

ASSEMBLY BILL NO. 49—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED DECEMBER 20, 2014

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing crimes. (BDR 15-158)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State: Yes.

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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; establishing the crime of unlawful dissemination of an intimate image of a person; prohibiting the electronic dissemination or the sale of an intimate image of another person in certain circumstances; prohibiting a person from demanding payment of money, property, services or anything else of value from a person in exchange for removing an intimate image from public view; revising provisions relating to sexual assault and the abuse of a child; setting forth provisions relating to expert testimony in a prosecution for pandering or sex trafficking; revising provisions concerning acts of open or gross lewdness, open and indecent or obscene exposure and lewdness with a child; revising provisions relating to statutory sexual seduction; revising provisions relating to sexual conduct between certain pupils and certain employees of or volunteers at a school and between certain students and certain employees of a college or university; setting forth various provisions relating to the admissibility of evidence and expert testimony in criminal and juvenile delinquency actions; prohibiting a court from ordering the victim of or a witness to a sexual offense to take or submit to a psychological or psychiatric examination in a criminal or juvenile delinquency action relating to the commission of the sexual offense; authorizing the court to exclude in certain circumstances the testimony of a licensed psychologist, psychiatrist or clinical worker who performed a psychological or psychiatric examination on such a victim or witness; providing penalties; and providing other matters properly relating thereto.



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Legislative Counsel's Digest:

Sections 1-6.5 of this bill establish the crime of unlawful dissemination of an intimate image of a person. **Section 3** defines the term "intimate image" generally as a photograph, film, videotape or other recorded image, or any reproduction thereof, which depicts: (1) the fully exposed nipple of the female breast of another person; or (2) one or more persons engaged in sexual conduct. **Section 3** also provides that an image which would otherwise constitute an intimate image is not an intimate image if the person depicted in the image: (1) is not clearly identifiable; (2) voluntarily exposed himself or herself in a public or commercial setting; or (3) is a public figure.

Section 5 provides that a person commits the crime of unlawful dissemination of an intimate image and is guilty of a category D felony when, with the intent to harass, harm or terrorize another person, the person electronically disseminates or sells an intimate image which depicts the other person and the other person: (1) did not give prior consent to the electronic dissemination or sale; (2) had a reasonable expectation that the intimate image would be kept private and would not be made visible to the public; and (3) was at least 18 years of age when the intimate image was created. **Section 5** also sets forth certain exceptions regarding when an intimate image may be lawfully electronically disseminated. Under **section 6**, a person is guilty of a category D felony if he or she demands payment of money, property, services or anything else of value from a person in exchange for removing an intimate image from public view. **Section 6.5** provides that the provisions of **sections 1-6** must not be construed to impose liability on an interactive computer service, as that term is defined in federal law, for any content provided by another person.

Existing law provides that a person who forces another person under certain circumstances to make a sexual penetration on himself or herself or another, or on a beast, is guilty of sexual assault. (NRS 200.366) **Section 8** of this bill additionally provides that a person who commits a sexual penetration upon a child under the age of 14 years or causes a child under the age of 14 years to make a sexual penetration on himself or herself or another, or on a beast, is guilty of sexual assault. **Section 8** further provides that, except in certain circumstances, such provisions do not apply to a person who commits any such act if the person is less than 18 years of age and is not more than 2 years older than the person upon whom the act is committed.

Existing law also provides that a person who commits any act of open or gross lewdness or who makes any open and indecent or obscene exposure of his or her person, or of the person of another, is guilty of a gross misdemeanor for the first offense and a category D felony for any subsequent offense. (NRS 201.210, 201.220) Under **sections 13 and 14** of this bill, if a person commits any such offense and he or she has previously been convicted of a sexual offense, or if the person commits any such offense in the presence of a child under the age of 18 years or a vulnerable person, the person is guilty of a category D felony.

Additionally, under existing law, a person who commits certain acts with a child under the age of 14 years is guilty of lewdness with a child and is guilty of a category A felony. (NRS 201.230) **Section 15** of this bill increases that age to 16 years and provides that if a person commits lewdness with: (1) a child under the age of 14, he or she is guilty of a category A felony; and (2) a child who is 14 or 15, he or she is guilty of a category B felony. **Section 15** also provides that, except in certain circumstances, such provisions do not apply to a person who commits any such act if the person is less than 18 years of age and is not more than 2 years older than the person upon whom the act is committed.

Section 7 of this bill revises the definition of the term "statutory sexual seduction," and **section 8.5** of this bill revises the penalties imposed for the crime of statutory sexual seduction. **Section 15** provides that an act which constitutes the crime of statutory sexual seduction does not constitute lewdness with a child.



Section 10 of this bill provides that certain persons are guilty of a category A felony if they willfully cause, permit or allow a child to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect or to be placed in a situation where the child may suffer physical pain or mental suffering as the result of abuse or neglect, and substantial bodily or mental harm results to the child which includes certain severe injuries.

