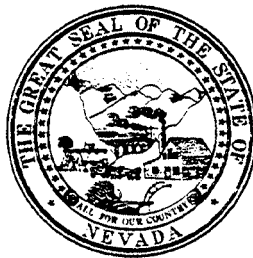


REPORT TO THE LEGISLATIVE COMMISSION OF THE
RECOMMENDATIONS BY THE CITIZENS' ADVISORY
COMMITTEE STUDYING SEXUAL DISCRIMINATION
IN NEVADA'S LAWS



BULLETIN NO. 77-16

LEGISLATIVE COMMISSION
OF THE
LEGISLATIVE COUNSEL BUREAU
STATE OF NEVADA

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Assembly Concurrent Resolution No. 8—Assemblymen Getto, Ford and Wagner

FILE NUMBER 91

ASSEMBLY CONCURRENT RESOLUTION—Directing the legislative commission to study sexual discrimination in Nevada law.

WHEREAS, The 92d Congress of the United States of America has proposed a constitutional amendment providing that equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex; and

WHEREAS, The legislatures of a large number of states have ratified the proposed constitutional amendment; and

WHEREAS, Discrimination based on sex has come under close judicial scrutiny; and

WHEREAS, It is presently undetermined which constitutional and statutory provisions of Nevada law are based upon suspect sexual differentiation and which of such provisions might be modified to retain their basic features while eliminating their sexual bias; now, therefore, be it

Resolved by the Assembly of the State of Nevada, the Senate concurring, That the legislative commission is hereby directed to study constitutional and statutory provisions of Nevada law to discover which of them discriminate between persons on the basis of their sex, and to report the results of such study and submit appropriate recommendations and suggested legislation to the 59th session of the Nevada legislature; and be it further

Resolved, That the legislative commission consider appointing a citizens' advisory committee to assist with this study.

REPORT OF THE RECOMMENDATIONS BY THE CITIZENS'
ADVISORY COMMITTEE STUDYING SEXUAL
DISCRIMINATION IN NEVADA LAW

I. INTRODUCTION

During the 1975 session of the Nevada legislature the assembly adopted a concurrent resolution (A.C.R. 8) directing the legislative commission to conduct a thorough study of constitutional and statutory provisions of Nevada law to identify those laws which are based upon suspect sexual differentiation. The resolution further directed the legislative commission to consider appointing a citizens' advisory committee to assist with the study and report its results, together with appropriate recommendations and suggested legislation, to the 59th session of the legislature.

Pursuant to this resolution, the legislative commission appointed a citizens' advisory committee to prosecute the study. The citizens who accepted their appointment to the committee were:

Mrs. Adelene Bartlett
Mrs. Julie Bouck
Mrs. Kate Butler
Mrs. Mary Edwards
Mrs. Molly Hyer
Mrs. Joan Kenny
Mrs. Lorna Kesterson
Mrs. Charlotte McCourt

Mrs. Ione Minister
Mr. John Pilkington
Mrs. Judy Lunn Roze
Mrs. William Saxton
Mrs. Lorraine Scatena
Mrs. Barbara Neinberg
Mrs. Peggy Westall
Miss Cheryl Yee

Mrs. Charlotte McCourt and Mrs. Peggy Westall were elected by the committee's members to serve as chairman and vice chairman, respectively.

II. METHODOLOGY

The study began several months prior to the appointment of the citizens' advisory committee with the task of compiling and reviewing all constitutional and statutory provisions of Nevada to determine which ones unfairly discriminated against persons on the basis of their sex. Except for a brief comment in the area relating to veterans' benefits, no attempt was made to identify any constitutional or statutory provision for possible discriminatory effect on either sex where the language of the provision reflected no sexual preference.

This preliminary work was performed by a staff member of the legal division of the legislative counsel bureau and the results were compiled in a pamphlet entitled "Preliminary Staff Study of Sexual Discrimination in Nevada Law." For convenience, ~~the~~ substantive provisions of this pamphlet have been appended to this report as Exhibit A.

Following the completion of this initial work the committee held four meetings, two in Las Vegas, one in Carson City and one in Reno, to study and evaluate each provision identified in the preliminary report, as well as any others brought to the committee's attention and deemed worthy of evaluation.

The sections of Nevada law listed in the preliminary report but not discussed in this report were, in the committee's opinion, not sufficiently discriminatory toward one sex as to warrant amendment or they have been tentatively changed by the legislature in a manner acceptable to the committee.

III. DISCUSSION OF THE ADVISORY COMMITTEE'S RECOMMENDATIONS

The following pages of the report describe current law and the committee's recommendations. For facility of discussion, the recommendations concerning specific provisions of NRS correspond to the order in which they appeared in the preliminary staff study appended to this report as Exhibit A. This explanation discusses major proposals and makes no attempt to discuss every detailed change recommended by the committee. A complete record of changes suggested by the committee is available and on file in the legislative counsel bureau. The affected sections of the NRS are listed at the foot of each part of the discussion unless identified in the body of the discussion.

A. Recommendations Relating to the NRS Generally.

Gender Reference Provision

The committee recommends the gender reference provision declaring words in the masculine include words in the feminine and neuter genders, applying only to segments of the NRS, be made applicable throughout. The committee believes this change would reflect in unmistakable language that Nevada's laws apply equally to both men and women, except where the legislature clearly manifests a different intention. The committee's belief that this recommendation would be acceptable to the

legislative commission and the 59th legislative session precluded consideration of alternative methods which would reflect equality between the sexes.

"Reasonable Man" Statutes

In various areas of Nevada law "reasonable man" or "reasonable prudent man" is used in part to describe the duty of care a fiduciary owes to a person whose personal affairs he manages. Although these terms have had a long history of usage in our legal system technically denoting a person exercising those qualities of attention, knowledge, intelligence and judgment which society requires of its members for the protection of their own interests and the interests of others, the committee recommends that as Nevada statutes are revised these terms be replaced with nongender terms (i.e., reasonable person) to avoid a discriminatory impact on female persons.

B. Recommendations Relating to Specific NRS Provisions.

Compromising a Claim of a Minor

The existing Nevada law provides that the father of a minor child has the right to compromise a claim which that minor has against a third party where both parents are living together. The committee recommends that this statute be amended to allow either parent to compromise the minor's claim where the parents are living together. Where the parents are living separate the custodial parent, or if no custody award has been made, the parent with whom such minor is living should be allowed to compromise the claim.
NRS 41.200.

Women As Members Of The Vestry In Protestant Episcopal Churches

Current law limits female participation on the vestry of the Protestant Episcopal Church to not more than one-half the standing membership. Inquiry with episcopal church officials uncovered no explanation for the purpose of this limitation and, therefore, the committee recommends the limitation on female membership on the vestry be repealed.
NRS 82.310, subsection 6.

Rules to Determine the Existence of a Partnership

Existing law declares receipt by a person of a share of the profits from a business is prima facie evidence that the recipient is a partner in that business. One exception to the foregoing rule is an annuity received by a widow of a deceased partner. The committee recommends this exception be extended to cover the surviving spouse of a deceased partner.

NRS 81.070, subsection 4.

Liens on Homestead

The existing law provides that no instrument of alienation made for securing a loan or indebtedness on homestead property is valid unless the instrument is signed by both the husband and wife. This provision requires the wife to acknowledge the instrument outside the presence of her husband. The committee believes this provision reflects women to be subservient to their husbands and recommends this requirement be deleted.

In addition, current law permits a husband to alienate the homestead property when his wife is not a resident of this state. The committee recommends this same privilege be extended to wives when their husbands reside outside Nevada. This later change would be consistent with the community property laws which give the right of management and control of community property to either spouse.

NRS 115.040.

Executions against Homesteads

Existing law permits the court, where execution is against a husband, to direct the proceeds from the sale of the homestead to be paid into the court and released only upon the joint receipt of the husband and wife. The committee proposes this provision be amended to afford the same protection to a husband when execution is against his wife.

NRS 115.050.

Conveyance of Homestead

Existing law permits a husband to petition the court for permission to convey a homestead by his sole deed if his wife is insane. The committee recommends this provision be amended to provide the same rights under this circumstance to either spouse.

NRS 115.070.

Support Obligations of a Husband and Wife

Current Nevada law reflects the policy followed in most, if not all, state jurisdictions specifying a husband's responsibility for the care and support of his wife. If a husband fails to provide for his wife's support, any other person may in good faith supply her with articles necessary for her support and recover their value from the husband. A person seeking to recover the value of articles supplied to a wife must attempt to satisfy the claim from any community property the couple may hold. If community property assets are insufficient, the person can satisfy a claim from the husband's separate property. No right of action exists against the separate property of the wife. A wife's obligation to support her husband arises only when he has no separate property, they have no community property and he, from infirmity, is not able or competent to support himself.

The committee thinks statutory imposition of greater support obligations on a husband is not only discriminatory against men, but inconsistent with the committee's consensus that marriage should be a partnership arrangement in which each partner shares equally in the fruits and liabilities of that partnership. As endorsement of this belief, the committee recommends amending Nevada law to reflect a mutual obligation of support on each spouse which shows that the separate property of each spouse is subject to the claims of creditors for necessities provided his spouse if there are no community assets and the spouse receiving necessities has no separate property.

The committee also requests that physical limitations which limit the duty of one spouse to support the other be deleted from Nevada law. NRS 123.090 and 123.110

Support of Illegitimate Children

Although NRS 126.030 specifically states the mother as well as the father of a child born out of wedlock and not legitimized owe that child necessary maintenance, education and support, the remainder of chapter 126 of NRS pertains only to means and methods of securing support from a father.

The committee is acutely aware that current law reflects the usual occurrence (i.e., abandonment of the mother and child by the father), but it believes the provisions of this chapter

should reflect that either parent may bring a lawsuit against the other to recover an equitable share of the child's necessary maintenance, education and support.

Therefore, the committee recommends references to "mother" and "father" be replaced with nongender terms such as "custodial parent" and "nonsupporting parent" where appropriate, and all sections of chapter 126 be amended, if necessary, to reflect the neutral operation of the chapter on the mother and father.
Chapter 126 of NRS.

Divorce--Preliminary Orders Concerning Children

Current Nevada law reflects the historic legal principle that the mother of a child of tender years is the most suitable parent to have custody of that child following divorce or separation unless it can be shown to the court that she is unfit. The committee believes this principle is discriminatory against fathers and not necessarily in the best interests of a child.

The committee recommends that NRS 125.060 be amended to embrace the substantive provisions of Oregon Revised Statute 107.137 (Exhibit B). This statute not only states that the court shall not give preference in custody to the mother over the father for the sole reason that she is the mother, but enumerates factors which the court should consider to make a determination which would serve the best interest of the child. The factors ask for a determination of:

1. The emotional ties between the child and other family members;
2. The interest of the parties in and their attitude toward the child; and
3. The desirability of continuing an existing relationship.

The Oregon statute also provides that the best interest of a child should not be determined by isolating any one relevant factor and relying on it to the exclusion of all others.

The committee believes that adoption of the foregoing recommendations would alleviate the discriminatory element in Nevada's statute by placing a mother and father on an equal

footing before the court in a custody proceeding. The committee believes an objective determination of custody following consideration of all relevant factors, in the absence of any preconceived presumptions about which parent is best suited to have custody would operate in the best interest of children subject to these provisions.
NRS 125.060.

Adjudication of Alimony and Property Rights

Current law permits an alimony award to be made to a husband only where he is disabled or unable to provide for himself. The committee recommends that this limitation be deleted from Nevada law and that the court consider the relative merits of each party prior to allowing an alimony award. The committee believes all relevant matters should be examined by the court, but recommends the following factors be added to the law to insure their consideration:

1. The duration of the marriage;
2. The nonmonetary contribution of the homemaker;
3. The ages of the parties;
4. The health and physical condition of the parties;
5. Their financial condition, resources and property rights;
6. Their work experience and earning capabilities;
7. Provisions of the degree relating to the custody of any minor children of the parties; and
8. The ages, health and dependency of any children of the parties.

All the foregoing provisions with the exception of number 2 are presently considered by the courts in the State of Oregon.
NRS 125.150

Separate Maintenance

Existing provisions of NRS 125.190 to 125.280, inclusive, not only limit separate maintenance awards to wives, but also give the courts extensive latitude in determining the amount and length of time the maintenance payments shall continue. The

committee believes the unfettered grant of separate maintenance to wives who may seek it is no longer warranted in a society where many women work outside the home and have the training and capabilities to care for themselves. The committee recommends Nevada's separate maintenance provisions be amended to reflect that men as well as women are eligible to receive separate maintenance. It also recommends that criteria be inserted into our law which will provide Nevada's courts with guidelines specifying when and for what periods of time separate maintenance payments should be made to a spouse seeking maintenance. Specifically, the committee proposes that NRS 125.190 be amended to embrace the provisions of section 308 of an act entitled, "Uniform Marriage and Divorce Act," proposed by the 1970 National Conference of Commissioners of Uniform State Laws (Exhibit C). This provision permits a court to grant separate maintenance only where the spouse seeking maintenance:

1. Lacks sufficient property, including marital property apportioned to him, to provide for his reasonable needs, and
2. Is unable to support himself through appropriate employment or is the custodian of a child whose condition or circumstances make it inappropriate that the custodian seek employment outside the home.

