MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Eightieth Session
May 14, 2019

The Committee on Judiciary was called to order by Chairman Steve Yeager at 9:10 a.m. on Tuesday, May 14, 2019, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 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/App/NELIS/REL/80th2019.

COMMITTEE MEMBERS PRESENT:

Assemblyman Steve Yeager, Chairman
Assemblywoman Lesley E. Cohen, Vice Chairwoman
Assemblywoman Shea Backus
Assemblyman Skip Daly
Assemblyman Chris Edwards
Assemblyman Ozzie Fumo
Assemblywoman Alexis Hansen
Assemblywoman Lisa Krasner
Assemblywoman Brittney Miller
Assemblywoman Rochelle T. Nguyen
Assemblywoman Sarah Peters
Assemblyman Tom Roberts
Assemblywoman Jill Tolles
Assemblywoman Selena Torres
Assemblyman Howard Watts

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Diane C. Thornton, Committee Policy Analyst
Bradley A. Wilkinson, Committee Counsel
Karyn Werner, Committee Secretary
Melissa Loomis, Committee Assistant

OTHERS PRESENT:

Jessica Adair, Chief of Staff, Office of the Attorney General
Kyle E. N. George, Special Assistant Attorney General, Office of the Attorney General
John T. Jones, Jr., representing Nevada District Attorneys Association
James Sweetin, Chief Deputy District Attorney, Clark County District Attorney's Office
Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department
Amy Coffee, representing Nevada Attorneys for Criminal Justice
John J. Piro, Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office
Nadia Hojjat, Attorney, Clark County Public Defender's Office
Wesley Goetz, Private Citizen, Reno, Nevada
Anne K. Carpenter, Deputy Chief, Division of Parole and Probation, Department of Public Safety
Michael McDonald, President, Committee for Family Criminal Law Reform
Ben Graham, Private Citizen, Las Vegas, Nevada

Chairman Yeager:
[Roll was called. Committee protocol and rules were explained.] We are going to move to our agenda. Normally, we do our work session first, but since Assemblywoman Torres is detained for the moment, we are going to hear our bill first, and then we will move to the work session. At this time, I am going to open the hearing on Senate Bill 8 (1st Reprint). You should have a proposed amendment (Exhibit C) on Nevada Electronic Legislative Information System (NELIS) that we will be working from. If you have not had a chance to look at it, please make sure to reference it. It is not dramatically different from the bill in its first reprint, but it does have some differences.

Senate Bill 8 (1st Reprint): Revises provisions governing the conditions for lifetime supervision of sex offenders. (BDR 16-408)

Jessica Adair, Chief of Staff, Office of the Attorney General:
I will give the microphone to Special Assistant Attorney General Kyle George in Las Vegas to go through Senate Bill 8 (1st Reprint).

Kyle E. N. George, Special Assistant Attorney General, Office of the Attorney General:
In *McNeill v. State of Nevada* [132 Nev. Adv. Op. 54, 375 P.3d 1022 (2016)], the Nevada Supreme Court ruled that the State Board of Parole Commissioners (Parole Board) could not impose lifetime supervision conditions on sex offenders unless those conditions were explicitly authorized by statute. This bill is responsive to *McNeill* by statutorily providing the "explicit grant of authority" for these conditions of lifetime supervision, as called for by the Nevada Supreme Court.

Before we start, it is important to understand the narrow applicability of this bill. Lifetime supervision is reserved for those convicted of the most heinous sex crimes; for example, sexual assault on a child under 14 years of age, sexual assault committed during a murder, or sexual abuse of a child under 13 years of age. Additionally, although these conditions are referred to as "lifetime conditions," a sex offender who has not been convicted of an offense that poses a threat to the safety or well-being of others for ten years may petition the court to have the conditions removed. If the applicant satisfies the conditions set forth in statute, the court must grant the petition.

The conditions in this bill are broadly compartmentalized into four sections: (1) conditions that apply to all sex offenders under lifetime supervision, (2) additional conditions that apply to sex offenders convicted of sex crimes against a minor or child pornography, (3) conditions for sex offenders convicted of sex crimes that involved the use of the Internet, and (4) conditions for sex offenders with alcohol and controlled substance issues.

Section 1, subsection 11 of the bill provides the conditions that apply to all sex offenders during their term of lifetime supervision. These conditions include a search and seizure clause, clearing employment and volunteer activities with the Division of Parole and Probation (P&P) officer, abiding by any curfews that may be imposed, counseling, a prohibition on using aliases, informing P&P about post office boxes being used by the offender, refraining from possessing pornography, refraining from patronizing businesses that derive their primary source of income from sexually related forms of entertainment such as strip clubs, and checking in with the supervising officer as required. There is also a requirement that these sex offenders comply with any prescription protocol that may be imposed by the supervising officer.

Section 1, subsection 12 of the bill provides that if the underlying sex crime involved a minor, the sex offender will be barred from visiting or interacting with minors except in the presence of another adult who has never been convicted of a sex crime and with prior authorization from the supervising P&P officer. I will note that the version of this bill presented to the Senate used the term "socialize" instead of "visit" or "interact." The term socialize was purposefully used to prevent implicating casual but innocent contact with minors. For example, as written, it is possible that a sex offender whose groceries are being bagged by a minor has interacted with a child without prior approval of his P&P officer. This certainly is not the intent of this bill, and we would urge this Committee to restore the term "socialize" or similar language at the work session on this bill. This subsection also

requires any sex offender intending to enroll in an institution of higher education to inform his P&P officer.

If the underlying crime involved the use of a computer, section 1, subsection 13 provides that the sex offender may not access the Internet without software that allows P&P to monitor his or her Internet usage; for example, to track websites visited or search terms used. I will once again note that the version of this bill that made it through the Senate included a carve-out for computers used at the sex offender's place of employment. Since employees have limited control over what software can be installed on work computers and most employers monitor their employees' web traffic, we believe this carve-out did not diminish P&P's ability to conduct meaningful supervision. It is not our intent that the Parole Board imposes conditions that doom those on lifetime supervision to failure. For this reason, I once again urge this Committee to restore this language during the work session on this bill.

Section 1, subsection 14 imposes restrictions on the use of alcohol, marijuana, and controlled substances, and random drug testing if the underlying crime had some nexus to the use of these substances. This section also gives the Board the statutory authority to impose a condition for completion of substance abuse counseling if deemed necessary.

Under current law, new crimes committed by a sex offender under lifetime supervision must be prosecuted in the county in which the underlying sex offense occurred if the crime constitutes a violation of the conditions of supervision. For example, if the sex offender originally committed sexual assault in Clark County, is placed on lifetime supervision, and then commits a new sex assault in Washoe County, the violation must be prosecuted in Clark County. Subsection 16 of this bill provides that new crimes that constitute a violation should be treated like any other crime committed by any other person and should be prosecuted in the county where the crime occurred. If the crime occurs outside the state of Nevada, then the violation may be prosecuted in the county where the underlying crime took place.

Lastly, this bill is sensitive to the workload required to impose these conditions on persons currently under lifetime supervision. The Parole Board has a notice and hearing process by which these conditions can be imposed, but this process involves lead times of several months. For this reason, section 2 of the bill provides that, for persons currently on lifetime supervision, these conditions will apply to them on January 1, 2021. For persons who are currently serving a term of incarceration or probation prior to commencing lifetime supervision, these conditions will be applicable to them starting on January 1, 2020.

Before closing, the Office of the Attorney General would like to thank the numerous stakeholders who worked closely with us to craft legislation that balanced the interests of public safety with constitutional protections afforded to all. Because of their input, we have a strong bill that will allow the Division of Parole and Probation to conduct meaningful supervision of the most serious sex offenders, but has been written in a manner that is narrowly tailored to do so in the least restrictive means possible.

Assemblywoman Miller:
First, I would like to say the one thing that gets misconstrued is that we are not protecting, defending, or validating certain crimes or actions, or even certain individuals who perpetrated those crimes. We are sworn to uphold the *United States Constitution* and the *Nevada Constitution*.

I am looking at section 1, subsection 11 and the conditions of lifetime parole. We have discussed what parole is many times during this session and when people have completed their parole. Paragraph (a) says, "Submit to a search and seizure of the sex offender's person, residence, or vehicle" and then it continues on. To me, that conflicts directly with the Fourth Amendment. Can you tell me about the constitutionality of this request?

Jessica Adair:
Yes. Kyle George did a great deal of research on the constitutionality of lifetime supervision and these conditions specifically. I will let him speak to that.