Sections 18 and 19 of this bill revise the punishment imposed for: (1) certain employees of or volunteers at a school who engage in sexual conduct with certain pupils; and (2) certain employees of a college or university who engage in sexual conduct with certain students.

Sections 12, 23 and 24 of this bill revise various provisions relating to the admissibility of expert testimony and evidence in certain criminal and juvenile delinquency cases. **Section 12** provides that in a prosecution for pandering or sex trafficking, certain expert testimony that is offered by the prosecution or defense is admissible for any relevant purpose, but certain other expert testimony cannot be offered against the defendant to prove the occurrence of an act which forms the basis of a criminal charge against the defendant. Under **section 23**, expert testimony offered by the prosecution or defense which concerns the behavior of a defendant in preparing a child under the age of 18 or a vulnerable person for sexual abuse by the defendant is admissible for any purpose. **Section 24** prohibits a court in a criminal or juvenile delinquency action relating to the commission of a sexual offense from ordering a victim of or witness to a sexual offense to take or submit to a psychological or psychiatric examination. **Section 24** also authorizes the court to exclude the testimony of a licensed psychologist, psychiatrist or clinical worker who performed a psychological or psychiatric examination on a victim or witness in certain circumstances.

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

Section 1. Chapter 200 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 6.5, inclusive, of this act.

Sec. 2. *As used in sections 2 to 6.5, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 and 4 of this act have the meanings ascribed to them in those sections.*

Sec. 3. *"Intimate image":*

1. Except as otherwise provided in subsection 2, includes, without limitation, a photograph, film, videotape or other recorded image which depicts:

(a) The fully exposed nipple of the female breast of another person, including through transparent clothing; or

(b) One or more persons engaged in sexual conduct.

2. Does not include an image which would otherwise constitute an intimate image pursuant to subsection 1, but in which the person depicted in the image:

(a) Is not clearly identifiable;



(b) Voluntarily exposed himself or herself in a public or commercial setting; or

(c) Is a public figure.

Sec. 4. "Sexual conduct" has the meaning ascribed to it in NRS 200.700.

Sec. 5. 1. Except as otherwise provided in subsection 3, a person commits the crime of unlawful dissemination of an intimate image when, with the intent to harass, harm or terrorize another person, the person electronically disseminates or sells an intimate image which depicts the other person and the other person:

(a) Did not give prior consent to the electronic dissemination or the sale of the intimate image;

(b) Had a reasonable expectation that the intimate image would be kept private and would not be made visible to the public; and

(c) Was at least 18 years of age when the intimate image was created.

2. A person who commits the crime of unlawful dissemination of an intimate image is guilty of a category D felony and shall be punished as provided in NRS 193.130.

3. The provisions of this section do not apply to the electronic dissemination of an intimate image for the purpose of:

(a) A legitimate public interest;

(b) Reporting unlawful conduct;

(c) Any lawful law enforcement or correctional activity;

(d) Investigation or prosecution of a violation of this section; or

(e) Preparation for or use in any legal proceeding.

4. A person who commits the crime of unlawful dissemination of an intimate image is not considered a sex offender and is not subject to registration or community notification as a sex offender pursuant to NRS 179D.010 to 179D.550, inclusive.

Sec. 6. Any person who demands payment of money, property, services or anything else of value from a person in exchange for removing an intimate image from public view is guilty of a category D felony and shall be punished as provided in NRS 193.130.

Sec. 6.5. 1. The provisions of sections 2 to 6.5, inclusive, of this act must not be construed to impose liability on an interactive computer service for any content provided by another person.

2. As used in subsection 1, "interactive computer service" has the meaning ascribed to it in 47 U.S.C. § 230(f)(2).



1 **Sec. 7.** NRS 200.364 is hereby amended to read as follows:
2 200.364 As used in NRS 200.364 to 200.3784, inclusive,
3 unless the context otherwise requires:

4 1. "Offense involving a pupil" means any of the following
5 offenses:

6 (a) Sexual conduct between certain employees of a school or
7 volunteers at a school and a pupil pursuant to NRS 201.540.

8 (b) Sexual conduct between certain employees of a college or
9 university and a student pursuant to NRS 201.550.

10 2. "Perpetrator" means a person who commits a sexual offense,
11 an offense involving a pupil or sex trafficking.

12 3. "Sex trafficking" means a violation of subsection 2 of
13 NRS 201.300.

14 4. "Sexual offense" means any of the following offenses:

15 (a) Sexual assault pursuant to NRS 200.366.

16 (b) Statutory sexual seduction pursuant to NRS 200.368.

