

PROVISIONS RELATING TO OBSCENITY



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LEGISLATIVE COMMISSION
OF THE
LEGISLATIVE COUNSEL BUREAU
STATE OF NEVADA

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Assembly Concurrent Resolution No. 6—Assemblymen Wagner, Murphy,
Jeffrey, Hayes, Weise and Coulter

FILE NUMBER 119...

ASSEMBLY CONCURRENT RESOLUTION—Directing the legislative commission to study all provisions of law relating to obscenity.

WHEREAS, The legislature of the State of Nevada is concerned with the problem of protecting the citizens of this state, their families and youth against the dissemination of obscene matter; and

WHEREAS, Obscene matters are not protected by the constitutional guaranties of free speech and press, but complicated and recurring problems exist in establishing standards defining what matters are not so protected and lie outside the limits of candor and decency; and

WHEREAS, A definition of the current standards of obscenity is necessary to prevent and eliminate any abuse of the public health, safety and morals of the citizens of this state and to satisfy due process; and

WHEREAS, The definition of obscenity contained in NRS 201.250 and various local ordinances is no longer workable in light of recent opinions rendered by the United States Supreme Court; now, therefore, be it

Resolved by the Assembly of the State of Nevada, the Senate concurring, That the legislative commission, with participation by representatives of the Nevada State Library Association, the state department of education, district attorneys and city attorneys of the State of Nevada, is hereby directed to study the provisions of Nevada law which relate to obscenity, review relevant court decisions which deal with obscenity, and examine workable obscenity laws of other states; and be it further

Resolved, That the findings of the commission and its recommendations be reported to the 60th session of the legislature.

REPORT OF THE LEGISLATIVE COMMISSION

To the Members of the 60th Session of the Nevada Legislature:

This report is submitted in compliance with Assembly Concurrent Resolution No. 6 of the 59th session of the Nevada legislature, which directed the legislative commission to study all provisions of law relating to obscenity.

The legislative commission assigned the inquiry to a subcommittee under the chairmanship of Senator James I. Gibson, with Assemblyman Eileen Brookman as vice chairman and Senator Eugene Echols and Assemblymen William Kissam and Sue Wagner as members.

This report is transmitted to the members of the 60th session of the legislature for their consideration and for appropriate action.

Respectfully submitted,

Legislative Commission
Legislative Counsel Bureau
State of Nevada

Carson City, Nevada

* * * * *

LEGISLATIVE COMMISSION

Assemblyman Donald R. Mello, Chairman
Assemblyman Paul W. May, Vice Chairman

Senator Keith Ashworth
Senator Richard H. Bryan
Senator Margie Foote
Senator James I. Gibson
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Assemblyman Eileen B. Brookman
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REPORT OF THE SUBCOMMITTEE FOR STUDY OF PROVISIONS
RELATING TO OBSCENITY

In the 1977 legislative session, considerable interest was expressed in, and some consideration was given to, legislation which would amend the statutes concerned with obscenity. The most serious drafting effort was initiated by the City of Las Vegas through its then city attorney, Carl Lovell, who presented a comprehensive bill for introduction. Unfortunately, there were difficulties in gaining approval of all those interested in the bill draft and it was not ready for introduction until fairly late in the session. Because of the controversial nature of the subject, if not of the proposed bill itself, it was determined that proper indepth study and hearing could not be given in the time remaining in the session and it was further decided not to proceed with any major legislation in this field.

Earlier in the session Assembly Concurrent Resolution No. 6 had been introduced by Assemblyman Sue Wagner of Washoe County joined by five of her colleagues. This resolution directed the legislative commission to study provisions of Nevada law relating to obscenity. When it became apparent that no major legislation would be forthcoming in this field in the 1977 session, and yet the concern and interest that something be done remained, it was felt that this resolution could provide the means of allowing constructive and studied suggestions to be made in time for a serious consideration early in the 1979 session. The concurrent resolution was passed with strong support in both houses of the legislature.

