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Criminal Procedure; Pretrial Habeas Corpus Appeals

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given under oath of the grounds for the requested issuance.² A record of the statement must be made by electronic means or by a certified shorthand reporter in the presence, or immediate vicinity, of the magistrate.³ The record must be transcribed, certified by the magistrate and the reporter, if one was used, and filed with the clerk of the court.⁴

Chapter 685 also provides that after issuing a search warrant based either on a sworn affidavit or an oral statement given under oath, a magistrate may orally authorize a peace officer to sign the magistrate's name on a duplicate original warrant.⁵ The duplicate original is considered to be a search warrant for all purposes.⁶ After the duplicate original has been served, it must be returned to the issuing magistrate to be endorsed and dated.⁷ Chapter 685 provides that a magistrate's failure to endorse and date the warrant *does not* invalidate the warrant, although no provision is made regarding the specific effect of the failure.⁸ After endorsing the duplicate original warrant, the magistrate must attach the search warrant, a copy of the return, the inventory, and all other related papers, and file them with the clerk of the court in the jurisdiction where the property was seized.⁹

2. N.R.S. §§179.045 1, 179.045 2; *accord*, CAL. PENAL CODE §1526 (California law similar to Chapter 685); 2 PAC. L.J. REVIEW OF SELECTED 1970 CALIFORNIA LEGISLATION 377 (1971).

3. N.R.S. §179.045 2.

4. *Id.*

5. *Id.* §179.045 3; *accord*, CAL. PENAL CODE §1528 (California law similar to Chapter 685); 2 PAC. L.J. REVIEW OF SELECTED 1970 CALIFORNIA LEGISLATION 377 (1971).

6. N.R.S. §179.045 3.

7. *Id.*

8. *Id.*

9. *Id.* §179.095.

Criminal Procedure; pretrial habeas corpus appeals

N.R.S. §§34.375, 34.380 (amended).

AB 529 (Committee on Judiciary); STATS 1981, Ch 263
(*Effective May 19, 1981*)

Prior to the enactment of Chapter 263, a provision granting an accused the right to appeal the denial of a petition for a writ of habeas corpus was deleted from the Nevada Revised Statutes.¹ In *White v. Warden*,² the Nevada Supreme Court determined that this deletion

1. *See* STATUTES OF NEVADA 1979, c. 216, §1, at 312 (amending N.R.S. §34.380).

2. 96 Adv. 168, 614 P.2d 536 (1980).

was intended to restrict only pretrial appeals.³ Chapter 263 modifies the content requirements of the pretrial petition and reestablishes the right to appeal orders denying pretrial petitions for writs of habeas corpus under certain circumstances.⁴

Chapter 263 removes the requirement that the accused consent in the initial petition for a writ of habeas corpus to an automatic change in the trial date if any party appeals the ruling on the petition.⁵ The accused, however, must still waive the sixty-day limit for commencing the trial⁶ and consent to a continuance if the initial petition is not decided within fifteen days of the trial date.⁷ Chapter 263 also provides that a district court order denying a pretrial writ of habeas corpus based on an alleged lack of probable cause or jurisdiction over the charge may be appealed to the supreme court within fifteen days after the entry of the order or judgment but only if the applicant already has been convicted or there is no criminal charge pending.⁸

Finally, Chapter 263 deletes certain provisions governing the authority of the justices of the Nevada Supreme Court and District Court judges to grant writs of habeas corpus.⁹ This authority, however, is expressly granted by the Nevada Constitution and thus the power of the judges to issue writs of habeas corpus is not affected.¹⁰

3. *See id.*; *cf.* Gary v. Sheriff, 96 Adv. 24, 605 P.2d 212 (1980) (restriction of pretrial appellate review of habeas petition constitutional).

4. *Compare* N.R.S. §§34.375, 34.380 3 *with* STATUTES OF NEVADA 1977, c. 545, §1, at 1350 (enacting N.R.S. §34.375) *and* STATUTES OF NEVADA 1979, c. 216, §1, at 312.

5. *Compare* N.R.S. §34.375 *with* STATUTES OF NEVADA 1977, c. 545, §1, at 1350.

6. *See* N.R.S. §34.375 1(b)(1).

7. *See id.* §34.375 1(b)(2).

8. *See id.* §34.380 3.

9. *Compare* N.R.S. §34.380 1-3 *with* STATUTES OF NEVADA 1979, c. 216, §1, at 312.

10. *See* NEV. CONST. art. VI, §§4, 6.

Criminal Procedure; search incident to arrest

N.R.S. §171.— (new).

SB 563 (Raggio); STATS 1981, Ch 422

Existing law authorizes a peace officer to conduct a search incident to a lawful arrest¹ of an arrestee's person and the area within the arrestee's immediate control for weapons or evidence of criminal activity.²

1. N.R.S. §171.104 (definition of arrest). *See generally* A Minor Boy v. State, 91 Nev. 456, 537 P.2d 477 (1975) (court interpretation of N.R.S. §171.104).

2. *See* Chimel v. California, 395 U.S. 752 (1969); N.R.S. §171.146. *See also* Heffley v. State, 83 Nev. 100, 105, 423 P.2d 666, 669 (1967) (officer conducting a lawful search may act on evidence