17 5. "Sexual penetration" means cunnilingus, fellatio, or any
18 intrusion, however slight, of any part of a person's body or any
19 object manipulated or inserted by a person into the genital or anal
20 openings of the body of another, including sexual intercourse in its
21 ordinary meaning. *The term does not include any such conduct for*
22 *medical purposes.*

23 6. "Statutory sexual seduction" means ~~f~~:

24 ~~—(a) Ordinary~~ *ordinary* sexual intercourse, anal intercourse,
25 ~~[cunnilingus or fellatio]~~ *or sexual penetration* committed by a
26 person 18 years of age or older with a person ~~[under the age of 16~~
27 ~~years; or~~

28 ~~—(b) Any other sexual penetration committed by a person 18~~
29 ~~years of age or older with a person under the age of 16 years with~~
30 ~~the intent of arousing, appealing to, or gratifying the lust or passions~~
31 ~~or sexual desires of either of the persons.]~~ *who is 14 or 15 years of*
32 *age and who is at least 4 years younger than the perpetrator.*

33 7. "Victim" means a person who is a victim of a sexual
34 offense, an offense involving a pupil or sex trafficking.

35 **Sec. 8.** NRS 200.366 is hereby amended to read as follows:

36 200.366 1. A person who subjects another person to sexual
37 penetration, or who forces another person to make a sexual
38 penetration on himself or herself or another, or on a beast, against
39 the will of the victim or under conditions in which the perpetrator
40 knows or should know that the victim is mentally or physically
41 incapable of resisting or understanding the nature of his or her
42 conduct, *or who commits a sexual penetration upon a child under*
43 *the age of 14 years or causes a child under the age of 14 years to*
44 *make a sexual penetration on himself or herself or another, or on*
45 *a beast,* is guilty of sexual assault.



2. Except as otherwise provided in subsections 3 and 4, a person who commits a sexual assault is guilty of a category A felony and shall be punished:

(a) If substantial bodily harm to the victim results from the actions of the defendant committed in connection with or as a part of the sexual assault, by imprisonment in the state prison:

(1) For life without the possibility of parole; or

(2) For life with the possibility of parole, with eligibility for parole beginning when a minimum of 15 years has been served.

(b) If no substantial bodily harm to the victim results, by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served.

3. Except as otherwise provided in subsection 4, a person who commits a sexual assault against a child under the age of 16 years is guilty of a category A felony and shall be punished:

(a) If the crime results in substantial bodily harm to the child, by imprisonment in the state prison for life without the possibility of parole.

(b) Except as otherwise provided in paragraph (c), if the crime does not result in substantial bodily harm to the child, by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 25 years has been served.

(c) If the crime is committed against a child under the age of 14 years and does not result in substantial bodily harm to the child, by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 35 years has been served.

4. A person who commits a sexual assault against a child under the age of 16 years and who has been previously convicted of:

(a) A sexual assault pursuant to this section or any other sexual offense against a child; or

(b) An offense committed in another jurisdiction that, if committed in this State, would constitute a sexual assault pursuant to this section or any other sexual offense against a child,

is guilty of a category A felony and shall be punished by imprisonment in the state prison for life without the possibility of parole.

5. *The provisions of this section do not apply to a person who is less than 18 years of age and who commits any of the acts described in subsection 1 if the person is not more than 2 years older than the person upon whom the act was committed unless:*

(a) The person committing the act uses force or threatens the use of force;



(b) The person upon whom the act is committed suffers from a condition of physical or mental incapacitation because of a developmental disability, organic brain damage or mental illness that is apparent or known to the person committing the act; or

(c) The victim has diminished capacity at the time of the offense as a result of drug or alcohol use.

6. For the purpose of this section, "other sexual offense against a child" means any act committed by an adult upon a child constituting:

- (a) Incest pursuant to NRS 201.180;
- (b) Lewdness with a child pursuant to NRS 201.230;
- (c) Sado-masochistic abuse pursuant to NRS 201.262; or
- (d) Luring a child using a computer, system or network pursuant to NRS 201.560, if punished as a felony.

Sec. 8.5. NRS 200.368 is hereby amended to read as follows:

200.368 ~~Except under circumstances where a greater penalty is provided in NRS 201.540, a~~ A person who commits statutory sexual seduction shall be punished:

1. If the person is 21 years of age or older ~~for a category C felony as provided in NRS 193.130.~~ *at the time of the commission of the offense, for a category B felony 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.*

2. ~~For~~ *Except as otherwise provided in subsection 3, if* the person is under the age of 21 years, for a gross misdemeanor.

3. *If the person is under the age of 21 years and has previously been convicted of a sexual offense, as defined in NRS 179D.097, for a category D felony as provided in NRS 193.130.*

Sec. 9. NRS 200.400 is hereby amended to read as follows:

200.400 1. As used in this section:

(a) "Battery" means any willful and unlawful use of force or violence upon the person of another.

(b) "Strangulation" has the meaning ascribed to it in NRS 200.481.

2. A person who is convicted of battery with the intent to commit mayhem, robbery or grand larceny 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 2 years and a maximum term of not more than 10 years, and may be further punished by a fine of not more than \$10,000.

3. A person who is convicted of battery with the intent to kill 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 2 years and a maximum term of not more than 20 years.



4. A person who is convicted of battery with the intent to commit sexual assault shall be punished:

(a) If the crime results in substantial bodily harm to the victim or is committed by strangulation, for a category A felony by imprisonment in the state prison:

(1) For life without the possibility of parole; or

(2) For life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served . ~~It~~

~~→ as determined by the verdict of the jury, or the judgment of the court if there is no jury.]~~

(b) If the crime does not result in substantial bodily harm to the victim and the victim is 16 years of age or older, for a category A felony by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of life with the possibility of parole.

