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March 27, 2003

The Honorable Mark Amodei, Chairman
Senate Committee on the Judiciary
Nevada State Legislature
401 S. Carson Street
Carson City, NV 89701-4747

Re: S.B. 300, Changes to Technological Crimes, March 27, 2003

Dear Chairman Amodei and Members of the Committee:

In 2001, the Nevada Legislature passed Senate Bill 551 which authorized the use of subpoenas by law enforcement to obtain certain Internet Service Provider records and created the crimes of cyber-stalking and luring minors with the use of the internet. S.B. 300 seeks to make a few minor changes to increase the usefulness of the provisions to law enforcement and to fine tune the tools used to catch on-line predators and pedophiles.

S.B. 300 has been introduced on behalf of the Office of the Attorney General and in turn for the Nevada High Tech Crime Advisory Board and the Nevada Cybercrime lab. The bill seeks to do 4 things: Amend the subpoena statute to comport to the changes in federal law; to limit the costs charged to law enforcement for complying with the subpoenas; to change the definition of obscene materials used in the luring statute; and, to add the crime of luring children through the use of the internet to the items for which school employees can be terminated. For your information I have attached copies of NRS 193.340 the subpoena statute, NRS 201.257 'material harmful to minors,' NRS 201.560 Using Technology to Lure Children and 18 U.S.C. § 2703 the federal law authorizing the use of subpoenas.

Since the passage of S.B. 551 last session Congress has amended the Electronic Communications Privacy Act, commonly know as 'ECPA.' Those amendments include changing the scope of subscriber information that can be obtained through a subpoena under the terms of 18 U.S.C. § 2703 and allowing Internet Service Providers to voluntarily disclose a much broader range of information in certain emergencies. S.B.

551, as codified in NRS 193.340, limits the use of the statute to the version of 18 U.S.C. § 2703 that existed on June 13, 2001. That version no longer exists and by deleting the reference to the date, NRS 193.340 would refer to the correct current version. Several parts of the post-9/11 amendments are also due to sunset in 2005. By eliminating the date those changes would automatically take effect in Nevada without the need to amend the NRS again.

We are also requesting that the limitation placed in NRS 193.340 limiting subpoenas to felonies also be removed. Law enforcement has had several instances of misdemeanors being committed that could have been solved by a subpoena to an ISP to determine someone's name, but could not since the crime was not a felony. ECPA does not limit the use of subpoenas to felonies and this amendment would comport state law to federal law.

Subsection 3 of Section 1 would limit the costs charged to law enforcement for complying with the subpoena to actual costs. Some ISP's have attempted to avoid complying with these subpoenas by charging horrendous 'research' fees that prohibit law enforcement from obtaining the information. This amendment would ensure that an ISP is not out of pocket for complying with the subpoena, but also ensure that information is obtained by law enforcement at a reasonable cost.

Sections 2 and 3 of the bill seek to change a definitional term in the internet luring statute, NRS 201.560. Currently if an on-line predator uses 'obscene' materials in conjunction with his attempts to lure a child out of his or her home, it is a category C felony. 'Obscene' is a term of art contained in NRS 201.235. In order for this section of the luring statute to be used, we have to prove that the materials in question would be found by the average person to violate contemporary community standards for adults. Since the materials are actually used to commit crimes against children, the proposed amendment would replace 'obscene materials' with 'materials harmful to children.' This definition is already set forth at NRS 201.257. Instead of an adult standard, it applies the standard of what the adult community would find unsuitable for minors and includes a greater range of materials than is included in the adult standard. The proposed amendment would make this section of the luring statute much more practical for law enforcement to use.

The original Bill Draft Request sought to expand the membership of the High Tech Crime Advisory Board. Part of the reason was to include greater representation from local law enforcement on the board. That issue has been resolved and in the face the current budget situation the Advisory Board no longer wishes to expand its membership. We would therefore request that sections 4, 7 and 8 of the bill be deleted. This will also render the fiscal note containing the costs for the additional committee members moot.

Lastly, sections 5 and 6 of the bill seek to add the luring statute, NRS 201.560 to the provisions of NRS 391.311 and 391.314 which govern the discipline and dismissal of school employees. Section 5 adds internet luring to the definition of 'immorality' in

NRS 391.311. Section 6 would add luring to those crimes for which the conviction of a licensed school employee automatically causes them to be terminated from the date of their arrest. See, NRS 391.314.

