

SENATE BILL NO. 277—SENATOR WIENER

MARCH 18, 2011

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing certain acts by juveniles relating to the possession, transmission and distribution of certain sexual images. (BDR 15-10)

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 juveniles; prohibiting, under certain circumstances, a minor from using an electronic communication device to possess, transmit or distribute certain sexual images of a minor; clarifying the definition of “cyber-bullying” for the purposes of certain provisions relating to education; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law prohibits a person, under certain circumstances, from distributing to a minor material that is harmful to minors. Such material includes certain nude pictures of a person. If an adult violates these provisions, the adult is generally guilty of a misdemeanor. (NRS 201.265) If a minor violates these provisions, the minor may be adjudicated delinquent. (NRS 62B.330) Existing law also prohibits a person from committing certain acts regarding pornography involving minors. (NRS 200.700-200.760) If an adult violates these provisions, the adult is guilty of a felony and is subject to registration and community notification as a sex offender. (NRS 179D.010-179D.550) If a minor violates these provisions, the minor may be adjudicated delinquent and subject to registration and community notification as a juvenile sex offender. (Chapter 62F of NRS) This bill provides an alternative prohibition with alternative penalties for violating that alternative prohibition which can be applied to certain minors instead of the penalties in existing law. Thus, this bill preserves prosecutorial discretion in addressing this issue.

Section 1 of this bill prohibits, under certain circumstances, a minor from using an electronic communication device, such as a cell phone, to possess, transmit or distribute a sexual image of himself or herself or of another minor. A minor who uses an electronic communication device to transmit or distribute a sexual image of himself or herself is considered a child in need of supervision for the purposes of the laws governing juvenile justice. A minor who uses an electronic communication



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device to possess, transmit or distribute a sexual image of another minor is considered to have committed a delinquent act. **Section 1** also provides that a minor who violates the provisions of **section 1** is not considered a sex offender and is not subject to registration or community notification as a juvenile sex offender or as a sex offender.

Existing law requires the Department of Education to prescribe a policy for all school districts and public schools to provide a safe and respectful learning environment that is free of bullying, cyber-bullying, harassment and intimidation, including the provision of training to school personnel and requirements for reporting violations of the policy. (NRS 388.121-388.139) **Section 4** of this bill revises the definition of "cyber-bullying" to clarify that the term includes the use of electronic communication to transmit or distribute a sexual image of a minor.

This revised definition of "cyber-bullying" also applies to certain other provisions related to education. Specifically, the term applies to existing law which requires the Council to Establish Academic Standards for Public Schools to establish the standards of content and performance for courses of study in computer education and technology. (NRS 389.520) Those standards must include a policy for the ethical, safe and secure use of computers and other electronic devices which includes methods to ensure the prevention of cyber-bullying. Further, the revised definition applies to existing law which prohibits a person from using any means of oral, written or electronic communication, including the use of cyber-bullying, to knowingly threaten to cause bodily harm or death to a pupil or school employee with the intent to: (1) intimidate, frighten, alarm or distress the pupil or school employee; (2) cause panic or civil unrest; or (3) interfere with the operation of a public school. (NRS 392.915)

WHEREAS, The Legislature has taken a strong stance with regard to protecting children from the harmful effects of child pornography and in doing so has enacted several statutes which impose severe penalties for persons who violate Nevada's child pornography laws; and

WHEREAS, Existing law provides that if an adult violates those child pornography laws, the adult is guilty of a felony and subject to registration and community notification as a sex offender; and

WHEREAS, Existing law also provides that if a child violates those child pornography laws, the child may be adjudicated delinquent and subject to registration and community notification as a juvenile sex offender; and

WHEREAS, The rapid advancement of new technology, such as cell phones with cameras, has created the unintended consequence of making it easy for children to violate these child pornography laws; and

WHEREAS, A significant number of children regularly use cellular phones and computers to communicate with their peers, and the act of sending such communications can be completed in a matter of seconds; and

WHEREAS, Some elements of popular culture aimed at children and young adults glamorize and urge others to engage in the act commonly referred to as "sexting," the act of sending or posting



1 sexual images of oneself or another via a computer, cellular phone
2 or other electronic device; and

3 WHEREAS, An increasing number of children use such
4 technology to engage in the act of sexting; and

5 WHEREAS, Children often act without fully contemplating the
6 potential grave consequences of their actions, including, without
7 limitation, the serious penalties imposed for violating child
8 pornography laws, the requirement to register as a sex offender for
9 violating such laws, the negative effect on relationships, the loss of
10 educational and employment opportunities, the use of such materials
11 in bullying and cyber-bullying, and the distribution of such
12 materials on the Internet to a worldwide audience; and

13 WHEREAS, It is important to educate children about the serious
14 consequences of engaging in sexting and to provide an effective and
15 measured response to children who engage in such behavior without
16 imposing penalties on these children which will severely, negatively
17 and, in many cases, permanently alter these children's lives; now,
18 therefore,

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20 THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
21 SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:
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23 **Section 1.** Chapter 200 of NRS is hereby amended by adding
24 thereto a new section to read as follows:

25 *1. A minor shall not knowingly and willfully use an*
26 *electronic communication device to transmit or distribute a sexual*
27 *image of himself or herself to another person.*

