1995

SB 192 By James SEX OFFENDERS

Makes various changes related to provisions pertaining to sexual devients. (BDR 15-171)

Fiscal Note: Effect on Local Government: Yes. Effect on the State or on Industrial Insurance: Yes.

02/03	15	Read first time. Referred to Committee on Judiciary. To printer.
02/20	16	From printer. To committee.
02/20	16	Dates discussed in Committee: 2/7, 3/2, 3/15 (A&DP)
03/10	30	From committee: Amend, and do pass as amended.
03/10	30	(Amendment number 91.)
03/13	31	Read second time. Amended. To printer.
03/14	32	From printer. To engrossment.
03/14	32	Engrossed. First reprint.
03/15	33	Read third time. Amended. To printer.
03/15	33	(Amendment number 112.)
03/16	34	From printer. To re-engrossment.
03/16	34	Re-engrossed. Second reprint.
03/17	35	Taken from General File. Placed on General File for next legislative day.
03/20	36	Read third time. Passed, as amended. Title approved, as amended. (21 Yeas, 0 Nays, 0 Absent, 0 Excused, 0 Not Voting.) To Assembly.
03/21	37	In Assembly.
03/21	37	Read first time. Referred to Committee on Judiciary. To committee.
03/21	37	Dates discussed in committee: 4/12, 5/12 (DPRR) 5/9 (Subc)
05/12	74	From committee: Re-refer to Committee on Ways and Means.
05/12	74	Re-referred to Committee on Ways and Means. To committee.
05/12	74	Dates discussed in committee: 5/31 (DP)
06/02	89	From committee: Amend, and do pass as amended.
06/02	89	(Amendment number 726.)
06/05	90	Read second time. Amended. To printer.
06/06	91	From printer. To re-engrossment.
06/06	91	Re-engrossed. Third reprint.
06/06	91	Placed on General File.
06/06	91	Read third time. Passed, as amended. Title approved. (42 Yeas, 0 Nays, 0 Absent, 0 Excused, 0 Not Voting.) To Senate.
06/07	92	In Senate. 6/8 Do concur, Committee on Judiciary
06/09	94	Assembly amendment concurred in. To enrollment.
06/10	95	Enrolled and delivered to Governor.
06/16	100	Approved by the Governor. Chapter 256. Effective October 1, 1995.

Additional Committee Discussion:
Senate Judiciary: 5/3, 5/25, 6/13
Senate Legislative Affairs and Operations: 6/20

S.B. 192 of the 68th Session

1995

SEX OFFENDERS

NEVADA LEGISLATURE

SIXTY-EIGHTH SESSION

1995

SUMMARY OF LEGISLATION

PREPARED BY

RESEARCH DIVISION

LEGISLATIVE COUNSEL BUREAU

S.B. 192 (Chapter 256)

Senate Bill 192 increases the penalties for certain sex-related offenses, provides for community notification of the release of offenders who have committed sexual offenses, and imposes a sentence of lifetime supervision on such offenders.

The bill provides that a person who commits a sexual assault against a child under 16 years of age, resulting in substantial bodily harm, must be punished by imprisonment for life without the possibility of parole. If no substantial bodily harm to the victim results, the offender must be punished by imprisonment for life with the possibility of parole after a minimum of 20 years has been served or for a period of 5 to 10 years without the possibility of parole.

Senate Bill 192 also provides that a person convicted of battery with the intent to commit a sexual assault, resulting in substantial bodily harm, must be punished by life in prison with or without the possibility of parole. If the crime does not result in substantial bodily harm, and the victim is over 16 years of age, the penalty is imprisonment for 2 to 10 years. If the victim is under 16, a sentence of 5 to 15 years in prison without the possibility of parole must be imposed.

Lifetime Sentence

Senate Bill 192 requires a special sentence of lifetime supervision for individuals convicted of certain sex-related offenses. This lifetime supervision begins after the conclusion of any term of imprisonment or any period of probation or parole. Upon a petition, the court may release an individual from lifetime supervision if the person has not committed a crime for 15 years since being released from incarceration or last convicted, whichever occurs later, and is not likely to pose a threat to the safety of others.

Central Repository for Nevada Records of Criminal History

Senate Bill 192 adds to the list of crimes for which the court is required to submit the results of blood and saliva tests to the Central Repository for Nevada Records of Criminal History: battery with intent to commit a sexual assault; possession of child pornography; solicitation of a minor to engage in acts constituting the crime against nature; indecent or obscene exposure; necrophilia; molestation or annoyance of a minor; or any attempt to commit these offenses.

Community Notification

Senate Bill 192 creates an advisory council for community notification composed of three members appointed by the Governor and four members appointed by the Legislative Commission. The council must consult with and provide recommendations to the Attorney General concerning the guidelines for community notification upon the release of a sex offender on parole. The Attorney General is responsible for establishing these guidelines, which must identify factors relevant to the risk of

recidivism. These factors include therapy, treatment, advanced age, debilitating illness, and the criminal history of the offender.

The law enforcement agency responsible for the jurisdiction in which the offender is to be released provides the notification required by the guidelines. If the risk of recidivism is low, other law enforcement agencies must be notified. If the risk is moderate, law enforcement agencies, schools, and religious and youth organizations must be notified. If the risk is high, members of the public likely to encounter the offender must be notified in addition to the entities in the other two categories.

Sexual Offenses

An offender may receive a sentence of lifetime supervision, and community notification may be required, if the offender is convicted of a sexual offense or other crime deemed sexually-motivated. An act is deemed sexually-motivated if one of the reasons the person committed the act was sexual gratification. The court must conduct a separate hearing into the issue of sexual motivation if the prosecuting attorney requests such a hearing prior to the trial and notifies the defendant. This hearing must be conducted before the court imposes its sentence or before a separate penalty hearing.

Following are the sexual offenses for which an offender may receive a sentence of lifetime supervision or for which community notice may be required:

- Sexual assault;
- Battery with the intent to commit sexual assault, resulting in substantial bodily harm;
- Using a minor in producing pornography;
- Promotion of the sexual performance of a minor;
- Subsequent offense of possession of visual presentation depicting the sexual conduct of a person under 16 years of age;
- Incest;
- Solicitation of a minor to engage in acts constituting the crime against nature where the minor engaged in the act;
- Subsequent offense of solicitation of a minor to engage in acts constituting the crime against nature where a minor did not engage in such acts;
- Lewdness with a child under 14 years of age;
- Necrophilia; or

- An attempt to commit any of the crimes listed above.

SENATE BILL NO. 192—SENATORS JAMES, O'CONNELL, ADLER, AUGUSTINE, COFFIN, JACOBSEN, LEE, LOWDEN, MATHEWS, MCGINNESS, O'DONNELL, PORTER, RAGGIO, RAWSON, REGAN, SHAFFER, TITUS, TOWNSEND AND WASHINGTON

FEBRUARY 3, 1995

Referred to Committee on Judiciary

SUMMARY—Makes various changes related to criminal and civil laws pertaining to sexual deviants. (BDR 15-171)

FISCAL NOTE: Effect on Local Government: Yes.
Effect on the State or on Industrial Insurance: Yes.

EXPLANATION—Matter in italics is new; matter in brackets [ ] is material to be omitted.

AN ACT relating to sexual deviants; increasing the penalty for certain crimes related to sex; providing for lifetime supervision of sex offenders; expanding the definition of sexual offense for the purpose of requiring sex offenders to have their blood and saliva tested for inclusion in the central repository for Nevada records of criminal history; requiring the director of the department of prisons to establish and administer a program for the treatment of sex offenders; requiring the attorney general to adopt guidelines for notification of the release of sex offenders from confinement; providing for the involuntary civil commitment of persons found to be sexually violent predators; requiring the mental hygiene and mental retardation division of the department of human resources to adopt certain regulations; and providing other matters properly relating thereto.

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

Section 1. NRS 200.366 is hereby amended to read as follows:

200.366 1. A person who subjects another person to sexual penetration, or who forces another person to make a sexual penetration on himself or another, or on a beast, against the victim's will or under conditions in which the perpetrator knows or should know that the victim is mentally or physically incapable of resisting or understanding the nature of his conduct, is guilty of sexual assault.

2. [Any] *Except as otherwise provided in subsection 3, a* person who commits a sexual assault shall be punished:

(a) If substantial bodily harm to the victim results from the actions of the defendant committed in connection with or as a part of the sexual assault:

(1) By imprisonment in the state prison for life, without *the* possibility of parole; or

(2) By imprisonment in the state prison for life with *the* possibility of parole, eligibility for which begins when a minimum of 10 years has been served.

(b) If no substantial bodily harm to the victim results:

(1) By imprisonment in the state prison for life, with *the* possibility of parole, beginning when a minimum of 5 years has been served; or

(2) By imprisonment in the state prison for any definite term of 5 years or more, with eligibility for parole beginning when a minimum of 5 years has been served.

[(c) If the victim was a child under the age of 14 years, by imprisonment in the state prison for life with possibility of parole, eligibility for which begins when a minimum of 10 years has been served.]

3. *A person who commits a sexual assault against a child under the age of 16 years shall be punished:*

(a) If the crime results in substantial bodily harm to the child, by imprisonment in the state prison for life without the possibility of parole.

(b) If the crime does not result in substantial bodily harm to the child, by imprisonment in the state prison for:

(1) Life with the possibility of parole, beginning when a minimum of 20 years has been served; or

(2) Any definite term of not less than 5 years nor more than 20 years, without the possibility of parole.

4. The trier of fact in a trial for sexual assault shall determine whether substantial bodily harm has been inflicted on the victim in connection with or as a part of the sexual assault, and if so, the sentence to be imposed upon the perpetrator.

Sec. 2. NRS 200.400 is hereby amended to read as follows:

200.400 1. As used in this section, "battery" means any willful and unlawful use of force or violence upon the person of another.

2. Any person convicted of battery with intent to kill, commit [sexual assault,] mayhem, robbery or grand larceny shall be punished by imprisonment in the state prison for not less than 2 years nor more than 10 years, and may be further punished by a fine of not more than $10,000. [, except that if a battery with intent to commit a sexual assault is committed, and if the crime results in substantial bodily harm to the victim, the person convicted shall be punished by imprisonment in the state prison for life, with or without the possibility of parole, as determined by the verdict of the jury, or the judgment of the court if there is no jury.]

3. *A person convicted of battery with intent to commit sexual assault shall be punished:*

(a) If the crime results in substantial bodily harm to the victim, by imprisonment in the state prison for life with or without the possibility of parole, as determined by the verdict of the jury or the judgment of the court if there is no jury;

(b) If the crime does not result in substantial bodily harm to the victim and the victim is 16 years of age or older, by imprisonment in the state prison for not less than 2 years nor more than 10 years; or

(c) If the crime does not result in substantial bodily harm to the victim and the victim was a child under the age of 16, by imprisonment in the state prison for not less than 5 years nor more than 15 years, without the possibility of parole,

and may be further punished by a fine of not more than $10,000.

4. If the penalty is fixed at life imprisonment with the possibility of parole, eligibility for parole begins when a minimum of 10 years has been served.

Sec. 3. Chapter 176 of NRS is hereby amended by adding thereto a new section to read as follows:

1. When a defendant pleads or is found guilty of a sexual offense, the judge shall include in sentencing, in addition to any other penalties provided by law, a special sentence of lifetime supervision to commence after any period of probation or any term of imprisonment and period of release on parole.

2. The special sentence of lifetime supervision must begin upon the release of a sex offender from incarceration.

3. A person sentenced to lifetime supervision may petition the court for release from lifetime supervision. The court shall grant a petition for release from a special sentence of lifetime supervision if:

(a) The person has not committed a crime for 15 years after his last conviction or release from incarceration, whichever occurs later; and

(b) The person is not likely to pose a threat to the safety of others if released from supervision.

4. For the purposes of this section, "sexual offense" means a violation of NRS 200.366, subsection 1 of NRS 200.368, subsection 3 of NRS 200.400, NRS 200.710, 200.720, subsection 2 of NRS 200.730, NRS 201.180, paragraph (a) or subparagraph (2) of paragraph (b) of subsection 1 of NRS 201.195, paragraph (b) of subsection 1 of NRS 201.210, paragraph (b) of subsection 1 of NRS 201.220, NRS 201.230 or 201.450 or a second or subsequent violation of NRS 207.260.

Sec. 4. NRS 176.111 is hereby amended to read as follows:

176.111 1. When a defendant is convicted of a sexual offense, the court, by order, shall direct the defendant to submit to a blood and saliva test, to be made by qualified persons, under such restrictions and directions as the court deems proper. The tests must include analyses of his blood to determine its genetic markers and of his saliva to determine its secretor status. The court shall order that the results of the tests be submitted to the central repository for Nevada records of criminal history.

2. For the purposes of this section, "sexual offense" means:

(a) Sexual assault pursuant to NRS 200.366;

(b) Statutory sexual seduction pursuant to NRS 200.368;

(c) *Battery with intent to commit a sexual assault pursuant to NRS 200.400;*

(d) Use of a minor in producing pornography pursuant to NRS 200.710;

[(d)**]** *(e)* Promotion of a sexual performance of a minor pursuant to NRS 200.720;

[(e)**]** *(f) Possession of a visual representation depicting the sexual conduct of a person under 16 years of age pursuant to NRS 200.730;*

(g) Incest pursuant to NRS 201.180; **[**or

(f)**]** *(h) Solicitation of a minor to engage in acts constituting the infamous crime against nature pursuant to NRS 201.195;*

(i) Open or gross lewdness pursuant to NRS 201.210;

(j) Indecent or obscene exposure pursuant to NRS 201.220;

(k) Lewdness with a child pursuant to NRS 201.230 **[**.**]** ;

(l) Sexual penetration of a dead human body pursuant to NRS 201.450;

(m) Annoyance or molestation of a minor pursuant to NRS 207.260; or

(n) An attempt to commit any offense listed in this subsection.

Sec. 5. Chapter 209 of NRS is hereby amended by adding thereto the provisions set forth as sections 6 and 7 of this act.

Sec. 6. *"Sex offender" means any person who has been convicted of:*

1. A violation of NRS 200.366, subsection 1 of NRS 200.368, subsection 3 of NRS 200.400, NRS 200.710, 200.720, subsection 2 of NRS 200.730, NRS 201.180, paragraph (a) or subparagraph (2) of paragraph (b) of subsection 1 of NRS 201.195, paragraph (b) of subsection 1 of NRS 201.210, paragraph (b) of subsection 1 of NRS 201.220, NRS 201.230 or 201.450;

2. A second or subsequent violation of NRS 207.260; or

3. An attempt to commit any offense listed in subsection 1 or 2.

Sec. 7. *The director, with the approval of the board, shall establish and administer a program for the treatment of sex offenders.*

Sec. 8. NRS 209.011 is hereby amended to read as follows:

209.011 As used in this chapter, unless the context otherwise requires, the terms defined in NRS 209.015 to 209.085, inclusive, *and section 6 of this act* have the meanings ascribed to them in those sections.

Sec. 9. NRS 209.451 is hereby amended to read as follows:

209.451 1. If any offender:

(a) Commits any assault upon his keeper or any foreman, officer, offender or other person, or otherwise endangers life;

(b) Is guilty of any flagrant disregard of the regulations of the department or of the terms and conditions of his residential confinement; or

(c) Commits any misdemeanor, gross misdemeanor or felony,

he forfeits all deductions of time earned by him before the commission of that offense, or forfeits such part of those deductions as the director considers just.

2. If a sex offender refuses or otherwise fails to participate in the program for the treatment of sex offenders established pursuant to section 7 of this act, he forfeits all deductions of time earned by him before the commission of that offense, or forfeits such part of those deductions as the director considers just.

3. If any offender commits a serious violation of any of the regulations of the department or of the terms and conditions of his residential confinement, he may forfeit all or part of such deductions, in the discretion of the director.

[3.] *4.* A forfeiture may be made only by the director after proof of the offense and notice to the offender. The decision of the director regarding a forfeiture is final.

[4.] *5.* The director may restore credits forfeited for such reasons as he considers proper.

Sec. 10. Chapter 213 of NRS is hereby amended by adding thereto the provisions set forth as sections 11 to 14, inclusive, of this act.

Sec. 11. *1. The board shall establish by regulation a program of lifetime supervision of sex offenders to commence after any period of probation or any term of imprisonment and any period of release on parole. The program must*

provide for the lifetime supervision of sex offenders by parole and probation officers.

2. Lifetime supervision shall be deemed a form of parole for the limited purposes of the applicability of the provisions of subsection 9 of NRS 213.1095, NRS 213.1096, 213.10973 and subsection 2 of NRS 213.110.

3. A person who violates a condition imposed on him pursuant to the program of lifetime supervision is guilty of a felony.

Sec. 12. *1. There is hereby created an advisory council for community notification. The council consists of:*

(a) Three members, of whom no more than two may be of the same political party, appointed by the governor; and

(b) Four members, of whom no more than two may be of the same political party, appointed by the legislative commission.

2. Each member serves a term of 4 years. Members may be reappointed for additional terms of 4 years in the same manner as the original appointments.

3. Any vacancies occurring in the membership of the council must be filled in the same manner as the original appointments.

4. The council shall consult with and provide recommendations to the attorney general concerning guidelines and procedures for the notification of the community where a sex offender is to be released on parole.

Sec. 13. *1. The attorney general shall consult with the advisory council for community notification and shall establish guidelines and procedures for the notification of the community where a sex offender will be released on parole.*

2. The guidelines and procedures established by the attorney general must identify and incorporate factors relevant to the sex offender's risk of recidivism. Factors relevant to the risk of recidivism include, but are not limited to:

(a) Conditions of release that minimize the risk of recidivism, including probation or parole, counseling, therapy or treatment;

(b) Physical conditions that minimize the risk of recidivism, including advanced age or debilitating illness; and

(c) Any criminal history of the sex offender indicative of a high risk of recidivism, including:

(1) Whether the conduct of the sex offender was found to be characterized by repetitive and compulsive behavior;

(2) Whether the sex offender committed the sexual offense against a child;

(3) Whether the sexual offense involved the use of a weapon, violence or infliction of serious bodily injury;

(4) The number, date and nature of prior offenses;

(5) Whether psychological or psychiatric profiles indicate a risk of recidivism;

(6) The offender's response to treatment;

(7) Any recent threats against a person or expressions of intent to commit additional crimes; and

(8) Behavior while confined.

3. The procedures for notification established by the attorney general must provide for three levels of notification by the law enforcement agency in whose jurisdiction the sex offender is to be released depending upon the risk of recidivism by the sex offender as follows:

(a) If the risk of recidivism is low, other law enforcement agencies likely to encounter the sex offender must be notified.

(b) If the risk of recidivism is moderate, in addition to the notice required by paragraph (a), schools and religious and youth organizations must be notified.

(c) If the risk of recidivism is high, in addition to the notice required by paragraphs (a) and (b), the public must be notified through means designed to reach members of the public likely to encounter the sex offender.

4. The attorney general shall establish procedures for the evaluation of the risk of recidivism and implementation of community notification that promote the uniform application of the notification guidelines required by this section.

5. This section must not be construed to prevent law enforcement officers from providing community notification concerning any person who poses a danger to the welfare of the public.

Sec. 14. *The law enforcement agency in whose jurisdiction a sex offender will be released on parole shall disclose information regarding the sex offender to the appropriate parties pursuant to the procedures established by the attorney general pursuant to section 13 of this act. The law enforcement agency is immune from civil liability for damages for disclosing or failing to disclose information regarding a sex offender pursuant to the provisions of this section.*

Sec. 15. NRS 213.107 is hereby amended to read as follows:

213.107 As used in NRS 213.107 to 213.160, inclusive, *and sections 11 to 14, inclusive, of this act,* unless the context otherwise requires:

1. "Board" means the state board of parole commissioners.

2. "Chief" means the chief parole and probation officer.

3. "Division" means the division of parole and probation of the department of motor vehicles and public safety.

4. "Residential confinement" means the confinement of a person convicted of a crime to his place of residence under the terms and conditions established by the board.

5. *"Sex offender" means any person who has been or is convicted of a sexual offense.*

6. *"Sexual offense" means:*

(a) A violation of NRS 200.366, subsection 1 of NRS 200.368, subsection 3 of NRS 200.400, NRS 200.710, 200.720, subsection 2 of NRS 200.730, NRS 201.180, paragraph (a) or subparagraph (2) of paragraph (b) of subsection 1 of NRS 201.195, paragraph (b) of subsection 1 of NRS 201.210, paragraph (b) of subsection 1 of NRS 201.220, NRS 201.230 or 201.450;

(b) A second or subsequent violation of NRS 207.260; or

(c) An attempt to commit any offense listed in paragraph (a) or (b).

7. "Standards" means the objective standards for granting or revoking parole or probation which are adopted by the board or the chief . [parole and probation officer.]

Sec. 16. NRS 213.1099 is hereby amended to read as follows:

213.1099 1. Except as otherwise provided in this section and NRS 213.1215, the board may release on parole a prisoner otherwise eligible for parole under NRS 213.107 to 213.160, inclusive.

2. In determining whether to release a prisoner on parole, the board shall consider:

(a) Whether there is a reasonable probability that the prisoner will live and remain at liberty without violating the laws;

(b) Whether the release is incompatible with the welfare of society;

(c) The seriousness of the offense and the history of criminal conduct of the prisoner; and

(d) The standards adopted pursuant to NRS 213.10987 and the recommendation, if any, of the chief . [parole and probation officer.]

3. When a person is convicted of any felony and is punished by a sentence of imprisonment, he remains subject to the jurisdiction of the board from the time he is released on parole under the provisions of this chapter until the expiration of the term of imprisonment imposed by the court less any good time or other credits earned against the term.

4. Except as otherwise provided in NRS 213.1215, the board may not release on parole a prisoner whose sentence to death or to life without possibility of parole has been commuted to a lesser penalty unless it finds that the prisoner has served at least 20 consecutive years in the state prison, is not under an order [that he] *to* be detained to answer for a crime or violation of parole or probation in another jurisdiction, and that he has no history of:

(a) Recent misconduct in the institution, and that he has been recommended for parole by the director of the department of prisons;

(b) Repetitive criminal conduct;

(c) Criminal conduct related to the use of alcohol or drugs;

(d) Repetitive sexual deviance, violence or aggression; or

(e) Failure in parole, probation, work release or similar programs.

5. In determining whether to release a prisoner on parole pursuant to this section, the board shall not consider whether the prisoner will soon be eligible for release pursuant to NRS 213.1215.

6. The board shall not release on parole a sex offender until the law enforcement agency in whose jurisdiction a sex offender will be released on parole has been provided an opportunity to give the notice required by the attorney general pursuant to section 14 of this act.

Sec. 17. Chapter 433A of NRS is hereby amended by adding thereto the provisions set forth as sections 18 to 41, inclusive, of this act.

Sec. 18. *The legislature hereby finds and declares that:*

1. A small group of sexual predators suffers from mental abnormalities or personality disorders that render them dangerous to the public and likely to commit sexually violent offenses.

2. The existing procedures for involuntary court-ordered admission are inadequate to address the high risk that sexually violent predators will commit sexually violent offenses upon release from detention. Sexually violent predators do not have access to potential victims while detained and therefore may not engage in observable behavior which demonstrates that they remain

dangerous to others and that further treatment would be in their best interests, as required by NRS 433A.310 to renew their detention. Sexually violent predators also require different modalities of treatment for a longer period of time than that offered by public or private mental health facilities as the result of traditional involuntary court-ordered admissions.

3. In order to ensure that the public is protected from sexually violent predators and that sexually violent predators receive proper treatment and care, it is necessary to provide for the involuntary civil commitment of sexually violent predators to the custody of the program for the treatment of sexually violent predators established under the regulations adopted by the division pursuant to section 41 of this act. The program for the treatment of sexually violent predators is not to be established to punish or to exact retribution against persons who have committed prior sexually violent offenses, but is to be established to provide appropriate treatment and care for such persons in a secure facility.

Sec. 19. *As used in sections 18 to 41, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 20 to 28, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 20. *"Automatic request for release" means a request for release without the approval of the administrator deemed to have been filed pursuant to subsection 2 of section 37 of this act by a person committed to the custody of the program if the person fails to waive his right to file an annual request for release.*

Sec. 21. *"Court" means the district court in which a petition alleging that a person is a sexually violent predator or a request for release is filed.*

Sec. 22. *"Mental abnormality" means a congenital or acquired condition affecting the emotional or volitional capacity of a person which predisposes that person to the commission of criminal sexual acts to the degree that the person constitutes a menace to the health and safety of others.*

Sec. 23. *"Person professionally qualified to evaluate sexually violent predators" means a person possessing the professional qualifications to evaluate a person alleged to be a sexually violent predator in compliance with the regulations adopted by the division pursuant to paragraph (a) of subsection 2 of section 41 of this act.*

Sec. 24. *"Petition" means a petition alleging that the person named therein is a sexually violent predator.*

Sec. 25. *"Program" means the program for the treatment of sexually violent predators established under the regulations adopted by the division pursuant to section 41 of this act.*

Sec. 26. *"Sexually motivated" means that one of the purposes for which a person committed an act was his sexual gratification.*

Sec. 27. *"Sexually violent offense" means:*

1. Sexual assault.

2. Battery with intent to commit a sexual assault.

3. A violation of any of the provisions of NRS 201.195, 201.210, 201.220, 201.230 or 207.260 which:

(a) At the time of sentencing for the act, was found to have involved the use or the threatened use of violence or force against the victim; or

(b) During the hearing of a petition to determine whether the person named therein is a sexually violent predator, is determined beyond a reasonable doubt to have involved the use or the threatened use of violence or force against the victim.

4. An act of murder in the first or second degree, kidnaping in the first or second degree, false imprisonment, burglary or invasion of the home which:

(a) At the time of sentencing for the act, was found to have been sexually motivated; or

(b) During the hearing of a petition to determine whether the person named therein is a sexually violent predator, is determined beyond a reasonable doubt to have been sexually motivated.

5. An attempt to commit any offense listed in subsections 1 to 4, inclusive.

6. An offense committed in any place other than the State of Nevada which, if committed in this state, would be punishable as an offense listed in subsections 1 to 5, inclusive.

Sec. 28. *"Sexually violent predator" means any person who has been convicted of a sexually violent offense and who suffers from:*

1. A mental abnormality; or

2. A personality disorder,

which makes the person likely to commit a sexually violent offense.

Sec. 29. *1. If:*

(a) Before or after the sentence of a person convicted of a sexually violent offense expires; or

(b) Before or after the term of confinement of a person found to have committed a sexually violent offense as a juvenile expires,

it appears that the person may be a sexually violent predator, the district attorney of the county where the person was convicted or found to have committed a sexually violent offense as a juvenile may file a petition in the district court alleging that the person is a sexually violent predator and stating sufficient facts to support the allegation.

2. If the person named in the petition is not in confinement when the petition is filed, the petition must contain the allegation that the person has recently committed an overt act that, when considered in conjunction with the other facts alleged in the petition, is sufficient to establish that there is probable cause to believe the person is a sexually violent predator.

Sec. 30. *1. No later than 72 hours after the filing of a petition pursuant to section 29 of this act, the court shall hold a hearing to determine whether probable cause exists to believe that the person named in the petition is a sexually violent predator. The court shall, upon the request of counsel for the person named in the petition, grant a recess in the hearing to determine probable cause for not more than 5 days to give counsel an opportunity to prepare for the hearing.*

2. If at the conclusion of the hearing the court determines that probable cause exists, the court shall:

(a) Order that the person named in the petition be taken into custody and detained at a mental health facility for an evaluation by a person professionally qualified to evaluate sexually violent predators to determine whether the person is a sexually violent predator.

(b) Schedule a hearing to be held before a jury to determine whether the person named in the petition is a sexually violent predator. The hearing must be held no later than 45 days after the finding of probable cause is made.

Sec. 31. *1. At the hearing to determine whether probable cause exists to believe that the person named in a petition is a sexually violent predator, and in any subsequent proceeding before the district court relating to his commitment to or release from the program, the person named in the petition is entitled to retain counsel to represent him. If the person is indigent, the court shall appoint counsel, who may be the public defender or his deputy, to represent the person in any such proceeding.*

2. The court shall award compensation to any counsel appointed pursuant to subsection 1 for his services in an amount determined by the court to be fair and reasonable. Compensation for appointed counsel must be charged against the county in which the petition is brought.

3. The district attorney or a deputy district attorney shall represent the state in all proceedings relating to the commitment of a person to the program or the release of a person from the program.

Sec. 32. *1. The hearing to determine whether a person is a sexually violent predator must be held before a jury of 12 persons. The district attorney and the person named in the petition are each entitled to exercise three peremptory challenges. The court may direct that not more than two jurors in addition to the regular jury be called and impaneled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who become unable or disqualified to perform their duties. If an alternate juror is required to replace a regular juror after the jury has retired to consider its verdict, the judge shall recall the jury, seat the alternate and resubmit the decision regarding the petition to the jury. In addition to the peremptory challenges otherwise allowed pursuant to this subsection, if one or two alternate jurors are to be impaneled, the district attorney and the person named in the petition are each entitled to one peremptory challenge, which may only be used against an alternate juror.*

2. At the hearing, the district attorney bears the burden of proving beyond a reasonable doubt that the person suffers from a mental abnormality or personality disorder which makes the person likely to commit a sexually violent offense. If the district attorney alleges in the petition that a prior act committed by the person constitutes a sexually violent offense:

(a) Because the act involved the use or the threatened use of violence or force against the victim, the district attorney bears the burden of proving beyond a reasonable doubt that the alleged sexually violent offense involved the use or the threatened use of violence or force against the victim.

(b) Because the act was sexually motivated, the district attorney bears the burden of proving beyond a reasonable doubt that the alleged sexually violent offense was sexually motivated as defined in section 26 of this act.

3. A unanimous verdict of the jury must be found to determine that the person named in the petition is a sexually violent predator. If the jury finds that the person named in the petition is a sexually violent predator, the jury shall consider whether other alternative courses of treatment within the least restrictive appropriate environment are in the best interests of the person. If

the jury finds that it is in the best interests of the person found to be a sexually violent predator to be committed to the custody of the program, the court shall enter an order committing the person to the custody of the program. If the jury finds that another alternative course of treatment is in the best interests of the person, the court shall enter an order requiring that the person be released.

Sec. 33. *1. In all proceedings relating to the commitment of a person to the program or the release of a person from the program, the court, within its discretion, may hear and consider all relevant evidence, including, but not limited to, the testimony of a person professionally qualified to evaluate sexually violent predators who participated in the evaluation of the person named in the petition, the testimony of any experts or qualified persons retained by the person named in the petition and the testimony of other witnesses.*

2. Except as otherwise provided in subsection 4 of section 37 of this act, in all proceedings relating to the commitment of a person to the program or the release of a person from the program, the person with respect to whom the proceedings are held shall be present and may, at the discretion of the court, testify.

Sec. 34. *1. Whenever the person named in the petition is subjected to an examination by a person professionally qualified to evaluate sexually violent predators pursuant to the provisions of sections 18 to 41, inclusive, of this act, the person named in the petition has the right to retain experts or other qualified persons to perform an examination on his behalf.*

2. The division shall permit an expert or other qualified person retained by the person named in the petition to have reasonable access to the person named in the petition and to all relevant medical and psychological records and reports. If the person named in the petition is indigent, upon his request or the request of his counsel, the court shall assist the person in obtaining an expert or other qualified person to perform an examination or to testify on the person's behalf at the hearing on the petition.

Sec. 35. *A witness subpenaed to testify in any proceeding related to the commitment of a person to the program or the release of a person from the program under the provisions of this chapter must be paid the same fees and mileage as is paid to a witness in the courts of the State of Nevada.*

Sec. 36. *1. A person committed to the custody of the program pursuant to sections 18 to 41, inclusive, of this act, shall undergo a complete examination at least once per year to evaluate his mental condition. The examination must be performed by a person professionally qualified to evaluate sexually violent predators selected by the division.*

2. A person professionally qualified to evaluate sexually violent predators shall have access to review all records concerning the person committed. Upon completion of his examination of the person committed, the person professionally qualified to evaluate sexually violent predators shall prepare a report concerning his conclusions regarding the mental condition of the person examined. The division shall provide a copy of the report to the clerk of the district court that committed the person to the program.

Sec. 37. *1. If at any time the administrator determines that a person committed to the custody of the program no longer suffers from a mental abnormality or personality disorder which makes the person likely to commit a sexually violent offense, the administrator shall notify the person that he has the approval of the administrator to file a request for release with the district court that committed him to the program. If the person files a request for release, the person shall serve a copy of the request for release upon the district attorney.*

2. A person committed to the custody of the program may also file a request for release without the approval of the administrator not more than once per year. The administrator shall, before the expiration of 1 year following the date upon which a person was committed to the custody of the program, and at intervals of 1 year thereafter, provide the person with written notice of the right to file a request for release without the administrator's approval. The notice must contain a waiver of the right to file a request for release. If the person fails to sign the waiver within 15 days after receipt of the notice, the person shall be deemed to have filed an automatic request for release. If a person files an automatic request for release, the administrator shall, within 10 days thereafter, provide written notice of that fact to the court that committed the person and to the district attorney. If the person files a request for release without the approval of the administrator, the person shall serve a copy of the request upon the district attorney.

3. Upon receipt of written notice from the administrator that a person committed to the custody of the program has filed an automatic request for release, or upon receipt of a request for release filed without the approval of the administrator, the court shall schedule a hearing to show cause whether facts exist that warrant a hearing on whether the mental condition of the person has so changed that the person no longer suffers from a mental abnormality or personality disorder which makes the person likely to commit a sexually violent offense. The hearing to show cause must be held no later than 30 days after the date upon which:

(a) The person filed a request for release without the approval of the administrator; or

(b) The court received notice from the administrator that the person filed an automatic request for release.

4. At the hearing to show cause, the person requesting release from the program shall have the right to be represented by counsel, but the person is not entitled to be present. If the court at the hearing to show cause determines that probable cause exists to believe that the person's mental condition has so changed that the person no longer suffers from a mental abnormality or personality disorder which makes the person likely to commit a sexually violent offense, the court shall schedule a hearing in accordance with section 38 of this act.

Sec. 38. *1. If a person committed to the custody of the program files a request for release with the approval of the administrator, or if the court pursuant to subsection 4 of section 37 of this act determines that probable cause exists to believe that the person's mental condition has so changed that*

the person no longer suffers from a mental abnormality or personality disorder which makes the person likely to commit a sexually violent offense, the court shall schedule a hearing to be held no later than 45 days after:

(a) The date on which the request for release with the approval of the administrator was filed; or

(b) The date on which the court determined that probable cause exists to believe that the person's mental condition has so changed that the person no longer suffers from a mental abnormality or personality disorder which makes the person likely to commit a sexually violent offense.

A hearing scheduled pursuant to this subsection must be conducted in the same manner and must provide to the person requesting release the same constitutional protections as an initial hearing to determine whether a person is a sexually violent predator.

2. No later than 30 days before the date of the hearing, if the district attorney so requests, the person committed to the custody of the program shall undergo a complete examination by a person professionally qualified to evaluate sexually violent predators chosen by the district attorney. The person committed to the custody of the program may also retain an expert or other qualified person to perform an examination. Upon request of the person if he is indigent, the court shall assist the person in obtaining an expert or other qualified person to perform an examination or to testify on the person's behalf at the hearing on the request for release.

3. At the hearing, the district attorney bears the burden of proving beyond a reasonable doubt that the petitioner continues to suffer from a mental abnormality or personality disorder which makes the person likely to commit a sexually violent offense. Unless the jury determines, by a unanimous verdict, that the person must not be released from the program, the court shall enter an order requiring that the person be released.

Sec. 39. *1. If a person committed to the custody of the program has previously:*

(a) Filed a request for release without the administrator's approval; or

(b) Filed an automatic request for release,

and the court at the hearing to show cause found that probable cause was not shown that facts exist which warrant a hearing before a jury on whether the mental condition of the person has so changed that the person no longer suffers from a mental abnormality or personality disorder which makes the person likely to commit a sexually violent offense, the court shall deny any subsequent request for release filed without the approval of the administrator or any automatic request for release unless the person requesting release presents additional facts upon which the court could find that the condition of the person committed has so changed that a hearing before a jury is warranted.

2. Upon receipt of any request for release filed without the approval of the administrator, the court shall endeavor whenever possible to review the request to determine whether it is based upon frivolous grounds. If after review of the request the court determines that the request is based upon frivolous grounds, the court shall deny the request.

Sec. 40. *An appeal may be taken from a judgment or an order of the court in the same manner and under the same circumstances as an appeal taken from a civil case originating in a district court.*

Sec. 41. *1. The division shall adopt regulations establishing the program, including regulations:*

(a) Specifying guidelines for the treatment and care of persons committed to the custody of the program;

(b) Ensuring that persons committed to the custody of the program are securely confined and that appropriate procedures are followed to protect the safety of persons in the custody of the program and of the public; and

(c) Providing that a person committed to the custody of the program is permitted to:

(1) Wear his own clothing and to keep and use his personal possessions, except when the deprivation of such possessions is necessary for his treatment, protection or safety, for the protection or safety of others or for the protection of property within the facility;

(2) Have access to reasonable space for the storage of personal possessions, within the limitations of the facility;

(3) Have approved visitors within reasonable limitations;

(4) Have reasonable access to a telephone to make and receive telephone calls;

(5) Have reasonable access to materials to write letters; and

(6) Receive and send correspondence through the mail within reasonable limitations.

2. The division shall adopt regulations setting forth the professional qualifications necessary for a person to be professionally qualified to evaluate sexually violent predators.

3. The division shall in conjunction with the department of prisons make available to persons in the custody of the program mental health facilities.

Sec. 42. As soon as practicable after October 1, 1995:

1. The governor shall, pursuant to section 12 of this act, appoint three members to the advisory council for community notification for an initial term of 4 years commencing on January 1, 1996.

2. The legislative commission shall, pursuant to section 12 of this act, appoint four members to the advisory council for community notification for an initial term of 4 years commencing on January 1, 1996.

Sec. 43. The amendatory provisions of sections 1, 2 and 3 of this act do not apply to an offense which was committed before October 1, 1995.

Sec. 44. The amendatory provisions of sections 18 to 41, inclusive, of this act, apply to any person who has been convicted of, or has been found to have committed as a juvenile, a sexually violent offense as defined in section 27 of this act, irrespective of whether:

1. The offense was committed before, on or after October 1, 1995;

2. The person was sentenced for the offense before, on or after October 1, 1995; or

3. The person was released from confinement before, on or after October 1, 1995.

(30)

BDR 15-171
A.B.
S.B. 192

EXECUTIVE AGENCY
FISCAL NOTE

STATE AGENCY'S ESTIMATES Date Prepared 4/12/95

Agency Submitting Mental Hygiene/Mental Retardation

Items of Revenue or Expense or both	Fiscal Year 1994-95	Fiscal Year 1995-96	Fiscal Year 1996-97	Continuing(Y/N)
Total				

Explanation (Use Additional Sheets or Attachments, if required)

SB192 relates to sexual deviants: increased penalty for crimes, lifetime supervision and other matters. Significant modifications and deletions (specifically sections 18 to 41) from the initial bill have resulted in the elimination of any impact on the Division of Mental Hygiene/Mental Retardation.

Signature
Title Acting Administrator

DEPARTMENT OF ADMINISTRATION'S COMMENTS Date April 18, 1995

Agency's remarks appear reasonable.

Signature John P. Comeaux
Title Director

FISCAL EFFECT ON LOCAL GOVERNMENT
(LCB - Fiscal Division Use Only) Date April 24, 1995

Respondent local governments report no significant fiscal effect.

Signature
Title Deputy Fiscal Analyst

FN-1 (Revised 11/16/94)

BDR 15-171

EXECUTIVE AGENCY
FISCAL NOTE

A.B.

S.B. 192

[redacted]

STATE AGENCY'S ESTIMATES Date Prepared 3/31/95

Agency Submitting DMV/PS DIVISION OF PAROLE AND PROBATION

Items of Revenue or Expense or both	Fiscal Year 1994-95	Fiscal Year 1995-96	Fiscal Year 1996-97	Continuing(Y/N)
OFFICERS: -0-	-0-	-0-	-0-	
Total				

Explanation (Use Additional Sheets or Attachments, if required)
Attached please find copies of our worksheet, which reflects that the Division of Parole and Probation does not anticipate a fiscal impact for ten years. However, we do anticipate an impact commencing in FY2006, when inmates sentenced under this legislation would be eligible for release on parole. It should be noted that the second ten years reveals a significant fiscal impact, as a result of these offenders being under supervision for life. (See attachments)

Signature Nancy L. Brecken
Title Administrative Services Officer

DEPARTMENT OF ADMINISTRATION'S COMMENTS

Date

Signature
Title

FISCAL EFFECT ON LOCAL GOVERNMENT
(LCB - Fiscal Division Use Only)

Date

Signature
Title Deputy Fiscal Analyst

FN-1 (Revised 11/16/94)

SB-192 IMPACT OVER TWENTY YEARS

FY - BASE	PAROLEES	OFFICERS	COST PER YEAR
95	100	-0-	-0-
96	105	-0-	-0-
97	110.25	-0-	-0-
98	115.76	-0-	-0-
99	121.55	-0-	-0-
00	127.63	-0-	-0-
01	134.01	-0-	-0-
02	140.71	-0-	-0-
03	147.75	-0-	-0-
04	155.14	-0-	-0-
05	162.89	-0-	-0-
06	262.11	1	$8,734.00
07	366.29	3	$253,717.00
08	475.68	4	$340,248.00
09	590.54	7	$635,662.00
10	711.14	8	$746,128.00
11	837.77	10	$992,282.00
12	970.73	13	$1,374,580.00
13	1110.34	15	$1,678,402.00
14	1256.93	17	$2,030,688.00
15	1410.85	20	$2,569,208.00

BDR 15-171
A.B.
S.B. 192

EXECUTIVE AGENCY
FISCAL NOTE

STATE AGENCY'S ESTIMATES — Date Prepared 3-01-95

Agency Submitting State Public Defender

Items of Revenue or Expense or both	Fiscal Year 1994-95	Fiscal Year 1995-96	Fiscal Year 1996-97	Continuing(Y/N)
Expense	-0-	316,667	304,257	Y
Total				

Explanation (Use Additional Sheets or Attachments, if required)

Please see attached

Signature
Title State Public Defender

DEPARTMENT OF ADMINISTRATION'S COMMENTS — Date

Agency estimate appears reasonable.

Signature
Title

FISCAL EFFECT ON LOCAL GOVERNMENT
(LCB - Fiscal Division Use Only) — Date

Signature
Title Deputy Fiscal Analyst

FN-1 (Revised 11/16/94)

NEVADA STATE PUBLIC DEFENDER

JAMES J. JACKSON
STATE PUBLIC DEFENDER

MEMORANDUM

303 E. PROCTOR STREET
CAPITOL COMPLEX
CARSON CITY, NEVADA 89710
TELEPHONE (702) 687-4880
FAX (702) 687-4993

Date: March 1, 1995

To: Kevin D. Welsh
Fiscal Analysis Division
Legislative Counsel Bureau

From: James J. Jackson
Nevada State Public Defender

Re: Fiscal Note, BDR No. 15-171

I apologize for my tardy response to your February 7, 1995 request, but I have been out of town and away from my office for almost the entire period until today.

I was present in Las Vegas for the opening hearing on the above-referenced BDR. This bill would propose to basically continue an individual in custody or under lifetime supervision, even after completion of a prison sentence, if a district court determines that individual to be a "sexual deviant" or "predator" as a result of him/her being previously convicted of certain sexual offenses.

Because an individual facing such adjudication is entitled to ongoing representation and numerous hearings over their lifetime or until they are released from the requirements proposed under this statute, this statutory change would have fiscal impact on this office.

The changes as proposed in the BDR would take most, if not all, incentive for an individual facing charges for the crimes contemplated in this bill to enter a plea, as any of the crimes set forth could result, upon conviction, of a person being declared a sexual deviant or predator and facing a lifetime of supervision/punishment. Thus, more cases would go to trial, more cases would be appealed to the Supreme Court, and the ongoing hearings following conviction and service of sentence

Kevin D. Welsh
Fiscal Analysis Division
Page Two

would place more demands on the limited resources of this office. As such, the following minimal fiscal impact is noted for your consideration:

Additional Personnel		
Three (3) Trial Deputy Public Defenders (Salaries and Costs)		$179,835
One (1) Appellate Deputy Public Defender (Salary and Costs)		59,545
One (1) Secretarial/Support Staff (Salary and Costs)		31,167
Office Equipment (FY 1996 only)		12,410
Operating Expenses		3,500
In-State Travel		3,800
Training		2,000
Total fiscal impact	FY 1996	$316,667
	FY 1997	$304,257

I hope this information has been helpful to you. Please do not hesitate to contact me should you have any questions.

JJJ/kd

BDR 15-171
A.B. _____
S.B. 192

EXECUTIVE AGENCY
FISCAL NOTE

STATE AGENCY S ESTIMATE Date Prepared 5-7-95

Agency Submitting: Department of Prisons

Items of Revenue or Expense or Both	Fiscal Year 1994-95	Fiscal Year 1995-96	Fiscal Year 1996-97	Continuing
NONE	0	0	0	

Explanation

Section #1 of this Bill would raise the age threshold for crimes against children from 14 to 16 and would create a new penalty for such offenses. The penalty for Sexual Assault against a child, involving substantial bodily harm, would increase from Life Without parole or Life with parole (10 year minimum), to Life Without parole only. The penalty for Sexual Assault against a child, not involving substantial bodily harm, would increase from Life with parole (10 year minimum), to Life with parole (20 year minimum) or 5 to 20 years without parole.

To evaluate the impact of this element of the Bill, the Department reviewed those newly arrived inmates over the last 12 complete months of intake processing. Of the 63 inmates who were received in the last 12 months with an offense of Sexual Assault, 36 had a victim under the age of 16, none of which were charged with "substantial bodily harm". Given this situation, we can project no measurable impact on the basis of the enhanced penalty for "substantial bodily harm".

Of the 36 admissions where the victim was under the age of 16, the overwhelming majority were also under 14. Yet, only thirteen of these cases were prosecuted under the existing, enhanced parole eligibility of Life with a 10 year parole minimum. This is because the other cases were plea bargained. Given this historical information and given that this Bill does not eliminate plea bargaining, we assume that, proportionately, there will not be an increase in the number of offenders prosecuted for a crime involving a minor. Consequently, the impact relates only to the increased penalty, and not to increased prosecutions. The change in the parole eligibility from 10 to 20 years would have no visible impact on a projection because these inmates would already be considered to be incarcerated through the 120 month array generated by the NCCD model.

Section #2 of this Bill also seeks to change the sentence range of offenders convicted of Battery with intent to commit sexual assault, where no substantial bodily harm results, and the victim is under the age of 16. It is proposed that the sentence range change from the existing 2 to 10 years, to a range of 5 to 15 years. Of the four inmates received in the last 12 months for Battery with intent to commit sexual assault, there were two where the victim was under the age of 16. Both of these inmates received three year terms, indicating that this type of offender would not long remain in the inmate population, regardless of how the law is changed. Additionally, this number is so small that it is impractical to execute a model to identify an impact. It would be difficult to tell the difference between the impact of changing the law and the normal small variation that occurs in the model based on the random number generator that the model employs. Regardless, There would be no measurable change to the average population in the next biennium, because these individuals would be incarcerated through that portion of a projection. Beyond that, the small change in the population would be accounted for in future projections as elements of the stock population and the intake population.

This Bill also seeks to mandate a process for the lifetime supervision of some sex offenders. This supervision would relate to all the permutations of:

Sexual Assault in NRS 200.366
Statutory Sexual Seduction in NRS 200.368
Variations of Battery with intent to commit sexual assault in NRS 200.400
Using a minor in pornography in NRS 200.710
Promotion of a sexual performance by a minor in NRS 200.720
Possession of child pornography in NRS 200.730
Incest in NRS 201.180
Solicitation of a minor in NRS 201.195
Open or gross lewdness in NRS 201.210
Indecent exposure in NRS 201.220
Lewdness with a minor in NRS 201.230
Sexual penetration of a dead body in NRS 201.450
Molesting a minor in NRS 207.260

The estimate of the impact of this proposed change seems logically to be a task for the Division of Parole & Probation. That agency would seem to need to estimate, by fiscal year, those persons with these offenses who will be sentenced for the affected offenses, the type and length of their sentence, and the rate at which they violate life supervision. For P&P's benefit, it would be helpful for them to know that offenders who violate probation or parole, before the implementation of life supervision do not need to be estimated. However, they would of course reduce the population at risk of violation of life supervision. This latter group would only be guilty of a violation, and not another felony. P&P might also assume that the effect of this measure will not be immediate, given that these offenders will have to be sentenced after 7-1-95, and discharge their probation, prison sentence, or parole.

