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Crimes; Obscene Materials–Injunctions, Sale to Minors

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and of the penalty to be imposed.²⁹ The establishment of enumerated offenses and penalties under Chapter 216, however, may be sufficient to protect it from similar attack.³⁰

29. See *State v. Harper*, 510 S.W.2d 749, 750 (Mo. Ct. App. 1974).

30. Compare N.R.S. §§453.—, 453.— with *Cole v. State*, 511 P.2d 593, 594 (Okla. Crim. App. 1973) (1971 Okla. Sess. Laws, c. 119, §2-405(B), at 365 held unconstitutional).

Crimes; obscene materials—injunctions, sale to minors

N.R.S. §201.258 (repealed);
 §§200.5011, 201.241, 201.257, 201.262, 201.265 (amended).
 AB 534 (Committee on Judiciary);
 STATS 1981, Ch 694

The Nevada Revised Statutes provisions dealing with obscenity¹ allow a district or city attorney to seek an injunction to prohibit an owner from selling, renting, exhibiting, reproducing, manufacturing, or distributing material² that the attorney believes is obscene.³ The court is not allowed to issue a temporary restraining order,⁴ but prior to the enactment of Chapter 694 the court could issue a preliminary injunction without a showing of irreparable injury or threat of irreparable injury.⁵ Chapter 694 apparently precludes the issuance of a preliminary injunction without a showing of irreparable injury or threat of irreparable injury.⁶ Thus, the court cannot issue a preliminary injunction unless there is grave doubt concerning the law or the facts or it is necessary to prevent hardship or irreparable damage until there is a hearing and determination.⁷ Chapter 694 also imposes time restrictions for the trial on the merits.⁸ The trial must be commenced no later than thirty-five days after the complaint is filed but no earlier than five days after the answer is filed.⁹ Moreover, the court must render a decision

1. See N.R.S. §§201.235-201.254.

2. See *id.* §201.235 3 (definition of material).

3. See *id.* §§201.241 1, 201.235 4 (definition of obscene).

4. See *id.* §201.241 2.

5. See STATUTES OF NEVADA 1981, c. 694, §2, at — (amending N.R.S. §201.241). See generally *Glass v. Eighth Judicial District Court*, 87 Nev. 321, 323, 486 P.2d 1180, 1181 (1971) (a preliminary injunction may not be issued without "a hearing designed to focus searchingly on the issue of obscenity"); *A Quantity of Books v. Kansas*, 378 U.S. 205 (1964) (first and fourteenth amendments require a prior adversary judicial hearing), *Julian v. Las Vegas*, 88 Nev. 68, 493 P.2d 1037 (1972) (hearing required in both civil and criminal action).

6. N.R.S. §201.241 2.

7. *Marino v. Williams*, 30 Nev. 360, 372, 96 P. 1073, 1075 (1908). See generally NEV. R. CIV. P. 65(a).

8. See N.R.S. §201.241 3.

9. See *id.*

within two days of the completion of the trial.¹⁰

The Nevada Revised Statutes provisions dealing with exhibition and sale of obscene materials to minors¹¹ regulates specified knowing¹² sales, loans, or exhibitions of material that represent or depict nudity,¹³ sexual excitement, sexual conduct,¹⁴ or sadomasochistic abuse¹⁵ that is harmful to minors.¹⁶ Chapter 694 modifies the standard applied by the court in determining whether the material is harmful to minors.¹⁷ Before 1973 one element of the standard for obscenity as established by the United States Supreme Court required a finding that the material be "*utterly without redeeming social importance.*"¹⁸ Prior to the enactment of Chapter 694 this standard was used in Nevada to determine the obscenity of materials that were exhibited or sold to minors.¹⁹ Chapter 694 now requires for a determination that the material is harmful to minors, that the quality of any description or representation, *whether constituting all or a part of the material considered*, must predominately appeal to the prurient, shameful, or morbid interest of minors, must be patently offensive to prevailing standards in the adult community with respect to what is suitable material for minors, and must be *without serious literary, artistic, political, or scientific value.*²⁰ This change apparently is influenced by the standard set forth in 1973 by the United States Supreme Court in *Miller v. California.*²¹

10. *See id.*

11. *See generally id.* §§201.256-201.265.

12. *See* STATUTES OF NEVADA 1981, c. 694, §6, at — (repealing N.R.S. §201.258). Thus apparently the definition of "knowingly" from Title 16, N.R.S. §193.010 12, applies to N.R.S. §§201.256-201.265.

13. *See* N.R.S. §201.261 (definition of nudity).

14. *See id.* §201.263 (definition of sexual conduct).

15. *See id.* §201.262. Chapter 694 changes the definition of "sado-masochistic abuse" as used in N.R.S. §§201.256-201.265 by removing the requirement that the person be clad in undergarments, mask, or bizarre costume. *Compare id.* §201.262 with STATUTES OF NEVADA 1969, c. 300, §7, at 513.

16. *See* N.R.S. §201.265.

17. *Compare id.* §201.257 with STATUTES OF NEVADA 1969, c. 300, §3, at 513 (enacting N.R.S. §201.257).

18. *See* *Roth v. United States*, 354 U.S. 476, 484 (1957). *See generally* *Ginsburg v. New York*, 390 U.S. 629 (1968) (application of *Roth* standard to minors), *Memoirs v. Massachusetts*, 383 U.S. 413, 419 (1966).

19. *See* STATUTES OF NEVADA 1981, c. 694, §§3, 5, at — (amending N.R.S. §201.257).

20. *See* N.R.S. §201.257.

21. 413 U.S. 15 (1973).