

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

**Seventy-Fifth Session  
March 3, 2009**

The Committee on Corrections, Parole, and Probation was called to order by Chairman William C. Horne at 8:11 a.m. on Tuesday, March 3, 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](#)) and the Attendance Roster ([Exhibit B](#)), 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/](http://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](mailto: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:**

Assemblyman Tom Grady, Assembly District No. 38

**STAFF MEMBERS PRESENT:**

Allison Combs, Committee Policy Analyst  
Nicolas C. Anthony, Committee Counsel  
Katherine Malzahn-Bass, Committee Manager  
Kyle McAfee, Committee Secretary  
Julie Kellen, Committee Assistant

**OTHERS PRESENT:**

Robert L. Auer, District Attorney, Office of the District Attorney,  
Lyon County, Dayton, Nevada  
Mark J. Krueger, Assistant District Attorney, Office of the District  
Attorney, Lyon County, Dayton, Nevada  
Kristin Erickson, representing the Nevada District Attorneys Association,  
Reno, Nevada  
Terry Miller, Private Citizen, Las Vegas, Nevada  
Jason Frierson, Attorney at Law, Clark County Public Defender's Office,  
Las Vegas, Nevada

**Chairman Horne:**

[Roll called. The Committee's standing rules were stated to those present.]

Today, we are going to hear Assembly Bill 126, presented by Assemblyman Grady.

**Assembly Bill 126:** Makes various changes to the provisions relating to certain sexual offenses. (BDR 14-69)

**Assemblyman Tom Grady, Assembly District No. 38:**

This is Robert Auer's and Mark Krueger's bill that I am bringing forward on their behalf.

**Robert L. Auer, District Attorney, Office of the District Attorney,  
Lyon County, Dayton, Nevada:**

I am briefly going to tell you how this bill came about. I will also tell you that we took this proposed language to the Nevada District Attorneys Association and discussed it with them. They voted to support this bill, so there is no problem from the prosecution's side on this matter that I am aware of. We

have heard a few concerns about various parts of this bill. If there are things that need to be changed, we would certainly work with anybody to make those changes so that we can try to make this work.

In 2007, I became the District Attorney. Mark and I were doing a case that involved a Yerington high school girl, 16 years old, who was in love with her teacher/coach who was 28 years old. Her mom and dad found out about it, and we prosecuted the case under the existing statute that makes it a felony for a person to use his influence, in that kind of situation, to take advantage of a young person. Mark also asked me to remind you that even in our small county, Lyon County, we had another case like this a few years back. It is something that does happen on occasion. It happens in Las Vegas and throughout the state on occasion, unfortunately. As we started to prosecute this case, we tried to find protection for the victim because, quite frankly, it is one of those kinds of cases where the victim is extremely reluctant. She was in love with this guy. She certainly did not want to testify and be put through the rigors of the court process. We were trying to find every way that we could to help protect her, and, as we went through the statutes, we found that there were no protections for this kind of victim. We just winged it. We created things that were not in statute. We created a pseudonym for her. You have the ability to do that for almost any other sexual assault victim or victim of that type of crime. Especially in a small community like Yerington, this person does not want to have her name on pleadings that are going to be public records. When we got to the preliminary hearing, and we wanted her to testify, she wanted to have her sister sit with her as an attendant. We looked in the statutes, and we found there was no ability for us to do that. Luckily, the defense lawyer, who was a good lawyer out of Reno, let us do it. We had no authority to do it, but we did it; we worked it out. When we finally got through the negotiations, and this teacher decided he was going to plead guilty and become a felon, mom's question was: is he going to have to register as a sex offender? We looked that up in the statutes, and the answer was no. Mom was not pleased, but that was the answer. We told her, "We will come to the Legislature and see what we can do." That is why we are here; that is how this bill came about.

Mr. Krueger is briefly going to go through the details of what we are asking for.

**Assemblyman Mortenson:**

We are not privy to the relationship between the girl and the man. How did the man plead? Did he say he was in love with the girl?

**Robert Auer:**

There is already an existing statute that makes it a felony for a teacher to have sex, even consensual sex, with a student under these situations. We are not

trying to change that in any way, shape, or form. As the case started to progress, I think he was trying to convince her that he was in love with her, hoping that it would somehow help him to receive leniency in the case or dissuade her from cooperating. I think that it became clear to her, by the end of the case, that he did not love her and had taken advantage of her.