The legislative commission assigned this study priority 3 on the list of studies to be carried out in this interim, indicating the importance attached to the matter of obscenity problems by the legislators. It turned out that while the study content was felt to be very important, very few of the legislators expressed any interest in serving on the subcommittee. The subcommittee was made up of those members who expressed enough interest to be willing to serve in the assignment. The members of the subcommittee assigned were Senator James I. Gibson (D) Clark, who was asked to serve as chairman, Senator Eugene Echols (D) Clark, Assemblyman Eileen Brookman (D) Clark, who served as vice chairman, Assemblyman William Kissam (D) Clark and Assemblyman Sue Wagner (R) Washoe. Frank Daykin and Allen Gibson were assigned as support legal staff from the Legislative Counsel Bureau.

The subcommittee, at its organizational meeting in Las Vegas on September 15, 1977, made several decisions which set the course for the work of the subcommittee in discharging its assignment as listed in the resolution. Those decisions were:

- (1) To assign the staff to make an exhaustive search of all existing Nevada statutes relating to obscenity and to brief them for subcommittee study;

(2) To assign staff to carry on an exhaustive search of all pertinent court decisions at the various levels of judiciary relating to obscenity and to brief them for subcommittee study;

(3) To assign staff to make an analysis of the present provisions of Nevada law relating to obscenity in light of the laws of other states and in light of the various court decisions, particularly those issued since the Nevada laws relating to obscenity were last amended and to present that analysis to the subcommittee for study;

(4) To hold public hearings in Las Vegas and Reno to allow opportunity for public input into the course of the subcommittee action and, perhaps more importantly, to allow the subcommittee to gain an understanding of that which is the concern of the public in this field;

(5) To lay out a schedule for the subcommittee to accomplish the work to be done. This provided for the staff study, analysis and briefing to be accomplished by the end of December, with the public hearings to be held in January and the subcommittee to draft its recommendations to the commission in March or April with time for review by interested parties and the final drafting of the subcommittee's report in time for submitting it to the commission by August 1, 1978;

(6) To utilize the assistance and input of the groups mentioned in the resolution as resource sources to the subcommittee, but not as formal members of the subcommittee. This decision was in keeping with guidelines set by the parent legislative commission.

The course of the subcommittee's work pretty well followed that set down in the September meeting. The only major change was to allow additional public hearings in Carson City in April, as considerable expression was received in the hearings in Reno and Las Vegas that the work of the subcommittee was not well enough noticed and publicized to allow all those vitally interested to be heard.

Those appearing before the subcommittee were principally:

1. Public prosecutors, including the attorney general, district attorneys and city attorneys, who explained the problems arising under the present laws and suggested certain changes;

2. Representatives of church groups and concerned individual citizens, who expressed their desire to protect the public and especially children from the public display of offensive nudity and the availability of pornographic material to children as well as adults;

3. Representatives of libraries and schools, who were concerned lest prohibition of the commercial exploitation of pornography interfere unnecessarily with the availability for legitimate purposes of explicit sexual illustrations or descriptions; and

4. Persons who believed that any restriction of the content of pictorial or written material was wrong in principle or could not be prevented from spreading into a general censorship.

The preliminary recommendations of the subcommittee represent its desire to respond to the matters of concern that were expressed in the public hearings. Attendance of the subcommittee's hearings was high; several dozen people attended these meetings. In all meetings, the subcommittee reiterated its determination not to recommend any action to the legislative commission which was unconstitutional. Further, the subcommittee did indicate through its chairman's pronouncements that it did intend to have constructive recommendations which would strengthen Nevada law in this field.

The subcommittee's preliminary recommendations follow. Space will not permit detailed discussion of each but a review of the list will indicate the extent to which the subcommittee has been able to fulfill the charge of ACR 6.

