

ASSEMBLY BILL NO. 85—COMMITTEE ON  
CORRECTIONS, PAROLE, AND PROBATION

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED DECEMBER 15, 2008

Referred to Committee on Corrections, Parole, and Probation

SUMMARY—Revises provisions relating to sex offenders.  
(BDR 14-259)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets [omitted material] is material to be omitted.

AN ACT relating to public safety; revising the applicability of certain restrictions regarding residency imposed on a person who is convicted of a sexual offense; revising certain definitions relating to sex offenders; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

**Sections 1, 4 and 5** of this bill amend existing law to provide that the restrictions on the location of a residence of a person convicted of certain sexual offenses apply only to a person who establishes a residence at a location on or after October 1, 2007. (NRS 176A.410, 213.1243, 213.1255)

**Section 2** of this bill amends existing law, which defines the term “sex offender” for the purposes of certain statutes, to provide that the term means a person who is convicted of certain sexual offenses after July 1, 1961, rather than July 1, 1956. (NRS 179D.095)

**Section 3** of this bill amends the existing definition of the term “sexual offense,” which is defined for the purposes of certain statutes relating to sex offenders, to include specific definitions of the terms “sexual act” and “sexual conduct.” (NRS 179D.097)



\* A B 8 5 \*

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

**Section 1.** NRS 176A.410 is hereby amended to read as follows:

176A.410 1. Except as otherwise provided in subsection 6, if a defendant is convicted of a sexual offense and the court grants probation or suspends the sentence, the court shall, in addition to any other condition ordered pursuant to NRS 176A.400, order as a condition of probation or suspension of sentence that the defendant:

(a) Submit to a search and seizure of his person, residence or vehicle or any property under his control, at any time of the day or night, without a warrant, by any parole and probation officer or any peace officer, for the purpose of determining whether the defendant has violated any condition of probation or suspension of sentence or committed any crime.

(b) Reside at a location only if:

(1) The residence has been approved by the parole and probation officer assigned to the defendant.

(2) If the residence is a facility that houses more than three persons who have been released from prison, the facility is a facility for transitional living for released offenders that is licensed pursuant to chapter 449 of NRS.

(3) The defendant keeps the parole and probation officer assigned to the defendant informed of his current address.

(c) Accept a position of employment or a position as a volunteer only if it has been approved by the parole and probation officer assigned to the defendant and keep the parole and probation officer informed of the location of his position of employment or position as a volunteer.

(d) Abide by any curfew imposed by the parole and probation officer assigned to the defendant.

(e) Participate in and complete a program of professional counseling approved by the Division.

(f) Submit to periodic tests, as requested by the parole and probation officer assigned to the defendant, to determine whether the defendant is using a controlled substance.

(g) Submit to periodic polygraph examinations, as requested by the parole and probation officer assigned to the defendant.

(h) Abstain from consuming, possessing or having under his control any alcohol.

(i) Not have contact or communicate with a victim of the sexual offense or a witness who testified against the defendant or solicit another person to engage in such contact or communication on behalf of the defendant, unless approved by the parole and probation



\* A B 8 5 \*

1 officer assigned to the defendant, and a written agreement is entered  
2 into and signed in the manner set forth in subsection 5.

3 (j) Not use aliases or fictitious names.

4 (k) Not obtain a post office box unless the defendant receives  
5 permission from the parole and probation officer assigned to the  
6 defendant.

7 (l) Not have contact with a person less than 18 years of age in a  
8 secluded environment unless another adult who has never been  
9 convicted of a sexual offense is present and permission has been  
10 obtained from the parole and probation officer assigned to the  
11 defendant in advance of each such contact.

12 (m) Unless approved by the parole and probation officer  
13 assigned to the defendant and by a psychiatrist, psychologist or  
14 counselor treating the defendant, if any, not knowingly be within  
15 500 feet of any place, or if the place is a structure, within 500 feet of  
16 the actual structure, that is designed primarily for use by or for  
17 children, including, without limitation, a public or private school, a  
18 school bus stop, a center or facility that provides day care services, a  
19 video arcade, an amusement park, a playground, a park, an athletic  
20 field or a facility for youth sports, or a motion picture theater. The  
21 provisions of this paragraph apply only to a defendant who is a Tier  
22 III offender.

