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Criminal Procedure; indictment—sexual abuse of a child

NEV. REV. STAT. § 171.095 (amended).

SB 515 (Committee on Judiciary); 1989 STAT. Ch. 627

Under existing law, when a crime¹ is committed in a secret manner,² the victim may file a complaint³ after discovery of the offense.⁴ Chapter 627 allows a child⁵ who is a victim of sexual abuse⁶ to file a complaint at any time⁷ before the child becomes twenty-one years old.⁸

JMF

1. See Nev. Rev. Stat. § 171.095 (1987) (includes felonies, gross misdemeanors and misdemeanors).

2. See *Walstrom v. State*, ___ Nev. ___, 752 P.2d 225, 228 (1988) (secret manner is a crime done in a deliberately covert manner with the intention of keeping the victim unaware that the crime has been committed). The crime of lewdness with a child can be committed in a secret manner even though the victim may be aware of the crime. *Id.* The Supreme Court held that the state has the burden of proving, by a preponderance of the evidence, that the crime was committed in a secret manner. *Id.* at ___, 752 P.2d 227.

3. See Nev. Rev. Stat. § 171.095 (1987) (the state may issue an indictment).

4. *Id.* (the statute of limitations begins at the time of discovery). Compare *id. with id.* § 171.085 (1987) (an indictment for sexual assault must be filed within four years after the crime is committed).

5. See Nev. Rev. Stat. § 432.040 (1987) (a child is any person less than 18 years old).

6. See *id.* § 432B.100 (1987) (sexual abuse includes: incest, lewdness with a child, annoyance or molestation of a child, sado-masochistic abuse, sexual assault, and statutory sexual seduction). See also *Tyson v. Tyson*, 107 Wash.2d 72, 88, 727 P.2d 226, 234 (1986) (Pearson, J., dissenting) (sexual abuse of a child may be defined as "contacts or interactions between a child and an adult when the child is used as an object of gratification for adult sexual needs or desires").

7. See NEV. REV. STAT. § 171.095 (1987) (amended by 1989 Nev. Stat. ch. 627, sec. 1, at 1443) (providing that no other report has been made with the police or an agency which provides protective services). See *id.* § 432B.030 (1987) (an agency which provides protective services is defined as the welfare department or any agency appointed by the court to handle abused persons). But see *Brannan v. State*, 102 Nev. 7, 7, 714 P.2d 175, 175 (1986) (the Nevada Supreme Court held that an action for lewdness with a child under 14 could not be brought more than three years after the time of the offense).

8. 1989 Nev. Rev. Stat. ch. 627, sec. 1, at 1445 (amending NEV. REV. STAT. § 171.095 2 at (raising the age from eighteen years old). See *Tyson v. Tyson*, 107 Wash. 2d 72, 79-80, 727 P.2d 226, 230 (1986) (The Washington Supreme Court held that the victim of sexual child abuse must bring the action within three years of reaching eighteen years old). But see *Meiers-Post v. Schafer*, 170 Mich. App. 174, ___, 427 N.W.2d 606, 610 (1988) (victim of sexual child abuse may toll the statute of limitations under the insanity clause where: (1) The memory of the abuse was so severely repressed that the victim was unaware of the victim's rights, and (2) there is corroboration that the abuse did occur).