In terms of this particular provision in section 1, subsection 11, paragraph (a), this is most often used when a child who lives near someone who is under lifetime supervision goes missing. This condition is most helpful to those investigating a missing child who lives, or was last seen, near someone who is under lifetime supervision. That is why it is in this bill and why we were in conversations with stakeholders such as P&P. They expressed when that condition is used most often. Understand that this is a sensitive issue, and we want to make sure we are protecting people's Fourth Amendment rights.

Kyle George:
The *Constitution* does not say that the protections afforded are absolute and unlimited. The United States Supreme Court has said there are occasions when there is a compelling governmental interest and that the state may intrude slightly into these constitutional protections if it is done so in a way that is narrowly tailored, least restrictive on the person, and serves a compelling government interest. The concept of the Fourth Amendment protections that you raise has been vetted fully by numerous courts throughout the country over the years. Fourth Amendment protections exist to protect from unlawful intrusion by the government. It generally says that, if the government intends to invade the sanctity of a person's privacy, there must be a warrant to do so or there must have been some sort of due process. This court, however, has also said that people who have been placed on conditions of parole have a reduced set of constitutional privileges until they have satisfied their debt to society and, subsequently, have been restored to full constitutional standing. For that reason, these conditions are not unconstitutional. They do serve a compelling governmental interest, are narrowly tailored as we have written it, and are being done in the least restrictive means. Therefore, we believe we will be fully constitutional if scrutinized by the court.

Assemblywoman Miller:
You are saying that the Fourth Amendment does not guarantee absolute rights in narrowly tailored situations, and, of course, in the least restrictive means, that there would be the ability to do searches. But that is not at all what paragraph (a) says. In criminal justice there

is a balance between justice, public safety, and constitutional rights—but it does not say anything about a child two doors down who is missing. This implies any time of the day or night, period. How do we ensure it would just be in those narrowly tailored instances and not be abused by P&P? Also, could you provide some of the actual case laws that defend the idea that it is narrowly focused?

Jessica Adair:
Yes. We can provide case law to you and this Committee to support what we testified to. I apologize if what I said was confusing. That is not the only time this condition would be used. That is the most often and the most helpful to parole officers. It could be used to ensure compliance with other conditions, such as ensuring the people under lifetime supervision who are required not to use controlled substances do not have those substances at their home, for example. Given the workload on P&P and from a resource perspective, it would be very difficult for them to constantly search someone's home at all hours of the day and night. I do not think that is something they would be interested in doing or would have the time to do. We can confirm with P&P that this condition has not been imposed improperly in the past against folks and will not be used improperly in the future. If we narrowly define these conditions to the point that it is difficult to use them, it handicaps P&P's ability to do their job and to ensure people are succeeding under lifetime supervision. That is why we wanted to specifically enumerate these conditions in a way that gives P&P a bit of discretion and flexibility, but also gives folks who are under lifetime supervision a narrow condition so they can understand it and make sure they are in compliance. If it is too vague, they will not be able to understand it or know if they are complying. We are trying to strike the balance between being clear and being narrowly tailored.

Assemblywoman Hansen:
As despicable as these crimes are, I appreciate the intent of what you are trying to do. You might have answered my question, but when you gave the example of the child going missing and there is a person under lifetime supervision in the neighborhood, is there not probable cause? Why can we not use that? Is it because it is Parole and Probation? I do not know how different law enforcement agencies break this down. Would you be able to use that there is a missing child, or there has been a sexual offense against a child in the neighborhood where the person lives? Do you have enough grounds already to get a search warrant?

Jessica Adair:
This condition is important because it specifically says, "Without a warrant." It would depend on the facts and circumstances of each case to ensure probable cause would be there to get a warrant. This condition would allow the officer to go to that person's home without a warrant. It would also save a great deal of time. You would not have to contact a judge to get a warrant before going to that person's home. That is why it is important.

Assemblywoman Hansen:
Can you list other states where they do not need a warrant?

Jessica Adair:
Not off the top of my head, but I can get that to you.

Assemblyman Watts:
I want to take a step back. Can you provide some background on lifetime supervision and compare it to parole? What are the conditions that are imposed between those two? As I was reading through the bill, I understood it. An offender is convicted, serves his sentence, may go through probation, and then he is on lifetime supervision. Please provide more clarity on the different levels of restrictions that are contemplated at each of those stages in the process. That would be helpful for me.

Jessica Adair:
There is probation, parole, and lifetime supervision. As was stated earlier, "lifetime" is a bit of a misnomer. It does not have to be someone's lifetime. It depends on compliance for ten years. There are different tiers of sex offenders, and only certain tiers would be eligible for lifetime supervision. This particular bill is meant to give the Parole Board additional tools to apply additional conditions on those specific tiers of sex offenders who are eligible for lifetime supervision. We are dealing with a very small subset of sex offenders who are eligible for this particular kind of supervision that is different from parole.

Kyle George:
I would direct your attention to the very top of the bill and existing statute *Nevada Revised Statutes* (NRS) 213.1243. Section 1, subsection 2 of the bill says, "Lifetime supervision shall be deemed a form of parole." This is so you will understand where this fits into the large picture.

I want to flesh out one other aspect. The concept of lifetime parole is in existing statute and does currently exist. We do currently impose it. Right below this section you will see there are some conditions that can be imposed currently, including not residing next to schools, not being around playgrounds, et cetera. What we are doing is taking existing statute and adding other conditions that we have been told would be useful in allowing P&P to conduct meaningful supervision of the most dangerous sex offenders.

Assemblywoman Cohen:
In section 1, subsection 3, there is a list of paragraphs, but oddly, there is no "and" or "or" in the drafting. Legal tells me that it should probably be an "and." Since there is already an amendment, I wonder if the "and" should be included now.

The psychotropic drug section, section 1, subsection 11, paragraph (j), refers to, "Comply with any protocol concerning the use of prescription medication prescribed by a treating physician, including . . . any protocol concerning the use of psychotropic medication." Is this what the doctor orders, or is there a right to appeal to the court if someone does not want to be on the medication?

Jessica Adair:
Yes. This is specifically by a treating physician. Under that person's medical treatment with the physician, if the physician says you must take this type of medication, you would need to comply with that treatment. The reason is that we want people to succeed so they can petition to be removed from supervision and to be successful in society. A lot of times that requires compliance with taking medication as prescribed. This is not just what a parole officer thinks; it is what their physician thinks.

In terms of whether a person can appeal, that is a good question. I do not know, but I can get that answer to you.

Assemblywoman Cohen:
If they do not like their physician, can they change doctors?

Further down in that subsection—in the amendment it has been changed to paragraph (i)—it says, "Comply with any condition to report in person as imposed by the parole and probation officer assigned to the sex offender." I know Assemblywoman Miller was discussing the different terms the offender must comply with, but I would ask you to add something about complying with the condition to report in person during normal business hours, or that type of language. We need to be very clear about what can be requested, so there is no question if something is being done for harassment. There should be no chance that someone can say you must come to the office at 10 p.m. If they have to show up at 4:30 p.m., the claim of harassment would be minimized.

Jessica Adair:
That makes sense to me. I want to make sure we do not delineate that they have to report Monday through Friday between 9 a.m. to 5 p.m. in the statute because that person may work. We need to ensure they can go to their job and still check in with their officer when they can so it does not prevent them from being employed.

Chairman Yeager:
For the record and in response to Vice Chairwoman Cohen's question about medication, it is an interesting concept. A person generally has a constitutional right not to take medication. When that happens, motions can be made to the court for medication over objection. There is some procedural due process that is put in place for a judge to make that determination. I am not sure how that might comply with paragraph (j). Perhaps someone else in the room can weigh in. We may want to think about that going forward. It does seem to be a potential clash of two constitutional rights. I do not know how often that really happens, but it is something to keep in mind.

Assemblywoman Nguyen:
I have concerns that a lot of this is overly broad. There are separations of powers issues. We are giving the Board a lot of authority to add very restrictive sentencing conditions that would be best imposed by the Judicial Branch.

Jessica Adair:
Given the research that we have done on case law on this subject, we feel confident that there is not a separation of powers issue here. We had discussions with the Board of Parole Commissioners, the Division of Parole and Probation, and stakeholders about whether this should be something that a judge would do. But I think that would significantly change the current statutory provision for this lifetime supervision scheme. Currently, this is already set up to go to the Parole Board. We did not want to make a drastic change in this bill when we are just intending to add additional conditions. In deciding whether these decisions should be made by judges, much of the time the judges—in terms of this type of situation—are not very familiar with P&P's ability to supervise this kind of sex offender. I do not mean any disrespect to judges, but in this case, the Parole Board is the expert in this type of supervision. We will get that case law to you as well.

