

Amendment No. 407

Assembly Amendment to Assembly Bill No. 380

(BDR 15-727)

Proposed by: Assembly Committee on Judiciary**Amends:** Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	☐	Lost	☐	_____	Adopted	☐	Lost	☐	_____
Concurred In	☐	Not	☐	_____	Concurred In	☐	Not	☐	_____
Receded	☐	Not	☐	_____	Receded	☐	Not	☐	_____

EXPLANATION: Matter in (1) ***blue bold italics*** is new language in the original bill; (2) ***green bold italic underlining*** is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) ~~orange double underlining~~ is deleted language in the original bill that is proposed to be retained in this amendment; and (6) ***green bold dashed underlining*** is newly added transitory language.

BFG/BAW



Date: 4/16/2009

A.B. No. 380—Makes various changes relating to the sexual exploitation of children. (BDR 15-727)



ASSEMBLY BILL NO. 380—ASSEMBLYMEN HAMBRICK, ANDERSON; CARPENTER,
DONDERO LOOP, HORNE, MANENDO, OHRENSCHALL AND PARNELL

MARCH 16, 2009

Referred to Committee on Judiciary

SUMMARY—Makes various changes relating to the sexual exploitation of
children. (BDR 15-727)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to crimes; providing for the freezing and forfeiture of the assets
of a person who commits certain offenses involving the pandering or
prostitution of a child; ~~imposing a civil penalty against~~ authorizing a
court to impose an additional criminal fine on a person convicted of
certain offenses involving the pandering or prostitution of a child; and
providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law establishes several crimes relating to pandering or prostitution, including:
(1) pandering by inducing a person to become a prostitute through threats or other actions; (2)
pandering by placing a spouse in a house of prostitution through force, fraud, intimidation or
threats; (3) living from the earnings of a prostitute; (4) pandering by detaining a person in a
house of prostitution because of any debt; and (5) pandering by furnishing transportation to
induce a person to become a prostitute or engage in prostitution. (NRS 201.300-201.340)

Section 2 of this bill provides that: (1) the assets of a person who commits an offense
involving the pandering or prostitution of a child are subject to forfeiture; and (2) in a
proceeding for such a forfeiture, a temporary restraining order may be entered by the court
to freeze the assets of such a person. Sections 2 and 5.5 of this bill require the proceeds of
the forfeiture, which remain after satisfying certain protected interests and paying
certain expenses related to the forfeiture proceeding, be distributed to programs for the
prevention of child prostitution which are designated by the district attorney of the
county.

Section 3 of this bill ~~imposes a civil penalty, in addition to any criminal penalty,~~
provides that, in addition to the criminal penalties prescribed by statute, a court may
impose additional criminal fines on a person who is convicted of an offense involving
pandering or prostitution of a child.

~~Section 4 of this bill, which is patterned after similar provisions in the Nevada Revised
Statutes that establish restrictions on the use of plea bargaining for certain crimes, provides
that if a person is charged with committing an offense involving pandering or prostitution of a
child, the prosecuting attorney is prohibited from dismissing the charge in exchange for a plea,
unless the prosecutor knows or it is obvious that the charge is not supported by probable cause
or cannot be proved at the time of trial.~~

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Chapter 201 of NRS is hereby amended by adding thereto the
2 provisions set forth as sections 2, 3 and 4 of this act.

3 **Sec. 2. 1.** *All assets derived from or relating to any violation of NRS*
4 *201.300 to 201.340, inclusive, in which the victim of the offense is a child when*
5 *the offense is committed are subject to forfeiture pursuant to NRS 179.121 and a*
6 *proceeding for their forfeiture may be brought pursuant to NRS 179.1156 to*
7 *179.121, inclusive.*

8 2. *In any proceeding for forfeiture brought pursuant to NRS 179.1156 to*
9 *179.121, inclusive, the plaintiff may apply for, and a court may issue without*
10 *notice or hearing, a temporary restraining order to preserve property which*
11 *would be subject to forfeiture pursuant to this section if:*

12 (a) *The forfeitable property is in the possession or control of the party*
13 *against whom the order will be entered; and*

