

May 15, 2011

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

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RE: Lifetime Supervision Hearings per NAC 213.290

Honorable Committee Members,

As we have noted to you before, our organization is respectfully bringing the ongoing issue of Lifetime Supervision before you. We will continue to provide the Legislative Committees with the appropriate and factual information that we have found and believe to be true. We 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 and United States Constitution.

In relation to the Nevada Legislature in this matter, we do believe that the Legislature in its intent in SB 192 did follow the correct procedure in relation to the implementation of the law in 1995. What our members and our organization have legal issues with is:

1. We consider the enforcement of this law by the Division of Parole and Probation due to their *interpretation* of the laws and conditions to be punitive in nature and effect which places it in the realm of double jeopardy.
2. We consider the imposition of conditions by the Board of Parole Commissioners to be illegal in nature because of the issues of due process, the use of inappropriate conditions which are punitive in nature and effect, and the restraint of liberty for a civil offender.

The following issue concerns due process in relation to Lifetime Supervision hearings. One of the legal issues here is in relation to the way the Nevada Board of Parole Commissioners hold hearings and imposes conditions regarding Lifetime Supervision. We believe that they deny an offender the Constitutional Rights to due process. This is an extremely important consideration in the legal interpretation of this law, as shown by the following case in Texas.

There is a recent Supreme Court Case and Opinion in Texas that deals with this issue very appropriately. We are providing you with a short summary of the case to illustrate our point. It is interesting to note that the Texas Supreme Court voted unanimously in regards to this decision 8-0. This case concerned the illegal *interpretation* of due

process by the Texas Board of Parole Commissioners in relation to hearings to impose conditions. This is even more interesting when you consider that these were offenders on parole, where the criminal legal basis for the State is so much stronger due to it being a matter of “legislative grace” than it is in this situation, which is a civil sentence. While these conditions were regarding the imposition of sex offender conditions on parolees not deemed to be sex offenders, the basis for the lawsuit is the same in relation to due process. We will be obtaining the legal decisions related to this case to see how we will apply them to our issue. We firmly believe that we are correct in our legal interpretation of this issue and our members are willing to go to Court to obtain a ruling validating our interpretation in this matter.

The State of Texas now has to fund a substantial amount of money to correct an issue that should never have been a concern. This is entirely due to the Board of Parole Commissioners in Texas believing that they are entitled to decide what due process is and how it is applied to an offender. In Nevada, we model many of our state statutes after other states that are also tough on crime, like Texas. As you can clearly see, sometimes this is not the smartest way to legally hold an offender accountable for their actions. In this day of limited resources for the State, due to the economic conditions, the budget factors are enormous when deciding what is legally appropriate in relation to an offender. As concerned citizens of the State of Nevada, we have an obligation to make you aware of legal issues that could cost our State much needed funds due to losing a court battle over an issue.

We have supplied the Judicial Committees with many appropriate concerns and solutions in the past few weeks. This is another attempt by our organization to not have to resort to the Court System in Nevada to right this wrong. Sometimes, no matter how hard the Legislature works on a law, the interpretation of the law by those obligated to enforce it gets to be punitive in nature. The Nevada Division of Parole and Probation has the ability to effectively supervise this civil sentence in relation to the Legislative intent. The Division chooses not to. The Board chooses to not grant due process. These choices by State Agencies under the control of the Legislature could cost the State of Nevada funds we need in other areas of our budget. Our organization hopes the Judicial Committees will take action and investigate these concerns soon.

On March 3, 2000 the Nevada Board of Parole Commissioners enacted NAC 213.290 through the means available to them provided by the Nevada Legislature in NRS 213.1243. The Board was supposed to do the following and this is quoted to you from a previous letter entitled Lifetime Supervision, A Civil Penalty which we have provided to the Members of the Legislative Committees.

