shall:
    i. Record on the warrant the number assigned to the citation issued thereon;
    ii. Attach the warrant to the citation issued thereon; and
    iii. Return the warrant and citation to the magistrate before whom the defendant is scheduled to appear.
3. On or before the return day the person to whom a summons was delivered for service shall make return thereof to the magistrate before whom the summons is returnable.
4. At the request of the district attorney made at any time while the complaint is pending, a warrant returned unexecuted and not cancelled or a summons returned unserved or a duplicate thereof may be delivered by the magistrate to a peace officer for execution or service.

Rule 10 Appearance Before Magistrate Following Arrest

(a) **Appearance before magistrate.**[16]

1. An arrested person shall be brought before the magistrate who issued the warrant or the nearest available magistrate empowered to commit persons charged with offenses against the laws of the State of Nevada. The magistrate must make a probable cause determination within 48 hours of arrest based upon a probable cause statement prepared by the arresting officer. If the magistrate determines that probable cause for the arrest existed, the magistrate may hold the individual for further proceedings after determining if the bail set in the matter is appropriate. If the magistrate determines that probable cause for the arrest did not exist, the magistrate shall release the individual.
2. If the magistrate determines that probable cause existed to justify the arrest, within 72 hours, excluding nonjudicial days, of that determination, the following shall occur: (1) The prosecuting agency, unless excused by the following subsection, must file a complaint before the magistrate setting forth the crime or crimes with which the person is charged; and (2) The person must be brought before the magistrate for an advisement hearing in which the person is advised of the person's right to counsel and the nature of the charges contained in the Complaint.
3. If the complaint is not filed within the 72 hours after arrest, excluding nonjudicial days, the magistrate:
    i. Shall give the prosecuting attorney an opportunity to explain the circumstances leading to the delay and may allow additional time to file a Complaint; and
    ii. May release the arrested person if the magistrate determines that the person was not brought before a magistrate without unnecessary delay.
4. When a person arrested under the terms of a warrant for arrest is brought before a magistrate, a complaint must be filed forthwith.
5. Except as otherwise provided in NRS 178.484 and 178.487, where the defendant can be admitted to bail without appearing personally before a magistrate, the defendant must be so admitted with the least possible delay, and required to appear before a magistrate at the earliest convenient time thereafter.
6. When a summons is issued in lieu of a warrant of arrest, the defendant shall appear before the court as directed in the summons.

(b) **Proceedings before another magistrate.**[17] If the defendant is brought before a magistrate in the same county, other than the one who issued the warrant, the affidavits and depositions on which the warrant was granted, if the defendant insists upon an examination, must be sent to that magistrate, or, if they cannot be procured, the prosecutor and the prosecutor's witnesses must be summoned to give their testimony anew.

(c) **Proceedings upon complaint for offenses triable in another county.**[18]

1. When a complaint is laid before a magistrate of the commission of a public offense triable in another county of the State, but showing that the defendant is in the county where the complaint is laid, the same proceedings must be had as prescribed in these

[16] NRS 171.178.
[17] NRS 171.182.
[18] Mirrors the language in NRS 171.184.

Rules except that the warrant must require the defendant to be taken before the nearest or most accessible magistrate of the county in which the offense is triable, and the depositions of the complainant or prosecutor, and of the witnesses who may have been produced, must be delivered by the magistrate to the officer to whom the warrant is delivered.

2. The officer who executed the warrant must take the defendant before the nearest or most accessible magistrate of the county in which the offense is triable, and must deliver the depositions and the warrant, with the officer's return endorsed thereon, and the magistrate must then proceed in the same manner as upon a warrant issued by the magistrate.
3. If the offense charged in the warrant issued pursuant to subsection 1 is a misdemeanor, the officer must, upon being required by the defendant, take the defendant before a magistrate of the county in which the warrant was issued, who must admit the defendant to bail, and immediately transmit the warrant, depositions and undertaking to the justice of the peace or clerk of the court in which the defendant is required to appear.

(d) **Proceedings upon discovery of another arrest warrant outstanding in another county.**[19]

1. If a person is brought before a magistrate under the provisions of NRS 171.178 or 171.184, and it is discovered that there is a warrant for the person's arrest outstanding in another county of this State, the magistrate may release the person in accordance with the provisions of NRS 178.484 or 178.4851 if:
    i. The warrant arises out of a public offense which constitutes a misdemeanor; and
    ii. The person provides a suitable address where the magistrate who issued the warrant in the other county can notify the person of a time and place to appear.
2. If a person is released under the provisions of this section, the magistrate who releases the person shall transmit the cash, bond, notes or agreement submitted under the provisions of NRS 178.502 or 178.4851, together with the person's address, to the magistrate who issued the warrant. Upon receipt of the cash, bonds, notes or agreement and address, the magistrate who issued the warrant shall notify the person of a time and place to appear.
3. Any bail set under the provisions of this section must be in addition to and apart from any bail set for any public offense with which a person is charged in the county in which a magistrate is setting bail. In setting bail under the provisions of this section, a magistrate shall set the bail in an amount which is sufficient to induce a reasonable person to travel to the county in which the warrant for the arrest is outstanding.
4. A person who fails to appear in the other county as ordered is guilty of failing to appear and shall be punished as provided in NRS 199.335. A sentence of imprisonment imposed for failing to appear in violation of this section must be imposed consecutively to a sentence of imprisonment for the offense out of which the warrant arises.

Commented [TW1]: Need to check all of these references to ensure that they align with provisions that will still be in place.

[19] NRS 171.1845.

Rule 11 Proceedings Before Justice of the Peace or Municipal Court Judge

(a) **Rights of defendant at the advisement hearing.**[20] The magistrate or master shall inform the defendant of the complaint and of any affidavit filed therewith, of the right to retain counsel, of the right to request the assignment of counsel if the defendant is unable to obtain counsel, and of the right to have a preliminary examination if any charge alleges a gross misdemeanor or felony crime or of the right to an arraignment if the charge or charges involve any misdemeanor crime. The magistrate shall also inform the defendant that the defendant is not required to make a statement and that any statement made may be used against him or her. The magistrate shall allow the defendant reasonable time and opportunity to consult counsel, and shall admit the defendant to bail as provided in these rules.

(b) **Procedure for appointment of attorney for indigent defendant.**[21]

1. Any defendant charged with a public offense who is an indigent may, by oral statement to the district judge, justice of the peace, municipal judge or master, request the appointment of an attorney to represent the defendant.
2. The request must be accompanied by the defendant's affidavit, which must state:
    i. That the defendant is without means of employing an attorney; and
    ii. Facts with some particularity, definiteness and certainty concerning the defendant's financial disability.
3. The district judge, justice of the peace, municipal judge or master shall forthwith consider the application and shall make such further inquiry as he or she considers necessary. If the district judge, justice of the peace, municipal judge or master:
    i. Finds that the defendant is without means of employing an attorney; and
    ii. Otherwise determines that representation is required, the judge, justice or master shall designate the public defender of the county or the State Public Defender, as appropriate, to represent the defendant. If the appropriate public defender is unable to represent the defendant, or other good cause appears, another attorney must be appointed.
4. The county or State Public Defender must be reimbursed by the city for costs incurred in appearing in municipal court. If a private attorney is appointed as provided in this section, the private attorney must be reimbursed by the county for appearance in Justice Court or the city for appearance in municipal court in an amount not to exceed $75 per case.

(c) **Certification of bail; discharge of defendant.**[22] On admitting the defendant to bail, the magistrate shall certify on the warrant the fact of having done so, and deliver the warrant and recognizance to the officer having charge of the defendant.

(d) **Preliminary examination: Waiver; time for conducting; postponement; burden of proof, introduction of evidence and cross-examination of witnesses by defendant; admissibility of hearsay evidence.**[23]

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[20] NRS 171.186.
[21] NRS 171.188.
[22] NRS 171.192.
[23] Taken primarily from NRS 171.196.

1. If an offense is not triable in the Justice Court, the defendant must not be called upon to plead. If the defendant waives preliminary examination, the magistrate shall immediately hold the defendant to answer in the district court.
2. The magistrate may require the appearance of the defendant at the preliminary hearing.
3. If the defendant does not waive examination, the magistrate shall hear the evidence within 15 days of the advisement hearing, unless for good cause shown the magistrate extends such time.
4. Unless the defendant waives counsel, reasonable time must be allowed for counsel to appear.
5. Except as otherwise provided in this rule, if the magistrate postpones the examination at the request of a party, the magistrate may order that party to pay all or part of the costs and fees expended to have a witness attend the examination. The magistrate shall not require a party who requested the postponement of the examination to pay for the costs and fees of a witness if:
    i. It was not reasonably necessary for the witness to attend the examination; or
    ii. The magistrate ordered the extension pursuant to subsection 4.
6. If application is made for the appointment of counsel for an indigent defendant, the magistrate shall postpone the examination until:
    i. The application has been granted or denied; and
    ii. If the application is granted, the attorney appointed or the public defender has had reasonable time to appear.
7. Unless otherwise provided, a preliminary examination shall be held under the rules and laws applicable to criminal cases tried before a court. The state has the burden of proof and shall proceed first with its case. The preliminary examination is confined to the issues relevant to the determination as to whether there is probable cause to believe that a crime was committed and that the defendant committed said crime. These rules do not abrogate the established case law of the appellate courts of this state regarding preliminary hearings.
8. The defendant may cross-examine witnesses against him or her and may introduce evidence in his or her own behalf.
9. Hearsay evidence consisting of an out of court statement made by the alleged victim of the offense is admissible at a preliminary examination conducted pursuant to this section only if the defendant is charged with one or more of the following offenses:
    i. A sexual offense committed against a child who is under the age of 16 years if the offense is punishable as a felony. As used in this paragraph, "sexual offense" has the meaning ascribed to it in NRS 179D.097;
    ii. Abuse of a child pursuant to NRS 200.508 if the offense is committed against a child who is under the age of 16 years and the offense is punishable as a felony; and
    iii. An act which constitutes domestic violence pursuant to NRS 33.018, which is punishable as a felony and which resulted in substantial bodily harm to the alleged victim.

Commented [TW2]: I added this paragraph

(e) **Discovery by defendant before preliminary examination; material subject to discovery; effect of failure to permit discovery.**[24]

1. At the time a person is brought before a magistrate pursuant to NRS 171.178, or as soon as practicable thereafter, but not less than 5 judicial days before a preliminary examination, the prosecuting attorney shall provide a defendant charged with a felony or a gross misdemeanor with copies of any:
    i. Written or recorded statements or confessions made by the defendant, or any written or recorded statements made by a witness or witnesses, or any reports of statements or confessions, or copies thereof, within the possession or custody of the prosecuting attorney;
    ii. Results or reports of physical or mental examinations, scientific tests or scientific experiments made in connection with the particular case, or copies thereof, within the possession or custody of the prosecuting attorney; and
    iii. Books, papers, documents or tangible objects that the prosecuting attorney intends to introduce in evidence during the case in chief of the State, or copies thereof, within the possession or custody of the prosecuting attorney.
2. The defendant is not entitled, pursuant to the provisions of this section, to the discovery or inspection of:
    i. An internal report, document or memorandum that is prepared by or on behalf of the prosecuting attorney in connection with the investigation or prosecution of the case; and
    ii. A statement, report, book, paper, document, tangible object or any other type of item or information that is privileged or protected from disclosure or inspection pursuant to the Constitution or laws of this State or the Constitution of the United States.
3. The provisions of this section are not intended to affect any obligation placed upon the prosecuting attorney by the Constitution of this State or the Constitution of the United States to disclose exculpatory evidence to the defendant.
4. The magistrate shall not postpone a preliminary examination at the request of a party based solely on the failure of the prosecuting attorney to permit the defendant to inspect, copy or photograph material as required in this section, unless the court finds that the defendant has been prejudiced by such failure.

(f) **Use of affidavit at preliminary examination: When permitted; notice by district attorney; circumstances under which district attorney must produce person who signed affidavit; continuances.**[25]

1. If a witness resides outside this State or more than 100 miles from the place of a preliminary examination, the witness's affidavit may be used at the preliminary examination if it is necessary for the district attorney to establish as an element of any offense that:

[24] NRS 171.1965.
[25] NRS 171.197.

i. The witness was the owner, possessor or occupant of real or personal property; and
ii. The defendant did not have the permission of the witness to enter, occupy, possess or control the real or personal property of the witness.

2. If a financial institution does not maintain any principal or branch office within this State or if a financial institution that maintains a principal or branch office within this State does not maintain any such office within 100 miles of the place of a preliminary examination, the affidavit of a custodian of the records of the financial institution or the affidavit of any other qualified person of the financial institution may be used at the preliminary examination if it is necessary for the district attorney to establish as an element of any offense that:
   i. When a check or draft naming the financial institution as drawee was drawn or passed, the account or purported account upon which the check or draft was drawn did not exist, was closed or held insufficient money, property or credit to pay the check or draft in full upon its presentation; or
   ii. When a check or draft naming the financial institution as drawee was presented for payment to the financial institution, the account or purported account upon which the check or draft was drawn did not exist, was closed or held insufficient money, property or credit to pay the check or draft in full.
3. If a specific rule or statute allows for the use of an affidavit, the prosecutor may use the affidavit in accordance with the specific rule or statute.
4. The district attorney shall provide either written or oral notice to the defendant's attorney, not less than 10 days before the scheduled preliminary examination, that the district attorney intends to use an affidavit described in this section at the preliminary examination.
5. If, at or before the time of the preliminary examination, the defendant establishes that:
   i. There is a substantial and bona fide dispute as to the facts in an affidavit described in this section; and
   ii. It is in the best interests of justice that the person who signed the affidavit be cross-examined,

   the magistrate may order the district attorney to produce the person who signed the affidavit and may continue the examination for any time it deems reasonably necessary in order to receive such testimony.

(g) **Use of audiovisual technology to present live testimony at preliminary examination: Requirements.**[26]

1. If a witness resides more than 100 miles from the place of a preliminary examination or is unable to attend the preliminary examination because of a medical condition, or if good cause otherwise exists, the magistrate must allow the witness to testify at the preliminary examination through the use of audiovisual technology.
2. If a witness testifies at the preliminary examination through the use of audiovisual technology:

[26] NRS 171.1975.

i. The testimony of the witness must be transcribed by a certified court reporter; and

ii. Before giving testimony, the witness must be sworn and must sign a written declaration, on a form provided by the magistrate, which acknowledges that the witness understands that he or she is subject to the jurisdiction of the courts of this state and may be subject to criminal prosecution for the commission of any crime in connection with his or her testimony, including, without limitation, perjury, and that the witness consents to such jurisdiction.

3. Audiovisual technology used pursuant to this section must ensure that the witness may be:
   i. Clearly heard and seen; and
   ii. Examined and cross-examined.
4. As used in this section, "audiovisual technology" includes, without limitation, closed-circuit video and videoconferencing.

(h) **Reporting testimony of witnesses.**[27]

1. Except as otherwise provided in subsection 2, a magistrate shall employ a certified court reporter to take down all the testimony and the proceedings on the preliminary hearing or examination and, within such time as the court may designate, have such testimony and proceedings transcribed into typewritten transcript.
2. A magistrate who presides over a preliminary hearing in a justice court, in any case other than in a case in which the death penalty is sought, may employ a certified court reporter to take down all the testimony and the proceedings on the hearing or appoint a person to use sound recording equipment to record all the testimony and the proceedings on the hearing. If the magistrate appoints a person to use sound recording equipment to record the testimony and proceedings on the hearing, the testimony and proceedings must be recorded and transcribed in the same manner as set forth in NRS 4.390 to 4.420, inclusive. Any transcript of the testimony and proceedings produced from a recording conducted pursuant to this subsection is subject to the provisions of this section in the same manner as a transcript produced by a certified court reporter.
3. When the testimony of each witness is all taken and transcribed by the reporter, the reporter shall certify to the transcript in the same manner as for a transcript of testimony in the district court, which certificate authenticates the transcript for all purposes of this title.
4. Before the date set for trial, either party may move the court before which the case is pending to add to, delete from or otherwise correct the transcript to conform with the testimony as given and to settle the transcript so altered.
5. The compensation for the services of a reporter employed as provided in this section are the same as provided in NRS 3.370, to be paid out of the county treasury as other claims against the county are allowed and paid.
6. Testimony reduced to writing and authenticated according to the provisions of this section must be filed by the examining magistrate with the clerk of the district court of

[27] NRS 171.198.

the magistrate's county, and if the prisoner is subsequently examined upon a writ of habeas corpus, such testimony must be considered as given before such judge or court. A copy of the transcript must be furnished to the defendant and to the district attorney.

7. The testimony so taken may be used:
    i. By the defendant; or
    ii. By the State if the defendant was represented by counsel or affirmatively waived his or her right to counsel,

upon the trial of the cause, and in all proceedings therein, when the witness is sick, out of the State, dead, or persistent in refusing to testify despite an order of the judge to do so, or when the witness's personal attendance cannot be had in court.

(i) **District attorney to prosecute at preliminary examination where felony or gross misdemeanor charged.** The district attorney of the proper county shall be present at and conduct the prosecution in all preliminary examinations where a felony or gross misdemeanor is charged.

(j) **Exclusion of persons; exceptions.**[28]

1. Except as otherwise provided in subsection 2, the magistrate may, if good cause is shown and upon the request of any party or on the magistrate's own motion, exclude from the examination every person except:
    i. The magistrate's clerk;
    ii. The Attorney General;
    iii. The prosecuting attorney;
    iv. An investigating officer, after the investigating officer has testified as a prosecuting witness and the investigating officer's cross-examination has been completed;
    v. Any counsel for the victim;
    vi. The victim, after the victim has testified as a prosecuting witness and the victim's cross-examination has been completed;
    vii. The defendant and the defendant's counsel;
    viii. The witness who is testifying;
    ix. The officer having the defendant or a witness in the officer's custody;
    x. An attendant to a witness designated pursuant to NRS 178.571; and
    xi. Any other person whose presence is found by the magistrate to be necessary for the proper conduct of the examination.
2. A person who is called as a witness primarily for the purpose of identifying the victim may not be excluded from the examination except in the discretion of the magistrate.
3. As used in this section, "victim" includes any person described in NRS 178.569.

(k) **Procedure following preliminary examination.**[29] If from the evidence it appears to the magistrate that there is probable cause to believe that an offense has been committed and that the defendant has committed it, the magistrate shall forthwith hold the defendant to answer in the district court; otherwise the magistrate shall discharge the defendant. The magistrate shall admit the

[28] NRS 171.204.
[29] NRS 171.206.

defendant to bail as provided in this title. After concluding the proceeding the magistrate shall transmit forthwith to the clerk of the district court all papers in the proceeding and any bail.

Rule 12 Appointment of Counsel

(a) **Right to Counsel.**[30] A defendant charged with a public offense has the right to self-representation, and if indigent, has the right to court-appointed counsel if the defendant faces a substantial probability of deprivation of liberty.

(b) **Appointment of attorney other than public defender prohibited unless public defender disqualified.**[31] A magistrate, master or a district court shall not appoint an attorney other than a public defender to represent a person charged with any offense or delinquent act by petition, indictment or information unless the magistrate, master or district court makes a finding, entered into the record of the case, that the public defender is disqualified from furnishing the representation and sets forth the reason or reasons for the disqualification.

(c) **Counsel in Capital Case.**[32] In all cases in which counsel is appointed to represent an indigent defendant who is charged with an offense for which the punishment may be death, the court shall appoint two or more attorneys to represent such defendant and shall make a finding on the record based on the requirements set forth below that appointed counsel is proficient in the trial of capital cases. In making its determination, the court shall ensure that the experience of counsel who are under consideration for appointment have met the minimum requirements under SCR 250.

(d) **Attorney Selection in Capital Case.**[33] In making its selection of attorneys for appointment in a capital case, the court should also consider at least the following factors:

1. whether one or more of the attorneys under consideration have previously appeared as counsel or co-counsel in a capital case;
2. the extent to which the attorneys under consideration have sufficient time and support and can dedicate those resources to the representation of the defendant in the capital case now pending before the court with undivided loyalty to the defendant;
3. the extent to which the attorneys under consideration have engaged in the active practice of criminal law in the past five years;
4. the diligence, competency and ability of the attorneys being considered; and
5. any other factor which may be relevant to a determination that counsel to be appointed will fairly, efficiently and effectively provide representation to the defendant.

(e) **Counsel for Capital Case Appeal.**[34] In all cases where an indigent defendant is sentenced to death, the court shall appoint one or more attorneys to represent such defendant on appeal and shall make a finding that counsel is proficient in the appeal of capital cases. To be found proficient to represent on appeal persons sentenced to death, the combined experience of the appointed attorneys must meet the following requirements:

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31 NRS 7.115, NRS 260.065.

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1. at least one attorney must have served as counsel in at least three felony appeals; and
2. at least one attorney must have attended and completed within the past five years an approved continuing legal education course which deals, in substantial part, with the trial or appeal of death penalty cases.

(f) **Counsel for Post-Conviction.**[35] In all cases in which counsel is appointed to represent an indigent petitioner, the court shall appoint one or more attorneys to represent such petitioner at post-conviction trial and on post-conviction appeal and shall make a finding that counsel is qualified to represent persons sentenced to death in post-conviction cases. To be found qualified, the combined experience of the appointed attorneys must meet the following requirements:

1. at least one of the appointed attorneys must have served as counsel in at least three felony or post-conviction appeals;
2. at least one of the appointed attorneys must have appeared as counsel or co-counsel in a post-conviction case at the evidentiary hearing, on appeal, or otherwise demonstrated proficiency in the area of post-conviction litigation;
3. at least one of the appointed attorneys must have attended and completed or taught within the past five years an approved continuing legal education course which dealt, in substantial part, with the trial and appeal of death penalty cases or with the prosecution or defense of post-conviction proceedings in death penalty cases;
4. at least one of the appointed attorneys must have tried to judgment or verdict three civil jury or felony cases within the past four years or ten cases total; and
5. the experience of at least one of the appointed attorneys must total not less than five years in the active practice of law.

(g) **Grounds not Created by Rule.**[36] Mere noncompliance with this rule or failure to follow the guidelines set forth in this rule shall not of itself be grounds for establishing that appointed counsel ineffectively represented the defendant at trial or on appeal.

(h) **Fees of appointed attorney other than public defender.**[37]

1. Except as limited by subsections 2, 3 and 4, an attorney, other than a public defender, who is appointed by a magistrate or a district court to represent or defend a defendant at any stage of the criminal proceedings from the defendant's initial appearance before the magistrate or the district court through the appeal, if any, is entitled to receive a fee for court appearances and other time reasonably spent on the matter to which the appointment is made of $125 per hour in cases in which the death penalty is sought and $100 per hour in all other cases. Except for cases in which the most serious crime is a felony punishable by death or by imprisonment for life with or without possibility of parole, this subsection does not preclude a governmental entity from contracting with a private attorney who agrees to provide such services for a lesser rate of compensation.
2. Except as otherwise provided in subsection 4, the total fee for each attorney in any matter regardless of the number of offenses charged or ancillary matters pursued must not exceed:

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37 NRS 7.125.

i. If the most serious crime is a felony punishable by death or by imprisonment for life with or without possibility of parole, $20,000;
ii. If the most serious crime is a felony other than a felony included in paragraph (a) or is a gross misdemeanor, $2,500;
iii. If the most serious crime is a misdemeanor, $750;
iv. For an appeal of one or more misdemeanor convictions, $750; or
v. For an appeal of one or more gross misdemeanor or felony convictions, $2,500.

3. Except as otherwise provided in subsection 4, an attorney appointed by a district court to represent an indigent petitioner for a writ of habeas corpus or other postconviction relief, if the petitioner is imprisoned pursuant to a judgment of conviction of a gross misdemeanor or felony, is entitled to be paid a fee not to exceed $750.
4. If the appointing court because of:
   i. The complexity of a case or the number of its factual or legal issues;
   ii. The severity of the offense;
   iii. The time necessary to provide an adequate defense; or
   iv. Other special circumstances,

   deems it appropriate to grant a fee in excess of the applicable maximum, the payment must be made, but only if the court in which the representation was rendered certifies that the amount of the excess payment is both reasonable and necessary and the payment is approved by the presiding judge of the judicial district in which the attorney was appointed, or if there is no such presiding judge or if he or she presided over the court in which the representation was rendered, then by the district judge who holds seniority in years of service in office.
5. The magistrate, the district court, the Court of Appeals or the Supreme Court may, in the interests of justice, substitute one appointed attorney for another at any stage of the proceedings, but the total amount of fees granted to all appointed attorneys must not exceed those allowable if but one attorney represented or defended the defendant at all stages of the criminal proceeding.

