# MINUTES OF THE MEETING
# OF THE
# ASSEMBLY COMMITTEE ON CORRECTIONS, PAROLE, AND PROBATION

## Seventy-Fifth Session
## February 17, 2009

The Committee on Corrections, Parole, and Probation was called to order by Chairman William C. Horne at 8:15 a.m. on Tuesday, February 17, 2009, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/75th2009/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT**:

Assemblyman William C. Horne, Chairman
Assemblyman Tick Segerblom, Vice Chair
Assemblyman Bernie Anderson
Assemblyman John C. Carpenter
Assemblyman Ty Cobb
Assemblywoman Marilyn Dondero Loop
Assemblyman Don Gustavson
Assemblyman John Hambrick
Assemblyman Ruben J. Kihuen
Assemblyman Mark A. Manendo
Assemblyman Richard McArthur
Assemblyman Harry Mortenson
Assemblyman James Ohrenschall
Assemblywoman Bonnie Parnell

**COMMITTEE MEMBERS ABSENT**:

None

**GUEST LEGISLATORS PRESENT**:

None

**STAFF MEMBERS PRESENT**:

Allison Combs, Committee Policy Analyst
Nicolas C. Anthony, Committee Counsel
Katherine Malzahn-Bass, Committee Manager
Sean McDonald, Recording Secretary
Nichole Bailey, Committee Assistant

**OTHERS PRESENT**:

Claudia Stieber, Lieutenant, Division of Parole and Probation, Department of Public Safety
David Helgerman, Pre-Release Unit Sergeant, Division of Parole and Probation, Department of Public Safety
Jerod Updike, Citizen, Reno, Nevada
Pat Hines, Advocate for Criminal Justice Reform, Yerington, Nevada
Cotter Conway, Attorney at Law, Alternate Public Defender, Washoe County
Paul V. Townsend, Legislative Auditor, Audit Division, Legislative Counsel Bureau
Dennis Klenczar, Deputy Legislative Auditor, Audit Division, Legislative Counsel Bureau
Bernard W. Curtis, Chief, Division of Parole and Probation, Department of Public Safety
Mark Woods, Deputy Chief, Division of Parole and Probation, Department of Public Safety
David M. Smith, Executive Secretary, State Board of Pardons Commissioners, Department of Public Safety
Lee Rowland, Northern Nevada Coordinator, American Civil Liberties Union of Nevada, Reno, Nevada
Jason Frierson, Chief Deputy Public Defender, Clark County Public Defender's Office, Las Vegas, Nevada
Tom Roberts, Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department, Las Vegas, Nevada

**Chairman Horne:**
[Roll taken.] We will start with and open the hearing on Assembly Bill 35.

**Assembly Bill 35: Revises provisions governing petitions by offenders under lifetime supervision for release from lifetime supervision. (BDR 14-312)**

**Claudia Stieber, Lieutenant, Division of Parole and Probation, Department of Public Safety:**
I will be giving you an overview of the bill this morning. Sitting next to me is Sergeant David Helgerman also from the Division. Sergeant Helgerman is one of the Division's subject matter experts in regard to sex offenders and lifetime supervision.

Currently, under Assembly Bill 35, offenders may petition the sentencing court or the Parole Board for release from lifetime supervision. They may do so if they meet certain criteria listed under *Nevada Revised Statutes* (NRS) 176.0931 and after they have been supervised by the Division for at least ten years after their last conviction or released from incarceration, whichever occurs later.

Currently, there is no requirement that the sentencing court or the Parole Board consider input from the Division in determining whether to release the offender from lifetime supervision. The Division anticipates an increase in the number of offenders petitioning for release from lifetime supervision. This is due to many of them reaching the ten-year requirement since lifetime supervision was enacted in 1995. The Division supervises the offenders while they are on lifetime supervision, and as such, can offer a unique insight as to whether the offender is suitable for release from lifetime supervision or not. This input from the Division would certainly aid the sentencing courts or the Parole Board in rendering their decisions in these matters. As such, this bill would require the court or Parole Board to consider any report submitted by the Division of Parole and Probation before releasing an offender from lifetime supervision.

**Chairman Horne:**
When we are talking about this release, in subsection 3(b), it states, "at least ten years." We have the condition set forth on what has to be present before they are released from lifetime supervision, but if the person is already on parole and probation, is it not likely that after ten years that parole or probation term will have expired. I am not talking about the lifetime supervision but the parole term. In ten years that would have expired.

**David Helgerman, Pre-Release Unit Sergeant, Division of Parole and Probation, Department of Public Safety:**
Their parole and probation will have expired before they start lifetime supervision. If they have a parole and probation case that is active while they are on lifetime supervision, it would be unrelated to that actual supervision.

**Chairman Horne:**
In the new language in subpart (d), it states, "As determined by the sentencing court or Board." In practice, would an offender be able to choose whether he is to go before the sentencing court? Is there a hierarchy? And unless the sentencing court is in another jurisdiction, for example Texas, but the offender is here in Nevada now, would it be the Parole Board?

**David Helgerman:**
I believe it would be in the subject's best interest to petition the court that sentenced him. That particular wording includes the word "Board" because of the other two Assembly bills. If the nature of the violation process is changed to include the Parole Board, it may be possible to include the Board in the process of getting off lifetime supervision. To answer your question: Yes, it would be the court.

**Chairman Horne:**
If things change, it says "court or."

**David Helgerman:**
It is our understanding that it could be either.

**Chairman Horne:**
Who would choose?

**David Helgerman:**
It would be my understanding that it would be the subject on lifetime supervision and his attorney, if he has one.

**Assemblyman Carpenter:**
Can you explain page 2, section 3 (b) where it says, "The person has not been convicted of an offense that poses a threat to the safety or well-being of others for an interval of at least 10 consecutive years after his last conviction or release from incarceration, whichever occurs later"? In reality, how does that work out?

**David Helgerman:**
Not being convicted of any offenses that pose a threat to the safety of the public or others for at least ten years is one of the requirements that the person would have to meet in order to get off lifetime supervision. He cannot have any convictions for that.

**Assemblyman Carpenter:**
It says "after his last conviction."

**David Helgerman:**
My understanding of what is currently in NRS is that the last conviction would be the conviction that placed them on the sentence that carried the term of lifetime supervision. If a person had no additional convictions during the ten years of lifetime supervision, he could possibly get off.

**Assemblyman Carpenter:**
That is ten years after he got out of prison, correct?

**David Helgerman:**
That is true. A person could go directly from prison to lifetime supervision.

**Assemblywoman Dondero Loop:**
What percentage or group of people does this affect?

**David Helgerman:**
Currently, there are 415 people that the Division of Parole and Probation supervises on lifetime supervision. I am unaware of how many people are currently incarcerated, pending release to come to lifetime supervision. We currently have well over 1,000 sex offenders, and I cannot tell you how many of those are actually going to go to lifetime supervision. Potentially, there are 415 people who, over the course of the next ten years, could go to lifetime supervision.

**Assemblywoman Dondero Loop:**
Is that a large number of people?

**David Helgerman:**
I would say, in comparison to parolees and probationers, it is a small number.

**Chairman Horne:**
At this time I am willing to call for those who are in favor of A.B. 35. Since there are none, we will move to those opposed. I have Mr. Updike signed in.

