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Criminal Procedure; forfeiture of property

University of the Pacific, McGeorge School of Law

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respondent of a petition for post-conviction relief in order for the court to stay the execution.¹⁸ If a petitioner files for post-conviction relief, the court must enter a stay of execution if the petitioner is under a death sentence and it is necessary to consider the claim for relief.¹⁹ A respondent may file a petition to dissolve the stay,²⁰ and if the petition or an appeal is denied, the stay of execution must be vacated by the court.²¹ After determination on a petition for post-conviction relief, the court must make a finding of fact and state a conclusion of law.²²

MVY

18. 1987 Nev. Stat. ch. 539, sec. 21, at ___ (enacting NEV. REV. STAT. § 176.____). *But see* NEV. CONST. art. V, § 14 (the governor with the supreme court and attorney general can grant pardons).

19. 1987 Nev. Stat. ch. 539, sec. 22, at ___ (enacting NEV. REV. STAT. § 176.____). The court should consider: (1) whether this is petitioner's first effort to raise constitutional claims; (2) whether the petition was timely filed; (3) if this is not the first attempt for post-conviction relief, whether the petition raises constitutional claims which are not barred by procedural default; (4) whether the petition presents substantial grounds for relief; and (5) whether the claims are based on facts or law which entitle the petitioner to relief if true. *Id.*

20. *Id.* sec. 26, at ___ (enacting Nev. Rev. Stat. § 176.____) (the petition must be filed with the supreme court within 10 days after the entry of a stay of execution).

21. *Id.* sec. 24, at ___ (enacting NEV. REV. STAT. § 176.____); *id.* sec. 25, at ___ (enacting NEV. REV. STAT. § 176.____).

22. *Id.* sec. 35, at ___ (enacting NEV. REV. STAT. § 177.____).

Criminal Procedure; forfeiture of property

NEV. REV. STAT. §§ 179.116, 179.117, 179.1195 (repealed); § 179.____ (new); §§ 31.840, 179.1165, 179.1175, 179.118, 179.1185, 179.119, 200.760, 453.301 (amended).

SB 270 (Committee on Judiciary); 1987 STAT. Ch 571

Prior law specified procedures for the forfeiture of property¹ used in or obtained through criminal activity.² Chapter 571 establishes a uniform forfeiture procedure.³ Property or proceeds⁴ derived from

1. 1987 Nev. Stat. ch. 571, sec. 7, at ___ (enacting NEV. REV. STAT. § 179.____) (definition of property).

2. 1985 Nev. Stat. ch. 478, sec. 4, at 1466.

3. 1987 Nev. Stat. ch. 571, sec. 2, at ___(enacting NEV. REV. STAT. § 179.____).

4. *Id.* sec. 6, at ___(definition of proceeds).

the commission or attempted commission of any felony are subject to seizure and forfeiture.⁵ Any right, title, or interest in the property is vested in the law enforcement agency that commences a proceeding for forfeiture.⁶ Furthermore, a transfer of property occurring after title vests in a law enforcement agency is void as against the agency unless the transferee is a good faith purchaser for value without notice of the forfeiture proceeding.⁷

Existing law regulates the distribution of proceeds acquired through forfeiture proceedings.⁸ Chapter 571 amends existing law by requiring that proceeds be applied, first, to satisfy any protected interest,⁹ then to other specified expenses.¹⁰

JMA

5. 1987 Nev. Stat. ch. 571, sec. 9, at ____ (enacting NEV. REV. STAT. § 179.____). Property may not be declared forfeited by reason of an act or omission occurring without knowledge or consent of the claimant. *Id.* A claimant is any person who claims to have a right, title, or interest of record or community property interest in the property or proceeds or had possession of the property or proceeds when they were seized. *Id.* sec. 4, at _____. The Nevada Rules of Civil Procedure are applicable to a forfeiture proceeding. *Id.* sec. 11, at _____. Forfeiture proceedings are given priority over other civil actions and the rule of law that forfeitures are not favored does not apply. *Id.* sec. 12, at _____. If a criminal action which is the basis for the proceeding is pending trial, the court must stay the proceeding upon motion of either party. *Id.*

6. *Id.* sec. 10, at _____. Title vests when the property is used or intended to facilitate the commission of a felony or when an event giving rise to forfeiture occurs, as specified by statute. *Id.* The agency must file a complaint for forfeiture in the district court where the property is located within 60 days of seizure or the property is subject to an action by the claimant for delivery. *Id.* The agency is not required to plead or prove that a claimant has been charged with or convicted of any criminal offense. *Id.* sec. 12, at ____.

7. *Id.* sec. 10, at _____. Notice of the proceeding is conclusively presumed if the purchaser acquires an interest after the seizure of the property. *Id.*

8. NEV. REV. STAT. § 179.118 (amended by 1987 Nev. Stat. ch. 571, sec. 16, at ____).

9. 1987 Nev. Stat. ch. 571, sec. 16, at ____ (amending NEV. REV. STAT. § 179.118) (interest established by a claimant in the proceeding).

10. *Id.* (maintaining custody, advertising, and costs of suit).