(i) **Reimbursement for expenses; employment of investigative, expert or other services.**[38] The attorney appointed by a magistrate or district court to represent a defendant is entitled, in addition to the fee provided by NRS 7.125 for the attorney's services, to be reimbursed for expenses reasonably incurred by the attorney in representing the defendant and may employ, subject to the prior approval of the magistrate or the district court in an ex parte application, such investigative, expert or other services as may be necessary for an adequate defense. Compensation to any person furnishing such investigative, expert or other services must not exceed $500, exclusive of reimbursement for expenses reasonably incurred, unless payment in excess of that limit is:

1. Certified by the trial judge of the court, or by the magistrate if the services were rendered in connection with a case disposed of entirely before the magistrate, as necessary to provide fair compensation for services of an unusual character or duration; and
2. Approved by the presiding judge of the judicial district in which the attorney was appointed or, if there is no presiding judge, by the district judge who holds seniority in years of service in office.

[38] NRS 7.135.

(j) **Claim for compensation and expenses.**[39]

1. A claim for compensation and expenses made pursuant to NRS 7.125 or 7.135 must not be paid unless it is submitted within 60 days after the appointment is terminated to:
    i. The magistrate in cases in which the representation was rendered exclusively before the magistrate; and
    ii. The district court in all other cases.
2. Each claim must be supported by a sworn statement specifying the time expended in court, the services rendered out of court and the time expended therein, the expenses incurred while the case was pending and the compensation and reimbursement applied for or received in the same case from any other source. Except as otherwise provided for the approval of payments in excess of the statutory limit, the magistrate or the court to which the claim is submitted shall fix and certify the compensation and expenses to be paid, and the amounts so certified must be paid in accordance with NRS 7.155.

(k) **Payment of compensation and expenses from county treasury or money appropriated to State Public Defender.**[40] The compensation and expenses of an attorney appointed to represent a defendant must be paid from the county treasury unless the proceedings are based upon a postconviction petition for habeas corpus, in which case the compensation and expenses must be paid from money appropriated to the Office of State Public Defender, but after the appropriation for such expenses is exhausted, money must be allocated to the Office of State Public Defender from the reserve for statutory contingency account for the payment of such compensation and expenses.

(l) **Payment of compensation and expenses by defendant.**[41] If at any time after the appointment of an attorney or attorneys the magistrate or the district court finds that money is available for payment from or on behalf of the defendant so that the defendant is financially able to obtain private counsel or to make partial payment for such representation, the magistrate or the district court may:

1. Terminate the appointment of such attorney or attorneys; or
2. Direct that such money be paid to:
    i. The appointed attorney or attorneys, in which event any compensation provided for in NRS 7.125 shall be reduced by the amount of the money so paid, and no such attorney may otherwise request or accept any payment or promise of payment for representing such defendant; or
    ii. The clerk of the district court for deposit in the county treasury, if all of the compensation and expenses in connection with the representation of such defendant were paid from the county treasury, and remittance to the Office of State Public Defender, if such compensation and expenses were paid partly from moneys appropriated to the Office of State Public Defender and the money received exceeds the amount of compensation and expenses paid from the county treasury.

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[39] NRS 7.145.
[40] NRS 7.155.
[41] NRS 7.165.

(m) **Compensation and expenses on new trial.**[42] For the purposes of compensation and other payments authorized by NRS 7.125 to 7.165, inclusive, an order by a court granting a new trial shall be deemed to initiate a new case.

[42] NRS 7.175.

Rule 13 Hearings With Contemporaneous Transmission From A Different Location.[43]

(a) The court, in its discretion, may conduct the arraignment, bail hearing, and/or initial appearance with a defendant attending by contemporaneous transmission from a different location without the agreement of the parties or waiver of the defendant's attendance in person.

(b) For any other type of hearing, the court may conduct the hearing with a defendant attending by contemporaneous transmission from a different location only if the parties agree and the defendant knowingly and voluntarily waives attendance in person.

(c) For good cause and with appropriate safeguards the court may permit testimony in open court by contemporaneous transmission from a different location if the party not calling the witness waives the right to confront the witness in person.

(d) Nothing in this rule precludes or affects the procedures in rule ***.

[43] .

Rule 14 [Reserved]

PROPOSED NEVADA RULES OF CRIMINAL PROCEDURE

Rule 15 [Reserved]

PROPOSED NEVADA RULES OF CRIMINAL PROCEDURE

TITLE IV. ARRAIGNMENT AND PREPARATION FOR TRIAL

PROPOSED NEVADA RULES OF CRIMINAL PROCEDURE

Rule 16 Arraignment

(a) **Remand for preliminary examination.**[44] If the case involves any felony or gross misdemeanor, a preliminary examination has not been had, and the defendant has not unconditionally waived the examination, the district court may for good cause shown at any time before a plea has been entered or an indictment found remand the defendant for preliminary examination to the appropriate justice of the peace or other magistrate, and the justice or other magistrate shall then proceed with the preliminary examination as provided in this chapter.

(b) **Representation by Counsel, Additional time.** Upon arraignment, unless the defendant makes knowing and voluntary waiver in open court, the following applies: (1) A defendant may be represented by counsel on all misdemeanors; (2) A defendant shall be represented by counsel in all misdemeanor cases in which jail time is mandatory or likely to be imposed; and (3) The defendant shall be represented by counsel in all gross misdemeanor or felony cases. The defendant shall not be required to plead until the defendant has had a reasonable time to confer with counsel.

(c) **Conduct of arraignment.**[45] ***District Court:*** Upon the return of an indictment or upon receipt of the records from the magistrate following a bind-over, the defendant shall be arraigned in the district court in the following manner:

1. Except as otherwise provided in subsection 3, arraignment shall be conducted in open court and shall consist of reading the indictment or information to the defendant or stating the substance of the charge and calling on the defendant to plead thereto. The defendant may waive the formal reading after being advised of the right.
2. The Court will take the plea to the charge or charges contained in the Information and enter the pleas upon the records of the Court;
3. The Court shall canvass the Defendant to ensure the Defendant understands the rights associate with trial, to wit: (1) The speedy trial right; (2) The right to use the subpoena power of the court to compel witnesses to appear; (3) The right of confrontation; (4) The right to remain silent; and (5) The right to waive the right to remain silent and to give testimony;

Justice/Municipal Court: In the justice court or municipal court, an arraignment on all complaints alleging misdemeanor offenses must be held within 30 days of the advisement hearing. At the arraignment, the magistrate shall conduct the arraignment in open court and shall provide the Defendant an opportunity to have the complaint read in open court and shall call on the Defendant to enter a plea to each offense of the complaint. The defendant may waive the formal reading after being advised of the right. The Court shall also

1. The Court will take the plea to the charge or charges contained in the Complaint and enter the pleas upon the records of the Court; and

[44] NRS 171.208.
[45] NRS 174.015.

2. The Court shall canvass the Defendant to ensure the Defendant understands the rights associate with trial, to wit: (1) The speedy trial right; (2) The right to use the subpoena power of the court to compel witnesses to appear; (3) The right of confrontation; (4) The right to remain silent; and (5) The right to waive the right to remain silent and to give testimony;
3. Before the defendant is called upon to plead, the court shall determine whether the defendant is eligible for assignment to a preprosecution diversion program pursuant to NRS 174.031.

(d) **Proceedings respecting name of defendant; entry of true name in minutes; subsequent proceedings in true name.**[46] When the defendant is arraigned, the defendant must be informed that if the name by which the defendant is prosecuted is not his or her true name the defendant must then declare his or her true name, or be proceeded against by the name in the indictment, information or complaint. If the defendant gives no other name, the court may proceed accordingly; but, if the defendant alleges that another name is his or her true name, the court must direct an entry thereof in the minutes of the arraignment, and the subsequent proceedings on the information, indictment or complaint may be had against the defendant by that name, referring also to the name by which the defendant was first charged therein.

(e) **Additional Time.** If upon arraignment the defendant requests additional time in which to plead or otherwise respond, a reasonable time may be granted.

(f) **Failure to Appear.** If a defendant has been released on bail, or on his own recognizance, prior to arraignment and thereafter fails to appear for arraignment or trial when required to do so, a warrant of arrest may issue and bail may be forfeited.

[46] NRS 174.025.

Rule 17 Assignment to Preprosecution Diversion Program

(a) **Determination of eligibility; court may order defendant to complete program.**[47]

1. At the arraignment of a defendant in justice court or municipal court, but before the entry of a plea, the court shall determine whether the defendant is eligible for assignment to a preprosecution diversion program established pursuant to NRS 174.032. The court shall receive input from the prosecuting attorney and the attorney for the defendant, if any, whether the defendant would benefit from and is eligible for assignment to the program.
2. A defendant may be determined to be eligible by the court for assignment to a preprosecution diversion program if the defendant:
    i. Is charged with a misdemeanor other than:
        A. A crime of violence as defined in NRS 200.408;
        B. Vehicular manslaughter as described in NRS 484B.657;
        C. Driving under the influence of intoxicating liquor or a controlled substance in violation of NRS 484C.110, 484C.120 or 484C.130; or
        D. A minor traffic offense; and
    ii. Has not previously been:
        A. Convicted of violating any criminal law other than a minor traffic offense; or
        B. Ordered by a court to complete a preprosecution diversion program in this State.
3. If a defendant is determined to be eligible for assignment to a preprosecution diversion program pursuant to subsection 2, the justice court or municipal court may order the defendant to complete the program pursuant to subsection 5 of NRS 174.032.
4. A defendant has no right to complete a preprosecution diversion program or to appeal the decision of the justice court or municipal court relating to the participation of the defendant in such a program.

(b) **Establishment of program; terms and conditions.**[48]

1. A justice court or municipal court may establish a preprosecution diversion program to which it may assign a defendant if he or she is determined to be eligible pursuant to NRS 174.031.
2. If a defendant is determined to be eligible for assignment to a preprosecution diversion program pursuant to NRS 174.031, the justice or municipal court must receive input from the prosecuting attorney, the attorney for the defendant, if any, and the defendant relating to the terms and conditions for the defendant's participation in the program.
3. A preprosecution diversion program established by a justice court or municipal court pursuant to this section may include, without limitation:
    i. A program of treatment which may rehabilitate a defendant, including, without limitation, educational programs, participation in a support group, anger management therapy, counseling or a program of treatment for veterans and members of the military, mental illness or intellectual disabilities or the abuse of alcohol or drugs;

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[47] NRS 174.031.
[48] NRS 174.032.

ii. Any appropriate sanctions to impose on a defendant, which may include, without limitation, community service, restitution, prohibiting contact with certain persons or the imposition of a curfew; and

iii. Any other factor which may be relevant to determining an appropriate program of treatment or sanctions to require for participation of a defendant in the preprosecution diversion program.

4. If the justice court or municipal court determines that a defendant may be rehabilitated by a program of treatment for veterans and members of the military, persons with mental illness or intellectual disabilities or the abuse of alcohol or drugs, the court may refer the defendant to an appropriate program of treatment established pursuant to NRS 176A.250, 176A.280 or 453.580. The court shall retain jurisdiction over the defendant while the defendant completes such a program of treatment.

5. The justice court or municipal court shall, when assigning a defendant to a preprosecution diversion program, issue an order setting forth the terms and conditions for successful completion of the preprosecution diversion program, which may include, without limitation:

i. Any program of treatment the defendant is required to complete;

ii. Any sanctions and the manner in which they must be carried out by the defendant;

iii. The date by which the terms and conditions must be completed by the defendant, which must not be more than 18 months after the date of the order;

iv. A requirement that the defendant appear before the court at least one time every 3 months for a status hearing on the progress of the defendant toward completion of the terms and conditions set forth in the order; and

v. A notice relating to the provisions of subsection 3 of NRS 174.033.

6. A defendant assigned to a preprosecution diversion program shall pay the cost of any program of treatment required by this section to the extent of his or her financial resources. The court shall not refuse to place a defendant in a program of treatment if the defendant does not have the financial resources to pay any or all of the costs of such program.

7. If restitution is ordered to be paid pursuant to subsection 5, the defendant must make a good faith effort to pay the required amount of restitution in full. If the justice court or municipal court determines that a defendant is unable to pay such restitution, the court must require the defendant to enter into a judgment by confession for the amount of restitution.

(c) **Discharge of defendant upon fulfillment of terms and conditions; termination of participation of defendant and order to appear for arraignment.**[49]

1. If the justice court or municipal court determines that a defendant has successfully completed the terms and conditions of a preprosecution diversion program ordered pursuant to subsection 5 of NRS 174.032, the court must discharge the defendant and dismiss the indictment, information, complaint or citation.

2. Discharge and dismissal pursuant to subsection 1 is without adjudication of guilt and is not a conviction for purposes of employment, civil rights or any statute or regulation or license or questionnaire or for any other public or private purpose. Discharge and

[49] NRS 174.033.

dismissal restores the defendant, in the contemplation of the law, to the status occupied before the indictment, information, complaint or citation. The defendant may not be held thereafter under any law to be guilty of perjury or otherwise giving a false statement by reason of failure to recite or acknowledge the indictment, information, complaint or citation in response to an inquiry made of the defendant for any purpose.

3. If the justice court or municipal court determines that a defendant has not successfully completed the terms or conditions of a preprosecution diversion program ordered pursuant to subsection 5 of NRS 174.032, the court must issue an order terminating the participation of the defendant in the preprosecution diversion program and order the defendant to appear for an arraignment to enter a plea based on the original indictment, information, complaint or citation pursuant to NRS 174.015.

(d) **Sealing of records after discharge.**[50]

1. If the defendant is discharged and the indictment, information, complaint or citation is dismissed pursuant to NRS 174.033, the justice court or municipal court must order sealed all documents, papers and exhibits in the record of the defendant, minute book entries and entries on dockets, and other documents relating to the case in the custody of such other agencies and officers as are named in the order of the court. The court shall order those records sealed without a hearing unless the district attorney petitions the court, for good cause shown, not to seal the records and requests a hearing thereon.
2. If the justice court or municipal court orders the record of a defendant sealed, the defendant must send a copy of the order to each agency or officer named in the order. Each such agency or officer shall notify the court in writing of its compliance with the order.

[50] NRS 174.034.

Rule 18 Pleas

(a) **Types of pleas; procedure for entering plea.**[51]

1. A defendant may plead not guilty, guilty, guilty but mentally ill or, with the consent of the court, nolo contendere. The court may refuse to accept a plea of nolo contendere, guilty or guilty but mentally ill. In all cases involving a misdemeanor, the prosecution and defense may also agree to a plea in abeyance, wherein the defendant pleads guilty to the offense or offenses in the Complaint.
2. A plea in abeyance means that an order by a court, upon motion of the prosecution and the defendant, accepting a plea of guilty or of no contest from the defendant but not, at that time, entering judgment of conviction against him nor imposing sentence upon him on condition that he comply with specific conditions as set forth in a plea in abeyance agreement. In accordance with the order, the proceedings are suspended allowing the defendant to comply with terms and conditions set forth in the plea and abeyance agreement. Any such agreement requires that the defendant waive the right to a speedy trial while the agreement is in place. If at the end of the agreement, the defendant has completed the terms and conditions of the agreement, the agreement shall bind the parties to the terms of the agreement. If the defendant fails to successfully complete the agreement within the timeframe agreed to by the parties, the prosecuting attorney may request that the plea be entered and sentencing proceed. The Court shall require the prosecutor to put on evidence of a violation of the agreement or non-completion of the agreement by the defendant before proceeding to sentencing and shall allow the defendant to contest the prosecutors evidence. In such a hearing, the rules of evidence applicable to a sentencing hearing are applicable.
3. If a plea of guilty or guilty but mentally ill is made in a written plea agreement, the agreement must be in substantially the form prescribed in NRS 174.063. If a plea of guilty or guilty but mentally ill is made orally, the court shall not accept such a plea or a plea of nolo contendere without first addressing the defendant personally and determining that the plea is made voluntarily with understanding of the nature of the charge and consequences of the plea.
4. With the consent of the court and the district attorney, a defendant may enter a conditional plea of guilty, guilty but mentally ill or nolo contendere, reserving in writing the right, on appeal from the judgment, to a review of the adverse determination of any specified pretrial motion. A defendant who prevails on appeal must be allowed to withdraw the plea.
5. Upon an unconditional waiver of a preliminary hearing, a defendant and the district attorney may enter into a written conditional plea agreement, subject to the court accepting the recommended sentence pursuant to the agreement.
6. A plea of guilty but mentally ill must be entered not less than 21 days before the date set for trial. A defendant who has entered a plea of guilty but mentally ill has the burden of establishing the defendant's mental illness by a preponderance of the evidence. Except as otherwise provided by specific statute, a defendant who enters such a plea is subject to the same criminal, civil and administrative penalties and procedures as a defendant who pleads guilty.

[51] NRS 174.035.

7. The defendant may, in the alternative or in addition to any one of the pleas permitted by subsection 1, plead not guilty by reason of insanity. A plea of not guilty by reason of insanity must be entered not less than 21 days before the date set for trial. A defendant who has not so pleaded may offer the defense of insanity during trial upon good cause shown. Under such a plea or defense, the burden of proof is upon the defendant to establish by a preponderance of the evidence that:
    i. Due to a disease or defect of the mind, the defendant was in a delusional state at the time of the alleged offense; and
    ii. Due to the delusional state, the defendant either did not:
        A. Know or understand the nature and capacity of his or her act; or
        B. Appreciate that his or her conduct was wrong, meaning not authorized by law.
8. If a defendant refuses to plead or if the court refuses to accept a plea of guilty or guilty but mentally ill or if a defendant corporation fails to appear, the court shall enter a plea of not guilty.
9. A defendant may not enter a plea of guilty or guilty but mentally ill pursuant to a plea bargain for an offense punishable as a felony for which:
    i. Probation is not allowed; or
    ii. The maximum prison sentence is more than 10 years,

    unless the plea bargain is set forth in writing and signed by the defendant, the defendant's attorney, if the defendant is represented by counsel, and the prosecuting attorney.
10. If the court accepts a plea of guilty but mentally ill pursuant to this section, the court shall cause, within 5 business days after acceptance of the plea, on a form prescribed by the Department of Public Safety, a record of that plea to be transmitted to the Central Repository for Nevada Records of Criminal History along with a statement indicating that the record is being transmitted for inclusion in each appropriate database of the National Instant Criminal Background Check System.
11. As used in this section:
    i. "Disease or defect of the mind" does not include a disease or defect which is caused solely by voluntary intoxication.
    ii. "National Instant Criminal Background Check System" has the meaning ascribed to it in NRS 179A.062.

(b) **Proceedings on plea of guilty or guilty but mentally ill in justice court or municipal court.**[52] In a justice court or municipal court, if the defendant pleads guilty or guilty but mentally ill, 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 the defendant or any information which may be filed by the district attorney.

(c) **Plea bargaining: General requirements; prohibited agreements.**[53]

1. If a prosecuting attorney enters into an agreement with a defendant in which the defendant agrees to testify against another defendant in exchange for a plea of guilty,

[52] NRS 174.055.
[53] NRS 174.061.

guilty but mentally ill or nolo contendere to a lesser charge or for a recommendation of a reduced sentence, the agreement:

i. Is void if the defendant's testimony is false.

ii. Must be in writing and include a statement that the agreement is void if the defendant's testimony is false.

2. A prosecuting attorney shall not enter into an agreement with a defendant which:

i. Limits the testimony of the defendant to a predetermined formula.

ii. Is contingent on the testimony of the defendant contributing to a specified conclusion.

(d) **Written plea agreement for plea of guilty or guilty but mentally ill: Form; contents.**[54]

1. If a plea of guilty or guilty but mentally ill is made in a written plea agreement, the agreement must be substantially in the following form:

Case No. .....
Dept. No. .....

IN THE ..... JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR THE COUNTY OF.....,

The State of Nevada,
PLAINTIFF,

v.

(Name of defendant),
DEFENDANT.

GUILTY OR GUILTY BUT MENTALLY ILL PLEA AGREEMENT

I hereby agree to plead guilty or guilty but mentally ill to: (List charges to which defendant is pleading guilty or guilty but mentally ill), as more fully alleged in the charging document attached hereto as Exhibit 1.

My decision to plead guilty or guilty but mentally ill is based upon the plea agreement in this case which is as follows:

(State the terms of the agreement.)

CONSEQUENCES OF THE PLEA

I understand that by pleading guilty or guilty but mentally ill I admit the facts which support all the elements of the offenses to which I now plead as set forth in Exhibit 1.

I understand that as a consequence of my plea of guilty or guilty but mentally ill I may be imprisoned for a period of not more than (maximum term of imprisonment) and that I (may

[54] NRS 174.063.

or will) be fined up to (maximum amount of fine). I understand that the law requires me to pay an administrative assessment fee.

I understand that, if appropriate, I will be ordered to make restitution to the victim of the offenses to which I am pleading guilty or guilty but mentally ill and to the victim of any related offense which is being dismissed or not prosecuted pursuant to this agreement. I will also be ordered to reimburse the State of Nevada for expenses relating to my extradition, if any.

I understand that I (am or am not) eligible for probation for the offense to which I am pleading guilty or guilty but mentally ill. (I understand that, except as otherwise provided by statute, the question of whether I receive probation is in the discretion of the sentencing judge, or I understand that I must serve a mandatory minimum term of (term of imprisonment) or pay a minimum mandatory fine of (amount of fine) or serve a mandatory minimum term (term of imprisonment) and pay a minimum mandatory fine of (amount of fine).)

I understand that if more than one sentence of imprisonment is imposed and I am eligible to serve the sentences concurrently, the sentencing judge has the discretion to order the sentences served concurrently or consecutively.

I understand that information regarding charges not filed, dismissed charges or charges to be dismissed pursuant to this agreement may be considered by the judge at sentencing.

I have not been promised or guaranteed any particular sentence by anyone. I know that my sentence is to be determined by the court within the limits prescribed by statute. I understand that if my attorney or the State of Nevada or both recommend any specific punishment to the court, the court is not obligated to accept the recommendation.

I understand that the Division of Parole and Probation of the Department of Public Safety may or will prepare a report for the sentencing judge before sentencing. This report will include matters relevant to the issue of sentencing, including my criminal history. I understand that this report may contain hearsay information regarding my background and criminal history. My attorney (if represented by counsel) and I will each have the opportunity to comment on the information contained in the report at the time of sentencing.

WAIVER OF RIGHTS

By entering my plea of guilty or guilty but mentally ill, I understand that I have waived the following rights and privileges:

1. The constitutional privilege against self-incrimination, including the right to refuse to testify at trial, in which event the prosecution would not be allowed to comment to the jury about my refusal to testify.

2. The constitutional right to a speedy and public trial by an impartial jury, free of excessive pretrial publicity prejudicial to the defense, at which trial I would be entitled to the assistance of an attorney, either appointed or retained. At trial, the State would bear the burden of proving beyond a reasonable doubt each element of the offense charged.

3. The constitutional right to confront and cross-examine any witnesses who would testify against me.

4. The constitutional right to subpoena witnesses to testify on my behalf.

5. The constitutional right to testify in my own defense.

6. The right to appeal the conviction, with the assistance of an attorney, either appointed or retained, unless the appeal is based upon reasonable constitutional, jurisdictional or other grounds that challenge the legality of the proceedings and except as otherwise provided in subsection 3 of NRS 174.035.

VOLUNTARINESS OF PLEA

I have discussed the elements of all the original charges against me with my attorney (if represented by counsel) and I understand the nature of these charges against me.

I understand that the State would have to prove each element of the charge against me at trial.

I have discussed with my attorney (if represented by counsel) any possible defenses and circumstances which might be in my favor.

All of the foregoing elements, consequences, rights and waiver of rights have been thoroughly explained to me by my attorney (if represented by counsel).

I believe that pleading guilty or guilty but mentally ill and accepting this plea bargain is in my best interest and that a trial would be contrary to my best interest.

I am signing this agreement voluntarily, after consultation with my attorney (if represented by counsel) and I am not acting under duress or coercion or by virtue of any promises of leniency, except for those set forth in this agreement.

I am not now under the influence of intoxicating liquor, a controlled substance or other drug which would in any manner impair my ability to comprehend or understand this agreement or the proceedings surrounding my entry of this plea.

My attorney (if represented by counsel) has answered all my questions regarding this guilty or guilty but mentally ill plea agreement and its consequences to my satisfaction and I am satisfied with the services provided by my attorney.

Dated: This ..... day of the month of ..... of the year .....

.....
Defendant.

Agreed to on this ..... day of the month of ..... of the year .....

.....
Deputy District Attorney.

2. If the defendant is represented by counsel, the written plea agreement must also include a certificate of counsel that is substantially in the following form:

CERTIFICATE OF COUNSEL

I, the undersigned, as the attorney for the defendant named herein and as an officer of the court hereby certify that:

1. I have fully explained to the defendant the allegations contained in the charges to which guilty or guilty but mentally ill pleas are being entered.

2. I have advised the defendant of the penalties for each charge and the restitution that the defendant may be ordered to pay.