(c) If the crime does not result in substantial bodily harm to the victim and the victim is a child under the age of 16, for a category A felony by imprisonment in the state prison for a minimum term of not less than 5 years and a maximum term of life with the possibility of parole.

➤ In addition to any other penalty, a person convicted pursuant to this subsection may be punished by a fine of not more than \$10,000.

Sec. 10. NRS 200.508 is hereby amended to read as follows:

200.508 1. A person who willfully causes a child who is less than 18 years of age to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect or to be placed in a situation where the child may suffer physical pain or mental suffering as the result of abuse or neglect:

(a) If substantial bodily or mental harm results to the child:

(1) If the child is less than 14 years of age and the harm is the result of sexual abuse or exploitation, is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 15 years has been served; or

(2) *If the child is less than 18 years of age and the resulting harm includes, without limitation, one or more of the following injuries:*

(I) Skull fracture;

(II) Depressed skull fracture;

(III) Cerebral laceration;

(IV) Cerebral contusion;

(V) Subarachnoid hemorrhage;

(VI) Subdural hemorrhage in the brain, neck or spinal

cord;

(VII) Epidural hemorrhage;



(VIII) Intracranial hemorrhage;
(IX) Cerebral edema caused by trauma;
(X) Multiple fractures of the skull or face with injuries to other bones of the body;

(XI) Contusion of the cerebellum or brain stem;

(XII) Optic nerve injury;

(XIII) Retinal hemorrhage;

(XIV) Loss of eyesight;

(XV) Loss of hearing; or

(XVI) Speech impairment or loss of speech,

↪ is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 5 years has been served, or for a definite term of 15 years, with eligibility for parole beginning when a minimum of 5 years has been served.

(3) In all other such cases to which subparagraph (1) or (2) does not apply, 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 2 years and a maximum term of not more than 20 years; or

(b) If substantial bodily or mental harm does not result to the child:

(1) If the person has not previously been convicted of a violation of this section or of a violation of the law of any other jurisdiction that prohibits the same or similar 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 6 years; or

(2) If the person has previously been convicted of a violation of this section or of a violation of the law of any other jurisdiction that prohibits the same or similar 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 2 years and a maximum term of not more than 15 years,

↪ unless a more severe penalty is prescribed by law for an act or omission that brings about the abuse or neglect.

2. A person who is responsible for the safety or welfare of a child pursuant to NRS 432B.130 and who permits or allows that child to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect or to be placed in a situation where the child may suffer physical pain or mental suffering as the result of abuse or neglect:

(a) If substantial bodily or mental harm results to the child:



(1) If the child is less than 14 years of age and the harm is the result of sexual abuse or exploitation, is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served; or

(2) *If the child is less than 18 years of age and the resulting harm includes, without limitation, one or more of the following injuries:*

(I) *Skull fracture;*

(II) *Depressed skull fracture;*

(III) *Cerebral laceration;*

(IV) *Cerebral contusion;*

(V) *Subarachnoid hemorrhage;*

(VI) *Subdural hemorrhage in the brain, neck or spinal cord;*

(VII) *Epidural hemorrhage;*

(VIII) *Intracranial hemorrhage;*

(IX) *Cerebral edema caused by trauma;*

(X) *Multiple fractures of the skull or face with injuries to other bones of the body;*

(XI) *Contusion of the cerebellum or brain stem;*

(XII) *Optic nerve injury;*

(XIII) *Retinal hemorrhage;*

(XIV) *Loss of eyesight;*

(XV) *Loss of hearing; or*

(XVI) *Speech impairment or loss of speech,*

↪ is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 5 years has been served, or for a definite term of 15 years, with eligibility for parole beginning when a minimum of 5 years has been served.

(3) In all other such cases to which subparagraph (1) or (2) does not apply, 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 2 years and a maximum term of not more than 20 years; or

(b) If substantial bodily or mental harm does not result to the child:

(1) If the person has not previously been convicted of a violation of this section or of a violation of the law of any other jurisdiction that prohibits the same or similar conduct, is guilty of a gross misdemeanor; or

(2) If the person has previously been convicted of a violation of this section or of a violation of the law of any other jurisdiction



1 that prohibits the same or similar conduct, is guilty of a category C
2 felony and shall be punished as provided in NRS 193.130,

3 ➔ unless a more severe penalty is prescribed by law for an act or
4 omission that brings about the abuse or neglect.

5 3. A person does not commit a violation of subsection 1 or 2 by
6 virtue of the sole fact that the person delivers or allows the delivery
7 of a child to a provider of emergency services pursuant to
8 NRS 432B.630.

9 4. As used in this section:

10 (a) "Abuse or neglect" means physical or mental injury of a
11 nonaccidental nature, sexual abuse, sexual exploitation, negligent
12 treatment or maltreatment of a child under the age of 18 years, as set
13 forth in paragraph (d) and NRS 432B.070, 432B.100, 432B.110,
14 432B.140 and 432B.150, under circumstances which indicate that
15 the child's health or welfare is harmed or threatened with harm.

