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Crimes; child abuse and neglect

N.R.S. §§62.—, 200.— (new); §§62.040, 200.5011, 200.502, 200.5045, 201.241, 201.257, 201.262, 201.265, 432.090 (amended).

AB 269 (Sader); STATS 1981, Ch 575

AB 534 (Committee on Judiciary); STATS 1981, Ch 694

SB 149 (Committee on Judiciary); STATS 1981, Ch 750

Chapter 715 redefines the criminal offense of child abuse and neglect,¹ provides new definitions for its elements,² and extends the jurisdiction of the juvenile court over child abuse victims.³ Prior law defined child abuse and neglect as the nonaccidental physical⁴ or mental injury, sexual abuse, negligent treatment, or maltreatment of a child under the age of eighteen by a person responsible for the child's welfare.⁵ Apparently under prior law a mental or physical injury was not considered to be the product of child abuse unless it was shown that the injury was not accidentally inflicted upon the child.⁶ Rather than focusing on the nature of the causative *conduct*, Chapter 715 focuses on the resulting *injury*, providing that child abuse has been established if the injury is shown to be of a nonaccidental *nature*.⁷ Therefore, where prior law seemed to require proof that the particular injury was intentional, it appears that under Chapter 715, child abuse and neglect is shown by establishing that the type of injury alleged normally does not occur accidentally.⁸ Additionally, existing law prohibits enticing or permitting a minor to engage in obscene or pornographic filming, photography, or performance.⁹ Chapter 715 provides that this offense shall also constitute a form of child abuse and neglect,¹⁰ to be known as sexual exploitation.¹¹

Chapter 715 also provides statutory definitions for physical¹² and

1. See N.R.S. §200.5011 1.

2. See *id.* §200.5011 2, 3, 4, 5(a), (b), (c).

3. See *id.* §62.040 1(a)(3).

4. See *id.* §200.5011 7(a), (b), (c), (d), (e), (f) (definition of sexual abuse). See also *id.* §201.262 redefining one of the elements of sexual abuse or sado-masochistic abuse. The offense under prior law emphasized torture or flagellation as the essential element. Chapter 694, however, stresses the sexual nature of the offense, requiring that the flagellation, torture, or physical restraint be reasonably construed as being for the purpose of sexual arousal or gratification.

5. See STATUTES OF NEVADA 1979, c. 290, §4, at 437.

6. See *id.*

7. See N.R.S. §200.5011 1.

8. Compare *id.* with STATUTES OF NEVADA 1979, c. 290, §4, at 437.

9. See N.R.S. §200.509.

10. See *id.* §200.5011 1.

11. See *id.* §200.5011 8 (definition of sexual exploitation).

12. See *id.* §200.5011 5(a), (b), (c).

mental injury,¹³ which were lacking under prior law.¹⁴ Chapter 715 defines mental injury as a substantial injury to the intellectual or psychological capacity of a child which impairs the child's ability to function normally.¹⁵ Physical injury is defined as a permanent or temporary disfigurement, the impairment of any bodily function or organ, or any injury resulting from excessive corporal punishment;¹⁶ this appears to be the same definition as has been used by the courts.¹⁷

Under existing law, the juvenile court has exclusive original jurisdiction over abandoned children,¹⁸ and children who are without subsistence, education, medical care, or who otherwise lack proper parental care and control.¹⁹ Chapter 715 provides that this conduct, considered to be neglect for the purpose of granting the juvenile court jurisdiction over these children,²⁰ also constitutes negligent treatment for the purpose of finding child abuse and neglect.²¹ Chapter 715 also grants the juvenile court exclusive original jurisdiction over all child abuse victims,²² thereby allowing the court to exercise control and care over the child and over the suspect adult incidental to the court's jurisdiction over the child.²³ In exercising care and control, Chapter 715 authorizes the court to appoint a social worker, juvenile probation officer, officer of the court, or a volunteer guardian to represent and protect the best interests of the child once the district attorney has filed a petition.²⁴ This seems to further the express policy of existing law, which is to protect the child's interest, offer protective services to prevent further harm, provide a safe environment for the child, and to preserve family life.²⁵

Any action taken by the juvenile court apparently survives regardless of action taken by the district attorney against the suspected offender in district court, and does not preclude the prosecution, conviction, and imprisonment of an offender.²⁶ Chapter 575 also allows the district attorney to refer a suspected offender to a public or private agency for

13. *See id.* §200.5011 2.

14. *Compare* N.R.S. §200.5011 with STATUTES OF NEVADA 1979, c. 290, §4, at 437.

15. *See* N.R.S. §200.5011 2.

16. *See id.* §200.5011 5(a), (b), (c).

17. *See* *Levi v. State*, 95 Nev. 746, 748, 609 P.2d 189, 190 (1979). *See also* N.R.S. §193.015 (defining substantial bodily harm).

18. *See* N.R.S. §62.040 1(a)(1).

19. *See id.* §62.040 1(a)(2).

20. *See id.* §62.040 1(a).

21. *Compare id.* §62.040 1(a)(1), (2) with *id.* §200.5011 3.

22. *See id.* §62.040 1(a)(3).

23. *See id.* §§62.043, 62.044.

24. *See id.* §62.—.

25. *See id.* §200.501.

26. *See id.* §62.040 4.

treatment or counseling in lieu of prosecution for the alleged offense.²⁷ This recommendation is discretionary with the district attorney,²⁸ and may be utilized either as an alternative or in addition to prosecution for the alleged offense.²⁹

Existing law requires that specified persons³⁰ who suspect that a child is abused or neglected promptly report the suspected child abuse to the local office of the Welfare Division of the Department of Human Resources, an authorized county agency, or any police or sheriff's office to enable the agency or Welfare Division to investigate and, if necessary, institute remedial action.³¹ The reporting requirement is mandatory under existing law.³² Chapter 715 clarifies the language which requires reports to be made³³ and additionally requires that persons employed by or maintaining an agency or service for abused or neglected children also make reports to an agency or to the Welfare Division.³⁴

Once a report has been made, existing law authorizes the distribution of information concerning the reports and investigations to authorized persons or agencies.³⁵ Under Chapter 715, agencies which are authorized by existing law to license foster homes, approve adoptive parents, and investigate persons applying for approval to adopt a child or become a foster parent³⁶ are also permitted to receive this information.³⁷

27. *See id.* §200.— 1.

28. *See id.*

29. *See id.* §200.— 2.

30. *See generally id.* §200.502 2 (requiring physicians, dentists, hospital administrators, nurses, attorneys, clergymen, school authorities, and teachers to make reports).

31. *See id.* §200.502 1.

32. *See id.*

33. *See id.*

34. *See id.* §200.502 2(f).

35. *See generally id.* §200.5045 3.

36. *See id.* §127.280 3.

37. *See id.* §200.5045 3.

Crimes; mistreatment of older persons

N.R.S. §§200.—, 200.— (new).

AB 157 (Coulter); STATS 1981, Ch 611

In an attempt to provide additional protection to older persons, Chapter 611 requires that law enforcement officials, courts of competent jurisdiction, and state agencies providing human services are to