**Jerod Updike, Citizen, Reno, Nevada [through interpreter Karla Johnston]:**
I am a sexual offender, and I have been charged with meeting a 15-year-old girl over the Internet. She was actually an undercover cop. I was 22 years old at the time. I am not here to make any excuses for myself. I am very embarrassed because I have put my family and friends through a great deal of conflict, and I do not want to hurt them any further because of my mistakes.

I am here because of A.B. 35 and for the opportunity to fix the lifetime supervision program. I was never told about it when I went to court. I thought

that after ten years I would be off parole and probation. I did not know about the lifetime supervision (Exhibit C).

There are 13 states that have lifetime supervision, including Colorado, Arizona, New Jersey, and Nevada. It is a very strict law in these states. I know that it is important for our community to be safe, but a lifetime without the possibility of going before a judge or making any kind of petition is going to be very difficult for someone in my situation. In other states, there is the possibility that one can go before the judge after three years to make some type of petition, and that is what I am proposing here for myself. We should follow other states and have a program for petition after three years.

It is important to protect the people, but lifetime supervision without parole in a situation such as mine is very difficult. I cannot move or go across state lines for the activities that I enjoy. There are other states that I cannot move into because of my situation here, so I feel like I am stuck in the State of Nevada. I love to do outdoor activities, and there are many opportunities for those just across the border, but I cannot do that at the moment. I have to go to Parole and Probation to get permission to leave, and I do not look forward to having to do that every time I want to leave during my lifetime supervision.

There is a report that came out in 2003 from the U.S. Department of Justice that says after three years, 96 percent of sexual offenders never commit a sexual offense again. I feel this law is unjustly tough on certain crimes committed. I understand trying to protect children from serious molesters, and I think that lifetime supervision for a person like that would be necessary, but for my situation, where I was a stupid, young kid who made a poor choice over the Internet, I do not feel that lifetime supervision fits the crime that I committed. I am asking you to please change this law and allow the limit to be set to three years with the opportunity to petition the judge for dismissal. I am not saying that someone should be dismissed immediately, but I am saying that someone should be able to petition the judge. I am asking for more specifics in this bill.

**Chairman Horne:**
Your objections are primarily the ten-year interval that must elapse before you are eligible to petition, correct?

**Jerod Updike:**
Yes, that is correct. I feel that the court system may need to look at offenders in their different situations and see the different type of offenses committed, and determine whether or not they were silly offenses, or minor mistakes, or had any direct contact with people. If someone is 35 years old, absolutely, the punishment fits the crime, and the judge would know that. He would be able to

analyze the situation and make that judgment on whether lifetime supervision fits the crime. It should be up to the judge to look specifically at a case and not lump every offender into one sexual offense category.

**Assemblyman Anderson:**
In your particular case, how many years have you been under supervision?

**Jerod Updike:**
The judge gave one to four years, but my sentence was supposed to be one to ten years. I finished my sentence, and I thought that I would be able to move to another state to start my life over and be free of this, but it has now been over a year and a half, and I still cannot. I have also had a psychological evaluation, and the professionals can attest that I am not of any danger to our society.

**Assemblyman Anderson:**
If I am to understand, you are suggesting that after finishing your four-year sentence, you would have anticipated that three years of supervision would be sufficient?

**Jerod Updike:**
I thought that, in my own situation, I was finished because they never informed me of the lifetime supervision. Once I received the statement, I was confused because I had noticed that the rules had changed, and I was very upset over this because I never received that information. I thought that once I had finished my four-year sentence that I would be released, but that was a misunderstanding. I did not understand about lifetime supervision until after my court date, so I did not have any way to complain about it, and Parole and Probation informed me that I needed to follow the rules for lifetime supervision. It was a very confusing situation.

**Assemblyman Anderson:**
If you were to come in front of the judge today, and we were to modify this law as you have suggested, you would be sentenced to four years and then three years of supervision.

**Jerod Updike:**
I have figured out that the law is very important and that it would depend on the person. Myself, I was stupid and young, and I know not to do that now. I am not making excuses for myself, but I would like to see the sentence reduced from ten years to three years because I know that it was not my intention to break the law. There are probably people in a similar situation to mine that feel

as if there should be a limitation on how much time they serve. The law should be more specific.

**Assemblyman Anderson:**
Your concern is not with probation but with the original sentence?

**Jerod Updike:**
I understand that I made a terrible mistake and that I was guilty. My main complaint is that there was an addition to the time that I served. After I served my four-year sentence and had my last court date, they added the extra time which was a surprise to me. I did not know about this, and that is my complaint.

**Chairman Horne:**
Mr. Updike, just so you know, in 2005 the 10 years was lowered from 15 years. It has been brought down.

**Jerod Updike:**
I do know that.

**Chairman Horne:**
Part of the balance that this legislative body has to do is keep in consideration the protection of the public. While there may be individuals such as yourself where three years of supervision may be adequate, unfortunately, we have individuals where three years or even ten years is not sufficient. I believe that this legislative body does what it can to strike that balance.

On another note, you said in your testimony that you have comments on Assembly Bill 36 which is coming up. I understand that we have some time constraints with the interpreter, and I was under the impression that you were coming today to testify on A.B. 35. We may not get to that.

**Jerod Updike:**
That is fine. I understand. Assembly Bill 35 is the most important one for me and is the one that I have experienced directly. It is important to watch and make sure that the judge has some say to either deny or add time to an offender's sentence. Perhaps there could be some sort of addition for me in this situation.

**Chairman Horne:**
We have one other person wishing to testify in opposition to A.B. 35.

**Pat Hines, Advocate for Criminal Justice Reform, Yerington, Nevada:**
I signed in with the idea that I was going to oppose this bill as it is written.

**Chairman Horne:**
Please tell us your objections to this bill in general.

**Pat Hines:**
I think that there are objections to the bill, and I am here to speak for the sex offenders who are not in the room this morning. There are supposedly 415 people on lifetime supervision, but my last report had 265. If you pass lifetime supervision, and add to the Adam Walsh Act, the estimate is going to be 2,500 to over 3,000 people. I think you need to factor that into this.

I cannot speak to this bill without bringing in the other bills, so I will wait to bring up my recommendations later.

**Chairman Horne:**
Are there any neutral on the bill wishing to speak?

**Cotter Conway, Attorney at Law, Alternate Public Defender, Washoe County:**
I do remain neutral. My only concern is that when we look at the provisions of section 3 of NRS 176.0931, and that is the section being amended, we do have specific requirements in (a), (b), and (c), but when we get to (d), it is broad and vague. It leaves open many ways for the Division to come in and say "well he did not report every second he was supposed to report, so now he is out." He may have been working and still complying with the requirements in section (a), had no offenses in ten years, and has gotten the required psychological testing. I am concerned about whether this may be opening the door to exclude people from release when, in fact, they have done everything that they were required to. The broadness and vagueness of what conduct we are talking about is the concern that I have for persons who are placed on lifetime supervision and are seeking to be released after their ten-year terms.

**Chairman Horne:**
You do not believe that the conduct is inferred to the conduct that is prohibited?

**Cotter Conway:**
There are technical violations which could be as simple as not having a job the full time or not paying the supervision fees or things that do not necessarily have anything to do with offensive conduct. That is where I get concerned. If that conduct includes technical violations, are these people going to be prohibited from release after not committing any crimes for ten years, after getting the required psycho-sexual evaluation and complying with the specific

conditions set forth in subsection (a) of section 3? How serious is the conduct that they are talking about?