28 *2. A minor shall not knowingly and willfully use an*
29 *electronic communication device to transmit or distribute a sexual*
30 *image of another minor who is older than, the same age as or not*
31 *more than 4 years younger than the minor transmitting the sexual*
32 *image.*

33 *3. A minor shall not knowingly and willfully possess a sexual*
34 *image that was transmitted or distributed as described in*
35 *subsection 1 or 2 if the minor who is the subject of the sexual*
36 *image is older than, the same age as or not more than 4 years*
37 *younger than the minor who possesses the sexual image. It is an*
38 *affirmative defense to a violation charged pursuant to this*
39 *subsection if the minor who possesses a sexual image:*

40 *(a) Did not knowingly purchase, procure, solicit or request the*
41 *sexual image or take any other action to cause the sexual image to*
42 *come into his or her possession; and*

43 *(b) Promptly and in good faith, and without retaining or*
44 *allowing any person, other than a law enforcement agency, to*
45 *access any sexual image:*



(1) Took reasonable steps to destroy each image; or
(2) Reported the matter to a law enforcement agency and gave that agency access to each image.

4. A minor who violates subsection 1:

(a) For the first violation:

(1) Is a child in need of supervision, as that term is used in title 5 of NRS, and is not a delinquent child; and

(2) Is not considered a sex offender or juvenile sex offender and is not subject to registration or community notification as a juvenile sex offender pursuant to title 5 of NRS, or as a sex offender pursuant to NRS 179D.010 to 179D.550, inclusive.

(b) For the second or subsequent violation:

(1) Commits a delinquent act, and the court may order the detention of the minor in the same manner as if the minor had committed an act that would have been a misdemeanor if committed by an adult; and

(2) Is not considered a sex offender or juvenile sex offender and is not subject to registration or community notification as a juvenile sex offender pursuant to title 5 of NRS, or as a sex offender pursuant to NRS 179D.010 to 179D.550, inclusive.

5. A minor who violates subsection 2 or 3:

(a) Commits a delinquent act, and the court may order the detention of the minor in the same manner as if the minor had committed an act that would have been a misdemeanor if committed by an adult; and

(b) Is not considered a sex offender or juvenile sex offender and is not subject to registration or community notification as a juvenile sex offender pursuant to title 5 of NRS, or as a sex offender pursuant to NRS 179D.010 to 179D.550, inclusive.

6. As used in this section:

(a) "Electronic communication device" means any electronic device that is capable of transmitting or distributing a sexual image, including, without limitation, a cellular phone, personal digital assistant, computer, computer network and computer system.

(b) "Minor" means a person who is under 18 years of age.

(c) "Sexual conduct" has the meaning ascribed to it in NRS 200.700.

(d) "Sexual image" means any visual depiction, including, without limitation, any photograph or video, of a minor simulating or engaging in sexual conduct or of a minor as the subject of a sexual portrayal.

(e) "Sexual portrayal" has the meaning ascribed to it in NRS 200.700.



1 **Sec. 2.** NRS 200.740 is hereby amended to read as follows:
2 200.740 For the purposes of NRS 200.710 to 200.735,
3 inclusive, *and section 1 of this act*, to determine whether a person
4 was a minor, the court or jury may:

- 5 1. Inspect the person in question;
- 6 2. View the performance;
- 7 3. Consider the opinion of a witness to the performance
8 regarding the person's age;
- 9 4. Consider the opinion of a medical expert who viewed the
10 performance; or
- 11 5. Use any other method authorized by the rules of evidence at
12 common law.

13 **Sec. 3.** NRS 62B.320 is hereby amended to read as follows:

14 62B.320 1. Except as otherwise provided in this title, the
15 juvenile court has exclusive original jurisdiction in proceedings
16 concerning any child living or found within the county who is
17 alleged or adjudicated to be in need of supervision because the
18 child:

19 (a) Is subject to compulsory school attendance and is a habitual
20 truant from school;

21 (b) Habitually disobeys the reasonable and lawful demands of
22 the parent or guardian of the child and is unmanageable; ~~for~~

23 (c) Deserts, abandons or runs away from the home or usual
24 place of abode of the child and is in need of care or rehabilitation ~~for~~
25 *; or*

26 (d) *Uses an electronic communication device to transmit or*
27 *distribute a sexual image of himself or herself to another person*
28 *in violation of section 1 of this act.*

29 2. A child who is subject to the jurisdiction of the juvenile
30 court pursuant to this section must not be considered a delinquent
31 child.

32 **3. As used in this section:**

33 (a) *“Electronic communication device” has the meaning*
34 *ascribed to it in section 1 of this act.*

35 (b) *“Sexual image” has the meaning ascribed to it in section 1*
36 *of this act.*

37 **Sec. 4.** NRS 388.123 is hereby amended to read as follows:

38 388.123 “Cyber-bullying” means bullying through the use of
39 electronic communication. *The term includes the use of electronic*
40 *communication to transmit or distribute a sexual image of a*
41 *minor. As used in this section, “sexual image” has the meaning*
42 *ascribed to it in section 1 of this act.*

43 **Sec. 5.** This act becomes effective on July 1, 2011.

