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## Criminal Procedure; Witness Immunity

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witness testifies for the purpose of providing support.<sup>3</sup> The attendant must not be (1) a member of the news or broadcast media, unless the attendant is also the parent, child, brother or sister of the prosecuting witness<sup>4</sup>, or (2) a witness in the proceedings.<sup>5</sup>

Under Chapter 369, an attendant who influences or affects the testimony of the prosecuting witness must be excluded by the court.<sup>6</sup> Additionally, a defendant may move to exclude a particular attendant on a showing of good cause.<sup>7</sup> In apparent conflict with this provision,<sup>8</sup> Chapter 369 changes existing law<sup>9</sup> by including attendants within the class of persons absolutely protected from being excluded from hearings upon a motion by the defendant.<sup>10</sup>

These conflicting provisions pertain to preliminary hearings or examinations only, while the provisions of Chapter 369, as they relate to trials, are not in conflict.<sup>11</sup> Furthermore, the apparent intent of the legislature is that the general prohibition of existing law preventing the exclusion of attendants should not be used to circumvent the more specific provision of Chapter 369 authorizing the exclusion of an attendant for good cause.<sup>12</sup>

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3. *Id.*

4. *Id.* c. 369, §1(2), at 891. Chapter 369 prohibits attendants from taking notes during the hearing or trial. *Id.*

5. *Id.* c. 369, §1(1), at 891.

6. *Id.* c. 369, §1(3), at 891. Chapter 369 also prohibits the attendant from *attempting* to influence the witness' testimony. If an attendant is excluded for any reason, the prosecuting witness may designate another attendant. *Id.* c. 369, §1(3),(4) at 891.

7. *Id.* c. 369, §1(4), at 891. The court must hear the defendant's motion out of the presence of the jury, if any. *Id.*

8. Compare NEV. REV. STAT. §171.204 (amended by 1983 Nev. Stat. c. 369, §2, at 891) with 1983 Nev. Stat. c. 369, §1(4), at 891.

9. Compare NEV. REV. STAT. §171.204 (amended by 1983 Nev. Stat. c. 369, §2, at 891) with 1969 Nev. Stat. c. 364, §1, at 628-29 (amending NEV. REV. STAT. §171.204).

10. NEV. REV. STAT. §171.204 (amended by 1983 Nev. Stat. c. 369, §2, at 891).

11. See 1983 Nev. Stat. c. 369, §1(1), at 891; see NEV. REV. STAT. §171.204 (amended by 1983 Nev. Stat. c. 369, §2, at 891); see also Telephone conversation with Mr. Lorne Malkiewich, Legislative Counsel Bureau attorney (June 29, 1983) (notes on file at the *Pacific Law Journal*) [hereinafter cited as Telephone conversation].

12. See Telephone conversation, *supra* note 11.

## **Criminal Procedure; witness immunity**

NEV. REV. STAT. §178.572 (amended).

AB 246 (Committee on Judiciary); 1983 STAT. Ch 497

Under prior law, in any grand jury investigation, trial in a court of

record, or trial in a justice's court, the court could order<sup>1</sup> a material witness to be released from liability<sup>2</sup> resulting from testimony or other evidence that the witness was required to produce.<sup>3</sup> Chapter 497 provides this immunity only to witnesses called to testify at a grand jury investigation, trial in a court of record, or preliminary examination.<sup>4</sup>

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1. 1967 Nev. Stat. c. 523, §373.2, at 1457 (enacting NEV. REV. STAT. §178.572). This order requires a motion from the state requesting a release from liability. *Id.*

2. *Id.* (liability for prosecution or punishment).

3. *Id.*

4. NEV. REV. STAT. §178.572 (amended by 1983 Nev. Stat. c. 497, §1, at 1346).

### Criminal Procedure; burglary—inferences

NEV. REV. STAT. §§205.060, 205.065, 205.2715, 205.312 (amended).  
SB 315 (Committee on Judiciary); 1983 STAT. Ch 294

Existing law provides that a judge may not direct the jury to find a presumed fact<sup>1</sup> against the accused in a criminal action.<sup>2</sup> When a presumed fact establishes guilt or is an element of the crime, the judge may submit the issue of its existence to the jury only if a reasonable juror could find the existence of the presumed fact beyond a reasonable doubt, based upon evidence of the proven facts.<sup>3</sup>

Prior to the enactment of Chapter 294, anyone breaking and entering<sup>4</sup> or unlawfully entering a building was presumed to have the requisite intent to commit grand or petit larceny or a felony therein.<sup>5</sup> In *Hollis v. State*,<sup>6</sup> however, the Nevada Supreme Court held that using this identical language in a jury instruction<sup>7</sup> violated the statutory prohibition<sup>8</sup> against directing the jury to find a presumed fact.<sup>9</sup> Chapter 294 changes the definition of burglary by replacing the statutory *pre-*

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1. See *Ex parte Kline*, 71 Nev. 124, 134, 282 P.2d 367, 371 (1955)(a presumption is a deduction the law expressly directs to be made from particular facts); see also *State v. Vaughn*, 22 Nev. 285, 299, 39 P.2d. 733, 735 (1985)(a presumption is legitimate where a rational connection exists between the facts proved and the facts assumed.); see NEV. REV. STAT., §47.230(1)(definition of presumed fact).

2. NEV. REV. STAT. §47.230(2)(presumptions against accused in criminal actions); see also *Marshall v. State*, 95 Nev. 802, 804, 603 P.2d 283, 284 (1979). The jury could be instructed to draw an inference of guilty knowledge and intent, but could not be directed to do so. *Id.*

3. NEV. REV. STAT. §47.230(3).

4. *Id.* §193.010(3),(8) (definition of breaking; definition of entering).

5. 1959 Nev. Stat. c. 22, §1 at 19 (amending NEV. REV. STAT. §205.065).

6. 96 Nev. 207, 606 P.2d 534 (1980).

7. *Id.* at 207, 606 P.2d at 535. The jury instruction in *Hollis* directed the jury to find criminal intent to commit larceny presumed from the proven facts. *Id.* The issue of intent was the only disputed fact at trial. *Id.*

8. NEV. REV. STAT. §47.230(2).

9. *Hollis* 96 Nev. at 209, 606 P.2d at 535.