3. All pleas of guilty or guilty but mentally ill offered by the defendant pursuant to this agreement are consistent with all the facts known to me and are made with my advice to the defendant and are in the best interest of the defendant.

4. To the best of my knowledge and belief, the defendant:

(a) Is competent and understands the charges and the consequences of pleading guilty or guilty but mentally ill as provided in this agreement.

(b) Executed this agreement and will enter all guilty or guilty but mentally ill pleas pursuant hereto voluntarily.

(c) Was not under the influence of intoxicating liquor, a controlled substance or other drug at the time of the execution of this agreement.

Dated: This ..... day of the month of ..... of the year .....

.....
Attorney for defendant.

(e) **When plea may specify degree of crime or punishment.**[55] Except as otherwise provided in NRS 174.061:

1. On a plea of guilty or guilty but mentally ill to an information or indictment accusing a defendant of a crime divided into degrees, when consented to by the prosecuting attorney in open court and approved by the court, the plea may specify the degree, and in such event the defendant shall not be punished for a higher degree than that specified in the plea.
2. On a plea of guilty or guilty but mentally ill to an indictment or information for murder of the first degree, when consented to by the prosecuting attorney in open court and approved by the court, the plea may specify a punishment less than death. The specified punishment, or any lesser punishment, may be imposed by a single judge.

[55] NRS 174.065.

PROPOSED NEVADA RULES OF CRIMINAL PROCEDURE

Rule 19 Pleadings before Trial

(a) **Pleadings and motions.**[56]

1. Pleadings in criminal proceedings are the indictment, the information and, in justice court, the complaint, and the pleas of guilty, guilty but mentally ill, not guilty, not guilty by reason of insanity and nolo contendere.
2. All other pleas, demurrers and motions to quash are abolished, and defenses and objections raised before trial which could have been raised by one or more of them may be raised only by motion to dismiss or to grant appropriate relief, as provided in Rule **.

(b) **Proceedings not constituting acquittal; effect of acquittal on merits; proceedings constituting bar to another prosecution; retrial after discharge of jury; effect of voluntary dismissal.**[57]

1. If a defendant was formerly acquitted on the ground of a variance between the indictment, information or complaint and proof, or the indictment, information, or complaint was dismissed upon an objection to its form or substance, or in order to hold a defendant for a higher offense without a judgment of acquittal, it is not an acquittal of the same offense.
2. If a defendant is acquitted on the merits, the defendant is acquitted of the same offense, notwithstanding a defect in the form or substance in the indictment, information, or complaint on which the trial was had.
3. When a defendant is convicted or acquitted, or has been once placed in jeopardy upon an indictment, information or complaint, except as otherwise provided in subsections 5 and 6, the conviction, acquittal or jeopardy is a bar to another indictment, information or complaint for the offense charged in the former, or for an attempt to commit the same, or for an offense necessarily included therein, of which the defendant might have been convicted under that indictment, information or complaint.
4. In all cases where a jury is discharged or prevented from giving a verdict by reason of an accident or other cause, except where the defendant is discharged during the progress of the trial or after the cause is submitted to them, the cause may be again tried.
5. The prosecuting attorney, in a case that the prosecuting attorney has initiated, may voluntarily dismiss a complaint:
    i. Before a preliminary hearing if the crime with which the defendant is charged is a felony or gross misdemeanor; or
    ii. Before trial if the crime with which the defendant is charged is a misdemeanor,

   without prejudice to the right to file another complaint, unless the State of Nevada has previously filed a complaint against the defendant which was dismissed at the request of the prosecuting attorney. After the dismissal, the court shall order the defendant released from custody or, if the defendant is released on bail, exonerate the obligors and release any bail.
6. If a prosecuting attorney files a subsequent complaint after a complaint concerning the same matter has been filed and dismissed against the defendant:

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[56] NRS 174.075

[57] NRS 174.085.

i. The case must be assigned to the same judge to whom the initial complaint was assigned; and
ii. A court shall not issue a warrant for the arrest of a defendant who was released from custody pursuant to subsection 5 or require a defendant whose bail has been exonerated pursuant to subsection 5 to give bail unless the defendant does not appear in court in response to a properly issued summons in connection with the complaint.

7. The prosecuting attorney, in a case that the prosecuting attorney has initiated, may voluntarily dismiss an indictment or information before the actual arrest or incarceration of the defendant without prejudice to the right to bring another indictment or information. After the arrest or incarceration of the defendant, the prosecuting attorney may voluntarily dismiss an indictment or information without prejudice to the right to bring another indictment or information only upon good cause shown to the court and upon written findings and a court order to that effect.

Rule 20 Motions

(a) **In General**

1. *Requirement of writing and signature.* A pretrial motion shall be in writing and signed by the party making the motion or the attorney for that party. Pretrial motions shall be filed within the time set forth in subdivision (d) of this rule. The writing and signature requirements may be waived by: (1) The opposing party; or (2) by Order of the Court after the moving party has demonstrated good cause as to why the Motion could not have been made in writing with the required notice to the opposing party[58].
2. *Grounds and Affidavit.* A pretrial motion shall state the grounds on which it is based and shall include in separately numbered paragraphs all reasons, defenses, or objections then available, which shall be set forth with particularity. If there are multiple charges, a motion filed pursuant to this rule shall specify the particular charge to which it applies. Grounds not stated which reasonably could have been known at the time a motion is filed shall be deemed to have been waived, but a judge for cause shown may grant relief from such waiver. In addition, an affidavit detailing all facts relied upon in support of the motion and signed by a person with personal knowledge of the factual basis of the motion shall be attached.
3. *Service and Notice:* A copy of any pretrial motion and supporting affidavits shall be served on all parties or their attorneys pursuant to Rule 32 at the time the originals are filed. Opposing affidavits shall be served not later than one day before the hearing. For cause shown the requirements of this subdivision may be waived by the court and the time for notice may be shortened.[59]
4. *Memoranda of Law:* The court may require the filing of a memorandum of law, in such form and within such time as the court may direct, as a condition precedent to a hearing on a motion or interlocutory matter. A dispositive motion may not be filed unless accompanied by a memorandum of law, except when otherwise ordered by the court.
5. *Renewal:* Upon a showing that substantial justice requires and good cause similar to the require showing for a Rule 60(b) Motion under the Nevada Rules of Civil Procedure, the court may permit a pretrial motion which has been heard and denied to be renewed.
6. *Certificate of Good Faith:* A certificate of good faith ("certificate") must be filed with any motion, any opposition to a motion, or any reply to an opposition. The certificate shall be signed by the attorney representing the party. If the party is self-represented, the self-represented party must personally sign the certificate. The certificate must indicate that the pleading is filed in good faith and, to the best of the signer's

[58] Based upon NRS 174.125
[59] Based upon NRS 174.125

knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, that:

i. The Motion is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and
ii. The claims asserted within the Motion are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; and
iii. The allegations and other factual contentions within the Motion have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

In the event that the Court or a party believes that the party/attorney has violated the representations in the certificate, the court may follow the procedure under Rule 11(c) of the Nevada Rules of Civil Procedure ("NRCP") in relation to sanctions and may impose such sanctions identified in NRCP Rule 11(c) against the party who violated the representations set forth in the certificate in filing a Motion, Opposition, or Reply.

(b) **Procedure for Submission Of Motions**

1. *Response/Opposition to Motion*: Unless otherwise ordered by the court, any response to a motion filed under NRS 174.105 shall be filed on or before the first business day which falls 10 calendar days, excluding holidays, after service of the motion.
2. *Reply*: Unless otherwise ordered by the court, any reply shall be filed on or before the judicial day which falls 5 calendar days after service of the response.
3. *Request for Submission*: If neither party has advised the court of the filing nor requested a hearing, when the time for filing a response to a motion and the reply has passed, either party may file a request that the motion be submitted for decision ("Request to Submit for Decision"). If a Request to Submit for Decision is filed, the pleading shall be a separate pleading so captioned. The Request to Submit for Decision shall state the date on which the motion was filed, the date on which any response was filed and the date on which any reply was filed. If no party files a written Request to Submit, or the motion has not otherwise been brought to the attention of the court, the motion will not be considered submitted for decision.

(c) **Timing of Motions.**

1. *Thirty Days Rule:* Unless otherwise ordered by the Court or set forth in these rules, all motions in a criminal prosecution that if granted will delay or postpone the time of trial, must be made at least 30 days before trial or prior to the pre-trial conference whichever occurs earlier, or at such time as otherwise order by the court, unless an opportunity to make such a motion before trial did not exist or the moving party was not aware of the grounds for the motion at least 45 days prior to the first day of trial.[60]
2. *Motion for Leave to file Untimely Motion:* In the event that an opportunity to make such a motion before trial did not exist or the moving party was not aware of the grounds for the motion at least 45 days prior to the first day of trial:

[60] Based upon NRS 174.095 and replaces the distinction between single and multiple judge districts in NRS 174.125.

i. If the basis or grounds for such a Motion are discovered prior to trial, a written Motion seeking leave to file the Untimely Motion, which complies with Rule 16, must be filed setting forth the justification for not raising the issue at an earlier date, together with the Motion; or

ii. If the basis or grounds for such a Motion are discovered at trial, a verbal motion for leave may be made, which shall be supported by a statement made under oath, setting forth the justification for not filing a written Motion prior to trial.

3. *Ruling on Motion for Leave to file Untimely Motion:* In ruling on a Motion for Leave, the Court shall determine if the grounds exist to allow the untimely Motion by determining: (1) If the moving party exercised reasonable due diligence prior to seeking leave to file the motion[61]; and (2) Good cause exists which justifies the proposed Motion being brought in an untimely manner. In analyzing the good cause grounds, the Court shall examine the adequacy of the moving party's reasons for failure to comply with applicable rules of procedure and whether the opposing party will be unfairly or unduly prejudiced by the untimely motion.

(d) **Pre-Trial Motions For Self-Represented Defendants.** Whenever an issue concerning the constitutionality of the use of specific evidence against the defendant raises before trial, and the defendant is not represented by counsel, the court shall inform the defendant that:

1. The defendant may, but need not, testify at a pretrial hearing regarding the circumstances surrounding the acquisition of the evidence;
2. If the defendant testifies at the hearing, he or she will be subject to cross-examination by the opposing party;
3. If the defendant does testify at the hearing, he or she does not waive his or her right to remain silent by so testifying; and
4. If the defendant does testify at the hearing, neither this fact nor his or her testimony at the hearing shall be mentioned to the jury unless he or she testifies at trial concerning the same matter.

(e) **Defense Motions[62].**

1. All defenses available to a defendant by plea, other than not guilty, shall only be raised by a motion to dismiss or by a motion to grant appropriate relief.
2. Any defenses and objections based on defects in the institution of the prosecution or in the indictment, information, or complaint must be raised by motion before entry of

[61] The good cause justification required by the rule are soundly based. A defendant waives the right to make certain motions (i.e. Motions to Suppress) if the Motion is not brought before trial commences. The purpose behind such a rule is centered on due process for the State and Defendant to have the issue properly before the Court and considered on its merits. For example, if the court grants a suppression motion and excludes evidence, the rule avoids having the prosecution's appeal rights inadvertently extinguished by double jeopardy protections. Trial courts must adjudicate any suppression issues prior to trial, absent good cause for delaying such rulings until trial. Cf. *Jones v. State*, 395 Md. 97, 909 A.2d 650, 659 (2006) (noting the Maryland procedural rule providing that suppression motions "shall be determined before trial" (citation omitted)). See also *Hill v. State*, 67862, 2016 WL 1616577, at *2 (Nev. App. Apr. 20, 2016) discussing that due diligence must be exercised.

[62] Based upon NRS 174.105.

plea, unless the Court permits the defendant to make file a written motion within a reasonable time thereafter.[63] This provision is subject to the following[64]:

i. If a motion is determined adversely to the defendant, the defendant shall be permitted to plead if the defendant had not previously pleaded. A plea previously entered shall stand.
ii. If the court grants such a motion, the court may also order that bail be continued for a reasonable and specified time pending the filing of a new indictment, information, or complaint.
iii. Nothing in this provision shall be deemed to permit the relating back of a newly filed indictment, information, or complaint to the original filing date of the indictment, information, or complaint for purposes of a statute of limitations.

3. Any other defenses, objections or motions that are capable of determination without trial of the general issue must be raised by motion at least 30 days prior to the commencement of the trial, unless the moving party can demonstrate good cause in that either: (1) An opportunity to make such a motion before trial did not exist; or (2) The moving party was not aware of the grounds for the motion prior to trial.
4. Failure to present any such defense or objection as herein provided constitutes waiver thereof, but the court may, for good cause shown, grant relief from the waiver and permit them to be raised within a reasonable time thereafter.
5. Lack of jurisdiction or the failure of the indictment, information or complaint to charge an offense shall be noticed by the court at any time during the pendency of the proceeding.
6. **TBD

(f) **Amendment of Charging Document.** If prior to the close of the State's Case In Chief, the prosecution discovers that the Information or Complaint needs to be amended because there exists a material variance between the evidence and the allegations of the pleading, the prosecutor may move to amend the pleadings to conform to the evidence. The Court may order that the Complaint or Information be amended to conform to the evidence or grant such other relief as justice requires.

(g) **Dispositive Motions.**

1. The following are considered Dispositive Motions and shall be raised by motion at least 30 days prior to trial, or at such time as otherwise ordered by the court if good cause exists to allow the Motion to be raised later:
   i. Motions to suppress evidence on the grounds that the evidence was illegally obtained;
   ii. Requests for a severance of charges or defendants;
   iii. Matters which go to legality of arrest;
   iv. All motions in limine to exclude or admit evidence;
   v. Motions to dismiss based on former jeopardy;

[63] NRS 174.105 and NRS 174.115.
[64] NRS 174.145 *Effect of Determination.*

vi. Motion for the withdrawal of counsel;
vii. Motions to admit other act evidence under NRS 48.035 or 48.045;
viii. Motion to declare that Defendant is intellectually disabled; or
ix. Motions which by their nature, if granted, delay or postpone the time of trial.

2. *Motion to Suppress Evidence:* A motion to suppress evidence under shall:
   i. Describe with particularity the evidence and/or testimony sought to be suppressed;
   ii. Set forth the standing of the movant to make the motion; and
   iii. Provide specific sufficient legal and factual grounds for the motion to give the opposing party reasonable notice of the issues and enable the court to determine what proceedings are appropriate to address the issues and grounds so raised.
3. *Motions to admit other act evidence under NRS 48.035 or 48.045.* A Motion seeking to have a defendant declared intellectually disabled shall:
   i. The party seeking to introduce the evidence must file a Motion which states with particularity the evidence and/or testimony sought to be introduced;
   ii. The motion must state why the evidence is relevant to the crime charged and the particular portion of the statute that would allow its admission;
   iii. At the hearing on the Motion, the party seeking to introduce the evidence must prove by clear and convincing evidence the particular act(s); and
   iv. The motion and evidence must establish that the probative value is not substantially outweighed by the danger of unfair prejudice.
4. *Motion to declare that Defendant is intellectually disabled.*[65] A Motion seeking to have a defendant, who is charged with murder in the first degree and the State is seeking to impose the death penalty, declared intellectually disabled shall be subject to the following:
   i. Be filed not less than 60[66] days prior the date set for the pre-trial conference[67], file a motion to declare that the defendant is intellectually disabled.
   ii. If a defendant files a motion pursuant to this section, the court shall:
      A. Stay the proceedings pending a decision on the issue of intellectual disability; and
      B. Hold a hearing within a reasonable time before the trial to determine whether the defendant is intellectually disabled.
   iii. The court shall order the defendant to:
      A. Provide evidence which demonstrates that the defendant is intellectually disabled not less than 30 days before the date set for a hearing conducted pursuant to subsection (d)(ii); and

[65] NRS 174.098. ***This portion of the rule should be decided by the committee that is analyzing these issues and maybe a section of special death penalty case provisions should be created by a separate rule.***

[66] This was originally set for ten days. Given the reality of death penalty cases and the time it takes to get to a trial, it would seem that this issue could and should be resolved at a much earlier stage than in the last days before a trial.

[67] Statute provides trial. One of the goals of the Motion committee was to have these issues addressed at earlier dates.

B. Undergo an examination by an expert selected by the prosecution on the issue of whether the defendant is intellectually disabled at least 15 days before the date set for a hearing pursuant to subsection (d)(ii).

iv. For the purpose of the hearing conducted pursuant to subsection (d)(ii), there is no privilege for any information or evidence provided to the prosecution or obtained by the prosecution pursuant to subsection (d)(iii).

v. At a hearing conducted pursuant to subsection (d)(ii):

A. The court must allow the defendant and the prosecution to present evidence and conduct a cross-examination of any witness concerning whether the defendant is intellectually disabled; and

B. The defendant has the burden of proving by a preponderance of the evidence that the defendant is intellectually disabled.

vi. If the court determines based on the evidence presented at a hearing conducted pursuant to subsection 2 that the defendant is intellectually disabled, the court must make such a finding in the record and strike the notice of intent to seek the death penalty. Such a finding may be appealed pursuant to NRS 177.015.

vii. For the purposes of this section of the Rule, "intellectually disabled" means significant subaverage general intellectual functioning which exists concurrently with deficits in adaptive behavior and manifested during the developmental period.

Rule 21 Joinder/Consolidation of Cases and Relief Therefrom

(a) **Trial together of indictments or informations.**[68] The court may order two or more indictments or informations or both to be tried together if the offenses, and the defendants if there is more than one, could have been joined in a single indictment or information. The procedure shall be the same as if the prosecution were under such single indictment or information.

(b) **A motion to consolidate cases.**[69] A motion to consolidate cases shall be heard by the judge assigned to the first case filed. Notice of a motion to consolidate cases shall be given to all parties in each case. The order denying or granting the motion shall be filed in each case.

(c) **Case number.**[70] If a motion to consolidate is granted, the case number of the first case filed shall be used for all subsequent papers and the case shall be heard by the judge assigned to the first case. The presiding judge may assign the case to another judge for good cause.

(d) **Relief from prejudicial joinder.**[71]

1. If it appears that a defendant or the State of Nevada is prejudiced by a joinder of offenses or of defendants in an indictment or information, or by such joinder for trial together, the court may order an election or separate trials of counts, grant a severance of defendants or provide whatever other relief justice requires.
2. In ruling on a motion by a defendant for severance the court may order the district attorney to deliver to the court for inspection in chambers any statements or confessions made by the defendants which the State intends to introduce in evidence at the trial.

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[68] NRS 174.155.

[69]

[70] .

[71] NRS 174.165.

Rule 22 Depositions

(a) **Applicability.**[72] The provisions of NRS 174.171 to 174.225, inclusive, do not apply to a deposition taken pursuant to NRS 174.227 or used pursuant to NRS 174.228, or both.

(b) **When taken.**[73]

1. If it appears that a prospective witness is an older person or a vulnerable person or may be unable to attend or prevented from attending a trial or hearing, that the witness's testimony is material and that it is necessary to take the witness's deposition in order to prevent a failure of justice, the court at any time after the filing of an indictment, information or complaint may, upon motion of a defendant or of the State and notice to the parties, order that the witness's testimony be taken by deposition and that any designated books, papers, documents or tangible objects, not privileged, be produced at the same time and place. If the motion is for the deposition of an older person or a vulnerable person, the court may enter an order to take the deposition only upon good cause shown to the court. If the deposition is taken upon motion of the State, the court shall order that it be taken under such conditions as will afford to each defendant the opportunity to confront the witnesses against him or her.
2. If a witness is committed for failure to give bail to appear to testify at a trial or hearing, the court, on written motion of the witness and upon notice to the parties, may direct that the witness's deposition be taken. After the deposition has been subscribed, the court may discharge the witness.
3. This section does not apply to the prosecutor, or to an accomplice in the commission of the offense charged.
4. As used in this section:
   (a) "Older person" means a person who is 70 years of age or older.
   (b) "Vulnerable person" has the meaning ascribed to it in NRS 200.5092.

(c) **Notice of taking.**[74] The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined. On motion of a party upon whom the notice is served, the court for cause shown may extend or shorten the time.

(d) **Defendant's counsel and payment of expenses.**[75] If a defendant is without counsel the court shall advise the defendant of his or her right and assign counsel to represent the defendant unless the defendant elects to proceed without counsel or is able to obtain counsel. If it appears that a defendant at whose instance a deposition is to be taken cannot bear the expense thereof, the court may direct that the expenses of the court reporter and of travel and subsistence of the defendant's attorney for attendance at the examination must be paid as provided in NRS 7.135.

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[72] NRS 174.171.
[73] NRS 174.175.
[74] NRS 174.185.
[75] NRS 174.195.

(e) **How taken.**[76] A deposition shall be taken in the manner provided in civil actions. The court at the request of a defendant may direct that a deposition be taken on written interrogatories in the manner provided in civil actions.

(f) **Use of deposition.**[77]

1. At the trial or upon any hearing, a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used if it appears:
    i. That the witness is dead;
    ii. That the witness is out of the State of Nevada, unless it appears that the absence of the witness was procured by the party offering the deposition;
    iii. That the witness cannot attend or testify because of sickness or infirmity;
    iv. That the witness has become of unsound mind; or
    v. That the party offering the deposition could not procure the attendance of the witness by subpoena.
2. Any deposition may also be used by any party to contradict or impeach the testimony of the deponent as a witness.
3. If only a part of a deposition is offered in evidence by a party, an adverse party may require the party to offer all of it which is relevant to the part offered and any party may offer other parts.

(g) **Objections to admissibility.**[78] Objections to receiving in evidence a deposition or part thereof may be made as provided in civil actions.

(h) **Videotaped depositions: Order of court; notice to parties; cross-examination; use.**[79]

1. A court on its own motion or on the motion of the district attorney may, for good cause shown, order the taking of a videotaped deposition of:
    i. A victim of sexual abuse as that term is defined in NRS 432B.100;
    ii. A prospective witness in any criminal prosecution if the witness is less than 14 years of age; or
    iii. A victim of sex trafficking as that term is defined in subsection 2 of NRS 201.300. There is a rebuttable presumption that good cause exists where the district attorney seeks to take the deposition of a person alleged to be the victim of sex trafficking.

   The court may specify the time and place for taking the deposition and the persons who may be present when it is taken.
2. The district attorney shall give every other party reasonable written notice of the time and place for taking the deposition. The notice must include the name of the person to be examined. On the motion of a party upon whom the notice is served, the court:
   (a) For good cause shown may release the address of the person to be examined; and
   (b) For cause shown may extend or shorten the time.
3. If at the time such a deposition is taken, the district attorney anticipates using the deposition at trial, the court shall so state in the order for the deposition and the accused

[76] NRS 174.205.
[77] NRS 174.215.
[78] NRS 174.225.
[79] NRS 174.227.

must be given the opportunity to cross-examine the deponent in the same manner as permitted at trial.

4. Except as limited by NRS 174.228, the court may allow the videotaped deposition to be used at any proceeding in addition to or in lieu of the direct testimony of the deponent. It may also be used by any party to contradict or impeach the testimony of the deponent as a witness. If only a part of the deposition is offered in evidence by a party, an adverse party may require the party to offer all of it which is relevant to the part offered and any party may offer other parts.

(i) **Videotaped depositions: Use.**[80] A court may allow a videotaped deposition to be used instead of the deponent's testimony at trial only if:

1. In the case of a victim of sexual abuse, as that term is defined in NRS 432B.100:
    i. Before the deposition is taken, a hearing is held by a justice of the peace or district judge who finds that:
        A. The use of the videotaped deposition in lieu of testimony at trial is necessary to protect the welfare of the victim; and
        B. The presence of the accused at trial would inflict trauma, more than minimal in degree, upon the victim; and
    ii. At the time a party seeks to use the deposition, the court determines that the conditions set forth in subparagraphs (1) and (2) of paragraph (a) continue to exist. The court may hold a hearing before the use of the deposition to make its determination.
2. In the case of a victim of sex trafficking as that term is defined in subsection 2 of NRS 201.300:
    i. Before the deposition is taken, a hearing is held by a justice of the peace or district judge and the justice or judge finds that cause exists pursuant to paragraph (c) of subsection 1 of NRS 174.227; and
    ii. Before allowing the videotaped deposition to be used at trial, the court finds that the victim is unavailable as a witness.
3. In all cases:
    i. A justice of the peace or district judge presides over the taking of the deposition;
    ii. The accused is able to hear and see the proceedings;
    iii. The accused is represented by counsel who, if physically separated from the accused, is able to communicate orally with the accused by electronic means.
    iv. The accused is given an adequate opportunity to cross-examine the deponent subject to the protection of the deponent deemed necessary by the court; and
    v. The deponent testifies under oath.

(j) **Videotaped testimony.**[81] If a prospective witness who is scheduled to testify before a grand jury or at a preliminary hearing is less than 14 years of age, the court shall, upon the motion of the district attorney, and may, upon its own motion, order the child's testimony to be videotaped at the time it is given.