16 (b) "Allow" means to do nothing to prevent or stop the abuse or
17 neglect of a child in circumstances where the person knows or has
18 reason to know that the child is abused or neglected.

19 (c) "Permit" means permission that a reasonable person would
20 not grant and which amounts to a neglect of responsibility attending
21 the care, custody and control of a minor child.

22 (d) "Physical injury" means:

23 (1) Permanent or temporary disfigurement; or

24 (2) Impairment of any bodily function or organ of the body.

25 (e) "Substantial mental harm" means an injury to the intellectual
26 or psychological capacity or the emotional condition of a child as
27 evidenced by an observable and substantial impairment of the ability
28 of the child to function within his or her normal range of
29 performance or behavior.

30 **Sec. 11.** NRS 200.604 is hereby amended to read as follows:

31 200.604 1. Except as otherwise provided in subsection 4, a
32 person shall not knowingly and intentionally capture an image of the
33 private area of another person:

34 (a) Without the consent of the other person; and

35 (b) Under circumstances in which the other person has a
36 reasonable expectation of privacy.

37 2. Except as otherwise provided in subsection 4, a person shall
38 not distribute, disclose, display, transmit or publish an image that
39 the person knows or has reason to know was made in violation of
40 subsection 1.

41 3. ~~1A~~ *Unless a greater penalty is provided pursuant to*
42 *section 5 of this act, a person who violates this section:*

43 (a) For a first offense, is guilty of a gross misdemeanor.

44 (b) For a second or subsequent offense, is guilty of a category E
45 felony and shall be punished as provided in NRS 193.130.



4. This section does not prohibit any lawful law enforcement or correctional activity, including, without limitation, capturing, distributing, disclosing, displaying, transmitting or publishing an image for the purpose of investigating or prosecuting a violation of this section.

5. If a person is charged with a violation of this section, any image of the private area of a victim that is contained within:

(a) Court records;

(b) Intelligence or investigative data, reports of crime or incidents of criminal activity or other information;

(c) Records of criminal history, as that term is defined in NRS 179A.070; and

(d) Records in the Central Repository for Nevada Records of Criminal History,

➤ is confidential and, except as otherwise provided in subsections 6 and 7, must not be inspected by or released to the general public.

6. An image that is confidential pursuant to subsection 5 may be inspected or released:

(a) As necessary for the purposes of investigation and prosecution of the violation;

(b) As necessary for the purpose of allowing a person charged with a violation of this section and his or her attorney to prepare a defense; and

(c) Upon authorization by a court of competent jurisdiction as provided in subsection 7.

7. A court of competent jurisdiction may authorize the inspection or release of an image that is confidential pursuant to subsection 5, upon application, if the court determines that:

(a) The person making the application has demonstrated to the satisfaction of the court that good cause exists for the inspection or release; and

(b) Reasonable notice of the application and an opportunity to be heard have been given to the victim.

8. As used in this section:

(a) "Broadcast" means to transmit electronically an image with the intent that the image be viewed by any other person.

(b) "Capture," with respect to an image, means to videotape, photograph, film, record by any means or broadcast.

(c) "Female breast" means any portion of the female breast below the top of the areola.

(d) "Private area" means the naked or undergarment clad genitals, pubic area, buttocks or female breast of a person.

(e) "Under circumstances in which the other person has a reasonable expectation of privacy" means:



(1) Circumstances in which a reasonable person would believe that he or she could disrobe in privacy, without being concerned that an image of his or her private area would be captured; or

(2) Circumstances in which a reasonable person would believe that his or her private area would not be visible to the public, regardless of whether the person is in a public or private place.

Sec. 12. Chapter 201 of NRS is hereby amended by adding thereto a new section to read as follows:

In a prosecution for pandering or sex trafficking pursuant to NRS 201.300, expert testimony concerning:

1. The prostitution subculture, including, without limitation, the effect of physical, emotional or mental abuse on the beliefs, behavior and perception of the alleged victim of the pandering or sex trafficking that is offered by the prosecution or defense is admissible for any relevant purpose, including, without limitation, to demonstrate:

(a) The dynamics of and the manipulation and psychological control measures used in the relationship between a prostitute and a person who engages in pandering or sex trafficking in violation of NRS 201.300; and

(b) The normal behavior and language used in the prostitution subculture.

2. The effect of pandering or sex trafficking may not be offered against a defendant pursuant to subsection 1 to prove the occurrence of an act which forms the basis of a criminal charge against the defendant.

Sec. 13. NRS 201.210 is hereby amended to read as follows:

201.210 1. A person who commits any act of open or gross lewdness is guilty:

(a) ~~For~~ *Except as otherwise provided in this subsection, for the first offense, of a gross misdemeanor.*

(b) For any subsequent offense, *or if the person has previously been convicted of a sexual offense as defined in NRS 179D.097, of a category D felony and shall be punished as provided in NRS 193.130.*

(c) *For an offense committed in the presence of a child under the age of 18 years or a vulnerable person as defined in paragraph (a) of subsection 7 of NRS 200.5092, of a category D felony and shall be punished as provided in NRS 193.130.*

2. For the purposes of this section, the breast feeding of a child by the mother of the child does not constitute an act of open or gross lewdness.