23 (n) Comply with any protocol concerning the use of prescription  
24 medication prescribed by a treating physician, including, without  
25 limitation, any protocol concerning the use of psychotropic  
26 medication.

27 (o) Not possess any sexually explicit material that is deemed  
28 inappropriate by the parole and probation officer assigned to the  
29 defendant.

30 (p) Not patronize a business which offers a sexually related form  
31 of entertainment and which is deemed inappropriate by the parole  
32 and probation officer assigned to the defendant.

33 (q) Not possess any electronic device capable of accessing the  
34 Internet and not access the Internet through any such device or any  
35 other means, unless possession of such a device or such access is  
36 approved by the parole and probation officer assigned to the  
37 defendant.

38 (r) Inform the parole and probation officer assigned to the  
39 defendant if the defendant expects to be or becomes enrolled as a  
40 student at an institution of higher education or changes the date of  
41 commencement or termination of his enrollment at an institution of  
42 higher education. As used in this paragraph, "institution of higher  
43 education" has the meaning ascribed to it in NRS 179D.045.

44 2. Except as otherwise provided in subsection 6, if a defendant  
45 is convicted of an offense listed in subsection 6 of NRS 213.1255



1 against a child under the age of 14 years, the defendant is a Tier III  
2 offender and the court grants probation or suspends the sentence of  
3 the defendant, the court shall, in addition to any other condition  
4 ordered pursuant to subsection 1, order as a condition of probation  
5 or suspension of sentence that the defendant:

6 (a) Reside at a location only if the residence is not located  
7 within 1,000 feet of any place, or if the place is a structure, within  
8 1,000 feet of the actual structure, that is designed primarily for use  
9 by or for children, including, without limitation, a public or private  
10 school, a school bus stop, a center or facility that provides day care  
11 services, a video arcade, an amusement park, a playground, a park,  
12 an athletic field or a facility for youth sports, or a motion picture  
13 theater. *The provisions of this paragraph apply to a defendant who*  
14 *establishes a residence at a location on or after October 1, 2007.*

15 (b) As deemed appropriate by the Chief Parole and Probation  
16 Officer, be placed under a system of active electronic monitoring  
17 that is capable of identifying his location and producing, upon  
18 request, reports or records of his presence near or within a crime  
19 scene or prohibited area or his departure from a specified  
20 geographic location.

21 (c) Pay any costs associated with his participation under the  
22 system of active electronic monitoring, to the extent of his ability to  
23 pay.


24 3. A defendant placed under the system of active electronic  
25 monitoring pursuant to subsection 2 shall:

26 (a) Follow the instructions provided by the Division to maintain  
27 the electronic monitoring device in working order.

28 (b) Report any incidental damage or defacement of the  
29 electronic monitoring device to the Division within 2 hours after the  
30 occurrence of the damage or defacement.

31 (c) Abide by any other conditions set forth by the Division with  
32 regard to his participation under the system of active electronic  
33 monitoring.

34 4. Except as otherwise provided in this subsection, a person  
35 who intentionally removes or disables or attempts to remove or  
36 disable an electronic monitoring device placed on a defendant  
37 pursuant to this section is guilty of a gross misdemeanor. The  
38 provisions of this subsection do not prohibit a person authorized by  
39 the Division from performing maintenance or repairs to an  
40 electronic monitoring device.

41 5. A written agreement entered into pursuant to paragraph (i) of  
42 subsection 1 must state that the contact or communication is in the  
43 best interest of the victim or witness  and specify the type of  
44 contact or communication authorized. The written agreement must  
45 be signed and agreed to by:



- 1 (a) The victim or the witness;
- 2 (b) The defendant;
- 3 (c) The parole and probation officer assigned to the defendant;
- 4 (d) The psychiatrist, psychologist or counselor treating the
- 5 defendant, victim or witness, if any; and
- 6 (e) If the victim or witness is a child under 18 years of age, each
- 7 parent, guardian or custodian of the child.

8 6. The court is not required to impose a condition of probation  
9 or suspension of sentence listed in subsections 1 and 2 if the court  
10 finds that extraordinary circumstances are present and the court  
11 enters those extraordinary circumstances in the record.

12 7. As used in this section, "sexual offense" has the meaning  
13 ascribed to it in NRS 179D.097.

