IN THE SUPREME COURT OF THE STATE OF NEVADA

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ZANE MICHAEL FLOYD

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE MICHAEL P. VILLANI, DISTRICT JUDGE,

Respondents,

and

STATE OF NEVADA,

Real Party in Interest.

Supreme Court No. 83225

District Court Case No. 99C159897

(Death Penalty Habeas Corpus Case)

PETITIONER'S REPLY APPENDIX

Volume 1 of 1

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1967

A. B. 81—Committee on Judiciary, Jan. 23.

Summary—New criminal procedure law. (BDR 14-43)

Jan. 23—Read first time. Referred to Committee on Judiciary. To printer.

Jan. 24—From printer. To committee. 1/23; 2/8 St; 2/9; 3/9; 3/14; 3/16

Mar. 20—From committee: Amend, and do pass as amended.

✓Mar. 21—Read second time. Amended. To printer.

Mar. 23—From printer. ✓To engrossment. Engrossed.

✓Mar. 24—Read third time. Passed, as amended. Title approved. To Senate.

Mar. 27—In Senate. Read first time. Referred to Committee on Judiciary. To committee. 4/3; 4/5; 4/10

✓Apr. 10—From committee: Amend, and do pass as amended. Read second time. Amended. To printer.

✓Apr. 12—From printer. ✓To re-engrossment. Re-engrossed. Read third time. Passed, as amended. Title approved. To Assembly. In Assembly. Senate amendments concurred in. To enrollment.

Apr. 20—Enrolled and delivered to Governor.

Apr. 26—Approved by the Governor. Chapter 523.

Sections 317 to 324, inclusive, become effective upon passage and approval.

All other sections become effective on January 1, 1968, but:

(a) The provisions of sections 287 to 316, inclusive, relating to appeals, do not:

(1) Apply to any appeal the notice of which is filed prior to January 1, 1968; or

(2) Operate to reduce the time within which the notice of appeal may be filed from a judgment or order entered prior to January 1, 1968.

(b) Except as otherwise provided in this section, no provision of this act applies to any criminal action in which the complaint or information is filed or the indictment found prior to January 1, 1968.

The provisions of sections 287 to 316, inclusive, of this act, relating to appeals, shall apply to any criminal action in which the notice of appeal has not been filed prior to January 1, 1968, except that the time within which a notice of appeal may be filed in any particular action shall not be reduced by such application.

The provisions of sections 317 to 324, inclusive, of this act, relating to post conviction remedies, shall become effective upon passage and approval.

A. B. 81

ASSEMBLY BILL NO. 81—COMMITTEE ON JUDICIARY

JANUARY 23, 1967

Referred to Committee on Judiciary

SUMMARY—New criminal procedure law. (BDR 14-43)

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is material to be omitted.

AN ACT to regulate proceedings in criminal cases in this state; to amend and repeal designated sections of NRS relating to such proceedings; to amend certain provisions of the charters of the cities of Caliente, Carson City, Elko, Gabbs, Henderson, Las Vegas, North Las Vegas, Reno, Sparks, Wells and Yerington to conform certain provisions with state law; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. Chapter 169 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 24, inclusive, of this act.

SEC. 2. *This Title may be known and cited as the Nevada Criminal Procedure Law.*

SEC. 3. *This Title governs the procedure in the courts of the State of Nevada and before magistrates in all criminal proceedings, but does not apply to proceedings against children under chapter 62 of NRS.*

SEC. 4. *This Title is intended to provide for the just determination of every criminal proceeding. Its provisions shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay.*

SEC. 5. *As used in Title 14, unless the context otherwise requires, the words and terms defined in sections 6 to 21, inclusive, of this act have the meaning ascribed to them in such sections.*

SEC. 6. *"Criminal action" means the proceedings by which a party charged with a public offense is accused and brought to trial and punishment. A criminal action is prosecuted in the name of the State of Nevada, as plaintiff.*

SEC. 7. *"Defendant" means the party prosecuted in a criminal action.*

SEC. 8. *"District attorney" includes any deputy district attorney.*

SEC. 9. *"Law" includes statutes and judicial decisions.*

SEC. 10. *"Magistrate" means an officer having power to issue a warrant for the arrest of a person charged with a public offense and includes:*

1. Justices of the supreme court;

2. Judges of the district courts;

3. Justices of the peace;

4. Police judges; and

5. Others upon whom are conferred by law the powers of a justice of the peace in criminal cases.

SEC. 11. *"Month" means a calendar month unless otherwise expressed.*

SEC. 12. *"Oath" includes an affirmation.*

SEC. 13. *"Peace officer" includes:*

1. The bailiff of the supreme court;

2. Sheriffs of counties and their deputies;

3. Constables;

4. Members of the Nevada state police;

5. Personnel of the Nevada highway patrol when exercising the police powers specified in NRS 481.150 and 481.180;

6. The inspector or field agents of the motor carrier division of the department of motor vehicles when exercising the police powers specified in NRS 481.049;

7. Marshals and policemen of cities and towns;

8. Parole and probation officers;

9. Special investigators employed by the office of any district attorney or the attorney general;

10. Arson investigators for fire departments specially designated by the appointing authority; and

11. Members of the University of Nevada police department.

SEC. 14. *"Person" includes a company, partnership, association or corporation as well as a natural person.*

SEC. 15. *"Personal property" includes money, goods, chattels, things in action and evidences of debt.*

SEC. 16. *"Property" includes both real and personal property.*

SEC. 17. *"Public officer" means a person elected or appointed to a position which:*

1. Is established by the constitution or a statute of this state, or by a charter or ordinance of a political subdivision of this state; and

2. Involves the continuous exercise, as part of the regular and permanent administration of the government, of a public power, trust or duty.

SEC. 18. *"Real property" is coextensive with lands, tenements and hereditaments.*

SEC. 19. *"State," when applied to the different parts of the United States, includes the District of Columbia and the territories.*

SEC. 20. *1. "Trial" means that portion of a criminal action which:*

(a) If a jury is used, begins with the impaneling of the jury and ends with the return of the verdict, both inclusive.

(b) If no jury is used, begins with the opening statement, or if there is no opening statement, when the first witness is sworn, and ends with the closing argument or upon submission of the cause to the court without argument, both inclusive.

2. "Trial" does not include any proceeding had upon a plea of guilty to determine the degree of guilt or to fix the punishment.

SEC. 21. *"United States" may include the District of Columbia, Puerto Rico, territories or insular possessions.*

SEC. 22. *1. Words in the present tense include the future as well as the present.*

2. Words in the masculine gender include the feminine and neuter.

3. The singular number includes the plural, and the plural the singular.

4. Writing includes printing and typewriting.

5. Every mode of oral statement, under oath or affirmation, is embraced by the term "testify," and every written one in the term "depose."

SEC. 23. *When a signature of a person is required by Title 14, the mark of a person, if he cannot write, shall be deemed sufficient, the name of the person making the mark being written near it, and the mark being witnessed by a person who writes his own name as a witness.*

SEC. 24. *The superseding of any law creating a criminal offense shall not be held to constitute a bar to the prosecution and punishment of a crime already committed, or to bar the trial and punishment of a crime where a prosecution has been already begun, for a violation of the law so superseded, unless the intention to bar such prosecution and punishment, or trial and punishment where a prosecution has been already begun is expressly declared in the superseding act.*

SEC. 25. NRS 170.040 is hereby amended to read as follows:

170.040 Public offenses may be prevented by the intervention of the officers of justice [:

1. By requiring surety to keep the peace.

2. By forming a police in cities and towns, and requiring their attendance in exposed places.

3. By suppressing riots.] *by requiring surety to keep the peace.*

SEC. 26. NRS 170.060 is hereby amended to read as follows:

170.060 *1.* A complaint may be filed and warrant issued, as in other criminal cases, for the arrest of any person who has threatened to commit an offense against the person or property of another.

2. Such a complaint may also be filed in a municipal court. The city attorney shall act as prosecutor, and the proceedings shall conform to the requirements of NRS 170.070 to 170.170, inclusive.

SEC. 27. Chapter 171 of NRS is hereby amended by adding thereto the provisions set forth as sections 28 to 72, inclusive, of this act.

SEC. 28. *The complaint is a written statement of the essential facts constituting the public offense charged. It shall be made upon oath before a magistrate.*

SEC. 29. *An arrest is the taking of a person into custody, in a case and in the manner authorized by law. An arrest may be made by a peace officer or by a private person.*

SEC. 30. *If it appears from the complaint or from an affidavit or affidavits filed with the complaint that there is probable cause to believe*

that an offense, triable within the county, has been committed and that the defendant has committed it, a warrant for the arrest of the defendant shall be issued by the magistrate to any peace officer. Upon the request of the district attorney a summons instead of a warrant shall issue. More than one warrant or summons may issue on the same complaint. If a defendant fails to appear in response to the summons, a warrant shall issue.

SEC. 31. The warrant of arrest is an order in writing in the name of the State of Nevada which shall:

1. Be signed by the magistrate with his name of office;

2. Contain the name of the defendant or, if his name is unknown, any name or description by which he can be identified with reasonable certainty;

3. State the date of its issuance, and the county, city or town where it was issued;

4. Describe the offense charged in the complaint; and

5. Command that the defendant be arrested and brought before the nearest available magistrate.

SEC. 32. The summons shall be in the same form as the warrant except that it shall summon the defendant to appear before a magistrate at a stated time and place. Upon a complaint against a corporation, the magistrate must issue a summons, signed by him, with his name of office, requiring the corporation to appear before him at a specified time and place to answer the charge, the time to be not less than 10 days after the issuing of the summons.

SEC. 33. The warrant shall be directed to and executed by a peace officer. The summons may be served by any person authorized to serve a summons in a civil action.

SEC. 34. A magistrate may depute in writing any suitable and discreet person to act as constable when no constable is at hand and the nature of the business requires immediate action.

SEC. 35. The warrant may be executed or the summons may be served at any place within the jurisdiction of the State of Nevada.

SEC. 36. 1. The warrant shall be executed by the arrest of the defendant. The officer need not have the warrant in his possession at the time of the arrest, but upon request he shall show the warrant to the defendant as soon as possible. If the officer does not have a warrant in his possession at the time of the arrest, he shall then inform the defendant of his intention to arrest him, of the offense charged, the authority to make it and of the fact that a warrant has or has not been issued. The defendant must not be subjected to any more restraint than is necessary for his arrest and detention, but if the defendant either flees or forcibly resists, the officer may use all necessary means to effect the arrest.

2. The summons shall be served upon a defendant by delivering a copy to him personally, or by leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by mailing it to the defendant's last-known address. In the case of a corporation, the summons must be served at least 5 days before the day of appearance fixed therein, by delivering a copy to an officer or to a managing or general agent or to any other agent authorized

by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the corporation's last-known address within the State of Nevada or at its principal place of business elsewhere in the United States.

SEC. 37. 1. A peace officer may make an arrest in obedience to a warrant delivered to him, or may, without a warrant, arrest a person:

(a) For a public offense committed or attempted in his presence.

(b) When a person arrested has committed a felony, although not in his presence.

(c) When a felony has in fact been committed, and he has reasonable cause for believing the person arrested to have committed it.

(d) On a charge made, upon a reasonable cause, of the commission of a felony by the party arrested.

(e) When a warrant has in fact been issued in this state for the arrest of a named or described person for a public offense, and he has reasonable cause to believe that the person arrested is the person so named or described.

2. He may also, at night, without a warrant, arrest any person whom he has reasonable cause for believing to have committed a felony, and is justified in making the arrest, though it afterward appear that a felony has not been committed.

SEC. 38. A private person may arrest another:

1. For a public offense committed or attempted in his presence.

2. When the person arrested has committed a felony, although not in his presence.

3. When a felony has been in fact committed, and he has reasonable cause for believing the person arrested to have committed it.

SEC. 39. A magistrate may orally order a peace officer or private person to arrest anyone committing or attempting to commit a public offense in the presence of the magistrate, and may thereupon proceed as if the offender had been brought before him on a warrant of arrest.

SEC. 40. Any person making an arrest may orally summon as many persons as he deems necessary to aid him therein.

SEC. 41. If a person arrested escapes or is rescued, the person from whose custody he escaped or was rescued may immediately pursue and retake him at any time and in any place within the state.

SEC. 42. 1. If the offense charged is a felony, the arrest may be made on any day, and at any time of day or night.

2. If it is a misdemeanor, the arrest cannot be made at night, unless upon the direction of a magistrate, endorsed upon the warrant, except when the offense is committed in the presence of the arresting officer.

SEC. 43. To make an arrest, a private person, if the offense is a felony, and in all cases a peace officer, may break open a door or window of the house in which the person to be arrested is, or in which there is reasonable grounds for believing him to be, after having demanded admittance and explained the purpose for which admittance is desired.

SEC. 44. Any person who has entered a house for the purpose of making an arrest may break open the door or window thereof if detained therein, when necessary for the purpose of liberating himself, and an

officer may do the same, when necessary for liberating a person who, acting in his aid, entered for the purpose of making an arrest, and is detained therein.

SEC. 45. *To retake a person arrested who has escaped or been rescued, the person pursuing may break open an outer or inner door or window of a dwelling house, structure or other place of concealment, if, after notice of his intention, he is refused admittance.*

SEC. 46. *Any person making an arrest may take from the person arrested all dangerous and offensive weapons which he may have about his person, and must deliver them to the magistrate before whom he is taken.*

SEC. 47. *1. A justice of the supreme court, a judge of the district court, or a clerk of the district court may, by an endorsement under his hand upon a warrant of arrest, authorize the service thereof by telegraph, and thereafter a telegraphic copy of such warrant may be sent to one or more peace officers, and such copy is as effectual in the hands of any officer, and he must proceed in the same manner under it, as though he held an original warrant issued by the magistrate before whom the original complaint in the case was laid.*

2. Every officer causing telegraphic copies of warrants to be sent must certify as correct and file in the telegraph office from which such copies are sent a copy of the warrant and endorsement thereon, and must return the original with a statement of his action thereunder.

SEC. 48. *1. The peace officer executing a warrant shall make return thereof to the magistrate before whom the defendant is brought pursuant to sections 59 and 61 of this act. At the request of the district attorney any unexecuted warrant shall be returned to the magistrate by whom it was issued and shall be canceled by him.*

2. On or before the return day the person to whom a summons was delivered for service shall make return thereof to the magistrate before whom the summons is returnable.

3. At the request of the district attorney made at any time while the complaint is pending, a warrant returned unexecuted and not canceled or a summons returned unserved or a duplicate thereof may be delivered by the magistrate to a peace officer for execution or service.

SEC. 49. *Sections 49 to 53, inclusive, of this act may be cited as the Uniform Act on Interstate Fresh Pursuit.*

SEC. 50. *As used in sections 49 to 53, inclusive, of this act, unless the context or subject matter otherwise requires:*

1. "Fresh pursuit" includes fresh pursuit as defined by the common law and also the pursuit of a person who has committed a felony or who is reasonably suspected of having committed a felony. It shall also include the pursuit of a person suspected of having committed a supposed felony, though no felony has actually been committed, if there is reasonable ground for believing that a felony has been committed. Fresh pursuit as used in sections 49 to 53, inclusive, of this act shall not necessarily imply instant pursuit, but pursuit without unreasonable delay.

2. "State" includes the District of Columbia for the purpose of sections 49 to 53, inclusive, of this act.

SEC. 51. *1. Any member of a duly organized state, county or municipal peace unit of another state of the United States who enters this state in fresh pursuit, and continues within this state in fresh pursuit, of a person in order to arrest him on the ground that he is believed to have committed a felony in the other state, shall have the same authority to arrest and hold such person in custody, as has any member of any duly organized state, county or municipal peace unit of this state, to arrest and hold in custody a person on the ground that he is believed to have committed a felony in this state.*

2. The officer of another state making an arrest within this state shall take the person arrested before a magistrate of the county in which the arrest was made, without unnecessary delay. The magistrate shall conduct a hearing for the purpose of determining the lawfulness of the arrest. If the magistrate determines that the arrest was lawful, he shall commit the person arrested to await for a reasonable time the issuance of an extradition warrant by the governor of this state or admit him to bail for such purpose. If the magistrate determines the arrest was unlawful he shall discharge the person arrested.

3. This section shall not be construed so as to make unlawful any arrest in this state which would otherwise be lawful.

SEC. 52. *On March 4, 1955, the secretary of state shall certify a copy of sections 49 to 53, inclusive, of this act to the executive department of each of the states of the United States.*

SEC. 53. *If any part of sections 49 to 53, inclusive, of this act is for any reason declared void, it is declared to be the intent of sections 49 to 53, inclusive, of this act that such invalidity shall not affect the validity of the remaining portions of those sections.*

SEC. 54. *Sections 54 to 58, inclusive, of this act may be cited as the Uniform Act on Intrastate Fresh Pursuit.*

SEC. 55. *"Fresh pursuit" as used in sections 54 to 58, inclusive, of this act shall include fresh pursuit as defined by the common law and also the pursuit of a person who has committed a felony or is reasonably suspected of having committed a felony in this state, or who has committed or attempted to commit any criminal offense in this state in the presence of the arresting officer referred to in section 56 of this act or for whom such officer holds a warrant of arrest for a criminal offense. It shall also include the pursuit of a person suspected of having committed a supposed felony in this state, though no felony has actually been committed, if there is reasonable ground for so believing. Fresh pursuit as used in sections 54 to 58, inclusive, of this act shall not necessarily imply instant pursuit, but pursuit without unreasonable delay.*

SEC. 56. *Any peace officer of this state in fresh pursuit of a person who is reasonably believed by him to have committed a felony in this state or has committed, or attempted to commit, any criminal offense in this state in the presence of such officer, or for whom such officer holds a warrant of arrest, may hold in custody such person anywhere in this state.*

SEC. 57. *If such an arrest is made in obedience to a warrant, the disposition of the prisoner shall be as in other cases of arrest under a warrant. If the arrest is without a warrant, the prisoner shall without*

unnecessary delay be taken before a municipal court or a justice of the peace or other magistrate of the county wherein such an arrest was made, and such court shall admit such person to bail, if the offense is bailable, by taking security by way of recognizance for the appearance of such prisoner before the court having jurisdiction of such criminal offense.

SEC. 58. Section 56 of this act shall not make unlawful an arrest which would otherwise be lawful.

SEC. 59. 1. A peace officer making an arrest under a warrant issued upon a complaint or any person making an arrest without a warrant shall, in all cases, take the arrested person without unnecessary delay before the magistrate who issued the warrant or the nearest available magistrate empowered to commit persons charged with offenses against the laws of the State of Nevada.

2. When a person arrested without a warrant is brought before a magistrate, a complaint shall be filed forthwith.

3. Where the defendant can be admitted to bail without appearing personally before a magistrate, he shall be so admitted with the least possible delay, and required to appear before a magistrate at the earliest convenient time thereafter.

SEC. 60. If the defendant is brought before a magistrate in the same county, other than the one who issued the warrant, the affidavits and depositions on which the warrant was granted, if the defendant insist upon an examination, must be sent to that magistrate, or, if they cannot be procured, the prosecutor and his witnesses must be summoned to give their testimony anew.

SEC. 61. 1. When a complaint is laid before a magistrate of the commission of a public offense triable in another county of the state, but showing that the defendant is in the county where the complaint is laid, the same proceedings must be had as prescribed in this chapter except that the warrant must require the defendant to be taken before the nearest or most accessible magistrate of the county in which the offense is triable, and the depositions of the complainant or prosecutor, and of the witnesses who may have been produced, must be delivered by the magistrate to the officer to whom the warrant is delivered.

2. The officer who executed the warrant must take the defendant before the nearest or most accessible magistrate of the county in which the offense is triable, and must deliver to him the depositions and the warrant, with his return endorsed thereon, and the magistrate must then proceed in the same manner as upon a warrant issued by himself.

3. If the offense charged in the warrant issued pursuant to subsection 1 is a misdemeanor, the officer must, upon being required by the defendant, take him before a magistrate of the county in which the warrant was issued, who must admit the defendant to bail, and immediately transmit the warrant, depositions and undertaking to the justice of the peace or clerk of the court in which the defendant is required to appear.

SEC. 62. The magistrate shall inform the defendant of the complaint against him and of any affidavit filed therewith, of his right to retain counsel, of his right to request the assignment of counsel if he is unable to obtain counsel, and of his right to have a preliminary examination. He

shall also inform the defendant that he is not required to make a statement and that any statement made by him may be used against him. The magistrate shall allow the defendant reasonable time and opportunity to consult counsel, and shall admit the defendant to bail as provided in this Title.

SEC. 63. 1. Any defendant charged with a felony or a gross misdemeanor who is an indigent may, by written application addressed to the district court and delivered to the magistrate, request the appointment of an attorney to represent him.

2. The application shall be accompanied by the defendant's affidavit, which shall state:

(a) That he is without means of employing an attorney; and

(b) Facts with some particularity, definiteness and certainty concerning his financial disability.

3. The magistrate shall forthwith transmit the application and affidavit to the appropriate judge of the district court. If, after reading the application and affidavit and conducting such further inquiry as he may deem necessary, the judge finds that the defendant is without means of employing an attorney, the judge shall appoint an attorney or designate the public defender to represent him.

SEC. 64. On admitting the defendant to bail, the magistrate shall certify on the warrant the fact of his having done so, and deliver the warrant and recognizance to the officer having charge of the defendant. The officer shall forthwith discharge the defendant from arrest, and shall, without delay, deliver the warrant and recognizance to the justice of the peace, magistrate or clerk of the court at which the defendant is required to appear.

SEC. 65. The defendant, when arrested under a warrant for a capital offense, must be held in custody by the sheriff of the county in which the complaint is filed, unless admitted to bail after an examination or upon a writ of habeas corpus.

SEC. 66. 1. Where the offense is not triable in the justice's court, the defendant shall not be called upon to plead. If the defendant waives preliminary examination, the magistrate shall forthwith hold him to answer in the district court.

2. If the defendant does not waive examination, the magistrate shall hear the evidence within a reasonable time. Unless the defendant waives counsel, reasonable time shall be allowed for counsel to appear.

3. Where application is made for the appointment of counsel for an indigent defendant, the magistrate shall postpone the examination until:

(a) The application has been granted or denied by a district judge; and

(b) If the application is granted, the attorney appointed or the public defender has had reasonable time to appear.

4. The defendant may cross-examine witnesses against him and may introduce evidence in his own behalf.

SEC. 67. 1. The preliminary examination shall not be used by the defendant for discovery.

2. When the prosecutor has presented his evidence, or at any time thereafter, if the magistrate is satisfied that the defendant should be held to answer, he shall so inform the parties. If the defendant wishes to call

any witnesses thereafter or introduce any evidence, the magistrate shall inquire as to the nature of the testimony or other evidence that the defendant wishes to admit. If the magistrate is satisfied that such testimony or evidence, if admitted, would not affect his determination that the defendant should be held to answer, the preliminary hearing shall be terminated.

3. At any time when the defendant wishes to call witnesses or introduce evidence, the magistrate may inquire as to the nature and purpose of the testimony sought to be elicited or the evidence sought to be introduced and if he is satisfied that such testimony or evidence would not, if introduced, affect the determination as to whether or not the defendant should be held to answer, he may refuse to allow such witness to be called or other evidence to be introduced.

4. Subsections 2 and 3 do not limit the right of a defendant to testify in his own behalf.

5. If a magistrate terminates a hearing or refuses to receive testimony or other evidence, his ruling is not ground for dismissal or remand by the district court unless:

(a) There is no evidence in the record to sustain a finding that an offense has been committed and there is probable cause to believe that the defendant has committed it;

(b) The testimony or evidence which the defendant offered to introduce would, if introduced, clearly have required a different finding by the magistrate; or

(c) There was manifest abuse of discretion on the part of the magistrate.

SEC. 68. *1. The magistrate shall employ a reporter to take down all the testimony and the proceedings on the hearing or examination, and within such time as the court may designate have such testimony and proceedings transcribed into typewritten transcript.*

2. The reporter employed as provided in subsection 1 shall be sworn by the magistrate before whom such proceedings are held to record verbatim, truthfully and correctly such proceedings and testimony, and to make a true and correct transcript thereof into typewritten transcript.

3. When the testimony of each witness is all taken and transcribed by the reporter, the reporter shall certify to the transcript in the same manner as for a transcript of testimony in the district court, which certificate shall authenticate the transcript for all purposes of this Title.

4. Prior to the date set for trial, either party may move the court before which the case is pending to add to, delete from, or otherwise correct the transcript to conform with the testimony as given and to settle the transcript so altered.

5. The compensation for the services of a reporter employed as provided in this section shall be the same as provided in subsection 1 of NRS 3.370, to be paid out of the county treasury as other claims against the county are allowed and paid.

6. Testimony reduced to writing and authenticated according to the provisions of this section must be filed by the examining magistrate with the clerk of the district court of his county, and in case the prisoner is subsequently examined upon a writ of habeas corpus, such testimony must

be considered as given before such judge or court. A copy of the transcript shall be furnished without charge to the defendant and to the district attorney.

7. The testimony so taken may be used:

(a) By the defendant; or

(b) By the state if the defendant was represented by counsel or affirmatively waived his right to counsel,

upon the trial of the cause, and in all proceedings therein, when the witness is sick, out of the state, dead, or when his personal attendance cannot be had in court.

SEC. 69. *The district attorney of the proper county shall be present at and conduct the prosecution in all preliminary examinations where a felony is charged.*

SEC. 70. *The magistrate shall, upon the request of the defendant, exclude from the examination every person except his clerk, the prosecutor and his counsel, the attorney general, the district attorney of the county, the defendant and his counsel, the witness who is testifying, the officer having the defendant or a witness in his custody, and any other person whose presence is found by the magistrate to be necessary for the proper conduct of the examination.*

SEC. 71. *If from the evidence it appears to the magistrate that there is probable cause to believe that an offense has been committed and that the defendant has committed it, the magistrate shall forthwith hold him to answer in the district court; otherwise the magistrate shall discharge him. The magistrate shall admit the defendant to bail as provided in this Title. After concluding the proceeding the magistrate shall transmit forthwith to the clerk of the district court all papers in the proceeding and any bail taken by him.*

SEC. 72. *Whenever a preliminary examination has not been had, the district court may for good cause shown at any time before a plea has been entered or an indictment found remand the defendant for preliminary examination to the appropriate justice of the peace, and such justice shall then proceed with the preliminary examination as provided in this chapter.*

SEC. 73. Chapter 172 of NRS is hereby amended by adding thereto the provisions set forth as sections 74 to 100, inclusive, of this act.

SEC. 74. *Every public offense must be prosecuted by indictment or information, except:*

1. Where proceedings are had for the removal of a civil officer.

2. Offenses arising in the militia when in actual service in time of war, or which this state may keep, with the consent of Congress, in time of peace.

3. Offenses tried in justices' courts.

SEC. 75. *When proceedings are had for the removal of district, county, municipal or township officers, they may be commenced by accusation, in writing, as provided in chapter 283 of NRS.*

SEC. 76. *All accusations, informations and indictments against district, county, municipal and township officers must be found or filed in the district court.*

SEC. 77. *Grand juries shall be impaneled as provided in chapter 6 of NRS.*

SEC. 78. *The district attorney or a defendant who has been held to answer in the district court may challenge the array of jurors on the ground that the grand jury was not selected, drawn or summoned in accordance with law, and may challenge an individual juror on the ground that the juror is not legally qualified. Challenges may be oral or in writing and shall be tried by the court.*

SEC. 79. *A motion to dismiss the presentment or indictment may be based on objections to the array or on the lack of legal qualification of an individual juror, if not previously determined upon challenge. A presentment or indictment shall not be dismissed on the ground that one or more members of the grand jury were not legally qualified if it appears from the record kept pursuant to section 80 of this act that 12 or more jurors, after deducting the number not legally qualified, concurred in finding the presentment or indictment.*

SEC. 80. *The jury shall elect one of its members to be foreman, another to be deputy foreman and a third to be secretary. The foreman shall have power to administer oaths and affirmations and shall sign all presentments and indictments. The secretary shall keep a record of the number of jurors concurring in the finding of every presentment or indictment and shall file the record with the clerk of the court, but the record shall not be made public except on order of the court. During the absence of the foreman, the deputy foreman shall act as foreman, and if both are absent, the jury shall elect a temporary foreman.*

SEC. 81. *The following oath must be administered to the grand jury:*

You, as grand jurors, will diligently inquire into, and true presentment make, of all offenses against the State of Nevada committed or triable within this county, of which you shall have or can obtain legal evidence. You will keep your own counsel, and that of your fellows and the government, and will not, except when required in the due course of judicial proceedings, disclose the testimony of any witness examined before you, nor anything which you or any other grand juror may have said, nor the manner in which you or any other grand juror may have voted on any matter before you. You will present no person through malice, hatred, or ill will, nor leave any unpresented through fear, favor, or affection, or for any reward, or the promise or hope thereof; but in all your presentments you will present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding, so help you God.

SEC. 82. *The grand jury being impaneled and sworn, must be charged by the court. In doing so, the court must give them such information as it may deem proper, or as is required by law, as to their duties, and as to any charges for public offenses returned to the court or likely to come before the grand jury. The court need not, however, charge them respecting the violation of any particular statute.*

SEC. 83. *The grand jury must inquire into all public offenses triable in the district court or in a justice's court, committed within the territorial jurisdiction of the district court for which it is impaneled.*

SEC. 84. *A presentment is an informal statement in writing, by the grand jury, representing to the court that a public offense has been committed, which is triable within the district, and that there is reasonable ground for believing that a particular person, named or described, has committed it.*

SEC. 85. *An indictment is an accusation in writing, presented by a grand jury to a competent court, charging a person with a public offense.*

SEC. 86. *1. In the investigation of a charge, for the purpose of either presentment or indictment, the grand jury can receive no other evidence than such as is given by witnesses produced and sworn before them, or furnished by legal documentary evidence, or the deposition of witnesses taken as provided in this Title.*

2. The grand jury can receive none but legal evidence, and the best evidence in degree, to the exclusion of hearsay or secondary evidence.

SEC. 87. *The grand jury is not bound to hear evidence for the defendant. It is their duty, however, to weigh all evidence submitted to them, and when they have reason to believe that other evidence within their reach will explain away the charge, they must order such evidence to be produced, and for that purpose may require the district attorney to issue process for the witnesses.*

SEC. 88. *1. The grand jury ought to find an indictment when all the evidence before them, taken together, establishes probable cause to believe that an offense has been committed and that the defendant has committed it.*

2. The defendant may object to the sufficiency of the evidence to sustain the indictment only by application for a writ of habeas corpus. If no such application is made before the plea is entered, unless the court permits it to be made within a reasonable time thereafter, the objection is waived.

SEC. 89. *If a member of the grand jury knows or has reason to believe that a public offense has been committed, which is triable within the jurisdiction of this court, he must declare such knowledge or belief to his fellow jurors, who shall thereupon investigate the alleged offense.*

SEC. 90. *1. The grand jury must inquire into:*

(a) The case of every person imprisoned in the jail of the county, on a criminal charge, and not indicted.

(b) The condition and management of the public prisons within the county.

(c) The misconduct in office of public officers of every description within the county.

2. The grand jury may inquire into any and all matters affecting the morals, health and general welfare of the inhabitants of the county, or of any administrative division thereof, or of any township, incorporated city, irrigation district or town therein.

SEC. 91. *The grand jury shall be entitled to free access, at all reasonable times, to all public prisons and to the examination without charge of all public records within its district.*

SEC. 92. *The grand jury shall have the power, with the consent of the board of county commissioners, to engage the services of an attorney*

other than and in addition to the district attorney, certified public accountants, and such other skilled persons as may be necessary in the performance of its inquisitorial powers.

SEC. 93. *Whenever criminal causes are being investigated by the grand jury, it shall appoint a competent stenographic reporter. If he is not an official district court reporter, he shall, before entering upon his duties, take and subscribe the constitutional oath of office. He shall receive the same compensation for his services as an official district court reporter.*

SEC. 94. *1. If an indictment has been found or accusation presented against a defendant, the stenographic reporter shall certify and file with the county clerk an original transcription of his shorthand notes and a copy thereof and as many additional copies as there are defendants.*

2. The reporter shall complete such certification and filing within 10 days after the indictment has been found or the accusation presented unless the court for good cause makes an order extending the time.

3. The county clerk shall deliver the original of the transcript so filed with him to the district attorney immediately upon his receipt thereof, shall retain one copy for use only by judges in proceedings relating to the indictment or accusation, and shall deliver a copy of such transcript to each such defendant who is in custody or has given bail or to his attorney.

4. Any defendant to whom such copy has not been delivered is entitled upon motion to a continuance of his arraignment until a date 10 days after he actually receives such copy.

5. If several criminal charges against a defendant are investigated on one investigation and thereafter separate indictments are returned or accusations presented upon the several charges, the delivery to such defendant or his attorney of one copy of the transcript of such investigation is a compliance with this section as to all of such indictments or accusations.

SEC. 95. *The district attorney, the witness under examination, interpreters when needed, a stenographer for the purpose of taking the evidence, any person engaged by the grand jury pursuant to section 90 of this act, and any person requested by the grand jury to be present may be present while the grand jury is in session, but no person other than the jurors may be present while the grand jury is deliberating or voting.*

SEC. 96. *1. Disclosure of matters occurring before the grand jury other than its deliberations and the vote of any juror may be made to the district attorney for use in the performance of his duties. Otherwise a juror, attorney, interpreter, stenographer or other person may disclose matters occurring before the grand jury only:*

(a) When so directed by the court preliminary to or in connection with a judicial proceeding;

(b) When permitted by the court at the request of the defendant upon a showing that grounds may exist for a motion to dismiss the presentment or indictment because of matters occurring before the grand jury; or

(c) As provided in section 94 of this act.

2. No obligation of secrecy may be imposed upon any person except in accordance with this section. The court may direct that a presentment or indictment shall be kept secret until the defendant is in custody or has

been given bail, and in that event the clerk shall seal the presentment or indictment and no person shall disclose the finding of the presentment or indictment except when necessary for the issuance and execution of a warrant or summons.

SEC. 97. *1. A presentment or indictment may be found only upon the concurrence of 12 or more jurors. The presentment or indictment shall be returned by the grand jury to a judge in open court. If the defendant has been held to answer and 12 jurors do not concur in finding a presentment or indictment, the foreman shall so report to the court in writing forthwith.*

2. The failure to indict shall not, however, prevent the same charge from being again submitted to a grand jury or as often as the court shall so direct. But, without such direction, it shall not be again submitted.

SEC. 98. *When an indictment is found, the names of the witnesses examined before the grand jury shall be inserted at the foot of the indictment, or endorsed thereon before it is presented to the court.*

SEC. 99. *1. A grand jury shall serve until discharged by the court but no grand jury may serve more than 3 years. At any time for cause shown the court may excuse a juror either temporarily or permanently, and in the latter event the court may impanel an alternate grand juror in place of the juror excused.*

2. Where the court is composed of more than one judge, any judge may discharge or excuse a juror; but if any other judge notifies the judge so acting, in writing within 24 hours after the action is taken, that he objects, such action shall stand rescinded and not become effective unless and until the concurrence of a majority of the judges composing the court is obtained.

SEC. 100. *1. If the court deems that the facts stated in a presentment constitute a public offense triable:*

(a) In the district court of the county, it shall direct the clerk to issue a warrant for the arrest of the defendant.

(b) In another court of the county, it shall forward the presentment to such court.

2. The clerk, or justice of the peace in a case forwarded to him, may accordingly at any time thereafter issue a warrant under the signature and seal of the court, if it has a seal.

3. The magistrate before whom the defendant is brought shall proceed to examine the charge contained in the presentment and hold the defendant to answer such charge, or discharge him, in the same manner as upon a warrant of arrest on complaint.

SEC. 101. Chapter 173 of NRS is hereby amended by adding thereto the provisions set forth as sections 102 to 121, inclusive, of this act.

SEC. 102. *The first pleading on the part of the state is the indictment or information.*

SEC. 103. *The several courts of this state shall have and may exercise the same power and jurisdiction to try and determine prosecutions upon information for crimes, misdemeanors and offenses, to issue writs and process and do all other acts therein as in cases of like prosecution under indictment.*

SEC. 104. *1. An information may be filed against any person for any offense when the person:*

(a) Has had a preliminary examination as provided by law before a justice of the peace, or other examining officer or magistrate, and has been bound over to appear at the court having jurisdiction; or

(b) Has waived his right to a preliminary examination.

2. If, however, upon the preliminary examination the accused has been discharged, or the affidavit or complaint upon which the examination has been held has not been delivered to the clerk of the proper court, the district attorney may, upon affidavit of any person who has knowledge of the commission of an offense, and who is a competent witness to testify in the case, setting forth the offense and the name of the person or persons charged with the commission thereof, upon being furnished with the names of the witnesses for the prosecution, by leave of the court first had, file an information, and process shall forthwith issue thereon. The affidavit mentioned herein need not be filed in cases where the defendant has waived a preliminary examination, or upon such preliminary examination has been bound over to appear at the court having jurisdiction.

3. The information shall be filed within 10 days after the holding or waiver of the preliminary examination. All informations shall set forth the crime committed according to the facts.

SEC. 105. *1. All informations shall be filed in the court having jurisdiction of the offenses specified therein, by the district attorney of the proper county as informant, and his name shall be subscribed thereto by himself or by his deputy.*

2. He shall endorse thereon the names of such witnesses as are known to him at the time of filing the same, and shall also endorse upon such information the names of such other witnesses as may become known to him before the trial at such time as the court may, by rule or otherwise, prescribe; but this shall not preclude the calling of witnesses whose names, or the materiality of whose testimony, are first learned by the district attorney upon the trial. He shall include with each name the address of the witness if known to him. He shall not endorse the name of any witness whom he does not reasonably expect to call.

3. In all cases in which the defendant has not had or waived a preliminary examination there shall be filed with the information the affidavit of some credible person verifying the information upon the personal knowledge of affiant that the offense was committed.

SEC. 106. *1. The district attorney of the proper county shall inquire into all cases of preliminary examinations as provided by law, touching the commission of any offense, whether the offenders shall be committed to jail, or be recognized or held to bail.*

2. If the district attorney shall determine in any such case that an information ought not to be filed, he shall file with the clerk of the court having jurisdiction of the supposed offense a written statement containing his reasons, in fact and in law, for not filing any information in the case. The statement shall be filed within 10 days after the holding of the preliminary examination.

SEC. 107. *The judge of the court having jurisdiction may in extreme cases, upon affidavit filed with him of the commission of a crime, require*

the district attorney to prosecute any person for such crime, and may compel by attachment, fine or imprisonment a compliance by the district attorney with the provisions of this section.

SEC. 108. *1. The indictment or the information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged. It shall be signed by the district attorney. It need not contain a formal commencement, a formal conclusion or any other matter not necessary to such statement.*

2. Allegations made in one count may be incorporated by reference in another count. It may be alleged in a single count that the means by which the defendant committed the offense are unknown or that he committed it by one or more specified means.

3. The indictment or information shall state for each count the official or customary citation of the statute, rule, regulation or other provision of law which the defendant is alleged therein to have violated. Error in the citation or its omission shall not be ground for dismissal of the indictment or information or for reversal of a conviction if the error or omission did not mislead the defendant to his prejudice.

SEC. 109. *The court on motion of the defendant may strike surplusage from the indictment or information.*

SEC. 110. *The court may permit an information to be amended at any time before verdict or finding if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced.*

SEC. 111. *When a defendant is charged by a fictitious or erroneous name, and in any stage of the proceedings his true name is discovered, it must be inserted in the subsequent proceedings referring to the fact of his being charged by the name mentioned in the indictment or information.*

SEC. 112. *Two or more offenses may be charged in the same indictment or information in a separate count for each offense if the offenses charged, whether felonies or misdemeanors or both, are:*

1. Based on the same act or transaction; or

2. Based on two or more acts or transactions connected together or constituting parts of a common scheme or plan.

SEC. 113. *The prosecution is not required to elect between the different offenses or counts set forth in the indictment or information and a plea of guilty to one or more offenses charged in the indictment or information does not preclude prosecution for the other offenses.*

SEC. 114. *Two or more defendants may be charged in the same indictment or information if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately and all of the defendants need not be charged in each count.*

SEC. 115. *1. Upon the request of the district attorney the court shall issue a warrant for each defendant named in the information, if it is supported by oath, or in the indictment.*

2. The clerk shall issue a summons instead of a warrant upon the request of the district attorney or by direction of the court.

3. Upon like request or direction the clerk shall issue more than one warrant or summons for the same defendant.

4. The clerk shall deliver the warrant or summons to the peace officer or other person authorized by law to execute or serve it.