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[80] NRS 174.228.
[81] NRS 174.229.

(k) **Effect of NRS 174.227, 174.228 and 174.229.**[82] The provisions of NRS 174.227, 174.228 and 174.229 do not preclude:

1. The submission of videotaped depositions or testimony which are otherwise admissible as evidence in court.
2. A victim or prospective witness from testifying at a proceeding without the use of his or her videotaped deposition or testimony.

[82] NRS 174.231.

Rule 23 Discovery

(a) **Disclosure by defendant of intent to claim alibi; defendant to disclose list of alibi witnesses; prosecuting attorney to disclose list of rebuttal witnesses; continuing duty to disclose; sanctions.**[83]

1. In addition to the written notice required by NRS 174.234, a defendant in a criminal case who intends to offer evidence of an alibi in his or her defense shall, not less than 10 days before trial or at such other time as the court may direct, file and serve upon the prosecuting attorney a written notice of the defendant's intention to claim the alibi. The notice must contain specific information as to the place at which the defendant claims to have been at the time of the alleged offense and, as particularly as are known to defendant or the defendant's attorney, the names and last known addresses of the witnesses by whom the defendant proposes to establish the alibi.
2. Not less than 10 days after receipt of the defendant's list of witnesses, or at such other time as the court may direct, the prosecuting attorney shall file and serve upon the defendant the names and last known addresses, as particularly as are known to the prosecuting attorney, of the witnesses the State proposes to offer in rebuttal to discredit the defendant's alibi at the trial of the cause.
3. Both the defendant and the prosecuting attorney have a continuing duty to disclose promptly the names and last known addresses of additional witnesses which come to the attention of either party after filing their respective lists.
4. If a defendant fails to file and serve a copy of the notice required by this section, the court may exclude evidence offered by the defendant to prove an alibi, except the testimony of the defendant. If the notice is given by a defendant, the court may exclude the testimony of any witness offered by the defendant to prove an alibi if the name and last known address of the witness, as particularly as are known to the defendant or the defendant's attorney, are not stated in the notice.
5. If the prosecuting attorney fails to file and serve a copy on the defendant of a list of witnesses as required by this section, the court may exclude evidence offered by the State in rebuttal to the defendant's evidence of alibi. If the list is filed and served by the prosecuting attorney, the court may exclude the testimony of any witness offered by the prosecuting attorney for the purpose of rebutting the evidence of alibi if the name and last known address of the witness, as particularly as are known to the prosecuting attorney, are not stated in the notice. For good cause shown the court may waive the requirements of this section.

(b) **Reciprocal disclosure of lists of witnesses and information relating to expert testimony; continuing duty to disclose; protective orders; sanctions.**[84]

1. Except as otherwise provided in this section, not less than 5 judicial days before trial or at such other time as the court directs:
    i. If the defendant will be tried for one or more offenses that are punishable as a gross misdemeanor or felony:
        A. The defendant shall file and serve upon the prosecuting attorney a written notice containing the names and last known addresses of all witnesses the defendant intends to call during the case in chief of the defendant; and

[83] NRS 174.233.
[84] NRS 174.234.

B. The prosecuting attorney shall file and serve upon the defendant a written notice containing the names and last known addresses of all witnesses the prosecuting attorney intends to call during the case in chief of the State.

ii. If the defendant will not be tried for any offenses that are punishable as a gross misdemeanor or felony:

A. The defendant shall file and serve upon the prosecuting attorney a written notice containing the name and last known address of any witness the defendant intends to call during the case in chief of the defendant whose name and last known address have not otherwise been provided to the prosecuting attorney pursuant to NRS 174.245; and

B. The prosecuting attorney shall file and serve upon the defendant a written notice containing the name and last known address or place of employment of any witness the prosecuting attorney intends to call during the case in chief of the State whose name and last known address or place of employment have not otherwise been provided to the defendant pursuant to NRS 171.1965 or 174.235.

2. If the defendant will be tried for one or more offenses that are punishable as a gross misdemeanor or felony and a witness that a party intends to call during the case in chief of the State or during the case in chief of the defendant is expected to offer testimony as an expert witness, the party who intends to call that witness shall file and serve upon the opposing party, not less than 21 days before trial or at such other time as the court directs, a written notice containing:
   i. A brief statement regarding the subject matter on which the expert witness is expected to testify and the substance of the testimony;
   ii. A copy of the curriculum vitae of the expert witness; and
   iii. A copy of all reports made by or at the direction of the expert witness.
3. After complying with the provisions of subsections 1 and 2, each party has a continuing duty to file and serve upon the opposing party:
   i. Written notice of the names and last known addresses of any additional witnesses that the party intends to call during the case in chief of the State or during the case in chief of the defendant. A party shall file and serve written notice pursuant to this paragraph as soon as practicable after the party determines that the party intends to call an additional witness during the case in chief of the State or during the case in chief of the defendant. The court shall prohibit an additional witness from testifying if the court determines that the party acted in bad faith by not including the witness on the written notice required pursuant to subsection 1.
   ii. Any information relating to an expert witness that is required to be disclosed pursuant to subsection 2. A party shall provide information pursuant to this paragraph as soon as practicable after the party obtains that information. The court shall prohibit the party from introducing that information in evidence or shall prohibit the expert witness from testifying if the court determines that the party acted in bad faith by not timely disclosing that information pursuant to subsection 2.
4. Each party has a continuing duty to file and serve upon the opposing party any change in the last known address, or, if applicable, last known place of employment, of any witness

that the party intends to call during the case in chief of the State or during the case in chief of the defendant as soon as practicable after the party obtains that information.

5. Upon a motion by either party or the witness, the court shall prohibit disclosure to the other party of the address of the witness if the court determines that disclosure of the address would create a substantial threat to the witness of bodily harm, intimidation, coercion or harassment. If the court prohibits disclosure of an address pursuant to this subsection, the court shall, upon the request of a party, provide the party or the party's attorney or agent with an opportunity to interview the witness in an environment that provides for protection of the witness.
6. In addition to the sanctions and protective orders otherwise provided in subsections 3 and 5, the court may upon the request of a party:
    i. Order that disclosure pursuant to this section be denied, restricted or deferred pursuant to the provisions of NRS 174.275; or
    ii. Impose sanctions pursuant to subsection 2 of NRS 174.295 for the failure to comply with the provisions of this section.
7. A party is not entitled, pursuant to the provisions of this section, to the disclosure of the name or address of a witness or any other type of item or information that is privileged or protected from disclosure or inspection pursuant to the Constitution or laws of this state or the Constitution of the United States.

(c) **Disclosure by prosecuting attorney of evidence relating to prosecution; limitations.**[85]

1. Except as otherwise provided in NRS 174.233 to 174.295, inclusive, at the request of a defendant, the prosecuting attorney shall permit the defendant to inspect and to copy or photograph any:
    i. Written or recorded statements or confessions made by the defendant, or any written or recorded statements made by a witness the prosecuting attorney intends to call during the case in chief of the State, or copies thereof, within the possession, custody or control of the State, the existence of which is known, or by the exercise of due diligence may become known, to the prosecuting attorney;
    ii. Results or reports of physical or mental examinations, scientific tests or scientific experiments made in connection with the particular case, or copies thereof, within the possession, custody or control of the State, the existence of which is known, or by the exercise of due diligence may become known, to the prosecuting attorney; and
    iii. Books, papers, documents, tangible objects, or copies thereof, which the prosecuting attorney intends to introduce during the case in chief of the State and which are within the possession, custody or control of the State, the existence of which is known, or by the exercise of due diligence may become known, to the prosecuting attorney.
2. The defendant is not entitled, pursuant to the provisions of this section, to the discovery or inspection of:
    i. An internal report, document or memorandum that is prepared by or on behalf of the prosecuting attorney in connection with the investigation or prosecution of the case.

[85] NRS 174.235.

ii. A statement, report, book, paper, document, tangible object or any other type of item or information that is privileged or protected from disclosure or inspection pursuant to the Constitution or laws of this state or the Constitution of the United States.

3. The provisions of this section are not intended to affect any obligation placed upon the prosecuting attorney by the Constitution of this state or the Constitution of the United States to disclose exculpatory evidence to the defendant.

(d) **Disclosure by defendant of evidence relating to defense; limitations.**[86]

1. Except as otherwise provided in NRS 174.233 to 174.295, inclusive, at the request of the prosecuting attorney, the defendant shall permit the prosecuting attorney to inspect and to copy or photograph any:
   i. Written or recorded statements made by a witness the defendant intends to call during the case in chief of the defendant, or copies thereof, within the possession, custody or control of the defendant, the existence of which is known, or by the exercise of due diligence may become known, to the defendant;
   ii. Results or reports of physical or mental examinations, scientific tests or scientific experiments that the defendant intends to introduce in evidence during the case in chief of the defendant, or copies thereof, within the possession, custody or control of the defendant, the existence of which is known, or by the exercise of due diligence may become known, to the defendant; and
   iii. Books, papers, documents or tangible objects that the defendant intends to introduce in evidence during the case in chief of the defendant, or copies thereof, within the possession, custody or control of the defendant, the existence of which is known, or by the exercise of due diligence may become known, to the defendant.
2. The prosecuting attorney is not entitled, pursuant to the provisions of this section, to the discovery or inspection of:
   i. An internal report, document or memorandum that is prepared by or on behalf of the defendant or the defendant's attorney in connection with the investigation or defense of the case.
   ii. A statement, report, book, paper, document, tangible object or any other type of item or information that is privileged or protected from disclosure or inspection pursuant to the Constitution or laws of this state or the Constitution of the United States.

(e) **Protective orders.**[87] Upon a sufficient showing, the court may at any time order that discovery or inspection pursuant to NRS 174.234 to 174.295, inclusive, be denied, restricted or deferred, or make such other order as is appropriate. Upon motion by the defendant or prosecuting attorney, the court may permit the defendant or prosecuting attorney to make such showing, in whole or in part, in the form of a written statement to be inspected by the court in chambers. If the court enters an order granting relief following a showing in chambers, the entire text of the written statement must be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.

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[86] NRS 174.245.
[87] NRS 174.275.

(f) **Time limits.**[88]

1. A request made pursuant to NRS 174.235 or 174.245 may be made only within 30 days after arraignment or at such reasonable later time as the court may permit. A subsequent request may be made only upon a showing of cause why the request would be in the interest of justice.
2. A party shall comply with a request made pursuant to NRS 174.235 or 174.245 not less than 30 days before trial or at such reasonable later time as the court may permit.

(g) **Continuing duty to disclose; failure to comply; sanctions.**[89]

1. If, after complying with the provisions of NRS 174.235 to 174.295, inclusive, and before or during trial, a party discovers additional material previously requested which is subject to discovery or inspection under those sections, the party shall promptly notify the other party or the other party's attorney or the court of the existence of the additional material.
2. If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with the provisions of NRS 174.234 to 174.295, inclusive, the court may order the party to permit the discovery or inspection of materials not previously disclosed, grant a continuance, or prohibit the party from introducing in evidence the material not disclosed, or it may enter such other order as it deems just under the circumstances.

[88] NRS 174.285.
[89] NRS 174.295.

Rule 24 Subpoena

(a) **Subpoena for attendance of witnesses; form; issuance.**[90] Except as provided in NRS 172.195 and 174.315:

1. A subpoena must be issued by the clerk under the seal of the court. It must state the name of the court and the title, if any, of the proceeding, and must command each person to whom it is directed to attend and give testimony at the time and place specified therein. The clerk shall issue a subpoena, signed and sealed but otherwise in blank, to a party requesting it, who shall fill in the blanks before it is served.
2. A subpoena must be issued by a justice of the peace in a proceeding before the justice of the peace under the seal of the court.

(b) **Issuance of subpoena by prosecuting attorney or attorney for defendant; promise to appear; informing witness of general nature of grand jury's inquiry; calendaring of certain subpoenas.**[91]

1. A prosecuting attorney may issue subpoenas subscribed by the prosecuting attorney for witnesses within the State, in support of the prosecution or whom a grand jury may direct to appear before it, upon any investigation pending before the grand jury.
2. A prosecuting attorney or an attorney for a defendant may issue subpoenas subscribed by the issuer for:
    i. Witnesses within the State to appear before the court at which a preliminary hearing is to be held or an indictment, information or criminal complaint is to be tried.
    ii. Witnesses already subpoenaed who are required to reappear in any Justice Court at any time the court is to reconvene in the same case within 60 days, and the time may be extended beyond 60 days upon good cause being shown for its extension.
3. Witnesses, whether within or outside of the State, may accept delivery of a subpoena in lieu of service, by a written or oral promise to appear given by the witness. Any person who accepts an oral promise to appear shall:
    i. Identify himself or herself to the witness by name and occupation;
    ii. Make a written notation of the date when the oral promise to appear was given and the information given by the person making the oral promise to appear identifying the person as the witness subpoenaed; and
    iii. Execute a certificate of service containing the information set forth in paragraphs (a) and (b).
4. A peace officer may accept delivery of a subpoena in lieu of service, via electronic means, by providing a written promise to appear that is transmitted electronically by any appropriate means, including, without limitation, by electronic mail transmitted through the official electronic mail system of the law enforcement agency which employs the peace officer.
5. A prosecuting attorney shall orally inform any witness subpoenaed as provided in subsection 1 of the general nature of the grand jury's inquiry before the witness testifies. Such a statement must be included in the transcript of the proceedings.

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[90] NRS 174.305.
[91] NRS 174.315.

6. Any subpoena issued by an attorney for a defendant for a witness to appear before the court at which a preliminary hearing is to be held must be calendared by filing a motion that includes a notice of hearing setting the matter for hearing not less than 2 full judicial days after the date on which the motion is filed. A prosecuting attorney may oppose the motion orally in open court. A subpoena that is properly calendared pursuant to this subsection may be served on the witness unless the court quashes the subpoena.

(c) **Production of prisoner as witness.**[92]

1. When it is necessary to have a person imprisoned in the state prison brought before any district court, or a person imprisoned in the county jail brought before a district court sitting in another county, an order for that purpose may be made by the district court or district judge, at chambers, and executed by the sheriff of the county when it is made. The order can only be made upon motion of a party upon affidavit showing the nature of the action or proceeding, the testimony expected from the witness, and its materiality.
2. When a person required as a witness before a district court is imprisoned, the judge thereof may order the sheriff to bring the prisoner before the court at the expense of the State or, in the judge's discretion, at the expense of the defendant.

(d) **Subpoena for production of documentary evidence and of objects.**[93]

1. Except as otherwise provided in NRS 172.139, a subpoena may also command the person to whom it is directed to produce the books, papers, documents or other objects designated therein.
2. The court on motion made promptly may quash or modify the subpoena if compliance would be unreasonable or oppressive.
3. The court may direct that books, papers, documents or objects designated in the subpoena be produced before the court at a time before the trial or before the time when they are to be offered in evidence and may, upon their production, permit the books, papers, documents or objects or portions thereof to be inspected by the parties and their attorneys.

(e) **Service of subpoena.**[94]

1. Except as otherwise provided in NRS 174.315 and subsection 2, a subpoena may be served by a peace officer or by any other person who is not a party and who is not less than 18 years of age. Except as otherwise provided in NRS 289.027, service of a subpoena must be made by delivering a copy thereof to the person named.
2. Except as otherwise provided in NRS 174.315, a subpoena to attend a misdemeanor trial may be served by mailing the subpoena to the person to be served by registered or certified mail, return receipt requested from that person, in a sealed postpaid envelope, addressed to the person's last known address, not less than 10 days before the trial which the subpoena commands the person to attend.
3. If a subpoena is served by mail, a certificate of the mailing must be filed with the court within 2 days after the subpoena is mailed.

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92 NRS 174.325.
93 NRS 174.335.
94 NRS 174.345.

(f) **Place of service.**[95] A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the State of Nevada.

(g) **Subpoena for taking depositions; place of examination.**[96]

1. An order to take a deposition authorizes the issuance by the clerk of the court for the county in which the deposition is to be taken of subpoenas for the persons named or described therein.
2. A resident of this state may be required to attend an examination only in the county wherein the resident resides or is employed or transacts business in person. A nonresident of this state may be required to attend only in the county where the nonresident is served with a subpoena or within 40 miles from the place of service or at such other place as is fixed by the court.

(h) **Contempt.**[97] Failure by any person without an adequate excuse to obey a subpoena of a court, a prosecuting attorney or an attorney for a defendant served upon the person or, in the case of a subpoena issued by a prosecuting attorney or an attorney for a defendant, delivered to the person and accepted, shall be deemed a contempt of the court from which the subpoena issued or, in the case of a subpoena issued by a prosecuting attorney or an attorney for a defendant, of the court in which a preliminary hearing is to be held, an investigation is pending or an indictment, information or complaint is to be tried.

[95] NRS 174.365.
[96] NRS 174.375
[97] NRS 174.385

Rule 25 Attendance of Witness Outside State

(a) **Definitions.**[98] As used in NRS 174.395 to 174.445, inclusive:

1. "State" shall include any territory of the United States and the District of Columbia.
2. "Summons" shall include a subpoena, order or other notice requiring the appearance of a witness.
3. "Witness" shall include a person whose testimony is desired in any proceeding or investigation by a grand jury or in a criminal action, prosecution or proceeding.

(b) **Summoning witness in this State to testify in another state.**[99]

1. If a judge of a court of record in any state which by its laws has made provision for commanding persons within that state to attend and testify in this State certifies under the seal of such court that there is a criminal prosecution pending in such court, or that a grand jury investigation has commenced or is about to commence, that a person being within this State is a material witness in such prosecution, or grand jury investigation, and that the person's presence will be required for a specified number of days, upon presentation of such certificate to any judge of a court of record in the county in which such person is, such judge shall fix a time and place for a hearing, and shall make an order directing the witness to appear at a time and place certain for the hearing.
2. If at a hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution or a grand jury investigation in the other state, and that the laws of the state in which the prosecution is pending, or grand jury investigation has commenced or is about to commence (and of any other state through which the witness may be required to pass by ordinary course of travel), will give the witness protection from arrest and the service of civil and criminal process, the judge shall issue a summons, with a copy of the certificate attached, directing the witness to attend and testify in the court where the prosecution is pending, or where a grand jury investigation has commenced or is about to commence at a time and place specified in the summons. In any such hearing the certificate shall be prima facie evidence of all the facts stated therein.
3. If the certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting state to assure the witness's attendance in the requesting state, such judge may, in lieu of notification of the hearing, direct that such witness be forthwith brought before the judge for hearings; and the judge at the hearing being satisfied of the desirability of such custody and delivery, for which determination the certificate shall be prima facie proof of such desirability, may, in lieu of issuing subpoena or summons, order that the witness be forthwith taken into custody and delivered to an officer of the requesting state.
4. If the witness, who is summoned as above provided, after being paid or tendered by some properly authorized person the amount required by NRS 50.225 for subsistence and travel expenses, fails without good cause to attend and testify as directed in the

[98] NRS 174.405.
[99] NRS 174.415.

summons, the witness shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this State.

(c) **Witness from another state summoned to testify in this State.**[100]

1. If a person in any state, which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions, or grand jury investigations commenced or about to commence, in this State, is a material witness in a prosecution pending in a court of record in this State, or in a grand jury investigation which has commenced or is about to commence, a judge of such a court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. The certificate may include a recommendation that the witness be taken into immediate custody and delivered to an officer of this State to ensure the witness's attendance in this State. This certificate must be presented to a judge of a court of record in the county in which the witness is found.
2. If the witness is summoned to attend and testify in this State the witness is entitled to receive the amount required by NRS 50.225 for subsistence and travel expenses. A witness who has appeared in accordance with the provisions of the summons shall not be required to remain within this State a longer period of time than the period mentioned in the certificate unless otherwise ordered by the court. If such witness, after coming into this State, fails without good cause to attend and testify as directed in the summons, the witness shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this State.

(d) **Exemption from arrest and service of process.**[101]

1. If a person comes into this state in obedience to a summons directing the person to attend and testify in this state the person shall not while in this state pursuant to such summons be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before the person's entrance into this state under the summons.
2. If a person passes through this state while going to another state in obedience to a summons to attend and testify in that state or while returning therefrom, the person shall not while so passing through this state be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before the person's entrance into this state under the summons.

(e) **Uniformity of interpretation.**[102] NRS 174.395 to 174.445, inclusive, shall be so interpreted and construed as to effectuate their general purpose to make uniform the law of the states which enact them.

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100 NRS 174.425.
101 NRS 174.435.
102 NRS 174.445.

PROPOSED NEVADA RULES OF CRIMINAL PROCEDURE

Rule 26 Pre-trial Conference[103]

(a) **Pre-trial Conference.** Unless otherwise ordered by the trial court, the trial court shall hold a scheduled mandatory pre-trial conference with trial counsel present at least 30 days prior to a trial to consider such matters as will promote a fair and expeditious trial. The defendant shall be present unless he waives his right to appear and the Court orders that the Defendant not be required to appear.

(b) **Dispositive Motions.** Any motion, defense or objection not previously raised by motion prior to the pre-trial conference as required under the Nevada Rules of Criminal Procedure shall be precluded, unless the basis thereof was not then known, and by the exercise of reasonable diligence could not then have been known, and the party raises the issue promptly upon learning of it.

(c) **Issues, Jury Instructions.** The parties shall identify the issues of fact which must be determined at trial by the trier of fact and, if a jury trial is to be held, provide the Court with written jury instructions for consideration.

(d) **Pretrial Order.** At the conclusion of the conference, a pretrial order shall set out the matters ruled upon. Any stipulations made shall be signed by counsel, approved by the court and filed, and shall be binding upon the parties at trial, on appeal, and in postconviction proceedings unless set aside or modified by the court.

[103] Partly replaces NRS 174.135.

Rule 27 [Reserved]

Rule 28 [Reserved]

PROPOSED NEVADA RULES OF CRIMINAL PROCEDURE

TITLE V. VENUE

Rule 29 Disability/Disqualification Of A Judge

(a) **Disability After Start Of Trial.** If, by reason of death, sickness, or other disability, the judge before whom a trial has begun is unable to continue with the trial, any other judge of that court or any judge assigned by the Administrative Office of the Courts, upon certifying that the judge is familiar with the record of the trial, may, unless otherwise disqualified, proceed with and finish the trial, but if the assigned judge is satisfied that neither he nor another substitute judge can proceed with the trial, the judge may, in his discretion, grant a new trial.

(b) **Disability After Trial Completed, Prior To Sentencing.** If, by reason of death, sickness, or other disability, the judge before whom a defendant has been tried is unable to perform the duties required of the court after a verdict of guilty, any other judge of that district or township or any other judge assigned by the Administrative Office of the Courts may perform those duties.

(c) **Disqualification of Judge:**

1. Disqualification of a Judge is governed by NRS 1.230 *et. seq.* and the Nevada Code of Judicial Conduct ("NCJC"). The party seeking disqualification must file a Motion to Disqualify and shall comply with the provisions in Rule ** pertaining to Motions.
2. If a Motion to Disqualify is filed, the other parties to the action may not file an opposition to the motion and if any response is filed it will not be considered. The moving party need not file a Request to Submit for Decision. The motion will be submitted for decision upon filing in accordance with the NRS 1.235 and may be decided under the statutory provision in chapter 1 of the NRS or under NCJC.
3. Should the assigned judge file an answer in response to the Motion for Disqualification in accordance with NRS 1.235(6), no party is allowed to file a responsive pleading to the Answer filed by the judge.

Rule 30 Change of Judge As A Matter of Right[104]

(a) **Notice of change.** In any criminal action commenced after July 1, 2019 in any district or justice court, all parties joined in the action may, by unanimous agreement and without cause, change the judge assigned to the action by filing a written notice of a peremptory challenge and request for change of judge.

(b) **Contents of Notice.** The parties shall send a copy of the notice to the assigned judge, and, in districts with more than one judge, to the presiding judge. The notice shall be signed by: The district attorney or assigned deputy district attorney; The Defendant(s) personally; and By each attorney appearing in the action as a representative of a defendant to the action. The notice shall state in separate clearly identified sections:

1. The name of the assigned judge;
2. The date on which the action was commenced through the filing of a complaint in the justice's court;
3. That all parties joined in the action have agreed to the change;
4. That no other persons are expected to be named as parties;
5. Either:
    i. The date of the advisement/arraignment of the charges on a misdemeanor in justice's court;
    ii. The date of the bindover/indictment on a felony or gross misdemeanor charge in a single judge district; or
    iii. The date of arraignment in a multiple judge district; and

That a good faith effort has been made to serve all parties named in the pleadings.

Failure to follow the exact requirements of this subsection renders the notice invalid and precludes any change of judge under this rule.

(c) **Restrictions.** The notice shall not specify any reason for the change of judge. Under no circumstances shall more than one change of judge be allowed under this rule in any action. A change of judge under this rule is available only after a judge has been assigned to the case for arraignment or for preliminary hearing. A notice of change may not be filed during a preliminary examination.