Sec. 14. NRS 201.220 is hereby amended to read as follows:

201.220 1. A person who makes any open and indecent or obscene exposure of his or her person, or of the person of another, is guilty:

(a) ~~For~~ *Except as otherwise provided in this subsection, for the first offense, of a gross misdemeanor.*

(b) For any subsequent offense, *or if the person has previously been convicted of a sexual offense as defined in NRS 179D.097, of a category D felony and shall be punished as provided in NRS 193.130.*

(c) *For an offense committed in the presence of a child under the age of 18 years or a vulnerable person as defined in paragraph (a) of subsection 7 of NRS 200.5092, of a category D felony and shall be punished as provided in NRS 193.130.*

2. For the purposes of this section, the breast feeding of a child by the mother of the child does not constitute an act of open and indecent or obscene exposure of her body.

Sec. 15. NRS 201.230 is hereby amended to read as follows:

201.230 1. A person who willfully and lewdly commits any lewd or lascivious act, other than acts constituting the ~~crime~~ *crimes* of sexual assault ~~or~~ *or statutory sexual seduction*, upon or with the body, or any part or member thereof, of a child under the age of ~~14~~ *16* years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of that child, is guilty of lewdness with a child.

2. Except as otherwise provided in subsection ~~3~~ *4*, a person who commits lewdness with a child *under the age of 14* is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served, and may be further punished by a fine of not more than \$10,000.

3. *Except as otherwise provided in subsection 4, a person who commits lewdness with a child who is 14 or 15 years of age 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.*

4. A person who commits lewdness with a child and who has been previously convicted of:

(a) Lewdness with a child pursuant to this section or any other sexual offense against a child; or

(b) An offense committed in another jurisdiction that, if committed in this State, would constitute lewdness with a child pursuant to this section or any other sexual offense against a child,



1 ➡ is guilty of a category A felony and shall be punished by
2 imprisonment in the state prison for life without the possibility of
3 parole.

4 ~~[4.]~~ 5. *The provisions of this section do not apply to a person*
5 *who is less than 18 years of age and who commits any act*
6 *described in subsection 1 if the person is not more than 2 years*
7 *older than the person upon whom the act was committed unless:*

8 (a) *The person committing the act uses force or threatens the*
9 *use of force;*

10 (b) *The person upon whom the act is committed suffers from a*
11 *condition of physical or mental incapacitation because of a*
12 *developmental disability, organic brain damage or mental illness*
13 *that is apparent or known to the person committing the act; or*

14 (c) *The victim has diminished capacity at the time of the*
15 *offense as a result of drug or alcohol use.*

16 6. For the purpose of this section, "other sexual offense against
17 a NRS" has the meaning ascribed to it in subsection 5 of
18 NRS 200.366.

19 **Sec. 16.** NRS 201.295 is hereby amended to read as follows:

20 201.295 As used in NRS 201.295 to 201.440, inclusive, **and**
21 **section 12 of this act**, unless the context otherwise requires:

22 1. "Adult" means a person 18 years of age or older.

23 2. "Child" means a person less than 18 years of age.

24 3. "Induce" means to persuade, encourage, inveigle or entice.

25 4. "Prostitute" means a male or female person who for a fee,
26 monetary consideration or other thing of value engages in sexual
27 intercourse, oral-genital contact or any touching of the sexual organs
28 or other intimate parts of a person for the purpose of arousing or
29 gratifying the sexual desire of either person.

30 5. "Prostitution" means engaging in sexual conduct with
31 another person in return for a fee, monetary consideration or other
32 thing of value.

33 6. "Sexual conduct" means any of the acts enumerated in
34 subsection 4.

35 7. "Transports" means to transport or cause to be transported,
36 by any means of conveyance, into, through or across this State, or to
37 aid or assist in obtaining such transportation.

38 **Sec. 17.** NRS 201.520 is hereby amended to read as follows:

39 201.520 "Sexual conduct" means:

40 1. Ordinary sexual intercourse;

41 2. Anal intercourse;

42 3. Fellatio, cunnilingus or other oral-genital contact;

43 4. Physical contact by a person with the unclothed genitals or
44 pubic area of another person for the purpose of arousing or
45 gratifying the sexual desire of either person;



5. Penetration, however slight, by a person of an object into the genital or anal opening of the body of another person for the purpose of arousing or gratifying the sexual desire of either person;

6. Masturbation or the lewd exhibition of unclothed genitals;

~~for~~ 7. Sado-masochistic abuse ~~for~~; or

8. *Any lewd or lascivious act upon or with the body, or any part or member thereof, of another person.*

Sec. 18. NRS 201.540 is hereby amended to read as follows:

