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Criminal Procedure; Search Incident to Arrest

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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

Chapter 422 requires a peace officer arresting a person who appears to be intoxicated³ or not in control of his or her physical functions, to conduct a reasonable investigation to determine whether the arrestee is wearing a bracelet, necklace, or other medical device or identification.⁴ If the investigation reveals identification of a medical condition that might account for the arrestee's actions, the arresting officer must take reasonable steps to aid the arrestee in receiving treatment for the condition.⁵

of a crime other than that triggering the arrest); N.R.S. §171.1232 (limited search permitted of person lawfully detained).

3. See *Jackson v. State*, 84 Nev. 203, 207, 438 P.2d 795, 798 (1968) (discussion of peace officer's discretion in determining intoxication).

4. See N.R.S. §171.— 1.

5. See *id.* §171.— 2.

Criminal Procedure; restitution to victims of crime

N.R.S. §209.— (new); §§176.189, 213.126, 217.260 (amended).

SB 29 (Wagner); STATS 1981, Ch 335

SB 257 (Committee on Judiciary); STATS 1981, Ch 616

Chapter 616 authorizes the establishment of restitution centers and creates a system for payment of restitution by criminal offenders to the victims of their crimes.¹ A victim may be any natural person, governmental agency, unincorporated association, or business organization injured or damaged directly by the criminal act.² In addition, the spouse, children, or dependents³ of a natural person who is killed, injured, or suffered damage as a direct result of the criminal act qualify as victims eligible to receive restitution.⁴

Chapter 616 allows the Director of the Department of Prisons (hereinafter referred to as the Director),⁵ with the approval of the Board of State Prisons,⁶ to establish centers for housing offenders, enabling them to work and earn wages to use in making restitution to the victims of their crimes.⁷ No offender may be assigned to a center, however, unless he or she requests the assignment,⁸ the Director determines that the

1. See generally STATUTES OF NEVADA 1981, c. —, §§1-13, at —.

2. N.R.S. §209.— 1.

3. *Id.* §209.— (definition of dependent).

4. *Id.* §209.— 2.

5. *Id.* §209.061 (definition of Director).

6. *Id.* §209.021 (definition of Board).

7. *Id.* §209.— 1.

8. *Id.* §209.— 1.