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Criminal Procedure; Restitution to Victims of Crime

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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.

offender is suitable for assignment,⁹ a valid claim for restitution is filed by the victim or an approved offer to make restitution is made by the offender,¹⁰ and the offender assigns all wages earned to the Department of Prisons (hereinafter referred to as the Department).¹¹

Chapter 616 allows any victim to file a claim for restitution with the Director at any time while the offender is incarcerated.¹² After approving the offender's request for assignment to a center, the Director will determine the validity of all claims for restitution.¹³ In absence of a claim, voluntary offers by the offender to make restitution also are reviewed by the Director.¹⁴ Following approval of a restitution claim or offer the Director must attempt to negotiate and enter into an agreement with the offender that assigns the offender's earned wages to the Department and sets forth a schedule of payments to be made to the victims.¹⁵ The wages will be disbursed to offset the costs incurred by the Department in the care and housing of the offender at the center,¹⁶ and to the victim as scheduled restitution payments.¹⁷ Any remaining wages are deposited in the offenders personal property fund.¹⁸ The total amount awarded to the victim is based on a consideration of the victim's economic loss,¹⁹ loss of companionship, and pain and suffering.²⁰ In addition, when determining the amount to be awarded the Director will consider any payments the claimant already has received as a result of the injury or loss²¹ and any conduct by the injured victim or the deceased that contributed to the loss.²² Payments of restitution must terminate, however, if the offender is transferred to another institution that is not a restitution center,²³ the victim has received the full

9. *Id.* §209.— 2.

10. *Id.* §209.— 3.

11. *Id.* §209.— 4.

12. *Id.* §209.— 1; *see id.* §§209.— 2 (when the victim is a minor, the claim may be made by parent or guardian; when the victim is mentally incompetent, the claim may be made by parent, guardian, or other person authorized to administer the victim's estate), 209.— (if an offender has been convicted of a criminal act that is the basis for a claim for restitution, proof of that conviction is conclusive that the offense has been committed unless an appeal or any related proceeding is pending).

13. *Id.* §209.— 3(a).

14. *Id.* §209.— 3(b).

15. *Id.* §209.—

16. *Id.* §§209.—, 209.— 2, 209.— 2(a).

17. *Id.* §§209.— 1, 209.— 2(b).

18. *Id.* §§209.— 3, 209.— 2(c).

19. *Id.* §209.— 1 (economic loss may consist of medical expenses including expenses for psychiatric treatment, expenses for nonmedical remedial care including psychological treatment, funeral expenses, loss of earnings of financial support, damage to or loss of real or personal property, or any other economic loss suffered by the victim).

20. *Id.* §209.— 2.

21. *Id.* §209.— 3.

22. *Id.* §209.— 4.

23. *Id.* §209.— 1.

amount under the restitution agreement,²⁴ or the offender is released from prison and continuation of restitution payments is not a condition of parole.²⁵ Existing law, however, authorizes a court to order restitution by a defendant as a condition of probation or suspension of sentence.²⁶ Chapter 616 requires that if, within three years after the defendant has been discharged from probation, the Department of Parole and Probation has not located the person to whom restitution was ordered, the restitution payments must be deposited with the State Treasurer for credit to the fund for the compensation of victims of crime.²⁷

24. *Id.* §209.— 3.

25. *Id.* §209.— 2.

26. *Id.* §§176.189 1, 213.126 1.

27. *Id.* §§176.189 3, 213.126 4.

Criminal Procedure; jury instructions

N.R.S. §175.161 (amended).

SB 227 (Committee on Judiciary); STATS 1981, Ch 218

Under existing law, either party in a criminal trial may request that a specific instruction be given to the jury.¹ The judge may exercise discretion in either giving or refusing the instruction.² Prior to the enactment of Chapter 218, the court was required to show by endorsement on the charge its decision whether the instruction would be given to a jury, distinguishing if necessary those parts of the instruction that were given and those that were refused.³ The court also was required to sign the charge.⁴ Chapter 218 replaces these requirements for the giving or refusing of jury instructions.⁵

Under the procedures established by Chapter 218, each party requesting an instruction must submit an original and one copy of the request to the court.⁶ The copies must be numbered and indicate the identity of the requesting party.⁷ In addition, the court must identify any copies it modifies or submits on its own motion.⁸ Any conferences

1. See N.R.S. §175.161. See generally *id.* §169.025.

2. See *id.* §175.161 3.

3. STATUTES OF NEVADA 1969, c. 237, §1, at 401 (amending N.R.S. §175.161 4).

4. *Id.*

5. Compare N.R.S. §§175.161 4, 175.161 5 with STATUTES OF NEVADA 1969, c. 237, §1, at 401.

6. N.R.S. §175.161 4.

7. *Id.*

8. *Id.*