(d) **Time.** The notice shall be filed: (1) To remove the assigned justice of the peace: (i) Ten days after the filing in the Justice's Court of a complaint alleging a felony or gross misdemeanor charge; or (ii) Within ten calendar days after the arraignment on a misdemeanor in the justice's court; and (2) To remove the assigned district judge: (i) No later than fourteen (14) days after bind-over from justice's court to the district court, or the indictment, in a single judge district; and (ii) No later than ten (10) days after arraignment in a district with more than one judge. Failure to file a timely notice renders the notice invalid and precludes any change of judge under this rule.

[104]

(e) **Assignment of Action.** Upon the filing of a timely, valid, and complete notice of change, the assigned judge shall take no further action in the case and shall transfer the case accordingly. If the assigned judge determines that the notice is invalid, the judge shall make specific findings as to the assigned judge's determination as to why the notice is invalid. The judge shall refer the matter for ruling as to whether the notice is invalid to another judge. In a single judge district court, the referral shall be to a consenting judge in another district. In multi-judge district court or justice's court, the matter shall be referred to another judge in either the district or township. In a single judge justice's court, the referral shall either be referred to the district judge or to a justice of the peace in another township. If the second judge determines that the notice is valid, the matter shall be assigned to another judge. If the second judge determines that the notice is invalid, the matter shall continue to be heard by the judge assigned prior to the notice being filed.

(f) **Nondisclosure to Court.** No party shall communicate to the court, or cause another to communicate to the court, the fact of any party's seeking consent to a notice of change.

(f) **Rule ** Unaffected.** This rule does not affect any rights under Rule **.

Rule 31 Transfer of Venue

(a) **Transfer of Venue:** In the District Courts, if a party believes that a fair and impartial jury trial cannot be had in the court location or in the county where the action is pending, that party may move to have the trial of the case take place with a jury from another county or the case transferred to a court location in a county where a fair trial may be held.[105] Such motion may not be granted until after the voir dire examination of the jury has concluded and it is apparent to the court that the selection of a fair and impartial jury cannot be had in the county where the indictment, information or complaint is pending.[106]

(b) **Application for removal:** Making and service; hearing and determination in absence of defendant.[107]

1. The application for removal must be made in open court, and in writing, verified by the affidavit of the defendant or district attorney, and a copy of the affidavit must be served on the adverse party, at least 1 day prior to the hearing of the application.
2. The application may be supported or opposed by other affidavits or other evidence, or other witnesses may be examined in open court.
3. Whenever the affidavit of the defendant shows that the defendant cannot safely appear in person to make such application, because popular prejudice is so great as to endanger the defendant's personal safety, and such statement is sustained by other testimony, such application may be made by the defendant's attorney and must be heard and determined in the absence of the defendant, notwithstanding the charge then pending against the defendant be a felony, and the defendant has not, at the time of such application, been arrested or given bail, or been arraigned, or pleaded to the indictment or information.

(c) **Grounds.** The party seeking a change of venue must prove to the judge at a hearing on the motion, through competent and admissible evidence, that:

1. The community hosting the trial will not yield a jury qualified to deliberate impartially, and solely upon competent trial evidence, the guilt or innocence of the accused;[108]
2. The extent of inflammatory pretrial publicity and demonstrate that such publicity would corrupt the trial; and
3. Jurors harbor preconceived notions of guilt or innocence that existed prior to their call to jury service and that such notions cannot be set aside, and that the Jurors cannot fairly and impartially render a verdict based upon the trial evidence.[109]
4. If the court is satisfied that the evidence presented demonstrates that a change of jury pool or location is justified, the court shall enter an order transferring the case, or

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[105] NRS § 174.455 (1): A criminal action prosecuted by indictment, information or complaint may be removed from the court in which it is pending, on application of the defendant or state, on the ground that a fair and impartial trial cannot be had in the county where the indictment, information or complaint is pending.

[106] NRS § 174.455 (2): An application for removal of a criminal action shall not be granted by the court until after the voir dire examination has been conducted and it is apparent to the court that the selection of a fair and impartial jury cannot be had in the county where the indictment, information or complaint is pending.

[107] NRS 174.464.

[108] Ford v. State, 102 Nev. 126, 129, 717 P.2d 27, 29 (1986).

[109] Sonner v. State, 112 Nev. 1328, 1336, 903 P.2d 707, 712 (1996) (*citing* Rogers v. State, 101 Nev. 457, 462, 705 P.2d 664, 668 (1985).

selecting a jury from a county free from prejudice. If the court is not satisfied that the evidence demonstrates that a change of jury pool or location is justified, the court shall either enter an order denying the motion. or order a hearing to receive further evidence with respect to the alleged prejudice and resolve the matter.[110]

5. In the justice courts, if a party believes that a fair and impartial trial cannot be had in the court location or in the county where the action is pending, that party may move to have the trial of the case take place with a jury from another county or in a court location where a fair trial may be held. Such motion shall be supported by an affidavit setting forth facts. If the trial involves a jury, the rules applicable to the District Court should be followed.

(d) **Time for Filing.** A motion filed pursuant to this Rule 30 shall be filed not later than 14 days after the party learns or with the exercise of reasonable diligence should have learned of the grounds upon which the motion is based. If the party fails to allege facts and circumstances that would justify the Court in concluding that the motion was timely under this subsection, the Court may consider said failure in making a ruling on the Motion.

(e) **Entry of order of removal; transmittal of papers.**[111] The order of removal must be entered on the minutes, and the clerk must immediately make out and transmit to the court to which the action is removed a certified copy of the order of removal, record, pleadings, and proceedings in the action, including the undertakings for the appearance of the defendant and of the witnesses.

(f) **Proceedings on removal when defendant is in custody.**[112] If the defendant is in custody, the order must direct the defendant's removal and the defendant must be forthwith removed by the sheriff of the county where the defendant is imprisoned, to the custody of the sheriff of the county to which the action is removed.

(g) **Authority of court to which action is removed; transmission of original papers.**[113] The court to which the action is removed must proceed to trial and judgment therein as if the action had been commenced in such court. If it is necessary to have any of the original pleadings or other papers before such court, the court from which the action is removed must, at any time, on the application of the district attorney or the defendant, order such papers or pleadings to be transmitted by the clerk, a certified copy thereof being retained.

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[110] NRS 174.475.
[111] NRS 174.485.
[112] NRS 174.495.
[113] NRS 174.505.

Rule 32 [Reserved]

Rule 33 [Reserved]

TITLE VI. TRIAL

Rule 34 Time of Trial

(a) **Right of State to trial within 60 days after arraignment; exceptions.**[114] The State, upon demand, has the right to a trial of the defendant within 60 days after arraignment. The court may postpone the trial if:

1. It finds that more time is needed by the defendant to prepare a defense; or
2. The number of other cases pending in the court prohibits the acceptance of the case for trial within that time.

(b) **Postponement: When and how ordered; court may require depositions of and undertakings by witnesses; court may consider adverse effect upon child who is victim or witness.**[115]

1. When an action is called for trial, or at any time previous thereto, the court may, upon sufficient cause shown by either party by affidavit, direct the trial to be postponed to another day. In all cases where a continuance is granted upon the application of either party the court may require, as a condition of granting such continuance, that the party applying therefor consent to taking, forthwith, or at any time to be fixed by the court, of the deposition of any witness summoned by the opposite party whose deposition has not previously been taken.
2. The court also may require all witnesses to enter into undertakings in such sum as the court may order, with or without sureties, to appear and testify on the day to which the case may be continued, but any witness who is unable to procure sureties for the witness's attendance may be discharged on the witness's own recognizance, upon giving a deposition in the manner prescribed in NRS 174.175 and 174.205.
3. If the trial involves acts committed against a child less than 16 years of age or involving acts witnessed by a child less than 16 years of age, the court may consider any adverse effect a continuance or other postponement might have upon the mental or emotional health or well-being of the child. The court may deny a continuance or other postponement if the delay will adversely affect the mental or emotional health or well-being of the child.

(c) **Request for preference in setting date for trial where child is victim or witness; court may consider effect on child of delay in commencement of trial.**[116] If the trial involves acts committed against a child less than 16 years of age or involving acts witnessed by a child less than 16 years of age, the prosecuting attorney shall request the court, in its discretion, to give preference in setting a date for the trial of the defendant. In making a ruling, the court may consider the effect a delay in the commencement of the trial might have on the mental or emotional health or well-being of the child.

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[114] NRS 174.511.
[115] NRS 174.515.
[116] NRS 174.519.

Rule 35 Selection Of The Jury

(a) **Trial by Jury.**[117]

1. In a district court, cases required to be tried by jury must be so tried unless the defendant waives a jury trial in writing with the approval of the court and the consent of the State. A defendant who pleads not guilty to the charge of a capital offense must be tried by jury.
2. In a Justice Court, a case must be tried by jury only if the defendant so demands in writing not less than 30 days before trial. Except as otherwise provided in NRS 4.390 and 4.400, if a case is tried by jury, a reporter must be present who is a certified court reporter and shall report the trial.

(b) **Formation of jury; number of jurors.**[118]

1. Trial juries for criminal actions are formed in the same manner as trial juries in civil actions.[119]
2. Except as provided in subsection 3, juries must consist of 12 jurors, but at any time before verdict, the parties may stipulate in writing with the approval of the court that the jury consist of any number less than 12 but not less than six.
3. Juries must consist of six jurors for the trial of a criminal action in a Justice Court.

(c) **Examination of trial jurors.**[120] The court shall conduct the initial examination of prospective jurors, and defendant or the defendant's attorney and then the district attorney are entitled to supplement the examination by such further inquiry as the court deems proper. Any supplemental examination must not be unreasonably restricted. Examination may be limited by the Court to issues regarding grounds for disqualification.

(d) **Challenges for cause for individual jurors: Grounds; trial of challenge.**[121]

1. Either side may challenge an individual juror for disqualification or for any cause or favor which would prevent the juror from adjudicating the facts fairly, including:[122]
    i. Want of any of the qualifications prescribed by law.
    ii. Any mental or physical infirmity which renders one incapable of performing the duties of a juror.
    iii. Consanguinity or affinity within the fourth degree to the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted.
    iv. The existence of any social, legal, business, fiduciary or other relationship between the prospective juror and any party, witness or person alleged to have been victimized or injured by the defendant, which relationship when viewed objectively, would suggest to reasonable minds that the prospective juror would be unable or unwilling to return a verdict which would be free of favoritism. A

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117 NRS 175.011.
118 NRS 175.021.
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120 NRS 175.031.
121 NRS 175.036.
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prospective juror shall not be disqualified solely because the juror is indebted to or employed by the state or a political subdivision thereof.

v. Having been or being the party adverse to the defendant in a civil action, or having complained against or having been accused by the defendant in a criminal prosecution.
vi. Having served on the grand jury which found the indictment.
vii. Having served on a trial jury which has tried another person for the particular offense charged.
viii. Having been one of a jury formally sworn to try the same charge, and whose verdict was set aside, or which was discharged without a verdict after the case was submitted to it.
ix. Having served as a juror in a civil action brought against the defendant for the act charged as an offense.
x. If the offense charged is punishable with death, the juror's views on capital punishment would prevent or substantially impair the performance of the juror's duties as a juror in accordance with the instructions of the court and the juror's oath in subsection (*).
xi. Because the juror is or, within one year preceding, has been engaged or interested in carrying on any business, calling or employment, the carrying on of which is a violation of law, where defendant is charged with a like offense.
xii. Because the juror has been a witness, either for or against the defendant on the preliminary examination or before the grand jury.
xiii. Having formed or expressed an unqualified opinion or belief as to whether the defendant is guilty or not guilty of the offense charged.
xiv. Conduct, responses, state of mind or other circumstances that reasonably lead the court to conclude the juror is not likely to act impartially. No person may serve as a juror, if challenged, unless the judge is convinced the juror can and will act impartially and fairly.

2. Challenges for cause shall be tried by the court. The juror challenged and any other person may be examined as a witness on the trial of the challenge. Challenges for cause shall be completed before peremptory challenges are taken.

(e) **Limitation of defendants' right to sever in challenges.**[123] When several defendants are tried together, they cannot sever their peremptory challenges, but must join therein.

(f) **Number of peremptory challenges.**[124] A peremptory challenge is an objection to a juror for which no reason need be given. If there is more than one defendant the court may allow the defendants additional peremptory challenges and permit them to be exercised separately or jointly.

1. If the offense charged is punishable by death or by imprisonment for life, each side is entitled to eight peremptory challenges.
2. If the offense charged is punishable by imprisonment for any other term or by fine or by both fine and imprisonment, each side is entitled to four peremptory challenges.
3. The State and the defendant shall exercise their challenges alternately, in that order. Any challenge not exercised in its proper order is waived.

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123 NRS 175.041.
124 NRS 175.051.

(g) **Alternate jurors.**[125]

1. The court may direct that not more than six jurors in addition to the regular jury be called and impaneled to sit as alternate jurors.
2. Alternate jurors, in the order in which they were called, shall replace jurors who become unable or disqualified to perform their duties.
3. Alternate jurors shall:
    i. Be drawn in the same manner;
    ii. Have the same qualifications;
    iii. Be subject to the same examination and challenges;
    iv. Take the same oath; and
    v. Have the same functions, powers, facilities and privileges, as the regular jurors.
4. If an alternate juror is required to replace a regular juror after the jury has retired to consider its verdict, the judge shall recall the jury, seat the alternate and resubmit the case to the jury.
5. Each side is entitled to one peremptory challenge in addition to those otherwise allowed by law if one or two alternate jurors are to be impaneled, two peremptory challenges if three or four alternate jurors are to be impaneled, and three peremptory challenges if five or six alternate jurors are to be impaneled. The additional peremptory challenges may be used against an alternate juror only, and the other peremptory challenges allowed by statute may not be used against an alternate juror.

(h) **Oath of jurors.**[126] When the jury has been impaneled, the court shall administer the following oath:

Do you and each of you solemnly swear that you will well and truly try this case, now pending before this court, and a true verdict render according to the evidence given, so help you God.

(i) **Personal knowledge of jurors.**[127]

1. The judge shall then admonish the jury that:
    i. No juror may declare to any fellow jurors any fact relating to the case as of the juror's own knowledge; and
    ii. If any juror discovers during the trial or after the jury has retired that he or she or any other juror has personal knowledge of any fact in controversy in the case, the juror shall disclose such situation to the judge out of the presence of the other jurors.
2. When any such disclosure is made, the judge shall examine the juror who admits or is alleged to have personal knowledge, under oath, in the presence of counsel for the parties, and may allow such counsel to examine the juror.
3. If the juror has disclosed the juror's own knowledge to the judge and it appears that the juror has not declared any fact relating to the case to any fellow jurors as of the juror's own knowledge, the judge shall after the examination decide whether the juror shall remain or shall be replaced by an alternate juror.

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125 NRS 175.061.
126 NRS 175.111.
127 NRS 175.121.

4. If it appears that the juror has declared any fact relating to the case to any fellow jurors as of the juror's own knowledge, or that the juror's vote was influenced by such knowledge undisclosed, the judge shall declare a mistrial.

(j) **Judge to inform jury of right to take notes.**[128] Before any evidence has been introduced the judge may inform the jury they may individually take notes during the trial, but the judge 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.

(k) **Discharge of juror where juror dies or unable to perform duty.**[129] If, before the conclusion of the trial, and there being no alternate juror called or available, a juror dies, or becomes disqualified or unable to perform the juror's duty, the court may duly order the juror to be discharged and a new juror may be sworn and the trial begun anew, or the jury may be discharged and a new jury then or afterward impaneled.

(l) **Discharge of jury after retirement upon accident or cause.**[130] If, after the retirement of the jury, any accident or cause occurs to prevent their being kept for deliberation, the jury may be discharged.

[128] NRS 175.131.
[129] NRS 175.071.
[130] NRS 175.081.

Rule 36 The Trial

(a) **Defendant's Presence.**[131] In all cases the defendant shall have the right to appear and defend in person and by counsel. The defendant shall be personally present at the trial with the following exceptions:

1. In prosecutions of misdemeanors and infractions, the defendant may consent in writing to trial in his absence;
2. In prosecutions for offenses not punishable by death, the defendant's voluntary absence from the trial after notice to defendant of the time for trial shall not prevent the case from being tried and a verdict or judgment entered therein shall have the same effect as if defendant had been present; and
3. The court may exclude or excuse a defendant from trial for good cause shown which may include tumultuous, riotous, or obstreperous conduct.

Upon application of the prosecution, the court may require the personal attendance of the defendant at the trial.

(b) **Calendar Priorities.**[132] Cases shall be set on the trial calendar to be tried in the following order:

1. misdemeanor cases when defendant is in custody;
2. felony cases when defendant is in custody;
3. felony cases when defendant is on bail or recognizance; and
4. misdemeanor cases when defendant is on bail or recognizance.

(c) **Order of trial.**[133] The jury having been impaneled and sworn, the trial shall proceed in the following order:

1. If the indictment or information be for a felony or gross misdemeanor, the clerk must read it and state the plea of the defendant to the jury. In all other cases this formality may be dispensed with.
2. The district attorney, or other counsel for the State, must open the cause. The defendant or the defendant's counsel may then either make the defendant's opening statement or reserve it to be made immediately prior to the presentation of evidence in the defendant's behalf.
3. The State must then offer its evidence in support of the charge, and the defendant may then offer evidence in his or her defense.
4. The parties may then respectively offer rebutting testimony only, unless the court, for good reasons, in furtherance of justice, permit them to offer evidence upon their original cause.
5. When the evidence is concluded, unless the case is submitted to the jury on either side, or on both sides, without argument, the district attorney, or other counsel for the State, must open and must conclude the argument.

(d) **Number of counsel who may argue case.**[134] If the indictment or information be for an offense punishable with death, two counsel on each side may argue the case to the jury, but in such case, as

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133 NRS 175.141.

134 NRS 175.151.

well as in all others, the counsel for the State must open and conclude the argument. If it be for any other offense, the court may, in its discretion, restrict the argument to one counsel on each side.

(e) **Presumption of innocence: Acquittal in case of reasonable doubt.**[135] A defendant in a criminal action is presumed to be innocent until the contrary is proved; and in case of a reasonable doubt whether the defendant's guilt is satisfactorily shown, the defendant is entitled to be acquitted.

(f) **Presumption of innocence: Conviction of lowest degree of offense.**[136] Every person charged with the commission of a crime shall be presumed innocent until the contrary is proved by competent evidence beyond a reasonable doubt; and when an offense has been proved against the person, and there exists a reasonable doubt as to which of two or more degrees the person is guilty, the person shall be convicted only of the lowest.

(g) **Definition of reasonable doubt; no other definition to be given to juries.**[137] **The jury must be instructed on the definition of reasonable doubt.**

1. ***Definition of Reasonable Doubt***: A reasonable doubt is one based on reason. It is not mere possible doubt, but is such a doubt as would govern or control a person in the more weighty affairs of life. If the minds of the jurors, after the entire comparison and consideration of all the evidence, are in such a condition that they can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or speculation.
2. No other definition of reasonable doubt may be given by the court to juries in criminal actions in this State.

(h) **Evidence.**[138]

1. In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by statute.
2. The admissibility of evidence and the competency and privileges of witnesses shall be governed by:
    i. The general provisions of title 4 of NRS;
    ii. The Rules of Evidence;
    iii. The specific provisions of any other applicable statute; and
    iv. Where no statute applies, the principles of the common law as they may be interpreted by the courts of the State of Nevada in the light of reason and experience.

(i) **Proof of corporate existence generally.**[139] If, upon a trial or proceeding in a criminal case, the existence, constitution or powers of any corporation shall become material, or be in any way drawn in question, it is not necessary to produce a certified copy of the articles or acts of incorporation, but the same may be proved by general reputation, or by the printed statutes of the state, or government, or country by which such corporation was created.

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135 NRS 175.191.
136 NRS 175.201.
137 NRS 175.211.
138 NRS 175.221.
139 NRS 175.241.

(j) **Conspiracy: Allegation and proof of overt act; evidence of overt acts not alleged.**[140] Upon a trial for conspiracy, in a case where an overt act shall be necessary to constitute the offense, the defendant shall not be convicted unless one or more overt acts shall be expressly alleged in the indictment or information, nor unless one of the acts alleged shall have been proved; but other overt acts not alleged may be given in evidence.

(k) **False pretenses: What evidence necessary.**[141] Upon a trial for having, with an intent to cheat or defraud another designedly, by any false pretense, obtained the signature of any person, to a written instrument, or having obtained from any person any money, personal property, or valuable thing, the defendant shall not be convicted if the false pretense shall have been expressed in language, unaccompanied by a false token or writing, unless the pretense or some note or memorandum thereof be in writing, subscribed by or in the handwriting of the defendant, or unless the pretense be proved by the testimony of two witnesses, or that of one witness and corroborating circumstances; but this section shall not apply to a prosecution for falsely representing or personating another, and, in such assumed character, marrying, or receiving any money or property.

(l) **Plea bargain: Inspection by jury; instruction of jury; cross-examination of defendant.**[142] If a prosecuting attorney enters into an agreement with a defendant in which the defendant agrees to testify against another defendant in exchange for a plea of guilty, guilty but mentally ill or nolo contendere to a lesser charge or for a recommendation of a reduced sentence, the court shall:

1. After excising any portion it deems irrelevant or prejudicial, permit the jury to inspect the agreement;
2. If the defendant who is testifying has not entered a plea or been sentenced pursuant to the agreement, instruct the jury regarding the possible related pressures on the defendant by providing the jury with an appropriate cautionary instruction; and
3. Allow the defense counsel to cross-examine fully the defendant who is testifying concerning the agreement.

(m) **Testimony of accomplice must be corroborated; sufficiency of corroboration; accomplice defined.**[143]

1. A conviction shall not be had on the testimony of an accomplice unless the accomplice is corroborated by other evidence which in itself, and without the aid of the testimony of the accomplice, tends to connect the defendant with the commission of the offense; and the corroboration shall not be sufficient if it merely shows the commission of the offense or the circumstances thereof.
2. An accomplice is hereby defined as one who is liable to prosecution, for the identical offense charged against the defendant on trial in the cause in which the testimony of the accomplice is given.

(n) **Testimony of person upon or with whom abortion was allegedly committed.**[144] Upon a trial for procuring or attempting to procure an abortion, or aiding or assisting therein, the defendant must

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[140] NRS 175.251.
[141] NRS 175.261.
[142] NRS 175.282.
[143] NRS 175.291.
[144] NRS 175.301.

not be convicted upon the testimony of the person upon or with whom the offense has allegedly been committed, unless:

1. The testimony of that person is corroborated by other evidence; or
2. The person giving the testimony is, and was at the time the crime is alleged to have taken place, a police officer or deputy sheriff who was performing his or her duties as such.

(o) **Procedure when higher offense is shown by evidence.**[145] If it appears by the testimony that the facts proved constitute an offense of a higher nature than that charged in the indictment or information, the court may direct the jury to be discharged, and all proceedings on the indictment or information to be suspended, and may order the defendant to be committed, or continued on, or admitted to bail, to answer any new indictment or information which may be found or filed against the defendant for the higher offense.

(p) **Procedure if higher offense ignored.**[146] If an indictment for the higher offense be dismissed by the grand jury, or be not found at its next session, or if an information be not filed before the next session of the grand jury, the court shall again proceed to try the defendant on the original indictment or information.

(q) **When defendant on bail appears for trial defendant may be committed and held.**[147] When a defendant who has given bail appears for trial, the court may, in its discretion, at any time after the defendant's appearance for trial, order the defendant to be committed to the custody of the proper officer, to abide the judgment or further order of the court, and the defendant must be committed and held in custody accordingly.

(r) **Mistake in charging proper offense: Defendant not discharged; commitment or bail.**[148] When it appears, at any time before verdict or judgment, that a mistake has been made in charging the proper offense, the defendant must not be discharged, if there appears good cause to detain the defendant in custody; but the court must commit the defendant, or require the defendant to give bail for his or her appearance to answer to the offense; and may also require the witnesses to give bail for their appearance.

(s) **Discharge of defendant when jury discharged for want of jurisdiction.**[149] If the jury is discharged because the court has not jurisdiction of the offense charged, and it appears that it was committed out of the jurisdiction of this state, the defendant must be discharged, unless the court orders that the defendant be detained for a reasonable time, to be specified in the order, to enable the district attorney to communicate with the chief executive officer of the country, state, territory or district where the offense was committed.

