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## Crimes; vandalism-Indian burial sites

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**Crimes; racketeering**

NEV. REV. STAT. § 207.360 (amended).

AB 26 (Committee on Judiciary); 1989 STAT. Ch. 16

Under existing law, racketeering is the commission of at least two specified crimes<sup>1</sup> within five years that are interrelated by distinguishing characteristics.<sup>2</sup> Chapter 16 adds the crimes of securities fraud,<sup>3</sup> commodities fraud,<sup>4</sup> and insurance fraud<sup>5</sup> to the list of crimes related to racketeering.<sup>6</sup>

BAS

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1. See NEV. REV. STAT. § 207.390 (1987) (crimes must be "related to racketeering," as set forth in Nevada Revised Statutes section 207.360).

2. *Id.* Distinguishing characteristics include the same or similar: pattern, intents, results, accomplices, victims, or methods of commission. *Id.* The criminal penalty for violation of a racketeering statute is a prison term of not less than five years nor more than 20 years, and a fine of not more than \$25,000. See *id.* § 207.400 (1987).

3. See *id.* §§ 90.090 (1987) (definition of securities), 90.185 (1987) (definition of securities fraud).

4. See *id.* §§ 91.050 (1987) (definition of commodity); 91.230 (1987) (definition of commodities fraud).

5. See *id.* §§ 686A.290 (1988) (definition of fraudulent applications for insurance), 686A.291 (1988) (definition of fraudulent benefit claims).

6. 1989 Nev. Stat. ch. 16, sec. 1, at 18 (amending NEV. REV. STAT. § 207.360).

**Crimes; restitution**

NEV. REV. STAT. §§ 209.4821, 209.4823, 209.4825, 209.4833, 209.4835, 209.4839 (repealed); §§ 176.033, 209.4829, 209.4837, 209.4843, 213.126 (amended).

AB 389 (Gaston); 1989 STAT. Ch. 322

Under existing law, the court must order a convicted offender to pay restitution to the victim as a condition of a suspended sentence or probation, unless payment is impracticable.<sup>1</sup> Chapter 322 requires the court to impose restitution whenever appropriate, regardless of whether the offender is imprisoned, sentenced to probation, or given

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1. NEV. REV. STAT. § 176.189 (1987).

a suspended sentence.<sup>2</sup> If an imprisoned offender is granted parole before the court-ordered restitution is satisfied, the Board of State Prison Commissioners must require the offender to complete restitution as a condition of parole, unless restitution is impracticable.<sup>3</sup>

Prior law allowed a victim<sup>4</sup> of a crime to file a claim for restitution with the Director of Prisons.<sup>5</sup> Under Chapter 322, such a claim need no longer be filed.<sup>6</sup>

#### COMMENT

The United States Supreme Court held in *Tate v. Short*<sup>7</sup> that imprisonment of indigents for failure to pay a fine is a violation of constitutional guarantees of equal protection.<sup>8</sup> Chapter 322 provides that failure to pay restitution may be a violation of parole, allowing the Board of State Prison Commissioners to impose imprisonment as a penalty for failure to pay.<sup>9</sup> Chapter 322 should withstand constitutional scrutiny, however, since imprisonment is only imposed where the failure to pay was for reasons other than financial hardship.<sup>10</sup> The United States Supreme Court held in *Williams v. Illinois*,<sup>11</sup> that states are free to imprison offenders who fail to pay fines for reasons other than financial hardship.<sup>12</sup> The Supreme Court of Nev-

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2. 1989 Nev. Stat. ch. 322, sec. 1, at 678 (amending NEV. REV. STAT. § 176.033). The Director of Prisons may assign the offender to a work center for the purpose of making restitution. *Id.* sec. 2, at 678 (amending NEV. REV. STAT. § 209.4829). The offender may negotiate a payment plan with the Director of Prisons. *Id.* sec. 3, at 678 (amending NEV. REV. STAT. § 209.4837). Chapter 322 does not specify a method for the court to use when determining what amount of restitution, if any, is appropriate. *Id.* sec. 1, at 678 (amending NEV. REV. STAT. § 176.033). Under prior law, such factors as the victim's medical expenses, lost earnings, damage to property, or pain and suffering were required to be considered. 1983 Nev. Stat. Ch. 190, sec. 2, at 449 (amending NEV. REV. STAT. § 209.4839).

