

***Cote H. v. Dist. Ct.*, 124 Nev. Adv. Op. No. 3 (January 31, 2008)**

**CRIMINAL LAW – WRIT OF PROHIBITION**

In July 2006, Richard Larmouth discovered his nephew, petitioner Cote H. fondling his cousin, 4 year old M.R. Larmouth took M.R. downstairs to her mother. M.R.'s mother confronted Cote, who confessed to the act and also admitted to fondling the girl once at his home in Utah. M.R.'s mother then contacted the Las Vegas Metropolitan Police Department and recounted the incident to officers. Cote's father informed detectives that Cote said that he did not know why he fondled M.R. but that he knew his actions were wrong. Cote was arrested and transported him to the Clark County Juvenile Detention Center, and read his *Miranda* rights. Cote stated that he understood his rights and did not want a parent present. He then described in detail, and confessed to, the fondling incidents at both his residence in Utah and M.R.'s home.

A delinquency petition was filed alleging that Cote committed the offense of lewdness with a minor under 14 years of age in violation of NRS 201.230(1). Cote moved that the delinquency petition should be dismissed because he was a member of the class of persons protected under NRS 201.230(1). The district court denied the motion. Cote then sought from the Nevada Supreme Court a petition for a writ of prohibition precluding the district court from proceeding on the State's delinquency petition, or a writ of mandamus directing the district court to dismiss the underlying delinquency petition. Cote also made a motion for the Nevada Supreme Court to stay the district court proceedings. The Court issued an order granting a stay and directing an answer to the petition.

**Issue**

Whether NRS 201.230(1), which defines the offense of lewdness with a minor under the age of 14, can be used to adjudicate as delinquent a minor under the age of 14.

**Disposition**

The Nevada Supreme Court held that the statute's broad language applied to all persons of all ages and could thus be applied to petitioner.

**Commentary**

The court took on this case in the interests of judicial economy, to provide clarification on a point of law that had not been precisely adjudicated prior. The issue turned on the meaning of the term "person" under the statute. The Court here followed similarly decided cases in other jurisdictions such as the Connecticut Appellate Court which stated that

"we will not interpret the law to give minors license to sexually molest other minors. It is contrary to the law's intent, and to common sense, to establish a

policy that withdraws the law's protection from the victim in order to protect the violator, even one who is a minor.”

The court determined that the term “person” was unambiguous in its plain meaning, and, when applied as such, did not lead to an absurd result. The court concluded that a minor under the age of 14 who is aware of the difference between right and wrong is sufficiently a “person” under the statute. Under the Nevada criminal statutes, such a person forms the requisite intent to commit a crime when there is clear proof that the individual knew, at the time of the commission of the charged offense, that the act was wrong.

### **Conclusion**

This case makes it clear that minors, though protected under the statute, can themselves be violators of the statute. However, it would also imply that should a minor be incapable of forming the requisite intent to commit the crime, they would not be liable under the statute. The court makes a point of outlining the necessary factors to create intent and therefore would seem to indicate that such an analysis is still appropriate regardless of whether or not a minor is the alleged perpetrator of the crime.