I look forward to testifying before your committee on Thursday, March 27th. In the meantime if I can provide any further information about S.B. 300 please call or email me.

Very truly yours,

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By:



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NRS 193.340 Required disclosure of certain information by provider of Internet service; penalty; issuance and enforcement of administrative subpoena.

1. A provider of Internet service who violates the provisions of 18 U.S.C. § 2703, as that section existed on June 13, 2001, is guilty of a misdemeanor and shall be punished by a fine of not less than \$50 or more than \$500 for each violation.

2. In investigating criminal activity that involves or may involve the use of a computer, the attorney general, a district attorney, the sheriff of any county in this state, the head of any organized police department of any municipality in this state, the head of any department of this state engaged in the enforcement of any criminal law of this state and any sheriff or chief of police of a municipality may, if there is reasonable cause to believe that an individual subscriber or customer of a provider of Internet service has committed an offense through the use of the services of the provider of Internet service that is punishable as a felony, issue a subpoena to carry out the procedure set forth in 18 U.S.C. § 2703, as that section existed on June 13, 2001, to compel the provider of Internet service to provide information concerning the individual subscriber or customer that the provider of Internet service is required to disclose pursuant to 18 U.S.C. § 2703, as that section existed on June 13, 2001.

3. If a person who has been issued a subpoena pursuant to subsection 2 refuses to produce any information that the subpoena requires, the person who issued the subpoena may apply to the district court for the judicial district in which the investigation is being carried out for the enforcement of the subpoena in the manner provided by law for the enforcement of a subpoena in a civil action.

4. As used in this section, "provider of Internet service" has the meaning ascribed to it in NRS 205.4758, but does not include a public library when it is engaged in providing access to the Internet.

(Added to NRS by 2001, 2784)

EXHIBITION AND SALE OF OBSCENE MATERIAL TO MINORS

NRS 201.256 Definitions. As used in NRS 201.256 to 201.2655, inclusive, unless the context otherwise requires, the words and terms defined in NRS 201.257 to 201.264, inclusive, have the meanings ascribed to them in those sections.

(Added to NRS by 1969, 513; A 1997, 1314, 2662)

NRS 201.2565 "Distribute" defined. "Distribute" means to transfer possession with or without consideration.

(Added to NRS by 1997, 2662)

NRS 201.257 "Harmful to minors" defined. "Harmful to minors" means that quality of any description or representation, whether constituting all or a part of the material considered, in whatever form, of nudity, sexual conduct, sexual excitement or sado-masochistic abuse which predominantly appeals to the prurient, shameful or morbid interest of minors, is patently offensive to prevailing standards in the adult community with respect to what is suitable material for minors, and is without serious literary, artistic, political or scientific value.

(Added to NRS by 1969, 513; A 1981, 1689)

NRS 201.2581 "Material" defined. "Material" means:

1. A book, pamphlet, magazine, newspaper, printed advertising or other printed or written material;
2. A motion picture, photograph, picture, drawing, statue, sculpture or other visual representation or image; or
3. A transcription, recording or live or recorded telephone message.

(Added to NRS by 1997, 2662)

NRS 201.259 "Minor" defined. "Minor" means any person under the age of 18 years, but as applied to the showing of a motion picture excludes any person employed on the premises where the motion picture is shown.

(Added to NRS by 1969, 513)

NRS 201.2595 "Motion picture" defined. "Motion picture" means a film or a video recording, whether or not it has been rated appropriate for a particular audience, that is:

1. Placed on a videodisc or videotape; or
 2. To be shown in a theater or on television,
- and includes, without limitation, a cartoon or an animated film.

(Added to NRS by 1997, 1314; A 1997, 2663)

NRS 201.261 "Nudity" defined. "Nudity" means:

1. The showing of the human female breast with less than a fully opaque covering of any portion of the areola and nipple;
2. The showing of the human male or female genitals or pubic area with less than a fully opaque covering of any portion thereof; or
3. The depiction of the human male genitals in a discernible turgid state whether or not covered.

(Added to NRS by 1969, 513; A 1999, 1360)

NRS 201.262 "Sado-masochistic abuse" defined. "Sado-masochistic abuse" means:

1. Flagellation or torture practiced by or upon a person whether or not clad in undergarments, a mask or bizarre costume; or
2. The condition of being fettered, bound or otherwise physically restrained.