1. TO EXEMPT PUBLICLY CONTROLLED EDUCATIONAL INSTITUTIONS, LIBRARIES, MEDICAL INSTITUTIONS AND MUSEUMS FROM THE OBSCENITY STATUTES. This allays their legitimate concerns while relying upon the fact of public control to assure their compliance with community standards of decency suited to their respective purposes.

2. TO PROVIDE A CRIMINAL PENALTY FOR THE VIOLATION OF AN INJUNCTION AGAINST THE SALE OR DISPLAY OF OBSCENE MATERIAL. This protects the merchant genuinely doubtful whether his material is obscene by encouraging a civil determination of the issue of obscenity without criminal prosecution. At the same time, it substitutes the easier standard of "clear and convincing evidence" for "proof beyond reasonable doubt" in determining the issue of obscenity; then, if the person enjoined knowingly violates the injunction, all that need be proved beyond reasonable doubt is the fact of violation.

3. TO PERMIT RECOVERY, FOR THE USE OF THE CITY OR COUNTY, OF THE PRICE OF ANY OBSCENE MATERIAL SOLD OR DISPLAYED AFTER AN INJUNCTION. This strikes at the heart of pornography, by making it potentially costly instead of profitable to risk dealing in material known to be obscene.

4. TO PERMIT CANCELLATION OF THE LEASE OF PREMISES USED FOR AN OBSCENE PURPOSE, AND IMPOSE CRIMINAL LIABILITY UPON THE LANDLORD

IF THEY ARE SO USED AFTER A DETERMINATION OF OBSCENITY. This gives landlords both the power and the motive to restrain the use of rented premises.

5. TO SPECIFY THAT COMMERCIAL EXPLOITATION OF MATERIAL FOR ITS PRURIENT INTEREST IS EVIDENCE--NOT CONCLUSIVE--OF ITS OBSCENITY. This codifies existing case law: Ginzburg v. United States, 383 U.S. 463 (1966); Hamling v. United States, 418 U.S. 87 (1974).

6. TO PROHIBIT THE DISPLAY OF MATERIAL HARMFUL TO MINORS IN A PLACE ACCESSIBLE TO MINORS. This is aimed at two evils frequently mentioned: offensive depictions of nudity on billboards and on the covers of magazines in supermarkets. "Gross nudity" as defined in section 10 of BDR 16-29 is the same as the former definition of "nudity" in NRS 201.261 which is repealed.

7. TO REDEFINE OBSCENITY. The new definition is taken from Miller v. California, 413 U.S. 15 (1973), which broadened the former test of "utterly without redeeming social value" to "without serious literary, artistic, political, or scientific value" (emphasis added) and Hamling v. United States, 418 U.S. 87 (1974), which made clear that neither a national nor a statewide standard need be applied by a jury in determining obscenity, that the standard of the "community" from which the jury is drawn suffices.

8. TO SPECIFY, IN THE DEFINITION OF WHAT IS "HARMFUL TO MINORS," THAT THE MATERIAL NEED NOT BE CONSIDERED AS A WHOLE. This follows the holding of Ginsberg v. New York, 390 U.S. 629 (1968), that a state could limit the access of children to material which would not be obscene for an adult.

9. TO PROHIBIT (AS A FELONY) THE EXPLOITATION OF A CHILD IN THE PREPARATION OF PRONOGRAPHIC MATERIAL. (Appendix B, BDR 16-30) This supplements recently enacted Federal legislation which prohibits such exploitation but only if interstate commerce is involved.

10. TO PROHIBIT THE ADVERTISEMENT OF PROSTITUTION WHERE THE PRACTICE OF IT IS UNLAWFUL. (Appendix C, BDR 16-31) State law in Nevada prohibits prostitution only in counties whose population is 200,000 or more and in narrowly defined places in other counties. The purpose of this statute is to strengthen local ordinances against prostitution where they are in effect, as well as to ban this type of advertising where prostitution is prohibited by statute.