Further, it would seem to be important for P&P to determine whether persons who violate life supervision might still be granted a probation for that violation. They would thus not come to prison, unless you assume that they would violate their life supervision probation at some point in the life of the projection.

SIGNATURE _____

TITLE Director

DEPARTMENT OF ADMINISTRATIONS COMMENTS

DATE: _____

Concur with agency evaluation.

SIGNATURE _____

TITLE _____

FISCAL EFFECT ON LOCAL GOVERNMENT
(LCB - Fiscal Division Use Only)

DATE _____

SIGNATURE _____

TITLE Deputy Fiscal Analyst

MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Sixty-eighth Session
February 7, 1995

The Senate Committee on Judiciary was called to order by Chairman Mark A. James, at 8:30 a.m., on Tuesday, February 7, 1995, in Room 1006 of the Grant Sawyer State Office Building, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Mark A. James, Chairman
Senator Maurice Washington
Senator Mike McGinness
Senator Ernest E. Adler
Senator Dina Titus
Senator O.C. Lee

COMMITTEE MEMBERS ABSENT:

Senator Jon C. Porter Vice Chairman (Excused)

STAFF MEMBERS PRESENT:

Allison Combs, Senior Research Analyst
Lori Story, Committee Secretary
Maddie Fischer, Primary Secretary

OTHERS PRESENT:

David F. Sarnowski, Chief Criminal Deputy Attorney General, State of Nevada, Office of the Attorney General,
Mariah L. Sugden, Senior Deputy Attorney General, State of Nevada, Office of the Attorney General, assigned to the Department of Motor Vehicles and Public Safety
John P. Lukens, Chief Deputy District Attorney, Sexual Assault/Child Abuse Unit, Clark County, Nevada
Suzann Denton-Pratt, Licensed Clinical Social Worker and Therapist, Oasis Counseling Associates, Las Vegas, Nevada

Sandi Levy Barbero, Licensed Clinical Social Worker, Executive Director, Southwest Passage, Las Vegas, Nevada
Lieutenant Lawrence Spinosa, Detective Bureau, Las Vegas Metropolitan Police Department (METRO), Las Vegas, Nevada
Sergeant Russell J. Shoemaker, Sexual Assault Unit, Las Vegas Metropolitan Police Department (METRO), Las Vegas, Nevada
Thomas F. Pitaro, Attorney at Law, Las Vegas, Nevada
Karen Winckler, Attorney at Law, Las Vegas, Nevada
James Jackson, Nevada State Public Defender
Patricia Justice, representing Clark County, Nevada

SENATE BILL 192: Makes various changes related to criminal and civil laws pertaining to sexual deviants.

SENATE BILL 192 OF THE SIXTY-SEVENTH SESSION: Revises provisions for registration of sex offenders.

Senator James described Senate Bill (S.B.) 192 as one of the most important pieces of legislation he would introduce this session. He indicated the bill is a companion to Senate Bill 192 of the Sixty-Seventh Session (S.B.192 of the 67th Session), which was passed and signed by the Governor. The chairman said that legislation dealt with enhanced registration and tracking requirements for sex offenders who commit crimes against children. He stated through research on the bill, he found states which had "gone beyond and tried to deal more aggressively with sex offenders who prey on children...and in particular, repeat sex offenders." He cited the state of Washington which has "decided to do something more to deal with dangerous individuals...that the normal parole and probation system...wasn't good enough." Senator James also referred to cases around the country in which sexual offenders murdered children. He said the state of New Jersey has enacted a sexual predator's law, named "Megan's Law," in honor a child who was murdered by a paroled sexual offender. He stated it was important for Nevada to learn from other laws which have been passed around the country, and to develop an aggressive regimen to identify and deal with sexually violent predators.

Senator James referenced S.B. 192, which is attached to these minutes in its entirety, as Exhibit C. He complimented the legislative bill drafters, in particular Jan Needham, for the work done in connection with this legislation. The chairman stated the bill drafters "have attempted to address certain constitutional and other problems which have been identified in bills enacted in other states, to insure Nevada's law...will be as constitutionally sound as it can be."

Senator James indicated he would outline the provisions of S.B. 192 for the benefit of the committee members and those in attendance at the hearing. He stated the bill was "extremely comprehensive and far-reaching," and said it touches on a number of issues which have been proposed individually in other bills, such as community notification of the release of sex offenders, enhanced penalties and involuntary civil commitment of sex offenders after release from prison.

Senator James said section 1 of S.B. 192 enhances the penalty for sexual assault of a child, with "child" being defined as a person under the age of 16 years. He said the penalty would be enhanced to "life without the possibility of parole" if substantial bodily harm is involved. Senator James indicated section 2 enhances the penalty for battery with intent to commit sexual assault against a child. He said section 3 introduces the concept of lifetime supervision of sex offenders. Senator James added a sentence of lifetime supervision would have to be given by a court to a person who commits a sex offense. He said the definition of sex offense included sexual assault, sexual battery, child pornography, child prostitution, incest, sex with a child, open and gross lewdness, etc. Senator James stated the sentence of lifetime supervision would commence following a period of parole and probation or upon release from confinement, and would last for a period of at least 15 years.

Senator James stated section 4 of S.B. 192 expands the definition of sexual offense with regard to blood and saliva testing for placement in a central repository for criminal history. He said sections 5 through 7 require the Director of the Department of Prisons to establish a program for treatment of sex offenders. The chairman said section 9 provides that if a sex offender who has been sentenced fails to participate in a treatment program, he or she forfeits all good time credits. He stated section 11 directs the State Board of Pardons Commissioners to establish the program of lifetime supervision of sex offenders, which is administered by parole and probation officers. Senator James pointed out violation of lifetime supervision would be a felony under this statute.

Senator James explained section 12 of S.B. 192, saying it dealt with the entire issue of community notification. He said one of the problems with other bills dealing with community notification is that they have stated simply that: "If you commit a certain crime and are released from prison, the community into which you are paroled...must be notified...." Senator James stated this piece of legislation "sets up a more flexible program." He said it provides for an advisory council to be appointed by the Governor and the Legislature, which advisory council will consult with Nevada's attorney general in order to develop guidelines for notifying the community. Senator James added all of the guidelines would be used to determine what the risk of recidivism would be for a certain offender. He pointed out the conditions which must be considered are outlined in section 13 of the bill. The chairman said all the factors listed would be considered by the community notification panel and the attorney general, which would lead to three levels of notification, as outlined in section 13(3) of S.B. 192.

Senator James stated section 14 of the bill gives immunity to law enforcement for notifying or failing to notify someone with regard to the statute. He added the statute would provide that law enforcement is not prevented from notifying anyone they deem requires notification, in order to protect the public or themselves.

Senator James moved to section 18 of S.B. 192, stating it was the first portion of the bill dealing with "sexually violent predators" and the "institution of involuntary civil commitment...." He said sections 19 through 26 include definitions, with section 28 specifically defining a sexually violent predator as someone who has committed a sexually violent offense, coupled with a finding of a mental abnormality or personality disorder which indicates a likelihood of reoffending. Senator James stated sections 29 through 33 deal with the adjudication of a person who has been determined to be a sexually violent predator. He said an adjudication can occur either before or after a person's imprisonment expires. Senator James pointed out a jury of 12 persons must agree unanimously on a verdict stating a person is a sexually violent predator, and further decide if the person will be committed to a program for treatment for sexually violent predators or an alternative form of treatment.

Senator James stated the legislation provides the administrator of the Mental Hygiene and Mental Retardation Division of the Department of Human Resources (MHMR) will set up treatment programs. He added once an individual is committed to a program, that individual will be there until he or she is determined

not to be dangerous any longer. Senator James pointed out the commitment will be civil, and is not designed to punish or to exact retribution from the individual so committed. He said the committed person "should be able to live like a civilian...be allowed to have visitors and to engage in normal activities within their confinement." The chairman reminded the committee that the individual who has been committed to a program has already completed his or her term of incarceration.

Senator James stated the legislation provided that once each year a committed person can petition for release from the program or, if the person does not waive his or her right to petition for release once a year, he or she is automatically deemed to have requested release. He said once a request for release has been received by the district attorney and the court, a probable cause hearing will be scheduled, at which time the adjudication procedures will be repeated, pursuant to sections 36-39 of S.B. 192.

Senator James said the final sections of the bill empower MHMR to adopt the regulations necessary to administer the entire program, set forth enactment clauses, and establishes how the initial advisory panel will be appointed.

The first persons to testify with respect to S.B. 192 was David Sarnowski, Chief Criminal Deputy Attorney General, State of Nevada, Office of the Attorney General, and Mariah L. Sugden, Senior Deputy Attorney General, State of Nevada, Office of the Attorney General, assigned to the Department of Motor Vehicles and Public Safety (DMV & PS) Mr. Sarnowski indicated the DMV & PS would be impacted practically, as well as financially, should the legislation pass. He informed the committee members that Attorney General Frankie Sue Del Papa supports the bill "in concept," and stands ready to offer the assistance of her staff "...to make this the best possible piece of legislation, so the people of the state are protected." Mr. Sarnowski stated he had compared S.B. 192 to the statutes of the state of Washington upon which it is modeled, and has studied a Washington Supreme Court opinion entitled, In re Young, 857 P.2d 989 (Wash. 1993). A copy of the opinion is included with these minutes in the Legislative Counsel Bureau Research Library as Exhibit D. Also attached to these minutes as Exhibit E,* housed in the library, is a decision of the Minnesota Supreme Court, In re Phillip Jay Blodgett (no citation included). Mr. Sarnowski indicated in this case the court upheld a statute similar to the one in Washington "against a number of constitutional challenges." He added, " Your bill drafters must have taken great pains...a few of the infirmities the Washington Supreme Court saw in

*on file with minutes

their statutory scheme have already been addressed in the bill draft proposal." Mr. Sarnowski reiterated S.B. 192 is designed to be civil in nature and not punitive. He added he believed it was important that the Legislature express its collective intent in that regard, since the decisions set forth state criminals are not subject to "double jeopardy." Mr. Sarnowski stated it was important that the supervisory agencies which will be involved if the legislation is passed, "...will have a very practical involvement in the process...providing records, witnesses, moving prisoners...which will have a fiscal impact." He indicated he hoped such agencies would step forward at some point in the hearing process on S.B. 192. Mr. Sarnowski said passage of the bill would have an obvious impact on the offices of the district attorney and public defender in all localities, since they will bear the burden of litigating the cases which are brought before them. He indicated representatives of these offices, together with district court judges should testify before the committee.

Ms. Sugden reiterated Attorney General Del Papa's support for the legislation. She stated the attorney general had proposed a statewide sexual offender registration system during the last session of the Legislature. Ms. Sugden said the DMV & PS is currently expanding database resources in order to accommodate more stored information.

Senator Titus asked Mr. Sarnowski if he had a "ballpark" figure concerning the cost of the programs set forth in S.B. 192. Mr. Sarnowski answered he did not, but suggested prison officials or parole and probation may be able to provide some information regarding persons who may be subject to the commitment program. He suggested a commitment facility may be the item of highest cost initially, since the feeling is that there be no connection between the civil and criminal commitment. Senator Titus asked if the treatment programs established in the state of Washington have a good record of success. Mr. Sarnowski stated he was not qualified to answer the question, but indicated testimony could be provided by other persons in that regard.

Senator Titus asked, "Since you are keeping the civil and criminal so separate...there is not any way the civil part can become part of plea bargaining...?" Mr. Sarnowski answered: "I am not going to say it could never be...it may be that in order to avoid pleading to a charge...early in the process, they may plead to an offense which is not in this list." He added even if someone did not plead to one of the enumerated offenses, if violence was used to do something of a sexual nature, it would have to be taken into an account. Senator

James said at the civil commitment stage, the district attorney can show that a prior act would have been a sexually violent offense as defined in the statute developed from this legislation.

Senator James stated he had discussed the matter of cost with Robert Bayer of the Department of Prisons, who indicated he did not believe there would be a large fiscal impact on the department. He said the reason the fiscal impact connected with S.B. 192 would be low, is that there would be a relatively small category of offenders. Senator James referred to the earlier question regarding success of treatment programs and advised the committee members of a program on the ABC network entitled, "Turning Point" which studied how treatment programs have worked in the state of Washington in the past two years. He said he had a copy of that program if anyone wished to view the same. Senator James stated one person who had been interviewed had said, "I will commit these offenses again if you let me out...and I would just as soon be treated here."

Senator Adler asked if any of the committed persons could be placed within the mental health unit of the prisons. Mr. Sarnowski answered, "I think the closer you make the nexus between the correctional side of the house and the mental health side of the house, the more risk you run in having a finding that may be adverse to the whole process." Senator Adler asked if housing could be utilized at the Lake's Crossing facility. Mr. Sarnowski answered he did not know if the capacity at that facility could absorb additional persons. Senator Adler indicated there were two groups of persons, those who had been previously adjudicated as having committed a violent sexual offense, and those who suffer from a mental abnormality or personality disorder, which would make that person likely to commit a sexually violent offense. Mr. Sarnowski indicated the Washington statute inherently applies only to dangerous offenders. Senator Adler asked if someone who had no previous record, "...but was really strange and came to the attention of the local authorities could have a petition filed against him." Senator James answered that was not how the statute would apply and was not possible under S.B. 192. He stated a person would have to have been adjudicated to have committed a sexually violent offense.

The next person to testify was John P. Lukens, Chief Deputy District Attorney, Sexual Assault/Child Abuse Unit, Clark County, Nevada. Mr. Lukens stated the unit has recently been renamed "Crimes Against Women and Children's Unit." He said the unit consists of himself and three deputies at this time, and they are responsible for prosecuting all crimes which would fall under S.B. 192 which are

committed in Clark County. Mr. Lukens referred to language in the bill which states, "If substantial bodily results to the victim, the jury may assess the sentence at life without the possibility of parole." He said this language poses a problem, i.e., if the defendant has a prior conviction which cannot be presented to a jury hearing the present case. Mr. Lukens stated the language dealing with the jury being able to determine a sentence of life with or without parole should be changed to provide for a separate penalty hearing, at which time the jury could be advised of a defendant's past history. Senator James responded that the crime of sexual assault on a child under the age of 16 years which carries a penalty of life without the possibility of parole is not discretionary with a jury if the party is found guilty.

Mr. Lukens said there was also the question of whether crimes which are subject to lifetime supervision should include the entire list of misdemeanors and gross misdemeanors which are set forth in S.B. 192. He cited as examples indecent exposure and gross lewdness. Mr. Lukens said generally those crimes do not advance to a sexual predator type of crime. He set forth as an example, urinating in public. He also cited a conviction for "statutory sexual seduction" could involve a 19-year-old-boy who has sexual relations with a 15-year-old girl, a gross misdemeanor, which does not generally lead to sexual predator implications.

Senator Adler agreed, indicating there were misdemeanors listed which should perhaps be removed, such as "annoyance of a minor," which is not necessarily a sexual offense. He said he had the same concerns as Mr. Lukens, that "...we may be turning minor offenses into lifetime supervision offenses." Senator James indicated the offenses he had wished to focus upon were sexual assault, sexual battery, child pornography, child prostitution, incest, sex with a child, open or gross lewdness with a child, indecent exposure (involving a child), and sex with a dead person. He asked Mr. Lukens if he agreed those offenses should be left in to the bill. Mr. Lukens said he did, "...if open or gross lewdness and indecent exposure involved conduct with a child." Senator James asked Mr. Lukens if he wished the committee to reconsider any more charges listed which were minor offenses, and Mr. Lukens answered, "statutory sexual seduction if the perpetrator is under 21 years." He referenced Nevada Revised Statutes (NRS) 200.368.

Mr. Lukens stated the next issue he wished to address was the matter of establishing that a sexually violent offense had been committed. He said in order to do that, as a practical basis, the prosecutor should be able to use the defendant's conviction in a criminal trial as conclusive proof that "...that aspect

of the statute has been satisfied...and once that has been established, it is established for all subsequent hearings." Mr. Lukens added he did not believe it should be necessary for a victim "...to come back time after time...to establish that she was in fact the victim of a sexually violent offense." He stated in the contemplation of the proposed law, "...we ought to be able to use a conviction that may be 15 or 20 years old, because that person may well have spent 17 of those last 20 years in prison, where he hasn't been committing any crimes."

Mr. Lukens expressed concern over the anticipated cost to the counties if the legislation is passed, and likened it to "unfunded mandates." He said since there are approximately 300 persons in prison now who may be eligible to go into the commitment program, "...we would have a tremendous amount of cases to review immediately, to determine if these people would qualify." Mr. Lukens added the defendants would be entitled to expert testimony, and the cost would be substantial. Senator James pointed out the district attorneys would be filing the petitions, and would have the discretion to determine if such case should be filed. He disagreed that it was a "mandate," and added, "I think it is giving the tools to the district attorney to initiate these proceedings against people he or she thinks are going to be dangerous to the community." Senator James stated, "Protecting children from these kind of people is not free...." He asked Mr. Lukens to provide the committee with whatever facts and figures he might have regarding costs. Mr. Lukens suggested the "county financial people" could do so. He also referred to Senator James' use of the term "discretionary," and an earlier question from Senator Titus regarding whether the process could be used as plea bargaining, and stated, "It most certainly can."

Mr. Lukens stated the Clark County District Attorney's Office supports the concept of S.B. 192, not only the aspect of confinement of sexually violent predators, but also the lifetime supervision factor.

Senator Titus referred again to the matter of plea bargaining. She stated, "I would hate to spend all this money...set up this very elaborate scheme of things...just to put another arrow in the quiver...one more thing to bargain before a case comes forward." Senator Titus added she would like to have some reassurance that the program would work and be used for the protection of the public. Mr. Lukens responded, "There are certainly cases where there is no question this would be used...extreme cases...it would be a valuable tool to protect the public in instances like that." He added, "Fortunately for us there are very few...but when you find them, you have to deal with them...this is the type of tool we could

use...." Senator Titus asked Mr. Lukens if he was familiar with how the program was working in the state of Washington. Mr. Lukens answered it was working to the extent it would keep dangerous sexual predators off the streets. He added, however, "The day-to-day volume...that is yet to be known." Mr. Lukens indicated there are still no answers as to whether treatment was effective because the programs are so new.

The next person to testify was Suzann Denton-Pratt, Licensed Clinical Social Worker, Oasis Counseling Associates, Las Vegas, Nevada. Ms. Pratt indicated she was not speaking for the organization at this time, since they had not had enough time to obtain an official sanction by their state or national boards. She said she would speak from personal experience which occurred in another state, regarding a pedophile who was 70 years old at the time of his arrest. Ms. Pratt stated by the time district attorneys in two different counties had finished investigating the case, they had identified 16 victims, five of whom were willing to testify. She referred to section 13(b) of S.B. 192, which indicates age should be a mitigating factor in determining release, and stated, "Age is not a factor in a nonviolent pedophile...and probably not in a violent one either." Therefore, Ms. Pratt stated, "I do not see that as a mitigating factor as far as release is concerned." She said age was not a barrier to perpetration. Ms. Pratt said an adolescent is much more amenable to treatment. Senator James said the language of section 13(b) related to the factors which may or may not be taken into account for community notification. Ms. Pratt answered she believed the community needed to be notified regardless of age.

Ms. Pratt referred to earlier discussion regarding "statutory sexual seduction" and said she was reluctant to have it removed from the list contained in section 4 of the bill. She said it was her observation that pedophiles begin their perpetration in adolescence. Mr. Pratt mentioned the fact that the legislation provides for a 15-year petition which would evidence a lack of recurrence, and the perpetrator could be removed from supervision.

Senator Titus asked Ms. Pratt if she was familiar with treatment programs for sexual offenders and the success rate connected thereto. Ms. Pratt answered she had not been involved with such programs, but another person who would testify before the committee had been involved. She did say, however, that she had studied literature which indicated the programs "were not terribly successful with adults...but much more with adolescents."

The next person to speak to the committee was Sandi Levy Barbero, Licensed Clinical Social Worker, Executive Director, Southwest Passage, Las Vegas, Nevada. Ms. Barbero thanked the committee members for allowing the public to participate in the hearings on S.B. 192. She indicated the bill was very important. Ms. Barbero stated Southwest Passage was a small mental health organization, which addresses the needs of many people "who fall between the cracks, because there may not be money available to serve them, or because they speak the Spanish language. She said children are treated from the ages of two or three years through adolescence. Ms. Barbero stated the organization also treats perpetrators. She stated she had experience treating the area of sexual trauma in at least four states. Ms. Barbero said the bill has "tremendous merit for those of us who treat both the survivors and the perpetrators...." However, she stated, there is an area which is not being addressed, i.e., the limited number of persons on a sexual assault team, who do not have time to do a thorough job. Ms. Barbero suggested expanding the number of officers through the district attorney's offices who can serve on a sexual assault team. She also said they should "look at the quality of service to the community that the psychotherapists have." Ms. Barbero stated, "Just because a person has a license to do business as a psychtherapist does not mean they have the qualifications to work with this very difficult clientele." She said perpetrators "are the best cons I have ever seen in my life." Ms. Barbero indicated she always has associates working with her, in order to "check out my perceptions." She said mental health and corrections are not mutually exclusive and mental health professionals have to be highly skilled and trained. Ms. Barbero indicated the mental health professionals must work with police officers who are doing investigations and the district attorney's office. She stated it must be a "close knit team, where the objective is the protection of the victim and the community."

Ms. Barbero said it was very important to have different programs for those who are perpetrators because they are mentally retarded. She also stated she believed there would have to be additional parole and probation personnel in order to handle the scope of the programs if the legislation is passed. Ms. Barbero concluded by saying it appears Nevada law does not provide an opportunity for an alleged perpetrator to initiate psychotherapy immediately. She said in some other states, "admitting and disclosing" so a perpetrator can immediately be treated is a major consideration in determining if a person is incarcerated. Ms. Barbero indicated in many cases, "...with intensive monitoring, psychotherapy and intervention...a person can either remain in the community or a specialized halfway house."

Senator Adler stated it was his understanding that "most adult perpetrators are not very rehabilitable anyway...." He asked, "Why would we want to set up a system where they are not punished?" Ms. Barbero said she had never been in a state where she had accepted into treatment the kinds of perpetrators that have not been adjudicated or incarcerated. She added, "There was no chance of that...because they plea-bargained...and they are still in denial." Senator Adler referred to an earlier comment by Ms. Barbero that juvenile sexual offenders were "more treatable." Ms. Barbero replied her personal experience showed that with intensive treatment, juvenile sex offenders are more "rehabilitable" because you can reach them better. She added it was not true that adults are not "rehabilitable."

Senator Washington referred to earlier testimony that "most sex offenders are con artists and very manipulative," and asked Ms. Barbero to explain such manipulation. She answered these persons have spent a lifetime lying in order to protect themselves because of sexual or domestic violence, abandonment or abuse in their "family of origin." Ms. Barbero added, "People are not born sex perpetrators with rage." She said these persons are "charming and pleasant" and from every walk of life. She indicated their "main hallmark was their ability to get by." Ms. Barbero added, "They will set up and groom the victim for as long as it takes...." She concluded, "Their thinking processes are extremely distorted...that is one of the things that makes them so dangerous."

Senator James advised Ms. Barbero that S.B. 192 attempts to set up treatment programs for dangerous individuals, not those who are "kind and loving." Ms. Barbero responded that the "kind and loving" people can be very dangerous also. Senator James indicated they are attempting to identify those persons who have the potentiality for violent acts. He said the bill also attempts to provide for an indefinite commitment for those persons until they are no longer a danger to society. Ms. Barbero answered, "That would be rare...to be able to show...with that particular profile...that they would never be a danger to society."

Senator James said the way the system operates at this time, if a person goes through the "normal prison system" and there is no civil commitment potential, a person can leave prison with a sexual predator background "...can go put up a sign in a grocery store that [he] is a baby-sitter." He said S.B. 192 will attempt to identify those persons, "...and insure that those types of situations don't arise, as much as we possibly can." Ms. Barbero indicated she was in complete support of the concept.

The next persons to testify were Sergeant (Sgt.) Russell J. Shoemaker, Sexual Assault Unit, and Lieutenant (Lt.) Lawrence Spinosa, Detective Bureau, Las Vegas Metropolitan Police Department (METRO). Lt. Spinoza indicated the unit he is connected with, which handles crimes against youth and families, "handles several thousand sex crimes each year." He stated METRO is in favor of the legislation. Lt. Spinoza asked at what point the petition for commitment would be filed, before sentencing, during the trial or while the perpetrator is in prison. Senator James answered the district attorney may file the petition before or after a person's release from confinement. He added persons convicted of certain offenses, even if he or she has not been classified as a sexual predator, will be required to participate in treatment programs within the prison. Senator James added a separate treatment program for sexually violent predators would be set up through the Department of Human Resources. Lt. Spinoza indicated he approved and did not feel great additional expense would be involved.

Sgt. Shoemaker indicated he has 15 years service with METRO, 9 years of which has been spent dealing with sexually related crimes, specifically sexual abuse of children. He said he has supervised the investigation of over 4,000 cases. Sgt. Shoemaker stated, "These people believe what they are doing is OK...and we are all wrong in our view of their activities." He added, "They go through tremendous strains to make it look right...they are manipulators." Sgt. Shoemaker said there were four basic areas they deal with: "We try to prevent it from happening...if it does happen, we try to identify the people...we do our best to prosecute each and every case we can...and we would like to see the perpetrators isolated...." He said he feels S.B. 192 speaks to all four of those points and added, "If I knew I was going to be watched for, perhaps, all the rest of my life, I think it might affect the way I behave." Additionally, he said, "These people don't just do it once...they will do it as long as they can get away with it. Unfortunately, we are not good at tracking them." Sgt. Shoemaker stated the system now provides for a sex offender to register only in the jurisdiction in which he lives. He added if the person visits another area of the state, people in that area would not know he was so registered. Sgt. Shoemaker praised the legislation for its reference to identification by genetic markers, since that is not currently done in the state.

Sgt. Shoemaker stressed the importance of isolating a perpetrator, saying: "We need to put them some place where they are safe...and our families and communities are safe from them." He added, "They will perpetrate over and over again."

Sgt. Shoemaker indicated they had a list of 12 persons in Clark County at this time who would fall into the category set forth in S.B. 192. Senator Adler asked what "categories of crimes" those 12 persons would fall into. Sgt. Shoemaker stated four persons "specifically perpetrated against children," and the other eight were "violent sexual offenders...with brutal force employed." Senator Adler then referred to earlier comments by Mr. Lukens regarding the addition of the term "statutory sexual seduction" within the bill and asked if any of the 12 listed fell into that category. Lt. Spinoza responded there was no one and added, "I don't understand why that is even in there...."

Lt. Spinoza referred to the "grooming process" which is used by sexual perpetrators against children. He said they provide pornographic magazines and video tapes to young boys. Lt. Spinoza indicated he believed the legislation was a step in the right direction toward identifying the perpetrators.

Senator Washington asked if sexual deviancy progressed to a violent nature. Sgt. Shoemaker answered they do not normally see that happen in pedophile perpetrators. However, he said, "There are those who will take a child...have sexual contact with that child and murder the child...that is where they receive their gratification...there are very few...thank God...that do that."

Sgt. Shoemaker referred to section 4 of S.B. 192, regarding specifics on blood and saliva testing, and said it "dovetails" in with a proposal made by both Las Vegas Metropolitan Police Department and the Nevada Division of Investigation (NDI). He said this proposal was for a statewide tracking system which would have the facility to enable law enforcement to log such information.

Sgt. Shoemaker cited a case involving a 17-year-old that sexually assaulted eight persons over a 2-year period, and said he will be released from prison "in a few short years because of his age." He added, "He will begin the same activity the second he hits the streets...no doubt in my mind...and he agrees with me." Sgt. Shoemaker stated without the passage of the legislation, "...we will have no way of tracking him...or advising the community of his present location." Senator James said a person who is a juvenile and commits a crime, would fall within the definition of "sexually violent predator" and can undergo the same type of commitment proceedings as an adult.

The next person to testify was Thomas F. Pitaro, Attorney at Law, and Karen C. Winckler, Attorney at Law, both from Las Vegas, Nevada. Mr. Pitaro advised the

committee that he believed there should be "extensive additional hearings on the bill." He stated, "This has to be one of the most draconian bills I have ever seen in any society that purports to call itself intelligent, reasonable or free." Mr. Pitaro stated the bill would create a "sex police" that would attempt to monitor by psychological testing and prediction what is going to happen in the future. He referred to testimony by METRO concerning the number of sex crimes they deal with each year and said, "As I look at the bill, I would assume that almost all those people, if convicted, would fall within the provisions...they said they could only find eight or 10...I find that difficult to believe." Mr. Pitaro accused the committee of "engaging in political rhetoric, which this bill appears to be...." He said no one is opposed to getting the violent sexual predator out of the community. However, he asked, "What is a violent sexual crime under this bill?" He referred to one classification listed in the legislation, that is, "annoyance of a minor" and stated, "I have to tell you...as the father of five kids, I annoy minors every day of my life." Mr. Pitaro indicated under the provisions of S.B. 192, he could be subject to conviction of annoyance of a minor, carrying a penalty of "lifetime sexual treatment" and possible incarceration. He added, "If that isn't a bizarre law, I don't know what is." Senator James asked Mr. Pitaro how he felt concerning other classifications, such as "sexual assault," "child prostitution," "incest," and "sex with a child." He added he had requested the bill drafters place into the bill "all things involving violence or force or threat of violence in connection with a sexually motivated crime," and everything which involves a child who is a victim of a sex crime. The Chairman admitted there may be some categories which should be stricken from the bill. He reminded Mr. Pitaro that in order to have a "sexually violent offense," there must be the threat of violence. Mr. Pitaro asked Senator James, "Can you point to one sex crime that is not covered in this bill?" He reminded the chairman that METRO indicated they cover approximately 2,500 sex crimes each year. He also indicated he believed all 2,500 of those crimes would be included in the legislation. Mr. Pitaro stated, "You draft laws...with these overbroad statements we have to deal with." He then referred to the idea of a lifetime civil commitment which can be based upon a psychological test and said, "That is frightening." Senator James responded, "You have mischaracterized what the bill does...the bill quite clearly says that you are not committed civilly until you have had a trial in front of a jury of 12 people...." He reminded Mr. Pitaro that the jury would have to find the person has committed a sexually violent act, has a mental abnormality or personality disorder which would make it likely the person would commit such an act again. The chairman also stated the person who is being tested psychologically, has the right to have his own psychiatrist involved. He said the state will have "the burden of

proof" in the matter.

Mr. Pitaro stated he had been a criminal defense attorney for over 20 years, and has "dealt with the issues of overbroad criminal statutes," and reiterated the legislation was overbroad, and not addressing the matter of a "narrow group of people, who no matter what you do, are going to go out and commit violent crimes." He asked Senator James, "Can you think of anything more overbroad as a legal definition...as a mental abnormality...I cannot." Mr. Pitaro also stated there are many types and definitions of "personality disorders."

Senator James stated, "While you have continued to mischaracterize the provisions of the bill, I want to point out where you have done so." He said the definitions of "sex offense" and "sexually violent predator" are separate. The chairman continued, "The broader definition of all the sex crimes which you talked about is defined as 'sexual offense," which is in section 3...'sexually violent offense' is a different thing." He reiterated that crime includes the use or threat of force or violence in connection with the crime. Senator James also reminded Mr. Pitaro that the legislation provides that a mental abnormality or personality disorder is likely to cause the person to commit another sexually violent offense in the future. He added, "This is much more narrow than you say it is."

Senator Adler indicated there were drafting problems regarding listing of misdemeanors and gross misdemeanors. Mr. Pitaro responded some of those offenses were defined as "sexually violent offenses" and added, "In my 20 years...I have never seen a hint of violence in some of those [offenses]." He referred again to psychological testing and stated, "This bill wants to have standardized testing...a person can...determine a personality disorder and from that give an opinion to predict the future...from that you are going to incarcerate people." Mr. Pitaro concluded:

> I am still opposed to portions of this bill. It's not that if you are opposed to portions of the bill and the unconstitutionality...you are somehow in favor of children being raped and murdered. Those sort of arguments are counterproductive and they offend me. What I am saying is, this bill has problems. If you people want to work with it, fine. But to expect me to be able to analyze this thing in reading it this morning...in five minutes of looking at this, I saw a lot of concerns which I think reasonable people should have.

Senator James expressed his willingness to work with whomever wishes to improve the bill. He added:

> The difficulty I have with your testimony, Mr. Pitaro, is I think you have mischaracterized a lot of the bill. Frankly, I don't think you read section 33. When you make the statement that these determinations are going to be made by a simple standardized test submitted to a court...I don't think you have read it...section 33 indicates the kind of test evidence which will come into the hearings....

Mr. Pitaro pointed out the wording of section 33 included language in which the court may hear the test evidence "within its discretion." He also said the bill referred to a "professionally qualified person," and asked the chairman, "Where is that defined? Is that person a family counselor...a therapist...?" Senator James replied a court always has the discretion to decide what evidence is presented, and an appeal lies for an abuse of discretion.

Senator James stated:

> I don't want to argue about the fine points of evidence in this hearing. We are drafting a bill. What we are trying to do is come up with a bill that addresses this problem. You have lambasted the whole bill...you said it sets up 'sex police'...that it would apply to every offense. The fact is, it wouldn't. We have taken a bill that has been upheld by the courts of two states already as constitutional, and tried to improve upon it where the dissenting and concurring opinions in those cases have indicated there might be constitutional problems...that is what we have here...a bill that has been supported by every other witness here today, including the attorney general's office, local law enforcement and the district attorney's office. I don't think the bill is nearly as bad as you think it is.

Senator James added, "If you think some of the definitions are too broad, we can work on those definitions...but I don't think it is constructive to come in and say the whole bill is terrible and should be thrown out." He stated there would be more hearings on the bill, and he invited Mr. Pitaro to participate. The chairman added, "I would like it to be constructive...I would like you to come in after you have read the whole bill, instead of saying, 'This is what it says,' when it

doesn't." Mr. Pitaro responded he did not appreciate the senator saying he had not read the bill. He added, "You have not shown where I misconstrued this...you were the one who talked about violent people, and yet the bill includes 'annoyance of a minor.'" Senator James responded, "Annoyance of a minor is not under the violent act...I already showed you that the definition does not include annoyance of a minor, unless it includes the use of force or violence." He agreed, however, that definition probably should not be included.

Mr. Pitaro referred to language in the bill which states, "...a person professionally qualified to evaluate sexual violent predators," and stated, "I have absolutely no idea what that would mean, and I don't think anyone in this room does." Senator Titus referred to earlier testimony from persons who were licensed therapists.

Ms. Winkler stated she would appreciate being able to attend future hearings on S.B. 192, since she felt the bill was quite extensive and should be analyzed carefully. She said she would ask the committee to address some questions regarding section 3(1) of the bill, regarding lifetime supervision. Ms. Winkler stated the bill "takes away the discretion of the court to look at a situation and determine whether or not that would be appropriate under certain circumstances." She asked if the committee would consider if the language should be changed from "shall include [a special sentence of lifetime supervision]" to "may include...." Ms. Winkler stated she has had cases in her practice as a criminal defense attorney, in which sexual assault is in fact a "date rape" or as a result of a relationship. She said she did not believe those situations would fall within "what the committee is trying to address." Ms. Winkler stated "date rape" or a rape within a relationship is still violent. She said because a person becomes violent within a relationship, does not mean that person will continue that behavior.

Ms. Winkler next referred to section 6(3), which states, "...an attempt to commit any offense listed...," and said she believed this was overbroad and perhaps should be removed from the bill. She turned to the matter of the testing process and said, "My concern is that Nevada's mental health system does not have a reputation of high regard in the country...it is in a lot of trouble right now." She asked, "Are we going to have a special group of people who are going to be specially trained?" Ms. Winkler wondered if that could be better defined. She also referred back to METRO's estimate of 2,500 persons each year who are arrested for sexual crimes. She indicated she felt the testing might overburden Nevada's mental health system. Ms. Winkler suggested the Nevada mental health

professionals should be asked to testify regarding who would do testing and lifetime supervision. She also asked if there was going to be a special unit within the parole and probation system to administer the lifetime supervision. Senator James indicated the state of Washington has special parole and probation officers who are trained in this area.

Senator James indicated some of the concerns of Mr. Pitaro and Ms. Winkler may be worked out in the "regulatory stage" when regulations are adopted for development of the treatment program. He said those persons would be the experts who could testify on behalf of the state.

Ms. Winkler testified:

> I have noticed in some of the legislation which is not pending regarding drug and alcohol abuse, that the prison and parole and probation are directed to define those people and to have directors and program directors for certain areas. Perhaps this bill would be better served if it included a specialist to manage that...to provide for specialized parole and probation officers who would be trained in this area.

Senator James indicated there was legislation around the country which addressed various portions of what is contained in S.B. 192 . He stated: "What this bill is trying to do...is not just pass a law for community notification or sex offender registration...it tries to deal with it...all together." Mr. Pitaro stated he agreed if a bill was to be drafted, "it should identify the specific problem and narrowly tailor a law to deal with that specific problem." He added, "We all know when we pass laws that aren't well thought out and narrowly tailored at this stage, we have to come back and try to resolve the problems at a later stage." Mr. Pitaro stated he was willing to work with the committee on the legislation.

Senator Adler cited a case of a person who was a known pedophile, who was working as a school bus driver. He pointed out the idea of the legislation was to be able to track repeat offenders "to make sure they don't end up in those types of positions." Senator Adler added they needed to discuss the matter of developing a special mental health unit which would be able to deal with sexual offenses, together with a unit of officers to deal with offenders. He added, "The caseload could kill the program." Mr. Pitaro agreed and reiterated, "What we have to do if we are going to draft a bill is make it narrow...the way I read it, it can be

so broad that it encompasses everybody...." He added, "I think it is important for you people to know there are different viewpoints, so you can make the best legislation possible."

Senator Washington asked Senator James if he had initially stated the number of persons who would be affected by the legislation "was minute." He asked if a parole and probation officer would have to deal with hundreds of pedophiles or sex offenders. Senator James indicated he had discussed the matter with a prison official who had indicated there was a "very small population that this bill defines."

Senator Lee asked Mr. Pitaro if he had indicated the bill would in part create "some sort of sex police." Mr. Pitaro agreed. Senator Lee stated: "When we have drug police, homicide police...all kinds of police...can you explain what I sense to be offensive to you with having sex police?" Mr. Pitaro answered his problem was with the drafting of the bill in that it would encompass "all sorts of things...a pervasive area within government dealing with a whole host of issues that don't relate to the concern you have." He emphasized he was not referring to a "sexual assault unit" within a police department.

Senator Titus stated, "My name is on [this bill] as a cosponsor, but I still appreciate the fact you are here...to point out some of the real serious problems." Senator James responded that other than a few definitional things, which were the result of his instructions to the bill drafter that they include "all crimes against children and all the violent sex crimes," he did not believe the bill was overbroad in its definitional aspects. Senator James indicated they were not attempting to create "sex police," but rather were attempting to enhance the ability of law enforcement and prosecutors to deal with people who are very dangerous. He directed a comment to Mr. Pitaro: "I am willing to work with you on this. I am not willing to accept your characterization of the bill as a political ploy or your characterization of the bill as creating sex police. It frankly is not that."

Mr. Pitaro said it was his wish that any legislation which is passed will be acceptable to everyone, but reiterated his concerns regarding what he feels are the overbroad aspects of the language now being considered.

Senator James indicated he appreciated Mr. Pitaro's remarks, and thanked him for his testimony.

The next to testify was James Jackson, Nevada State Public Defender. Mr. Jackson stated he was testifying as the public defender and also as a representative of the Nevada State Department of Human Resources. He stated he had reviewed the bill and has spoken with the acting director of the department, Charlotte Crawford. Mr. Jackson said they had only one request and stated:

> This is a bill that has the potential to affect a number of departments...not only my own office, but the Lake's Crossing Center for the mentally ordered offender, the Nevada Mental Health Institute, the Nevada rural clinics, and the Division of Child and Family Services. We would simply ask for the opportunity to assess more completely and further the potential impacts and report those to you...so we can let you know the overall position of the department.

The next to speak was Patricia Justice, representing Clark County, Nevada. Ms. Justice reiterated Mr. Jackson's statement. She said the legislation would have an impact on local government and it would be necessary to study the bill further.

There being no business to come before the committee, Senator James adjourned the hearing at 11:20 a.m.

RESPECTFULLY SUBMITTED:

Marilyn Hofmann,
Committee Secretary

APPROVED BY:

Senator Mark A. James, Chairman

DATE: ~~Feb.~~ March 1, 1995

SENATE BILL NO. 192—SENATORS JAMES, O'CONNELL, ADLER, AUGUSTINE, COFFIN, JACOBSEN, LEE, LOWDEN, MATHEWS, MCGINNESS, O'DONNELL, PORTER, RAGGIO, RAWSON, REGAN, SHAFFER, TITUS, TOWNSEND AND WASHINGTON

FEBRUARY 3, 1995

Referred to Committee on Judiciary

SUMMARY—Makes various changes related to criminal and civil laws pertaining to sexual deviants. (BDR 15-171)

FISCAL NOTE: Effect on Local Government: Yes.
Effect on the State or on Industrial Insurance: Yes.

EXPLANATION—Matter in italics is new; matter in brackets [ ] is material to be omitted.

AN ACT relating to sexual deviants; increasing the penalty for certain crimes related to sex; providing for lifetime supervision of sex offenders; expanding the definition of sexual offense for the purpose of requiring sex offenders to have their blood and saliva tested for inclusion in the central repository for Nevada records of criminal history; requiring the director of the department of prisons to establish and administer a program for the treatment of sex offenders; requiring the attorney general to adopt guidelines for notification of the release of sex offenders from confinement; providing for the involuntary civil commitment of persons found to be sexually violent predators; requiring the mental hygiene and mental retardation division of the department of human resources to adopt certain regulations; and providing other matters properly relating thereto.

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

Section 1. NRS 200.366 is hereby amended to read as follows:

200.366 1. A person who subjects another person to sexual penetration, or who forces another person to make a sexual penetration on himself or another, or on a beast, against the victim's will or under conditions in which the perpetrator knows or should know that the victim is mentally or physically incapable of resisting or understanding the nature of his conduct, is guilty of sexual assault.

2. [Any] *Except as otherwise provided in subsection 3, a* person who commits a sexual assault shall be punished:

(a) If substantial bodily harm to the victim results from the actions of the defendant committed in connection with or as a part of the sexual assault:

(1) By imprisonment in the state prison for life, without *the* possibility of parole; or

(2) By imprisonment in the state prison for life with *the* possibility of parole, eligibility for which begins when a minimum of 10 years has been served.

(b) If no substantial bodily harm to the victim results:

EXHIBIT C

(1) By imprisonment in the state prison for life, with *the* possibility of parole, beginning when a minimum of 5 years has been served; or

(2) By imprisonment in the state prison for any definite term of 5 years or more, with eligibility for parole beginning when a minimum of 5 years has been served.

[(c) If the victim was a child under the age of 14 years, by imprisonment in the state prison for life with possibility of parole, eligibility for which begins when a minimum of 10 years has been served.]

3. *A person who commits a sexual assault against a child under the age of 16 years shall be punished:*

(a) If the crime results in substantial bodily harm to the child, by imprisonment in the state prison for life without the possibility of parole.

(b) If the crime does not result in substantial bodily harm to the child, by imprisonment in the state prison for:

(1) Life with the possibility of parole, beginning when a minimum of 20 years has been served; or

(2) Any definite term of not less than 5 years nor more than 20 years, without the possibility of parole.

4. The trier of fact in a trial for sexual assault shall determine whether substantial bodily harm has been inflicted on the victim in connection with or as a part of the sexual assault, and if so, the sentence to be imposed upon the perpetrator.

Sec. 2. NRS 200.400 is hereby amended to read as follows:

200.400 1. As used in this section, "battery" means any willful and unlawful use of force or violence upon the person of another.

2. Any person convicted of battery with intent to kill, commit [sexual assault,] mayhem, robbery or grand larceny shall be punished by imprisonment in the state prison for not less than 2 years nor more than 10 years, and may be further punished by a fine of not more than $10,000 . [, except that if a battery with intent to commit a sexual assault is committed, and if the crime results in substantial bodily harm to the victim, the person convicted shall be punished by imprisonment in the state prison for life, with or without the possibility of parole, as determined by the verdict of the jury, or the judgment of the court if there is no jury.]

3. *A person convicted of battery with intent to commit sexual assault shall be punished:*

(a) If the crime results in substantial bodily harm to the victim, by imprisonment in the state prison for life with or without the possibility of parole, as determined by the verdict of the jury or the judgment of the court if there is no jury;

(b) If the crime does not result in substantial bodily harm to the victim and the victim is 16 years of age or older, by imprisonment in the state prison for not less than 2 years nor more than 10 years; or

(c) If the crime does not result in substantial bodily harm to the victim and the victim was a child under the age of 16, by imprisonment in the state prison for not less than 5 years nor more than 15 years, without the possibility of parole,

and may be further punished by a fine of not more than $10,000.

4. If the penalty is fixed at life imprisonment with the possibility of parole, eligibility for parole begins when a minimum of 10 years has been served.

Sec. 3. Chapter 176 of NRS is hereby amended by adding thereto a new section to read as follows:

1. When a defendant pleads or is found guilty of a sexual offense, the judge shall include in sentencing, in addition to any other penalties provided by law, a special sentence of lifetime supervision to commence after any period of probation or any term of imprisonment and period of release on parole.

2. The special sentence of lifetime supervision must begin upon the release of a sex offender from incarceration.

3. A person sentenced to lifetime supervision may petition the court for release from lifetime supervision. The court shall grant a petition for release from a special sentence of lifetime supervision if:

(a) The person has not committed a crime for 15 years after his last conviction or release from incarceration, whichever occurs later; and

(b) The person is not likely to pose a threat to the safety of others if released from supervision.

4. For the purposes of this section, "sexual offense" means a violation of NRS 200.366, subsection 1 of NRS 200.368, subsection 3 of NRS 200.400, NRS 200.710, 200.720, subsection 2 of NRS 200.730, NRS 201.180, paragraph (a) or subparagraph (2) of paragraph (b) of subsection 1 of NRS 201.195, paragraph (b) of subsection 1 of NRS 201.210, paragraph (b) of subsection 1 of NRS 201.220, NRS 201.230 or 201.450 or a second or subsequent violation of NRS 207.260.

Sec. 4. NRS 176.111 is hereby amended to read as follows:

176.111 1. When a defendant is convicted of a sexual offense, the court, by order, shall direct the defendant to submit to a blood and saliva test, to be made by qualified persons, under such restrictions and directions as the court deems proper. The tests must include analyses of his blood to determine its genetic markers and of his saliva to determine its secretor status. The court shall order that the results of the tests be submitted to the central repository for Nevada records of criminal history.

2. For the purposes of this section, "sexual offense" means:

(a) Sexual assault pursuant to NRS 200.366;

(b) Statutory sexual seduction pursuant to NRS 200.368;

(c) *Battery with intent to commit a sexual assault pursuant to NRS 200.400;*

(d) Use of a minor in producing pornography pursuant to NRS 200.710;

[(d)] *(e)* Promotion of a sexual performance of a minor pursuant to NRS 200.720;

[(e)] *(f) Possession of a visual representation depicting the sexual conduct of a person under 16 years of age pursuant to NRS 200.730;*

(g) Incest pursuant to NRS 201.180; [or

(f)] *(h) Solicitation of a minor to engage in acts constituting the infamous crime against nature pursuant to NRS 201.195;*

(i) Open or gross lewdness pursuant to NRS 201.210;

(j) Indecent or obscene exposure pursuant to NRS 201.220;

(k) Lewdness with a child pursuant to NRS 201.230 [.] ;

(l) Sexual penetration of a dead human body pursuant to NRS 201.450;

(m) Annoyance or molestation of a minor pursuant to NRS 207.260; or

(n) An attempt to commit any offense listed in this subsection.

Sec. 5. Chapter 209 of NRS is hereby amended by adding thereto the provisions set forth as sections 6 and 7 of this act.