Once the court determines that a maintenance award is appropriate, the court is directed to examine all relevant factors in determining the amount and period of time the maintenance award should continue. Factors enumerated for the court's consideration are:

1. The financial resources of the party seeking maintenance and his ability to meet needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party as custodian;
2. The time necessary for the party seeking maintenance to acquire sufficient education or training to find appropriate employment;
3. The standard of living established during the marriage;
4. The duration of the marriage;

5. The age, and the physical and emotional condition of the spouse seeking maintenance; and
6. The ability of the spouse from whom maintenance is sought to meet his needs while meeting those of the spouse seeking maintenance.

The committee believes its recommendations alleviate any discrimination in the law, are fair to both sexes and will result in maintenance awards being made to a spouse only when a true necessity is demonstrated to the court.

Incapacity of Executors, Administrators and Estates of Missing Persons

Current law provides that a "widow" of a deceased person shall be issued letters of administration when the executors or administrators become incapable of performing their trust. The committee recommends amending the law to reflect that the "surviving spouse" of a deceased person be the first person considered for letters of administration.

The committee also recommends the same change, proposed above, be made to the law relating to appointment of a trustee for the estate of a missing person.
NRS 141.070 and 156.040.

Support of the Family

Existing Nevada law only permits a widow to remain in possession of a homestead or to receive a family allowance when her husband dies. The committee recommends amending these provisions to reflect that the surviving spouse, regardless of sex, be entitled to remain in possession of homestead property and remain eligible to receive a family allowance.
NRS 146.010 and 146.030.

Persons Capable of Committing Crimes

Subsection 8 of NRS 194.010 specifically excuses "married women" from liability for all crimes they commit, except where the crime is punishable by death, if they were acting under violent threats, commands or coercion of their husbands. Subsection 9 of this same section exculpates any person for a crime he commits, except one punishable by death, if he committed the act charged under threats or menaces sufficient to show he had

reasonable cause to believe, and did believe, that his life would be in danger or he would suffer great bodily harm if he refused.

The committee believes that subsection 8 of this section, dealing solely with married women, is discriminatory against all men and single women and adds very little, if any, to the basic protection afforded both men and women under subsection 9. Therefore, the committee recommends that subsection 8 be deleted from the current law.
NRS 194.010.

Sex Offense Provisions

The committee's consensus, following evaluation of Nevada's laws dealing with sex offenses and comparing them with similar laws from other states, is that Nevada's laws give unwarranted preferential treatment to females. The committee believes that many of this state's existing laws could be redefined to provide equivalent protection to both sexes. For example, the crime of statutory rape, which is presently defined as the carnal knowledge of a female under 16 years of age, with her consent, by a male 18 years of age, could be renamed and redefined to reflect that the crime involves the carnal knowledge of a minor under 16 years of age by an adult. If this change were made all adults, male or female, could be capable of committing this offense and would be susceptible to the same degree of punishment.

Due to the subject matter's complexity and the lack of time needed to analyze properly all Nevada's sex offense provisions, the committee recommends the legislative commission thoroughly study this area of our law and initiate legislation, where feasible, to reflect that either sex may be the victim or offender.

In addition, the committee would refer the legislative commission to the term "sexual battery" which was introduced in Senate Bill 52 of the 1975 legislation as an example of its desire to have various sex offenses classified without reference to either sex.

Prostitution Provisions

Current Nevada law regarding prostitution is written to reflect that only females are prostitutes. The committee, while cognizant that the vast majority of prostitutes are women, also

recognizes that male prostitution is not uncommon. If prostitution is to be tolerated in this state, the committee believes that statutory provisions dealing with it should reflect that prostitution can be committed by either sex.

The committee recommends adding a new section to NRS which would define prostitution to include males and females and also identify sexual activities which would fall within the scope of that term. Existing sections could easily be amended to reflect this change.

The committee also recommends that NRS 201.370, which declares that every male who habitually resorts in a house of prostitution is guilty of a misdemeanor, be repealed because it is vague and indefinite.

NRS 201.300 to 201.440, inclusive, 175.301 and 244.345.

Criminal Sanctions for Nonsupport

Current Nevada law imposes criminal sanctions on a husband who fails to support his wife in destitute or necessitous circumstances. The committee recommends amending these provisions to reflect that either spouse is subject to criminal liability for failure to support his spouse under destitute or necessitous circumstances. This proposal is consistent with the committee's previous recommendation regarding intra-spousal support.

NRS 201.020 to 201.050, inclusive, and 201.070.

Employment of Vagrants in Public Works

Current Nevada law provides that only males convicted of vagrancy are subject to a requirement of performing labor on public works. It is the committee's belief that unless the work referred to under this provision is consistently beyond the physical capabilities of women generally, the law should be amended to extend to women.

NRS 207.040.

Power of a Sheriff and Other Public Officers to Command Assistance

Current Nevada law provides that only males are subject to the command of a sheriff or other public officer to render assistance in overcoming resistance in the execution of a lawful process. The committee believes if a situation of

sufficient magnitude should occur which requires a sheriff or other public officer to command the assistance of citizens, females should be subject to those commands and render services within their capabilities. Therefore, the committee recommends that Nevada's laws be amended accordingly. NRS 248.200 and 281.290.

Veterans' Rights and Benefits

The committee made no determination concerning whether Nevada's veterans' preference laws were discriminatory against women. It believes that because the United States armed forces have adopted an all-volunteer policy, the legislative commission should study Nevada's veterans' preference laws, prior to the 1979 legislative session, and determine whether these provisions should be retained in their present state, modified to apply only to those veterans who served or were serving prior to the commencement of the all-volunteer forces or entirely abolished.

Determination of Residence for Election Purposes

Current election law, which seeks to define elements constituting "residence" for election purposes, refers only to where a "man" works or his family resides. The committee recommends this provision be amended and a nongender term be substituted for "man." This change would reflect equal application of the provision to both sexes. NRS 293.497.

Revenue and Taxation

Current Nevada law allows widows a \$1,000 assessed valuation property tax exemption as well as permitting them to receive additional assistance under the Senior Citizens Property Tax Assistance Act. The committee recommends, based on the evaluation of the fiscal information provided by the department of taxation (Exhibit D) and its belief the law is unfair in its present form, that Nevada law be amended to extend the same benefits to widowers. NRS 361.080 and 361.850.

Discrimination Between Teachers' Salaries

Current Nevada law provides that a school district shall not discriminate against female teachers in the matter of salary.

Although recognizing this provision was inserted into the law to insure that female teachers performing the same jobs as male teachers in a school district would receive the same pay, the committee believes this provision should be amended to reflect that both sexes have statutory protection from salary discrimination.

NRS 391.160.

State Militia

Provisions of Nevada law regarding the state militia continually use the phrase "bodies of men," "enlisted men" or "men" when referring to militia members. Although the adoption of the committee's recommendation, calling for the adoption of a uniform NRS gender provision which declares that words in the masculine are to be understood as encompassing those of the feminine would tend to alleviate the discriminatory impact resulting from the use of masculine terms in these provisions, it, nevertheless, recommends amending these sections to make it understood that both men and women are eligible to render state militia services.

NRS 412.126, 412.142 and 412.146.

Duties of the Commissioner for Veteran Affairs

Current law defining the duties of the commissioner and deputy commissioner of veteran affairs specifies that assistance would be provided "widows" of veterans upon request, but it makes no provision for "widowers." The committee thinks this is unfair and recommends amending the law to charge the commissioner and deputy commissioner of veteran affairs with the duty of providing assistance to the surviving spouse of a veteran.

NRS 417.090.

Nevada Highway Patrol Membership

Current Nevada law states that membership in the Nevada highway patrol division of the department of motor vehicles is limited to "men" who meet specified qualifications. However, information received from the division indicates that women are employed by the division and eligible for employment in any position within the division if they satisfy the basic qualifications for that job description. Therefore, the committee recommends Nevada law be amended to reflect the currently followed division practice.

NRS 481.160.

Forest Practice

Nevada law requires applicants for logging permits to submit logging plans with their applications specifying the number of "men" normally available for firefighting. The committee believes this requirement, if literally construed, could result in discriminatory hiring practices against women by logging camp operators. Therefore, it recommends replacing references to "men" with a nongender provision.
NRS 528.043 and 528.080.

Labor

"Employee" is defined in chapter 208 of NRS regulating compensation, wages and hours of service of persons in private employment in Nevada, to include male and female persons. Provisions establishing permissible periods of employment in smelters, open mines and surface workings of underground mines refer to persons employed in these occupations as "workingmen." Information received from the labor commission indicates that women are employed in these occupations and subject to the same provisions as male employees.

To show that all provisions of chapter 208 apply to both sexes, the committee recommends replacing references to "workingman" with the term "employee."
NRS 608.210, 608.220 and 608.230.

Employment of Minors

Nevada law imposes a criminal penalty on an employer or custodian of a minor if he is permitted to work in businesses or engages in activities which the law has identified as injurious, immoral or dangerous to the minor. Employment in a "public dancehall," which is defined as a place where women or girls are employed or attend for profit either directly or indirectly to themselves, is one such business.

The committee believes this provision is discriminatory against women as well as outdated; it therefore recommends that it be repealed.
NRS 609.210.

Unemployment Compensation Due to Pregnancy

Current Nevada law states that a pregnant woman is not entitled to unemployment compensation beginning with the week she is

separated from work due to pregnancy and each week thereafter until she submits proof of ability to work.

The committee did not determine whether this provision is discriminatory against women, but it recommends the legislative commission consider the law in view of recent court decisions in other jurisdictions and determine whether pregnancy is a condition which should be made compensable under Nevada's unemployment compensation law. NRS 612.435 and 612.440.

Insurance

Current Nevada law requires a female applicant for an agent's, broker's or solicitor's license to provide the commissioner of insurance with pertinent information about her spouse if he has even been involved in the insurance business. Similar information concerning the spouse of a male applicant is not required.

The committee believes this is discriminatory and could result in a woman's being denied a license to sell insurance because of her husband's unacceptable insurance record. The committee recommends this requirement imposed on female applicants be applicable to both sexes or deleted from current law. NRS 683A.150, subsection 5.

Miscellaneous Health Provisions

The existing law requires every Nevada employer who employs five or more men or three or more women in the same building or on the same premises to provide separate lavatories or convenience rooms for each sex. The committee recommends this provision be amended to equalize the requirements for providing such facilities. NRS 618.720.

EXHIBITS

I. REMEDIAL CODE

Procedure for Compromising a Claim of a Minor.

NRS 41.200 allows only the "father" to settle money claims which his minor child may have against a third person.

41.200 Disputed claims for money by minor against third person may be compromised by parents, guardian; no fees to be charged in proceedings.

1. Where a minor shall have a disputed claim for money against a third person, the father, or if the father be dead or the parents of the minor are living separate and apart and the mother has care or custody of the minor, then the mother of the minor, or if a general guardian or guardian of the estate of such minor has been appointed, then such guardian, shall have the right to compromise such claim, but before the compromise shall be valid or of any effect the same shall be approved by the district court of the county where the minor resides, or in the event that the minor is not a resident of the State of Nevada, then by the district court of the county where the claim was incurred, upon a verified petition in writing, regularly filed with the court. If the court approves such compromise, the district court may direct the money to be paid to the father, mother or guardian of such minor, with or without the filing of any bond, or it may require a general guardian or guardian ad litem to be duly appointed and the money to be paid to such guardian or guardian ad litem with or without a bond as in the discretion of the court seems to the best interest of the minor.

2. The clerk of the district court shall not charge any fee for filing a petition for leave to compromise or for placing the same upon the calendar to be heard by the court.

[1:11:1931; A 1953, 65]--(NRS A 1963, 137)

II. CIVIL CODE

Selection of the Vestry in Protestant Episcopal Churches.

Subsection 6 of the following section restricts the number of women which may serve on the vestry. No similar restriction exists for male members.

82.310 Incorporation: Qualifications of incorporators; election of church wardens and vestrymen; notice and certificates; women as members of vestry.

1. All persons over the age of 18 years, of any church or congregation in communion with the Protestant Episcopal Church in this state, who:

(a) Shall have belonged to such church or congregation for the last 6 months preceding the election herein described; and

(b) Shall have been baptized in the Episcopal Church; or who shall have been received therein, either by the rite of confirmation, or by receiving the holy communion, or by purchasing or hiring a pew or seat in the church, or by some joint act of the parties and of the rector whereby they shall have attached themselves to the Protestant Episcopal Church; and

(c) Are not already incorporated, may meet at any time for the purpose of incorporating themselves under the provisions of NRS 82.300 to 82.390, inclusive.

2. At such meeting, by a majority of voices, there shall be elected 2 church wardens and not less than 3 nor more than 12 vestrymen; and there shall be determined upon what day of the week called Easter Week the officers, called church wardens and vestrymen, shall annually thereafter cease to hold office and their successors in office be chosen.

3. Notice of the first election shall be given, during the time of morning service, on 2 Sundays previous thereto by the rector, or if there be none or he be necessarily absent, then by any other person belonging to such church or congregation.

4. The rector, or if there be none or he be necessarily absent, then any other person called to the chair, shall preside at such first election, and, together with two other persons duly selected, shall make a certificate, under their hands and seals:

(a) Of the church wardens and vestrymen so elected;

(b) Of the day of Easter Week so fixed upon for the annual election of their successors; and

(c) Of the name or title by which such church or congregation shall be known in law.

