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## Criminal Procedure; Writs of Habeus Corpus

Lorne Malkiewich

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6. Ch. 589 §1 (amending NRS 171.178(3)). See Ex Parte A Kee, 22 Nev. 374, 375-376, 40 P.879, 879-880 (1895).
7. Ch. 589 §1 (adding NRS 171.178(3) (a)).
8. Id. §1 (adding NRS 171.178(3) (b)).
9. 1975 Nev. Stats. ch. 643 §3, at 1201 (NRS 171.178). Compare id. with Rule 5 of Federal Rules of Criminal Procedure. See also McNabb v. U.S., 318 U.S. 332, 344 (1943) rehearing denied, 319 U.S. 784 (1943); McMichael v. State, 94 Nev. Adv. Op. 59 at 6, 577 P.2d 398, 403 (1978); Morgan v. Sheriff, Clark County, 92 Nev. 544, 546, 554 P.2d 733, 734 (1976); Wammack v. Sheriff, Washoe County, 86 Nev. 162, 163, 466 P.2d 849, 850 (1970); Lemel v. Smith, 64 Nev. 545, 566-567, 187 P.2d 169, 179 (1947). See generally, Bybee, Nevada's 1967 Criminal Procedure Law From Arrest to Trial: One State's Response to a Widely Recognized Need, 35 NEV. ST. B.J. (no. 3) 12 (1970), reprinted from 1969 UTAH L. REV. 520.
10. See Deutscher v. State, 95 Nev. Adv. Op. 182, at 6 n. 7, —P.2d— (1979).

### CRIMINAL PROCEDURE; WRITS OF HABEUS CORPUS

Amends NRS 34.380

SB 129 (Committee on Judiciary); STATS 1979, Ch 216

Chapter 216 eliminates a petitioner's right to appeal a district court's denial of a writ of habeus corpus.<sup>1</sup> Under previous law, a petitioner could appeal a district court's denial to the supreme court.<sup>2</sup> When appeal was available, a petitioner could not independently apply to the supreme court for a writ of habeus corpus.<sup>3</sup>

Chapter 216 eliminates a petitioner's appeal from a denial of a writ, but does not eliminate a state's appeal from a grant of a writ.<sup>4</sup> It appears that independent application to the supreme court may be permitted even after a district court denial,<sup>5</sup> because NRS 34.380 permits application at any time.

Lorne Malkiewich

## FOOTNOTES

1. 1979 Nev. Stats. Ch. 216 (hereinafter "Ch. 216") §1 (amending NRS 34.380).
2. 1977 Nev. Stats. ch. 545 §2, at 1350.
3. Ex parte Merton, 80 Nev. 435, 438, 395 P.2d 766, 767 (1964).
4. NRS 34.380(6) as renumbered by Ch. 216 §1.
5. Ex parte Merton, 80 Nev. at 435, 395 P.2d at 767, denied independent application because appeal was available; as appeal is no longer available, independent application may be permitted.

### CRIMINAL PROCEDURE; JUSTICES' COURTS ARE COURTS OF RECORD

Adds to NRS Chapters 4, 189

Amends NRS 1.020, 189.030, 189.050, 266.565

Repeals NRS 189.040, 189.080

SB 267 (Committee on Judiciary); STATS 1979, Ch 659

(Effective January 1, 1980)

Cross-reference: Civil Procedure; justice and municipal courts

Effective January 1, 1980,<sup>1</sup> Chapter 659 amends NRS 1.020 to establish justices' courts of record<sup>2</sup> and amends NRS 189.050 to eliminate the right to a trial de novo on appeal to district courts.<sup>3</sup> Chapter 659 also amends, repeals and adds various NRS sections to implement these changes.

In Nevada, justice courts have original jurisdiction over civil suits that do not exceed \$750 and jurisdiction over the public offenses of petit larceny; assault and battery, which were not committed against a public officer in the discharge of his duties or with the intent to kill; breaches of the peace, riots, affrays and willful commissions of injury to property; and all misdemeanors punishable by fine not exceeding \$500, or imprisonment not exceeding six months, or both.<sup>4</sup> Under NRS 4.010, the only requirement to be eligible for the office of justice of the peace is that the candidate must be a qualified voter.<sup>5</sup> Since there is no requirement for justices of the peace to be attorneys, a problem may arise because of the decision in North v. Russell.<sup>6</sup> In North, the United States Supreme Court ruled that the due process clause of the Fourteenth Amendment did not preclude criminal trial before a lay judge when an appeal of right with a de novo trial before a traditionally law-