**Assemblyman Mortenson:**

I think there is some uncertainty there. That is what is bothering me a little bit.

**Robert Auer:**

When it comes to affairs of the heart, it is hard to be certain.

**Mark J. Krueger, Assistant District Attorney, Office of the District Attorney,  
Lyon County, Dayton, Nevada:**

Section 1 of the bill provides for an attendant in support of a witness. That is exactly what Mr. Auer is talking about; we found that there was no attendant provision. This would allow someone to be in there throughout the courtroom process. In addition, it requires registration under the sexual registration provisions.

Section 2 provides for certain sexual offenses to include conduct between the students and the employees of colleges and universities, as well as high schools and students of high schools.

Sections 4 through 9 expand the provision on public disclosure of the identity of the victims. As Mr. Auer indicated, that is particularly important in small towns where the identity of a victim can become public knowledge.

Section 10 revises the definition of "violent or sexual offense" to include these two provisions.

Section 11 revises the definition of the term "sexual abuse" to include cases involving certain employees at a school or university. It also includes a provision under *Nevada Revised Statutes* (NRS) Chapter 432B to allow the Division of Child and Family Services (DCFS) to take appropriate action if they deem it to be necessary. We have been contacted by Chrystal Main from DCFS, who opposes the addition of subsections 7 and 8 in section 11. As Mr. Auer indicated, we have no problem with the removal these subsections.

**Chairman Horne:**

I want to direct the Committee's attention to a copy of the NRS that was passed out, NRS 201.540 and NRS 201.550. These outline the statutes dealing with sexual contact between students and school teachers and college

professors and employees. I believe those are directly related to this bill. Mr. Krueger is section 2 the registration requirement?

**Mark Krueger:**  
That is correct.

**Chairman Horne:**  
These individuals, if convicted, are required to register.

**Mark Krueger:**  
That is the section that would require registration for sex offenders.

**Chairman Horne:**  
In section 2, subsection 2, where it says, "except for the offenses described in paragraphs (o) and (p)," if you are convicted, even if it was determined to be a consensual relationship, that consensual relationship does not preclude you from having to register?

**Mark Krueger:**  
That is exactly correct. That is the intent of the bill.

**Chairman Horne:**  
But that applies only if you are convicted.

**Mark Krueger:**  
That is correct, Mr. Chairman.

**Chairman Horne:**  
My largest concern is on section 12, which you did not discuss. That section applies this bill to offenses committed before, on, or after October 1, 2009.

**Robert Auer:**  
That is not our language. We did not request that. I do not know why that is there.

**Assemblyman Anderson:**  
In section 1 you are asking for the addition of NRS 201.540 and NRS 201.550 to the list of circumstances where we currently allow supporting witnesses. Going back to the original discussion about earlier legislation, when the District Attorneys Association supported the overall idea that people with special needs or children should have the proper support, they were very concerned about who that was going to be. Has the District Attorneys Association changed its position on this overall question?

**Robert Auer:**

I do not know if the District Attorneys Association has changed its position, but we presented our proposed bill to the association, which would provide an attendant for these types of victims. That was explained to the association at a meeting, and they voted to support this bill.

**Assemblyman Anderson:**

The witness is supposed to be able to appear on his own without anybody holding his hand. That has always been the case unless there were special circumstances. You are now saying that NRS 201.550 creates a special group?

**Robert Auer:**

The short answer to your question is yes. That would be my perception, at least, through the case that we did. I can see that if you have a 19-year-old college student, and you are under the provision concerning the college professor, maybe that college student would not need an attendant. I can see your point that maybe that does not work. In our particular case with this 16-year-old victim, she wanted an attendant, and she needed an attendant in my opinion. As a practical matter, it worked in the case that we did. I can appreciate your concern.

**Assemblyman Anderson:**

It seemed to me that when we originally heard this, there were frequent cases where people would like to have somebody up there, giving them support. A concern was raised many years ago that, in some cases, a person might be intimidated or led by the person they were up there with. That was the concern that was expressed in the past. I wonder if the association has changed its position on that. Perhaps you or someone from the District Attorneys Association may want to give testimony on that factor.