14 **Sec. 2.** NRS 179D.095 is hereby amended to read as follows:

15 179D.095 1. "Sex offender" means a person who, after  
16 July 1, ~~1956,~~ 1961, is or has been:

- 17 (a) Convicted of a sexual offense listed in NRS 179D.097; or
- 18 (b) Adjudicated delinquent by a court having jurisdiction over
- 19 juveniles of a sexual offense listed in NRS 62F.200 if the offender
- 20 was 14 years of age or older at the time of the offense.

21 2. The term includes, without limitation, a sex offender who is  
22 a student or worker within this State but who is not otherwise  
23 deemed a resident offender pursuant to subsection 2 or 3 of  
24 NRS 179D.460.

25 **Sec. 3.** NRS 179D.097 is hereby amended to read as follows:

26 179D.097 1. "Sexual offense" means any of the following  
27 offenses:

28 (a) Murder of the first degree committed in the perpetration or  
29 attempted perpetration of sexual assault or of sexual abuse or sexual  
30 molestation of a child less than 14 years of age pursuant to  
31 paragraph (b) of subsection 1 of NRS 200.030.

32 (b) Sexual assault pursuant to NRS 200.366.

33 (c) Statutory sexual seduction pursuant to NRS 200.368.

34 (d) Battery with intent to commit sexual assault pursuant to  
35 subsection 4 of NRS 200.400.

36 (e) An offense involving the administration of a drug to another  
37 person with the intent to enable or assist the commission of a felony  
38 pursuant to NRS 200.405, if the felony is an offense listed in this  
39 section.

40 (f) An offense involving the administration of a controlled  
41 substance to another person with the intent to enable or assist the  
42 commission of a crime of violence pursuant to NRS 200.408, if the  
43 crime of violence is an offense listed in this section.

44 (g) Abuse of a child pursuant to NRS 200.508, if the abuse  
45 involved sexual abuse or sexual exploitation.



(h) An offense involving pornography and a minor pursuant to NRS 200.710 to 200.730, inclusive.

(i) Incest pursuant to NRS 201.180.

(j) Solicitation of a minor to engage in acts constituting the infamous crime against nature pursuant to NRS 201.195.

(k) Open or gross lewdness pursuant to NRS 201.210.

(l) Indecent or obscene exposure pursuant to NRS 201.220.

(m) Lewdness with a child pursuant to NRS 201.230.

(n) Sexual penetration of a dead human body pursuant to NRS 201.450.

(o) Luring a child or a person with mental illness pursuant to NRS 201.560, if punished as a felony.

(p) Any other offense that has an element involving a sexual act or sexual conduct with another.

(q) An attempt or conspiracy to commit an offense listed in paragraphs (a) to (p), inclusive.

(r) An offense that is determined to be sexually motivated pursuant to NRS 175.547 or 207.193.

(s) An offense committed in another jurisdiction that, if committed in this State, would be an offense listed in this section. This subsection includes, without limitation, an offense prosecuted in:

(1) A tribal court.

(2) A court of the United States or the Armed Forces of the United States.

(t) An offense of a sexual nature committed in another jurisdiction, whether or not the offense would be an offense listed in this section, if the person who committed the offense resides or has resided or is or has been a student or worker in any jurisdiction in which the person is or has been required by the laws of that jurisdiction to register as a sex offender because of the offense. This subsection includes, without limitation, an offense prosecuted in:

(1) A tribal court.

(2) A court of the United States or the Armed Forces of the United States.

(3) A court having jurisdiction over juveniles.

2. The term does not include an offense involving consensual sexual conduct if the victim was:

(a) An adult, unless the adult was under the custodial authority of the offender at the time of the offense; or

(b) At least 13 years of age and the offender was not more than 4 years older than the victim at the time of the commission of the offense.

### ***3. As used in this section:***



(a) *“Sexual act” means any of the following acts or any combination thereof:*

(1) *Contact between the penis and the vulva or the penis and the anus. For the purposes of this subparagraph, contact involving the penis occurs upon penetration, however slight.*

(2) *Contact between the mouth and the penis, the mouth and the vulva or the mouth and the anus.*

(3) *Any intrusion, however slight, of the anal or genital opening of another person by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade or arouse or gratify the sexual desire of any person.*

(4) *The intentional touching, not through the clothing, of the genitalia of another person under the age of 16 years, with an intent to abuse, humiliate, harass, degrade or arouse or gratify the sexual desire of any person.*

(b) *“Sexual conduct” means acts of masturbation, homosexuality, sexual intercourse or physical conduct with a person’s unclothed genitals or pubic area.*

**Sec. 4.** NRS 213.1243 is hereby amended to read as follows:

213.1243 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:

(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 of NRS 213.110; and

(b) The purposes of the Interstate Compact for Adult Offender Supervision ratified, enacted and entered into by the State of Nevada pursuant to NRS 213.215.

