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Evidence

Evidence; affidavits and adjournments for expert witnesses

NEV. REV. STAT. § 50.325 (amended).

AB 234 (Committee of Judiciary); 1987 STAT. Ch 132

SB 481 (Committee on Judiciary); 1987 STAT. Ch 330

(Effective June 6, 1987)

Under existing law, if a person is charged with an act punishable under the Uniform Controlled Substances Act,¹ for driving while intoxicated,² or for a homicide resulting from driving a vehicle while under the influence,³ then the prosecuting attorney may request that the affidavit of an expert⁴ be admitted into evidence at the trial or hearing.⁵ Chapters 132 and 330 provide that the use of affidavits in lieu of compelling the appearance of an expert witness is limited to preliminary hearings and criminal trials.⁶ Under existing law, if the affidavit is admitted into evidence and if justice requires the presence of the expert,⁷ the judge⁸ may adjourn the trial for a minimum of three judicial days for the purpose of receiving such testimony.⁹ In

1. See NEV. REV. STAT. §§ 453.011-.810 (defines and regulates controlled substances and paraphernalia as well as providing criminal and civil penalties for violations).

2. See *id.* § 484.379 (defining the unlawful act of driving while intoxicated).

3. *Id.* (under the influence of intoxicated liquor, controlled substance, chemical, poison, or organic substance). See *id.* § 484.3795 (penalty for deaths caused by driving while intoxicated).

4. See *id.* § 50.315 (definition of an expert witness which includes one who withdrew blood, received samples of blood or urine, analyzed, tested, or prepared for calibration or calibrated a machine testing for the presence of intoxicating chemicals).

5. *Id.* § 50.325 1 (amended by 1987 Nev. Stat. ch. 330, sec. 1, at ____). The request must be made at least 10 days before the trial date and sent to the defendant and the defendant's counsel by registered or certified mail. *Id.* § 50.325 2. If the defendant or the defendant's counsel notifies the prosecuting attorney at least 96 hours before the trial date that the presence of the expert or other person is demanded, the affidavit must not be admitted. *Id.* § 50.325 3 (amended by 1987 Nev. Stat. ch. 330, sec. 1, at ____).

6. 1987 Nev. Stat. ch. 330, sec. 4, at ____ (amending NEV. REV. STAT. § 50.325) (only judges or justices of the peace may adjourn the trial or preliminary hearing).

7. NEV. REV. STAT. § 50.315 (presence of expert required for examination or cross-examination).

8. A justice of the peace or hearing officer may also adjourn the trial or hearing. *Id.* § 50.325 4 (amended by 1987 Nev. Stat. ch. 330, sec. 1, 2, at ____).

9. *Id.* § 50.325 4 (amended by 1987 Nev. Stat. ch. 132, sec. 1, at ____ and by 1987 Nev. Stat. ch. 330, sec. 2, at ____). See *State v. Vezeris*, 102 Nev. Adv. Op. 53, 3-5, 720 P.2d 1208,

counties with less than 25,000 people, Chapter 330 permits the judge or justice of the peace to extend the period of adjournment for a period not exceeding ten days.¹⁰

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1211-12 (1986) (defendants in criminal proceedings may object to the use of affidavits of person drawing blood samples, but parties seeking administrative review of driver's license revocations could not object to the use of such affidavits).

10. 1987 Nev. Stat. ch. 330, sec. 2, at ___ (amending NEV. REV. STAT. § 50.325 4) (providing that three judicial days are not sufficient time for the expert to appear).

Evidence; privilege—marriage and family counselors

NEV. REV. STAT. § 49.____ (new).

SB 379 (Committee on Judiciary); 1987 STAT. Ch 259

Existing law allows a privilege of confidentiality for legal¹ and accounting² clients, medical patients,³ confessants,⁴ and other persons.⁵ Under Chapter 259, a client⁶ has a privilege to refuse to disclose, and prevent others from disclosing, confidential communications⁷ between the client and the marriage and family counselor.⁸ The privilege⁹ may be invoked by the client, the client's

1. NEV. REV. STAT. § 49.095.

2. *Id.* § 49.185.

3. *Id.* § 49.225. *But see id.* § 49.245 (excepts from the privilege specific communications involving mentally ill patients' hospitalizations, court ordered examinations, conditions that comprise legal claims or defenses, prosecutions or mandamus proceedings regarding patients' venereal diseases, persons' efforts to obtain illegal, dangerous, or controlled substances, authorized investigations performed by the board of medical examiners, acts prohibited by the Uniform Controlled Substances Act, and medical malpractice investigations).

4. *Id.* § 49.255.

5. *Id.* §§ 49.265 (committees for review of medical care proceedings and records), 49.275 (news media members), 49.285 (public officers as witnesses), 49.290 (school counselors and pupils), 49.291 (teachers and pupils), 49.335 (law enforcement informers), 49.315 (voters in political elections), 49.325 (trade secret possessors), and 49.295 (spouses). *But see id.* § 49.305 (a sane spouse must be a witness to any fact that occurred either before or during the insane spouse's insanity).

6. 1987 Nev. Stat. ch. 259 sec. 2, at ___ (enacting NEV. REV. STAT. § 49.____) (definition of client).

7. *Id.* (definition of confidential communication).

8. *Id.* sec. 3, at ___ (enacting NEV. REV. STAT. § 49.____); *id.* sec. 2, at ___ (enacting NEV. REV. STAT. § 49.____) (definition of marriage and family counselor). *But see* NEV. REV. STAT. § 49.385 (holder of the privilege waives the privilege if the holder voluntarily discloses or consents to disclosure of any significant part of the matter).

9. NEV. REV. STAT. § 49.015 (except as otherwise required by the United States Consti-