201.540 1. Except as otherwise provided in subsection ~~4,~~ 3, a person who:

(a) Is 21 years of age or older;

(b) Is or was employed in a position of authority by a public school or private school or is or was volunteering in a position of authority at a public or private school; and

(c) Engages in sexual conduct with a pupil who is 16 or 17 years of age and:

(1) Who is or was enrolled in or attending the public school or private school at which the person is or was employed or volunteering; or

(2) With whom the person has had contact in the course of performing his or her duties as an employee or volunteer,
~~for is guilty of a category C felony and shall be punished as provided in NRS 193.130.~~

~~2. Except as otherwise provided in subsection 4, a person who:~~

~~(a) Is 21 years of age or older;~~

~~(b) Is or was employed in a position of authority by a public school or private school or is or was volunteering in a position of authority at a public or private school; and~~

~~(c) Engages in sexual conduct with a pupil who is 14 or 15 years of age and:~~

~~(1) Who is or was enrolled in or attending the public school or private school at which the person is or was employed or volunteering; or~~

~~(2) With whom the person has had contact in the course of performing his or her duties as an employee or volunteer,]~~

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~~ 2 years and a maximum term of not more than ~~6~~ 20 years, and may be further punished by a fine of not more than ~~\$5,000.~~ \$10,000.

~~3.]~~ 2. For the purposes of ~~subsections~~ subsection 1 ~~and 2,~~ a person shall be deemed to be or have been employed in a position of authority by a public school or private school or deemed to be or



1 have been volunteering in a position of authority at a public or
2 private school if the person is or was employed or volunteering as:

- 3 (a) A teacher or instructor;
- 4 (b) An administrator;
- 5 (c) A head or assistant coach; or
- 6 (d) A teacher's aide or an auxiliary, nonprofessional employee
7 who assists licensed personnel in the instruction or supervision of
8 pupils pursuant to NRS 391.100.

9 ~~14.1~~ 3. The provisions of this section do not apply to a person
10 who is married to the pupil.

11 **Sec. 19.** NRS 201.550 is hereby amended to read as follows:

12 201.550 1. Except as otherwise provided in subsection 3, a
13 person who:

- 14 (a) Is 21 years of age or older;
- 15 (b) Is employed in a position of authority by a college or
16 university; and
- 17 (c) Engages in sexual conduct with a student who is 16 or 17
18 years of age and who is enrolled in or attending the college or
19 university at which the person is employed,

20 ➔ is guilty of a category ~~1C~~ B felony and shall be punished ~~as~~
21 ~~provided in NRS 193.130.1~~ *by imprisonment in the state prison for*
22 *a minimum term of not less than 2 years and a maximum term of*
23 *not more than 20 years and may be further punished by a fine of*
24 *not more than \$10,000.*

25 2. For the purposes of subsection 1, a person shall be deemed
26 to be employed in a position of authority by a college or university
27 if the person is employed as:

- 28 (a) A teacher, instructor or professor;
- 29 (b) An administrator; or
- 30 (c) A head or assistant coach.

31 3. The provisions of this section do not apply to a person who
32 is married to the student.

33 **Sec. 20.** (Deleted by amendment.)

34 **Sec. 21.** NRS 48.045 is hereby amended to read as follows:

35 48.045 1. Evidence of a person's character or a trait of his or
36 her character is not admissible for the purpose of proving that the
37 person acted in conformity therewith on a particular occasion,
38 except:

39 (a) Evidence of a person's character or a trait of his or her
40 character offered by an accused, and similar evidence offered by the
41 prosecution to rebut such evidence;

42 (b) Evidence of the character or a trait of character of the victim
43 of the crime offered by an accused, subject to the procedural
44 requirements of NRS 48.069 where applicable, and similar evidence
45 offered by the prosecution to rebut such evidence; and



(c) Unless excluded by NRS 50.090, evidence of the character of a witness, offered to attack or support his or her credibility, within the limits provided by NRS 50.085.

2. Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show that the person acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

3. Nothing in this section shall be construed to prohibit the admission of evidence in a criminal prosecution for a sexual offense that a person committed another crime, wrong or act that constitutes a separate sexual offense. As used in this subsection, "sexual offense" has the meaning ascribed to it in NRS 179D.097.

Sec. 22. Chapter 50 of NRS is hereby amended by adding thereto the provisions set forth as sections 23 and 24 of this act.

Sec. 23. 1. *In any criminal or juvenile delinquency action, expert testimony offered by the prosecution or defense which concerns the behavior of a defendant in preparing a child under the age of 18 years or a vulnerable person as defined in NRS 200.5092 for sexual abuse by the defendant is admissible for any relevant purpose. Such expert testimony may concern, without limitation:*

(a) The effect on the victim from the defendant creating a physical or emotional relationship with the victim before the sexual abuse; and

(b) Any behavior of the defendant that was intended to reduce the resistance of the victim to the sexual abuse or reduce the likelihood that the victim would report the sexual abuse.