**Robert Auer:**

I do not think there was any great depth of discussion at the District Attorneys Association on this issue. They supported the bill we presented to them, that there would be an attendant under these circumstances. It seems to me there are enough safeguards in the existing language of the bill that would preclude an attendant from influencing the testimony of the witness. It is my understanding that there is no opposition to the concept of having an attendant by the Clark County Public Defenders Association. I have not heard any problems from anybody in the defense bar about this.

**Chairman Horne:**

In section 1, subsection 2, it states that in a case in which a minor is a witness, the minor witness must be allowed to attend the preliminary hearing and the

trial during witness testimony. I do not understand why that did not apply in the case you tried.

**Robert Auer:**

It was not the right kind of crime. In other words, the existing language limits the types of crimes where a person can have an attendant. If we do a case where there is a sexual assault on a six-year-old girl, she can have an attendant. We just did one where a girl chose not to have an attendant. She marched in there and testified on her own. Most six-year-olds cannot do that. This bill limits attendants to these kinds of crimes. This amendment would include those two crimes, flagged in the bill, to the list of crimes where a person could have an attendant.

**Assemblyman Carpenter:**

What penalty did this person receive?

**Robert Auer:**

He pled guilty to a felony. He was probably sentenced to 12 to 36 months. He did not go to prison: that sentence was suspended. He was placed on probation under the Department of Parole and Probation with various conditions of supervision, including no further contact with the girl and no more similar types of offenses. He also did some jail time as one of the conditions of his probation. He served about three months of jail time that he was allowed to serve on the weekends so he could continue to work. He was not teaching anymore. He had some sort of construction job.

**Assemblywoman Parnell:**

I have a question about the references to sexual conduct between certain employees of a college or a university and a student, pursuant to NRS 201.550. I am looking at the statute, so I see it applies to ages 16 or 17. I want it on the record that this refers to minors. Am I to conclude that a 19-year-old would not come under this statute?

**Robert Auer:**

I think it depends on which section of the bill we are looking at.

**Chairman Horne:**

Mr. Auer, I think she was referring to NRS 201.550.

**Robert Auer:**

I understand, but there are different parts of this bill. Do you have a question, for example, on the concept of registration?

**Assemblywoman Parnell:**

It is used throughout. If you are 19 years old, I do not think you should be covered. I see this as an issue of sexually taking advantage of minors. If you look at the language, it does use ages 16 or 17. I want it on the record that this entire discussion, in regard to a college or university campus, concerns minors. I have a concern with stating 16 or 17 instead of the word "minor," because we now have some high schools that are on a college campus, and those students may be under 16. We might need to look at doing something with that language that specifies 16 or 17-year-olds. If there were a 15-year-old in this situation, he might slip through the cracks. It is something to ponder.

**Robert Auer:**

I appreciate your concern. We would have to take a more thorough look at that. I had not considered your question before.

**Assemblyman Segerblom:**

My concern is over the registration of sexual offenders. Someone found guilty of this crime could be put into a tier 1, tier 2, or tier 3 classification depending on how the state views the crime. Is that correct?

**Robert Auer:**

Yes, I believe that is correct. This type of crime, I assume, would be the least offensive tier of a sexual offender. I do not know that for a fact, but that would be my guess.

**Assemblyman Segerblom:**

My concern is that this is at the discretion of the state, and I would prefer to have it left as a tier 1 offense. If it were some type of sexual assault or intentional act, then it could be charged as some other crime. By definition, this is a consensual act. It may be illegal and inappropriate, but I do not think these people should be in the tier 2 or tier 3 categories, where they are subject to a lifetime of reporting and, basically, they are prevented from having any kind of a job in the future, which comes back and hurts all of us.

**Robert Auer:**

We have no problem with that. We were not trying to even get to that question as to how to define this person. Again, it was brought to us by a parent who believes that a person who commits this kind of offense should have to register. I am not totally committed to that position myself. If that is something that the Legislature does not want to do at this point, so be it. But if the Legislature does decide to do that, I certainly think that it would be perfectly fine to define what tier that person should be in if they are going to have to register.



**Assemblywoman Dondero Loop:**

I would like to refer back to my colleague's question about the age. Unless I am missing it, I see that there is 16 and 17, 14 and 15, they are in college, but there is no 18. There are students in high school who turn 18. What happens to a student who turns 18 but had a February birthday and is still in school?

**Chairman Horne:**

In NRS 200.364, statutory sexual seduction is described as ordinary sexual intercourse committed by a person 18 years of age or older with a person under the age of 16. Conduct related to that statute may be why the bill states 16 and 17 years of age.