Sec. 6. *"Sex offender" means any person who has been convicted of:*

1. A violation of NRS 200.366, subsection 1 of NRS 200.368, subsection 3 of NRS 200.400, NRS 200.710, 200.720, subsection 2 of NRS 200.730, NRS 201.180, paragraph (a) or subparagraph (2) of paragraph (b) of subsection 1 of NRS 201.195, paragraph (b) of subsection 1 of NRS 201.210, paragraph (b) of subsection 1 of NRS 201.220, NRS 201.230 or 201.450;

2. A second or subsequent violation of NRS 207.260; or

3. An attempt to commit any offense listed in subsection 1 or 2.

Sec. 7. *The director, with the approval of the board, shall establish and administer a program for the treatment of sex offenders.*

Sec. 8. NRS 209.011 is hereby amended to read as follows:

209.011 As used in this chapter, unless the context otherwise requires, the terms defined in NRS 209.015 to 209.085, inclusive, *and section 6 of this act* have the meanings ascribed to them in those sections.

Sec. 9. NRS 209.451 is hereby amended to read as follows:

209.451 1. If any offender:

(a) Commits any assault upon his keeper or any foreman, officer, offender or other person, or otherwise endangers life;

(b) Is guilty of any flagrant disregard of the regulations of the department or of the terms and conditions of his residential confinement; or

(c) Commits any misdemeanor, gross misdemeanor or felony,

he forfeits all deductions of time earned by him before the commission of that offense, or forfeits such part of those deductions as the director considers just.

2. *If a sex offender refuses or otherwise fails to participate in the program for the treatment of sex offenders established pursuant to section 7 of this act, he forfeits all deductions of time earned by him before the commission of that offense, or forfeits such part of those deductions as the director considers just.*

3. If any offender commits a serious violation of any of the regulations of the department or of the terms and conditions of his residential confinement, he may forfeit all or part of such deductions, in the discretion of the director.

[3.] *4.* A forfeiture may be made only by the director after proof of the offense and notice to the offender. The decision of the director regarding a forfeiture is final.

[4.] *5.* The director may restore credits forfeited for such reasons as he considers proper.

Sec. 10. Chapter 213 of NRS is hereby amended by adding thereto the provisions set forth as sections 11 to 14, inclusive, of this act.

Sec. 11. *1. The board shall establish by regulation a program of lifetime supervision of sex offenders to commence after any period of probation or any term of imprisonment and any period of release on parole. The program must*

provide for the lifetime supervision of sex offenders by parole and probation officers.

2. Lifetime supervision shall be deemed a form of parole for the limited purposes of the applicability of the provisions of subsection 9 of NRS 213.1095, NRS 213.1096, 213.10973 and subsection 2 of NRS 213.110.

3. A person who violates a condition imposed on him pursuant to the program of lifetime supervision is guilty of a felony.

Sec. 12. *1. There is hereby created an advisory council for community notification. The council consists of:*

(a) Three members, of whom no more than two may be of the same political party, appointed by the governor; and

(b) Four members, of whom no more than two may be of the same political party, appointed by the legislative commission.

2. Each member serves a term of 4 years. Members may be reappointed for additional terms of 4 years in the same manner as the original appointments.

3. Any vacancies occurring in the membership of the council must be filled in the same manner as the original appointments.

4. The council shall consult with and provide recommendations to the attorney general concerning guidelines and procedures for the notification of the community where a sex offender is to be released on parole.

Sec. 13. *1. The attorney general shall consult with the advisory council for community notification and shall establish guidelines and procedures for the notification of the community where a sex offender will be released on parole.*

2. The guidelines and procedures established by the attorney general must identify and incorporate factors relevant to the sex offender's risk of recidivism. Factors relevant to the risk of recidivism include, but are not limited to:

(a) Conditions of release that minimize the risk of recidivism, including probation or parole, counseling, therapy or treatment;

(b) Physical conditions that minimize the risk of recidivism, including advanced age or debilitating illness; and

(c) Any criminal history of the sex offender indicative of a high risk of recidivism, including:

(1) Whether the conduct of the sex offender was found to be characterized by repetitive and compulsive behavior;

(2) Whether the sex offender committed the sexual offense against a child;

(3) Whether the sexual offense involved the use of a weapon, violence or infliction of serious bodily injury;

(4) The number, date and nature of prior offenses;

(5) Whether psychological or psychiatric profiles indicate a risk of recidivism;

(6) The offender's response to treatment;

(7) Any recent threats against a person or expressions of intent to commit additional crimes; and

(8) Behavior while confined.

3. The procedures for notification established by the attorney general must provide for three levels of notification by the law enforcement agency in whose jurisdiction the sex offender is to be released depending upon the risk of recidivism by the sex offender as follows:

(a) If the risk of recidivism is low, other law enforcement agencies likely to encounter the sex offender must be notified.

(b) If the risk of recidivism is moderate, in addition to the notice required by paragraph (a), schools and religious and youth organizations must be notified.

(c) If the risk of recidivism is high, in addition to the notice required by paragraphs (a) and (b), the public must be notified through means designed to reach members of the public likely to encounter the sex offender.

4. The attorney general shall establish procedures for the evaluation of the risk of recidivism and implementation of community notification that promote the uniform application of the notification guidelines required by this section.

5. This section must not be construed to prevent law enforcement officers from providing community notification concerning any person who poses a danger to the welfare of the public.

Sec. 14. *The law enforcement agency in whose jurisdiction a sex offender will be released on parole shall disclose information regarding the sex offender to the appropriate parties pursuant to the procedures established by the attorney general pursuant to section 13 of this act. The law enforcement agency is immune from civil liability for damages for disclosing or failing to disclose information regarding a sex offender pursuant to the provisions of this section.*

Sec. 15. NRS 213.107 is hereby amended to read as follows:

213.107 As used in NRS 213.107 to 213.160, inclusive, *and sections 11 to 14, inclusive, of this act,* unless the context otherwise requires:

1. "Board" means the state board of parole commissioners.
2. "Chief" means the chief parole and probation officer.
3. "Division" means the division of parole and probation of the department of motor vehicles and public safety.
4. "Residential confinement" means the confinement of a person convicted of a crime to his place of residence under the terms and conditions established by the board.
5. *"Sex offender" means any person who has been or is convicted of a sexual offense.*
6. *"Sexual offense" means:*

(a) A violation of NRS 200.366, subsection 1 of NRS 200.368, subsection 3 of NRS 200.400, NRS 200.710, 200.720, subsection 2 of NRS 200.730, NRS 201.180, paragraph (a) or subparagraph (2) of paragraph (b) of subsection 1 of NRS 201.195, paragraph (b) of subsection 1 of NRS 201.210, paragraph (b) of subsection 1 of NRS 201.220, NRS 201.230 or 201.450;

(b) A second or subsequent violation of NRS 207.260; or

(c) An attempt to commit any offense listed in paragraph (a) or (b).

7. "Standards" means the objective standards for granting or revoking parole or probation which are adopted by the board or the chief. [parole and probation officer.]

Sec. 16. NRS 213.1099 is hereby amended to read as follows:

213.1099 1. Except as otherwise provided in this section and NRS 213.1215, the board may release on parole a prisoner otherwise eligible for parole under NRS 213.107 to 213.160, inclusive.

2. In determining whether to release a prisoner on parole, the board shall consider:

(a) Whether there is a reasonable probability that the prisoner will live and remain at liberty without violating the laws;

(b) Whether the release is incompatible with the welfare of society;

(c) The seriousness of the offense and the history of criminal conduct of the prisoner; and

(d) The standards adopted pursuant to NRS 213.10987 and the recommendation, if any, of the chief . [parole and probation officer.]

3. When a person is convicted of any felony and is punished by a sentence of imprisonment, he remains subject to the jurisdiction of the board from the time he is released on parole under the provisions of this chapter until the expiration of the term of imprisonment imposed by the court less any good time or other credits earned against the term.

4. Except as otherwise provided in NRS 213.1215, the board may not release on parole a prisoner whose sentence to death or to life without possibility of parole has been commuted to a lesser penalty unless it finds that the prisoner has served at least 20 consecutive years in the state prison, is not under an order [that he] *to* be detained to answer for a crime or violation of parole or probation in another jurisdiction, and that he has no history of:

(a) Recent misconduct in the institution, and that he has been recommended for parole by the director of the department of prisons;

(b) Repetitive criminal conduct;

(c) Criminal conduct related to the use of alcohol or drugs;

(d) Repetitive sexual deviance, violence or aggression; or

(e) Failure in parole, probation, work release or similar programs.

5. In determining whether to release a prisoner on parole pursuant to this section, the board shall not consider whether the prisoner will soon be eligible for release pursuant to NRS 213.1215.

6. The board shall not release on parole a sex offender until the law enforcement agency in whose jurisdiction a sex offender will be released on parole has been provided an opportunity to give the notice required by the attorney general pursuant to section 14 of this act.

Sec. 17. Chapter 433A of NRS is hereby amended by adding thereto the provisions set forth as sections 18 to 41, inclusive, of this act.

Sec. 18. *The legislature hereby finds and declares that:*

1. A small group of sexual predators suffers from mental abnormalities or personality disorders that render them dangerous to the public and likely to commit sexually violent offenses.

2. The existing procedures for involuntary court-ordered admission are inadequate to address the high risk that sexually violent predators will commit sexually violent offenses upon release from detention. Sexually violent predators do not have access to potential victims while detained and therefore may not engage in observable behavior which demonstrates that they remain

dangerous to others and that further treatment would be in their best interests, as required by NRS 433A.310 to renew their detention. Sexually violent predators also require different modalities of treatment for a longer period of time than that offered by public or private mental health facilities as the result of traditional involuntary court-ordered admissions.

3. In order to ensure that the public is protected from sexually violent predators and that sexually violent predators receive proper treatment and care, it is necessary to provide for the involuntary civil commitment of sexually violent predators to the custody of the program for the treatment of sexually violent predators established under the regulations adopted by the division pursuant to section 41 of this act. The program for the treatment of sexually violent predators is not to be established to punish or to exact retribution against persons who have committed prior sexually violent offenses, but is to be established to provide appropriate treatment and care for such persons in a secure facility.

Sec. 19. *As used in sections 18 to 41, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 20 to 28, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 20. *"Automatic request for release" means a request for release without the approval of the administrator deemed to have been filed pursuant to subsection 2 of section 37 of this act by a person committed to the custody of the program if the person fails to waive his right to file an annual request for release.*

Sec. 21. *"Court" means the district court in which a petition alleging that a person is a sexually violent predator or a request for release is filed.*

Sec. 22. *"Mental abnormality" means a congenital or acquired condition affecting the emotional or volitional capacity of a person which predisposes that person to the commission of criminal sexual acts to the degree that the person constitutes a menace to the health and safety of others.*

Sec. 23. *"Person professionally qualified to evaluate sexually violent predators" means a person possessing the professional qualifications to evaluate a person alleged to be a sexually violent predator in compliance with the regulations adopted by the division pursuant to paragraph (a) of subsection 2 of section 41 of this act.*

Sec. 24. *"Petition" means a petition alleging that the person named therein is a sexually violent predator.*

Sec. 25. *"Program" means the program for the treatment of sexually violent predators established under the regulations adopted by the division pursuant to section 41 of this act.*

Sec. 26. *"Sexually motivated" means that one of the purposes for which a person committed an act was his sexual gratification.*

Sec. 27. *"Sexually violent offense" means:*

1. Sexual assault.

2. Battery with intent to commit a sexual assault.

3. A violation of any of the provisions of NRS 201.195, 201.210, 201.220, 201.230 or 207.260 which:

(a) At the time of sentencing for the act, was found to have involved the use or the threatened use of violence or force against the victim; or

(b) During the hearing of a petition to determine whether the person named therein is a sexually violent predator, is determined beyond a reasonable doubt to have involved the use or the threatened use of violence or force against the victim.

4. An act of murder in the first or second degree, kidnaping in the first or second degree, false imprisonment, burglary or invasion of the home which:

(a) At the time of sentencing for the act, was found to have been sexually motivated; or

(b) During the hearing of a petition to determine whether the person named therein is a sexually violent predator, is determined beyond a reasonable doubt to have been sexually motivated.

5. An attempt to commit any offense listed in subsections 1 to 4, inclusive.

6. An offense committed in any place other than the State of Nevada which, if committed in this state, would be punishable as an offense listed in subsections 1 to 5, inclusive.

Sec. 28. *"Sexually violent predator" means any person who has been convicted of a sexually violent offense and who suffers from:*

1. A mental abnormality; or

2. A personality disorder,

which makes the person likely to commit a sexually violent offense.

Sec. 29. *1. If:*

(a) Before or after the sentence of a person convicted of a sexually violent offense expires; or

(b) Before or after the term of confinement of a person found to have committed a sexually violent offense as a juvenile expires,

it appears that the person may be a sexually violent predator, the district attorney of the county where the person was convicted or found to have committed a sexually violent offense as a juvenile may file a petition in the district court alleging that the person is a sexually violent predator and stating sufficient facts to support the allegation.

2. If the person named in the petition is not in confinement when the petition is filed, the petition must contain the allegation that the person has recently committed an overt act that, when considered in conjunction with the other facts alleged in the petition, is sufficient to establish that there is probable cause to believe the person is a sexually violent predator.

Sec. 30. *1. No later than 72 hours after the filing of a petition pursuant to section 29 of this act, the court shall hold a hearing to determine whether probable cause exists to believe that the person named in the petition is a sexually violent predator. The court shall, upon the request of counsel for the person named in the petition, grant a recess in the hearing to determine probable cause for not more than 5 days to give counsel an opportunity to prepare for the hearing.*

2. If at the conclusion of the hearing the court determines that probable cause exists, the court shall:

(a) Order that the person named in the petition be taken into custody and detained at a mental health facility for an evaluation by a person professionally qualified to evaluate sexually violent predators to determine whether the person is a sexually violent predator.

(b) Schedule a hearing to be held before a jury to determine whether the person named in the petition is a sexually violent predator. The hearing must be held no later than 45 days after the finding of probable cause is made.

Sec. 31. *1. At the hearing to determine whether probable cause exists to believe that the person named in a petition is a sexually violent predator, and in any subsequent proceeding before the district court relating to his commitment to or release from the program, the person named in the petition is entitled to retain counsel to represent him. If the person is indigent, the court shall appoint counsel, who may be the public defender or his deputy, to represent the person in any such proceeding.*

2. The court shall award compensation to any counsel appointed pursuant to subsection 1 for his services in an amount determined by the court to be fair and reasonable. Compensation for appointed counsel must be charged against the county in which the petition is brought.

3. The district attorney or a deputy district attorney shall represent the state in all proceedings relating to the commitment of a person to the program or the release of a person from the program.

Sec. 32. *1. The hearing to determine whether a person is a sexually violent predator must be held before a jury of 12 persons. The district attorney and the person named in the petition are each entitled to exercise three peremptory challenges. The court may direct that not more than two jurors in addition to the regular jury be called and impaneled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who become unable or disqualified to perform their duties. If an alternate juror is required to replace a regular juror after the jury has retired to consider its verdict, the judge shall recall the jury, seat the alternate and resubmit the decision regarding the petition to the jury. In addition to the peremptory challenges otherwise allowed pursuant to this subsection, if one or two alternate jurors are to be impaneled, the district attorney and the person named in the petition are each entitled to one peremptory challenge, which may only be used against an alternate juror.*

2. At the hearing, the district attorney bears the burden of proving beyond a reasonable doubt that the person suffers from a mental abnormality or personality disorder which makes the person likely to commit a sexually violent offense. If the district attorney alleges in the petition that a prior act committed by the person constitutes a sexually violent offense:

(a) Because the act involved the use or the threatened use of violence or force against the victim, the district attorney bears the burden of proving beyond a reasonable doubt that the alleged sexually violent offense involved the use or the threatened use of violence or force against the victim.

(b) Because the act was sexually motivated, the district attorney bears the burden of proving beyond a reasonable doubt that the alleged sexually violent offense was sexually motivated as defined in section 26 of this act.

3. A unanimous verdict of the jury must be found to determine that the person named in the petition is a sexually violent predator. If the jury finds that the person named in the petition is a sexually violent predator, the jury shall consider whether other alternative courses of treatment within the least restrictive appropriate environment are in the best interests of the person. If

the jury finds that it is in the best interests of the person found to be a sexually violent predator to be committed to the custody of the program, the court shall enter an order committing the person to the custody of the program. If the jury finds that another alternative course of treatment is in the best interests of the person, the court shall enter an order requiring that the person be released.

Sec. 33. *1. In all proceedings relating to the commitment of a person to the program or the release of a person from the program, the court, within its discretion, may hear and consider all relevant evidence, including, but not limited to, the testimony of a person professionally qualified to evaluate sexually violent predators who participated in the evaluation of the person named in the petition, the testimony of any experts or qualified persons retained by the person named in the petition and the testimony of other witnesses.*

2. Except as otherwise provided in subsection 4 of section 37 of this act, in all proceedings relating to the commitment of a person to the program or the release of a person from the program, the person with respect to whom the proceedings are held shall be present and may, at the discretion of the court, testify.

Sec. 34. *1. Whenever the person named in the petition is subjected to an examination by a person professionally qualified to evaluate sexually violent predators pursuant to the provisions of sections 18 to 41, inclusive, of this act, the person named in the petition has the right to retain experts or other qualified persons to perform an examination on his behalf.*

2. The division shall permit an expert or other qualified person retained by the person named in the petition to have reasonable access to the person named in the petition and to all relevant medical and psychological records and reports. If the person named in the petition is indigent, upon his request or the request of his counsel, the court shall assist the person in obtaining an expert or other qualified person to perform an examination or to testify on the person's behalf at the hearing on the petition.

Sec. 35. *A witness subpenaed to testify in any proceeding related to the commitment of a person to the program or the release of a person from the program under the provisions of this chapter must be paid the same fees and mileage as is paid to a witness in the courts of the State of Nevada.*

Sec. 36. *1. A person committed to the custody of the program pursuant to sections 18 to 41, inclusive, of this act, shall undergo a complete examination at least once per year to evaluate his mental condition. The examination must be performed by a person professionally qualified to evaluate sexually violent predators selected by the division.*

2. A person professionally qualified to evaluate sexually violent predators shall have access to review all records concerning the person committed. Upon completion of his examination of the person committed, the person professionally qualified to evaluate sexually violent predators shall prepare a report concerning his conclusions regarding the mental condition of the person examined. The division shall provide a copy of the report to the clerk of the district court that committed the person to the program.

Sec. 37. *1. If at any time the administrator determines that a person committed to the custody of the program no longer suffers from a mental abnormality or personality disorder which makes the person likely to commit a sexually violent offense, the administrator shall notify the person that he has the approval of the administrator to file a request for release with the district court that committed him to the program. If the person files a request for release, the person shall serve a copy of the request for release upon the district attorney.*

2. A person committed to the custody of the program may also file a request for release without the approval of the administrator not more than once per year. The administrator shall, before the expiration of 1 year following the date upon which a person was committed to the custody of the program, and at intervals of 1 year thereafter, provide the person with written notice of the right to file a request for release without the administrator's approval. The notice must contain a waiver of the right to file a request for release. If the person fails to sign the waiver within 15 days after receipt of the notice, the person shall be deemed to have filed an automatic request for release. If a person files an automatic request for release, the administrator shall, within 10 days thereafter, provide written notice of that fact to the court that committed the person and to the district attorney. If the person files a request for release without the approval of the administrator, the person shall serve a copy of the request upon the district attorney.

3. Upon receipt of written notice from the administrator that a person committed to the custody of the program has filed an automatic request for release, or upon receipt of a request for release filed without the approval of the administrator, the court shall schedule a hearing to show cause whether facts exist that warrant a hearing on whether the mental condition of the person has so changed that the person no longer suffers from a mental abnormality or personality disorder which makes the person likely to commit a sexually violent offense. The hearing to show cause must be held no later than 30 days after the date upon which:

(a) The person filed a request for release without the approval of the administrator; or

(b) The court received notice from the administrator that the person filed an automatic request for release.

4. At the hearing to show cause, the person requesting release from the program shall have the right to be represented by counsel, but the person is not entitled to be present. If the court at the hearing to show cause determines that probable cause exists to believe that the person's mental condition has so changed that the person no longer suffers from a mental abnormality or personality disorder which makes the person likely to commit a sexually violent offense, the court shall schedule a hearing in accordance with section 38 of this act.

Sec. 38. *1. If a person committed to the custody of the program files a request for release with the approval of the administrator, or if the court pursuant to subsection 4 of section 37 of this act determines that probable cause exists to believe that the person's mental condition has so changed that*

the person no longer suffers from a mental abnormality or personality disorder which makes the person likely to commit a sexually violent offense, the court shall schedule a hearing to be held no later than 45 days after:

(a) The date on which the request for release with the approval of the administrator was filed; or

(b) The date on which the court determined that probable cause exists to believe that the person's mental condition has so changed that the person no longer suffers from a mental abnormality or personality disorder which makes the person likely to commit a sexually violent offense.

A hearing scheduled pursuant to this subsection must be conducted in the same manner and must provide to the person requesting release the same constitutional protections as an initial hearing to determine whether a person is a sexually violent predator.

2. No later than 30 days before the date of the hearing, if the district attorney so requests, the person committed to the custody of the program shall undergo a complete examination by a person professionally qualified to evaluate sexually violent predators chosen by the district attorney. The person committed to the custody of the program may also retain an expert or other qualified person to perform an examination. Upon request of the person if he is indigent, the court shall assist the person in obtaining an expert or other qualified person to perform an examination or to testify on the person's behalf at the hearing on the request for release.

3. At the hearing, the district attorney bears the burden of proving beyond a reasonable doubt that the petitioner continues to suffer from a mental abnormality or personality disorder which makes the person likely to commit a sexually violent offense. Unless the jury determines, by a unanimous verdict, that the person must not be released from the program, the court shall enter an order requiring that the person be released.

Sec. 39. *1. If a person committed to the custody of the program has previously:*

(a) Filed a request for release without the administrator's approval; or

(b) Filed an automatic request for release,

and the court at the hearing to show cause found that probable cause was not shown that facts exist which warrant a hearing before a jury on whether the mental condition of the person has so changed that the person no longer suffers from a mental abnormality or personality disorder which makes the person likely to commit a sexually violent offense, the court shall deny any subsequent request for release filed without the approval of the administrator or any automatic request for release unless the person requesting release presents additional facts upon which the court could find that the condition of the person committed has so changed that a hearing before a jury is warranted.

2. Upon receipt of any request for release filed without the approval of the administrator, the court shall endeavor whenever possible to review the request to determine whether it is based upon frivolous grounds. If after review of the request the court determines that the request is based upon frivolous grounds, the court shall deny the request.

Sec. 40. *An appeal may be taken from a judgment or an order of the court in the same manner and under the same circumstances as an appeal taken from a civil case originating in a district court.*

Sec. 41. *1. The division shall adopt regulations establishing the program, including regulations:*

(a) Specifying guidelines for the treatment and care of persons committed to the custody of the program;

(b) Ensuring that persons committed to the custody of the program are securely confined and that appropriate procedures are followed to protect the safety of persons in the custody of the program and of the public; and

(c) Providing that a person committed to the custody of the program is permitted to:

(1) Wear his own clothing and to keep and use his personal possessions, except when the deprivation of such possessions is necessary for his treatment, protection or safety, for the protection or safety of others or for the protection of property within the facility;

(2) Have access to reasonable space for the storage of personal possessions, within the limitations of the facility;

(3) Have approved visitors within reasonable limitations;

(4) Have reasonable access to a telephone to make and receive telephone calls;

(5) Have reasonable access to materials to write letters; and

(6) Receive and send correspondence through the mail within reasonable limitations.

2. The division shall adopt regulations setting forth the professional qualifications necessary for a person to be professionally qualified to evaluate sexually violent predators.

3. The division shall in conjunction with the department of prisons make available to persons in the custody of the program mental health facilities.

Sec. 42. As soon as practicable after October 1, 1995:

1. The governor shall, pursuant to section 12 of this act, appoint three members to the advisory council for community notification for an initial term of 4 years commencing on January 1, 1996.

2. The legislative commission shall, pursuant to section 12 of this act, appoint four members to the advisory council for community notification for an initial term of 4 years commencing on January 1, 1996.

Sec. 43. The amendatory provisions of sections 1, 2 and 3 of this act do not apply to an offense which was committed before October 1, 1995.

Sec. 44. The amendatory provisions of sections 18 to 41, inclusive, of this act, apply to any person who has been convicted of, or has been found to have committed as a juvenile, a sexually violent offense as defined in section 27 of this act, irrespective of whether:

1. The offense was committed before, on or after October 1, 1995;

2. The person was sentenced for the offense before, on or after October 1, 1995; or

3. The person was released from confinement before, on or after October 1, 1995.

(30)

122 Wash.2d 1

In re the Personal Restraint Petition of Andre Brigham YOUNG, Petitioner.

In re the Detention of Andre Brigham YOUNG, Appellant.

In re the Personal Restraint Petition of Vance Russell CUNNINGHAM, Petitioner.

In re the Detention of Vance Russell CUNNINGHAM, Appellant.

Nos. 57837-1, 57838-9.

Supreme Court of Washington, En Banc.

Aug. 9, 1993.

As Amended Aug. 12, 1993.

Reconsideration Denied Sept. 20, 1993.

In separate actions, persons involuntarily committed as sexually violent predators challenged constitutionality of statutory scheme. The Supreme Court, Durham, J., held that: (1) commitment was civil in nature, and thus statutes violated neither ex post facto clause nor prohibition against double jeopardy; (2) detainee must be permitted to appear in court within 72 hours to contest probable cause; (3) statute was not void for vagueness; (4) state was required to prove dangerousness of unincarcerated detainees through evidence of recent overt acts; and (5) jury unanimity was required.

First detainee's case reversed; second detainee's case affirmed in part and remanded.

Johnson, J., dissented and filed opinion in which Utter and Smith, JJ., joined.

1. Statutes ⇐235

Categorization of particular statute as civil or criminal is largely matter of statutory construction; court looks to language of statute and legislative history, analyzing purpose and effect of statutory scheme.

2. Constitutional Law ⇐203
Double Jeopardy ⇐23

Statutory scheme authorizing involuntary commitment of sexually violent predators after such persons had served their criminal sentences was civil rather than criminal in nature, and thus did not violate double jeopardy clause or prohibition against ex post facto laws. U.S.C.A. Const. Art. 1, § 10, cl. 1; Amends. 5, 14; West's RCWA 71.09.010 et seq.

3. Constitutional Law ⇐255(1)

Individual's liberty interest is important and fundamental, and thus state law impinging on interest survives due process challenge only if it furthers compelling interest and is narrowly drawn to serve those interests. U.S.C.A. Const.Amends. 5, 14; West's RCWA Const. Art. 1, § 3.

4. Constitutional Law ⇐255(5)

State has compelling interest both in treating sex predators and in protecting society from their actions, for purpose of determining whether civil commitment statute violates due process. U.S.C.A. Const. Amends. 5, 14; West's RCWA 71.09.010.

5. Constitutional Law ⇐255(5)
Mental Health ⇐433

Statutory scheme for civil commitment of sexually violent predators satisfied due process requirement that persons committed be both mentally ill and dangerous; evidence that treatment of sex offenders was difficult or impossible did not preclude finding that affected persons suffered from mental disorder and statute, applicable only to "sexually violent offenders" inherently applied only to dangerous persons. U.S.C.A. Const.Amends. 5, 14; West's RCWA 71.09.010 et seq.

6. Constitutional Law ⇐255(5)
Mental Health ⇐433

Statutory scheme for civil commitment of sexually violent predators satisfied due process requirement that nature and duration of commitment bear some reasonable relation to purposes of commitment, i.e., treatment and incapacitation. U.S.C.A.

EXHIBIT D

N A S M H P D
LEGAL ISSUES
MENTAL HEALTH
MENTAL RETARDAT
ALCOHOLISM
DRUG ABUSE

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

HUBERT H. HUMPHREY III
ATTORNEY GENERAL

PUBLIC RESOURCES SECTION
SUITE 200
520 LAFAYETTE ROAD
ST. PAUL, MN 55155-4199
TELEPHONE: (612) 297-1075

January 14, 1994

Stuart Broad
NASMHPD
66 Canal Center Plaza
Suite 302
Alexandria, VA 22314

Mary Barrett
Assistant Attorney General
Office of the Attorney General
P.O. Box 40124
Olympia, WA 98504-0124

Dear Mr. Broad and Ms. Barrett:

I am enclosing for your information a copy of the Minnesota Supreme Court's decision in In re Phillip Jay Blodgett, Alleged Psychopathic Personality, affirming the Minnesota Court of Appeals' decision. If you have any questions or wish to discuss this matter further, please contact me.

Sincerely,

Kathy Meade Hebert

KATHY MEADE HEBERT
Assistant Attorney General
(612) 296-7216

Enclosure
HEBE:FA1

January 24, 1994

COMMITMENT OF VIOLENT SEXUAL OFFENDER UNDER PSYCHOPATHIC PERSONALITY COMMITMENT ACT AFFIRMED BY SUPREME COURT OF MINNESOTA

In Re: Phillip Jay Blodgett *(January 14, 1992, C-9-92-844)*

COPY OF ENTIRE DECISION AND DISSENT IS ATTACHED.

Robert W. Glover, Ph.D.
Executive Director

Mary C. Barrett, Chair
Association of State
Mental Health Attorneys

Stuart Broad
Counsel

STATE OF MINNESOTA

IN SUPREME COURT

C9-92-844

Court of Appeals

Simonett, J.
Dissenting, Wahl, J., Keith, C.J., & Tomljanovich, J.

In Re: Phillip Jay Blodgett,
Alleged Psychopathic Personality

Filed January 14, 1994
Office of Appellate Courts

SYLLABUS

Minnesota's Psychopathic Personality Statute does not violate substantive due process nor does it violate the equal protection guaranties of the United States Constitution and the Minnesota Constitution.

Affirmed.

Heard, considered, and decided by the court en banc.

OPINION

SIMONETT, Justice.

Petitioner Phillip Jay Blodgett challenges the constitutionality of the Minnesota Psychopathic Personality Commitment Act, Minn. Stat. § 526.09-.10 (1992), under which he has been committed to the Minnesota Security Hospital as a psychopathic personality. We conclude, as did the lower courts, that the Act is constitutional, and affirm.

Blodgett, now 28, has a history of sexual misconduct and violence beginning when he was 16 years old. In January 1982, Blodgett was adjudicated a delinquent in Pierce County, Wisconsin, for having sexual contact with his brother. Seven months later, Blodgett was again found delinquent after being charged for misdemeanor battery of a social worker. In May of 1985, the Washington

County District Court found Blodgett guilty of a misdemeanor charge of violating a domestic abuse restraining order.

On September 18, 1985, three hours after his release from the Washington County Jail where he served time for convictions for burglary and obstructing the legal process, Blodgett broke into the home of the parents of his ex-girlfriend, entered the room where his ex-girlfriend was sleeping, and sexually assaulted her. For this conduct Blodgett pled guilty, on January 16, 1986, and was sent to prison on a charge of first degree burglary for entering a dwelling with the intent to commit criminal sexual conduct.

On May 9, 1987, while enrolled in the pre-release program at Lino Lakes (under which an inmate leaves the prison during the day but must return at night), Blodgett sexually assaulted a woman in the parking lot of a supermarket while attempting to steal her car. Blodgett grabbed the woman, pushed her into the front seat, shoved his hand in her mouth, hit her on the side of the head, put his hand between her legs and squeezed and rubbed her genital area. When the woman resisted and screamed for help, Blodgett asked her, "Do you want to die?" Five weeks later, June 15, 1987, while on supervised release to a half-way house and enrolled in a treatment program in St. Paul, Blodgett raped a 16-year-old girl both vaginally and anally. As a result of these incidents, Blodgett pled guilty to two counts of criminal sexual conduct in the second degree and was returned to prison.

Shortly before Blodgett's scheduled release date in 1991, Dr. Richard Friberg evaluated him pursuant to the Department of Corrections' new risk assessment and release procedures.[1] By letter

---

[1] Frank W. Wood, Risk Assessment and Release Procedures for Violent Offenders/Sexual Psychopaths (1991). The introduction to the section entitled Institution Procedures for Identification, Monitoring and Release of Public Risk Monitoring Cases reads as follows:

> These procedures are designed to create a uniform screening process and criteria to be used by institution program review teams for the identification of offenders already in or entering the corrections system whose behaviors prior to commitment or related to the offender's committing offense or during incarceration indicate that the offender is a candidate for civil commitment as a psychopathic personality or may represent a risk to the public upon release.

dated September 19, 1991. Dr. Friberg informed the Washington County Attorney that, in his view, Blodgett met the criteria for commitment under the psychopathic personality statute.

A petition for commitment was promptly filed by the Washington County Attorney, and an initial hearing was held on October 10 and 11, 1991. Evidence was received that Blodgett had an abused childhood in a dysfunctional family; that he had elevated MMPI scores and an addiction to both drugs and alcohol; and that although offered a "litany" of treatment programs, he had refused them all. The five psychologists who testified at the hearing agreed that Blodgett had an antisocial personality disorder, that he was chemically dependent, and that he was dangerous. Four of the five experts stated they felt Blodgett met the statutory definition of a psychopathic personality. When two of these four were questioned further about their understanding of the term "psychopathic personality," one, Dr. Richard Friberg, explained that he relied solely on Minn. Stat. § 526.09 for his definition. The other, Dr. James Jacobson, stated that he had read the statute and had a copy of the relevant case law. Dr. John Austin, who opposed Blodgett's commitment, stated he relied on "the definitions [he] was aware of in [the] Minnesota statute and at least the Minnesota Supreme Court's interpretation of that [statute] in [the] Pearson case." The court found by clear and convincing evidence that Blodgett is a psychopathic personality. Blodgett was committed to the Minnesota Security Hospital (MSH) in St. Peter and the hospital was ordered to file an evaluation report within 60 days. Sections 526.10, subd. 1, and 253B.18, subd. 2 (1992).

The MSH staff filed a report with the court, diagnosing Blodgett as suffering from polysubstance abuse and an antisocial personality disorder, but opposing his commitment as a psychopathic personality. A final court hearing was commenced on January 6, 1992, at which time Blodgett moved to dismiss the proceedings on the grounds "that Minnesota Statute Section 256.09 is unconstitutional." At the hearing, Dr. Jacobson, who had performed the second court-ordered examination, diagnosed Blodgett as having an antisocial disorder, a substance abuse disorder, and

a psychopathic personality, and said that Blodgett met the criteria of Minn. Stat. § 526.09. Dr. Michael Farnsworth, MSH senior staff psychiatrist, opposed commitment, contending that any treatment Blodgett could receive at the hospital would be "sham" or "placebo" treatment.

Finally, on April 2, 1992, the trial court issued its decision finding that Blodgett continued to meet the criteria for commitment as a psychopathic personality and that there was no reasonable, less restrictive alternative to commitment. After further determining that the statute was constitutional, the trial court ordered Blodgett committed to the security hospital for an indeterminate period of time.

On appeal, the court of appeals ruled that the trial court's finding that Blodgett was a psychopathic personality was not clearly erroneous and that Blodgett's commitment as a psychopathic personality was not unconstitutional. In re Blodgett, 490 N.W.2d 638 (Minn. App. 1992). Blodgett then petitioned this court for further review, raising, however, only the constitutional challenge. In other words, Blodgett does not challenge here the findings that he has an uncontrollable sexual impulse dangerous to others. We granted review.

Blodgett's claim of unconstitutionality has two parts: (1) that § 526.10 violates his right to substantive due process; and (2) that the statute violates equal protection under the Minnesota and United States Constitutions.[2]

I.

Minnesota, like other states, has wrestled long with the legitimate public concern over the danger posed by predatory sex offenders and the question of how to deal with that concern.[3] In

---

[2] We also granted leave to the Minnesota Civil Liberties Union to file an amicus brief. Because our review is limited to the issues raised by appellant Blodgett, we do not consider the additional issues raised by amicus.

[3] Minnesota is one of 13 jurisdictions with a sexual psychopath statute: Colorado, Connecticut, Illinois, Massachusetts, Minnesota, Nebraska, New Jersey, Oregon, Tennessee, Utah, Virginia, Washington, and the District of Columbia. Gary Gleb, Comment, Washington's Sexually Violent

(continued...)

1939, the Minnesota Legislature passed a law, now codified as Minn. Stat. § 526.10, providing for the civil commitment of any person found to be a psychopathic personality. The term "psychopathic personality" is defined as

> the existence in any person of such conditions of emotional instability, or impulsiveness of behavior, or lack of customary standards of good judgment, or failure to appreciate the consequences of personal acts, or a combination of any such conditions, as to render such person irresponsible for personal conduct with respect to sexual matters and thereby dangerous to other persons.

Minn. Stat. § 526.09. Originally, the laws relating to insane persons, rather than the laws relating to the dangerous insane, were made applicable to persons with a psychopathic personality. Minn. Stat. § 526.10 (1941). In 1969, § 526.10 was amended to make "the provisions of chapter 253A, pertaining to persons mentally ill and dangerous to the public," applicable to psychopathic personalities. Minn. Stat. § 526.10 (1969).[4]

Soon after its enactment, the psychopathic personality statute was challenged on the grounds that it was unconstitutionally vague. State ex rel. Pearson v. Probate Court of Ramsey County, 205 Minn. 545, 287 N.W. 297 (1939), aff'd, 309 U.S. 270 (1940). In responding to the vagueness challenge, this court in Pearson recognized that "[i]t would not be reasonable to apply the provisions of the statute to every person guilty of sexual misconduct nor even to persons having strong sexual

---

[3](...continued)
Predator Law: The Need to Bar Unreliable Psychiatric Predictions of Dangerousness from Civil Commitment Proceedings, 39 UCLA L. Rev. 213, 215 (1991).

In 1959, 26 states and the District of Columbia had sexual psychopath statutes but, except for the 13 jurisdictions above listed, have since repealed their statutes. See Alan H. Swanson, Comment, Sexual Psychopath Statutes: Summary and Analysis, 51 J. Crim. L. & Criminology 215, app. at 228-35 (1960-61).

[4] Chapter 253B, formerly chapter 253A, includes the discharge provisions, section 253B.18, subd. 15 (1992), whereby a person committed as a psychopathic personality remains confined until showing to the satisfaction of the commissioner and the special review board that the person "is capable of making an adjustment to open society, is no longer dangerous to the public, and is no longer in need of inpatient treatment and supervision."

propensities. Such a definition would * * * make the act impracticable of enforcement, and perhaps, unconstitutional in its application." Consequently, the court employed principles of statutory interpretation to narrow the reach of the statute to only

> those persons who, by a habitual course of misconduct in sexual matters, have evidenced an utter lack of power to control their sexual impulses and who, as a result, are likely to attack or otherwise inflict injury, loss, pain or other evil on the objects of their uncontrolled and uncontrollable desire.

205 Minn. at 555, 287 N.W. at 302. Our court determined that, with these additional criteria, the act was not so indefinite or uncertain as to make it void for vagueness under the Fourteenth Amendment of the United States Constitution. The case was then appealed to the United States Supreme Court.

In a unanimous opinion authored by Chief Justice Charles Evans Hughes, the United States Supreme Court affirmed, holding the statute, as construed, was not so vague and indefinite as to be invalid. Minnesota ex rel. Pearson v. Probate Court of Ramsey County, Minn., 309 U.S. 270, 274 (1940), aff'g 205 Minn. 545, 287 N.W. 297 (1939). In the Court's view, "[t]hese underlying conditions, calling for evidence of past conduct pointing to probable consequences are as susceptible of proof as many of the criteria constantly applied in prosecutions for crime." Id. The Court also rejected Pearson's claim that the statute violated the Equal Protection Clause of the Fourteenth Amendment. Using a rational basis test, the Court stated that "the legislature is free to recognize degrees of harm, and it may confine its restrictions to those classes of cases where the need is deemed to be clearest." Id. at 275. Finally, the Court found Pearson's procedural due process objections premature, but assumed "that the Minnesota courts will protect appellant in every constitutional right he possesses." Id. at 277. Recently, the constitutionality of our psychopathic personality statute was again upheld by the Eighth Circuit in Bailey v. Gardebring, 940 F.2d 1150 (8th Cir. 1991), cert. denied, 112 S. Ct. 1516 (1992).

In this case, Blodgett argues that Pearson should not be controlling because in recent years the United States Supreme Court has decided a number of cases, especially Foucha v. Louisiana, 112 S.Ct. 1780 (1992), which have restricted a state's power to confine individuals in a noncriminal setting.[5] To live one's life free of physical restraint by the state is a fundamental right; curtailment of a person's liberty is entitled to substantive due process protection. See, e.g., Foucha, 112 S.Ct. at 1785; Jones v. United States, 463 U.S. 354, 361 (1983). The state must show a legitimate and compelling interest to justify any deprivation of a person's physical freedom. E.g., United States v. Salerno, 481 U.S. 739, 748 (1987).

Here the compelling government interest is the protection of members of the public from persons who have an uncontrollable impulse to sexually assault. In this case it has been clearly and convincingly established that Blodgett is dangerous, and that there is a substantial likelihood that he will sexually assault again, as he has in the past. Blodgett contends, however, that having served his allotted time in prison, he is entitled to his freedom.

The heart of Blodgett's argument is that although he may be socially maladjusted, he is not in any way mentally ill. And if he is not ill, he may not be confined by the state, unless and until convicted of another crime. Blodgett points to Foucha, which identified three categories of confinement in which a state, under its police power, may constitutionally deprive an individual of his or her liberty: (a) imprisonment of convicted criminals for purpose of deterrence and retribution; (b) confinement for persons mentally ill and dangerous; and (c) in "certain narrow circumstances, persons who pose a danger to others or to the community may be subject to limited confinement,"

---

[5] In Foucha v. Louisiana, 112 S.Ct. 1780 (1992), the United States Supreme Court held that a Louisiana civil commitment statute, which allowed a person acquitted by reason of insanity, who had an antisocial personality disorder but no longer a mental illness, to remain indefinitely committed to a mental hospital on the basis of dangerousness alone, violated substantive due process.

See also Addington v. Texas, 441 U.S. 418 (1979) (commitment for mental illness); and Jackson v. Indiana, 406 U.S. 715 (1972) (pretrial commitment of incompetent criminal defendant).

19

such as pretrial detention of dangerous criminal defendants. Id. at 1785-86. Blodgett says he does not fit within any of these three categories.

Blodgett's argument, really, is that Foucha has overruled Pearson, even though the United States Supreme Court has not said so. We believe, however, that Pearson may be considered either a sub-set of Foucha's second category (mentally ill and dangerous), or an additional category.[6]

The argument against the constitutionality of civil commitment for a psychopathic personality is that the condition is not a mental illness, at least not one medically recognized, or at least not yet. But while the term "psychopathic personality" is considered outmoded today, the reality it describes is not; this reality, even if it is not currently classified as a mental illness, does not appear to be a mere social maladjustment.

Mental illness is simply that, an illness, and should be treated no differently than other illnesses and with due respect for personal liberties. When, however, a person is both mentally ill "and dangerous to the public," our legislature has provided for commitment to the state security hospital. Minn. Stat. § 253B.18 (1992). In like measure, and with like concern, our legislature has provided for commitment of the "psychopathic personality" who, because of an uncontrollable sexual impulse, is dangerous to the public.

The psychopathic personality statute identifies a volitional dysfunction which grossly impairs judgment and behavior with respect to the sex drive. Compare Minn. Stat. § 253B.02, subd. 13 (1992) (defining mental illness). The psychopathic personality is sometimes equated with the medically recognized "anti-social personality disorder"; it is, however, limited to sexual assaultive

---

[6] It does not appear that the three categories mentioned in Foucha were meant to be exclusive. Minnesota, for example, provides for civil commitment without a finding of mental illness in three other situations, namely, Minn. Stat. § 353B.02, subd. 14 (1992) (mentally retarded), Minn. Stat. § 253B.02, subd. 2 (1992) (chemically dependent), and Minn. Stat. § 144.4172, subd. 8 (1992) (a health threat to others).

behavior and excludes mere sexual promiscuity.[7] It also excludes other forms of social delinquency. Whatever the explanation or label, the "psychopathic personality" is an identifiable and documentable violent sexually deviant condition or disorder.[8]

In applying the Pearson test, the court considers the nature and frequency of the sexual assaults, the degree of violence involved, the relationship (or lack thereof) between the offender and the victims, the offender's attitude and mood, the offender's medical and family history, the results of psychological and psychiatric testing and evaluation, and such other factors that bear on the predatory sex impulse and the lack of power to control it. Proof of the requisite condition must be by clear and convincing evidence.

As the dissent points out, there apparently have been instances of persons committed as psychopathic personalities who do not fit the Pearson definition. The fact that the statute has been misapplied on occasion is not a valid criticism of the statute itself. The remedy for misapplication is not to declare the statute unconstitutional but to appeal erroneous decisions and get them reversed.[9]

---

[7] See American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders 342-46 (3d ed. rev. 1987). The manual indicates that the antisocial personality disorder may at times be characterized by sexual promiscuity.

[8] "Sexual offenders have been found to present distorted and disturbed thought processes, as identified in previous research. For example, several studies have reported that men prone towards sexual violence and convicted rape offenders hold false beliefs, distorted perceptions, and irrational justifications concerning violence against women." Margit Henderson & Seth Kalichman, Sexually Deviant Behavior and Schizotypy: A Theoretical Perspective with Supportive Data, Psychiatric Quarterly, Vol. 61, No. 4 (Winter 1990) at p. 281. "[T]here are diagnostic implications for identifying schizotypic characteristics among sexual offenders." Id. at 282. In our case here, the trial court found that Blodgett had no insight into his misconduct and had no sense of guilt or remorse.

[9] See In re Rodriguez, 506 N.W.2d 660 (Minn. App. (1993), rev. denied (Minn. 1993). There the court of appeals reversed a commitment as a psychopathic personality, holding, as a matter of law, the statute does not cover a nonviolent sexual exhibitionist.

More pertinent to the facial challenge to the statute are the cases where the statute has been properly applied.[10]

The problem is not what medical label best fits the statutory criteria, but whether these criteria may, constitutionally, warrant civil commitment. Fifty-three years ago the answer was yes, but it is now suggested that the passage of years has outmoded that decision. Yet the "sexual predator" -- today's term for yesterday's "psychopathic personality" -- seems, if anything, on the increase, which may be related to the increase in dysfunctional families and substance abuse.[11]

It is next argued that a psychopathic personality condition is untreatable, and, therefore, confinement is equivalent to life-long preventive detention. But it is not clear that treatment for the psychopathic personality never works.[12] It also seems somewhat incongruous that a sexual offender

---

[10] See, e.g., Enebak v. Noot, 353 N.W.2d 544 (Minn. 1984). The petitioner was found to have an antisocial personality disorder and was civilly committed. He had sexually assaulted over 37 women in the 15 years prior to his commitment, leaving his last victim prior to commitment, a 16-year-old girl, paralyzed with fractured vertebrae. When transferred to an "open" hospital, he became sexually involved with a mentally retarded patient and on pass from the hospital sexually assaulted another young girl. See also Matter of Martenies, 350 N.W.2d 470 (Minn. App. 1984), rev. denied (Minn. 1984) (sexual sadist with history of sexual assaults).

See also In the Matter of: Dwight (NMN) Walton, ___ N.W.2d ___ (Minn. 1993), the companion appeal to Blodgett, also decided today. On January 13, 1986, Walton raped a 13-year-old girl, threatening to shoot her if she made any noise. The next day he forced a 19-year-old woman, at knife point, to have intercourse three times over the course of an hour, during which he moved her to different locations. He was convicted, put in prison, and eventually released on August 15, 1989. Less than a year later, on July 21, 1990, Walton broke into an apartment in a complex where he lived, later admitting he intended to commit rape, but fled when the woman screamed. At a party two months later, he partially disrobed a young woman who had passed out on a couch.

[11] See American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders 301.70 (3d ed. rev. 1987) and the clinical criteria listed. See also the Final Report of the Minnesota Attorney General's Task Force on the Prevention of Sexual Violence against Women (Feb. 1989) at 30.

[12] See, e.g., Barbara K. Schwartz, Ph.D., Effective Treatment Techniques for Sex Offenders, Psychiatric Annals, Vol. 22:6 (June 1992) at 319: "While popular opinion may continue to be 'nothing works,' thousands of professionals are exploring 'what works.'" As the author points out, therapists are working with behavioral reconditioning, cognitive-behavioral techniques, family

(continued...)

should be able to prove he is untreatable by refusing treatment. Cf. Matter of Wolf, 486 N.W.2d 421, 424 (Minn. 1992) (A confirmed alcoholic refusing all treatment may be involuntarily committed: "[r]espondent may never agree to be treated, but * * * the state has the power to keep trying.").