Assemblywoman Nguyen:
It is my understanding this was previously litigated, and it was deemed to be a separation of power issue when the Board is given the authority that is normally in the hands of the Judicial Branch. I believe this was an American Civil Liberties Union (ACLU) case when Senator Catherine Cortez Masto was the Nevada Attorney General. I am curious to see what case law you think overturns that. If there is someone from the ACLU here, I would like to have some input on that.

I also have questions about the medication issue. It seems so broad that you could be in violation of lifetime supervision or parole by not taking the whole course of your antibiotics. It is not limited to medications that address issues related to the sexual offense, or that help prevent recidivism with these types of despicable crimes.

Jessica Adair:
We can talk about the appeal process for the medication issue specifically. The case you are referring to is probably the *McNeill* case. In that case, the problem was that the Parole Board did not have the statutory authority to impose these conditions. It was not that there was a problem with the conditions, it was that they did not have the authority. This bill would fix the problem that was brought up in that case.

Kyle George:
The *McNeill* case said the Parole Board was not allowed to impose these conditions because it had not been granted the authority by the Legislature. This bill is in direct response to that decision by having the Legislature allow them to impose these same conditions. I believe it is directly constitutional since it is following the directive of the *McNeill* case.

As to the question about medication, we need to be careful that P&P does not get in the business of practicing medicine; therefore, the way this is written is very narrow. If the doctor says to take these drugs, you have to take these drugs. If you do not like the drugs the doctor has prescribed, that is an issue between you and the doctor. Perhaps you need to find a different doctor who is more amenable to your position. I do not think we really want

to put P&P in the position of making medical decisions since that is not their expertise and they have no ability to do so.

Assemblywoman Nguyen:
Is it my understanding that your intent in this bill is to take away that authority and power from the Judicial Branch and put it in the hands of the Parole Board?

Kyle George:
Our intent with this bill is to comply with the *McNeill* case, which says that these conditions have to be granted by the Legislature to the Parole Board.

Assemblyman Fumo:
If I understand, the purpose of this bill is to conform to the *McNeill* case. Is that correct?

Jessica Adair:
Yes.

Assemblyman Fumo:
When these offenders expire their sentences, are they still considered to be on parole?

Jessica Adair:
I need a bit more clarification on your question. If someone has expired his term of incarceration and by statute is eligible for lifetime supervision, it is our position that the person should be under lifetime supervision in accordance with the statute. We are not changing the statutory scheme of lifetime supervision at all; we are just saying that these conditions must be in statute if the Parole Board wishes to impose them. That is all this bill is trying to do.

Assemblyman Fumo:
Are you saying that once they have expired their sentence, they are still considered to be on parole?

Kyle George:
I would direct your attention to NRS 213.1243, section 1, subsection 2, which says, "Lifetime supervision shall be deemed a form of parole."

Assemblyman Fumo:
Does not *McNeill* say just the opposite?

Kyle George:
I do not believe *McNeill* says that explicitly. The holding in *McNeill* said it was limited to separation of powers, and if the Parole Board wants to impose these conditions, they must have a legislative grant to do so. I believe it would be over-reading *McNeill* to find that its holding represented more than that.

Assemblyman Fumo:
I will have to review the case because I disagree with that.

If a person pleads to a charge that would qualify him for lifetime supervision, but at the end of his sentence the charge is reduced to something that does not qualify for lifetime supervision, what is your position? Would they be supervised for lifetime? They originally pled to a charge that would qualify them for lifetime supervision.

Jessica Adair:
Our position is that the Legislature has already put into law a statutory scheme that directs the Parole Board to create a regulatory program for lifetime supervision. This bill is not seeking to amend the current process with that scheme. Whatever the process is currently, we are not trying to change that. Whatever is currently happening would not be impacted whatsoever, even if a person pleas at the end of his term. The only thing this bill does, in response to *McNeill*, is to give specific statutory authority to the Parole Board to impose additional conditions for this specific, limited type of sex offender in accordance with NRS 213.1243. That is the only thing this bill does.

I want to be extremely clear for the record that this bill is not changing the current statutory directive to the Board of Parole Commissioners to create this scheme.

Kyle George:
I have two people here in Las Vegas: one from the Clark County District Attorney's Office and one from the Nevada Attorneys for Criminal Justice (NACJ). They have both indicated that they would not be under lifetime supervision under the scenario you have described.

Assemblyman Fumo:
I wanted that on the record.

I have concerns with section 1, subsection 11, paragraph (a) as well. I know you said you have case law that you used to prepare for this meeting—do you have the case law with you now or if it is something we need to work on off-line?

Kyle George:
I did have it in my stack of papers, but I do not see it right now. We will provide that to the Committee.

Assemblyman Fumo:
My concern is that it would be a violation of the defendant's Fourth Amendment rights, and if you have case law that says it can impinge on that, I would like to see it.

Assemblywoman Backus:
Not to belabor the Fourth Amendment issue, but I want to take your attention back to section 1, subsection 11, paragraph (a). I was trying to find the constitutional test for when we can do warrantless searches, but I was unable to find it. I believe you indicated that it

was to be the least restrictive means. When I read this section, it seems overly broad, so I wonder what else you considered with respect to determining the least restrictive means to permit warrantless searches of basically anything at any time at any place.

Kyle George:
The standard of review is strict scrutiny, so it is the narrowly tailored, least restrictive compelling governmental interests. My analysis of this is that it is not as broad as one would think. The numerous courts have upheld that search and seizure clauses are permitted when a supervised person is under probation or parole. As I indicated, this is a form of parole according to this statute. More than that, we have a slightly different scenario tested by the United States Supreme Court several times, and that is with civil commitments. Some states have adopted a scheme that involves a civil commitment instead of these conditions of lifetime supervision. Even under this civil process, the Supreme Court has upheld that the search and seizure clause is constitutional. If a parole—which is a higher level than a civil commitment—is upheld under a civil case, it should be upheld under parole, as is the case here.

Jessica Adair:
That is exactly what we do not want to do in the state of Nevada. We do not want to go to a place where we have to perform civil commitments for every single person under lifetime supervision. We believe that is much more restrictive, and that has been upheld by the Supreme Court. We do not want to go to this higher form of what we think is more restrictive but is happening in other states. We want something that is lower and more narrowly tailored. That is why there are only specific conditions that apply to everyone under lifetime supervision, and those specific conditions that apply to people if relevant.

Assemblyman Roberts:
I wonder about the timeline for implementation. Can you explain why you picked January 1, 2020, for the new folks who are going on lifetime supervision, and why the current folks are pushed back an additional year?

Jessica Adair:
This was in conversation with Chairman Christopher DeRicco, the chairman of the Board of Parole Commissioners, who is here today. We specifically chose these dates so they would have the ability to go back through the current list of folks who are under lifetime supervision but do not have these conditions applied to them, because they were not able to after *McNeill*. As the people who are on probation or are currently incarcerated come up, the Parole Board is able to apply those conditions as those hearings happen. The other reason we chose those dates is that people who are leaving incarceration and are eligible for lifetime supervision have to get a 90-day notice. The next Parole Board meeting is June 19, 2019, so we are within that 90-day period for that meeting. We will have to wait until the next meeting so those people who are currently incarcerated can have the 90-day notice. For the folks who are currently out but do not have these conditions applied to them, it gives the Board more time to comply with this provision.

Assemblywoman Hansen:
In section 1, subsection 11, paragraph (d), which says, "Participate in and complete a program of professional counseling approved by the Division," is it not already a part of lifetime supervision that they have a counseling program?

Jessica Adair:
That was one of the conditions that was removed by the *McNeill* case, so right now, no. I spoke to the chairman of the Parole Board, and this is a really important provision. It is important that the person who completes this professional counseling does so while not incarcerated. While it is great that someone who is incarcerated goes through counseling, it is also important that once that person leaves incarceration, he participates in a counseling program. When they are in a situation in the community that is similar to circumstances when they will not be under lifetime supervision, counseling is more effective.

Assemblywoman Hansen:
Also, regarding paragraph (j) that talks about medication—this one will take us off the rails—I know other states, including California, use chemical castration. Have we ever done that in Nevada? Is it an option?

