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Crimes; Prisoners-Penalties for Battery and False Imprisonment, Prohibition of Sexual Activity

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ever, specifies that the new penalty is not applicable when the conviction is for assault with intent to kill or with intent to commit sexual assault, mayhem, robbery, or grand larceny.¹¹ These crimes continue to be punishable as gross misdemeanors,¹² thus reserving the harsher penalty for assault with a deadly weapon.¹³

11. *Id.* §200.471 2. *See also id.* §200.400 (definitions and penalties for assault and battery with intent to commit a crime).

12. *Id.* §200.400 2.

13. *Compare id.* §200.471 with *id.* §200.400.

Crimes; prisoners—penalties for battery and false imprisonment, prohibition of sexual activity

N.R.S. §212.— (new); §§200.460, 200.481 (amended).
AB 87 (Committee on Judiciary); STATS 1981, Ch 334

Under existing law, persons convicted of false imprisonment¹ are liable for all damages sustained by the person imprisoned and are guilty of a gross misdemeanor² punishable by not more than one year in a county jail, or a \$1,000 fine, or both.³ Chapter 334 requires imprisonment in the state prison for one to six years if the false imprisonment is committed with the use of a deadly weapon⁴ or by a prisoner in a penal institution without the use of a deadly weapon.⁵ A prisoner in lawful confinement or custody who is convicted of false imprisonment committed with the use of a deadly weapon will be punished by imprisonment in state prison for not less than two but no more than twenty years.⁶

Under existing law, the punishment for a conviction of battery⁷ ranges from a misdemeanor,⁸ if the battery is not committed with a deadly weapon and no substantial injury results to the adult victim,⁹ to a felony if a deadly weapon is used.¹⁰ Imprisonment in state prison for one to six years is required under Chapter 334 if the battery is committed by a prisoner in lawful custody without the use of a deadly weapon

1. *See* N.R.S. §200.460 1 (definition of false imprisonment).

2. *See id.* §193.120 (definition of a gross misdemeanor).

3. *See id.* §§193.140, 200.460 2.

4. *See id.* §200.460 3(b).

5. *See id.* §200.460 3(a).

6. *See id.* §200.460 4.

7. *See id.* §200.481 1(a) (definition of battery).

8. *See id.* §193.150.

9. *See id.* §200.481 2(a).

10. *Id.* §200.481 2(d). *See id.* §193.120 (definition of a felony).

and whether or not substantial bodily harm results to the victim.¹¹ A prisoner who commits a battery with the use of a deadly weapon will be imprisoned for not less than two and no more than twenty years.¹²

Finally, Chapter 334 makes it unlawful for a prisoner to engage voluntarily in sexual conduct¹³ with a person having lawful custody of the prisoner or with an employee of the institution where the prisoner is confined.¹⁴ It is also unlawful for a person having custody of a prisoner or an employee of the institution where the prisoner is confined to engage voluntarily in sexual conduct with the prisoner.¹⁵

11. *See id.* §200.481 2(e).

12. *See id.* §200.481 2(f).

13. *See id.* §212.— 2 (sexual conduct includes acts of masturbation, homosexuality, sexual intercourse, or physical contact with another's unclothed genitals or pubic area).

14. *See id.* §212.— 1(a).

15. *See id.* §212.— 1(b). *See generally* *People v. Santibanez*, 91 Cal. App. 3d 287, 154 Cal. Rptr. 74 (1979) (upholding against attack on equal protection and privacy grounds California provision prohibiting prisoners from engaging in acts of oral copulation while making no similar prohibition for non-prisoners). *See also* *Tarlton v. Clark*, 441 F.2d 384 (5th Cir.) *cert. denied* 403 U.S. 934 (1971) (the plaintiff (prisoner) not denied his eighth amendment rights when not allowed sexual relations with his wife during her visit); *Lyons v. Gilligan*, 382 F. Supp. 198 (N.D. Ohio 1974) (plaintiff's constitutional right of privacy not infringed by the absence of facilities for conjugal visits or by prison rules prohibiting acts of sexual intimacy between prisoners and their wives during visits).