**Assemblywoman Dondero Loop:**

It says, "committed by a person 18 years or older," but what about the person that is the victim?

**Robert Auer:**

Are you looking at NRS 201.540?

**Assemblywoman Dondero Loop:**

Yes.

**Chairman Horne:**

They both have that provision.

**Robert Auer:**

The way this statute currently reads, if I were in high school and 18 years old, and I had consensual sex with a teacher, there would be no crime. That is the existing statute.

**Chairman Horne:**

Right.

**Assemblywoman Dondero Loop:**

I guess that answers my question. If you are 18, you are sort of in a no man's land. Is that right?

**Robert Auer:**

I do not know the legislative history of this law, but I do know that there was probably some thought that an 18-year-old person would be less subject to influence in a special relationship with a teacher than a 16-year-old would. In the case that we had, it was clear to me that the 28-year-old teacher took advantage of the 16-year-old student. She thought she was in love with him,

and he allowed that to happen. Maybe the Legislature thinks that if you are 18 you are less likely to be subjected to that kind of influence, even though you are still in high school. You have to draw lines in certain places, and that is what happened here.

**Assemblywoman Dondero Loop:**

NRS 201.550 is between college and university people, and those students are over 18.

**Chairman Horne:**

Not necessarily, Ms. Dondero Loop. Many students graduate from high school early. Some are even as young as 16. In extraordinary cases, 15- and 14-year-olds go into college. Many students start college at the age of 17.

**Assemblyman Anderson:**

Mr. Auer, among the penalties that this particular individual incurred was a felony conviction. As a result of that, he lost his ability to be a teacher. He has lost his license; he can no longer teach. That has been taken away from him by state statute. I notice that was not among the penalties you said were applied to him. Is that not so? That is the reason he had to become a carpenter?

**Robert Auer:**

The short answer is yes. That did happen. That process is not part of the criminal penalty. It happens administratively. That was a consequence of his act, but it was not a part of the penalty.

**Assemblyman Anderson:**

I bring this forward because, when you receive your professional license to teach, you have the moral responsibility that comes with the position. You know that you are putting your license at stake by entering into this kind of a relationship. Even had you not found this person guilty of a statutory crime, it is conceivable that he would have immediately been put on administrative leave by the Lyon County School District. I presume Lyon County operates the same way Washoe County does.

**Robert Auer:**

That did happen, eventually. This was a complicated situation where many people in the school supposedly knew this was happening, and it probably did not get investigated through the school system the way it should have until criminal charges were filed. At the point where criminal charges were filed, this person was put on leave.

**Assemblyman Anderson:**

Did other school employees lose their positions as a result of not reporting this situation? I thought there was a reporting requirement applicable to school employees for the protection of the children.

**Robert Auer:**

No. There were no ramifications for any other school personnel.

**Assemblywoman Parnell:**

I am going back to the sections in NRS 201.540 that refers to 16 or 17 and 14 or 15 and the section in NRS 201.550 that refers to 16 and 17. The commonality is that they are all minors. Anyone 18 or over would not be considered under those statutes. Could someone tell me whether an offense committed on a victim as young as 12 puts the crime into a different statute? Is that a tougher standard? Is that why specific ages are identified in the bill as opposed to using the term "minor"?

**Robert Auer:**

Yes. It would be a more severe penalty. A person who is 12 cannot give consent: he is not of sufficient age to give consent. It would be a sexual assault. Probably, even a 15-year-old would fall into a category of statutory sex or a sexual assault. If a 15-year-old attempted to give consent, it would be a statutory sex violation.

**Kristin Erickson, representing the Nevada District Attorneys Association, Reno, Nevada:**

We are in support of this bill. Mr. Anderson is correct in that we did not support the original provisions, from several years ago, regarding the college students and the college professors. That was our concern. At this point, we do not want to appear to contradict our previous stance, but we do support the remaining portions of this bill.

**Chairman Horne:**

Is that because college students are not at risk?

**Kristin Erickson:**

I do not want to go that far. At the time of the original discussion, there were other issues. As a result, we have backed off that issue.

**Chairman Horne:**

Mrs. Pierczynski, you want it on the record that you are in support of this bill. [She nodded yes.]