5. If a defendant fails to appear in response to the summons, a warrant shall issue.

SEC. 116. *The form of the warrant shall be as provided in section 28 of this act except that it shall be signed by the clerk, it shall describe the offense charged in the indictment or information and it shall command that the defendant be arrested and brought before the court. The amount of bail may be fixed by the court and endorsed on the warrant.*

SEC. 117. *If the offense charged in the warrant is bailable, and the defendant is arrested in another county, the officer must, upon being required by the defendant, take him before the most convenient magistrate in that or any adjoining county, who must admit the defendant to bail in the amount fixed in the warrant and take bail from him accordingly, naming therein a time, not more than 10 days after the time of taking such bail, for the defendant to appear before the court in which the warrant was issued; or, in case the court is not in session at the time so fixed for the defendant to appear, for the defendant to appear before the court in which the warrant was issued at the first time it is in session thereafter.*

SEC. 118. *When the indictment or information is for a felony and the defendant before the filing thereof has given bail for his appearance to answer the charge, the court in which the indictment or information is presented, or in which it is pending, may order the defendant to be committed to actual custody unless he gives bail in an increased amount, to be specified in the order.*

SEC. 119. *The summons shall be in the same form as the warrant except that it shall summon the defendant to appear before the court at a stated time and place.*

SEC. 120. *The warrant shall be executed or the summons served as provided in sections 33, 35 and 36 of this act. A summons to a corporation shall be served as provided in section 36 of this act. The officer executing the warrant shall bring the arrested person promptly before the court or, for the purpose of admission to bail, before a magistrate.*

SEC. 121. *1. The peace officer executing a warrant shall make return thereof to the court. At the request of the district attorney any unexecuted warrant shall be returned and canceled.*

2. On or before the return day the person to whom a summons was delivered for service shall make return thereof.

3. At the request of the district attorney made at any time while the indictment or information is pending, a warrant returned unexecuted and not canceled or a summons returned unserved or a duplicate thereof may be delivered by the clerk to a peace officer or other authorized person for execution or service.

SEC. 122. Chapter 174 of NRS is hereby amended by adding thereto the provisions set forth as sections 123 to 172, inclusive, of this act.

SEC. 123. *1. Arraignment shall be conducted in open court and shall consist of reading the indictment or information to the defendant or stating to him the substance of the charge and calling on him to plead thereto. He shall be given a copy of the indictment or information before he is called upon to plead.*

2. In justice's court, before the trial commences, the complaint must be distinctly read to the defendant before he is called upon to plead.

SEC. 124. *When the defendant is arraigned, he must be informed that if the name by which he is prosecuted is not his true name he must then declare his true name, or be proceeded against by the name in the indictment, information or complaint. If he gives no other name, the court may proceed accordingly; but, if he alleges that another name is his true name, the court must direct an entry thereof in the minutes of the arraignment, and the subsequent proceedings on the information, indictment or complaint may be had against him by that name, referring also to the name by which he was first charged therein.*

SEC. 125. *1. A defendant may plead not guilty, guilty or, with the consent of the court, nolo contendere. The court may refuse to accept a plea of guilty, and shall not accept such plea or a plea of nolo contendere without first addressing the defendant personally and determining that the plea is made voluntarily with understanding of the nature of the charge and consequences of the plea.*

2. The defendant may, in the alternative or in addition to any one of the pleas permitted by subsection 1, plead not guilty by reason of insanity. A defendant who has not so pleaded may offer the defense of insanity during trial upon good cause shown. Under such plea or defense, the burden of proof is upon the defendant to establish his insanity by a preponderance of the evidence.

3. If a defendant refuses to plead or if the court refuses to accept a plea of guilty or if a defendant corporation fails to appear, the court shall enter a plea of not guilty.

SEC. 126. *1. When any person is convicted upon a plea of guilty of an offense punishable by death, except as provided in section 128 of this act, the supreme court shall appoint two district judges from judicial districts other than the district in which the plea is made who shall with the district judge before whom such plea is made, or his successor in office, by examination of witnesses determine the degree or facts of the offense and give sentence accordingly. A sentence of death may be given only by unanimous vote of the three judges, but any other sentence may be given by the vote of a majority.*

2. If the concurrence of a majority cannot be had for any sentence less than death, the supreme court shall appoint a new panel of three district judges, none of whom was a member of the original panel. The new panel may in its discretion either give sentence upon the record of the evidence heard before the original panel or supplement such record by recalling the former witnesses or calling new ones. The same vote is required for the giving of sentence by the new panel as by the original panel.

SEC. 127. *In the justice's court, if the defendant pleads guilty, the court may, before entering such a plea or pronouncing judgment, examine witnesses to ascertain the gravity of the offense committed; and if it*

appears to the court that a higher offense has been committed than the offense charged in the complaint, the court may order the defendant to be committed or admitted to bail, to answer any indictment that may be found against him or any information which may be filed by the district attorney.

SEC. 128. *1. On a plea of guilty to an information or indictment accusing a defendant of a crime divided into degrees, when consented to by the district attorney in open court and approved by the court, the plea may specify the degree, and in such event the defendant shall not be punished for a higher degree than that specified in the plea.*

2. On a plea of guilty to an indictment or information for an offense punishable by death, when consented to by the district attorney in open court and approved by the court, the plea may specify a punishment less than death. The specified punishment, or any lesser punishment, may be imposed by a single judge.

SEC. 129. *1. Pleadings in criminal proceedings shall be the indictment, the information and, in justice's court, the complaint, and the pleas of not guilty, not guilty by reason of insanity, and nolo contendere.*

2. All other pleas, and demurrers and motions to quash are abolished, and defenses and objections raised before trial which heretofore could have been raised by one or more of them shall be raised only by motion to dismiss or to grant appropriate relief, as provided in this Title.

SEC. 130. *1. If the defendant was formerly acquitted on the ground of variance between the indictment, information or complaint and proof, or the indictment, information, or complaint was dismissed upon an objection to its form or substance, or in order to hold the defendant for a higher offense without a judgment of acquittal, it is not an acquittal of the same offense.*

2. Whenever the defendant is acquitted on the merits, he is acquitted of the same offense, notwithstanding any defect in form or substance in the indictment, information, or complaint on which the trial was had.

3. When the defendant is convicted or acquitted, or has been once placed in jeopardy upon an indictment, information or complaint, the conviction, acquittal or jeopardy is a bar to another indictment, information or complaint for the offense charged in the former, or for an attempt to commit the same, or for an offense necessarily included therein, of which he might have been convicted under that indictment, information or complaint.

4. In all cases where a jury is discharged or prevented from giving a verdict by reason of any accident or other cause, except where the defendant is discharged during the progress of the trial or after the cause is submitted to them, the cause may be again tried.

SEC. 131. *Any defense or objection which is capable of determination without the trial of the general issue may be raised before trial by motion.*

SEC. 132. *1. Defenses and objections based on defects in the institution of the prosecution, other than insufficiency of the evidence to warrant an indictment, or in the indictment, information or complaint, other than that it fails to show jurisdiction in the court or to charge an offense, may be raised only by motion before trial. The motion shall include all such defenses and objections then available to the defendant.*

2. Failure to present any such defense or objection as herein provided constitutes a waiver thereof, but the court for cause shown may grant relief from the waiver.

3. Lack of jurisdiction or the failure of the indictment, information or complaint to charge an offense shall be noticed by the court at any time during the pendency of the proceeding.

SEC. 133. *The motion shall be made before the plea is entered, but the court may permit it to be made within a reasonable time thereafter.*

SEC. 134. *1. All motions in a criminal prosecution to suppress evidence, for a transcript of former proceedings, for a preliminary hearing, for severance of joint defendants, for withdrawal of counsel, and all other motions which by their nature, if granted, delay or postpone the time of trial, shall be made prior to trial, unless opportunity to make any such motion prior to trial did not exist or the moving party was not aware of the grounds for the motion prior to trial.*

2. In any judicial district in which a single judge is provided by NRS 3.010:

(a) All motions subject to the provisions of subsection 1 shall be made in writing, with not less than 10 days' notice to the opposite party unless good cause is shown to the court at the time of trial why the motion could not have been made in writing upon the required notice.

(b) The court may, by written order, shorten the notice required to be given to the opposite party.

3. In any judicial district in which two or more judges are provided by NRS 3.010:

(a) All motions subject to the provisions of subsection 1 shall be made in writing not less than 15 days before the date set for trial, except that if less than 15 days intervene between entry of a plea and the date set for trial, such a motion may be made within 5 days after entry of the plea.

(b) The court may, if a defendant waives hearing on the motion or for other good cause shown, permit the motion to be made at a later date.

4. Grounds for making such a motion after the time provided or at the trial must be shown by affidavit.

SEC. 135. *1. A motion before trial raising defenses or objections shall be determined before trial unless the court orders that it be deferred for determination at the trial of the general issue.*

2. An issue of fact shall be tried by a jury if a jury trial is required under the Constitution of the United States or of the State of Nevada or by statute.

3. All other issues of fact shall be determined by the court with or without a jury or on affidavits or in such other manner as the court may direct.

SEC. 136. *1. If a motion is determined adversely to the defendant he shall be permitted to plead if he had not previously pleaded. A plea previously entered shall stand.*

2. If the court grants a motion based on a defect in the institution of the prosecution or in the indictment, information or complaint, it may also order that the defendant be held in custody or that his bail be continued for a specified time pending the filing of a new indictment, information or complaint.

3. Nothing in this section shall affect the provisions of any statute relating to periods of limitations.

SEC. 137. *The court may order two or more indictments or informations or both to be tried together if the offenses, and the defendants if there is more than one, could have been joined in a single indictment or information. The procedure shall be the same as if the prosecution were under such single indictment or information.*

SEC. 138. *1. If it appears that a defendant or the State of Nevada is prejudiced by a joinder of offenses or of defendants in an indictment or information, or by such joinder for trial together, the court may order an election or separate trials of counts, grant a severance of defendants or provide whatever other relief justice requires.*

2. In ruling on a motion by a defendant for severance the court may order the district attorney to deliver to the court for inspection in chambers any statements or confessions made by the defendants which the state intends to introduce in evidence at the trial.

SEC. 139. *1. If it appears that a prospective witness may be unable to attend or prevented from attending a trial or hearing, that his testimony is material and that it is necessary to take his deposition in order to prevent a failure of justice, the court at any time after the filing of an indictment, information or complaint may upon motion of a defendant and notice to the parties order that his testimony be taken by deposition and that any designated books, papers, documents or tangible objects, not privileged, be produced at the same time and place.*

2. If a witness is committed for failure to give bail to appear to testify at a trial or hearing, the court on written motion of the witness and upon notice to the parties may direct that his deposition be taken. After the deposition has been subscribed the court may discharge the witness.

3. This section does not apply to the prosecutor, or to an accomplice in the commission of the offense charged.

SEC. 140. *The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined. On motion of a party upon whom the notice is served, the court for cause shown may extend or shorten the time.*

SEC. 141. *If a defendant is without counsel the court shall advise him of his right and assign counsel to represent him unless the defendant elects to proceed without counsel or is able to obtain counsel. If it appears that a defendant at whose instance a deposition is to be taken cannot bear the expense thereof, the court may direct that the expenses of the court reporter and of travel and subsistence of the defendant's attorney for attendance at the examination shall be paid as provided in NRS 7.260.*

SEC. 142. *A deposition shall be taken in the manner provided in civil actions. The court at the request of a defendant may direct that a deposition be taken or written interrogatories in the manner provided in civil actions.*

SEC. 143. *1. At the trial or upon any hearing, a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used if it appears:*

(a) That the witness is dead;

(b) That the witness is out of the State of Nevada, unless it appears that the absence of the witness was procured by the party offering the deposition;

(c) That the witness is unable to attend or testify because of sickness or infirmity; or

(d) That the party offering the deposition has been unable to procure the attendance of the witness by subpena.

2. Any deposition may also be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

3. If only a part of a deposition is offered in evidence by a party, an adverse party may require him to offer all of it which is relevant to the part offered and any party may offer other parts.

SEC. 144. *Objections to receiving in evidence a deposition or part thereof may be made as provided in civil actions.*

SEC. 145. *Upon motion of a defendant the court may order the district attorney to permit the defendant to inspect and copy or photograph any relevant:*

1. Written or recorded statements or confessions made by the defendant, or copies thereof, within the possession, custody or control of the state, the existence of which is known, or by the exercise of due diligence may become known, to the district attorney; and

2. Results or reports of physical or mental examinations, and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession, custody or control of the state, the existence of which is known, or by the exercise of due diligence may become known, to the district attorney.

SEC. 146. *Upon motion of a defendant the court may order the district attorney to permit the defendant to inspect and copy or photograph books, papers, documents, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the state, upon a showing of materiality to the preparation of his defense and that the request is reasonable. Except as provided in subsection 2 of section 145 of this act, this section does not authorize the discovery or inspection of reports, memoranda or other internal state documents made by state agents in connection with the investigation or prosecution of the case, or of statements made by state witnesses or prospective state witnesses (other than the defendant) to agents of the state.*

SEC. 147. *If the court grants relief sought by the defendant under subsection 2 of section 145 or under section 146 of this act, it may, upon motion of the state, condition its order by requiring that the defendant permit the state to inspect and copy or photograph scientific or medical reports, books, papers, documents, tangible objects, or copies or portions thereof, which the defendant intends to produce at the trial and which are within his possession, custody or control, upon a showing of materiality to the preparation of the state's case and that the request is reasonable. Except as to scientific or medical reports, this section does not authorize the discovery or inspection of reports, memoranda, or other internal defense documents made by the defendant, or his attorneys or agents in connection with the investigation or defense of the case, or of statements*

made by the defendant, or by state or defense witnesses, or by prospective state or defense witnesses, to the defendant, his agents or attorneys.

SEC. 148. An order of the court granting relief under sections 145 to 151, inclusive, of this act shall specify the time, place and manner of making the discovery and inspection permitted and may prescribe such terms and conditions as are just.

SEC. 149. Upon a sufficient showing the court may at any time order that the discovery or inspection be denied, restricted or deferred, or make such other order as is appropriate. Upon motion by the state the court may permit the state to make such showing, in whole or in part, in the form of a written statement to be inspected by the court in chambers. If the court enters an order granting relief following a showing in chambers, the entire text of the state's statement shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal by the defendant.

SEC. 150. A motion under sections 145 to 151, inclusive, of this act may be made only within 10 days after arraignment or at such reasonable later time as the court may permit. The motion shall include all relief sought under such sections. A subsequent motion may be made only upon a showing of cause why such motion would be in the interest of justice.

SEC. 151. If, subsequent to compliance with an order issued pursuant to sections 145 to 151, inclusive, of this act, and prior to or during trial, a party discovers additional material previously requested or ordered which is subject to discovery or inspection under such sections, he shall promptly notify the other party or his attorney or the court of the existence of the additional material. If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with such sections or with an order issued pursuant to such sections, the court may order such party to permit the discovery or inspection of materials not previously disclosed, grant a continuance, or prohibit the party from introducing in evidence the material not disclosed, or it may enter such other order as it deems just under the circumstances.

SEC. 152. 1. A subpena shall be issued by the clerk under the seal of the court. It shall state the name of the court and the title, if any, of the proceeding, and shall command each person to whom it is directed to attend and give testimony at the time and place specified therein. The clerk shall issue a subpena, signed and sealed but otherwise in blank, to a party requesting it, who shall fill in the blanks before it is served.

2. A subpena shall be issued by a justice of the peace in a proceeding before him, but it need not be under the seal of the court.

SEC. 153. 1. When it is necessary to have a person imprisoned in the state prison brought before any district court, or a person imprisoned in the county jail brought before a district court sitting in another county, an order for that purpose may be made by the district court or district judge, at chambers, and executed by the sheriff of the county when it is made. The order can only be made upon motion of a party upon affidavit showing the nature of the action or proceeding, the testimony expected from the witness, and its materiality.

2. When a person required as a witness before a district court is

imprisoned, the judge thereof may order the sheriff to bring the prisoner before the court at the expense of the state or, in his discretion, at the expense of the defendant.

SEC. 154. 1. A subpena may also command the person to whom it is directed to produce the books, papers, documents or other objects designated therein.

2. The court on motion made promptly may quash or modify the subpena if compliance would be unreasonable or oppressive.

3. The court may direct that books, papers, documents or objects designated in the subpena be produced before the court at a time prior to the trial or prior to the time when they are to be offered in evidence and may upon their production permit the books, papers, documents or objects or portions thereof to be inspected by the parties and their attorneys.

SEC. 155. A subpena may be served by a peace officer or by any other person who is not a party and who is not less than 18 years of age. Service of a supena shall be made by delivering a copy thereof to the person named and by tendering to him the fee for 1 day's attendance and the mileage allowed by law.

SEC. 156. Fees and expenses of witnesses in criminal cases shall be as provided in NRS 48.290 and 48.300.

SEC. 157. A subpena requiring the attendance of a witness at a hearing or trial may be served at any place within the State of Nevada.

SEC. 158. 1. An order to take a deposition authorizes the issuance by the clerk of the court for the county in which the deposition is to be taken of subpenas for the persons named or described therein.

2. A resident of this state may be required to attend an examination only in the county wherein he resides or is employed or transacts his business in person. A nonresident of this state may be required to attend only in the county where he is served with a subpena or within 40 miles from the place of service or at such other place as is fixed by the court.

SEC. 159. 1. Failure by any person without adequate excuse to obey a subpena served upon him may be deemed a contempt of the court from which the subpena issued.

2. A witness disobeying a subpena issued on the part of a defendant shall also forfeit to the defendant the sum of $100, which may be recovered in a civil action, unless good cause can be shown for his nonattendance.

SEC. 160. Sections 160 to 165, inclusive, of this act, may be cited as the Uniform Act To Secure the Attendance of Witnesses From Without a State in Criminal Proceedings.

SEC. 161. As used in sections 160 to 165, inclusive, of this act:

1. "State" shall include any territory of the United States and the District of Columbia.

2. "Summons" shall include a subpena, order or other notice requiring the appearance of a witness.

3. "Witness" shall include a person whose testimony is desired in any proceeding or investigation by a grand jury or in a criminal action, prosecution or proceeding.

SEC. 162. 1. If a judge of a court of record in any state which by its

laws has made provision for commanding persons within that state to attend and testify in this state certifies under the seal of such court that there is a criminal prosecution pending in such court, or that a grand jury investigation has commenced or is about to commence, that a person being within this state is a material witness in such prosecution, or grand jury investigation, and that his presence will be required for a specified number of days, upon presentation of such certificate to any judge of a court of record in the county in which such person is, such judge shall fix a time and place for a hearing, and shall make an order directing the witness to appear at a time and place certain for the hearing.

2. If at a hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution or a grand jury investigation in the other state, and that the laws of the state in which the prosecution is pending, or grand jury investigation has commenced or is about to commence (and of any other state through which the witness may be required to pass by ordinary course of travel), will give to him protection from arrest and the service of civil and criminal process, he shall issue a summons, with a copy of the certificate attached, directing the witness to attend and testify in the court where the prosecution is pending, or where a grand jury investigation has commenced or is about to commence at a time and place specified in the summons. In any such hearing the certificate shall be prima facie evidence of all the facts stated therein.

3. If the certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting state to assure his attendance in the requesting state, such judge may, in lieu of notification of the hearing, direct that such witness be forthwith brought before him for hearing; and the judge at the hearing being satisfied of the desirability of such custody and delivery, for which determination the certificate shall be prima facie proof of such desirability, may, in lieu of issuing subpena or summons, order that the witness be forthwith taken into custody and delivered to an officer of the requesting state.

4. If the witness, who is summoned as above provided, after being paid or tendered by some properly authorized person the sum of 10 cents a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending, and $5 for each day that he is required to travel and attend as a witness, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this state.

SEC. 163. *1. If a person in any state, which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions, or grand jury investigations commenced or about to commence, in this state, is a material witness in a prosecution pending in a court of record in this state, or in a grand jury investigation which has commenced or is about to commence, a judge of such court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness shall be required. The certificate may include a recommendation that the witness be taken into immediate custody and delivered to an officer of this state to assure his*

attendance in this state. This certificate shall be presented to a judge of a court of record in the county in which the witness is found.

2. If the witness is summoned to attend and testify in this state he shall be tendered the sum of 10 cents a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending and $5 for each day that he is required to travel and attend as a witness. A witness who has appeared in accordance with the provisions of the summons shall not be required to remain within this state a longer period of time than the period mentioned in the certificate unless otherwise ordered by the court. If such witness, after coming into this state, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this state.

SEC. 164. *1. If a person comes into this state in obedience to a summons directing him to attend and testify in this state he shall not while in this state pursuant to such summons be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons.*

2. If a person passes through this state while going to another state in obedience to a summons to attend and testify in that state or while returning therefrom, he shall not while so passing through this state be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons.

SEC. 165. *Sections 160 to 165, inclusive, of this act shall be so interpreted and construed as to effectuate their general purpose to make uniform the law of the states which enact them.*

SEC. 166. *A criminal action prosecuted by indictment, information or complaint may be removed from the court in which it is pending, on application of the defendant or state, on the ground that a fair and impartial trial cannot be had in the county where the indictment, information or complaint is pending.*

SEC. 167. *1. The application for removal must be made in open court, and in writing, verified by the affidavit of the defendant or district attorney, and a copy of the affidavit must be served on the adverse party, at least 1 day prior to the hearing of the application.*

2. The application may be supported or opposed by other affidavits or other evidence, or other witnesses may be examined in open court.

3. Whenever the affidavit of the defendant shows that he cannot safely appear in person to make such application, because popular prejudice is so great as to endanger his personal safety, and such statement is sustained by other testimony, such application may be made by his attorney and must be heard and determined in the absence of the defendant, notwithstanding the charge then pending against him be a felony, and he has not, at the time of such application, been arrested or given bail, or been arraigned, or pleaded to the indictment or information.

SEC. 168. *If the court is satisfied that the representations of the applicant are true, an order must be made transferring the action to the district court of some convenient county free from a like objection.*

SEC. 169. *The order of removal must be entered on the minutes, and*

the clerk must immediately make out and transmit to the court to which the action is removed a certified copy of the order of removal, record, pleadings, and proceedings in the action, including the undertakings for the appearance of the defendant and of the witnesses.

SEC. 170. *If the defendant is in custody, the order must direct his removal and he must be forthwith removed by the sheriff of the county where he is imprisoned, to the custody of the sheriff of the county to which the action is removed.*

SEC. 171. *The court to which the action is removed must proceed to trial and judgment therein as if the action had been commenced in such court. If it is necessary to have any of the original pleadings or other papers before such court, the court from which the action is removed must, at any time, on the application of the district attorney or the defendant, order such papers or pleadings to be transmitted by the clerk, a certified copy thereof being retained.*

SEC. 172. *1. When an action is called for trial, or at any time previous thereto, the court may, upon sufficient cause shown by either party by affidavit, direct the trial to be postponed to another day; but in all cases where a continuance is granted upon the application of either party the court may require, as a condition of granting such continuance, that the party applying therefor consent to taking, forthwith, or at any time to be fixed by the court, of the deposition of any witness summoned by the opposite party whose deposition has not previously been taken.*

2. The court also has authority to require all witnesses to enter into undertakings in such sum as the court may order, with or without sureties, to appear and testify on the day to which the case may be continued; but any witness who is unable to procure sureties for his attendance may be discharged on his own recognizance, upon giving his deposition in the manner prescribed in sections 137 and 142 of this act.

3. All depositions taken in pursuance of any of the provisions of this Title may be read in evidence, subject to the legal objections made at the time of taking the same, on the trial of the cause, whenever it shall appear that the personal attendance of the witness could not, with due diligence, be obtained, or when he has left the state, or become of unsound mind, or is too sick or infirm to attend, or is dead.

SEC. 173. Chapter 175 of NRS is hereby amended by adding thereto the provisions set forth as sections 174 to 229, inclusive, of this act.

SEC. 174. *1. Cases required to be tried by jury shall be so tried unless the defendant waives a jury trial in writing with the approval of the court and the consent of the state. A defendant who pleads not guilty to the charge of a capital offense must be tried by jury.*

2. Where a case is tried by jury in a justice's court, a reporter must be present who is an official reporter for a district court of this state, and shall report the trial.

SEC. 175. *1. Trial juries for criminal actions are formed in the same manner as trial juries in civil actions.*

2. Juries shall be of 12 but at any time before verdict the parties may stipulate in writing with the approval of the court that the jury shall consist of any number less than 12.

SEC. 176. *1. The court may permit the defendant or his attorney and*

the district attorney to conduct the examination of prospective jurors or may itself conduct the examination.

2. In the latter event the court shall permit the defendant or his attorney and the district attorney to supplement the examination by further inquiry.

SEC. 177. *When several defendants are tried together, they cannot sever their peremptory challenges, but must join therein.*

SEC. 178. *1. If the offense charged is punishable by death or by imprisonment for life, each side is entitled to eight peremptory challenges.*

2. If the offense charged is punishable by imprisonment for any other term or by fine or by both fine and imprisonment, each side is entitled to four peremptory challenges.

3. The state and the defendant shall exercise their challenges alternately, in that order. Any challenge not exercised in its proper order is waived.

SEC. 179. *1. The court may direct that not more than four jurors in addition to the regular jury be called and impaneled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who become unable or disqualified to perform their duties.*

2. Alternate jurors shall:

(a) Be drawn in the same manner;

(b) Have the same qualifications;

(c) Be subject to the same examination and challenges;

(d) Take the same oath; and

(e) Have the same functions, powers, facilities and privileges as the regular jurors.

3. If an alternate juror is required to replace a regular juror after the jury has retired to consider its verdict, the judge shall recall the jury, seat the alternate and resubmit the case to the jury.

4. Each side is entitled to one peremptory challenge in addition to those otherwise allowed by law if one or two alternate jurors are to be impaneled, and two peremptory challenges if three or four alternate jurors are to be impaneled. The additional peremptory challenges may be used against an alternate juror only, and the other peremptory challenges allowed by these rules may not be used against an alternate juror.

SEC. 180. *If, before the conclusion of the trial, and there being no alternate juror called or available, a juror dies, or becomes disqualified or unable to perform his duty, the court may duly order him to be discharged and a new juror may be sworn and the trial began anew, or the jury may be discharged and a new jury then or afterward impaneled.*

SEC. 181. *If, after the retirement of the jury, any accident or cause occurs to prevent their being kept for deliberation, the jury may be discharged.*

SEC. 182. *If by reason of death, sickness or other disability the judge before whom a jury trial has commenced is unable to proceed with the trial, any other judge regularly sitting in or assigned to the court, upon certifying that he has familiarized himself with the record of the trial, may proceed with and finish the trial.*

SEC. 183. *If by reason of absence from the judicial district, death, sickness or other disability the judge before whom the defendant has been*

tried is unable to perform the duties to be performed by the court after a verdict or finding of guilt, any other judge regularly sitting in or assigned to the court may perform those duties; but if such other judge is satisfied that he cannot perform those duties because he did not preside at the trial or for any other reason, he may in his discretion grant a new trial.

SEC. 184. *When the jury has been impaneled, the court shall administer the following oath:*

Do you and each of you solemnly swear that you will well and truly try this case, now pending before this court, and a true verdict render according to the evidence given, so help you God.

SEC. 185. *1. The judge shall then admonish the jury that:*

(a) No juror may declare to his fellow jurors any fact relating to the case as of his own knowledge; and

(b) If any juror discovers during the trial or after the jury has retired that he or any other juror has personal knowledge of any fact in controversy in the case, he shall disclose such situation to the judge out of the presence of the other jurors.

2. When any such disclosure is made, the judge shall examine the juror who admits or is alleged to have personal knowledge, under oath, in the presence of counsel for the parties, and may allow such counsel to examine the juror.

3. If the juror has disclosed his own knowledge to the judge and it appears that he has not declared any fact relating to the case to his fellow jurors as of his own knowledge, the judge shall after the examination decide whether the juror shall remain or shall be replaced by an alternate juror.

4. If it appears that the juror has declared any fact relating to the case to his fellow jurors as of his own knowledge, or that his vote was influenced by such knowledge undisclosed, the judge shall declare a mistrial.

SEC. 186. *Before any evidence has been introduced the judge may inform the jury they may individually take notes during the trial, but he shall further caution them not to rely upon their respective notes in case of conflict among them, because the reporter's notes contain the complete and authentic record of the trial.*

SEC. 187. *The jury having been impaneled and sworn, the trial shall proceed in the following order:*

1. If the indictment or information be for a felony, the clerk must read it and state the plea of the defendant to the jury. In all other cases this formality may be dispensed with.

2. The district attorney, or other counsel for the state, must open the cause. The defendant or his counsel may then either make his opening statement or reserve it to be made immediately prior to the presentation of evidence in his behalf.

3. The state must then offer its evidence in support of the charge, and the defendant may then offer evidence in his defense.

4. The parties may then respectively offer rebutting testimony only, unless the court, for good reasons, in furtherance of justice, permit them to offer evidence upon their original cause.

5. When the evidence is concluded, unless the case is submitted to

the jury on either side, or on both sides, without argument, the district attorney, or other counsel for the state, must open and must conclude the argument.

SEC. 188. *If the indictment or information be for an offense punishable with death, two counsel on each side may argue the case to the jury, but in such case, as well as in all others, the counsel for the state must open and conclude the argument. If it be for any other offense, the court may, in its discretion, restrict the argument to one counsel on each side.*

SEC. 189. *1. Upon the close of the argument, the judge shall charge the jury, if requested by either party. He may state the testimony and declare the law, but shall not charge the jury in respect to matters of fact; such charge shall be reduced to writing before it is given; and in no case shall any charge or instructions be given to the jury otherwise than in writing, unless by the mutual consent of the parties. If either party request it, the court must settle and give the instructions to the jury before the argument begins, but this shall not prevent the giving of further instructions which may become necessary by reason of the argument.*

2. In charging the jury, the court shall state to them all such matters of law as it shall think necessary for their information in giving their verdict.

3. Either party may present to the court any written charge, and request that it may be given. If the court thinks it correct and pertinent, it must be given; if not, it must be refused.

4. Upon each charge so presented and given, or refused, the court shall endorse its decision, and shall sign it. If part be given and part refused, the court shall distinguish, showing by the endorsement what part of the charge was given and what part refused.

SEC. 190. *In the trial of all indictments, complaints and other proceedings against persons charged with the commission of crimes or offenses, the person so charged shall, at his own request, but not otherwise, be deemed a competent witness, the credit to be given his testimony being left solely to the jury, under the instructions of the court, but no special instruction shall be given relating exclusively to the testimony of the defendant.*

SEC. 191. *1. No instruction shall be given relative to the failure of the person charged with the commission of crime or offense to testify, except, upon the request of the person so charged, the court shall instruct the jury that, in accordance with a right guaranteed by the constitution, no person can be compelled, in a criminal action, to be a witness against himself.*

2. Nothing herein contained shall be construed as compelling any such person to testify.

SEC. 192. *A defendant in a criminal action is presumed to be innocent until the contrary is proved; and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to be acquitted.*

SEC. 193. *Every person charged with the commission of a crime shall be presumed innocent until the contrary is proved by competent evidence beyond a reasonable doubt; and when an offense has been proved against*

him, and there exists a reasonable doubt as to which of two or more degrees he is guilty, he shall be convicted only of the lowest.

SEC. 194. *1. A reasonable doubt is one based on reason. It is not mere possible doubt, but is such a doubt as would govern or control a person in the more weighty affairs of life. If the minds of the jurors, after the entire comparison and consideration of all the evidence, are in such a condition that they can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt to be reasonable must be actual and substantial, not mere possibility or speculation.*

2. No other definition of reasonable doubt shall be given by the court to juries in criminal actions in this state.

SEC. 195. *1. In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by statute.*

2. The admissibility of evidence and the competency and privileges of witnesses shall be governed, except when otherwise provided by statute, by the principles of the common law as they may be interpreted by the courts of the State of Nevada in the light of reason and experience.

SEC. 196. *An official record or an entry therein or the lack of such a record or entry may be proved in the same manner as in civil actions.*

SEC. 197. *If, upon a trial or proceeding in a criminal case, the existence, constitution or powers of any corporation shall become material, or be in any way drawn in question, it is not necessary to produce a certified copy of the articles or acts of incorporation, but the same may be proved by general reputation, or by the printed statutes of the state, or government, or country by which such corporation was created.*

SEC. 198. *Upon a trial for conspiracy, in a case where an overt act shall be necessary to constitute the offense, the defendant shall not be convicted unless one or more overt acts shall be expressly alleged in the indictment or information, nor unless one of the acts alleged shall have been proved; but other overt acts not alleged may be given in evidence.*

SEC. 199. *Upon a trial for having, with an intent to cheat or defraud another designedly, by any false pretense, obtained the signature of any person, to a written instrument, or having obtained from any person any money, personal property, or valuable thing, the defendant shall not be convicted if the false pretense shall have been expressed in language, unaccompanied by a false token or writing, unless the pretense or some note or memorandum thereof be in writing, subscribed by or in the handwriting of the defendant, or unless the pretense be proved by the testimony of two witnesses, or that of one witness and corroborating circumstances; but this section shall not apply to a prosecution for falsely representing or personating another, and, in such assumed character, marrying, or receiving any money or property.*

SEC. 200. *1. The court may order the defendant or the state or both to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations.*

2. The court may appoint any expert witnesses agreed upon by the parties, and may appoint witnesses of its own selection. An expert witness shall not be appointed by the court unless he consents to act.

3. A witness so appointed shall be informed of his duties by the court

in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have the opportunity to participate.

4. A witness so appointed shall advise the parties of his findings, if any, and may thereafter be called to testify by the court or by any party. He shall be subject to cross-examination by each party.

5. The court may determine the reasonable compensation of such a witness and direct its payment out of such funds as may be provided by law.

6. The parties also may call expert witnesses of their own selection.

7. An expert witness, whether appointed by the court or called by a party, shall not be excluded from the courtroom during the testimony of other witnesses.

SEC. 201. *The court may appoint an interpreter of its own selection and may fix the reasonable compensation of such interpreter. Such compensation shall be paid out of funds provided by law.*

SEC. 202. *1. A conviction shall not be had on the testimony of an accomplice unless he is corroborated by other evidence which in itself, and without the aid of the testimony of the accomplice, tends to connect the defendant with the commission of the offense; and the corroboration shall not be sufficient if it merely shows the commission of the offense or the circumstances thereof.*

2. An accomplice is hereby defined as one who is liable to prosecution, for the identical offense charged against the defendant on trial in the cause in which the testimony of the accomplice is given.

SEC. 203. *Upon a trial for procuring or attempting to procure an abortion, or aiding or assisting therein, or for inveigling, enticing or taking away any female of previous chaste character, for the purpose of prostitution, or aiding or assisting therein, the defendant shall not be convicted upon the testimony of the woman upon or with whom the offense shall have been committed, unless she is corroborated by other evidence.*

SEC. 204. *If it appears by the testimony that the facts proved constitute an offense of a higher nature than that charged in the indictment or information, the court may direct the jury to be discharged, and all proceedings on the indictment or information to be suspended, and may order the defendant to be committed, or continued on, or admitted to bail, to answer any new indictment or information which may be found or filed against him for the higher offense.*

SEC. 205. *If an indictment for the higher offense be dismissed by the grand jury, or be not found at its next session, or if an information be not filed before the next session of the grand jury, the court shall again proceed to try the defendant on the original indictment or information.*

SEC. 206. *When a defendant who has given bail appears for trial, the court may, in its discretion, at any time after his appearance for trial, order him to be committed to the custody of the proper officer, to abide the judgment or further order of the court, and he must be committed and held in custody accordingly.*

SEC. 207. *When it appears, at any time before verdict or judgment, that a mistake has been made in charging the proper offense, the defendant must not be discharged, if there appears good cause to detain him in custody; but the court must commit him, or require him to give bail for*

his appearance to answer to the offense; and may also require the witnesses to give bail for their appearance.

SEC. 208. If the jury is discharged because the court has not jurisdiction of the offense charged, and it appears that it was committed out of the jurisdiction of this state, the defendant must be discharged, unless the court orders that he be detained for a reasonable time, to be specified in the order, to enable the district attorney to communicate with the chief executive officer of the country, state, territory or district where the offense was committed.

SEC. 209. If the offense was committed within the jurisdiction of another county of this state, the court may direct the defendant to be committed for such time as it deems reasonable, to await a warrant from the proper county for his arrest, or, if the offense is a misdemeanor only, it may admit him to bail in an undertaking, with sufficient sureties that he will, within such time as the court may appoint, render himself amenable to a warrant for his arrest from the proper county; and, if not sooner arrested thereon, will attend at the office of the sheriff of the county, where the trial was had, at a certain time particularly specified in the undertaking, to surrender himself upon the warrant, if issued, or that his bail will forfeit such sum as the court may fix, to be mentioned in the undertaking; and the clerk must forthwith transmit a certified copy of the indictment or information, and of all the papers filed in the action, to the district attorney of the proper county, the expenses of which transmission are chargeable to that county.

SEC. 210. 1. If the defendant is not arrested on a warrant from the proper county, as provided in section 209 of this act, he must be discharged from custody, or his bail in the action is exonerated, or money deposited instead of bail must be refunded, as the case may be, and the sureties in the undertaking, as mentioned in that section, must be discharged.

2. If he is arrested, the same proceedings must be had thereon as upon the arrest of a defendant in another county on a warrant issued by a magistrate.

SEC. 211. 1. The court on motion of a defendant or of its own motion shall order the entry of judgment of acquittal of one or more offenses charged in the indictment or information after the evidence on either side is closed if the evidence is insufficient to sustain a conviction of such offense or offenses.

2. If a defendant's motion for judgment of acquittal at the close of the evidence offered by the state is not granted, the defendant may offer evidence without having reserved the right.

SEC. 212. If a motion for judgment of acquittal is made at the close of all the evidence, the court may reserve decision on the motion, submit the case to the jury and decide the motion either before the jury returns a verdict or after it returns a verdict of guilty or is discharged without having returned a verdict.

SEC. 213. 1. If the jury returns a verdict of guilty or is discharged without having returned a verdict, a motion for judgment of acquittal may be made or renewed within 7 da[illegible] the jury is discharged or within such further time as the court ma[illegible] the 7-day period. If a

verdict of guilty is returned the court may on such motion set aside the verdict and enter judgment of acquittal. If no verdict is returned the court may enter judgment of acquittal.

2. It shall not be necessary to the making of such a motion that a similar motion has been made prior to the submission of the case to the jury.

SEC. 214. The jurors sworn to try a criminal action may, at any time before the submission of the case to the jury, in the discretion of the court, be permitted to separate or be kept in charge of a proper officer. The officer must be sworn to keep the jurors together until the next meeting of the court, to suffer no person to speak to them or communicate with them, nor to do so himself, on any subject connected with the trial, and to return them into court at the next meeting thereof.

SEC. 215. The jury must also, at each adjournment of the court, whether they be permitted to separate or be kept in charge of officers, be admonished by the court that it is their duty not to:

1. Converse among themselves or with anyone else on any subject connected with the trial; or

2. Read, watch or listen to any report of or commentary on the trial or any person connected with the trial by any medium of information, including without limitation newspapers, television and radio; or

3. Form or express any opinion on any subject connected with the trial until the cause is finally submitted to them.

SEC. 216. Upon the jury's retiring, an officer must be sworn to keep them together in some private and convenient place, and not permit any person to speak to or communicate with them, nor to do so himself, unless by order of the court, or to ask them whether they have agreed upon a verdict, and to return them into court when they have so agreed, or when ordered by the court.

SEC. 217. A room shall be provided by the sheriff of each county for the use of the jury upon their retirement for deliberation, with suitable furniture, fuel, lights and stationery, unless such necessaries have been already furnished by the county. The court may order the sheriff to do so, and the expenses incurred by him in carrying the order into effect, when certified by the court, shall be a county charge.

SEC. 218. While the jury are kept together, either during the progress of the trial or after their retirement for deliberation, they shall be provided, at the expense of the county, with suitable and sufficient food and lodging.

SEC. 219. Upon retiring for deliberation, the jury may take with them:

1. All papers and all other items and materials which have been received as evidence in the case, except depositions or copies of such public records or private documents given in evidence as ought not, in the opinion of the court, to be taken from the person having them in possession.

2. The written instructions given, and notes of the testimony or other proceedings on the trial, taken by themselves or any of them, but none taken by any other person.

SEC. 220. After the jury has [illegible]tired for deliberation, if there is any

disagreement between them as to any part of the testimony, or if they desire to be informed on any point of law arising in the cause, they must require the officer to conduct them into court. Upon their being brought into court, the information required shall be given in the presence of, or after notice to, the district attorney and the defendant or his counsel.