(t) **Offense committed in other county: Commitment to await warrant; admission to bail; transmittal of papers to district attorney of proper county; expense of transmission.**[150] If the offense was committed within the jurisdiction of another county of this state, the court may direct the defendant to be committed for such time as it deems reasonable, to await a warrant from the

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145 NRS 175.311.
146 NRS 175.321.
147 NRS 175.331.
148 NRS 175.341.
149 NRS 175.351.
150 NRS 175.361.

proper county for the defendant's arrest, or it may admit the defendant to bail in an undertaking, with sufficient sureties that the defendant will, within such time as the court may appoint, render himself or herself amenable to a warrant for arrest from the proper county; and, if not sooner arrested thereon, will attend at the office of the sheriff of the county where the trial was had, at a certain time particularly specified in the undertaking, to surrender himself or herself upon the warrant, if issued, or that the defendant's bail will forfeit such sum as the court may fix, to be mentioned in the undertaking; and the clerk must forthwith transmit a certified copy of the indictment or information, and of all the papers filed in the action, to the district attorney of the proper county, the expenses of which transmission are chargeable to that county.

(u) **Discharge where defendant not arrested on warrant from other county; proceedings in case of arrest.**[151]

1. If the defendant is not arrested on a warrant from the proper county, as provided in NRS 175.361, the defendant must be discharged from custody, or the defendant's bail in the action is exonerated, or money deposited instead of bail must be refunded, as the case may be, and the sureties in the undertaking, as mentioned in that section, must be discharged.
2. If the defendant is arrested, the same proceedings must be had thereon as upon the arrest of a defendant in another county on a warrant issued by a magistrate.

(v) **Court may advise jury to acquit defendant when evidence on either side closed; motion for judgment of acquittal after verdict of guilty or guilty but mentally ill; subsequent motion for new trial.**[152]

1. 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.
2. 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 or guilty but mentally ill, 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.
3. If a motion for a judgment of acquittal after a verdict of guilty or guilty but mentally ill 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.

(w) **Withdrawal, discharge or change of defense counsel; limitations.**[153] If a counsel seeks to withdraw from the case or is discharged by the defendant for the purpose of delaying the trial, the

[151] NRS 175.371.
[152] NRS 175.381.
[153] NRS 175.383.

court shall not allow the counsel to be changed. The counsel for a defendant may not be changed after a trial has commenced except upon good cause shown to the court.

(x) **Misconduct of defendant; sanctions.**[154]

1. Whenever a defendant interferes with the orderly course of a trial by disruptive, disorderly or disrespectful conduct, the court may:
    i. Order the defendant bound and gagged.
    ii. Cite the defendant for contempt.
    iii. Order the defendant removed from the courtroom and proceed with the trial.
2. No such order or citation shall issue except after the defendant has been fully and fairly informed that the defendant's conduct is wrong and intolerable and has been warned of the consequences of continued misconduct.
3. A defendant who has been removed from the courtroom may be returned upon the defendant's promise to discontinue such misconduct. If the defendant's misconduct continues after the defendant's return the court may proceed as provided in subsection 1.

[154] NRS 175.387.

Rule 37 Conduct of the Jury

1. **Separation or custody of jury before submission.**[155] The jurors sworn to try a criminal action may, at any time before the submission of the case to the jury, in the discretion of the court, be permitted to separate, depart for home overnight or be kept in charge of a proper officer. Upon commencing deliberation, the jurors shall be kept in charge of a proper officer, unless at the discretion of the court they are permitted to depart for home overnight. When the jurors are kept together, the officer in charge shall keep the jurors in some private and convenient place and separate from other persons. The officer shall not permit any communication to be made to them, or make any personally, unless by order of the court, except to ask them if they have agreed upon their verdict. The officer shall not, before the verdict is rendered, communicate to any person the state of their deliberations or the verdict agreed upon. The officer shall return them into court when they have reached their verdict or when ordered by the court.

2. **Jury to be admonished at each adjournment.**[156] At each adjournment of the court, whether the jurors are permitted to separate or depart for home overnight, or are kept in charge of officers, they must be admonished by the judge or another officer of the court that it is their duty not to:

1. Converse among themselves or with anyone else on any subject connected with the trial;
2. Read, watch or listen to any report of or commentary on the trial or any person connected with the trial by any medium of information, including without limitation newspapers, television and radio; or
3. If they have not been charged, form or express any opinion on any subject connected with the trial until the cause is finally submitted to them.

3. **Accommodations for jury upon retirement; power of court to furnish.**[157] A room shall be provided by the sheriff of each county for the use of the jury upon their retirement for deliberation, with suitable furniture, fuel, lights and stationery, unless such necessaries have been already furnished by the county. The court may order the sheriff to do so, and the expenses incurred by the sheriff in carrying the order into effect, when certified by the court, shall be a county charge.

4. **Jury provided food and lodging when kept together.**[158] While the jury are kept together, either during the progress of the trial or after their retirement for deliberation, they shall be provided, at the expense of the county, with suitable and sufficient food and lodging.

5. **Questions by jurors.**[159] A judge may invite jurors to submit written questions to a witness as provided in this section.

1. If the judge permits jurors to submit questions, the judge shall control the process to ensure the jury maintains its role as the impartial finder of fact and does not become an investigative body. The judge may disallow any question from a juror and may discontinue questions from jurors at any time.

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155 NRS 175.391.
156 NRS 175.401.
157 NRS 175.431.
158 NRS 175.421.
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2. If the judge permits jurors to submit questions, the judge should advise the jurors that they may write the question as it occurs to them and submit the question to the bailiff for transmittal to the judge. The judge should advise the jurors that some questions might not be allowed.
3. The judge shall review the question with counsel and unrepresented parties and rule upon any objection to the question. The judge may disallow a question even though no objection is made. The judge shall preserve the written question in the court file. If the question is allowed, the judge shall ask the question or permit counsel or an unrepresented party to ask it. The question may be rephrased into proper form. The judge shall allow counsel and unrepresented parties to examine the witness after the juror's question.

6. **Jury may take written instructions, materials received in evidence, certain papers and own notes of trial on retiring for deliberation.**[160] Upon retiring for deliberation, the jury may take with them:

1. All papers and all other items and materials which have been received as evidence in the case, except 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.
2. 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.

(f) **Juries visiting off-site places.**[161] When in the opinion of the court it is proper for the jury to view the place in which the offense is alleged to have been committed, or in which any other material fact occurred, it may order them to be conducted in a body under the charge of an officer to the place, which shall be shown to them by some person appointed by the court for that purpose. The officer shall be sworn that while the jury are thus conducted, the officer will suffer no person other than the person so appointed to speak to them nor shall the officer speak to the jury on any subject connected with the trial and to return them into court without unnecessary delay or at a specified time. The judge and all parties shall attend any on-site visits with the jury.

(g) **Admonition prior to recess.**[163] At each recess of the court, whether the jurors are permitted to separate or are sequestered, they shall be admonished by the court that it is their duty not to converse among themselves or to converse with, or suffer themselves to be addressed by, any other person on any subject of the trial, and that it is their duty not to form or express an opinion thereon until the case is finally submitted to them.

(h) **Return of jury for information.**[163] After the jury have retired for deliberation, if there is any disagreement between them as to any part of the testimony, or if they desire to be informed on any point of law arising in the cause, they must require the officer to conduct them into court. Upon their being brought into court, the information required shall be given in the presence of, or after notice to, the district attorney and the defendant or the defendant's counsel.

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160 NRS 175.441.

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163 NRS 175.451.

(i) **Deliberations.**[164] Upon retiring for deliberation, the jury may take with them the instructions of the court and all exhibits which have been received as evidence, except exhibits that should not, in the opinion of the court, be in the possession of the jury, such as exhibits of unusual size, weapons or contraband. The court shall permit the jury to view exhibits upon request. Jurors are entitled to take notes during the trial and to have those notes with them during deliberations. As necessary, the court shall provide jurors with writing materials and instruct the jury on taking and using notes.

(j) **Jury under officer's charge.**[165] When the case is finally submitted to the jury, they shall be kept together in some convenient place under charge of an officer until they agree upon a verdict or are discharged, unless otherwise ordered by the court. Except by order of the court, the officer having them under the officer's charge shall not allow any communication to be made to them, nor shall the officer speak to the jury except to ask them if they have agreed upon their verdict, and the officer shall not, before the verdict is rendered, communicate to any person the state of their deliberations or the verdict agreed upon.

(k) **Juror questions during deliberations.**[166] After the jury has retired for deliberation, if they desire to be informed on any point of law arising in the cause, they shall inform the officer in charge of them, who shall communicate such request to the court. The court may then direct that the jury be brought before the court where, in the presence of the defendant and both counsel, the court shall respond to the inquiry or advise the jury that no further instructions shall be given. Such response shall be recorded. The court may in its discretion respond to the inquiry in writing without having the jury brought before the court, in which case the inquiry and the response thereto shall be entered in the record.

(l) **Jury not to be discharged after cause submitted; exceptions.**[167] Except as provided in NRS 175.081, the jury shall not be discharged after the cause is submitted to them, until they have agreed upon their verdict and rendered it in open court, unless by the consent of both parties, entered upon the minutes, or unless, at the expiration of such time as the court may deem proper, it satisfactorily appears that there is no reasonable probability that the jury can agree.

(m) **Incorrect verdict.**[168] If the verdict rendered by a jury is incorrect on its face, it may be corrected by the jury under the advice of the court, or the jury may be sent out again.

(n) **Directed verdict.**[169] At the conclusion of the evidence by the prosecution, or at the conclusion of all the evidence, the court may issue an order dismissing any information or indictment, or any count thereof, upon the ground that the evidence is not legally sufficient to establish the offense charged therein or any lesser included offense.

(o) **Adjournment of court during absence of jury.**[170] While the jury are absent, the court may adjourn from time to time, as to other business, but it shall nevertheless be deemed to be open for every purpose connected with the cause submitted to the jury, until a verdict be rendered or the jury discharged.

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167 NRS 175.461.

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170 NRS 175.471.

PROPOSED NEVADA RULES OF CRIMINAL PROCEDURE

Rule 38 Expert Witnesses And Interpreters

(a) **Expert witnesses.**[171] The court may appoint any expert witness agreed upon by the parties or of its own selection. An expert so appointed shall be informed of his duties by the court in writing, a copy of which shall be filed. An expert so appointed shall advise the court and the parties of his findings and may thereafter be called to testify by the court or by any party. He shall be subject to cross-examination by each party. The court shall determine the reasonable compensation of the expert and direct payment thereof. The parties may call expert witnesses of their own at their own expense. Upon showing that a defendant is financially unable to pay the fees of an expert whose services are necessary for adequate defense, the witness fee shall be paid as if he were called on behalf of the prosecution.

(b) **Interpreters.**[172] The court may appoint an interpreter of its own selection and shall determine reasonable compensation and direct payment thereof. The court may allow counsel to question the interpreter before he is sworn to discharge the duties of an interpreter.

[171] Replaces NRS 175.271.

[172] .

Rule 39 Out Of Court Statement And Testimony Of Child Victims Or Child Witnesses Of Sexual Or Physical Abuse - Conditions Of Admissibility

(a) **Previously recorded statements.**[173] In any case concerning a charge of child abuse or of a sexual offense against a child, the oral statement of a victim or other witness younger than 14 years of age which was recorded prior to the filing of an information or indictment is, upon motion and for good cause shown, admissible as evidence in any court proceeding regarding the offense if all of the following conditions are met:

1. the child is available to testify and to be cross-examined at trial, either in person or as provided by law, or the child is unavailable to testify at trial, but the defendant had a previous opportunity to cross-examine the child concerning the recorded statement, such that the defendant's rights of confrontation are not violated;
2. no attorney for either party is in the child's presence when the statement is recorded;
3. the recording is visual and aural and is recorded on film, videotape or other electronic means;
4. the recording is accurate and has not been altered;
5. each voice in the recording is identified;
6. the person conducting the interview of the child in the recording is present at the proceeding and is available to testify and be cross-examined by either party;
7. the defendant and his attorney are provided an opportunity to view the recording before it is shown to the court or jury; and
8. the court views the recording before it is shown to the jury and determines that it is sufficiently reliable and trustworthy and that the interest of justice will best be served by admission of the statement into evidence.

(b) **Remote transmission of testimony.**[174] In a criminal case concerning a charge of child abuse or of a sexual offense against a child, the court, upon motion of a party and for good cause shown, may order that the testimony of any victim or other witness younger than 14 years of age be taken in a room other than the court room, and be televised by closed circuit equipment to be viewed by the jury in the court room. All of the following conditions shall be observed:

1. Only the judge, attorneys for each party and the testifying child (if any), persons necessary to operate equipment, and a counselor or therapist whose presence contributes to the welfare and emotional well-being of the child may be in the room during the child's testimony. A defendant who consents to be hidden from the child's view may also be present unless the court determines that the child will suffer serious emotional or mental strain if required to testify in the defendant's presence, or that the child's testimony will be inherently unreliable if required to testify in the defendant's presence. If the court makes that determination, or if the defendant consents:
    i. the defendant may not be present during the child's testimony;
    ii. the court shall ensure that the child cannot hear or see the defendant;
    iii. the court shall advise the child prior to his testimony that the defendant is present at the trial and may listen to the child's testimony;

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iv. the defendant shall be permitted to observe and hear the child's testimony, and the court shall ensure that the defendant has a means of two-way telephonic communication with his attorney during the child's testimony; and
v. the conditions of a normal court proceeding shall be approximated as nearly as possible.

2. Only the judge and an attorney for each party may question the child.
3. As much as possible, persons operating the equipment shall be confined to an adjacent room or behind a screen or mirror so the child cannot see or hear them.
4. If the defendant is present with the child during the child's testimony, the court may order that persons operating the closed circuit equipment film both the child and the defendant during the child's testimony, so that the jury may view both the child and the defendant, if that may be arranged without violating other requirements of Subsection (b)(1).

(c) **Remote recording of testimony.**[175] In any criminal case concerning a charge of child abuse or of a sexual offense against a child, the court may order, upon motion of a party and for good cause shown, that the testimony of any victim or other witness younger than 14 years of age be taken outside the courtroom and be recorded. That testimony is admissible as evidence, for viewing in any court proceeding regarding the charges if the provisions of Subsection (b) are observed, in addition to the following provisions:

1. the recording is visual and aural and recorded on film, videotape or by other electronic means;
2. the recording is accurate and is not altered;
3. each voice on the recording is identified; and
4. each party is given an opportunity to view the recording before it is shown in the courtroom.

(d) **Presence of child when recording is used.**[176] If the court orders that the testimony of a child be taken under Subsection (b) or (c), the child may not be required to testify in court at any proceeding where the recorded testimony is used.

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Rule 40 Instructions

(a) **Instructions before opening statements.**[177] After the jury is sworn and before opening statements, the court may instruct the jury concerning the jurors' duties and conduct, the order of proceedings, the elements and burden of proof for the alleged crime, and the definition of terms. The court may instruct the jury concerning any matter stipulated to by the parties and agreed to by the court and any matter the court in its discretion believes will assist the jurors in comprehending the case. Preliminary instructions shall be in writing and a copy provided to each juror. At the final pretrial conference or at such other time as the court directs, a party may file a written request that the court instruct the jury on the law as set forth in the request. The court shall inform the parties of its action upon a requested instruction prior to instructing the jury, and it shall furnish the parties with a copy of its proposed instructions, unless the parties waive this requirement.

(b) **Instructions during trial.**[178] During the course of the trial, the court may instruct the jury on the law if the instruction will assist the jurors in comprehending the case. Prior to giving the written instruction, the court shall advise the parties of its intent to do so and of the content of the instruction. A party may request an interim written instruction.

(c) **Instructions at the close of trial.**[179]

1. Upon the close of the argument, the judge shall charge the jury. The judge may state the testimony and declare the law, but may not charge the jury in respect to matters of fact. The charge must be reduced to writing before it is given, and no charge or instructions may be given to the jury otherwise than in writing, unless by the mutual consent of the parties. If either party requests it, the court must settle and give the instructions to the jury before the argument begins, but this does not prevent the giving of further instructions which may become necessary by reason of the argument.
2. In charging the jury, the judge shall state to them all such matters of law the judge thinks necessary for their information in giving their verdict.
3. Either party may present to the court any written charge, and request that it be given. If the court believes that the charge is pertinent and an accurate statement of the law, whether or not the charge has been adopted as a model jury instruction, it must be given. If the court believes that the charge is not pertinent or not an accurate statement of law, then it must be refused.
4. 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

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179 NRS 175.161.

manner explain them to the jury except in writing unless the parties agree to oral instructions.

5. 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.
6. Conferences with counsel to settle instructions must be held out of the presence of the jury and may be held in chambers at the option of the court.
7. When the offense charged carries a possible penalty of life without possibility of parole a charge to the jury that such penalty does not exclude executive clemency is a correct and pertinent charge, and must be given upon the request of either party.

(d) **No special instructions to be given relating exclusively to defendant's testimony.**[180] In the trial of all indictments, complaints and other proceedings against persons charged with the commission of crimes or offenses, the person so charged shall, at the person's own request, but not otherwise, be deemed a competent witness, the credit to be given the person's testimony being left solely to the jury, under the instructions of the court, but no special instruction shall be given relating exclusively to the testimony of the defendant.

(e) **Restriction on comments of evidence.**[181] The court shall not comment on the evidence in the case, and if the court refers to any of the evidence, it shall instruct the jury that they are the exclusive judges of all questions of fact.

(f) **Instruction not to be given relative to failure of defendant to testify.**[182]

1. No instruction shall be given relative to the failure of the person charged with the commission of crime or offense to testify, except, upon the request of the person so charged, the court shall instruct the jury that, in accordance with a right guaranteed by the Constitution, no person can be compelled, in a criminal action, to be a witness against himself or herself.
2. Nothing herein contained shall be construed as compelling any such person to testify.

(g) **Instructions in prosecution for sexual assault or statutory sexual seduction: Use of certain terms and instructions prohibited.**[188]

1. In any prosecution for sexual assault or statutory sexual seduction or for an attempt to commit or conspiracy to commit either crime, the term "unchaste character" may not be used with reference to the alleged victim of the crime in any instruction to the jury.
2. In a prosecution for sexual assault or statutory sexual seduction, the court may not give any instructions to the jury to the effect that it is difficult to prove or establish the crime beyond a reasonable doubt.

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180 NRS 175.171.

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182 NRS 175.181.

183 NRS 175.186.

Rule 41 Verdict

(a) **Return.**[184] The verdict shall be unanimous. It shall be returned by the jury to the judge in open court.

(b) **Verdict where there are several defendants.**[185] If there are two or more defendants, the jury at any time during its deliberations may return a verdict or verdicts with respect to a defendant or defendants as to whom it has agreed; if the jury cannot agree with respect to all, the defendant or defendants as to whom it does not agree may be tried again.

(c) **Jury may convict of lesser included offense or attempt.**[186] The defendant may be found guilty or guilty but mentally ill of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein if the attempt is an offense.

(d) **When offenses to be stated separately.**[187] When the defendant may be convicted of more than one offense charged, each offense of which the defendant is convicted must be stated in the verdict or the finding of the court.

(e) **Polling jury; further deliberation or discharge.**[188] When a verdict is returned and before it is recorded the jury shall be polled at the request of any party or upon the court's own motion. If upon the poll there is not unanimous concurrence, the jury may be directed to retire for further deliberation or may be discharged.

(g) **Acquittal.**[189] If judgment of acquittal is given on a verdict or the case is dismissed and the defendant is not detained for any other legal cause, he shall be discharged as soon as the judgment is given. If a verdict of guilty is returned, the court may order the defendant to be taken into custody to await judgment on the verdict or may permit the defendant to remain on bail.

(f) **Notice to defendant of provisions concerning sealing of records of proceedings leading to acquittal.**[190] Upon the entry of a judgment of acquittal, the court shall provide the defendant with a written notice of the provisions of NRS 179.255 which concern the sealing of records of the proceedings leading to the acquittal.

(g) **Finding of guilty but mentally ill upon plea of not guilty by reason of insanity; required findings; effect of finding.**[191]

1. During a trial, upon a plea of not guilty by reason of insanity, the trier of fact may find the defendant guilty but mentally ill if the trier of fact finds all of the following:
    i. The defendant is guilty beyond a reasonable doubt of an offense;

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184 NRS 175.481.
185 NRS 175.491.
186 NRS 175.501.
187 NRS 175.511.
188 NRS 175.531.
189 Replaces NRS 175.541.
190 NRS 175.543.
191 NRS 175.533.

ii. The defendant has established by a preponderance of the evidence that due to a disease or defect of the mind, the defendant was mentally ill at the time of the commission of the offense; and
iii. The defendant has not established by a preponderance of the evidence that the defendant is not guilty by reason of insanity pursuant to subsection 6 of NRS 174.035.

2. Except as otherwise provided by specific statute, a defendant who is found guilty but mentally ill is subject to the same criminal, civil and administrative penalties and procedures as a defendant who is found guilty.
3. If the trier of fact finds a defendant guilty but mentally ill pursuant to subsection 1, the court shall cause, within 5 business days after the finding, on a form prescribed by the Department of Public Safety, a record of the finding to be transmitted to the Central Repository for Nevada Records of Criminal History, along with a statement indicating that the record is being transmitted for inclusion in each appropriate database of the National Instant Criminal Background Check System.
4. As used in this section:
   i. "Disease or defect of the mind" does not include a disease or defect which is caused solely by voluntary intoxication.
   ii. "National Instant Criminal Background Check System" has the meaning ascribed to it in NRS 179A.062.

(h) Acquittal by reason of insanity: Defendant to be examined; hearing to be held to determine whether defendant is mentally ill; procedure for committing defendant to custody of Division of Public and Behavioral Health.[192]

1. Where on a trial a defense of insanity is interposed by the defendant and the defendant is acquitted by reason of that defense, the finding of the jury pending the judicial determination pursuant to subsection 2 has the same effect as if the defendant were regularly adjudged insane, and the judge must:
   i. Order a peace officer to take the person into protective custody and transport the person to a forensic facility for detention pending a hearing to determine the person's mental health;
   ii. Order the examination of the person by two psychiatrists, two psychologists, or one psychiatrist and one psychologist who are employed by a division facility; and
   iii. At a hearing in open court, receive the report of the examining advisers and allow counsel for the State and for the person to examine the advisers, introduce other evidence and cross-examine witnesses.
2. If the court finds, after the hearing:
   i. That there is not clear and convincing evidence that the person is a person with mental illness, the court must order the person's discharge; or
   ii. That there is clear and convincing evidence that the person is a person with mental illness, the court must order that the person be committed to the custody of the Administrator of the Division of Public and Behavioral Health of the Department of Health and Human Services until the person is

[192] NRS 175.539.

discharged or conditionally released therefrom in accordance with NRS 178.467 to 178.471, inclusive.

The court shall issue its finding within 90 days after the defendant is acquitted.

3. The Administrator shall make the reports and the court shall proceed in the manner provided in NRS 178.467 to 178.471, inclusive.
4. If the court accepts a verdict acquitting a defendant by reason of insanity pursuant to this section, the court shall cause, within 5 business days after accepting the verdict, on a form prescribed by the Department of Public Safety, a record of that verdict to be transmitted to the Central Repository for Nevada Records of Criminal History, along with a statement indicating that the record is being transmitted for inclusion in each appropriate database of the National Instant Criminal Background Check System.
5. As used in this section, unless the context otherwise requires:
    i. "Division facility" has the meaning ascribed to it in NRS 433.094.
    ii. "Forensic facility" means a secure facility of the Division of Public and Behavioral Health of the Department of Health and Human Services for offenders and defendants with mental disorders. The term includes, without limitation, Lakes Crossing Center.
    iii. "National Instant Criminal Background Check System" has the meaning ascribed to it in NRS 179A.062.
    iv. "Person with mental illness" has the meaning ascribed to it in NRS 178.3986.

Rule 42 Written Orders, Judgments And Decrees.[198]

(a) In all pretrial and postconviction rulings by a court, counsel for the party or parties obtaining the ruling shall within 14 days, or within a shorter time as the court may direct, file with the court a proposed order, judgment, or decree in conformity with the ruling.

(b) Copies of the proposed findings, judgments, and orders shall be served upon opposing counsel before being presented to the court for signature unless the court otherwise orders. Notice of objections shall be submitted to the court and counsel within five days after service.

(c) All orders, judgments, and decrees shall be prepared in such a manner as to show whether they are entered based on a ruling after a hearing or argument, the stipulation of counsel, the motion of counsel or upon the court's own initiative, and shall identify the attorneys of record in the cause or proceeding in which the judgment, order or decree is made. If the order, judgment, or decree is the result of a hearing, the order shall include the date of the hearing, the nature of the hearing, and the names of the attorneys and parties present at the hearing.

(d) The trial court shall prepare the final judgment and sentence, and any commitment order. The trial court shall serve the final judgment and sentence on the parties and immediately transmit the commitment order to the county sheriff.

(e) All orders, judgments and decrees shall be prepared as separate documents and shall not include any matters by reference unless otherwise directed by the court.

(f) No orders, judgments, or decrees based upon stipulation shall be signed or entered unless the stipulation is in writing, signed by the attorneys of record for the respective parties and filed with the clerk or the stipulation was made on the record.