**Terry Miller, Private Citizen, Las Vegas, Nevada:**

I am the mother, formerly from Pahrump, who asked for the original legislation making sexual misconduct against students by teachers a felony. I know those statutes very well, and I have been sitting here trying to answer all of your questions with regard to those statutes. Originally, when I was working on this legislation with Senator Mike McGinness in 1997, we wanted to protect all students enrolled in school. We found that because there were existing statutes that protected minors under 14, defined lewdness with a minor and sexual assault against a minor, and the penalties were very severe in those cases, there were students who were left in the gap. We wanted to make sure that those students were protected from being exploited by teachers. We took a look at the statutes and found that the students who were not protected were the 16- and 17-year-old students who were over the age of consent. We tried to get the 18-year-olds in there, feeling that they, too, were vulnerable. They had been in the school system for four years, the teacher has had that much time to groom them, and we felt that they should also be protected to keep the statute equitable. The Legislature did not feel that was viable, so, this is how we ended up with the statutes as they are. With regard to the college students, many of those students are 16- and 17-year-old minors. As was mentioned earlier, some of those students are very advanced and are able to enter into college at a young age. My daughter was one of those as well.

In going forward with my testimony this morning, I am in support of this legislation. It has bothered me for many years that these particular sex offenders are not required to register when other sex offenders in this state are so required. There have been a lot of problems with that. In supporting this bill, I also want to bring your attention to the fact that there are two other types of sex offenders who are also not currently required to register. Those offenders are corrections officers who enter into sexual misconduct with prisoners and mental health care workers in mental health facilities who are prohibited from violating the patients in NRS 212.187 and NRS 433.554. I also recommend that you consider adding those two types of sex offenders to the registration statutes.

Persons in a position of trust and authority should be held to a higher standard of punishment and penalty. In their professional capacity, they are trained to adhere to codes of conduct or ethics to ensure the well-being of those entrusted to them. They should not be afforded lenient sentencing by exemption from statutes designed to protect the public. The statutes that prohibit teachers, corrections officers, and mental health employees from perpetrating sexual offenses against children, prisoners, and vulnerable patients are felonies ranging from class B to class D. Communities are put at risk if employers are not made aware of the criminal history of sexual offenders. Without supervision, as is

required of registered sex offenders, they are more likely to offend again. These persons could easily slip under the radar and acquire jobs where they would have access to children, mentally ill patients and prisoners. Between 1994 and 2005, I documented 52 teachers who had committed sexual offenses, in varying degrees, against students. Of those, only two are registered sex offenders in Nevada. Another six are registered in other states. Thirty-six have been convicted in our courts. Surely, more than eight of these offenders should be registered. Nine were reported by the media to be required to register, three of whom are still incarcerated. Of the remaining six, one is registered in Idaho, and the other five are not registered in any state registry. I was contacted by a reporter in another state who discovered that the principal of a local high school in that state was one such former teacher from Nevada. Another teacher, who was prosecuted in Nevada, was also able to obtain a license to teach in another state. A former assistant principal in Nevada was never reported. He resigned under suspicion, obtained an administrative position at a high school in another state, was disciplined for groping himself in front of students, and was demoted to an elementary music director. Subsequently, he was arrested and prosecuted for the sexual abuse of a fifth grade little girl. Shame on us for having a system that allowed that to happen.

In early 2004, a teacher who had a 4-year history of sexually abusing middle school students, was prosecuted for sexually abusing two 13- and 14-year-old little girls. He was charged with lewdness with a minor under 14, a class A felony and an offense not eligible for probation under the law as amended in 2003, and sexual conduct between a school employee and a student. In order to get a guilty plea from the offender that would require him to register, the prosecutor did some creative plea bargaining and backdated his crime prior to the date the amendment was enacted. Otherwise, the offender was not going to plead to an offense that did not afford him the possibility of probation. Although I do not agree with the prosecutor's decision to circumvent law to get the desired sex offender registration requirement in this case, I support the prosecutor's determination to require this offender to register. The same result could have easily been achieved if the teacher had been required to register under NRS 201.540. Data shows that 1 in 10 children will suffer sexual abuse by a school staff member between kindergarten and 12th grade. Only 3 percent of child sexual abusers are ever reported. Statistically, a teacher, who sexually offends, will have worked in a minimum of three jurisdictions before he or she is reported and punished. With the aid of lenient laws and school systems, these mobile molesters are allowed to prey on children for many years before being stopped.