SEC. 221. *Except as provided in section 181 of this act, the jury shall not be discharged after the cause is submitted to them, until they have agreed upon their verdict and rendered it in open court, unless by the consent of both parties, entered upon the minutes, or unless, at the expiration of such time as the court may deem proper, it satisfactorily appears that there is no reasonable probability that the jury can agree.*

SEC. 222. *While the jury are absent, the court may adjourn from time to time, as to other business, but it shall nevertheless be deemed to be open for every purpose connected with the cause submitted to the jury, until a verdict be rendered or the jury discharged.*

SEC. 223. *The verdict shall be unanimous. It shall be returned by the jury to the judge in open court.*

SEC. 224. *If there are two or more defendants, the jury at any time during its deliberations may return a verdict or verdicts with respect to a defendant or defendants as to whom it has agreed; if the jury cannot agree with respect to all, the defendant or defendants as to whom it does not agree may be tried again.*

SEC. 225. *The defendant may be found guilty of an offense necessarily included in the offense charged or of an attempt to convict either the offense charged or an offense necessarily included therein if the attempt is an offense.*

SEC. 226. *When the defendant may be convicted of more than one offense charged, each offense of which the defendant is convicted must be stated in the verdict or the finding of the court.*

SEC. 227. *Where on a trial a defense of insanity is interposed by the defendant and he is acquitted by reason of that defense, the finding of the jury shall have the same force and effect as if he were regularly adjudged insane as now provided by law, and the judge thereupon shall forthwith order that the defendant be confined in the Nevada state hospital until he be regularly discharged therefrom in accordance with law.*

SEC. 228. *When a verdict is returned and before it is recorded the jury shall be polled at the request of any party or upon the court's own motion. If upon the poll there is not unanimous concurrence, the jury may be directed to retire for further deliberation or may be discharged.*

SEC. 229. *If judgment of acquittal be given on a verdict, and the defendant be not detained for any other legal cause, he must be discharged as soon as the verdict is given.*

SEC. 230. Chapter 176 of NRS is hereby amended by adding thereto the provisions set forth as sections 231 to 285, inclusive, of this act.

SEC. 231. *1. Sentence shall be imposed without unreasonable delay. Pending sentence the court may commit the defendant or continue or alter the bail.*

2. Before imposing sentence the court shall afford counsel an opportunity to speak on behalf of the defendant and shall address the defendant personally and ask him if he wishes to make a statement in his own behalf and to present any information in mitigation of punishment.

SEC. 232. *A death sentence shall not be imposed or inflicted upon any person convicted of a crime now punishable by death who at the time of the commission of such crime was under the age of 16 years. As to such person, the maximum punishment that may be imposed shall be life imprisonment.*

SEC. 233. *1. Whenever a person shall be convicted of two or more offenses, and sentence has been pronounced for one offense, the court in imposing any subsequent sentence may, in its discretion, provide that the sentences subsequently pronounced shall run either concurrently or consecutively with the sentence first imposed.*

2. If the court shall make no order with reference thereto, all sentences shall run concurrently; but whenever a person under sentence of imprisonment shall commit another crime and be sentenced to another term of imprisonment, such latter term shall not begin until the expiration of all prior terms.

SEC. 234. *1. Whenever a person convicted of a public offense in this state is under sentence of imprisonment pronounced by another jurisdiction, federal or state, whether or not the prior sentence is for the same offense, the court in imposing any sentence for the offense committed in this state may, in its discretion, provide that such sentence shall run either concurrently or consecutively with the prior sentence.*

2. If the court provides that the sentence shall run concurrently, and the defendant is released by the other jurisdiction prior to the expiration of the sentence imposed in this state, the defendant shall be returned to the State of Nevada to serve out the balance of such sentence.

3. If the court makes no order pursuant to this section, the sentence imposed in this state shall not begin until the expiration of all prior sentences imposed by other jurisdictions.

SEC. 235. *Whenever a person is sentenced to both fine and imprisonment, or to pay a forfeiture in addition to imprisonment, he shall be confined in the state prison or in the county jail, whichever is designated in his sentence of imprisonment, for an additional period of 1 day for each $4 of the amount until such fine or forfeiture is satisfied, but his eligibility for parole is governed only by his sentence of imprisonment.*

SEC. 236. *Whenever a person is sentenced to pay a fine or forfeiture without accompanying sentence of imprisonment, he shall be confined in the county jail for a period of not more than 1 day for each $4 of the amount until such fine or forfeiture is satisfied.*

SEC. 237. *Whenever, after a fine has been imposed but before it has been discharged by payment or confinement, it is made to appear to the judge or justice imposing such fine or his successor that the fine is excessive in relation to the financial resources of the defendant, such judge or justice or his successor may reduce the fine accordingly.*

SEC. 238. *The state board of parole commissioners may direct that any prisoner confined in the state prison shall be released on parole as provided in chapter 213 of NRS, if eligible for parole under the provisions of such chapter.*

SEC. 239. *A judgment of conviction shall set forth the plea, the verdict or findings, and the adjudication and sentence. If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly. The judgment shall be signed by the judge and entered by the clerk.*

SEC. 240. *1. In all cases of criminal prosecution where the defendant is not found guilty, the court may require the complainant, if it appears that the prosecution was malicious or without probable cause, to pay the costs of the action, or to give security to pay the same within 30 days.*

2. If the complainant does not comply with the order of the court, judgment may be entered against him for the amount thereof.

3. Such judgments may be enforced and appealed from in the same manner as those rendered in civil actions.

SEC. 241. *When judgment upon a conviction is rendered, the clerk shall within 5 days, annex together and file the following papers, which shall constitute the record of the action:*

1. A copy of the minutes of any challenge which may have been interposed by the defendant to the panel of the grand jury, or to any individual grand juror, and the proceedings thereon.

2. The indictment or information and a copy of the minutes of the plea.

3. A copy of the minutes of any challenge which may have been interposed to any juror, and the proceedings thereon.

4. A copy of the minutes of the trial.

5. A copy of the judgment.

6. The decision of the court upon matters of law deemed excepted to, if such decision is in writing, and a copy of the minutes showing any decision deemed excepted to.

7. Any written charges given or refused by the court, with the endorsements thereon.

8. The affidavits and counteraffidavits, if any, used on the hearing of a motion for a new trial.

SEC. 242. *The probation service of the district court shall make a presentence investigation and report to the court upon each defendant who pleads guilty or nolo contendere or is found guilty before the imposition of sentence or the granting of probation unless the court otherwise directs.*

SEC. 243. *The report of the presentence investigation shall contain:*

1. Any prior criminal record of the defendant;

2. Such information about his characteristics, his financial condition and the circumstances affecting his behavior as may be helpful in imposing sentence or in granting probation or in the correctional treatment of the defendant;

3. A recommendation of a definite term of confinement, amount of fine or both, with a statement either that such recommendation is the normal punishment for like offenses in the United States or of the reasons for recommending a punishment more or less severe than the normal; and

4. Such other information as may be required by the court.

SEC. 244. *1. The report of the presentence investigation is for the information of the trial court and of any reviewing court. No other person is entitled of right to any disclosure of its contents.*

2. The court may, upon its own motion or upon application by the district attorney or by the defendant or his counsel, discuss the report in chambers with counsel for both parties. The defendant shall not be present in person unless he is not represented by counsel in the case.

3. The report shall be filed as part of the record in the case, but shall be sealed, and may be opened only by order of a judge of a court designated in subsection 1.

4. It is unlawful for any person, except a judge of a court designated in subsection 1 and except as necessary in the preparation of the report, to disclose any contents of the report to any person, but an attorney in the case may act upon his knowledge of the contents to protect the interest of his client.

SEC. 245. *Except as provided in section 251 of this act, a motion to withdraw a plea of guilty or of nolo contendere may be made only before sentence is imposed or imposition of sentence is suspended; but to correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his plea.*

SEC. 246. *As used in sections 246 to 254, inclusive, of this act:*

1. "Board" means the state board of parole commissioners.

2. "Court" means a district court of the State of Nevada.

3. "Parole and probation officer" means the chief parole and probation officer or an assistant parole and probation officer appointed in accordance with the provisions of chapter 213 of NRS.

SEC. 247. *1. Whenever any person has been found guilty in a district court of the State of Nevada of a crime upon verdict or plea, the court, except in cases of murder of the first or second degree, kidnaping or forcible rape, may by its order suspend the execution of the sentence imposed and grant such probation to the convicted person as the judge thereof deems advisable. The court may grant probation to a person convicted of the infamous crime against nature, of indecent or obscene exposure or of lewdness only if a certificate of a psychiatrist, as required by NRS 201.190, 201.210 or 201.230, is received by the court.*

2. The district judge shall not grant probation until a written report is received by him from the chief parole and probation officer. The chief parole and probation officer shall submit a written report not later than 30 days following a request for a probation investigation from the county clerk, and if no report is submitted by the chief parole and probation officer within 30 days the district judge may grant probation without the written report.

3. Upon the granting of such probation, the court shall have full power to fix the terms and conditions thereof in the order therefor; but in imposing sentence the court shall have the power to fix the definite term of imprisonment within the minimum and maximum periods fixed by law, except that the court shall not suspend the execution of a sentence of imprisonment after the defendant shall have begun to serve such sentence.

4. In placing any defendant on probation or in granting any defendant a suspended sentence, the court shall direct that he be placed under the supervision of the board and of the chief parole and probation officer.

5. The court shall also, upon the entering of the order of probation or suspension of sentence, as provided for in sections 246 to 254, inclusive, of this act direct the clerk of such court to certify a copy of the records in the case and deliver the same to the chief parole and probation officer.

SEC. 248. *1. The parole and probation officer shall inquire into the circumstances of the offense, criminal record, social history and present condition of the defendant. Such investigation may include a physical and mental examination of the defendant. The expense of any such examination shall be paid by the county in which the indictment was found or the information filed.*

2. If a defendant is committed to any institution, the parole and probation officer shall send a report of such investigation to the institution at the time of commitment.

SEC. 249. *By order duly entered, the court may impose, and may at any time modify, any conditions of probation or suspension of sentence. The court shall cause a copy of any such order to be delivered to the parole and probation officer and the probationer.*

SEC. 250. *1. The period of probation or suspension of sentence may be indeterminate or may be fixed by the court and may at any time be extended or terminated by the court. Such period with any extensions thereof shall not exceed 5 years.*

2. At any time during probation or suspension of sentence, the court may issue a warrant for violating any of the conditions of probation or suspension of sentence and cause the defendant to be arrested. Any parole and probation officer or any peace officer with power to arrest may arrest a probationer without a warrant, or may deputize any other officer with power to arrest to do so by giving him a written statement setting forth that the probationer has, in the judgment of the parole and probation officer, violated the conditions of probation. The parole and probation officer, or the peace officer, after making an arrest shall present to the detaining authorities a statement of the circumstances of violation. The parole and probation officer shall at once notify the court which granted probation of the arrest and detention of the probationer and shall submit a report in writing showing in what manner the probationer has violated the conditions of probation.

3. If the probationer is arrested, by or without warrant, in another judicial district of this state, the court which granted probation may assign the case to the district court of that district, with the consent of such court. The court retaining or thus acquiring jurisdiction shall cause the defendant to be brought before it, and may continue or revoke the probation or suspension of sentence, and may cause the sentence imposed to be executed.

4. The necessary expenses of returning to the State of Nevada a person arrested for violation of probation shall be a charge upon the State of Nevada, and shall be paid by the parole and probation officer under the direction of the board, in the same manner as that in which other claims against the state are paid, from any funds appropriated and set aside for that purpose.

SEC. 251. *1. Every defendant who:*

(a) Has fulfilled the conditions of his probation for the entire period thereof; or

(b) Is recommended for earlier discharge by the chief parole and probation officer; or

(c) Has demonstrated his fitness for honorable discharge but because of economic hardship, verified by a parole and probation officer, has been unable to make restitution as ordered by the court,

may at any time thereafter be permitted by the court to withdraw his plea of guilty or nolo contendere and enter a plea of not guilty; or, if he has been convicted after a plea of not guilty, the court may set aside the verdict of guilty; and in either case, the court shall thereupon dismiss the indictment or information against such defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense or crime of which he has been convicted.

2. The probationer shall be informed of this privilege in his probation papers.

3. The probationer may make such application and change of plea in person or by attorney authorized in writing, or by a parole and probation officer authorized in writing; but in any subsequent prosecution of the defendant for any other offense, such prior conviction may be pleaded and proved and shall have the same effect as if probation had not been granted or the indictment or information had not been dismissed.

4. The clerk of the court shall notify every person who, and every agency which, to his knowledge has obtained from the court or clerk knowledge of the conviction, that the probationer has been honorably discharged and is released as provided in subsection 1.

5. Any amount of restitution remaining unpaid constitutes a civil liability arising upon the date of discharge.

SEC. 252. *1. Every defendant whose term of probation has expired and:*

(a) Who has failed to make restitution in full as ordered by the court, without a verified showing of economic hardship; or

(b) Who has otherwise failed to qualify for an honorable discharge as provided in section 251 of this act but is not subject to dishonorable discharge under section 253 of this act; or

(c) Whose whereabouts are unknown but who is not known to have committed any violation of law during his term of probation,

shall be given a general discharge.

2. Such general discharge releases the probationer from any further obligation, except a civil liability arising on the date of discharge for any unpaid restitution, but does not entitle the probationer to any privilege conferred by section 251 of this act.

SEC. 253. *1. Every defendant:*

(a) Whose probation has been revoked pursuant to section 250 of this act; or

(b) Whose term of probation has expired, whose whereabouts are unknown, and for whose arrest a warrant has been issued,

shall be given a dishonorable discharge.

2. Such dishonorable discharge does not release the defendant from

any obligation. Under the circumstances stated in paragraph (b) of subsection 1, it shall be issued if the defendant is not arrested within 1 year after the expiration of his term of probation.

SEC. 254. All information obtained in the discharge of official duty by a parole and probation officer or employee of the board shall be privileged and shall not be disclosed directly or indirectly to anyone other than the board or the judge, unless otherwise ordered by the board or judge.

SEC. 255. The full amount of all fines imposed and collected under and for violation of any penal law of this state shall be paid into the state treasury.

SEC. 256. A judgment which imposes a fine constitutes a lien in like manner as a judgment for money rendered in a civil action.

SEC. 257. In justice's court, when a fine is paid or bail is forfeited, the justice must pay the same to the county treasurer within 30 days thereafter.

SEC. 258. 1. In every case where a criminal action may have been or shall be removed before trial, the costs accruing upon such removal and trial shall be a charge against the county in which the cause of the indictment or information occurred.

2. The clerk of the county to which such action is or may be removed shall certify the amount of the costs to the auditor of the county in which the indictment was found, or the information filed, which shall be examined, allowed and paid as other county charges.

SEC. 259. If the judgment be imprisonment, or a fine and imprisonment until it is satisfied, the defendant must forthwith be committed to the custody of the proper officer, and by him detained until the judgment is complied with.

SEC. 260. A judgment of imprisonment to be served in a county jail must be executed by delivering the defendant into the custody of the sheriff or other officer in charge of the county jail. A copy of the judgment, duly certified by the judge or justice, is a sufficient warrant for the doing of every act necessary or proper in the due execution thereof. The officer shall, upon discharging the defendant, return such copy to the justice, with an account of his doings endorsed thereon, and must at the same time pay over to the justice all money which he may have received from the defendant in payment of the fine.

SEC. 261. When a judgment of imprisonment to be served in the state prison has been pronounced, duplicate certified copies of the entry thereof in the minutes, duly attested by the clerk under the seal of the court, shall forthwith be furnished to the officers whose duty it is to execute the judgment, as provided by section 262 of this act, and no other warrant or authority is necessary to justify or require the execution thereof, except when judgment of death is rendered.

SEC. 262. 1. If the judgment is for imprisonment in the state prison, the sheriff of the county must, on receipt of the duplicate certified copies thereof, immediately notify the warden of the state prison, and the warden of the state prison shall, without delay, send some authorized person to the county where the prisoner is held for commitment to receive the prisoner.

2. When such authorized person shall present to the sheriff holding

the prisoner his order for the delivery of the prisoner, the sheriff shall deliver to such authorized person one of the certified copies of the judgment, and take from such person a receipt for the prisoner, and the sheriff shall make return upon his certified copy of such judgment, showing his proceedings thereunder, and both such copy with the return affixed thereto and the receipt from the authorized person shall be filed with the county clerk.

3. The term of imprisonment designated in the judgment shall begin on the date of sentence of the prisoner by the court.

4. Upon the expiration of the term of imprisonment of the prisoner, or the termination thereof for any legal reason, the warden shall return his certified copy of the judgment to the county clerk of the county from whence it was issued, with a brief report of his proceedings thereunder endorsed thereon, and the endorsed copy shall be filed with the county clerk. The return shall show the cause of the termination of such imprisonment, whether by death, legal discharge or otherwise.

SEC. 263. 1. When a judgment of death has been pronounced, a certified copy of the entry thereof in the minutes of the court shall be forthwith executed and attested in triplicate by the clerk under the seal of the court. There shall be attached to the triplicate copies a warrant signed by the judge, attested by the clerk, under the seal of the court, which shall recite the fact of the conviction and judgment, and appoint a week within which the judgment is to be executed, which must not be less than 60 days nor more than 90 days from the time of judgment, and must direct the sheriff to deliver the prisoner to such authorized person as the warden of the state prison shall designate to receive the prisoner, for execution, such prison to be designated in the warrant.

2. The original of the triplicate copies of the judgment and warrant shall be filed in the office of the county clerk, and two of the triplicate copies shall be immediately delivered by the clerk to the sheriff of the county; one of the triplicate copies to be delivered by the sheriff, with the prisoner, to such authorized person as the warden of the state prison shall designate, which shall be the warrant and authority of the warden of the state prison for the imprisonment and execution of the prisoner, as therein provided and commanded, and the warden shall return his certified copy of the judgment to the county clerk of the county whence it was issued; and the other triplicate copy of such judgment and warrant to be the warrant and authority of the sheriff to deliver the prisoner to such authorized person so designated by the warden of the state prison; the last-mentioned copy to be returned to the county clerk by the sheriff with his proceedings endorsed thereon.

SEC. 264. 1. The judgment of death shall be inflicted by the administration of lethal gas.

2. The execution shall take place within the limits of the state prison, wherein a suitable and efficient enclosure and proper means for the administration of such gas for that purpose shall be provided by the board of prison commissioners.

3. The warden of the state prison must be present, and must invite a competent physician, and not less than six reputable citizens over the age

of 21 years, to be present at the execution; but no other persons shall be present at the execution.

SEC. 265. After the execution, the warden must make a return upon the death warrant to the court by which the judgment was rendered, showing the time, place, mode and manner in which it was executed.

SEC. 266. 1. Whenever any person shall be convicted of any crime except murder, kidnaping, burglary in the first degree, arson in the first degree, robbery, carnal knowledge of a female child under the age of 10 years, or rape, the court in which the conviction is had may in its discretion and when in its opinion clemency should be exercised, at the time of imposing sentence upon such person, direct that the execution of such sentence be stayed for a period of not more than 20 days for the purpose of allowing such person to apply to the state board of pardons commissioners or to the state board of parole commissioners for the remission of the fine or forfeiture, commutation of sentence, parole or pardon, as the case may be.

2. Upon the staying of the execution of the sentence the court may, in its discretion, permit such person his liberty on his own recognizance, admit him to bail or commit him to such custody as to the court shall seem meet pending the determination of such application by the board.

SEC. 267. 1. Upon the staying of the sentence, as provided in section 268 of this act, the person making application to the state board of pardons commissioners or to the state board of parole commissioners shall make or cause to be made a statement in writing, signed by him, setting forth in full the reasons for the remission of the fine or forfeiture, commutation of the sentence, parole or pardon, as the case may be, which statement shall be forwarded to and filed with the chairman of the board within 6 days of the staying of the execution of the sentence.

2. Accompanying the statement shall be a statement in writing signed by the judge of the court staying the sentence, wherein such judge shall give his reasons for staying the sentence, his reasons for recommending consideration by the board, and such other matters as will fully advise the board concerning the case.

3. When the statements are received by the chairman of the board, the board shall convene and consider the statements and such other evidence as it may require within such time as will permit of a determination of the matter within the 20-day period and transmittal of its order thereon to the court staying the execution of such sentence.

4. The board may, upon consideration of the statements, evidence, and any other matters in connection therewith, remit the fine or forfeiture, commute the sentence, grant a parole upon such terms as it deems just, or grant a full or conditional pardon.

5. Upon the receipt of the order made by the board, the court shall enter the same upon its records and the sentence of the court theretofore imposed shall be vacated, or otherwise modified or changed so as to comply with the action of the board.

SEC. 268. If the board shall remit the fine or forfeiture in its entirety, or absolve the person from punishment, or grant an unconditional pardon, such person shall be relieved of all liability imposed by the sentence and the sentence shall be vacated and annulled by the court.

SEC. 269. Nothing in sections 268 to 271, inclusive, of this act shall be deemed to provide for or be used as an appeal to an appellate court.

SEC. 270. The execution of a judgment of death shall be stayed only:

1. By the governor or the state board of pardons commissioners as authorized in sections 13 and 14 of article 5 of the constitution of the State of Nevada;

2. When an appeal from such judgment is taken to the supreme court of Nevada; or

3. By a judge of the district court of the county in which the state prison is situated, for the purpose of a sanity or pregnancy investigation as provided in section 271 to 277, inclusive, of this act.

SEC. 271. 1. If, after judgment of death, there is a good reason to believe that the defendant has become insane, the warden of the state prison to whom the convicted person has been delivered for execution may by a petition in writing, verified by a physician, petition a district judge of the district court of the county in which the state prison is situated, alleging the present insanity of such person, whereupon such judge shall:

(a) Fix a day for a hearing to determine whether the convicted person is insane;

(b) Appoint two physicians, at least one of whom shall be a psychiatrist, to examine the convicted person; and

(c) Give immediate notice of the hearing to the attorney general and to the district attorney of the county in which the conviction was had.

2. If such judge shall determine that the hearing on and the determination of the sanity of the convicted person cannot be had before the date of the execution of such person, such judge may stay the execution of the judgment of death pending the determination of the sanity of such convicted person.

SEC. 272. 1. On the day fixed, the warden of the state prison shall bring the convicted person before the court, and the attorney general or his deputy shall attend the hearing. The district attorney of the county in which the conviction was had, and an attorney for the convicted person, may attend the hearing.

2. The court shall receive the report of the examining physicians and may require the production of other evidence. The attorney general or his deputy, the district attorney, and the attorney for the convicted person or such person if he is without counsel may introduce evidence and cross-examine any witness, including the examining physicians.

3. The court shall then make and enter its finding of sanity or insanity.

SEC. 273. If it is found by the court that the convicted person is sane, the warden must execute the judgment of death; but if such judgment has been stayed, as provided in section 271 of this act, the judge shall cause a certified copy of his order staying the execution of the judgment, together with a certified copy of his finding that the convicted person is sane, to be immediately fowarded by the clerk of the court to the clerk of the district court of the county in which the conviction was had, who shall give notice thereof to the district attorney of such county, whereupon proceedings shall be instituted in the last-mentioned district court for the issuance of a

new warrant of execution of the judgment of death in the manner provided in section 278 of this act.

SEC. 274. *1. If it is found by the court that the convicted person is insane, the judge shall make and enter an order staying the execution of the judgment of death until the convicted person shall have become sane, and shall therein direct the warden of the state prison to confine such person in a safe place of confinement until his reason is restored.*

2. The clerk of the court shall serve or cause to be served three certified copies of the order, one on the warden, one on the governor, for the use of the state board of pardons commissioners, and one on the clerk of the district court of the county in which the conviction was had.

3. If the convicted person shall thereafter become sane, notice of such fact shall be given by the warden to a judge of the court staying the execution of the judgment, and such judge, upon being satisfied that such person is then sane, shall enter an order vacating the order staying the execution of the judgment.

4. The clerk of the court shall immediately serve or cause to be served three certified copies of such vacating order as follows: One on the warden, one on the governor, for the use of the state board of pardons commissioners, and one on the clerk of the district court of the county in which the conviction was had, who shall give notice thereof to the district attorney of such county, whereupon proceedings shall be instituted in the last-mentioned district court for the issuance of a new warrant of execution of the judgment of death in the manner provided in section 278 of this act.

SEC. 275. *1. If there is good reason to believe that a female against whom a judgment of death has been rendered is pregnant, the warden of the state prison to whom she has been delivered for execution shall petition a judge of the district court of the county in which the state prison is situated, in writing, alleging such pregnancy, whereupon such judge shall summon a jury of three physicians to inquire into the alleged pregnancy and fix a day for the hearing thereon, and give immediate notice thereof to the attorney general and to the district attorney of the county in which the conviction was had.*

2. The provisions of sections 271 and 272 of this act shall apply to the proceedings upon the inquisition, save and except that three physicians shall be summoned. They shall certify in writing to the court their findings as to pregnancy.

SEC. 276. *1. If it is found by the court that the female is not pregnant, the warden must execute the judgment of death; but if a stay of execution has been granted pursuant to section 271 of this act the procedure provided in section 273 of this act shall then be applicable.*

2. If the female is found to be pregnant, the judge shall enter an order staying the execution of the judgment of death, and shall therein direct the warden of the state prison to confine such female in a safe place of confinement commensurate with her condition until further order of the court.

3. Thereafter and when such female shall be no longer pregnant, notice of such fact shall be given by the warden to a judge of the court staying the execution of the judgment. Thereupon the judge, upon being satisfied that the pregnancy no longer exists, shall enter an order vacating the order staying the execution of the judgment and shall direct the clerk of such court to serve or cause to be served three certified copies of such order, one on the warden, one on the governor, for the use of the state board of pardons commissioners, and one on the clerk of the district court of the county in which the conviction was had, who shall give notice thereof to the district attorney of such county, whereupon proceedings shall be instituted in the last-mentioned district court for the issuance of a new warrant of execution of the judgment in the manner provided in section 278 of this act.

SEC. 277. *The costs and expenses of the investigations provided in sections 270 to 276, inclusive, of this act shall be borne by the state and paid in the following manner: The costs and expenses of an investigation shall first be paid by county warrants drawn upon the order of the district judge. The county clerk shall then present a claim to the state board of examiners for the amount of such costs and expenses so ordered paid by the district judge. Upon approval of the claim by the state board of examiners, the state controller shall draw his warrant for the payment thereof, and the state treasurer shall pay the same from the reserve for statutory contingency fund.*

SEC. 278. *1. If for any reason a judgment of death has not been executed, and it remains in force, the court in which the conviction was had must, upon the application of the attorney general or the district attorney of the county in which the conviction was had, cause another warrant to be drawn, signed by the judge and attested by the clerk under the seal of the court, and delivered to the warden of the state prison.*

2. The warrant must state the conviction and judgment and appoint a day on which the judgment is to be executed, which must be not less than 15 days nor more than 30 days after the date of the warrant.

3. Where sentence was imposed by a district court composed of three judges, the district judge before whom the confession or plea was made, or his successor in office, shall set the date of execution and sign the warrant.

SEC. 279. *When a remittitur showing the affirmation of a judgment of death has been filed with the clerk of the court from which the appeal therefrom has been taken, the court in which the conviction was had must inquire into the facts, and, if no legal reasons exist against the execution of the judgment, must make and enter an order that the warden of the state prison shall execute the judgment at a specified time; but the presence of the defendant in the court at the time the order of execution is made and entered, or the warrant is issued, as in this section provided, shall not be required.*

SEC. 280. *1. The court may grant a new trial to a defendant if required as a matter of law or on the ground of newly discovered evidence.*

2. If trial was by the court without a jury the court may vacate the judgment if entered, take additional testimony and direct the entry of a new judgment.

3. A motion for a new trial based on the ground of newly discovered evidence may be made only before or within 2 years after final judgment,

but if an appeal is pending the court may grant the motion only on remand of the case.

4. A motion for a new trial based on any other grounds shall be made within 7 days after verdict or finding of guilty or within such further time as the court may fix during the 7-day period.

SEC. 281. *The court shall arrest judgment if the indictment, information or complaint does not charge an offense or if the court was without jurisdiction of the offense charged. The motion in arrest of judgment shall be made within 7 days after determination of guilt or within such further time as the court may fix during the 7-day period.*

SEC. 282. *The effect of allowing a motion in arrest of judgment is to place the defendant in the same situation in which he was before the indictment was found or information or complaint filed.*

SEC. 283. *1. If, from the evidence on the trial, there is reasonable ground to believe the defendant guilty, and a new indictment, information or complaint can be framed upon which he may be convicted, the court may order him to be recommitted to the officers of the proper county, or admitted to bail anew to answer the new indictment, information or complaint.*

2. If the evidence shows him guilty of another offense, he shall be committed or held thereon, and in neither case shall the verdict be a bar to another prosecution.

3. But if no evidence appear sufficient to charge him with any offense, he shall, if in custody, be discharged; or, if admitted to bail, his bail shall be exonerated; or, if money has been deposited instead of bail, it shall be refunded to the defendant, and the arrest of judgment shall operate as an acquittal of the charge upon which the indictment, information or complaint was founded.

SEC. 284. *The court may correct an illegal sentence at any time. The court may reduce a sentence within 60 days after the sentence is imposed, or within 60 days after receipt by the court of a mandate issued upon affirmance of the judgment or dismissal of the appeal.*

SEC. 285. *Clerical mistakes in judgments, orders or other parts of the record and errors in the record arising from oversight or omission may be corrected by the court at any time and after such notice, if any, as the court orders.*

SEC. 286. Chapter 177 of NRS is hereby amended by adding thereto the provisions set forth as sections 287 to 324, inclusive, of this act.

SEC. 287. *The party aggrieved in a criminal action, whether that party be the state or the defendant, may appeal as follows:*

1. To the district court of the county from a final judgment of the justice's court.

2. To the supreme court from:

(a) A final judgment of the district court in all criminal cases.

(b) An order of the district court granting a motion to dismiss, a motion for acquittal or a motion in arrest of judgment, or granting or refusing a new trial.

SEC. 288. *The appeal to the supreme court from the district court can be taken on questions of law alone.*

SEC. 289. *The party appealing shall be known as the appellant, and*

the adverse party as the respondent, but the title of the action is not changed by reason of the appeal.

SEC. 290. *Upon the appeal, any decision of the court in an intermediate order or proceeding, forming a part of the record, may be reviewed.*

SEC. 291. *When upon a plea of not guilty a judgment of death is entered, an appeal is deemed automatically taken by the defendant without any action by him or his counsel, unless the defendant or his counsel affirmatively waives such appeal.*

SEC. 292. *In other cases, an appeal to the supreme court from a judgment or order must be taken within 30 days after its rendition. An appeal to a district court from a final judgment of a justice's court must be taken within the time specified in NRS 189.010.*

SEC. 293. *1. Except where appeal is automatic, an appeal from a district court to the supreme court is taken by filing with the clerk of the district court a notice of appeal in duplicate. Bills of exception and assignments of error in cases governed by this chapter are abolished.*

2. When a court imposes sentence upon a defendant who has not pleaded guilty and who is without counsel, the court shall advise the defendant of his right to appeal, and if he so requests, the clerk shall prepare and file forthwith a notice of appeal on his behalf.

3. The notice of appeal shall set forth:

(a) The title of the case;

(b) The name and address of the appellant and of appellant's attorney;

(c) A general statement of the offense;

(d) A concise statement of the judgment or order, giving its date and any sentence imposed;

(e) The place of confinement if the defendant is in custody; and

(f) A statement that the appellant appeals from the judgment or order.

4. The notice of appeal shall be signed:

(a) By the appellant or appellant's attorney; or

(b) By the clerk if prepared by him.

5. The duplicate notice of appeal and a statement of the docket entries shall be forwarded immediately by the clerk of the district court to the clerk of the supreme court.

6. Notification of the filing of the notice of appeal shall be given by the clerk by mailing copies thereof to adverse parties, but his failure to do so does not affect the validity of the appeal.

7. When the appeal is both from the judgment and from an order denying a motion for a new trial, one notice of appeal so specifying is sufficient.

SEC. 294. *1. An appeal taken by the state shall in no case stay or affect the operation of a judgment in favor of the defendant; but if the appeal by the state is from an order sustaining a demurrer to an indictment or information, or granting a motion to set aside an indictment or information, and upon such appeal the order is reversed, the defendant shall thereupon be liable to arrest and trial upon the indictment or information. In all such cases any statute of limitations on the offense from which the appeal is taken is tolled from the time the notice of appeal is filed by the state until such appeal is heard and a ruling made thereon.*

2. If the appeal by the state is from an order allowing a motion in arrest of judgment, or granting a motion for a new trial, and upon appeal the order is reversed, the trial court shall enter judgment against the defendant.

SEC. 295. *A sentence of death shall be stayed if an appeal is taken.*

SEC. 296. *A sentence of imprisonment shall be stayed if an appeal is taken and the defendant is admitted to bail.*

SEC. 297. *A sentence to pay a fine or a fine and costs, if an appeal is taken, may be stayed by a justice's court, district court, or by the supreme court upon such terms as the court deems proper. The court may require the defendant pending appeal to deposit the whole or any part of the fine and costs in the registry of the court appealed from, or to give bond for the payment thereof, or to submit to an examination of assets, and it may make any appropriate order to restrain the defendant from dissipating his assets.*

SEC. 298. *An order placing the defendant on probation may be stayed if an appeal is taken.*

SEC. 299. *Admission to bail upon appeal shall be as provided in this Title.*

SEC. 300. *If application is made to a district court or to a justice of the supreme court for bail pending appeal or for an extension of time for filing the record on appeal or for any other relief which might have been granted by the trial court, the application shall be upon notice and shall show that:*

1. Application to the court below or a judge thereof is not practicable; or

2. Application has been made and denied, with the reasons given for the denial; or

3. The action on the application did not afford the relief to which the applicant considers himself to be entitled.

SEC. 301. *The supervision and control of the proceedings on appeal shall be in the appellate court from the time the notice of appeal is filed with its clerk, except as otherwise provided in this Title. The appellate court may at any time entertain a motion to dismiss the appeal, or for directions to the trial court, or to modify or vacate any order made by the trial court or by any judge or justice of the peace in relation to the prosecution of the appeal, including any order fixing or denying bail.*

SEC. 302. *All appeals from a district court to the supreme court shall be heard on the original papers and the reporter's transcript of evidence or proceedings. The form and manner of preparation of the record and of other papers filed may be prescribed by the supreme court, and to the extent not otherwise so prescribed shall conform to the practice in civil cases.*

SEC. 303. *1. In an appeal from a district court to the supreme court, the record on appeal shall be filed with the supreme court and the proceeding there docketed within 40 days from the date the notice of appeal is filed in the district court.*

2. Where more than one appeal is taken from the same judgment, the district court may prescribe the time for filing and docketing all such

appeals, which shall not be less than 40 days from the date the first notice of appeal is filed.

3. In all appeals to the supreme court, the district court or the supreme court or any justice thereof in vacation may, for cause shown, extend the time for filing and docketing.

SEC. 304. *1. As used in this section, "brief" includes points and authorities.*

2. In an appeal from a district court to the supreme court:

(a) Appellant shall file and serve his brief within 30 days after the filing of the record on appeal.

(b) Respondent shall file and serve his brief within 30 days after the service of appellant's brief.

(c) Appellant shall file and serve his brief in reply within 30 days after the service of respondent's brief.

3. The times provided in subsection 2 may be extended by the supreme court either pursuant to general rule or by special order in the case.

SEC. 305. *Upon an appeal being taken to the supreme court as provided in this chapter, the appellant or person taking the appeal shall, in addition to service upon all adverse parties or their attorneys, serve or cause to be served upon the attorney general a true copy of the notice of appeal.*

SEC. 306. *The supreme court may, on its own motion or on motion of the respondent, dismiss an appeal:*

1. If the appeal is irregular in any substantial particular.

2. If the appellant has failed to comply with the requirements of section 303 or 304 of this act for docketing of the record on appeal or filing briefs, unless for good cause shown an extension is granted.

SEC. 307. *Unless good cause is shown for an earlier hearing, the supreme court shall set the appeal for argument on a date not less than 30 days after the expiration of the time limited for filing briefs and as soon thereafter as the state of the calendar will permit. Preference shall be given to appeals in criminal cases over appeals in civil cases.*

SEC. 308. *Judgment of affirmance may be granted without argument, if the appellant fail to appear. But judgment of reversal can only be given upon argument, orally or upon written brief, though the respondent fail to appear.*

SEC. 309. *Upon the argument of the appeal, if the offense is punishable with death, two counsel shall be heard on each side, if they require it. In any other case the court may, in its discretion, restrict the argument to one counsel on each side.*

SEC. 310. *The defendant need not personally appear in the supreme court.*

SEC. 311. *After hearing the appeal, the court shall give judgment without regard to technical error or defect which does not affect the substantial rights of the parties.*

SEC. 312. *The supreme court may reverse, affirm, or modify the judgment appealed from, and may, if necessary or proper, order a new trial.*

SEC. 313. *If a judgment against the defendant is reversed, without*

ordering a new trial, the supreme court shall direct, if he is in custody, that he be discharged therefrom, or if he is admitted to bail, that his bail be exonerated, or if money be deposited instead of bail, that it be refunded to the defendant.

SEC. 314. On a judgment of affirmance against the defendant, the original judgment shall be carried into execution, as the supreme court shall direct.

SEC. 315. When the judgment of the supreme court has been given, it must be entered on the minutes, and a certified copy of the entry remitted to the clerk of the court from which the appeal has been taken. When the supreme court reverses or modifies the judgment of an inferior court on appeal, the clerk of the supreme court shall return to the inferior court with the remittitur therein the papers transmitted to the supreme court on appeal.

SEC. 316. After the certificate of judgment has been remitted, the supreme court shall have no further jurisdiction of the appeal or of the proceedings thereon, and all orders which may be necessary to carry the judgment into effect shall be made by the court to which the certificate is remitted.

SEC. 317. 1. Any person convicted of a crime and under sentence of death or imprisonment who claims that the conviction was obtained, or that the sentence was imposed, in violation of the Constitution of the United States or the constitution or laws of this state, or that the court was without jurisdiction to impose the sentence, or that the sentence exceeds the maximum authorized by law, or that the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy, may, without paying a filing fee, apply for a writ of habeas corpus under sections 317 to 324, inclusive, of this act to secure relief from the conviction or sentence.

2. The remedy herein provided is not a substitute for nor does it affect any remedies which are incident to the proceedings in the trial court, or any remedy of direct review of the sentence or conviction. It comprehends and takes the place of all other common law, statutory, or other remedies which have heretofore been available for challenging the validity of the conviction or sentence, and shall be used exclusively in place of them. A petition for relief under sections 317 to 324, inclusive, of this act may be filed at any time.

SEC. 318. Unless otherwise ordered by the supreme court or a justice thereof, the proceeding is commenced by filing a petition verified by the petitioner with the clerk of the court in which the conviction took place. Facts within the personal knowledge of the petitioner and the authenticity of all documents and exhibits included in or attached to the petition must be sworn to affirmatively as true and correct. The supreme court may by rule prescribe the form of the petition and verification. The clerk shall docket the petition upon its receipt and promptly bring it to the attention of the court and deliver a copy to the district attorney and to the attorney general.

SEC. 319. The petition shall identify the proceedings in which the petitioner was convicted, give the date of the entry of the judgment and

sentence complained of, specifically set forth the grounds upon which the petition is based, and clearly state the relief desired. All facts within the personal knowledge of the petitioner shall be set forth separately from other allegations of facts and shall be verified as provided in section 318 of this act. Affidavits, records, or other evidence supporting its allegations shall be attached to the petition unless the petition recites why they are not attached. The petition shall identify any previous state or federal court proceedings, together with the grounds therein asserted, taken by the petitioner to secure relief from his conviction or sentence. No such ground upon which a decision has been rendered in any such proceeding may be asserted in a proceeding under sections 317 to 324, inclusive, of this act. Argument, citations and discussion of authorities are unnecessary.

SEC. 320. If the conviction was for a gross misdemeanor or a felony:

1. The petition may allege that the petitioner is unable to pay the costs of the proceeding or to employ counsel. If the court is satisfied that the allegation is true, it shall appoint counsel for him.

2. If after judgment, a review is sought by the petitioner or by the state, and the reviewing court is of the opinion that the requested review, if sought by the petitioner, is not frivolous, and the court finds that the petitioner is unable to pay the costs of the review or to employ counsel, it shall appoint counsel for him.

3. If inability to pay is determined, all necessary costs and expense incident to the proceedings in the trial court and in the reviewing court, including all court costs, stenographic services, printing, and reasonable compensation for legal services, shall be paid from the reserve for statutory contingency fund.

4. Where a copy of the transcript of any proceedings pursuant to sections 317 to 324, inclusive, of this act is necessary to a review by the Supreme Court of the United States, and inability to pay has been determined, such copy shall be supplied and the cost shall be paid from the reserve for statutory contingency fund.

5. Any order by a court, justice or judge for the supplying of a transcript may provide expressly for the rejection of all or any parts of such transcript upon which the petitioner or appellant relies which raise questions of law not open to him under section 319 of this act.

