

March 13, 2011

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

Nevadans for Civil Liberties
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RE: Lifetime Supervision, A Civil Penalty

Honorable Senate Members,

Our organization is respectfully bringing this issue before you. 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, and since then, is that this "special sentence" be a civil penalty. This was done in order to place this "special sentence" on an offender and not violate the constitutional liberty against double jeopardy.

The double jeopardy clause in the Nevada Constitution protects a person against multiple criminal punishments for the same offense. In 1995, the Nevada Legislature Senate Judiciary Committee was well aware of that protection afforded to the citizens of the State. This is documented in the Legislative Record in reference to SB 192. The Nevada Supreme Court has upheld the intention of the Legislature in reference to the "special sentence" being a civil penalty in Palmer v. State, a 2002 decision.

In a Nevada Supreme Court decision relating to a civil sentence it states:

- "In determining whether particular punishment is criminal or civil for double jeopardy purposes, the court must ask whether Legislature, in establishing penalizing mechanism, indicated either expressly or impliedly preference for one label or other, and even in those cases where Legislature indicates intention to establish a civil penalty, court should inquire further whether statutory scheme is so punitive either in purpose or effect, as to transform what was clearly intended as a civil penalty into criminal penalty."

We believe the Board of Parole Commissioners and the Division of Parole and Probation have made this civil penalty so punitive in effect as to violate the civil liberty against double jeopardy as guaranteed in the Nevada Constitution. We know that they are even placing the mandatory conditions of parole on offenders sentenced to Lifetime Supervision. We have documented that they are using the mandatory conditions of parole as stated in NRS 213.1245 which is a criminal penalty relating to parole only. This is documented in an open public meeting of the Board of Parole Commissioner's held in their offices in Carson City, NV on January, 20, 2011 at 1:00 pm.

Please see the attached letter dated March 1, 2011 addressed to the Nevada Board of Parole Commissioners which outlines this serious concern. This letter is entitled Lifetime Supervision, A Civil Penalty. We are including a copy for your review.

In a different Nevada Supreme Court ruling, concerning the interpretation of the language in a statute, the Court has determined that:

- “Words in a statute should be given their plain meaning unless this violates the spirit of the act.”
- “No part of a statute should be rendered nugatory, nor any language turned to mere surplusage, if such consequences can properly be avoided.”
- “Where a statute is clear on its face, a court may not go beyond the language of the statute in determining the Legislature’s intent.”

The Board and the Division both consider this to be a form of parole for all the purposes relating to parole, including the way they supervise an offender and the conditions placed upon an offender. In the plain meaning of the language of the NRS 213.1243 statute of law, it states:

- “Lifetime Supervision shall be deemed a form of parole for:”
- “(a) The ***limited*** purposes of the applicability of the provisions of NRS 213.1076, subsection 9 of NRS 213.1095, NRS 213.1096, and subsection 2 or NRS 213.110.”

The Board and the Division have rendered the term ***limited*** nugatory, and turned the language to mere surplusage, with no authority granted by the Legislature. By doing so, they have created a serious issue of double jeopardy. They have gone beyond the language of the statute, which is clear on its face in relation to the applicability of this being a form of parole in relation to Lifetime Supervision. Lifetime Supervision is different than parole. This has been determined in a ruling by the Nevada Supreme Court in Palmer v. State.

In the current Operations of the Board, they state this as fact: “That Lifetime Supervision shall be deemed a form of parole”. They do not identify that there are ***limited*** purposes for that application. In fact, they do not address the limited purposes at all. The Board even has the punishment wrong in accordance with the law. There are 2(two) levels of punishment, a misdemeanor and a felony for a new offense. The Board also violates due process in relation to an offender. They give no notice of hearing to the offender, and they *may* require an offender’s presence. As they act as a semi-judiciary Board, and that conditions may only be imposed after a hearing, which is a continuance of the court action, an offender’s presence should be mandatory. They should be allowed all court rights in relation to this hearing. This is a State Supreme Court decision in Jamgochian v. State of Tennessee.

Lifetime Supervision is a civil penalty applied to a criminal offense, such as a civil fine, or community service. It was specially placed by the Legislature to be under the authority of the Board and was to be supervised by the Division, in order to keep “*better track of the offenders; and to keep better and more appropriate records*”. This is thoroughly documented in the Legislative Record relating to SB 192 in 1995.

We are respectfully asking the Senate Judiciary Committee and its members to thoroughly review the Legislative Record in relation to this violation of the Legislature's intent. We are asking the members to review the attached document and verify the facts presented through their own sources. We are including some other State's statistics in relation to Lifetime Supervision. We know that this law will be challenged as unconstitutional unless the Legislature stops the Board and the Division in their blatant disregard of the intent and wording of the law.

We are a new organization in the State of Nevada, who has just filed our paperwork with the Secretary of State. We are concentrating our efforts in relation to violations of Civil Liberties in regards to the families of offenders by the Division of Parole and Probation. The Division enforces these restraints of liberty on families who are not under any sentence or penalty of law through their *interpretation* of your statute. The Division also enforces conditions and *interpretations* of conditions and other laws upon an offender using a "black book" of rules which they will not let the public see or know about. We believe this is another serious violation of Civil Liberties against multiple punishments for the same offense which we are also pursuing.

We will remain adamant in our efforts to keep Lifetime Supervision a civil penalty as determined by the Legislature in 1995. If you wish, we can let the Nevada Supreme Court decide this matter; that in effect, Lifetime Supervision has become even more punitive in nature since Palmer v. State and violates the double jeopardy clause of the Nevada Constitution. If the Court ruled in our favor, we will ask that the entire Lifetime Supervision Law be stricken. This has happened in a recent Court decision in ACLU v. Masto. There are at least 3 other State Supreme Court decisions, besides the Nevada Supreme Court decision that agree that Lifetime Supervision is punitive in nature.

We realize that the Legislature does its best in regards to Constitutional issues when they draft and enact a new law. The Legislature had done its homework in relation to the enactment of these statutes in 1995. The Legislature has done nothing wrong in regards to this issue. These statutes have become an issue due to the lack of integrity shown by the Board and the Division in relation to their blatant disregard of the language of the statute of law and the legislative intent of the Nevada Legislature. In effect, they have made this punitive and a violation of the double jeopardy clause.

We thank you for your time and effort in regards to this matter.

Sincerely,

Alexandra Davis
President
Nevadans for Civil Liberties