5. The certificate, being duly acknowledged and proved by one or more of the subscribing witnesses before the judge of any court of competent jurisdiction in the county where such church or place of worship of such congregation shall be situated, shall be recorded in the office of the recorder of such county.

6. Nothing in NRS 82.300 to 82.390, inclusive, shall be held to exclude women, qualified as in subsection 1, from serving as members of the vestry; but not more than one-half of the membership of the vestry may be women.

[2:69:1862; A 1915, 34; 1919 RL § 1426; NCL § 3284]

Determination of the Existence of a Partnership.

Subsection 4, paragraph (c) only applies to payments received by widows.

87.070 Rules for determining the existence of a partnership. In determining whether a partnership exists, these rules shall apply:

1. Except as provided by NRS 87.160 persons who are not partners as to each other are not partners as to third persons.

2. Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not of itself establish a partnership, whether such coowners do or do not share any profits made by the use of the property.

3. The sharing of gross returns does not of itself establish a partnership, whether or not the persons sharing them have a joint or common right or interest in any property from which the returns are derived.

4. The receipt by a person of a share of the profits of a business is prima facie evidence that he is a partner in the business, but no such inference shall be drawn if such profits were received in payment:

- (a) As a debt by installments or otherwise,
- (b) As wages of an employee or rent to a landlord,
- (c) As an annuity to a widow or representative of a deceased partner,

(d) As interest on a loan, though the amount of payment vary with the profits of the business,

(e) As the consideration for the sale of a good will of a business or other property by installments or otherwise.

[7:74:1931; 1931 NCL § 5028.06]

Liens on Homestead and Abandonment of Homestead.

Subsections 2 and 3 of NRS 115.040 require a wife to acknowledge a legal document outside the presence of her husband. No similar provisions are made applicable to acknowledgments made by husbands.

Subsection 4 presents a different problem in that it does not require acknowledgment of a wife where she is a nonresident, but does not provide the same privilege for a wife should her husband be a nonresident.

115.040 Exemption does not extend to liens; abandonment of homestead.

1. The exemption shall not extend to any mechanic's, laborer's or vendor's lien lawfully obtained.

2. No mortgage or alienation of any kind, made for the purpose of securing a loan or indebtedness upon the homestead property, shall be valid for any purpose whatsoever, unless the signature of the husband and wife, when that relationship exists, be obtained to the same and such mortgage or alienation is acknowledged by the wife separately and apart from her husband.

3. The homestead property shall not be deemed to be abandoned without a declaration thereof in writing, signed and acknowledged by both husband and wife, other head of a family, or other single person claiming the homestead, and recorded in the same office and in the same manner as the declaration of claim to the same is required to be recorded, and the acknowledgment of the wife to such declaration of abandonment shall be taken separately and apart from her husband.

4. If the wife be not a resident of this state, her signature and the acknowledgment thereof shall not be necessary to the validity of any mortgage or alienation of the homestead before it becomes the homestead of the debtor.

[2:72:1865; B § 187; BH § 540; C § 551; RL § 2143; NCL § 3316]--(NRS A 1963, 28; 1971, 576)

Executions against Homesteads.

Subsection 3 of NRS 115.050 provides special protection for a wife which is not available to a husband.

115.050 Proceedings on execution against homesteads.

1. Whenever execution has been issued against the property of a party claiming the property as a homestead, and the creditor in the judgment shall make oath before the judge of the district court of the county in which the premises are situated, that the cash value of the premises exceeds, to the best of the creditor's information and belief, the sum of \$25,000, the judge shall, upon notice to the debtor, appoint three disinterested and competent persons as appraisers to estimate and report as to the value of the premises, and if the same exceeds the sum, whether they can be divided so as to leave the premises amounting to the homestead exemption without material injury.

2. If it appear, upon the report, to the satisfaction of the judge that the premises can be thus divided, he shall order the excess to be sold under execution. If it appear that the premises cannot be thus divided, and the value thereof exceeds the exemption allowed by this chapter, he shall order the entire premises to be sold, and out of the proceeds the sum of \$25,000 to be paid to the defendant in execution, and the excess to be applied to the satisfaction on the execution. No bid shall be received by the officer making the sale under \$25,000.

3. When the execution is against the husband, whose wife is living, the judge may, in his discretion, direct the \$25,000 to be deposited in court, to be paid out only upon the joint receipt of the husband and wife, and it shall possess all the protection against legal process and voluntary disposition of the husband as were the original homestead premises.

[3:72:1865; B § 188; BH § 541; C § 552; RL § 2144; NCL § 3317]--(NRS A 1975, 215)

Conveyance of Homestead.

Subsection 1 of NRS 115.070 permits a husband to petition the court to convey a homestead if his wife is insane. No similar privilege is granted a wife.

115.070 Conveyance of homestead by husband when wife insane: Procedure.

1. If the wife of any owner of a homestead shall be insane, and the owner shall desire to convey the homestead, or any interest therein, he may petition the district court in which the homestead may be situated for license to convey the same. The court, upon reasonable and not less than 20 days' notice of the petition to the kindred of the insane wife residing in this state (which notice may be personal or by publication in some newspaper in the county, or directed by the court), may hear and determine the petition, and may license the owner to convey the homestead, or any interest therein, by his sole deed. The license shall be recorded in the office where the homestead is recorded, and thereupon the sole deed shall have the same operation as if the wife had been sane and joined in the deed.

2. On granting the license, the court may make such special order as to the investment or disposition of the funds derived from conveyance, as a court of equity could do in the case of the funds of married women.

3. On the hearing of the petition for license, any of the kindred may appear and be heard in the premises, and may appeal from any order made on the subject in the same manner provided for other appeals from decrees of the district court.

[5:72:1865; B § 190; BH § 543; C § 554; RL § 2146; NCL § 3319] + [6:72:1865; B § 191; BH § 544; C § 555; RL § 2147; NCL § 3320] + [7:72:1865; B § 192; BH § 545; C § 556; RL § 2148; NCL § 3321]

Support Obligations.

The following two sections reflect disparity of treatment between husbands and wives regarding interspousal support.

123.090 Necessaries provided wife when husband neglects to provide; recovery of value. If the husband neglects to make adequate provision for the support of his wife, any other person may in good faith supply her with articles necessary for her support, and recover the reasonable value thereof from the husband. The separate property of the husband is liable for the cost of such necessities if the community property of the spouses is not sufficient to satisfy such debt.

[22:119:1873; B § 172; BH § 520; C § 531;
RL § 2176; NCL § 3376]--(NRS A 1975, 558)

123.110 When wife must support husband. The wife must support the husband out of her separate property when he has no separate property and they have no community property and he, from infirmity, is not able or competent to support himself.

[24:119:1873; B § 174; BH § 522; C § 533;
RL § 2178; NCL § 3378]

The provisions of NRS 126.030 state that both parents of an illegitimate child owe the child necessary maintenance, education and support, but the remainder of the provisions listed continually discuss means and methods of securing support from the father.

126.030 Obligation of parents.

1. The parents of a child born out of wedlock and not legitimated (in this chapter referred to as "the child") owe the child necessary maintenance, education, and support.

2. They are also liable, in the event of the child's death, for its funeral expenses.

3. The father is also liable to pay the expenses of the mother's pregnancy and confinement.

4. The obligation of the parent to support the child under the laws for the support of poor relatives applies to children born out of wedlock.

[1:87:1923; NCL § 3405]

126.040 Recovery by mother from father.

1. The mother may recover from the father a reasonable share of the necessary support of the child.

2. In the absence of a previous demand in writing (served personally or by registered or certified letter addressed to the father at his last-known residence), not more than 2 years' support furnished prior to the bringing of the action may be recovered from the father.

[2:87:1923; NCL § 3406]--(NRS A 1969, 95)

126.050 Recovery by others than the mother. The obligation of the father as herein provided creates also a cause of action on behalf of the legal representatives of the mother, or on behalf of third persons furnishing support or defraying the reasonable expenses thereof, where paternity has been judicially established by proceedings brought by the mother or by or on behalf of the child or by the authorities charged with its support, or where paternity has been acknowledged by the father in writing or by the part performance of the obligations imposed upon him.

[3:87:1923; NCL § 3407]

126.060 Discharge of father's obligation.

1. The obligation of the father other than that under the laws providing for the support of poor relatives is discharged by complying with a judicial decree for support or with the terms of a judicially approved settlement.

2. The legal adoption of the child into another family discharges the obligation for the period subsequent to the adoption.

[4:87:1923; NCL § 3408]

126.070 Liability of the father's estate.

1. The obligation of the father, where his paternity has been judicially established in his lifetime, or has been acknowledged by him in writing or by the part performance of his obligations, is enforceable against his estate in such an amount as the court may determine, having regard to the age of the child, the ability of the mother to support it, the amount of property left by the father, the number, age, and financial condition of the lawful issue, if any, and the rights of the widow, if any.

2. The court may direct the discharge of the obligation by periodical payments or by the payment of a lump sum.

[5:87:1923; NCL § 3409]

STATUTORY PROCEEDINGS TO ENFORCE
THE OBLIGATIONS OF THE FATHER

126.080 Proceedings to compel support: Fees and nonexclusiveness. Proceedings to compel support by the father may be brought in accordance with NRS 126.090 to 126.290, inclusive, and no filing fees or other fees, charges, or court costs shall be charged for bringing or maintaining the same, but the usual filing fees, charges, or court costs, as aforesaid, may by the court be assessed against the father and enforced with the other provisions of the judgment as provided in NRS 126.250. They shall not be exclusive of other proceedings that may be available on principles of law or equity.

[6:87:1923; A 1933, 186; 1931 NCL § 3410]

126.090 Complainants.

1. The proceedings to compel support may be brought by the mother, or if the child is or is likely to be a public charge, by the authorities charged with its support as provided in NRS 126.-325. After the death of the mother or in case of her disability, it may also be brought by the child acting through its guardian or next friend.

2. If the proceeding is brought by the public authorities, the mother, if living, shall be made a party defendant.

[7:87:1923; NCL § 3411]--(NRS A 1969, 589)

126.100 Time of bringing complaint. The proceeding may be instituted during the pregnancy of the mother or after the birth of the child, but, except with the consent of the person charged with being the father, the trial shall not be had until after the birth of the child.

[8:87:1923; NCL § 3412]

126.130 Substance of complaint. The complainant shall charge the person named as defendant with being the father of the child and demand that he be brought before the judge or magistrate to answer the charge.

[11:87:1923; NCL § 3415]

126.190 Absence of defendant. If the defendant fails to appear, the security for his appearance shall be forfeited and shall be applied on account of the payment of the judgment, but the trial shall proceed as if he were present; and the court shall upon the findings of the judge or the verdict of the jury make such orders as if the defendant were in court.

[17:87:1923; NCL § 3421]

126.200 Effect of death, absence or insanity of mother. If after the complaint the mother dies or becomes insane or cannot be found within the jurisdiction, the proceeding does not abate, but the child shall be substituted as complainant.

[18:87:1923; NCL § 3422]--(NRS A 1971, 803)

126.210 Death of defendant. In case of the death of the defendant, after the preliminary hearing, the action may be prosecuted against the personal representatives of the deceased with like effect as if he were living, subject as regards the measure of support to the provision of NRS 126.080 except that no arrest of such personal representative shall take place or bond be required of him.

[19:87:1923; NCL § 3423]

126.220 Finding for defendant. If the verdict of the jury at the trial or the finding of the court be in favor of the defendant and there be a motion for a new trial, he shall be held until such motion be disposed of; and if a new trial is granted, the same course shall be pursued as in case of a continuance.

[20:87:1923; NCL § 3424]

126.230 Judgment.

1. If the finding or verdict be against the defendant, the court shall give judgment against him declaring paternity and for support of the child.

2. The judgment shall be for annual amounts, equal or varying, having regard to the obligation of the father under NRS 126.030, as the court directs, until the child, if male, reaches the age of 21 years or, if female, reaches the age of 18 years.

3. The payments may be required to be made at such periods or intervals as the court directs.

4. In addition to providing for support, the judgment may also provide for the payment of the necessary expenses incurred by or for the mother in connection with the birth of the child.

[21:87:1923; NCL § 3425]--(NRS A 1969, 650)

126.240 Payment to trustee.

1. The court may require the payments to be made to the mother, or to some person or corporation to be designated by the court as trustee.

2. The payments shall be directed to be made to a trustee if the mother does not reside within the jurisdiction of the court.

3. The trustee shall report to the court annually, or oftener, as directed by the court, the amounts received and paid over.

[22:87:1923; NCL § 3426]

126.250 Security; commitment or probation.

1. The court may require the father to give security, by bond with sureties, for the payment of the judgment. In default of such security, when required, the court may commit him to jail. After 1 year the person so committed may be discharged (in accordance with the law relating to the discharge of insolvent debtors), but his liability to pay the judgment shall not be thereby affected.

2. Instead of committing the father to jail, or as a condition of his release from jail, the court may commit him to the custody of the sheriff of the county, upon such terms regarding payments and personal reports, as the court may direct. Upon violation of the terms imposed, the court may commit or recommit the father to jail.

[23:87:1923; NCL § 3427]

126.270 Contempt process. The court also has power, on default as aforesaid, to adjudge the father in contempt and to order him committed to jail in the same manner and with the same powers as in case of commitment for default in giving security. The commitment of the father shall not operate to stay execution upon the judgment on the bond.