In arriving at these recommendations the subcommittee has sifted through great volumes of written material as well as material presented in public hearings. The subcommittee believes these suggestions, if enacted into law, will give Nevada a strong basis

for moving against the problems about which concern was expressed in the public hearings--and at the same time, protecting individual constitutional rights fundamental to our country.

James I. Gibson, Chairman
Eileen B. Brookman, Vice Chairman
Eugene V. Echols
William A. Kissam
Sue Wagner

SUMMARY--Revises test for obscenity and provides civil remedies.
(BDR 16-29)

Fiscal Note: Effect on Local Government: No.
Effect on the State or on Industrial
Insurance: No.

AN ACT relating to crimes against public decency and good morals; revising the test for obscenity; exempting certain institutions and persons from prosecution for obscenity; providing for an injunction as an alternative to criminal prosecution and for other civil remedies; prohibiting certain displays; providing penalties; and providing other matters properly relating thereto.

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

Section 1. Chapter 201 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 11, inclusive, of this act.

Sec. 2. The provisions of NRS 201.250 to 201.254, inclusive, NRS 201.256 to 201.265, inclusive, and sections 3 to 11, inclusive, of this act do not apply to those universities, schools, museums, medical clinics, hospitals or libraries which are operated by or are under the direct control of the state, or any political subdivision of the state, or to persons while acting as employees of such organizations.

Sec. 3. 1. The district attorney or city attorney of any county or city, respectively, in which there is an item or material which he believes to be obscene, may file a complaint in the district court seeking to have the item or material declared obscene and to enjoin the possessor and the owner from selling,

renting, exhibiting, reproducing, manufacturing or distributing it and from possessing it for any purpose other than personal use.

2. Those sought to be enjoined are entitled to a trial of the issues within 10 days after joinder of issue and a decision shall be rendered by the court within 10 days after the conclusion of the trial.

Sec. 4. 1. If a final judgment declaring an item or material obscene and an injunction are entered against its owner and possessor, the judgment or injunction shall contain a provision directing the owner or possessor to surrender to the sheriff of the county in which the action was brought the item or material declared obscene and a direction to the sheriff to seize and destroy it.

2. In any action brought to declare an item or material obscene, the district attorney or city attorney bringing the action is not required to file an undertaking before an injunction is issued.

3. A sheriff directed to seize and destroy an obscene item or material is not liable for damages sustained by reason of the injunction in cases where judgment ultimately is rendered in favor of the person, firm, association or corporation sought to be enjoined.

4. Every person, firm, association or corporation who sells, distributes, or acquires possession with intent to sell or distribute any allegedly obscene item or material, after service

of a summons and complaint in an action brought to declare an item or material obscene is chargeable with knowledge of the contents of the item or material.

Sec. 5. If a district court enters a judgment that an item or material is obscene and that item or material, or one substantially identical thereto, is sold after that judgment or injunction, the court shall order an accounting to determine the value of all money and other consideration received by the defendant which was derived from the obscene item or material after the court judged it to be obscene. The defendant shall pay a sum equivalent to that value into the general fund of the city or county which prosecuted the action.

Sec. 6. 1. If a lessee of real property uses the property for an activity for which he is convicted of violating any provision of NRS 201.253, 201.265 or section 8 of this act, the lessor is entitled to cancel the lease. This right does not arise until all avenues of direct appeal have been exhausted. After 10 days' written notice to the lessee that the lessor is exercising this right, the right of possession of the property reverts to the lessor. The prosecuting attorney who obtains such a conviction of a tenant shall so notify the landlord by registered or certified mail directed to the landlord's last known address as it appears on the records of the county assessor.

2. After the required notice has been given, if the landlord knowingly permits that tenant to use the property for any activity

constituting an offense prohibited by NRS 201.253, 201.265 or section 8 of this act, the landlord is guilty of a misdemeanor.

3. A lessee is guilty of a misdemeanor if he receives written notice that his lease is being revoked pursuant to this section and he does not quit the premises within 10 days.

