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# SENATE COMMITTEE ON JUDICIARY



## WORK SESSION DOCUMENT

APRIL 2, 2003

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SENATE COMMITTEE ON JUDICIARY

APRIL 2, 2003

The following measures may be considered for action during the work session:

- SENATE BILL 300 (BDR 15-438 was requested by the Senate Committee on Judiciary).

**This bill makes various changes concerning technological crimes.**

Committee Action: The bill was heard in Committee on March 27, 2003, and no action was taken.

Proponents/those testifying in support of the bill: Kevin Higgins, Office of the Attorney General; Sergeant Tom Keller, Las Vegas Metro Cybercrimes; Tara Sheperson, Nevada Cybercrime Task Force.

Opponents/those testifying against the bill: None.

Discussion: Testimony indicated this bill was requested by the Office of the Attorney General and is intended to bring Nevada in line with the Electronic Communications Privacy Act (ECPA).

Proposed Amendments: Kevin Higgins submitted a letter (TAB A) detailing the specifics of the bill. On page 2 of the letter, Mr. Higgins requested that Sections 4, 7 and 8 (relating to the expansion of the High Tech Crime Advisory Board) be deleted. This amendment would also remove the fiscal note containing the costs for the additional committee members.

- **SENATE BILL 316** (BDR 14-1278 was requested by the Senate Committee on Judiciary).

**This bill revises provisions pertaining to the issuance of search warrants.**

Committee Action: The bill was heard in Committee on March 27, 2003, and no action was taken.

Proponents: Ben Graham, Nevada District Attorney's Association; Kristin Erickson, Washoe County District Attorney's Office; Jim Nadeau, Washoe County Sheriff's Office.

Neutral/Opponents: Juanita Cox, Citizens in Action.

Discussion: Testimony indicated that this bill was brought forth to help insure utmost protection to witnesses who provide probable cause information for search warrants. The bill would delete the requirement that probable cause search warrants be left at the location being searched. During the hearing, Senator Care expressed some level of concern on the federal and constitutional requirements and surrounding case law.

Amendments: Ben Graham submitted a minor amendment to page 2, line 18 of the bill to add "pursuant to Sections 1 and 2 above." A copy of the amendment is attached as **TAB B**.

- **SENATE BILL 394** (BDR 15-1026 was requested by the Senate Committee on Judiciary).

**This bill revises various provisions relating to certain criminal statutes.**

Committee Action: The bill was heard in Committee on March 27, 2003, and no action was taken.

Proponents: Kristin Erickson, Washoe County District Attorney's Office, Nevada District Attorney's Association; Jim Nadeau, Washoe County Sheriff's Office.

Opponents: None.

Discussion: Testimony indicated that this measure was brought in response to two recent Nevada Supreme Court cases, which held that certain provisions of the *Nevada Revised Statutes* (NRS) are unconstitutionally vague. One case related to the annoyance or molesting of minors and the other case related to NRS 453.332 (unlawful acts relating to imitation of controlled substances).

Proposed Amendments: None.



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March 27, 2003

The Honorable Mark Amodei, Chairman  
Senate Committee on the Judiciary  
Nevada State Legislature  
401 S. Carson Street  
Carson City, NV 89701-4747

Re: S.B. 300, Changes to Technological Crimes, March 27, 2003

Dear Chairman Amodei and Members of the Committee:

In 2001, the Nevada Legislature passed Senate Bill 551 which authorized the use of subpoenas by law enforcement to obtain certain Internet Service Provider records and created the crimes of cyber-stalking and luring minors with the use of the internet. S.B. 300 seeks to make a few minor changes to increase the usefulness of the provisions to law enforcement and to fine tune the tools used to catch on-line predators and pedophiles.

S.B. 300 has been introduced on behalf of the Office of the Attorney General and in turn for the Nevada High Tech Crime Advisory Board and the Nevada Cybercrime lab. The bill seeks to do 4 things: Amend the subpoena statute to comport to the changes in federal law; to limit the costs charged to law enforcement for complying with the subpoenas; to change the definition of obscene materials used in the luring statute; and, to add the crime of luring children through the use of the internet to the items for which school employees can be terminated. For your information I have attached copies of NRS 193.340 the subpoena statute, NRS 201.257 'material harmful to minors,' NRS 201.560 Using Technology to Lure Children and 18 U.S.C. § 2703 the federal law authorizing the use of subpoenas.

Since the passage of S.B. 551 last session Congress has amended the Electronic Communications Privacy Act, commonly know as 'ECPA.' Those amendments include changing the scope of subscriber information that can be obtained through a subpoena under the terms of 18 U.S.C. § 2703 and allowing Internet Service Providers to voluntarily disclose a much broader range of information in certain emergencies. S.B.

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551, as codified in NRS 193.340, limits the use of the statute to the version of 18 U.S.C. § 2703 that existed on June 13, 2001. That version no longer exists and by deleting the reference to the date, NRS 193.340 would refer to the correct current version. Several parts of the post-9/11 amendments are also due to sunset in 2005. By eliminating the date those changes would automatically take effect in Nevada without the need to amend the NRS again.

We are also requesting that the limitation placed in NRS 193.340 limiting subpoenas to felonies also be removed. Law enforcement has had several instances of misdemeanors being committed that could have been solved by a subpoena to an ISP to determine someone's name, but could not since the crime was not a felony. ECPA does not limit the use of subpoenas to felonies and this amendment would comport state law to federal law.