Jessica Adair:
I do not know if it is something the state of Nevada has done historically, but it is not something that is implicated in this bill. We are specifically talking about medication that is prescribed by a treating physician. I do not believe that is something a treating physician would prescribe.

Assemblywoman Hansen:
I was just using that as a segue to ask the question if we, in our state, have ever considered that? I know there are a lot of implications, but I am curious.

Kyle George:
At one point, the state of Nevada did engage in chemical castration. The Nevada Supreme Court struck it down as a cruel and unusual punishment.

Assemblyman Watts:
I want to follow up on my previous question. I appreciate your pointing to that section of the bill. One of the things that I noticed is that it says this is considered a form of parole only for limited things like setting fees, allowing for staff, and the creation of regulations to carry out the program. Looking at statute as it currently stands, it appears to me that lifetime supervision is more of a monitoring program. It has a lower level of restrictions, liberties, and conditions than parole or probation. I am not sure what the total array of options for conditions for parole and probation are, but this seems to be expanding to allow a large degree of those to be incorporated into lifetime supervision, essentially extending the parole period. This may be more of a comment on where my concerns are, that it is taking something that had a lower level of restrictions and is more focused on monitoring, and is now turning it more into the finishing of a sentence through parole or probation with

additional restrictions and conditions. I wanted to put that on the record, but I also appreciate your pointing to the existing statute.

Kyle George:
The breadth of this statute is exactly what the Legislature deems it to be. In *McNeill*, the Supreme Court said, "In enacting NRS 213.1243, the Legislature did not explicitly provide the Board the authority to create additional conditions. And even assuming that the Legislature had intended to do so, that delegation of power would fail because the Legislature has not provided guidelines informing the Board how, when, or under what circumstances, it may create additional conditions." The current statutory language has provided the parameters of what lifetime supervision means. This Committee and the Legislature have the power to determine what it should be and can expand or contract those powers. I concur, to some degree, that it is kind of a gray area, but it is a constitutional gray area because it has been carved out by this Legislature.

Jessica Adair:
Maybe I misunderstood your comment, but I think it is important to note that this type of supervision should be more restrictive and expansive than what we would normally consider to be parole. This particular type of crime is one that leads itself to a particular type of supervision that is more restrictive than what you would consider parole for other crimes that do not involve sexual offenses with children, or particular sexual offenses that qualify someone to be this kind of sex offender. I want to be clear that the intent of the Legislature enacting this statute is to specifically say, as a policy and public safety measure, it is more important that this type of offender is treated differently than those who are under normal parole.

Assemblyman Watts:
To be clear, that is not what I was trying to get at. It was not to compare this offense to other offenses. Essentially, someone has been convicted, has served whatever sentence that includes parole or probation—which is part of serving that sentence—and then has been released, but is on a program of lifetime supervision. My clarifications are more that you are under that sentence, which comes with restrictions, then you go into a lifetime supervision program, which, as statute is currently laid out, is really focused on monitoring. My concern is that we are—particularly from what you just said—potentially creating something that is higher than the restrictions that come with parole, or at least equal to, extending out the restrictions, conditions, and punishment associated with that sentence as opposed to creating an additional monitoring program that is aimed at making sure people stay within the boundaries of the law. That is where I am coming from, not comparing forms of parole or probation with other types of offenses.

Kyle George:
Perhaps part of the confusion with this bill is the notion that these people have paid their debt to society, and now we are imposing a new debt on them. That is not an accurate characterization of lifetime supervision. It is probably more accurate to consider lifetime supervision as part of their debt to society.

We have a few options when we convict people of crimes. We can say that we think this is just a one-time offense and you probably will not ever do it again, so we will put you on probation. The other option is that we sentence them to prison and they can serve the entire term of incarceration in prison. The third option is that we send them to prison and they serve some amount of that time in prison and the rest of the time on the sentence—and the debt they owe to society—is served out in public as we reintroduce them into society. Lifetime supervision is a very important tool to allow these offenders an opportunity to be reintroduced into society because, if we do not have the means of supervising them as they get their lives back together, the alternative is that we keep them in prison for a longer period of time. We redefine what the debt to society is and say that we will keep them locked up until the debt has been satisfied. Because we are giving the sex offenders the benefit of release onto the streets, part of their payment of that debt is increased supervision that allows them to reintegrate, while still making sure they do not represent or pose any threat to society.

Chairman Yeager:
We are going to move on. I know there may be additional questions, but I would ask you to ask them off-line in the interest of time.

Before I open it up for additional testimony, I want to let folks know that I have a number of people signed up to speak, so I am asking you to limit your comments to two minutes, so we can make sure we get through our work session.

At this time, I am going to open it up for testimony in support of Senate Bill 8 (1st Reprint). Anyone in support, please come forward, both in Carson City and Las Vegas.

John T. Jones, Jr., representing Nevada District Attorneys Association:
We are in support of S.B. 8 (R1). We are in strong support of the lifetime supervision program.

I have a few things that I want to point out. First, I think the comments made by the Office of the Attorney General about this being a part of a defendant's sentence, and not something in addition to it, is very important to note. Defendants are told at the time they are sentenced that they are subject to a term of lifetime supervision after the expiration of their parole or probation. They are put on notice at the very beginning that they are subject to this.

Additionally, lifetime supervision is meant to keep people from cycling through behaviors that would cause them to reoffend. When you read the terms and conditions in here, it is basically to help keep people from reoffending.

One other point I want to make is that every condition spelled out in S.B. 8 (R1) is a term that the Parole Board used to impose prior to the *McNeill* decision. There is nothing new in here. This is what the Parole Board used to do, unless it was specifically stated in statute that the Parole Board could not do it, which is why we are coming here to specifically enumerate these conditions.

James Sweetin, Chief Deputy District Attorney, Clark County District Attorney's Office:
I am currently in charge of the Special Victims Unit. We deal with sex offender cases on a regular basis. We have to wrestle with what is fair to the defendant, as well as what is fair to the victim and how we can protect the community.

In looking at those things, lifetime supervision plays a very significant role. Sexually oriented crimes require lifetime supervision under our current statutory scheme. The current statutory framework does not provide adequate supervision of those sex offenders the Legislature has already identified through the lifetime supervision statute as being in need of supervision, although it is a small percentage of the crimes. The idea is that certain sex offenders are so inherently dangerous that the punishment and/or supervision they receive as a direct consequence of their crime—the sentence that is imposed by the court—is not deemed sufficient to guarantee their rehabilitation or adequately protect the community. That is where lifetime supervision falls into this. After a qualifying sex offender has expired his or her probation, parole, or prison sentence, that is when lifetime supervision kicks in. As has been said, prior to the *McNeill* case in 2016, the Division of Parole and Probation established their own conditions, and they did this based on what they knew about the offender at the time he rolled over to lifetime supervision. Through this statute, the Legislature is pointing out exactly what particular conditions are appropriate for different offenders. In doing that, this statute recognizes certain triggers that these sex offenders have. For instance, there might be a perpetrator who becomes violent and compulsive when he or she drinks or uses drugs.

In the end, there is a need for this statute to both protect the community, as well as help the perpetrator rehabilitate. The conditions, as laid out, provide a framework that will provide both of those to the community, and it is for that reason we support this bill.

Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:
We are here in support of the bill.

Amy Coffee, representing Nevada Attorneys for Criminal Justice:
I am here in support of the bill. Let me explain why. To explain lifetime supervision, you can think of it as parole-plus, an enhanced form of parole that goes on longer and has specific conditions for sex offenders. Having represented many people on lifetime supervision over the years, it is very critical. Lifetime supervision can make the difference between someone getting their freedom or not. The extra community-safety value of lifetime supervision is why the Parole Board or judges might agree to a certain sentence or to letting someone out of prison because they have the assurance that the community is safe. Most states and the federal system have a form of lifetime supervision, so this is very common.

I want to briefly address the search clause. My understanding is that the United States Supreme Court has discussed searches of people on parole and probation, which is what Mr. George said. You have less of a liberty interest. My understanding is that the search has

to be related to the violation. The way subsection 11(a) of section 1 is written, the search can only be done for the purpose of determining whether the sex offender has violated any condition of lifetime supervision or committed any other crime. I do not think it is an unfettered freedom. There has to be some nexus. I am not sure about the example of searching for a suspect. I cannot honestly say whether that fits. You have less of a liberty interest when you are on parole, and I believe there has to be a nexus. It is less of a standard Fourth Amendment right than all of us have that are not on lifetime supervision.

