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Crimes; detention of material witness

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child,² unless the person acts to protect the child from abuse or neglect.³

JZ

2. 1989 Nev. Stat. ch. 727, sec. 1, at 1110 (amending NEV. REV. STAT. § 200.359). The crime is punishable by imprisonment in the state prison for one to six years, or by a fine of \$1000 to \$5000, or both. *Id.* If the offender has no prior convictions, upon recommendation of the prosecuting attorney the judge may impose a misdemeanor sentence. *Id.* Before an arrest warrant may be issued for a violation of Chapter 727, the court must determine that: 1) Nevada is the child's home state; 2) there is probable cause to believe that the child has been wrongly removed from the court's jurisdiction; and 3) the child has been wrongfully removed from the person with legal custody or wrongfully retained after a visit. *Id.* See NEV. REV. STAT. § 125A.040(5) (1987) (definition of home state).

3. *Id.* See NEV. REV. STAT. § 200.508 (1985) (definition of abuse and neglect).

Crimes; detention of material witness

NEV. REV. STAT. § 178.494 (amended).
AB 343 (Gibbons); 1989 STAT. Ch. 157

Under existing law, in a criminal proceeding where it appears impractical to secure the presence of a material witness by subpoena,¹ the magistrate² may require the witness to post bail.³ If the witness fails to give bail, the magistrate may incarcerate the witness.⁴ Chapter 157 requires that a detained witness be brought before the court

1. See NEV. REV. STAT. §§ 174.305 (1987) (form and issuance of a subpoena for attendance of a witness); 174.345, 174.365, 174.395 (1987) (service of subpoena). The affidavit must show that the witness's testimony is material to the criminal proceeding. *Id.* § 178.494 (1987) (amended by 1989 Nev. Stat. ch. 157, sec. 1, at 327). Refusal to answer as a witness may be punished as contempt of court. *Id.* § 50.195 (1987). The disobeying witness may be arrested and brought before the court. *Id.* § 50.205 (1987). A witness disobeying a defendant's subpoena shall also forfeit \$100 to the defendant. *Id.* § 50.195 3 (1988).

2. See *id.* § 169.095 (1987) (definition of magistrate).

3. *Id.* § 178.494 (1987) (amended by 1989 Nev. Stat. ch. 157, sec. 1, at 327). See *id.* § 178.498 (1987) (considerations for setting defendant's bail).

4. *Id.* § 178.494 (1987) (amended by 1989 Nev. Stat. ch. 157, sec. 1, at 327). The magistrate may also modify the bail or order the witness to be released if incarceration has been for an unreasonable length of time. *Id.* See NEV. CONST. art. I, § 6 (a witness shall not be unreasonably detained). Witnesses are entitled to compensation only if their attendance is in obedience to a subpoena. NEV. REV. STAT. § 50.225 1 (1987).

within seventy-two hours of the initial detention.⁵ The judge or magistrate must then determine whether to continue detention or to modify the bail.⁶ If the detention continues, the court must also establish a schedule for the periodic review of the witness's situation.⁷

DMT

5. 1989 Nev. Stat. ch. 157, sec. 1, at 327 (amending NEV. REV. STAT. § 178.494).

6. *Id.*

7. *Id.*

Crimes: driving under the influence— sentencing

NEV. REV. STAT. §§ 176.215, 484.3795 (amended).

SB 456 (Committee on Judiciary); 1989 STAT. Ch. 527

Under prior law, the period of probation or suspension of sentence for a felony conviction could not exceed five years.¹ Chapter 527 increases this period to ten years for persons convicted of felony drunk driving.² However the sentence can only be suspended if the defendant is imprisoned³ for at least one year and is thereafter put on probation.⁴

KMS

1. 1987 Nev. Stat. ch 328, sec. 3, at 761 (amending NEV. REV. STAT § 176.215). See NEV. REV. STAT. § 176.185 (1987) (terms and conditions for suspension of sentence and probation).

2. 1989 Nev. Stat. ch. 527, sec. 1, at 1110 (amending NEV. REV. STAT. § 176.215). The probation or suspension of sentence may be indeterminate but may not exceed 10 years. *Id.* See NEV. REV. STAT. § 484.3795 (1987) (definition of felony drunk driving). See generally *Cotter v. State*, 103 Nev. 303, 306, 738 P.2d 506, 508 (1987) (driving under the influence is a question of fact for the jury, except when the defendant's blood alcohol level is over .10%).

3. See 1989 Nev. Stat. ch. 527, sec. 2, at 1110 (amending NEV. REV. STAT. § 484.3795) (prison includes an institution of minimum security, an honor camp, a restitution center, a state prison, or similar facility).

4. *Id.* (necessary conditions for suspension of sentence or probation); sec. 1, at 1110 (the defendant can be put on probation for up to 10 years). See generally, Ross, *Judicial Disobedience of the Mandate to Imprison Drunk Drivers*, 21 LAW AND SOC. REV. 315-27 (Fall 1987) (discussing judicial avoidance of firm mandates on drunk driving laws).