[25:87:1923; NCL § 3429]

126.280 Agreement or compromise.

1. An agreement or compromise made by the mother or child or by some authorized person on their behalf with the father concerning the support of the child shall be binding upon the mother and child only when adequate provision is fully secured by payment or otherwise and when approved by a court having jurisdiction to compel support of the child.

2. The performance of the agreement or compromise, when so approved, shall bar other remedies of the mother or child for the support of the child.

[26:87:1923; NCL § 3430]

126.300 Failure to support.

1. The failure of the father, without lawful excuse, to support the child where the same is not in his custody, and where paternity has been judicially established, or has been acknowledged by him in writing or by the part performance of his obligations, is a misdemeanor.

2. The failure of the parent to support the child where the same is in his or her custody shall be governed by the laws applicable to the failure to support a legitimate child.

[28:87:1923; NCL § 3432]--(NRS A 1967, 531)

126.310 Failure to carry out judgment. The failure, without lawful excuse, of a father to comply with and carry out a judgment for the support of the child, whether the child be a resident in the jurisdiction where the judgment was rendered or not, is a misdemeanor.

[29:87:1923; NCL § 3433]--(NRS A 1967, 531)

126.320 Probation. Upon a prosecution under the provisions of NRS 126.300 or 126.310, on entry of a plea of guilty or after conviction, the court, instead of imposing sentence or of committing the father to jail, or as a condition of his release from jail, may commit him to the custody of the sheriff of the county, upon such terms as to payment of support to or on behalf of the mother or child, and as to personal reports, as the court may direct. Upon violation of the terms imposed,

the court may proceed to impose the sentence and commit or recommit to jail in accordance with the sentence.

[30:87:1923; NCL § 3434]

126.325 District attorney to establish paternity, take legal action against deserting, nonsupporting parent.

1. The district attorney of the county of residence of the child shall take such action as is necessary to establish paternity of such child and locate, apprehend or take legal action against a deserting or nonsupporting parent of such child.

2. In a county where the district attorney has deputies to aid him in the performance of his duties, such district attorney shall designate himself or a particular deputy as responsible for performing the duties imposed by subsection 1.

(Added to NRS by 1969, 589)

126.340 Limitation of actions. Proceedings to enforce the obligation of the father shall not be brought after the lapse of more than 2 years from the birth of the child, unless paternity has been judicially established, or has been acknowledged by the father in writing or by the furnishing of support.

[32:87:1923; NCL § 3436]

126.350 Available district. Jurisdiction over proceedings to compel support is vested in the district court of the county in which the alleged father is permanently or temporarily resident, or in which the mother or the child resides or is found. It is not a bar to the jurisdiction of the court that the complaining mother or child resides in another state.

[33:87:1923; NCL § 3437]

126.370 Reference to relation of mother and child. In all records, certificates, or other papers hereafter made or executed, other than birth records and certificates or records of judicial proceedings in which the question of birth out of wedlock is at issue, requiring a

declaration by or notice to the mother of a child born out of wedlock or otherwise requiring a reference to the relation of a mother to such a child, it shall be sufficient for all purposes to refer to the mother as the parent having the sole custody of the child or to the child as being in the sole custody of the mother, and no explicit reference shall be made to illegitimacy, and the term "natural" shall be deemed equivalent to the term "illegitimate" when referring to parentage or birth out of wedlock.

[35:87:1923; NCL § 3439]

Divorce.

The following statute reflects the attitude that the best interests of the child require that only the mother have custody of minor children during the "tender years."

125.060 Preliminary orders concerning children.

1. When, at the commencement or during the pendency of the suit or proceedings for modification of decree, it shall be made to appear to the court, or to the judge, that any child of the wife, whether she be plaintiff or defendant, which is too young to dispense with the care of its mother, or other female, has been, or is likely to be, taken or detained from her, or that any child of either party has been, or is likely to be, taken, or removed, by, or at the instance of, the other party, out of the country, or concealed within the same, the court or judge shall forthwith order such child to be produced before him, and then to make such disposition of the same, during the pendency of the suit, as shall appear most advantageous to such child, and most likely to secure to it the benefit of the final order to be made in its behalf.

2. All such orders may be enforced, and made effectual, by attachment, commitment and requiring security for obedience thereto, or by other means, according to the usages of courts, and to the circumstances of the case.

[Part 24:33:1861; A 1947, 271; 1953, 116]

Subsections 1 and 3 of NRS 125.150 reflect disparity of treatment between wives and husbands in regard to alimony and property rights.

125.150 Alimony and adjudication of property rights; award of attorney's fee; subsequent modification by court.

1. In granting a divorce, the court may award such alimony to the wife, or to the husband if he is disabled or unable to provide for himself, in a specified principal sum or as specified periodic payments, and shall make such disposition of the community property of the parties, as appears just and equitable, having regard to the respective merits of the parties and to the condition in which they will be left by such divorce, and to the party through whom the property was acquired, and to the burdens, if any, imposed upon it, for the benefit of the children.

2. Whether or not application for suit money has been made under the provisions of NRS 125.040, the court may award a reasonable attorney's fee to either party to an action for divorce if attorneys' fees are in issue under the pleadings.

3. The court may also set apart such portion of the husband's property for the wife's support, or the wife's property for the husband's support if he is disabled or unable to provide for himself, or the property of either spouse for the support of their children as shall be deemed just and equitable.

4. In the event of the death of either party or the subsequent remarriage of the spouse to whom specified periodic payments were to be made, all such payments required by the decree shall cease, unless it was otherwise ordered by the court.

5. If the court adjudicates the property rights of the parties, or an agreement by the parties settling their property rights has been approved by the court, whether or not the court has retained jurisdiction to modify the same, such adjudication of property rights, and such agreements settling property rights, may nevertheless at any time

thereafter be modified by the court upon written stipulation duly signed and acknowledged by the parties to such action, and in accordance with the terms thereof.

6. If a decree of divorce, or an agreement between the parties which was ratified, adopted or approved in a decree of divorce, provides for specified periodic payments of alimony, such decree or agreement is not subject to modification by the court as to accrued payments. Payments pursuant to a decree entered on or after July 1, 1975, which have not accrued at the time a motion for modification is filed may be modified upon a showing of changed circumstances, whether or not the court has expressly retained jurisdiction for such modification.

[Part 25:33:1861; A 1939, 18; 1943, 117; 1949, 54; 1943 NCL § 9463]--(NRS A 1961, 401; 1975, 1588)

Separate Maintenance.

The following provisions of chapter 125 of NRS permit only wives to receive separate maintenance.

125.190 Action by wife for permanent support and maintenance: Grounds. When the wife has any cause of action for divorce against her husband, or when she has been deserted by him and such desertion has continued for the space of 90 days, she may, without applying for a divorce, maintain in the district court an action against her husband for permanent support and maintenance of herself, or of herself and of her child or children.

[1:97:1913; 1919 RL p. 3365; NCL § 9468]

125.200 During pendency of action court may require husband to pay expenses of litigation and support. During the pendency of such action, the court may, in its discretion, require the husband to pay any money necessary for the prosecution of the action and for the support and maintenance of the wife, or of the wife and of her child or children.

[2:97:1913; 1919 RL p. 3365; NCL § 9469]

125.210 Powers of the court respecting property and support of wife and children: Orders and decrees.

1. In any such action the court may assign and decree to the wife the possession of any real or personal property of the husband and may order or decree the payment of a fixed sum of money for the support of the wife or for the support of the wife and of her child or children and provide that the payment of the same be secured upon real estate, or other security may be required, or any other suitable provision may be made; payments to be made at such times and in such manner as to the court may seem proper.

2. The court shall have the power to change, modify or revoke its orders and decrees from time to time.

3. No order or decree shall be effective beyond the joint lives of the husband and wife.

[3:97:1913; 1919 RL p. 3366; NCL § 9470]

125.220 Wife may file notice of lis pendens; husband may be enjoined from disposing of property.

1. At any time after the filing of the complaint the wife may file a notice of pendency of the action in the office of the county recorder of any county in which the husband may have real property which shall have the same effect as such notice in actions directly affecting real property.

2. The court may also enjoin the husband from disposing of any property during the pendency of the action.

[4:97:1913; 1919 RL p. 3366; NCL § 9471]

125.240 Enforcement of judgment and orders: Remedies. The final judgment and any order or orders made before or after judgment may be enforced by the court by such order or orders as in its discretion it may from time to time deem necessary. A receiver may be appointed, security may be required, execution may issue, under which real or personal property of the husband may be sold as under execution in other cases, and disobedience of any order or orders may be punished as a contempt.

[6:97:1913; 1919 RL p. 3366; NCL § 9473]

125.250 Procedure and practice as in actions for divorce. In all cases commenced under NRS 125.190 to 125.280, inclusive, the proceedings and practice shall be the same, as nearly as may be, as is now or hereafter may be provided in actions for divorce. Suit may be brought, at the option of the wife, either in the county in which the wife shall reside at the time the suit is commenced, or in the county in which the husband may be found.

[7:97:1913; 1919 RL p. 3366; NCL § 9474]

125.280 Judgment for arrearages in payment of support.

1. Where the husband, in an action for separation, makes default in paying any sum of money as required by the judgment or order directing the payment thereof, the district court may make an order directing the entry of judgment for the amount of such arrears, together with costs and disbursements not to exceed \$10 and a reasonable attorney's fee.

2. The application for such order shall be upon such notice to the husband as the court may direct.

3. The judgment may be enforced by execution or in any other manner provided by law for the collection of money judgments.

4. The relief herein provided for is in addition to any and every other remedy to which the wife may be entitled under the law.

[Part 1:147:1953; A 1955, 182]

Although the provisions of NRS 128.105 provide that the parental rights of either the father or mother of a minor child may be terminated if a child is abandoned by either parent, subsection 3 of NRS 128.105 creates an additional basis for termination of the parental rights of a father or putative father based on the abandonment of the mother as defined in NRS 128.011.

128.011 "Abandoned mother" defined. A mother is "abandoned" if the father or putative father has not provided for her support during her pregnancy or has not communicated with her for a period beginning no later than 3 months after conception and extending to the birth of the child.

(Added to NRS by 1975, 964)

Minors' Disabilities.

The following section is identified only because an unmarried father who did not qualify under paragraphs (a), (b) or (d) of subsection 1 would not be afforded the same privilege extended to unmarried mothers.

129.030 Consent to furnishing health care services.

1. A minor may give consent for the health care services provided in subsection 2 for herself or himself or for her or his child, if such minor is:

(a) Living separate and apart from her or his parents or legal guardian, with or without the consent of such parent, parents or legal guardian, for a period of at least four months;

(b) Married or has been married;

(c) A mother, or has borne a child; or

(d) In a physician's judgment, in danger of suffering a serious health hazard if health care services are not provided.

2. Except as otherwise provided in NRS 442.250, the consent of the parent or parents or the legal guardian of a minor is not necessary for a local or state health officer, board of health, licensed physician or public or private hospital to examine or provide treatment for any minor, included within the provisions of subsection 1, who understands the nature and purpose of the proposed examination or treatment and its probable outcome, and voluntarily requests it. The consent of the minor to examination or treatment pursuant to this subsection is not subject to disaffirmance because of minority.

3. A person who treats a minor pursuant to subsection 2 shall, prior to initiating treatment, make prudent and reasonable efforts to obtain the minor's consent to contact the parent, parents or legal guardian of such minor, and shall make a note of such efforts in the minor's health care record. If such person believes that such efforts would jeopardize treatment necessary to such minor's life or necessary to avoid a serious and immediate threat to such minor's health, such person may omit such efforts and note the reasons for such omission in the minor's health care record.

4. Notwithstanding the provisions of subsection 2, a minor may not consent to her or his sterilization.

5. In the absence of negligence, no person providing health care services pursuant to subsection 2 shall be subject to civil or criminal liability for providing such services.

6. The parent, parents or legal guardian of a minor who receives health care services pursuant to subsection 2 shall not be liable for the payment for such health care services unless such parent, parents or legal guardian has consented to such health care services. The provisions of this subsection shall not relieve a parent, parents or legal guardian from liability for payment for emergency health care services provided to a minor pursuant to NRS 129.-040.

(Added to NRS by 1965, 170; A 1971, 1334; 1973, 25, 1521; 1975, 1475)

Succession.

Sections 134.170 and 134.180 reflect disparity of treatment between fathers and mothers of illegitimate children. Although both parents have an obligation to support illegitimate children pursuant to chapter 126, only a mother may inherit from such child.

134.170 Illegitimate child.

1. Every illegitimate child shall be considered as an heir of the person who shall acknowledge himself to be the father of such child by signing in writing a declaration to that effect in the presence of one credible witness, who shall sign the declaration also as a witness, and shall in all cases be considered as heir of the mother, and shall inherit in whole or in part, as the case may be, in the same manner as if born in lawful wedlock. Illegitimate children shall be legitimized by the intermarriage of the parents with each other. Children, so acknowledged or so legitimized, shall have all the rights of inheritance of legitimate children.

2. The issue of all marriages, deemed null in law or dissolved by divorce, shall be legitimate.

[298:107:1941; 1931 NCL § 9882.298]

134.180 Estate of illegitimate child. If any illegitimate child shall die intestate, without lawful issue, and shall not have been acknowledged or legitimized, as provided in NRS 134.170, his estate shall descend to his mother, or in case of her decease to her heirs at law.