Another condition that no one addresses is about monitoring the Internet. We support the need for it; however, we are concerned about the potential misuse of monitoring the Internet. Should we see it being misused, we would address that later at another session.

Chairman Yeager:
Is there anyone else who would like to testify in support? I do not see anyone coming to the table in either location, so I will now take opposition testimony. Please keep your comments to two minutes.

John J. Piro, Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office:
If we could start in Las Vegas, I would cede the Clark County Public Defender's Office's two minutes and the Washoe County Public Defender's Office's two minutes to Ms. Hojjat.

Chairman Yeager:
I will give you creativity points for that, Mr. Piro. I do not see the Washoe County Public Defender in the room. Here is what I will do because I do not want to give her six minutes, so, in the interest of compromise, I will give you four minutes.

Nadia Hojjat, Attorney, Clark County Public Defender's Office:
I was the trial attorney in *McNeill v. State of Nevada*, so I have a lot of familiarity with lifetime supervision. I will quickly tell you the history. The lifetime supervision bill—and we are talking a decade ago—did not enumerate the conditions of lifetime supervision, and P&P and the Board were allowed to determine which conditions were placed on which offenders. There was a lawsuit that I believe was *ACLU of Nevada v. Masto* [670 F.3d 1046, (9th Cir. 2012)]. Judge James C. Mahan, in the federal court, struck that down and said that it was a separation of powers issue, and that the Board and P&P could not determine which offenders have to follow which conditions. At that point, lifetime supervision was put back in front of the Legislature, and the Legislature came up with the statute as it is now. The Legislature enumerated specific conditions, which are the current conditions of lifetime supervision. After this bill was passed, P&P continued requiring individuals on lifetime supervision to follow the conditions that they had the ability to impose under the old statute. There was no longer language in the statute that said they could come up with their own conditions, but they continued to do so.

Fast-forward to *McNeill*, and we litigated that case. We said these are not the conditions that the Legislature came up with and put in the statute. That is what the *McNeill* decision was

about. The *McNeill* decision was not the Nevada Supreme Court saying that, yes, those are the conditions of lifetime supervision, but you have to specifically enumerate them. The *McNeill* decision was that the Legislature has come up with a statute, and you have to follow that statute and cannot come up with your own things outside of this statute.

Lifetime supervision is still in effect; *McNeill* did not overturn lifetime supervision. As it currently stands, sex offenders are not allowed to live within a certain distance of schools, playgrounds, and areas where children congregate. They are not allowed to contact the victims of their crime. They have to register. They need to have their residence approved by P&P. The implication that we do not currently have lifetime supervision is not accurate; we have lifetime supervision. We have the bill this Legislature passed. It is simply that P&P is being required to actually comport with the plain language of the statute. That is what *McNeill* did.

There has been a lot of back-and-forth about whether these individuals are on parole or something else. The whole point of *McNeill* was that they are not on parole. If they were on parole, the Parole Board could decide what conditions they want to impose. They are not on parole. These are individuals who have expired their sentence. The suggestion that we would keep them in prison longer if we did not have these conditions of lifetime supervision is inaccurate. They have expired their sentences. These individuals have absolutely paid their debt to society.

I am not sitting here supporting what they did. We are all in agreement that the accusations and the things they have been convicted of are heinous, but they have expired their sentences. They are now trying to reintegrate into society. These individuals are not still under a term of imprisonment. What this statute does is truly lifetime parole. This creates indefinite parole for every sex offender after they have been released.

Everyone already hit on the constitutional issues of this bill. There are serious First Amendment and Fourth Amendment issues. There is a separation of powers issue going back to the ACLU lawsuit in allowing the Board to determine what conditions are going to be imposed on which individuals.

Let us talk about the real world of facts. In *McNeill v. State of Nevada*, the facts are that Steve McNeill was a homeless man, and his P&P officer decided he needed to have a curfew for the street corner he had registered. From 6 p.m. to 6 a.m., in the middle of July in Las Vegas, he was required to stand on the street corner. He was not allowed to go inside to a shelter; he had to be on his street corner. She drove by the street corner, and he was not standing there at 6 p.m. in the middle of July. That is what Steve McNeill was violated for. He ended up being convicted and went to prison before the Nevada Supreme Court reversed that case. A man went to prison because he was homeless and he did not want to stand on a street corner in the middle of July. Putting a curfew condition in is exactly what we will go back to. These are the types of enforcement that we were seeing when these conditions were being enforced by P&P. We had individuals who were being prosecuted for possession of marijuana and felony convictions. We are going to go back to that.

The suggestion that the search clause is most frequently used when children are missing is not true. What we were seeing—as public defenders who were defending these cases—was that this was parole. It was not selective enforcement of these conditions. They were being enforced on everyone exactly like probation and parole were enforced on everyone. The suggestion that we will do it differently is not in the statute and is not allowed. There is nothing in the statute that says this is going to be different from parole and probation. What we saw previously is that this was considered an extension, and that is what is going to happen again.

Chairman Yeager:
Mr. Piro, I want to confirm that the Clark County and Washoe County Public Defender's Offices are in opposition to the bill. Is that correct?

John Piro:
That is correct.

Chairman Yeager:
If there is anyone else in Las Vegas, please come forward. We will now take testimony here in Carson City.

Wesley Goetz, Private Citizen, Reno, Nevada:
This session was supposed to be the session of transparency. I have an amendment to this bill to be considered (Exhibit D). I will read it to you.

> In its current state . . . NV Senate Bill 8 grants more power to supervising officers to carry out their duties with a greater degree of freedom and a lesser degree of accountability. It allows supervising officers:
>
> a. To search and seize in offenders' homes without a warrant from a judge.
> b. It allows them to restrict offenders' housing and travel options. And most importantly,
> c. It allows them to restrict employment and income opportunities.
>
> I propose that this bill be rewritten to incorporate more specific and appropriate language that takes into account the defending parties' constitutional rights.
>
> Attorney General Aaron Ford stated in his latest hearing to the Nevada Senate Judiciary that when an individual is released from Nevada State Prison, a portion of their constitutional rights should be reinstated. The rights outlined by the 4th, 5th, and 14th Amendments, in particular, are in contradiction with several actions that Bill 8 now allows supervising officers to carry out independently and without documentation.

While the majority of officers do their duty to help past offenders succeed in their goal of completing lifetime supervision, there are some who abuse power. This can range from:

a) Sabotaging the ability of employment of the offenders under their charge to the
b) Unannounced invasion of their living environments.

This abuse can be particularly prominent towards sex offenders because of social stigma.

The Office of Professional Responsibility in Nevada is where offenders may place a complaint regarding abusive officers; however, the complaint is sent to the Department of Parole and Probation itself. This can lead to non-effective actions taken, in order to protect the interests of either the parole officers, their superiors, or the reputation of the Department itself.

Chairman Yeager:
First, I want you to know that we have your proposed amendment on NELIS. It looks as though you are simply reading the document to us. We have that in front of us, and we are over two minutes, so please take a couple of moments and wrap up.

Wesley Goetz:
Before the *McNeill* decision, it felt like psychological torture toward me by some of the parole officers. I have a stack of complaints about officers. If you are willing to read any of these, I will put them on NELIS.

My first probation officer basically tried to extort a gift from me. I was a chain installer making lots of money. When I had a job at Squaw Valley, another officer told me I would have to get a travel permit in Carson City each day, and then drive to Incline Village to work in Squaw Valley, which was over 100 miles. There was also a time when she sabotaged my chance to be a ski instructor.

I want you to ask how many sex offenders who have been on lifetime supervision have been arrested on a new sex crime. How many sex offenders have been sent back to prison because they violated one of those special conditions? [Additional material was submitted by Wesley Goetz (Exhibit E) and (Exhibit F).]

Chairman Yeager:
Is there anyone else in opposition? I do not see anyone, so I will take neutral testimony. Is there anyone neutral on S.B. 8 (R1) here or in Las Vegas?

Anne K. Carpenter, Deputy Chief, Division of Parole and Probation, Department of Public Safety:
The Division has weighed in and worked with the Attorney General's Office on amendments, and we stand neutral.