3. *Id.* sec. 5, at 679 (amending NEV. REV. STAT. § 213.126). The Board must set forth its reasons for finding that restitution is impracticable. *Id.* The offender's failure to comply with a restitution requirement is a violation of parole unless the failure to pay was caused by economic hardship. *Id.* The offender is entitled to a hearing to prove that economic hardship exists. *Id.*

4. See 1983 Nev. Stat. ch. 190, sec. 1, at 449 (repealed by 1989 Nev. Stat. ch. 322, sec. 6, at 680) (definition of victim).

5. 1985 Nev. Stat. ch. 604, sec. 2, at 1898 (repealed by 1989 Nev. Stat. ch. 322, sec. 6, at 680) (procedure and disposition of victim's claims for restitution).

6. 1989 Nev. Stat. ch. 322, sec. 6, at 680 (repealing NEV. REV. STAT. §§ 209.4821, .4823, .4825, .4833, .4835, .4839).

7. 401 U.S. 235 (1971).

8. *Id.* at 399. See U.S. CONST. amend. XIV, § 3 (equal protection clause).

9. 1989 Nev. Stat. ch. 322, sec. 5, at 679 (amending NEV. REV. STAT. § 213.126).

10. *Id.*

11. 399 U.S. 235 (1970).

12. *Id.* at 244-245. Accord, *Tate* at 400-401.

ada ruled in *Burke v. State*,<sup>13</sup> that the *Tate* and *Williams* rationales apply to failure to pay restitution as well as failure to pay fines.<sup>14</sup>

JZ

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13. 96 Nev. 449, 611 P.2d 203 (1980).

14. *Id.* at 452, 611 P.2d at 204-205.

## Crimes; selling a person

NEV. REV. STAT. §§ 128.\_\_\_\_, 200.\_\_\_\_ (new); §§ 127.300, 128.106, 179.121 (amended).

AB 696 (Porter); 1989 STAT. Ch. 558

Chapter 558 makes it a crime to buy<sup>1</sup> or sell<sup>2</sup> any person or to hold a person in involuntary servitude.<sup>3</sup> Chapter 558 also encompasses any person who knowingly aids another in the crime.<sup>4</sup> When a parent attempts to sell a child, Chapter 558 requires the court to presume that the child is abandoned.<sup>5</sup>

Existing law provides that instrumentalities used in the commission of specified crimes are subject to forfeiture.<sup>6</sup> Chapter 558 is one of those specified crimes.<sup>7</sup>

JZ

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1. 1989 Nev. Stat. ch. 558, sec. 1, at 1186 (enacting NEV. REV. STAT. § 200.\_\_\_\_) (it is a crime to pay money or any other consideration for a person).

2. *Id.* (it is a crime to accept money or other consideration for a person).

3. *Id.* (the act is punishable by imprisonment for life or for a definite term of not less than five years, plus a fine of up to \$50,000); *cf.* U.S. CONST. amend. XIII, § 3 (involuntary servitude prohibited). Chapter 558 makes an exception for licensed child-placing agencies. 1989 Nev. Stat. ch. 558, sec. 1, at 1186 (enacting NEV. REV. STAT. § 200.\_\_\_\_). *See* NEV. REV. STAT. § 127.220 (1987) (definition of child-placing agency). *See generally* Los Angeles Times, April 5, 1989, § 1, at 20, col. 4 (woman accused of selling her child at the Reno airport).

4. 1989 Nev. Stat. ch. 558, sec. 1, at 1186 (enacting NEV. REV. STAT. § 200.\_\_\_\_).

5. *See id.*, sec. 3, at 1186 (enacting NEV. REV. STAT. § 128.\_\_\_\_). Chapter 558 does not state whether the presumption is rebuttable. *Id.* *But see* *Pyborn v. Quathamer*, 95 Nev. 145, 147, 605 P.2d 1147, 1148 (court did not allow rebuttal of presumption of abandonment raised by statute through non-support of child). Violation of Chapter 558 must be considered by the court in determining the fitness of a parent. 1989 Nev. Stat. ch. 558, sec. 4, at 1187 (amending NEV. REV. STAT. § 128.106).

6. NEV. REV. STAT. § 179.121 (1987) (amended by 1989 Nev. Stat. ch. 558, sec. 5, at 1187). Instrumentalities subject to forfeiture include tools, weapons, substances, machines, money, or securities. *Id.*

7. 1989 Nev. Stat. ch. 558, sec. 5, at 1187 (amending NEV. REV. STAT. § 179.121).