3. Except as otherwise provided in subsection 9, the Board shall require as a condition of lifetime supervision that the sex offender reside at a location only if:

(a) The residence has been approved by the parole and probation officer assigned to the person.

(b) If the residence is a facility that houses more than three persons who have been released from prison, the facility is a facility for transitional living for released offenders that is licensed pursuant to chapter 449 of NRS.

(c) The person keeps the parole and probation officer informed of his current address.

4. Except as otherwise provided in subsection 9, the Board shall require as a condition of lifetime supervision that the sex offender, unless approved by the parole and probation officer



1 assigned to the sex offender and by a psychiatrist, psychologist or  
2 counselor treating the sex offender, if any, not knowingly be within  
3 500 feet of any place, or if the place is a structure, within 500 feet of  
4 the actual structure, that is designed primarily for use by or for  
5 children, including, without limitation, a public or private school, a  
6 school bus stop, a center or facility that provides day care services, a  
7 video arcade, an amusement park, a playground, a park, an athletic  
8 field or a facility for youth sports, or a motion picture theater. The  
9 provisions of this subsection apply only to a sex offender who is a  
10 Tier 3 offender.

11 5. Except as otherwise provided in subsection 9, if a sex  
12 offender is convicted of a sexual offense listed in subsection 6 of  
13 NRS 213.1255 against a child under the age of 14 years, the sex  
14 offender is a Tier 3 offender and the sex offender is sentenced to  
15 lifetime supervision, the Board shall require as a condition of  
16 lifetime supervision that the sex offender:

17 (a) Reside at a location only if the residence is not located  
18 within 1,000 feet of any place, or if the place is a structure, within  
19 1,000 feet of the actual structure, that is designed primarily for use  
20 by or for children, including, without limitation, a public or private  
21 school, a school bus stop, a center or facility that provides day care  
22 services, a video arcade, an amusement park, a playground, a park,  
23 an athletic field or a facility for youth sports, or a motion picture  
24 theater. *The provisions of this paragraph apply to a sex offender*  
25 *who establishes a residence at a location on or after October 1,*  
26 *2007.*

27 (b) As deemed appropriate by the Chief, be placed under a  
28 system of active electronic monitoring that is capable of identifying  
29 his location and producing, upon request, reports or records of his  
30 presence near or within a crime scene or prohibited area or his  
31 departure from a specified geographic location.

32 (c) Pay any costs associated with his participation under the  
33 system of active electronic monitoring, to the extent of his ability to  
34 pay.

35 6. A sex offender placed under the system of active electronic  
36 monitoring pursuant to subsection ~~4~~ 5 shall:

37 (a) Follow the instructions provided by the Division to maintain  
38 the electronic monitoring device in working order.

39 (b) Report any incidental damage or defacement of the  
40 electronic monitoring device to the Division within 2 hours after the  
41 occurrence of the damage or defacement.

42 (c) Abide by any other conditions set forth by the Division with  
43 regard to his participation under the system of active electronic  
44 monitoring.





7. Except as otherwise provided in this subsection, a person who intentionally removes or disables or attempts to remove or disable an electronic monitoring device placed on a sex offender pursuant to this section is guilty of a gross misdemeanor. The provisions of this subsection do not prohibit a person authorized by the Division from performing maintenance or repairs to an electronic monitoring device.

8. Except as otherwise provided in subsection 7, a sex offender who commits a violation of a condition imposed on him pursuant to the program of lifetime supervision is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years, and may be further punished by a fine of not more than \$5,000.

9. The Board is not required to impose a condition pursuant to the program of lifetime supervision listed in subsections 3, 4 and 5 if the Board finds that extraordinary circumstances are present and the Board states those extraordinary circumstances in writing.