Michael McDonald, President, Committee for Family Criminal Law Reform:
I have seen the different changes in S.B. 8 (R1) regarding sex offenders. I can tell you from personal experience and from seeing a lot of people who have been affected by this, that some of the laws are completely vague. For example, one story I know of is about a guy who was in an alley and urinated there. He was pulled in by the cops. Because he was caught in the act, he had to register as a sex offender. He now has lifetime supervision, has to register, wear an ankle bracelet, and all of those other requirements. There are a lot of stories. There are merited cases of sexual assault, and those extreme cases should have some kind of supervision, especially when they have done a psychoanalysis of that person and he is more likely to reoffend. What I am trying to say is that a lot of the supervision is completely despotic. If there is one little hoop that the offenders do not jump through, Parole and Probation incarcerates them instead of helping to reform them.

It is against our Fourth Amendment right to search and seize. Even in a federal case called *Torrey Dale Grady v. North Carolina* [575 United States ___ (2015)], they proved that ankle monitors are unconstitutional, yet they get the offenders to sign their rights away. Our position is to help alleviate this and to go to the merited cases to see that they are supervised in a certain manner. Our constitutional rights should be protected. This country was founded to be free and to have liberty. Many times the person going through a divorce is accused of the most heinous crimes.

Chairman Yeager:
We are at two minutes and this bill has nothing to do with divorce.

Is there anyone else in the neutral position? I do not see anyone else in neutral, so I will close neutral testimony and invite our sponsors back up to the table for concluding remarks. It looks like those have been waived. I will now close the hearing on Senate Bill 8 (1st Reprint). At this time, we are going to move to our work session. We are going to take Assembly Bill 236 last, but we will take the others in order. We will start with Senate Bill 177 (1st Reprint).

Senate Bill 177 (1st Reprint): Revises provisions relating to employment practices. (BDR 53-723)

Diane C. Thornton, Committee Policy Analyst:
Our first bill today is Senate Bill 177 (1st Reprint), sponsored by Senator Cancela and heard in this Committee on May 7, 2019 (Exhibit G). This bill requires the Nevada Equal Rights Commission of the Department of Employment, Training and Rehabilitation to notify a person who files a claim of injury as a result of certain unlawful employment practices that he or she may request a right-to-sue notice. The bill requires the Commission, upon request,

to issue a right-to-sue notice indicating the claimant may, under certain circumstances, bring civil action in district court against the person named in a complaint. Additionally, the bill authorizes a court to award the employee the same legal or equitable relief that may be awarded to a person pursuant to Title VII of the Civil Rights Act of 1964, if the employee is protected under the provisions of Title VII or certain provisions of existing state law. There are no amendments to the bill.

Chairman Yeager:
Are there any questions on the work session document for Senate Bill 177 (1st Reprint)? I do not see any questions, so at this time I will take a motion to do pass the bill.

> ASSEMBLYWOMAN PETERS MOVED TO DO PASS SENATE BILL 177 (1ST REPRINT).
>
> ASSEMBLYMAN WATTS SECONDED THE MOTION.

Is there any discussion on the motion? I do not see any discussion.

> THE MOTION PASSED UNANIMOUSLY.

I will assign the first floor statement to Assemblywoman Peters. We will go next to Senate Bill 382 (1st Reprint).

Senate Bill 382 (1st Reprint): Revises provisions relating to real property. (BDR 9-1067)

Diane C. Thornton, Committee Policy Analyst:
Senate Bill 382 (1st Reprint) is sponsored by Senator Cannizzaro and was heard in Committee on April 26, 2019 (Exhibit H). This bill consolidates definitions and clarifies various terms concerning deeds of trust, liens, notices of waiver, conveyances, and nonresidential common-interest communities. Additionally, the bill revises requirements concerning amendments to unit boundaries and allocated interests in residential units within a common-interest community, and it clarifies the requirement that a unit owner's association must provide written notice to unit owners within ten days of commencing a civil action applies only to civil actions upon which the unit owners are entitled to vote.

There is one amendment. Shannon Chambers, President, Home Means Nevada, proposed an amendment. The amendment revises the reporting requirements in section 12, subsection 16, and deletes the required audit by the Division of Internal Audits, Office of Finance, in section 12, subsection 17 of the bill.

Chairman Yeager:
Are there any questions on Senate Bill 382 (1st Reprint) as detailed in the work session document? That is a friendly amendment, and I have confirmed that with Senator Cannizzaro. I will take a motion to amend and do pass.

ASSEMBLYWOMAN TORRES MOVED TO AMEND AND DO PASS SENATE BILL 382 (1ST REPRINT).

ASSEMBLYWOMAN NGUYEN SECONDED THE MOTION.

Is there any discussion on the motion? I do not see any discussion.

THE MOTION PASSED UNANIMOUSLY.

I will assign the floor statement to Assemblywoman Backus because no one on our Committee understands obscure property law better. We will go next to Senate Bill 435 (1st Reprint)

Senate Bill 435 (1st Reprint): Enacts provisions relating to claims for personal injury. (BDR 2-1148)

Diane C. Thornton, Committee Policy Analyst:
Senate Bill 435 (1st Reprint) was sponsored by the Assembly Committee on Judiciary and was heard in Committee on May 1, 2019 (Exhibit I). This bill provides that a release of liability relating to a personal injury claim made by the releaser may be voided within 60 days of the original release under certain circumstances. If the release is voided, the releaser must provide notice and return any money paid by the releasee. The bill also prohibits a person whose interest is adverse to the injured person's to negotiate or otherwise attempt to obtain a settlement agreement within 15 days after the injury. A settlement, release of liability, or any statement obtained illegally may not be used as evidence in a legal proceeding concerning the injury. Finally, the bill provides for the sharing of medical and related records between a claimant and an insurer in a claim relating to a policy of motor vehicle insurance.

There is one amendment provided by the Nevada Resort Association and the Nevada Justice Association. Section 2, subsection 1 shortens the time set for a release of liability from 60 days to 30 days. Section 2, subsection 1(a) clarifies the start date for the 30-day period by adding the word "initially." Also in section 2, subsection 2, it clarifies the process for voiding a release. Section 2, subsection 4 clarifies the definitions of "release" and "releasor," and adds a definition of "personal injuries." Section 3 of the bill is deleted. Finally, section 4 revises the discovery rules governing claims for compensation or damages for mental or physical injuries under a motor vehicle insurance policy.

Chairman Yeager:
As you can see, the proposed amendment was from the Nevada Resort Association and the Nevada Justice Association, so that is a friendly amendment. You may recall that the Nevada Justice Association presented the bill in front of the Committee. Are there any questions on the work session document?

Assemblyman Edwards:
One of the problematic areas with the bill for some of us is the policy limit disclosure. Why are we trying to share the insurer's private insurance information?

Chairman Yeager:
I do not want to speak out of turn, but I think the testimony we heard at the hearing was that, at times, an injured party needs to make a decision whether to seek particular treatment. When they are not able to pay for that treatment, to make an informed decision, they have to know if there is potential insurance coverage for it. That was the rationale. The patient needs to know, if he decides to get treatment, that it is a minimum insurance policy, and there is not going to be enough coverage by the alleged wrongdoer in the case. That is my recollection of the testimony. I will note that the way this provision is written in the bill, it requires that the injured person send a release for medical records in order to get that information. The exchange of information happens when the injured party informs the insurer what the injuries, diagnosis, and recommended treatment are before that party is allowed to know about the policy. The minimum bodily injury policy in our state is now $25,000. As you know, medical care is not getting any cheaper. That was the rationale. Are there other questions? We will have time for comments in a moment. I will take a motion to amend and do pass.

> ASSEMBLYWOMAN NGUYEN MOVED TO AMEND AND DO PASS SENATE BILL 435 (1ST REPRINT).
>
> ASSEMBLYWOMAN TORRES SECONDED THE MOTION.

Now would be the time for comments.

Assemblywoman Tolles:
There have been some last-minute questions raised that I have not had a chance to vet, so I will be a "yes," but I reserve the right to keep getting input on the question and to vet it out.

Assemblywoman Backus:
I appreciate all the work that went into the amendment, but I am still hesitant on section 1 and how it could be overly broad and potentially cause problems with settlements. I will vote it out of Committee, but I reserve the right to change my vote on the floor of the Assembly.

Chairman Yeager:
I remind you that you always have the right to change your vote, but it is nice if you give me a heads-up so there are no surprises on the floor. There is an amendment, so it will not be reported to the floor right away. Legal will prepare the amendment first, so that will give everyone time to get any questions answered before we vote on the floor. Seeing no additional discussion, the motion is to amend and do pass.

THE MOTION PASSED. (ASSEMBLYMEN EDWARDS, HANSEN, AND ROBERTS VOTED NO.)