Sec. 7. In prosecutions under NRS 201.250 to 201.254, inclusive, and NRS 201.256 to 201.265, inclusive, and sections 3 to 11, inclusive, of this act, evidence of circumstances of production, dissemination, sale or publicity of the material or item, which indicates it is being commercially exploited by the defendant for its prurient appeal, is probative of the obscenity of the material or item and can justify the conclusion that it is, taken as a whole, without serious literary, artistic, political or scientific value.

Sec. 8. Except as otherwise provided in section 2 of this act, a person is guilty of a misdemeanor who knowingly:

1. Prints, produces or reproduces any obscene item or material for sale or commercial distribution.

2. Publishes, sells, rents, transports in intrastate commerce, or commercially distributes or exhibits any obscene item or material, or offers to do any such things.

3. Has in his possession with intent to sell, rent, transport or commercially distribute any obscene item or material.

4. Violates an injunction prohibiting him from selling, renting, exhibiting, reproducing, manufacturing, distributing or possessing an obscene item or material.

Sec. 9. 1. A person, firm, association or corporation shall not, as a condition to any sale, allocation, consignment or delivery for resale of any item or material, require that the purchaser or consignee receive for resale any other item or material which is obscene. A person, firm, association or corporation shall not deny or threaten to deny any franchise or impose or threaten to impose any penalty, financial or otherwise, for the failure or refusal of any person to accept any obscene item or material or for the return thereof.

2. A person, firm, association or corporation who violates any provision of this section is guilty of a misdemeanor.

Sec. 10. "Gross nudity" means the showing of the human male or female genitals or pubic area or the depiction of covered male genitals in a discernible turgid state.

Sec. 11. A person is guilty of a misdemeanor who knowingly:

1. Misrepresents that he is the parent, guardian or spouse of a minor for the purpose of obtaining admission of such minor to any motion picture, show or any other presentation which is harmful to minors.

2. Misrepresents his age as 18 or over for the purpose of obtaining admission to any motion picture, show or other presentation which is harmful to minors.

Sec. 12. NRS 201.250 is hereby amended to read as follows:

201.250 [1. In this section,] In NRS 201.250 to 201.254, inclusive, and sections 3 to 9, inclusive, of this act, unless the context otherwise requires:

[(a)] 1. "Community" means the area from which a jury is selected.

2. "Item" includes any book, leaflet, pamphlet, magazine, booklet, picture, drawing, photograph, film, negative, slide, motion picture, figure, object, article, novelty device, recording, transcription, phonograph record or tape recording, with or without music, or other similar items.

[(b)] 3. "Material" means anything tangible which is capable of being used or adapted to arouse interest, whether through the medium of reading, observation, sound or in any other manner.

[(c)] 4. "Obscene" means any item, material or performance
[if:

(1) Considered as a whole, its predominant appeal is to prurient, shameful or morbid interest in nudity, sex, excretion, sadism or masochism; and

(2) It goes substantially beyond customary limits of candor in describing or representing such matters; and

(3) It is utterly without redeeming social value.

flaw Predominant appeal] which:

(a) An average person applying contemporary community standards would find, taken as a whole, appeals to prurient interest; and

(b) Depicts or describes in a patently offensive way:

(1) Ultimate sexual acts, normal or perverted, actual or simulated; or

(2) Masturbation, excretory functions, sadism, masochism or the genitals; and

(c) Taken as a whole, lacks serious literary, artistic, political or scientific value.

flush Appeal shall be judged with reference to ordinary adults, unless it appears, from the character of the material or the circumstances of its dissemination, to be designed for children or [other specially susceptible audiences.] a clearly defined deviant group.

[(d)] 5. "Performance" means any play, motion picture, dance or other exhibition performed before an audience.

[2. A person is guilty of a misdemeanor who knowingly:

(a) Prints, copies, manufactures, prepares, produces or reproduces any obscene item or material for purposes of sale or commercial distribution.