But even when treatment is problematic, and it often is, the state's interest in the safety of others is no less legitimate and compelling. So long as civil commitment is programmed to provide treatment and periodic review, due process is provided. Minnesota's commitment system provides for periodic review and reevaluation of the need for continued confinement. A person committed as a psychopathic personality may petition the Commissioner of Human Services at any time for a transfer to an open hospital or for a provisional discharge to a community or other residential treatment facility, or for a temporary pass. These relaxations of security hospital confinement provide an opportunity (and an incentive) for the committed person to demonstrate that he has mastered his sexual impulses and is ready to take his place in society. The patient can also petition for a full discharge. Minn. Stat. §§ 526.10 and 253B.18, subds. 5, 6, 7 & 15 (1992). De novo judicial review of the commissioner's decision is provided. Minn. Stat. § 253B.19 (1992). Further, committed persons have the right to an individualized written program plan; the right to periodic medical assessments; and the right to proper care and treatment, best adapted, according to contemporary professional standards, to rendering further confinement unnecessary. Minn. Stat. § 253B.03, subd. 7 (1992).

We do not read Foucha to prohibit Minnesota's commitment program for psychopathic personalities. In Foucha the confinement was for insanity and, when the insanity was shown to be

---

[12](...continued)
systems approaches, and the addictive model. See also Harry L. Kozol, Richard J. Boucher, & Ralph F. Garafalo, The Diagnosis and Treatment of Dangerousness, 18 Crime and Delinquency 371, 381 (1972).

in remission, the United States Supreme Court said Foucha had to be released.[13] Here, if there is a remission of Blodgett's sexual disorder, if his deviant sexual assaultive conduct is brought under control, he, too, is entitled to be released.[14] We conclude, therefore, that the psychopathic personality statute does not violate substantive due process.

II.

Nor do we think the psychopathic personality statute violates equal protection under either the federal or state constitution. Because the fundamental right of liberty is involved, we assume the United States Supreme Court would require a heightened degree of scrutiny for federal equal protection analysis. And we think no less is required under our state constitution. See State v. Russell, 477 N.W.2d 886, 889 (Minn. 1991), and also at 895 (Simonett, J., concurring opinion); and Mitchell v. Steffen, 504 N.W.2d 198, 210 (Minn. 1993) (Tomljanovich, J., dissenting opinion), pet. for cert. filed 62 U.S.L.W. 3350 (1993).

Blodgett's equal protection argument is obscure, but he apparently claims it is a denial of equal protection to deny sexual predators their liberty when others who may be dangerous but not recognized medically as mentally ill retain their personal freedom. This, however, is simply a variation of Blodgett's substantive due process argument, and the argument ignores the fact that the

---

[13] Foucha's criminal act was aggravated burglary and illegal discharge of a firearm. After Foucha regained his sanity, Louisiana sought to continue his confinement because he had been involved in several altercations while institutionalized, indicative of an antisocial personality, and the doctor said that he would not "feel comfortable" in certifying Foucha as nondangerous. Foucha, 112 S.Ct. at 1782-83. Foucha, of course, would not be committable under our psychopathic personality statute.

[14] Charles Pearson, the appellant in State ex rel. Pearson v. Probate Court of Ramsey County, 205 Minn. 545, 287 N.W. 297 (1939), aff'd, 309 U.S. 270 (1940), was, interestingly enough, released within the year after the United States Supreme Court affirmance of his commitment. See Dr. William D. Erickson, The Psychopathic Personality Statute: Need for Change 10 (1991) (unpublished paper presented by the Commissioner of Human Services to the legislature in 1991, appellant's appendix at 38).

sexual predator poses a danger that is unlike any other.[15] Amicus argues that it is unequal treatment to commit the psychopathic personality but not other criminal recidivist types, such as potential murderers and arsonists. But again, Pearson delineates genuine and substantial distinctions which define a class that victimizes women and children in a particular manner. See Bailey v. Gardebring, 940 F.2d 1150, 1153 (8th Cir. 1991) (also rejecting the equal protection claim).

III.

In this case the trial judge's findings of fact follow the statutory language of Minn. Stat. § 526.09-.10. The findings should have referred to the restrictive construction given the statute in Pearson. It appears, however, that Pearson was repeatedly referred to during the court hearings and that the trial judge had Pearson in mind in making his decision. We agree with the court of appeals' opinion which construes the trial court's findings in view of the evidence to accord with Pearson, and, therefore, we see no need for a remand for further findings. We think, however, the legislature might well consider amending the statute to incorporate the Pearson construction.

Although this is not a proceeding where a committed person is seeking a discharge from commitment, we believe, in such a case, that the burden of proof should be on the state to show by clear and convincing evidence that commitment should continue. In such a proceeding the committed persons should have legal representation, just as at an initial commitment proceeding.

Most sexual offenders will be released upon completion of their prison terms. It is only the predator that is subject to Minn. Stat. § 526.10. If the state were to be denied the ability to hospitalize the predator, then, rather than let the offender out on the street, the state will counter by increasing the length of the prison sentence. Minnesota has already taken this step by enacting a

---

[15] Blodgett seems to argue also that the likelihood of a psychopathic personality's conduct being dangerous is less predictable than for a mentally ill person. There is no merit to this argument. As Foucha notes, the opinions of mental health experts are sufficiently reliable to support commitment proceedings. Foucha, 112 S.Ct. at 1783 n.3. See also State v. Christie, 506 N.W.2d 293 (Minn. 1993).

patterned sex offender statute. In State v. Christie, 506 N.W.2d 293 (Minn. 1993), this court upheld the constitutionality of this statute where sentences are increased solely because the sex offender is dangerous and likely to attack sexually again. Arguably, then, the question is not whether the sexual predator can be confined, but where. Should it be in prison or in a security hospital?

Or to put it another way: Is it better for a person with an uncontrollable sex drive to be given an enhanced prison sentence or to be committed civilly? The State of Washington, with a somewhat different program, has opted for the second alternative. See In re Young, 857 P.2d 989 (Wash. 1993) (upholding constitutionality of sexually violent predator commitments under state's Community Protection Act). For the legislature which must provide the necessary prison cells or hospital beds, there are no easy answers. Nor are there easy answers for society which, ultimately, must decide to what extent criminal blame is to be assigned to people who are what they are.

At issue is the safety of the public on the one hand and, on the other, the liberty interests of the individual who acts destructively for reasons not fully understood by our medical, biological and social sciences. In the final analysis, it is the moral credibility of the criminal justice system that is at stake.[16]

In the present imperfect state of scientific knowledge, where there are no definitive answers, it would seem a state legislature should be allowed, constitutionally, to choose either or both alternatives for dealing with the sexual predator. At the very least, we should follow Pearson until the United States Supreme Court says otherwise.

Affirmed.

---

[16] The concern with enhanced criminal punishment on the basis of dangerousness is that the punishment may tend to become divorced from moral blameworthiness, thus adversely affecting the criminal justice system's credibility, which largely rests on a sense of blameworthiness. See Paul H. Robinson, Foreword: The Criminal-Civil Distinction and Dangerous Blameless Offenders, 83 J. Crim. L. & Criminology, No. 4, 693 at 716 (1993). Professor Robinson argues "that it would be better to expand civil commitment to include seriously dangerous offenders who are excluded from criminal liability as blameless for any reason, than to divert the criminal justice system from its traditional requirement of moral blame." Id.

WAHL, Justice (dissenting).

I respectfully dissent.

The Minnesota Psychopathic Personality Statutes, Minn. Stat. §§ 526.09-.10, under which a person, who may in the future commit acts of sexual misconduct dangerous to others, may be involuntarily committed, without the requirement of a finding that the person suffers from a medically diagnosable and treatable mental illness, to a confinement of indefinite duration until the person proves he is no longer dangerous to the public and no longer in need of inpatient treatment, in my view, violate the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution. Furthermore, the rigor and methodical efficiency with which the Psychopathic Personality Statute is presently being enforced is creating a system of wholesale preventive detention, a concept foreign to our jurisprudence.[1]

---

[1]According to Dr. William Erickson, Acting Medical Director of the Minnesota Security Hospital in 1991, thirteen men were committed to the security hospital under the psychopathic personality statute during the 1970s; thirteen men were committed during the 1980s; but that ten men have been committed in 1990 and the first half of 1991. See Dr. William D. Erickson, The Psychopathic Personality Statute, Need for Change 2 (1991), [hereinafter, Erickson] (unpublished paper presented by the Commissioner of Human Services to the legislature in 1991, appellant's appendix at 38).

Since 1991, our correctional institutions have been using Institution Procedures for Identification, Monitoring and Release of Public Risk Monitoring Cases which are designed, as the majority opinion notes at F1,

> to create a uniform screening process and criteria to be used by institution program review teams for the identification of offenders already in or entering the corrections system whose behaviors prior to commitment or related to the offender's committing offense or during incarceration indicate that the offender is a candidate for civil commitment as a psychopathic personality or may represent a risk to the public upon release.

Frank W. Wood, Risk Assessment and Release Procedures for Violent Offenders/Sexual Psychopaths (1991).

The introduction to the Procedures gives the statutory definition of "psychopathic personality" then provides that "all person offenders" currently in the system and any other property offenders whose cases contain documented evidence of behaviors which represent a

~~D-1~~
17

I do not deny that we must aggressively confront the danger posed by predatory sex offenders nor do I doubt the good faith of the efforts we have made to do so thus far. I only say the search for a solution and a statute that comports with the dictates of substantive due process is not at an end and that the public interest might be better served if the legislature turned its energies to that task rather than to appropriating millions of dollars for a prison to hold indefinitely persons committed as psychopathic personalities.

Since the legislature, in response to the report of the Governor's Committee on the Care of Insane Criminals and Sex Crimes,[2] passed the first Psychopathic Personality Statute in 1939,

---

significant risk to the public will be screened on the offenders' annual review dates utilizing the Residential Placement/Special Release Programming Guidelines and the alerting risk factors to determine the level of public risk they represent upon release. Priority is placed on reviewing those cases in their last year of confinement to ensure no offender is released without such a determination.

All new commitments in the above-listed categories will be screened in the same way. Utilizing the guidelines, the institution program review teams will determine whether the inmate should be classified as a Public Risk Monitoring Case.

All inmates identified as Public Risk Monitoring Cases will be reviewed by the program review team and appropriate institution psychology staff to determine whether there is sufficient evidence from the committing offense and/or other documented behavior to make appropriate a referral for a civil commitment as mentally ill and dangerous or as a psychopathic personality. If there is sufficient evidence, the institution staff prepares the case for review and refers it to the department's Civil Commitment Review Team.

The department's Civil Commitment Review Team will review the case for referral to the appropriate county of commitment. If in their judgment the case is appropriate for a civil commitment, a member of the team will be designated to assist the institution in taking the case through the civil commitment process.

[2]Report of the Governor's Committee on the Care of Insane Criminals and Sex Crimes, Journal of the House of the Fifty-First Session of the Legislature of the State of Minnesota, at 1394 (1939), on which the statute was based, recommended a "change in present laws relating to the care of defectives dangerous to the public to make possible the control of dangerously psychopathic persons without having to wait for them to commit a shocking crime." (Emphasis added.) Thus "control" rather than "treatment" was the original purpose of the statute. The Committee recognized the "necessarily vague and uncertain difference between criminal acts and behavior that is offensive only in light of certain standards or morality * * * " and acknowledged

the definition of the term "psychopathic personality" has remained essentially unchanged:

> the existence in any person of such conditions of emotional instability, or impulsiveness of behavior, or lack of customary standards of good judgment, or failure to appreciate the consequences of personal acts, or a combination of any such conditions, as to render such person irresponsible for personal conduct with respect to sexual matters and thereby dangerous to other persons.

Minn. Stat. § 526.09 (1992). Shortly after its passage, however, this court narrowed the statute to apply only to

> those persons who, by a habitual course of misconduct in sexual matters, have evidenced an utter lack of power to control their sexual impulses and who, as a result, are likely to attack or otherwise inflict injury, loss, pain or other evil on the objects of their uncontrolled and uncontrollable desire.

State ex rel. Pearson v. Probate Court of Ramsey County, 205 Minn. 545, 555, 287 N.W. 297, 302 (1939), aff'd, 309 U.S. 270 (1940). The United States Supreme Court affirmed the statute as construed. Neither the Minnesota Supreme Court nor the United States Supreme Court addressed issues of substantive due process.

After Pearson had affirmed the constitutionality of the Minnesota Psychopathic Personality Statute, a number of other states passed similar statutes. Since 1959, however, half of the states that had sexual psychopath statutes have repealed them. Gary Gleb, Comment, Washington's Sexually Violent Predator Law: The Need to Bar Unreliable Psychiatric Predictions of Dangerousness from Civil Commitment Proceedings, 39 UCLA L. Rev. 213, 215 (1991).[3] Minnesota is one of thirteen jurisdictions which retain such laws,[4] despite outspoken

---

that "[f]ormal control of behavior in this field becomes, therefore, exceedingly difficult both from the standpoint of legislation and law enforcement." Id.

[3] In 1959, 26 states and the District of Columbia had statutes providing for the commitment of psychopathic sex offenders: Alabama, California, Colorado, District of Columbia, Florida,

criticism of those laws by commentators.[5] See, e.g., Donald B. Gould & Irving L. Hurwitz, Note, Out of Tune with the Times: The Massachusetts SDP Statute, 45 B.U. L. Rev. 391 (1965); Michael B. Roche, Note, The Plight of the Sexual Psychopath: A Legislative Blunder and Judicial Acquiescence, 41 Notre Dame Lawyer 527 (1966); Joseph F. Grabowski V, Comment, The Illinois Sexually Dangerous Persons Act: An Examination of a Statute in Need of Change, 12 S. Ill. U. L.J. 437 (1988); C. Peter Erlinder, Minnesota's Gulag: Involuntary Treatment for the "Politically Ill," 19 Wm. Mitchell L. Rev. 99 (1993). It is troubling that since the Minnesota statute went into effect in 1939, it has been arbitrarily and inconsistently

---

Illinois, Indiana, Iowa, Kansas, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, Ohio, Oregon, Pennsylvania, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, Wisconsin, and Wyoming. See Alan H. Swanson, Comment, Sexual Psychopath Statutes: Summary and Analysis, 51 J. Crim. L. & Criminology 215 app. at 228-35 (1960-61).

[4] In 1990, the following 12 states and the District of Columbia had sexual psychopath statutes: Colorado, Connecticut, Illinois, Massachusetts, Minnesota, Nebraska, New Jersey, Oregon, Tennessee, Utah, Virginia, Washington. Gleb, supra, at 215 n.22. It appears that only Minnesota and the District of Columbia require that persons committed under those statutes be confined within the mental health system rather than in corrections. Erickson, supra note 1, at 12.

[5] Commentators have noted that

> "growing awareness that there is no specific group of individuals who can be labeled sexual psychopaths by acceptable medical standards and that there are no proven treatments for such offenders has lead such professional groups as the Group for the Advancement of Psychiatry, the President's Commission on Mental Health, and most recently, the American Bar Association Committee on Criminal Justice Mental Health Standards to urge that these laws be repealed."

Samuel J. Brakel, John Parry, and Barbara A. Weiner, The Mentally Disabled and the Law, (3rd Ed. 1985) 743.

~~D4~~
20

enforced despite the limiting construction in Pearson.[6] It is also troubling, as noted earlier, th in recent years the statute, infrequently invoked for many years, has come to be use increasingly to insure the detention of dangerous sex offenders who have not been adequatel controlled under determinant sentencing.

In the more than half a century since its holding in Pearson, the United States Supreme Court has decided a number of cases involving a state's power to confine individuals without a criminal conviction. See, e.g., Youngberg v. Romeo, 457 U.S. 307 (1982) (commitment for mental retardation); Addington v. Texas, 441 U.S. 418 (1979) (commitment for mental illness); Jackson v. Indiana, 406 U.S. 715 (1972) (pretrial commitment of incompetent criminal defendants). Appellant argues that many of these civil commitment cases, including most recently, Foucha v. Louisiana, 112 S. Ct. 1780 (1992), render Minn. Stat. §§ 526.09-.10 unconstitutional on their face and as applied to him. While the psychopathic personality statutes comes to us with a presumption of continuing constitutional validity, In re Haggerty, 448 N.W.2d 363, 364 (Minn. 1989), we are not free to disregard the dictates of the United States Supreme Court when reviewing state legislation challenged as violative of the Fourteenth Amendment. Minnesota v. Clover Leaf Creamery, 449 U.S. 456, 461 n. 6 (1981). The law

---

[6]According to Dr. William D. Erickson, Medical Director of the St. Peter Regional Treatment/Minnesota Security Hospital, persons have been committed as psychopathic personalities for a very wide range of behaviors, including window peeping, excessive masturbation, "sexual contact with cows," homosexuality, incest, pedophilia, and rape. Erickson, supra note 1, at 20-26. Furthermore, many courts in subsequent cases have not followed the narrow judicial definition of "psychopathic personality" adopted in Pearson but have used instead the statutory definition as written. See, e.g., Dittrich v. Brown County, 215 Minn. 234, 235, 9 N.W.2d 510, 511 (1943); In re Martenies, 350 N.W.2d 470, 472 (Minn. Ct. App. 1984); In re Stone, 376 N.W.2d 511, 513 (Minn. Ct. App. 1985); In re Brown, 414 N.W.2d 800, 803 (Minn. Ct. App. 1987); In re Clements, 440 N.W.2d 133, 136 (Minn. Ct. App. 1989); In re Monson, 478 N.W.2d 785, 788-89 (Minn. Ct. App. 1991).

~~D-5~~
21

set out in Foucha, applied to appellant's case, compels the conclusion that the Minnesota Psychopathic Personality Statutes, Minn. Stat. §§ 526.09-.10 are violative of the Fourteenth Amendment and, therefore, unconstitutional.

In Foucha, the United States Supreme Court held that a Louisiana civil commitment statute that allowed a person acquitted by reason of insanity, who had an antisocial personality disorder but no longer had a mental illness, to remain indefinitely committed to a mental institution on the basis of dangerousness alone violated due process. 112 S. Ct. at 1787. Terry Foucha, charged by Louisiana authorities with aggravated burglary and illegal discharge of a firearm, was found not guilty by reason of insanity and committed to a mental institution. Id. at 1782. Four years later a review panel at the institution, convened to determine Foucha's mental condition and whether he could be released without danger to himself or others, found no evidence of mental illness since admission and recommended conditional discharge.

At the hearing required to determine dangerousness, the trial court received (1) the report of the two-member sanity commission that Foucha "is presently in remission from mental illness [but] [w]e cannot certify that he would not constitute a menace to himself or others if released," and (2) the testimony of one of the doctors on the commission, who had also conducted the pretrial examination, that Foucha had recovered from a temporary drug-induced psychosis and was in "good shape" mentally but had "an antisocial personality, a condition that is not a mental disease and that is untreatable." Id. On the basis of several altercations in which Foucha had been involved at the institution, the doctor testified he would not feel comfortable certifying that Foucha would not be a danger to himself or other people. Id. at 1782-83. The trial court determined that Foucha was dangerous to himself and others and ordered him returned to the

D6
22

mental institution. The state court of appeals refused supervisory writs. The Louisiana Supreme Court affirmed, holding that the statutory provision permitting confinement of an insanity acquittee based on dangerousness alone did not violate the Due Process Clause nor the Equal Protection Clause. The United States Supreme Court granted certiorari. Id.

The Court noted at the outset of its substantive due process analysis that the State was no longer entitled to hold Foucha in a psychiatric facility as an insanity acquittee because when he regained his sanity, that basis for holding him had disappeared.[7] Foucha, 112 S. Ct. at 1784. Nor, in the Court's view, should Foucha be held as a mentally ill person because he was not suffering from a mental disease or illness and "[d]ue process requires that the nature of commitment bear some reasonable relation to the purpose for which the individual is committed." Id. at 1785; Jackson v. Indiana, 406 U.S. 715, 738 (1972). The State, the Court said, sought to perpetuate Foucha's confinement on the basis of his antisocial personality which, as evidenced by his conduct at the facility, the trial court found rendered him a danger to himself or others. 112 S. Ct. at 1784. This basis the Court found fraught not only with difficulties but unconstitutional. "[T]he Due Process Clause," the Court stated, "contains a substantive component that bars certain arbitrary, wrongful government actions regardless of the fairness of the proceedings used to implement them." Id. at 1785 (quoting Zinermen v. Burch, 494 U.S. 113, 125, 110 S. Ct. 975, 983 (1990)). "Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary government action." Foucha, 112 S. Ct. at 1785; Youngberg v. Romeo, 457 U.S. 307, 316 (1982).

---

[7] "[T]he Constitution permits the government on the basis of the insanity judgment, to confine him to a mental institution until such time as he has regained his sanity or is no longer a danger to himself or society." Jones v. United States, 463 U.S. 354, 368, 370 (1983).

~~D-1~~
23

"[C]ommitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." Jones, 463 U.S. at 361. The Court recognized that by indefinitely committing Foucha to a mental institution on the basis of dangerousness alone, the State was depriving him of a fundamental right, and, without articulating the strict scrutiny standard, the Court looked for the existence of a compelling governmental interest to justify that deprivation.[8]

The Foucha Court identified three categories of confinement in which a state, pursuant to its police power, may constitutionally deprive an individual of his or her liberty. Id. at 1785-86. First, the state may imprison convicted criminals for purposes of deterrence and retribution, though there are constitutional limitations on the conduct that a state may criminalize. Id. Second, the state may confine persons shown by clear and convincing evidence to be mentally ill and dangerous. Id. at 1786. Third, in "certain narrow circumstances persons who pose a danger to others or to the community may be subject to limited confinement * * * ." Id. As an example of the limits placed on this third category, the Court cited United States v. Salerno, 481 U.S. 739 (1987), a decision in which the Court found freedom from physical confinement to be a fundamental right, but also found the state's "interest in preventing crime by arrestees [to be] both legitimate and compelling." Id. at 749. In Salerno, the Court found constitutionally permissible a statute that permitted pre-trial detention of dangerous arrestees where its use was limited to circumstances involving only the most serious of crimes, where the government had

---

[8]Deprivation or infringement of a fundamental right triggers strict scrutiny by a reviewing court, a level of scrutiny which requires the state to prove the existence of a "compelling governmental interest" and to demonstrate that no alternative means are available that involve a lesser deprivation of liberty. See, e.g., Roe v. Wade, 410 U.S. 113, 155 (1973); James W. Ellis, Limits on the State's Power to Confine "Dangerous" Persons: Constitutional Implications of Foucha v. Louisiana, 15 U. Puget Sound L. Rev. 635, 644 (1992).

to demonstrate probable cause and prove by clear and convincing evidence at an adversarial hearing that no conditions of release could reasonably assure the safety of the community, and where the duration of detention was strictly limited by the Speedy Trial Act. Foucha, 112 U.S. at 1786.

The Foucha court found that the Louisiana statute did not fall within any of these constitutionally-acceptable reasons for involuntary confinement because the appellant had not been convicted, because the state did not assert that the appellant was mentally ill, and because the statute was not sufficiently narrow. 112 S. Ct. at 1786-87. To accept the State's rationale that Foucha may be held indefinitely because he once committed a criminal act and now has an antisocial personality that sometimes leads to aggressive conduct, a disorder for which there is no effective treatment, the Court said, "would permit the State to hold indefinitely any other insanity acquittee not mentally ill who could be shown to have a personality disorder that may lead to criminal conduct." Id. at 1787. The Court held the Louisiana statute permitting the indefinite detention of insanity acquittees who are not mentally ill and do not prove they would not be dangerous to others not to be "one of those carefully limited exceptions permitted by the Due Process Clause." Id.

Examination of the Minnesota Psychopathic Personality Statutes in the substantive due process light of Foucha, starts by recognizing the fundamental nature of a person's right to be free from bodily restraint. That right "has always been at the core of the liberty protected by the Due Process Clause" which "contains a substantive component that bars certain arbitrary, wrongful government actions regardless of the fairness of the proceedings used to implement them." Foucha, 112 S. Ct. at 1785. The state's commitment of Blodgett as a psychopathic

~~D-9~~
25

personality deprives him of the fundamental right to be free from physical confinement. Deprivation or infringement of a fundamental right requires the state to prove the existence of a compelling governmental interest in continuing that confinement and to demonstrate that no alternative means are available that involve a lesser deprivation of liberty. See supra note 8.

Foucha has set out the limited circumstances under which the state may constitutionally defeat an individual's interest in physical liberty. Minnesota Statutes §§ 526.09-.10, like the Louisiana statute, fail to fall within those constitutional limits. First, commitment as a psychopathic personality under the statute is not a criminal conviction for which an individual can be imprisoned. Appellant was convicted of two counts of criminal sexual conduct and only after he had served his sentence for those crimes was he committed under section 526.09, with his three prior felony convictions being used to establish the habitual course of misconduct in "sexual matters" on which the commitment was based. Second, like Foucha, Blodgett is not mentally ill, but suffers from an antisocial personality disorder for which, as the Foucha Court recognized, there is no effective treatment. Thus, if the state is to have a constitutionally valid basis for Blodgett's confinement, it must be one of those "carefully limited exceptions permitted by the Due Process Clause" where "in certain narrow circumstances persons who pose a danger to others or to the community may be subject to limited confinement * * *." Foucha, 112 S. Ct. at 1786.

In Salerno, the United States Supreme Court found such an exception and upheld the constitutionality of the Federal Bail Reform Act of 1984, which provided for pretrial detention of certain defendants found likely to commit dangerous crimes while awaiting trial. Salerno did not save Louisiana's scheme of confinement in Foucha, however, and it will not save Minn.

~~D-10~~
26

Stat. §§ 526.09-.10. While section 526.09 is narrowly focused on a particularly acute problem in which the government interests are overwhelming, i.e., violent sexual assaults, and seeks to confine those who are habitual and dangerous sex offenders, the statute does not provide for a confinement that is strictly limited in duration or, for that matter, limited in duration at all. The duration of the confinement must bear some reasonable relation to the purpose for which the individual is committed. Jackson v. Indiana, 406 U.S. 715, 738 (1972).

The Salerno court emphasized that the detention there found to be constitutionally permissible for pre-trial detainees was strictly limited in duration by the stringent time limitations of the Speedy Trial Act. 481 U.S. at 747. While the constitutionally permissible duration of confinement of persons committed as mentally ill and dangerous may be longer than that of pretrial detainees, the duration of that confinement is limited by the reasonable possibility under Minn. Stat. § 253B.18, subd. 15 (1992), that such persons may respond to treatment and be released. In contrast, once Blodgett is involuntarily committed as a psychopathic personality, which does not require a finding that he is suffering from a medically diagnosable and treatable mental illness, he may be confined indefinitely until he shows to the satisfaction of the commission and the special review board that he "is no longer dangerous to the public, and is no longer in need of inpatient treatment and supervision." Minn. Stat. § 253B.18, subd. 15. The burden of proof has now shifted to Blodgett. It is questionable whether he can show he is no longer in need of "inpatient treatment and supervision" when the very psychiatrists who are charged with treating him say there is no treatment for an antisocial personality disorder and that any "treatment" he could receive at the security hospital would be "sham" or "placebo" treatment with "no evidence at the end of spending time in these groups that he would be less

~~D-11~~
27

or more likely to commit the same crime."

Furthermore, how can Blodgett, or any person committed under the psychopathic personality statute, show he is "no longer dangerous to the public," when, if the Pearson standard has been followed, it has already been established that he has an utter lack of power to control his sexual impulses as evidenced by a habitual course of misconduct in sexual matters which makes it likely that he will inflict injury, loss, pain or other evil on the object of his uncontrolled and uncontrollable desire and when the lack of any recent overt acts may well be explained by the control under which he has been placed at the security hospital? The statute thus has the effect of "substituting confinement for dangerousness for our present system which, with only narrow exceptions and aside from permissible confinements for mental illness, incarcerates only those who are proved beyond reasonable doubt to have violated a criminal law." Foucha, 112 S. Ct. at 1787.

The state argues forcefully that the Psychopathic Personality Statutes serve the state's compelling interest under its police power to protect the public from dangerous sexual offenders.[9] Jones v. United States, 463 U.S. 354, 366, 368 (1983), and the state's legitimate

---

[9]In In re Young, 857 P.2d 989 (Wash. 1993), the Supreme Court of Washington has held constitutional the sexually violent predator provisions of Washington's Community Protection Act of 1990. Under the statutory scheme there at issue, in order to commit as a sexually violent predator a person who has been convicted of or charged with a crime of sexual violence, the state must prove beyond a reasonable doubt that the person "suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence." Id. at 993. According to the Washington Supreme Court, the statute "falls comfortably within the 'civil commitment' category discussed in Foucha because the state must prove both a mental illness and dangerousness." Young, 857 P.2d at 1007. (Emphasis added). The Court reads "antisocial personality disorder," as opposed to antisocial personality behavior, into the definition of mental illness and also requires that an allegation of a recent overt act be included in sex predator petitions for non-incarcerated individuals. Id. at 1006-1009. Either party or the court may request a jury trial. Id. at 993. While Young is instructive, it is not

interest under its parens patriae power to provide treatment to its citizens who are unable because of mental disorders to help themselves. The state points to three commitment statutes, in addition to sections 526.09-.10, under which, in the exercise of its police and parens patriae powers, it may civilly commit persons without a finding of mental illness. Minn. Stat. § 253B.02, subd. 14 (1992) (mentally retarded); Minn. Stat. § 253B.02, subd. 2 (1992) (chemically dependent); and Minn. Stat. § 144.4172, subd. 8 (1992) (health threat to others). These statutes, however, as the majority opinion fails to recognize, involve verifiable, well-defined, medically recognized and clinically valid conditions[10] in addition to requiring that the condition "pose a substantial risk of harm to self or others." (mental retardation and chemical dependency) or "place others at risk of * * * serious illness, serious disability or death." (health threat). And in each of these three conditions, the State's parens patriae interest in protecting the individual committed, as well as the public, is more compelling than it is in a psychopathic personality commitment. As to the duration of confinement, chemically dependent persons and mentally ill persons may not be committed for a period to exceed 12 months without the filing of a new petition. Minn. Stat. §§ 253B.13, subd. 3, 253B.12, subd. 1.

The state does have a compelling interest in protecting the public from violent sexual assaults but, absent mental illness or a criminal conviction, that interest can be constitutionally implemented only by observing the limitations set out in Salerno. Under section 526.10 there is no limitation on the duration of confinement. Given the difficulty, if not the impossibility,

---

controlling in the case before us.

[10]The terms "psychopathic personality" and "sexual psychopath" are not clinically valid. Group for Advancement of Psychiatry, Psychiatry and Sexual Psychopath Legislation: The 30's to the 80's 840-41 (1977).

~~D-15~~
29

of the proof required for release under Minn. Stat. § 253B.18, subd. 15, of persons committed without a medically diagnosable and treatable mental illness, commitment under the Psychopathic Personality Statutes could result in a potential life sentence served in what amounts to preventive detention.

The state has not adequately explained why its police power interest cannot be vindicated by ordinary criminal processes involving charge and conviction, the use of enhanced sentences for recidivists,[11] and other constitutionally permissible means of dealing with patterns of criminal conduct. See Foucha, 112 S. Ct. at 1786-87. Nor has the state shown that confinement of psychopathic personalities is even rationally related to the asserted purpose of treatment as required by Jackson, 406 U.S. at 738. ("At the least, due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed.") Appellant does not suffer from a medically recognized mental illness; he has a personality disorder for which, at least at this point, there appears to be no treatment available.[12] The Minnesota Psychopathic Personality Statutes, Minn. Stat. §§ 526.09-.10, under which a person without a medically diagnosable and treatable mental illness who may in the future commit an act of sexual misconduct dangerous to others may be involuntarily committed to a confinement of indefinite duration is violative of substantive due process under the Fourteenth Amendment of the United States Constitution.

---

[11]This court has found constitutional the patterned sex offender statute, Minn. Stat. § 609.1352 (1990), which provides for enhanced sentences, State v. Christie, 506 N.W.2d 293 (Minn. 1993).

[12]One commentator has noted that "[h]ospitalization and medical treatment cannot cure a legislatively created category." C. Peter Erlinder, Minnesota's Gulag: Involuntary Treatment for the "Politically Ill," 19 Wm. Mitchell L. Rev. 99, 133 (1993).

~~D-14~~
30

Appellant also argues that section 526.09 violates his Fourteenth Amendment right to Equal Protection because it creates a class of citizens, identified solely by legislatively defined behavior and deprives those citizens of the fundamental right to liberty, without either a criminal conviction or a finding that they suffer from a medically defined, clinically valid illness that requires hospitalization for reasons of safety to the individual or the public.[13] The Equal Protection Clause of the Fourteenth Amendment requires that "all persons similarly situated should be treated alike." City of Cleburne v. Cleburne Living Ctr., Inc., 473 U.S. 432, 439 (1985). In Pearson, the United States Supreme Court used a rational basis test to reject Pearson's equal protection argument, stating that "the legislature is free to recognize degrees of harm, and it may confine its restrictions to those classes of cases where the need is deemed to be clearest." 309 U.S. at 275. Relying on Pearson, the court of appeals used the same analysis in this case. In re Blodgett, 490 N.W.2d at 645-46. It is questionable, however, in light of recent equal protection analysis, whether these cases employed the correct level of scrutiny.[14] While, as a general rule, legislation is presumed valid if the classification drawn by the statute is rationally related to a legitimate state interest, City of Cleburne, 473 U.S. at 440, that rule

---

[13]Appellant also claims he has been denied equal protection under the Minnesota Constitution, art. I, § 2, but did not develop this claim in the courts below. Thus, while it is unlikely that the Minnesota Constitution requires less than heightened or strict scrutiny when a statute infringes on an individual's fundamental right to freedom from confinement, I would not reach the state constitutional issue at this time.

[14]The United States Supreme Court recently declined to consider the question of whether heightened equal protection scrutiny should be applied to a certain statutory scheme involving civil commitment because the claim was not properly presented. Heller v. Doe, 113 S. Ct. 2637 (1993). And Justice O'Connor, the deciding vote in Foucha, did not believe it necessary to reach equal protection issues in that case. Foucha, 112 S. Ct. at 1790 (Justice O'Connor, concurring in part and concurring in the judgment).

~~D-15~~
31

gives way when the statute impinges on a fundamental right protected by the constitution. Since the statutory classification here burdens the fundamental right to liberty, the Psychopathic Personality Statute can be upheld only if the state has a compelling interest, a "particularly convincing reason," for confining in a mental institution a class of people with psychopathic personalities when it does not confine other classes of people who have committed criminal acts and who cannot later prove that they are not dangerous. Foucha, 112 S. Ct. at 1788. As discussed above, the state's asserted interests -- protection of citizens under its police power and treatment of psychopathic personalities under its parents patriae power -- do not meet this standard.

The release standards applicable under the psychopathic personality statute also implicate the Equal Protection Clause. The discharge provisions of Minn. Stat. § 253B.18, subd. 15, applicable both to persons committed as mentally ill and dangerous and to persons committed as psychopathic personalities, require proof that the person seeking release "is no longer dangerous to the public, and is no longer in need of inpatient treatment and supervision." Because mental illness is medically diagnosable and treatable, the person committed as mentally ill and dangerous has a reasonable opportunity for release by showing he has been treated and that his mental illness is in remission or under control, rendering him no longer dangerous to the public. The person committed as a psychopathic personality, as a practical matter, has no such opportunity.[15]

---

[15]Dr. Erickson reports that of the 21 men in residence at the security hospital in mid-1991 under commitment as psychopathic personalities, only one was making reasonable progress in treatment, none were mentally ill and none were on psychotropic medication. Erickson, supra note 1, at 3. Of the 16 persons committed as psychopathic personalities who had initially engaged in the Intensive Treatment Program for Sexual Aggressive (ITPSA) since its beginning

In Jackson v. Indiana, 406 U.S. 715 (1972), the United States Supreme Court invalidated a statute that governed the commitment and release standards for criminal defendants who were found incompetent to stand trial. Under the statute, the standards for committing an incompetent defendant were more lenient and the standards for release were more stringent than those used for other civil commitments. Id. at 730. Addressing the equal protection challenge, the Court stated that "[t]he harm to the individual is just as great if the State, without reasonable justification, can apply standards making his commitment a permanent one when standards generally applicable to all others afford him a substantial opportunity for release." Id. at 729. The harm here is similar and similarly violative of the Equal Protection Clause.

Though we will declare no statute unconstitutional "if by any reasonable construction it can be given a meaning in harmony with the fundamental law," State v. Oman, 261 Minn. 10, 18, 110 N.W.2d 514, 520 (1960), statutes which permit the involuntary and indefinite confinement of a non-mentally ill, though potentially dangerous, individual suffering from an untreatable personality disorder cannot pass scrutiny. "Confinement based on what amounts to a propensity for dangerousness unrelated to mental illness and for which no treatment is required 'is nothing more than preventive detention, a concept foreign to our constitutional order.'" Reome v. Levine, 692 F. Supp. 1046, 1051 (D. Minn. 1988). I would hold that the Minnesota Psychopathic Personality Statutes, Minn. Stat. §§ 526.09-.10, under which a person, who may in the future commit acts of sexual misconduct dangerous to others, may be involuntarily committed, without the requirement of a finding that the person suffers from a medically

---

in 1974, only three, all non-violent pedophiles, had completed the program and one of those had been reincarcerated. Erickson, supra note 1, at 19.

diagnosable and treatable mental illness, to a confinement of indefinite duration until the person proves he is no longer dangerous to the public and no longer in need of inpatient treatment violate the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution. I would reverse the judgment of the court of appeals.

KEITH, Chief Justice (Dissenting).

I join the dissent of Justice Wahl.

TOMLJANOVICH, Justice (Dissenting).

I join the dissent of Justice Wahl.

~~D-18~~
34

MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Sixty-eighth Session
March 2, 1995

The Senate Committee on Judiciary was called to order by Chairman Mark A. James, at 8:30 a.m., on Thursday, March 2, 1995, in Room 224 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Mark A. James, Chairman
Senator Jon C. Porter, Vice Chairman
Senator Maurice Washington
Senator Mike McGinness
Senator Ernest E. Adler
Senator Dina Titus
Senator O. C. Lee

STAFF MEMBERS PRESENT:

Allison Combs, Senior Research Analyst
Lori M. Story, Committee Secretary

OTHERS PRESENT:

Scott Freeman, Vice President, Johnson's Sporting World
William Cavagnaro, Lieutenant, Legislative Liaison, Las Vegas Metropolitan Police Department
Lucille Lusk, Representative, Nevada Concerned Citizens
Ben Graham, Chief Deputy District Attorney, Clark County, Representative, Nevada District Attorneys Association
Cynthia Pyzel, Senior Deputy Attorney General, Representative, Mental Hygiene and Mental Retardation Division
George Kizer, Medical Director, Department of Prisons

The first order of business before the committee was discussion of the subcommittee on truth-in-sentencing progress. The chairman told the entire committee that one of the things identified by the subcommittee as an area to address straight away is crimes that are punishable by life without the possibility of parole. The proposal is to remove such crimes from the purview of the pardons

language is in response to another experience he had with an individual who bought a gun with a bad check. This man was on parole for writing bad checks previously, and the new language would turn the last time into a felony offense, he explained. This will save him from having to send a demand letter to the man before the law enforcement and prosecutor will review the matter. The chairman explained to the witness the three prior convictions will make the offense a felony no matter what is purchased, and he is not willing to address that issue with this bill.

Lucille Lusk, Representative, Nevada Concerned Citizens, told the committee her organization "is very concerned about this bill because we think it sends a message that may be inappropriate." It is the group's view, she said, that when a person *willfully* writes a bad check, no matter what the purchase, the intention is "thievery." Ms. Lusk and her group feels that setting the purchase of a firearm with a bad check apart from other purchases with bad checks sends the message that firearms are inherently bad. This is not true, she stated. The group would like to see bad checks treated consistently, considering the amount of money, not the the item or purpose for the check.

The chairman asked Mr. Freeman how many firearms are valued under $250. He replied there are possibly 24 new guns that can be purchased for under that amount. Then Senator James reviewed his understanding that under current law, any bad check written in an amount in excess of $250 is a felony. He made an attempt to explain to Ms. Lusk what the intent of the bill is. She replied that anyone who is stealing anything has bad intent to begin with. She also pointed out there is not always bad intent when a bad check is written. Many times it is done in error, either by the bank of by the account holder. She suggested the issue here is writing bad checks, not firearms. Senator Washington observed that in cases where bad checks are written unintentionally, most times the writer will try to make some kind of restitution as quickly as possible.

Senator James asked if the District Attorneys Association had any comment on the bill. Ben Graham, Chief Deputy District Attorney, Clark County, Representative, Nevada District Attorneys Association, asked to address the bill at another time. The hearing was closed.

SENATE BILL 192: Makes various changes related to criminal and civil laws pertaining to sexual deviants.

This is the second hearing on S.B. 192, Senator James noted, and there have been suggestions and comments made that makes him willing to consider some amendments to the bill. The chairman called the first witness.

Cynthia Pyzel, Senior Deputy Attorney, Representative, Mental Health and Mental Retardation Division, took the floor. She told the committee the department of mental hygiene opposes the bill only in relation to the section dealing with involuntary civil commitment. On the record, she wanted to express two concerns of the division. She stated:

> The bill proposes a system of involuntary civil commitment for sexual deviants to a secure facility operated by the division of mental hygiene and mental retardation. By definition, sexual deviants are persons with diagnoses of personality disorders rather than mental illness. The current state of the art in the fields of psychology and psychiatry finds that this population of persons is not particularly amenable to treatment. They are particularly not willing to get treatment on an involuntary basis. If you have to commit someone to treatment, the likelihood of any form of success of that treatment is extremely remote.
>
> The treatment that currently does exist takes a very long time to administer, over a course of several years. There are states that have such programs–Washington and Minnesota. These states report that a large percentage of people who have been involuntarily committed to the programs for sexual deviants simply refuse to participate in the treatment that is provided for them, often on the advice of their lawyers who wish to discredit the efficacy of such a program.
>
> The division is also concerned about the directive in the bill to house these involuntarily civilly committed people in a secure facility. Currently, the only secure facility that the division has is Lake's Crossing Center [for the Mentally Disordered Personality], which is already running at census, and needs to be expanded. The division has put off expanding into building a second forensic facility, such as Lakes Crossing, in southern Nevada because of the sheer expense of such a proposition.

While the division wishes the committee to know they understand and appreciate the intent of the bill, Ms. Pyzel noted, they are concerned that if such a program is undertaken, it must be thoroughly researched and carefully developed by experts

in the field. Also, she emphasized the necessity of providing sufficient funding for such a program in order for it to be successful and effective, and it is questionable that involuntary commitment of sexual deviants in a treatment program would be the most effective use of the state's funds.

Senator Porter asked the witness, based on her statement, what the division suggests. He asked if they are suggesting the Legislature not increase the penalties. Ms. Pyzel stated her concern is that involuntary civil commitments might not be the best option. She noted there are involuntary civil commitments currently used for people with mental illness and they are used to protect the individuals with the illness, as well as the public. These commitments are probably the model used when formulating the involuntary civil commitments for sexual deviants, but problems arise because the treatment is not "happening, it is more a very expensive charade," the witness explained.

Senator Porter asked what should be done with the people who do not want to voluntarily take treatment. "Those are the ones who are the problem," he said. Ms. Pyzel reiterated the effective programs are for mentally ill people, and sexual deviants are not mentally ill. Senator Adler asked if the witness meant the sexual deviants are sociopathic personalities who should probably be incarcerated and not placed in a mental health institution. Ms. Pyzel expressed her view since the current state of mental health science does not provide an effective treatment for these individuals, some other form of supervision or control would be more appropriate.

Senator James opined the bill is very creative, using models from several states which deals with "enigmatic people who commit horrible crimes." If it is possible to insure that people who commit these crimes would never be in society, a plan for civil commitments would not be necessary, he stated. But, with the system the way it is, they do get released, and there is a need for some alternative, Senator James continued, and he outlined the process through which the provisions of the bill will be triggered.

The chairman outlined the contents of the bill which include: life sentences for people who commit sex offenses against children; enhanced lifetime supervision for people who get out of prison, as administered by parole and probation; community notification; and expanded testing and criminal histories required for those convicted of these crimes. He stated:

> "I do not want to see this bill waylaid by a big fiscal note, or an argument between psychologists over whether or not we really can

> treat these people. So, what I am going to ask the committee to do is, if they will accommodate me, is just take it out. I'd like to see it have treatment and be able to have this option, but I think this bill is too important, and the other parts of the bill are too important to see it get waylaid. So, I think we just take the treatment out, for now. We will put it in a separate bill, and you suggested that maybe it ought to be studied. I would support you in that. ... We leave in community notification, lifetime supervision, lifetime sentences, and all those things, and then we can pass the bill separately.

That said, Senator James called George Kizer, Medical Director, Department of Prisons, to the stand. Before Mr. Kizer spoke, Senator Porter asked Ms. Pyzel how many, if any, of the people covered by the bill could be treated. Ms. Pyzel said the senator's question reminded her of a "silly joke,...How many psychologists does it take to change a light bulb?...One, but the light bulb has to want to change." She continued stating it is hard to know precisely what the figures might be, but in the report from Washington, 17 of 29 refuse to participate in treatment, on the advice of their counsel. She speculated this might be in an effort to invalidate the efficacy of the program or to avoid admission about acts they committed.

Senator James noted that in television interviews of these criminals, they admit they are glad for the program, because they cannot control the urge or impulse to commit these acts. He said he pointed these out to note the successes that do occur. He then directed his question to Dr. Kizer, asking if sections 5 through 7 of the bill, which require the establishment for the treatment of sex offenders by the director of prisons of a program, would cause much difficulty for him and his department. Prefacing his remarks with the caveat that he is not an expert in the treatment of sex offenders, Dr. Kizer stated he has spoken to the mental health staff and found there is group counseling available for the sex offenders. There is no formalized program, but the convicts do have access to the same mental health counseling that is provided to all convicts.

Dr. Kizer, noting he had spoken to Dr. Nelson, the mental health director, reported that studies are "fairly skeptical as far as the outcome for sex offender treatment." He said there do exist subgroups of sex offenders that seem to show more success with treatment, and these groups might be the ones targeted for treatment programs. Secondly, he told the committee, sex offender treatment is not a "constitutional standard," and so, would not be considered a primary health care issue. Senator James corrected the witness, stating with this bill in effect there would be a requirement to provide treatment for sex offenders. Dr. Kizer agreed that it would be a more formalized, rehabilitation program, but it would not be

covered under the Eighth Amendment to the United States Constitution. Finally, he confirmed Ms. Pyzel's report that longer term treatment is more effective for sex offenders, and he suggested the program might require some investment by the offender, by way of payment or other cost, so they are more likely to participate toward improvement.

Senator Adler stated it is necessary to be careful in drafting the requirements for a mandatory sexual offender treatment program in prison because, "if you mandate it for all sex offenders, and the prison does not deliver that program, it becomes a liberty interest and is the basis for a civil rights suit." He cautioned that it needs to be worded so as not to create a right on the part of the inmates.

The chairman reiterated his willingness to amend the bill to either remove the treatment requirement for inmates or to modify it somewhat. He suggested it might be best to wait until further study is done to determine what modalities are best suited for treatment in this area. Dr. Kizer said he feels it might be possible to provide a small, voluntary program. Senator James asked to remove that provision from the bill and include it in the study to be done in determining what works best. He asked the witness to contact the mental health division to find out what their study might entail. He offered, with the support of the committee, to support a study of this area. Dr. Kizer said he would be happy to do as requested and to report back to the committee.

Other problems that have been pointed out to the committee in regard to the bill, he said, deal with the listing of crimes included in the sexual offenses. It was suggested the definition of sex offender is overbroad and the chairman asked that annoyance of a minor, indecent exposure, statutory sexual seduction, and maybe open and gross lewdness might be removed from the list of lifetime supervision crimes, (section 3). The senator noted he is not seeking any amendment to the section dealing with community notification, or the makeup of the advisory board.

Senator Adler stated he feels the statutory sexual seduction crime should not be included in the list of lifetime supervision crimes. He said there might be circumstances which would justify this sanction, but many more which would not. Senator James suggested the removal of statutory sexual seduction from the list of lifetime supervision offenses, as he stated earlier. Senator Titus asked if the lifetime supervision is activated on the first offense, she would agree with removing the statutory sexual seduction.

The chairman noted the enhanced life sentence penalties only apply to battery with intent to commit sexual assault against a child, and sexual assault against a child.

He asked the committee if everyone understood the proposed amendments. The members confirmed their understanding, but Senator Titus asked to see the bill, as amended, before it went any further. The chairman called for a motion to amend and do pass the bill.

SENATOR ADLER MOVED TO AMEND AND DO PASS SENATE BILL 192.

SENATOR LEE SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

*****

There being no further business before the committee, the hearing was adjourned at 10:30 a.m.

