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Assembly Bill 88 Fights Child Pornography By Attorney General Catherine Cortez Masto

During the 2009 Legislative session, an important step was taken to better protect children with the passage of Assembly Bill 88, a bill that makes two significant changes to Nevada law to combat the problem of child pornography.

This legislation was developed by the Technological Crime Advisory Board, which I chair. AB 88 addresses the Board's concern with some of the challenges that exist for law enforcement in areas where the Internet is an integral part of the crime of child pornography.

The bill updates Nevada's criminal statutes to account for evolving technology that has resulted in the widespread dissemination of child pornography over the Internet. AB 88 makes it a felony to intentionally use the Internet to control images of child pornography for the specific purpose of viewing such material. This includes conduct such as searching for and locating Web sites with images of child pornography, opening and navigating such sites, and accessing and browsing child pornography online.

This is important because modern technology eliminates the need to download a file to a local computer for viewing. The Internet provides the ability to control photographic images or streaming video without actually downloading the material. In effect, child pornography can be "viewed" on the Internet without physically possessing an electronic file that produces video or still images.

While Nevada law also provides criminal penalties against the production and promotion of child pornography, it is also important to target the audience for this material. Consumers of child pornography on the Internet share culpability in the victimization of the children involved, and now face criminal penalties for their conduct. Moreover, research indicates that as many as 85 percent of child pornography viewers and collectors eventually commit sexual offenses against children.

Computer technology allows law enforcement agencies to locate Internet sites that suspects visit and computer forensic examiners have the ability to determine where and when a suspect has used a computer to seek out, access

and view child pornography online. With this new legislation, law enforcement officials can now bring these offenders to justice.

A second issue addressed by, AB 88 is the establishment of a civil cause of action for victims of child pornography who have suffered personal or psychological injury. This portion of the bill is based on a provision in federal law known as "Masha's Law" giving child pornography victims a right to seek civil damages in federally prosecuted cases.. Nevada is just the second state to grant similar rights.

This new civil remedy allows victims who, while under the age of 16, appeared in any film, photograph or other visual presentation engaging in specifically-defined explicit "sexual conduct" and suffered personal or psychological injury as a result. This civil remedy allows victims of child pornography to recover damages against any person who promoted, possessed, or used the Internet to view any images of the sexual conduct.

Recognizing that actual damages may be difficult to assess, the bill deems the amount of damages to be at least \$150,000, plus attorney's fees and costs. Like all causes of action, there are elements that must be proven. If they are all proven by a preponderance of the evidence (the evidentiary burden in civil matters) the defendant may be liable for damages.

While monetary damages cannot fully compensate for the trauma to child pornography victims, they can provide some measure of vindication while also serving as a strong deterrent to the continued circulation of their childhood images. Further, in consideration of the significant privacy interests involved, a plaintiff may use a pseudonym in all court proceedings and records related to an action brought before the court. It is also not a sufficient defense that the defendant did not know the plaintiff or did not engage in the sexual conduct with the plaintiff.

It is often said that a society is judged by how it protects its most vulnerable members, including its children. Protecting children is a top priority of my administration. AB 88 is an important step to better protect children in our state from exploitation and victimization in pornography.