(b) Publishes, sells, rents, transports in intrastate commerce, or commercially distributes or exhibits any obscene item or material, or offers to do any such things.

(c) Has in his possession with intent to sell, rent, transport or commercially distribute any obscene item or material.

3. No person, firm, association or corporation shall, as a condition to any sale, allocation, consignment or delivery for resale of any paper, magazine, book, periodical or publication require that the purchaser or consignee receive for resale any other item, article, book or other publication which is obscene. No person, firm, association or corporation shall deny or threaten to deny any franchise or impose or threaten to impose any penalty, financial or otherwise, by reason of the failure or refusal of

any person to accept such items, articles, books or publications, or by reason of the return thereof. A person, firm, association or corporation who violates any provision of this subsection is guilty of a misdemeanor.

4. (a) The district court has jurisdiction to enjoin the sale or distribution of obscene prints and articles, as described in paragraph (b).

(b) The district attorney of any county or the city attorney of any city in which a person, firm, association or corporation publishes, sells or distributes or is about to sell or distribute or has in his possession with intent to sell or distribute or is about to acquire possession with intent to sell or distribute any book, magazine, pamphlet, comic book, story paper, writing, paper, picture, drawing, photograph, figure, image or any written or printed matter of an obscene character, or which contains an article or instrument of obscene use or purports to be for an obscene use or purpose, or in any other respect defined in subsection 1, may maintain an action on behalf of such county or city for an injunction against such person, firm, association or corporation in the district court to prevent the sale or further sale or the distribution or further distribution of the acquisition, publication or possession within the state of any book, magazine, pamphlet, comic book, story paper, writing, paper, picture, drawing, photographed figure or image or any written or printed matter of an obscene character, described in this subsection or in subsection 1.

(c) The person, firm, association or corporation sought to be enjoined shall be entitled to a trial of the issue within 10 days after joinder of issue and a decision shall be rendered by the court within 10 days of the conclusion of the trial.

(d) If a final order or judgment of injunction is entered against the person, firm, association or corporation sought to be enjoined, such final order of judgment shall contain a provision directing the person, firm, association or corporation to surrender to the sheriff of the county in which the action was brought any of the matter described in paragraph (b), and such sheriff shall be directed to seize and destroy such obscene prints and articles.

(e) In any action brought as provided in this subsection, such district attorney or city attorney bringing the action shall not be required to file any undertaking before the issuance of an injunction order provided for in paragraph (c).

(f) The sheriff directed to seize and destroy such obscene prints and articles shall not be liable for damages sustained by reason of the injunction order in cases where judgment is rendered in favor of the person, firm, association or corporation sought to be enjoined.

(g) Every person, firm, association or corporation who sells, distributes, or acquires possession with intent to sell or distribute any of the matter described in paragraph (b), after the service upon him of a summons and complaint in an action brought pursuant to this subsection is chargeable with knowledge of the contents of such matter.]

Sec. 13. NRS 201.256 is hereby amended to read as follows:

201.256 Unless the context otherwise requires, the definitions set forth in NRS 201.257 to 201.264, inclusive, and section 10 of this act govern the construction of NRS 201.256 to 201.265, inclusive [.] , and sections 10 and 11 of this act.

Sec. 14. NRS 201.257 is hereby amended to read as follows:

201.257 "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 gross 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 [as a whole] with respect to what is suitable material for minors, and is [utterly without redeeming social importance for minors.] without serious literary, artistic, political or scientific value.

Sec. 15. NRS 201.265 is hereby amended to read as follows:

201.265 [A] Except as otherwise provided in section 2 of this act, a person is guilty of a misdemeanor who knowingly:

1. [Exhibits for sale, sells] Sells or loans for monetary consideration to a minor [, or exhibits for sale to an adult in such a manner or location as to allow a minor to view or have access for examination] any picture, photograph, drawing, sculpture, motion picture film, or similar visual representation or image of a person or portion of the human body which depicts gross nudity, sexual conduct or sado-masochistic abuse and is harmful to minors.