A corrections officer in a women's detention facility, who violated and impregnated a female prisoner, was not required to register as a sex offender.

Imagine a person who suffers a mental illness and is admitted to a facility for treatment. These persons epitomize vulnerability. They are defenseless against those who would betray and abuse. It is inconceivable to think that such an offender is not currently required to register. Even persons who sexually penetrate a dead human body are required to register as sex offenders. It is unconscionable that persons in positions of trust and authority can sexually offend living and breathing children, incarcerated prisoners, and mentally ill patients and not be held to the same penalties as all other sex offenders. We have a duty to stop all sex offenders by mandated reporting, prosecution, punishment, and required registration to protect victims from lifetime trauma.

**Chairman Horne:**

Could you state the two statutes that you recommended be added to this bill? Did you propose those changes to Assemblyman Tom Grady?

**Terry Miller:**

Yes, I forwarded a copy of my testimony documenting the two statutes. The statutes are NRS 212.187 and NRS 433.554.

**Chairman Horne:**

What do those two statutes do?

**Terry Miller:**

*Nevada Revised Statutes* 212.187 prohibits sexual contact between corrections officers and prisoners, and NRS 433.554 prohibits sexual abuse by mental health care workers.

**Chairman Horne:**

Mr. Grady, are you familiar with these suggested changes? Are you amenable, or do you have no position? It is your bill.

**Assemblyman Grady:**

I did receive the information from Ms. Miller yesterday. I did not have a chance to go over it with Mr. Auer. We were looking at the bill mainly as it pertained to the schools and not other sections. We are neutral on what she is proposing.

**Chairman Horne:**

It seems like Ms. Miller is trying to expand the scope of this registration requirement to other identified crimes that deal with sexual offenses against vulnerable people, meaning those incarcerated and under the authority of prison guards and those who are caring for the mentally ill.

It is easy to see the vulnerability of those in prison, but, my concern is that adding people who have been diagnosed with a mental illness to the bill creates a pretty broad spectrum. I am curious as to how large that net is. I think you could possibly have mental illness without necessarily being subject to the type of vulnerability we are talking about today.

**Terry Miller:**

Specifically, I am speaking of the mentally ill in any situation. The mentally ill can be people who are recovering from a drug addiction. They can be children or adults. They can be people placed into mental health facilities for depression. It does not necessarily have to be a debilitating illness, but nonetheless, one that they are being treated for. Those who are suffering from more severe forms of mental illness are defenseless and may not understand what is happening to them. To allow the offender to get away without having to register puts more people at risk, I believe.

**Jason Frierson, Attorney at Law, Clark County Public Defender's Office, Las Vegas, Nevada:**

I spoke with the sponsors of this bill to get a feel for their intent. I signed in as neutral because we do not have an issue with their effort in protecting victims. I think that is ultimately what they are trying to do with this legislation, protect victims. However, we have some concerns about some of the constitutional implications. I think some of the questions that were raised touched on those points. Those questions concerned the age restrictions. In Nevada, 16 is the age of consent, and it is our concern that when we treat 16-year-olds and older, in one manner in some circumstances and in another manner in other circumstances within the criminal justice system, we raise not only Nevada Constitutional problems but also the possibility of equal protection concerns. If you have a 17-year-old who has a 21-year-old boyfriend in one circumstance, they might be treated differently than a 17-year-old that has a 21-year-old boyfriend who is an employee or volunteer at a university. Things of that nature give rise to some conflicts within the *Nevada Constitution*. So it is our concern that addressing conduct with a consenting adult in Nevada—for all practical purposes they become an adult at 16 for purposes of consent—would raise some constitutional challenges that I think would create quite a bit of litigation.

I also want to note that there is already protection for sexual conduct for people under 16 under NRS 200.364. I think part of this proposed legislation addresses conduct involving victims under 16. I would submit that that is already covered under the statutory sexual seduction legislation.

It was mentioned earlier that this area deals with affairs of the heart, and I agree. I think that is why it is so difficult to legislate. We are dealing with people, who at some point we consider to be adults, and there are feelings involved under circumstances that are difficult to legislate individually.

With respect to the punishment for people who commit these offenses, there is a significant criminal penalty, and it was touched upon that having to register as a lifetime felon is at least one consequence. There is also probation. Probation can range from one to five years. Within that probationary period, the court is allowed to prohibit an individual from going around schools and from being around victims. The judge's protective order measures, we think, provide adequate protection.

