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## Crimes; procedure-Attorney General as prosecutor

The University of the Pacific, McGeorge School of Law

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**Crimes; procedure—Attorney General as prosecutor**

NEV. REV. STAT. §§ 173.035, 173.045, 173.055, 173.075, 173.145, 173.205, 228.120, 228.170 (amended).

AB 291 (Committee on Judiciary); 1989 STAT. Ch. 60

Prior law required the Attorney General to obtain the court's permission before prosecuting a criminal case.<sup>1</sup> Under Chapter 60, the Attorney General no longer needs the court's permission.<sup>2</sup>

Under existing law the Attorney General may prosecute any crime committed by a person confined in an institution<sup>3</sup> or facility of the Department of Prisons.<sup>4</sup> Chapter 60 expands the law to allow the Attorney General to prosecute any crime that is committed by any person acting in concert<sup>5</sup> or through unauthorized conduct or contact with a prisoner.<sup>6</sup>

In most cases prosecuted by the Attorney General, prior law permitted only the district attorney to file an information.<sup>7</sup> Chapter 60 empowers the Attorney General to file an information in any case the Attorney General is prosecuting.<sup>8</sup>

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1. 1981 Nev. Stat. ch. 292, sec. 3, at 546 (amending NEV. REV. STAT. § 228.170 5). See 1989 Nev. Stat. ch. 60, sec. 2, at \_\_\_ (amending NEV. REV. STAT. §§ 228.120, .170); NEV. REV. STAT. § 228.177 (1987) (defining when the Attorney General has the power to prosecute criminal cases). The Attorney General's powers are created exclusively by the legislature. *Ryan v. Dist. Court*, 88 Nev. 638, 642, 503 P.2d 842, 844 (1972). See also NEV. CONST. art. 5, § 19 (creation of Attorney General's Office).

2. 1989 Nev. Stat. ch. 60, sec. 1, at(amending NEV. REV. STAT. § 228.120).

3. See NEV. REV. STAT. § 209.071 (1987) (definition of institution).

4. NEV. REV. STAT. § 228.170 (1987) (amended by 1989 Nev. Stat. ch. 60, sec. 2, at \_\_\_).

5. 1989 Nev. Stat. ch. 60, sec. 2, at \_\_\_ (amending NEV. REV. STAT. § 228.170). The person may be either a principal or an accessory. See NEV. REV. STAT. §§ 195.020 (1987) (definition of principal), .030 (1987) (definition of accessory).

6. 1989 Nev. Stat. ch. 60, sec. 2, at \_\_\_ (amending NEV. REV. STAT. § 228.170). The Attorney General may prosecute any violation of Nevada Revised Statutes chapter 212. *Id.* See, e.g., NEV. REV. STAT. §§ 212.100-.130 (1987) (aiding an escape); 212.160 (1987) (furnishing weapons or intoxicants to prisoners); 212.187 (1987) (sexual conduct with a prisoner); 212.190 (1987) (damaging prison property).

7. 1975 Nev. Stat. ch. 437, sec. 3, at 655 (amending NEV. REV. STAT. § 173.045). The attorney general could only file an information against a defendant who committed a crime while incarcerated in the state prison system. *Id.* For all other crimes, only the District Attorney was empowered to file an information. *Id.* See *Ryan v. Dist. Court*, 88 Nev. 638, 641, 503 P.2d 842, 843 (the Attorney General is may not initiate a prosecution by information independent of the district attorney). See also *Junior v. State*, 91 Nev. 439, 441, 537 P.2d 1204, 1206 (1975); *Webb v. State*, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975) (citing *Ryan*). *But see* *Ryan v. District Court*, 88 Nev. 638, 643, 503 P.2d 842, 847 (Mowbray, J., dissenting) (arguing that Nevada Revised Statutes section 228.120 gives the Attorney General the authority to file an information).

8. 1989 Nev. Stat. ch. 60, sec. 4, at(amending NEV. REV. STAT. § 173.045).