SEC. 321. Within 30 days after the docketing of the petition, or within any further time the court may fix, the state shall respond by motion or answer. No further pleadings shall be filed except as the court orders. At any time prior to entry of judgment the court may grant leave to withdraw the petition. The court may make appropriate orders for amendment of the petition or any pleading, for pleading over, for filing further pleadings, or for extending the time of the filing of any pleading. In considering the petition or an amendment the court shall take account of substance regardless of defects of form.

SEC. 322. 1. The petition shall be heard in, and before any judge of, the court in which the conviction took place. A record of the proceedings shall be made and kept. All existing rules and statutes applicable in civil proceedings including pretrial and discovery procedures are available to the parties. The court may receive proof by affidavits, depositions, oral

testimony, or other evidence and may order the petitioner brought before it for the hearing.

2. If the court finds in favor of the petitioner, it shall enter an appropriate order with respect to the conviction or sentence in the former proceedings, and any supplementary orders as to rearraignment, retrial, custody, bail, discharge, correction of sentence, or other matters that may be necessary and proper. The court shall make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented. This order is a final judgment for purposes of review.

SEC. 323. *All grounds for relief available to a petitioner under sections 317 to 324, inclusive, of this act must be raised in his original, supplemental or amended petition. Any ground not so raised or finally adjudicated or knowingly and understandingly waived in the proceedings resulting in the conviction or sentence or in any other proceeding that the petitioner has taken to secure relief from his conviction or sentence may not be the basis for a subsequent petition, unless the court finds a ground for relief asserted which for reasonable cause was omitted or inadequately raised in the original, supplemental, or amended petition.*

SEC. 324. *A final judgment entered under sections 317 to 324, inclusive, of this act may be reviewed by the supreme court of this state on appeal, brought either by the petitioner or by the state as provided by law.*

SEC. 325. NRS 178.405 is hereby amended to read as follows:

178.405 When an indictment or information is called for trial, or upon conviction the defendant is brought up for judgment, if doubt shall arise as to the sanity of the defendant, the court shall [order the question to be submitted to a jury that must be drawn and selected as in other cases.] *suspend the trial of the indictment or information or the pronouncing of the judgment, as the case may be, until the question of insanity is determined.*

SEC. 326. NRS 178.415 is hereby amended to read as follows:

178.415 [The trial of the question of insanity shall proceed in the following form:

1. The counsel for the defendant shall open the case and offer evidence in support of the allegations of insanity.

2. The counsel for the state shall open their case and offer evidence in support thereof.

3. The parties may then respectively offer rebutting testimony only, unless the court for good reason in furtherance of justice permit them to offer evidence upon their original cause.

4. When the evidence is concluded, unless the case is submitted to the jury, on either or both sides, without argument, the counsel for the state must commence, and the defendant, or his counsel, may conclude the argument to the jury.

5. If the indictment or information be for an offense punishable with death, two counsel on each side may argue the cause to the jury, in which case they must do so alternately. In other cases the argument may be restricted to one counsel on each side.

6. The court shall then charge the jury, stating to them all matters of law necessary for their informa[illegible]ndering a verdict.]

1. The court shall appoint two physicians, at least one of whom is a psychiatrist, to examine the defendant.

2. At a hearing in open court, the judge shall receive the report of the examining physicians and shall permit counsel for both sides to examine them. The state and the defendant may introduce other evidence and cross-examine one another's witnesses.

3. The court shall then make and enter its finding of sanity or insanity.

SEC. 327. NRS 178.420 is hereby amended to read as follows:

178.420 If the [jury find] *court finds* that the defendant is sane, the trial of the indictment or information shall proceed, or judgment may be pronounced, as the case may be.

SEC. 328. NRS 178.425 is hereby amended to read as follows:

178.425 1. If the [jury find] *court finds* the defendant insane, [and the court deems his freedom a menace to public quietude,] the judge shall order the sheriff to convey him forthwith, together with a copy of the complaint, the commitment and the physicians' certificate, if any, to the Nevada state hospital.

2. Proceedings against the defendant must be suspended until he becomes sane.

SEC. 329. NRS 178.445 is hereby amended to read as follows:

178.445 Where any person shall have been charged in an indictment or an information with a public offense and is placed upon his or her trial therefor and shall have been found by the [jury] *court* to be insane at that time, or in the event of a conviction for the commission of the offense and before or at the time of the pronouncement of the judgment of the court the question of the then sanity of such person is raised, all as provided in NRS 178.400 to 178.440, inclusive, and the [jury] *court* shall have found the convicted person insane as of that time, the district judge of the trial court shall commit such person to the Nevada state hospital and such person shall remain in the hospital until released therefrom for trial, judgment or discharge, as provided in NRS 178.445 to 178.470, inclusive.

SEC. 330. Chapter 178 of NRS is hereby amended by adding thereto the provisions set forth as sections 331 to 386, inclusive, of this act.

SEC. 331. *1. The defendant shall be present at the arraignment, at every stage of the trial including the impaneling of the jury and the return of the verdict, and at the imposition of sentence, except as otherwise provided by this Title. A corporation may appear by counsel for all purposes.*

2. In prosecutions for offenses not punishable by death, the defendant's voluntary absence after the trial has been commenced in his presence shall not prevent continuing the trial to and including the return of the verdict.

3. In prosecutions for offenses punishable by fine or by imprisonment for not more than 1 year or both, the court, with the written consent of the defendant, may permit arraignment, plea, trial and imposition of sentence in the defendant's absence.

4. The defendant's presence is not required at the settling of jury instructions or at a reduction of sentence under section 284 of this act.

SEC. 332. *No person can be subject to a second prosecution for a public offense for which he has once been prosecuted and duly convicted or acquitted.*

SEC. 333. *No person can be compelled, in a criminal action, to be a witness against himself, nor shall a person charged with a pubic offense be subjected, before conviction, to any more restraint than is necessary for his detention to answer the charge.*

SEC. 334. *Every defendant accused of a gross misdemeanor or felony who is financially unable to obtain counsel is entitled to have counsel assigned to represent him at every stage of the proceedings from his initial appearance before a magistrate or the court through appeal, unless he waives such appointment.*

SEC. 335. *In computing any period of time the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a nonjudicial day, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a nonjudicial day. When a period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and nonjudicial days shall be excluded in the computation.*

SEC. 336. *When an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion:*

1. With or without motion or notice, order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order; or

2. Upon motion made after the expiration of the specified period permit the act to be done if the failure to act was the result of excusable neglect,

but the court may not extend the time for taking any action under sections 280, 281, 284, 292 or 303 of this act except to the extent and under the conditions stated in such sections.

SEC. 337. *1. A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than 5 days before the time specified for the hearing unless a different period is fixed by rule or order of the court. For cause shown such an order may be made on ex parte application.*

2. When a motion is supported by affidavit, the affidavit shall be served with the motion; and opposing affidavits may be served not less than 1 day before the hearing unless the court permits them to be served at a later time.

SEC. 338. *Whenever a party has the right or is required to do an act within a prescribed period after the service of a notice or other paper upon him and the notice or other paper is served upon him by mail, 3 days shall be added to the prescribed period.*

SEC. 339. *1. A person arrested for an offense not punishable by death shall be admitted to bail.*

2. A person arrested for an offense punishable by death may be admitted to bail unless the proof is evident or the presumption great by any competent court or magistrate authorized by law to do so in the

exercise of discretion, giving due weight to the evidence and to the nature and circumstances of the offense.

SEC. 340. *When the admission to bail is a matter of discretion, the court, or officer by whom it may be ordered, shall require such notice of the application therefor as he may deem reasonable to be given to the district attorney of the county where the examination is had.*

SEC. 341. *1. Bail may be allowed pending appeal or certiorari unless it appears that the appeal is frivolous or taken for delay.*

2. Pending appeal to a district court, bail may be allowed by the trial justice, by the district court, or by any judge thereof, to run until final termination of the proceedings in all courts.

3. Pending appeal or certiorari to the supreme court, bail may be allowed by the district court or by any judge thereof or by the supreme court or by a justice thereof.

4. Any court or any judge or justice authorized to grant bail may at any time revoke the order admitting the defendant to bail.

SEC. 342. *When the admission to bail is a matter of discretion, the court or judge by whom it may be ordered shall require such notice of the application therefor as he may deem reasonable to be given to the district attorney of the county in which the verdict or judgment was originally rendered.*

SEC. 343. *If it appears by affidavit that the testimony of a person is material in any criminal proceeding and if it is shown that it may become impracticable to secure his presence by subpena, the magistrate may require him to give bail for his appearance as a witness, in an amount fixed by the magistrate. If the person fails to give bail the magistrate may:*

1. Commit him to the custody of a peace officer pending final disposition of the proceeding in which the testimony is needed;

2. Order his release if he has been detained for an unreasonable length of time; and

3. Modify at any time the requirement as to bail.

SEC. 344. *Infants and married women who are material witnesses against the defendant may be required to procure sureties for their appearance, as provided in section 343 of this act.*

SEC. 345. *If the defendant is admitted to bail, the amount thereof shall be such as in the judgment of the magistrate will insure the presence of the defendant, having regard to:*

1. The nature and circumstances of the offense charged;

2. The financial ability of the defendant to give bail; and

3. The character of the defendant.

SEC. 346. *1. A person required or permitted to give bail shall execute a bond for his appearance. The magistrate or court or judge or justice, having regard to the considerations set forth in section 345 of this act, may require one or more sureties, may authorize the acceptance of cash or bonds or notes of the United States in an amount equal to or less than the face amount of the bond, or may authorize the release of the defendant without security upon his written agreement to appear at a specified time and place and upon such conditions as may be prescribed to insure his appearance.*

2. Bail given originally on appeal shall be deposited with the magistrate or the clerk of the court from which the appeal is taken.

SEC. 347. 1. Every surety, except a corporate surety which is approved as provided by law, shall justify by affidavit and may be required to describe in the affidavit:

(a) The property by which he proposes to justify and the encumbrances thereon;

(b) The number and amount of other bonds and undertakings for bail entered into by him and remaining undischarged; and

(c) All his other liabilities.

2. No bond shall be approved unless the surety thereon appears to be qualified.

SEC. 348. If there is a breach of condition of a bond, the court shall declare a forfeiture of the bail.

SEC. 349. If the undertaking or money deposited instead of bail is in excess of $50, the court shall direct that the sureties first be given notice by certified mail that the defendant has failed to appear, and the undertaking or money instead of bail shall not be declared forfeited until the fifth day after the notice is mailed. A copy of the notice shall be transmitted to the district attorney at the time notice is given to the sureties.

SEC. 350. The court may direct that a forfeiture be set aside, upon such conditions as the court may impose, if it appears that justice does not require the enforcement of the forfeiture.

SEC. 351. 1. When a forfeiture has not been set aside, the court shall on motion enter a judgment of default and execution may issue thereon.

2. By entering into a bond the obligors submit to the jurisdiction of the court and irrevocably appoint the clerk of the court as their agent upon whom any papers affecting their liability may be served. Their liability may be enforced on motion and such notice of the motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail copies to the obligors to their last-known addresses.

SEC. 352. After entry of such judgment, the court may remit it in whole or in part under the conditions applying to the setting aside of forfeiture in section 350 of this act.

SEC. 353. Money collected pursuant to sections 348 to 352, inclusive, of this act is to be paid over to the county treasurer.

SEC. 354. 1. When the condition of the bond has been certified or the forfeiture thereof has been set aside or remitted, the court shall exonerate the obligors and release any bail.

2. A surety may be exonerated by a deposit of cash in the amount of the bond or by a timely surrender of the defendant into custody.

SEC. 355. If the defendant surrenders himself to, is apprehended by or is in the custody of a peace officer in the State of Nevada or the warden of the Nevada state prison other than the officer to whose custody he was committed at the time of giving bail, the bail may make application to the court for the discharge of his bail bond, and shall then give to the court an amount in cash or a surety bond sufficient in amount to guarantee reimbursement of any costs that may be expended in returning the defendant to the officer to whose custody the defendant was committed at the time of giving bail.

SEC. 356. For the purpose of surrendering the defendant, the sureties, at any time before they are finally discharged, and at any place within the state, may themselves arrest him, or by a written authority, endorsed on a certified copy of the undertaking, may empower any person of suitable age and discretion to do so.

SEC. 357. When money has been deposited, if it remains on deposit at the time of a judgment for the payment of a fine, the court, or the clerk under the direction of the court, shall apply the money in satisfaction thereof, and after satisfying the fine and costs shall refund the surplus, if any, to the defendant.

SEC. 358. The court to which the committing magistrate shall return the depositions and statement, or in which an indictment or information or an appeal is pending, or to which a judgment on appeal is remitted to be carried into effect, may, by an order to be entered on its minutes, direct the arrest of the defendant and his commitment to the officer to whose custody he was committed at the time of giving bail, and his detention until legally discharged, in the following cases:

1. When, by reason of his failure to appear, he has incurred a forfeiture of his bail, or of money deposited instead thereof, as provided in section 348 of this act.

2. When it satisfactorily appears to the court that his bail, or either of them, are dead, or insufficient, or have removed from the state.

3. Upon an indictment being found or information filed in the cases provided in section 118 of this act.

SEC. 359. The order for the recommitment of the defendant shall:

1. Recite generally the facts upon which it is founded.

2. Direct that the defendant be arrested by any sheriff, constable, marshal, policeman or other peace officer within the state, and committed to the custody of the sheriff of the county where the depositions and statement were returned, or the indictment was found, or the information was filed, or the conviction was had, as the case may be, to be detained until legally discharged.

SEC. 360. The defendant may be arrested pursuant to the order, upon a certified copy thereof, in any county, in the same manner as upon a warrant of arrest, except that when arrested in another county the order need not be endorsed by a magistrate of that county.

SEC. 361. 1. If the order recites, as the grounds upon which it is made, the failure of the defendant to appear for judgment upon conviction, the defendant must be committed according to the requirement of the order.

2. If the order be made for any other cause, and the offense is bailable, the court may fix the amount of bail, and may cause a direction to be inserted in the order that the defendant be admitted to bail in the sum fixed, which shall be specified in the order.

SEC. 362. Each county clerk shall maintain a bail bond register in which the following information relative to each bail bond accepted by a justice's or district court within the county or the supreme court as hereafter provided shall be recorded:

1. The name of the defendant;

2. The name of the st

3. The amount of the bond;
4. The court admitting the defendant to bail and the case number;
5. The date of exoneration or forfeiture of the bond;
6. The book and page of the minute order declaring the exoneration or forfeiture; and
7. The date of notice to the district attorney of any forfeiture of the bond.

SEC. 363. *1. Whenever a person is admitted to bail in a justice's court and the bail is put in by a written undertaking, the justice of the peace admitting such person to bail, or the clerk of the justice's court if there is one, shall file with the county clerk of the county in which the court is located a notice containing:*
(a) The name of the defendant;
(b) The names of the sureties;
(c) The amount of the bond;
(d) The name of the court;
(e) The case number; and
(f) Such other information as the county clerk may reasonably require.

Upon registration of the bond described in the notice, the county clerk shall issue a receipt for the notice which shall bear the number assigned to the bond in the bail bond register.

2. When the bond is exonerated or forfeited, the justice of the peace declaring the exoneration or forfeiture, or the clerk of the justice's court if there is one, shall file a notice with the county clerk containing:
(a) The name of the defendant;
(b) The names of the sureties;
(c) The amount of the bond;
(d) The date of the exoneration or forfeiture;
(e) The book and page of the minute order declaring the exoneration or forfeiture; and
(f) The registration number assigned to the bond in the bail bond register.

SEC. 364. *1. Whenever a person is admitted to bail by the supreme court or a justice of the supreme court, the clerk of the supreme court shall file with the county clerk of the county where the defendant was convicted, or if no conviction has been had, of the county where the defendant was incarcerated, a notice containing:*
(a) The name of the defendant;
(b) The names of the sureties;
(c) The amount of the bond; and
(d) The case number.

Upon registration of the bond described in the notice, the county clerk shall issue a receipt for the notice which shall bear the number assigned to the bond in the bail bond register.

2. When the bond is exonerated or forfeited, the clerk of the supreme court shall file with the county clerk with whom the first notice was filed a notice containing:
(a) The name of the defendant;
(b) The names of the sureties;

(c) The amount of the bond;
(d) The date of the exoneration or forfeiture;
(e) The file number of the order declaring the forfeiture or exoneration; and
(f) The registration number assigned to the bond in the bail bond register.

SEC. 365. *1. The county clerk shall record in the bail bond register the information contained in the notices which are filed with him pursuant to sections 363 and 364 of this act and shall obtain and record the necessary information relating to all bail bonds filed in the district court of the county.*

2. No bail bond may be filed in any case file unless it has been registered by the county clerk and the registration number assigned to such bond in the bail bond register is recorded on the face of the bond.

3. The county clerk shall notify the district attorney in writing promptly upon the receipt of information indicating that a bail bond has been forfeited.

SEC. 366. *An application to the court for an order shall be by motion. A motion other than one made during a trial or hearing shall be in writing unless the court permits it to be made orally. It shall state the grounds upon which it is made and shall set forth the relief or order sought. It may be supported by affidavit.*

SEC. 367. *The district attorney, or the attorney general in those cases which have been initiated by him, may by leave of court file a dismissal of an indictment, information or complaint and the prosecution shall thereupon terminate. Such a dismissal may not be filed during the trial without the consent of the defendant.*

SEC. 368. *If no indictment is found or information filed against a person within 15 days after he has been held to answer for a public offense, or if a defendant whose trial has not been postponed upon his application is not brought to trial within 60 days after the finding of the indictment or filing of the information, the court may dismiss the indictment, information or complaint.*

SEC. 369. *A defendant who before being brought to trial in this state is held in custody in another state for a crime committed in that state shall be brought to trial within a reasonable time after his release from such custody, and no motion to discharge such a person from custody in this state may be granted if the requirements of this section are met.*

SEC. 370. *1. An order for the dismissal of the action, as provided in sections 367 and 368 of this act, shall be a bar to another prosecution for the same offense.*

2. The discharge of a person accused upon preliminary examination shall be a bar to another complaint against him for the same offense, but shall not bar the finding of an indictment or filing of an information.

SEC. 371. *When a defendant is held to answer on a charge of a misdemeanor, for which the person injured by the act constituting the offense has a remedy by a civil action, the offense may be compromised as provided in section 372 of this act, except when it was committed:*

1. By or upon an officer of justice, while in the execution of the duties of his office.

2. *Riotously.*

3. *With intent to commit a felony.*

SEC. 372. *1. If the party injured appears before the court to which the depositions are required to be returned, at any time before trial, and acknowledges in writing that he has received satisfaction for the injury, the court may, in its discretion, on payment of the costs incurred, order all proceedings to be stayed upon the prosecution, and the defendant to be discharged therefrom; but in such case the reasons for the order must be set forth therein, and entered on the minutes.*

2. The order shall be a bar to another prosecution for the same offense.

SEC. 373. *No public offense shall be compromised, nor shall any proceeding for the prosecution or punishment thereof, upon a compromise, be stayed, except as provided in this Title.*

SEC. 374. *Written motions other than those which are heard ex parte, written notices, designations of record on appeal and similar papers shall be served upon each of the parties.*

SEC. 375. *1. Whenever under this Title or by an order of the court service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party himself is ordered by the court.*

2. Service upon the attorney or upon a party shall be made in the manner provided in civil actions.

SEC. 376. *Immediately upon the entry of an order made on a written motion subsequent to arraignment the clerk shall mail to each party a notice thereof and shall make a note in the docket of the mailing. Lack of notice of the entry by the clerk does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed.*

SEC. 377. *Papers required to be served shall be filed with the court. Papers shall be filed in the manner provided in civil actions.*

SEC. 378. *1. The clerk must prepare a calendar of all criminal actions pending in the court, enumerating them according to the date of filing of the indictment, information or complaint, specifying opposite the title of each action whether such action is for a felony or misdemeanor, and whether the defendant is in custody or on bail.*

2. Preference shall be given to criminal proceedings as far as practicable.

SEC. 379. *The issues on the calendar must be disposed of in the following order, unless for good cause the court shall direct an action to be tried out of its order:*

1. Prosecutions for felony, when the defendant is in custody.

2. Prosecutions for misdemeanor, when the defendant is in custody.

3. Prosecutions for felony, when the defendant is on bail.

4. Prosecutions for misdemeanor, when the defendant is on bail.

SEC. 380. *Exceptions to rulings or orders of the court are unnecessary and for all purposes for which an exception has been necessary prior to the effective date of this act it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which he desires the court to take or his objection to the action of the court and the grounds therefor; but if a party has no opportunity to object to a ruling or order, the absence of an objection does not thereafter prejudice him.*

SEC. 381. *Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.*

SEC. 382. *Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.*

SEC. 383. *The taking of photographs in the courtroom during the progress of judicial proceedings or radio or television broadcasting of judicial proceedings from the courtroom shall not be permitted by the court.*

SEC. 384. *A docket shall be kept by the justice, or by the clerk of the justice's court, if there be one, in which he shall enter each action, and the minutes of the proceedings of the court therein.*

SEC. 385. *Rules made by justices' courts and district courts for the conduct of criminal proceedings shall not be inconsistent with this Title.*

SEC. 386. *If no procedure is specifically prescribed by this Title, the court may proceed in any lawful manner not inconsistent with this Title or with any other applicable statute.*

SEC. 387. Chapter 179 of NRS is hereby amended by adding thereto the provisions set forth as sections 388 to 422, inclusive, of this act.

SEC. 388. *As used in sections 389 to 398, inclusive, of this act, the term "property" includes documents, books, papers and any other tangible objects.*

SEC. 389. *A search warrant authorized by sections 388 to 398, inclusive, of this act may be issued by a magistrate of the State of Nevada.*

SEC. 390. *A warrant may be issued under sections 388 to 398, inclusive, of this act to search for and seize any property:*

1. Stolen or embezzled in violation of the laws of the State of Nevada; or

2. Designed or intended for use or which is or has been used as the means of committing a criminal offense.

3. When the property or things to be seized consist of any item or constitute any evidence which tends to show that a felony has been committed, or tends to show that a particular person has committed a felony.

SEC. 391. *1. A search warrant shall issue only on affidavit or affidavits sworn to before the magistrate and establishing the grounds for issuing the warrant. If the magistrate is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, he must issue a warrant identifying the property and naming or describing the person or place to be searched.*

2. The warrant shall be directed to a peace officer in the county where the warrant is to be executed. It shall state the grounds or probable cause for its issuance and the names of the persons whose affidavits have been taken in support thereof. It shall command the officer to search forthwith the person or place named for the property specified.

3. The warrant shall direct that it be served in the daytime, unless the magistrate, upon a showing of good cause therefor, inserts a direction that it be served at any time.

4. It shall designate the magistrate to whom it shall be returned.

SEC. 392. *1. The officer may break open any outer or inner door or window of a house, or any part of the house, or anything therein, to execute the warrant, if, after notice of his authority and purpose, he is refused admittance.*

2. The officer may break open any outer or inner door or window of a house for the purpose of liberating a person who, having entered to aid him in the execution of his warrant, is detained therein, or when necessary for his own liberation.

3. All reasonable and necessary force may be used to effect an entry into any building or property or part thereof to execute a search warrant. In the execution of the warrant, the person executing it may reasonably detain and search any person in the place at the time in order to protect himself from attack or to prevent destruction, disposal or concealment of any instruments, articles or things particularly described in the warrant.

SEC. 393. *When a person charged with a felony is supposed to have on his person a dangerous weapon, or anything which may be used as evidence of the commission of the offense, the officer making the arrest shall cause him to be searched, and the weapon or other thing to be retained, subject to the order of the court in which the defendant may be tried.*

SEC. 394. *1. The warrant may be executed and returned only within 10 days after its date.*

2. The officer taking property under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken or shall leave the copy and receipt at the place from which the property was taken.

3. The return shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the applicant for the warrant or the person from whose possession or premises the property was taken, and shall be verified by the officer.

4. The magistrate shall upon request deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

SEC. 395. *1. A person aggrieved by an unlawful search and seizure may move the court having jurisdiction where the property was seized for the return of the property and to suppress for use as evidence anything so obtained on the ground that:*

(a) The property was illegally seized without warrant; or

(b) The warrant is insufficient on its face; or

(c) The property seized is not that described in the warrant; or

(d) There was not probable cause for believing the existence of the grounds on which the warrant was issued; or

(e) The warrant was illegally executed.

The judge shall receive evidence on any issue of fact necessary to the decision of the motion.

2. If the motion is granted the property shall be restored unless

otherwise subject to lawful detention and it shall not be admissible evidence at any hearing or trial.

3. The motion to suppress evidence may also be made in the court where the trial is to be had. The motion shall be made before trial or hearing unless opportunity therefor did not exist or the defendant was not aware of the grounds for the motion, but the court in its discretion may entertain the motion at the trial or hearing.

SEC. 396. *The magistrate who has issued a search warrant shall attach to the warrant a copy of the return, inventory and all other papers in connection therewith and shall file them with the clerk of the court having jurisdiction where the property was seized.*

SEC. 397. *All property or things taken on a warrant must be retained by an officer in his custody, subject to the order of the court to which he is required to return the proceedings before him, or of any other court in which the offense in respect to which the property or things are taken is triable. If it appears that the property taken is not the same as that described in the warrant, or that there is no probable cause for believing the existence of the grounds on which the warrant was issued, the magistrate shall cause it to be restored to the person from whom it was taken. However, no search warrant shall be quashed by any magistrate or judge within this state nor shall any evidence based upon a search warrant be suppressed in any criminal action or proceeding because of mere technical irregularities which do not affect the substantial rights of the accused.*

SEC. 398. *Sections 388 to 397, inclusive, of this act do not modify any other statute regulating search, seizure and the issuance and execution of search warrants in circumstances for which special provision is made.*

SEC. 399. *When property, alleged to have been stolen or embezzled, shall come into the custody of a peace officer, he shall hold the same subject to the order of the magistrate authorized by section 400 of this act to direct the disposal thereof.*

SEC. 400. *On satisfactory proof of the title of the owner of the property, the magistrate to whom the information is laid, or who shall examine the charge against the person accused of stealing or embezzling the property, may order it to be delivered to the owner, on his paying the reasonable and necessary expenses incurred in its preservation, to be certified by the magistrate. The order shall entitle the owner to demand and receive the property.*

SEC. 401. *If the property stolen or embezzled come into the custody of the magistrate, it shall be delivered to the owner on satisfactory proof of his title, and on his paying the necessary expenses incurred in its preservation, to be certified by the magistrate.*

SEC. 402. *If the property stolen or embezzled has not been delivered to the owner, the court before which a conviction is had for stealing or embezzling it may, on proof of his title, order it to be restored to the owner.*

SEC. 403. *If property stolen or embezzled is not claimed by the owner before the expiration of 6 months from the conviction of a person for stealing or embezzling it, the magistrate or other officer having it in custody shall, on p[illegible] of the necessary expenses incurred for its*

preservation, deliver it to the county treasurer, by whom it must be sold and the proceeds paid into the county treasury.

SEC. 404. *When money or other property is taken from a defendant arrested upon a charge of a public offense, the officer taking it shall at the time give duplicate receipts therefor, specifying particularly the amount of money and the kind of property taken, one of which receipts he shall deliver to the defendant, and the other of which he shall forthwith file with the clerk of the court to which the deposition and statements must be sent.*

SEC. 405. *1. Unless otherwise expressly required by this Title, no particular form of words is required to be used in any pleading, warrant, order, motion or other paper incident to a criminal proceeding. Substantial compliance with any statutory requirement as to content, or in the absence of any such requirement, language which reasonably informs the defendant or other person to whom such paper is directed of its nature, is sufficient.*

2. The use of one of the forms set out in sections 406 to 422, inclusive, of this act, modified as may be necessary to fit the case, is prima facie sufficient for their respective purposes.

SEC. 406. *A warrant of arrest may be in substantially the following form:*

Warrant of Arrest

County of ..... The State of Nevada, to any sheriff, constable, marshal, policeman, or peace officer in this state: A complaint, upon oath, has been this day laid before me by A. B. that the crime of (designate it) has been committed, and accusing C. D. thereof; you are therefore commanded forthwith to arrest the above-named C. D. and bring him before me at (naming the place), or, in case of my absence or inability to act, before the nearest or most accessible magistrate in this county. Dated at ....., this ..... day of ....., 19.....

.....

(Signature and official title of magistrate)

SEC. 407. *A summons may be in substantially the following form:*

Summons

STATE OF NEVADA, } ss.
COUNTY OF..... }

The State of Nevada to the (naming defendant or corporation):

You are hereby summoned to appear before me at (naming the place) on (specifying the day and hour), to answer a charge made against you upon the complaint of A. B. for (designating the offense generally).

Dated at ..... this ..... day of ....., 19.....

.....

(Signature and official title of magistrate)

SEC. 408. *A search warrant may be in substantially the following form:*

Search Warrant

STATE OF NEVADA, } ss.
COUNTY OF..... }

The State of Nevada, to any peace officer in the county of .....

Proof by affidavit having been made before me by (naming every person whose affidavit has been taken) that (stating the grounds or probable cause for issuance).

You are hereby commanded to search (naming the person or describing with reasonable particularity the place to be searched) for the following property (describing it with reasonable particularity), making the search (in the daytime or at any time, as determined by the magistrate) and if any such property is found there to seize it, prepare a written inventory of the property seized and bring the property before me (or another designated magistrate).

Dated at ..... this ..... day of ....., 19.....

.....

(Signature and official title of magistrate)

SEC. 409. *A motion for the return of seized property and the suppression of evidence may be in substantially the following form:*

Motion for the Return of Seized Property and the Suppression of Evidence

Defendant (naming defendant) hereby moves this court to direct that certain property of which he is the owner, a schedule of which is annexed hereto, and which on (stating date and time), at (describing the place), was unlawfully seized and taken from him by a peace officer of the State of Nevada (name and designation of peace officer, or, if so, state "whose true name is unknown to the petitioner"), be returned to him and that it be suppressed as evidence against him in any criminal proceeding.

The petitioner further states that the property was seized against his will and without a search warrant (or other reason why the warrant is defective or illegal).

.....

(Attorney for Petitioner)

SEC. 410. *An undertaking for bail after arrest and before preliminary examination may be in substantially the following form:*

Undertaking

A warrant having been issued on the ..... day of ....., A.D. 19...., by ....., a justice of the peace of ..... County, for the arrest of ..... (stating name of the accused), upon a charge of ..... (stating briefly the nature of the offense), upon which he has been arrested and duly ordered admitted to bail in the sum of ..... dollars and ordered to appear before the magistrate who issued the warrant, we, ..., of ....., and ....., (stating their names and place of residence), hereby undertake that the above-named ..... shall appear and answer the charge above mentioned, at ..... o'clock ....m., on the ..... day of ....., A.D. 19...., before ....., the magistrate issuing the warrant, at his office in ....., ... County, State of Nevada, and that the above-named (insert name of accused) shall appear and answer the charge above mentioned in whatever court and before whatever magistrate it may be prosecuted, or before which he may be required to appear by law, and shall at all times render himself amenable to the orders and process of the court and the requirements of the law, and if convicted shall appear for judgment and render himself in

execution thereof; or if he fail to perform any of these conditions, that we will pay to the State of Nevada the sum of ..... dollars (inserting the sum in which the defendant is admitted to bail).

.....

.....

(Signatures of Sureties)

SEC. 411. *An endorsement on a warrant of arrest for commitment for preliminary examination may be in substantially the following form:*

Endorsement

The within-named A. B., having been brought before me under this warrant, is committed for examination to the sheriff (or other appropriate peace officer) of the county of .....

.....

(Signature and official title of magistrate)

SEC. 412. *A discharge after preliminary examination may be in substantially the following form:*

Discharge

There being no sufficient cause to believe the within-named A. B. guilty of the offense within named, I order him to be discharged.

.....

(Signature and official title of magistrate)

SEC. 413. *Commitment and bail may be in substantially the following form:*

Commitment and Bail

It appearing to me by the within depositions and statement (if any) that the offense therein named (or any other offense according to the fact, stating generally the nature thereof) has been committed, and that there is sufficient cause to believe the within-named A.B. guilty thereof, I order that he be held to answer the same (and he is hereby committed to the sheriff of the county of.....) or (and I have admitted him to bail to answer by the undertaking hereto annexed) or (and that he be admitted to bail in the sum of ..... dollars, and is committed to the sheriff of the county of ..... until he give such bail).

.....

(Signature and official title of magistrate)

SEC. 414. *A commitment where defendant is held to answer after a preliminary examination may be in substantially the following form:*

Commitment

County of ..... (as the case may be).

The State of Nevada to the sheriff of the county of .....: An order having been this day made by me, that A.B. be held to answer upon a charge of (stating briefly the nature of the offense, and giving as near as may be the time when and the place where the same was committed), you are commanded to receive him into your custody and detain him until he is legally discharged.

Dated this ..... day of ....., 19....

....., *(Signature and official title of magistrate)*

SEC. 415. *An undertaking for bail after preliminary examination and before arraignment may be in substantially the following form:*

Undertaking

An order having been made on the ..... day of ....., A. D. 19...., by A. B., a justice of the peace of ..... County (or as the case may be), that C. D. be held to answer upon a charge of (stating briefly the nature of the offense), upon which he has been duly admitted to bail in the sum of ..... dollars, we, E. F. and G. H. (stating their place of residence), hereby undertake that the above-named C. D. shall appear and answer the charge above mentioned, in whatever court it may be prosecuted, and shall at all times render himself amenable to the orders and process of the court, and, if convicted, shall appear for judgment and render himself in execution thereof, or, if he fail to perform any of these conditions, that we will pay to the State of Nevada the sum of ..... dollars (inserting the sum in which the defendant is admitted to bail).

.....

.....

Signatures of Sureties

SEC. 416. *An indictment may be substantially in the following form:*

Indictment

STATE OF NEVADA, }
COUNTY OF ..... } *ss.*

The State of Nevada, plaintiff, against A. B., defendant (or John Doe, whose real name is unknown). Defendant A. B., above named, is accused by the grand jury of the county of ....., of a felony (or of the crime of murder or other name of crime), committed as follows: The said A. B., on the ..... day of....., A. D. 19...., or thereabouts, at the county of ....., State of Nevada, without authority of law and with malice aforethought, killed Richard Roe, by shooting with a pistol (or with a gun or other weapon, according to the facts).

.....

District Attorney
or District Attorney, by Deputy.

SEC. 417. *An information may be in substantially the following form:*

Information

STATE OF NEVADA, }
COUNTY OF ..... } *ss.*

In the ..... court. The State of Nevada against A. B., C. D. district attorney within and for the county of ..... in the state aforesaid, in the name and by the authority of the State of Nevada, informs the court that A. B. on the ..... day of ....., A. D. 19...., at the county of ....., did (here state offense) against the peace and dignity of the State of Nevada.

C. D., District Attorney.
or C. D., District Attorney, by H. M., Deputy.

SEC. 418. *A warrant upon the finding of a presentment, indictment or information may be in substantially the following form:*

Warrant

County of ..... The State of Nevada, to any sheriff, constable, marshal, policeman, or peace officer in this state: A presentment

having been made or an indictment having been found (or information filed) on the ..... day of ....., A. D. 19...., in the district court of the ....., county of ....., charging C. D. with the crime of (designating it generally), you are therefore commanded forthwith to arrest the above-named C. D. and bring him before that court to answer the presentment, indictment or information; or if the court is not in session that you deliver him into the custody of the sheriff of the county of ..... By order of the court. Given under my hand with the seal of the court affixed this ..... day of ....., A.D. 19.....

(Seal) *E. F., Clerk.*

SEC. 419. *An undertaking for bail after arrest on a warrant following the finding of a presentment, indictment or information may be in substantially the following form:*

Undertaking

A presentment having been made (or an indictment having been found or an information having been filed), on the ..... day of ....., A.D. 19...., in the District Court of the ..... Judicial District of the State of Nevada, in and for the County of ..... (as the case may be), charging A. B. with the crime of (indicating it generally), and he having been duly admitted to bail in the sum of ..... dollars, we, C. D. and E. F. (stating their place of residence), hereby undertake that the above-named A. B. shall appear and answer the indictment or information above mentioned in whatever court it may be prosecuted, and shall at all times render himself amenable to the orders and processes of the court, and, if convicted, shall appear for judgment and render himself in execution thereof; or, if he fail to perform either of these conditions, that we will pay to the State of Nevada the sum of ..... dollars (inserting the sum in which the defendant is admitted to bail).

.....

.....

Signatures of Sureties

SEC. 420. *A subpena or subpena duces tecum may be in substantially the following form:*

Subpena

The State of Nevada to A. B.: You are commanded to appear before C. D., a justice of the peace of ..... township, in ..... County (or, the court of ....., as the case may be), at (naming the place), on (stating the day and hour), as a witness in a criminal action, prosecuted by the State of Nevada against E. F. Given under my hand this ..... day of ....., A.D. 19..... G. H., Justice of the Peace (or "By order of the court, L. M., Clerk (seal)" as the case may be). (If books, papers or documents be required, a direction to the following effect shall be contained in the subpena: "And you are required also to bring with you the following (describing intelligibly the books, papers or documents required).")

SEC. 421. *A bench warrant may be in substantially the following form:*

Bench Warrant

STATE OF NEVADA, }
COUNTY OF ..... } *ss.*

The State of Nevada, to any sheriff, constable, marshal, policeman or other peace officer in this state: A. B. having been on the ..... day of ....., A. D. 19...., duly convicted in the ..... Judicial District Court of the State of Nevada and in and for the County of ....., of the crime of (designating it generally); you are therefore commanded forthwith to arrest the above-named A. B. and bring him before that court for judgment, or if the court has adjourned, that you deliver him into the custody of the sheriff of the county of ..... Given, by order of the court, under my hand with the seal of the court affixed, this the ..... day of ....., A. D. 19.....

(Seal)

.....

E. F., Clerk

SEC. 422. *When bail is taken upon the recommitment of the defendant, the undertaking shall be in substantially the following form:*

Undertaking

An order having been made on the ..... day of ....., A. D. 19...., by the court (naming it), that A. B. be admitted to bail in the sum of $....., in an action pending in that court against him, in behalf of the State of Nevada, upon a (presentment, indictment, information, or appeal, as the case may be), we, C. D. and E. F., of (stating their place of residence), hereby undertake that the above-named A. B. shall appear in that or any other court in which his appearance may be lawfully required, upon that (presentment, indictment, information, or appeal, as the case may be), and shall at all times render himself amenable to its orders and processes, and appear for judgment, and surrender himself in execution thereof; or, if he fail to perform any of these conditions, that we will pay to the State of Nevada the sum of $..... (inserting the sum in which the defendant is admitted to bail).

.....

.....

(Signatures of Sureties)

SEC. 423. Chapter 185 of NRS is hereby amended by adding thereto a new section which shall read as follows:

Except as otherwise expressly provided in chapter 189 of NRS, criminal proceedings in justices' courts are governed by the provisions of Title 14 of NRS.

SEC. 424. NRS 189.020 is hereby amended to read as follows:

189.020 1. The party intending to appeal must file with the justice and serve upon the district attorney a notice entitled in the action, setting forth the character of the judgment, and the intention of the party to appeal therefrom to the district court.

2. [He may also, at any time thereafter, if he desire to be released from custody during the pendency of the appeal, or desire a stay of proceedings under the judgment until the appeal be disposed of, enter bail for the due prosecution of the appeal, the payment of any judgment, fine and costs that may be awarded against him on the appeal, and for failure to prosecute the same, and for the rendering of himself in execution of the judgment appealed from, or of any judgment rendered against him in the action appealed from in the court to which the same is appealed.] *Stay*

of judgment pending appeal is governed by sections 296 and 297 of this act.

SEC. 425. NRS 189.080 is hereby amended to read as follows:

189.080 1. If the defendant does not object to the complaint for any of the causes specified in NRS 189.070, or if his objections are overruled, he must be required to plead as to an indictment without regard to any plea entered before the justice.

2. *If a jury trial was had in the justice's court, the reporter shall transcribe his notes and no evidence except such transcript may be received.*

3. No appeal may be tried by jury.

4. In other respects, the proceedings shall be the same as in criminal actions originally commenced in the district court, and judgment shall be rendered and carried into effect accordingly.

SEC. 426. Chapter 6 of NRS is hereby amended by adding thereto a new section which shall read as follows:

Upon the completion of its business for the time being, the court may recess the grand jury subject to recall at such time or times as new business may require its attention.

SEC. 427. NRS 6.130 is hereby amended to read as follows:

6.130 1. In any county it shall be mandatory to summon a grand jury whenever a verified petition is presented *to the clerk of the district court* containing the signatures of 75 registered voters or the signatures of registered voters equal in number to 5 percent of the number of votes cast within the county at the last preceding general election for the office of Representative in Congress, whichever number of signatures is the greater, specifically setting forth the fact or facts constituting the necessity of convening a grand jury.

