

CHAPTER.....

AN ACT relating to criminal procedure; specifying that a prosecuting attorney or an attorney for a defendant may issue subpoenas for witnesses in this State to appear before the court at which a preliminary hearing is to be held; authorizing a peace officer to accept delivery of a subpoena in lieu of service, via electronic means; providing that a person who fails to obey a subpoena of an attorney for a defendant without an adequate excuse is in contempt of court; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes the prosecuting attorney or the attorney for the defendant in a criminal proceeding to issue subpoenas for witnesses within the State to appear before the court at which an indictment, information or criminal complaint is to be tried. (NRS 174.315) **Section 2** of this bill additionally specifies that a prosecuting attorney or an attorney for a defendant may issue subpoenas for such witnesses to appear before the court at which a preliminary hearing is to be held. **Section 2** also provides that a peace officer may accept delivery of a subpoena in lieu of service, via electronic means.

Existing law also provides that a person who, without an adequate excuse, fails to obey a subpoena of a court or a prosecuting attorney that was served upon the person or that was delivered to the person and accepted is in contempt of the court from which the subpoena was issued or in which the investigation is pending or the indictment, information or complaint is to be tried. (NRS 174.385) **Section 3** of this bill provides that a person who fails to obey a subpoena of an attorney for a defendant is also in contempt of court. **Section 3** also specifies that a person who fails to obey a subpoena of a prosecuting attorney or an attorney for a defendant is in contempt of the court in which a preliminary hearing is to be held.

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 172.305 is hereby amended to read as follows:
172.305 A presentment or indictment may not be dismissed on the ground that the specific subject of the inquiry was not disclosed to the defendant pursuant to NRS 172.195 or subsection ~~4~~ 5 of NRS 174.315.

Sec. 2. NRS 174.315 is hereby amended to read as follows:
174.315 1. ~~The~~ A prosecuting attorney may issue subpoenas subscribed by the prosecuting attorney for witnesses within the State, in support of the prosecution or whom ~~the~~ a grand



jury may direct to appear before it, upon any investigation pending before the grand jury.

2. ~~The~~ *A* prosecuting attorney or ~~the~~ *an* attorney for ~~the~~ *a* defendant may issue subpoenas subscribed by the issuer for:

(a) 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.

(b) 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:

(a) Identify himself or herself to the witness by name and occupation;

(b) 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

(c) Execute a certificate of service containing the information set forth in paragraphs (a) and (b).

4. ~~The~~ *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.

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.*



Sec. 3. NRS 174.385 is hereby amended to read as follows:

174.385 Failure by any person without *an* adequate excuse to obey a subpoena of a court, ~~for~~ 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~~ *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~~ *or an attorney for a defendant*, of the court in which ~~the~~ *a preliminary hearing is to be held*, *an* investigation is pending or ~~the~~ *an* indictment, information or complaint is to be tried.