2. As used in this section, "sexual abuse" has the meaning ascribed to it in NRS 432B.100.

Sec. 24. 1. *In any criminal or juvenile delinquency action relating to the commission of a sexual offense, a court may not order the victim of or a witness to the sexual offense to take or submit to a psychological or psychiatric examination.*

2. The court may exclude the testimony of a licensed psychologist, psychiatrist or clinical worker who performed a psychological or psychiatric examination on the victim or witness if:

(a) There is a prima facie showing of a compelling need for an additional psychological or psychiatric examination of the victim or witness by a licensed psychologist, psychiatrist or clinical worker; and



(b) The victim or witness refuses to submit to an additional psychological or psychiatric examination by a licensed psychologist, psychiatrist or clinical worker.

3. In determining whether there is a prima facie showing of a compelling need for an additional psychological or psychiatric examination of the victim or witness pursuant to subsection 2, the court must consider whether:

(a) There is a reasonable basis for believing that the mental or emotional state of the victim or witness may have affected his or her ability to perceive and relate events relevant to the criminal prosecution; and

(b) Any corroboration of the offense exists beyond the testimony of the victim or witness.

4. If the court determines there is a prima facie showing of a compelling need for an additional psychological or psychiatric examination of the victim or witness, the court shall issue a factual finding that details with particularity the reasons why an additional psychological or psychiatric examination of the victim or witness is warranted.

5. If the court issues a factual finding pursuant to subsection 4 and the victim or witness consents to an additional psychological or psychiatric examination, the court shall set the parameters for the examination consistent with the purpose of determining the ability of the victim or witness to perceive and relate events relevant to the criminal prosecution.

6. As used in this section, “sexual offense” includes, without limitation:

(a) Sexual assault pursuant to NRS 200.366;

(b) Statutory sexual seduction pursuant to NRS 200.368;

(c) Battery with intent to commit sexual assault pursuant to NRS 200.400;

(d) Abuse of a child pursuant to NRS 200.508, if the abuse involved sexual abuse or sexual exploitation;

(e) An offense involving pornography and a minor pursuant to NRS 200.710 to 200.730, inclusive;

(f) Incest pursuant to NRS 201.180;

(g) Open or gross lewdness pursuant to NRS 201.210;

(h) Indecent or obscene exposure pursuant to NRS 201.220;

(i) Lewdness with a child pursuant to NRS 201.230;

(j) Sexual penetration of a dead human body pursuant to NRS 201.450;

(k) An offense involving the administration of a drug to another person with the intent to enable or assist the commission of a felony pursuant to NRS 200.405, if the felony is an offense listed in this section;



(l) An offense involving the administration of a controlled substance to another person with the intent to enable or assist the commission of a crime of violence pursuant to NRS 200.408, if the crime of violence is an offense listed in this section;

(m) Luring a child or a person with mental illness pursuant to NRS 201.560;

(n) An offense that is found to be sexually motivated pursuant to NRS 175.547 or 207.193;

(o) Pandering of a child pursuant to NRS 201.300;

(p) Any other offense that has an element involving a sexual act or sexual conduct with another person; or

(q) Any attempt or conspiracy to commit an offense listed in this subsection.

Sec. 25. NRS 50.260 is hereby amended to read as follows:

50.260 As used in NRS 50.260 to 50.345, inclusive, **and section 23 of this act**, unless the context otherwise requires, “prohibited substance” has the meaning ascribed to it in NRS 484C.080.

Sec. 26. NRS 432B.140 is hereby amended to read as follows:

432B.140 Negligent treatment or maltreatment of a child occurs if a child **has been subjected to harmful behavior that communicates rejection or is threatening, intimidating, disparaging, terrorizing or humiliating, has been subjected to painful or abusive conduct**, has been abandoned, is without proper care, control ~~and~~ or supervision or lacks the subsistence, education, shelter, medical care or other care necessary for the well-being of the child because of the faults or habits of the person responsible for the welfare of the child or the neglect or refusal of the person to provide them when able to do so.

Sec. 27. 1. The amendatory provisions of sections 1 to 5, inclusive, 6.5 and 11 of this act apply to an intimate image that is electronically disseminated or sold on or after October 1, 2015.

2. The amendatory provisions of section 6 of this act apply to an intimate image that is electronically disseminated or sold before, on or after October 1, 2015, if, on or after October 1, 2015, a person:

(a) Demands payment of money, property, services or anything else of value from a person in exchange for removing the intimate image from public view; or

(b) Directly or indirectly counsels, hires, commands, induces or otherwise procures another person to demand payment of money, property, services or anything else of value from a person in exchange for removing the intimate image from public view.

3. The amendatory provisions of sections 7 to 10, inclusive, 13, 14, 15, 17, 18, 19 and 26 of this act apply to an offense that is committed on or after October 1, 2015.



1 4. The amendatory provisions of sections 12, 16 and 20 to 25,
2 inclusive, of this act apply to a court proceeding that is commenced
3 on or after October 1, 2015.

4 5. As used in this section, “intimate image” has the meaning
5 ascribed to it in section 3 of this act.

6 **Sec. 28.** (Deleted by amendment.)

