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## Criminal Procedure; Justices' Courts are Courts of Record

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## 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-

trained judge is available.<sup>7</sup> The inference to be drawn from North is that a trial before a lay judge, when a right to appeal with a trial de novo before an attorney judge is unavailable, would be an unconstitutional denial of due process under the Fourteenth Amendment. If this inference is valid and since Chapter 659 permits appeal from the justice court on the record only, defendants committed by a non-attorney justice of the peace after January 1, 1980 may be granted habeas corpus when the legality of the conviction is challenged on the constitutional ground of lack of procedural due process.<sup>8</sup>

Darlynn Cassaday

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#### FOOTNOTES

1. 1979 Nev. Stats. ch. 659 §12.
2. Id. §6 (amending NRS 1.020).
3. Id. §9 (amending NRS 189.030).
4. NRS 4.370(3).
5. NRS 4.010.
6. 427 U.S. 328 (1976).
7. Id. at 339,
8. See Shum v. Fogliani, 82 Nev. 156, 158, 413 P.2d 495, 496 (1966) (remedy of habeas corpus is appropriate to test the legality of a conviction which is challenged on constitutional grounds).

CRIMINAL LAW; PROBATION PROHIBITED WHERE DEADLY WEAPON  
USED TO COMMIT SPECIFIED CRIMES

Amends NRS 193.165

SB 192 (Committee on Judiciary); STATS 1979, Ch 160

Chapter 160 amends NRS 193.165 to prohibit probation for the use of a deadly weapon in the commission of specified crimes. Chapter 160 works in conjunction with related criminal law statutes.