(Added to NRS by 1969, 513; A 1981, 1689)

NRS 201.263 "Sexual conduct" defined. "Sexual conduct" means acts of masturbation, homosexuality, sexual intercourse or physical contact with a person's unclothed genitals or pubic area.

(Added to NRS by 1969, 513)

NRS 201.264 "Sexual excitement" defined. "Sexual excitement" means the condition of human male or female genitals in a state of sexual stimulation or arousal.

(Added to NRS by 1969, 513)

NRS 201.265 Unlawful acts; penalty. Except as otherwise provided in NRS 200.720 and 201.2655, a person is guilty of a misdemeanor if the person knowingly:

1. Distributes or causes to be distributed to a minor material that is harmful to minors, unless the person is the parent, guardian or spouse of the minor.

2. Exhibits for distribution to an adult in such a manner or location as to allow a minor to view or to have access to examine material that is harmful to minors, unless the person is the parent, guardian or spouse of the minor.

3. Sells to a minor an admission ticket or pass for or otherwise admits a minor for monetary consideration to any presentation of material that is harmful to minors, unless the minor is accompanied by his parent, guardian or spouse.

4. Misrepresents that he is the parent, guardian or spouse of a minor for the purpose of:

(a) Distributing to the minor material that is harmful to minors; or

(b) Obtaining admission of the minor to any presentation of material that is harmful to minors.

5. Misrepresents his age as 18 or over for the purpose of obtaining:

(a) Material that is harmful to minors; or

(b) Admission to any presentation of material that is harmful to minors.

6. Sells or rents motion pictures which contain material that is harmful to minors on the premises of a business establishment open to minors, unless the person creates an area within the establishment for the placement of the motion pictures and any material that advertises the sale or rental of the motion pictures which:

(a) Prevents minors from observing the motion pictures or any material that advertises the sale or rental of the motion pictures; and

(b) Is labeled, in a prominent and conspicuous location, "Adults Only."

(Added to NRS by 1969, 513; A 1971, 161, 495; 1981, 1689; 1995, 952; 1997, 1314, 2662)

NRS 201.2655 Exemptions. The provisions of NRS 201.256 to 201.2655, inclusive, do not apply to:

1. A university, community college, school, museum or library which is operated by or which is under the direct control of this state or a political subdivision of this state; or

2. An employee or independent contractor of an institution listed in subsection 1, if the employee or independent contractor is acting within the scope of his employment or contractual relationship.

(Added to NRS by 1997, 2662)

USING TECHNOLOGY TO LURE CHILDREN

NRS 201.560 Definitions; exception; penalty.

1. Except as otherwise provided in subsection 2, a person shall not use a computer, system or network to knowingly contact or communicate with or attempt to contact or communicate with a child who is less than 16 years of age and who is at least 5 years younger than the person with the intent to persuade, lure or transport the child away from his home or from any location known to his parent or guardian or other person legally responsible for the child to a place other than where the child is located, for any purpose:

(a) Without the express consent of the parent or guardian or other person legally responsible for the child; and

(b) With the intent to avoid the consent of the parent or guardian or other person legally responsible for the child.

2. The provisions of this section do not apply if the contact or communication is made or attempted with the intent to prevent imminent bodily, emotional or psychological harm to the child.

3. A person who violates or attempts to violate the provisions of this section:

(a) With the intent to engage in sexual conduct with the child or to cause the child to engage in sexual conduct, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 10 years and may be further punished by a fine of not more than \$10,000;

(b) By providing the child with obscene material or requesting the child to provide the person with obscene material, is guilty of a category C felony and shall be punished as provided in NRS 193.130; or

(c) If paragraph (a) or (b) does not apply, is guilty of a gross misdemeanor.

4. As used in this section:

(a) "Computer" has the meaning ascribed to it in NRS 205.4735.

(b) "Material" means anything that is capable of being used or adapted to arouse interest, whether through the medium of reading, observation, sound or in any other manner.

(c) "Network" has the meaning ascribed to it in NRS 205.4745.

(d) "Obscene" has the meaning ascribed to it in NRS 201.235.

(e) "Sexual conduct" has the meaning ascribed to it in NRS 201.520.

(f) "System" has the meaning ascribed to it in NRS 205.476.

