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Evidence

Evidence; affidavits of expert witnesses

NEV. REV. STAT. §§ 50.315, 50.325 (amended).
SB 68 (Committee on Judiciary); 1989 STAT. Ch. 44

Existing law authorizes admitting into evidence an affidavit of an expert witness¹ to prove the amount of alcohol or the presence of a controlled substance² in a person's blood.³ Chapter 44 broadens existing law by allowing admission of an expert's affidavit to prove the quantity of a controlled substance purportedly in the possession of a person.⁴

Under existing law, when a person is charged with an act punishable under the Uniform Controlled Substance Act⁵ or the state traffic laws,⁶ or for homicide resulting from driving under the influence,⁷ the prosecuting attorney may request the admission of an expert's affidavit to prove the identity or existence of a controlled substance.⁸

1. NEV. REV. STAT. § 50.315 (1987) (amended by 1989 Nev. Stat. ch. 44, sec. 1, at 77) (expert must be qualified to testify regarding the presence of alcohol or controlled substances in another's blood or urine pursuant to the expert's analysis or testing of the other's blood or urine, or to testify regarding the identity of a controlled substance which was purportedly in the possession of another).

2. See *id.* § 0.031 (1987) (definition of controlled substance). See also *id.* §§ 453.166-.216 (1987) (board authorization for determining whether item is a controlled substance).

3. See *id.* § 50.315 (1987) (amended by 1989 Nev. Stat. ch. 44, sec. 1, at 77) (affidavits may be admitted in administrative proceedings, criminal trials in district courts, or preliminary examinations or trials in justices' or municipal courts).

4. 1989 Nev. Stat. ch. 44, sec. 1, at 77 (amending NEV. REV. STAT. § 50.315).

5. See NEV. REV. STAT. §§ 453.011-.810 (1987) (regulates controlled substances and provides penalties for violations).

6. See *id.* §§ 484.011-.817 (1987) (defines and regulates state traffic laws and provides penalties for violations).

7. See *id.* §§ 484.3795 (1987) (provides penalties for causing death while driving under the influence), 484.379 (defines act of driving under the influence).

8. *Id.* § 50.325 (1987) (amended by 1989 Nev. Stat. ch. 44, sec. 2, at 78). The prosecuting attorney must make the request by registered mail at least 10 days prior to the date of the trial or preliminary hearing. *Id.* If the defendant by registered mail at least 96 hours before the date set for a trial or preliminary hearing makes a demand that the expert appear, the affidavit must not be admitted. *Id.* The defendant may be required to pay the fees and expenses of the expert for his presence. *Id.* The judge or justice of the peace may adjourn

Chapter 44 permits the prosecuting attorney to request that an expert's affidavit be admitted into evidence to prove the quantity of a controlled substance.⁹

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the trial or preliminary hearing for up to three judicial days to receive the expert testimony, and up to 10 days in counties with a population of less than 25,000 if three days is insufficient.
Id.

9. 1989 Nev. Stat. ch. 44, sec. 2, at 78 (amending NEV. REV. STAT. § 50.325).

Evidence; controlled substances

NEV. REV. STAT. § 52.— (new); § 52.395 (amended).
AB 204 (Nevin); 1989 STAT. Ch. 73

Under existing law, a district court can order evidence destroyed when there is an unnecessary quantity of a controlled substance.¹ Chapter 73 expands court authority by authorizing the court to order the destruction of dangerous drugs² or immediate precursors.³ In addition, Chapter 73 specifies that authenticated⁴ photographs,⁵ samples, and writings⁶ describing the measurements⁷ of hazardous waste⁸

1. NEV. REV. STAT. § 52.395 1 (1987) (amended by 1989 Nev. Stat. ch. 73, sec. 2, at 183) (allowing destruction of any alleged controlled substance seized from a defendant by a peace officer). *See id.* § 0.031 (1987) (definition of controlled substance). *See also id.* § 52.395 (1987) (requiring weighing and retention of a sample of the substance). *See generally id.* §§ 453.011-.348 (1987) (Uniform Controlled Substances Act).

2. *See* 1989 Nev. Stat. ch. 73, sec. 2, at 183 (incorporating NEV. REV. STAT. § 454.201) (definition of dangerous drug). *See also* *Smithart v. State*, 86 Nev. 925, 931, 478 P.2d 576, 580 (1970) (diet pills requiring a prescription and bearing a cautionary label are dangerous drugs).

3. 1989 Nev. Stat. ch. 73, sec. 2, at 183 (amending NEV. REV. STAT. § 52.395). *See id.* (incorporating NEV. REV. STAT. § 453.086) (definition of immediate precursor).

4. *See* NEV. REV. STAT. § 52.015 (1987) (authentication or identification required for admissibility into evidence).

5. *See id.* § 52.215 (1988) (definition of photograph).

6. *See id.* § 52.225 (1988) (definition of writing).

7. *See* 1989 Nev. Stat. ch. 73, sec. 1, at 183 (enacting NEV. REV. STAT. § 52.—) (including actual net or estimated net weight).

8. *See id.* (incorporating NEV. REV. STAT. § 459.430) (definition of hazardous waste).