- “In 1995, the Nevada Legislature mandated in NRS 213.1243, that “the Board of Parole Commissioners **shall** establish by regulation a program of lifetime supervision”. We believe that this was never done as mandated, and the only regulation that addresses any issue of Lifetime Supervision has been NAC 213.290. The constitutional validity of this regulation has never been reviewed as required per NRS 233B.050, Section 1, subsection (e) as specified at least once every 10 years. This regulation deals almost exclusively with the timelines

that the various agencies in the State of Nevada have to meet in order to place an offender under Lifetime Supervision. We intend to ask the Legislature if this fits their mandate for a clear, comprehensive and definitive program by regulation of Lifetime Supervision.”

- We have requested all information relating to the enactment of this regulation from the Board of Parole Commissioners and they have failed to address or respond to our requests concerning these issues many times. We believe we have the right to obtain this information according to the Fact Sheet provided to us by the Research Division of the Legislative Counsel Bureau entitled Nevada Administrative Code-Frequently Asked Questions. This Fact Sheet was prepared by Linda Eissman and provided to the public in October of 2009.
- An interesting note that we wish to make the Judicial Committees aware of is this: If the Board of Parole Commissioners has done everything that the Legislature has mandated, and are correct in the legality of their regulation, why would they not supply the appropriate information that we have requested to legally defuse the situation? Why create more work for themselves by continually refusing to provide the information? Why create a situation where our organization will have to go to court and waste state funds if we are correct in our request, which we believe we are? The Board of Parole Commissioners has never provided any legal grounds for their refusal of our requests.
- In these days of transparent government, and these times of budgetary constraints, every Agency in the State of Nevada should be diligent in their efforts to defuse a situation that could end up in a Court of Law and cost the State funds that they can ill afford to lose. An Agency should attempt to do everything within their power to investigate or respond to a request or a situation in a manner that will answer the request or defuse the situation.

As stated to you previously, our organization believes that the Board of Parole Commissioners has violated the due process rights granted to us by the Constitution and we quote from the same letter as above the following:

- “The Board of Parole Commissioners has violated the rights of due process in relation to the review of the offender in hearings related to NAC 213.290 and their placement under these mandatory 20 conditions. Since the placement of conditions is a furtherance of the court sentence, mandatory requirement of an offender’s presence should be paramount. A decision by the Nevada Supreme Court in Johnson v. State, 159 P.3d 1096 declaring that the conditions will be placed upon an offender by the Board at a later date would seem to confirm that the presence of an offender and the granting of all “court rights” would be required to satisfy due process. In recent Tennessee Supreme Court rulings regarding this issue, they affirmed that an offender has a due process right, as they are not under constructive custody, and any restraint of liberty should be approached cautiously and with all facts in hand. The condition needs to have a relation to the crime, in order for the application of one to be enforced. This is

becoming a common ruling across the country in State Supreme Court decisions. We believe that the Nevada Supreme Court would agree in these rulings as one of the basic premises for these decisions is Palmer v. State, 59 P.3d 1192.

Our organization is trying very hard to bring to light some serious issues that we believe the Nevada Legislature should be concerned about. We have supplied numerous letters and documents for your review. We have not received any response for our efforts, as we have asked Members of the Committees or their staff to do. It would be a shame for us to end up in a Nevada or Federal Court of Law without hearing any of the Legislators side of the story or opinions, which could influence our decision to go to Court. We are finding information daily which validates our issues and which makes our organization and our members wish to double our efforts about obtaining a solution to this issue of Lifetime Supervision.

As Members of the Nevada Legislature, it is a duty to respond to citizens, organizations, and companies concerns over issues. While we realize that this issue is related to "sex offenders", the duty is still there. Even though we realize that this is a political issue and a topic which you might not wish to address, offenders have families and friends, and those family members and friends more than likely have the right to vote, and their numbers in relation to offenders concerns are growing daily. This is a very large constituency that you should be concerned about, as they do have a large voting voice. This is becoming more apparent across the country in regards to draconian laws in relation to sex offenders. People do have the right to have their voice heard, and we believe you are feeling that voice in relation to a number of other issues and concerns lately, due to the economic crisis. We not only have a voice, we believe that the law is on our side in this matter. We appreciate all of your efforts as Legislators of our great State, and realize that you have many issues on your plate at this time; but we are not going to go away, and we will continue to address our concerns to you appropriately, respectfully and repeatedly.

Again, 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