[299:107:1941; 1931 NCL § 9882.299]

Changes in Administration of Estates.

141.070 Incapacity of all executors, administrators. If all the executors or administrators shall die or from any cause become incapable of executing the trust, or the power and authority of all of them shall be revoked or annulled according to law, the district court shall direct letters of administration with the will annexed, or otherwise, to be issued to the widow, next of kin or others, in the same manner as directed in relation to original letters of administration. The administrator so appointed shall give bond in like penalty, with like sureties and conditions as required of administrators, and shall have the like power and authority.

[91:107:1941; 1931 NCL § 9882.91]--(NRS A 1959, 47)

Support of Family.

In NRS 146.010 and 146.030, only "widows" are given right to remain in possession of "homestead" or receive a "family allowance."

146.010 Widow and minor children entitled to remain in possession of homestead, provisions; judge may make order for support. Except as provided in NRS 125.140, when any person shall die, leaving a widow or a minor child or children, the widow, child or children shall be entitled to remain in possession of the homestead and of all the wearing apparel and provisions on hand of the family, and all of the household furniture, and shall also be entitled to a reasonable provision for their support, to be allowed by the district judge at chambers or in court.

[111:107:1941; 1931 NCL § 9882.111]--(NRS A 1973, 401)

146.030 Family allowance from estate if property set apart is insufficient; where persons have other support.

1. If the whole property exempt by law be set apart and should not be sufficient for the support of the widow, child or children, the district court or judge shall make such reasonable allowance out of the estate as shall be necessary for the maintenance of the family according to their circumstances during the progress of the settlement of the estate, which, in case of an insolvent estate, shall not be longer than 1 year after granting letters of administration.

2. If the widow or any minor child has a reasonable maintenance derived from other property, and there are other persons entitled to a family allowance, the allowance shall be granted only to those who have not such maintenance, or such allowance may be apportioned in such manner as may be just.

[113:107:1941; 1931 NCL § 9882.113] + [118:107:1941; 1931 NCL § 9882.118]

Estates of Missing Persons.

156.040 Who may be appointed trustee. In appointing such trustee, the court shall prefer the wife of the missing person, or her nominee, and, in the absence of a wife, some relative of the missing person.

(Added to NRS by 1959, 505)

III. PENAL CODE

Persons Capable of Committing Crimes.

Subsection 8 of NRS 194.010 exempts married women from punishment for most crimes where they act under threats, command or coercion of their husbands.

194.010 Who are capable of committing crimes. All persons are liable to punishment except those belonging to the following classes:

1. Children under the age of 8 years.
2. Children between the ages of 8 years and 14 years, in the absence of clear proof that at the time of committing the act charged against them they knew its wrongfulness.

3. Idiots.
 4. Lunatics and insane persons.
 5. Persons who committed the act or made the omission charged under an ignorance or mistake of fact, which disproves any criminal intent, where a specific intent is required to constitute the offense.
 6. Persons who committed the act charged without being conscious thereof.
 7. Persons who committed the act or made the omission charged, through misfortune or by accident, when it appears that there was no evil design, intention or culpable negligence.
 8. Married women, unless the crime be punishable with death, acting under the threats, command or coercion of their husbands; provided, it appear, from all the facts and circumstances of the case, that violent threats, command or coercion were used.
 9. Persons, unless the crime be punishable with death, who committed the act or made the omission charged under threats or menaces sufficient to show that they had reasonable cause to believe, and did believe, their lives would be endangered if they refused, or that they would suffer great bodily harm.
- [1911 C&P § 3; RL § 6268; NCL § 9952]

Sex Crimes Against the Person and Other Sex Related Provisions.

Statutory rape would most probably survive an "equal protection" attack under present law, but various authors of studies of the ERA express doubt that the law as it presently exists will survive should the ERA be adopted.

200.365 Statutory rape: Definition; penalties. Statutory rape is the carnal knowledge of a female under the age of 16 years, with her consent, by a male person of the age of 18 years or over. A person convicted of statutory rape shall be punished:

1. Where the male is under the age of 21 years, for a gross misdemeanor.
2. Where the male is of the age of 21 years or older, by imprisonment in the state prison for not less than 1 year nor more than 10 years.

(Added to NRS by 1967, 470)

NRS 50.090 may, in view of the foregoing comment on statutory rape, need to be considered for limitation of its scope to forcible rape situations.

50.090 Evidence of previous sexual conduct of rape victim inadmissible to challenge victim's credibility; exceptions. In any prosecution for forcible or statutory rape or for assault with intent to commit, attempt to commit or conspiracy to commit either crime, the accused may not present evidence of any previous sexual conduct of the victim of the crime to challenge the victim's credibility as a witness unless the prosecutor has presented evidence or the victim has testified concerning such conduct, or the absence of such conduct, in which case the scope of the accused's cross-examination of the victim or rebuttal shall be limited to the evidence presented by the prosecutor or victim.

(Added to NRS by 1975, 1132)

The same comment relating to NRS 50.090, above, applies to NRS 176.375. In addition, subsection 1 gives special emphasis to the offense of carnal knowledge with a female child under 10 years of age.

176.375 Staying of sentence for purpose of allowing defendant to apply for remission of fine, commutation of sentence or pardon; bail.

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 for the remission of the fine or forfeiture, commutation of sentence or pardon.

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.

(Added to NRS by 1967, 1439)

NRS 12.060 and 12.070 reflect that the offense of seduction is limited to intercourse with an unmarried female under 20 years of age.

12.060 Unmarried female may sue for seduction.

An unmarried female, under 20 years of age at the time of her seduction, may prosecute, as plaintiff, an action therefor, and may recover therein such damages, pecuniary or exemplary, as are assessed in her favor.

[1911 CPA § 52; RL § 4994; NCL § 8551]

12.070 Parent and guardian may maintain action for seduction. The father and mother jointly, or the father or the mother, without preference to either, may prosecute as plaintiff for the seduction of the daughter who, at the time of her seduction, is under the age of majority; and the guardian, for the seduction of the ward who, at the time of her seduction, is under the age of majority, though the daughter or ward be not living with or in the service of the plaintiff at the time of the seduction, or afterwards, and there be no loss of service.

[1911 CPA § 53; A 1913, 27; NCL § 8552]

Pandering, Prostitution and Disorderly Houses.

The following provisions reflect that Nevada's prostitution provisions are framed so that criminal sanctions are imposed only in situations where females are prostitutes.

201.300 Pandering: Definition; punishment.

1. Any person who:

(a) Shall induce, persuade, encourage, inveigle or entice a female person to become a prostitute; or

(b) By threats, violence or by any device or scheme, shall cause, induce, persuade, encourage, take, place, harbor, inveigle or entice a female person to become an inmate of a house of prostitution, or assignation place, or any place where prostitution is practiced, encouraged or allowed; or

(c) By threats, violence, or by any device or scheme, by fraud or artifice, or by duress of person or goods, or by abuse of any position of confidence or authority, or having legal charge, shall take, place, harbor, inveigle, entice, persuade, encourage or procure any female person to enter any place within this state in which prostitution is practiced, encouraged or allowed, for the purpose of prostitution; or

(d) Shall, by promises, threats, violence, or by any device or scheme, by fraud or artifice, by duress of person or goods, or abuse of any position of confidence or authority or having legal charge, take, place, harbor, inveigle, entice, persuade, encourage or procure any female person of previous chaste character to enter any place within this state in which prostitution is practiced, encouraged or allowed for the purpose of sexual intercourse; or

(e) Takes or detains a female with the intent to compel her by force, threats, menace or duress to marry him or to marry any other person; or

(f) Shall receive or give or agree to receive or give any money or thing of value for procuring or attempting to procure any female person to become a prostitute or to come into this state or leave this state for the purpose of prostitution, shall be guilty of pandering.

2. Any person who is guilty of pandering shall be punished:

(a) Where physical force or the immediate threat of such force is used upon the female person, by imprisonment in the state prison for not less than 1 year nor more than 10 years.

(b) Where no physical force or immediate threat of such force is used, by imprisonment in the state prison for not less than 1 year nor more than 6 years, or by a fine of not more than \$5,000, or by both fine and imprisonment.

[1:233:1913; 1919 RL p. 3379; NCL § 10537]--(NRS A 1959, 7; 1967, 477)

201.310 Placing wife in brothel; pandering.

1. Any person who by force, fraud, intimidation or threats, places, or procures any other person or persons to place, his wife in a house of prostitution or lead a life of prostitution shall be guilty of pandering and upon conviction thereof shall be punished:

(a) Where physical force or the immediate threat of such force is used upon the wife, by imprisonment in the state prison for not less than 1 year nor more than 10 years.

(b) Where no physical force or immediate threat of such force is used, by imprisonment in the state prison for not less than 1 year nor more than 6 years, or by a fine of not more than \$5,000, or by both fine and imprisonment.

2. Upon the trial of any offense mentioned in this section, a wife shall be a competent witness for or against her husband, with or without his consent, and may be compelled so to testify.

[2:233:1913; 1919 RL p. 3380; NCL § 10538]--(NRS A 1967, 478)

201.320 Living from earnings of prostitute.

1. Any person who shall knowingly accept, receive, levy or appropriate any money or other valuable thing, without consideration, from the proceeds of any women engaged in prostitution, shall be punished by imprisonment in the state prison for not less than 1 year nor more than 6 years, or by a fine of not more than \$5,000, or by fine and imprisonment.

2. Any such acceptance, receipt, levy or appropriation of such money or valuable thing shall, upon any proceedings or trial for violation of this section, be presumptive evidence of lack of consideration.

[3:233:1913; 1919 RL p. 3380; NCL § 10539]--(NRS A 1967, 478)

201.330 Detaining female in brothel because of debt; pandering. Any person or persons who attempt to detain any female person in a disorderly house or house of prostitution because of any debt or debts she has contracted, or is said to have contracted, while living in the house, shall be guilty of pandering and upon conviction thereof shall be punished:

1. Where physical force or the immediate threat of such force is used upon the female person, by imprisonment in the state prison for not less than 1 year nor more than 10 years.

2. Where no physical force or immediate threat of such force is used, by imprisonment in the state prison for not less than 1 year nor more than 6 years, or by a fine of not more than \$5,000, or by both fine and imprisonment.

[4:233:1913; 1919 RL p. 3380; NCL § 10540]--
(NRS A 1967, 479)

201.340 Furnishing transportation; pandering.

1. Any person who shall knowingly transport or cause to be transported, by any means of conveyance, into, through or across this state, or who shall aid or assist in obtaining such transportation for, any female person, with the intent and purpose to induce, entice or compel such female person to become a prostitute, shall be deemed guilty of pandering, and upon conviction thereof shall be punished:

(a) Where physical force or the immediate threat of such force is used upon the female person, by imprisonment in the state prison for not less than 1 year nor more than 10 years.

(b) Where no physical force or immediate threat of such force is used, by imprisonment in the state prison for not less than 1 year nor more than 6 years, or by a fine of not more than \$5,000, or by both fine and imprisonment.

2. Any person who may commit the crime mentioned in this section may be prosecuted, indicted, tried and convicted in any county or city in or through which he shall so transport or attempt to transport any female person.

[5:233:1913; 1919 RL p. 3380; NCL § 10541]--
(NRS A 1967, 479)

201.360 Placing female in house of prostitution: Penalty.

1. Every person who:

(a) Shall place a female in the charge or custody of another person for immoral purposes, or in a house of prostitution, with intent that she shall live a life of prostitution, or who shall compel any female to reside with him or with any other person for immoral purposes, or for the purposes of prostitution, or shall compel any such

female to reside in a house of prostitution or to live a life of prostitution; or

(b) Shall ask or receive any compensation, gratuity or reward, or promise thereof, for or on account of placing in a house of prostitution or elsewhere any female for the purpose of causing her to cohabit with any male person or persons not her husband; or

(c) Shall give, offer, or promise any compensation, gratuity or reward, to procure any female for the purpose of placing her for immoral purposes in any house of prostitution, or elsewhere, against her will; or

(d) Being the husband of any woman, or the parent, guardian or other person having legal charge of the person of a female under the age of 18 years, shall connive at, consent to, or permit her being or remaining in any house of prostitution or leading a life of prostitution; or

(e) Shall live with or accept any earnings of a common prostitute, or entice or solicit any person to go to a house of prostitution for any immoral purposes, or to have sexual intercourse with a common prostitute; or

(f) Shall decoy, entice, procure or in any manner or way induce any female to become a prostitute or to become an inmate of a house of ill fame or prostitution, for purposes of prostitution, or for purposes of employment, or for any purpose whatever, when she does not know that the house is one of prostitution; or

(g) Shall decoy, entice, procure or in any manner or way induce any person, under the age of 21 years, to go into or visit, upon any pretext or for any purpose whatever, any house of ill fame or prostitution, or any room or place inhabited or frequented by any prostitute, or used for purposes of prostitution, is guilty of a felony.

2. Any person who violates the provisions of subsection 1 shall be punished:

(a) Where physical force or the immediate threat of such force is used upon the female person, by imprisonment in the state prison for not less than 1 year nor more than 10 years.

(b) Where no physical force or immediate threat of such force is used, by imprisonment in the state prison for not less than 1 year nor more than 6 years, or by a fine of not more than \$5,000, or by both fine and imprisonment.