RESPECTFULLY SUBMITTED:

Lori M. Story,
Committee Secretary

APPROVED BY:

Senator Mark A. James, Chairman

DATE: 3-22-95

Senate Bill No. 192.

Bill read second time.

The following amendment was proposed by the Committee on Judiciary:

Amendment No. 91.

Amend sec. 3, page 3, by deleting lines 18 through 24 and inserting:

"*4. As used in this section, "sexual offense" means:*

(a) A violation of NRS 200.366, subsection 3 of NRS 200.400, NRS 200.710, 200.720, subsection 2 of NRS 200.730, NRS 201.180, paragraph (a) or subparagraph (2) of paragraph (b) of subsection 1 of NRS 201.195, NRS 201.230 or 201.450;

(b) An attempt to commit any offense listed in paragraph (a); or

(c) An act of murder in the first or second degree, kidnaping in the first or second degree, false imprisonment, burglary or invasion of the home if the district attorney proves beyond a reasonable doubt that the act was sexually motivated. For the purposes of this paragraph, an act is "sexually motivated" if one of the purposes for which the person committed the act was his sexual gratification.".

Amend the bill as a whole by deleting sections 5 through 9 and renumbering sections 10 through 16 as sections 5 through 11.

Amend sec. 10, page 4, line 44, by deleting: "11 to 14," and inserting: "6 to 9,".

Amend sec. 14, page 6, line 22, by deleting "*13*" and inserting "*8*".

Amend sec. 15, page 6, lines 27 and 28, by deleting: "*11 to 14,*" and inserting: "*6 to 9,*".

Amend sec. 15, page 6, by deleting lines 39 through 45 and inserting:

"*(a) A violation of NRS 200.366, subsection 3 of NRS 200.400, NRS 200.710, 200.720, subsection 2 of NRS 200.730, NRS 201.180, paragraph (a) or subparagraph (2) of paragraph (b) of subsection 1 of NRS 201.195, NRS 201.230 or 201.450;*

(b) An attempt to commit any offense listed in paragraph (a); or

(c) An act of murder in the first or second degree, kidnaping in the first or second degree, false imprisonment, burglary or invasion of the home if the district attorney proves beyond a reasonable doubt that the act was sexually motivated. For the purposes of this paragraph, an act is "sexually motivated" if one of the purposes for which the person committed the act was his sexual gratification.".

Amend sec. 16, page 7, line 37, by deleting "*14*" and inserting "*9*".

Amend the bill as a whole by deleting sections 17 through 41 and renumbering sections 42 and 43 as sections 12 and 13.

Amend sec. 42, page 14, line 31, by deleting "12" and inserting "7".

Amend sec. 42, page 14, line 34, by deleting "12" and inserting "7".

Amend the bill as a whole by deleting section 44.

Amend the title of the bill to read as follows:

"An Act relating to sexual deviants; increasing the penalty for certain crimes related to sex; providing for lifetime supervision of certain sex offenders; expanding the definition of sexual offense for the purpose of requiring sex offenders to have their blood and saliva tested for inclusion in

the central repository for Nevada records of criminal history; requiring the attorney general to adopt guidelines for notification of the release of sex offenders from confinement; and providing other matters properly relating thereto.".

Amend the summary of the bill, first line, by deleting: "criminal and civil laws" and inserting "provisions".

Senator James moved the adoption of the amendment.

Remarks by Senators James, Neal, Raggio, Adler and Coffin.

Senator Coffin requested that the following remarks be entered in the Journal.

SENATOR JAMES:

Thank you, Mr. President. As you can see, the amendment to this bill is pretty substantial. Let me explain why we are excising part of the bill. What this bill tries to do is to deal with the problem of dangerous sex offenders in three ways. The first way is to enhance the penalties for certain sex crimes where there is historically a high danger of recidivism. When these kinds of people, who commit sex crimes especially on children, get out of prison they are very likely to repeat the crimes.

The second thing that we sought to do is to increase the treatment of these convicted sex offenders, both within the prison system and after they are released from prison.

The third thing the bill seeks to do is to provide for community notification when people who commit serious sexual crimes are released on parole or probation or other type of release from actual confinement. The bill contemplates that the community has a right to know at some level. We need to assess the degree of the risk the person poses to the community and notify the community accordingly.

What this amendment does is to take the treatment part out of the bill. The reason for this is that we have heard extensive testimony on this bill over the course of three hearings in the Senate Committee on Judiciary. The people from the Department of Prisons who deal with the mental health issues in the system and the people from the Mental Hygiene Division of the Department of Human Resources came and said that the treatment techniques for dangerous sex offenders are in the experimental stages, at best, in their view.

This bill, in some ways, patterns itself after the Washington law. What it tries to do is to take the best things from the Washington law, the best things from the New Jersey law, the best things from the Illinois and Minnesota laws and come up with an aggressive approach to this problem. This is both a measured response to the problem and a constitutional response which will not be struck down by the courts.

On the treatment side, we sought to adopt many of the things which the Washington statute had implemented. Those consist basically of two things. One, the idea that you treat these offenders while they are in prison and that you force them to participate in treatment programs or you take away their good time credits. Secondly, that if they are going to get out of prison, there is a civil commitment proceeding whereby they can be committed to confinement to a civil treatment program. This is not any longer punitive because they have served their time, but it is recognized that they may still be a danger to society. So, the bill sought to require the Mental Hygiene Division to assess whether or not this person had a mental abnormality which would cause them to again offend. In that case, they could be civilly committed after a trial by a jury of 12 people and a unanimous verdict and several other due process protections and could be sent back to civil confinement until such time as they could show a jury that they were not a danger to society anymore.

That is a very expensive process. We heard from the people in this state that it would be very expensive and at this point they felt that it would be of questionable effect in actually changing someone's mind. At lower levels, perhaps they can treat people, but for more serious crimes that are involved and more serious mental problems which motivate people to commit these terrible acts, there is not a great deal of confidence that we would be spending money and accomplishing a lot. The committee decided to take the treatment

parts out of the bill and leave the other parts that I explained. We have enhanced penalties left in the bill. We have community notification left. Those are two important things which have nothing to do with the treatment issue. We are going to keep these offenders in prison longer, if they commit serious crimes and particularly against children. As you can see, that is a life sentence without possibility of parole if the person is convicted of sexual assault on a person under the age of 16.

I do not think we are doing any violence to the rest of the bill by the amendment we are proposing. We are allowing this issue to be played out a little more in other jurisdictions and also studied by our own state. We haven't ruled out the possibility of recommending to this body that a study be done as to the treatment issue.

Now, there are also a couple of other changes. The definition of a sexually motivated offense or a sex offense, as defined in the bill, was thought a little too broad by the members of the committee. Remember, committing one of these offenses is what triggers all the things that are part of this bill, the long sentences, the lifetime supervision upon release from incarceration, the community notification provisions. It is important that we be dealing with the most serious types of offenses when we do this. So, we recommend amending the bill to remove a few crimes we felt did not come up to that level. Due to almost unanimous testimony from people who supported or opposed the bill, we are proposing to take out the statutory sexual seduction, take out the lewdness and indecent exposure and take out the annoyance of a minor. The serious crimes are still a part of the bill such as sexual assault, sexual battery, child pornography, child prostitution, incest, sex with a child under circumstances which are not considered statutory sexual seduction and a few other terrible crimes we left in the bill.

The reason the bill was so broad in its definition, as introduced, is because I indicated to the bill drafters when I requested this bill that I would like the trigger offense to consist of two types of things. I requested we include every violent sex offense, no matter who the victim, every sex offense even if it is not violent if the victim is a child. That is how the bill was originally drafted. We are removing a few conditions which were within the broad definition I gave to the bill drafters pre-session in order to more narrowly define this group of dangerous sexual predators, people with a high degree of likelihood of recidivism who will trigger these very serious civil penalties in civil actions by way of community notification. I know this is a big change and I hope the members of the Senate will support the amendment. I think we will still have a very good bill which deals with this issue in a comprehensive fashion and we don't rule out the possibility of dealing with the treatment issue at a later date.

I will be happy to answer any questions, Mr. President.

SENATOR NEAL:

Thank you, Mr. President, I have a couple of questions I would like to ask of the chairman of the Judiciary Committee. I notice that the amendment to the bill removes NRS 207.260 which is the annoyance or molestation of a minor. Why was that taken out?

SENATOR JAMES:

Thank you, Mr. President. The testimony of both the defense bar and the prosecution was that that wasn't in the category of those serious offenses. The testimony was that there had not been a prosecution under the category of annoyance of a minor in many, many years. It is not considered as serious a crime as those dealing with pedophiles and those kinds of offenses are prosecuted under other statutes which are left in the bill.

SENATOR NEAL:

In looking at the fiscal note of the bill, it says that the bill increases the term of imprisonment in a city or county jail, or detention facility, or make releases on probation therefrom less likely. Therefore, local government would incur all of the costs of enforcement prosecution and incarceration. Is this an unfunded mandate to the local governments?

SENATOR JAMES:

Thank you, Mr. President. On the fiscal note, I think that the amendment is going to remove virtually all of the fiscal consequences that this bill has on the state other than the consequences of increasing the term of incarceration for a very narrow category of people

who rape children. As we have known in the past, whenever we get a fiscal note on one of those kinds of things, the prison system is usually unable to assess exactly what that impact will have. So, the fiscal consequences to the state are going to be minimal at best, the way the bill is amended.

The part the Senator read concerning county jails is, I think, associated with the necessity of holding people in jail with respect to the civil commitment proceedings and the other things we have removed from the bill. I think that county and local government fiscal note is going to go away with approval of this amendment. I do not think this is a large mandate but, I do think it is an appropriate one. It would only be in connection with trying to deal with these very serious offenders. They are going to end up serving long terms of incarceration in the prison system. Their time in the jail system is going to be incidental. None of the crimes we are dealing with are gross misdemeanors. These are considered felony crimes and the time is served in the prison system. That note has to deal with some kind of incarceration in those kinds of facilities as part of the prosecutorial scheme of these crimes. I think it appropriate we ask these local governments to bear that burden, whatever it may be. I will find out before this bill is on general file whether there is going to be any fiscal impact after adoption of the amendment.

SENATOR NEAL:

My next question was, if we pass this amendment, would you be willing to hold the bill until we could get the new fiscal note on the amendment?

SENATOR JAMES:

Thank you, Mr. President. The day we brought forth this amendment, I asked for the fiscal note. The fiscal analyst for the Senate has been working on that. I spoke to him this morning and expected to have it here on my desk during session, but apparently there was some problem. It will be available before we consider the bill on general file. Assuming we can get this bill amended, I am going to ask we move the bill through unless there is some substantial problem with the fiscal note.

SENATOR RAGGIO:

Thank you, Mr. President. I would like to ask a couple of questions of the chairman of the Judiciary Committee. One is a technical inquiry and the other would be procedural. In two parts of the amendment, when you include murder, kidnapping, burglary, etc., the term is used "if the district attorney proves beyond a reasonable doubt that the act was sexually motivated." My first question would be concerning the usage of the term "district attorney." I suppose the bill drafter would have to or has responded to this. There are instances where, for example, the attorney general prosecutes these cases. I was wondering if this needs to be included or whether the term "the state proves" or something rather than specifically "district attorney" would be appropriate. Secondly, having said that, is there already in the statutes or in the procedures some manner in which you will be able to determine that the act was sexually motivated. I am referring to the language which says "if the district attorney proves beyond a reasonable doubt that the act was sexually motivated." Will that require a special finding on the part of the jury for this purpose? Is that already listed in the procedures, or will that be a requirement?

SENATOR JAMES:

Thank you, Mr. President. On the first question as to whether, referring to the district attorney, limits the ability of the attorney general to prosecute this, I don't know. I can tell the Majority Leader, through you Mr. President, that the attorney general had two deputy attorney generals who deal with the crime issue and with these sex offenses who closely tracked every hearing we had on this bill, testified on it and reviewed it in detail. That gave us a couple of memoranda on the bill and how it operated. So, that might be something they missed, but it does refer to district attorneys throughout the bill, even the part we are amending out. Whether that term is generic enough to allow the attorney general to act under it, I think the bill drafter would have to address this. Perhaps the Senator from Carson City can address this aspect of the bill.

As to the second question, there is not a specific procedure for a separate hearing in this bill that I have seen. There is an element set up because the bill defines what sexually motivated consists of. You can see the definition follows there. There would have to be a

special finding on that issue or the provisions of this bill would not kick in. Those provisions, again, are the lifetime supervision provisions and the notification provisions. When we amended the bill, that part of the amendment was in the part of the bill we are amending out on civil commitment. I asked that be moved back in because I think if you have a violent crime such as murder, kidnapping, false imprisonment or burglary which is not defined as a sex offense, but is sexually motivated and can be shown as such to a jury, all these same provisions should well operate. Somebody shouldn't be able to commit a sexual offense against a child and get out and have all the stipulations enforced, while a person who commits kidnapping or murder with a sexual motivation and not have those same remedies available to the public for protecting our communities. That is why I am asking that to be put into the bill. If there is a problem with this, I would be happy to ask for an amendment when the bill comes up on general file.

SENATOR ADLER:

Thank you, Mr. President, through you to the Senator from Washoe County. I believe the attorney general's office did ask that we start using the term prosecuting attorney because the attorney general and their specially-named prosecuting attorneys are now handling cases. So it is probably technically correct to use the term prosecuting attorney in this statute rather than district attorney.

SENATOR COFFIN:

Thank you, Mr. President. I rise in opposition to this amendment which comes as no surprise after I had read the news stories which stated that the committee had stripped the bill of the treatment provisions. I am listed as a co-sponsor on this bill and, as a veteran of the money committee, signed it with my eyes open recognizing that the most important part of the bill was the treatment aspects. This committee has cast these aside. I heard the chairman of the committee make the statement that, at best, these treatment procedures in prisons are experimental, at this point. But, I can't think of a better place for experiments to occur than amongst the prison population. Many of them are willing to rid themselves of the problems which caused them to be incarcerated. Now, I am sorry that I am listed as a sponsor. What the committee has done is to change this from an expensive bill, which conceivably could help remove the problem in the long term of the sexual offender, to just another expensive bill by putting people in jail for a long period of time. I am dismayed at that because I thought the intent of the sponsor was to produce some measure that would help to eliminate the problem. All it will do now, with the amendment to this bill, is to provide another expensive bill which should be taken from this floor and sent to the Committee on Finance so that they may assess the costs. I am sorry that I am listed as a sponsor and it is very difficult to come out and say you are against one of these "tough on crime" bills which continually come out of the Committee on Judiciary, but to have removed the one beneficial aspect is a serious error and I must oppose the amendment.

SENATOR JAMES:

Thank you, Mr. President, through you to the Senator from Clark County. I was careful to explain all the things this bill does. I was careful to explain that in enacting this bill we are not, on the Senate Judiciary Committee who processed this bill, or myself or the other co-sponsors of the bill, trying to react to public hysteria or enact a bill which is unconstitutional as the one in New Jersey which was just struck down by a federal judge a week ago. The judge said, in his opinion, that we know that well-intentioned legislators have tried to enact a well-intentioned bill to deal with the problem. But, no matter how well-intentioned, the bill has to pass constitutional muster, and he struck it out. When I have health care professionals who come in and tell me that I have spent my entire life and training learning about mental abnormalities, treatment and all the technical aspects of the human mind, that civil commitment and attempted treatment of child molesters and child rapists and those kinds of heinous criminals is going to have questionable effect, I have to listen to them. I am not a psychologist or psychiatrist nor do we have one on the committee. So, I have to listen to the people who are employed by the taxpayers of this state to assess these things and advise us whether we are doing something which is imprudent and might risk passage of the entire bill. They also testified that this exact treatment procedure that is now in the Washington statute is having questionable effect.

You cannot make someone participate in treatment in civil confinement. Their lawyers are telling them to not do it. So, half the people in the civil commitment program in Washington aren't even being treated. They are just sitting there, taking up space and using up money. I don't want to do that in Nevada. I am smart enough, and I think this body is smart enough, to look to another state where something is not working and say to wait a minute and study it.

The comment was made, Mr. President, that we took out the only effective part of this bill, the only thing which made it worthwhile. The Senator stated that he wished he wasn't a co-sponsor. I am sorry that the Senator has regrets about being the co-sponsor of a bill which provides for community notification when dangerous sex offenders are released into communities. I am sorry that the Senator regrets being a co-sponsor of a bill which provides for lifetime incarceration for people who rape children. I am sorry that the Senator regrets being the co-sponsor of a bill which provides for lifetime supervision of some of the most dangerous characters our criminal justice system has to deal with. This is not just another "tough on crime" bill which doesn't do anything. This is one of the toughest on crime bills you are going to see, out of this committee, this session. We have not done anything except extricate a couple of provisions which dealt with treatment which is of questionable benefit. Now, Mr. President, I would have to agree with the Senator. If we had some proven methodology of treating people and having some degree of certainty that we would be taking a problem away because we would be treating someone and curing them so they could become productive members of society, I would be standing here defending this and the fiscal note along with it. But, not when the health care officials come in in droves representing the prison system and the mental health division, and tell us it is not going to work. We need more time with this. I am not opposed to studying a problem when there really is something which needs to be studied. That is what I am willing to do with this bill. Let me reassure the other members of the Senate who are co-sponsors on this measure that this bill goes a long way in dealing with dangerous sex offenders, dangerous sexual predators who particularly prey on children. I will be here to defend this bill and this bill in its amended version to the very end.

SENATOR NEAL:

Thank you, Mr. President. I don't want to prolong the discussion on this bill. I thought when our Majority Leader was questioning whether or not there should be a finding of sexual motivation as to the commission of these acts that I would get a clear understanding of what this amendment is supposed to do and therefore eliminate some of the vagueness that I see in the amendment. The amendment seems to address a new type of standard in our criminal law in reference to the acts which would be in violation of NRS 200.366, subsection 3 of NRS 200.400, NRS 200.710 and NRS 200.720, subsection 2 of NRS 200.730, etc. These particular crimes would require the law enforcement personnel to prove that the acts were committed, but the amendment says that you have to go beyond that. You have to prove what motivated the person to commit these acts. That seems to be an application of a new standard. It goes on to say that sexual motivation is when a person committed the act for his sexual gratification. It seems to me that we are taking a very simple statute and making it more difficult in terms of proof for the prosecuting attorney or whoever wants to bring these particular charges against an individual. If you have a case of kidnapping, forced imprisonment, burglary, invasion of the home, you have to prove that the reason the person went into that house was because he was motivated for sexual gratification. That tells me that this is going to be a difficult standard for the prosecuting attorney to prove. After all, what is sexual gratification and should that not be defined in this amendment? I understand what the chairman of the Judiciary Committee would like to do, but if we are going to do it, we have to do it right. You don't want to put into a statute something which is going to add a tremendous amount of time to the prosecution of these types of crimes. I applaud your gesture in trying to do something about this, as you see fit. But, I think what you have allowed to happen, in trying to reach these particular acts for the purpose of enhancing these penalties, you are doing a disservice to those who wish to prosecute. Sexual motivation and sexual gratification are terms which defy definition. What do they mean? Do they mean that someone just looked at a person and became aroused by doing that? Does it mean that someone touched a person and became aroused

by doing that? What does it mean? We don't know. By the fact that it has this vague meaning, it says to me that you are going to have appeal upon appeal until the courts begin to set some type of meaning. The courts should not do this, it should be done here.

SENATOR JAMES:

Thank you, Mr. President. Let me just offer a couple of comments to reassure the members of the Senate that what we are doing here is not going to present any complications. It is going to give tools to prosecutors and law enforcement which they don't have now with respect to some very serious crimes. The provision, referred to by the Senator from Clark County, is the definition of sex offense which triggers those other provisions. If you look at the bill, it amends the section of page 6 which says "as used in sections 11 to 14 inclusive of the act." These are the sections which deal with community notification and parole board review of these kinds of releases. As used in those sections, sex offense means these things. It goes on to define sex offense as it has previously, then adds to it other kinds of crimes which are not defined by their terms as sex offenses, but which are sexually motivated. You commit the crime of burglary, under the common law, by entering a dwelling house with the intent to commit a crime inside the place. It must be proven beyond a reasonable doubt, and the key here is the standard of proof. The suggestion has been made that this is vague and is going to cause reversals, but what has to be proved here must be proved beyond a reasonable doubt. That is the criminal standard. If it can be shown, beyond a reasonable doubt, that someone is entering a dwelling house or whatever you might do that is related to sexual gratification, if that can be proven to a jury, as required by the bill, I think that kind of criminal ought to have the same kinds of protections built into his sentence as these other criminals do. These are such as community notification upon release. What we are trying to do here is to deal with the problem both from the penalty side and also to try to prevent these crimes from being recommitted by people who have a high degree of recidivism.

SENATOR NEAL:

I have another question. Take for instance a burglary. Assuming that a person broke into a house for the purpose of robbing that house and, while that person is in there, the occupant appears while the burglar is hiding in the closet, undresses. The burglar is aroused by watching the occupant disrobe and then bolts for the door. Is he then charged with sexual motivation in this case?

SENATOR JAMES:

Thank you, Mr. President. Sexual harassment has nothing to do with this. If a jury of his peers found, beyond a reasonable doubt, that one of the purposes for committing the crime was sexual gratification, yes! That is the protection that is built into the system; it has to be proven. The district attorney or the prosecuting attorney, in one of these cases, is not going to try to get such a finding if there is no proof of it. It is a tool which prosecutors will now have to utilize to show that this was a motivation of the crime and is the reason that this person has an extra level of dangerousness and we should deal with them through this statute and its provisions.

On what was said, Mr. President and still answering the question, the concern raised by the Majority Leader is the only concern I have heard raised which needs to be dealt with. I can't tell you whether or not that part of the statute which says "district attorney" needs to apply to the attorney general. So, that technical aspect of this bill will be dealt with. I think it is appropriate to pass the amendment. If there is a problem with that, the words "prosecuting attorney" can be amended into the statute wherever they need to go. I think it has already been handled since we did discuss this in committee, as the Senator from Carson City indicated. The bill drafter gave us this language. If there is a problem, I will give you an amendment on that. There are no other big problems in this bill, as is being suggested.

SENATOR COFFIN:

Thank you, Mr. President, to you and through you to the chairman of the Judiciary Committee. I have served here in the legislature for 12 years. The first four years were in the Assembly, where things are done a little differently than in the Senate and things move a little faster. One of the reasons we are Senators, with four-year terms, is so that we can

insulate ourselves somewhat from the political pressures which bear on us and sometimes cause us to try to appeal to the public in a fashion which may not be in a dignified manner. What I want to try to do is to throw a little oil on the waters, for the chairman, who has warmed them up some. We all carry scars from being here and I think it is important for us to separate our attack on an amendment or bill from an attack on an individual. That does not mean that the charming chairman of the Judiciary Committee, in his response to me, wasn't justified in being upset with this member. On the other hand, I want the chairman to know that this wasn't an attack on him personally, but rather an attack on the amendment.

Amendment adopted.

Senator Coffin requested that the record reflect that he had voted no on the amendment.

Bill ordered reprinted, engrossed and to third reading.

Assembly Bill No. 14.

Bill read second time and ordered to third reading.

GENERAL FILE AND THIRD READING

Senate Joint Resolution No. 4.

Resolution read third time.

Remarks by Senator Rawson.

Roll call on Senate Joint Resolution No. 4:

YEAS—20.

NAYS—None.

Absent—McGinness.

Senate Joint Resolution No. 4 having received a constitutional majority, Mr. President declared it passed, as amended.

Resolution ordered transmitted to the Assembly.

Assembly Bill No. 66.

Bill read third time.

Remarks by Senator Rawson.

Roll call on Assembly Bill No. 66:

YEAS—20.

NAYS—None.

Absent—McGinness.

Assembly Bill No. 66 having received a constitutional majority, Mr. President declared it passed.

Bill ordered transmitted to the Assembly.

REMARKS FROM THE FLOOR

Senator Lowden requested that her remarks be entered in the Journal.

The Alliance for Child Care in cooperation with Americorp has presented each member of the Legislature a cutout doll this morning. Each doll represents a real child in Nevada. I am sure you have noticed that each child's story is printed on its back. These are the stories of children who are currently receiving assistance with the cost of child care or who are waiting for that help. For these children, child care is not just a safe place to stay, but a place that allows their parents to work or attend job training programs so that they don't have to be on welfare. I'm extremely proud as a member of the Variety Day School Board of Directors. We house hundreds of children on a daily basis so that parents can

SENATE BILL NO. 192—SENATORS JAMES, O'CONNELL, ADLER, AUGUSTINE, COFFIN, JACOBSEN, LEE, LOWDEN, MATHEWS, MCGINNESS, O'DONNELL, PORTER, RAGGIO, RAWSON, REGAN, SHAFFER, TITUS, TOWNSEND AND WASHINGTON

FEBRUARY 3, 1995

Referred to Committee on Judiciary

SUMMARY—Makes various changes related to provisions pertaining to sexual deviants. (BDR 15-171)

FISCAL NOTE: Effect on Local Government: Yes.
Effect on the State or on Industrial Insurance: Yes.

EXPLANATION—Matter in italics is new; matter in brackets [ ] is material to be omitted.

AN ACT relating to sexual deviants; increasing the penalty for certain crimes related to sex; providing for lifetime supervision of certain sex offenders; expanding the definition of sexual offense for the purpose of requiring sex offenders to have their blood and saliva tested for inclusion in the central repository for Nevada records of criminal history; requiring the attorney general to adopt guidelines for notification of the release of sex offenders from confinement; and providing other matters properly relating thereto.

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

Section 1. NRS 200.366 is hereby amended to read as follows:

200.366 1. A person who subjects another person to sexual penetration, or who forces another person to make a sexual penetration on himself or another, or on a beast, against the victim's will or under conditions in which the perpetrator knows or should know that the victim is mentally or physically incapable of resisting or understanding the nature of his conduct, is guilty of sexual assault.

2. [Any] *Except as otherwise provided in subsection 3, a* person who commits a sexual assault shall be punished:

(a) If substantial bodily harm to the victim results from the actions of the defendant committed in connection with or as a part of the sexual assault:

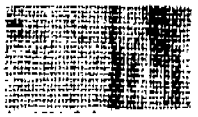
(1) By imprisonment in the state prison for life, without *the* possibility of parole; or

(2) By imprisonment in the state prison for life with *the* possibility of parole, eligibility for which begins when a minimum of 10 years has been served.

(b) If no substantial bodily harm to the victim results:

(1) By imprisonment in the state prison for life, with *the* possibility of parole, beginning when a minimum of 5 years has been served; or

(2) By imprisonment in the state prison for any definite term of 5 years or more, with eligibility for parole beginning when a minimum of 5 years has been served.



[(c) If the victim was a child under the age of 14 years, by imprisonment in the state prison for life with possibility of parole, eligibility for which begins when a minimum of 10 years has been served.]

3. A person who commits a sexual assault against a child under the age of 16 years shall be punished:

(a) If the crime results in substantial bodily harm to the child, by imprisonment in the state prison for life without the possibility of parole.

(b) If the crime does not result in substantial bodily harm to the child, by imprisonment in the state prison for:

(1) Life with the possibility of parole, beginning when a minimum of 20 years has been served; or

(2) Any definite term of not less than 5 years nor more than 20 years, without the possibility of parole.

4. The trier of fact in a trial for sexual assault shall determine whether substantial bodily harm has been inflicted on the victim in connection with or as a part of the sexual assault, and if so, the sentence to be imposed upon the perpetrator.

Sec. 2. NRS 200.400 is hereby amended to read as follows:

200.400 1. As used in this section, "battery" means any willful and unlawful use of force or violence upon the person of another.

2. Any person convicted of battery with intent to kill, commit [sexual assault,] mayhem, robbery or grand larceny shall be punished by imprisonment in the state prison for not less than 2 years nor more than 10 years, and may be further punished by a fine of not more than $10,000 . [, except that if a battery with intent to commit a sexual assault is committed, and if the crime results in substantial bodily harm to the victim, the person convicted shall be punished by imprisonment in the state prison for life, with or without the possibility of parole, as determined by the verdict of the jury, or the judgment of the court if there is no jury.]

3. A person convicted of battery with intent to commit sexual assault shall be punished:

(a) If the crime results in substantial bodily harm to the victim, by imprisonment in the state prison for life with or without the possibility of parole, as determined by the verdict of the jury or the judgment of the court if there is no jury;

(b) If the crime does not result in substantial bodily harm to the victim and the victim is 16 years of age or older, by imprisonment in the state prison for not less than 2 years nor more than 10 years; or

(c) If the crime does not result in substantial bodily harm to the victim and the victim was a child under the age of 16, by imprisonment in the state prison for not less than 5 years nor more than 15 years, without the possibility of parole,

and may be further punished by a fine of not more than $10,000.

4. If the penalty is fixed at life imprisonment with the possibility of parole, eligibility for parole begins when a minimum of 10 years has been served.

Sec. 3. Chapter 176 of NRS is hereby amended by adding thereto a new section to read as follows:

1. When a defendant pleads or is found guilty of a sexual offense, the judge shall include in sentencing, in addition to any other penalties provided by law, a special sentence of lifetime supervision to commence after any period of probation or any term of imprisonment and period of release on parole.

2. The special sentence of lifetime supervision must begin upon the release of a sex offender from incarceration.

3. A person sentenced to lifetime supervision may petition the court for release from lifetime supervision. The court shall grant a petition for release from a special sentence of lifetime supervision if:

(a) The person has not committed a crime for 15 years after his last conviction or release from incarceration, whichever occurs later; and

(b) The person is not likely to pose a threat to the safety of others if released from supervision.

4. As used in this section, "sexual offense" means:

(a) A violation of NRS 200.366, subsection 3 of NRS 200.400, NRS 200.710, 200.720, subsection 2 of NRS 200.730, NRS 201.180, paragraph (a) or subparagraph (2) of paragraph (b) of subsection 1 of NRS 201.195, NRS 201.230 or 201.450;

(b) An attempt to commit any offense listed in paragraph (a); or

(c) An act of murder in the first or second degree, kidnaping in the first or second degree, false imprisonment, burglary or invasion of the home if the district attorney proves beyond a reasonable doubt that the act was sexually motivated. For the purposes of this paragraph, an act is "sexually motivated" if one of the purposes for which the person committed the act was his sexual gratification.

Sec. 4. NRS 176.111 is hereby amended to read as follows:

176.111 1. When a defendant is convicted of a sexual offense, the court, by order, shall direct the defendant to submit to a blood and saliva test, to be made by qualified persons, under such restrictions and directions as the court deems proper. The tests must include analyses of his blood to determine its genetic markers and of his saliva to determine its secretor status. The court shall order that the results of the tests be submitted to the central repository for Nevada records of criminal history.

2. For the purposes of this section, "sexual offense" means:

(a) Sexual assault pursuant to NRS 200.366;

(b) Statutory sexual seduction pursuant to NRS 200.368;

(c) *Battery with intent to commit a sexual assault pursuant to NRS 200.400;*

(d) Use of a minor in producing pornography pursuant to NRS 200.710;

[(d)**]** *(e)* Promotion of a sexual performance of a minor pursuant to NRS 200.720;

[(e)**]** *(f) Possession of a visual representation depicting the sexual conduct of a person under 16 years of age pursuant to NRS 200.730;*

(g) Incest pursuant to NRS 201.180; **[**or

(f)**]** *(h) Solicitation of a minor to engage in acts constituting the infamous crime against nature pursuant to NRS 201.195;*

(i) Open or gross lewdness pursuant to NRS 201.210;
(j) Indecent or obscene exposure pursuant to NRS 201.220;
(k) Lewdness with a child pursuant to NRS 201.230 **[.]** *;*
(l) Sexual penetration of a dead human body pursuant to NRS 201.450;
(m) Annoyance or molestation of a minor pursuant to NRS 207.260; or
(n) An attempt to commit any offense listed in this subsection.

Sec. 5. Chapter 213 of NRS is hereby amended by adding thereto the provisions set forth as sections 6 to 9, inclusive, of this act.

Sec. 6. *1. The board shall establish by regulation a program of lifetime supervision of sex offenders to commence after any period of probation or any term of imprisonment and any period of release on parole. The program must provide for the lifetime supervision of sex offenders by parole and probation officers.*

2. Lifetime supervision shall be deemed a form of parole for the limited purposes of the applicability of the provisions of subsection 9 of NRS 213.1095, NRS 213.1096, 213.10973 and subsection 2 of NRS 213.110.

3. A person who violates a condition imposed on him pursuant to the program of lifetime supervision is guilty of a felony.

Sec. 7. *1. There is hereby created an advisory council for community notification. The council consists of:*

(a) Three members, of whom no more than two may be of the same political party, appointed by the governor; and

(b) Four members, of whom no more than two may be of the same political party, appointed by the legislative commission.

2. Each member serves a term of 4 years. Members may be reappointed for additional terms of 4 years in the same manner as the original appointments.

3. Any vacancies occurring in the membership of the council must be filled in the same manner as the original appointments.

4. The council shall consult with and provide recommendations to the attorney general concerning guidelines and procedures for the notification of the community where a sex offender is to be released on parole.

Sec. 8. *1. The attorney general shall consult with the advisory council for community notification and shall establish guidelines and procedures for the notification of the community where a sex offender will be released on parole.*

2. The guidelines and procedures established by the attorney general must identify and incorporate factors relevant to the sex offender's risk of recidivism. Factors relevant to the risk of recidivism include, but are not limited to:

(a) Conditions of release that minimize the risk of recidivism, including probation or parole, counseling, therapy or treatment;

(b) Physical conditions that minimize the risk of recidivism, including advanced age or debilitating illness; and

(c) Any criminal history of the sex offender indicative of a high risk of recidivism, including:

(1) Whether the conduct of the sex offender was found to be characterized by repetitive and compulsive behavior;

(2) Whether the sex offender committed the sexual offense against a child;

(3) Whether the sexual offense involved the use of a weapon, violence or infliction of serious bodily injury;

(4) The number, date and nature of prior offenses;

(5) Whether psychological or psychiatric profiles indicate a risk of recidivism;

(6) The offender's response to treatment;

(7) Any recent threats against a person or expressions of intent to commit additional crimes; and

(8) Behavior while confined.

3. The procedures for notification established by the attorney general must provide for three levels of notification by the law enforcement agency in whose jurisdiction the sex offender is to be released depending upon the risk of recidivism by the sex offender as follows:

(a) If the risk of recidivism is low, other law enforcement agencies likely to encounter the sex offender must be notified.

(b) If the risk of recidivism is moderate, in addition to the notice required by paragraph (a), schools and religious and youth organizations must be notified.

(c) If the risk of recidivism is high, in addition to the notice required by paragraphs (a) and (b), the public must be notified through means designed to reach members of the public likely to encounter the sex offender.

4. The attorney general shall establish procedures for the evaluation of the risk of recidivism and implementation of community notification that promote the uniform application of the notification guidelines required by this section.

5. This section must not be construed to prevent law enforcement officers from providing community notification concerning any person who poses a danger to the welfare of the public.

Sec. 9. *The law enforcement agency in whose jurisdiction a sex offender will be released on parole shall disclose information regarding the sex offender to the appropriate parties pursuant to the procedures established by the attorney general pursuant to section 8 of this act. The law enforcement agency is immune from civil liability for damages for disclosing or failing to disclose information regarding a sex offender pursuant to the provisions of this section.*

Sec. 10. NRS 213.107 is hereby amended to read as follows:

213.107 As used in NRS 213.107 to 213.160, inclusive, *and sections 6 to 9, inclusive, of this act,* unless the context otherwise requires:

1. "Board" means the state board of parole commissioners.

2. "Chief" means the chief parole and probation officer.

3. "Division" means the division of parole and probation of the department of motor vehicles and public safety.

4. "Residential confinement" means the confinement of a person convicted of a crime to his place of residence under the terms and conditions established by the board.

5. *"Sex offender" means any person who has been or is convicted of a sexual offense.*

6. *"Sexual offense" means:*

Sec. 10. *The law enforcement agency in whose jurisdiction a sex offender will be released on parole shall disclose information regarding the sex offender to the appropriate parties pursuant to the procedures established by the attorney general pursuant to section 9 of this act. The law enforcement agency is immune from civil liability for damages for disclosing or failing to disclose information regarding a sex offender pursuant to the provisions of this section.*

Sec. 11. NRS 213.107 is hereby amended to read as follows:

213.107 As used in NRS 213.107 to 213.160, inclusive, *and sections 7 to 10, inclusive, of this act,* unless the context otherwise requires:

1. "Board" means the state board of parole commissioners.
2. "Chief" means the chief parole and probation officer.
3. "Division" means the division of parole and probation of the department of motor vehicles and public safety.
4. "Residential confinement" means the confinement of a person convicted of a crime to his place of residence under the terms and conditions established by the board.
5. *"Sex offender" means any person who has been or is convicted of a sexual offense.*
6. *"Sexual offense" means:*

(a) A violation of NRS 200.366, subsection 3 of NRS 200.400, NRS 200.710, 200.720, subsection 2 of NRS 200.730, NRS 201.180, paragraph (a) or subparagraph (2) of paragraph (b) of subsection 1 of NRS 201.195, NRS 201.230 or 201.450;

(b) An attempt to commit any offense listed in paragraph (a); or

(c) An act of murder in the first or second degree, kidnaping in the first or second degree, false imprisonment, burglary or invasion of the home if the act is determined to be sexually motivated at a hearing conducted pursuant to section 3 of this act.

7. "Standards" means the objective standards for granting or revoking parole or probation which are adopted by the board or the chief. [parole and probation officer.]

Sec. 12. NRS 213.1099 is hereby amended to read as follows:

213.1099 1. Except as otherwise provided in this section and NRS 213.1215, the board may release on parole a prisoner otherwise eligible for parole under NRS 213.107 to 213.160, inclusive.

2. In determining whether to release a prisoner on parole, the board shall consider:

(a) Whether there is a reasonable probability that the prisoner will live and remain at liberty without violating the laws;

(b) Whether the release is incompatible with the welfare of society;

(c) The seriousness of the offense and the history of criminal conduct of the prisoner; and

(d) The standards adopted pursuant to NRS 213.10987 and the recommendation, if any, of the chief. [parole and probation officer.]

3. When a person is convicted of any felony and is punished by a sentence of imprisonment, he remains subject to the jurisdiction of the board from the time he is released on parole under the provisions of this chapter until the

expiration of the term of imprisonment imposed by the court less any good time or other credits earned against the term.

4. Except as otherwise provided in NRS 213.1215, the board may not release on parole a prisoner whose sentence to death or to life without possibility of parole has been commuted to a lesser penalty unless it finds that the prisoner has served at least 20 consecutive years in the state prison, is not under an order [that he] *to* be detained to answer for a crime or violation of parole or probation in another jurisdiction, and that he has no history of:

(a) Recent misconduct in the institution, and that he has been recommended for parole by the director of the department of prisons;

(b) Repetitive criminal conduct;

(c) Criminal conduct related to the use of alcohol or drugs;

(d) Repetitive sexual deviance, violence or aggression; or

(e) Failure in parole, probation, work release or similar programs.

5. In determining whether to release a prisoner on parole pursuant to this section, the board shall not consider whether the prisoner will soon be eligible for release pursuant to NRS 213.1215.

6. The board shall not release on parole a sex offender until the law enforcement agency in whose jurisdiction a sex offender will be released on parole has been provided an opportunity to give the notice required by the attorney general pursuant to section 10 of this act.

Sec. 13. As soon as practicable after October 1, 1995:

1. The governor shall, pursuant to section 8 of this act, appoint three members to the advisory council for community notification for an initial term of 4 years commencing on January 1, 1996.

2. The legislative commission shall, pursuant to section 8 of this act, appoint four members to the advisory council for community notification for an initial term of 4 years commencing on January 1, 1996.

Sec. 14. The amendatory provisions of sections 1, 2 and 4 of this act do not apply to an offense which was committed before October 1, 1995.

MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Sixty-eighth Session
March 15, 1995

The Senate Committee on Judiciary was called to order by Chairman Mark A. James, at 9:40 a.m., on Wednesday, March 15, 1995, in Room 224 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Mark A. James, Chairman
Senator Jon C. Porter, Vice Chairman
Senator Maurice Washington
Senator Mike McGinness
Senator Dina Titus
Senator O.C. Lee

COMMITTEE MEMBERS ABSENT:

Senator Ernest E. Adler (Excused)

STAFF MEMBERS PRESENT:

Allison Combs, Senior Research Analyst
Marilyn Hofmann, Committee Secretary

OTHERS PRESENT:

Dean Heller, Secretary of State, State of Nevada
Donald J. Reis, Deputy Secretary of State for Securities Regulation, State of Nevada, Office of the Secretary of State
Frankie Sue Del Papa, Attorney General, State of Nevada
David F. Sarnowski, Chief Deputy Attorney General, State of Nevada, Office of the Attorney General
Robert (Bob) Barengo, Lobbiest, Securities Industry Association
Ben Graham, Nevada District Attorneys Association, Office of the Clark County District Attorney

Senator James opened the hearing to a discussion of a proposed amendment to Senate Bill (S.B.) 192.

SENATE BILL 192: Makes various changes related to criminal and civil laws pertaining to sexual deviants.

Senator James provided the committee members with a copy of an amendment to S.B. 192, which is attached hereto as Exhibit C. He said the amendment was prepared in order to address the concerns raised by the majority leader. Senator James stated the amendment referenced those specific cases where sexual gratification is an element of a crime, which could be proved separately. He said the result would be that community notification under other provisions of the bill would "come into play." Senator James pointed out section 3 of the amendment would be added to outline that condition. He said the section would allow the district attorney discretion, "...if he or she thinks there is enough evidence in a given case...he or she will ask the court for a separate penalty hearing, which will be accomplished before sentencing."

SENATOR McGINNESS MOVED FOR APPROVAL OF THE AMENDMENT SET FORTH AS EXHIBIT C.

SENATOR WASHINGTON SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS ADLER AND TITUS WERE ABSENT FOR THE VOTE.)

* * * * *

Senator Lee asked Senator James if he believed a fiscal note would be added to the bill, and Senator James answered he had requested the same. He said it was his understanding the large fiscal impact of the bill had been removed, other than long sentences for child rapists.

SENATE BILL 244: Makes various changes relating to violations of statutes governing securities and commodities.

The first to testify was Dean Heller, Secretary of State, State of Nevada. Mr. Heller introduced Donald J. Reis, Deputy Secretary of State for Securities

1995 REGULAR SESSION (68th)

ASSEMBLY ACTION		SENATE ACTION		
Adopted	☐	Adopted	☐	Senate Amendment to Senate Bill No. 192 First Reprint BDR 15-171 Proposed by Committee on Judiciary
Lost	☐	Lost	☐	
Date: Initial:		Date: Initial:		
Concurred in	☐	Concurred in	☐	
Not Concurred in	☐	Not Concurred in	☐	
Date: Initial:		Date: Initial:		

Amendment No. 112

Amend the bill as a whole by renumbering sections 3 through 13 as sections 4 through 14 and adding a new section designated sec. 3, following sec. 2, to read as follows:

"**Sec. 3.** Chapter 175 of NRS is hereby amended by adding thereto a new section to read as follows:

1. In any case in which a defendant pleads or is found guilty of murder in the first or second degree, kidnaping in the first or second degree, false imprisonment, burglary or invasion of the home, the court shall, at the request of the prosecuting attorney and for the purposes of carrying out the provisions of sections 4 and 7 to 10, inclusive, of this act, conduct a separate hearing to determine whether the offense was sexually motivated. A request for such a hearing may not be submitted to the court

Drafted by: JKN:mrw Date: 3/14/95

S.B. No. 192--Makes various changes related to provisions pertaining to sexual deviants.

-EXHIBIT C

unless the prosecuting attorney, before the commencement of the trial, files and serves upon the defendant a written notice of his intention to request such a hearing.

2. A hearing requested pursuant to subsection 1 must be conducted before:

(a) The court imposes its sentence; or

(b) A separate penalty hearing is conducted.

3. At the hearing, only evidence concerning the question of whether the offense was sexually motivated may be presented. The prosecuting attorney must prove beyond a reasonable doubt that the offense was sexually motivated.

4. The court shall enter its finding in the record.

5. For the purposes of this section, an offense is "sexually motivated" if one of the purposes for which the person committed the offense was his sexual gratification.".

Amend sec. 3, page 3, by deleting lines 24 through 27 and inserting:

"*act is determined to be sexually motivated at a hearing conducted pursuant to section 3 of this act.*".

Amend sec. 5, page 4, line 8, by deleting:

"6 to 9," and inserting:

"7 to 10.".

Amend sec. 9, page 5, line 31, by deleting "8" and inserting "9".

Amend sec. 10, page 5, lines 36 and 37, by deleting:

"*6 to 9.*" and inserting:

"*7 to 10.*".

Amend sec. 10, page 6, by deleting lines 8 through 11 and inserting:

"*act is determined to be sexually motivated at a hearing conducted pursuant to section 3 of this act.*".

Amend sec. 11, page 7, line 4, by deleting "9" and inserting "*10*".

Amend sec. 12, page 7, line 6, by deleting "7" and inserting "8".

Amend sec. 12, page 7, line 9, by deleting "7" and inserting "8".

Amend sec. 13, page 7, line 12, by deleting "and 3" and inserting "and 4".

"authorizing the use of such a tag on private land during a special season established therefor;".

Amend the summary of the bill by deleting "(BDR S-1099)" and inserting "(BDR 45-1099)".

Senator Rhoads moved the adoption of the amendment.

Remarks by Senator Rhoads.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senate Joint Resolution No. 9.

Resolution read second time.

The following amendment was proposed by the Committee on Natural Resources:

Amendment No. 56.

Amend the resolution, page 2, line 3, by deleting: "Commissioner and Director" and inserting "Chairman".

Amend the preamble of the resolution, page 1, by deleting lines 17 through 20 and inserting:

"WHEREAS, The board of county commissioners of Clark County requested the Colorado River Commission and the Bureau of Land Management to initiate a process to exchange certain lands administered by the commission for certain federal land in Laughlin, and the commission has approved that request and directed its staff to initiate that process; and".

Senator Rhoads moved the adoption of the amendment.

Remarks by Senator Rhoads.

Amendment adopted.

Resolution ordered reprinted, engrossed and to third reading.

GENERAL FILE AND THIRD READING

Senate Bill No. 192.

Bill read third time.

The following amendment was proposed by the Committee on Judiciary:

Amendment No. 112.

Amend the bill as a whole by renumbering sections 3 through 13 as sections 4 through 14 and adding a new section designated sec. 3, following sec. 2, to read as follows:

"Sec. 3. Chapter 175 of NRS is hereby amended by adding thereto a new section to read as follows:

1. In any case in which a defendant pleads or is found guilty of murder in the first or second degree, kidnaping in the first or second degree, false imprisonment, burglary or invasion of the home, the court shall, at the request of the prosecuting attorney and for the purposes of carrying out the provisions of sections 4 and 7 to 10, inclusive, of this act, conduct a separate hearing to determine whether the offense was sexually motivated. A request for such a hearing may not be submitted to the court unless the prosecuting attorney, before the commencement of the trial, files and serves upon the defendant a written notice of his intention to request such a hearing.

2. A hearing requested pursuant to subsection 1 must be conducted before:

(a) The court imposes its sentence; or

(b) A separate penalty hearing is conducted.

3. At the hearing, only evidence concerning the question of whether the offense was sexually motivated may be presented. The prosecuting attorney must prove beyond a reasonable doubt that the offense was sexually motivated.

4. The court shall enter its finding in the record.

5. For the purposes of this section, an offense is "sexually motivated" if one of the purposes for which the person committed the offense was his sexual gratification.".

Amend sec. 3, page 3, by deleting lines 24 through 27 and inserting: "*act is determined to be sexually motivated at a hearing conducted pursuant to section 3 of this act.*".

Amend sec. 5, page 4, line 8, by deleting: "6 to 9," and inserting: "7 to 10,".

Amend sec. 9, page 5, line 31, by deleting "*8*" and inserting "*9*".

Amend sec. 10, page 5, lines 36 and 37, by deleting: "*6 to 9,*" and inserting: "*7 to 10,*".

Amend sec. 10, page 6, by deleting lines 8 through 11 and inserting: "*act is determined to be sexually motivated at a hearing conducted pursuant to section 3 of this act.*".

Amend sec. 11, page 7, line 4, by deleting "*9*" and inserting "*10*".

Amend sec. 12, page 7, line 6, by deleting "7" and inserting "8".

Amend sec. 12, page 7, line 9, by deleting "7" and inserting "8".

Amend sec. 13, page 7, line 12, by deleting "and 3" and inserting "and 4".

Senator James moved the adoption of the amendment.

Remarks by Senator James.

Amendment adopted.

Bill ordered reprinted, re-engrossed and to third reading.