2. In any county, if the statute of limitations has not run against the person offending, it shall also be mandatory, within 5 days, to summon a grand jury after an affidavit or verified petition by any taxpayer accompanied by and with corroborating affidavits of at least 2 additional persons has been filed with the clerk of the district court, setting forth that there is reason to believe that there has been a misappropriation of public funds or property by a public officer, past or present, or any fraud committed against the county or state by any officer, past or present, or any violation of trust by any officer, past or present.

3. If there is a grand jury in recess, the court shall recall that grand jury. Otherwise, a new grand jury shall be summoned.

SEC. 428. NRS 7.260 is hereby amended to read as follows:

7.260 1. An attorney other than a public defender appointed by a district court to represent a defendant before a magistrate or to defend a person charged with any offense by indictment or information, or by a district court or the supreme court or a justice thereof to represent an indigent petitioner for a writ of habeas corpus, which petitioner is imprisoned pursuant to a judgment of conviction of a gross misdemeanor or a felony, is entitled to receive a fee to be set at the discretion of the appointing court, judge or justice, but the fee shall not be set at more than $200 for services in a justice's court and $300 for services in a district court unless the crime is punishable by death, in which event the fee for services in a district court shall not be set at more than $1,000. The fee shall

be paid from the county treasury, unless the proceeding is based upon a petition for a writ of habeas corpus filed by an indigent petitioner imprisoned pursuant to a judgment of conviction of a gross misdemeanor or a felony, *or upon an automatic appeal,* in which [case] *cases* the fee shall be paid from the reserve for statutory contingency fund pursuant to NRS 353.264.

2. If such an attorney is called by a court into a county other than the county in which he has his office, he shall be allowed in addition to the fee provided in subsection 1 traveling expenses and subsistence allowances in the amounts specified in NRS 281.160.

3. Compensation for services and expenses which is a county charge shall be paid by the county treasurer out of any moneys in the county treasury not otherwise appropriated, upon the certificate of the judge of the court that such attorney has performed the services required and incurred the expenses claimed. Compensation for services and expenses which is a state charge shall be paid from the reserve for statutory contingency fund upon approval by the state board of examiners.

4. An attorney cannot, in such case, be compelled to follow a case to another county or into the supreme court, and if he does so, he may recover an enlarged compensation to be graduated on a scale corresponding to the sums allowed.

SEC. 429. NRS 34.360 is hereby amended to read as follows:

34.360. *1.* Every person unlawfully committed, detained, confined or restrained of his liberty, under any pretense whatever, may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment or restraint.

2. Application for the writ by or on behalf of a person who has been convicted of a crime and is under sentence of death or imprisonment shall be made in the manner provided by sections 317 to 324, inclusive, of this act.

SEC. 430. NRS 34.500 is hereby amended to read as follows:

34.500 If it appears on the return of the writ of habeas corpus that the prisoner is in custody by virtue of process from any court of this state, or judge or officer thereof, such prisoner may be discharged, in any one of the following cases: [, subject to the restrictions of NRS 34.490:]

1. When the jurisdiction of such court or officer has been exceeded.

2. When the imprisonment was at first lawful, yet by some act, omission or event, which has taken place afterwards, the party has become entitled to be discharged.

3. When the process is defective in some matter of substance required by law, rendering such process void.

4. When the process, though proper in form, has been issued in a case not allowed by law.

5. When the person having the custody of the prisoner is not the person allowed by law to detain him.

6. Where the process is not authorized by any judgment, order or decree of any court, nor by any provision of law.

7. Where a party has been committed *or indicted* on a criminal charge without reasonable or probable cause.

SEC. 431. Chapter 193 of NRS is hereby amended by adding thereto the provisions set forth as sections 432 to 435, inclusive, of this act.

SEC. 432. *Lawful resistance to the commission of a public offense may be made:*

1. By the party about to be injured.

2. By other parties.

SEC. 433. *Resistance sufficient to prevent the offense may be made by the party about to be injured:*

1. To prevent an offense against his person, or his family or some member thereof.

2. To prevent an illegal attempt, by force, to take or injure property in his lawful possession.

SEC. 434. *Any other person, in aid or defense of a person about to be injured, may make resistance sufficient to prevent the offense.*

SEC. 435. *Whenever the officers of justice are authorized to act in the prevention of public offenses, other persons, who by their command act in their aid, are justified in so doing.*

SEC. 436. NRS 193.180 is hereby amended to read as follows:

193.180 [1.] All offenses recognized by the common law as crimes, and not enumerated in NRS, shall be punished:

[(a)] *1.* In cases of felonies, by imprisonment in the state prison for a term not less than 1 year nor more than 5 years.

[(b)] *2.* In cases of misdemeanors, by imprisonment in the county jail for a term not exceeding 6 months nor less than 1 month, or by fine not exceeding $500, or both.

[2. Whenever any fine is imposed for any felony or misdemeanor, whether such be by statute or at common law, the party upon whom the fine is imposed shall be committed to the county jail, when not sentenced to the state prison, until the fine is paid; and he shall be imprisoned at the rate of 1 day for each $2 until such fine is paid.]

SEC. 437. Chapter 199 of NRS is hereby amended by adding thereto a new section which shall read as follows:

Every person who has been admitted to bail, whether provided by deposit, surety or upon his own recognizance, and has not been recommitted to custody who fails to appear at the time and place required by the order admitting him to bail or any modification thereof, unless he surrenders himself within 30 days or is excused by the court, is guilty of:

1. A felony, if admitted incident to prosecution for a felony.

2. A misdemeanor, if admitted incident to prosecution for a misdemeanor or gross misdemeanor.

SEC. 438. NRS 200.030 is hereby amended to read as follows:

200.030 1. All murder which shall be perpetrated by means of poison, or lying in wait, torture, or by any other kind of willful, deliberate and premeditated killing, or which shall be committed in the perpetration, or attempt to perpetrate, any arson, rape, robbery or burglary, or which shall be committed by a convict in the state prison serving a sentence of life imprisonment, shall be deemed murder of the first degree; and all other kinds of murder shall be deemed murder of the second degree.

2. The jury before whom any person indicted for murder shall be tried shall, if they find such person guilty thereof, designate by their verdict whether it be murder of the first or second degree.

3. [Upon a plea of guilty which specifies a degree lower than murder in the first degree, the district judge before whom such plea was made shall give sentence accordingly. If any person is convicted of murder on his confession in open court without a jury, or upon a plea of guilty without specification of a degree, the supreme court shall appoint two district judges from judicial districts other than the district in which the confession or plea is made, who shall, with the district judge before whom such confession or plea was made, or his successor in office, by examination of witnesses, determine the degree of the crime and give sentence accordingly. Such determination shall be by unanimous vote of the three district judges.

4.] If the jury shall find the defendant guilty of murder in the first degree, then the jury by its verdict shall fix the penalty at death or imprisonment in the state prison for life with or without possibility of parole, except that if the murder was committed by a convict in the state prison serving a sentence of life imprisonment, the jury shall fix the penalty at death or imprisonment in the state prison for life without possibility of parole. [Upon a plea of guilty the court, as provided in subsection 3, shall determine the same; and every] *Every* person convicted of murder of the second degree shall suffer imprisonment in the state prison for a term of not less than 10 years, which term may be extended to life.

SEC. 439. Chapter 201 of NRS is hereby amended by adding thereto a new section which shall read as follows:

Any sexual penetration, however slight, is sufficient to complete the crime against nature.

SEC. 440. NRS 213.1098 is hereby amended to read as follows:

213.1098 All information obtained in the discharge of official duty by a parole and probation officer or employee of the board shall be privileged and shall not be disclosed directly or indirectly to anyone other than the board [, the] *or* judge, [district attorney or others entitled to receive such information,] unless otherwise ordered by the board or judge.

SEC. 441. NRS 260.030 is hereby amended to read as follows:

260.030 1. The public defender shall be a qualified attorney licensed to practice in this state.

2. The public defender shall, when designated by the appropriate judge of the district court, [pursuant to the provisions of NRS 171.370,] represent, without charge, each indigent person who is under arrest and held for a crime which constitutes a felony or gross misdemeanor.

SEC. 442. NRS 260.050 is hereby amended to read as follows:

260.050 When representing an indigent person, the public defender shall:

1. Counsel and defend him, if he is held in custody and charged with a public offense amounting to a felony or gross misdemeanor, at every stage of the proceedings following his designation by the appropriate judge of the district court, [pursuant to the provision of NRS 171.370;] and

2. Prosecute any appeals or other remedies before or after conviction that he considers to be in the interests of justice.

SEC. 443. NRS 266.590 is hereby amended to read as follows:

266.590 1. Any person upon whom any fine or penalty shall be imposed may, upon the order of the court before whom the conviction is had, be committed to the county jail or the city jail, or to such other place as may be provided by the city for the incarceration of offenders, until such fine [,] *or* penalty [and costs] shall be fully paid.

2. The city council shall have power to provide by ordinance that every person committed shall be required to work for the city at such labor as his strength will permit, not exceeding 8 hours each working day; and for such work the person so employed shall be allowed [$2] *$4* for each day's work on account of such fine. [and costs.] The council may provide for the formation of a chain gang for persons convicted of offenses in violation of the ordinances of the city, and for their proper employment for the benefit of the city, and to safeguard and prevent their escape while being so employed.

3. Fines imposed by the municipal court may be recovered by execution against the property of the defendant, or the payment thereof enforced by imprisonment in the city jail of the city at the rate of 1 day for every [$1] *$4* of such fine, or the court may, in its discretion, adjudge and enter upon the docket a supplemental order that such offender shall work on the streets or public works of the city, at the rate of [$2] *$4* for each day of the sentence, which shall apply on such fine until the same shall be exhausted or otherwise satisfied.

SEC. 444. Chapter 281 of NRS is hereby amended by adding thereto a new section which shall read as follows:

As used in this chapter, "public officer" means a person elected or appointed to a position which:

1. Is established by the constitution or a statute of this state, or by a charter or ordinance of a political subdivision of this state; and

2. Involves the continuous exercise, as part of the regular and permanent administration of the government, of a public power, trust or duty.

SEC. 445. NRS 353.264 is hereby amended to read as follows:

353.264 1. There is hereby created in the state treasury the reserve for statutory contingency fund.

2. The reserve for statutory contingency fund shall be administered by the state board of examiners, and the moneys in such fund shall be expended only for the payment of claims which are obligations of the state under NRS 7.260, [34.690,] 41.037, [176.610,] 178.435, 179.310, 212.040, 212.050, 212.070, 214.040 and 353.120 [.] *and sections 277 and 320 of this act.*

SEC. 446. Chapter 462 of NRS is hereby amended by adding thereto a new section which shall read as follows:

Upon a trial for violation of any of the provisions of NRS 462.010 to 462.060, inclusive, it shall not be necessary to prove the existence of any lottery in which any lottery ticket shall purport to have been issued, nor to prove the actual signing of any such ticket or share, or pretended ticket or share of any pretended lottery, nor that any lottery ticket, share, or interest was signed or issued by the authority of any manager, or of any person assuming to have authority as manager; but in all cases proof of

the sale, furnishing, bartering, or procuring of any ticket, share, or interest therein, or of any instrument purporting to be a ticket, or part or share of any such ticket, shall be evidence that such share or interest was signed and issued according to the purport thereof.

SEC. 447. Chapters 186, 187, 188 and 190 of NRS and NRS 34.490, 34.690, 169.010 to 169.190, inclusive, 170.010 to 170.030, inclusive, 170.050, 171.105 to 171.510, inclusive, 172.010 to 172.420, inclusive, 173.010 to 173.450, inclusive, 174.010 to 174.540, inclusive, 175.010 to 175.575, inclusive, 176.010 to 176.610, inclusive, 177.010 to 177.280, inclusive, 178.010 to 178.395, inclusive, 178.410, 178.475 to 178.600, inclusive, 179.010 to 179.200, inclusive, 185.010 to 185.130, inclusive, and 211.070 are hereby repealed.

SEC. 448. Section 16 of the charter of the City of Caliente, being chapter 289, Statutes of Nevada 1957, at page 406, is hereby amended to read as follows:

Section 16. Police Judge, Courts, Powers and Duties.

(1) There shall be in the City of Caliente a municipal court; the papers, pleadings filed therein and process issuing therefrom shall be entitled "In the Municipal Court of the City of Caliente."

(2) The municipal court shall be presided over by a police judge, who shall be a citizen of the state, and shall have been a bona fide resident of the city for not less than one year next preceding his election or appointment, and he shall be an elector and taxpayer in the city.

(3) The municipal court shall have such powers and jurisdiction in the city as are now provided by law for justices of the peace wherein any person or persons are charged with the breach or violation of the provisions of any ordinance of said city or of this act, of a police or municipal nature; provided, that the trial and proceedings in such cases shall be summary and without a jury.

(4) The said court shall have jurisdiction to hear, try and determine all cases, whether civil or criminal, for the breach or violation of any city ordinance or any provision of this act of a police or municipal nature, and shall hear, try and determine such cases in accordance with the provisions of such ordinances or of this act.

(5) The practice and proceedings in said court shall conform, as nearly as practicable, to the practice and proceedings of justice courts in similar cases.

(6) Fines imposed by the court may be recovered by execution against the property of the defendant, or the payment thereof enforced by imprisonment in the city jail of said city, at the rate of one day for every [two] *four* dollars of such fine, or the court may, in its discretion, adjudge and enter upon the docket a supplemental order that such offender shall work on the streets or public works of said city, at the rate of [three] *four* dollars for each day of the sentence, which shall apply on such fine until the same shall be exhausted or otherwise satisfied.

(7) Said court shall have jurisdiction of any action for the collection of taxes or assessments levied for city purposes, when the principal sum thereof does not exceed three hundred dollars; also of actions to foreclose liens in the name of the city for the nonpayment of such taxes or assessments when the principal sum claimed does not exceed three hundred

dollars; also for the breach of any bond given by any officer or persons to or for the use or benefit of the city, and of any action for damages to which the city is a party, and upon all forfeited recognizances given to or for the use or benefit of the city, and upon all appeal bonds given on appeals from said court in any of the cases above named, when the principal sum claimed does not exceed three hundred dollars; provided, that nothing herein contained shall be so construed as to give such court jurisdiction to determine any such cause when it shall be made to appear by the pleadings or the verified answer, that the validity of any tax, assessment or levy, or title to real property shall necessarily be an issue in such cause, in which case the court shall certify such cause to the district court in like manner and with the same effect as provided by law for certification of causes by justice courts.

(8) The said court shall have jurisdiction of offenses committed within the city, which violate the peace and good order of the city or which invade any of the police powers of the city, or endanger the health of the inhabitants thereof, such as breaches of the peace, drunkenness, intoxication, fighting, quarreling, dog fights, cock fights, routs, riots, riot affrays, violent injury to property, malicious mischief, vagrancy, indecent conduct, lewd or lascivious cohabitation, or behavior, and all disorderly, offensive or opprobrious conduct; and of all offenses under ordinances of the city.

(9) The said court shall be treated and considered as a justice court whenever the proceedings thereof are called into question. The court shall have power to issue all warrants, search warrants, writs and process necessary to a complete and effective exercise of its powers and jurisdiction, and may punish for contempts in like manner and with the same effect as is provided by general law for justices of the peace.

(10) The police judge shall keep a docket in which shall be entered all official business in like manner as in justice courts. He shall render monthly or oftener as the council may require, an exact and detailed statement, in writing, under oath, of the business done and of all fines collected, as well as fines imposed but uncollected, since his last report, and shall at the same time render and pay into the city treasury all fines collected and moneys received on behalf of the city since his last report.

(11) In all cases in which the police judge shall, by reason of being a party, or being interested therein, to any proceeding pending in the municipal court, or related to either defendant or plaintiff or complaining witness therein as the case may be, by consanguinity or affinity within the third degree, or in case of his sickness, absence or inability to act, any justice of the peace of said county, on the written request of the mayor, shall act in place and stead of said police judge; and the council shall have power to apportion ratably the salary of such police judge to such justice of the peace so serving, and deduct the sum so apportioned from the salary of such police judge.

(12) Appeals to the district court may be taken from any final judgment of said municipal court in the same manner and with the same effect as appeals from justice courts in civil or criminal cases, as the case may be.

(13) All warrants issued by the municipal court shall run to any sheriff or constable of the county, or to the marshal or any policeman of the city.

SEC. 449. Section 31 of the charter of the City of Caliente, being chapter 289, Statutes of Nevada 1957, at page 424, is hereby amended to read as follows:

Section 31. Punishment of Offenders. In all actions for the violation of any ordinance, it shall be sufficient if the complaint refer to the title and section of the ordinance under which such action is brought. Any person upon whom any fine or penalty shall be imposed, may, upon the order of the court, before whom the conviction is had, be committed to the county jail or the city prison, or to such other place as may be provided by the city for the incarceration of offenders, until such fine [,] *or* penalty [and costs] shall be fully paid.

The city council shall have power to provide by ordinance that every person committed shall be required to work for the city at such labor as his strength will permit, not exceeding eight hours each working day; and for such work the person so employed shall be allowed [three] *four* dollars for each day's work on account of such fine. [and costs.] The council may provide for the formation of a chain-gang for persons convicted of offenses in violation of the ordinances of the city, and to safeguard and prevent their escape while being so employed.

SEC. 450. Section 28 of the charter of Carson City, being chapter 43, Statutes of Nevada 1875, at page 96, is hereby amended to read as follows:

Section 28. Civil actions may be brought by the city in any Court of competent jurisdiction, and actions for violation of any ordinances of the city may be brought before the City Recorder, and fines imposed by the Recorder may be recovered by execution against the property of the defendant, or the payment thereof may be enforced by imprisonment in the County Jail of Ormsby County, which shall serve as the City Jail, at the rate [not exceeding] *of* one day for every [two] *four* dollars of such fine; [and costs;] or said Recorder may, at his discretion, adjudge and enter up in his docket an order that such offender shall work on the streets or public works at the rate of [two] *four* dollars for each day, which shall apply on such fine [and costs] until the same be so exhausted or otherwise satisfied. Appeal may be taken from such judgments as in cases of appeal from Justices' Courts in criminal cases.

SEC. 451. Section 35 of the charter of the City of Elko, being chapter 417, Statutes of Nevada 1965, at page 1122, is hereby amended to read as follows:

Section 35. Punishment of Offenders. In all actions for the violation of any ordinance, it shall be sufficient if the complaint refer to the title and section of the ordinance under which such action is brought. Any person upon whom any fine or penalty shall be imposed may, upon the order of the court before whom the conviction is had, be committed to the county jail or the city prison, or to such other place as may be provided by the city for the incarceration of offenders, until such fine [,] *or* penalty [and costs] shall be paid, or satisfied at the rate of one day for each four dollars of such fine. [and costs.]

SEC. 452. Section 36 of the charter of the City of Elko, being chapter 417, Statutes of Nevada 1965, at page 1122, is hereby amended to read as follows:

Section 36. Chain Gang. The board of supervisors shall have power to provide by ordinance that every person committed shall be required to work for the city at such labor as his strength will permit, not exceeding eight hours each working day; and for such work the person so employed shall be allowed four dollars for each day's work on account of such fine. [and costs.] The board may provide for the formation of a chain gang for persons convicted of offenses in violation of the ordinances of the city, and for their proper employment for the benefit of the city, and to safeguard and prevent their escape while being so employed.

SEC. 453. Section 32 of the charter of the city of Gabbs, being chapter 381, Statutes of Nevada 1955, at page 674, is hereby amended to read as follows:

Section 32. The municipal court shall be presided over by a police judge, who shall be a citizen of the state and resident of the city for not less than 1 year and who shall be a qualified elector of the city. The municipal court shall have such powers and jurisdiction in the city as are now provided by law for justices of the peace, wherein any person or persons are charged with breach or violation of the provisions of any ordinance of the city or of this act, or of a violation of a municipal nature, and the court shall have concurrent jurisdiction with the justice of the peace in both civil and criminal matters arising and triable within the limits of the city and be governed by the same rules and receive the same fees as are now, or may be provided by law; provided, that the trial and proceedings in such cases shall be summary and without a jury. The court shall have exclusive jurisdiction to hear, try and determine all cases, whether civil or criminal, for the breach or violation of any city ordinance or any provision of the charter of a police nature, and shall hear, try, determine, acquit, convict, commit, fine or hold to bail in accordance with the provisions of such ordinances, or of this charter. The practice and proceedings in the court shall conform, as nearly as practicable, to the practice and proceedings of the justices' courts in similar cases. Fines imposed by the court may be recovered by execution against the property of the defendant, or the payment thereof enforced by imprisonment in the city or county jail, at the rate of 1 day for every [$2] *$4* of such fine, or the court may, in its discretion, adjudge and enter upon the docket a supplemental order that such offender shall work on the streets or public works of the city, at a rate of [$2] *$4* for each day of the sentence, which shall apply on such fine until the same shall be exhausted or otherwise satisfied.

The court shall have jurisdiction of any action for the collection of taxes or assessments levied for city purposes, when the principal sum thereof does not exceed $300; also, of actions to foreclose liens in the name of the city for the nonpayment of such taxes or assessments where the principal sum claimed does not exceed $300; also, of any action for the collection of any money payable to the city from any person when the principal sum claimed does not exceed $300; also, for the breach of any bond given by any officer or person to or for the use or benefit of the city, and any action for damages in which the city is a party, and upon all forfeited recognizances given to or for the use or benefit of the city, and upon all appeal bonds given on appeals from the court in any of the cases

named above, when the principal sum claimed does not exceed $300; also, for the recovery of personal property belonging to the city when the value thereof does not exceed $300; provided, that nothing herein contained shall be construed as to give such court jurisdiction to determine any such cause when it shall be made to appear by the pleadings or the verified answer that the validity of any tax, assessment, or levy shall necessarily be in issue in such cause, in which case the court shall certify such cause to the district court in like manner and with the same effect as provided by law for certification of causes by justices' courts.

The court shall have jurisdiction of offenses committed within the city, which violate the peace and good order of the city, or which invade any of the police powers of the city, or endanger the health of the inhabitants thereof, such as breaches of the peace, drunkenness, intoxication, fighting, quarreling, routs, riots, affrays, violent injury to property, malicious mischief, vagrancy, indecent conduct, lewd or lascivious cohabitation or behavior, and all disorderly, offensive, or opprobrious conduct, and of all offenses under ordinances of the city.

The court shall be treated and considered as a justice's court whenever the proceedings thereof are called into question. The court shall have power to issue all warrants, writs and process necessary to a complete and effective exercise of the powers and jurisdiction of the court, and may punish for contempt in like manner and with the same effect as is provided by the general law for justices of the peace.

The police judge shall keep a docket in which shall be entered all official business in like manner as in justices' courts. He shall render monthly or oftener, as the councilmen may require, an exact and detailed statement in writing, under oath, of the business done and of all fines collected, as well as imposed but uncollected, since his last report, and shall at the same time render and pay unto the city clerk all fines collected and moneys received on behalf of the city since his last report.

In all cases in which the police judge shall by reason of being a party, or being interested, or related to either defendant or plaintiff, or complaining witness, as the case may be, by consanguinity or affinity within the third degree, or in case of his sickness, absence or inability to act, any justice of the peace of the county on the written request of the mayor, may act in the place and stead of such police judge, and the councilmen shall have the power to apportion ratably the salary or compensation of such police judge to such justice of the peace so serving, and deduct the sum so apportioned from the salary of such police judge.

Appeals to the district court may be taken from any final judgment of the municipal court, in the same manner and with the same effect as in cases of appeal from justices' courts in civil and criminal cases, as the case may be.

All warrants issued by the municipal court shall run to any sheriff or constable of the county or the marshal or any policeman of the city.

SEC. 454. Section 39 of the charter of the city of Gabbs, being chapter 381, Statutes of Nevada 1955, at page 685, is hereby amended to read as follows:

Section 39. Punishment of Offenders. In all actions for the violation of any ordinance, it shall be sufficient if the complaint refer to the

title and section of the ordinance under which such action is brought. Any person upon whom any fine or penalty shall be imposed may, upon the order of the court, before whom the conviction is had, be committed to the county jail or the city prison, or to such other place as may be provided by the city for the incarceration of offenders, until such fine [.] *or* penalty [and costs] shall be fully paid.

SEC. 455. Section 40 of the charter of the City of Gabbs, being chapter 381, Statutes of Nevada 1955, at page 685, is hereby amended to read as follows:

Section 40. Chain Gang. The board of councilmen shall have power to provide by ordinance that every person committed shall be required to work for the city at such labor as his strength will permit, not exceeding 8 hours each working day; and for such work the person so employed shall be allowed [$2] *$4* for each day's work on account of such fine. [and costs.] The board may provide for the formation of a chain gang for persons convicted of offenses in violation of the ordinances of the city, and for their proper employment for the benefit of the city, and to safeguard and prevent their escape while being so employed.

SEC. 456. Section 79 of the charter of the City of Henderson, being chapter 240, Statutes of Nevada 1965, at page 461, is hereby amended to read as follows:

Section 79. Fines and penalties: Commitment; recovery be execution; work gang.

1. Any person upon whom any fine or penalty is imposed may, upon the order of the court before whom the conviction is had, be committed to the city jail, or to such other place as may be provided by the city for the incarceration of offenders, until such fine and penalty are fully paid.

2. The council shall have power to provide by ordinance that every person committed shall be required to work for the city at such labor as his strength will permit, not exceeding 8 hours each working day; and for such work the person so employed shall be allowed $4 for each day's work on account of such fine. The council may provide for the formation of a work gang for persons convicted of offenses in violation of the ordinances of the city, and for their proper employment for the benefit of the city, and to safeguard and prevent their escape while being so employed.

3. Fines imposed by the municipal court may be recovered by execution against the property of the defendant, or the payment thereof enforced by imprisonment in the city jail at the rate of 1 day for every [$2] *$4* of such fine, or the court may, in its discretion, adjudge and enter upon the docket a supplemental order that such offender shall work on the streets or public works of the city, at the rate of $4 for each day of the sentence, which shall apply on such fine until the same shall be exhausted or otherwise satisfied.

SEC. 457. Section 29 of chapter II of the charter of the City of Las Vegas, being chapter 132, Statutes of Nevada 1911, as last amended by chapter 377, Statutes of Nevada 1963, at page 824, is hereby amended to read as follows:

Section 29. The Municipal Court—Jurisdiction of—Coextensive and Concurrent Jurisdiction of Judges. One department of the municipal court shall be presided over by the elected municipal judge. Other

departments of the municipal court shall be presided over by municipal judges appointed by the mayor, which judges shall possess the same qualifications required for the elected municipal judge and shall receive such compensation as may be determined by the mayor and board of commissioners. All municipal judges shall possess equal coextensive and concurrent jurisdiction and power. The municipal court shall have such powers and jurisdiction in the city as are now provided by law for a justice of the peace, wherein any person or persons are charged with a breach or violation of the provisions of any ordinance of the city or of this act, or of a violation of a municipal nature, and the court shall have concurrent jurisdiction with the justice of the peace in both civil and criminal matters arising and triable within the limits of the city, and be governed by the same rules and receive the same fees as are now or may be provided by law; provided, that the trial and proceedings in such cases shall be summary and without a jury. The court shall have jurisdiction to hear, try, and determine all cases whether civil or criminal, for the breach or violation of any city ordinance or any provision of this act of a police nature, and shall hear, try, and determine, acquit, convict, commit, fine, punish, or hold to bail in accordance with the provisions of such ordinances or of this act. The practice and proceedings of the court shall conform, as nearly as practicable, to the practice and proceedings of the justices' courts in similar cases. Fines imposed by the court may be recovered by execution against the property of the defendant, or by the payment thereof enforced by imprisonment in the city jail of the city at the rate of one day for every [two] *four* dollars of such fine, or the court may, in its discretion, adjudge and enter upon the docket a supplemental order that such offender shall work on the streets of the city at a rate of [two] *four* dollars for each day of the sentence which shall apply on such fine until the same shall be exhausted or otherwise satisfied. The court shall have jurisdiction of actions for the collection of taxes and assessments levied for city purposes, by the city for such services, when the principal sum claimed does not exceed three hundred dollars; also, actions to foreclose liens in the name of the city for the nonpayment of such taxes, assessments, and charges where the principal sum claimed does not exceed three hundred dollars; also, of actions for the collection of any money payable to the city when the principal sum claimed does not exceed three hundred dollars; and actions for damage in which the city is a party, and upon all forfeited recognizances given to or for the use or benefit of the city, and upon all appeal bonds given on appeals from the court in any of the cases above named, when the principal sum claimed does not exceed three hundred dollars; also, the recovery of personal property belonging to the city when the value thereof does not exceed three hundred dollars; provided, that nothing herein contained shall be so construed as to give such court jurisdiction to determine any such cause when it shall be made to appear by the pleadings or the verified answer that the validity of any tax, assessment, or levy shall necessarily be in issue in such cause, in which case the court shall certify such cause to the district court in like manner and with the same effect as provided for by law for certifications of causes by justices' courts. The court shall have jurisdiction of the following offenses committed within the city which either violate

the peace and good order of the city or the peace and quietude of an individual or individuals, or which invade any of the police powers of the city, or endanger the health of the inhabitants thereof, such as breaches of the peace, drunkenness, intoxication, driving any vehicle while under the influence of intoxicating liquors, fighting, quarreling, dogfights, cockfights, riots, affrays, violent injury to property, malicious mischief, vagrancy, indecent conduct, lewd or lascivious cohabitation or behavior and all disorderly, offensive, or opprobrious conduct and all other offenses under ordinances of the city. The court shall be treated and considered as a justices' court whenever the proceedings thereof are called into question. The court shall have power to issue all warrants, writs, and process necessary to a complete and effective exercise of the powers and jurisdiction of the court and for the enforcement of its judgment, and may punish for contempt in like manner and with the same effect as if provided by the general law for a justice of the peace. Each municipal judge shall keep a docket in which shall be entered all official business in like manner as in justices' courts. He shall render monthly or oftener, as the commissioners may require, an exact and detailed statement in writing, under oath, of the business done and of all fines collected, as well as imposed and uncollected, since his last report, and shall at the same time render and pay unto the city treasurer all fines collected and moneys received on behalf of the city since his last report. In all cases in which a municipal judge shall by reason of being a party, or being interested, or related to either defendant or plaintiff, or complaining witness, as the case may be, by consanguinity or affinity within the third degree, or in case of his sickness, absence, or inability to act, and no other municipal judge of the city is qualified to act, any justice of the peace of Clark County, or any person who possesses the qualification prescribed by this act for the office of municipal judge, on the written request of the mayor, may act in the place and stead of such municipal judge. The commissioners shall have the power to apportion ratably the salary or compensation of such municipal judge to such person so serving, and deduct the sum so apportioned from the salary of such municipal judge, provided, that the commissioners shall not apportion ratably the salary or compensation of the municipal judge to such person so serving, and deduct the sum so apportioned from the salary of the municipal judge, for a period of absence on leave or vacation authorized by the commissioners, and, in that event, the person so serving in the place and stead of the municipal judge shall receive such compensation as the commissioners shall prescribe. Appeals to the district court may be taken from any final judgment of the municipal court in the same manner and with the same effect as in cases of appeal from justices' courts in civil and criminal cases, as the case may be. All warrants, writs, and process issued by the municipal court shall run to any sheriff or constable of the county or the marshal or policeman of the city.

SEC. 458. Section 35 of chapter II of the charter of the City of Las Vegas, being chapter 132, Statutes of Nevada 1911, as amended by chapter 132, Statutes of Nevada 1949, at page 251, is hereby amended to read as follows:

Section 35. Punishment of Offenders—Pleading in Acti all

actions for the violation of any ordinance, it shall be sufficient if the complaint refer to the title and section of the ordinance, or the chapter and section of the revised or code of ordinances, if such there be, under which such action is brought. Any person upon whom any fine or penalty shall be imposed, may, upon the order of the court, before whom the conviction is had, be committed to the county jail or the city prison, or to such other place as may be provided by the city for the incarceration of offenders, until such fine [,] *or* penalty [and costs] shall be fully paid.

SEC. 459. Section 36 of chapter II of the charter of the City of Las Vegas, being chapter 132, Statutes of Nevada 1911, at page 172, is hereby amended to read as follows:

Section 36. Chain Gang. The board of commissioners shall have power to provide by ordinance that every person committed shall be required to work for the city at such labor as his strength will permit, not exceeding eight hours each working day; and for such work the person so employed shall be allowed [two] *four* dollars for each day's work on account of such fine. [and costs.] The board may provide for the formation of a chain gang for persons convicted of offenses in violation of the ordinances of the city, and for their proper employment for the benefit of the city, and to safeguard and prevent their escape while being so employed.

SEC. 460. Section 38 of chapter II of the city of North Las Vegas, being chapter 283, Statutes of Nevada 1953, as amended by chapter 440, Statutes of Nevada 1965, at page 1211, is hereby amended to read as follows:

Section 38. Punishment of Offenders. In all actions for the violation of any ordinance, it shall be sufficient if the complaint refer to the number and section of the ordinance or if there is a code as provided in Chapter II in section 32.5 of this act, then in the manner in which the section of the ordinance is identified in that code, under which such action is brought. Any person upon whom any fine or penalty shall be imposed may, upon the order of the court, before whom the conviction is had, be committed to the county jail or the city prison, or to such other place as may be provided by the city for the incarceration of offenders, until such fine [,] *or* penalty [and costs] shall be fully paid, or satisfied at the rate of one day for each four dollars of such fine. [and costs.]

SEC. 461. Section 3 of article XIV of the charter of the City of Reno, being chapter 102, Statutes of Nevada 1903, as added by chapter 71, Statutes of Nevada 1905, and amended by chapter 204, Statutes of Nevada 1937, at page 456, is hereby amended to read as follows:

Section 3. The municipal court shall have the powers and jurisdiction in said city as are now provided for justices of the peace, wherein any person or persons are charged with the breach or violation of the provisions of any ordinance of said city or of this charter, of a police nature; provided, that the trial and proceedings in such cases, in the municipal court or on appeal therefrom, shall be summary and without a jury. The said court shall have jurisdiction to hear, try and determine all cases, whether civil or criminal for the breach or violation of any city ordinance or any provision of this charter of a police nature, or for violation of the rules and regulations or quarantine laws of the board of health, when the

city council has by ordinance provided a penalty therefor, and shall hear, try, determine, acquit, convict, commit, fine or hold to bail in accordance with the provisions of such ordinances or of this charter. The practice and proceedings in said court shall conform, as nearly as practicable, to the practice and proceedings of justice's courts in similar cases, except as herein limited or extended. Fines imposed by the court may be recovered by execution against the property of the defendant, or the payment thereof enforced by imprisonment in the city jail of said city, at the rate of one day for every [dollar] *four dollars* of such fine, or said court may, in its discretion, adjudge and enter upon the docket a supplemental order that such offender shall work on the streets or public works of said city, at a rate of [two] *four* dollars for each day of the sentence, which shall apply on such fine until the same shall be exhausted or otherwise satisfied. The complaint in any prosecution for any offense or offenses committed under any ordinance or ordinances of the city may state the offense in the language of the ordinance; and no complaint shall be dismissed on appeal or otherwise where more than one offense is stated therein, if such offenses arose out of the same act, transaction or event; nor shall the city be required to elect between the different offenses stated, but in no event shall the defendant be punished for more than one of such offenses.

SEC. 462. Section 8 of the charter of the City of Sparks, being chapter 180, Statutes of Nevada 1949, as last amended by chapter 469, Statutes of Nevada 1965, at page 1260, is hereby amended to read as follows:

Section 8. There shall be a police judge, who shall be elected by the qualified electors of the city at each general municipal election and he shall hold office for the term of 4 years and until his successor shall be duly elected and qualified. He shall be a bona fide resident of the city of Sparks for at least 3 years prior to his election and a taxpayer on real property therein. He shall execute and file such bond as the council by ordinance shall prescribe. The police judge shall have the jurisdiction and powers in the city, as are now provided by law for justices of the peace, wherein any person or persons are charged with a breach of violation of the provisions of any ordinance of the city or of this charter, of a police nature; provided, that the trial and proceedings in such cases shall be summary and without a jury. The police judge shall have jurisdiction to try, hear, and determine all cases, whether civil or criminal, for a breach or violation of any city ordinance or any provisions of this charter of a police nature and shall hear, try, determine, acquit, convict, commit, fine, or hold to bail in accordance with the provisions of such ordinance. The practice and proceedings in the court shall conform as nearly as practicable to the practice and proceedings of justices' courts in similar cases. Fines imposed by the police judge may be recovered by execution against the property of the defendant, or the payment thereof may be enforced by imprisonment in the city jail of the city at the rate of one day for each $4 of such fine, or the police judge may at his discretion adjudge and enter upon his docket a supplemental order that such offender shall work on the streets or public works of the city at a rate of [$6] *$4* for each day of sentence, which shall apply on such sentence or fine until the same be exhausted or otherwise satisfied. If a sentence of imprisonment is

imposed, the police judge may order intermittent periods of incarceration so long as the entire sentence will be completed within 6 months from the date of sentence. The periods of incarceration may be varied from time to time with consent of the defendant, but the total time of incarceration may not be increased.

SEC. 463. Section 35 of chapter II of the charter of the City of Wells, being chapter 104, Statutes of Nevada 1927, at page 171, is hereby amended to read as follows:

Section 35. Punishment of Offenders. In all actions for the violation of any ordinance, it shall be sufficient if the complaint refer to the title and section of the ordinance under which such action is brought. Any person upon whom any fine or penalty shall be imposed may, upon the order of the court, before whom the conviction is had, be committed to the county jail or the city prison, or to such other place as may be provided by the city for the incarceration of offenders, until such fine [,] *or* penalty [and costs] shall be fully paid.

SEC. 464. Section 36 of chapter II of the charter of the City of Wells, being chapter 104, Statutes of Nevada 1927, as amended by chapter 223, Statutes of Nevada 1963, at page 367, is hereby amended to read as follows:

Section 36. Chain Gang. The board of councilmen shall have power to provide by ordinance that every person committed shall be required to work for the city at such labor as his strength will permit, not exceeding eight hours each working day; and for such work the person so employed shall be allowed four dollars for each day's work on account of such fine. [and costs.] The board may provide for the formation of a chain gang for persons convicted of offenses in violation of the ordinances of the city, and for their proper employment for the benefit of the city, and to safeguard and prevent their escape while being so employed.

SEC. 465. Section 24 of the charter of the City of Yerington, being chapter 72, Statutes of Nevada 1907, at page 164, is hereby amended to read as follows:

Section 24. The Justices of the Peace in and for Mason Valley Township shall be ex officio Police Judges of said city; provided, that such Justices execute and file as ex officio Police Judges, such bonds as the ordinance may prescribe; and provided further, that nothing herein contained shall be so construed as to deny or abridge the power of the Council to elect as Police Judge of said city any competent person other than said Justices of the Peace. The Police Judge shall have the jurisdiction and powers in said city that are now provided by law for Justices of the Peace, wherein any person or persons are charged with the breach or violation of the provisions of any ordinance of said city or of this charter, of a police nature; provided, that the trial and proceedings in such cases shall be summary and without a jury. The Police Judge shall have jurisdiction to hear, try and determine all cases, whether civil or criminal, for the breach or violation of any city ordinance or any provision of this charter of a police nature, and shall hear, try, determine, acquit, convict, commit, fine or hold to bail in accordance with the provisions of such ordinances. The

practice and proceedings in said court shall conform as nearly as practicable to the practice and proceedings of the Justice Courts in similar cases. Fines imposed by the Police Judge may be recovered by execution against the property of the defendant, or the payment thereof enforced by imprisonment in the city jail of said city, at the rate of one day for every [dollar] *four dollars* of such fine, or said Police Judge may, at his discretion, adjudge and enter upon his docket, a supplemental order that such offender shall work upon the streets or public works of said city, at a rate of [two] *four* dollars for each day of the sentence, which shall apply on such sentence or fine, until the same shall be exhausted or otherwise satisfied.

SEC. 466. Except as provided in sections 468 and 469 of this act, the provisions of this act shall not apply to any criminal action in which the complaint or information has been filed or the indictment found prior to January 1, 1968, and shall apply to every criminal action prosecuted on or after January 1, 1968.

SEC. 467. The provisions of sections 287 to 316, inclusive, of this act, relating to appeals, shall apply to any criminal action in which the notice of appeal has not been filed prior to January 1, 1968, except that the time within which a notice of appeal may be filed in any particular action shall not be reduced by such application.

SEC. 468. The provisions of sections 317 to 324, inclusive, of this act, relating to post conviction remedies, shall become effective upon passage and approval.

Assembly

MINUTES OF MEETING - COMMITTEE ON JUDICIARY, 54th Session, Jan. 23, 1967

Meeting was called to order at 10:30 A.M.

Present: Wooster, Dungan, Lowman, Swackhamer, Hilbrecht, Schouweiler, Torvinen, White (late).

Absent: Kean

Mr. Wooster gave each member of the committee a copy of the amended committee rules.