**Chairman Horne:**
You did not bring any proposed amendment language?

**Cotter Conway:**
I did not bring any proposed amendment language. I was concerned when I read this that there is no explanation as to what conduct we are talking about and whether it is so broad that this is going to be a way of not allowing people off lifetime supervision. That was my only concern.

**Assemblyman Segerblom:**
Is it your understanding that the Parole Board would have to make some type of finding when making this decision, or they would just say "denied" and not explain what the reason was?

**Cotter Conway:**
The only experience that I have with this is in regard to probation violations. What they would do is file a violation report or an incident report to submit to the Parole Board or to the court depending on who is making this decision about his release from lifetime supervision.

I do not want it to turn out that the offender would serve the ten years and then they would bring up all of the technical violations that he did not do and, therefore, conclude that his conduct is such that he should not be released. We do not have a definition of this conduct. Are we talking about specific things like in (a), (b), and (c)?

**Chairman Horne:**
I am going to close the hearing on A.B. 35.

We will move onto the audit.

**Paul V. Townsend, Legislative Auditor, Audit Division, Legislative Counsel Bureau:**
I have on my left Mike Spell, who is the Audit Supervisor, and on my right Dennis Klenczar, who is the Deputy Legislative Auditor.

I would like you to know that when this audit report was first issued last year, on February 29, 2008, it raised a great deal of concern. With this concern, both the audit subcommittee and the Legislative Commission took some strong legislative oversight action. Normally they would wait eight to nine months

after an audit for an agency to come back and report on how they have been doing on implementing the recommendations. In this case, they asked the agency to come back to the next two meetings of the audit subcommittee. The Division of Parole and Probation did return on May 15 and then again on September 24 to note how they were doing.

I would like to note that during the course of the audit, the Division was very cooperative even though we were bringing up some difficult and sensitive issues, and since that time there has been a change in management at the Division. Chief Curtis has continued to be very cooperative in addressing the problems we brought before them.

From the last communication we got from the Department of Administration, they conducted an assessment of the status of the audit recommendations implementation to see if they had addressed these problems. The report in December indicated that of the 21 recommendations, 17 had been fully implemented. The remaining four dealt with some accounting issues for restitution of accounts receivable, and I believe the Division is facing some technology hurdles that they are working to get over currently.

With your permission, Mr. Chairman, I would like to ask Dennis Klenczar, who was the in-charge auditor on the assignment, to make the presentation.

**Dennis Klenczar, Deputy Legislative Auditor, Audit Division, Legislative Counsel Bureau:**
I would like to start my presentation on page 7 of the audit report with some background information of the Division. [Read from the audit report (Exhibit D).]

As previously mentioned, the six-month report on the status of these audit recommendations was issued on November 24, 2008. In that report, the director of the Department of Administration indicated that 17 recommendations had been fully implemented, and the 4 that are partially implemented are still being worked on for full implementation by the Division.

**Chairman Horne:**
In your assessment with all of these, is it primarily a staffing problem where we have these lapses?

**Dennis Klenczar:**
The majority of our testing was high-risk caseloads. Staffing was not an issue.

**Assemblyman Anderson:**
To understand your audit recommendations, I need to ask, do you think that the problem is that they are not applying their set of rules and standards in a consistent manner, in particular with the high-risk sex offenders? You do not see that as a result from the ratio of officers assigned to supervise those people? Is it the internal part of the process?

**Dennis Klenczar:**
A majority of our testing was solely for high-risk caseloads. There were a couple areas, such as the deoxyribonucleic acid (DNA) report and the case assignment process. Excluding those two areas in the report, our testing was exclusively of the high-risk caseloads, so staffing was not an issue.

**Assemblyman Anderson:**
With the question of employer notification, I thought it might be a result of the fact that there are not enough personnel to go around.

Relative to the question of DNA, which is an issue that we have been dealing with and will continue to deal with, is the nature of the audit recommendation for DNA stem from staff not identifying who they should be taking DNA tests, and is that where the error in processing is taking place? Or is it that the quality of DNA being sampled did not meet auditing standards?

**Dennis Klenczar:**
It was not the quality of the test. The system generates a very useful DNA report which was not consistently used. Had it been, they could have identified who still did not have a DNA test, and in some instances, who had a DNA sample taken but was not properly entered into the system.

**Assemblyman Anderson:**
This is an internal problem in terms of trying to utilize the new materials of the DNA reports and the requirement to utilize them in terms of their paperwork load and supervision of personnel, and who should and should not be documented through the central history repository (CHR).

**Dennis Klenczar:**
It is my understanding that CHR has nothing to do with the DNA testing. When an officer is assigned to an offender, that requirement should be in the file. It is quite common that at the intake interview the officer will take that DNA sample.

**Chairman Horne:**
Chief Curtis and Mark Woods, would you come up here? This is not a bill, and we do not take testimony, but I thought it would be fair that you have an

opportunity to be heard after the audit report. I appreciate that the 21 recommendations had been accepted by Parole and Probation. Maybe you can give the Committee an assurance that you are moving forward with these recommendations and making some corrections.

I had the concern that of the 27 sex offenders who met the employer notification requirement, 21 of the employers were not notified.

**Bernard W. Curtis, Chief, Division of Parole and Probation, Department of Public Safety:**
Of all the accepted audit recommendations that we received, we have implemented all but about three and a half of them. We are working diligently on the last four to make sure that we are in complete compliance with that audit.

**Chairman Horne:**
Which four are those?

**Mark Woods, Deputy Chief, Division of Parole and Probation, Department of Public Safety:**
The four of those center on our fiscal unit and that has to do with the programming issues within the system for bad debt and turning over the restitution. They are partially implemented. The policy and procedures are in place; it is just a matter of making sure that the Offender Tracking Information System (OTIS), our technology system, can talk with the state's technology system.

**Chairman Horne:**
In one of those you have over $80,000 in restitution, some of which was submitted back in the year 2000. Accounts had not even been set up for the victims to draw from that.

**Mark Woods:**
That one has already been taken care of. Through a Crystal Report, we were able to include the people whom the system had not set up in OTIS. All of those back accounts have been paid off and are now paid off on a monthly basis.

**Assemblyman Anderson:**
On staffing needs in Parole and Probation, how many positions do you have open currently?

**Bernard Curtis:**
We currently have 102 vacancies, but that does not necessarily mean that we have 102 open positions. About 60 percent of these are in the south and 40 percent are throughout the rest of the state.

**Assemblyman Anderson:**
In terms of individuals under supervision and the ability to meet the requirements as indicated in the audit relative to employer notification, is that part of the problem? If the majority of the offenders are in the southern part of the state, and we are missing 60 positions down there, how are you going about meeting that part of the audit in your budget?

**Mark Woods:**
You are correct that the primary issue is in Las Vegas. The staff down there is overwhelmed with the numbers they have. When it comes to supervision levels, the majority of the rest of the state is fine. However, in the south, if they had 30 additional officers to put on the street, they could handle a full caseload but be at the minimum number required to get the job done. When the audit was done two years ago, several staff members had caseloads that were much too high, and that included some of the sex offender caseloads. As a result, we have concentrated more on bringing those ratios down to where they should be at 45 to 1.

