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Criminal Procedure; Probation--Credit for Time Served, Work as Optional Punishment

Univeristy of the Pacific, McGeorge School of Law

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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).

constitutional grounds.⁹

Existing law requires that a probationer be returned to the court for violating a condition of probation only after an inquiring officer¹⁰ finds probable cause that the probationer has violated a condition of probation.¹¹ In addition, this inquiry must be held at or reasonably near the place of the alleged violation or arrest,¹² and not later than fifteen days after the arrest if the arrested person is on probation from a Nevada court or thirty days after the arrest if he or she is on probation from another state and under supervision in Nevada.¹³ Chapter 247 now specifies that the time for the inquiry may be extended if, within the fifteen day period, the probationer is released from confinement or the order that he or she be held is withdrawn.¹⁴ Any conviction, except for a minor traffic offense, constitutes probable cause for the revocation of probation and an inquiry is therefore not necessary.¹⁵

While persons are placed on probation before the imposition of any sentence,¹⁶ convicted persons are placed on parole after serving a part of any sentence.¹⁷ Before parole may be revoked, existing law requires that an inquiring officer determine that there is probable cause for a hearing by the Board of Parole Commissioners (hereinafter referred to as the Board).¹⁸ Prior law required the Board to consider the revocation at its next meeting after the probable cause determination by an inquiring officer.¹⁹ Chapter 247 provides that the case must be considered within sixty days after the parolee's return to the custody of the Department of Prisons.²⁰ Moreover, Chapter 247 specifies that any conviction for violating a federal, state, or local law, except a minor traffic offense, constitutes probable cause and neither an inquiry nor a hearing need be held prior to the revocation of parole.²¹

Currently, a court may require a probationer to make restitution to any person designated by the court as a condition of probation.²² Chapter 249 provides that a defendant also may be allowed to perform

9. Compare N.R.S. §205.060 2 with *Bel v. Chernoff*, 390 F. Supp. 1256 (D. Mass. 1975) and *Howard v. Maggio*, 540 F.2d 1280 (5th Cir. 1976).

10. See *id.* §176.216 2 (qualifications of inquiring officer).

11. See *id.* §176.216 1, 2.

12. *Id.* §176.216 3.

13. Compare *id.* with STATUTES OF NEVADA 1979, c. 110, §1, at 168.

14. See N.R.S. §176.216 3(b).

15. *Id.* §176.216 4.

16. See BLACK'S LAW DICTIONARY 1082 (5th ed. 1979) (definition of probation).

17. See *id.* 1006 (definition of parole).

18. See *id.* §213.1515 1(b).

19. See STATUTES OF NEVADA 1975, c. 163, §7, at 197 (amending N.R.S. §213.1517).

20. See N.R.S. §213.1517 4.

21. See *id.* §§213.1517 3, 176.216 4.

22. See *id.* §176.189 1.

supervised work for the benefit of the community as a condition of probation or as a substitute punishment for the conviction of a misdemeanor.²³ A convicted defendant must, however, agree to perform the supervised work²⁴ and a supervising authority must agree to accept the convicted person before the work may begin.²⁵ Any work imposed under Chapter 249 must be performed for and under the supervising authority of a county, city, town, or other political subdivision or agency or the State of Nevada, or a charitable organization that renders service to the community or its citizens.²⁶ The supervising authority must be located within the jurisdiction of the court, but if this is impossible, the authority may be located outside the court's jurisdiction.²⁷ In addition, the work imposed must be supervised by a person designated by the supervising authority or by an official of the authority.²⁸ Furthermore, the court may require the supervising authority to report periodically to the court or to a probation officer regarding the probationer's performance.²⁹

When a convict has agreed to perform supervised work as punishment or as a condition of probation, Chapter 249 permits the court to require that the convict deposit with the court a reasonable sum of money to pay for the cost of liability insurance for personal injury or damage to property, or for industrial insurance, or both, for the period that the probationer works.³⁰ In addition, the court is required to fix the period of work that is imposed and distribute the period over weekends or other times that will allow the probationer to continue his or her employment and care for his or her family.³¹ The period of work imposed on any person may not exceed twenty hours for a misdemeanor,³² 240 hours for a gross misdemeanor,³³ or 1000 hours for a felony.³⁴

Finally, under the Nevada Industrial Insurance Act,³⁵ any person under eighteen years of age, who is subject to the jurisdiction of the district court and by order of the court is working for the county, is

23. *Id.* §176.— 1(a), (b).

24. *See id.* §176.— 3.

25. *See id.* §§176.— 2 (persons or agencies designated as supervising authorities), 176.— 5(b).

26. *Id.* §176.— 2.

27. *Id.* §176.— 5(b).

28. *Id.* §176.— 5(c).

29. *Id.* §176.— 5(d).

30. *Id.* §176.— 4.

31. *Id.* §176.— 5(a).

32. *Id.* §176.— 5(a)(1).

33. *Id.* §176.— 5(a)(2).

34. *Id.* §176.— 5(a)(3).

35. *See generally id.* §§616.010-616.680 (enacting the Nev. Industrial Act).

deemed an employee of the county and entitled to wages of \$50 per month and the benefits of industrial insurance.³⁶ Chapter 249 now specifies that persons eighteen years of age or older who are ordered to work for a community as punishment or as a condition of probation by any court are also employees of the county and as such are entitled to \$50 per month wages and industrial insurance benefits.³⁷

36. *Id.* §616.082 1.

37. Compare *id.* §616.082 2 with STATUTES OF NEVADA 1973, c. 753, §19, at 1580.

Criminal Procedure; release without bail

N.R.S. §178.— (new); §§171.1845, 178.484, 178.502 (amended).
SB 310 (Committee on Judiciary); STATS 1981, Ch 665

Chapter 665 is an apparent response to the consent decree ordered by the Federal District Court in *West v. Lamb*¹ to remedy overcrowded, dirty, and dangerous conditions existing in some Nevada jails.² The Executive Summary of Recommendations,³ the evidentiary basis for the consent decree,⁴ states that a presumption favoring pretrial release should apply in all cases where the defendant is shown not to present a danger to the community and where there is not a strong risk of flight⁵ and also recommends that prior law⁶ should be broadened to allow more pretrial releases.⁷ Chapter 665 broadens prior law by authorizing the courts to release, without bail, any person entitled to bail upon showing good cause,⁸ and by granting local sheriffs and chiefs of police greater latitude in decisions regarding pretrial release.⁹ Chapter 665 imposes certain procedures for release without bail¹⁰ and provides sanctions for defendants who do not comply with release conditions, including payment of costs when it is necessary to return a defendant who fails to appear for trial.¹¹ Chapter 665 enumerates the following factors for the court to consider in determining good cause for release without bail: (1) length of residence in the community; (2) employ-

1. 497 F. Supp. 989, 994 (D. Nev. 1980).

2. *See id.* (Clark County Grand Jury Report, 1975 and 1977).

3. *See id.* at 1011.

4. *See id.* at 994 (consent decree).

5. *See id.* at 1011.

6. *See* STATUTES OF NEVADA 1977, c. 585, §11, at 1545 (amending N.R.S. §178.484).

7. *See* 497 F. Supp. at 1011.

8. *See* N.R.S. §178.— 1.

9. Compare *id.* with STATUTES OF NEVADA 1977, c. 585 §11, at 1545.

10. *See* N.R.S. §178.— 4.

11. *See id.* §178.— 4(c), (d), 5, 6.