Mr. Wooster asked if the members of the committee could meet at 9:00 A.M. Tues.

Mr. Hilbrecht said Mr. Glaser has suggested that the Ways and Means Committee and the Judiciary committee meet afternoons and move the other committess into the morning time slots, since there is no conflict between the two committees.

Mr. Wooster explained that he would like Russ McDonald to be present when the 13 technical correction bills are introduced as there are things that should be explained and that Mr. McDonald could be available Tuesday morning. A meeting was definitely set for 9:00 A.M. Tuesday .

Mr. Wooster said he could probably explain the ten technical bills satisfactorily himself but would like Mr. McDonald to help with the other 13. He then went over the ten bills.

AB 11: An amendment of a bill enacted by the 1965 legislature. Page 2, paragragh 6 is to be changed to read "an exemplified copy of the official record of judgment of a felony conviction, etc".

Mr. Lowman moved Do Pass
Mr. Hilbrecht seconded
Motion passed unanimously

AB 13: Addition of section 4 gives way in which Revised Statutes of Nevada may be cited.

Mr. Hilbrecht moved Do Pass
Mr. Lowman seconded
Motion passed unanimously

AB 14: Provides correct reference to Migratory Bird Conservation Act. On line 6 the reference is being changed from 42 to the correct figure of 16.

Miss Dungan moved Do Pass
Mr. Hilbrecht seconded
Motion carried unanimously

AB 20: This bill changes a wrong word. With reference to transcription the word "prescribe" was used instead of "transcribe".

Miss Dungas moved Do Pass
Mr. Lowman seconded
Motion carried unanimously

AB 21: Makes a direct exchange of the word "such" in line 3 with the word "county" in line 6.

Mr. Loman moved Do Pass
Mr. Hilbrecht seconded
Motion passed unanimously

AB 22: Technical reference correction. Line 21. U.S. C. 901 should be 1601.

Mr. Torvinen moved Do Pass
Mr. Lowman seconded
Motion passed unanimously

AB 23: Internal reference correction. The law on apprentices has been changed and the reference should be to the entire chapter.

Mr. White moved Do Pass
Mr. Lowman seconded
Motion passed unanimously

AB 25: Replaces reference to notarial seal with reference to notarial stamp.

Mr. Schouweiler moved Do Pass
Mr. Lowman seconded
Motion passed unanimously

AB 30: Corrects misused word "alternatively" with correct word "alternately" for peremptory challenge of jurors.

Mr. Hilbrecht moved Do Pass
Mr. Lowman seconded
Motion passed unanimously

AB 31: Eliminates the word "also" in line 12.

Mr. Lowman moved Do Pass
Mr. Hilbrecht seconded
Motion passed unanimously

Mr. Wooster said that we do not yet have the reprinted Criminal Code, AB 81, but that we should have it tomorrow. Also, tomorrow we will begin discussions about when to set up hearings, coordinating with the Senate, etc.

Mr. Torvinen mentioned that it seemed to him that 3 convictions on petit larceny as given in AB 11 seemed a little severe. He said he thought perhaps the committee should amend the bill to leave this up to the discretion of the judge.

Mr. Wooster suggested that we make the technical changes now and the substantive changes later, but Mr. Torvinen thought it would be better to hold it for now and then pass it later if AB 81 does not pass.

Miss Dungas moved to rescind previous action taken on AB 11
Mr. Hilbrecht seconded
Motion passed unanimously

1967 Assembly Judiciary Committee 1/23/1967

Howard McKissick, who was sitting in on the committee meeting, asked if the proposed therapeutic abortion bill is in conflict in any way with AB 81.

Mr. Wooster suggested that Mr. McKissick check that point out with Frank Dakin who drafted AB 81.

Meeting was adjourned at 10:55

MINUTES OF MEETING - JOINT HEARING - ASSEMBLY & SENATE COMMITTEES ON JUDICIARY
54th Session, Feb. 8, 1967

Hearing was called to order at 2:05 P.M.

Assembly Committee members present: Wooster, White, Lowman, Kean, Dungan, Swackhamer, Hilbrecht, Torvinen

Absent: Schouweiler

In his welcome and opening remarks Mr. Wooster made special mention of the presence at the hearing of Judges Zenoff, Collins and Barrett.

AB 71: Revises criminal penalties and provides for determinate sentences.

SIDNEY WHITMORE, city attorney of Las Vegas, was the first speaker to be called. He said, however, that his comments would deal mostly with AB 81 and asked if he might delay his remarks.

WILLIAM BEKO, Nevada District Attorneys Association was next called. He said that he had planned to speak on both bills together. Since Chairman Wooster had announced that each would be dealt with separately he chose to speak later, other than to say that this act is one that will require a great deal of study by everyone. He then introduced William J. Raggio, District Attorney from Washoe County.

WILLIAM J. RAGGIO: I would like to reserve the right to present written suggestions for possible amendments to the bill as presently written. We, the Nevada District Attorneys, are going to meet again today after the hearing to solidify our feelings and put our comments in a written report. We hope this will not be the final hearing on these two bills. My group would like to submit written proposals. We feel that society as a whole may be prejudiced by the bill in its present form.

I am authorized to tell you that in addition to the District Attorneys' Association I represent the views of the Nevada Peace Officers Association, and also the Sheriff's Association. All three groups have had meetings and we are all agreed that we are engaged in a rather large task. We are changing laws we have lived with for one hundred years.

We feel the efforts of the committee that worked on this legislation should be commended. Both bills point in the right general direction.

We have searched these measures and have discovered some gaps or omissions, as well as unnecessary or undesirable changes or modifications. Certainly further study is necessary. We are not here to stop progress. If further study can be accomplished within a month while you are meeting, then fine. If not, it should be left until next session, we are sure.

AB 71 has to do largely with sentencing procedures. It has been brought about by legislation enacted last session. It provides for determinate sentencing and parole eligibility. It is a hodge-podge of sentencing procedures which have been used in other jurisdictions. This will not bring us in line with California. Their procedure has greater merit, we feel, than that suggested in AB 71.

Under the California procedure, when someone is convicted and probation is denied, he is sent to the institution. There is a minimum time he must serve before his case is considered for parole. It follows the indeterminate sentencing, not less than so many years and not more than so many years. After the minimum term, like 3 years for robbery for instance, the parole authority meets and it sets at that time a determinate sentence. To repeat, after the person has served the minimum 3 years, he appears before adult authority who consider all factors and sets as a result a determinate sentence, or it may decide that it is not time to set a determinate sentence and will hold it over. At some point it is set. The adult authority may set this sentence at 6 years, with 2 years which may be served by parole. They have done away with the idea of good time credits, work time, etc. It seems ridiculous to some of us to reward someone in prison for good time.

I commend the committee for grouping crimes in categories.

Most crimes carry 1 to 6 years sentence. It makes little difference whether the District Judge says 1 or 6. This makes no difference in his eligibility for parole. Work time and good time, eligibility time, will be about the same, utilizing the one-fourth criteria. Further study and a better plan should be given to the method of sentencing and determining the elgibility of parole consideration.

We should delete crime which are now non-probationary. We are in large portion opposed to reclassifying crimes which are now misdemeanors to gross misdemeanors. Gross misdemeanors will require additional cost and are not of sufficient concern or attention to warrant this. The smaller counties especially will be very concerned about the gross misdemeanors.

We are consolidating specific suggestions and hope to present them tomorrow. At a more appropriate time I will have more remarks on AB 81, the procedural law.

FRANK DAKIN was called to explain changes made. He said the following offenses in this bill are classified as misdemeanors: Petty Larceny, Assault & Battery, Forcible Entering and Detainer, Rout & Riot, Publication and Distribution of Obscene Matter, Aiming a Deadly Weapon. The ceiling is left at $100.

SENATOR DODGE: Does the judge there have any flexibility about determining the minimum or does he set the minimum as prescribed by law?

RAGGIO: In most cases there is no discretion allowed to the court other than the setting of indeterminate sentencing. Most of us feel that the District Court should have some discretion. It is rather ridiculous that they do not. The District Judge should have some latitude. A determinate sentence should not be set until a minimum time has been served and the person evaluated.

ROY TORVINEN: Are any gross misdemeanors left which were former misdemeanors?

FRANK DAKIN: Yes, there are, but they are not the more common offenses. I will supply you with a list.

FLORA DUNGAN: You object to which sections?

RAGGIO: Robbery--certain narcotics. We feel that Robbery is not a probationable offense. It should be in the same category with Rape and Murder.

FLORA DUNGAN: You feel that these are not rehabilitatable?

RAGGIO: I think "rehabilitate" is a most over-worked term. People think that most prisoners are first offenders. This is not so. Only a minority can be rehabilitated. This has nothing to do with parole.

AB 81: New criminal procedure law

SIDNEY WHITMORE: I am appearing in behalf of the city of Las Vegas. Our principal interest in 81 is how it affects our municipal court in its operation under substantive law.

We need to bring to your attention some matters having to do with Justice Court. We should amend to make it clear that we do not have appeals from guilty pleas in Municipal Court. Specifically, probation should apply in these cases.

It might be well to provide some type of transcripts in Municipal Courts rather than having a new trial.

Recently we have had a Supreme Court ruling from this state that provides we are to have jury trials on appeal from Municipal Courts. No city now has jury trials for these situations. I don't think rights are being jeopardized by not having jury trials in misdemeanor matters. I would like to see that corrected. I would like to see all matters right for the Municipal Court as well as for the Justice Court.

DAKIN: We have provided specifically that no appeal either from Justice Court or Municipal Court be tried by jury.

RAGGIO: I am speaking on this for the law enforcement people too. We do have a long list of suggested changes for AB 81, and we would hope to furnish you with this list in writing for your consideration. 81 is a much greater change from our present situation than is AB 71. It opens up an entirely new procedure to be followed in criminal cases. Our concern as prosecutors is that in our anxiety to make changes we may come up with a great many things that we are unable to live with. We want a great many changes, but abrupt, immediate change without considering all the ramifications of these changes could be disastrous.

We want fair and effective administration of criminal justice. In the procedure which has grown up through the common law we have something which has been devised because of experience which we learned in many areas by hard and bitter experience. We are trying to develop something which is basically the fairest way to bring forth the truth at a criminal proceeding and give those persons charged with crime every right which is basic to our way of life.

We say and suggest to you here that whatever we decide on should not be merely an out that is the way the prosecutor wants nor the one best liked by the defendant of a criminal case. We have tried to approach this legislation with that in mind. If we were to present everything we don't like, we could nit-pick on every section but that is not our desire. We are just as interested as any of you to accomplish something worthwhile.

Rather than take time to go over each section I would like to pick just some of them and later give our complete objections. I will refer to section and page.

Section 20, page 2: I see no defense for defining where a trial commences, where a judge is used and where a jury is not used. A trial should commence when the first witness is sworn.

Section 13, page 2: Peace officers should include district attorneys and investigators for district attorneys.

Section 25: See no reason for changing.

Section 46 page 6: This is obviously ridiculous. A gun is a very important piece of evidence. The weapon should be taken and examined by laboratories so that evidence will not be disrupted. This will only deter investigation and proper use of evidence.

Section 47 page 6: I feel this should also include teletype wire.

Section 69 page 11: This should include, also, gross misdemeanors.

Section 72 page 11: Provides for remand of preliminary examination by justice of the peace. By experience, we have found that sometimes it should be other than a justice of the peace.

Section 80 page 12: Recommend a specific provision that the deputy foreman, as well as the secretary, of a grand jury be allowed to swear witnesses and administer oaths and issue subpenas.

Sections 86, 87, 88 page 13: I recommend that consideration be given to the present rules of criminal procedure 6, 7 and 8, which provide far lesser degree of evidence to be present in support of in indictment which is not a formal charge. There should not be the necessity of a formal trial to bring a formal charge.

Most of AB 81 is taken from or conforms to the Federal rules. There are some things included which have no place under our procedure. It is just a matter of transplacing the entire language from the Federal to 81.

Section 94, page 14, and those other sections which relate to sustenance of 94: This has to do with preparing a transcript of the grand jury proceedings and then furnishing a copy to the defendant. This is a recent development by the Supreme Court in our state. Previously the defendant was not entitled to the transcipt of testimony presented at the grand jury. Many of us feel that the secrecy of the grand jury should be kept inviolate. It has more functions here than in most states. Just the mention that the grand jury is going to look into something has had a very salutory effect upon officials throughout the State of Nevada. This has been accomplished because persons felt they could appear before the grand jury and relate what they knew without fear of reprisal or ridicule. We suggest that the type of evidence necessary for an indictment be such as is required for a Federal indictment.

An indictment, once filed, is presumed to be valid without transcripts and delivery of transcripts to a defendant. Having these transcripts made and delivering them would amount to tremendous cost in all the 17 counties. A transcript is not cheap.

As an alternative, I would suggest something to preserve the traditional and valued secrecy of the grand jury proceedings.

An objection will be raised: Why shouldn't the defendant know the details? There is a great deal of difference between a civil proceeding and a criminal proceeding. If we are after the truth in the matter in court then we must change something about this section for we are whittling away at the proper method for arriving at the truth in court.

Section 99: This limits the length of time a grand jury may serve to 3 years. Now they may not be discharged before the expiration of one year. This new rule would make it mandatory that the jury be discharged by the end of 3 years. In our experience we have found it necessary to retain a grand jury for longer than 3 years. The grand jury that investigated the city administration in Reno was longer than 3 years and to have dismissed them sooner would have been disastrous. An absolute breaking off point for a grand jury would be most undesirable.

Section 107 page 16: We feel this should have no place in our criminal procedure. Historically and logically the function of the District Attorney has been to evaluate circumstances and determine in his discretion whether or not a crime has been committe To have the judge order the District Attorney to prosecute a case is unwise law.

This is such a long subject that mistakes have inevitably occurred and omissions been made. For instance, I would like to feel that there could be a plea of guilty but it is omitted from the list of pleas.

I feel that the new plea of nolo contendere is a good innovation. It should be allowed only by the consent of the court and the D.A. We should never have a guilty plea without the consent of the D.A. It will always be nolo contendere.

Section 139 page 22: I would like to study further the possibility that not only the defendant would have the right to take depositions but also the prosecutor.

Section 145, 146, 147 page 23: This involves a rather controversial area of discovery. The courts have wisely used their discretion in this area and we feel that this is probably a good approach, should exercise discretion upon a showing of cause. I also feel that if there is going to be discovery as set forth in AB 81 the defendant should also be compelled to make prior disclosure of alibi and witnesses. If not, the state has no chance to check on his alibi. If we are really trying to get at the truth, this should be done.

Section 152 and attendant sections: The law which is presently in force has been changed and only the clerk of the court has power to subpena witnesses. The D.A. must insist on having this power. It is an absolute necessity. We see no reason whatsoever for making any change here.

Section 153: Each party should have the right to call a witness without the necessity of a motion upon proper application.

Sections 2, 11, 213: Now a District Judge may direct the jury to return a verdict of not guilty. This is called an advisory verdict. The jury may disregard this and return a verdict of guilty. In Washoe County we had a jury that disregarded an advisory verdict and returned a verdict of guilty. A member of the bar was tried

for subornation of perjury. I feel it would be tragic to take from the jury the right to make the decision for itself.

Section 213 goes beyond that and says that even after 7 days, when a jury has returned a verdict of guilty, the defendant can make an appeal for an acquital and have it granted by the court. We feel the present jury rule should be retained.

Section 243: This concerns pre-sentence investigation, also provides that the court be advised of normal punishment for like crimes in the U.S. We question that this is a legitimate requirement.

Section 244: This is a new wrinkle where the report of the pre-sentence investigation is given only to the trial court. Now the D.A. also receives a copy. This is important because often the prosecutor's office has supplemental information. I see no reason to exclude this information from the D.A. This would have some influence on approach to the matter at probation time.

Section 247: Robbery has been excluded and we feel it should remain there, along with murder, kidnap and forcible rape.

Section 291: This provides for automatic appeal in death cases. We have no objection, however, we feel that something should be spelled out as to just how this appeal will be perfected. The section provides no details as to how this will be done.

There are some changes that we would recommend in the area of search warrants as proposed here.

Section 372: This is also a new wrinkle which is apparently intended to apply to a misdemeanor but it isn't clear that it does. It says persons guilty of criminal offense. This should require the consent of the D.A.

Section 390: This would not cover a situation where property is stolen in California and hidden here. This should read "criminal offense" and search warrante should be available.

I have not hit upon all the points that we feel merit some consideration. These are the highlights. We will incorporate them more fully in writing later.

NORMAN HILBRECHT: It is my understanding that the concern here is the extent to which proceedings before a grand jury abrogate the necessity for a preliminary hearing for people having established reasonable cause. I take it that it is not your position that some relief in the nature of reasonable cause ought not to be established or set up at least as an alternative?

RAGGIO: We suggest the Federal standards.

HILLBRECHT: On probation reports, could we clarify that by making reports to both counsel and D.A.?

RAGGIO: We would have no disagreement with you on that. My dissent has been that they have felt some limitation in making their representation if the representation was going to be made available to the defendant. We are dealing here with a situation where a plea of guilty has been entered.

Another section changes the present existing law which provides that information received by a parole or probation officer in the course of his duties may be made available to the court, the Parole Board and other official agencies. I think this would be a serious mistake. We have found it inevitable to request information which is in the files of the Parole and Probation Department. Other than that it should be confidential information and this right should be continued.

ROY TORVINEN: Question on page 13 section 90.

RAGGIO: This is the present law. It doesn't represent any change. I see what you mean, however. It should say "not charged" instead of "not indicted". You are right. It should be changed.

TORVINEN: Referring to the section that District Judges require the D.A. to prosecute: Could the Attorney General prosecute?

RAGGIO: It seems to me that the Attorney General does have the right to come into any criminal prosecution, I think without request. He also may come in at request.

TORVINEN: Any purpose in omitting jeopardy?

RAGGIO: I don't know why that was omitted. Maybe it can be reached under one of the other sections.

One other area I would like to speak on, the section that precludes the D.A. or any other person from relaying publicly anything that a grand jury is undertaking. I think this would be a grave error. We are not talking about matters where criminal cases are being considered. We are talking about areas which involve permissive powers of grand juries, such as public officers being found unworthy and so forth. Some involve areas of police administration, affairs of welfare department, places where general agencies have found necessity for making an investigation and have filed a report. This has been a valuable psychological factor upon persons involved. Just an indication that a grand jury may look into something is information that should be made public. As I understand it, a D.A. or anyone can mention that a grand jury is going to look into something. There is a situation in Clark County right now that needs looking into. The public is entitled to know that the grand jury is going to look into it. The nature of the inquiry should be public information.

DUNGAN: Is there any authorization for the grand jury other than criminal?

DAKIN: Yes

HOWARD MCKISSICK: I suggest that we legislators stay out of this and hear from more of these informed people.

HILBRECHT: Were all attorneys made aware of this hearing?

WOOSTER: Every attorney in the State of Nevada was notified of this hearing.

RAGGIO: Under this proposal some of these things would no longer be crimes of common law. You have provided punishment for something you no longer say is an offense.

JUDGE JON COLLINS: I believe that there should be some background given on the drafting of this bill. By resolution of the legislature, an interim commission was established under the chairmanship of Mr. Mel Close. Other people were included. I was a member of the trial bench and I was designated a member of this commission. The commission met for the better part of a year. During that time, meetings were held in Reno and Las Vegas and all persons who had anything to say were invited to attend. Some did attend, in considerable numbers, members of the bar and other member of the bench. There was a broad consideration of the matters that were finally put into this draft. There are, of course, errors that should be corrected, but I would suggest that the bill as proposed is an over-all and integrated whole. Be careful in modifying any part of it or changing any part without considering the other parts. Great thought was given to this.

Probably the bill has general merit down the middle of the line. There are some innovations, but the law doesn't stand still either. The pre-se tence investigation is intended basically for the trial judge who has to make the decision as to probation.

Section 244, paragraph 2--this seems to me to have unlimited discretion on the part of the trial court. It isn't anyone's purpose to keep it away from the District Attorney or from the defense if they need it. Neither should have, as a matter of right, the possession of it. I think there will be much flexibility, and in most cases both sides will receive copies.

I would think it is important, and especially to you, to have some knowledge as to how this draft was arrived at. Please make your consideration with that in mind.

GEORGE FRANKLIN: District Attorney of Clark County. I am not going to get into specifics. I would like to urge that you take a long look at this bill. Our old Act has been in effect for one hundred years. It does not need to be changed in two years. There should be more hearings and more opportunities to be heard. I first saw this bill about the middle of last December. If it is passed just to make a change, it will end up with every ambiguous phrase being tried in the court. These ambiguities should be worked out before this is passed. I suggested about twenty changes and Mr. Dakin agreed with practically all of these.

DAKIN: That is correct, and there are doubtless many more changes which should be made. Fifty-five pairs of eyes should be sharper than the lesser number that devised this. I hope the "guilty" plea was the fault of the printer. Don't listen to the views of the prosecutors and then the defense counsel and try to come up with a compromise. You are concerned with the basic needs and the protection of society. It is not Raggio versus some criminal. It is the State of Nevada. The D.A.'s are there representing society. The D.A. is there in your behalf and in behalf of society.

FRANKLIN:
I have heard that sentences should be comparative to other states. I do not believe this. Nevada has problems that are unkown to other states. We have a 24-hour economy. Our crime rate is always going to be higher because we do not fold cities up at 11:00 P.M. I say, and many others feel, that if burglary merits a certain sentence in another state, it should be a little tougher in Nevada. We should get this kind of reputation for Nevada.

Every law enforcement officer should be allowed to make an arrest if he sees a need for it. If they come on a wrecked car with a drunken driver they cannot make an arrest because the event was not witnessed by him and he has no warrant for the arrest.

This situation should be corrected in this bill.

CLINTON WOOSTER: Chairman of Committee on Judiciary for the Assembly . We invite everyone present to send in their suggestions for changes or amendments to us for consideration. We also would like all who spoke today to send in writing all suggestions and remarks made by them.

BOB LIST: District Attorney of Ormsby County. Concerning the matter of changes previously spoken of here,that of changing misdemeanors to gross misdemeanors, we think the reasoning behind many of these changes is that the penalty should be greater than is allowed for misdemeanors. Perhaps these should be changed to felonies. There is a great difference between serving a sentence in the county jail and in serving one in the state prison. If a person is to serve additional time, it would be better served in a penitentiary. I would encourage changes to be made so that misdemeanors remain misdemeanors. I appreciate the work that has gone into this bill. Many of us have not had reason to be concerned with the bill up to now. Now we find ourselves right in the middle of it and this is our court of last resort. We do not feel that we are coming in too late in the situation.

SENATOR DODGE: I notice that most of the corrections and objections have been made by peace officers. I would direct a question to Mr. Close. Were these same suggestions made before the commission?

CLOSE: Many of them were. One example relates to the disclosure of material that took place before a grand jury. The bill provides that a transcript be made available to anyone after ten days. This way the public gets a complete picture of what went on instead of just one persons observation.

Each group will feel that certain areas of the bill will not be best for them. Each person will have certain sections that he will think are not good. We have tried to consider the bill and come up with what we thought was the procedure that represented fairly the public interest and also the individual's interest. We feel this is a workable program.

As regards sentencing, we do not feel that everyone should be sentenced to the same time. There is presently in our law and retained in this bill the possibility of charging a man as a habitual criminal. If a young man comes before the court for the first time, rather than give him a sentence that you might give to a person with a long record of arrests, we have provided the court with a spectrum from which to set his maximum sentence. Lesser crimes have been set at 20 years, eligibility of parole after one-fourth of that time. There are provisions for good time credits in the prison. It is felt that the judge, after hearing all these things, should have some discretion to set the sentence. Maybe two or four years from now we can go to a completely indeterminate sentence but we should go to this now.

GRISWOLD: Reno Attorney. I am here to disagree with Mr. Justice Collins and to agree, in a sense, with Mr. Raggio. There are two points that I would like to cover, both based on the assumption that Nevada will go to determinate sentencing, whereby the judge fixes the sentence within a minimum and a maximum. I agree with Raggio in that I fear that a determinate sentence is going to create problems in the state that we cannot foresee. We have many district judges with different philosophies on punishment and other things.

The basis of criminal convictions is the "guilty" plea. This is one of the procedures

that you go through with the district attorney and the defense counsel. Where you have determinate sentencing of 1 to 10 years or 1 to 20 years, I am not sure what the effect will be on plea bargaining. I don't know whether this will result in more time being served or less time.

There is another thing we are going to find without question under the procedure of determinate sentencing, particularly in counties where there is more than one judge. Unless the judges get together and attempt to reach some uniformity of sentencing under similar circumstances, you will find the defendant and defense counsel shopping for the proper judge under which he is going to be convicted. If one judge is more severe, the defendant will see that he is not tried before that particular judge.

The concept is going to be new and there will be a lot of adjustments that we do not foresee at this time. There was a study made in Connecticut to determine the cause of prison unrest. One cause was found to be different sentences for the same offense. The prisoners feel they are unfairly treated and this was the cause for unrest which resulted in prison riots and then judicial reform in Connecticut. They maintain determinate sentencing be provided for an appellate system. I do not think this bill provides for sentence review.

The Nevada Constitution gives the legislature power to advise district courts to fix sentences for persons convicted of crimes. Once convicted, he can't plead guilty and then appeal from his sentence. No constitutional rights on probation if you have determinate sentencing. Under this present code you are giving one man a terrific amount of power to set sentences with no review and all by himself. Two people guilty of the same crime may get sentences completely different. If you are going to go to determinate sentencing, there should be some provision for review of sentencing, whether to increase or decrease the sentence. This is the only way to prevent frivolous appeals. If they run the risk of having their sentence increased there will not be so many appeals.

You are taking the decision of how long a person would serve in prison from one branch of the Parole Board and putting it in the hands of another branch of the Parole Board. Maybe a judge is just as sensitive to peoples' feelings, etc., as anyone. I feel that the committee in the legislature should consider, for these reasons, that if they do take the determinate sentence approach, they do then provide for review. Punishment should not be standardized. I don't feel there is any other way to review sentences than the Supreme Courts. I don't believe in giving this much power to one man.

The D.A. should see the proceedings of the earlier investigations, otherwise he won't know the basis for the charge. They gather the information from the best sources they can but it is not always accurate.

JUDGE BARRETT: Apparently I am the only District Judge here and I feel that I should speak in our defense. I was an advisory member of the committee and the statements made as to the method used for conducting the hearings was accurate.

Something should be said as to the function of the judge in this whole thing. I think I detect an element of distruct of the judiciary. The concept is to allow a man who knows his business, who has listened to all the evidence, who will consider everything carefully, then decide what the maximum sentence should be for that defendant.

Consider two burglaries: One, a habitual criminal, get 1-15 years; the other, a first offender, an 18-year old boy, gets the same sentence. Doesn't it make sense to give the judge discretion to decide what is to be done with this person? That is a judge's function. Why not let him do it? Under the new law the sentence will not be the same in each case. We are dealing with different people.

People in prison will be unhappy no matter what you do. Just the other day I had a letter from a man who is in prison. He is unhappy because he is in prison and there are worse people there than he is. I'll bet there are!

If you have to sentence 3 persons involved in a burglary under our present law, you can give probation to one or two or three. Not all are going to get probation. You just don't treat an 18-year old the same as a 45-year old who has been to prison before.

As regards the pre-sentencing report: I don't really have any objection to the D.A. and defense counsel having the report but think the judge should have the report. It is readied for him, to help him decide the sentence. He should decide what is to be done with it. I personally have never refused to let a D.A. see that report.

If you don't trust me as a district judge, if you think I am going to be unreasonable, if enough people think that for very long, I will not be a judge. If you are going to have a judge, let him be a judge.

SENATOR DODGE: Based on your experience, are there situations other than this age differential which would make you as a judge feel that, although the crime was the same, the circumstances surrounding the commission of it are the same, something that might influence you to give different sentences?

JUDGE BARRETT: Age is only one thing. For example, some guy commits a felony at age 18, then leads a decent life until age 40 and then does some damn fool thing. He doesn't deserve the same sentence as a person who makes a career of robbing, etc.

SENATOR CLIFF YOUNG: Do you have objections to both sides getting the same information, if it is facts?

JUDGE BARRETT: What you say makes sense. It would not make sense not to advise you as a defense attorney of information you need. During committee meetings much attention was given to this point. At every meeting there were representatives from the Bar Association and from the D.A. Association. All of these points were raised. By the way, there is a guilty plea.

In answer to your question: I would prefer, as a judge, to leave the pre-sentencing stuff the way it is and let the judge decide what he wants to do with it. Common sense and a little trust is what we need.

FRANCOVICH: Defense Attorney from Reno. It seems that many more of the comments have been made by prosecutors. I notice Mr. Raggio did not think it necessary to stay and listen to my remarks. I will not respond to Judge Barrett. I almost agree with everything he said. I commend Mr. Close and his committee for the work they did. Generally, this is good legislation.

One thing that concerns me is whether it would be successful if attacked on a constitutional basis. I suppose the committee must have considered this. The constitution says an act must embrace one subject only. In 71 there are many things that are taken into consideration. The law of vagrancy is rewritten, the age of consent is reduced for females involved in rape, etc. Maybe these should be written into separate bills.

I do not want to get into specifics too much at this time. In regard to 81, it provides for appeals for sentence in most cases, with some exceptions. I think some of the language is ambiguous. For instance, State Board of Pardons or State Board of Parole Commissioners. Perhaps this should be considered and the language clarified somewhat.

I think 81 should be expanded somewhat. I think we in the defense field should have the right to waive a jury trial in certain circumstances. I think it could be amended to provide a trial jury would be allowed to entertain a motion for a direct verdict of acquittal. Our law does not provide such a thing now.

DAKIN: About the constitutionality of the bill: This was taken into consideration in the drafting of the bill. There have been two major crime and punishment laws in Nevada, the one enacted in territorial days and the other enacted in 1911. The titles on both were virtually identical with the title on the present bill and both have been considered to relate to the same subject, namely criminal law. The State of Nevada has never sustained a challenge on the grounds of multiplicity of title.

MR. WOOSTER: I thank you all for appearing and speaking to this joint hearing. I urge you to return to return tomorrow, same time, same place. We do have already a definite list of people who want to be heard tomorrow.

The joint hearing adjourned at 4:40 P.M.

MINUTES OF MEETING - JOINT HEARING - ASSEMBLY & SENATE COMMITTEES ON JUDICIARY
54th Session, Feb. 9, 1967

The hearing was called to order at 2:00 P.M.

Assembly Committee members present: Wooster, White, Lowman, Kean, Dungan, Swackhamer, Hilbrecht, Torvinen, Schouweiler

Mr. Clinton Wooster conducted the joint hearing. He commented in his opening remarks that anyone who speaks should put their comments in writing to be submitted to him for study by the committees.

AB 71:

RICHARD O'BRIEN: Clark County Public Defender. It is unique for the defense attorney to agree with the prosecutor but I have to disagree with the determinate sentence embodied in 71. The present indeterminate sentence was enacted into law in 1912. Why would we think that all knowledge is of the last decade?

The law library discusses the change to indeterminate sentencing. I read from this: "The imposition of determinate sentences imposes many inequalities". We should have indeterminate sentences so the judges can exercise judgment about whether a sentence should be light or heavy.

The function of both the defense attorney and the prosecuting attorney is to bargain for the plea. By enacting 71 we are going to have the potential of an inequality of sentencing. Same type of crime and all but different sentences. The sentencing should be left to those who are in a position to gain knowledge and data about the offender.

I would like to comment on a couple of other items. 1. On page 2, line 39 "where the loss is $5,000 or more, etc., not less than 1 year nor more than 6, etc." The scope is too broad. Suppose a drunken driver collided with a telephone pole. Would this apply?

On page 141, section 470, I think the statute as presently drafted works considerable hardship. The law now provides that the law has no discretion for a second offense. The time may be 25-30 years. It works an obvious hardship; there should be a period of limitation on this. There should be some kind of an escape provision for one who is dependant on driving to earn his livelihood.

On page 11 Section 44, the change would eliminate a gross misdemeanor option which is presently available. If involuntary manslaughter, the resulting fatality is not intended. Does the committee wish to attach a felony to this? Now the presiding judge has the authority to decide this.

Section 440, page 131, on the narcotics penalties: It seems that the committee ought to consider at this time whether or not they want to continue to equate criminal offense of the possession of marijuana and heroin. I suggest, most strongly, that the penalty should be equated with the social conduct involved. Heroin is an addictive narcotic and should be worse. There should be a distinction in the penalties. A different classification should be made for the sentencing and treatment of the addict who sells it himself.

RAGGIO: In that particular case, the sentence was just not long enough.

MONROE: Under a determinate sentence he would have to be released when he finished his maximum sentence?

RAGGIO: Yes, there was nothing anyone could do because he had served his confinement period. Most crimes come under one to six years. One-fourth the maximum comes down to about one year. Robbery goes to twenty. If everyone concerned could be used to determine the sentence it would be the best we could do. But we have to decide where the best informed judge can be reached. I have suggested following California's system because they have reached where they are today after much time and work and study. The legislature could still set the determinate sentence for each crime or type of crime.

CLIFF YOUNG: How many cases would come before the Parole Board in a year? Would the Parole Board have to see them all?

RAGGIO: Yes, but there would be only the one appearance after the minimum had been served.

YOUNG: How many felonies would we have in a year?

RAGGIO: Washoe County would have about 70 prisoners committed to the State Prison. I don't see that this would amount to any more consideration. Everything concerning one prisoner could be done at one time--setting the sentence, release date, etc.

BARRETT: The one-fourth period that must be served before parole can be considered doesn't mean that a person will be put on parole at that time, he will just be eligible.

AB 81:

RICHARD O'BRIEN: The pre-sentence report is certainly a very important part of the penal system. A majority of people charged never go to trial. I believe the pre-sentence report should be made available to both the D.A. and defense attorney. It doesn't serve the best purpose of justice to keep these two ignorant of the pre-sentence report. I am referring, of course, to page 38, section 244.

Page 12, section 83: This indicates the grand jury "must". This should be changed to "may".

Page 13, section 90: Same change should be made making it discretionary.

Withholding a grand jury indictment is not valid. Names can be obtained from other sources.

Page 37, section 235: If a man is sentenced to both fine and imprisonment, and he is an indigent person, he may be sentenced to an additional day for each $4 that he can't pay. I believe this is unconstitutional. We should not penalize persons for not having any money. I think this violates the 14th section of the constitution. The fine should be continued by attachment, as any normal debt. This, of course, should not apply where he has money to pay the fine.

Page 17, section 112: I suggest that the adoption of this particular change you are going to build into every case is reversable error. No two lawyers could agree on what constitutes the same scheme. Present law calls for multiple convictions. We ought to get away from common scheme or plan because it is too ill-defined.

Page 31, subsection 189: This says the judge shall charge if requested by either party. I think this is ill-advised. I think this will be subject to innocent abuse. We should not give the judge the right to comment upon the testimony.

Page 5, section 39: I think this legislation is too broad. Do you want your judge to serve as both judge and witness? This legislation should be changed.

Page 9, section 66: I am concerned with subsection 2, which says the preliminary should be held within 6 days. This is not fair. "Reasonable time" is too indefinite. I would like to see a particular time set, such as 15 days.

Page 9, section 67: The preliminary is not to be used for discovery. This should be left to the discretion of the magistrate. Cross examination is in itself discovery, so this section could be abused. We should be able to call witnesses.

Page 37, section 233: We ought to at least give the judge discretion as to whether sentences can be run concurrently.

CLOSE: I believe that he does have this discretion.

O'BRIEN: Page 22. A deposition ought to be admissable where absence of witness is unavoidable, but this eliminates the possibility of cross examination. Should require diligence in getting witnesses there.

Page 32, section 200: Subsection 7. An expert witness ought not to be excluded from the court during the testimony of other witnesses or let to stay. This should be at the discretion of the District Court. This statute is not sufficiently clear as to when the expert witness has the right to be in the courtroom.

Section 204: This might very well violate double jeopardy for offenses. We ought to consider this.

Page 23, section 145: The problem is the discovery portion of the bill. I think this section, through 151, is bad. From the defendant's point of view, it is worse than no statute at all.

Section 146, line 33: The defendant doesn't have the right to statements of witnesses until it reaches the Supreme Court. I cannot see the reason for the limiting legislation on this.

Section 147: The committee should study whether this infringes on self-incrimination. This is worse than no statute in my own candid opinion.

Page 22, section 138: Subsection 2. This is not in the best interests of justice. Counsel can best inform the judge if it knows what the judge has before him. This is bad and should be stricken, or re-drafted.

Page 21, subsection 136: I would like to see a limiting time that a man can be held in custody without a charge being made against him. This is not in the best interests of criminal justice. The prosecutor should have to file or turn him loose.

Page 34, section 208: This again talks about the defendant being held for a reasonable time. This should have some protective provision.

Clark County provides for a public defender. This is taken care of in 260.030 and 260.050. I would ask that the committee provide that the public defender may represent misdemeanor offenses. There should be discretion in the court to provide public defender help for some misdemeanors. There would be no extra cost involved because the public defender is on salary.

QUESTION: Where you objected to time limits not being set, propose that the act as at present is better, because the court has a better idea of each of these, the work involved, etc.

O'BRIEN: I feel, from the defendant's point of view, that it is better to set a certain time, a definitive period of time, unless good cause be shown. I don't like the act as it is at present. It gives the right to hold a man indefinitely without filing a charge.

JUDGE COLLINS: It is a slow process to find what the rules of discovery are; therefore, it was thought to be better to set one down in accordance with definite rules so that it would be standard throughout the state. All law would be guided and bound by the same general rule. We can evolve these in time but having it set definitely is better.

O'Brien: In fairness, I will have to say that these are the federal regulations.

PAUL TOLAND: Section 244: I agree with Judge Barrett on what he said yesterday. This could be amended and added to for the defense, with the stipulation that it pertain only to factual information. Our officers have to deal with these people and it could destroy the rapport.

Section 254: Official information obtained by the parole officer is to be privileged. This is not entirely realistic. Many times a parole officer will receive information from one of his parolees about an anticipated criminal action and not to be allowed to forward this would be making us almost culpable. They should be able to exchange this information with all other law enforcement officers.

MONROE: Wouldn't the parole officer need to tell some of this information in his attempt to place the man in a position of employment?

TOLAND: Yes, that is right. The prospective employer may ask some very pointed questions before he can make a decision about whether to hire a man.

SECTIONS 266-269: Under the heinous crimes the court may, at its discretion, permit the sentence to be delayed 20 days in order for some kind of appeal to Board of Pardons. This would allow parole before the man was even in prison. It also would create some administrative problems as these cases were being handled.

FRANK DAYKIN: This is an instance of an unfortunate reproduction from the existing statutes that is so old it has whiskers on it. The court thinks it should be revised. Since this state has a Board of Pardons rather than executive clemency this seemed almost necessary.

BEKO: I have some comments on both bills together. Many of the legislators have come to agree with the District Attorneys Association. There is a great deal of very necessary and essential legislation in both these bills. It is a very ambitious task

you have undertaken. If you stayed in session from now until two years from now you could not please everybody. Under no circumstances should you take the position that it just impossible to work this out. Mel and his committee have done a tremendous piece of work. All this should not go out the window, for example, the nolo plea.

There are two views on discovery and you cannot possibly reconcile them.

MONROE: It is my intention to process this legislation and put it into effect, then if we miss some corrections this time we can take care of them two years from now.

BEKO: Many district attorneys are just giving up because the law is so indefinite for the prosecution. If there is some definiteness put into some of them, it may encourage some of the D.A.'s to stay with it.

Mr. Wooster again encouraged all those who had spoken to put their comments in writing and turn them in to him for study by the committee.

The joint hearing was adjourned at 4:30 P.M.

MINUTES OF MEETING - ASSEMBLY COMMITTEE ON JUDICIARY, 54th Session, March 9, 1967

Meeting was called to order at 3:40 P.M.

Present: Wooster, White, Kean, Hilbrecht, Torvinen, Dungan, Schouweiler, Lowman, Swackhamer

Absent: None

AB 275: Permits sheriffs to deputize private detectives to serve certain writs.

Mr. Woody Cole, Peace Officer from Las Vegas, was present to speak against the bill.

MR. COLE: This bill says the sheriff may deputize private detectives to serve writs of attachments, with property value of $5,000 or less, with bond of $10,000. This bond is twice the value of the property but you could go and seize a piece of machinery and while you had it, the man could lose his job and then sue the sheriff for $30,000 or $40,000. We have to answer to the people for our actions in these matters, but the private detectives want to have this power, and they would have to answer to nobody. I think this would be a harassment on the people.

MR. KEAN: Do you happen to know why the sum of $5,000 was picked?

MR. COLE: I don't know. The small claims court is the people's court, but in Las Vegas, it belongs to the collection agencies.

MEL CLOSE: A man gets a judgment and he goes out and enforces it himself, attaches property and so forth. This can be a dangerous thing.