We are current with informing the employers who need to be informed, but as a result of doing that, an administrative caseload has been created in southern Nevada which on any given day changes. Currently the most recent count is 2,200 people being supervised by four. We need 30 officers in southern Nevada to take a caseload today, but the reality of the situation is that does not exist. Even if you gave us 30 people, by the time they could take a caseload, 30 others would retire, be promoted, or leave.

**Assemblyman Anderson:**
In the audit report, on page 14, there is a specific statement saying that out of 27 sex offenders, 21 of them were not reported to their employer, which is an extremely high percentage, yet you alluded to the fact that this is predominantly a southern Nevada problem. That is because of the ratio of officers to offenders. The rest of the state is not having this problem, so is this almost exclusively a southern Nevada problem? Is this not a failure of Parole and Probation as a whole in terms of a policy process by not getting out and notifying these employers about hiring sex offenders?

**Mark Woods:**
I apologize if I misled you. That report is two years old, and the 21 of 27 offenders probably refers to statewide. We were broke, and we were not doing our job properly back then. We fully admit that, and that is why we have implemented the new procedures. Southern Command, in Clark County, has implemented procedures and is following through. What I meant to say is that Southern Command, currently, is the one needing staff, whereas the rest of the state is not.

**Chairman Horne:**
For clarification, you heard Mr. Klenczar say that staffing was not an issue, but you are saying that staffing is an issue in southern Nevada?

**Bernard Curtis:**
That is correct. Staffing is an issue. Position Control Numbers (PCN) versus vacancies is another issue.

**Assemblyman Mortenson:**
I do not understand why you would have such a big problem in southern Nevada. Why would you not distribute the money throughout the state so that there would be a balance?

**Bernard Curtis:**
It is a different concern in the southern part of the state. What we are talking about is a retention and recruitment issue more than anything in southern Nevada. We have some significant law enforcement agencies that love to see Parole and Probation officers because they are good people. They are well qualified and well-trained and high-quality individuals. The Metropolitan, North Las Vegas, and Henderson Police Departments continuously cause us competition for staff, and they have very little problem taking our staff from us based on the financial situation throughout.

**Assemblyman Carpenter:**
How are you doing on your DNA collections? Are they up to par now?

**Mark Woods:**
Yes, they are. Per last session, almost every felon has to have a DNA test taken, and as of our last report, we were almost at 100 percent of those needed to be taken.

**Assemblyman Manendo:**
On page 23 of the report, with regard to the restitution accounts that were never established, what is happening with that?

**Chairman Horne:**
They have already stated that they already have that up and going.

**Mark Woods:**
That is current now. We take care of that every month.

**Assemblyman Manendo:**
That will not happen again?

**Mark Woods:**
It is my hope that it will not happen. We put in the necessary procedures.

**Assemblyman Manendo:**
On page 24 and 25 of the report, with regard to locating the victims, victims are not getting their restitution because we are not able to locate them. Can you help me understand that a bit?

**Mark Woods:**
In Parole and Probation, we go through the courts when a person is convicted. At that time, the person who was convicted is ordered to pay restitution through us. It is before conviction that we get in touch with the victims, usually through the District Attorney (DA). We identify them and put them into the system. Included in the system are their addresses. There is nothing that orders these victims to contact us if they choose to move. Many times our offenders go to prison first and then come out to start paying restitution. That could be a year or two years down the road. We get a check, and we send it to the last known address, and we find out that the victim is no longer there. We have support staff who try to figure out where that victim is. That is how we lose those victims.

**Assemblyman Manendo:**
Is the problem that the victims are not told that they need to keep their records updated? Or are they doing that, and the updates are pushed aside?

**Mark Woods:**
For the ones that are advising us, we are changing the records, but the majority of them do not advise us.

**Assemblyman Manendo:**
Is it because they do not know that they are to advise you?

**Mark Woods:**
You heard testimony earlier today about someone who was convicted and had no idea what the sentence was going to be. I feel pretty confident that when a victim is talked to by our pre-sentence investigation (PSI) writers, they are advised of the system and what happens. We cannot control whether they follow through or not.

**Assemblyman Manendo:**
I am not confident.

**Bernard Curtis:**
We would like to arrange a meeting with you to talk about this.

**Chairman Horne:**
We are going to close the hearing on the audit report.

[Recessed and reconvened.]

**Chairman Horne:**
I will open the hearing on Assembly Bill 36.

**Assembly Bill 36: Revises provisions pertaining to lifetime supervision of sex offenders. (BDR 16-317)**

**Claudia Stieber, Lieutenant, Division of Parole and Probation, Department of Public Safety:**
I will give an overview of Assembly Bill 36.

Currently under *Nevada Revised Statutes* (NRS) 213.1243, subsection 8, offenders under lifetime supervision who violate the terms of their lifetime supervision may be prosecuted for a new category B felony. Those prosecutions must take place in the county in which the court imposes sentence. Although handling violations in this manner may appear to be an excellent motivation for offenders to refrain from committing violations, it causes several problems.

First, prosecutors and courts are reluctant to proceed on felony charges for violations such as an offender's refusal to participate in counseling, alcohol use, not maintaining employment, absconding, et cetera. The end result is that violations occur without any consequences.

Second, having new felony charges for violations being handled in the original county of conviction causes undue burden on the Division and an inconvenience for the offenders as well. For example, please consider an offender on lifetime supervision who was originally sentenced in Clark County but subsequently moved to Washoe County. If that offender commits an alcohol violation in Washoe County that necessitates his arrest, the offender must be booked into the Washoe County jail on a felony charge of violation of lifetime supervision. If the offender is unable to post bail on the charge, he must be transported within two working days to Clark County to answer charges. Should the offender be released from custody pending the new charges or the charge is not pursued, the offender then has to arrange travel back to Washoe County.

This bill would allow a violation of a condition of lifetime supervision to be treated in the same manner as a violation of condition of parole by a parolee, rather than prosecuted in court as a separate crime. Based upon the seriousness of the violation, the State Board of Parole Commissioners may impose a range of sanctions for the violation which may include incarceration up to three years in the Nevada Department of Corrections, placement on residential confinement or house arrest for a period of time, a modification of the terms of the lifetime supervision program, or any other sanction deemed appropriate by the Board.

At this point Sergeant Helgerman has some additional information.

**David Helgerman, Pre-Release Unit Sergeant, Division of Parole and Probation, Department of Public Safety:**
Under subsection 8 on page 4, letter (b) should be removed. It was not part of the original draft submitted by the Division. The Division spoke to Legislative Counsel Bureau (LCB) Legal, and we are not sure why letter (b) was added, but we believe that it should be removed.

**Chairman Horne:**
Lieutenant Stieber, in your testimony it seems that it was your perception that alleged violators are not being punished by the court. So you want to do it?

**Claudia Stieber:**
No, we would like them to be treated in the same manner as violators of parole are handled: In a hearing in front of the Parole Board.

**Chairman Horne:**
I recall you saying that when they go before the courts, violators are treated without consequences. That tells me that there is a disagreement in what you

think probably should have been the disposition by the courts, as opposed to what other offenders receive. Is that correct?

**Claudia Stieber:**
Prosecutions vary widely when we bring lifetime offenders back for these types of violations.

**Chairman Horne:**
It seems that it is a huge problem when you have, regardless of what the violation is, a whole string of violations. Some violations are actually stated so that these offenders know what they are. Then there are other things, such as committing another crime, which could get them declared in violation. Under this, we are going to remove the due process of going to court, and let someone else revoke them up to three years. Is that correct?