14 (b) *The court determines that the nature of the property is such that it can be*
15 *concealed, disposed of or placed beyond the jurisdiction of the court before a*
16 *hearing on the matter.*

17 3. *A temporary restraining order which is issued without notice may be*
18 *issued for not more than 10 days and may be extended only for good cause or by*
19 *consent. The court shall provide notice and hold a hearing on the matter before*
20 *the order expires.*

21 4. *Any proceeds derived from a forfeiture of property pursuant to this*
22 *section and remaining after the distribution required by subsection 1 of NRS*
23 *179.118 must be deposited with the county treasurer and distributed to programs*
24 *for the prevention of child prostitution which are designated to receive such*
25 *distributions by the district attorney of the county.*

26 **Sec. 3. 1.** ~~*In addition to any criminal penalty, if*~~ *If a person ~~[violates]~~ is*
27 *convicted of a violation of any provision of NRS 201.300 to 201.340, inclusive,*
28 *and the victim of the ~~[offense]~~ violation is a child who is:*

29 (a) *At least 14 years of age but less than 18 years of age when the offense is*
30 *committed, ~~[except as otherwise provided in subsection 2, the person is liable for~~*
31 *a civil penalty of \$100,000.] the court may, in addition to the punishment*
32 *prescribed by statute for the offense and any fine imposed pursuant to subsection*
33 *2, impose a fine of not more than \$100,000.*

34 (b) *Less than 14 years of age when the offense is committed, ~~[except as~~*
35 *otherwise provided in subsection 2, the person is liable for a civil penalty of*
36 *\$500,000.] the court may, in addition to the term of imprisonment prescribed by*
37 *statute for the offense and any fine imposed pursuant to subsection 2, impose a*
38 *fine of not more than \$500,000.*

39 2. *If a person ~~[violates]~~ is convicted of a violation of any provision of NRS*
40 *201.300 to 201.340, inclusive, the victim of the offense is a child when the offense*
41 *is committed and the offense also involves a conspiracy to commit a violation of*
42 *NRS 201.300 to 201.340, inclusive, ~~[pursuant to NRS 199.490, the person is liable~~*
43 *for a civil penalty of \$1,000,000.*

44 ~~*3. Money collected from a civil penalty pursuant to this section must be*~~
45 ~~*deposited with the county treasurer and distributed.*~~

46 ~~*(a) In an amount equal to 60 percent of the civil penalty collected, to an*~~
47 ~~*account to be administered by the district attorney to defray the cost of*~~
48 ~~*operational expenses.*~~

~~(b) In an amount equal to 40 percent of the civil penalty collected, to an account used for programs addressing the needs of victims of the crimes described in NRS 201.300 to 201.340, inclusive, the court may, in addition to the punishment prescribed by statute for the offense of a provision of NRS 201.300 to 201.340, inclusive, and any fine imposed pursuant to subsection 1, impose a fine of not more than \$500,000.~~

3. The provisions of subsections 1 and 2 do not create a separate offense but provide an additional penalty for the primary offense, the imposition of which is contingent upon the finding of the prescribed fact.

~~Sec. 4. If a person is charged with a violation of NRS 201.300 to 201.340, inclusive, in which the victim of the offense is a child when the offense is committed, a prosecuting attorney shall not dismiss such a charge in exchange for a plea of guilty, guilty but mentally ill or nolo contendere to a lesser charge or for any other reason unless he knows, or it is obvious, that the charge is not supported by probable cause or cannot be proved at the time of trial. (Deleted by amendment.)~~

Sec. 5. NRS 201.295 is hereby amended to read as follows:

201.295 As used in NRS 201.295 to 201.440, inclusive, and sections 2, 3 and 4 of this act, unless the context otherwise requires:

1. "Adult" means a person 18 years of age or older.
2. "Child" means a person less than 18 years of age.
3. "Prostitute" means a male or female person who for a fee engages in sexual intercourse, oral-genital contact or any touching of the sexual organs or other intimate parts of a person for the purpose of arousing or gratifying the sexual desire of either person.
4. "Prostitution" means engaging in sexual conduct for a fee.
5. "Sexual conduct" means any of the acts enumerated in subsection 3.