MR. COLE: How would you set the fees for these private detectives?

MR. HILBRECHT: I use a number of private investigators. However they go about fixing their fees, they are about half what you in the sheriff's department ask. Does that answer your question?

MR. COLE: No, it does not.

Mr. Mel Close read a letter which he had just received from Sheriff Ralph Lamb of Clark County, stating his opposition to this bill. He said that he already has the supervision of 275 deputies and he couldn't possibly supervise private detectives as writ servers.

Joseph Bartell, who runs a detective agency in Las Vegas, was present to speak for the bill.

MR. BARTELL: I believe this particular bill is a good one. In a way, it reflects on the sheriff, that he isn't, perhaps, doing a job. The sheriff's department is a good one in the Civil Court but not in the Justice Court. It takes too long to get things done. I know Clark County has grown, and things are getting away from the Constable's office. This bill is designed to alleviate his work load.

No detective agency in Las Vegas are collectors at the present time, and they should not be allowed to become collectors.

MR. HILBRECHT: What hours does the Civil Office work?

MR. BARTELL: From 8 to 5, and many papers should be served after and outside of those hours.

One more point: A complaint I receive quite often is that when a paper is served in the Justice Court, costs are awarded only to the Constable. If the creditor hires someone outside of the Constable's office to serve the paper the cost comes out of his own pocket. But in spite of this, many people hire me to serve their papers.

MR. CLOSE: The sheriff in Clark County recently lost a suit for $50,000. I don't know how many more he has pending against him. Who would be sued if the private detectives did the serving?

MR. TORVINEN: A sheriff often can file a cross action over against the party.

MR. HILBRECHT: I have letters from 15 to 20 attorneys urging this kind of action. The sheriff is right at the top of his budget and will have to divert some of his men to police work. I think what he would prefer to see is to have the number of people enlarged that can do this work.

The problem might be answered by making the bond larger. I think $50,000 is large enough.

MR. WHITE: What would be the cost difference between a $50,000 bond and a $100,000 bond?

MISS DUNGAN: What kind of fees do the private detectives charge? Are they more than the sheriff's office would charge?

MR. HILBRECHT: No, it is less, and they are available at more hours of the day. For instance, they can pick up a car when it is likely to be at home, say around 8:30.

MR. TORVINEN: I don't think it should be limited to this group of people listed in the bill. We shouldn't say the sheriff can only do such and such. He should be able to appoint any special deputy that he wants to.

MR. WOOSTER: Why is it necessary to have this special act to license private detectives/ The sheriff now has the power to deputize people. Why is the bill necessary?

MR. HILBRECHT: Lamb is hesitant to deputize anyone unless he is a hired employee of the sheriff or a regular paid employee of some business. People of an independent business like private detectives does not come within the area of his acceptability.

MR. WOOSTER: Do we accomplish anything by this bill? We can't possibly force the sheriff to appoint these people.

MR. HILBRECHT: Maybe we should increase the bond and make it so he could appoint these people by request.

MR. DAYKIN: Service of process can be done by anyone over 21 now.

MR. WOOSTER: Perhaps we are premature in considering this, since you are planning to amend it anyway.

MR. HILBRECHT: This is an urgent need in Clark County. Everyone realizes there is a bottle neck.

AB 81: New criminal procedure law.

SECTION 143

Mr. Bryan's objection: Section 143 would seem to make the use of a deposition admissible

at the time of trial upon a showing that the deponent was out of State. I believe that an additional burden should be cast upon the prosecution to establish that due diligence has been undertaken to secure the attendance of the out-of-state witness. Cross examination during the time of the deposition may be based upon considerable less information available to defense counsel than cross-examination at the time of the trial when the discovery order has been entered and when other witnesses who may not have testified at th preliminary hearing have been called by the State. The use of these depositions, therefor should be as a last resort rather than as a substitute for direct confrontation by the witness at the time of the trial.

MR. HILBRECHT: I think this should apply to both the defendant and the prosecution.

MR. WOOSTER: Was there discussion of this by the study committee?

MR. DAYKIN: Yes, and the committee held to the section as it is stated. This section is taken word for word from 15E of the Federal Rules on Criminal Procedure.

MR. WOOSTER: There has been some interpretation of these Rules, and our action yesterday was to adhere basically to these Rules.

MR. HILBRECHT: What is the relationship of this kind of section allowing deposition with the confrontation?

MR. DAYKIN: Federal Courts accept this deposition.

MR. HILBRECHT: If we were to adopt, it should cut both ways.

MR. DAYKIN: I agree, but they wanted to stay with the Federal Rules. These were extensive revised by the U.S. Supreme Court July 4, 1966.

Mr. Schouweiler moved to reject Mr. Bryan's comments
Mr. Lowman seconded
Motion passed, with Mr. Hilbrecht voting No

SECTIONS 145-147

The D.A.'s comment: If taken together these provisions are probably acceptable. The matter of discovery in criminal cases is, of course, most controversial since it has largely been a one-way street proposition, the defendant being required to produce nothing. In addition, however, the defendant should be required to disclose prior to trial at a reasonable time whether or not he intends to rely on an alibi as a defense and to furnish the name and addresses of witnesses who will corroborate this alibi. In many cases if this is legitimate, the expense of a trial can be avoided.

MR. WOOSTER: I would like to ask Mr. Daykin about the discussion in the committee on this.

MR. DAYKIN: This was discussed extensively for several hours on more than one occasion. Mr. Bryan's point that under this law this would be less liberal than what he is getting now was concurred in by several Clark County lawyers, but many people thought it was much more liberal than what they have in Washoe County, so there you are.

MR. WOOSTER: Either Judge Collins or Judge Barrett made the point in the hearings that discovery should be uniform throughout the state and the section would enable this to be done.

MR. HILBRECHT: The discovery section of the Federal Rules is quite separable from the rest without upsetting anything. If we were to leave the law as it is, where the judge has discretion, we would not be upsetting the rest.

MR. DAYKIN: That is true, but we would have no standard of reference.

MR. HILBRECHT: I disagree. We would have the same one we have now. The length of the magistrate's foot is not a very persuasive argument. Most of those who testifed were not favorable to these sections. My feeling is that we do not need the Federal Rules of Discovery.

MR. WOOSTER: The D.A.'s statement was generally favorable. Both judges spoke in favor of this and several of them spoke in favor of this in the study committee, according to Mr. Daykin.

MR. KEAN: Where discovery is used and the evidence mounts, how often does the defendant change his plea?

MR. WOOSTER: Quite often this obtains a change of plea.

MR. HILBRECHT: That is not a fair answer to the question. Usually when it comes to giving defense counsel you look at the evidence. If it is a strong case, the D.A. is usually delighted to show it and this forces the counsel to a deal of some kind, unless he is locked in.

MR. WOOSTER: This would formalize the procedure for this exchange of information.

MR. HILBRECHT: I think it would restrict it. I don't think we need it. No defendant is going to utilize it. In most areas we have some discovery.

MR. WOOSTER: I think it would liberalize it in Washoe and it is a good uniform system.

MR. HILBRECHT: To retain this is to change the present law.

Mr. Lowman moved to reject the comments and suggestions
Mr. Swackhamer seconded
Motion passed with Lowman, Schouweiler, Torvinen, White, and Wooster voting Aye and Hilbrecht, Swackhamer, Dungan and Kean voting No

SECTION 152

Objection: The D.A.'s don't want to lose the power to issue subpoenas. They want to be able to keep the blanks on hand.

MR. DAYKIN: Once again, this corresponds verbatim to the Federal Rule. Nevada practice in the past has been to allow the District Attorney to issue his own subpoenas.

MR. WOOSTER: Why was it thought necessary to change the rule?

MR. DAYKIN: Simply to conform with the Federal Rule. We thought no substantive hardship was created.

MR. KEAN: Didn't we have this last session?

MR. DAYKIN: No, this is an old act.

MISS DUNGAN: Where does a defense attorney go now to get subpoenas?

MR. DAYKIN: To the clerk of the court. He can get them in blank. This bill would make the District Attorney do the same thing.

MR. TORVINEN: The District Attorney is a public officer and the defendant is not.

Mr. Hilbrecht moved to reject the proposed amendment.
Mr. Schouweiler seconded
Motion passed unanimously

SECTION 153

D.A.'s Comments: The present law should be retained with reference to bringing a witness from the state prison or from any other jail. This is presently accomplished by making an application to the court and obtaining an order in the nature of a subpoena. There is no need to have a hearing upon a motion since each party should have the right to call any witness whether he be incarcerated or not.

MR. DAYKIN: This is not new law. It is existing law that is classified to refer to District Court only.

MR. TORVINEN: As I read this, all you have to do is show the reality of the testimony.

Mr. Lowman moved to reject the suggestions for a proposed amendment.
Mr. Kean seconded
Motion passed unanimously

SECTION 154

D.A.'s Comments: In addition, the D.A. should have the right to issue a Subpoena Duces Tecum, or the defendant should have a similar right, to require the delivery of books and documents to their respective offices for examination prior to trial. This is most necessary as a practical matter in order to ascertain the nature of the evidence prior to trial and in the course of an investigation.

MR. DAYKIN: We should go the same way on both sections.

Mr. Lowman moved to reject the proposed amendment
Mr. Hilbrecht seconded
Motion passed unanimously

SECTION 155

D.A.'s Comments: The present law does not require the tender of fees in matters of criminal subpoenas. This should definitely not be required on subpoenas issued by the state. In large counties it is often necessary to issue subpoenas to a long list of police officers for trials anticipated but which for many reasons result in guilty pleas and postponements and where the trial is dismissed for some reason. This would cause a great and unnecessary expenditure of funds for many witnesses who undoubtedly would not testify.

MR. DAYKIN: We followed literally the language of Federal 17 D. The matter of language was not studied in the committee. We could strike language relating to summoning of

witnesses if you so desire. It depends on whether you want the witness to come in free or if you want to pay him. This is in criminal cases.

MR. HILBRECHT: The way Civil Service works: They have a check in their pockets, but they do not give it to you unless you demand it.

MR. TORVINEN: In Washoe County, if you give the sheriff a check, he gives it to the witness. I feel they are entitled to it after they appear but not at the time of the subpoena.

Mr. Hilbrecht moved to amend Section 155 by removing "tendering to him the fee for 1 day's attendance".
Mr. Torvinen seconded
Motion passed unanimously

MR. SWACKHAMER: What if one witness doesn't show up and said he had no money to make the trip. Would he be guilty of contempt?

MR. DAYKIN: There is a limitation of 100 miles.

MR. HILBRECHT: They would continue the case and send someone out for him.

SECTION 176

Objection: It is felt that the present system of each attorney conducting the entire examination of prospective jurors should be retained rather than the court conducting this examination.

MR. DAYKIN: This corresponds to Rule 24 A of the Federal Rules and it was discussed very extensively in the committee. The only difference is that the Federal Rule says "may" and the committee inserted the word "shall". The statute as tendered is a compromise between discretion and no discretion made in the committee.

MR. TORVINEN: In criminal cases you have to get all twelve jurors to agree. In Civil Court you need only three-fourths of them agreeing.

MR. WOOSTER: It is not the same burden.

MR. SWACKHAMER: This language seems reasonable.

Mr. Hilbrecht moved to reject the proposed change
Mr. Lowman seconded
Motion passed unanimously

SECTION 174

This section was brought up at Mr. Torvinen's request.

MR. TORVINEN: The present practice is that if you don't demand a jury trial vigorously you don't get it. This lumps the rules of District Court and Justice Court together. I can see that this will cause havoc in Reno and Las Vegas. If my interpretation correct?

MR. DAYKIN: Yes, it is.

MR. TORVINEN: Whenever a petit larceny case comes up, you will be in trouble, unless you get a waiver of jury trial. I can see some problems in the administration of justice.

MR. DAYKIN: I don't believe this facet actually engaged much attention of the committee. The next section was intentionally added by the committee. No one thought of waiver of jury in the Justice Court.

MR. WOOSTER: What do you suggest as an amendment?

MR. TORVINEN: Do you think people charged with misdemeanors should really have this right?

MR. DAYKIN: The present section corresponds to Federal Rule 23 A and supercedes rules applying to Justice Court.

If we had any lack on the study committee, it was a lack of anyone involved in the Justice Court.

Mr. Torvinen moved to insert language similar to the present statute on this, 186.00, in section 174 and change section so that the language in the bill applies only to District Court.

Mr. Lowman seconded
Motion passed unanimously

SECTION 180

D.A.'s Comments: It is recommended that a provision be added that would not necessitate the trial beginning anew and a new jury being empaneled in this type of situation. The law should permit the continuance of the trial with less than twelve jurors. There is no constitutional requirement for a jury of any certain number of people.

MR. KEAN: Does it limit the number of jurors that could be out?

MR. WOOSTER: No.

MR. DAYKIN: You would have to put a provision on it that if the parties were in agreement the trial could continue. Section 175.

Mr. Kean moved to reject the objections.
Mr. Lowman seconded
Motion passed unanimously

MR. DAYKIN: There are two ways around this, 2 in section 180 and 1 in section 175.

MR. WOOSTER: We now have 68 bills in our committee. Can we meet tomorrow from 1 to 3?

Miss Dungan, Mr. White and Mr. Lowman could not.

MR. WOOSTER: What we could do is consider other bills than AB 81. We have some that are relatively non-controversial.

SB 345
SB 256
SB 180
SB 71
SJR 22
SJR 12
AB 437

MR. KEAN: I would like to ask Mr. Daykin: Is it unconstitutional to get 5 Justices of the Supreme Court? With an election and interim appointments?

MR. DAYKIN: No, I don't think it would be unconstitutional. It is a close question but the three top authorities on it are the three incumbents. I think it is reasonable to expect that they would uphold such an action.

SECTION 189

Mr. Bryan's Comments: This gives to the trial Judge the right to state the testimony. I believe that this constitutes an unwarranted intrusion upon the trier of the fact's determination of what the facts are in the case. Moreover, I believe the Judge's recollection is subject to human frailty and his statement of the testimony may, in a given case, be clearly erroneous. By reason of the exalted position the trial Judge holds, his statement of the testimony may be accepted as the correct version and the jury may, therefore, defer to his recollection rather than their own, or worse, decline to call for a read back of the stenographically recorded testimony by the court reporter in case of doubt.

MR. DAYKIN: This section was preserved from the present Nevada law. It was taken verbatim from existing statutes.

MR. KEAN: What position is an attorney in to question the judge's words?

MR. WOOSTER: Very poor.

MR. TORVINEN: "state the testimony". What does this mean?

MR. DAYKIN: That he could state back to them what the testimony was. I have never seen a case in which it was construed in spite of the length of time it has been with us. He can instruct them what the witness said but he can't tell them to find such and such a fact

MR. TORVINEN: This wasn't discussed by the committee?

MR. DAYKIN: No

MR. SWACKHAMER: If this has been good all these time, why should we louse it up now?

MR. KEAN: Mr. Daykin, do you think that the proposed revision of the courts which Judge Barrett spoke of will ever come to pass? If we are going to get rid of senile judges then there isn't much harm here.

MR. DAYKIN: Judges have been dealing with this section ever since statehood. I have never even heard a discussion on it.

MR. TORVINEN: Some of the wording bothers me. I would like to hold it over. On line 11, starting with "if" I would like to strike all that out. Page 31, line 11.

MR. KEAN: Can the counsel ask for yesterday's testimony to be read?

MR. TORVINEN: I have never heard of it being done. The jury can ask for testimony to be reviewed for them.

MR. WOOSTER: I agree with Bill. Why should we change it?

Mr. Lowman moved to retain present language
Mr. White seconded

MR. WOOSTER: I can see changing by striking line 11 "unless requested by either party".

Mr. Lowman made that a part of his motion

Motion passed unanimously

Meeting was adjourned at 5:30.

S. B. 116—Committee on Education, Health and Welfare and State Institutions, Jan. 21.

Summary—Establishes the Department of Prisons. (BDR 16-198) Fiscal Note: Local Government Impact: No. State or Industrial Insurance Impact: Yes.

Jan. 21—Read first time. Referred to Committee on Education, Health and Welfare and State Institutions. To printer.

Jan. 24—From printer. To committee. 1/26, 2/2, 2/4

Feb. 9—From committee: Amend, and do pass as amended.

Feb. 10—Read second time. Amended. To printer.

Feb. 11—From printer. To engrossment. Engrossed. First reprint.

Feb. 14—Taken from General File. Re-referred to Committee on Finance. To committee. 2/28 am

Feb. 28—From committee: Re-refer to Committee on Judiciary. Re-referred to Committee on Judiciary. To committee. 3/15, 3/24 am

Mar. 31—From committee: Amend, and do pass as amended.

Apr. 1—Read third time. Amended. To printer.

Apr. 4—From printer. To re-engrossment. Re-engrossed. Second reprint.

Apr. 5—Read third time. Passed, as amended. Title approved, as amended. To Assembly.

Apr. 6—In Assembly. Read first time. Referred to Committee on Government Affairs. To committee. 4/11

Apr. 13—From committee: Re-refer to Committee on Judiciary. Re-referred to Committee on Judiciary. To committee. 4/20, 4/29

Apr. 29—From committee: Amend, and do pass as amended.

Apr. 30—Read second time. Amended. To printer.

May 2—From printer. To re-engrossment. Re-engrossed. Third reprint. Placed on General File. Read third time. Passed, as amended. Title approved. To Senate. Judiciary 5-3 am

May 3—In Senate. Assembly amendment concurred in. To enrollment.

May 5—Enrolled and delivered to Governor.

May 8—Approved by the Governor. Chapter 430.

Subsections 2 and 3 of Section 100 effective 12:01 a.m., July 1, 1977. Balance of act effective July 1, 1977. Section 64 amended in accordance with the provisions of Assembly Bill No. 355.

Summary of Legislation 1977

S.B. 116 (chapter 430) reorganizes the state prison system into a Department of Prisons. In addition, much of the statutory language governing prison operations, dating in large part from 1873, has been amended or repealed. The prison system is still under the control of the constitutional board of prison commissioners composed of the governor, secretary of state and attorney general. The present warden is redesignated as director of the department.

PRA077

EDUCATION, HEALTH, WELFARE & STATE INSTITUTIONS

JANUARY 26, 1977

The meeting was called to order at 8:05 a.m. in Room #323 of the Legislative Building, Carson City.

Senator Schofield was in the chair.

PRESENT: Senator Jack Schofield, Chairman
Senator Joe Neal, Vice Chairman
Senator Richard Blakemore
Senator William Raggio
Senator Wilbur Faiss
Senator William Hernstadt

OTHERS PRESENT:
Susan Haase, Nevada Association for Retarded Citizens
Michael Medema, Nevada State Prison
Jack Middleton, Mental Hygiene & Mental Retardation
Patrick Mullen, Nevada State Prison
Orville A. Wahrenbrock, Department of Human Resources
Charles Wolff, Warden, Nevada State Prison

The minutes of the previous meeting were distributed and unanimously approved by the committee members. Chairman Schofield remarked that the minutes were a well summarized report of the committee's visit to the Nevada State Prison on the previous day.

Senator Schofield then commended Warden Wolff and those he had assigned to accompany the committee through Maximum, Medium and Women's facilities for their courtesy and cooperation in showing the committee everything it had wanted to see. He commented that the committee came away from the visit feeling satisfied that from what they saw, they would be much more knowledgeable when deliberating on legislation affecting the prison system.

Chairman Schofield then distributed and reviewed the revised committee visitation schedule (see Attachment #1).

Testimony was then heard on the following bills:

SB 96 LOWERS MAXIMUM AGE FOR DETENTION OF MENTALLY RETARDED PERSONS.

Mr. Jack Middleton, Associate Administrator, Department of Mental Hygiene and Mental Retardation testified in favor of the bill. He said that the purpose of the measure was to change the age of majority from 21 to 18 as it deals with the mentally retarded who are cared for in State institutions. The bill does have a fiscal note. At the present time parents pay for the care of children up to the age of 21. The estimated affect will be the loss in fee revenues by $4,600 the first year and $5,300 the following year.

Senator Neal referred to section 18 and asked if there were any changes on the current work program. Mr. Medema answered that section 18 is identical to the present statute and that it is just being lifted from one section of NRS and placed in another section for the purpose of housekeeping.

There being no further questions or testimony on SB 114, action by the committee was deferred until later in the meeting.

SB 116 ESTABLISHES THE DEPARTMENT OF PRISONS

Warden Charles Wolff testified that the intent of the bill is to provide a sound organizational structure which becomes essential to the effective administration of a comprehensive correctional operation. It refines the terminology that is used throughout the United States with regard to addressing corrections and the correctional organization. Penologists basically are placing increasing effectiveness on a fully integrated operation that is linked to a variety of classification requirements with regard to the inmates within the system and there is a definite need for a coherent and consistent administrative legal framework to cope with the demands that are being placed on correctional institutions today.

Warden Wolff continued by saying that most of SB 116 is a consolidation of a variety of statutes that are in force in the State of Nevada and places them into a concise form and refines the terminology with regard to some of the titles and the individual positions in the Nevada State Prisons. It also clarifies the fact that it is, in fact, an operating department within the State of Nevada. It addresses the major issues of policy structure, accountability and operations of the prisons and seeks to provide a more effective approach to corrections with improved standards and procedures for custody care and training and a more systematic administrative organization. Fundamentally, the bill addresses the point that the State does have a basic obligation to protect the public by providing institutional confinement care and training of the offenders; efforts to provide persons in correctional institutions with adequate educational, vocational, counseling training and other services so that they may be prepared for lawful community living which is essential to the reduction of crime; upgrading the correctional institutions and services deserves priority with regard to considerations as a means of lowering crime; preventing offenders and particularly youths and first offenders from establishing careers in crime

and being institutionalized; and, correctional institution and services should be diversified in programs of personnel so as to facilitate individualized custody care, treatment and possible rehabilitation of the offender. He noted that SB 114 is consolidated into the scope of SB 116 in the event SB 114 receives favorable consideration.

Senator Raggio asked a series of questions and Warden Wolff answered as follows:

1. QUESTION: This bill changes the terminology to indicate that the Warden becomes the Director. Are those who are now in the category of superintendents under classified service?
   ANSWER: Yes. The Director and Deputy Director are the only unclassified positions.

2. QUESTION: Does this bill seek to incorporate some of the requisites which have been part of the federal court decisions?
   ANSWER: To a certain extent; however, there is no major thrust in that direction because these requisites are already in the statutes.

3. QUESTION: Is there any provision for temporary furlough of inmates?
   ANSWER: Provision for temporary furlough is made in the present law.
   QUESTION: Has temporary furlough been used during Warden Wolff's tenure?
   ANSWER: This statute has been used for people who are down to having received a parole and have a very short period of time to serve before they are released. The temporary furlough is given them during this period to be used for finding jobs and living locations. The prisoner is accompanied by a probation or parole officer on these furloughs.
   QUESTION: Could this temporary furlough be used when there is a terminal illness in a prisoner's family, a death, etc.?
   ANSWER: Yes, if it is within the State of Nevada.
   QUESTION: Does this provision of the bill cover the situation where a person could be absent without leave from a temporary furlough? Does this constitute an escape?
   ANSWER: It is part of the furlough agreement.

Because this was not specified in the bill or the existing law, Senator Raggio felt the "escape" clause should specifically be written into the section pertaining to temporary furlough.

Senator Raggio moved that SB 116 be amended to specify that an unauthorized departure or absence from any authorized leave by an inmate constitutes an escape.
Senator Blakemore seconded the motion.
Motion carried unanimously.

Senator Raggio said that he would take the responsibility for getting the amendment made by the bill drafter.

Senator Raggio then asked further questions of Warden Wolff regarding SB 116.

4. QUESTION: Referring to section 51 of SB 116, in most cases do prisoners have other funds when they are released?
ANSWER: Yes, and if an inmate has from $0 to $250 of his own money, he is given a $50 check from the State; $250 to $500, he is given $35; and, if he has resources of $500 or more, he is not allowed any "gate" money.

5. QUESTION: Does this bill leave any major omissions from the existing law?
ANSWER: The only omissions are those which are also contained in SB 114 relating to some of the technical reporting requirements to the Prison Board. In actual practice, these reports have not been made in at least 8 years because they are no longer requested by the Prison Board.

6. QUESTION: What presently is available in the psychiatric area? Is there a resident psychiatrist at any of the institutions?
ANSWER: There is a fulltime psychologist for the three institutions and a parttime psyciatrist who obligates approximately 20 hours a week. Dr. Molte is the psyciatrist; Dr. Robert Wittemore is the psycologist; and, Dr. Stublefield is the fulltime medical doctor for the facilities. The Governor's Budget contains a recommendation for a fulltime psyciatrist and a parttime psyciatrist for the new facility at Jean.

Warden Wolff stated that he felt reasonable medical care was being provided for the prison population and there is a procedure which handles inmates who need further treatment in an outside medical facility.

Chairman Schofield asked about the academic and physical education programs for the entire prison population.

[redacted]

Warden Wolff stated that the thrust of the prison programs in this area has been in trying to get back to the work ethic and organized activity which will develop skills. He said that there used to be a mandatory school program but court decisions have found that the individuals can be provided the opportunity for education but they cannot be mandated to attend educational classes. He added that an inmate who does participate in classes can accumulate "good time" credits or "reward for effort."

Senator Neal asked if there were any changes regarding responsibilities of the Prison Board. Warden Wolff answered that this could not be changed by statute because the Prison Board's responsibilities are set forth in the State Constitution.

Senator Hernstadt, referring to page 18 of SB 116, line 1, asked why the legal age is 21 instead of 18? Mr. Medema answered that there was no reason for this not being changed and Warden Wolff stated there would be no objection to changing the age of majority. Senator Raggio intervened by saying that it was his opinion if the age was changed, the summary and title of the bill would also have to be changed.

Senator Hernstadt moved that an amendment be drawn to change the age of majority from 21 to 18 to conform with other State laws.
Senator Faiss seconded the motion.
The motion did not carry by a vote of 2 in favor (Senators Hernstadt and Faiss) to 3 against (Senators Blakemore, Raggio and Schofield). Senator Neal did not vote.

There was further discussion as to whether or not all of the statutes should be made consistent on the age of majority. Senator Hernstadt was instructed by Chairman Schofield to look into this matter with the Legislative Counsel.

Warden Wolff then requested the possibility of two possible amendments to SB 116 (See attachment 2).

Page 9, line 8 - After commissioners add "upon referral by the Director to the Board." Warden Wolff stated the purpose of this was to give him more latitude.

Senator Raggio commented that he felt the language would then be too limited. Director Wolff withdrew the amendment.

Page 11, line 41 - This line begins the amendment Director Wolff feels would allow for restitution of victims and that possibly the wording needs clarification of "To pay either in full or ratably the offender's obligation which has been acknowledged by him in writing or which has been reduced to judgement." Warden Wolff would like language added to provide for the possibility of restitution to the victim by the inmate who was sentenced for a crime against that person. He added that this could be as a condition of parole, but not as a condition of sentence; however, the restitution has to be done on a voluntary basis. According to Warden Wolff "restitution to a victim" laws in other states have been quite effective.

Chairman Schofield said that he would get an opinion on this matter from the Legislative Counsel

ACTION WAS THEN TAKEN BY THE COMMITTEE ON THE BILLS WHICH HAD BEEN DISCUSSED AT THE MEETING:

SB 94 Mr. Wahrenbrock asked if he could be heard on SB 94 before any action was taken by the committee. His request was granted.

SB 96 Senator Raggio moved DO PASS.
Seconded by Senator Blakemore.
Motion carried unanimously. (See Attachment 3)

SB 114 Senator Raggio moved DO PASS.
Seconded by Senator Hernstadt.
Motion carried unanimously. (See Attachment 4)

SB 116 Senators Raggio and Hernstadt will request the Legislative Counsel to make suggested amendment and the bill will be reconsidered at a later meeting.

SB 99 Senator Raggio moved the attached letter from the Department of Mental Health and Mental Retardation regarding SB 99 be made a part of the minutes. (See Attachment 5)
Seconded by Senator Blakemore.
Motion carried unanimously.

Senator Hernstadt moved DO PASS
Seconded by Senator Raggio
Motion carried unanimously. (See Attachment 6)

Chairman Schofield then announced that the following Senators would give an explanation of specified bills on the floor of the Senate:

M E M O

ATTACHMENT #2

TO: WARDEN WOLFF

FROM: MIKE MEDEMA

SUBJECT: SUGGESTED CHANGES SB 116 DATE: 1/25/77

The following are suggested changes for SB 116:

Page 9, Line 8 - after commissioners add "upon referral by the Director to the Board" - This allows lattitude to the Director.

Page 11, Line 41 - This line begins the amendment we feel allows for restitution of victims. You may feel the wording needs clarification.

Mike

MIKE

[redacted]

PRA084

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SENATE FINANCE COMMITTEE
MINUTES OF MEETING
FEBRUARY 28, 1977

The Meeting was called to order at 8:00 A. M.

Senator Floyd R. Lamb was in the chair.

PRESENT: Senator Floyd R. Lamb, Chairman
Senator James I. Gibson, Vice-Chairman
Senator Eugene V. Echols
Senator Norman D. Glaser
Senator Norman Ty Hilbrecht
Senator Thomas R. C. Wilson
Senator C. Clifton Young

OTHERS: Charles L. Wolff, Jr., Warden, Nevada State Prison
Michael L. Medema, Business Manager, Prison
Ronald W. Sparks, Chief Deputy, Fiscal Analyst
Howard Barrett, Budget Director
Judy Matteucci, Budget
Cy Ryan, UPI

Mr. Barrett explained that the prison budget is now broken down into 5 separate budgets. Senator Lamb asked the warden to speak. Mr. Wolff said he would just make a few introductory remarks and let Mr. Medama answer questions in detail as to the budgets.

Mr. Wolff said this is the budget which has been recommended by the Governor. It represents the needs of the system; it is austere in the effect that it contains the operating needs which are felt to be necessary for the system during the next two years. Mr. Medema gave each of the Senators a memo on the budget presentation.

Mr. Wolff explained that they were trying to provide additional facilities for proper housing for the inmates; develop and expand the work and training programs and, as much as possible, to bring back the work ethic into the institutional setting. They wanted to develop physical and administrative responsibilities and controls in all of the institutions incorporated under the present system and as much as possible to prepare the inmates for their return to society.

The budget represents 5 areas:

1. The Directors Office
2. Nevada State Prison
3. Northern Nevada Correctional Center
4. Nevada Womens Correctional Center
5. Southern Nevada Correctional Center

The overall budget is looking at an increase in the population within the prison system. That has occurred now and is greater than was initially anticipated. He referred to the breakdowns on page 2 of the memo giving statistics on this. The capital improvement program is also outlined in detail on page 2 of the memo.

Mr. Wolff stated that they wanted to involve themselves in projects that have meaningful results. Some of these projects are listed on page 3, and the details of the 5 budget areas are listed on pages 4 and 5. Mr. Wolff said he thought it best if Mr. Medema reviewed the budgets and answered any questions the Committee might have, unless they had questions they would like to direct to him.

OFFICE OF THE DIRECTOR - NEVADA PRISONS: Due to expanding areas of responsibilities, including widening geographic areas, it is recommended the Nevada State Prison's accounting maintenance be broken down by institution to provide closer control and supervision over each institution's budget.

NEVADA WOMEN'S CORRECTIONAL CENTER: Mr. Medema went over the budget and said there was not much for the ladies to do and there was no training being given them. This was the reason they wanted to hire two teachers, on a part time basis. One in the business type training and the other in the home economics field. He said they needed more staffing in the control center of the institution. Some women who live in the cottages work in state offices in town doing clerical work. In answer to a question, Mr. Wolff said that women were more responsive to instruction and change and they seemed to benefit more from a correctional experience than men do.

Senator Lamb asked if there was a trend to parole people to lessen the burden on the institutions. Mr. Wolff said he had not seen any indication of this.

Senator Young wondered what kind of capital improvement program had to be considered in the near future. Mr. Wolff said he could not even guess, they would have to look at it during this year and look at the situation a year from now. He cited legislation being introduced that he felt was significant that could have a specific impact on the prison population.

Senator Glaser asked how many were on death row. Mr. Wolff said three, but the law is in jeopardy so he did not feel there was anybody there right now. They would wait until the Attorney General's office said they were still on death row.

Senator Lamb directed the Committee's attention to S. B. 116. Mr. Wolff stated that the intent of the bill was to provide a more effective, organizational structure in the administration of the correctional system. It places increased emphasis on the integrated operation linked to a variety of classification requirements and programs and the need for a coherent and consistent administrative and legal frame work to cope with the demands that are placed upon the correctional institutions today. It brings into perspective some of the things recommended by the legislative audit and other things that are just good sound organizational steps to run a correctional system. There are four fundamental areas. The obligation to protect the public by providing institutional confinement and care and training. To provide persons in correctional institutions with adequate educational and vocational counseling and training in other services so they are prepared to be placed effectively back into the community and earn a livelihood. Upgrading of the correctional institution in services really deserves a priority consideration at the present time because of the fact of the population problems confronting prison authorities. And hopefully through good programming it will be possible to impact more of the youthful first offenders into preventing them from going into careers of crime. The correctional institutions services should be diversified and programmed to personnel, to facilitate individual custody care and training and to meet the needs of the major portion of the population. It also takes in some refinement of putting safe guards into the areas of accounting and fiscal control throughout the institutions and administrative offices. It consolidates a number of things.

Questions followed on the bill. Senators Hilbrecht and Wilson were concerned with some of the language in the bill. They recognized that it was not in the province of the budget area but they felt it should be reviewed by the Judiciary Committee. Senator Lamb said they could refer the bill to the Judiciary. Senator Young suggested that they read the bill in detail. Mr. Wolff said as he understood the bill, there were no substantial changes, it was just putting it all together; so in terms of fact there is now a Department of Prisons instead of the Nevada State Prison.

It refines the terminology and it sets up a couple of areas refining the department's accounting. It incorporates legislation introduced at the last Legislature. This was voluminous and it has been refined down. He said he felt it was a good bill and refines a lot of areas. It streamlines the Department in terms of being able to have a good fiscal approach to what needs to be done.

General questions on the bill followed.

S. B. 116: Establishes the Department of Prisons. Senator Young moved that the Committee refer the bill to the Judiciary; Senator Hilbrecht seconded and the motion passed.

OFFICE OF DIRECTOR - NEVADA PRISONS BUDGET: Senator Young moved the Committee approve the budget; Senator Wilson seconded and the motion passed.

NEVADA STATE PRISON BUDGET: Senator Wilson moved that this budget be approved; Senator Young seconded and the motion passed.

NORTHERN NEVADA CORRECTIONAL CENTER BUDGET: Senator Young moved the budget be approved and Senator Hilbrecht seconded. The motion passed.

SOUTHERN NEVADA CORRECTIONAL CENTER BUDGET: Senator Glaser moved that the budget be approved; Senator Hilbrecht seconded and the motion passed.

SOUTHERN NEVADA PRE-RELEASE CENTER BUDGET: Senator Hilbrecht moved the budget be approved; Senator Wilson seconded and the motion passed.

NEVADA WOMEN'S CORRECTIONAL CENTER BUDGET: Senator Glaser asked what the number of correctional officers requested in this budget was based on. Mr. Barrett said it was based on the ratio of 1.6 for staffing. Senator Glaser moved that the number of new correctional officers be reduced from 4 to 2. Senator Young seconded the amendment and the motion passed. Senator Glaser moved for approval of the budget as amended; Senator Echols seconded and the motion passed. Senator Lamb announced that the meeting scheduled for later in the day at 12:00 noon would have to be postponed until 1:00 P. M. Senators Young and Wilson said they would have to leave at 1:30 P. M. Senator Lamb said he thought they could finish the business in half an hour. Senator Lamb reminded the Committee that they were scheduled to go to Lahontan at 12:30 on Tuesday. He also announced that the Finance Committee would neet at 8:00 A. M. on Friday as there would be a quorum available. The meeting could be scheduled from 8:00 A. M. to 11:00 A. M.

The meeting adjourned at 10:00 A. M.

RESPECTFULLY SUBMITTED:

Muriel P. Mooney

MURIEL P. MOONEY, SECRETARY

APPROVED:

Floyd R. Lamb

FLOYD R. LAMB, CHAIRMAN

SENATE JUDICIARY COMMITTEE

MINUTES OF MEETING

MARCH 15, 1977

The meeting was called to order at 8:00 a.m. Senator Close was in the Chair.

PRESENT: Senator Close
Senator Bryan
Senator Dodge
Senator Foote
Senator Sheerin
Senator Gojack
Senator Ashworth

ABSENT:

SB 116 Establishes the Department of Prisons.

Eugene A. Coughlin, Training Officer, Nevada State Prison appeared at the request of A. A. Campos, Chief Parole and Probation Officer, in support of this measure.

Following a brief discussion, Senator Gojack requested that Mr. Couglin furnish the Committee with a copy of the memorandum submitted to the Human Resources and Facilities Committee which outlines in detail exactly what this bill accomplishes.

Mr. Coughlin will return with that information at a later date. No action was taken at this time.

SB 162 Revises law on compensation for victims of crime.

Maynard R. Yasmer, Chief of Staff Services, Rehabilitation Division of Human Resources testified in support of this bill. He stated that the Nevada Rehabilitation Division provides services to disabled persons towards the achievement of vocational goals. Victims of crime are only eligible for rehabilitation services under federal regulations if vocational goal objectives are possible or practicable. Their concern was for persons who did not fall in this category such as the very young, who cannot wait until they are in high school and be picked up under another federal program; the elderly; and the housewife who wishes to continue as a housewife. He also expressed concern over the inequities in services granted to the offender vs. the victim. He cited the Governor's proposed budget which grants over $30 million to services for the offende and practically nothing to their victims, as an example.

SENATE JUDICIARY COMMITTEE

MINUTES OF MEETING

MARCH 24, 1977

The meeting was called to order at 8:10 a.m. Senator Close was in the chair.

PRESENT: Senator Close
Senator Bryan
Senator Ashworth
Senator Dodge
Senator Foote
Senator Gojack
Senator Sheerin

ABSENT: None

AB 338 Permits dedicated school lands to be reconveyed without cost to dedicator.

Bob Price, Assemblyman District 17 stated that the reason for this bill came to light because of a parcel of 5 acres between his district and Mr. Demers district. In 1950, as part of what was then a requirement placed upon developments to dedicate certain property to schools. This 5 acre parcel had been dedicated to the school district when it was free of cost. Somehow, the property was sold to various people and at this point in time, there are 8 different lots with houses, trailers and some corrals. Somehow the dedication was made but never recorded. No one ever took deeds or so forth. In 1961 the law was changed so that when property was dedicated to a school they would actually pay for the property. All this happened before the Clark County school district was in existence, so it was whatever school board or district happened to be in that area at that time. These properties changed hands many times and all of a sudden a young fireman bought a piece of property, built himself a home and was going to sell it again. Lawyers Title happened to catch the cloud on the thing. When everyone got together with the school district, the school district did not want the property as it is too small for anything they want now. But under existing law the only way they can dispose of any property they don't want, is to put it up for auction. His understanding is that there are also some other parcels from the old days, 20 or so years ago, that might fall into the same thing. The people have been paying taxes on the property, as if it were their own and it has been sold and resold. This bill attempts to address the problem that where there are in fact some of these parcels of land around, the property can be conveyed back to the original owner or their successors. And this would only affect land in these situations before the 1961 law.

Senator Dodge stated he felt that they should reword the bill

SB 116 Establishes the Department of Prisons.

Warden Charles Wolff, Nevada State Prison stated that this bill provides an organization structure which is essential to effective administration of the correctional system. It is growing and going to continue to increase the functions and responsibilities. Basically this bill does this. It addresses the major issues of policy structure, accountability and operations of Nevada State Prisons and seeks to provide a more effective approach. He submitted in writing the objectives (see exhibit A). He also submitted a letter which designated certain changes that they wished made (see exhibit B).

AB 12 Mike Fondi, District Attorney for Carson City stated he was representing the Nevada District Attorneys Association. He feels generally this is a good piece of legislation, but there are a couple of things he would like to point out. First, it has been amended from the way it originally started out and they are satisfied with the punishment terms that appear in the amendment. It does give the trial court some discretion in sentencing when a firearm is used, to anywhere from life to a minimum of 5 years. The problem is where it states "any person who uses a firearm or deadly weapon in commission of a crime". It is a misdemeanor to discharge a firearm under certain sections of our law and this would make this person subject to a possible penalty of 5 years in prison. He feels that the term crime should be changed to felony. Also under this bill you could end up with a lessor sentence. For instance a person who commits a burglary can receive a punishment that is not less than 1 or more than 10 years; that person possess a firearm and maybe takes a shot at someone at the same time; that person could be punished for an additional 10 years; and would be required to be punished by an additional 10 years as the law is presently written. This amendment would provide some discretion, which would permit the trial court under the circumstances that are before him to provide for a penalty of 5 years or anything in between. The other point he wanted to bring out is that there is another bill AB 381, that provides for a penalty for possession. It simply added the word in there "any person who possess or uses a firearm or other deadly weapon in commission of a crime".