**Claudia Stieber:**
It would change from a criminal matter in charging them with a new felony offense to an administrative hearing going back before the Board.

**Chairman Horne:**
Charging them with a new offense is inconvenient?

**Claudia Stieber:**
It is not inconvenient; it is what we are currently doing. This measure would certainly streamline the process and not make it a new felony charge, depending on any of the violations that they have committed, whether they are simple, technical violations all the way up to a serious felony charge.

**Chairman Horne:**
We have a letter we will be submitting from the Board of Parole Commissioners (Exhibit E). They do not even want this. At least that is my reading of their letter.

**Claudia Stieber:**
We were just handed the letter prior to this hearing as well.

**Chairman Horne:**
You did not have discussions with them prior to the submission of this bill?

**Claudia Stieber:**
I did not.

**Chairman Horne:**
Did anybody from the Division?

**David Helgerman:**
Our Division did speak with a representative from the Parole Board regarding this last week. We were aware of it; however, today is the first time that we have read this letter.

**Chairman Horne:**
Does this letter comport with the conversation that you had with the representative from the Board?

**David Helgerman:**
Yes, it does. We believe that A.B. 36 would change this to a conditional release and make these administrative hearings. If the Parole Board is concerned that, because they are not attorneys, they would not be able to afford the same rights, the Division believes that this bill would change it to an administrative hearing so that that concern would possibly be removed.

**Chairman Horne:**
Is this type of administrative hearing commonplace in other jurisdictions?

**David Helgerman:**
Lifetime supervision is unique to the State of Nevada. Few other states have this same process, and I believe that they are wrestling with similar problems. I do not know whether other states are deferring to their parole board for the violation process.

**Chairman Horne:**
That was my point. I understand that there are a handful of states that actually do lifetime supervision, but out of those states, are any others streamlining the process and having their parole boards take over?

**David Helgerman:**
They may or may not be. I can certainly check on that and get an answer for you.

**Chairman Horne:**
I am going to open the hearing to those in support of A.B. 36. I see none, so I will open the hearing to those opposed to A.B. 36.

I see that Mr. Updike is still present, and would you like to add anything to this bill?

**Jerod Updike, Citizen, Reno, Nevada [through interpreter Karla Johnston]:**
I would like to say that I am opposed to A.B. 36. I think that it is important for the judge to have the decision in that situation and not to give Parole and Probation the right to add a new charge at its discretion. That does not seem right and should be stopped. I think that it is important to have due process so that the judge makes the decision. If it is a separate situation, then there should be a separate division to take care of that.

**David M. Smith, Executive Secretary, State Board of Pardons Commissioners, Department of Public Safety:**
If anyone has any questions about the concerns that we have indicated in the letter (Exhibit E), I would be happy to answer any of those for you.

**Chairman Horne:**
We do have a letter that was handed out to the members dated February 13, 2009. It identifies your concerns, but if you would briefly state those concerns in your own words.

**David Smith:**
The primary concern has to do with how parole violation hearings are currently conducted. The rules of evidence are relaxed as opposed to judicial proceedings where there are stricter rules of evidence. The concern is that anyone who is a subject of a violation of lifetime supervision, brought before the Board, may not be afforded all of the due process rights that he might otherwise be provided in a judicial proceeding. I think Parole and Probation indicated that the law would relax that with regard to these types of cases, but in my own personal opinion, I think that if an attorney believes that the Board has not appropriately considered the case, or the due process, that the case will end up in a district court anyway with appeals over how the hearings were conducted.

Besides that, there would be an impact on our operation. I do not know how much time the board would have to spend dealing with these matters or how long these types of cases would take. They usually dispose of about eight to ten cases a day. If all cases are given full hearings with regard to attorneys and presenting evidence, like judicial proceedings, they may take more time and have a greater impact on the Board's operation.

**Assemblyman Anderson:**
One of the criticisms toward the Parole Board is whether they are re-examining the original case. In light of that criticism, you feel that the separation of powers, between what would essentially be the Executive Branch and the Judicial Branch, would add more time to your calendar by going back to the original case. Is that correct?

**David Smith:**
I do believe that there would be a fiscal impact on our operation. People who are serving a period of lifetime supervision are not serving sentences; they have completed their sentences. Since some probationers are serving lifetime supervision, they are not on conditional release and have never been to prison. They would be coming to the Parole Board, under this scenario, potentially to be sent to prison for the first time for a violation of the lifetime supervision, which is a lesser violation than the original felony. I think that it would be better if the court disposed of the violation and afforded all of the due process rights available to those on lifetime supervision.

**Assemblywoman Parnell:**
I could not agree more. I think that this bill crosses the fine line between the judicial responsibility and the responsibility of the Parole Board. This is not a good delineation of that. It concerns me that it was the Department of Public Safety that brought forth this bill that directly involves the Parole Board, and that you are opposing. It surprises me that we would see a bill like this that is charging you with additional responsibility that you did not support. If you could give me any background on that, I would appreciate it.

**David Smith:**
The Parole Board is situated under the Department of Public Safety as well, but we are a separate entity from the Division of Parole and Probation. We were unaware that this was submitted. There have been times that we have discussed bills in advance that might impact the other agencies, and there have been times that we have not. Until the bill was published, we were unable to see what the details were or have discussions with Parole and Probation on the bill. I do understand where they are coming from on the bill, but I have to strictly speak on how that would impact our agency.

**Cotter Conway, Attorney at Law, Alternate Public Defender, Washoe County:**
My concerns have been addressed, or at least have been discussed, and those are the due process concerns. This results in an imposition of a new sentence, not by the judge, but by the Executive Branch. That Executive Branch has pointed out in their letter that they do not have the same due process controls that a court would have. If these types of violations are coming before a judicial body, not only are the due process rights controlled, but also the rights of appeal concerning that new sentence if it is indeed imposed. That would be our objection, and it has been discussed by other parties.

**Assemblyman Carpenter:**
How many of these cases come up?

**Cotter Conway:**
They do not come up. We have not seen this. Normally if there is a violation of lifetime supervision, it becomes a charge. It becomes a new criminal felony complaint: A one to six, category B felony. That then goes through the normal process of the court. We would have a preliminary hearing, hear evidence from the probation officer, et cetera. These have not gone through the Parole Board before.

**Assemblyman Carpenter:**
That is what I am asking. Do you see many of these cases? I imagine that the public defender handles some of those cases.

**Cotter Conway:**
Absolutely, we do see them, but we do not see many of them.

**Assemblyman Carpenter:**
They have to be brought back to your jurisdiction if the original crime was committed in your area.

**Cotter Conway:**
That is correct. Normally, I think they are supervised in Washoe County. That is where they will bring the charge if the violation happened in our county. We do not see many of these cases, but we are appointed as the defense counsel for them.

**Mark Woods, Deputy Chief, Division of Parole and Probation, Department of Public Safety:**
To answer the first question, since 2006, there have been 146 violations that we have submitted on lifetime supervision. We do agree with Mr. Conway. He has seen very few of them because they stop. Most of the local jurisdictions do not want to charge a new category B felony for technical violations. The idea is that there is no consequence for a lifetime supervision offender who continues to have technical violations other than a new category B felony. That is what we are hoping to alleviate.

