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Criminal Procedure; Post Arrest Procedures

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- _____, 99 S.Ct. 833, 59 L. ED. 2d 32 (1979).
14. Ch. 382 §§6,7,9,10,13,14,16,17,18 (amending NRS 50.050(2), 171.1536, adding to NRS Chs. 213, 213, 233B, 391, 396, 422, 463).
 15. Id. §3 ¶3 (adding to NRS Ch. 50).
 16. Id. §3 ¶2 (adding to NRS Ch. 50).
 17. Id. §4 ¶1 (adding to NRS Ch. 50).
 18. Id. §4 ¶2 (adding to NRS Ch. 50).
 19. Id. §3 ¶1 (adding to NRS Ch. 50).
 20. Id. §19 (adding NRS 615.200(6)).
 21. 1975 Nev. Stats. ch. 243 §7, at 309 (NRS 171.1536) (amended by Ch. 382 §7).
 22. Ch. 382 §7 (amending NRS 171.1536).
 23. Id.

SEE GENERALLY:

- 1) Annot., 80 A.L.R. 2d 1084 (1961) (criminal trial for deaf, mute, or blind person).
- 2) Note, Constitutional Law: Translators: Mandatory for Due Process, 2 CONN. L. REV. 163 (1969).

CRIMINAL PROCEDURE; POST ARREST PROCEDURES

Amends NRS 171.178, 176.215, 213.151
 SB 154 (Neal); STATS 1979, Ch 589
 AB 459 (Barengo and Hayes); STATS 1979, Ch 222

Chapters 222 and 589 amend Nevada's criminal procedure law by allowing release of the arrested person either for lack of probable cause or for unnecessary delay between arrest and hearing before a magistrate.

Lack of Probable Cause

Chapter 222 amends NRS 171.178 to allow a peace officer to immediately release a person arrested without a warrant when the officer determines there are insufficient grounds for filing a criminal complaint.¹ Where a person is released for insufficient grounds, the record of arrest must also show a record of release.²

Furthermore, the released person is deemed only to have been detained, not arrested.³

In addition, Chapter 222 amends NRS 176.215 and 213.151 to apply these provisions where a person is arrested without a warrant for violating a condition of probation or parole. If a probation or parole officer or a peace officer determines there is no probable cause to believe that the arrested person violated a condition of probation or parole, the arrested person may be released.⁴ However, NRS 176.215 and 213.151 are not amended to include the provisions that the record must reflect release and that a person so released is deemed to have been detained rather than arrested.⁵

Unnecessary Delay

Chapter 589 further amends NRS 171.178 to allow release of an arrested person if he or she is not brought before a magistrate within seventy-two hours of arrest, excluding nonjudicial days.⁶ The prosecution is given a chance to explain the delay⁷ and if the magistrate decides the delay was unnecessary, the person may be released.⁸ These provisions do not change the requirement that an arrested person be brought before a magistrate without unnecessary delay; nor do they mandate release where delay exceeds seventy-two hours.⁹ Chapter 589 only provides that if the delay is longer than seventy-two hours, the prosecution must explain the delay to the satisfaction of the magistrate, or the arrested person may be released.¹⁰

Noreen M. Evans

FOOTNOTES

1. 1979 Nev. Stats. ch. 222 (hereinafter "CH. 222") §1 (adding NRS 171.178(5)) (renumbered by 1979 Nev. Stats. ch. 589 (hereinafter "Ch. 589") §1. Compare id. with CAL. PENAL CODE §849(b).
2. Ch. 222 §1 (adding NRS 171.178(5)) (renumbered by Ch. 589 §1).
3. Id.
4. Ch. 222 §§2, 3 (adding NRS 176.215(3), 213.151(5)).
5. Compare id. with Ch. 222 §1 (adding NRS 171.178(5)) (renumbered by Ch. 589 §1).

6. Ch. 589 §1 (amending NRS 171.178(3)). See Ex Parte A Kee, 22 Nev. 374, 375-376, 40 P.879, 879-880 (1895).
7. Ch. 589 §1 (adding NRS 171.178(3) (a)).
8. Id. §1 (adding NRS 171.178(3) (b)).
9. 1975 Nev. Stats. ch. 643 §3, at 1201 (NRS 171.178). Compare id. with Rule 5 of Federal Rules of Criminal Procedure. See also McNabb v. U.S., 318 U.S. 332, 344 (1943) rehearing denied, 319 U.S. 784 (1943); McMichael v. State, 94 Nev. Adv. Op. 59 at 6, 577 P.2d 398, 403 (1978); Morgan v. Sheriff, Clark County, 92 Nev. 544, 546, 554 P.2d 733, 734 (1976); Wammack v. Sheriff, Washoe County, 86 Nev. 162, 163, 466 P.2d 849, 850 (1970); Lemel v. Smith, 64 Nev. 545, 566-567, 187 P.2d 169, 179 (1947). See generally, Bybee, Nevada's 1967 Criminal Procedure Law From Arrest to Trial: One State's Response to a Widely Recognized Need, 35 NEV. ST. B.J. (no. 3) 12 (1970), reprinted from 1969 UTAH L. REV. 520.
10. See Deutscher v. State, 95 Nev. Adv. Op. 182, at 6 n. 7, —P.2d— (1979).

CRIMINAL PROCEDURE; WRITS OF HABEUS CORPUS

Amends NRS 34.380

SB 129 (Committee on Judiciary); STATS 1979, Ch 216

Chapter 216 eliminates a petitioner's right to appeal a district court's denial of a writ of habeus corpus.¹ Under previous law, a petitioner could appeal a district court's denial to the supreme court.² When appeal was available, a petitioner could not independently apply to the supreme court for a writ of habeus corpus.³

Chapter 216 eliminates a petitioner's appeal from a denial of a writ, but does not eliminate a state's appeal from a grant of a writ.⁴ It appears that independent application to the supreme court may be permitted even after a district court denial,⁵ because NRS 34.380 permits application at any time.

Lorne Malkiewich