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Rule 43 [Reserved]

PROPOSED NEVADA RULES OF CRIMINAL PROCEDURE

Rule 44 [Reserved]

PROPOSED NEVADA RULES OF CRIMINAL PROCEDURE

TITLE VII. POST-CONVICTION PROCEDURES

Rule 45 Presentence Investigation Reports; Restitution.

(a) **Presentence investigation and report: When required; time for completing.**[194]

1. Except as otherwise provided in this section and NRS 176.151, the Division shall make a presentence investigation and report to the court on each defendant who pleads guilty, guilty but mentally ill or nolo contendere to, or is found guilty or guilty but mentally ill of, a felony.
2. If a defendant is convicted of a felony that is a sexual offense, the presentence investigation and report:
    i. Must be made before the imposition of sentence or the granting of probation; and
    ii. If the sexual offense is an offense for which the suspension of sentence or the granting of probation is permitted, must include a psychosexual evaluation of the defendant.
3. If a defendant is convicted of a felony other than a sexual offense, the presentence investigation and report must be made before the imposition of sentence or the granting of probation unless:
    i. A sentence is fixed by a jury; or
    ii. Such an investigation and report on the defendant has been made by the Division within the 5 years immediately preceding the date initially set for sentencing on the most recent offense.
4. Upon request of the court, the Division shall make presentence investigations and reports on defendants who plead guilty, guilty but mentally ill or nolo contendere to, or are found guilty or guilty but mentally ill of, gross misdemeanors.

(b) **Presentence investigation and report: Psychosexual evaluation of certain sex offenders required; standards and methods for conducting evaluation; access to records; rights of confidentiality and privileges deemed waived; costs.**[195]

1. If a defendant is convicted of a sexual offense for which the suspension of sentence or the granting of probation is permitted, the Division shall arrange for a psychosexual evaluation of the defendant as part of the Division's presentence investigation and report to the court.
2. The psychosexual evaluation of the defendant must be conducted by a person professionally qualified to conduct psychosexual evaluations.
3. The person who conducts the psychosexual evaluation of the defendant must use diagnostic tools that are generally accepted as being within the standard of care for the evaluation of sex offenders, and the psychosexual evaluation of the defendant must include:
    i. A comprehensive clinical interview with the defendant; and

[194] NRS 176.135.
[195] NRS 176.139.

ii. A review of all investigative reports relating to the defendant's sexual offense and all statements made by victims of that offense.

4. The psychosexual evaluation of the defendant may include:
   i. A review of records relating to previous criminal offenses committed by the defendant;
   ii. A review of records relating to previous evaluations and treatment of the defendant;
   iii. A review of the defendant's records from school;
   iv. Interviews with the defendant's parents, the defendant's spouse or other persons who may be significantly involved with the defendant or who may have relevant information relating to the defendant's background; and
   v. The use of psychological testing, polygraphic examinations and arousal assessment.
5. The person who conducts the psychosexual evaluation of the defendant must be given access to all records of the defendant that are necessary to conduct the evaluation, and the defendant shall be deemed to have waived all rights of confidentiality and all privileges relating to those records for the limited purpose of the evaluation.
6. The person who conducts the psychosexual evaluation of the defendant shall:
   i. Prepare a comprehensive written report of the results of the evaluation;
   ii. Include in the report all information that is necessary to carry out the provisions of NRS 176A.110; and
   iii. Provide a copy of the report to the Division.
7. If a psychosexual evaluation is conducted pursuant to this section, the court shall:
   i. Order the defendant, to the extent of the defendant's financial ability, to pay for the cost of the psychosexual evaluation; or
   ii. If the defendant was less than 18 years of age when the sexual offense was committed and the defendant was certified and convicted as an adult, order the parents or guardians of the defendant, to the extent of their financial ability, to pay for the cost of the psychosexual evaluation. For the purposes of this paragraph, the court has jurisdiction over the parents or guardians of the defendant to the extent that is necessary to carry out the provisions of this paragraph.

(c) **Presentence investigation and report: Contents of report.**[196]

1. The report of any presentence investigation must contain:
   i. Any:
      A. Prior criminal convictions of the defendant;
      B. Unresolved criminal cases involving the defendant;
      C. Incidents in which the defendant has failed to appear in court when his or her presence was required;
      D. Arrests during the 10 years immediately preceding the date of the offense for which the report is being prepared; and

[196] NRS 176.145.

E. Participation in any program in a specialty court or any diversionary program, including whether the defendant successfully completed the program;

F. Information concerning the characteristics of the defendant, the defendant's financial condition, including whether the information pertaining to the defendant's financial condition has been verified, the circumstances affecting the defendant's behavior and the circumstances of the defendant's offense that may be helpful in imposing sentence, in granting probation or in the correctional treatment of the defendant;

ii. Information concerning the effect that the offense committed by the defendant has had upon the victim, including, without limitation, any physical or psychological harm or financial loss suffered by the victim, to the extent that such information is available from the victim or other sources, but the provisions of this paragraph do not require any particular examination or testing of the victim, and the extent of any investigation or examination is solely at the discretion of the court or the Division and the extent of the information to be included in the report is solely at the discretion of the Division;

iii. Information concerning whether the defendant has an obligation for the support of a child, and if so, whether the defendant is in arrears in payment on that obligation;

iv. Data or information concerning reports and investigations thereof made pursuant to chapter 432B of NRS and NRS 392.275 to 392.365, inclusive, that relate to the defendant and are made available pursuant to NRS 432B.290or NRS 392.317 to 392.335, inclusive, as applicable;

v. The results of the evaluation of the defendant conducted pursuant to NRS 484C.300, if such an evaluation is required pursuant to that section;

vi. A recommendation of a minimum term and a maximum term of imprisonment or other term of imprisonment authorized by statute, or a fine, or both;

vii. A recommendation, if the Division deems it appropriate, that the defendant undergo a program of regimental discipline pursuant to NRS 176A.780;

viii. If a psychosexual evaluation of the defendant is required pursuant to NRS 176.139, a written report of the results of the psychosexual evaluation of the defendant and all information that is necessary to carry out the provisions of NRS 176A.110; and

ix. A specific statement of pecuniary damages. This statement shall include, but not be limited to, a specific dollar amount recommended by the Division to be paid by the defendant to the victim(s). In cases where a specific dollar value is not known, and is not an accumulating amount, e.g. continuing medical expenses, the court may continue the sentencing. If sentencing occurs, it shall be done with the concurrence of defense counsel/defendant and the prosecutor and an agreement shall be reached as to how restitution shall be determined. In no instance shall the restitution amount be determined by the Department of Corrections without approval of the court, defendant, defense counsel and the

prosecutor. If the parties disagree about the restitution amount, a restitution hearing shall be scheduled.[197]

x. Such other information as may be required by the court.

2. The Division shall include in the report all scoresheets and scales used in determining any recommendation made pursuant to paragraphs (g) and (h) of subsection 1.
3. The Division shall include in the report the source of any information, as stated in the report, related to the defendant's offense, including, without limitation, information from:
   i. A police report;
   ii. An investigative report filed with law enforcement; or
   iii. Any other source available to the Division.
4. The Division may include in the report any additional information that it believes may be helpful in imposing a sentence, in granting probation or in correctional treatment.

(d) **General investigation and report on defendant convicted of category E felony: When required; time for completing; contents of report.**[198]

1. If a defendant pleads guilty, guilty but mentally ill or nolo contendere to, or is found guilty or guilty but mentally ill of, one or more category E felonies, but no other felonies, the Division shall not make a presentence investigation and report on the defendant pursuant to NRS 176.135, unless the Division has not made a presentence investigation and report on the defendant pursuant to NRS 176.135 within the 5 years immediately preceding the date initially set for sentencing on the category E felony or felonies and:
   i. The court requests a presentence investigation and report; or
   ii. The prosecuting attorney possesses evidence that would support a decision by the court to deny probation to the defendant pursuant to paragraph (b) of subsection 1 of NRS 176A.100.
2. If the Division does not make a presentence investigation and report on a defendant pursuant to subsection 1, the Division shall, not later than 45 days after the date on which the defendant is sentenced, make a general investigation and report on the defendant that contains:
   i. Any prior criminal convictions of the defendant;
   ii. Information concerning the characteristics of the defendant, the circumstances affecting the defendant's behavior and the circumstances of the defendant's offense that may be helpful to persons responsible for the supervision or correctional treatment of the defendant;
   iii. Information concerning the effect that the offense committed by the defendant has had upon the victim, including, without limitation, any physical or psychological harm or financial loss suffered by the victim, to the extent that such information is available from the victim or other sources, but the provisions of this paragraph do not require any particular examination or testing of the victim, and the extent of any investigation or examination and the extent of the information included in the report is solely at the discretion of the Division;

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[197] .

[198] NRS 176.151.

iv. Data or information concerning reports and investigations thereof made pursuant to chapter 432B of NRS and NRS 392.275 to 392.365, inclusive, that relate to the defendant and are made available pursuant to NRS 432B.290or NRS 392.317 to 392.335, inclusive, as applicable; and

v. Any other information that the Division believes may be helpful to persons responsible for the supervision or correctional treatment of the defendant.

(e) **Disclosure of report of presentence investigation: Report to include certain information relating to any gang affiliation of defendant.**[199]

1. Except as otherwise provided in subsection 3, the Division shall disclose to the prosecuting attorney, the counsel for the defendant, the defendant and the court, not later than 14 calendar days before the defendant will be sentenced, the factual content of the report of any presentence investigation made pursuant to NRS 176.135 and the recommendations of the Division.
2. In addition to the disclosure requirements set forth in subsection 1, if the Division includes in the report of any presentence investigation made pursuant to NRS 176.135 any information relating to the defendant being affiliated with or a member of a criminal gang and the Division reasonably believes such information is disputed by the defendant, the Division shall provide with the information disclosed pursuant to subsection 1 copies of all documentation relied upon by the Division as a basis for including such information in the report, including, without limitation, any field interview cards.
3. The defendant may waive the minimum period required by subsection 1.
4. As used in this section, "criminal gang" has the meaning ascribed to it in NRS 193.168.

(f) **Disclosure of report of presentence or general investigation; corrections to report; persons entitled to use report; confidentiality of report.**[200]

1. The Division shall disclose to the prosecuting attorney, the counsel for the defendant and the defendant the factual content of the report of:
   i. Any presentence investigation made pursuant to NRS 176.135 and the recommendations of the Division and, if applicable, provide the documentation required pursuant to subsection 2 of NRS 176.153, in the period provided in NRS 176.153.
   ii. Any general investigation made pursuant to NRS 176.151.

   The Division shall afford an opportunity to each party to object to factual errors in any such report and to comment on any recommendations. The court may order the Division to correct the contents of any such report following sentencing of the defendant if, within 180 days after the date on which the judgment of conviction was entered, the prosecuting attorney and the defendant stipulate to correcting the contents of any such report.
2. Unless otherwise ordered by a court, upon request, the Division shall disclose the content of a report of a presentence investigation or general investigation to a law enforcement agency of this State or a political subdivision thereof and to a law

[199] NRS 176.153.
[200] NRS 176.156.

enforcement agency of the Federal Government for the limited purpose of performing their duties, including, without limitation, conducting hearings that are public in nature.

3. Unless otherwise ordered by a court, upon request, the Division shall disclose the content of a report of a presentence investigation or general investigation to the Division of Public and Behavioral Health of the Department of Health and Human Services for the limited purpose of performing its duties, including, without limitation, evaluating and providing any report or information to the Division concerning the mental health of:
    i. A sex offender as defined in NRS 213.107; or
    ii. An offender who has been determined to be mentally ill.
4. Unless otherwise ordered by a court, upon request, the Division shall disclose the content of a report of a presentence investigation or general investigation to the Nevada Gaming Control Board for the limited purpose of performing its duties in the administration of the provisions of chapters 462 to 467, inclusive, of NRS.
5. Except for the disclosures required by subsections 1 to 4, inclusive, a report of a presentence investigation or general investigation and the sources of information for such a report are confidential and must not be made a part of any public record.

(g) **Delivery of report of presentence or general investigation to Director of Department of Corrections.**[201]

1. Except as otherwise provided in subsection 2, when a court imposes a sentence of imprisonment in the state prison or revokes a program of probation and orders a sentence of imprisonment to the state prison to be executed, the court shall cause a copy of the report of the presentence investigation to be delivered to the Director of the Department of Corrections, if such a report was made. The report must be delivered not later than when the judgment of imprisonment is delivered pursuant to NRS 176.335. Delivery of the report may, at the court's discretion, also be accomplished by electronic transmission or by affording the Department of Corrections the required electronic access necessary to retrieve the report.
2. If a presentence investigation and report were not required pursuant to paragraph (b) of subsection 3 of NRS 176.135 or pursuant to subsection 1 of NRS 176.151, the court shall cause a copy of the previous report of the presentence investigation or a copy of the report of the general investigation, as appropriate, to be delivered to the Director of the Department of Corrections in the manner provided pursuant to subsection 1.

(h) **Portion of certain presentence or general investigations and reports to be paid by county in which indictment found or information filed.**[202]

1. Seventy percent of the expense of any presentence or general investigation and report made by the Division pursuant to NRS 176.135 or 176.151, other than the expense of a psychosexual evaluation conducted pursuant to NRS 176.139, must be paid by the county in which the indictment was found or the information filed.
2. Each county shall pay to the Division all expenses required pursuant to subsection 1 according to a schedule established by the Division, which must require payment on at least a quarterly basis.

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[201] NRS 176.159.
[202] NRS 176.161.

(i) **Presentence reports confidential.**[203] Presentence reports shall either be physically removed from the case file and kept in a separate storage area or retained in the case file in a sealed envelope marked "Confidential".

[203] .

Rule 46 Sentence, Judgment And Commitment.

(a) **Prompt hearing; court may commit defendant or continue or alter bail before hearing; statement by defendant; presentation of mitigating evidence; rights of victim; notice of hearing.**[204]

1. Sentence must be imposed without unreasonable delay. Pending sentence, the court may commit the defendant or continue or alter the bail.
2. Before imposing sentence, the court shall:
    i. Afford counsel an opportunity to speak on behalf of the defendant; and
    ii. Address the defendant personally and ask the defendant if:
        A. The defendant wishes to make a statement in his or her own behalf and to present any information in mitigation of punishment; and
        B. The defendant is a veteran or a member of the military. If the defendant meets the qualifications of subsection 1 of NRS 176A.280, the court may, if appropriate, assign the defendant to:
            i. A program of treatment established pursuant to NRS 176A.280; or
            ii. If a program of treatment established pursuant to NRS 176A.280 is not available for the defendant, a program of treatment established pursuant to NRS 176A.250 or 453.580.
3. After hearing any statements presented pursuant to subsection 2 and before imposing sentence, the court shall afford the victim an opportunity to:
    i. Appear personally, by counsel or by personal representative; and
    ii. Reasonably express any views concerning the crime, the person responsible, the impact of the crime on the victim and the need for restitution.
4. The prosecutor shall give reasonable notice of the hearing to impose sentence to:
    i. The person against whom the crime was committed;
    ii. A person who was injured as a direct result of the commission of the crime;
    iii. The surviving spouse, parents or children of a person who was killed as a direct result of the commission of the crime; and
    iv. Any other relative or victim who requests in writing to be notified of the hearing.

    Any defect in notice or failure of such persons to appear are not grounds for an appeal or the granting of a writ of habeas corpus. All personal information, including, but not limited to, a current or former address, which pertains to a victim or relative and which is received by the prosecutor pursuant to this subsection is confidential.
5. For the purposes of this section:
    i. "Member of the military" has the meaning ascribed to it in NRS 176A.043.
    ii. "Relative" of a person includes:
        A. A spouse, parent, grandparent or stepparent;
        B. A natural born child, stepchild or adopted child;
        C. A grandchild, brother, sister, half brother or half sister; or
        D. A parent of a spouse.
    iii. "Veteran" has the meaning ascribed to it in NRS 176A.090.
    iv. "Victim" includes:

[204] NRS 176.015.

A. A person, including a governmental entity, against whom a crime has been committed;
B. A person who has been injured or killed as a direct result of the commission of a crime; and
C. A relative of a person described in subparagraph (1) or (2).

v. This section does not restrict the authority of the court to consider any reliable and relevant evidence at the time of sentencing.

(b) **Imposition of sentence on person convicted as adult for offense committed when person was under age of 18 years: Additional considerations; reduction of sentence.**[205]

1. If a person is convicted as an adult for an offense that the person committed when he or she was less than 18 years of age, in addition to any other factor that the court is required to consider before imposing a sentence upon such a person, the court shall consider the differences between juvenile and adult offenders, including, without limitation, the diminished culpability of juveniles as compared to that of adults and the typical characteristics of youth.
2. Notwithstanding any other provision of law, after considering the factors set forth in subsection 1, the court may, in its discretion, reduce any mandatory minimum period of incarceration that the person is required to serve by not more than 35 percent if the court determines that such a reduction is warranted given the age of the person and his or her prospects for rehabilitation.

[205] NRS 176.017.

Rule 47 Arrest of Judgment.

(a) **Arrest of judgment: When granted and time in which motion is to be made.**[206] The court shall arrest judgment if the indictment, information or complaint does not charge an offense or if the court was without jurisdiction of the offense charged. The motion in arrest of judgment shall be made within 7 days after determination of guilt or within such further time as the court may fix during the 7-day period.

(b) **Effect of arresting judgment.**[207] The effect of allowing a motion in arrest of judgment is to place the defendant in the same situation in which the defendant was before the indictment was found or information or complaint filed.

(c) **Procedure after allowance of arrest of judgment.**[208]

1. If, from the evidence on the trial, there is reasonable ground to believe the defendant guilty, and a new indictment, information or complaint can be framed upon which the defendant may be convicted, the court may order the defendant to be recommitted to the officers of the proper county, or admitted to bail anew to answer the new indictment, information or complaint.
2. If the evidence shows the defendant guilty of another offense, the defendant shall be committed or held thereon, and in neither case shall the verdict be a bar to another prosecution.
3. But if no evidence appear sufficient to charge the defendant with any offense, the defendant shall, if in custody, be discharged; or, if admitted to bail, the defendant's bail shall be exonerated; or, if money has been deposited instead of bail, it shall be refunded to the defendant, and the arrest of judgment shall operate as an acquittal of the charge upon which the indictment, information or complaint was founded.

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[206] NRS 176.525.
[207] NRS 176.535.
[208] NRS 176.545.

Rule 48 Motion For New Trial[209]

(a) The court may grant a new trial to a defendant if required as a matter of law or on the ground of newly discovered evidence.

(b) If trial was by the court without a jury, the court may vacate the judgment if entered, take additional testimony and direct the entry of a new judgment.

(c) Except as otherwise provided in NRS 176.09187, a motion for a new trial based on the ground of newly discovered evidence may be made only within 2 years after the verdict or finding of guilt.

(d) A motion for a new trial based on any other grounds must be made within 7 days after the verdict or finding of guilt or within such further time as the court may fix during the 7-day period.

[209] NRS 176.151

Rule 49 Stays Of Sentence Pending Appeal From Courts Of Record.[210]

(a) Staying sentence terms other than incarceration.

1. A sentence of death is stayed if an appeal or a petition for other relief is pending. The defendant shall remain in the custody of the warden of the Utah State Prison until the appeal or petition for other relief is resolved.
2. When an appeal is taken by the prosecution, a stay of any order of judgment in favor of the defendant may be granted by the court upon good cause pending disposition of the appeal.
3. Upon the filing of a notice of appeal, and motion of the defendant, the court may stay any sentenced amount of fines, conditions of probation (other than incarceration) pending disposition of the appeal, upon notice to the prosecution and a hearing if requested by the prosecution.
4. A party dissatisfied with the trial court's ruling on such a motion may petition for relief in the court in which the appeal is pending.

(b) Staying sentence terms of incarceration. A defendant sentenced, or required as a term of probation, to serve a period of incarceration in jail or in prison, shall be detained, unless released by the court in conformity with this rule.

1. In general. Before a court may release a defendant after the filing of a notice of appeal, the court must:
    i. issue a certificate of probable cause; and
    ii. determine by clear and convincing evidence that the defendant:
        A. is not likely to flee; and
        B. does not pose a danger to the safety of any other person or the community if released under any conditions as set forth in subsection (c).
2. A defendant shall file a written motion in the trial court requesting a stay of the sentence term of incarceration.
    i. That motion shall be accompanied by a copy of the filed notice of appeal; a written application for a certificate of probable cause; and a memorandum of law. The memorandum shall identify the issues to be presented on appeal and support the defendant's position that those issues raise a substantial question of law or fact reasonably likely to result in reversal, an order for a new trial or a sentence that does not include a term of incarceration in jail or prison. The memorandum shall also address why clear and convincing evidence exists that the defendant is not a flight risk and that the defendant does not pose a danger to any other person or the community.
    ii. A copy of the motion, the application for a certificate of probable cause and supporting memorandum shall be served on the prosecuting attorney. An opposing memorandum may be filed within 14 days after receipt of the application, or within a shorter time as the court deems necessary. A hearing on the application shall be held within 14 days after the court receives the opposing memorandum, or if no opposing memorandum is filed, within 14 days after the application is filed with the court.

[210] .

3. The court shall issue a certificate of probable cause if it finds that the appeal:
    i. is not being taken for the purpose of delay; and
    ii. raises substantial issues of law or fact reasonably likely to result in reversal, an order for a new trial or a sentence that does not include a term of incarceration in jail or prison.
4. If the court issues a certificate of probable cause it shall order the defendant released if it finds that clear and convincing evidence exists to demonstrate that the defendant is not a flight risk and that the defendant does not pose a danger to any other person or the community if released under any of the conditions set forth in subsection (c).
5. The court ordering release pending appeal under subsection (b)(4) shall order release on the least restrictive condition or combination of conditions set forth in subsection (c) that the court determines will reasonably assure the appearance of the person as required and the safety of persons and property in the community.
6. Review of trial court's order. A party dissatisfied with the relief granted or denied under this subsection may petition the court in which the appeal is pending for relief.
    i. If the petition is filed by the defendant, a copy of the petition, the affidavit and papers filed in support of the original motion shall be served on the Utah Attorney General if the case involves any felony charge, and on the prosecuting attorney if the case involves only misdemeanor charges.
    ii. If the petition is filed by the prosecution, a copy of the petition and supporting papers shall be served on defense counsel, or the defendant if the defendant is not represented by counsel.

(c) If the court determines that the defendant may be released pending appeal, it may release the defendant on the least restrictive condition or combination of conditions that the court determines will reasonably assure the appearance of the person as required and the safety of persons and property in the community, which conditions may include, without limitation, that the defendant:

1. is admitted to appropriate bail;
2. not commit a federal, state or local crime during the period of release;
3. remain in the custody of a designated person who agrees to assume supervision of the defendant and who agrees to report any violation of a release condition to the court, if the designated person is reasonably able to assure the court that the person will appear as required and will not pose a danger to the safety of any other person or the community;
4. maintain employment, or if unemployed, actively seek employment;
5. maintain or commence an educational program;
6. abide by specified restrictions on personal associations, place of abode or travel;
7. avoid all contact with the victim or victims of the crime(s), any witness or witnesses who testified against the defendant and any potential witnesses who might testify concerning the offenses if the appeal results in a reversal or an order for a new trial;
8. report on a regular basis to a designated law enforcement agency, pretrial services agency or other agency;
9. comply with a specified curfew;
10. refrain from possessing a firearm, destructive device or other dangerous weapon;
11. refrain from possessing or using alcohol, or any narcotic drug or other controlled substance except as prescribed by a licensed medical practitioner;

12. undergo available medical, psychological or psychiatric treatment, including treatment for drug or alcohol abuse or dependency;
13. execute an agreement to forfeit, upon failing to appear as required, such designated property, including money, as is reasonably necessary to assure the appearance of the defendant as required, and post with the court such indicia of ownership of the property or such percentage of the money as the court may specify;
14. return to custody for specified hours following release for employment, schooling or other limited purposes; and
15. satisfy any other condition that is reasonably necessary to assure the appearance of the defendant as required and to assure the safety of persons and property in the community.

(d) The court may at any time for good cause shown amend the order granting release to impose additional or different conditions of release.

Rule 50 Stays Pending Appeal From A Court Not Of Record- Appeals For A Trial De Novo[211]

(a) Except as outlined in subsection (d) below, the procedures in this rule shall govern stays of terms of sentences when a defendant files an appeal in a court not of record for a trial de novo.

(b) Upon the timely filing of a notice of appeal for a trial de novo, the court shall:

1. order stayed any fine or fee payments until the appeal is resolved; and
2. order stayed any period of incarceration, unless:
    i. at the time of sentencing, the judge found by a preponderance of the evidence that the defendant posed a danger to another person or the community; or
    ii. the appeal does not appear to have a legal basis.