10. If a court issues a warrant for arrest for a violation of this section, the court shall cause to be transmitted, in the manner prescribed by the Central Repository for Nevada Records of Criminal History, notice of the issuance of the warrant for arrest in a manner which ensures that such notice is received by the Central Repository within 3 business days.

11. For the purposes of prosecution of a violation by a sex offender of a condition imposed upon him pursuant to the program of lifetime supervision, the violation shall be deemed to have occurred in, and may only be prosecuted in, the county in which the court that imposed the sentence of lifetime supervision pursuant to NRS 176.0931 is located, regardless of whether the acts or conduct constituting the violation took place, in whole or in part, within or outside that county or within or outside this State.

**Sec. 5.** NRS 213.1255 is hereby amended to read as follows:

213.1255 1. Except as otherwise provided in subsection 4, in addition to any conditions of parole required to be imposed pursuant to NRS 213.1245, as a condition of releasing on parole a prisoner who was convicted of committing an offense listed in subsection 6 against a child under the age of 14 years and who is a Tier 3 offender, the Board shall require that the parolee:

(a) Reside at a location only if the residence is not located within 1,000 feet of any place, or if the place is a structure, within 1,000 feet of the actual structure, that is designed primarily for use by or for children, including, without limitation, a public or private school, a school bus stop, a center or facility that provides day care services, a video arcade, an amusement park, a playground, a park,



1 an athletic field or a facility for youth sports, or a motion picture  
2 theater. *The provisions of this paragraph apply to a parolee who*  
3 *establishes a residence at a location on or after October 1, 2007.*

4 (b) As deemed appropriate by the Chief, be placed under a  
5 system of active electronic monitoring that is capable of identifying  
6 his location and producing, upon request, reports or records of his  
7 presence near or within a crime scene or prohibited area or his  
8 departure from a specified geographic location.

9 (c) Pay any costs associated with his participation under the  
10 system of active electronic monitoring, to the extent of his ability to  
11 pay.

12 2. A parolee placed under the system of active electronic  
13 monitoring pursuant to subsection 1 shall:

14 (a) Follow the instructions provided by the Division to maintain  
15 the electronic monitoring device in working order.

16 (b) Report any incidental damage or defacement of the  
17 electronic monitoring device to the Division within 2 hours after the  
18 occurrence of the damage or defacement.

19 (c) Abide by any other conditions set forth by the Division with  
20 regard to his participation under the system of active electronic  
21 monitoring.

22 3. Except as otherwise provided in this subsection, a person  
23 who intentionally removes or disables or attempts to remove or  
24 disable an electronic monitoring device placed on a parolee pursuant  
25 to this section is guilty of a gross misdemeanor. The provisions of  
26 this subsection do not prohibit a person authorized by the Division  
27 from performing maintenance or repairs to an electronic monitoring  
28 device.

29 4. The Board is not required to impose a condition of parole  
30 listed in subsection 1 if the Board finds that extraordinary  
31 circumstances are present and the Board states those extraordinary  
32 circumstances in writing.

33 5. In addition to any conditions of parole required to be  
34 imposed pursuant to subsection 1 and NRS 213.1245, as a condition  
35 of releasing on parole a prisoner who was convicted of committing  
36 an offense listed in subsection 6 against a child under the age of 14  
37 years, the Board shall, when appropriate:

38 (a) Require the parolee to participate in psychological  
39 counseling.

40 (b) Prohibit the parolee from being alone with a child unless  
41 another adult who has never been convicted of a sexual offense is  
42 present.

43 6. The provisions of subsections 1 and 5 apply to a prisoner  
44 who was convicted of:



(a) Sexual assault pursuant to paragraph (c) of subsection 3 of NRS 200.366;

(b) Abuse or neglect of a child pursuant to subparagraph (1) of paragraph (a) of subsection 1 or subparagraph (1) of paragraph (a) of subsection 2 of NRS 200.508;

(c) An offense punishable pursuant to subsection 2 of NRS 200.750;

(d) Solicitation of a minor to engage in acts constituting the infamous crime against nature pursuant to subparagraph (1) of paragraph (a) of subsection 1 of NRS 201.195;

(e) Lewdness with a child pursuant to NRS 201.230;

(f) Luring a child or a person with mental illness pursuant to NRS 201.560, if punished as a felony; or

(g) Any combination of the crimes listed in paragraphs (a) to (f), inclusive.

**Sec. 6.** This act becomes effective upon passage and approval.