Subsection 3 of Section 1 would limit the costs charged to law enforcement for complying with the subpoena to actual costs. Some ISP's have attempted to avoid complying with these subpoenas by charging horrendous 'research' fees that prohibit law enforcement from obtaining the information. This amendment would ensure that an ISP is not out of pocket for complying with the subpoena, but also ensure that information is obtained by law enforcement at a reasonable cost.

Sections 2 and 3 of the bill seek to change a definitional term in the internet luring statute, NRS 201.560. Currently if an on-line predator uses 'obscene' materials in conjunction with his attempts to lure a child out of his or her home, it is a category C felony. 'Obscene' is a term of art contained in NRS 201.235. In order for this section of the luring statute to be used, we have to prove that the materials in question would be found by the average person to violate contemporary community standards for adults. Since the materials are actually used to commit crimes against children, the proposed amendment would replace 'obscene materials' with 'materials harmful to children.' This definition is already set forth at NRS 201.257. Instead of an adult standard, it applies the standard of what the adult community would find unsuitable for minors and includes a greater range of materials than is included in the adult standard. The proposed amendment would make this section of the luring statute much more practical for law enforcement to use.

The original Bill Draft Request sought to expand the membership of the High Tech Crime Advisory Board. Part of the reason was to include greater representation from local law enforcement on the board. That issue has been resolved and in the face the current budget situation the Advisory Board no longer wishes to expand its membership. We would therefore request that sections 4, 7 and 8 of the bill be deleted. This will also render the fiscal note containing the costs for the additional committee members moot.

Lastly, sections 5 and 6 of the bill seek to add the luring statute, NRS 201.560 to the provisions of NRS 391.311 and 391.314 which govern the discipline and dismissal of school employees. Section 5 adds internet luring to the definition of 'immorality' in

NRS 391.311. Section 6 would add luring to those crimes for which the conviction of a licensed school employee automatically causes them to be terminated from the date of their arrest. See, NRS 391.314.

I look forward to testifying before your committee on Thursday, March 27<sup>th</sup>. In the meantime if I can provide any further information about S.B. 300 please call or email me.

Very truly yours,

BRIAN SANDOVAL  
Attorney General



By:

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KEVIN G. HIGGINS  
Regional Chief Deputy Attorney General  
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(775) 688-1818

1 4. After a magistrate has issued a search warrant, whether [it]  
 2 *the warrant* is based on an affidavit or an oral statement given under  
 3 oath, he may orally authorize a peace officer to sign the name of the  
 4 magistrate on a duplicate original warrant. A duplicate original  
 5 search warrant shall be deemed to be a search warrant. [It] *The*  
 6 *warrant* must be returned to the magistrate who authorized the  
 7 signing of his name on [it.] *the warrant*. The magistrate shall  
 8 endorse his name and enter the date on the warrant when it is  
 9 returned to him. Any failure of the magistrate to make such an  
 10 endorsement and entry does not in itself invalidate the warrant.

11 5. The warrant must [be] :  
 12 (a) *Be* directed to a peace officer in the county where the  
 13 warrant is to be executed. [It must:

14 ~~(a) State the grounds or probable cause for its issuance and the]~~  
 15 (b) *Set forth:*  
 16 (1) *The criminal offenses alleged to have been committed;*  
 17 (2) *The names of the persons whose affidavits or oral*  
 18 *statements have been taken in support thereof.* [or

19 ~~(b) Incorporate by reference the affidavit or oral statement upon~~  
 20 ~~which it is based.~~  
 21 ~~The warrant must command]~~

22 (3) *The persons and places to be searched; and*  
 23 (4) *The property to be seized.*  
 24 (c) *Command* the officer to search forthwith the person or place  
 25 named for the property specified.

26 [6. ~~The warrant must direct that it]~~  
 27 (d) *Direct that the warrant* be served between the hours of  
 28 7 a.m. and 7 p.m., unless the magistrate, upon a showing of good  
 29 cause therefor, inserts a direction that [it] *the warrant* be served at  
 30 any time.

31 [7. ~~The warrant must designate]~~  
 32 (e) *Designate* the magistrate to whom [it] *the warrant* is to be  
 33 returned.

34 6. *An affidavit or recording of an oral statement:*  
 35 (a) *Is not required to be attached to a warrant or left at any*  
 36 *place searched.*

37 (b) *Not later than 10 days after the execution of the warrant,*  
 38 *must be filed with the issuing court, except upon good cause*  
 39 *shown, and must be made available to any person searched or*  
 40 *whose place was searched, unless the magistrate orders that the*  
 41 *affidavit or recording of an oral statement be sealed pursuant to*  
 42 *subsection 3.*

43 Sec. 2. This act becomes effective upon passage and approval.



Amend Adding ✓

- (b) Set forth:
- 2-16 (1) The criminal offenses alleged to have been committed;
- 2-17 (2) The names of the persons whose affidavits or oral
- 2-18 statements have been taken in support thereof pursuant to sections 1 and 2 above; [or
- 2-19 (b) Incorporate by reference the affidavit or oral statement upon
- 2-20 which it is based.
- 2-21 The warrant must command]

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