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Criminal Procedure; Sentencing

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items.⁴² All proceeds from the sale of the instruments and weapons must be deposited with the State Treasurer.⁴³ In addition, Chapter 193 provides that any property that is not contraband⁴⁴ will be returned to the owner if the owner can establish ownership and submit his or her claim within the one year period.⁴⁵ Any contraband consisting of controlled substances or dangerous drugs will be disposed of or destroyed.⁴⁶

42. See *id.* §213.— 3(c), (d).

43. See *id.* §213.— 4.

44. See *id.* §213.— 2 (definition of contraband).

45. See *id.* See also 68 AM. JUR. *Searches and Seizures* §118 (2d ed. 1973).

46. See *id.* §213.— 3.

Criminal Procedure; sentencing

N.R.S. §§4.370, 197.090, 200.481 (amended).
SB 109 (Committee on Judiciary); STATS 1981, Ch 9

Existing law provides that any person attempting to deter or prevent an executive or administrative officer from performing a law-imposed duty by the use of threat,¹ force, or violence,² or who knowingly resists, by the use of force or violence, an executive or administrative officer in the performance of his or her duty, is guilty of a gross misdemeanor.³ Additionally, existing law provides that a person convicted of a battery⁴ committed on an executive or administrative officer must be punished for a misdemeanor if a deadly weapon was not used in the commission of the offense, and if no substantial bodily harm to the victim results.⁵

Chapter 9 clarifies existing law by providing that *all* batteries committed upon an executive or administrative officer will be punishable, at minimum, as gross misdemeanors.⁶ Additionally, Chapter 9 provides for greater penalties if a battery has been committed upon an executive or administrative officer involving the use of a deadly weapon.⁷ Under these circumstances, an offender may be imprisoned for not less than two years nor more than ten years, and may be further

1. See N.R.S. §199.300 (intimidating a public officer).

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

3. *Id.* §197.090.

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

5. *Id.* §200.481 2.

6. See *id.* §§197.090, 200.481 2. This apparently also applies to batteries committed on peace officers. See *Senate Committee on Judiciary*, Minutes, at 4 (Feb. 16, 1981).

7. See N.R.S. §200.481 2(d).

punished by a fine not exceeding \$10,000.⁸

8. *Id.*

Criminal Procedure; probation—credit for time served, work as optional punishment

N.R.S. §176.— (new); §§176.055, 176.216, 193.150, 205.060, 213.1517, 616.082 (amended).

AB 250 (Ham); STATS 1981, Ch 295

SB 13 (Close); STATS 1981, Ch 249

SB 255 (Committee on Judiciary); STATS 1981, Ch 247

Chapter 247 introduces provisions limiting which persons may be granted credit for time served before conviction.¹ Also, Chapter 247 provides that any conviction may constitute probable cause for revocation of either probation or parole,² and Chapter 249 provides the option of work as either a substitute for punishment or a condition of probation.³

Under existing law, the penalty for burglary is imprisonment in a state prison for one to ten years and a possible fine of not more than \$10,000.⁴ Furthermore, the Legislature has given the district courts the power to grant probation.⁵ Chapter 295, however, expressly removes the opportunity of probation or suspension of sentence for those persons convicted of a second burglary.⁶ Statutes limiting parole or probation have been met with the argument that the lack of opportunity to receive parole or probation deprives the convicted person of due process and equal protection of the law.⁷ Two federal district courts have upheld statutes denying parole or probation in cases of violent crime.⁸ Pending further interpretation by the courts, the statutory denial of probation in the case of burglary may be subject to attack on these

1. See N.R.S. §176.055 2(a), (b). (Chapter 247 denies credit to persons who commit a later offense while in custody on a prior charge for which the person was convicted, and to persons who commit a later offense while imprisoned or on probation or parole.)

2. See *id.* §176.216 4.

3. See *id.* §176.— 1(a), (b).

4. *Id.* §205.060 2.

5. See *id.* §176.185. See also NEV. CONST. art. V, §14.

6. See *id.* §205.060 2. See also *id.* §202.060 1 (definition of burglary).

7. See Annot., 100 A.L.R.3d 431 (1980).

8. See *Bel v. Chernoff*, 390 F. Supp. 1256, 1259 (D. Mass. 1975); *Howard v. Maggio*, 540 F.2d 1280, 1282 (5th Cir. 1976).