No matter where they are supervised, they have to go back to the jurisdiction that sentenced them. If they are supervised in Washoe County and were sentenced in Washoe County, they must go back to a Washoe County court. If they are being supervised in Washoe County but were sentenced in Clark County, they must go back to Clark County.

**Assemblyman Segerblom:**
Based upon that last answer, could we accomplish a similar outcome by making the penalty a misdemeanor, gross misdemeanor, or felony?

**Mark Woods:**
These are all possibilities. The biggest concern of the Division of Parole and Probation is that in supervising any individual, there needs to be consequences of a wrong act, and they need to be immediate. That is the natural order of community supervision. The way the system is working right now, it is too time consuming. We are looking at making it more appropriate to community supervision. I think the local district attorney offices would have to answer that question.

**Chairman Horne:**
I am of the opinion that due process is sometimes time consuming and inconvenient, but it is the system that we have. We cannot cast it aside for expediency. I understand what you are saying, and there does need to be consequences for conduct, but discarding their proper due process is not the answer to that.

**Assemblyman Carpenter:**
What kind of situations are you talking about when they violate the lifetime supervision? What are the most common elements?

**David Helgerman:**
The technical violations that we are speaking about are frequently violations such as refusing to attend counseling. The District Attorney's (DA) office is reluctant to file new felony charges for someone who will not go to counseling. That puts us in the situation where the only avenue that the Division has is to pursue that felony charge. If the DA's office decides not to, our hands are tied, and someone on lifetime supervision does not have to comply with those conditions because they know that they will not get charged.

Counseling is one example; absconding is another common violation that we see on lifetime supervision.

**Assemblyman Carpenter:**
As the bill is written, they would have to go back to prison or go to prison "not to exceed three years" or go into residential confinement. It seems to me that it is a bit harsh for these violations. We should be able to figure out some other way for you to have authority to make offenders do what they are supposed to be doing rather than this kind of procedure. Is there anything that you can do if they are not going to counseling? Do you have some kind of authority?

**David Helgerman:**
The Division agrees with that one hundred percent. It would be nice if we had some alternative to charging a new felony. Assembly Bill 36 will give the Division other recommendations to make, including intermediate sanctions such as residential confinement, requesting other conditions, or some other type of sanction placed by the Parole Board, so that we would not have to go immediately to intermediate felony if someone was violating the technical terms of his lifetime supervision.

**Assemblyman Carpenter:**
Currently you have no authority to impose sanctions?

**David Helgerman:**
No, we do not. We actually have people now who we know are absconders from lifetime supervision and who we do not have a warrant for and cannot place a hold on them through the dangerous offender notification system. We do not know their whereabouts and have no ability to bring them back.

If we have someone who was to commit another technical violation of his lifetime supervision, and if a warrant or new charges were not issued by the DA's office, we have no other choice than to ask the Board to impose another condition. The way the law is written now, the Parole Board does set up, from inception to the violation process, all of lifetime supervision. However, if they are not complying with the condition already, imposing another condition to comply with the original condition would probably not be successful.

**Chairman Horne:**
Are you saying that there is currently not a crime of absconding while on lifetime supervision?

**David Helgerman:**
There is a crime. It would be a category B felony with one to six years for violation of lifetime supervision. However, there are cases where someone has absconded, and we have not gotten a warrant back. In some cases, it has taken weeks or months to get a warrant back, and in the meantime, the Division has no authority to bring the person back.

**Chairman Horne:**
You do have an avenue in which to handle these situations, such as a person absconding. You know the absconder's identity, and you could issue a warrant. Whether that warrant is being executed in a timely manner or their whereabouts are not known, there is that mechanism available. Should this person be found in another state, he can be extradited back to the State of Nevada and charged

for the crime of absconding. If we pass this, the absconder would be extradited back to Nevada, and the Parole Board could say go to prison for up to three years instead of going to court.

**David Helgerman:**
That is correct. The Parole Board could choose that if they decided.

**Lee Rowland, Northern Nevada Coordinator, American Civil Liberties Union of Nevada, Reno, Nevada:**
I wholeheartedly agree with all of the testimony mentioned about due process. We do oppose this bill for that reason. It is clear, however, that the drafters have some good intentions, which are to provide a range of intermediate sanctions for technical offenses. Perhaps they would be more willing to go back into this bill, now that the Committee may have some issues with the Parole Board, and simply provide for those intermediate sanctions that could still be levied by the court. I think there is some good language in here, but I think the piece about switching it to the Parole Board is probably not workable.

As I noted, we do oppose this bill; however, I did submit to you a proposed amendment (Exhibit F). What our proposed amendment would do is remove one exemption from the applicability of A.B. 36 which deals with voting rights.

You will soon be hearing about Assembly Bill 38 which would reduce voting rights for those on lifetime supervision. We are concerned that the exemption on section 1, line 17 of this bill says that currently all sex offenders are given the sentence of lifetime supervision. That is required by the NRS. They have the ability to petition to get off that supervision within ten years.

As we understand it, the beginning of this bill defines lifetime supervision as parole for every bit of NRS Chapter 213, and within NRS Chapter 213, there is one key provision, NRS 213.155, which allows someone who is off parole either to be restored his civil rights or to petition to do so.

If it were the pleasure of this Committee for this bill to go forward, our one objection, and the reason we submitted the proposed amendment that is so specific, is that we do not want a sex offender to be treated more harshly with respect to his voting rights than, for example, A and B felons. Since someone is on lifetime supervision for at least those ten years, if that is now being deemed a form of parole, yet NRS 213.155 does not apply to him, we cannot find an area in the law that would actually permit him to get his voting rights restored. This is a complex area of law, and I cannot certify to the Committee that it is one hundred percent because this involves about 18 statutes. But from our office's point of view, this would prevent those on lifetime supervision

from petitioning, after release from lifetime supervision, to have their voting rights restored. We think that is a disproportionate penalty on sex offenders largely because the definition of "sex offender" is so broad. You may actually have some offenders with relatively minor crimes being disenfranchised for their entire lives while an A and B felon, after ten years, can reapply. We oppose all felon disenfranchisement and believe it is unproductive.

**Pat Hines, Advocate for Criminal Justice Reform, Yerington, Nevada:**
The one thing that I have a concern about that has not been mentioned yet is on page 4, line 2 about "the seriousness of the violation." I am confused as to the seriousness of violations between technical violations and murder. It seems to me that regardless of who makes the decision, you need some kind of a matrix, and this state does not have anything right now. I would like to recommend that you consider setting up some specialty courts and getting the Research Division to look at some of the states that have lifetime supervision to see what they have found to be the best course of action.

**Chairman Horne:**
Are there any who are neutral on this bill who wish to speak?

**Jason Frierson, Chief Deputy Public Defender, Clark County Public Defender's Office, Las Vegas, Nevada:**
To address some of the practical questions that were asked, more often than not, what we have seen in these types of cases are homeless individuals under lifetime supervision who get into trouble because they have difficulty updating their addresses. Depending on the personality of the prosecutor and the defense attorney involved, a good percentage of those times, we simply help them update their addresses and the cases are either reduced to misdemeanors or dismissed. Most of the cases that we have seen involve individuals who are trying to update their addresses, and that is the substance of the violations. We support any way to avoid having to charge an extra felony for those types of situations.

