



# Pacific Law Journal Review of Selected Nevada Legislative

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Volume 1979 | Issue 1

Article 28

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1-1-1979

## Criminal Law; Children in Pornography

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### Recommended Citation

Noreen M. Evans, *Criminal Law; Children in Pornography*, 1979 U. PAC. L. REV. (1979).

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86. Id. at 154.
87. Hamling v. U.S., 418 U.S. at 123; Rosen v. U.S., 161 U.S. at 41.
88. Mishkin v. New York, 383 U.S. at 510.
89. Rosen v. U.S., 161 U.S. at 41.
90. Ch. 267 §4 ¶ 4 (adding to NRS Ch. 201).
91. 354 U.S. 436 (1957).

### CRIMINAL LAW; CHILDREN IN PORNOGRAPHY

Adds to NRS Chapter 200

Amends NRS 200.5011

AB 142 (Stewart); STATS 1979, Ch 290

Chapter 290 adds a new section to NRS Chapter 200 providing a penalty for the use of a minor in the portrayal of sexual acts. It is now a felony for any person knowingly to use or permit a minor to engage in, simulate, or assist in specified sexual acts<sup>1</sup> for the production of any performance or representation, including film or photography.<sup>2</sup> The punishment for violating this section is imprisonment for one to six years or a maximum fine of \$5,000, or both.<sup>3</sup>

Chapter 290 appears to be aimed at curbing child abuse inherent in the production of child pornography. In the latest decade child pornography has become an increasingly widespread activity.<sup>4</sup> Because of the lack of legislation dealing specifically with this problem, prosecution has been difficult.<sup>5</sup> While certain conduct between adults and children has been prohibited,<sup>6</sup> Nevada law has not previously addressed the abuse of children in pornography production.<sup>7</sup> Chapter 290 is a tool for the prosecution of parents and guardians who allow or provide their minor children to perform in pornography and those who entice and use minors in the representation of sexual acts.<sup>8</sup>

Chapter 290 punishes child abuse without regard to whether the material ultimately produced can be classified as obscene. Because it does not regulate the materials produced, this law may escape difficulties under the First Amendment protection of free speech.<sup>9</sup> The abuse of the minor is prosecuted under Chapter 290 while prosecution for production or distribution of the material is brought under 1979 Nevada Statutes Chapter 267.<sup>10</sup> Apparently, the law under Chapter 290 is so broad that it would apply, for example, to film-making in which a minor actor or actress is depicted in any sexual act, whether the film is obscene or not.

Additionally, Chapter 290 amends NRS 200.5011, the child abuse and neglect statute, to include sado-masochistic abuse<sup>11</sup> as defined in NRS 201.262.<sup>12</sup> The definition of sexual abuse now includes sado-masochistic acts upon a child.<sup>13</sup>

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## FOOTNOTES

1. Specifically, sexual intercourse, lewd exhibition of the genitals, fellatio, cunnilingus, bestiality, anal intercourse, excretion, sado-masochistic abuse, masturbation, or penetration of any part of the body or object into the body of another. 1979 Nev. Stats. ch. 290 (hereinafter "Ch. 290") §2 (adding to NRS Ch. 200).
2. Ch. 290 §2 (adding to NRS Ch. 200).
3. Id.
4. See Comment, Free Speech and Self-Incrimination: The Constitutionality of California's New Child Pornography Laws, 10 PAC. L.J. 119 (January, 1979); Comment, Child Pornography: A New Role for the Obscenity Doctrine, 1978 U. ILL. L.F. 711.
5. See Comment, Preying on Playgrounds: The Sexploitation of Children in Pornography and Prostitution, 5 PEPPERDINE L.R. 809 (1978).
6. See e.g., NRS 201.230(1) (as amended by 1979 Nev. Stats. ch. 655 §47, adding punishment by fine of not more than \$10,000); NRS 207.260 (as amended by 1979 Nev. Stats. ch. 655 §118, adding punishment by fine of not more than \$5,000); NRS 609.210 (as amended by 1979 Nev. Stats. ch. 483 §1, deleting definition of "public dance hall").
7. See e.g., Summers v. Sheriff, Clark County, 90 Nev. 180, 521 P.2d 1228 (1974) where defendant, who took pictures of a partially nude 12 year old girl, was convicted of lewdness with a minor.
8. Ch. 290 §2 (adding to NRS Ch. 200).
9. See Comment, Preying on Playgrounds: The Sexploitation of Children in Pornography and Prostitution, supra note 5.
10. Compare Ch. 290 §2 (adding to NRS Ch. 200) with 1979 Nev. Stats. ch. 267 §§3, 10 (adding to NRS Ch. 201, amending NRS 201.250).
11. Ch. 290 §4 (amending NRS 200.5011(2), (3)).
12. Id. §4 (amending NRS 200.5011(2)). As defined in NRS 201.262, sado-masochistic abuse is "flagellation or torture practiced by or upon a person clad

in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed."

13. Ch. 290 §4 (amending NRS 200.501(3)).

## CRIMINAL LAW; COMMERCIAL BRIBERY

Adds to NRS Chapter 207

SB 346 (Kosinski); STATS 1979, Ch 249

Chapter 249 adds a new section to NRS Chapter 207, providing for the crime of commercial bribery.<sup>1</sup> Anyone violating this section is guilty of a misdemeanor.<sup>2</sup> Commercial bribery is the act of influencing an employee to perform a duty improperly.<sup>3</sup> Prior to Chapter 249 there was no Nevada statute concerning commercial bribery. All Nevada bribery law was directed toward specific types of bribery, generally involving public employees or officers.<sup>4</sup>

### Elements of the Crime

Chapter 249 creates two statutory crimes of commercial bribery; the first is the offer of a bribe, the second is the acceptance.

#### Offering a bribe

Chapter 249 requires a corrupt intent to adversely affect an employee's conduct.<sup>5</sup> The conduct interfered with must be related to the employer's commercial affairs.<sup>6</sup> There must be at least an offer to confer a benefit;<sup>7</sup> the actual conferring or acceptance of the benefit is not necessary.<sup>8</sup> The statute requires that the employer not have consented to the conferring of the benefit.<sup>9</sup> It is not necessary that the employer be without knowledge of the bribe. Furthermore, it appears that there need not be actual injury to the employer; this has been the holding of other jurisdictions considering statutes similar to Nevada's.<sup>10</sup>