(c) If a stay is ordered, the judge may leave in effect any other terms of probation the judge deems necessary including:

1. continuation of any pre-trial restrictions or orders;
2. sentencing protective orders;
3. orders that limit or monitor a defendant's drug and alcohol use, including use of an ignition interlock device; and
4. requiring defendant's bail to continue until defendant's appearance in the district court. The judge shall only order bail to continue if the court finds by clear and convincing evidence that, without such security, the defendant will likely fail to appear at district court.

(d) A party dissatisfied with the findings made by the justice court judge in staying a sentence under this rule shall utilize the procedure outlined in rule ** to obtain relief in the district court.

(e) A court may at any time for good cause shown amend its order granting release to impose additional or different conditions of release. However, the justice court may only act under this subsection (f) if the district court has not docketed or held any hearings pursuant to this rule.

(f) For purposes of this rule, "term of sentence" or "sentence" shall include findings of contempt pursuant to NRS **.

[211]

Rule 51 RESERVED

Rule 52 Disposition After Appeal[212]

(a) If a judgment of conviction is reversed, a new trial shall be held unless otherwise specified by the appellate court. Pending a new trial or other proceeding, the defendant shall be detained, or released upon bail, or otherwise restricted as the trial court on remand determines proper. If no further trial or proceeding is to be had a defendant in custody shall be discharged, and a defendant restricted by bail or otherwise shall be released from restriction and bail exonerated and any deposit of funds or property refunded to the proper person.

(b) Upon affirmance by the appellate court, the judgment or order affirmed or modified shall be executed.

(c) Unless otherwise ordered by the trial court, within 28 days after receipt of the remittitur, the trial court shall notify the parties and place the matter on the calendar for review.

[212] .

PROPOSED NEVADA RULES OF CRIMINAL PROCEDURE

Rule 53 [Reserved]

Rule 54 [Reserved]

TITLE VIII. SUPPLEMENTARY AND SPECIAL PROCEEDINGS

PROPOSED NEVADA RULES OF CRIMINAL PROCEDURE

Rule 55 Exceptions Unnecessary.[213]

Exceptions to rulings or orders of the court are unnecessary. It is sufficient that a party state his objections to the actions of the court and the reasons therefor. Failure to object generally precludes appellate review.

[213] .

Rule 56 Dismissal Without Trial[214]

(a) **Dismissing an information.** In its discretion, for substantial cause and in furtherance of justice, the court may, either on its own initiative or upon application of either party, order an information or indictment dismissed.

(b) **Mandatory dismissal.** The court shall dismiss the information or indictment when:

1. There is unreasonable or unconstitutional delay in bringing defendant to trial;
2. The allegations of the information or indictment, together with any bill of particulars furnished in support thereof, do not constitute the offense intended to be charged in the pleading so filed;
3. It appears that there was a substantial and prejudicial defect in the impaneling or in the proceedings relating to the grand jury;
4. The court is without jurisdiction; or
5. The prosecution is barred by the statute of limitations.

(c) **Record of dismissal.** The reasons for any such dismissal shall be set forth in an order and entered in the minutes.

(d) **Effects of dismissal.** If the dismissal is based upon the grounds that there was unreasonable delay, or the court is without jurisdiction, or the offense was not properly alleged in the information or indictment, or there was a defect in the impaneling or of the proceedings relating to the grand jury, further prosecution for the offense shall not be barred and the court may make such orders with respect to the custody of the defendant pending the filing of new charges as the interest of justice may require. Otherwise the defendant shall be discharged and bail exonerated.

An order of dismissal based upon unconstitutional delay in bringing the defendant to trial or based upon the statute of limitations, shall be a bar to any other prosecution for the offense charged.

(e) **Dismissal by compromise.** In misdemeanor cases, upon motion of the prosecutor, the court may dismiss the case if it is compromised by the defendant and the injured party. The injured party shall first acknowledge the compromise before the court or in writing. The reasons for the order shall be set forth therein and entered in the minutes. The order shall be a bar to another prosecution for the same offense; provided however, that dismissal by compromise shall not be granted when the misdemeanor is committed by or upon a peace officer while in the performance of his duties, or riotously, or with an intent to commit a felony.

(f) **Voluntary dismissal by the State.** Pursuant NRS ***.***, the state may exercise its discretion to a one-time dismissal of a case in the justice or municipal court.

[214] .

Rule 57 Appeals From Justice Court To District Court by Defendant

(a) **Appeal must be taken within 10 days.**[215] Except as otherwise provided in NRS 177.015, a defendant in a criminal action tried before a justice of the peace may appeal from the final judgment therein to the district court of the county where the court of the justice of the peace is held, at any time within 10 days from the time of the rendition of the judgment.

(b) **Notice of intention to appeal: Filing and service; stay of judgment pending appeal.**[216]

1. The party intending to appeal must file with the justice and serve upon the district attorney a notice entitled in the action, setting forth the character of the judgment, and the intention of the party to appeal therefrom to the district court.
2. Stay of judgment pending appeal is governed by NRS 177.105 and 177.115.

(c) **Transmission of transcript, other papers, sound recording and copy of docket to district court.**[217]

1. The justice shall, within 10 days after the notice of appeal is filed, transmit to the clerk of the district court the transcript of the case, all other papers relating to the case and a certified copy of the docket.
2. The justice shall give notice to the appellant or the appellant's attorney that the transcript and all other papers relating to the case have been filed with the clerk of the district court.
3. If the district judge so requests, before or after receiving the record, the justice of the peace shall transmit to the district judge the sound recording of the case.

(d) **Procedure where transcript defective.**[218]

1. Except as provided in subsection 2, if the district court finds that the transcript of a case which was recorded by sound recording equipment is materially or extensively defective, the case must be returned for retrial in the justice court from which it came.
2. If all parties to the appeal stipulate to being bound by a particular transcript of the proceedings in the justice court, or stipulate to a particular change in the transcript, an appeal based on that transcript as accepted or changed may be heard by the district court without regard to any defects in the transcript.

(e) **Action to be judged on record.**[219] An appeal duly perfected transfers the action to the district court to be judged on the record.

(f) **Grounds for dismissal of appeal; enforcement of judgment.**[220]

1. The appeal may be dismissed on either of the following grounds:
    i. For failure to take the same in time.

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215 NRS 189.010.
216 NRS 189.020.
217 NRS 189.030.
218 NRS 189.035.
219 NRS 189.050.
220 NRS 189.060.

ii. For failure to appear in the district court when required.

2. If the appeal is dismissed, a copy of the order of dismissal must be remitted to the justice, who may proceed to enforce the judgment.

(g) **Dismissal for failure to set or reset appeal for hearing.**[221]

1. An appeal must be dismissed by the district court unless the appeal is perfected by application of the defendant, within 60 days after the appeal is filed in the justice court, by having it set for hearing before the District Court.
2. If an appeal has been set for hearing and the hearing is vacated at the request of the appellant, the appeal must be dismissed unless application is made by the appellant to reset the hearing within 60 days after the date on which the hearing was vacated.

(h) **Grounds for dismissal of complaint on appeal.**[222] Any complaint, upon motion of the defendant, may be dismissed upon any of the following grounds:

1. That the justice of the peace did not have jurisdiction of the offense.
2. That more than one offense is charged in any one count of the complaint.
3. That the facts stated do not constitute a public offense.

[221] NRS 189.065.
[222] NRS 189.070.

Rule 58 Appeals From Justice Court To District Court by State[223]

Appeal by State from order granting defendant's motion to suppress evidence.

1. The State may appeal to the district court from an order of a justice court granting the motion of a defendant to suppress evidence.
2. Such an appeal shall be taken:
    i. Within 2 days after the rendition of such an order during a trial or preliminary examination.
    ii. Within 5 days after the rendition of such an order before a trial or preliminary examination.
3. Upon perfecting such an appeal:
    i. After the commencement of a trial or preliminary examination, further proceedings in the trial shall be stayed pending the final determination of the appeal.
    ii. Before trial or preliminary examination, the time limitation within which a defendant shall be brought to trial shall be extended for the period necessary for the final determination of the appeal.

[223] NRS 189.120.

Rule 59 [Reserved]

PROPOSED NEVADA RULES OF CRIMINAL PROCEDURE

Rule 60 [Reserved]

PROPOSED NEVADA RULES OF CRIMINAL PROCEDURE

TITLE IX. GENERAL PROVISIONS

PROPOSED NEVADA RULES OF CRIMINAL PROCEDURE

Rule 61 Definitions

As used within this title, unless the context requires otherwise, the words and terms defined in this Rule have the meaning ascribed to them in the following sections:[224]

(a) **"Arrest"** defined. "Arrest" is defined under NRS 171.104.
(b) **"Attorney General"** defined. "Attorney General" includes any deputy attorney general or special prosecutor appointed by the Nevada Attorney General to prosecute individuals for the commission of a criminal offense.
(c) **"Case in chief of the defendant"** defined. "Case in chief of the defendant" means the first opportunity of the defendant to present evidence after the close of the case in chief of the State during trial.
(d) **"Case in chief of the state"** defined. "Case in chief of the state" means the first opportunity of the prosecutor to present evidence at the beginning of the trial.
(e) **"Complaint"** defined.[225] "Complaint" means a written statement of the essential facts constituting the public offense charged. The "Complaint" shall be made upon:

1. Oath before a magistrate or a notary public; or
2. Declaration which is made subject to the penalty for perjury.

(f) **"Criminal action"** defined. "Criminal action" means the proceedings by which a party charged with a public offense is accused and brought to trial and punishment. A criminal action is prosecuted in the name of the State of Nevada, as plaintiff.
(g) **"Defendant"** defined. "Defendant" means the party prosecuted in a criminal action. "The defendant" is the person named as such in a complaint, indictment, or information. "The defendant" as used in these rules includes an arrested person who at the time of arrest is not named in a charging document. "The defendant" in the context of certain rules includes the attorney who represents the defendant.
(h) **"Defense attorney"** defined. "Defense attorney" means the lawyer appointed or retained to represent a defendant in a criminal action. In a case in which multiple attorneys represent the same defendant, the term may be read to be plural.
(i) **"District attorney"** defined. "District attorney" includes the elected or appointed district attorney of the county and any deputy district attorney appointed .
(j) **"Issues of Fact"** defined. "Issues of Fact" those issues which must be tried by a jury if a jury trial is required under the Constitution of the United States or the State of Nevada or by any statute of the State of Nevada.[226]
(k) **"Law"** defined. "Law" means: Any rule, statute, ordinance or judicial opinion.
(l) **"May"** defined. "May" means: Generally, a discretionary choice to act or not, as distinguished from "shall" which generally makes the act imperative in nature. However, in certain

[224] Many of these definitions mirror the definitions under Chapter 169 of the Nevada Revised Statutes.
[225] NRS 171.102.
[226] NRS 174.135.

contexts "may" can have an imperative meaning, the word "may" must in those circumstances be read in context to determine if it means that the act is optional/discretionary or mandatory/required.

(m) **"Provision of Law"** defined. "Provision of law" means a clause or condition contained within a law that requires a party or some parties to perform a particular requirement by some specified time or prevents a party or some parties from performing a particular requirement by some specified time.

(n) **"Limited Jurisdiction Court"** defined. A "limited jurisdiction court" is a justice court under NRS §§ 4.370 *et seq.*, or a municipal court under NRS §§ 5.050 *et seq.*

(o) **"Magistrate"** defined. "Magistrate" means an officer having power to issue a warrant for the arrest of a person charged with a public offense and includes:

1. The justices of the Supreme Court;
2. The judges of the court of appeals;
3. The judges of the district courts;
4. The justices of the peace;
5. The judges of the municipal courts; and
6. Others upon whom are conferred by law the powers of a justice of the peace in a criminal case.

(p) **"Master"** defined. "Master" means a person appointed by the district court to inform defendants of their rights, assign counsel for indigent defendants and perform other similar administrative duties assigned by the court.

(q) **"Month"** defined. "Month" means a calendar month unless otherwise expressed.

(r) **"Oath"** defined. "Oath" includes an affirmation.

(s) **"Party"** defined. "Party" means the parties to the case, which generally include, but are not limited to, the State of Nevada and the defendants in a case. Use of the word "party" in these rules means all parties to the action unless specifically limited to a particular party (i.e. State or Defendant) or limited by the context of the word.

(t) **"Peace officer"** defined. "Peace officer" includes any person upon whom some or all of the powers of a peace officer are conferred pursuant to NRS 289.150 to 289.360, *inclusive*.

(u) **"Person"** defined. "Person" includes an entity.

(v) **"Personal property"** defined. "Personal property" includes money, goods, chattels, things in action and evidences of debt.

(w) **"Presiding Judge"** defined. "Presiding Judge" means:

(1) **For the District Court**: In a district having more than one judge, the presiding judge is designated by the appropriate rule or law or procedure. In a district that has only one district court judge, the lone judge is the presiding judge.

(2) For a Limited Jurisdiction Court. In courts having more than one judge, the presiding judge is designated by the appropriate rule or law or procedure. If a limited jurisdiction court consists only of one judge, the lone judge is the presiding judge.

(x) **"Property"** defined. "Property" includes both real and personal property.

(y) **"Prosecuting attorney"** defined. "Prosecuting attorney" means an attorney who conducts proceedings in a court on behalf of the government.

Commented [TW3]: You had the phase but no definition. I could not find a definition in the NRS but located this one.

(z) **"Public officer"** defined. "Public officer" means a person elected or appointed to a position which:

1. Is established by the constitution or a statute of this State, or by a charter or ordinance of a political subdivision of this State; and

2. Involves the continuous exercise, as part of the regular and permanent administration of the government, of a public power, trust or duty.

(aa) **"Real property"** defined. "Real property" is coextensive with lands, tenements, and hereditaments.

(bb) **"Shall"** defined. "Shall" means generally, an imperative mandate to act or not, as distinguished from "may" which generally makes the act permissive in nature. However, in certain contexts "shall" can have a permissive meaning, the word "shall" must in those circumstances be read in context to determine if it means that the act is optional/discretionary or mandatory/required.

(cc) **"The State."** "The State" means the State of Nevada, or any other Nevada state or local governmental entity or political subdivision that files a criminal charge in a Nevada court. "The State" in the context of certain rules includes the prosecuting attorney representing the State. "The State," when under context in which it is used refers to the different parts of the United States, includes within its reference all the States of the United States, including the District of Columbia and the territories.

(dd) **"Trial"** defined. "Trial" means that portion of a criminal action which:

(a) If a jury is used, begins with the impaneling of the jury and ends with the return of the verdict, both inclusive.

(b) If no jury is used, begins with the opening statement, or if there is no opening statement, when the first witness is sworn, and ends with the closing argument or upon submission of the cause to the court without argument, both inclusive.

The term "Trial" does not include any proceeding had upon a plea of guilty or guilty but mentally ill to determine the degree of guilt or to fix the punishment.

(ee) **"Trier of Fact"** defined. "Trier of Fact" as used in these rules means a jury who is shall determine issues of fact that are required to be tried by a jury under either the Constitution of the United States or of the State of Nevada and any statute.

(ff) **"United States"** defined. "United States" means all the State of the United States and includes the District of Columbia, Puerto Rico, territories or insular possessions as the context may require.

(gg) **"Victim"** defined. "Victim" means a person as defined in NRS § 217.070.

(hh) **"Writing"** defined. "Writing" means any typewritten, printed, computer generated, handwritten, or other document which contains letters or marks placed upon paper, parchment, or other material substance.[227]

(ii) **"Oral Statement"** defined. Every mode of oral statement, under oath or affirmation, is embraced by the term "testify," and every written one in the term "depose." [228]

[227] NRS 169.215

[228] NRS 169.215

PROPOSED NEVADA RULES OF CRIMINAL PROCEDURE

Rule 62 Time

(a) **Computing time.** The following rules apply in computing any time period specified in these rules, any local rule or court order, or in any statute that does not specify a method of computing time.[229] The following applies to counting time:

1. When the period is stated in days or a longer unit of time, the following applies:
    i. The day of the event that triggers the period of time shall be excluded from the calculation of the time period;
    ii. If the period of time is greater than seven (7) days, count every day, including intermediate Saturdays, Sundays, and legal holidays;
    iii. If the period of time is less than seven (7) days, count every day, excluding intermediate Saturdays, Sundays, and legal holidays; and
    iv. Include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.
2. When the period is stated in hours:
    i. Begin counting immediately on the occurrence of the event that triggers the period; and
    ii. Count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays.
3. Unless the court orders otherwise, if the clerk's office is inaccessible.
    i. On the last day for filing under Rule **, then the time for filing is extended to the first accessible day that is not a Saturday, Sunday or legal holiday; or
    ii. During the last hour for filing under Rule **, then the time for filing is extended to the same time on the first accessible day that is not a Saturday, Sunday, or legal holiday.
4. Unless a different time is set by a statute or court order, filing on the last day means:
    i. For electronic filing, at midnight; and
    ii. For filing by other means, the filing must be made before the clerk's office is scheduled to close.
5. The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.
6. "Legal holiday" means the day for legal holidays set forth in NRS 236.015.

(b) **Extending time.**[230]

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229 NRS 178.472 provides that: "In computing any period of time the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a nonjudicial day, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a nonjudicial day. When a period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and nonjudicial days shall be excluded in the computation.

230 NRS 178.476 provides that:

1. When an act may or must be done within a specified time, the court may, for good cause, extend the time unless a provision of law governing the act does not permit the Court to extend the time period:
    i. With or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires; or
    ii. On motion made after the time has expired if the party failed to act because of excusable neglect.
2. A court must not extend the time for taking any action under the rules applying to a judgment of acquittal, new trial, arrest of judgment and appeal, unless otherwise provided in these rules. Nor may the court extend times for filing and perfecting appeals.

(c) **Motions; affidavits.**[231]

1. A written motion, other than one which may be heard ex parte, and notice of the hearing thereof must be served not later than 5 days before the time specified for the hearing unless a different period is fixed by rule or order of the court. For cause shown such an order may be made on ex parte application.
2. When a motion is supported by affidavit, the affidavit must be served with the motion; and opposing affidavits may be served not less than 1 day before the hearing unless the court permits them to be served at a later time.
3. A certificate of service must accompany each motion filed.

(d) **Additional time after service by mail.** When a party may or must act within a specified time after service and service is made by mail, three days are added after the period would otherwise expire under paragraph (a).

When an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion:

1. With or without motion or notice, order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order; or
2. Upon motion made after the expiration of the specified period permit the act to be done if the failure to act was the result of excusable neglect,

but the court may not extend the time for taking any action under NRS 176.515 or 176.525 except to the extent and under the conditions stated in those sections.

The statutory exceptions under NRS 176.515 and 176.525 are covered by the language "unless a provision of law governing the act does not permit the Court to extend the time period."

[231] NRS 178.478

PROPOSED NEVADA RULES OF CRIMINAL PROCEDURE

Rule 64 Service And Filing Of Papers

(a) **Service Required.** All written motions, notices and pleadings shall be filed with the court and served on all other parties.

(b) **Service Upon Counsel.** Whenever service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney, unless service upon the party himself is ordered by the court or required by a specific rule or statute. Service upon the attorney or upon a party shall be made in the manner provided in civil actions. If a Court has implemented an e-filing system, service effectuated by the e-filing system shall constitute service under these rules.

(c) **Certificate of Service.** The motion, notice, or pleading shall also have a Certificate of Service which indicates that the party, the legal counsel for the party, or an employee of either has served the document and shall indicate the method of service employed. The party preparing an order shall, upon execution by the court, serve upon each party a Notice of Entry of Order which has a copy of the Order attached thereto and certify to the court such service in a Certificate of Mailing.

PROPOSED NEVADA RULES OF CRIMINAL PROCEDURE

Rule 65 Rules Of Court

(a) District courts may make local rules for the conduct of criminal proceedings not inconsistent with these rules and statutes of the state. Copies of all rules made by a court shall, upon promulgation, be furnished to the Supreme Court and to the Judicial Council and shall be made available to members of the state bar and the public.

(b) If no procedure is specifically prescribed by rule, the court may proceed in any lawful manner not inconsistent with these rules or statutes.

PROPOSED NEVADA RULES OF CRIMINAL PROCEDURE

Rule 66 Victims And Witnesses

Commented [TW4]: Need to update with the new law

(a) The prosecuting agency shall inform all victims and subpoenaed witnesses of their responsibilities during the criminal proceedings.

(b) The prosecuting agency shall inform all victims and subpoenaed witnesses of their right to be free from threats, intimidation and harm by anyone seeking to induce the victim or witness to testify falsely, withhold testimony or information, avoid legal process, or secure the dismissal of or prevent the filing of a criminal complaint, indictment or information.

(c) If requested by the victim, the prosecuting agency shall provide notice to all victims of the date and time of scheduled hearings, trial and sentencing and of their right to be present during those proceedings and any other public hearing unless they are subpoenaed to testify as a witness and the exclusionary rule is invoked.

(d) The informational rights of victims and witnesses contained in paragraphs (a) through (c) of this rule are contingent upon their providing the prosecuting agency and court with their current telephone numbers and addresses.

(e) In cases where the victim or the victim's legal guardian so requests, the prosecutor shall explain to the victim that a plea agreement involves the dismissal or reduction of charges in exchange for a plea of guilty and identify the possible penalties which may be imposed by the court upon acceptance of the plea agreement. At the time of entry of the plea, the prosecutor shall represent to the court, either in writing or on the record, that the victim has been contacted and an explanation of the plea bargain has been provided to the victim or the victim's legal guardian prior to the court's acceptance of the plea. If the victim or the victim's legal guardian has informed the prosecutor that he or she wishes to address the court at the change of plea or sentencing hearing, the prosecutor shall so inform the court.

(f) The court shall not require victims and witnesses to state their addresses and telephone numbers in open court.

(g) Judges should give scheduling priority to those criminal cases where the victim is a minor in an effort to minimize the emotional trauma to the victim. Scheduling priorities for cases involving minor victims are subject to the scheduling priorities for criminal cases where the defendant is in custody.

PROPOSED NEVADA RULES OF CRIMINAL PROCEDURE

Rule 67 Regulation Of Conduct In The Courtroom

(a) All pleadings, written motions and other papers must be free from burdensome, irrelevant, immaterial, scandalous, or uncivil matters. All attorneys must likewise govern their conduct. Pleadings, written motions and other papers and attorney conduct which are not in compliance may be disregarded or stricken, in whole or in part, and the court may impose sanctions against the offending person.

(b) The court may make appropriate orders regulating the conduct of officers, parties, spectators and witnesses prior to and during the conduct of any proceeding.

Rule 68 Withdrawal Of Counsel

(a) Withdrawal of counsel prior to entry of judgment.

1. Consistent with the Rules of Professional Conduct, an attorney may not withdraw as counsel of record in criminal cases without the approval of the court.
2. A motion to withdraw as an attorney in a criminal case shall be made in open court with the defendant present unless otherwise ordered by the court. Counsel must certify that the withdrawal meets the requirements of the Rules of Professional Conduct.

(b) Withdrawal of counsel after entry of judgment. Prior to permitting withdrawal of trial counsel, the trial court shall require counsel to file a written statement certifying:

1. That the defendant has been advised of the right to file a motion for new trial or to seek a certificate of probable cause, and if in counsel's opinion such action is appropriate, that the same has been filed.
2. That the defendant has been advised of the right to appeal and if in counsel's opinion such action is appropriate, that a Notice of Appeal, a Request for Transcript, and in appropriate cases, an Affidavit of Impecuniosity and an Order requiring the appropriate county to bear the costs of preparing the transcript have been filed.

PROPOSED NEVADA RULES OF CRIMINAL PROCEDURE

Rule 69 Minute Entry

The case file shall include copies of all minute entries of proceedings made in that case.

Rule 70 Errors And Defects

(a) Any error, defect, irregularity or variance which does not affect the substantial rights of a party shall be disregarded.

(b) Clerical mistakes in judgments, orders or other parts of the record and errors in the record arising from oversight or omission may be corrected by the court at any time and after such notice, if any, as the court may order.

PROPOSED NEVADA RULES OF CRIMINAL PROCEDURE

Rule 71 Citation To Decisions

Published decisions of the Supreme Court and the Court of Appeals may be cited as precedent in all criminal proceedings. Unpublished decisions may also be cited as precedent, so long as all parties and the court are supplied with accurate copies at the time the decision is first cited and said unpublished decisions are entitled to precedential effect as set forth by an appropriate rule.

Rule 72 Coordination Of Cases Pending In District Court And Juvenile Court

(a) All parties have a continuing duty to notify the court of a delinquency case pending in juvenile court in which the defendant is a party.

(b) The notice shall be filed with a party's initial pleading or as soon as practicable after the party becomes aware of the other pending case. The notice shall include the case caption, file number and name of the judge or commissioner in the other case.

PROPOSED NEVADA RULES OF CRIMINAL PROCEDURE

Rule 73 [Reserved]

Rule 74 [Reserved]