

SENATE BILL NO. 368—SENATORS FORD, ATKINSON,
SPEARMAN, CANCELA AND DENIS

MARCH 20, 2017

JOINT SPONSORS: ASSEMBLYMEN NEAL, FRIERSON, THOMPSON,
MONROE-MORENO, MILLER; AND MCCURDY II

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to criminal procedure.
(BDR 14-113)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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

AN ACT relating to criminal procedure; establishing requirements concerning certain motions to suppress evidence; providing for the return and inadmissibility as evidence of property which is seized as a result of certain unlawful stops or seizures and subsequent arrests and searches; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Generally, the exclusionary rule requires courts to exclude evidence that law
2 enforcement obtains in violation of the Fourth Amendment of the United States
3 Constitution, which bars unreasonable searches and seizures. The United States
4 Supreme Court and the Nevada Supreme Court recognized an exception to the
5 exclusionary rule under the “attenuation doctrine,” holding that “when [a]
6 constitutional violation is far enough removed from the acquisition of the evidence,
7 the violation is sufficiently ‘attenuated [so] as to dissipate the taint’ of the illegality
8 and the evidence may be admitted.” (*Torres v. State*, 131 Nev. Adv. Op. 2, 341
9 P.3d 652 (2015), citing *Wong Sun v. United States*, 171 U.S. 471, 491 (1993))
10 However, the Nevada Supreme Court in *Torres* held that the discovery of a warrant
11 of arrest does not purge the taint from an illegal seizure and that the attenuation
12 doctrine does not apply under such circumstances. See *Torres*, 131 Nev. Adv. Op.
13 2, at 11, 341 P.3d at 658.

14 In 2016, the United States Supreme Court extended the attenuation doctrine to
15 admit evidence seized in situations in which a law enforcement officer makes an
16 unconstitutional investigatory stop, discovers during the stop that the person
17 stopped is the subject of an outstanding arrest warrant, arrests the person and seizes



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18 evidence in a search conducted incident to the arrest. (*Utah v. Strieff*, 579 U.S. ____,
19 136 S.Ct. 2056 (2016)) Pursuant to the decision of the United States Supreme Court
20 in *Strieff*, the judgment of the Nevada Supreme Court in *Torres* was vacated and the
21 attenuation doctrine was extended to allow the admissibility of evidence seized
22 under such circumstances. (*State v. Torres*, 136 S.Ct. 2505 (2016)) **Section 1.5** of
23 this bill provides that the attenuation doctrine is not extended to permit the
24 admissibility of evidence seized under such circumstances.

25 **Section 1** of this bill requires that a motion to suppress evidence in any
26 criminal proceeding in which the defendant is charged with a felony or gross
27 misdemeanor: (1) be made in the district court having jurisdiction after any
28 preliminary hearing; (2) generally be in writing; and (3) be made in accordance
29 with all applicable provisions of law and court rules governing the procedure for
30 filing such a motion.

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

1 **Section 1.** Chapter 174 of NRS is hereby amended by adding
2 thereto a new section to read as follows:

3 *A motion to suppress evidence in any criminal proceeding in*
4 *which the defendant is charged with a felony or gross*
5 *misdemeanor must be made in the district court having*
6 *jurisdiction after any preliminary hearing. Such a motion must be:*

7 *1. Except as otherwise provided in paragraph (a) of*
8 *subsection 2 of NRS 174.125 or any other provision of law, in*
9 *writing; and*

10 *2. Made in accordance with all applicable provisions of law*
11 *and court rules governing the procedure for filing such a motion.*

12 **Sec. 1.5.** NRS 179.085 is hereby amended to read as follows:

13 179.085 1. A person aggrieved by an unlawful search and
14 seizure or the deprivation of property may move the court having
15 jurisdiction where the property was seized for the return of the
16 property on the ground that:

- 17 (a) The property was illegally seized without warrant;
18 (b) The warrant is insufficient on its face;
19 (c) There was not probable cause for believing the existence of
20 the grounds on which the warrant was issued;
21 (d) The warrant was illegally executed; or
22 (e) Retention of the property by law enforcement is not
23 reasonable under the totality of the circumstances.

24 ➤ The judge shall receive evidence on any issue of fact necessary to
25 the decision of the motion.

26 2. If the motion is granted on a ground set forth in paragraph
27 (a), (b), (c) or (d) of subsection 1, the property must be restored and
28 it must not be admissible evidence at any hearing or trial.

29 3. If the motion is granted on the ground set forth in paragraph
30 (e) of subsection 1, the property must be restored, but the court may



1 impose reasonable conditions to protect access to the property and
2 its use in later proceedings.

3 4. *If a peace officer:*

4 (a) *Makes an unlawful stop or seizure of a person;*

5 (b) *Discovers that there is an outstanding warrant for the
6 arrest of the person;*

7 (c) *Arrests the person pursuant to the outstanding warrant of
8 arrest;*

9 (d) *Conducts a search pursuant to that arrest; and*

10 (e) *Seizes property which is discovered during that search,
11 → a person aggrieved by the seizure or the deprivation of the
12 property may move the court having jurisdiction where the
13 property was seized for the return of the property on the ground
14 that the property was seized as the result of an unlawful stop or
15 seizure. The judge shall receive evidence on any issue of fact
16 necessary to the decision of the motion. If the motion is granted,
17 the property must be restored and it must not be admissible
18 evidence at any hearing or trial. For the purposes of this
19 subsection, the discovery of an outstanding warrant of arrest shall
20 be deemed not to purge the taint of an unlawful stop or seizure
21 and not to attenuate the connection between the unlawful stop or
22 seizure and the seizure of property during a search incident to an
23 arrest pursuant to the outstanding warrant of arrest.*

24 5. A motion to suppress evidence on any ground set forth in
25 paragraphs (a) to (d), inclusive, of subsection 1 ~~may also~~ *or*
26 *pursuant to subsection 4 must* be made in ~~the court where the trial~~
27 ~~is to be had. The motion must be made before trial or hearing unless~~
28 ~~opportunity therefor did not exist or the defendant was not aware of~~
29 ~~the grounds for the motion, but the court in its discretion may~~
30 ~~entertain the motion at the trial or hearing.~~

31 ~~5.1~~ *accordance with NRS 174.125 and section 1 of this act.*

32 6. If a motion pursuant to this section is filed when no criminal
33 proceeding is pending, the motion must be treated as a civil
34 complaint seeking equitable relief.

35 **Sec. 2.** NRS 189.120 is hereby amended to read as follows:

36 189.120 1. ~~The~~ *In a case in which a defendant is charged is a*
37 *only with any misdemeanor or felony, the State may appeal to the district*
38 *court from an order of a justice court granting the motion of ~~to~~ the*
39 *defendant to suppress evidence.*

40 2. Such an appeal ~~shall~~ *must* be taken:

41 (a) Within 2 days after the rendition of such an order during a
42 trial. ~~for preliminary examination.~~

43 (b) Within 5 days after the rendition of such an order before a
44 trial. ~~for preliminary examination.~~



1 3. Upon perfecting such an appeal:

2 (a) After the commencement of a trial , ~~for preliminary~~
3 ~~examination.~~ further proceedings in the trial ~~shall~~ *must* be stayed
4 pending the final determination of the appeal.

5 (b) Before trial , ~~for preliminary examination.~~ the time
6 limitation within which a defendant ~~shall~~ *must* be brought to trial
7 ~~shall~~ *must* be extended for the period necessary for the final
8 determination of the appeal.

9 **Sec. 3.** This act becomes effective upon passage and approval.

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