GUESTS EXTENDED PRIVILEGE OF SENATE FLOOR

On request of Senator Coffin, the privilege of the floor of the Senate Chamber for this day was extended to Gertrude Scruggs and Mercedes Samaniego.

On request of Senator Lee, the privilege of the floor of the Senate Chamber for this day was extended to Bob and Lyn Vick.

On request of Senator Lowden, the privilege of the floor of the Senate Chamber for this day was extended to Linda Gingras.

On request of Senator Mathews, the privilege of the floor of the Senate Chamber for this day was extended to Robert Munoz.

On request of Senator McGinness, the privilege of the floor of the Senate Chamber for this day was extended to Faron Baltazar and Elivera Baltazar.

SENATE BILL NO. 192—SENATORS JAMES, O'CONNELL, ADLER, AUGUSTINE, COFFIN, JACOBSEN, LEE, LOWDEN, MATHEWS, MCGINNESS, O'DONNELL, PORTER, RAGGIO, RAWSON, REGAN, SHAFFER, TITUS, TOWNSEND AND WASHINGTON

FEBRUARY 3, 1995

Referred to Committee on Judiciary

SUMMARY—Makes various changes related to provisions pertaining to sexual deviants. (BDR 15-171)

FISCAL NOTE: Effect on Local Government: Yes.
Effect on the State or on Industrial Insurance: Yes.

EXPLANATION—Matter in italics is new; matter in brackets [ ] is material to be omitted.

AN ACT relating to sexual deviants; increasing the penalty for certain crimes related to sex; providing for lifetime supervision of certain sex offenders; expanding the definition of sexual offense for the purpose of requiring sex offenders to have their blood and saliva tested for inclusion in the central repository for Nevada records of criminal history; requiring the attorney general to adopt guidelines for notification of the release of sex offenders from confinement; and providing other matters properly relating thereto.

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

Section 1. NRS 200.366 is hereby amended to read as follows:

200.366 1. A person who subjects another person to sexual penetration, or who forces another person to make a sexual penetration on himself or another, or on a beast, against the victim's will or under conditions in which the perpetrator knows or should know that the victim is mentally or physically incapable of resisting or understanding the nature of his conduct, is guilty of sexual assault.

2. [Any] *Except as otherwise provided in subsection 3, a* person who commits a sexual assault shall be punished:

(a) If substantial bodily harm to the victim results from the actions of the defendant committed in connection with or as a part of the sexual assault:

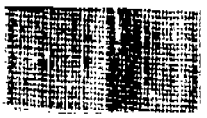
(1) By imprisonment in the state prison for life, without *the* possibility of parole; or

(2) By imprisonment in the state prison for life with *the* possibility of parole, eligibility for which begins when a minimum of 10 years has been served.

(b) If no substantial bodily harm to the victim results:

(1) By imprisonment in the state prison for life, with *the* possibility of parole, beginning when a minimum of 5 years has been served; or

(2) By imprisonment in the state prison for any definite term of 5 years or more, with eligibility for parole beginning when a minimum of 5 years has been served.



[(c) If the victim was a child under the age of 14 years, by imprisonment in the state prison for life with possibility of parole, eligibility for which begins when a minimum of 10 years has been served.]

3. A person who commits a sexual assault against a child under the age of 16 years shall be punished:

(a) If the crime results in substantial bodily harm to the child, by imprisonment in the state prison for life without the possibility of parole.

(b) If the crime does not result in substantial bodily harm to the child, by imprisonment in the state prison for:

(1) Life with the possibility of parole, beginning when a minimum of 20 years has been served; or

(2) Any definite term of not less than 5 years nor more than 20 years, without the possibility of parole.

4. The trier of fact in a trial for sexual assault shall determine whether substantial bodily harm has been inflicted on the victim in connection with or as a part of the sexual assault, and if so, the sentence to be imposed upon the perpetrator.

Sec. 2. NRS 200.400 is hereby amended to read as follows:

200.400 1. As used in this section, "battery" means any willful and unlawful use of force or violence upon the person of another.

2. Any person convicted of battery with intent to kill, commit [sexual assault,] mayhem, robbery or grand larceny shall be punished by imprisonment in the state prison for not less than 2 years nor more than 10 years, and may be further punished by a fine of not more than $10,000 . [, except that if a battery with intent to commit a sexual assault is committed, and if the crime results in substantial bodily harm to the victim, the person convicted shall be punished by imprisonment in the state prison for life, with or without the possibility of parole, as determined by the verdict of the jury, or the judgment of the court if there is no jury.]

3. A person convicted of battery with intent to commit sexual assault shall be punished:

(a) If the crime results in substantial bodily harm to the victim, by imprisonment in the state prison for life with or without the possibility of parole, as determined by the verdict of the jury or the judgment of the court if there is no jury;

(b) If the crime does not result in substantial bodily harm to the victim and the victim is 16 years of age or older, by imprisonment in the state prison for not less than 2 years nor more than 10 years; or

(c) If the crime does not result in substantial bodily harm to the victim and the victim was a child under the age of 16, by imprisonment in the state prison for not less than 5 years nor more than 15 years, without the possibility of parole,

and may be further punished by a fine of not more than $10,000.

4. If the penalty is fixed at life imprisonment with the possibility of parole, eligibility for parole begins when a minimum of 10 years has been served.

Sec. 3. Chapter 175 of NRS is hereby amended by adding thereto a new section to read as follows:

1. In any case in which a defendant pleads or is found guilty of murder in the first or second degree, kidnaping in the first or second degree, false imprisonment, burglary or invasion of the home, the court shall, at the request of the prosecuting attorney and for the purposes of carrying out the provisions of sections 4 and 7 to 10, inclusive, of this act, conduct a separate hearing to determine whether the offense was sexually motivated. A request for such a hearing may not be submitted to the court unless the prosecuting attorney, before the commencement of the trial, files and serves upon the defendant a written notice of his intention to request such a hearing.

2. A hearing requested pursuant to subsection 1 must be conducted before:

(a) The court imposes its sentence; or

(b) A separate penalty hearing is conducted.

3. At the hearing, only evidence concerning the question of whether the offense was sexually motivated may be presented. The prosecuting attorney must prove beyond a reasonable doubt that the offense was sexually motivated.

4. The court shall enter its finding in the record.

5. For the purposes of this section, an offense is "sexually motivated" if one of the purposes for which the person committed the offense was his sexual gratification.

Sec. 4. Chapter 176 of NRS is hereby amended by adding thereto a new section to read as follows:

1. When a defendant pleads or is found guilty of a sexual offense, the judge shall include in sentencing, in addition to any other penalties provided by law, a special sentence of lifetime supervision to commence after any period of probation or any term of imprisonment and period of release on parole.

2. The special sentence of lifetime supervision must begin upon the release of a sex offender from incarceration.

3. A person sentenced to lifetime supervision may petition the court for release from lifetime supervision. The court shall grant a petition for release from a special sentence of lifetime supervision if:

(a) The person has not committed a crime for 15 years after his last conviction or release from incarceration, whichever occurs later; and

(b) The person is not likely to pose a threat to the safety of others if released from supervision.

4. As used in this section, "sexual offense" means:

(a) A violation of NRS 200.366, subsection 3 of NRS 200.400, NRS 200.710, 200.720, subsection 2 of NRS 200.730, NRS 201.180, paragraph (a) or subparagraph (2) of paragraph (b) of subsection 1 of NRS 201.195, NRS 201.230 or 201.450;

(b) An attempt to commit any offense listed in paragraph (a); or

(c) An act of murder in the first or second degree, kidnaping in the first or second degree, false imprisonment, burglary or invasion of the home if the act is determined to be sexually motivated at a hearing conducted pursuant to section 3 of this act.

Sec. 5. NRS 176.111 is hereby amended to read as follows:

176.111 1. When a defendant is convicted of a sexual offense, the court, by order, shall direct the defendant to submit to a blood and saliva test, to be made by qualified persons, under such restrictions and directions as the court deems proper. The tests must include analyses of his blood to determine its genetic markers and of his saliva to determine its secretor status. The court shall order that the results of the tests be submitted to the central repository for Nevada records of criminal history.

2. For the purposes of this section, "sexual offense" means:

(a) Sexual assault pursuant to NRS 200.366;

(b) Statutory sexual seduction pursuant to NRS 200.368;

(c) *Battery with intent to commit a sexual assault pursuant to NRS 200.400;*

(d) Use of a minor in producing pornography pursuant to NRS 200.710;

[(d)**]** *(e)* Promotion of a sexual performance of a minor pursuant to NRS 200.720;

[(e)**]** *(f) Possession of a visual representation depicting the sexual conduct of a person under 16 years of age pursuant to NRS 200.730;*

(g) Incest pursuant to NRS 201.180; **[**or

(f)**]** *(h) Solicitation of a minor to engage in acts constituting the infamous crime against nature pursuant to NRS 201.195;*

(i) Open or gross lewdness pursuant to NRS 201.210;

(j) Indecent or obscene exposure pursuant to NRS 201.220;

(k) Lewdness with a child pursuant to NRS 201.230 **[**.**]** *;*

(l) Sexual penetration of a dead human body pursuant to NRS 201.450;

(m) Annoyance or molestation of a minor pursuant to NRS 207.260; or

(n) An attempt to commit any offense listed in this subsection.

Sec. 6. Chapter 213 of NRS is hereby amended by adding thereto the provisions set forth as sections 7 to 10, inclusive, of this act.

Sec. 7. *1. The board shall establish by regulation a program of lifetime supervision of sex offenders to commence after any period of probation or any term of imprisonment and any period of release on parole. The program must provide for the lifetime supervision of sex offenders by parole and probation officers.*

2. Lifetime supervision shall be deemed a form of parole for the limited purposes of the applicability of the provisions of subsection 9 of NRS 213.1095, NRS 213.1096, 213.10973 and subsection 2 of NRS 213.110.

3. A person who violates a condition imposed on him pursuant to the program of lifetime supervision is guilty of a felony.

Sec. 8. *1. There is hereby created an advisory council for community notification. The council consists of:*

(a) Three members, of whom no more than two may be of the same political party, appointed by the governor; and

(b) Four members, of whom no more than two may be of the same political party, appointed by the legislative commission.

2. Each member serves a term of 4 years. Members may be reappointed for additional terms of 4 years in the same manner as the original appointments.

3. Any vacancies occurring in the membership of the council must be filled in the same manner as the original appointments.

4. The council shall consult with and provide recommendations to the attorney general concerning guidelines and procedures for the notification of the community where a sex offender is to be released on parole.

Sec. 9. *1. The attorney general shall consult with the advisory council for community notification and shall establish guidelines and procedures for the notification of the community where a sex offender will be released on parole.*

2. The guidelines and procedures established by the attorney general must identify and incorporate factors relevant to the sex offender's risk of recidivism. Factors relevant to the risk of recidivism include, but are not limited to:

(a) Conditions of release that minimize the risk of recidivism, including probation or parole, counseling, therapy or treatment;

(b) Physical conditions that minimize the risk of recidivism, including advanced age or debilitating illness; and

(c) Any criminal history of the sex offender indicative of a high risk of recidivism, including:

(1) Whether the conduct of the sex offender was found to be characterized by repetitive and compulsive behavior;

(2) Whether the sex offender committed the sexual offense against a child;

(3) Whether the sexual offense involved the use of a weapon, violence or infliction of serious bodily injury;

(4) The number, date and nature of prior offenses;

(5) Whether psychological or psychiatric profiles indicate a risk of recidivism;

(6) The offender's response to treatment;

(7) Any recent threats against a person or expressions of intent to commit additional crimes; and

(8) Behavior while confined.

3. The procedures for notification established by the attorney general must provide for three levels of notification by the law enforcement agency in whose jurisdiction the sex offender is to be released depending upon the risk of recidivism by the sex offender as follows:

(a) If the risk of recidivism is low, other law enforcement agencies likely to encounter the sex offender must be notified.

(b) If the risk of recidivism is moderate, in addition to the notice required by paragraph (a), schools and religious and youth organizations must be notified.

(c) If the risk of recidivism is high, in addition to the notice required by paragraphs (a) and (b), the public must be notified through means designed to reach members of the public likely to encounter the sex offender.

4. The attorney general shall establish procedures for the evaluation of the risk of recidivism and implementation of community notification that promote the uniform application of the notification guidelines required by this section.

5. This section must not be construed to prevent law enforcement officers from providing community notification concerning any person who poses a danger to the welfare of the public.

Senate Bill No. 188.

Bill read third time.

Roll call on Senate Bill No. 188:

YEAS—21.

NAYS—None.

Senate Bill No. 188 having received a constitutional majority, Mr. President declared it passed.

Bill ordered transmitted to the Assembly.

Senate Bill No. 192.

Bill read third time.

Remarks by Senators James, Coffin and Neal.

Senator O'Donnell requested that the following remarks and a memorandum from the Fiscal Analysis Division be entered in the Journal.

SENATOR JAMES:

Thank you, Mr. President. I know there is substantial support here in the Senate that I move this bill along very quickly. I will keep my remarks brief since this measure was discussed at length when the amendments were adopted.

Let me remind the Senate, and those with an interest in this subject, what the bill would do. I think this bill takes a substantial step forward for Nevada criminal justice in terms of dealing with some of the most violent, reprehensible people who prey on the meekest and least able members of society to protect themselves. The bill would impose a lifetime sentence without the possibility of parole for those who commit the rape of a child. The bill would increase the penalties for certain other sex offenses against children. The bill would create, for the first time, a sentence of lifetime supervision which would be imposed upon those people who commit certain violent sex crimes against children. That sentence would be imposed upon those people in accordance with substantial evidence that the people who commit those crimes are often repeat offenders who graduate to more serious offenses, ultimately rape and murder of children.

The bill would increase the amount of information on blood and saliva testing we keep in the records of criminal history regarding these individuals who commit these crimes. The bill would provide, for the first time, for notification to the community of the release of these very dangerous individuals into the community. If they get by the long terms of incarceration set forth in the bill for these crimes, and they get a sentence of lifetime supervision, released from prison under close supervision, the bill recognizes that people in the community have a right to know if someone like this moves in across the street from where they might live with their children or near a neighborhood where there is a school or any other place children might frequent.

You might have heard recently about a case which was decided by a federal district court judge in New Jersey striking down Megan's Law from which much in this bill comes. I requested a copy of that decision, I have reviewed that decision, I have had the lawyer for the Judiciary Committee review the decision and I can't predict what a judge in Nevada would do. I can't predict what the Ninth Circuit Court would do. I can't predict what the circuit courts back east or what the Supreme Court might ultimately do regarding these issues. But, I can tell the members of the Senate that I think the community notification provisions, in the bill we are acting on today, address the constitutional problems which were raised by that one single federal judge. The judge found that the bill was an unconstitutional, ex post facto law, because it contained a punitive provision on people who were sentenced before enactment of the statute. The punitive provision derived from the community notification provision and the fact that it was too broad. It notified people without regard to the seriousness of the crime or the potential for this person to commit that crime again. Therefore, those notification provisions were determined not to be just civil in nature but also punitive in nature because they branded a person who might not need that branding in order to protect the community. That is why it

was unconstitutional. I think it is important that our bill does not do that. Our bill creates a community notification advisory panel consisting of citizens of this state to work with our attorney general to devise guidelines which will be applied, on a case by case, ad hoc basis, to decide who needs to be notified, under what circumstances, to protect the community from a given individual who will be released from our incarceration facilities. That, I think, is what makes this bill constitutional, not an ex post facto law, and not punitive. I think we have a constitutional measure. I think it is one which is greatly needed. As our state continues to grow and we have the influx of all the wonderful things we have with growth, we have influx of the terrible things as well, including the terrible individuals who come here to prey upon our children. This bill will, for the first time, provide community notification, lifetime supervision and the longest terms of incarceration our penal system has to offer for those people. If they want to come to Nevada, commit a crime here, they will receive the most serious sentencing that can be given throughout the 50 states. That, in a nut shell, is what this bill does.

I have been asked, by a number of Senators, what the fiscal impact of the bill will be. Let me tell you what I have found out concerning that fiscal impact. You may have seen a fiscal note, from local government in Clark County, indicating a huge fiscal impact. Be advised, that was prepared prior to reprinting the bill. The entire fiscal note addresses the portions which have been amended out of the bill such as the comprehensive treatment and civil commitment provisions. With respect to fiscal impact on state government, I would like to summarize for you the memo I received from the Senate Fiscal Analyst. I will read it to you: I think we have addressed the fiscal concerns. We addressed the concerns raised by the Majority Leader regarding the procedures used to determine someone's sexual motivation for a crime. I think we have a very good piece of legislation and I ask you to support it. Thank you, Mr. President.

SENATOR COFFIN:

Thank you, Mr. President. It is true the amendment proposed previously did pass and addressed many of the concerns I had raised concerning the fiscal impact on local government. That impact, in Clark County's estimation, would have been $11 million. In the memo from Clark County, it was indicated that about 540 individuals could qualify for the sexually violent predator provision of the legislation. I am not sure that with the amendment we have made a radical change which would reduce the number of people who might be sexual predators if we assume that is the definition of the number of people in Clark County and which could approach as many as 1,000 statewide. While much of the local fiscal impact has been addressed, I am not sure that I am reassured by the memo from our fiscal analyst. When the Senator states that we will have the most serious sentence for these crimes in 50 states, lifetime sentences and no parole, the increased penalties are there. We have lifetime supervision of those who are not incarcerated and other provisions, many of which I can support. I would still like to know what the cost will be. We have been promised a fiscal note, but one is not on our desks. We were promised one by the Chairman of the Judiciary Committee last Monday. Although a memo has been received, it is not a fiscal note. I really distrust this memo which states there is no fiscal impact on these agencies. If we are going to have the strongest sentencing in 50 states, we are bound to have a fiscal impact. It seems to me to be reasonable to ask what it is going to cost. We know it is going to cost something, a lot, but exactly how much? We make decisions on these "tough on crime" bills year after year. We have been the cause, to a great extent, for our overcrowded prisons. Can we not at least try to define the cost of this legislation to the state? We have a runaway budget and part of it is caused by our proclivity to be tough on criminals by increasing sentences and so on. It makes us all feel good, but in the end, I am not sure that it really helps us. That does not mean that I am not for many of these things. It does not mean that I am against community notification since I think that is an excellent provision and I hope it stands the constitutional test. But, I am troubled by the fact that we never seem to take a position on the cost of our measures. I would like to hear more reassurance. I don't know, for example, if the Chairman of the Senate Finance Committee has had time to mull over these comments. The Chairman of Finance has 20 years of experience with unreliable memoranda from agencies and incorrect fiscal notes.

As I said, we still do not have a fiscal note on our desks as promised last Monday by the Chairman of Judiciary.

SENATOR JAMES:

Thank you, Mr. President, I would like to address the remarks of the Senator who just spoke. Regarding the 540 individuals pointed out by Clark County, I have no way of verifying that information. I did express my concern that this fiscal note had been circulated at a time when apparently the bill had already been amended and reprinted which removed all of the provisions which the fiscal note addressed. Nevertheless, the fiscal note is there. But I would point out this to the Senator. The reason that the total number of people who might qualify as sexual deviants, having committed one of these crimes, was significant, before the bill was amended, was because all of those people could qualify for the civil commitment and lifetime treatment provisions upon their release from prison. The civil commitment provisions and the treatment provisions have been removed and the number of people currently sentenced in the system now is not relevant as regards that fiscal impact any longer. If you look at section 14 of the bill, you will notice that the effective date of the operative provisions of the bill regarding longer sentences and community notification is October 1, 1995. Now, I stated that Nevada was going to have the toughest penalties that can be given within the 50 states, that is because the United States Supreme Court has said that you cannot give the death penalty for rape. We are giving life imprisonment without the possibility of parole for the rape of a child. That does not refer to 540 people. If there were 540 children being raped in one county, then we would have a bigger problem than that which we are addressing here. It is a relatively small number and that is why the Department of Prisons says there is not a fiscal impact. Yes, we are meting out the most serious penalty we can for this most serious crime against children. We have upped the penalty, as well, which is life with and 20 years for other sexual assault on a child, which it is the highest you can give under the United States Constitution. As amended, the most serious fiscal impact this bill might theoretically have is on the Division of Parole and Probation which would be required to adopt and operate the lifetime supervision program. They were specifically contacted by our fiscal analyst, Mr. Welsh. Mr. Wyatt gave back the message which indicated there is not a fiscal impact. I don't know what else we can do. I think the fiscal concerns have been addressed by the amended bill and we are not doing something today which is imprudently going to fill up our prisons in the future. We are talking about a fairly narrow category of individuals who are extremely dangerous and who are committing most of these crimes. We are going to deal with them aggressively and they are going to spend their lives under the watchful eye of the state. That is all the bill says. I would appreciate the support of the Senate on this measure.

SENATOR NEAL:

Thank you, Mr. President, I have a couple of questions I would like to ask. In the first reprint of the bill, it says under fiscal note on local government, "Yes." It also says "Yes" under effect on state and industrial insurance. On the second reprint, which we have before us, the fiscal note says effect on local government "Yes," and effect on state or industrial insurance, "Yes." Since that is noted, I wonder if the Chairman of Judiciary would mind having the memo from the fiscal analyst which he read to the Senate inserted in the Journal for this legislative day so that we can be aware of these remarks and we can refer back to them in the future, in case things do not measure up to what we thought they were going to.

SENATOR JAMES:

Thank you, Mr. President. I read the memo and I have no problem if the Senator from North Las Vegas is requesting that the remarks on this bill be entered into the record. I have no problem with that.

SENATOR NEAL:

Thank you, Mr. President. What I am asking for is that the letter the Chairman was referring to be entered into the record stating that there is no fiscal note on this bill. I would like to have that letter inserted into the record for this legislative day, if there is no objection.

SENATOR JAMES:

Thank you, Mr. President. I have no objection to that.

Memorandum dated March 20, 1995 to Senator Mark James from Kevin D. Welsh, Deputy Fiscal Analyst regarding the fiscal effect of Senate Bill No. 192, as amended.

Per your request, I have canvassed the following state agencies regarding the fiscal effect of Senate Bill No. 192, as amended: Department of Parole and Probation, Department of Prisons (have not received reply), State Attorney General, Department of Motor Vehicles and Public Safety, Division of Mental Health and Mental Retardation and State Public Defender.

The Department of Parole and Probation, the Office of the Attorney General and the Office of the State Public Defender have replied that Senate Bill No. 192, as amended, does not have a significant fiscal impact on their respective agencies. No agency to date has replied with a significant effect. I will keep you informed as we receive further replies. If you have any further questions regarding this matter, please contact me at 687-6821.

Roll call on Senate Bill No. 192:

YEAS—21.

NAYS—None.

Senate Bill No. 192 having received a constitutional majority, Mr. President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

MOTIONS, RESOLUTIONS AND NOTICES

Senator Raggio moved that Senate Joint Resolution No. 9; Assembly Bills Nos. 14, 68 be taken from the General File and placed on the General File for the next legislative day.

Remarks by Senator Raggio.

Motion carried.

UNFINISHED BUSINESS

SIGNING OF BILLS AND RESOLUTIONS

There being no objections, the President and Secretary signed Assembly Bill No. 66; Assembly Concurrent Resolution No. 1.

GUESTS EXTENDED PRIVILEGE OF SENATE FLOOR

On request of Senator James, the privilege of the floor of the Senate Chamber for this day was extended to Lois James and John James.

On request of Senator Mathews, the privilege of the floor of the Senate Chamber for this day was extended to principal David Green, teacher Keith LaMont and the following students from Gerlach High School: Ericka Adams, Annabelle Graves, Rebecca Green, Clint Hassard, Tamara Kuskie, Eric Lee, Russel Minto, Steve Sugden, Tanya Vial and Amy Welson.

On request of Senator Rawson, the privilege of the floor of the Senate Chamber for this day was extended to Brian May.

Senator Raggio moved that the Senate adjourn until Wednesday, March 22, 1995 at 11 a.m.

Motion carried.

MINUTES OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Sixty-eighth Session
April 12, 1995

The Committee on Judiciary was called to order at 7:04 a.m., on Wednesday, April 12, 1995, Chairman Anderson presiding in Room 332 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Mr. Bernie Anderson, Chairman
Mr. David E. Humke, Chairman
Ms. Barbara E. Buckley, Vice Chairman
Mr. Brian Sandoval, Vice Chairman
Mr. Thomas Batten
Mr. John C. Carpenter
Mr. David Goldwater
Mr. Mark Manendo
Mrs. Jan Monaghan
Ms. Genie Ohrenschall
Mr. Richard Perkins
Mr. Michael A. (Mike) Schneider
Ms. Dianne Steel
Ms. Jeannine Stroth

COMMITTEE MEMBERS EXCUSED:

None

GUEST LEGISLATORS PRESENT:

Assemblyman Jack D. Close
Senator Mark A. James
Senator Raymond D. Rawson

STAFF MEMBERS PRESENT:

Dennis Neilander, Research Analyst
Patty Hicks, Committee Secretary

OTHERS PRESENT:

Lt. Stan Olsen, Legislative Liaison, Las Vegas Metropolitan Police Department
Susan Dart, NASW
Francis Gillings, citizen
David F. Sarnowski, Deputy Attorney General, Criminal Division
Elizabeth Livingston, Nevada Women's Lobby
Nancy Tiffany, Division of Parole and Probation
James J. Jackson, NSPD
Donald S. Mello, Director, Administrative Office of the Court
Susan Meuschke, Executive Director, Nevada Network Against Domestic Violence
Lucille Lusk, Nevada Concerned Citizens
Patricia Justice, Legislative Representative, Clark County
Janine Hansen, Nevada Eagle Forum

Chairman Anderson opened the meeting with testimony on Assembly Bill 405.

ASSEMBLY BILL 405 - Revises provisions prohibiting sexual exploitation of children.

Assemblyman Jack Close identified himself as the primary sponsor of the bill, brought attention to an amendment (Exhibit D) he was providing, and read his prepared testimony (Exhibit C).

Chairman Anderson noted the Committee members did not have copies of the amendment on hand.

Assemblyman Close reviewed the necessity for the amendment explaining the information about the incident at Wet n' Wild was not known when the bill draft was requested. He noted the context of the amendment was dealing specifically with that issue. He asked if he should detail the amendment at this time or wait until copies were available to the Committee.

Chairman Anderson asked that he wait. Chairman Anderson read into the record a letter from Mr. Randy Bulloch supporting the bill and requesting amendments (Exhibit E).

Mr. Francis Gillings, citizen of Sparks, Nevada, testified there were areas of the bill which scared him. He is for the bill, but would like to see better provisions as was mentioned earlier to protect innocent families. He stated the "bill is a Band-Aid, at its very best" and could be "a killer to good families." As an example he gave the instance of the picture his wife took of his son nearly 36 years ago showing his [son's] bare backside. He continued by stating "we're in the mess we're in because America turned away from God; and we did it in our government school system." He agreed the penalty should be a felony but thought the sentence should be increased to five years, minimum. He asked the Committee members to remember to look at Matthew 11:23-24 because "that's America, if we don't do something about it."

Chairman Anderson closed the testimony on A.B. 405 and asked the record remain open for additional written communication. He noted the bill may be sent to a subcommittee. He then opened testimony on Senate Bill 192.

SENATE BILL 192 - **(Second Reprint) Makes various changes related to provisions pertaining to sexual deviants.**

Senator James testified the bill has been referred to as the sexual predator bill and what he had endeavored to do was to introduce a comprehensive bill dealing with the problem of sexual offenders and sexual predators. The bill is modeled after laws in New Jersey, Washington, Minnesota, Illinois, and several other states which have confronted the issue of these dangerous individuals and addresses the problem in several areas: enhances penalties for certain sex offenses; singles out people who commit sex offenses with a high degree of recidivism; and deals with the question of community notification. He continued by reviewing in detail the contents and provisions of the bill. He noted the sentencing changes in S.B. 192 had been included in the upcoming 'sentencing bill.' In support of community notification he testified statistics show people who commit these offenses, and even less offenses which do not carry life terms, have a high potential to repeat their offenses if released from the prison system. Sex offenders can not be kept in prison forever and this bill gives people the right to know when a sex offender is released or paroled to their community. He felt the bill deals with the notification in an inventive way and noted Megan's Law is partly represented. The intent is to make people aware and able to protect their children. The bill also protects law enforcement from liability in notifying/not notifying and gives them some discretion. He wished to add that the bill originally set-up a level of treatment within the prison

system and civil mental health organizations of the state. Due to the testimony before the Senate on the "iffyness" of treatment for sex offenders the sections were amended out of the bill. He felt the remaining bill sections are important for the state. He stressed the fiscal consequences were an important issue and were considered. The various agencies effected (Prison, Parole and Probation) were asked to assess the impact and he had received a fiscal note showing little impact in the next ten years. He stated some studies he had seen reflected additional fiscal impact may occur "down the road", particularly in parole administering the lifetime supervision law. He mentioned a memorandum circulated which indicated a continuing fiscal impact, beginning in 2006 through 2015, up to two million dollars. He stated he had talked to Rich Wyett (Parole and Probation (P & P)) and felt the study conducted [by P & P] was unrealistic since the numbers were based on each offender being granted parole at their first request, gave no discount to persons who would require full supervision "anyway", and did not use a realistic parole grant rate for sex offenders which is possibly about 30-35%. Using more realistic numbers would reduce the fiscal note about 70% and asked the Committee not to rely on the memorandum regarding the study.

Chairman Anderson stated the Committee had not seen the memorandum in question and realized the parole and probation rate is about 23%, therefore the 30% would be high. He acknowledged Senator Rawson had joined Senator James at the table.

Senator James explained Senator Rawson was interested in the bill and he had asked him to testify.

Ms. Steel asked if the bill covers sexual offenders coming from other states once they have registered in Nevada.

Senator James answered the bill only deals with notification when someone is released from prison. It does not deal with the issue of someone coming from another state who is required to register as a sex offender under Nevada's laws. He added the U.S. Attorney General has indicated, under federal legislation, they will be asking states to comply with the national standard for sex offender registration in order to secure the crime rates. He explained currently there is litigation and questions regarding what level of sex offender registration is possible, creating a limbo situation, so felt it was important not to put the provision in the bill. Future intent is to develop legislation to bring Nevada into compliance with the federal regulations if the state is not already in compliance.

Chairman Anderson noted about 80% of the prison population in the United States are held in state institutions as compared to federal institutions and since the statute (under discussion) is generally for others than those using the mails so the sex offenders will occupy space in state prisons.

Senator Raymond D. Rawson, Senate District 6, wanted to lend his support to this major bill. In his finance hearings discussions were held on what should be done in Nevada about sex offenders (particularly youth sex offenders) and a group of 67 who can not be treated due to lack of facilities or programs in Nevada were identified. It was found the 67 offenders committed 4,400 offenses, many upon young children (2-5 years old). No matter what is done the offenders will be placed back into society at some point and there is a very low rate of being able to change their behavior. Arizona has faced the issue recently; identifying 2,000 sex offenders and finding only 1,000 would be in prison at any one time. By implementing a stricter sentencing procedure, making them serve their full time, they have been able to put more into prison and have fewer on the street. He continued "we don't want to warehouse them" even though it may be part of the solution. He felt the bill "speaks well to it" [the solution]. He added he testifies throughout the country on "bite mark" cases, which are often sex offense cases, and therefore receives from the many states information on where the offenders have been moved to. Personally he appreciates this as his family could be at some risk due to his testifying.

Mr. Carpenter reviewed Senator Rawson's statements regarding not being able to warehouse the offenders or rehabilitate them and asked what is the choice.

Senator Rawson responded he thought it is a combination of keeping them in prison as long as possible and trying to develop programs which will change behavior. Eventually the offenders will be released and the next best thing is to warn or prepare the public. It may be a problem to some people to think some rights are lost, but there are good statistics and track records reflecting a high re-offense rate.

Senator James agreed with Senator Rawson and added there has been much debate on these measures in other states and perhaps community notification is not perfect, but the alternative is to do nothing which is unacceptable. He stated if a successful treatment program is developed he would be the first to champion its implementation; but, just the opposite is happening now. He advised he was planning to advocate a study during the interim. He reviewed statistics in an article in an ADA Journal which reflected a person beginning as a juvenile sex offender

will commit an average of 360 sex offenses in a lifetime; the problem is a sickness and that is why the system has not been successful in dealing with the offenders.

Mr. Carpenter asked Senator James to explain how the lifetime supervision works.

Senator James stated the bill does not set out a specific statutory procedure; it requires the Board of Pardon Commissioners to establish lifetime supervision to be administered by the Division of Parole and Probation and sets up a violation of lifetime supervision is a felony. [The bill] allows the process to be administered by regulation but does stipulate a level of supervision in order to protect the public.

Mr. Carpenter asked if something, such as an ankle bracelet, would be needed. He was concerned if the offender was not highly supervised it would not work too well. He agrees with the idea; "we need to be willing to spend the money to protect the public."

Senator Rawson explained part of the supervision is registration to know where the offenders are. He explained if there is a sexual offense the police first look to the known sex offenders and most of the time the offender is found within the group. By having lifetime supervision there would be a better track of the offenders; to keep better and more appropriate records.

Mrs. Monaghan noted the statistics were frightening and asked if there were any identifiable predictors to catch the kids before they offend.

Senator James responded when the question was discussed in the Senate he spoke with mental health officials and found there were some things being studied but there are disagreements over whether the possible predictors are effective. He continued one thing this legislature should do is to commission a study of this issue to develop a treatment program.

Senator Rawson added if there were good predictors there would be less of a problem. He discussed some general areas of a child's home life and environment which could be a predicter but stated they are not good to predict who should "be taken off the street."

Mrs. Monaghan stressed the importance of identifying the potential offenders to "break the chain."

Senator James addressed the question of community notification being challenged constitutionality by describing the "Atway v. New Jersey Department of Corrections" where a federal judge struck down a portion [of the law] which applied retroactively to offenders who committed offenses prior to the effective date of the act (expos facto.) The decision was based on the law being so broad making it punitive and not just a protection of the public. He did not think the proposed bill [S.B. 192] would be unconstitutional under that judge's analysis since it insures a mechanism is set-up to tailor the community notification to the offender, not to punish the offender further. He added New Jersey currently has an unprecedented situation since their supreme court was reviewing the question and the Clinton administration and U.S. Department of Justice applied to advocate the constitutionality of the community notification, which is in the Megan's law. He hoped the information would not deter passage of this very important measure.

Ms. Buckley stated her questions were about those decisions and would save her questions for Mr. Sarnowski.

Chairman Anderson announced, during a wait for new testifiers to come forward, the intent of the Chairman to place A.B. 427, A.B. 405, A.B. 396, and S.B. 192 into a subcommittee to allow for equitable hearings. The subcommittee would be chaired by Assemblyman Perkins and include Assemblymen Humke, Buckley, and Steel as members. He recognized A.B. 427 and A.B. 396 have principal sponsors who are Judiciary Committee members and stated he hoped the individuals, though not subcommittee members, would participate in the discussions.

Mr. David Sarnowski, Chief Deputy Attorney General, Criminal Division, introduced Senior Deputy Attorney General, Mariah Sugden, currently assigned to the legal section of the Department of Motor Vehicles and Public Safety. He explained the Department would have responsibility for administering sections of the bill; such as, registration requirements, repository on physical evidence, etc., and Ms. Sugden could answer questions in those areas. He stated he would limit his comments, primarily, to Section 9. He testified the Attorney General supports the bill, as amended, by the Senate. He continued Section 8 and Section 9 places a significant task before the Attorney General in working with the appointed advisory council for community notification. He reiterated Senator James' comments regarding the modeling of the law on laws of other states. It was his opinion and projection they will not be without controversy should they be enacted; however, the Attorney General stands ready, willing, and able to assist in developing adequate and constitutional guidelines and would make any effort to meet any challenge. He

noted the federal law (the Jacob Wetterling Act) also probably will be challenged in various federal jurisdictions and added the Act requires the state of Nevada to come into compliance in three years; allowing another [legislative] session to "tune-up" the statutes. He continued the bill, unlike New Jersey's, is clearly regulatory and not punitive to the offender and noted Page 5, Section 9, Lines 40-42, as the area most subject to challenge; the retroactive applicability of the notice and registration requirements to law enforcement. Mr. Sarnowski offered to answer any questions.

Mr. Carpenter asked if the laws are to protect the public why would they be declared unconstitutional and can not there be a punitive measure on a person after release from prison if it is for the protection of the public. He added the information provided, in these cases, reflected low rehabilitation and high repeat offenses and the need to protect the public.

Mr. Sarnowski agreed the statistics bear out re-offense is likely to occur; however, the problem is of constitutional dimension in both the federal and Nevada State Constitutions. There are prohibitions against the enactment of expos facto laws which apply punishments without notice. He continued to describe the New Jersey case. He feels the controversy is the New Jersey legislature declared it regulatory but the judge decreed it was not. He stated he would be happy to provide material to the subcommittee and the legislature's legal counsel for review regarding the New Jersey (Atway) case.

Chairman Anderson asked Mr. Sarnowski to provide the information to the Committee's researcher [Dennis Neilander.]

Mr. Carpenter asked if a person was being sentenced after the bill is passed, and even if it was a punitive measure, could the public be notified after the release, and the law hold up.

Mr. Sarnowski responded it would be less likely for the offender to prevail on an expos facto issue but there may be other reasons for it to be said it is a cruel and/or unusual punishment.

Ms. Buckley asked if the Committee could receive copies of decisions from the other (possibly nine) jurisdictions having had rulings of unconstitutionality of portions of state's laws for review so the legislation can be crafted to reduce the risk of it being overturned.

Mr. Sarnowski answered he was unaware of that many decisions. He is currently trying to obtain the one from the New Jersey state court system. The Atway case was decided by a federal district judge after the state court found it was not punitive. He stated he would try to obtain as much information as possible.

Chairman Anderson stated Mr. Neilander indicated some of the decisions were in the possession of the research staff and Mr. Sarnowski may want to coordinate efforts.

Ms. Buckley referenced Page 5, Section 9, Paragraph 3.c. which indicates "where there is a high rate of recidivism the public must be notified through means designed to reach members of the public likely to encounter the sex offender" and asked for an explanation of how it is envisioned to notify the public in the area where the offender lives. Would it include neighborhoods, blocks, schools, libraries, etc.

Mr. Sarnowski referred to Subparagraph 3.b. requiring schools and youth organizations to be notified where the risk is only moderate. Subparagraph 3.c. covers,at least, the immediate vicinity of where the offender lives. He reviewed the reason for Megan's Law and how law enforcement enters neighborhoods to distribute notices, which, he added, is not without controversy.

Mr. Manendo wished to let the Committee know he had had a BDR for this type of concern and to avoid duplication and to speed up the process had it withdrawn. He feels it is most important to the Committee to make the public aware. He described a personal situation in his neighborhood regarding an individual whose actions have caused his neighbors concern and they wished to know how they can find out about the person's background. He stated there is no way to notify the community if this individual is dangerous.

Mr. Sarnowski wished to address Mr. Manendo's concern. A person could go to the Clark County District Court and obtain a public copy of a judgement or conviction of a sex offender, known to be living in their area, and make it a matter of public knowledge within the neighborhood and not "run a-foul" of the law; people do have access to public records and the right to speak.

Mr. Manendo stated his neighbors' concern was what the repercussion would be to them if they did obtain information and did notify the neighborhood.

Chairman Anderson thanked Mr. Sarnowski for his information and offer to work with the subcommittee and asked, due to the questions and conflicting testimony on this bill and several of the other bills [on the agenda] regarding the fiscal impact on the prison system, if he could aid in coordinating the development of a new fiscal note among Parole and Probation, the Attorney General, and the Governor's Office.

Mr. Sarnowski responded "they" would try to cooperate in the venture, but as a technical matter, it was his understanding, the Governor's Office will not develop a fiscal note unless the request comes from the Committee.

Chairman Anderson asked if he wished the Committee to send a letter to the Governor's Office requesting the fiscal note.

Mr. Sarnowski answered in the affirmative.

Ms. Nancy Tiffany, Unit Manager, Nevada Division of Parole and Probation, wished to testify on the support of the bill by the Division. She explained the people she sees, via her duties, being released into the community are "pretty scary" and she is not allowed to tell the community who will be living there; who may be involving themselves in community activities in order to prey on people. She stresses the strong support of her agency for community communication; that the veil of secrecy be removed. Pointing out on Page 5, Section 9, Lines 37-39, listing schools, and religious and youth organizations to be notified she stated something may be being missed as some offenders prey on the elderly or handicapped/disabled adults. She suggested it be considered to address those types of offenders in the bill.

Chairman Anderson stated it was very disheartening when it is the weak who are victimized.

Ms. Tiffany added offenders preying upon elderly volunteer at nursing homes in the hope their background will not be checked and also the parole officer will not know what they may be up to through actual employment.

Chairman Anderson commented she was in a tough position and has his admiration.

Mr. Goldwater wondered if her position was the position of the department.

Ms. Tiffany responded she was representing the Division of Parole and Probation.

Mr. Carpenter asked Mr. Sarnowski to be brought back to the witness table. Noting the question was also from Mr. Schneider, he asked, since there is really nothing which can be done to rehabilitate the offenders, could castration be legal.

Mr. Sarnowski stated he was not prepared to address the question and could not give an answer; he could do research if Mr. Carpenter wished.

Mr. Carpenter said he would appreciate it.

Chairman Anderson stated it would be expos facto if done to persons currently within the system since it was not part of the original sentencing and also considering it could be considered cruel and unusual and asked if his understanding was correct and were there any other guidelines to be considered.

Mr. Sarnowski responded there had been some research into the process of chemical castration, but as he is aware, the topic has not been broached here.

Mr. Schneider noted the comments by Senator James and stated sexual offenses were serious bodily injuries and penalized with life-without and asked if there was a definition for serious bodily injury.

Mr. Sarnowski replied there is not a statutory definition; however, through the process of litigation, definitions for the purpose for instructing juries have been developed. He offered to provide a copy of instructions which would be representative of those used in the state.

Mr. Schneider asked how many sexual offenders are in Nevada.

Mr. Sarnowski responded his agency does not have the statistics but thought the Department of Prison, and the Division of Parole and Probation had provided those numbers. He added there may not be a "good handle" on the number of offenders coming from other jurisdictions. He noted there is a registration requirement with law enforcement, but it is not known how many may not be registered.

Mr. Sandoval in follow-up to Mr. Carpenter's question and Mr. Sarnowski's comments noted he had read in other jurisdictions chemicals were being used to reduce, not eliminate, the sex drive of some of the sexual predators and asked if

Mr. Sarnowski could look into that and also the options some judges may be giving to offenders to use the chemical or be castrated in lieu of incarceration.

Mr. Sarnowski replied he would try to provide the information.

Ms. Stroth wished to comment on what she hopes the subcommittee will address. Regarding the substantial bodily harm phrase: a member of her family experienced being sexually molested and the emotional scars can last far longer than the physical scars. She hoped the subcommittee will look at the penalties relating to whether there was bodily harm. She commented to Mr. Sarnowski (and possibly as an area to address in the subcommittee) it seemed if the penalty was lifetime monitoring, legislation could continue punitive measures. She added she understood, in working with family abuse programs, the issue is not sexual drive but power and control, therefore, she was not convinced castration or reducing sex drive would solve the problem.

Mr. James Jackson, Nevada State Public Defender, wished to compare Section 4, regarding lifetime supervision, with the prior draft of the bill. The original draft required counsel which has been removed. He pointed it out as a concern since the procedure for the individual to be relieved of the lifetime supervision is not as clear. He asked if it could be considered by the subcommittee. He wished it noted these cases can be just as frustrating to defenders as they are to prosecutors because of the lack of culpability people want to admit to. He offered his office's assistance for the Committee.

Ms. Ohrenschall asked if lifetime supervision would include an order offenders could not leave the state of Nevada since leaving could cause difficulty in supervising the offender.

Mr. Jackson agreed it could be a problem but would be in the development of the program by Parole and Probation. Restrictions are used now and he knew of no valid constitutional challenges.

Lieutenant Stan Olsen, Legislative Liaison, Las Vegas Metropolitan Police Department, began testimony stating the Department was 100% behind the bill and submitted handouts to the Committee (Exhibit H). He wished to cover the issue of what occurs in a sexual assault, something he felt had been missed at some hearings. Police officers see the individuals "out there." As an example, he reviewed a recent incident involving a brutal sexual assault resulting in severe

injuries to the victim. The offender had an extensive criminal background, coming to Nevada from another state. He stated at the time this law may not have applied to the perpetrator as a sexual offender; however, in the future if the law is in place, notice could be given. He noted other examples were included in the handouts (Exhibit H).

Chairman Anderson asked Lt. Olsen to work with the subcommittee.

Mr. Carpenter stated he felt the offender did not deserve to live; especially in a neighborhood.

Chairman Anderson closed the hearing on S.B. 192, announced future scheduling changes, and called for a ten minute break. Chairman Anderson reconvened the hearing opening testimony on Assembly Bill 427. He noted there was a time constraint and wished the Committee to also process testimony on Assembly Bill 396, and Senate Bill 228.

ASSEMBLY BILL 427 - Requires notification of certain persons before release of offender convicted of specified crimes related to children.

Assemblywoman Genie Ohrenschall, acknowledged the time constraint, noting her testimony had been condensed to "hit the highlights." She testified in addition to the current form of the bill there are amendments she wished to propose. The first changes are on Page 1, Section 1, Subsection 3(a), Line 19, and Page 2, Section 1, Subsection 3(b), Line 3, and Page 2, Section 1, Subsection 3(c), Line 5, the provision, "or if they have testified at the trial or the sentencing hearing." The effect of the change would be to make the notification automatic. She continued persons confronted with an emotional situation may not realize they must make a written request thus allowing people having a direct interest in the release of an offender to be left out. The second change is on Page 2, Section 1, Subsection 3(c), Line 6 to add "before the offender is considered for early release." She wished to read a page of Lillian Hall's written testimony into the record (Exhibit I).

Ms. Nancy Tiffany, Division of Parole and Probation, prefaced her comments; she had been asked by Bob Bayer, Director, Nevada State Prison, (testifying in Senate Finance) to voice his concern regarding the wording on Page 2, Section 1, Subsection 4, Lines 7-8, stating, "warden...give any notice...." She stated normally requests for notification upon parole are filed with the Parole Board; he does not

CASE HISTORIES SUPPORTING SEXUAL PREDATOR STATUTE (SB-192)

ROLAND HAMILTON

Roland Hamilton was sentenced to death in the Tennessee State Prison system in 1977 for killing a man he alleged sexually assaulted his wife. After serving several years he was paroled from that prison. He drifted to several different states and finally settled in the Las Vegas area in the early part of 1993. On January 11, 1995 a woman was walking her dog close to her home during the evening hours. This subject walked past her. He then turned around and chased the woman and caught her a short distance away. He threw her on the ground and pulled off her pants. He then savagely beat her,with his fists, about the face and body causing severe injury to her face and midsection (both eye sockets were broken along with her nose and her ribs were damaged). He completed the act of sexual assault (digitally) and then picked up a handful of dirt and smeared it into her vagina. He was left the scene and was arrested a short distance later after a neighbor called police referencing a woman screaming. One must wonder how this person was ever paroled from a death sentence but the fact remains that he was and would certainly qualify as a sexual predator if ever released from prison again. If that should ever happen I believe the community should be advised and the sexual predator statute enforced.

FRIEDREICO GARCIA

Friedreico and Angel Garcia were living in an apartment complex. A resident of the complex made a complaint against them to management for an infraction of apartment rules. A short time later both suspects knocked on her door. She opened it to see who it was and the two subjects forced their was into the apartment at gunpoint. she was punched in the face and drug into the bedroom and told to shut up or die. She was forced to the bed and they disrobed her. She was forced to submit to vaginal, anal (she apparently lost control of her bowels during this process and this aggravated the suspects they beat her about the face for this) and orally (she was told during this, with a gun to her head that if she bit him he would kill her). She was repeatedly threatened with death. She was repeatedly beat. After they were both finished with her she was ordered to lie face down on the bed. She felt they were going to kill her and she made a break towards the front door. They grabbed her and drug her back into the living room. Friedreico placed a phone cord around her neck and tried to choke her to death. Fighting for her life, realizing she was coming close to death she pulled the cord and broke it. Friedreico, frustrated, now placed the gun to her chest, making contact and fired. The bullet went into her chest severely injuring her and the suspects fled the area. Both subjects fled the state. It should also be noted that Angel Garcia was involved in a shooting earlier that year and is also now wanted for murder by the Las

Vegas Metropolitan Police Department. Both subjects have extensive previous histories however no sex related crimes. They are now though, violent sexual offenders and in my opinion had every intention to kill the victim after they were done with her (they lived directly above her for several months). When these subjects are released from prison I believe the public should be advised where ever they choose to live, that there is a serious threat of recidivism and danger to the community.