[1911 C&P § 180; RL § 6445; NCL § 10127]--(NRS A 1967, 479)

201.390 Property on principal business streets not to be rented for purposes of prostitution, hurdy houses.

1. It shall be unlawful for any owner or agent of any owner or any other person to keep, let or rent for any length of time, or at all, any house fronting on the principal business street or thoroughfare of any of the towns of this state, for the purpose of prostitution or for the purpose of keeping any dance house or house commonly called a hurdy house, or house where wine, beer or spirituous liquors are sold or served by females or female waiters or attendants, or where females are used or employed to attract or solicit customers, nor shall any entrance or exit way to any house referred to in this subsection be made or used from the principal business street or thoroughfare of any of the towns of this state.

2. Any person violating the provisions of subsection 1 shall be punished by a fine of not more than \$500.

[1911 C&P § 246; RL § 6511; NCL § 10194] + [1911 C&P § 247; RL § 6512; NCL § 10195]--(NRS A 1967, 481)

201.400 General reputation competent evidence. In the trial of all cases arising under the provisions of NRS 201.380 and 201.390, evidence of general reputation shall be deemed competent evidence as to the question of the ill fame of any house alleged to be so kept, and to the question of the ill fame of such woman.

[1911 C&P § 248; RL § 6513; NCL § 10196]

201.430 Unlawful advertising of illicit resorts.

1. It shall be unlawful for any person or persons, company, association or corporation doing business in

this state to advertise, in any public theater, or on the public streets of any city or town, or on the public highway, any resort where females congregate for the purpose of illicit intercourse.

2. Any person or persons, company, association or corporation violating the provisions of this section shall be punished:

(a) For the first offense, by a fine of not more than \$500.

(b) For any subsequent offense, for a misdemeanor.

[1:109:1913; 1919 RL p. 3379; NCL § 10535]--
(NRS A 1967, 481)

201.440 Unlawful to permit illegal advertising if illicit resorts. Any person or persons, company, association or corporation doing business in this state who shall knowingly aid, abet, solicit, encourage, permit or allow any person or persons, company, association or corporation to advertise in their place of business, by any device, any roadhouse, or resort where females congregate for the purpose of illicit intercourse, shall be punished:

1. For the first offense, by a fine of not more than \$500.

2. For any subsequent offense, for a misdemeanor.

[2:109:1913; 1919 RL p. 3379; NCL § 10536]--
(NRS A 1967, 481)

The following three sections are listed for consideration in conjunction with the foregoing prostitution comment.

175.301 Abortion; enticing female for prostitution: Corroboration of woman's testimony. 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.

(Added to NRS by 1967, 1429)

201.370 Male person habitually resorting in house of prostitution. Every male person who shall habitually resort in any house of prostitution shall be guilty of a misdemeanor.

[Part 1911 C&P § 195; A 1921, 112; NCL § 10142]--
(NRS A 1967, 480)

244.345 Licensing of places of amusement, entertainment, recreation: County license board; licensing houses of prostitution prohibited in certain counties.

1. * * *

8. In any county having a population of 200,000 or more, as determined by the last preceding national census of the Bureau of the Census of the United States Department of Commerce, the license board shall not grant any license to a petitioner for the purpose of operating a house of ill fame or repute or any other business employing any female for the purpose of prostitution.

[1:50:1923; NCL § 2037] + [2:50:1923; NCL § 2038] + [3:50:1923; NCL § 2039] + [4:50:1923; NCL § 2040]--(NRS A 1959, 838; 1961, 364; 1971, 11; 1973, 923; 1975, 562)

Sections 201.020 to 201.070, inclusive, of NRS reflect the criminal sanctions which are imposed on a husband who does not support his wife in "destitute or necessitous circumstances." No criminal sanctions are imposed upon a wife for failure to support a husband in identical circumstances.

201.020 Nonsupport of wife by husband, child by parent: Penalty. Any husband who, without just cause, deserts, willfully neglects or refuses to provide for the support and maintenance of his wife in destitute or necessitous circumstances; or any parent who without lawful excuse deserts or willfully neglects or refuses to provide for the support and maintenance of his or her legitimate or illegitimate minor child or children or any parent who without lawful excuse deserts or willfully neglects or refuses to provide for the support and maintenance of his or her legitimate or illegitimate minor child or children who upon arriving at the age of majority are unable to

provide themselves with support and maintenance due to infirmity, incompetency or other legal disability contracted prior to their reaching the age of majority, shall be punished:

1. If the conduct for which the defendant was convicted persisted for less than 6 months, for a misdemeanor or, if such conduct persisted for more than 6 months, for a gross misdemeanor or, if for more than 1 year as provided in subsection 2.

2. For any subsequent offense by imprisonment in the state prison for not less than 1 year nor more than 6 years, or by a fine of not more than \$1,000, or by both fine and imprisonment.

[1:170:1923; NCL § 10516]--(NRS A 1965, 1440; 1967, 474; 1969, 271)

201.030 Institution of proceedings: Verified complaint. Proceedings under NRS 201.020 to 201.-080, inclusive, may be instituted upon complaint made under oath or affirmation by the wife or child or children, or by any other person, including the district attorney as provided in NRS 201.-025, against any person guilty of either of the offenses named in NRS 201.020.

[2:170:1923; NCL § 10517]--(NRS A 1969, 589)

201.040 Temporary order for support. At any time before the trial, upon petition of the complainant and upon notice to the defendant, the court may enter such temporary order as may seem just, providing for support of the deserted wife or children, or both, pendente lite, and may punish for such violation of such order as for contempt.

[3:170:1923; NCL § 10518]

201.050 Powers of court in addition to imposition of criminal penalty; recognizance of defendant.

1. Before the trial, with the consent of the defendant, or at the trial, on entry of a plea of guilty, or after conviction, instead of imposing the penalty provided in NRS 201.020, or in addition thereto, the court, in its discretion, having regard to the circumstances and to the financial ability or earning capacity of the defendant, shall have the power:

(a) To make an order, which shall be subject to change by the court from time to time as circumstances may require, directing the defendant to pay a certain sum periodically, for a term not exceeding 2 years, to the wife or the guardian, curator or custodian of the minor child or children, or to an organization or individual approved by the court as trustee.

(b) To release the defendant from custody on probation for the period so fixed, upon his or her entering into a recognizance, with or without surety, in such sum as the court may order and approve.

2. The condition of the recognizance shall be such that if the defendant shall make his or her personal appearance in court whenever ordered to do so, and shall further comply with the terms of such order of support, or of any subsequent modification thereof, then such recognizance shall be void, otherwise in full force and effect.

[4:170:1923; NCL § 10519]

201.070 Evidence; husband and wife competent witnesses.

1. No other or greater evidence shall be required to prove the marriage of the husband and wife, or that the defendant is the father or mother of such child or children, than is or shall be required to prove such facts in a civil action.

2. In no prosecution under NRS 201.020 to 201.-080, inclusive, shall any existing statute or rule of law prohibiting the disclosure of confidential communications between husband and wife apply, and both husband and wife shall be competent witnesses to testify against each other to any and all relevant matters, including the fact of such marriage and the parentage of such child or children; but neither shall be compelled to give evidence incriminating himself or herself.

3. Proof of the desertion of such wife, child or children, in destitute or necessitous circumstances, or of neglect or refusal to provide for the support and maintenance of such wife, child or children, shall be prima facie evidence that such desertion, neglect or refusal is willful.

[6:170:1923; NCL § 10521]

Miscellaneous Crimes.

NRS 207.040 reflects that only male prisoners who are convicted of vagrancy may be required to work on public works.

207.040 Vagrants may be employed on public works. All male persons having the physical ability to work, convicted of vagrancy and imprisoned on judgment therefor, may be required to perform labor on the public works, buildings, grounds or ways in the county, and the sheriff or other person or persons having them in charge while performing such labor may, in his discretion, employ any usual, reasonable, humane and sufficient means to guard against and prevent such prisoner escaping from custody while being so employed.

[1911 C&P § 355; RL § 6620; NCL § 10303]

IV. POLITICAL CODE

Powers of Sheriff and Other Public Officers.

The provisions of subsection 1 of NRS 248.200 and 281.290 indicate that only males are subject to the command for assistance by sheriff or other public officer.

248.200 Sheriff may command assistance when resistance made to execution of process.

1. When a sheriff shall find, or have reason to apprehend, that resistance will be made to the execution of his process, he may command as many male inhabitants of his county as he may think proper, and any military company or companies in the county, armed and equipped, to assist him in overcoming the resistance, and, if necessary, in seizing, arresting and confining the resisters and their aiders and abettors, to be punished according to law.

2. The sheriff shall certify to the court from which the process issued, the names of the resisters and their aiders and abettors, to the end that they be proceeded against for their contempt of court.

[Part 83:108:1866; B § 2681; BH § 1718; C § 1864; RL § 2833; NCL § 4833] + [84:108:1866; B § 2682; BH § 1719; C § 1865; RL § 2834; NCL § 4834]

281.290 Officers executing process may command assistance when resistance is apprehended.

1. When a public officer authorized to execute process shall find, or have reason to apprehend, that resistance will be made to the execution of his process, he may command as many male inhabitants of his county as he may think proper, and may call upon the governor for military aid in the manner provided by law, to assist him in overcoming the resistance, and, if necessary, in seizing, arresting and confining the resisters and their aiders and abettors, to be punished according to law.

2. The officer shall certify, to the court from which the process issued, the names of the resisters and their aiders and abettors, to the end that they be proceeded against for their contempt of court.

[Part 83:108:1866; B § 2681; BH § 1718; C § 1864; RL § 2833; NCL § 4833] + [84:108:1866; B § 2682; BH § 1719; C § 1865; RL § 2834; NCL § 4834]--(NRS A 1967, 1341)

Veterans' Rights and Benefits.

Nevada Revised Statutes confer numerous benefits on current and former members of the military services. These benefits include, but are not limited to, the right to:

1. Be reinstated to an employment position formerly held in public employment following honorable termination of active service (chapter 418);
2. Certain property tax exemptions (chapter 361);
3. Military leave of absence from public employment for a fixed period of time while engaged in military training (NRS 281.365, 284.370 and 412.078); and
4. Receive veterans' preference points when seeking public employment (NRS 281.060, 338.130 and 284.260).

Although veterans' benefit provisions are neutral on their face and although court suits challenging the validity of veterans' benefit provisions have, on the basis of violation of "equal protection," almost always been rejected, the following sections, relating to veterans' preference in

employment, are listed for evaluation because a 1976 federal district court case held that a particular veteran's preference scheme was unconstitutional because it violated the equal rights of women. However, the veteran's preference scheme declared unconstitutional was not the same as the point system followed by Nevada.

Since veterans' preferences in employment are the provisions most frequently challenged, they are the only sections specifically listed.

281.060 Preferential employment by state and political subdivisions; employment of aliens.

1. Only citizens or wards of the United States or persons who have been honorably discharged from the military service of the United States shall be employed by any officer of the State of Nevada, any political subdivision of the state, or by any person acting under or for such officer in any office or department of the State of Nevada, or political subdivision of the state.

2. In all cases where persons are so employed, preference shall be given, the qualifications of the applicants being equal:

(a) First: To honorably discharged military personnel of the United States who are citizens of the State of Nevada.

(b) Second: To other citizens of the State of Nevada.

3. Nothing in this section shall be construed to prevent:

(a) The working of prisoners by the State of Nevada, or by any political subdivision of the state, on street or road work or other public work.

(b) The working of aliens, who have not forfeited their right to citizenship by claiming exemption from military service, as common laborers in the construction of public roads, when it can be shown that citizens or wards of the United States or persons who have been honorably discharged from the military service of the United States are not available for such employment; but any alien so employed shall be replaced by a citizen, ward or ex-service person of the United States applying for employment.

(c) The employment of any teacher, instructor or professor authorized to teach in the United States under the teacher-exchange programs as authorized by federal laws enacted by the Congress of the United States.

(d) Employment of aliens by the University of Nevada System in the technical, graduate assistant and student help categories, but, with the exception of the foreign language departments, not more than 5 percent of the total number of persons employed in the technical, graduate assistant and student help categories may be aliens.

(e) Employment of aliens in any state or political subdivision hospital.

4. Subject to the exceptions contained in this section, no money shall be paid out of the state treasury or out of the treasury of any political subdivision of the state to any person employed on any of the work mentioned in this section unless such person shall be a citizen or ward or naturalized citizen of the United States.

5. Any officer of the State of Nevada, or of any political subdivision of the state, or any person acting under or for such officer, or any other person who violates any of the provisions of this section shall be guilty of a misdemeanor. The penalties provided for in this section shall not apply where violations thereof are due to misrepresentations made by the employee or employees by the production of fraudulent papers evidencing citizenship in the United States.

[Part 1:168:1919; A 1921, 205; 1929, 89; NCL § 6173] + [3:168:1919; 1919 RL p. 2965; NCL § 6175] + [Part 4:168:1919; A 1921, 205; NCL § 6176]--
(NRS A 1963, 289; 1967, 547; 1969, 400, 879, 1425; 1973, 222)

338.130 Preferential employment on public works construction.

1. In all cases where persons are employed in the construction of public works, preference shall be given, the qualification of the applicants being equal:

(a) First: To honorably discharged soldiers, sailors and marines of the United States who are citizens of the State of Nevada.

(b) Second: To other citizens of the State of Nevada.

