

SUMMARY—Revises provisions related to criminal procedure. (BDR 14-548)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State: No.

AN ACT relating to criminal procedure; providing that the interception, listening or recording of a wire, electronic or oral communication by a peace officer or certain other persons is not unlawful in certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law provides that the interception, listening or recording of a wire, electronic or oral communication by a peace officer or certain other persons is not unlawful if the peace officer or person is intercepting the communication of a person who has: (1) barricaded himself or herself, resulting in an imminent risk of harm to the life of another person; (2) created a hostage situation; or (3) threatened the imminent illegal use of an explosive. (NRS 179.463, 200.620) **Sections 3 and 6** of this bill similarly provide that the interception, listening or recording of a wire, electronic or oral communication by a peace officer or certain persons acting under the direction or request of a peace officer is not unlawful if the peace officer or person is intercepting the communication for the sole purpose of investigating a sexual offense against a child. **Section 2** of this bill defines the term “sexual offense against a child” for purposes of **section 3** and certain other provisions of



existing law relating to the interception of communications. **Section 4** of this bill makes certain definitions prescribed by existing law applicable to **sections 2 and 3**. **Section 5** of this bill makes a conforming change by eliminating certain language made redundant by **section 2**.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 179 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. *“Sexual offense against a child” includes any act upon a child constituting:*

- 1. Incest pursuant to NRS 201.180;*
- 2. Lewdness with a child pursuant to NRS 201.230;*
- 3. Sado-masochistic abuse pursuant to NRS 201.262;*
- 4. Sexual assault pursuant to NRS 200.366;*
- 5. Statutory sexual seduction pursuant to NRS 200.368;*
- 6. Open or gross lewdness pursuant to NRS 201.210; or*
- 7. Luring a child or a person with mental illness pursuant to NRS 201.560, if punished as a felony.*

Sec. 3. 1. *The interception, listening or recording of a wire, electronic or oral communication by a peace officer, or a person acting under the direction or request of a peace*



officer, is not unlawful if the peace officer or person is intercepting the communication for the sole purpose of investigating a sexual offense against a child.

2. As used in this section, "person" means:

(a) A child, with the consent of the parent or legal guardian of the child; or

(b) The parent or legal guardian of a child.

Sec. 4. NRS 179.410 is hereby amended to read as follows:

179.410 As used in NRS 179.410 to 179.515, inclusive, *and sections 2 and 3 of this act*, except where the context otherwise requires, the words and terms defined in NRS 179.415 to 179.455, inclusive, *and section 2 of this act* have the meanings ascribed to them in those sections.

Sec. 5. NRS 179.460 is hereby amended to read as follows:

179.460 1. The Attorney General or the district attorney of any county may apply to a Supreme Court justice or to a district judge in the county where the interception is to take place for an order authorizing the interception of wire, electronic or oral communications, and the judge may, in accordance with NRS 179.470 to 179.515, inclusive, grant an order authorizing the interception of wire, electronic or oral communications by investigative or law enforcement officers having responsibility for the investigation of the offense as to which the application is made, when the interception may provide evidence of the commission of murder, kidnapping, robbery, extortion, bribery, escape of an offender in the custody of the Department of Corrections, destruction of public property by explosives, a sexual offense against a child, sex trafficking, a violation of NRS 200.463, 200.464 or 200.465, trafficking in persons in violation of NRS 200.467



or 200.468, a violation of NRS 201.553, the commission of any offense which is made a felony by the provisions of chapter 453 or 454 of NRS or a violation of NRS 463.160 or 465.086.

2. A provider of electronic communication service or a public utility, an officer, employee or agent thereof or another person associated with the provider of electronic communication service or public utility who, pursuant to an order issued pursuant to subsection 1, provides information or otherwise assists an investigative or law enforcement officer in the interception of a wire, electronic or oral communication is immune from any liability relating to any interception made pursuant to the order.

~~[3. As used in this section, "sexual offense against a child" includes any act upon a child constituting:~~

~~—(a) Incest pursuant to NRS 201.180;~~

~~—(b) Lewdness with a child pursuant to NRS 201.230;~~

~~—(c) Sado-masochistic abuse pursuant to NRS 201.262;~~

~~—(d) Sexual assault pursuant to NRS 200.366;~~

~~—(e) Statutory sexual seduction pursuant to NRS 200.368;~~

~~—(f) Open or gross lewdness pursuant to NRS 201.210; or~~

~~—(g) Luring a child or a person with mental illness pursuant to NRS 201.560, if punished as a felony.]~~

Sec. 6. NRS 200.620 is hereby amended to read as follows:



200.620 1. Except as otherwise provided in subsection 5 and NRS 179.410 to 179.515, inclusive, 209.419 and 704.195, it is unlawful for any person to intercept or attempt to intercept any wire communication unless:

(a) The interception or attempted interception is made with the prior consent of one of the parties to the communication; and

(b) An emergency situation exists and it is impractical to obtain a court order as required by NRS 179.410 to 179.515, inclusive, before the interception, in which event the interception is subject to the requirements of subsection 3. If the application for ratification is denied, any use or disclosure of the information so intercepted is unlawful, and the person who made the interception shall notify the sender and the receiver of the communication that:

(1) The communication was intercepted; and

(2) Upon application to the court, ratification of the interception was denied.

2. This section does not apply to any person, or to the officers, employees or agents of any person, engaged in the business of providing service and facilities for wire communication where the interception or attempted interception is to construct, maintain, conduct or operate the service or facilities of that person.

3. Any person who has made an interception in an emergency situation as provided in paragraph (b) of subsection 1 shall, within 72 hours of the interception, make a written application to a justice of the Supreme Court or district judge for ratification of the interception. The interception must not be ratified unless the applicant shows that:



(a) An emergency situation existed and it was impractical to obtain a court order before the interception; and

(b) Except for the absence of a court order, the interception met the requirements of NRS 179.410 to 179.515, inclusive.

4. NRS 200.610 to 200.690, inclusive, do not prohibit the recording, and NRS 179.410 to 179.515, inclusive, do not prohibit the reception in evidence, of conversations on wire communications installed in the office of an official law enforcement or fire-fighting agency, or a public utility, if the equipment used for the recording is installed in a facility for wire communications or on a telephone with a number listed in a directory, on which emergency calls or requests by a person for response by the law enforcement or fire-fighting agency or public utility are likely to be received. In addition, those sections do not prohibit the recording or reception in evidence of conversations initiated by the law enforcement or fire-fighting agency or public utility from such a facility or telephone in connection with responding to the original call or request, if the agency or public utility informs the other party that the conversation is being recorded.

5. The interception or attempted interception of a wire communication is not unlawful under the circumstances set forth in subsection 1 of NRS 179.463 ~~or~~ *or subsection 1 of section 3 of this act.*