I will assign the floor statement to Assemblywoman Torres. We will go next to Senate Bill 486 (1st Reprint).

Senate Bill 486 (1st Reprint): Revises provisions relating to the issuance of citations. (BDR 43-1149)

Diane C. Thornton, Committee Policy Analyst:
Senate Bill 486 (1st Reprint) was sponsored by the Assembly Committee on Judiciary and was heard on May 8, 2019 (Exhibit J). This bill deems a traffic citation to be a lawful complaint when filed with a court, regardless of whether the citation was prepared electronically or by other means. The measure provides that when a person physically receives a copy of a traffic citation, receipt of the citation must be deemed personal service of a notice to appear in court to adjudicate the citation. There are no amendments to the bill.

Chairman Yeager:
Are there any questions on the work session document on Senate Bill 486 (1st Reprint)? Seeing no questions at this time, I will take a motion to do pass.

ASSEMBLYMAN EDWARDS MOVED TO DO PASS SENATE BILL 486 (1ST REPRINT).

ASSEMBLYMAN DALY SECONDED THE MOTION.

Is there any discussion on the motion? I see no discussion on the motion.

THE MOTION PASSED UNANIMOUSLY.

I will give this one to Assemblyman Edwards. At this point we will go to the one most people in the room have been waiting for. We will go to the work session on Assembly Bill 236.

Assembly Bill 236: Makes various changes related to criminal law and criminal procedure. (BDR 14-564)

Diane C. Thornton, Committee Policy Analyst:
Assembly Bill 236 was sponsored by the Assembly Committee on Judiciary and was heard on March 8, 2019 (Exhibit K). This bill makes various changes related to criminal law and criminal procedure. The measure revises various provisions, including but not limited to: Preprosecution diversion programs; crimes of burglary, invasion of the home, and housebreaking; various theft offenses; crimes involving controlled substances; reducing certain penalties for certain crimes from a category B to a category C felony; various changes concerning probation and parole; specialty court programs; requirements for the Nevada

Commission on Peace Officer Standards and Training; and the duties of the Nevada Sentencing Commission and the Nevada Local Justice Reinvestment Coordinating Council. There is an amendment on the following pages and a chart that includes the amendment summary for the Committee to review.

Chairman Yeager:
So that members know, I will allow discussion on the motion once we get to that point, and I will have some discussion of my own. I want to give members a chance to ask questions about the mock-up. If it is a question that will change your mind, it would be an appropriate question. In the interest of getting through the work session, if your question is more rhetorical or of a statement variety, I would request you save that until after we make the motion so the record will be clear. Are there any questions about the work session document or the mock-up? I do not see questions, so I will take a motion to amend and do pass.

> ASSEMBLYMAN FUMO MOVED TO AMEND AND DO PASS ASSEMBLY BILL 236.
>
> ASSEMBLYWOMAN TORRES SECONDED THE MOTION.

Before we go to additional discussion, I want to put a couple of things on the record. First, for the Committee and members of the public, I am not sure if you have had a chance to look at this, but I did upload to Nevada Electronic Legislative Information System (NELIS) the letter that was sent on May 22, 2018, where the State of Nevada asked for technical assistance from the Bureau of Justice Assistance, as well as The Pew Charitable Trusts (Exhibit L). As we have talked about in the Committee, that letter was signed by then-Governor Brian Sandoval, then-Chief Justice of the Nevada Supreme Court Michael Douglas, then-Senate Majority Leader Aaron Ford, and Speaker of the Assembly Jason Frierson. I am not going to go through the letter; you can read it on your own. The basic idea was that our state leaders asked for help in doing something meaningful in our criminal justice system, to do something to help stem the rising cost of the prison population, but doing so in a way that accommodated public safety and that would, hopefully, reduce recidivism.

You may recall this was the second time the State of Nevada asked them. They had asked in 2016, but we were not selected. Fortunately, in 2018, we were selected, and in came the Crime and Justice Institute to help us look at some of our data. This has been nearly a year-long process. As many of you know and may remember from the hearing, this started with the Advisory Commission on the Administration of Justice, which I was honored to chair. We were tasked with coming up with recommendations and that is what ultimately happened after a series of meetings. The vote out of the Advisory Commission was 11 to 4 in favor of the recommendations that were contained in the bill as introduced. That bill was introduced March 1, 2019, and a week later we had the hearing on March 8, 2019. It was a long hearing, but we got through as much as we could.

The question is, Why is it May 14, 2019, and we are just putting this bill on work session? The reason we are here now is that I heard loud and clear after the hearing that there was still work to be done on this issue. I heard legitimate concerns, so what has happened since then was a series of meetings—mostly in The Wood Shed—where many of the stakeholders, if not all of them, who were interested came in to talk about the bill and where we might go with it. I want to recognize all of those who participated. These meetings usually happened at 6 o'clock at night, so they were at the end of the day when everyone was tired and had every right in the world to just go home and be done with the legislative session for the day. Despite that, we had overflow rooms. I thought everyone participated in good faith and made good suggestions. I want to recognize some of our Committee members who participated in those meetings: Assemblywoman Tolles, Assemblywoman Krasner, Assemblyman Roberts, and Assemblywoman Nguyen, who occasionally ran meetings when I was detained on other matters. I want to say loud and clear that I appreciate all the hard work that has gone into this bill during the last nine weeks.

I do not think we reached complete consensus. There were ideas that were proffered that were not accepted, but I think what you have in front of you is a better bill than what was introduced initially back on March 1. As you will remember, we had some pretty spirited opposition and some pretty spirited support at the hearing.

I can report to the Committee a couple of new developments based on the mock-up of the bill. On NELIS you will find a letter from the Reno Sparks Chamber of Commerce (Exhibit M). They are fully in support of the mock-up that is in front of you, and it is signed by Ann Silver. I can also report that the Las Vegas Metropolitan Police Department (Metro) is in a neutral position on the bill. The Attorney General's Office is neutral on the bill as written. I think the others who were in opposition are still in opposition, but perhaps less fervent opposition than when we started. I wanted to get that on the record.

I have had a lot of inquiries as to what is going on with this bill. What is going on with the bill is what the legislative process is intended to do, to put this bill through the crucible of many sets of eyes trying to get it right. I think we have reached a position with this mock-up where we can fulfill what our state leaders asked of us, which was to be fiscally responsible in a way that accommodated public safety and reduced recidivism. That is how we are going to get out of this hole and not be faced in ten years—when we will probably not be in these seats—with having a decision to make whether to build one or two new prisons. We always talk about the scarcity of money in this building. This is where we can save money over the next ten years and reinvest it either in the justice system or in the many other state priorities. With all of that said, I am going to open it up for additional discussion.

Assemblywoman Tolles:
I was part of the Sentencing Commission and as many of The Wood Shed conversations as I could attend. For several hours last night, I poured through the bill again. I was in awe of how much in there is really important for our state, and that I do support, particularly the ongoing work of the Sentencing Commission and the Justice Reinvestment funding. It is good to have really good data available to make decisions about probationary periods,

diversion programs, and the sentencing structure. There is a lot of modernization, compromise, and work-throughs in this bill that I am proud of.

That being said, I still have some rather large concerns about some sections. If we can get this bill through, particularly the sections that deal with the Sentencing Commission and Justice Reinvestment funding, they need more work. Each of those could be taken piece by piece and evaluated, vetted out, and continued forward so that we meet the intent of the letter that was sent. I cannot support the bill, and I am a "no" or a "not yet" on those portions that are of great concern to me.

Chairman Yeager:
You jogged my memory of another thing I wanted to note. The question has been asked why there is so much in this bill. It is not even close to being the longest bill of the session. Any of you who have spent any time in the Assembly Committee on Taxation or on insurance bills, know they are often longer. One of the reasons there is so much in this bill is that, in order to get the technical assistance that comes with phase two of this bill, Nevada has to pass a comprehensive set of reforms to make that request of The Pew Charitable Trust and the Department of Justice. I do not want to overlook that part of it. We have not really talked about that. Should this bill pass and be implemented into law, there is a technical assistance piece where we do not have to ask our state agencies to just flip a switch and do this overnight. The agencies will have some help in implementing this. That is the reason everything is in one bill. We could pass one or two of these policies, but in the aggregate they are going to allow the state to ask for the technical assistance to make sure it is implemented in the right way, and to make sure we are actually collecting data. I do not know if that has ever been stated. It may have been better to have 37 different bills, although my Committee would have been upset with me to have to hear all of those.