Senator Bryan stated that he had a bill that made it mandatory rather than discretionary. He created a new classification of robbery. The category of armed robbery, and for that crime there would be a mandatory prison term. All other robberies would be robbery in the second degree.

Mr. Fondi stated that Larry Hicks had indicated a problem that he had experienced in his jurisdiction. Some people were caught in the process of committing a burglary, they were all armed, but the way they were swooped down upon they didn't have an opportunity to use the weapons that they had

arm of the justice court. Another concern is that historically great responsibilities have been placed upon the sheriff or his deputies or police officers and they have properly selected and trained for their responsibility and there are specific instances throughout the state where deputy constables have been hired and there is no regard as to what their background, or training is or what their capabilities are. Additionally in trying to poll some of the sheriffs throughout the state we find in some instances, particularly in rural areas the responsibility of the constable has been designated ex-officio to the sheriff of the county and he serves the process.

Senator Schofield stated this was requested by some of his constituants. They wanted to include their deputies as peace officer. The constable that requested this has shown a great deal of growth and development. He has put them in uniform and he has cars. He has shown him where they can save a lot of money by going out and serving these subpeonas on a commission basis, and it appeared he was doing some good things. Also, he has been requiring them to go to the police academy and the FBI academy and take training.

Senator Sheerin stated that there is a statutory schedule for the deputy constables to serve subpeonas, it couldn't be on a commission basis.

Senator Close stated that this bill refered to all constables not just the area he was interested in, and that was their concern.

Senator Schofield stated that he had also spoken to the Douglas County Constable, and that they were trying to do the same thing in upgrading their area.

Senator Bryan moved indefinite postponement.
Seconded by Senator Foote.
Motion carried unanimously.

SB 116 Establishes the Department of Prisons.

Senator Close stated that he had some correspondence from Warden Wolff and Patrick Mullen which the Committee has, see exhibits A and B.

After some discussion the Committee decided to take out section 64.5 and go with the amendments.

Senator Foote moved amend and do pass.
Seconded by Senator Ashworth.
Motion carried unanimously.

MINUTES OF THE NEVADA STATE LEGISLATURE

SIXTY-SECOND Session

Senate Committee on JUDICIARY

Date: February 15, 1983

Page: One (1)

The Senate Committee on Judiciary was called to order by Chairman, Senator Thomas R.C. Wilson, at 9:00 a.m., Tuesday, February 15, 1983, in Room 213 of the Legislative Building, Carson City, Nevada. Exhibit A is a copy of the Agenda; Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Thomas R.C. Wilson, Chairman
Senator Helen A. Foley, Vice Chairman
Senator Sue Wagner
Senator William H. Hernstadt
Senator Thomas J. Hickey
Senator James H. Bilbray
Senator Bob Ryan

STAFF MEMBERS PRESENT:

Marilyn Hofmann, Committee Secretary

SENATE BILL 117

The first order of business was the hearing regarding Senate Bill 117, an act relating to prisons, and allows employees of the Department of Prisons to intercept telephone calls of offenders. The first to testify was George Tackett, Government Relations Manager for Nevada Bell. Nevada Bell takes no position in support or opposition on this bill, but they do have a concern that the interception of telephone calls may require a connection to Nevada Bell facilities, and in that case, they would like a hold harmless clause included in the legislation to avoid any legal problems. He stated that Nevada Bell would no longer be providing the on-premises equipment for prison telephones, but will be for public telephones. He asked to provide an amendment with a hold harmless clause.

Reno Police Department, and if liquor licenses were not allowed within 1/2 mile, it would involve the downtown area. She suggested an amendment which says, "...prisons or correctional facilities which fall within the jurisdiction of the State of Nevada.

Ernie Ashelman, appearing on behalf of Peter Simon Enterprises, which owns Pop's Oasis, near Jean, Nevada, testified that when grandfather language is used, that it be stated as: "This section must not apply to any existing establishment." [Rather than using the word "license"]. He stated that the facility is within 1/2 mile "as the crow flies", but outside the 1/2 mile using the road.

There being no further testimony on Senate Bill 116, the hearing was closed to that matter.

SENATE BILL 118

Senate Bill 118 relates to prisons, changing the designation of certain facilities and officers of department of prisons. Pete Demosthenes stated that the department envisions this bill as housekeeping changes, in terms of designations and definitions. They have asked that a distinction be made between institutions and facilities, with institutions defined as "prisons designed to house 125 or more offenders within a secure perimeter", and facilities to become the legal definition for community correction centers, honor camps, or other places of confinement other than institutions. The have asked for certain other designations and definitions. Their primary purpose for using the language "125 or more", is to include the Women's Prison as one of the five major institutions. The department also wants to make a change the classification of the Assistant Director to state "..except for purposes of retention." The Chairman pointed out that certain of the provisions of this bill have not been discussed with the Prison Board. The Committee asked that they discuss the provisions of this bill with Mr. Houseright, the Director of the Dept. of Prisons. Senator Wagner stated that the Prison Board should have input on this bill. Mr. Demosthenes agreed that they should have touched base with the Prison Board before testifying on this bill. The Chairman said that there are important issues regarding personnel which should be more fully explained by Mr. Houseright. It was pointed out that at the present time deputy directors and wardens are unclassified, and below

wardens are classified. What this bill does is make them classified. Mr. Sumner disagreed and stated that the Assistant Director is classified, and that they are asking that it be classified except for purposes of retention. He said the wardens are classified except for purposes of retention. Mr. Demosthenes emphasized that this package of prison related bills has been discussed with Mr. Haye of the Governor's office, and he does not want to leave the Committee with the impression that they have not been discussed with the Governor's staff. He does not know if there had been dialogue regarding the section in question. Senator Wagner said that she believes that basically this bill is an attempt to reflect the philosophy of the new Director of the Department of Prisons, and Mr. Sumner agreed. Mr. Demosthenes next pointed out §18 of the bill, relating to a requirement that counties reimburse the department for the safekeeping of pre-trial detainees [in the event they become unmanageable to the county.]. The Department of Prisons would like to change the language to reflect that the Director "may" require the counties to reimburse the department. He said that in some cases it is not appropriate to bill the counties, and the Department would like to have that discretion.

The Chairman directed that the above prison bills be rebooked for Friday, February 18, 1983, and that Mr. Housewright be present.

There being no further business regarding Senate Bill 118, the Committee moved to dicussion of the bills heard today.

Senator Hickey moved do pass Senate Bill 113, and Senator Bilbray seconded the motion.

The motion carried unanimously.

Senator Hickey moved to amend and do pass Senate Bill 116, and Senator Bilbray seconded the motion.

It was discussed that the amendment would involve the grandfather clause as previously determined. This amendment would not apply to restitution centers. The bill would only apply to major facilities, not to honor camps and restitution centers. [The Committee did not specifically refer to the amendment suggested by Barbara Althouse].

There being no further business before the Committee, the hearing was adjourned at 10:35 a.m.

Respectfully submitted,

Marilyn Hofmann

Marilyn Hofmann, Secretary

APPROVED:

Senator Thomas R.C. Wilson,
Chairman

MEMBERS PRESENT: Chairman Jan Stewart
Mr. Gene Collins
Mr. Robert Fay
Mrs. Jane Ham
Mr. David Humke
Mr. Mike Malone
Mr. Leonard Nevin
Mr. James Stone
Mrs. Courtenay Swain

MEMBERS ABSENT: Mrs. Shelley Berkley (EXCUSED)
Mr. Byron Bilyeu (EXCUSED)

GUESTS PRESENT: See Guest List attached as EXHIBIT A.

The meeting was called to order at 8:00 AM, and Chairman Stewart referred Committee to SB 114.

SB 114: Provides for payment by prisoners for certain damages and provides immunity from suit for damages to their personal property. (BDR 16-141)

Mr. Vernon Housewright, Director of the Department of Prisons, introduced the bill. He said this bill broadens the issues for deduction by the Department, from in-mate trust accounts, to repay costs arising from inmates' misconduct. The present law concerns only damage or destruction to state property. Paragraphs 2, 3, and 4 add certain medical costs, costs related to escapes, and costs related to riots and disturbances. In response to Mr. Nevin, Director Houswright said that if they do not have the money, they would propably never get it. He said they have a way now, to take good time away from them to discipline them for certain kinds of acts, they can try them in court for certain felonys. They are looking for ways to keep people from mutilating themselves, and in escapes, the cost is tremendous for overtime for guards, etc. If they have the money on the books, or if they ever get the money, this law would enable the prisons to charge and take it - if they are indigent, then it will be handled through disciplinary procedures. Mr. Fay asked what happens to money if the prisoner successfully escapes. Director Housewright said they can't take their money with them; and after a period of time the money can charged and taken. That type of problem has never come up.

Mr. Collins asked why this money couldn't be used to re-train the prisoners. Director Housewright said they have a program now. At present they are working with the Carson City School District to set up some sort of program, and Western Nevada Community College is also helping. In Clark County is already involved in helping them set-up vocational training for the prisoners. With this bill, the funds would revert to the General Fund, and would help off-set some of the cost for the programming they have already requested.

There being no further questions or testimony, Chairman Stewart directed the Committee to SB 116.

Mr. Collins inquired about the impact of first-time offenders if the DUI bill passes. Chairman Stewart explained that the impact would be on local jails, not state prisons. An explanation of the difference was made.

There being no further questions on SB 116, Chairman Stewart directed the Committee to SB 118.

SB 118: Changes designation of certain facilities and officers of department of prisons. (BDR 16-140)

Director Housewright said that this bill had been amended to allow the Assistant Directors or Wardens to be designated "acting director" in the event of the Director being out of state. He said they have one Assistant Director, Perry Como, the Assistant Director of Management Services, and then wardens of each of the facilities. This would allow the department the discretion to absorb cost related to the safe keeping of county pre-trial detainees. Many times, if a local jail is housing a dangerous accused person, and they don't feel their facility is secure enough, the state prison will house him until the trial. This bill allows them to help out the locals without charging them, and at the same time, they are able to call on those sherrifs for help in times of emergency and escape. Sometimes, they house their prisoners in local jails, and they are never charged by the locals. The bill still allows the option to charge if necessary. Director Housewright said that they are changing "superintendent" to "warden" since there can be many different types of superintendents, but a warden always heads up a prison. Chairman Stewart suggested running through the bill section by section.

Sections 1, 2, 3, and 4 are the definitions. Institution appears in Section 6. Section 9 gives the authority to appoint assistant directors instead of deputy directors. Director Housewright said that the reason for this was that he does not have a deputy director and the position has never been funded. Mr. Malone pointed out that on line 35, page 2, the bill reads "shall", which means there is no option left for the Director, he must appoint an assistant. There was a brief discussion, also, about line 37, and the mandating of this employee as "classified". Mr. Demothenes explained that his role was that of a "money" or management man. Director Housewright said that he would appoint a warden to act in his stead if he were gone, not a management person. Director Housewright explained that these positions had all the benefits of a classified position, except they could be terminated; they are deemed classified for all the other benefits.

Section 10 changes superintendent to the word "warden".

Section 11 is the power of the peace officers, which is not changing other than the word "institution" to department.

Section 12 (there was quiet reading of the bill).

Section 27, subsection 1, page 8, was clarified. Director Housewright said that the department is budgeted in operating expenses for "gate money". Those monies used to be paid out of the general fund. Now it is a budgeted line item.

"Gate money" is given if a prisoner, upon release, is indigent. If he is traveling out of state, then a bus ticket will be purchased for him, in addition to the money. It is discretionary, but is not an additional charge against the general fund.

Chairman Stewart then inquired about Section 18. This deals with the ability of the prison to exchange prisoners. This change deals with the not-charging of local jails and law enforcement previously discussed.

Mr. Malone inquired about page 2, line 26, of Section 8, "inmates" is changed to "offender". Director Housewright said that people in mental hospitals are also called inmates. Prisoner or convict would do as well he said. The change was made for consistency sake, by the LCB.

Director Housewright said that he had been informed of a minor problem with the bill, and asked the advice of the Committee. On page 1, Section 3, line 7, Manager mean the administrative officer in charge of facility. Warden means the administrative officer in charge of an institution. The Stewart facilty may become available to the State for use which will house 200. The Director's question was if he would have to put a warden in bharge of the facility, because of this bill. He would like to put someone at the lieutenant-level in charge. He cannot get another warden slot appropriated, but he does have a warden at the Lemmons unit with 165 prisoners, could he transfer him over. This will be a minimum security dormitory with individual rooms.

Chairman Stewart said there is no conflict with this language. That there is no limitation on facility, and a manager can be put in charge. For it to be an institution, it must have at least 125 and have the other requirements. Chairman Stewart said to be sure, he would go with Director Housewright to Mr. Daykin's office and discuss it following the meeting. In response to Mr. Fay, Director Housewright said that there is a difference in the pay between a manager and a warden, with the warden making more.

There being no further testimony or questions, Chairman Stewart closed the hearing and called for action.

SB 114: Provides for payment by prisoners for certain damages and provides immunity from suit for damages to their personal property. (BDR 16-141)

Mr. Humke moved DO PASS, Mr. Stone seconded and the motion passed unanimously. Mr. Collins will handle the bill on the Floor.

SB 116: Clarifies prohibiiton against sale of certain intoxicating beverages near prisons. (BDR 16-156)

Mr. Nevin moved AMEND AND DO PASS, AMEND BY SUBSTITUTING INSTITUTION IN PLACE OF PRISON, AND SUBSTITUTE ALCOHOLIC BEVERAGES IN PLACE OF "SPIRITUOUS OR MALT LIQUORS, WINE OR CIDER", Mr. Humke seconded, and the motion passed unanimously.

Mr. Fay will handle SB 116 on the Floor.

SB 118: Changes designation of certain facilities and officers of department of prisons. (BDR 16-140)

Mr. Stone moved AMEND AND DO PASS, Mr. Malone seconded, and the motion passed unanimously. Mr. Humke will handle the bill on the Floor.

There being no further business, the meeting was adjourned at 8:55 AM.

Respectfully submitted,

Andrea Engleman

Andrea Engleman
Secretary

STATE OF NEVADA
DEPARTMENT OF CORRECTIONS

STATISTICAL ABSTRACT

FISCAL YEAR 2010
ISSUE

GREGORY COX
DIRECTOR

Exhibit #1
Locations and History

Full Name	Abbrev	County	Originally Opened As			Close Date	Currently Operated As			Notes
			Open Date	Gender	Security		Re-Open	Gender	Current Security	
Carlin Conservation Camp	CCC	Elko	1988	Male	Minimum			Male	Minimum	
Casa Grande Transitional Housing	CGTH	Clark	2005	Male and Female	Minimum			Co-ed	Community Trustee	
Ely Conservation Camp	ECC	White Pine	1984	Male	Minimum			Male	Minimum	
Ely State Prison	ESP	White Pine	1988	Male	Maxium			Male	Maximum	Phase II opened in 1989.
Humboldt Conservation Camp	HCC	Humboldt	1986	Male	Minimum			Male	Minimum	
High Desert State Prison	HDSP	Clark	2000	Male	Medium			Male	Max, Close, & Medium	
Three Lakes Valley Conservation Center	TLVCC	Clark	1982	Male	Minimum			Male	Minimum	Formerly named Indian Springs Conservation Center.
Jean Conservation Camp	JCC	Clark	1987	Male	Minimum			Female	Minimum	
Lovelock Correctional Center	LCC	Pershing	1995	Male	Medium			Male	Multi Custody	
Northern Nevada Correctional Center	NNCC	Carson	1961	Male	Minimum				Medium	Converted to medium custody in late 1960's.
Northern Nevada Restitution Center	NNRC	Washoe	1979	Male	Minimum	1993	1993	Male	Minimum	Originally opened in 10/1979 as RCF; in 1988 housed male inmates; in 1/1989, housed male and female inmates; in 7/1989, housed all female inmates; in 7/1993, RCF closed and re-opened as NNRC in 4/1993 housing only male inmates.
Nevada Women's Correctional Center	NWCC	Carson	1964	Female		1997				Name changed to WSCC (Warm Springs Correctional Center) in 1997.
Nevada State Prison	NSP	Carson	1862	Both	M			Male	Close & Medium	Housed male and female inmates until 1965 when NWCC (currently WSCC) opened; in 1989 when ESP opened, this institution was converted to medium security.

Full Name	Abbrev	County	Originally Opened As			Close Date	Currently Operated As			Notes
			Open Date	Gender	Security		Re-Open	Gender	Current Security	
Stewart Conservation Camp	SCC	Carson	1995	Male	Minimum			Male	Minimum	Was originally called Carson Conservation Camp.
Southern Desert Correctional Center	SDCC	Clark	1982	Male	Medium			Male	Close & Medium	
Southern Nevada Correctional Center	SNCC	Clark	1978	Male	Medium	2000 & 2008	7/06 & closed again 07/08.	Male & Female	Medium	Originally designed to housed 1st timers under age 25 but never used as such. Re-opened 07/06 as youth facility for ages 22 and under and closed again in 07/08 due to budget cuts.
Southern Nevada Pre-Release Center	SNPC		1976			1978				
Southern Nevada Restitution Center	SNRC	Clark	1980			2001				
Florence McClure Women's Correctional Center	FMWCC	Clark	1997	Female	Multi				Close & Medium	Before 10/2004, institution was contracted through CCA, in 2007 the name was changed from Southern Nevada Women's Correctional Center to Florence McClure.
Silver Springs Conservation Camp	SSCC	Lyon	1991	Female	Minimum	2008				This site and the population was redirected to other geographical locations due to budget cuts.
Tonopah Conservation Camp	TCC	Nye	1991	Male	Minimum			Male	Minimum	
Wells Conservation Camp	WCC	Elko	1984	Male	Minimum			Male	Minimum	
Warm Springs Correctional Center	WSCC	Carson	1961	Female	Medium		1997	Male	Medium	Originally called NWCC (Nevada Women's Correctional Center) and housed female inmates until 1997.

Updated: January 23, 2014

INSTITUTION ADDRESS

Florence McClure Women's Correctional Center

4370 Smiley Road
Las Vegas, Nevada 89115

(702) 668-7200

DIRECTIONS TO THE INSTITUTION

If coming into Vegas from I-15, take the Lamb Avenue exit. Go right and Smiley Road will be the 1st left on Lamb. Take the 1st left onto to the institutions driveway (approximately ¼ of a mile from Lamb Avenue).

INTRODUCTION

The purpose of this handbook is to inform you of general information, institutional rules and regulations, programs and services available to you.

This book will help you understand what to expect and what is expected of you while in custody. It is impossible to cover every situation and occasionally changes are necessary. Any policy or rule change which may effect you, will be posted on the bulletin board of your assigned living area and retained in the Institutional Procedures (IP), located in the Law Library.

If you have any questions concerning any matter, you may ask a staff member in your assigned housing area or send a "KITE" to the appropriate staff member, including the Warden.

INSTITUTIONAL INFORMATION

Inmate's Responsibility

It is your responsibility to know the rules, regulations and procedures of this institution as well as other directives, policies and information published and circulated to the General Population, and to abide by them. By knowing the rules and expectations, you can ensure your time here will be positive and you can benefit from participating in the programs and services available to you.

A copy of the Nevada Department of Corrections "Inmate Disciplinary Process" is provided to you during intake.

It is your responsibility to read and understand the disciplinary procedures. You are responsible for this handbook and will be required to pay for the booklet if it is lost, stolen or destroyed.

This booklet gives notice of unacceptable behavior so that involvement in misconduct can be prevented.

Management Teams

FMWCC is organized into a Unit Management system. Each unit is staffed by a Unit Team, directly responsible for the persons living in each unit. There is a Unit Officer(s), Caseworker, and Co-Managers.

To request a meeting with the Management Team, you should submit a kite to the Unit Officer requesting a meeting and stating the purpose of the meeting – the concern/issue/personal request. Also state if it is a routine request or if it is a request that requires immediate attention. After a meeting has been scheduled, you will be informed of the time and place.

The chain of command is used to address immediate issue as they arise. The current chain of command is as follows. Unit Officer, Unit Caseworker, Shift Supervisor, Associate Warden, and the Warden.

Contraband.

As defined in AR 711, contraband is:

Any item or article not authorized by department regulations, or in excess of the maximum quantity permitted, or which is received or obtained from an unauthorized source.

Any item or article of property that poses a threat to the security of the institution and ordinarily never approved for possession of admission into the institution, and any item or article which may be or has been authorized for possession at one time, but is now prohibited due to health, fire or safety concerns.

Any authorized property that has been altered.

"Contraband" may result in disciplinary sanctions as well as confiscation of the property. Confiscated items will be donated, destroyed, or mailed out, within ten (10), days at your expense. It is your responsibility to provide addresses for mailing these items before the expiration of the 10 day period.

Emergencies/Evacuations

If a fire or other emergency in the living area should occur, notify the Correctional Officer assigned to your housing area immediately. Follow the Officer's instructions quickly and calmly.

There may be quarterly fire evacuations and drills. You are to do as instructed during an emergency/drill to ensure that safety of everyone. Fire evacuation routes are posted in the living areas. Take the time to read and study the procedures.

No combustible materials will be stored in the housing unit. Piles of trash or other debris, combustible material, items hanging from fixtures or receptacles or other hazards, can not and will not be tolerated.

Grievances

Inmates may not grieve policies and procedures, only the application thereof. A grievance form may be obtained from the Unit Control Center at any time. You have ten (10) days from the alleged incident to file a formal grievance. You will have six (6), calendar months for personal property damages or loss, personal injury, medical claims, or any other claims.

Grievances must be submitted to the Grievance Coordinator. You will receive a response to your grievance twenty-five (25) calendar days after the date of receipt. You have five (5) calendar days to appeal the response to the next level. Please keep in mind, that before you filing a formal grievance, every effort should be made to resolve the issue informally. You must specify how and when this effort was made.

Smoking/Tobacco Products

Smoking or possessing tobacco products is strictly prohibited on state property. Failure to comply with this rule will result in disciplinary actions. ALL NDOC FACILITIES HAVE BEEN SMOKE FREE EFFECTIVE JULY 1, 2009.

Security/Procedures – Counts

Counts are taken in each POD daily. All inmates in the POD are required to report for counts at the posted times. Counts are the most important events in the institution. If you are not in your cell or on your bunk for dorms and multiple man housing cells at count time, make sure you notify your work area supervisor to place you on "out-count." It is your responsibility to be in your cell at count time. An inmate being out of place during count will not be tolerated.

Scheduled count times are as follows:

1:00 am	3:00 am	5:15 am	11:15 am	3:30 pm	**8:15 pm**	11:00 pm

The **8:15 pm** count is a health and wellness **'standing'** count. You must stand by your bunk unless you have a medical excuse or you are on an authorized "out-count" area.

ORIENTATION INFORMATION

Intake

You will be assigned to a restricted area during the Intake period. You will receive a medical evaluation, attend orientation and be interviewed by various staff members during this period.

Upon arrival into the facility, information pertaining to your history, which is received from the courts, Parole and Probation, and other official agencies, as well as information you provide during the intake process, will be utilized to assign you to the appropriate classification category (Maximum, Close, Medium, or Minimum Custody).

- Maximum, Close, and Medium Custody will remain at FMWCC.
- Minimum Custody will be re-classified to Jean Conservation Camp (JCC) or Casa Grande Transitional Housing (CGTH).

Classification

During your initial classification, you will have the opportunity to discuss your plans with the Management Team. The Management Team will recommend your custody assignments as well as classify you into institutional programs, such as education, placement into the Therapeutic Community (STARS), and mental health classes. Work assignments are selected by a Full Classification Committee (FCC).

Work Assignment

At FMWCC, you are required to work or program during your incarceration. If you do not work or program, you will not receive your monthly Work Good Time (WGT), credits. These credits amount to ten (10) credits per month if you are medium custody, or twenty (20) credits per month if you are minimum custody. If you work or program on a part-time basis your credits are prorated.

Work assignments are by application only. Open work positions are posted on bulletin boards by the caseworker's office and applications can be obtained from the unit officers or caseworker. Working within the institution is a 'Privilege', not a 'Right.' Only your Management Team can assign you to, or move you from the work detail. You must be at your work assignment on the day and times designated by your work supervisor. If you do not appear as required, you may receive a 'write-up' or disciplinary report.

****You must have a GED or High School Diploma to obtain work.*

You can change jobs by receiving permission from your current supervisor and have the proposed supervisor agree to accept you on the new job. However, you must go through the application process and FCC before you can start in your new position.

There is no overtime pay. Normally, work hours vary from 1-7 hours per day depending on the job (this does not include Prison Industries).

If you quit, or are fired from your job, you will not be eligible for another position for sixty (60) days. You may also receive a Notice of Charges for quitting or getting fired from your position for disciplinary reasons.

Social Security Cards and Birth Certificates

If you arrive at the institution with your original Birth Certificate or Social Security Card it will be documented and placed in you institutional file and given back to you upon your release. You may request original documents or have original birth certificates sent to the institution addressed to the following individual:

FMWCC
ATTN: Re-Entry Ms. T. Burton
4370 Smiley Road
Las Vegas, Nevada 89115

***Only **ORINGINAL** Birth Certificates will be accepted from family members. Social Security Cards will have to be sent in by the Social Security office.

NEVADA DEPARTMENT OF CORRECTIONS
ADMINISTRATIVE REGULATION
504

RECEPTION AND INITIAL CLASSIFICATION PROCESS

Supersedes: AR 504 (12/17/12); and AR 504 (Temporary, 01/12/15)
Effective Date: 05/19/15

AUTHORITY: NRS 209.131; NRS 209.261; NRS 209.341; NRS 209.351

RESPONSIBILITY

1. The Offender Management Administrator (OMA) is responsible to establish procedures for processing new and returning inmates.

2. An Associate Warden at Intake/Reception Centers is responsible to ensure compliance with this regulation.

504.01 GENERAL PROCEDURES

1. All incoming inmates will complete a thorough screening and assessment at admission and receive a thorough orientation of the institution's procedures, rules, programs and services.

2. The goal of the reception center and the initial classification process will be to:

A. Ensure that the inmate is properly committed to the Department with appropriate commitment documents;

B. Ensure that identification procedures are completed, to include photographs, fingerprints, and identifying marks;

C. Provide a quarantine period to permit medical/dental/psychological examinations and recommendations for necessary treatment;

D. Introduce inmates through orientation programs to policies, rules, regulations, and to the type of programs that are available;

E. Assign staff of various disciplines to work with inmates in needs assessments and developing future programs through the use of pre-commitment information,

psychological tests, and educational and vocational testing and risk assessment instruments;

F. Complete the reception process within three (3) weeks after the inmate is received, provided that medical and other requirements do not prevent release from the reception unit;

G. Ensure public protection through assignment of proper housing and custody designation;

H. Ensure custody designations are assigned at the lowest possible level consistent with the safety and security considerations of the Department; and

I. Maintain a classification process that is consistent with individual dignity and adheres to the principle of fairness.

3. The custody level for intake inmates will be unassigned pending completion of the reception process.

4. All male inmates from the ages of 18 to 25 will be provided documents needed to register for the draft if they haven't already done so.

504.02 RECEPTION POINT FOR NEW COMMITMENTS AND RETURNING INMATES

1. All new commitments must complete the reception process.

A. NDOC does not detain inmates solely for civil immigration purposes.

2. New commitments will be transported to an intake center based on the following regional formula:

A. Females

(1) Female inmates will be transported to Florence McClure Women's Correctional Center (FMWCC).

(2) Female inmates may be temporarily housed at Northern Nevada Correctional Center (NNCC) until transported to FMWCC.

B. Males will be transported to either Northern Nevada Correctional Center (NNCC) or High Desert State Prison (HDSP) depending on department transportation schedules, but generally:

(1) NNCC will intake inmates from the following counties:

Mineral, Lyon, Douglas, Carson, Washoe, Storey, Churchill, Pershing, Humboldt, Lander, Elko, and Eureka counties.

(2) HDSP will intake inmates from the following counties:

Clark, Esmeralda, Nye, Lincoln, and White Pine counties.

3. Returning inmates.

A. Returning inmates who have not been out of custody, may be returned to the institution from where they departed from, unless their absence exceeds 90 days.

(1) If the absence exceeds 90 days the inmate will be returned to the closest Department intake center for processing.

B. All returning inmates who are not processed through an intake center will be held in a segregated environment until properly classified.

C. Laboratory/blood tests are required for returning inmates who have been out of custody including, but not limited to, those assigned to Northern Nevada Restitution Center (NNRC) and Casa Grande Transitional Housing Center (CGTH).

(1) Returning inmates who have been out of custody will be treated as new commitments and will be processed through an intake center.

D. The Deputy Director/Warden will determine where returning escapees will be placed. Generally they will be returned, quarantined for medical testing, and processed through an intake center.

(1) The only exception to this will be for the extremely dangerous inmate for whom the intake unit provides too little security. These inmates will go directly to HDSP or Ely State Prison (ESP) for quarantine, processing, and classification.

(2) All female inmates returned from escape status will go to FMWCC.

4. Safe Keepers

A. Under limited circumstances county Safe Keepers may be approved (for temporary housing) by the OMA.

B. This approval must be obtained in advance and during normal working hours.

(1) Emergency approval may be granted by the highest ranking supervisor on duty after hours but only in cases where the request comes from a rural jail and where the inmate's behavior is seriously disruptive. Telephone approval must be

received from the OMA or Deputy Director. This action will be documented in NOTIS.

C. Safe Keepers will be required to complete an abbreviated intake process and will be housed in an intake center initially unless otherwise approved by OMA/Deputy Director.

D. The specific intake center where the Safe Keeper will be housed is dependant on the nature of the jail request (i.e. a medical case will be housed at NNCC). Direction will be provided by the OMA/Deputy Director.

5. Reception hours.

A. New commitments should be received between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday. Exceptions to this policy should be coordinated, in advance, by the OMA during normal working hours or by the highest ranking supervisor on duty, after hours.

B. Returning inmates will be received at anytime of day.

6. Required documentation

A. New commitments

(1) New Commitments must be accompanied by a certified copy of the Judgment of Conviction reflecting the judgment of imprisonment.

(2) Probation violators will be accompanied by a certified copy of the Order Revoking Probation and the original certified copy of the Judgment of Conviction.

B. Parole violators

(1) Parole violators must be accompanied by a Retake Warrant and either of the following Parole and Probation forms:

(a) Notice of Preliminary Inquiry Hearing; or

(b) Prior Notice of Charges and Receipt for documents.

C. Safe Keepers

(1) Verbal or written approval by the OMA/designee.

(2) The counties requesting safe keeping will forward a letter of request to the Offender Management Division (OMD).

(3) If verbal authorization is given, the written request will be submitted as soon as practical.

7. As documentation that accompanies new commitments is often non-standard and complex, institutions with intake units will develop operational procedures.

A. These operational procedures will be based on specific information provided by OMD.

8. It is the responsibility of the intake caseworker to ensure the proper commitment type is entered in NOTIS.

504.03 INITIAL CLASSIFICATION SUMMARY

1. The reception and initial classification process will be directed toward the evaluation and the entering of staff's findings and research in the Demographic & Descriptors, Legal Cases, and Integrated Case Management screens of Nevada Offender Tracking Information System (NOTIS) on all new and returning inmates.

2. This report will become a permanent part of the inmate's record and contain, but should not be limited to, relevant information required by statute.

A. The Department will obtain and maintain records of all offenders as listed below:

(1) The name, date of birth, race, sex, height, weight, complexion, color of eyes and hair, peculiarities of build or features;

(2) Place of birth (state, county or city, or country, province or city) and country of citizenship;

(3) Occupation, and whether the offender can read and write; and

(4) Date of sentence, name of judge passing sentence, county sentenced, the crime charged, date of incarceration, and the term of imprisonment.

B. Other pertinent information to be included will be:

(1) Information regarding offense;

(2) Inmate's offense motivation;

(3) Accounts of the legal aspects of the case, including statements or information from probation and parole officers, the courts or other law enforcement agencies;

(4) A summary of the inmate's prior criminal history;

(5) Educational achievement and intake testing scores;

(6) Medical/psychological/dental findings and treatment needs;

(7) Escape records;

(8) History of drug and/or drug abuse; and

(9) Security Threat Group documentation.

3. All applicable information will be entered into the NOTIS by the intake caseworker and become part of the automated Initial Classification Summary Sheet and initial Objective Classification Instrument used to make initial classification recommendations.

504.04 INITIAL DESIGNATION

1. Retention of custody at a higher level than the scoring guideline may be appropriate based upon case factors.

2. The reasons for any exception to the objective classification instrument score will be documented in the classification instrument narrative and in the classification case note of NOTIS.

3. Classification committees will be guided by the considerations when establishing levels of custody. They are:

A. Institutional adjustment;

(1) Relationship with staff.

(2) Disciplinary record.

(3) Violence while incarcerated.

(4) Escape proneness.

B. Nature of offense;

(1) Notoriety of offense.

(2) Severity of violence involved in offense.

(3) Psychopathology versus environmental anti-social behavior.

(4) Attitudes toward offense and authority.

C. Criminal history;

(1) Extent of prior arrest record.

(2) Levels of violence in prior arrest record.

(3) Pattern of increasing/decreasing violence.

(4) Prior incarcerations.

(5) History of escapes/absconding.

(6) Holds/detainers.

D. Total length of sentence;

(1) Time served versus time remaining.

E. Program consideration;

(1) Nature of work assignment.

(2) Release orientation versus institutional orientation.

(3) Mental Health consideration.

(4) Family relationships.

(5) Age and/or vulnerabilities.

4. Returning inmates from escape will be evaluated based on the nature and severity of the escape and from what custody level.

A. Male inmates representing the highest risk to the community and therefore the highest security considerations of the Department will be designated to ESP regardless of other case factors.

5. Staff judgment remains a key element in all classification decisions.

504.05 INITIAL CLASSIFICATION COMMITTEE

1. The Initial Classification Committee will be minimally comprised of the following, to include:

A. Warden/designee;

B. Reception unit caseworker; and

C. Any other appropriate staff as assigned by the Warden.

2. To the extent practicable, and upon completion of the evaluation and initial summary report, inmates will be scheduled for a hearing before the Initial Classification Committee within three (3) weeks of their reception.

3. The Initial Classification Committee, with the participation of the inmate, will recommend an appropriate level of custody

4. When making a recommendation, the Initial Classification Committee will be guided by, but not limited to, the following factors and considerations:

A. Information contained in the Initial Classification Summary report;

B. Recommendation of the sentencing court;

C. Initial Designation Instrument risk factor score;

D. Staff's evaluation;

E. The inmate's custody needs;

F. Needs assessment evaluation regarding programs and their availability within specific facilities;

G. The possibility and desirability of the inmate's reintegration into the community near the location of the facility;

H. The inmate's expressed interest and preference;

I. History of violence or escape;

J. Mental health problems, past or present;

K. Prior criminal history;

L. The availability of bed and program space at the facility deemed most suitable for the inmate;

M. Protection needs;

N. Length of sentence; and

O. Committees assessment regarding the degree and level of custody required for public protection, safety of staff, safety of other inmates and the individual to be classified.

5. The Initial Classification Committee will also make a recommendation for facility of transfer, assignment, educational or vocational program, and give direction for any special services it deems necessary (i.e., medical and psychological).

6. The Initial Classification Committee, or a subsequent classification committee, may determine whether arrangements, as authorized by law, should be made to house an inmate within another jurisdiction in the following circumstances:

A. Following a psychological examination and concurrence with mental health staff, the committee deems that an inmate is mentally incapable of being supervised by the Department in accordance with the Department's Administrative Regulation 654 Involuntary Transfer of Inmates to Non-Prison Mental Health Facilities.

B. If it is determined that an inmate's safety is in jeopardy at any Nevada institution/facility, due to factors including, but not limited to, notoriety or prior law enforcement employment, Interstate Compact transfer may be recommended.

7. The decisions and recommendations of the Initial Classification Committee will be recorded and made a part of the permanent record of the inmate and used as a reference during subsequent classification hearings.

A. The recommendations will be entered in the NOTIS classification system in correspondence with the Initial Designation Instrument completion.

B. The Initial Designation Instrument will be maintained in NOTIS throughout the inmates incarceration. It may be updated if the inmate returns as a parole violator or returning inmate.

8. Copies of the Initial Classification Summary report will be maintained in the Department's Institutional File (I-File) and Central File (C-File) for the inmate.

504.06 INITIAL CLASSIFICATION APPROVAL

1. The recommendation made by the Initial Classification Committee will be reviewed and either approved or disapproved by staff in the Offender Management Division through NOTIS.

A. Classification of inmates 18 years and under will be reviewed by the OMA.

REFERENCES

ACA Standards 4-4285, 4-4286, 4-4287, 4-4288,4-4297, 4-4374; and 2012 Standards Supplement

Director

Date

Nevada Department of Corrections Glossary

A

Abandonment : The termination of review of any addressable grievance, at any level of the Inmate Grievance Procedure, resulting from the inmate's failure to file a timely, proper or procedurally sufficient grievance. (AR 740)

Accounting Inquiry Form: The accounting inquiry form, DOC-544, is the form used by an inmate to resolve fiscal issues regarding the inmate's account. (AR 201)

Administration of Medication: The direct, single dose application of a medication to the body of a patient whether by injection, ingestion, or any other means. (AR 635)

Administrative Regulations (AR): Nevada Department of Corrections administrative rules and administrative decisions derived by the authority from the state legislature. The Director is responsible to the Board of Prison Commissioners, which prescribes regulations for carrying on the business of the Board and Department. (NRS 209.111; 209.131)

Administrative Regulations Project Coordinator: Management Analyst IV (Policy Administrator) is responsible for managing and coordinating the development of the Administrative Regulations. (AR 100)

Admission/Intake: The process of receiving a newly committed inmate, parole violator or safekeeper into the custody of the Department. (AR 504)

Administrative Investigation: A formal investigative process regarding a complaint of employee misconduct. (AR 340)

Administrative Officer of the Day: A designated administrator, who will be notified by the institution/facility of any unusual incident during off-duty hours, weekends, and holidays, facilitates communication and advises the institution/facility on-duty supervisors. (AR 113, 420)

Administrative Segregation: A form of separation from the general population imposed by the classification committee, when the continued presence of the inmate in the general population or protective segregation would pose a serious threat to life, property, self, staff or other inmates, or to the security or orderly operation of the institution. (AR 507)

Adulterated Mail: Items of correspondence or publications that have an unknown substance on or in it. Adulteration includes, but is not limited to, lipstick, stickers, white out, perfumes and other unknown foreign substances. (AR750)

Adverse Action: Action taken to try and keep someone from opposing a discriminatory practice, or from participating in an employment discrimination proceeding. (AR 305)

a stand-alone treatment group or outpatient treatment group versus a larger treatment program. It contains a smaller number of indicators then the original CPC.

H

Halfway House: A community-based program providing group residence (such as a house, work release center, prerelease center) for probationers, parolees, residents in incarcerated status, and referrals through the courts or other agencies. Clients also may receive these services from the agency on a nonresidential basis.

Health Insurance Portability and Accountability Act (HIIPA): HIPAA is the acronym for the Health Insurance Portability and Accountability Act that was passed by Congress in 1996. HIPAA does the following: Provides the ability to transfer and continue health insurance coverage for millions of American workers and their families when they change or lose their jobs; reduces health care fraud and abuse; mandates industry-wide standards for health care information on electronic billing and other processes; and requires the protection and confidential handling of protected health information. Correctional facilities are responsible to comply according to the Final Rule.

Heavy Equipment Operator: Is the blanket term for numerous types of machines. Cranes, bulldozers, front-end loaders, rollers, backhoes, graders, dredges, hoists, drills, pumps and compressors are some of the equipment used by operating engineers.

Helping Men Recover: Helping Men Recover is the first gender-responsive, trauma-informed treatment program for men. A Man's Workbook offers a companion product that is tied seamlessly to the Helping Men Recover Facilitator's Guide. This curriculum addresses what is often missing in prevailing treatment modes: a clear understanding of the impact of male socialization on the recovery process, a consideration of the relational needs of men, and a focus on the issues of abuse and trauma.

High Desert State Prison (HDSP): The High Desert State Prison is the largest major institution in the Department of Corrections. It was the first institution in becoming a Southern Nevada prison complex. High Desert was designed to incorporate much of the best technology available to corrections in order to provide for officer safety and the management and control of inmates. The complex totals approximately 1,576,000 square feet of space. The institution opened on September 1, 2000 and became the reception center for Southern Nevada.

High Risk Offender: High Risk Offenders are a heterogeneous group of offenders that have been convicted of some of the most heinous crimes. They can be murderers, rapists, pedophiles, robbers and a multitude of other criminals.

High Risk Potential (HRP): A designation given through the classification process to inmates who have assaulted staff or inmates or represent a serious escape risk on or off institutional grounds. (AR 521)