NORMAN PRIMO

Norman Primo worked as a correction officer for the Las Vegas Metropolitan Police Department in the Clark County Jail. Norman was divorced and had 1 son who was currently living with his ex-wife. Norman had a lot of toys (motorcycles, games, camping equipment, porno mags etc.) and allot of adolescence male friends. To an outsider it appeared as though this man was truly a friend to these children and the parents were pleased that a grown man was taking a very keen interest in the welfare of their children. There was never any reason to worry, this man was a policeman and a corrections officer and well respected throughout the community.

The pedophile/molester uses these toys to begin his "grooming" process. He befriends the children and really appears to listen to their problems. Adolescence is a very difficult period for a teen. Their parents are out of touch with "reality" and they feel their peers are the only ones who understand.

Norm was always "there" for them. He wold listen to their various predicaments and sympathize, thus starting his grooming process. He would gain their trust taking on the attitude of an adolescent and gain their confidence and loyalty all the while waiting for the opportune time to introduce them to his perversion.

As you can see these cases are extremely difficult to pursue because of the trust the suspect builds with the victim. The victim feels if he cooperates with authorities his "friend" will go to jail. Many times these cases cannot advance because of a lack of corroborating testimony. Persons of this nature live solely for the purpose of furthering their sexual exploitations. Never concerned with the repercussions of their acts only their satisfaction. Fortunately Primo was apprehended and will hopefully spend several years in prison.

Persons like Norman Primo are in every community. They appear to be quiet upstanding citizens hoping to blend into the community environment. The lawful citizens have a right to know that this person has moved in and the recidivism rate of someone as this is always high. Statistics indicate that these individuals will start perpetrating crimes as early as 15 years of age and will perpetrate upwards of 281 crimes logging numerous victims who will recount these tragic incidents forever. Statistics also show they will not stop until they are apprehended.

MINUTES OF THE
ASSEMBLY COMMITTEE ON JUDICIARY
SUBCOMMITTEE A.B. 131

Sixty-eighth Session
May 9, 1995

The Subcommittee on S.B. 192, A.B. 405, and A.B. 427 were called to order at 1:51 p.m., on Tuesday, May 9, 1995, Chairman Perkins presiding in Room 302 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Mr. Richard Perkins, Chairman
Mrs. Jan Monaghan
Ms. Dianne Steel

COMMITTEE MEMBERS EXCUSED:

Ms. Barbara E. Buckley

GUEST LEGISLATORS PRESENT:

Assemblyman Jack D. Close, Sr., District No. 15
Assemblyman Genie ohrenschall, District No. 12

STAFF MEMBERS PRESENT:

Dennis Neilander, Research Analyst, in Carson City
Patty Hicks, Committee Secretary

OTHERS PRESENT:

Lieutenant Stan Olsen, Las Vegas Metropolitan Police
Mr. Daniel New, Las Vegas Metropolitan Police
Mr. David F. Sarnowski, Chief Deputy, Criminal Division, Attorney General's Office
Ms. Lucille Lusk, Nevada Concerned Citizens
Ms. Bobbie Gang, Lobbyist, National Association of Social Workers and Nevada Women's League
Mr. Ben Graham, Clark County District Attorney's Office/Nevada District Attorneys Association

Testimony was heard and proposed amendments were presented.

Transcription of minutes were not required. The tape of the meeting is on file with the Legislative Counsel Bureau Research Division.

RESPECTFULLY SUBMITTED:

Patty Hicks,
Committee Secretary

APPROVED BY:

Assemblyman Richard Perkins, Chairman

SOUTHWEST
PASSAGE
3301 W. Spring Mountain Road, Suite 3
Las Vegas, NV 89102
702) 364-0608 Fax: 364-2549
May 9, 1995

Subject: support of following pending legislation:

SB 192 - Penalties for sexual deviants
AB 405 - Prohibiting sexual exploitation of children
AB 427 - Notification before offender release

I am a Licensed Clinical Social Worker whose private, non-profit agency specializes in the area of domestic violence survivors and perpetrators of all ages, and stranger sexually deviant behaviors. Domestic violence is an umbrella for: emotional, physical and sexual abuses within the context of an intimate relationship. My experience has ranged from treating persons for sexual trauma from the ages of three to over eighty, and persons for their crime of perpetration and/or rape. I set up the sexual trauma treatment team and wrote the guidelines for the second largest mental health agency in Iowa. Presently, this agency has a contract with the State to provide Juvenile Sex Offender Specific assessments. The States of Utah, Colorado and Iowa, where I have either practiced or been a consultant, all have penalties for the offender that are more aggressive, realistic and restrictive than the State of Nevada.

In my professional experience, the above bills are strategically necessary for our State's families, and our National reputation for meeting the needs of residents and tourists' safety and welfare. They are overdue and critically needed toward the security of our families and our children.

Federal Probation and Parole already informs the Attorney General's office when convicted felons leave the prison; but, in this system, there doesn't seem to be enough personpower in place to uniformly inform victims and their families about State or Federa releases. The potential, for any untreated felon convicted of sexual abuse and/or rape, to continue to be enraged against their victim at time of release, is usually very high. We have clients who have continuously moved from their residences, even moving out of state, innumerable times to save their own or their children's lives from a frightening, intimidating, incarcerated perpetrator who has threatened their lives.

It is imperative that perpetrators of all ages be tracked, monitored, and receive intensive treatment from a specialized psychotherapist who is part of the legitimate, responsible treatment team of the Courts, POs, CPS and peace officers. It is important that the seriousness of juvenile sex offenses be recognized, and the victims respected by enhancin

EXHIBIT C

the penalties and therapeutic interventions for persons under the age of 18. In fact, most of our adult perpetrators admit to beginning their history of sexual deviation and victim preying while still in their minority. Often, they have not seen their own perpetrators successfully identified and prosecuted; and the message is that there are no penalties, and that perpetrations are within the realm of reasonable behavior.

A difficult problem for our system is that, if an offender admits to his/her crime(s), there is automatic jail time, with no allowance for their potential for amenability to intensive, highly monitored, psychotherapeutic intervention in lieu of incarceration. If there is no conviction or upon release, when these persons are court ordered into therapy, they are still denying. In this State, they often do not get past their denial that has successfully protected them from heavier sanctions in the legal system.

This glitch in our system is a tremendous interference with obtaining the perpetrator's admission as a first step toward rehabilitation - and therapy - therefore the possibility for a crime-free, non-offending lifestyle change does not occur. In this example, which is pervasive, therapy does not work. Fortunately, in the Juvenile system, early admission means a higher potential for rehabilitation and is favorably viewed and encouraged. Juveniles in this State, therefore, are more likely to fully respond to therapy.

In our practice, we hear horror stories of child pornography and related, bizarre sexual offenses against children. It is very frightening to come to comprehend that children are not safe because the adults have not taken appropriate steps and enacted clear legal guidelines for sanctions of deviant behavior. The ensuing, lifetime devastation and toll on the victims, their own spouse and children, and upon our society, is immeasurable.

I had the privilege of testifying on the issue of supporting greatly enhanced penalties for sexual perpetrations before the ~~Junes~~ Senate committee. I once again, strongly urge serious, thoughtful, responsible and tough sanctions commensurate with the standards of this bill.

Sincerely,

Sandi Levy Barbero

Sandi Levy Barbero, MSW
Licensed Clinical Social Worker
Executive Director

MINUTES OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Sixty-eighth Session
May 12, 1995

The Committee on Judiciary was called to order at 8:05 a.m., on Friday, May 12, 1995, Chairman Anderson presiding in Room 332 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Mr. Bernie Anderson, Chairman
Mr. David E. Humke, Chairman
Ms. Barbara E. Buckley, Vice Chairman
Mr. Brian Sandoval, Vice Chairman
Mr. Thomas Batten
Mr. John C. Carpenter
Mr. David Goldwater
Mr. Mark Manendo
Mrs. Jan Monaghan
Ms. Genie Ohrenschall
Mr. Richard Perkins
Mr. Michael A. (Mike) Schneider
Ms. Dianne Steel
Ms. Jeannine Stroth

STAFF MEMBERS PRESENT:

Dennis Neilander, Research Analyst
Joi Davis, Committee Secretary

OTHERS PRESENT:

John Gibbons, Real Estate Division
Laurel Stadler, Mothers Against Drunk Driving
Anne Cathcart, Deputy Attorney General
Ben Graham, Clark County District Attorney's Office

Mr. Neilander outlined the bill for the committee and stated the subcommittee on this bill held an additional hearing. A.B. 427 is Ms. Ohrenschall's bill wherein if the offender expires his term without being released on parole, then the warden is required to notify the expanded list of victims of the crime. He stated the subcommittee had discussions which would have required the court to maintain a list and notify certain victims; however, the subcommittee chose to recommend a Do Pass without the amendment due to a possible fiscal impact which may prove damaging to other portions of the bill.

Mr. Perkins, Chairman of the subcommittee, stated Mr. Neilander accurately described discussions held during subcommittee, and in working with the prime sponsor of A.B. 427, it was agreed to remain with the original version of the bill.

ASSEMBLYMAN PERKINS MOVED TO DO PASS A.B. 427.

ASSEMBLYMAN HUMKE SECONDED THE MOTION.

THE MOTION CARRIED. ASSEMBLYMEN STROTH AND SCHNEIDER WERE NOT PRESENT FOR THE VOTE.

SENATE BILL 192 - Makes various changes related to provisions pertaining to sexual deviants.

Mr. Neilander explained the subcommittee on S.B. 192 received many handouts regarding caselaw in other states focusing on these types of laws and the notification that would go along with S.B. 192. In addition, the subcommittee received testimony from the Attorney General's Office regarding current cases pending in this jurisdiction. The subcommittee concluded the bill as drafted went a long way to accomplish what it was intended to do and recommended a Do Pass.

Ms. Buckley interjected, as a member of the subcommittee, she recalled a technical amendment regarding the statute being wrong. Mr. Neilander clarified that originally there appeared to be a technical error; however, further analysis revealed the problem was covered in the bill. The area of concern was at page 6, line 21.

Mr. Carpenter asked if the subcommittee heard any testimony about the cost of lifetime supervision. Chairman Anderson replied he had asked for the Governor's office to prepare a new cost factor for that particular bill. However, he has yet to

receive any documentation in that regard. Mr. Neilander stated, in the subcommittee, there was some discussion about the fiscal note and the prime sponsor of the bill provided additional information which indicated that the initial fiscal note was exaggerated and subsequent information was revised to show a lower amount. However, the fiscal note did not show any fiscal impact until 12 years from the date of enactment.

Mr. Carpenter remarked that chemical castration has been utilized in several states since 1966 and research shows that it as a very good alternative and he would like to see that in Nevada law. Mr. Perkins, as Chairman of the subcommittee on S.B. 192 and the other sex crime bills, stated the fiscal impact of the bill was not within the purview of the subcommittee's focus. Further, it was not the prime sponsor's request to have the bill go to Ways and Means as it did not go to Senate Finance because it did not impact this biennium. Mr. Perkins added this was not a prudent type of action because then people would be making bills with effective dates three or four years out in order to avoid fiscal notes.

Mr. Perkins pointed out that he has spent two years investigating sex crimes and the research he has seen indicates that chemical castration is not effective in that it would only reach a small portion of pedophiles. Further discussion was held regarding chemical castration.

ASSEMBLYMAN STROTH MOVED TO DO PASS S.B. 192 AND REREFER TO WAYS AND MEANS.

ASSEMBLYMAN PERKINS SECONDED THE MOTION.

THE MOTION CARRIED. ASSEMBLYMAN BATTEN WAS NOT PRESENT FOR THE VOTE.

Chairman Anderson announced a break at 9:30 a.m. and the committee reconvened at 9:55 a.m.

ASSEMBLY BILL 405 - **Revises provisions prohibiting sexual exploitation of children.**

Mr. Neilander informed the committee that the subcommittee on A.B. 405 held two hearings. At the first hearing, Assemblyman Close presented an amendment and the subcommittee reviewed that amendment in detail. However, there were

MINUTES OF the
ASSEMBLY COMMITTEE ON WAYS AND MEANS

Sixty-eighth Session
May 31, 1995

The Committee on Ways and Means was called to order at 7:00 a.m., on Wednesday, May 31, 1995, Chairman Marvel presiding in Room 352 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Mr. Morse Arberry, Jr., Chairman
Mr. John W. Marvel, Chairman
Mrs. Jan Evans, Vice Chairman
Mrs. Sandra Tiffany, Vice Chairman
Mr. Dennis L. Allard
Mrs. Maureen E. Brower
Mrs. Vonne Chowning
Mr. Jack D. Close
Mr. Joseph E. Dini, Jr.
Mr. Thomas A. Fettic
Ms. Chris Giunchigliani
Mr. Lynn Hettrick
Mr. Bob Price
Mr. Larry L. Spitler

STAFF MEMBERS PRESENT:

Mark Stevens, Fiscal Analyst
Gary Ghiggeri, Deputy Fiscal Analyst

SCIENCE ENGINEERING AND TECHNOLOGY - PAGE 17

Mark Stevens noted the Governor requested the salary for the unclassified position of director for the Science Engineering and Technology be increased. That, however, will be included in the unclassified pay bill.

Mr. Close commented the committee had earlier discussed moving this budget to the Commission on Economic Development. Mr. Stevens testified during the previous session there was discussion regarding placing the office of Science Engineering and Technology in either the Department of Museums, Libraries and Arts, Commission on Economic Development or the Office of the Governor.

Mrs. Evans commented the pending merger of the Commission on Economic Development and Tourism is a factor in the placement of this budget account.

Ms. Tiffany asked if the director's position had been filled and if the job description would be affected by which agency the office is located. Mr. Stevens said the recommendation to increase the salary was an incentive to attract a specific candidate but he is not aware if the position has actually been filled.

Mr. Close expressed his concern with a possible duplication of processes.

Ms. Giunchigliani asked what is the proposed increased salary for the director. Mr. Stevens said the revised recommendation from the Governor's office sets the salary in the upper $80,000 range.

Mr. Stevens outlined the suggested changes requested by the Secretary of State. First is a $30,000 general fund request for a new volume of political history of Nevada. The following requests are from expedited fees and not from the general fund: $400,000 for Business Process Reengineering; $81,000 for a computer data base rewrite; and four new half-time positions ($65,000 in the first year and $67,000 in the second year of the biennium).

Ms. Tiffany suggested any remaining from the request of $400,000 for BPR be reverted to the Special Services fund if that total amount is not used.

Mrs. Evans asked for clarification on what agencies are slated for BPR.

Ms. Giunchigliani said the General Government Subcommittee has not completed a review of all the budget requests for BPR. However, to date the subcommittee is considering approving BPR for DMV, Health and Human Services, Division of Insurance and the Prison. The subcommittee did not consider the budgets for the constitutional officers.

MS. TIFFANY MOVED GOVERNOR RECOMMENDATION PLUS the RECOMMENDATIONS FROM the SECRETARY OF STATE.

MR. CLOSE SECONDED the MOTION.

Mr. Spitler commented the committee should be consistent in their approval of BPR.

MS. TIFFANY AMENDED the MOTION TO REMOVE the BPR FOR FURTHER REVIEW.

MS. GIUNCHIGLIANI SECONDED the MOTION.

MOTION CARRIED. BUDGET CLOSED.

****

SECRETARY OF STATE SECURITIES DIVISION - PAGE 85

MS. GIUNCHIGLIANI MOVED GOVERNOR RECOMMENDATION.

MR. SPITLER SECONDED the MOTION.

MOTION CARRIED. BUDGET CLOSED.

****

SENATE BILL 192 **Makes various changes related to provisions pertaining to sexual deviants.**

Senator James testified S.B. 192 deals with dangerous sexual predators. First, it increases penalties for certain crimes, rape or battery with attempt to commit sexual assault against a child under the age of 16. Secondly, it creates a penalty of lifetime supervision. The bill extends the definition of sexual offense regarding blood and saliva testing for the central repository of Nevada records of criminal history. It directs the Board of Pardons to establish a program of lifetime supervision. One of the major provisions, is providing for a community notification program that will protect the public but not result in a constitutional question or ex-post facto law. The bill establishes a set of guidelines to determine the risk of recidivism of a particular offender. In summary, S.B. 192 increases prison

sentences, provides for lifetime supervision when offenders are paroled and lets the community know who the offenders are.

Senator James testified the fiscal note was reduced because of the original requirement that the offender undergo treatment was eliminated. The testimony revealed treatment for this type of offender is not successful. The Department of Prisons testified there will be little fiscal impact. The Division of Parole and Probation indicated there will be no fiscal impact until the year 2006.

Ms. Giunchigliani asked for clarification on the proposed advisory council. Senator James stated Section 8 establishes an advisory council for community notification and sets out the composition of the council. Section 9 indicates how the Attorney General would consult with the panel and sets forth the criteria for the risk of recidivism for determining what the level of notification would be in a given circumstance. Section 10 makes a law enforcement agency immune from liability for failure to notify. Ms. Giunchigliani asked what is the mechanism for notification. Senator James said notification should be at a level calculated to reach certain groups. Section 9, subsection 3 (a) (b) and indicates if the risk of recidivism is low, law enforcement agencies must be notified; if it is moderate, schools, religious and youth organizations must be notified; if it is high, any one in the public who may encounter the offender must be notified. Ms. Giunchigliani expressed concern if the recidivism rate is high, why would this type of offender even be paroled. Senator James said the bill provides for stiff sentencing, but it also recognizes they are paroled and provides for lifetime supervision. Ms. Giunchigliani asked what is the projected number of offenders who would fall under this umbrella. Senator James said according to the Division of Parole and Probation, possibly a few hundred. He also noted the provisions in this bill not only deals with the paroled offender, but also the offender who has been released after serving their sentence. Senator James commented the intent of the bill is not draconian, it is only trying to protect the public from a dangerous group of offenders.

Ms. Giunchigliani questioned the fiscal note from the Division of Parole and Probation. Senator James said the information he received from the Division of Parole and Probation shows a zero fiscal impact until the year 2006. In the year 2015 they are reporting a fiscal impact of $900,000.

Chairman Arberry asked if the proposed advisory council has any funding for travel. Senator James said the bill does not provide for any expenses or salary for the members of the council. Chairman Arberry questioned if reciprocity between states has been considered. Senator James said the inter-state cooperation to track sex offenders is in the formative stages. The Attorney General of the United States recently indicated they will require all states to have a sex offender registration law and a community notification provision that meets the national standard.

Chairman Marvel asked if the criminal history repository contains information on sex offenders. Senator James said the repository would contain that information only if there was a registration.

Mr. Fettic reiterated the concern for the need to track these offenders when they move into Nevada.

Mr. Close referred to Section 7 and asked if the Parole Board was capable of establishing the required lifetime supervision for the offenders. Senator James said he is confident the Parole Board will fulfill the requirements of this bill. Mr. Close questioned who would be the overseer of the advisory council. Senator James

said the Attorney General.

Mrs. Chowning congratulated Senator James on the bill and asked for further clarification pertaining to juvenile offenders. Senator James said the bill does not specifically revise the statutes for juvenile offenders - only those in the adult system.

Bobbi Gang testified the Nevada Women's Lobby and the National Association of Social Workers support S.B. 192.

SENATE BILL 197 **Makes appropriation to state gaming control board for computer and office equipment.**

William Bible, Chairman of the State Gaming Control Board, introduced Ed Allen, Chief of the Electronic Services Division, and testified the appropriation in S.B. 197 is contained in the Executive Budget. It requests $390,406 from the general fund for equipment and data processing. Also it provides for $38,450 for replacement of miscellaneous office items (Exhibit C).

Mr. Allen said the Gaming Control Board has had an in-house computer system since 1982. It consists of several mini computers and provides standard office automation functions. The main use of the computers is for data base applications. This request is to increase the availability of field support for investigative and audit agents.

Chairman Marvel asked about the capability to maintain confidentiality. Mr. Allen said the data on the board's computer system is secure. There are multiple levels of passwords and user profiles.

Ms. Giunchigliani asked about the request for new furniture and if they use equipment from Prison Industries. Mr. Bible said the request for chairs is a result of an inventory in the agency for furniture needs. He added all the existing equipment is surplused. Also, Prison Industries is utilized when possible.

Ms. Tiffany referred to the expansion of the digital network and asked if there is any interaction with other state systems. Mr. Allen responded the concern of the agency is to remain isolated because of the necessity for confidentiality. However, the agency has discussed with the Department of Information Services the capability to piggyback on their statewide networks. Ms. Tiffany concurred with the need for confidentiality but encouraged the agency in building the network to overlap with other agencies whenever possible. Ms. Tiffany questioned the need for additional terminals versus one hardware device providing more flexibility. Mr. Allen said the primary reason is cost - a terminal costs $400 versus $2,000 plus software for a personal computer. Ms. Tiffany further asked about centralized software and if it is licensed. Mr. Allen said the agency is converting word processing software. Ms. Tiffany asked if the software upgrades and points of service is an additional cost to what is being proposed. Mr. Allen said there is a provision in the bill for the conversion of approximately 40 users to the word perfect system.

Ms. Tiffany remarked the agency should be updated to today's technology. The lab is state of the art and encouraged the same for the data processing portion. She encouraged the agency to provide an updated data processing plan.

Ms. Tiffany asked about maintenance contracts and warranties on PC's. Mr. Allen said the PC's have a three year warranty and the agency maintains and repairs

Mr. Price said his wife is a university regent but he will vote.

Ms. Giunchigliani asked for clarification if there is any duplication with the funds appropriated to CIP's for the university. Mr. Stevens noted this is only for administrative and academic equipment unrelated to any capital improvement projects.

Ms. Tiffany asked if the university has any flexibility in diverting from the list of proposed equipment submitted to the committee. Mr. Stevens said they can change from the list of equipment submitted. However, the committee can request a list of what was actually purchased. Ms. Tiffany asked if any of the $20 million could be used for long distance learning in higher education. Mr. Stevens said he could not answer that question.

Ms. Giunchigliani further questioned if any of the $20 million could be used for salaries, merit pool or bonuses. Mr. Stevens noted the language states "acquisition of administrative and academic equipment".

MOTION CARRIED UNANIMOUSLY. MRS. EVANS ABSTAINED.

****

Chairman Marvel asked the committee to consider S.B. 197 which makes an appropriation to the Gaming Control Board for computer and office equipment.

MR. SPITLER MOVED DO PASS.

MR. DINI SECONDED THE MOTION.

MOTION CARRIED UNANIMOUSLY.

****

Chairman Marvel asked the committee to consider S.B. 192 which changes provisions pertaining to sexual deviants.

MR. ALLARD MOVED DO PASS.

MR. CLOSE SECONDED THE MOTION.

MOTION CARRIED. MS. GIUNCHIGLIANI VOTED NO.

****

Mr. Spitler commented it is untimely to pass bills that impact the prison budget when the budget has not been closed.

Ms. Guinchigliani voiced concern that the Division of Parole and Probation is not providing adequate information to the committee.

Chairman Marvel asked the committee to consider S.B. 207 which makes an appropriation to the State Gaming Control Board for a system of electronic tax payments.

Mr. Hettrick proposed to amend S.B. 207 by reducing the appropriation by $3,880.

MR. HETTRICK MOVED AMEND AND DO PASS.

MR. ALLARD SECONDED THE MOTION.

"An Act relating to gaming; authorizing the state gaming control board and the Nevada gaming commission to discipline under certain circumstances a gaming licensee who willfully fails to pay for certain parts specifically made for his gaming devices; and providing other matters properly relating thereto.".

Amend the summary of the bill to read as follows:

"Summary—Authorizes state gaming control board and Nevada gaming commission to discipline gaming licensee who willfully fails to pay for parts specifically made for gaming devices. (BDR 41-1296)".

Assemblyman Anderson moved the adoption of the amendment.

Remarks by Assemblyman Anderson.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senate Bill No. 69.

Bill read second time and ordered to third reading.

Senate Bill No. 131.

Bill read second time.

The following amendment was proposed by the Committee on Commerce:

Amendment No. 663.

Amend section 1, page 1, line 3, by deleting "*$35*" and inserting "*$25*".

Assemblyman Spitler moved the adoption of the amendment.

Remarks by Assemblyman Spitler.

Amendment adopted.

Bill ordered reprinted, re-engrossed and to third reading.

Senate Bill No. 192.

Bill read second time.

The following amendment was proposed by the Committee on Ways and Means:

Amendment No. 726.

Amend sec. 11, page 6, by deleting lines 9 and 10 and inserting:

"213.107 As used in NRS 213.107 to 213.160, inclusive, [and] section 5 of [this act,] *Senate Bill No. 61 of this session and sections 7 to 10, inclusive, of this act,* unless the context otherwise requires:".

Amend sec. 12, page 6, by deleting line 36 and inserting: "parole under NRS 213.107 to 213.160, inclusive, and section 5 of [this act.] *Senate Bill No. 61 of this session.*".

Assemblyman Marvel moved the adoption of the amendment.

Remarks by Assemblyman Marvel.

Amendment adopted.

Bill ordered reprinted, re-engrossed and to third reading.

Senate Bill No. 288.

Bill read second time and ordered to third reading.

Senate Bill No. 297.

Bill read second time and ordered to third reading.

SENATE BILL NO. 192—SENATORS JAMES, O'CONNELL, ADLER, AUGUSTINE, COFFIN, JACOBSEN, LEE, LOWDEN, MATHEWS, MCGINNESS, O'DONNELL, PORTER, RAGGIO, RAWSON, REGAN, SHAFFER, TITUS, TOWNSEND AND WASHINGTON

FEBRUARY 3, 1995

Referred to Committee on Judiciary

SUMMARY—Makes various changes related to provisions pertaining to sexual deviants. (BDR 15-171)

FISCAL NOTE: Effect on Local Government: Yes.
Effect on the State or on Industrial Insurance: Yes.

EXPLANATION—Matter in italics is new; matter in brackets [ ] is material to be omitted.

AN ACT relating to sexual deviants; increasing the penalty for certain crimes related to sex; providing for lifetime supervision of certain sex offenders; expanding the definition of sexual offense for the purpose of requiring sex offenders to have their blood and saliva tested for inclusion in the central repository for Nevada records of criminal history; requiring the attorney general to adopt guidelines for notification of the release of sex offenders from confinement; and providing other matters properly relating thereto.

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

Section 1. NRS 200.366 is hereby amended to read as follows:

200.366 1. A person who subjects another person to sexual penetration, or who forces another person to make a sexual penetration on himself or another, or on a beast, against the victim's will or under conditions in which the perpetrator knows or should know that the victim is mentally or physically incapable of resisting or understanding the nature of his conduct, is guilty of sexual assault.

2. [Any] *Except as otherwise provided in subsection 3, a* person who commits a sexual assault shall be punished:

(a) If substantial bodily harm to the victim results from the actions of the defendant committed in connection with or as a part of the sexual assault:

(1) By imprisonment in the state prison for life, without *the* possibility of parole; or

(2) By imprisonment in the state prison for life with *the* possibility of parole, eligibility for which begins when a minimum of 10 years has been served.

(b) If no substantial bodily harm to the victim results:

(1) By imprisonment in the state prison for life, with *the* possibility of parole, beginning when a minimum of 5 years has been served; or

(2) By imprisonment in the state prison for any definite term of 5 years or more, with eligibility for parole beginning when a minimum of 5 years has been served.

[(c) If the victim was a child under the age of 14 years, by imprisonment in the state prison for life with possibility of parole, eligibility for which begins when a minimum of 10 years has been served.]

3. A person who commits a sexual assault against a child under the age of 16 years shall be punished:

(a) If the crime results in substantial bodily harm to the child, by imprisonment in the state prison for life without the possibility of parole.

(b) If the crime does not result in substantial bodily harm to the child, by imprisonment in the state prison for:

(1) Life with the possibility of parole, beginning when a minimum of 20 years has been served; or

(2) Any definite term of not less than 5 years nor more than 20 years, without the possibility of parole.

4. The trier of fact in a trial for sexual assault shall determine whether substantial bodily harm has been inflicted on the victim in connection with or as a part of the sexual assault, and if so, the sentence to be imposed upon the perpetrator.

Sec. 2. NRS 200.400 is hereby amended to read as follows:

200.400 1. As used in this section, "battery" means any willful and unlawful use of force or violence upon the person of another.

2. Any person convicted of battery with intent to kill, commit [sexual assault,] mayhem, robbery or grand larceny shall be punished by imprisonment in the state prison for not less than 2 years nor more than 10 years, and may be further punished by a fine of not more than $10,000. [, except that if a battery with intent to commit a sexual assault is committed, and if the crime results in substantial bodily harm to the victim, the person convicted shall be punished by imprisonment in the state prison for life, with or without the possibility of parole, as determined by the verdict of the jury, or the judgment of the court if there is no jury.]

3. A person convicted of battery with intent to commit sexual assault shall be punished:

(a) If the crime results in substantial bodily harm to the victim, by imprisonment in the state prison for life with or without the possibility of parole, as determined by the verdict of the jury or the judgment of the court if there is no jury;

(b) If the crime does not result in substantial bodily harm to the victim and the victim is 16 years of age or older, by imprisonment in the state prison for not less than 2 years nor more than 10 years; or

(c) If the crime does not result in substantial bodily harm to the victim and the victim was a child under the age of 16, by imprisonment in the state prison for not less than 5 years nor more than 15 years, without the possibility of parole,

and may be further punished by a fine of not more than $10,000.

4. If the penalty is fixed at life imprisonment with the possibility of parole, eligibility for parole begins when a minimum of 10 years has been served.

Sec. 3. Chapter 175 of NRS is hereby amended by adding thereto a new section to read as follows:

1. In any case in which a defendant pleads or is found guilty of murder in the first or second degree, kidnaping in the first or second degree, false imprisonment, burglary or invasion of the home, the court shall, at the request of the prosecuting attorney and for the purposes of carrying out the provisions of sections 4 and 7 to 10, inclusive, of this act, conduct a separate hearing to determine whether the offense was sexually motivated. A request for such a hearing may not be submitted to the court unless the prosecuting attorney, before the commencement of the trial, files and serves upon the defendant a written notice of his intention to request such a hearing.

2. A hearing requested pursuant to subsection 1 must be conducted before:

(a) The court imposes its sentence; or

(b) A separate penalty hearing is conducted.

3. At the hearing, only evidence concerning the question of whether the offense was sexually motivated may be presented. The prosecuting attorney must prove beyond a reasonable doubt that the offense was sexually motivated.

4. The court shall enter its finding in the record.

5. For the purposes of this section, an offense is "sexually motivated" if one of the purposes for which the person committed the offense was his sexual gratification.

Sec. 4. Chapter 176 of NRS is hereby amended by adding thereto a new section to read as follows:

1. When a defendant pleads or is found guilty of a sexual offense, the judge shall include in sentencing, in addition to any other penalties provided by law, a special sentence of lifetime supervision to commence after any period of probation or any term of imprisonment and period of release on parole.

2. The special sentence of lifetime supervision must begin upon the release of a sex offender from incarceration.

3. A person sentenced to lifetime supervision may petition the court for release from lifetime supervision. The court shall grant a petition for release from a special sentence of lifetime supervision if:

(a) The person has not committed a crime for 15 years after his last conviction or release from incarceration, whichever occurs later; and

(b) The person is not likely to pose a threat to the safety of others if released from supervision.

4. As used in this section, "sexual offense" means:

(a) A violation of NRS 200.366, subsection 3 of NRS 200.400, NRS 200.710, 200.720, subsection 2 of NRS 200.730, NRS 201.180, paragraph (a) or subparagraph (2) of paragraph (b) of subsection 1 of NRS 201.195, NRS 201.230 or 201.450;

(b) An attempt to commit any offense listed in paragraph (a); or

(c) An act of murder in the first or second degree, kidnaping in the first or second degree, false imprisonment, burglary or invasion of the home if the act is determined to be sexually motivated at a hearing conducted pursuant to section 3 of this act.

Sec. 5. NRS 176.111 is hereby amended to read as follows:

176.111 1. When a defendant is convicted of a sexual offense, the court, by order, shall direct the defendant to submit to a blood and saliva test, to be made by qualified persons, under such restrictions and directions as the court deems proper. The tests must include analyses of his blood to determine its genetic markers and of his saliva to determine its secretor status. The court shall order that the results of the tests be submitted to the central repository for Nevada records of criminal history.

2. For the purposes of this section, "sexual offense" means:

(a) Sexual assault pursuant to NRS 200.366;

(b) Statutory sexual seduction pursuant to NRS 200.368;

(c) *Battery with intent to commit a sexual assault pursuant to NRS 200.400;*

(d) Use of a minor in producing pornography pursuant to NRS 200.710;

[(d)**]** *(e)* Promotion of a sexual performance of a minor pursuant to NRS 200.720;

[(e)**]** *(f) Possession of a visual representation depicting the sexual conduct of a person under 16 years of age pursuant to NRS 200.730;*

(g) Incest pursuant to NRS 201.180; **[**or

(f)**]** *(h) Solicitation of a minor to engage in acts constituting the infamous crime against nature pursuant to NRS 201.195;*

(i) Open or gross lewdness pursuant to NRS 201.210;

(j) Indecent or obscene exposure pursuant to NRS 201.220;

(k) Lewdness with a child pursuant to NRS 201.230 **[**.**]** *;*

(l) Sexual penetration of a dead human body pursuant to NRS 201.450;

(m) Annoyance or molestation of a minor pursuant to NRS 207.260; or

(n) An attempt to commit any offense listed in this subsection.

Sec. 6. Chapter 213 of NRS is hereby amended by adding thereto the provisions set forth as sections 7 to 10, inclusive, of this act.

Sec. 7. *1. The board shall establish by regulation a program of lifetime supervision of sex offenders to commence after any period of probation or any term of imprisonment and any period of release on parole. The program must provide for the lifetime supervision of sex offenders by parole and probation officers.*

2. Lifetime supervision shall be deemed a form of parole for the limited purposes of the applicability of the provisions of subsection 9 of NRS 213.1095, NRS 213.1096, 213.10973 and subsection 2 of NRS 213.110.

3. A person who violates a condition imposed on him pursuant to the program of lifetime supervision is guilty of a felony.

Sec. 8. *1. There is hereby created an advisory council for community notification. The council consists of:*

(a) Three members, of whom no more than two may be of the same political party, appointed by the governor; and

(b) Four members, of whom no more than two may be of the same political party, appointed by the legislative commission.

2. Each member serves a term of 4 years. Members may be reappointed for additional terms of 4 years in the same manner as the original appointments.

3. Any vacancies occurring in the membership of the council must be filled in the same manner as the original appointments.

4. The council shall consult with and provide recommendations to the attorney general concerning guidelines and procedures for the notification of the community where a sex offender is to be released on parole.

Sec. 9. *1. The attorney general shall consult with the advisory council for community notification and shall establish guidelines and procedures for the notification of the community where a sex offender will be released on parole.*

2. The guidelines and procedures established by the attorney general must identify and incorporate factors relevant to the sex offender's risk of recidivism. Factors relevant to the risk of recidivism include, but are not limited to:

(a) Conditions of release that minimize the risk of recidivism, including probation or parole, counseling, therapy or treatment;

(b) Physical conditions that minimize the risk of recidivism, including advanced age or debilitating illness; and

(c) Any criminal history of the sex offender indicative of a high risk of recidivism, including:

(1) Whether the conduct of the sex offender was found to be characterized by repetitive and compulsive behavior;

(2) Whether the sex offender committed the sexual offense against a child;

(3) Whether the sexual offense involved the use of a weapon, violence or infliction of serious bodily injury;

(4) The number, date and nature of prior offenses;

(5) Whether psychological or psychiatric profiles indicate a risk of recidivism;

(6) The offender's response to treatment;

(7) Any recent threats against a person or expressions of intent to commit additional crimes; and

(8) Behavior while confined.

3. The procedures for notification established by the attorney general must provide for three levels of notification by the law enforcement agency in whose jurisdiction the sex offender is to be released depending upon the risk of recidivism by the sex offender as follows:

(a) If the risk of recidivism is low, other law enforcement agencies likely to encounter the sex offender must be notified.

(b) If the risk of recidivism is moderate, in addition to the notice required by paragraph (a), schools and religious and youth organizations must be notified.

(c) If the risk of recidivism is high, in addition to the notice required by paragraphs (a) and (b), the public must be notified through means designed to reach members of the public likely to encounter the sex offender.

4. The attorney general shall establish procedures for the evaluation of the risk of recidivism and implementation of community notification that promote the uniform application of the notification guidelines required by this section.

5. This section must not be construed to prevent law enforcement officers from providing community notification concerning any person who poses a danger to the welfare of the public.

Sec. 10. *The law enforcement agency in whose jurisdiction a sex offender will be released on parole shall disclose information regarding the sex offender to the appropriate parties pursuant to the procedures established by the attorney general pursuant to section 9 of this act. The law enforcement agency is immune from civil liability for damages for disclosing or failing to disclose information regarding a sex offender pursuant to the provisions of this section.*

Sec. 11. NRS 213.107 is hereby amended to read as follows:

213.107 As used in NRS 213.107 to 213.160, inclusive, **[**and**]** section 5 of **[**this act,**]** *Senate Bill No. 61 of this session and sections 7 to 10, inclusive, of this act,* unless the context otherwise requires:

1. "Board" means the state board of parole commissioners.
2. "Chief" means the chief parole and probation officer.
3. "Division" means the division of parole and probation of the department of motor vehicles and public safety.
4. "Residential confinement" means the confinement of a person convicted of a crime to his place of residence under the terms and conditions established by the board.
5. *"Sex offender" means any person who has been or is convicted of a sexual offense.*
6. *"Sexual offense" means:*

(a) A violation of NRS 200.366, subsection 3 of NRS 200.400, NRS 200.710, 200.720, subsection 2 of NRS 200.730, NRS 201.180, paragraph (a) or subparagraph (2) of paragraph (b) of subsection 1 of NRS 201.195, NRS 201.230 or 201.450;

(b) An attempt to commit any offense listed in paragraph (a); or

(c) An act of murder in the first or second degree, kidnaping in the first or second degree, false imprisonment, burglary or invasion of the home if the act is determined to be sexually motivated at a hearing conducted pursuant to section 3 of this act.

7. "Standards" means the objective standards for granting or revoking parole or probation which are adopted by the board or the chief . **[**parole and probation officer.**]**

Sec. 12. NRS 213.1099 is hereby amended to read as follows:

213.1099 1. Except as otherwise provided in this section and NRS 213.1215, the board may release on parole a prisoner otherwise eligible for parole under NRS 213.107 to 213.160, inclusive, and section 5 of **[**this act.**]** *Senate Bill No. 61 of this session.*

2. In determining whether to release a prisoner on parole, the board shall consider:

(a) Whether there is a reasonable probability that the prisoner will live and remain at liberty without violating the laws;

(b) Whether the release is incompatible with the welfare of society;

(c) The seriousness of the offense and the history of criminal conduct of the prisoner; and

(d) The standards adopted pursuant to NRS 213.10987 and the recommendation, if any, of the chief . **[**parole and probation officer.**]**

3. When a person is convicted of any felony and is punished by a sentence of imprisonment, he remains subject to the jurisdiction of the board from the time he is released on parole under the provisions of this chapter until the expiration of the term of imprisonment imposed by the court less any good time or other credits earned against the term.

4. Except as otherwise provided in NRS 213.1215, the board may not release on parole a prisoner whose sentence to death or to life without possibility of parole has been commuted to a lesser penalty unless it finds that the prisoner has served at least 20 consecutive years in the state prison, is not under an order [that he] *to* be detained to answer for a crime or violation of parole or probation in another jurisdiction, and that he has no history of:

(a) Recent misconduct in the institution, and that he has been recommended for parole by the director of the department of prisons;

(b) Repetitive criminal conduct;

(c) Criminal conduct related to the use of alcohol or drugs;

(d) Repetitive sexual deviance, violence or aggression; or

(e) Failure in parole, probation, work release or similar programs.

5. In determining whether to release a prisoner on parole pursuant to this section, the board shall not consider whether the prisoner will soon be eligible for release pursuant to NRS 213.1215.

6. The board shall not release on parole a sex offender until the law enforcement agency in whose jurisdiction a sex offender will be released on parole has been provided an opportunity to give the notice required by the attorney general pursuant to section 10 of this act.

Sec. 13. As soon as practicable after October 1, 1995:

1. The governor shall, pursuant to section 8 of this act, appoint three members to the advisory council for community notification for an initial term of 4 years commencing on January 1, 1996.

2. The legislative commission shall, pursuant to section 8 of this act, appoint four members to the advisory council for community notification for an initial term of 4 years commencing on January 1, 1996.

Sec. 14. The amendatory provisions of sections 1, 2 and 4 of this act do not apply to an offense which was committed before October 1, 1995.

(30)

Roll call on Assembly Bill No. 645:
YEAS—41.
NAYS—None.
Not voting—Goldwater.

Assembly Bill No. 645 having received a constitutional majority, Mr. Speaker declared it passed, as amended.
Bill ordered transmitted to the Senate.

Assemblyman Ernaut moved that the Assembly recess subject to the call of the Chair.
Motion carried.

Assembly in recess at 12:47 p.m.

ASSEMBLY IN SESSION

At 1 p.m.
Mr. Speaker presiding.
Quorum present.

GENERAL FILE AND THIRD READING

Senate Bill No. 131.
Bill read third time.
Remarks by Assemblyman Arberry.
Roll call on Senate Bill No. 131:
YEAS—42.
NAYS—None.

Senate Bill No. 131 having received a constitutional majority, Mr. Speaker declared it passed, as amended.
Bill ordered transmitted to the Senate.

Senate Bill No. 192.
Bill read third time.
Remarks by Assemblyman Humke.
Roll call on Senate Bill No. 192:
YEAS—42.
NAYS—None.

Senate Bill No. 192 having received a constitutional majority, Mr. Speaker declared it passed, as amended.
Bill ordered transmitted to the Senate.

Senate Bill No. 207.
Bill read third time.
Remarks by Assemblyman Marvel.
Roll call on Senate Bill No. 207:
YEAS—42.
NAYS—None.

Senate Bill No. 207 having received a constitutional majority, Mr. Speaker declared it passed, as amended.
Bill ordered transmitted to the Senate.

MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Sixty-eighth Session
June 8, 1995

The Senate Committee on Judiciary was called to order by Chairman Mark A. James, at 8:10 a.m., on Thursday, June 8, 1995, in Room 224 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Mark A. James, Chairman
Senator Jon C. Porter, Vice Chairman
Senator Maurice Washington
Senator Mike McGinness
Senator Ernest E. Adler
Senator Dina Titus
Senator O. C. Lee

GUEST LEGISLATORS PRESENT:

Assemblyman John C. Carpenter, Assembly District No. 33

STAFF MEMBERS PRESENT:

Allison Combs, Senior Research Analyst
Judy Jacobs, Committee Secretary

OTHERS PRESENT:

Holly Gregory, Co-owner, Weststates Property Management Group
Debra Ramos, Property Manager, MacGregor Inn
Mary Lardino, President, Nevada Apartment Association, Inc.
David M. Frazza, Executive Director, Nevada Apartment Association, Inc.

the mail may not arrive within the 3-day notice period and it may arrive after the time when the tenant has been put out of the premises by the court, giving the tenant no reasonable time to respond.

Mr. Sasser asserted there are also technical flaws in A.B. 134. He pointed out the bill does not provide for informing the tenant when he has to file his papers in court, nor that the time starts running on the date the papers are delivered to the constable's office. He said the tenant is never informed of that time. He indicated other flaws are outlined in his written argument.

Senator James opined there is a problem, because there is a potential for abuse, just as there is a potential for people to abuse existing procedures. He invited Mr. Sasser to work with others on a subcommittee to be chaired by Senator Porter.

Senator James closed the hearing on A.B. 134 and opened the work session on S.B. 192.

SENATE BILL 192: Makes various changes related to provisions pertaining to sexual deviants.

Senator James pointed out the Assembly amended the measure with a conflict amendment. He stated the conflict with S.B. 61, which has already been passed into law, was resolved.

SENATE BILL 61: Requires person in custody to sign waiver of extradition proceedings as condition of release.

SENATOR TITUS MOVED TO CONCUR IN THE ASSEMBLY CONFLICT AMENDMENT TO S.B. 192.

SENATOR ADLER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

Senator James turned to consideration of S.B. 541.

Senate Bill No. 192—Senators James, O'Connell, Adler, Augustine, Coffin, Jacobsen, Lee, Lowden, Mathews, McGinness, O'Donnell, Porter, Raggio, Rawson, Regan, Shaffer, Titus, Townsend and Washington

CHAPTER 256

AN ACT relating to sexual deviants; increasing the penalty for certain crimes related to sex; providing for lifetime supervision of certain sex offenders; expanding the definition of sexual offense for the purpose of requiring sex offenders to have their blood and saliva tested for inclusion in the central repository for Nevada records of criminal history; requiring the attorney general to adopt guidelines for notification of the release of sex offenders from confinement; and providing other matters properly relating thereto.

[Approved June 16, 1995]

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

Section 1. NRS 200.366 is hereby amended to read as follows:

200.366 1. A person who subjects another person to sexual penetration, or who forces another person to make a sexual penetration on himself or another, or on a beast, against the victim's will or under conditions in which the perpetrator knows or should know that the victim is mentally or physically incapable of resisting or understanding the nature of his conduct, is guilty of sexual assault.

2. [Any] *Except as otherwise provided in subsection 3, a* person who commits a sexual assault shall be punished:

(a) If substantial bodily harm to the victim results from the actions of the defendant committed in connection with or as a part of the sexual assault:

(1) By imprisonment in the state prison for life, without *the* possibility of parole; or

(2) By imprisonment in the state prison for life with *the* possibility of parole, eligibility for which begins when a minimum of 10 years has been served.

(b) If no substantial bodily harm to the victim results:

(1) By imprisonment in the state prison for life, with *the* possibility of parole, beginning when a minimum of 5 years has been served; or

(2) By imprisonment in the state prison for any definite term of 5 years or more, with eligibility for parole beginning when a minimum of 5 years has been served.

[(c) If the victim was a child under the age of 14 years, by imprisonment in the state prison for life with possibility of parole, eligibility for which begins when a minimum of 10 years has been served.]

3. A person who commits a sexual assault against a child under the age of 16 years shall be punished:

(a) If the crime results in substantial bodily harm to the child, by imprisonment in the state prison for life without the possibility of parole.

(b) If the crime does not result in substantial bodily harm to the child, by imprisonment in the state prison for:

(1) Life with the possibility of parole, beginning when a minimum of 20 years has been served; or

(2) Any definite term of not less than 5 years nor more than 20 years, without the possibility of parole.

4. The trier of fact in a trial for sexual assault shall determine whether substantial bodily harm has been inflicted on the victim in connection with or as a part of the sexual assault, and if so, the sentence to be imposed upon the perpetrator.

Sec. 2. NRS 200.400 is hereby amended to read as follows:

200.400 1. As used in this section, "battery" means any willful and unlawful use of force or violence upon the person of another.

2. Any person convicted of battery with intent to kill, commit [sexual assault,] mayhem, robbery or grand larceny shall be punished by imprisonment in the state prison for not less than 2 years nor more than 10 years, and may be further punished by a fine of not more than $10,000. [, except that if a battery with intent to commit a sexual assault is committed, and if the crime results in substantial bodily harm to the victim, the person convicted shall be punished by imprisonment in the state prison for life, with or without the possibility of parole, as determined by the verdict of the jury, or the judgment of the court if there is no jury.]

3. *A person convicted of battery with intent to commit sexual assault shall be punished:*

(a) If the crime results in substantial bodily harm to the victim, by imprisonment in the state prison for life with or without the possibility of parole, as determined by the verdict of the jury or the judgment of the court if there is no jury;

(b) If the crime does not result in substantial bodily harm to the victim and the victim is 16 years of age or older, by imprisonment in the state prison for not less than 2 years nor more than 10 years; or

(c) If the crime does not result in substantial bodily harm to the victim and the victim was a child under the age of 16, by imprisonment in the state prison for not less than 5 years nor more than 15 years, without the possibility of parole,

and may be further punished by a fine of not more than $10,000.

4. If the penalty is fixed at life imprisonment with the possibility of parole, eligibility for parole begins when a minimum of 10 years has been served.

Sec. 3. Chapter 175 of NRS is hereby amended by adding thereto a new section to read as follows:

1. In any case in which a defendant pleads or is found guilty of murder in the first or second degree, kidnaping in the first or second degree, false imprisonment, burglary or invasion of the home, the court shall, at the request of the prosecuting attorney and for the purposes of carrying out the provisions of sections 4 and 7 to 10, inclusive, of this act, conduct a separate hearing to determine whether the offense was sexually motivated. A request for such a hearing may not be submitted to the court unless the prosecuting attorney, before the commencement of the trial, files and serves upon the defendant a written notice of his intention to request such a hearing.