2. Nothing in this section shall be construed to prevent the working of prisoners by the State of Nevada, or by any political subdivision of the state, on street or road work or other public work.

3. In each contract for the construction of public works a proviso shall be inserted to the effect that if the provisions of this section are not complied with by the contractor, the contract shall be void, and any failure or refusal to comply with any of the provisions of this section shall render any such contract void. All boards, commissions, officers, agents and employees having the power to enter into contracts for the expenditure of public money on public works shall file in the office of the labor commissioner the names and addresses of all contractors holding contracts with the State of Nevada, or with any political subdivision of the state. Upon the letting of new contracts the names and addresses of such new contractors shall likewise be filed. Upon the demand of the labor commissioner a contractor shall furnish a list of the names and addresses of all subcontractors in his employ.

4. Subject to the exceptions contained in this section, no money shall be paid out of the state treasury or out of the treasury of any political subdivision of the state to any person employed on any work mentioned in this section unless there has been compliance with the provisions of this section.

5. Any contractor with the State of Nevada or with any political subdivision of the state or any other person who violates any of the provisions of this section shall be guilty of a misdemeanor. The penalties provided for in this section shall not apply where violations thereof are due to misrepresentations made by the employee or employees.

[Part 1:168:1919; A 1921, 205; 1929, 89; NCL § 6173] + [2:168:1919; A 1921, 205; NCL § 6174] + [3:168:1919; 1919 RL p. 2965; NCL § 6175] + [Part 4:168:1919; A 1921, 205; NCL § 6176]--(NRS A 1967, 554; 1971, 209)

284.260 Veterans' preferences: Additional credits on examination.

1. In establishing the lists of eligible persons, certain preferences shall be allowed for veterans not dishonorably discharged from the Armed Forces of the United States. For disabled veterans, 10 points shall be added to the passing grade achieved on the examination. For ex-servicemen and women who have not suffered disabilities, and for the widows of veterans, 5 points shall be added to the passing grade achieved on the examination.

2. Any person qualifying for preference points pursuant to subsection 1, is entitled to have such points applied to any open competitive examination in the classified service, but only to one promotional examination.

[32:351:1953]--(NRS A 1975, 1166)

Elections.

293.497 Residence of family: Head of family. If a man has a family residing in one place and he does business in another, the former is his residence, unless his family is located there only temporarily, but if his family resides without the state and he is permanently located within the state, with no intention of removing therefrom, he shall be deemed a resident for election purposes.

(Added to NRS by 1960, 272)

Revenue and Taxation.

The following sections provide a property tax benefit for widows, but do not make the same provision for widowers.

361.080 Widows' and orphans' exemption. The property of widows and orphan children, not to exceed the amount of \$1,000 assessed valuation, shall be exempt from taxation, but no such exemption shall be allowed to anyone but actual bona fide residents of this state, and shall be allowed in but one county in this state to the same family. For the purpose of this section, property in which such person has any interest

shall be deemed the property of such person. The person or persons claiming such exemption shall file with the county assessor an affidavit declaring such residence and that such exemption has been claimed in no other county in this state for that year.

[Part 1:344:1953; A 1954, 29; 1955, 340]--(NRS A 1971, 142; 1973, 985)

361.850 Eligibility unaffected by property tax exemptions. A claimant may receive assistance under the Senior Citizen's Property Tax Assistance Act though such claimant also receives a property tax exemption as a widow, blind person or veteran.

(Added to NRS by 1973, 1331; A 1975, 489)

Education.

391.160 Determination of teachers' salaries. The salaries of teachers shall be determined by the character of the service required. In no school district shall there be any discrimination against female teachers in the matter of salary.

[338:32:1956]--(NRS A 1969, 1178; 1971, 75)

State Militia.

The following sections use the phrase "bodies of men," "enlisted men" or "men" in reference to members of state militia. Since no gender provision automatically includes "women" within these terms, these sections are listed for consideration.

412.126 Voluntary military organizations:
Licensing by governor; muster rolls; inspection.

1. The governor is authorized to issue licenses to bodies of men to organize, drill and bear arms as military companies or organizations.

2. Whenever any such body of men associate themselves as a military company or organization and drill with arms under the license of the governor, such military company or organization shall:

(a) File with the adjutant general annually, or at such time as the governor or adjutant general may designate, a muster roll of such military company or organization certified by the oath of the commanding officer thereof. The

muster roll shall contain the names, ages, occupations and places of residence of all members thereof, and the number and character of all arms in the possession of such organization; and

(b) Be subject to inspection by the adjutant general upon his request within such time as he shall designate.

3. Each member of such military company or organization shall take and subscribe to an oath before any officer authorized to administer the same that he will support the Constitution of the United States and the constitution of the State of Nevada and will obey and maintain all laws and obey all officers employed in administering the same.

(Added to NRS by 1967, 1302)

412.142 Industrial insurance; compensation.

1. In all cases in which any officer or enlisted man of the Nevada National Guard is wounded, injured, disabled or killed while in line of duty in the service of the state, such officer or enlisted man or the dependents of such officer or enlisted man are entitled to receive compensation from the State of Nevada, in accordance with the provisions of chapter 616 of NRS; and there shall be paid to the Nevada industrial commission quarterly, from the appropriation for the support of the Nevada National Guard, such sum for premium as may be fixed and agreed upon by the commander in chief and the Nevada industrial commission, based upon the number of officers and enlisted men in regular attendance during the month as shown by the reports filed with the adjutant general, who shall certify such numbers to the Nevada industrial commission.

2. In all such cases, such officer or enlisted man shall be deemed to be an employee of the State of Nevada. The compensation to be awarded to any such officer or enlisted man, or to the dependents of any such officer or enlisted man, shall be determined upon the basis of his average income from all sources during the year immediately preceding the date of such injury or death or the commencement of such disability; but such compensation shall in no case exceed the maximum prescribed in chapter 616 of NRS.

(Added to NRS by 1967, 1304)

412.146 Eligibility to state office of federally paid members of militia. Any officer or enlisted man of the militia of this state who receives compensation from the United States as a federally recognized member of the Nevada National Guard does not hold a lucrative office under the Government of the United States within the meaning of section 9 of article 4 of the constitution of the State of Nevada.

(Added to NRS by 1967, 1304)

Commissioner for Veteran Affairs.

Subsection 1 implies that only "widows" of deceased veterans receive assistance from the commissioner.

417.090 Duties of commissioner and deputy commissioner. The duties of the commissioner and the deputy commissioner are:

1. To assist veterans, and those presently serving in the military and naval forces of the United States who are residents of the State of Nevada, their wives, widows, husbands, children, dependents, administrators, executors and personal representatives, in preparing, submitting and presenting any claim against the United States, or any state, for adjusted compensation, hospitalization, insurance, pension, disability compensation, vocational training, education, rehabilitation, and to assist them in obtaining any aid or benefit to which they may, from time to time, be entitled under the laws of the United States or of any of the states.

2. To aid, assist, encourage and cooperate with every nationally recognized service organization insofar as the activities of such organizations are for the benefit of veterans and servicemen and women.

3. To give aid, assistance and counsel to each and every problem, question and situation, individual as well as collective, affecting any veteran or serviceman or woman, or their dependents, or any group of veterans or servicemen and women, when in their opinion such comes within the scope of this chapter.

[3:189:1943; A 1947, 779; 1943 NCL § 6879.02]

Nevada Highway Patrol.

NRS 481.160 limits service in the Nevada highway patrol to men.

481.160 Qualifications of Nevada highway patrol personnel. The appointed personnel shall:

1. Be men qualified at the time of their appointment with the knowledge of all traffic laws of this state, the provisions of chapter 482 of NRS, the provisions of chapter 483 of NRS, the provisions of chapter 706 of NRS, and all the laws with respect to the imposition and collection of gasoline taxes and special fuel taxes.

2. Be versed in the laws respecting the powers of police officers as to traffic law violations and other offenses committed over and along the highways of this state.

[Part 5:133:1949; A 1951, 36, 338; 1953, 195; 1955, 574]

Forest Practice.

Paragraph (i) of subsection 1 of NRS 528.043 requires a person applying for a logging permit to submit a logging plan showing only the "number of men" available for fire-fighting. A similar provision is set out in paragraph (b) of subsection 2 of NRS 528.080.

528.043 Logging permit: Logging plan; performance bond. An application for a logging permit shall be accompanied by:

1. A logging plan including, but not limited to, the following information:

- (a) An accurate topographical map showing exterior boundaries of the areas to be logged and the roads, structures and landings, existing and proposed.

- (b) The volume of timber to be removed.

- (c) The time required for removal of such volume.

- (d) The specification as to the percentage of merchantable volume to be removed and the composition of any residual stand.

- (e) The revegetation plan, if applicable.

- (f) The slash-disposal and cleanup plans.
- (g) The road construction specifications and erosion control measures.
- (h) An outline of the fire prevention and protection plans and procedures.
- (i) A description of tools and equipment suitable and available for firefighting, and the number of men normally available for firefighting.

2. If a variance is requested pursuant to NRS 528.048, the applicant shall also furnish the state forester firewarden with information and data regarding:

- (a) Soil characteristics;
- (b) Reproduction capability of the area;
- (c) Ground and litter cover;
- (d) Soil erosion hazards;
- (e) Natural drainage features;
- (f) Percent of gradient and aspect of slopes;
- (g) Description of the method of logging and equipment to be used; and
- (h) Such other information as the state forester firewarden may require.

3. A performance bond in an amount set by the state forester firewarden and based upon the contract price or value of the timber to be cut, which shall be conditioned upon compliance with all provisions of the logging permit, and shall be approved as to form and sufficiency by the state forester firewarden.

(Added to NRS by 1971, 1445; A 1973, 460)

A similar provision exists in NRS 528.080.

Labor.

NRS 608.018 is listed only to identify inconsistent use of terms in paragraphs (d) and (n) of subsection 2.

608.018 Overtime compensation: Requirement; exceptions.

1. Except as provided in subsection 2, an employer shall pay time and one-half of an employee's regular wage rate whenever an employee works:

- (a) More than 40 hours in any scheduled work-week;

(b) More than 8 hours in any workday unless by mutual agreement the employee works a scheduled 10 hours per day for 4 calendar days within any scheduled workweek.

2. The provisions of subsection 1 do not apply to:

(a) Employees who are not covered by the minimum wage provisions of NRS 608.250;

(b) Employees who receive compensation for employment at a rate not less than one and one-half times the minimum rate provided by NRS 608.250;

(c) Outside buyers;

(d) Retail commission salespersons if their regular rate is more than one and one-half the minimum wage, and more than one-half their compensation comes from commissions;

(e) Employees who are employed in bona fide executive, administrative or professional capacities;

(f) Employees covered by collective bargaining agreements which provide otherwise for overtime;

(g) Drivers, drivers' helpers, loaders and mechanics for motor carriers subject to the Motor Carrier Act of 1935, as amended;

(h) Railroad employees;

(i) Air carrier employees;

(j) Drivers or drivers' helpers making local deliveries and paid on a trip-rate basis or other delivery payment plan;

(k) Taxicab and limousine drivers;

(l) Agricultural employees;

(m) Employees of business enterprises having a gross sales volume of:

(1) Less than \$500,000 per year for calendar year 1975 or 1976.

(2) Less than \$250,000 per year for calendar year 1977 and thereafter; and

(n) Any salesman, parts man or mechanic primarily engaged in selling or servicing automobiles, trucks or farm equipment.

(Added to NRS by 1975, 1583)

Although term "employee" is defined in subsection 1 of NRS 608.010 to include both male and female persons, the term "workingmen" is used throughout NRS 608.210, 608.220 and 608.230. Unless these provisions are meant to establish an employment position which is limited to males, these sections should be amended to reflect that their provisions apply to both men and women.

608.210 Smelters and mills.

1. The period of employment of workingmen in smelters and in all other institutions for the reduction or refining of ores or metals shall be 8 hours per day, except:

(a) In cases of emergency where life or property is in imminent danger; or

(b) When the workingman voluntarily agrees to work beyond the 8-hour period.

2. Any person who violates this section, or any person, corporation, employer or his or its agent who hires, contracts with, or causes any person to work in a smelter or any other institution or place for the reduction or refining of ores or metals for a period of time longer than 8 hours during 1 day, unless life and property are in imminent danger or the workingman has voluntarily agreed to work beyond the 8-hour period, is guilty of a misdemeanor.

[1911 C&P § 290; RL § 6555; NCL § 10238] +
[Part 1911 C&P § 291; RL § 6556; NCL § 10239]--
(NRS A 1967, 625; 1969, 459)

608.220 Open mines.

1. The period of employment of workingmen in open pit and open cut mines shall not exceed 8 hours in any 24 hours, except:

(a) In cases of emergency where life or property is in imminent danger; or

(b) When the workingman voluntarily agrees to work beyond the 8-hour period.

2. Any person who violates any provision of subsection 1, or any person, persons, corporation, employer, or his or its agent who hires, contracts with, or causes any person to labor in any open pit or open cut mine for a period of time longer than 8 hours within any 24 hours, except in cases of emergency where life or property is in imminent danger or the workingman has voluntarily agreed to work beyond the 8-hour period, is guilty of a misdemeanor.