(Added to NRS by 2001, 2786)

§ 2703. Required disclosure of customer communications or records

(a) Contents of wire or electronic communications in electronic storage. A governmental entity may require the disclosure by a provider of electronic communication service of the contents of a wire or electronic communication, that is in electronic storage in an electronic communications system for one hundred and eighty days or less, only pursuant to a warrant issued using the procedures described in the Federal Rules of Criminal Procedure by a court with jurisdiction over the offense under investigation or equivalent State warrant. A governmental entity may require the disclosure by a provider of electronic communications services of the contents of a wire or electronic communication that has been in electronic storage in an electronic communications system for more than one hundred and eighty days by the means available under subsection (b) of this section.

(b) Contents of wire or electronic communications in a remote computing service.

(1) A governmental entity may require a provider of remote computing service to disclose the contents of any wire or electronic communication to which this paragraph is made applicable by paragraph (2) of this subsection--

(A) without required notice to the subscriber or customer, if the governmental entity obtains a warrant issued using the procedures described in the Federal Rules of Criminal Procedure by a court with jurisdiction over the offense under investigation or equivalent State warrant; or

(B) with prior notice from the governmental entity to the subscriber or customer if the governmental entity--

(i) uses an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury or trial subpoena; or

(ii) obtains a court order for such disclosure under subsection (d) of this section;

except that delayed notice may be given pursuant to section 2705 of this title.

(2) Paragraph (1) is applicable with respect to any wire or electronic communication that is held or maintained on that service--

(A) on behalf of, and received by means of electronic transmission from (or created by means of computer processing of communications received by means of electronic transmission from), a subscriber or customer of such remote computing service; and

(B) solely for the purpose of providing storage or computer processing services to such subscriber or customer, if the provider is not authorized to access the contents of any such communications for purposes of providing any services other than storage or computer processing.

(c) Records concerning electronic communication service or remote computing service.

(1) A governmental entity may require a provider of electronic communication service or remote computing service to disclose a record or other information

pertaining to a subscriber to or customer of such service (not including the contents of communications) only when the governmental entity--

(A) obtains a warrant issued using the procedures described in the Federal Rules of Criminal Procedure by a court with jurisdiction over the offense under investigation or equivalent State warrant;

(B) obtains a court order for such disclosure under subsection (d) of this section;

(C) has the consent of the subscriber or customer to such disclosure; or

(D) submits a formal written request relevant to a law enforcement investigation concerning telemarketing fraud for the name, address, and place of business of a subscriber or customer of such provider, which subscriber or customer is engaged in telemarketing (as such term is defined in section 2325 of this title); or

(E) seeks information under paragraph (2).

(2) A provider of electronic communication service or remote computing service shall disclose to a governmental entity the--

(A) name;

(B) address;

(C) local and long distance telephone connection records, or records of session times and durations;

(D) length of service (including start date) and types of service utilized;

(E) telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and

(F) means and source of payment for such service (including any credit card or bank account number),

of a subscriber to or customer of such service when the governmental entity uses an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury or trial subpoena or any means available under paragraph (1).

(3) A governmental entity receiving records or information under this subsection is not required to provide notice to a subscriber or customer.

(d) Requirements for court order. A court order for disclosure under subsection (b) or (c) may be issued by any court that is a court of competent jurisdiction and shall issue only if the governmental entity offers specific and articulable facts showing that there are reasonable grounds to believe that the contents of a wire or electronic communication, or the records or other information sought, are relevant and material to an ongoing criminal investigation. In the case of a State governmental authority, such a court order shall not issue if prohibited by the law of such State. A court issuing an order pursuant to this section, on a motion made promptly by the service provider, may quash or modify such order, if the information or records requested are unusually voluminous in nature or compliance with such order otherwise would cause an undue burden on such provider.

(e) No cause of action against a provider disclosing information under this chapter. No cause of action shall lie in any court against any provider of wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order, warrant, subpoena, statutory authorization, or certification under this chapter [18 USCS § § 2701 et seq.].

(f) Requirement to preserve evidence.

(1) In general. A provider of wire or electronic communication services or a remote computing service, upon the request of a governmental entity, shall take all necessary steps to preserve records and other evidence in its possession pending the issuance of a court order or other process.

(2) Period of retention. Records referred to in paragraph (1) shall be retained for a period of 90 days, which shall be extended for an additional 90-day period upon a renewed request by the governmental entity.

(g) Presence of officer not required. Notwithstanding section 3105 of this title, the presence of an officer shall not be required for service or execution of a search warrant issued in accordance with this chapter [18 USCS § § 2701 et seq.] requiring disclosure by a provider of electronic communications service or remote computing service of the contents of communications or records or other information pertaining to a subscriber to or customer of such service.