2. A hearing requested pursuant to subsection 1 must be conducted before:

(a) The court imposes its sentence; or

(b) A separate penalty hearing is conducted.

3. At the hearing, only evidence concerning the question of whether the offense was sexually motivated may be presented. The prosecuting attorney must prove beyond a reasonable doubt that the offense was sexually motivated.

4. The court shall enter its finding in the record.

5. For the purposes of this section, an offense is "sexually motivated" if one of the purposes for which the person committed the offense was his sexual gratification.

Sec. 4. Chapter 176 of NRS is hereby amended by adding thereto a new section to read as follows:

1. When a defendant pleads or is found guilty of a sexual offense, the judge shall include in sentencing, in addition to any other penalties provided by law, a special sentence of lifetime supervision to commence after any period of probation or any term of imprisonment and period of release on parole.

2. The special sentence of lifetime supervision must begin upon the release of a sex offender from incarceration.

3. A person sentenced to lifetime supervision may petition the court for release from lifetime supervision. The court shall grant a petition for release from a special sentence of lifetime supervision if:

(a) The person has not committed a crime for 15 years after his last conviction or release from incarceration, whichever occurs later; and

(b) The person is not likely to pose a threat to the safety of others if released from supervision.

4. As used in this section, "sexual offense" means:

(a) A violation of NRS 200.366, subsection 3 of NRS 200.400, NRS 200.710, 200.720, subsection 2 of NRS 200.730, NRS 201.180, paragraph (a) or subparagraph (2) of paragraph (b) of subsection 1 of NRS 201.195, NRS 201.230 or 201.450;

(b) An attempt to commit any offense listed in paragraph (a); or

(c) An act of murder in the first or second degree, kidnaping in the first or second degree, false imprisonment, burglary or invasion of the home if the act is determined to be sexually motivated at a hearing conducted pursuant to section 3 of this act.

Sec. 5. NRS 176.111 is hereby amended to read as follows:

176.111 1. When a defendant is convicted of a sexual offense, the court, by order, shall direct the defendant to submit to a blood and saliva test, to be made by qualified persons, under such restrictions and directions as the court deems proper. The tests must include analyses of his blood to determine its genetic markers and of his saliva to determine its secretor status. The court shall order that the results of the tests be submitted to the central repository for Nevada records of criminal history.

2. For the purposes of this section, "sexual offense" means:

(a) Sexual assault pursuant to NRS 200.366;

(b) Statutory sexual seduction pursuant to NRS 200.368;

(c) *Battery with intent to commit a sexual assault pursuant to NRS 200.400;*

(d) Use of a minor in producing pornography pursuant to NRS 200.710;

[(d)] *(e)* Promotion of a sexual performance of a minor pursuant to NRS 200.720;

[(e)] *(f) Possession of a visual representation depicting the sexual conduct of a person under 16 years of age pursuant to NRS 200.730;*

(g) Incest pursuant to NRS 201.180; [or

(f)] *(h) Solicitation of a minor to engage in acts constituting the infamous crime against nature pursuant to NRS 201.195;*

(i) Open or gross lewdness pursuant to NRS 201.210;

(j) Indecent or obscene exposure pursuant to NRS 201.220;

(k) Lewdness with a child pursuant to NRS 201.230 [.] *;*

(l) Sexual penetration of a dead human body pursuant to NRS 201.450;

(m) Annoyance or molestation of a minor pursuant to NRS 207.260; or

(n) An attempt to commit any offense listed in this subsection.

Sec. 6. Chapter 213 of NRS is hereby amended by adding thereto the provisions set forth as sections 7 to 10, inclusive, of this act.

Sec. 7. *1. The board shall establish by regulation a program of lifetime supervision of sex offenders to commence after any period of probation or any term of imprisonment and any period of release on parole. The program must provide for the lifetime supervision of sex offenders by parole and probation officers.*

2. Lifetime supervision shall be deemed a form of parole for the limited purposes of the applicability of the provisions of subsection 9 of NRS 213.1095, NRS 213.1096, 213.10973 and subsection 2 of NRS 213.110.

3. A person who violates a condition imposed on him pursuant to the program of lifetime supervision is guilty of a felony.

Sec. 8. *1. There is hereby created an advisory council for community notification. The council consists of:*

(a) Three members, of whom no more than two may be of the same political party, appointed by the governor; and

(b) Four members, of whom no more than two may be of the same political party, appointed by the legislative commission.

2. Each member serves a term of 4 years. Members may be reappointed for additional terms of 4 years in the same manner as the original appointments.

3. Any vacancies occurring in the membership of the council must be filled in the same manner as the original appointments.

4. The council shall consult with and provide recommendations to the attorney general concerning guidelines and procedures for the notification of the community where a sex offender is to be released on parole.

Sec. 9. *1. The attorney general shall consult with the advisory council for community notification and shall establish guidelines and procedures for the notification of the community where a sex offender will be released on parole.*

2. The guidelines and procedures established by the attorney general must identify and incorporate factors relevant to the sex offender's risk of recidivism. Factors relevant to the risk of recidivism include, but are not limited to:

(a) Conditions of release that minimize the risk of recidivism, including probation or parole, counseling, therapy or treatment;

(b) Physical conditions that minimize the risk of recidivism, including advanced age or debilitating illness; and

(c) Any criminal history of the sex offender indicative of a high risk of recidivism, including:

(1) Whether the conduct of the sex offender was found to be characterized by repetitive and compulsive behavior;

(2) Whether the sex offender committed the sexual offense against a child;

(3) Whether the sexual offense involved the use of a weapon, violence or infliction of serious bodily injury;

(4) The number, date and nature of prior offenses;

(5) Whether psychological or psychiatric profiles indicate a risk of recidivism;

(6) The offender's response to treatment;

(7) Any recent threats against a person or expressions of intent to commit additional crimes; and

(8) Behavior while confined.

3. The procedures for notification established by the attorney general must provide for three levels of notification by the law enforcement agency in whose jurisdiction the sex offender is to be released depending upon the risk of recidivism by the sex offender as follows:

(a) If the risk of recidivism is low, other law enforcement agencies likely to encounter the sex offender must be notified.

(b) If the risk of recidivism is moderate, in addition to the notice required by paragraph (a), schools and religious and youth organizations must be notified.

(c) If the risk of recidivism is high, in addition to the notice required by paragraphs (a) and (b), the public must be notified through means designed to reach members of the public likely to encounter the sex offender.

4. The attorney general shall establish procedures for the evaluation of the risk of recidivism and implementation of community notification that promote the uniform application of the notification guidelines required by this section.

5. This section must not be construed to prevent law enforcement officers from providing community notification concerning any person who poses a danger to the welfare of the public.

Sec. 10. *The law enforcement agency in whose jurisdiction a sex offender will be released on parole shall disclose information regarding the sex offender to the appropriate parties pursuant to the procedures established by the attorney general pursuant to section 9 of this act. The law enforcement agency is immune from civil liability for damages for disclosing or failing to disclose information regarding a sex offender pursuant to the provisions of this section.*

Sec. 11. NRS 213.107 is hereby amended to read as follows:

213.107 As used in NRS 213.107 to 213.160, inclusive, **[**and**]** section 5 of **[**this act,**]** *Senate Bill No. 61 of this session and sections 7 to 10, inclusive, of this act,* unless the context otherwise requires:

1. "Board" means the state board of parole commissioners.
2. "Chief" means the chief parole and probation officer.
3. "Division" means the division of parole and probation of the department of motor vehicles and public safety.
4. "Residential confinement" means the confinement of a person convicted of a crime to his place of residence under the terms and conditions established by the board.

5. "Sex offender" means any person who has been or is convicted of a sexual offense.

6. "Sexual offense" means:

(a) A violation of NRS 200.366, subsection 3 of NRS 200.400, NRS 200.710, 200.720, subsection 2 of NRS 200.730, NRS 201.180, paragraph (a) or subparagraph (2) of paragraph (b) of subsection 1 of NRS 201.195, NRS 201.230 or 201.450;

(b) An attempt to commit any offense listed in paragraph (a); or

(c) An act of murder in the first or second degree, kidnaping in the first or second degree, false imprisonment, burglary or invasion of the home if the act is determined to be sexually motivated at a hearing conducted pursuant to section 3 of this act.

7. "Standards" means the objective standards for granting or revoking parole or probation which are adopted by the board or the chief. [parole and probation officer.]

Sec. 12. NRS 213.1099 is hereby amended to read as follows:

213.1099 1. Except as otherwise provided in this section and NRS 213.1215, the board may release on parole a prisoner otherwise eligible for parole under NRS 213.107 to 213.160, inclusive, and section 5 of [this act.] *Senate Bill No. 61 of this session.*

2. In determining whether to release a prisoner on parole, the board shall consider:

(a) Whether there is a reasonable probability that the prisoner will live and remain at liberty without violating the laws;

(b) Whether the release is incompatible with the welfare of society;

(c) The seriousness of the offense and the history of criminal conduct of the prisoner; and

(d) The standards adopted pursuant to NRS 213.10987 and the recommendation, if any, of the chief. [parole and probation officer.]

3. When a person is convicted of any felony and is punished by a sentence of imprisonment, he remains subject to the jurisdiction of the board from the time he is released on parole under the provisions of this chapter until the expiration of the term of imprisonment imposed by the court less any good time or other credits earned against the term.

4. Except as otherwise provided in NRS 213.1215, the board may not release on parole a prisoner whose sentence to death or to life without possibility of parole has been commuted to a lesser penalty unless it finds that the prisoner has served at least 20 consecutive years in the state prison, is not under an order [that he] *to* be detained to answer for a crime or violation of parole or probation in another jurisdiction, and that he has no history of:

(a) Recent misconduct in the institution, and that he has been recommended for parole by the director of the department of prisons;

(b) Repetitive criminal conduct;

(c) Criminal conduct related to the use of alcohol or drugs;

(d) Repetitive sexual deviance, violence or aggression; or

(e) Failure in parole, probation, work release or similar programs.

5. In determining whether to release a prisoner on parole pursuant to this section, the board shall not consider whether the prisoner will soon be eligible for release pursuant to NRS 213.1215.

6. The board shall not release on parole a sex offender until the law enforcement agency in whose jurisdiction a sex offender will be released on parole has been provided an opportunity to give the notice required by the attorney general pursuant to section 10 of this act.

Sec. 13. As soon as practicable after October 1, 1995:

1. The governor shall, pursuant to section 8 of this act, appoint three members to the advisory council for community notification for an initial term of 4 years commencing on January 1, 1996.

2. The legislative commission shall, pursuant to section 8 of this act, appoint four members to the advisory council for community notification for an initial term of 4 years commencing on January 1, 1996.

Sec. 14. The amendatory provisions of sections 1, 2 and 4 of this act do not apply to an offense which was committed before October 1, 1995.

Senate Bill No. 265—Senator Titus

CHAPTER 257

AN ACT relating to state buildings; requiring the state council on the arts, state public works board and buildings and grounds division of the department of administration to cooperate to plan the potential purchase and placement of works of art to be placed inside or on the grounds surrounding state buildings; requiring the state council on the arts to report to the legislature works of art that need repair, restoration or replacement; and providing other matters properly relating thereto.

[Approved June 16, 1995]

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

Section 1. Chapter 233C of NRS is hereby amended by adding thereto a new section to read as follows:

The council shall periodically cause an examination to be made of the physical condition of the works of art acquired for inclusion in public works to determine which works of art need repair, restoration or replacement and shall report this information to the legislature.

Sec. 2. NRS 233C.090 is hereby amended to read as follows:

233C.090 1. The council shall stimulate throughout the state the presentation of the performing and fine arts and encourage artistic expression essential for the well-being of the arts, and shall make, before September 1 of each even-numbered year, a report covering the biennium ending June 30 of **[**such**]** *that* year to the governor and the legislature on **[**their**]** *its* progress in this regard.

2. The council is hereby authorized to:

(a) Hold public and private hearings;

(b) Enter into contracts, within the limit of **[**funds**]** *money* available therefor, with:

(1) **[**Individuals,**]** *Natural persons,* organizations and institutions for services furthering the educational objectives of the council; and

MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Sixty-eighth Session
May 3, 1995

The Senate Committee on Judiciary was called to order by Chairman Mark A. James, at 8:00 a.m., on Wednesday, May 3, 1995, in Room 224 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Mark A. James, Chairman
Senator Jon C. Porter, Vice Chairman
Senator Maurice Washington
Senator Mike McGinness
Senator Ernest E. Adler
Senator Dina Titus
Senator O. C. Lee

GUEST LEGISLATORS PRESENT:

Senator Lawrence E. Jacobsen
Assemblyman Mark A. Manendo

STAFF MEMBERS PRESENT:

Allison Combs, Senior Research Analyst
Lori M. Story, Committee Secretary
Dennis Neilander, Senior Research Analyst

OTHERS PRESENT:

Ron Pierini, Undersheriff, Douglas County
Richard Wyett, Chief, Division of Parole and Probation, Department of Motor Vehicles and Public Safety
Nancy Tiffany, Unit Manager, Division of Parole and Probation, Department of Motor Vehicles and Public Safety
Lupe Gunderson, Chairwoman, State Board of Parole Commissioners, Parole and Pardons Board
Thomas Wright, Commissioner, State Board of Parole Commissioners, Parole and Pardons Board

Judy Jacoboni, Chapter President, Mothers Against Drunk Driving, Lyon County Chapter
Carlos C. Concha, Acting Deputy Chief, Division of Parole and Probation, Department of Motor Vehicles and Public Safety
Judy Hillberry, Member, Families of Murder Victims
Susan McCurdy, Executive Secretary, Parole and Pardons Board
Lucille Lusk, Lobbyist, Nevada Concerned Citizens
Phil Galeoto, Lobbyist, City of Reno, Reno Police Department
Elizabeth Livingston, Lobbyist, Nevada Women's Lobby

SENATE BILL 312: Makes various changes to provisions relating to parole.

The chairman opened the hearing on Senate Bill (S.B.) 312 which is a bill sponsored by Senator Lawrence E. Jacobsen who introduced it. He explained to the committee the impetus for this proposal, noting there was an incident the previous year where a violent sexual offender was paroled to live in Douglas County without any notification to the local authorities or residents. When the parolee went to register as a sex offender with the local authorities the news spread and the citizens rose up against his release into their midst, the senator reported. The uprising was so widespread and vehement, the parolee asked to be returned to prison, he noted.

Senator Jacobsen reported this incident brought to light the need for a measure such as the one proposed in S.B. 312. He told of the development of an ad hoc committee which was formed to develop legislation to address the concerns of the public and law enforcement in this area, including prior notification of the impending release of the sex offender. The resulting bill requires a report to be prepared by the executive secretary of the Parole and Pardons Board and released to each law enforcement agency in Nevada, as well as a newspaper of general circulation in the county where the parolee is expected to reside.

The senator revealed the efforts he made to get a firsthand idea of what is involved in the prison and parole or probation process. He spoke of the helpfulness of the various individuals from those agencies. Then, he moved to review the specifics of the bill's notification requirements. He then introduced the undersheriff from Douglas County.

SENATE BILL 192: Makes various changes related to provisions pertaining to sexual deviants.

Senator James thanked the visiting senator for his presentation. He asked the witness if he was familiar with S.B. 192 which provides a community notification process. He also questioned whether the visiting senator would object to any amendments which would be necessary in order to make the two bills mesh. The chairman agreed the report regarding the parolee is an important requirement in the bill. He then explained the notification process outlined in S.B. 192, which is a panel of citizens working with government officials to determine the level of risk presented by the individual being released, then notifying the community on a level based on the determined risk.

Senator Jacobsen willingly assented to the necessary amendments. He also pointed out the bill's provisions for altering the makeup of the parole board with its specification as to the qualifications of those serving on the board, as well as increasing the board by one member. He stressed it is important to have a broad representation of the community, law enforcement, as well as education on the board.

Senator Jacobsen also noted for the record his concern for those individuals who have fulfilled their obligation to society, through their term of incarceration, along with his understanding that these individuals should not be punished further. He emphasized, however, that individuals who are prone to repeat their past transgression should be subject to increased scrutiny of their activities.

The chairman asked about the fiscal impact caused through the addition of one new parole commissioner. He questioned whether the funding for this position is incorporated into the administration's operating budget. Senator Jacobsen replied it is not. Senator James stated he had heard the position mentioned by the executive officials, noting their support for it.

Senator Porter voiced support for the present bill, and reminded the audience and the witnesses of testimony and evidence presented to the committee which shows sexual offenders are not often amenable to treatment for their deviant behavior.

This ended the testimony of Senator Jacobsen, who turned the floor over to Ron Pierini, Undersheriff, Douglas County. Before Mr. Pierini spoke, the chairman reminded the members of the audience that if they wish to speak before the committee they must sign-in on the visitor's roster. Mr. Pierini echoed the words and sentiments of Senator Jacobsen. He voiced appreciation for the senator's efforts on the bill, as this issue is very meaningful in the area where he lives and works.

Mr. Pierini opined the bill would be beneficial to all residents in the state who face the possibility of their neighborhood being occupied by released sexual offenders. He asked the committee to consider passage. He did acknowledge the bill could "create a monster," because there is always the possibility that residents will not want parolees in their neighborhood "regardless."

Senator James stated the committee not only supports the idea of community notification, it has already passed a similar measure. He stated it would be the intent of the committee to make the two bills consistent.

Senator Adler voiced some concern that the bill is structured to encourage supervised release of these individuals, rather than unsupervised release. He spoke to the matter of keeping convicted offenders in prison until they serve their entire sentence, which then releases them into the community without any means to ensure they are abiding by the law. This, he opined, is not a desirable situation which will result in even greater complaints from communities. The senator expressed his view that the Legislature is caught in an odd situation because it wishes to encourage a parole "tail" rather than a direct release, because it allows for additional monitoring of parolees, but it also wishes to assure citizens that their communities will not be disrupted without notice.

The undersheriff agreed with Senator Adler's statement. He said the Douglas County Sheriff's Department works well with the probation department. He observed the probation officers are overworked and understaffed, with large caseloads. This contributes to a situation where the parolees are not supervised as closely as they should be, he opined. He noted there is a lot of cooperation and communication between the sheriff's department and the probation division.

Senator Adler asked if the undersheriff feels there is a need for more probation or parole officers to monitor the parolees. Mr. Pierini agreed, noting the parole officers would also agree. The senator agreed the probation officers' caseloads are too heavy, and that there is a need for more intensive supervision of the released offenders. Mr. Pierini emphasized the need for the law enforcement agencies to be aware of the release of convicted felons into their jurisdiction. This communication allows them to be aware of what is going on in their community, he stated, as well allowing them to monitor the activities of these individuals, to some extent.

The chairman called for other witnesses on the bill. Richard Wyett, Chief, Division of Parole and Probation, Department of Motor Vehicles and Public Safety, and Nancy Tiffany, Unit Manager, Division of Parole and Probation, Department of

Motor Vehicles and Public Safety, came to the witness table. Mr. Wyett spoke in support of the bill. He stated he attended two of the meetings held by the ad hoc committee in the Fish Springs area of Douglas County. He asserted it is the philosophy of the Division of Parole and Probation (P&P), "that once a person is released from prison, the punitive part of their sentence has ended and the rehabilitative end starts."

Mr. Wyett stated it is the goal of P&P to release the individuals into a community that can work with the division, to provide a safe environment for all involved. It is necessary and welcome to rely on the additional eyes and ears of local law enforcement and the community. This policy applies to all parolees, he stated, especially sex offenders, who are somewhat different in nature from other types of offenders. In most cases, sex offenders give signals prior to re-offending, Mr. Wyett noted.

Mr. Wyett reported the division is planning to increase their staff in Douglas County to three officers, as well as opening a substation. This is in an attempt to better serve the community as their caseloads continue to grow in that area.

Senator Adler referred to page 2, section 3, subsection 4 of the bill, and asked if currently the policy of the parole board is to allow subcommittees of two members to ratify decisions. This section will change that requirement to four members, he stated. Mr. Wyett could not answer the senator's question, referring it to members of the parole board.

Ms. Tiffany spoke in favor of S.B. 312, noting the support of the parole board for this bill, as well as S.B. 192. The board, she reported, believes in community notification as a very important tool in the fight against crime. She asserted the community can better protect itself when armed with the knowledge of who has moved into the neighborhood, and what crime the offender may have committed.

Ms. Tiffany stated the Division of Parole and Probation is willing to assist the parole board in carrying out the requirements of the bill. The division also supports sections 9 and 10 of the bill, which empowers local law enforcement to detain suspected parole violators for a period of time sufficient to ascertain their status. She reported the division currently does a law enforcement notification with a 10-day advance, by certified letter, on order of the Governor. There were no questions from the committee.

Next, Lupe Gunderson, Chairwoman, State Board of Parole Commissioners, Parole and Pardons Board, and Thomas Wright, Commissioner, State Board of Parole

Commissioners, Parole and Pardons Board, addressed the committee. Ms. Gunderson spoke in support of the bill, with a couple of proposals for change. First, the witness directed the committee's attention to section 1(1). She requested the words "executive director" be changed to "the division" because they already have the information and it would be easier for them to prepare such a report.

Mr. Wright responded to the comments made by Senator Adler, stating the Parole and Pardons Board is not in opposition to public notification, however, he reminded the panel the New Jersey federal court has struck down such policies as unconstitutional. Chairman James declared the committee is well aware of this ruling, but has already crafted and passed a bill which will avoid a similar occurrence in Nevada. The assertion by the court that such a notification is punitive, he continued, has also been addressed through the appointment of a citizen's panel which will determine the breadth of community notification based on individual factors in each instance. He asked the witnesses not to spend "a lot of time on the notification part because it is going to have to be modified...to square with the other bill [S.B. 192]."

Mr. Wright continued, noting a paroled sex offender has passed a psychiatric panel, they have also engaged in positive programing. The sex offender who flattens out his sentence and is released, he noted, has not done any of these things, has not attempted rehabilitate himself and is, nonetheless, released without any supervision. In this case, he opined, "we have the target on the wrong back." Senator James stated this is in particular regard to the notion that the state should supervise released convicts, as opposed to never releasing them. Mr. Wright observed even those who expire their sentence must register with the local law enforcement, but there is no community notification or supervision. He emphasized these are the individuals that cause the most concern because, in many cases they have not admitted they have a problem, let alone made any attempts to address it.

The chairman explained that S.B. 192 requires public notification, regardless of the nature of the release, it also calls for lifetime supervision for a certain category of dangerous, violent sexual offenders, which the bill defines. Finally, the bill lengthens the terms of sentences for violent sex offenders, and there is a good likelihood that the terms actually served will be longer.

Mr. Wright concluded his remarks by voicing support for the additional parole commissioner. He observed it frequently occurs that the three commissioners from the northern part of the state are all unavailable to ratify cases that are heard in the

south or issue retake warrants, or even meet with victims in particularly pressing instances. This additional person should be "of great service to the state and to the agency, in particular." He stated he, personally, does not have any problem with S.B. 312's qualifications listing for commission members. He did state that even with the current makeup of the commission there is considerable experience in law enforcement, education, and mental health and rehabilitation.

Senator Adler asked, regarding section 3, subsection 4, whether the requirement for four commissioners to sign off on a decision is going to cause an increased delay or burden. Mr. Wright explained it is the policy of the commission to ratify every parole decision with a simple majority of four members, even in nonviolent cases. The senator asked if this is only codifying the current policy. Mr. Wright concurred, noting the addition of another commissioner should also help to alleviate delays.

Senator Adler wondered if the qualifications for commissioners listed in the bill would preclude the use of a prosecutor as one of the commissioners. Mr. Wright speculated a prosecutor might fall into the category of law enforcement, if a broad enough definition was applied. The senator wondered if there needs to be a specification of the number of commissioners needed to represent each of the qualification categories, or if the Governor should be allowed discretion in his appointments, within the guidelines of the qualifications outlined. He opined it would be fine to allow this discretion. Ms. Gunderson voiced her agreement with the senator. There was agreement also voiced by Mr. Wright and Senator James that the provision needs to be modified to allow the Governor this discretion.

Ms. Gunderson finally referred to pages 2-3, section 3, subsection 4, line 40 which discusses the need for the chairman to have the deciding vote in particular cases. She stated she is uncomfortable with imposing this extra power or responsibility on the chairman of the commission. It has always been the policy to allow each commissioner equal weight in voting. She stated it is her preference to retain the current policy, which requires four votes to ratify a decision.

Senator Adler objected to the provision because it includes conspiracy, a low-level crime, in this extraordinary voting structure. Mr. Wright agreed with Ms. Gunderson. He objected to "focusing that kind of pressure on the chairperson or vice chairperson...." He restated, if the commission goes to seven members, he does not object to the need for a majority of five, however, it seems unnecessary to require one of those votes be the chairman's. Chairman James stated he would get an explanation of this provision from Dennis Neilander, Senior Research Analyst, Legislative Counsel Bureau, who assisted in the drafting of the bill.

Mr. Wright reiterated the need to create the position of vice chairman who can act in the chairman's stead, especially if the commission is expanded to seven members. This concluded these witnesses' comments.

Judy Jacoboni, Chapter President, Mothers Against Drunk Driving (MADD), Lyon County Chapter spoke in support of S.B. 312. Ms. Jacoboni noted the bill has good provisions, especially section 3 which expands the board to seven members and the qualifications list which includes a victim's advocate.

She spoke regarding the issue of requiring the chairman to concur in decisions listed in section 3, subsection 4 of the bill. This, she opined, is a very good provision, because the members of MADD feel the chairman of the board should be accountable, that someone should have to answer for these votes. Senator James asked if all the commissioners are not currently accountable when they vote. Ms. Jacoboni agreed their votes are all recorded and they are, indeed, accountable, except there needs to be someone to [blame] for an unpopular decision.

Senator Adler asked the witness why the rest of the panel should even vote, if they are not accountable, and the chairman is the only one whose vote counts. Ms. Jacoboni asserted the voting process is such that undue influence can be put on persons to vote a particular way. The senator admitted this is possible, but insisted the entire board should be held accountable. Ms. Jacoboni maintained there is a need for "the buck" to stop with some individual. Senator Adler offered that if the chair's vote is the only one that counts, other members can let the chair take the unpopular stand and then cast then own vote the way that "makes [them] look the best," thus taking the heat off themselves in an uncomfortable situation. Ms. Jacoboni thanked the committee and stepped down.

Mr. Neilander was asked to answer some questions for the committee. Senator James asked Mr. Neilander to work with him in order to fashion a comfortable, workable overlap between S.B. 192 and S.B. 312. Secondly, the senator asked the origins of the chairman vote requirement in section 3, subsection 4.

Mr. Neilander stated he attended the ad hoc committee meetings with Senator Jacobsen in order to "act as a conduit between the committee and the bill drafters." Residents from the area in Douglas County which had the unpleasant experience of the sex offender being released into their community were present at those meetings, he explained. These residents felt great frustration that there was no real allowance for public input in parole decisions, no one individual to whom they could direct their concerns. This, he continued, was one way to create

some accountability, in cases of more serious offenses, through the creation of a super- majority. Mr. Neilander speculated the bill, as drafted, might be broader than the citizens would really request.

Mr. Neilander wished to add, referring to section 1 of the bill, that it was drafted prior to the drafting of S.B. 192 with its careful consideration of the New Jersey court's decision and its citizens panel to determine notification. He offered that S.B. 312's provision to notify a newspaper might be problematic. Senator James clarified the court's decision as stating "if you just have a reflexive publication.... for every offender, regardless of their risk of recidivism, then it can be punitive. And, if it's punitive, it's an *ex post facto* law.... and unconstitutional." Mr. Neilander agreed with the chairman's interpretation.

Senator James requested Mr. Neilander to work with him and Ms. Combs to "come up with the necessary changes." Mr. Neilander directed the committee's attention to section 9 of the bill, requested by law enforcement. He explained it is based, somewhat, on a California law allowing searches of suspected parole violators. The consensus of the group was it is not necessary to "go that far," but rather, to address the need to detain a suspect for a period of time sufficient to confirm if the individual is on parole, he stated.

SENATE BILL 416: Makes various changes regarding sentencing of persons convicted of felonies.

Senator Adler observed that some of the offenses which require notification through S.B. 312 are those that have been classified as category D crimes under S.B. 416. He suggested the bill should be revised to exclude the conspiracy crime notification, as it is not a violent crime and does not necessarily deserve the police and public attention that notification will bring. He asked the bill be made more specific. The chairman noted S.B. 192 has a less broad list, and S.B. 312 should be made more consistent. Mr. Neilander told of the bill is broad because there was no real consensus about which crimes should be included.

The hearing on S.B. 312 was closed.

SENATE BILL 313: Authorizes inclusion of assignment of wages for restitution as condition of parole, probation or suspension of sentence.

The hearing on S.B. 313 was opened and Senator Washington made its introduction to the committee. He explained the purpose of the bill is to provide

MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Sixty-eighth Session
May 25, 1995

The Senate Committee on Judiciary was called to order by chairman Mark A. James, at 8:00 a.m., on Thursday, May 25, 1995, in Room 224 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Mark A. James, Chairman
Senator Jon C. Porter, Vice Chairman
Senator Maurice Washington
Senator Mike McGinness
Senator Ernest E. Adler
Senator Dina Titus
Senator O. C. Lee

GUEST LEGISLATORS PRESENT:

Assemblyman Joseph E. Dini, Jr.
Assemblyman Brian E. Sandoval

STAFF MEMBERS PRESENT:

Allison Combs, Senior Research Analyst
Lori M. Story, Committee Secretary

OTHERS PRESENT:

Lucille Lusk, Lobbyist, Nevada Concerned Citizens
John W. Riggs, Sr., Concerned Citizen
Bill Cavagnaro, Lieutenant, Lobbyist, Las Vegas Metropolitan Police Department
Phil Galeoto, Lieutenant, Lobbyist, City of Reno, Reno Police Department
Margaret Springgate, Legal Counsel, Governor's Office
Greg Harwell, Lobbyist, California State Automobile Association
John P. Fowler, Chairman, Executive Committee, Business Law Section, Nevada State Bar

ASSEMBLY BILL 396: Restricts granting of probation to persons convicted of certain sexual offenses involving children.

The hearing opened with a subcommittee consisting of the chairman and Senator Lee. The chairman opened the hearing on Assembly Bill (A.B.) 396 and Assemblyman Brian E. Sandoval presented his testimony. Mr. Sandoval is the prime sponsor of the bill and he told the committee the intent of the bill. Mr. Sandoval referred to statistics about persons who prey on children and emphasized the recidivism rate for sexual deviants is 95 percent; one deviant can have as many as 300-400 victims; and, typically, the victim is between 3 and 5 years of age.

In discussions with prosecutors the assemblyman reported, it was revealed that in some cases crimes such as sexual assault on a child is negotiated down to a charge of attempted sexual assault. This crime is currently probationable, he noted. He observed that probation for such individuals is rare, but it has happened. Therefore, the bill focuses on this loophole, making anyone who is convicted of attempting or completing an act of sexual assault on a child under 16 years serve their sentence in prison, not on probation, the legislator told.

At this point Senator James noted the presence of a quorum of the entire committee and the hearing proceeded. He asked for questions. Mr. Sandoval recalled a bill sponsored by Senator Rawson, which is similar in nature, and may, he noted, contain a "redundant provision." Mr. Sandoval reported he had talked with the senator, and he represented the senator does not object to A.B. 396 proceeding to passage.

SENATE BILL 192: Makes various changes related to provisions pertaining to sexual deviants.

Senator James clarified that Senator Rawson's bill called for no probation at all for any sex offense. The senator judiciary committee had amended the senator's bill to apply only to the sex offenses that were also covered under Senate Bill (S.B.) 192. The bill was then passed out of committee, the chairman explained, with the same provisions as are contained in A.B. 396. Senator James observed that since the committee has endorsed the concept contained in the bill, it will proceed out of committee, unless the assemblyman has any changes to propose. Mr. Sandoval opined the bill is "perfect, [as] it is," but he welcomed the committee's insight for improvement.

Senator McGinness asked the witness why the age of 16 was chosen. Mr. Sandoval noted the original draft of the bill called for a child under the age of 14, but the Assembly judiciary committee amended it in an attempt to draw consistency with other bills, including S.B. 192. There were no further questions, and the assemblyman stepped down.

Lucille Lusk, Lobbyist, Nevada Concerned Citizens spoke next in support of the bill. She stated she would not repeat statistics, but the support arises for reasons frequently voiced in previous hearings. She stated she wishes the record to show this support. Senator James asked Ms. Lusk if she had testified in support of Senator Rawson's "no probation' bill. Ms. Lusk could not recall specifically, but speculated she had. There was no further testimony on A.B. 396 and the chairman closed the hearing.

Next, hearing on A.B. 393 was opened.

ASSEMBLY BILL 393: Makes various changes related to possession of firearm by children and increases penalty for sale of certain firearms to children.

Assemblyman Joseph E. Dini, Jr., addressed the committee introducing Margaret Springgate, General Counsel, Governor's Office. Mr. Dini explained the bill is a combination of efforts, including those of Ms. Springgate, the National Rifle Association (NRA) and himself. He opined the Assembly judiciary committee produced a good product in the version before the Senate.

The goal of the bill is to balance the rights of the gun owner with law enforcement's need to address the concerns arising from youth's gang and gun activity. Mr. Dini gave an overview of the bill, providing a copy of his remarks for the record (Exhibit C). He offered to answer any questions the committee might have.

Senator James asked about section 6's liability provision, noting it appears to "track the common law" on the question of negligent or reckless entrustment to someone who has the propensity to commit a crime, rather than providing strict liability for the parents. Ms. Springgate agreed with the senator, noting under current law, even if a parent does not know what the child is doing, they can be held liable if the child engages in willful misconduct. This strict liability carries a cap of $50,000, she explained. This bill makes for a more direct liability on the parents and removes any cap or restrictions on the amount, she continued. Therefore, if the parents are aware of delinquent activities of their children, they

MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Sixty-eighth Session
June 13, 1995

The Senate Committee on Judiciary was called to order by Chairman Mark A. James, at 8:30 a.m., on Tuesday, June 13, 1995, in Room 224 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Mark A. James, Chairman
Senator Jon C. Porter, Vice Chairman
Senator Maurice Washington
Senator Mike McGinness
Senator Ernest E. Adler
Senator Dina Titus
Senator O. C. Lee

GUEST LEGISLATORS PRESENT:

Assemblyman Jack D. Close

STAFF MEMBERS PRESENT:

Allison Combs, Senior Research Analyst
Lori M. Story, Committee Secretary

OTHERS PRESENT:

Russell J. Shoemaker, Sergeant, Sexual Assault Detail, Las Vegas Metropolitan Police Department (METRO)
Ben Graham, Chief Deputy, Clark County District Attorney, Lobbyist, Nevada District Attorneys Association
Janine Hansen, Lobbyist, President, Nevada Eagle Forum
Sheila Ward, Lobbyist, Carson/Douglas Christian Coalition
Lucille Lusk, Lobbyist, Nevada Concerned Citizens
Stan Olsen, Lobbyist, Las Vegas Metropolitan Police Department (METRO)
Carlos Concha, Acting Deputy Chief, Division of Parole and Probation
Joseph K. Evers, Director, Detention Facilities, Las Vegas Metropolitan Police Department (METRO)

Laurel Stadler, Lobbyist, Mothers Against Drunk Driving (MADD), Lyon County Chapter

ASSEMBLY BILL 405: Revises provisions prohibiting sexual exploitation of children.

The chairman called Assemblyman Jack D. Close to the witness table to explain his bill. Mr. Close spoke to the committee offering them a copy of a prepared statement (Exhibit C). He explained the bill originated from a problem that arose in a Las Vegas water park and swimming pool: the unauthorized and exploitative photographing of young children. These photographs were reproduced in such a way as to be pornographic, he reported. The bill is to address this situation.

SENATE BILL 192: Makes various changes related to provisions pertaining to sexual deviants.

The assemblyman explained the bill is not intended to prohibit a parent from photographing their naked infant on the bear skin rug. These prohibitions are against photos made with an intent to arouse the prurient interests of the viewer, he said. This situation was clarified during the hearings held in the Assembly, he told, and a language change was made to the original draft to that effect. Senator James asked what the original language of the bill was. Mr. Close told him that on page 2, lines 6 and 7 included the wording, "...sexual portrayal means the lewd and lascivious depiction of the genitals or pubic area, whether clothed or not." The assemblyman opined that Assembly Bill (A.B.) 405, in combination with Senate Bill (S.B.) 192, will provide a means of dealing with sexual exploitation of children. He encoraged the committee to support he bill.

Mr. Close explained the situation is difficult to deal with, especially if viewing the videos that are produced. He told the committee he had viewed some of the materials provided by the Las Vegas Metropolitan Police Department (METRO) in an attempt to become more educated about the subject. There were videos which would not come under the bill, including a video of a backyard barbeque held at a nudist colony. These pictures, he explained were not lewd in any way and could not be made to seem so. However, another video he viewed was a portion of the one produced with the pictures taken at the water park. These were clearly intended to focus on the genitals of the child for lewd purposes. These two films provided him with a good example of how videos of similar subject matter can be very different in their intent. Sometimes, however, it is difficult for the courts to make such determinations, and the wording, "...appeals to the prurient interest in sex," was an attempt to make this distinction more clear.

Senator James asked if there was an objective standard to be applied in the bill. He wondered what the objective standard would be for "appeals to the prurient interest in sex?" Mr. Close asked to have one of the law enforcement officers respond to that question. The chairman asked what attorneys testified at the Assembly hearings, because he said he is interested in "fleshing this out pretty well in the minutes," in order to clearly state the intent of the law. Subjects such as this one are easily misinterpreted or interpreted in a manner other than the intent of the bill's sponsors. If the intent is found to be overbroad, the courts are likely to "strike the whole thing down as unconstitutional," the senator pointed out, and that would defeat the purpose of the law, altogether.

Russell J. Shoemaker, Sergeant, Sexual Assault Detail, Las Vegas Metropolitan Police Department (METRO), came to the witness table in support of the bill. Sgt. Shoemaker explained he is assigned to the child sexual abuse detail. There, he explained, he investigates allegations of "people touching children in a sexual manner, as well as videotaping or photographing them in such a manner. Sgt. Shoemaker attempted to answer the question put to Mr. Close by the chairman, as to what the objective standard would be to "appealing to the prurient interest in sex." He stated, "The prurient sexual interest is that which might be viewed by any person and after such viewing be able to determine that the purpose of the video presentation photograph performance was sexually explicit conduct to incite the prurient interest of another person."

The witness agreed it is difficult to explain what this means without "showing examples." He offered to do so, noting he has several videotapes as examples. One case which the police were unable to prosecute was a man with his two nieces at Discovery Zone. This man filmed the young girls' crotches, had them dress in white cotton panties and filmed their crotches some more, along with filming the crotches of passersby. It was not just the crotches being present in the video, he explained, but rather the entire screen was filled with a view of the crotch areas of the subject.

Prurient interest, Sgt. Shoemaker continued, might best be demonstrated by the lewd or lascivious exhibition of the genitalia, whether clothed or not, in such a fashion as to incite sexual interest. He offered the names of a couple of cases that caused the police to seek this bill. One, Knox, distributed material similar to that taken at the water park. Knox was arrested and his case went all the way to the U.S. Supreme Court. Sgt. Shoemaker offered a copy of the supreme court decision in Knox as an exhibit (Exhibit D). The decision was that Knox was producing pornography according to the standards set by the U.S. Supreme Court.

METRO deals with a lot of people who could be called pedophile, the witness told. These investigations reveal films similar to those produced at the water park. These films are stored by individuals alongside other forms of pornography, including blatant child pornography, Sgt. Shoemaker stated. Finding these films all stored together, the witness testified, leads him to believe even the less blatant films are for the sexual interests of the owner of the film. He offered an example of a man who moved to the area from San Diego. This man had a collection of videos that cover the entire spectrum of pornography, including the ones produced from pictures taken at the water park and ones where he was pictured having sex with very young girls.

When the man was arrested, the only charges he faced in Nevada were gross misdemeanors, because, Sgt. Shoemaker explained, current Nevada law makes possession of such pictures a crime on that level. Senator James asked why the man could not be charged with the crime of having sex with children. The witness explained those activities did not occur in Nevada, and it was up to California authorities to prosecute him for those crimes.

Senator Washington asked the witness if this bill will give police the tools to be able to apprehend and convict these people a lot quicker than we are doing now. He stated he feared it might be just going through another formality, another "hoop" to jump through, to finally incarcerate them and put them away. Sgt. Shoemaker replied:

> Senator Washington, there is no one bill that, I think, would ever be able to do that for us. It's a combination of all of the laws that we pass. Senate Bill 192 has taken us a great step farther, through that one bill that we all visualize as being the one cure-all for this problem. This, Assembly Bill 405, in conjunction with Senate Bill 192, will be a powerful tool that I can use.

Current laws requires the subjects of the pictures be naked and engaged in sexual conduct before felonies can be charged. A.B. 405 will move the laws in the right direction; however, he stated, it is not a "cure-all."

Senator Adler asked what the intent was under section 2 of the bill. "Is this an attempt to prosecute persons for having a minor prepare, advertise or distribute the materials to other minors or is it an attempt to prosecute persons for distributing this material?," he asked. He read the section to the witness and asked for an interpretation, noting the way it is worded sounds like the person would be prosecuted for encouraging a minor to distribute the materials to a minor. The chairman called Ben Graham, Chief Deputy, Clark County District Attorney,

MINUTES OF THE
SENATE COMMITTEE ON LEGISLATIVE AFFAIRS AND OPERATIONS

Sixty-eighth Session
June 20, 1995

The Senate Committee on Legislative Affairs and Operations was called to order by Chairman Mike McGinness, at 3:14 p.m., on Tuesday, June 20, 1995, in Room 227 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Mike McGinness, Chairman
Senator William J. Raggio, Vice Chairman
Senator Raymond D. Rawson
Senator Mark A. James
Senator Dina Titus
Senator Bob Coffin
Senator Bernice Mathews

GUEST LEGISLATORS PRESENT:

Senator Jon C. Porter, Clark County Senatorial District No. 1
Assemblyman Peter G. Ernaut, Assembly District No. 37

STAFF MEMBERS PRESENT:

Robert E. Erickson, Research Director, Legislative Counsel Bureau
Mavis Scarff, Committee Secretary

OTHERS PRESENT:

Robert P. Olson, Incline Village Citizen

Senator McGinness announced that Senate Concurrent Resolution (S.C.R.) 57 was placed on the agenda to inform the committee that S.C.R. 57 is to be considered as a study, but that the substantive portion of S.C.R. 57 will be heard at 4:00 p.m. in the Senate Committee on Commerce and Labor.

SENATE CONCURRENT RESOLUTION 57: Directs Legislative Commission to conduct interim study of effect of competition in generation and sale of electric energy. (BDR R-1917)

other county in Nevada. There are a couple of positive features to this situation: first, taxpayers in Ponderosa County will likely be more attentive to what their county is doing or plans to do with their tax dollars than their counterparts in other counties: second, they will probably have more influence over the day-to-day decisions of their government than taxpayers elsewhere.

Senator McGinness closed the hearing on S.C.R. 56, and stated that the Senate Committee on Commerce and Labor will hear the substantive portion of S.C.R. 57, and that any changes will be recommended to the committee. He said S.C.R. 57 it is listed on the agenda to make sure that it is included in the list of studies. A quorum was now present as Senator Coffin arrived. Senator McGinness opened the hearing on S.C.R. 59.

SENATE CONCURRENT RESOLUTION 59: Directs Legislative Commission to conduct interim study of treatment of mentally ill offenders in prison. (BDR R-2147)

Senator James spoke eloquently on S.C.R. 59. He said this study is important for several reasons, not only because they have laid some statutory predicates for it with bills that they have passed this session, but also because this is an area of the law that is probably the very cutting edge of criminal justice in the state and the country; and that being whether the Legislature can do anything about people who are motivated to commit crime, and actually commit crimes, because of a mental disease or defect that they have. He indicated that the criminal justice system has done very little to treat people in the criminal justice system, or in prison, who suffer from these problems, and whose crimes are a direct result of these problems. Rehabilitation, as regards the mentally ill, he stated, has really been a goal that has not been reached in any degree; very little has been understood about mental disease, less than is understood about physical disease, and even less in dealing with the mental diseases that motivate people to do the most heinous and despicable things in society. Nevada also has to look at the question of whether enough is being done to use the resources necessary to offer treatment to these people, and perhaps prevent them from offending again. Senator James reminded the committee that this resolution is drafted so that it would require an analysis of insanity and mental illness in the criminal justice system, but would also ask for an emphasis to be placed on those who engage in sexually deviant behavior in connection with their crimes. He said that a recent study indicated that the average juvenile offender who commits his first sex crime will commit an average of 360 sex offenses in his lifetime, noting that this a rate of recidivism is the

average across the country for this kind of a crime. He remarked that the people who commit these terrible crimes are going to get out of prison, but he emphasized that the Legislature has to take some bold steps, this session, to increase the penalties for violent offenders, and he reminded the committee that they will never be able to keep people in prison forever. Senator James noted that the people who commit these kinds of crimes are different from others, indicating that the statistics show consistently that they have one of the highest of recidivism of any crime. He declared that recognizing that they are going to be free, and recognizing that most of these people have a mental disease or a defect of some kind, which motivates them to that high rate of repeat offense in the future, legislators have to ask themselves whether they are doing enough to try to prevent that from happening. He stated some studies show that treatment of sex offenders is of little help; however, other recent studies show that maybe they are not cured, but the rate of recidivism can be reduced. He agrees that this issue, of trying to look at the treatment of mental illness in the system, and prevent these kinds of crimes from being committed in the future, is a goal without parallel. He said that Senate Bill 192, now in statute, recognizes a class of people who are sexual deviants, and yet nothing has been done to direct further inquiry or study, either outside or inside the prison system, to determine whether these people can be treated to prevent them from repeating their crimes.

SENATE BILL 192: Makes various changes related to provisions pertaining to sexual deviants. (BDR 15-171)

SENATE BILL 314: Abolishes criminal defense of insanity. (BDR 14-331)

He noted that S.B. 314, which was passed by both houses, repeals the defense of insanity in criminal prosecutions, and also recognizes that people who commit crimes can be mentally ill, that the mental illness can be the cause of the crime, and the reason that they committed the crime. He asked how, someone can be dealt with, who is convicted of a crime, and also recognized by a jury or a judge to be mentally ill at the same time. He asserted that those are the two statutory predicates, and some of the statistics, as to why this bill is needed so much. Senator James indicated that many studies have been done over the last 15 years, and that at least seven research groups have analyzed sex offender treatment studies, and all but one, have found overall positive treatment effects. He said that what these studies found, in most cases, is not that people can be cured, not that people necessarily will have the disease, or the defect whatever it is, completely eradicated from their minds, is that one can reduce the chance, or the likelihood, that the particular disease will motivate them to commit a crime again. He cited a study, conducted in 1993, that found that the recidivism rate of treated offenders

was 10.9 percent versus 18.5 percent for untreated offenders. He stated that he thinks it is close to neglect of their duties for them not to commission the Nevada Legislature to look into these studies, and see whether they should be implemented in Nevada. Currently, he said, they are doing things on a day-to-day basis with each given crime, each given child that is violated, each rape that is committed; but they need to try to go to the source, and prevent these crimes from being committed in the first place. He urged the committee to adopt this study.

Senator Coffin indicated he forgot why they needed to take the sexual offender treatment out of S.B. 192, and asked if it was it because of the cost?

Senator James replied it was the strong testimony from the people in the mental health and retardation division, and also in the prison system who said they did not have the time to study these treatment regimes; however, they urged the Legislature to study it, and he stated the Legislature needs to do something to look at the current data and see what Nevada should be doing to try to stop this problem.

Senator Coffin asked if he was suggesting a staff study to do this?

Senator James said he is suggesting both an extensive review of the existing research, and to have the committee work with the prison officials and mental health officials to look at the programs that have been instituted in other states, in particular Washington.

Senator McGinness closed the hearing on S.C.R. 59, and indicated the committee will meet again on Thursday to review the studies. The chairman advised the members that Mr. Erickson had provided them with the latest update on the pending studies (Exhibit D). The meeting adjourned at 3:52 p.m.

RESPECTFULLY SUBMITTED:

Mavis Scarff,
Committee Secretary

APPROVED BY:

Senator Mike McGinness, Chairman

DATE: JULY 23, 1995