Assemblywoman Krasner:
I served on the interim Advisory Commission on the Administration of Justice with you and I appreciate all of the work that has gone into Assembly Bill 236.

When we look at criminal justice reform, it is important to balance the victim's rights. Saving money is important, but not when we sacrifice public safety. I appreciate diversion and rehabilitation programs for people who have served their time and have paid their debt to society so we can help them reenter society and be productive members. However, I still have concerns with some of the public safety issues. People deserve to feel safe in their homes and their communities. I will be voting "no."

Chairman Yeager:
The bill does not say this expressly, but our voters passed constitutional protections for our victims of crime—commonly known as "Marsy's Law"—at the last election. Those constitutional rights will overlay with what is in this bill. I do not want to give the impression that this will eliminate the mandates of Marsy's Law; it does not. That is a constitutional right that our competent and able legal counsel would not allow to be drafted into this bill. I am comfortable that, as courts and the district attorney's offices are working

through Marsy's Law and how to apply that issue, all those protections passed by an overwhelming majority are still going to apply to anything in this bill, as they would in any criminal bill that we pass.

Assemblyman Roberts:
This is a tough one for me. I believe in criminal justice reform. I believe we need to reshape our criminal justice system. At the same time, I spent 34 years of my life completely engaged in the criminal justice system. I appreciate all the work you have done and that you included me in the meetings and sought my input. There are a lot of great things in this bill that were previously discussed. My former agency is neutral, but no one else is. "Leadership" is disappointing your people at a rate they can absorb. I cannot move that far on some of those items that we cannot get consensus on. I pledge that I will collaboratively work with you in the interim and, if I am fortunate enough to come back, we will pass those items that we cannot come to an agreement on. I will be a "no."

Assemblywoman Hansen:
To be on the record, I know we talked privately, and I appreciate the time. As a freshman, you have taught me what true leadership is.

This is a hard one. My biggest gripe is that it is huge. I wish it could have been smaller. Sometimes we have to vote and not get everything we want. For me, it was too big, and the things that have me concerned could not be broken out. We are where we are. With much regret, at this point I am a "no." I look forward to seeing how this all rolls out.

Assemblywoman Backus:
With this bill, I cannot keep in my head the over-9,000 hours that were spent in the interim to work up the recommendations, and now another 9 weeks with all of the stakeholders meeting nonstop. When the bill was released, a constituent, who is one of our Metro officers, reached out to me and complimented the work we did and said he knew this was a compromise. I am excited to support this bill.

Chairman Yeager:
Thank you for the reminder. On the record, even though they are not in the room, I want to recognize the Crime and Justice Institute that is the technical assistance provider. As Assemblywoman Backus said, we may be over 10,000 or 11,000 hours in support of the state of Nevada, and the good news is that it was cost-free to our state. It was a joint effort by the United States Department of Justice and The Pew Charitable Trusts. For us to be able to get 11,000 hours of technical assistance is just amazing. I am not great at math, but someone can figure out how many 24-hour days that would be—probably longer than our legislative session.

Many of you in this room participated on the Advisory Commission or the meetings in The Wood Shed. You know who you are, and I very much appreciate your sacrifice of working on this. Is there any further discussion? Seeing none, the motion is to amend and do pass.

THE MOTION PASSED. (ASSEMBLYMEN EDWARDS, HANSEN, KRASNER, ROBERTS, AND TOLLES VOTED NO.)

I will take the floor statement on that one if and when we get it to the floor. That concludes our work session document.

Is there any public comment?

Wesley Goetz, Private Citizen, Reno, Nevada:
They were talking about search and seizure, and they said they were only going to do searches in the case where a kid is missing in the neighborhood. They came to my house and did searches many times, and it was not because they were looking for a kid in my house. It was more to look for alcohol, drugs, pornography, or anything else.

The other thing is that the Adam Walsh Act went into effect last year, so a lot of people were tier 3. They were unlikely to reoffend. Now with the Adam Walsh Act becoming active in Nevada, there were 300 tier 3 offenders before the Adam Walsh Act and now there are 3,000 in Nevada.

The Special Assistant Attorney General said the sex offenders are the most heinous, and we really need to watch them. If you actually gave real sex offender treatment in the prison system, with licensed psychologists that actually know how to give sex offender treatment, they would come out with only a 3 to 4 percent chance of reoffending. I was in prison for ten years and got probation. Parole and Probation did not like the fact that I got probation, so they found a way to put me in prison for ten years. While I was in prison for ten years, and with Assembly Bill 236—I really do not know what it is about but I know it talks about parole and probation—I found out that the people who are psychologists in the prison system do not have to be licensed in this state. When they found out that I found out that a psychologist did not even have a license in another state, they put me in solitary confinement for six months when it was only supposed to be two months. I was on the list to go to Ely to death row for just finding out that these people are not licensed. If you really want to help sex offenders get back into society, you should have real treatment.

Ben Graham, Private Citizen, Las Vegas, Nevada:
This is an emotional time. In 1995, Allison Combs and I spent weeks in a very small room coming up with categories A, B, C, D, and E in anticipation that this would start happening in 1997. Thank you. Legislative time works. I appreciate it. God bless you.

Chairman Yeager:
Is there any other public comment? I do not see any. We will close public comment. Is there anything from the Committee? I do not see anything. Concerning the rest of the week, tomorrow's meeting is canceled. We do not have Judiciary tomorrow. We are going to have a meeting on Friday, and we may have one on Thursday, although I am not sure yet. By my count, we do not have any bills left in Committee at this point. We have heard them all. Just so you will know, there are potentially as many as 12 bills that may still come over

from the Senate Committee on Finance or the Office of the Governor. For now, we do not have anything else to hear this week. We have 19 bills that are sitting in Committee that could possibly be work-sessioned by Friday. Stay tuned and I will let you know as soon as I know. We will likely start at 9 a.m. or later, so there will not be any 8 a.m. meetings this week. If anyone has amendments that we are waiting on for work sessions, do not sit on those, since Friday is the deadline. If it does not get out by Friday, your bill will not survive. Not getting your amendment in is one of the ways that can happen.

Have a fantastic day and the meeting is adjourned [at 10:59 a.m.].

RESPECTFULLY SUBMITTED:

_____
Karyn Werner
Committee Secretary

APPROVED BY:

_____
Assemblyman Steve Yeager, Chairman

DATE: _____

EXHIBITS

Exhibit A is the Agenda.

Exhibit B is the Attendance Roster.

Exhibit C is a proposed amendment to Senate Bill 8 (1st Reprint), submitted by the Office of the Attorney General, presented by Kyle E. N. George, Special Assistant Attorney General, Office of the Attorney General.

Exhibit D is a proposed amendment to Senate Bill 8 (1st Reprint), submitted and presented by Wesley Goetz, Private Citizen, Reno, Nevada.

Exhibit E is a court document titled "NRAP 26.1 Disclosure," submitted by Wesley Goetz, Private Citizen, Reno, Nevada.

Exhibit F is a court document titled "Respondents' Answering Brief," submitted by Wesley Goetz, Private Citizen, Reno, Nevada.

Exhibit G is a Work Session Document for Senate Bill 177 (1st Reprint), dated May 14, 2019, presented by Diane C. Thornton, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

Exhibit H is a Work Session Document for Senate Bill 382 (1st Reprint), dated May 14, 2019, presented by Diane C. Thornton, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

Exhibit I is a Work Session Document for Senate Bill 435 (1st Reprint), dated May 14, 2019, presented by Diane C. Thornton, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

Exhibit J is a Work Session Document for Senate Bill 486 (1st Reprint), dated May 14, 2019, presented by Diane C. Thornton, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

Exhibit K is a Work Session Document for Assembly Bill 236, dated May 14, 2019, presented by Diane C. Thornton, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

Exhibit L is a letter dated May 22, 2018, to Jon Adler, Director, Bureau of Justice Assistance, Office of Justice Programs, United States Department of Justice; and Adam Gelb, Director, Public Safety Performance Project, The Pew Charitable Trusts, from Brian Sandoval, Governor; Michael L. Douglas, Chief Justice of the Supreme Court; Aaron Ford, Senate Majority Leader; and Jason Frierson, Speaker of the Assembly.

Exhibit M is a letter dated May 12, 2019, to Chairman Yeager and members of the Assembly Committee on Judiciary, submitted by Ann Silver, Chief Executive Officer, Reno Sparks Chamber of Commerce, in support of Assembly Bill 236.