Sec. 5.5. NRS 179.118 is hereby amended to read as follows:

179.118 1. The proceeds from any sale or retention of property declared to be forfeited and any interest accrued pursuant to subsection 2 of NRS 179.1175 must be applied, first, to the satisfaction of any protected interest established by a claimant in the proceeding, then to the proper expenses of the proceeding for forfeiture and resulting sale, including the expense of effecting the seizure, the expense of maintaining custody, the expense of advertising and the costs of the suit.

2. Any balance remaining after the distribution required by subsection 1 must be deposited as follows:

(a) Except as otherwise provided in this subsection, if the plaintiff seized the property, in the special account established pursuant to NRS 179.1187 by the governing body that controls the plaintiff.

(b) Except as otherwise provided in this subsection, if the plaintiff is a metropolitan police department, in the special account established by the Metropolitan Police Committee on Fiscal Affairs pursuant to NRS 179.1187.

(c) Except as otherwise provided in this subsection, if more than one agency was substantially involved in the seizure, in an equitable manner to be directed by the court hearing the proceeding for forfeiture.

(d) If the property was seized pursuant to NRS 200.760, in the State Treasury for credit to the Fund for the Compensation of Victims of Crime to be used for the counseling and the medical treatment of victims of crimes committed in violation of NRS 200.366, 200.710 to 200.730, inclusive, or 201.230.

(e) If the property was seized as the result of a violation of NRS 202.300, in the general fund of the county in which the complaint for forfeiture was filed, to be used to support programs of counseling of persons ordered by the court to attend counseling pursuant to NRS 62E.290.

(f) If the property was forfeited pursuant to section 2 of this act, with the county treasurer to be distributed in accordance with the provisions of subsection 4 of section 2 of this act.

Sec. 6. NRS 179.121 is hereby amended to read as follows:

179.121 1. All personal property, including, without limitation, any tool, substance, weapon, machine, computer, money or security, which is used as an instrumentality in any of the following crimes is subject to forfeiture:

(a) The commission of or attempted commission of the crime of murder, robbery, kidnapping, burglary, invasion of the home, grand larceny ~~or~~ **or** theft if it is punishable as a felony ; ~~or pandering;~~

(b) The commission of or attempted commission of any felony with the intent to commit, cause, aid, further or conceal an act of terrorism;

(c) A violation of NRS 202.445 or 202.446;

(d) The commission of any crime by a criminal gang, as defined in NRS 213.1263; or

(e) A violation of NRS 200.463 to 200.468, inclusive, **201.300 to 201.340, inclusive**, 202.265, 202.287, 205.473 to 205.513, inclusive, 205.610 to 205.810, inclusive, 370.380, 370.382, 370.395, 370.405 or 465.070 to 465.085, inclusive.

2. Except as otherwise provided for conveyances forfeitable pursuant to NRS 453.301 or 501.3857, all conveyances, including aircraft, vehicles or vessels, which are used or intended for use during the commission of a felony or a violation of NRS 202.287, 202.300 or 465.070 to 465.085, inclusive, are subject to forfeiture except that:

(a) A conveyance used by any person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to the felony or violation;

(b) A conveyance is not subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without his knowledge, consent or willful blindness;

(c) A conveyance is not subject to forfeiture for a violation of NRS 202.300 if the firearm used in the violation of that section was not loaded at the time of the violation; and

(d) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he neither had knowledge of nor consented to the felony. If a conveyance is forfeited, the appropriate law enforcement agency may pay the existing balance and retain the conveyance for official use.

3. For the purposes of this section, a firearm is loaded if:

(a) There is a cartridge in the chamber of the firearm;

(b) There is a cartridge in the cylinder of the firearm, if the firearm is a revolver; or

(c) There is a cartridge in the magazine and the magazine is in the firearm or there is a cartridge in the chamber, if the firearm is a semiautomatic firearm.

4. As used in this section, "act of terrorism" has the meaning ascribed to it in NRS 202.4415.