

May 10, 2011

Nevada State Legislature
Members of Legislative Judiciary Committees
401 S. Carson Street
Carson City, NV 89701-4747

Nevadans for Civil Liberties
PO Box 60672
Reno, NV 89506
nevadansforcivilliberties@yahoo.com

RE: Effective Administration of Lifetime Supervision, A Civil Penalty

Honorable Committee Members,

Our organization is respectfully bringing the ongoing issue of Lifetime Supervision before you. We will provide the Legislative Committees with appropriate and factual information that we have found and believe to be true. We will continue to do this in order to address our concerns about what we believe to be the inappropriate and illegal enforcement of this civil sentence. We believe that this enforcement has placed this "special sentence" in violation of the double jeopardy clause of the Nevada Constitution and the Constitution of the United States.

On February 24, 1997, the Nevada Department of Public Safety originated the Parole and Probation Division Directive 6.2.101 that is subject labeled as Contact Guidelines. The purpose of this Division Directive is to set forth the minimum requirements for all guidelines concerning supervision based upon classification level, including an administrative supervision level. Our organization believes that the Department of Public Safety originated this Division Directive in response to the new Legislative Mandate in 1995 concerning Lifetime Supervision.

In 1995, the Nevada Legislature enacted NRS 176.0931 and NRS 213.1243 in relation to Lifetime Supervision. This Legislature's intent at the time was for this "special sentence" to be a civil administrative penalty, to work in a complementary fashion with the civil registration law. This was done in order to place this "special sentence" on an offender and not violate the constitutional liberty against double jeopardy by making this "special sentence" non-punitive in nature. The mandate of the Legislature places the *recordkeeping* for this "special sentence" under the *administration* of the Division of Parole and Probation, and under the *jurisdiction* of the Board of Parole Commissioners.

In the Legislative Record of SB 192, which was passed in 1995, it states that one of the main intents of this legislation was to provide law enforcement with a better way to track the location of recently released sex offenders, which would complement the registration law. I will quote the applicable section in Palmer v. State, 59 P.3d 1192, a Nevada Supreme Court decision that addressed this issue in 2002:

- "If there is a sexual offense, the police first look to the known sex offenders and most of the time the [perpetrator] is found within this group. By having lifetime supervision there would be a better track of the offenders; to keep better and more appropriate records". (FN13)

The issue of a high rate of recidivism for sex offenders, and especially offenders on Lifetime Supervision has been found to be simply put, wrong!!! This was a huge misconception perpetrated by law enforcement to the Legislature in 1995 and still continues to this day. In reality, and according to the Department of Justice in a recent statistical study, the actual recidivism rate for sex offenders to repeat a sex offense across the country is 3.5%. This is a documented fact by an Agency of the Government of the United States who is tasked with compiling these records. If an offender is provided therapy and an appropriate support and supervision level in the first 3 years after release, that rate drops in half. It drops again at 5 years, for the same reasons.

Our organization has informed you in a previous letter titled Lifetime Supervision, A Civil Penalty that:

- “By taking all of this information into account, the true facts of recidivism state that 94 to 95% of all new sex offenses are committed by a new offender, not a repeat one. And this rate is in the 98 to 99% range that a person on Lifetime Supervision will not have committed the new crime. This is by far the lowest rate of recidivism for any offender of any crime in the country”.

The Nevada Legislature has correctly placed this sentence on an offender and generated an extremely low level of recidivism as a result of this sentence. The Legislature has provided for public safety as required and achieved the results needed. There will never be a 100% effective rate of non-recidivism for any crime, and the Legislature should be proud of this achievement. In recognition of this low level of recidivism, the Nevada Legislature needs to be smart on crime through the continued use of effective sentencing. The Nevada Legislature needs to make sure this existing law will not be overturned on appeal as in ACLU v. Masto, due to the misinterpretation and punitive enforcement of this law by the Division of Parole and Probation.

The Division of Parole and Probation has stated that to properly administer this law, they need to have the authority and power to supervise an offender on this sentence “in effect” as they would an offender on parole or probation. They wish to do this to Lifetime Supervision, which is neither, and are currently enforcing it this way, regardless of the issues of double jeopardy or the violations of civil liberties that they commit. According to the Legislative intent, the law as written only entailed an offender keeping the Division informed monthly of their current address and residence, and an offender did not even have to seek approval of their residence, or who they live with as it is done at this time. “In effect”, the Division of Parole and Probation is telling the Legislature that they do not have to follow their mandate, that they will enforce this sentence however they please and use more of the budget than they need to. They do have the capability to track an offender monthly and keep the State properly informed of the current residence of an offender without applying all of these punitive measures.

In reality, the Division of Parole and Probation had already addressed this issue previously, and correctly set up an *administrative supervision level* that would allow them to comply with the Legislative Mandate in SB 192. In effect, they could probably have 1 or 2 “clerks”; instead of 20 to 30 Officers, keep track of the residence and whereabouts of an offender. The clerks could inform an Officer and have them check an offender when they are not compliant. The clerks would keep track through monthly reports supplied by the offender, the therapist of the offender, and address verification

supplied by canceled mail. This is clearly documented in Division Directive 6.2.101, which we are supplying for your convenience in reviewing this information.

The Division has made this sentence even more punitive in nature and effect by imposing the conditions of Lifetime Supervision upon the family members who reside with an offender. The Division continuously violates constitutional liberties of offenders, family members of offenders, and persons who live with an offender while violating the laws of the State of Nevada. They do this with the almost sole purpose to intimidate and harass the support group of the offender. With a 1 to 2% recidivism rate, they are trying to use technical violations to violate an offender to satisfy their goal of keeping an offender non-compliant. The Division needs to seriously put the same effort and time into repeat parole and probation violators who pose real risks and other serious issues. Lifetime Supervision is not one of them, and the statistics speak for themselves.

As responsible citizens of the State of Nevada, during these times of economic crisis, and budgetary constraints, we feel that our organization needs to present this information to the Legislative Committees. We believe the information we have provided is a fundamentally correct interpretation of a logical way to enforce this "special sentence". In effect, this would save the State the funds needlessly spent pursuing an already effective sentence in regards to public safety, and an extremely low level of recidivism. If the Division spent as much time on other offenders as they do those on Lifetime Supervision, maybe their rates of recidivism would go down too. The State could save funds by reducing the need for Officers and by applying the level of Officers present to more serious tracking of other offenders and the reduction of supervision levels to meet the mandated level of Officers to offenders.

The Legislature needs to be smart on crime and be fiscally responsible, while still being tough on crime through the use of cost effective measures of enforcement. In empirical studies that have been conducted on this issue of recidivism, the results are achieved by the use of therapy and family support, not by the use of "Gestapo Tactics" employed by the Division. We have the information that proves this and will continue to address this issue with the Committees.

We thank you for your time and effort in reviewing our issues and would appreciate a response verifying that you have received our concerns. With our membership growing daily and which includes members who have the right to vote in Nevada, we are going to have our voice heard. Our organization is growing fast due to these issues and concerns about violations of civil liberties for those offenders on parole, probation, and Lifetime Supervision. Especially for the family members and support group of offenders. Just because someone wishes to support an offender, that should not be a reason for their civil rights to be violated by the Division of Parole and Probation.

Sincerely,

Alexandra Davis
President
Nevadans for Civil Liberties