We share the due process concerns that have been more than adequately addressed today. If there is a way for us to achieve that by bringing it back before the court, it would be something that we would be much more supportive of. As it stands now, I think the due process concerns of the one-year and three-year options are problematic.

**Tom Roberts, Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department, Las Vegas, Nevada:**
We are neutral on this. We had an issue with page 4, line 7, letter (b) regarding the incarceration in the county jail, but Sergeant Helgerman has said that he was going to remove that, so we are good to go.

**Chairman Horne:**
We are going to close the hearing on A.B. 36. We have some problems with this bill.

The chair will entertain a motion.

> ASSEMBLYMAN ANDERSON MOVED TO INDEFINITELY POSTPONE ASSEMBLY BILL 36.
>
> ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.
>
> THE MOTION PASSED. (ASSEMBLYMAN KIHUEN WAS ABSENT FOR THE VOTE.)

**Assemblyman Anderson:**
It seems to me that this bill presents an unusual set of difficulties for the agencies, and it probably is not needed at this particular time. I think this bill would have put the Parole Board into a position where we would not want them to be, and we would have further discussions in here.

**Chairman Horne:**
We will open the hearing on Assembly Bill 38.

**Assembly Bill 38: Provides that sex offenders who are under lifetime supervision must not have their civil rights automatically restored. (BDR 14-421)**

**Claudia Stieber, Lieutenant, Division of Parole and Probation, Department of Public Safety:**
Currently *Nevada Revised Statutes* (NRS) 176A.850, NRS 213.155, and NRS 213.157 allow for the automatic restoration of civil rights to offenders who are being honorably discharged from probation or parole or have served a prison sentence and are being released and are transitioning to a program of lifetime supervision. It is the belief of the Division that there is not legislative intent for an offender currently being supervised by the Division under lifetime supervision to vote, serve as a juror in a civil or criminal action, or to hold office. This bill would prevent offenders from automatically being restored their

civil rights upon discharge from parole or probation or upon release from prison after serving a term unless that offender successfully petitions a court for restoration of his civil rights.

**Chairman Horne:**
You do not believe that there was legislative intent to include those under lifetime supervision in the restoration of civil rights that others who have been honorably discharged from their probation have. Let us operate on the premise that that is true, that there is no legislative intent suggesting it. Why do we need to put in there that they cannot be included in that group?

**David Helgerman, Pre-Release Unit Sergeant, Division of Parole and Probation, Department of Public Safety:**
The reason is if someone is discharged from a prison sentence or from parole and probation and goes to lifetime supervision, potentially he could serve as a juror in a civil suit, possibly against the Division, or after six years on lifetime supervision, he could serve as a juror on a criminal action, potentially involving a sex case. That is the reason the Division was interested in having that clarified and having that addition placed in.

**Chairman Horne:**
Would that not be identified by the District Attorney (DA)? I am sure that they will find those individuals and not let them sit on their jury.

**David Helgerman:**
You are correct Chairman Horne. I would hope so.

**Assemblywoman Dondero Loop:**
With the system that is in place right now, when anyone goes to jury trial, when the jury is chosen, there are many of us who would not be chosen. I would think that what we have in place already would be that the person would show up and give that information.

**David Helgerman:**
You are correct. We would hope that anyone who was on parole or probation, if this NRS was not in place, would not be allowed to serve as a juror in a criminal case similar to the crime that he had committed or in a civil case if he had been involved in some type of property crime or financial crime. We believe that this would keep it consistent with those who are already under supervision on parole or probation, so that cases like that do not happen. They could petition the court after they were off lifetime supervision to get these rights back, but we are asking that it not be automatic after their terms in prison, parole, or probation.

**Mark Woods, Deputy Chief, Division of Parole and Probation, Department of Public Safety:**
Throughout the history of the Division, we find that we supervise an individual as a gross misdemeanant, a felon, a lifetime supervisionee, or a parolee for a felony. What we are finding out is that we seem to be supervising all of these people differently. They have different criteria which we deal with. The idea of this bill was, if the Legislature saw fit, that should these people remain on supervision, they should still have the same rights, or lack of rights, as a parolee or a felon probationer.

An offender is on supervision, but his status is unclear. There is no avenue, except for a technical violation, to know whether or not he has his rights. We are trying to clean it up so that a person under supervision of the Division of Parole and Probation is treated identically to a parolee or felon probationer. In every case, a person will have the right to go back to the court and petition. It is not automatic. Serving on a jury is only one issue. If he commits a technical violation and uses due process, it takes a long time to handle a violation.

A person on lifetime supervision has to earn his rights, and it should not be automatic. As long as someone is on supervision, we are going to treat him like a parolee or a felon probationer as far as his rights are concerned.

**Chairman Horne:**
We are talking about the right to vote, the right to sit as a juror on a civil action, and the right to sit as a juror on a criminal action, pending a certain amount of time that passes. Those are the three rights that we are talking about. This is proposing to take those under lifetime supervision and place them in their own category where they have to petition for those rights to be restored as opposed to all others who, after a certain amount of time, get them back automatically. Correct?

**Mark Woods:**
The certain amount of time that you refer to that they get their rights back automatically is when they are off supervision, versus the lifetime that is still on supervision.

**Assemblywoman Parnell:**
Earlier today we had 21 recommendations presented that the Audit Division gave to your Division. Do any of the agency bills that you are bringing before us help you with doing your job better? It seems that adding this to your workload is not going to help correct the situation that your Division finds itself in.

**Mark Woods:**
We agree, and we take full responsibility for that audit. That audit is also over two years old, and we have corrected, as they have confirmed, over 17 of the 21 recommendations. We feel that there is no tie-in between the audit and the bills that we are offering. From the point of view of an officer who is supervising these individuals on the streets everyday, these bills would help them supervise their individuals more efficiently.

**Assemblyman Anderson:**
One of the issues that has come up is the restoration of civil rights. The people who have left prison and are coming under the supervision of the Department are to be informed of the fact that they have the opportunity to make application for the restitution of these civil rights if they so choose. If this bill were to pass, how are you going to assure that those people have knowledge of this additional language? This is a question that we have had in front of Parole and Probation for some time, and that is making people aware that they do have the opportunity to have their civil rights restored. There seemed to be a lack of that information several years ago. I think that is the reason that the Legislature took a more proactive position to the automatic restitution.

**Mark Woods:**
I agree with you. In the past there was a different system. If you recall, in the past there was a big difference between a dishonorable discharge, a general discharge, which no longer exists, and an honorable discharge. Once we got rid of the general, then we had the honorable with or without.

In your question regarding how people are notified, for those on supervision, there are several different venues we can use. We can have it on their monthly reports with a disclaimer that states, "Upon completion you are going to need this." Through different means they can be advised so they know that it is coming up. For the inmates who are going to be discharged from prison, we are not going to have that ability until they come under supervision.

**Assemblyman Anderson:**
You are currently doing that with individuals?

**Mark Woods:**
Yes we are.

**Chairman Horne:**
Are there any in opposition wishing to speak?

**Pat Hines, Advocate for Criminal Justice Reform, Yerington, Nevada:**
I have one thing to say, and that is by doing this and adding sex offenders who have minor technicalities, you are adding on to the discrimination and harassment of sex offenders as one special group. I think this is a reason to oppose this bill.