2. [Exhibits for sale, sells or loans for monetary consideration to a minor, or exhibits for sale to an adult] Allows any item or material to be placed in such a manner or location as to allow a minor to view a visual representation of gross nudity, sexual conduct, bestiality, sodomy or sado-masochistic abuse.

3. Allows any item or material to be placed in such a manner or location as to allow a minor to view [, read, hear or examine any book, pamphlet, magazine, printed matter, however reproduced, or sound recording, with or without music, which contains any matter enumerated in subsection 1, or explicit and detailed verbal descriptions or narrative accounts of] or hear any written or recorded description or narrative account of gross nudity, sexual excitement, sexual conduct or sado-masochistic abuse . [, which taken as a whole is harmful to minors.]

[3.] 4. Exhibits for monetary consideration to a minor, sells to a minor an admission ticket [or pass] or admits a minor, for monetary consideration, to premises [whereon] upon which there is exhibited a motion picture, show or other presentation which, in whole or in part, depicts gross nudity, sexual conduct or sado-masochistic abuse , [and is harmful to minors, unless such] 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 obtaining admission of such minor to any motion picture, show or any other presentation which is harmful to minors.

5. Misrepresents his age as 18 or over for the purpose of obtaining admission to any motion picture, show or other presentation which is harmful to minors.]

Sec. 16. NRS 207.080 is hereby amended to read as follows:

207.080 1. For the purpose of NRS 207.080 to 207.150, inclusive, a "convicted person" is defined as:

(a) Any person who [has been or hereafter] before or after March 15, 1955, was or is convicted of an offense punishable as a felony in the State of Nevada, or who has been or who is hereafter convicted of any offense in any place other than the State of Nevada, which offense, if committed in the State of Nevada, would be punishable as a felony.

(b) Any person who [has been or hereafter] before or after March 15, 1955, was or is convicted in the State of Nevada, or elsewhere, of the violation of any law, whether the [same] offense is or is not punishable as a felony:

(1) Relating to or regulating the possession, distribution, furnishing or use of any habit-forming drug of the kind or character described and referred to in the Uniform Narcotic Drug Act.

(2) Regulating or prohibiting the carrying, possession or ownership of any concealed weapon, deadly weapon, or any weapon capable of being concealed, or regulating or prohibiting the possession, sale or use of any device, instrument or attachment designed or intended to be used for the purpose of silencing the report or concealing the discharge or flash of any firearm.

(3) Regulating or prohibiting the use, possession, manufacture or compounding of tear gas, or any other gas, which may be

used for the purpose of temporarily or permanently disabling any human being.

(c) Any person who [has been, or who hereafter is,] before or after March 15, 1955, was or is convicted of a crime in the State of Nevada, under the provisions of one or more of NRS 122.220, 201.120 to 201.170, inclusive, [201.250,] sections 6 and 7 of this act, NRS 201.270, 201.360 to 201.400, inclusive, 201.420, 202.010, 202.040, 202.055, 202.200 to 202.230, inclusive, 212.170, 212.180, 433.564, 451.010 to 451.040, inclusive, 452.300, 462.010 to 462.080, inclusive, 465.010 to 465.070, inclusive, 646.010 to 646.060, inclusive, 647.095, 647.100, 647.110, 647.120, 647.130, 647.140 and 647.145, or who [has been, or hereafter is,] before or after March 15, 1955, was or is convicted, in any place other than the State of Nevada, of an offense which, if committed in this state, would have been punishable under one or more of such sections.

(d) Any person who [has been, or who hereafter is,] before or after March 15, 1955, was or is convicted in the State of Nevada or elsewhere of any attempt or conspiracy to commit any offense described or referred to in NRS 207.080 to 207.150, inclusive.

2. Any person, except as [hereinafter] set forth in NRS 207.090 to 207.150, inclusive, whose conviction is or has been set aside in the manner provided by law shall not be deemed a convicted person.