[1911 C&P § 292; RL § 6557; NCL § 10240] +
[1911 C&P § 293; RL § 6558; NCL § 10241]--(NRS A 1967, 625; 1969, 459)

608.230 Surface workings of underground mines.

1. The number of hours of work or labor of mechanics, engineers, blacksmiths, carpenters, topmen, and all workmen employed or working on or about the surface or surface workings of any underground mineworkings, shall not exceed 8 hours in any period of 24 hours, except:

(a) In cases of emergency where life or property is in imminent danger; or

(b) When the mechanic, engineer, blacksmith, carpenter, topman or other workman voluntarily agrees to work more than 8 hours in any period of 24 hours.

2. Any person who violates any of the provisions of this section, or any person, corporation, employer or agent who hires, contracts with, or in any manner causes or induces any person to work or labor on or about the surface or surface workings of any underground mineworkings for more than 8 hours in any period of 24 hours, except in cases of emergency where life or property is in imminent danger or the workman has voluntarily agreed to work more than 8 hours in any period of 24 hours, is guilty of a misdemeanor.

[1:188:1911; RL § 1941; NCL § 2784] + [2:188:1911; RL § 1942; NCL § 2795]--(NRS A 1967, 625; 1969, 460)

NRS 609.210 imposes a criminal penalty on an employer or a custodian of a minor if the minor engages in certain enumerated activities. This section may be discriminatory since a dancehall is defined in subsection 2 as a place where women or girls are employed or attend for profit.

609.210 Employing, exhibiting minor in injurious, immoral, dangerous business; penalty.

1. Every person who employs, or causes to be employed, exhibits or has in his custody for exhibition or employment, any minor, and every parent, relative, guardian, employer or other person having the care, custody or control of any such minor, who in any way procures or consents to the employment of such minor:

(a) In begging, receiving alms, or in any mendicant occupation;

(b) In any indecent or immoral exhibition or practice;

(c) In any practice or exhibition dangerous or injurious to life, limb, health or morals;

(d) As a messenger for delivering letters, telegrams, packages or bundles to any house of prostitution or assignation; or

(e) In any public dancehall within this state, is guilty of a misdemeanor.

2. As used in this section a public dancehall means a dancehall where women or girls are either employed or attend for profit either directly or indirectly to themselves.

[1911 C&P § 558; A 1927, 234; NCL § 10503]--
(NRS A 1975, 80)

NRS 612.435 and 612.440 exclude pregnant women from unemployment compensation. Legislation denying women unemployment compensation in such cases has been upheld by the U.S. Supreme Court as recently as 1974. The passage of the ERA would probably require a reevaluation of this area by the Supreme Court.

612.435 Separation from work because of pregnancy. A claimant is disqualified for benefits for the week in which the claimant is separated from work because of pregnancy and each week thereafter unless proof of ability to work is submitted.

[Part 5:129:1937; A 1939, 115; 1941, 412; 1943, 239; 1947, 413; 1949, 277; 1951, 339; 1955, 698]--(NRS A 1971, 752; 1973, 1361)

612.440 Unemployment due to pregnancy.

1. A claimant is disqualified for benefits for any week with respect to which the claimant's unemployment is due to pregnancy unless proof of ability to work is submitted.

2. The claimant's unemployment shall be deemed to be due to pregnancy following confinement until proof of ability to resume employment has been submitted by the claimant.

[Part 5:129:1937; A 1939, 115; 1941, 412; 1943, 239; 1947, 413; 1949, 277; 1951, 339; 1955, 698]--(NRS A 1971, 752; 1973, 1361)

Insurance.

Subsection 5 of NRS 683A.150 requires a female applicant for an agent's, broker's or solicitor's license to indicate

if her husband has ever had an insurance license refused, suspended or revoked. No similar requirement is imposed on married male applicants. The implication is that a woman applicant whose husband has had a previous application for a license refused, suspended or revoked may not have the same opportunity to become licensed as a male applicant under similar circumstances.

683A.150 Application for agent's, broker's or solicitor's license.

1. Written application for an agent's, broker's or solicitor's license shall be filed with the commissioner by the applicant, accompanied by the applicable fee shown in NRS 680B.010 (fee schedule). The application form shall be accompanied by the applicant's fingerprints, and shall require full answers to questions reasonably necessary to determine the applicant's:

- (a) Identity and residence;
- (b) Business record or occupations for not less than the 2 years next preceding, with the name and address of each employer, if any;
- (c) Experience or instruction in the kind or kinds of insurance business he proposes to transact, and relative to the insurance laws of this state; and
- (d) Other facts reasonably required by the commissioner to determine the applicant's qualifications for the license applied for.

2. If for an agent's license, the application shall state the kinds of insurance proposed to be transacted, and be accompanied by a written appointment by an authorized insurer or insurers as agent for such kinds of insurance, subject to issuance of the license.

3. If for a solicitor's license, the application shall be accompanied by the written requisition and certification by a licensed resident general lines agent or licensed resident broker, showing that the applicant is his bona fide employee, or is so employed as a solicitor subject to issuance of the license.

4. If the applicant for an agent's or broker's license is a firm or corporation, the application shall also show the names of all members, officers

and directors, and shall designate each individual who is to exercise the license powers; and each such individual shall furnish information as to himself as though for an individual license.

5. The application shall show whether and where the applicant is now or ever was previously licensed anywhere as to insurance; whether any such license was ever refused, suspended, revoked or renewal or continuance refused; whether any insurer, general agent, agent or broker claims the applicant has ever had an agency contract canceled, and the facts thereof; and, if the applicant is a married woman, like information with respect to her husband.

6. The application shall be verified by the applicant, and no applicant for a license under this chapter shall knowingly misrepresent or withhold any fact or information called for in the application form or in connection therewith.

(Added to NRS by 1971, 1640)

V. MISCELLANEOUS

"Married Women" Provisions.

Various provisions are scattered throughout NRS which appear to give married women certain rights which should be extended to married men to avoid discrimination. In actuality, these provisions were inserted in our law to remove certain "common law" disabilities which were imposed only on married women. Thus, these provisions only serve to establish equality between men and women.

For reference purposes, the NRS sections which contain "married women" references are: NRS 78.285, 111.110, 111.245, 133.030, 133.090, 138.030, 139.020, 240.060 and 673.340.

"Reasonable Man" Statutes.

The "reasonable man" or "reasonably prudent man" or like phrases are listed for possible amendment only because some people may contend that this phrase has a discriminatory impact on women. The term "reasonable man" has had a long history of usage in our legal system and simply denotes a person exercising those qualities of attention, knowledge, intelligence and judgment which society requires of its members for the protection of their own interests and the interest of others.

NRS sections containing "reasonable man" references are: NRS 164.050, 164.220, 167.050, 193.010 (subsections 12 and 14), 233B.123, 286.682, 616.4985, 644.403, 673.212, 678.450, 686A.310 and 689.315.

VI. NEVADA CONSTITUTION

Resolutions proposing constitutional amendments to the following constitutional sections were passed during the 1975 legislative session.

ARTICLE 4.

Legislative Department

Sec: 31. Separate property of wife; community property. All property, both real and personal, of the wife owned or claimed by her before marriage, and that acquired afterward by gift, devise or descent, shall be her separate property; and laws shall be passed, more clearly defining the rights of the wife in relation as well to her separate property, as to that held in common with her husband. Laws shall also be passed providing for the registration of the wives [wife's] separate property.

ARTICLE 15.

Miscellaneous Provisions

Section 3. Eligibility to public office: Dueling; females. No person shall be eligible to any office who is not a qualified elector under this constitution. No person who, while a citizen of this state, has, since the adoption of this constitution, fought a duel with a deadly weapon, sent or accepted a challenge to fight a duel with a deadly weapon, either within or beyond the boundaries of this state, or who has acted as second, or knowingly conveyed a challenge, or aided or assisted in any manner in fighting a duel, shall be allowed to hold any office of honor, profit or trust; or enjoy the right of suffrage under this

constitution. The legislature shall provide by law for giving force and effect to the foregoing provisions of this section; provided, that females over the age of twenty-one years, who have resided in this state one year, and in the county or district six months next preceding any election to fill either of said offices, or the making of such appointment, shall be eligible to the office of superintendent of public instruction, deputy superintendent of public instruction, school trustee and notary public.

[Amended in 1889 and 1912. The first amendment was proposed and passed by the 1887 legislature; agreed to and passed by the 1889 legislature; and approved and ratified by the people at a special election held February 11, 1889. See: Statutes of Nevada 1887, p. 162; Statutes of Nevada 1889, p. 151. The second amendment was proposed and passed by the 1909 legislature; agreed to and passed by the 1911 legislature; and approved and ratified by the people at the 1912 general election. See: Statutes of Nevada 1909, p. 349; Statutes of Nevada 1911, p. 454.]

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107.137 Factors considered in determining custody of minor child. (1) In determining custody of a minor child pursuant to ORS 107.105 or 107.135, the court shall give primary consideration to the best interests and welfare of the child. In determining the best interests and welfare of the child, the court may consider the following relevant factors:

(a) The emotional ties between the child and other family members;

(b) The interest of the parties in and attitude toward the child; and

(c) The desirability of continuing an existing relationship.

(2) The best interest and welfare of the child in a custody matter shall not be determined by isolating any one of the relevant factors referred to in subsection (1) of this section, or any other relevant factor, and relying on it to the exclusion of other factors.

(3) No preference in custody shall be given to the mother over the father for the sole reason that she is the mother.

(4) In determining custody of a minor child pursuant to ORS 107.105 or 107.135, the court shall consider the conduct, marital status, income, social environment or life style of either party only if it is shown that any of these factors are causing or may cause emotional or physical damage to the child.

[1975 c.722 s.2]

Note: 107.137 was not added to and made a part of ORS chapter 107 or any series therein by legislative action.

Note: Section 3, chapter 722, Oregon Laws 1975, provides:

Sec. 3. The provisions of this Act [ORS 107.105 and 107.137] shall not apply to petitions for annulment or dissolution of marriage or of separation filed before January 1, 1976. However, the provisions of this Act shall apply if a decree affecting the custody, support or welfare of minor children is vacated or modified under ORS 107.135.

107.140 [Paragraph (f) of subsection (1) of 1959
Replacement Part enacted as 1955 c.72 s.1; repealed
by 1961 c.551 s.2]

107.141 [1961 c.551 s.1; repealed by 1971 c.280
s.28]

Section 308. [Maintenance.]

(a) In a proceeding for dissolution of marriage or legal separation, or a proceeding for maintenance following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, the court may grant a maintenance order for either spouse only if it finds that the spouse seeking maintenance:

(1) lacks sufficient property, including marital property apportioned to him, to provide for his reasonable needs, and

(2) is unable to support himself through appropriate employment or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home,

(b) The maintenance order shall be in such amounts and for such periods of time as the court deems just, without regard to marital misconduct, and after considering all relevant factors including:

(1) the financial resources of the party seeking maintenance, including marital property apportioned to him, and his ability to meet his needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party as custodian;

(2) the time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment;

(3) the standard of living established during the marriage;

(4) the duration of the marriage;

(5) the age, and the physical and emotional condition of the spouse seeking maintenance; and

(6) the ability of the spouse from whom maintenance is sought to meet his needs while meeting those of the spouse seeking maintenance.

COMMENT

Section 308 (a) authorizes the court to order maintenance to either spouse in three kinds of proceedings: (1) dissolution of marriage; (2) legal separation; and (3) independent proceedings for maintenance following an earlier proceeding for dissolution of the marriage by a court which

lacked personal jurisdiction over the absent spouse and thus could not affect maintenance [see comment to Section 302 (a)]. In all three kinds of proceedings the court may award maintenance only if both findings listed in (1) and (2) are made. The dual intention of this section and Section 307 is to encourage the court to provide for the financial needs of the spouses by property disposition rather than by an award of maintenance. Only if the available property is insufficient for the purpose and if the spouse who seeks maintenance is unable to secure employment appropriate to his skills and interests or is occupied with child care may an award of maintenance be ordered.

Assuming that an award of maintenance is appropriate under subsection 308(a), the standards for setting the amount of the award are set forth in subsection 308(b). Here, as in Section 307, the court is expressly admonished not to consider the misconduct of a spouse during the marriage. Instead, the court should consider the factors relevant to the issue of maintenance, including those listed in subdivisions (1)-(6).

Number of Widows and the \$1,000 Exemption Allowed by County

<u>Counties</u>	<u>Number</u>	<u>Assessed Value Exempted</u>
Carson City	234	\$ 234,000
Churchill	211	203,800
Clark	2,336	2,335,280
Douglas	61	60,650
Elko	335	282,380
Esmeralda	20	17,770
Eureka	23	18,280
Humboldt	121	118,690
Lander	42	39,260
Lincoln	85	82,755
Lyon	140	138,400
Mineral	145	122,080
Nye	110	100,384
Pershing	58	56,675
Storey	27	27,000
Washoe	1,844	1,772,376
White Pine	249	244,150
 TOTALS	 <u>6,041</u>	 <u>\$5,853,930</u>

Per 1970 census there were: 13,485 Widows in Nevada
3,586 Widowers

Widows $\frac{6,041}{13,485} = 44.8\%$
 $\$5,853,930 \times .0416 = \$243,523$

Widowers $3,586 \times 44.8\% = 1,607$
 $1,607 \times 1,000 = \$1,607,000$
 $\$1,607,000 \times .0416 = \$66,851$

.0416 = Statewide average tax rate of \$4.16 per \$100 assessed valuation

Exhibit D