**Lee Rowland, Northern Nevada Coordinator, American Civil Liberties Union of Nevada, Reno, Nevada:**
I am here to vociferously oppose this bill for a number of reasons. First, I want to thank Assemblywoman Parnell for her question. My first impression when I saw this bill was why does the Division of Parole and Probation see as one of its main priorities to disenfranchise certain people who they supervise? I do not believe that they give a credible explanation for that, and I think it is bizarre in light of evidence of misplaced priorities that Parole and Probation used one of their few bill draft requests (BDR) to ensure that sex offenders cannot vote. I find it a mystery.

With respect to the substance of the bill, I think that there are a number of problems going down this road. Voting rights is one of the three main issues that we are talking about: The right to vote, the right to serve as a juror in civil or criminal action, or the right to hold office. The way that the law is structured, and it is unfortunately constitutional because we do oppose disenfranchisement, it seems that there are certain categories of crimes based on their severity. If you look at the NRS as it is currently written, which is part of the bill in front of you, at the bottom of the second page, it says that you lose these rights or they are not automatically restored if you have been convicted of certain felonies or a combination of certain felonies, and they are based on severity. They have not included an inclusion of (f) which is any sexual offense. "Sexual offense" has an incredibly broad definition, and that is not only problematic because it is not linking voting rights to the severity of the crime, but because they are now picking a particular group of people to deprive of their voting rights, not based on the severity of a crime or their involvement in a criminal process, but based on the kind of group of crimes they would shoehorn them into. I think that creates very serious equal protection problems when you are talking about reducing someone's right to vote. There needs to be very compelling reasons to do so, and picking out a broad group of people whose crimes range greatly in severity is irrational and problematic under equal protection principles.

With respect to the definition of "sex offender," that definition which is found in NRS 179.0931 notes that any crime constituting a sexual offense can include severe crimes such as first degree murder and the perpetration of sexual assault. There is no doubt that there are severe crimes in there. However, it

includes victimless offenses including misdemeanors and any other offense that has an element involving a sexual act or sexual conduct with another. That is how broad the definition of sex offender is. That can encompass conduct such as stealing pornographic magazines, flashing someone in a park, and possibly urinating in public. These are not crimes in which someone deserves to lose his voting rights for the rest of his life.

The final comment I have is in regard to anyone who is on lifetime supervision and is following a period of parole or probation. The existing law, even if a person is automatically restored, places a six year lag on the restoration of the right to be a criminal juror. With respect to the only real concern that I heard from Parole and Probation, the minimum wait for any sex offender to appear as a juror is after the period of parole and probation has ended, assuming he is eligible for the automatic restoration of rights. That is not a given because his felony may already be included here if it is category A or if it is a second category B, and he then has to wait six years. We are talking at least a minimum wait of ten years before that is even a possibility. As stated in earlier Committee discussion, the reality is that no one who has been a criminal defendant in a particular type of case is going to end up serving as a juror for that type of case, whether it is a sex offense or not.

In reality, if you look at this document, almost every sex offense that is severe, that is a category A or B felony, is already covered by the disenfranchisement laws that do not automatically restore one's rights. What this does is expand that law by adding every sexual offense, and by necessity, the only places where that is going is where that overlap does not already occur. By accepting this bill, all you would be doing is including the more minor sex offenders who for their lifetime, lose their voting rights and lose their right to serve as civil jurors.

As you know, the American Civil Liberties Union (ACLU) opposes disenfranchisement as a whole, and the reason we do so is we believe it is unproductive. I find it distressing that Parole and Probation is the source of this bill because they are the people in whom we vest the responsibility to make sure that people can re-enter the community. They have the intermediate authority to make sure that rehabilitation is possible and that people are entering into society in meaningful ways. A critical part of that is ensuring that people have ties to their communities and have some civic avenues of participation. Clearly the right to vote and the right to serve as jurors are fundamental rights that we believe actually help people reintegrate into society. Do not create a problem for criminal justice. I do not believe that Parole and Probation has an interest in seeing that people do not vote. We urge you not to pass this out of Committee.

**Assemblyman Cobb:**
Perhaps the Division, which is charged with dealing with sex offenders, and therefore has the most intimate knowledge of what horrible things these people are capable of, for that reason they do not want them voting, serving as jurors, or serving as elected officials.

**Lee Rowland:**
That may be true, however, that is already covered by their ability to oversee anyone on lifetime supervision. All this would do is reduce their rights after Parole and Probation sends them to court. These types of activities are not covered by Parole and Probation.

The second response is that I heard Mr. Woods note that they want consistency; they want to treat sex offenders as they treat parole and probation offenders. As a legal matter, there is a very real difference between lifetime supervision and parole and probation. Parole and probation are a definite part of the sentence that is clearly punitive. The idea behind lifetime supervision when this body passed it was that it was largely to protect the public. It was non-punitive and in place to make sure that we could have some way to monitor these people. I find it somewhat odd that Parole and Probation would believe that lifetime supervision and parole and probation need to be treated the same way because under the terms set by this body in passing those laws, they should not be treated the same way.

My final comment is that everyone on lifetime supervision has already completed a term of parole and probation. That is the time when Parole and Probation has the most oversight of those people and can deal with them. This bill affects rights after they are off parole and probation. I think that the connection is tenuous at best.

**Chairman Horne:**
Are there any neutral on this bill wishing to speak?

**Cotter Conway, Attorney at Law, Alternate Public Defender, Washoe County:**
My concerns are echoed to a large extent by Ms. Rowland. My concern is that when you include all of the sexual offenses, you are going to include people with sex offenses not in category A. Statutory sexual seduction and those types of things are lesser crimes and are not indicative of the other categories that we have, including serious category Bs, which include people who probably should continue to be disenfranchised. When you are talking about the lesser offenses, that is where my concern is, and that is what I wanted to raise to this Committee this morning.

**Chairman Horne:**
I am going to close the hearing on A.B. 38 and bring it back to Committee.

**Assemblyman Manendo:**
Would you accept a motion on this bill?

**Chairman Horne:**
We do not want to send out the wrong impression on this Committee. I would rather put it back on the board for a little bit. In my opinion, this bill does provide an avenue to petition, however, I do recognize the problems with the bill.

Just a reminder that February 20 is the deadline to submit Committee BDRs. Assemblyman Anderson and I will be conferring tomorrow on recommendations on those BDR suggestions. If you have not contacted us, you need to do that today.

**Chairman Horne:**
[Meeting adjourned at 10:45 a.m.]

RESPECTFULLY SUBMITTED:

_____
Sean McDonald
Recording Secretary

RESPECTFULLY SUBMITTED:

_____
Julie Kellen
Transcribing Secretary

APPROVED BY:

_____
Assemblyman William C. Horne, Chairman

DATE:_____

## EXHIBITS

**Committee Name: Committee on Corrections, Parole, and Probation**

**Date: February 17, 2009 Time of Meeting: 8:15 a.m.**

| Bill | Exhibit | Witness / Agency | Description |
|---|---|---|---|
| | A | | Agenda |
| | B | | Attendance Roster |
| A.B. 35 | C | Jerod Updike | Letter in opposition to Assembly Bill 35. |
| | D | Paul V. Townsend and Dennis Klenczar | 2007 audit report of the Department of Public Safety's Division of Parole and Probation. |
| A.B. 36 | E | David Smith | Letter from the Office of the Board of Parole Commissioners explaining Assembly Bill 36. |
| A.B. 36 | F | Lee Rowland | Letter and proposed amendment to Assembly Bill 36. |