Sec. 17. NRS 201.261 is hereby repealed.

SUMMARY--Creates crime of using minor in preparing pornography.
(BDR 16-30)

Fiscal Note: Effect on Local Government: No.
Effect on the State or on Industrial
Insurance: No.

AN ACT relating to crimes against the person; creating the separate offense of using a minor in preparing pornography; providing a penalty; and providing other matters properly relating thereto.

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 and 3 of this act.

Sec. 2. A person who knowingly uses, promotes, entices or permits a minor to simulate or engage in or assist others to simulate or engage in any performance of sexual intercourse, lewd exhibition of the genitals, fellatio, cunnilingus, bestiality, anal intercourse, excretion, sado-masochistic abuse or masturbation for the purpose of preparing a film, photograph or any other representation, is guilty of a felony and shall be punished by imprisonment in the state prison for not less than 1 year nor more than 6 years, or by a fine of not more than \$5,000, or by both fine and imprisonment.

Sec. 3. A child is not abused or neglected, nor is his health or welfare harmed or threatened for the sole reason that his parent or guardian, in good faith, selects and depends upon non-medical remedial treatment for such child, if such treatment is

recognized and permitted under the laws of this state in lieu of medical treatment.

Sec. 4. NRS 200.5011 is hereby amended to read as follows:

200.5011 As used in NRS 200.501 to 200.508, inclusive [:],
, and sections 2 and 3 of this act:

1. "Child abuse and neglect" means the nonaccidental physical or mental injury, sexual abuse, negligent treatment or maltreatment of a child under the age of 18 years by a person who is responsible for the child's welfare under circumstances which indicate that the child's health or welfare is harmed or threatened thereby.

2. [A child is not abused or neglected, nor is his health or welfare harmed or threatened for the sole reason that his parent or guardian, in good faith, selects and depends upon nonmedical remedial treatment for such child, if such treatment is recognized and permitted under the laws of this state in lieu of medical treatment.] "Sado-masochistic abuse" has the meaning ascribed to it in NRS 201.262.

3. "Sexual abuse" includes but is not limited to acts upon a child constituting the crimes of:

- (a) Incest under NRS 201.180;
- (b) The infamous crime against nature under NRS 201.190;
- (c) Lewdness with a child under NRS 201.230;
- (d) Annoyance or molestation of a minor under NRS 207.260;
- (e) Sexual assault under NRS 200.366; and
- (f) Statutory sexual seduction under NRS 200.368.

SUMMARY--Prohibits advertisement of prostitution where its practice is unlawful. (BDR 16-31)
Fiscal Note: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

AN ACT relating to crimes against public decency and good morals; prohibiting the advertisement of prostitution where its practice is unlawful; providing a penalty; and providing other matters properly relating thereto.

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

Section 1. NRS 201.430 is hereby amended to read as follows:

201.430 1. It [shall be] is unlawful for any person or persons, company, association or corporation doing business in this state to advertise [,] a house of prostitution in any public theater, or on the public streets of any city or town, or on the public highway, [any resort where females congregate for the purpose of illicit intercourse.] or in any county, city or town where prostitution is prohibited by local ordinance or where the licensing of a house of prostitution is prohibited by state statute.

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

- (a) For the first offense, by a fine of not more than \$500.
- (b) For any subsequent offense, for a misdemeanor.

Sec. 2. NRS 201.440 is hereby amended to read as follows:

201.440 Any person , [or persons,] company, association or corporation doing business in this state who [shall knowingly

aid, abet, solicit, encourage, permit or allow] knowingly aids,
abets, solicits, encourages or allows any person , [or persons,]
company, association or corporation to advertise a house of
prostitution in their place of business [, by any device, any
roadhouse, or resort where females congregate for the purpose
of illicit intercourse,] shall be punished:

1. For the first offense, by a fine of not more than \$500.
2. For any subsequent offense, for a misdemeanor.