With respect to the pseudonym aspects of this bill, we have no issue with it. Providing protection for any victim does not concern us; it is not the role of the defense bar to prevent a victim from being protected. It is the age restrictions that raise concerns with us, and I want to state that for the record so that the Committee is aware of the possible or likely litigation issues that might arise as a result.

**Chairman Horne:**

Mr. Frierson, most of what you are concerned with is already in statute. One concern you mentioned has to do with a school employee having sexual conduct with a student, for example at a university. Under this bill, if a 17-year-old at the University of Nevada, Reno (UNR) or the University of Nevada, Las Vegas (UNLV) is having sexual relations with the 21-year-old assistant basketball coach, the offender can be convicted under the current statute, and now under the bill he may have to register. If that 16- or 17-year-old is dating a 21-year-old who works at Pep Boys, it would not be treated as any crime because it is above the statutory limit.

**Jason Frierson:**

That is absolutely our concern.

**Assemblyman Cobb:**

The current statutes specifically point out that the offender has to be a person of authority at the same institution that the younger person is attending. If a young person is subjected to another person's authority, and the person in authority uses that authority to start a sexual relationship with the younger person, do you not think that is a different situation than the other scenario, proposed by my colleague, where you have two kids who meet out at a social situation and start dating? I think that is the intent of the current law, the



abuse of trust and authority makes the offender guilty of a sexual offense, and the offender should have to register as well.

**Jason Frierson:**

I agree that it is different, and it is different in the existing law: it is a felony. There are concerns about the influence of authority. That is why it is a felony. That is why the 21-year-old at Pep Boys dating the 17-year-old is not committing a crime. However, I also believe there are differences with respect to sexual offender registry requirements in that we are trying to keep track of people who we have reason to believe are sexual predators. It becomes hazier when you have adults who are consenting, and there are some. I would imagine there are some individuals in those circumstances who are predators and need to be tracked; there are also some who are not and do not. There are some who are in consensual relationships as adults. We want to make sure that we do not subject those individuals to lifetime registry requirements if they are not the predators from whom we are trying to protect the community.

**Assemblyman Cobb:**

That is why I am pointing out the issue of authority. When you are in a position of authority and you are using that position to engage in an improper relationship, by definition, you are a predator, and that is why it would be appropriate to add this type of offender to the sexual registry as well.

**Chairman Horne:**

Let us say you have a 17-year-old in a relationship with a 21-year-old on a college campus, and let us say the 21-year-old is a graduate assistant in one department, and the 17-year-old is a freshman English major and may never be in that graduate assistant's department, but they met at a concert on campus. In this situation, would we want to criminalize that behavior, particularly when there are probably administrative penalties that would cause this graduate assistant employee to be relieved of his duties? A person could be an employee of a college but not be in a position of authority over the student, particularly in a college setting.

**Assemblyman Mortenson:**

You are in a position of authority, but that authority does not extend over the 17-year-old, for instance, if you have a 21-year-old men's basketball coach in a relationship with a 17-year-old girl, but that 17-year-old is not playing basketball. The 21-year-old who works at Pep Boys might be a manager. He is in a position of authority, but it does not extend over the 17-year-old whom he is dating. This is a very nebulous thing, and I agree with you in asking whether or not we want to castigate these people and make them pariahs in our society?

**Assemblyman Anderson:**

Mr. Chair, I am still concerned that the Lyon County School District did not pursue this issue. Is there not a statewide requirement to report crimes of this nature? Is it not the district attorney's responsibility to make sure that requirement is being followed? Is it because of the position of authority that people in the school had that there were no reports from the school staff?

**Chairman Horne:**

It seems to be an administrative issue for that school district. I do not know why that happened.

**Robert Auer:**

I do not have an answer for you, and I am not the legal counsel for the school district. I would almost characterize the situation as an attempted cover-up.

**Chairman Horne:**

That concludes testimony on A.B. 126. I am going to close the hearing on A.B. 126 and bring it back to the Committee.

We are adjourned [at 9:18 a.m.].

RESPECTFULLY SUBMITTED:

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Kyle McAfee  
Committee Secretary

APPROVED BY:

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Assemblyman William C. Horne, Chairman

DATE: \_\_\_\_\_

**EXHIBITS**

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

**Date:** March 3, 2009

**Time of Meeting:** 8:11 a.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster