

**MINUTES OF THE  
SENATE COMMITTEE ON JUDICIARY**

**Eightieth Session  
March 18, 2019**

The Senate Committee on Judiciary was called to order by Chair Nicole J. Cannizzaro at 8:08 a.m. on Monday, March 18, 2019, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Nicole J. Cannizzaro, Chair  
Senator Dallas Harris, Vice Chair  
Senator James Ohrenschall  
Senator Marilyn Dondero Loop  
Senator Melanie Scheible  
Senator Scott Hammond  
Senator Ira Hansen  
Senator Keith F. Pickard

**STAFF MEMBERS PRESENT:**

Patrick Guinan, Policy Analyst  
Jeanne Mortimer, Committee Secretary

**OTHERS PRESENT:**

Aaron Ford, Attorney General  
Alissa Engler, Office of the Attorney General  
Kyle George, Office of the Attorney General  
John T. Jones, Jr., Nevada District Attorneys Association  
Kimberly Mull  
Chuck Callaway, Las Vegas Metropolitan Police Department  
Eric Spratley, Nevada Sheriffs' and Chiefs' Association  
Corey Solferino, Washoe County Sheriff's Office  
William Ledford, Lutheran Engagement Advocacy in Nevada  
Kay Landwehr, House of the Rising Sun

Senate Committee on Judiciary  
March 18, 2019  
Page 2

Amy Coffee, Nevada Attorneys for Criminal Justice  
Holly Welborn, American Civil Liberties Union of Nevada  
Nadia Hojjat, Office of the Public Defender, Clark County  
Kendra Bertschy, Office of the Public Defender, Washoe County  
Jessica Adair, Office of the Attorney General  
Jim Sweetin, Office of the District Attorney, Clark County  
John J. Piro, Office of the Public Defender, Clark County  
Natalie Wood, Chief, Division of Parole and Probation, Department of Public Safety  
Lisa Pierrott, Division of Parole and Probation, Department of Public Safety  
Christopher P. DeRicco, State Board of Parole Commissioners  
Christine Jones Brady, Office of the Attorney General  
Tony Yarbrough, Veterans of Foreign Wars

CHAIR CANNIZZARO:

We will begin with a presentation of Senate Bill (S.B.) 7 by the Attorney General. The hearing on S.B. 7 is now open.

**SENATE BILL 7**: Revises provisions relating to the prohibition against soliciting a child for prostitution. (BDR 15-406)

AARON FORD (Attorney General):  
My office will present S.B. 7.

ALISSA ENGLER (Office of the Attorney General):  
I have provided written testimony to the Committee ([Exhibit C](#)). We are in support of S.B. 7.

KYLE GEORGE (Office of Attorney General):  
I have provided written testimony ([Exhibit D](#)) detailing S.B. 7.

ATTORNEY GENERAL FORD:  
My office has worked with many interest groups to address concerns. We have tailored this bill to accomplish the ultimate goal of punishing this crime.

SENATOR SCHEIBLE:  
I would like clarification on proposed amendment ([Exhibit E](#)) section 3, subsection 1. I am a prosecutor. I had a case where a child was a victim of sex trafficking based upon the threat of force or physical violence against the

mother of the child—the threat of force was not against the child. The human trafficker threatened the mother of the child with violence if the child did not perform sex acts for money. Is this type of scenario covered in this statute?

ATTORNEY GENERAL FORD:

No. As written in [Exhibit E](#), section 3, subsection 1, the section would not cover physical violence against another person, for instance, the parent; however, this scenario would be covered elsewhere in the statute.

MR. GEORGE:

In [Exhibit E](#), section 3, subsection 1, the amendment does not encompass threats against the family. Other sections of this statute would encompass that scenario. I can provide further information to the Committee on this scenario.

SENATOR SCHEIBLE:

Yes, I would like additional information as we work on the bill.

SENATOR PICKARD:

This is an area of law that is underscrutinized. With regard to [Exhibit E](#), section 1, subsection 2, paragraph (b), the age of the victim is referenced. An adult is referenced in section 1, subsection 2, paragraph (b), subparagraph (1). A child is referenced in section 1, subsection 2, paragraph (b), subparagraph (2). Are individuals between the ages of 14 and 18 considered adults under the statute?

MR. GEORGE:

In [Exhibit E](#), the age of the child is referenced in section 1, subsection 2, paragraph (b), subparagraph (2), sub-subparagraph (III). There are escalating penalties when the child is younger.

SENATOR PICKARD:

Are individuals between the ages of 16 and 18 considered children?

ATTORNEY GENERAL FORD:

Yes, anyone under the age of 18 is considered a child.

SENATOR PICKARD:

Section 2, subsection 1, paragraph (d), subparagraph (1), sub-subparagraphs (I) and (II) of [Exhibit E](#) reference defenses available to a defendant. Section 2,

subsection 1, paragraph (d), subparagraph (1), sub-subparagraph (I) of [Exhibit E](#) requires that the State proves that the defendant had knowledge of the victim's age. In section 2, subsection 2, it reads that mistake of age is not a valid defense. Can we clarify that the intent is clear? A licensed brothel requires actual knowledge of the person by the defendant. Mistake of age becomes a valid defense. In other jurisdictions, mistake of age would not be a valid defense, correct?

MR. GEORGE:  
Yes, that is correct.

SENATOR PICKARD:  
Senate Bill 7 constitutes a significant change to existing statute. Nevada has never allowed mistake of age as a valid defense—this bill allows for that.

MR. GEORGE:  
Nevada has a legal mechanism for sex workers. Senate Bill 7 was crafted within those parameters. The rationale behind the knowledge of age within a legal brothel is that the law needs to give customers the benefit of the doubt. The customer has gone through the efforts of what the customer believed to be a lawful activity. Those customers expect that in Nevada, the brothels have vetted the sex workers.

JOHN T. JONES (Nevada District Attorneys Association):  
We support S.B. 7 and the proposed amendments in [Exhibit E](#).

KIMBERLY MULL:  
I have submitted written testimony ([Exhibit F](#)). I support S.B. 7. Statistics read that one out of eight men nationally have paid for sex. Buyers feed the demand for traffickers to bring in new and younger victims. Traffickers can manipulate and groom young victims who are in foster care, juvenile detention centers, impoverished neighborhoods and children who work at after-school jobs. Trafficking victims are "dolled up" at ages as young as 11 to be made to look older.

There was an open letter that was published in *The Boston Globe*, as referenced in [Exhibit F](#). Trauma is trauma. There is not always a trafficker, but there is always a buyer. Human trafficking victims do not want to be trapped; S.B. 7 puts equal accountability on the human trafficker.

Senate Committee on Judiciary  
March 18, 2019  
Page 5

CHUCK CALLAWAY (Las Vegas Metropolitan Police Department):  
We support S.B. 7.

ERIC SPRATLEY (Nevada Sheriffs' and Chiefs' Association):  
We support S.B. 7 and the amendment offered in [Exhibit E](#).

SENATOR HANSEN:

We have been working on similar bills like this for five sessions. What have the bills accomplished? What are the statistics on the number of prosecutions? Has there been a reduction in child sex trafficking?

MR. CALLAWAY:

There has been an impact. In 2018, there were 107 juvenile sex trafficking cases. We have a system at Las Vegas Metropolitan Police Department for when we have a vice-related arrest to determine if the person is a victim of trafficking. We use referral services to those individuals, and it has been a successful approach. Implementation of these laws is difficult. Completing stings on potential human traffickers requires many hours and training of officers. It is difficult to complete a reverse sting, as opposed to where we have knowledge of human trafficking occurring. We are looking at new technology that can imitate a juvenile sex trafficking victim, and the system captures the information of the individual. This information allows prosecution.

SENATOR HANSEN:

I agree that focusing on the perpetrators of human trafficking is key.

COREY SOLFERINO (Washoe County Sheriff's Office):

We support S.B. 7. Washoe County wants to create a task force to combat sex trafficking.

WILLIAM LEDFORD (Lutheran Engagement Advocacy in Nevada):

We support S.B. 7. We have been involved in advocating for laws involving sex trafficking.

KAY LANDWEHR (House of the Rising Sun):

We support S.B. 7. The House of the Rising Sun is a brothel ministry. Human trafficking is an epidemic across the world. This bill addresses this epidemic.

AMY COFFEE (Nevada Attorneys for Criminal Justice):

There have been many bills on human trafficking. I have experience defending clients, and there are laws on the books. There are many prosecutions of human trafficking, and minors are often victims. The issue is going after the buyers of human trafficking. From a policy perspective, we have to understand that someone who solicits an individual is different than the human trafficker.

Mistake of age is not a defense. A tourist who comes to Las Vegas and solicits someone who is over age 18 would be guilty of facilitating sex trafficking with a penalty of 3 to 10 years of imprisonment. This crime is a Category E felony, a serious felony crime. From a policy standpoint, criminal laws and sentences should be proportional to the crime. Someone who attempts to solicit a person who he or she believes to be age 18 is different than someone who is a human trafficker.

In [Exhibit E](#), section 2, subsection 2 reads that the crime will increase to a Category B felony. In section 4, subsection 3, subparagraph a, the crime is still listed as a misdemeanor. This is unclear—will all solicitation now be a felony? The bill is not drafted with clarity. Existing law provides for human trafficking to be a felony. This is a law enforcement issue. Increasing the crime to a Category B felony will not have a deterrent effect. Passing [S.B. 7](#) will not stop someone who wants to go out in the streets and solicit—there is no correlation. Existing law that provides for a felony is already stringent. [Senate Bill 7](#) is a law enforcement issue.

HOLLY WELBORN (American Civil Liberties Union of Nevada):

We oppose [S.B. 7](#). We support progress, such as when S.B. No. 214 of the 79th Session was signed into law. We are against child sex trafficking, and the penalties have to be as harsh as possible. This crime is already a Category E felony. There could be other settings that occur under an escort service where a person is intentionally misled. A graduated penalty might be the way to go—divert that person to a program, increasing harsher penalties for subsequent offenses. We want to work on amendments with the Attorney General.

NADIA HOJJAT (Office of the Public Defender, Clark County):

When sex trafficking was first introduced before the Legislature, there were assurances that prosecutors would not target persons who come to Nevada seeking to engage in activities at legal brothels. Nevada is known for legal prostitution and having legal brothels. Unfortunately, people are under the

impression that prostitution is legal in Las Vegas; however, it is not. We have tourists coming to the State who believe they are engaging in an activity with an adult. The tourist does not intend to commit a crime—Las Vegas has a reputation as "Sin City." In these instances, it is unlikely that these tourists are trying to solicit prostitution from a child. It is easy to make a mistake of fact for a person who goes to a legal brothel to engage in a sex act with an adult. I would urge the Committee to make mistake of age a valid defense for an individual who engages in a sex act at a legal brothel when, in fact, the sex worker was a minor.

We want to ensure that intent is present, rather than punish individuals who do not believe they are committing a crime. If someone is meeting someone at a nightclub where the minimum age is 21 and consensual activity occurs, this example should not be considered prostitution with children. People who are looking to engage in prostitution with children have the intent. We want to ensure that the law protects children victims and punishes the person who seeks to engage in a sex act with a child.

KENDRA BERTSCHY (Office of the Public Defender, Washoe County):

We do not support S.B. 7. Some form of *mens rea* needs to be present, especially when dealing with severe penalties. This bill is authorizing the potential for a maximum life imprisonment sentence. There are ambiguities in this bill. In [Exhibit E](#), section 2 might allow prosecution of legal sex workers.

ATTORNEY GENERAL FORD:

Testifiers have expressed concerns about mistake of age. We have legal brothels in Nevada; however, brothels are not legal in Las Vegas. The State may need to engage in an information campaign for tourists when they come to Nevada. Senate Bill 7 addresses a specific issue that deals with child sex trafficking and child prostitution. Senate Bill 7 appropriately addresses the issue at hand. The current law provides for child sex trafficking to be classified as a Category E felony—in which the sentence is mandatory probation. Compare a Category E crime to breaking into a vending machine, which is a Category B felony. Breaking into a vending machine has a harsher sentence than child sex trafficking.

MR. GEORGE:

The *mens rea* already exists for this crime. Prostitution in Las Vegas is illegal. People who solicit sex in Las Vegas already have the intent to commit a crime.

Senate Committee on Judiciary  
March 18, 2019  
Page 8

The law recognizes transferred intent—where an individual intends to commit one crime but ends up committing a different crime. The State will hold the defendant liable for those actions. There are comments that the penalties need to be proportional to the crime, and S.B. 7 accomplishes that. Ignorance of law has never been a valid defense in criminal law. The carefree attitude that tourists may have about Las Vegas is the attitude that allows child sex trafficking to exist. Senate Bill 7 is an important tool for law enforcement and for the child victims.

CHAIR CANNIZZARO:

The hearing on S.B. 7 is closed. The hearing on S.B. 8 is now open.

**SENATE BILL 8:** Revises provisions governing the conditions for lifetime supervision of sex offenders. (BDR 16-408)

ATTORNEY GENERAL FORD:

My office is here to present S.B. 8.

MR. GEORGE:

I have provided written testimony ([Exhibit G](#)). The Office of the Attorney General has provided a statement of intent and proposed amendment to S.B. 8 ([Exhibit H](#)).

SENATOR PICKARD:

With regard to [Exhibit H](#), section 1, subsection 11, paragraph (f), please clarify why polygraph examinations are removed from statute.

JESSICA ADAIR (Office of the Attorney General):

In [Exhibit H](#), section 1, subsection 11, paragraph (a), a person under a lifetime supervision would have to submit to a search and seizure of his or her person, residence, vehicle or any property at any time without a warrant by an officer from the Division of Parole and Probation (P&P). This part of the statute meets the needs that a polygraph examination would have provided.

For example, if a child goes missing, law enforcement interviews convicted sex offenders in that area who are under lifetime supervision for a child sex offense. In [Exhibit H](#), section 1, subsection 11, paragraph (a), we believe this section is a better tool for law enforcement. Polygraphs have been called into question regarding their validity.



SENATOR PICKARD:

Polygraphs have been challenged since their inception. For purposes of P&P, I find it unusual for us to remove this from our toolbox. What is the rationale for removing that tool?

MS. ADAIR:

This framework is based upon a collaborative effort. We would defer to the Legislature to reflect the intent of the Committee on S.B. 8.

SENATOR OHRENSCHALL:

With regard to the *McNeill v. State*, 375 P.3d 1022 (2016), is there data showing that since this ruling there have been violations of lifetime supervision? Have there been more new offenses? This question may be better suited for P&P.

MR. JONES:

We support S.B. 8.

JIM SWEETIN (Office of the District Attorney, Clark County):

Only the most serious sexual offenses require lifetime supervision. Certain sex offenders are so inherently dangerous that the punishment or lifetime supervision is not deemed sufficient to guarantee rehabilitation or protect the community. Lifetime supervision begins after probation, parole or incarceration has been completed. Prior to *McNeill*, P&P imposed sentences on offenders that the department felt was necessary for those who posed heightened risk to the community.

At the conclusion of incarceration, parole or probation, the totality of circumstances are taken into account. Identifying triggers for the offender are helpful for P&P to determine the conditions of lifetime supervision. These are commonsense necessities for high-risk individuals. Prior to 2016, P&P put reasonable conditions on offenders, such as lifetime supervision. The ruling in *McNeill* held that unless the condition was specifically detailed in statute, the condition could not be imposed. The statute is not clear—an offender could possibly live next door to his or her victim. The decision has had limited control over different aspects of conditions of lifetime supervision. This bill will protect our citizens.

For example, a perpetrator convicted of sexually abusing children is now able to go to a local elementary school and regularly hug and talk to children. This is known to P&P, and there is nothing the department can do about it—P&P cannot make conditions that would restrict access to children under the current statute. Another example was where a perpetrator who had a drinking problem and acted out violently when intoxicated went to prison for sexual battery. This offender was then prosecuted for stalking and battering a second girlfriend. Alcohol use cannot be restricted by P&P of this offender because of the law.

The polygraph examination is a significant tool when substantial activity is suspected but not verified—P&P has minimal resources. Polygraph examinations give P&P more information to believe that there is something afoot. It is not unusual for an offender to confess during a polygraph. There has been no lifetime supervision since 2016. As a prosecutor, I went from prosecuting a high volume of violations of lifetime supervision to prosecuting none after 2016. The amendments in [Exhibit H](#) will provide for a safer community for our children.

SENATOR OHRENSCHALL:

Since *McNeill*, it was stated that someone on lifetime supervision could potentially live next door to a victim, is that correct? Does the previous statute that predates the ruling in *McNeill* prohibit that type of contact?

MR. SWEETIN:

I do not know of a case where a victim lived next door to his or her perpetrator. However, under the law, it is a possibility. There is a prohibition with regard to contact between the perpetrator and the victim; there is nothing in the law that prohibits a Tier 1 or Tier 2 sex offender from living anywhere, as long as the residence was reported to P&P.

MR. CALLAWAY:

We support S.B. 8.

MR. LEDFORD:

We support S.B. 8. There was an instance where a registered sex offender wanted repentance and sought to attend church services. The church decided that the registered sex offender could attend church services; however, the individual was restricted and was prevented from being alone or interacting with persons who are easily exploited, such as children.

MR. SOLFERINO:

We support S.B. 8. Washoe County has 1,400 registered sex offenders with 3 detectives assigned to that division. In 2018, we had 52 arrests for failure to register as a sex offender and for new offenses based on those crimes.

MR. SPRATLEY:

We support S.B. 8.

MS. COFFEE:

We do not support S.B. 8 and have provided a proposed amendment ([Exhibit I](#)). The previous statute did not include specific activity that was prohibited. Certain sex offenders obviously need to live under strict conditions. The Ninth Circuit Court of Appeals has ruled that it is improper to ask the offender about anything besides the crime that the person was convicted of. There are constitutional issues regarding this; however, polygraphs are used for compliance, such as asking the offender if he or she is compliant with the terms of supervision. It is not as useful as some people might believe it is.

With regard to section 1, subsection 11, paragraph (k) in [Exhibit H](#), the language reads that the offender shall not possess any sexually explicit material. This is ambiguous language. What would be considered improper? There is material that is incorporated into cable television. It might be difficult for a person on lifetime supervision to know what is acceptable to possess. The intent may have been aimed at pornography, but the statute is unclear.

With regard to section 1, subsection 11, paragraph (l) in [Exhibit H](#), the language is not clear. I believe the intent may have been to address strip clubs. The statute does not bring clarity. Would this include a racy show? The wording needs to be amended to outline specific instances.

With regard to section 1, subsection 11, paragraph (o) in [Exhibit H](#), the language reads that the offender must abide by any in-person reporting requirements imposed on the sex offender by the P&P officer. This is unclear—what is an in-person reporting requirement? This language and intent are unclear. Strict conditions are required for lifetime supervision, and we want to ensure that people know what is acceptable under their terms of supervision.

Ms. HOJJAT:

I am the attorney who litigated *McNeill*. We do not support S.B. 8. This bill has issues that will result in more litigation for Nevada. Lifetime supervision begins after parole, probation or incarceration ends. These offenders have paid their debt to society. A top priority is to prevent the offender from reoffending. We do not want individuals out in society reoffending. When an individual's parole expires, that individual's constitutional rights are reinstated—that individual is considered to be like any other ordinary citizen under the Constitution.

The U.S. Supreme Court ruled in *Packingham v. North Carolina*, 137 S.Ct. 1730 (2017) that any attempt to supervise individuals after parole has ended must be narrowly tailored. The government cannot violate constitutional rights because they are afraid. The Constitution protects this right. In *Packingham*, the Supreme Court held that it was too restrictive and not narrowly tailored enough to say that an individual on lifetime supervision could not access social media. This is far less restrictive than the provisions in S.B. 8.

The First Amendment right trumps a broadly tailored law that says an individual cannot access social media. This is a violation of the Fourth Amendment. This bill will not stand in a court of law. There is a lot of litigation on *McNeill*, and P&P is getting sued. Senate Bill 8 talks about individuals not being able to associate with other people—the First Amendment protects our rights to freely associate. Being able to install electronic devices to monitor what sex offenders can do—this is a clear violation of the Fourth Amendment. Senate Bill 8 is ripe for constitutional challenge.

*McNeill* started criminal and civil litigation. We urge the Committee to look at each subsection and see if the sections comply with constitutional provisions. Requiring P&P to know where someone lives is not a violation; however, we cannot run afoul of the Constitution. Prior to *McNeill*, lifetime supervision was presented that it was narrowly tailored and that P&P was exercising discretion on what provisions were being put on sex offenders, however, every provision was placed on every sex offender.

The defendant in *McNeill* was a homeless man who was put on curfew—how can a homeless man be placed on curfew? The P&P officer put him on a nightly curfew and listed a street corner as his address. When the P&P officer did not see the offender on the street corner during curfew, his lifetime supervision was revoked. That is not narrowly tailored. There was a broad list of conditions that

P&P used when placing sex offenders on lifetime supervision. That is how his lifetime supervision was narrowly tailored. That is what is going to happen again. A Ninth Circuit Court of Appeals decision held that P&P can only polygraph individuals on terms of parole and compliance.

In the current statute, section 1, subsection 4 provides for restrictions for Tier 3 sex offenders. The law would not allow for a sex offender to live next door to his or her victim—the P&P would have to approve the residence of the sex offender. Senate Bill 8 is too broad. The law already imposes many restrictions on sex offenders.

SENATOR HANSEN:

If a sex offender is placed on lifetime supervision, P&P should have the maximum amount of oversight of these individuals. The reason these sex offenders are allowed out of prison is that the individual accepts exceptionally strict conditions to protect victims. This is recidivism that could impact children. If P&P is not allowed to impose strict guidelines, the sex offenders should instead remain in the prison system. These are sex offenders who have been convicted and are being allowed out on strict conditions. Is lifetime supervision a condition that can be revoked by the Legislature?

MS. HOJJAT:

I am concerned about recidivism. There are studies that these types of crimes have the lowest recidivism rates nationally. The Legislature ultimately has the ability to disallow lifetime supervision as a condition of parole.

SENATOR HANSEN:

If there is a lower recidivism rate, it may be due to the strict guidelines placed on the offender by P&P. Strict guidelines may result in lower recidivism. If we lower the guidelines, it may result in higher recidivism. Has your office worked with the bill sponsor to tailor the bill so that it meets all constitutional requirements?

JOHN J. PIRO (Office of the Public Defender, Clark County):

Yes, our office has met with the bill sponsor.

SENATOR HANSEN:

My concern is that if we have less oversight of sex offenders, there might be a higher recidivism rate. Many people in our community might prefer to see these

types of offenders locked up for extended periods of time. Do other states have less restrictions imposed by P&P on sex offenders?

Ms. HOJJAT:

Lifetime supervision is an issue that is constantly being challenged. There is a struggle between community safety and constitutional requirements.

SENATOR PICKARD:

Can you clarify the prohibitions of certain types of offenders and the ability of P&P to go into the home? Are you suggesting that monitoring software is impermissible?

Ms. HOJJAT:

In *Packingham*, the ruling was whether P&P could limit access to social media. With regard to [Exhibit H](#), section 1, subsection 11, paragraph (m), software monitoring is listed. This potentially violates the Fourth Amendment. Software installed that prevents an offender from accessing certain websites would most likely be upheld in a court. The ability of P&P to monitor the activities of the offender inside the home may not be upheld in a court.

SENATOR PICKARD:

The U.S. Supreme Court has already held that lifetime supervision is allowable and that one of the conditions for entry and search and seizure without a warrant has already been upheld. Where is the boundary here? Are you suggesting that language allowing for access to the home without a warrant is not an issue but instead the breadth of the language? Do you believe the amended language would pass muster?

Ms. HOJJAT:

I am not aware of a case where the U.S. Supreme Court has held that entry into the home for searching pursuant to lifetime supervision without a warrant is acceptable. I do not believe many of the amendments in [Exhibit H](#) will pass constitutional muster. The U.S. Supreme Court has already held that lifetime supervision is permissible but that it must be narrowly tailored. If fundamental rights are being implicated, the conditions must comply with the Constitution. To impose lifetime supervision conditions, the P&P must demonstrate there is a reason for each condition of the lifetime supervision.

SENATOR PICKARD:

I would like more information on this. I find it surprising that an obvious abrogation of a fundamental right of prohibition on searches and seizures without a warrant would not have been challenged sooner. My understanding is P&P conditions are universal.

MS. WELBORN:

We oppose S.B. 8. In section 1, subsection 11, paragraph (o) of [Exhibit H](#), the language is a catchall provision that is specifically precluded by the *McNeill* decision. We recommend that the attempts in the amendment to justify the additional conditions should mirror the federal system where a person is given the opportunity to challenge a condition of lifetime supervision.

MR. PIRO:

We oppose S.B. 8.

NATALIE WOOD (Chief, Division of Parole and Probation, Department of Public Safety):

We are neutral on S.B. 8.

SENATOR OHRENSCHALL:

The Nevada Supreme Court issued the *McNeill* decision in July 2016. It has been nearly three years P&P has operated under the caselaw. Does P&P have any data on whether violations of lifetime supervision have increased? Has there been a new increase in sexually related offenses by those who are on lifetime supervision?

MS. WOOD:

We do not keep that type of statistical information. Logically, it would tell you that if there are no conditions to enforce, then there would be violations.

SENATOR OHRENSCHALL:

The *Nevada Revised Statutes* (NRS) 213.1243 reads that an offender shall not have contact with a victim or a witness from his or her case. Has there been any issues since *McNeill* when someone has tried to violate this section?

MS. WOOD:

What *McNeill* did was remove many conditions that the P&P imposed on lifetime sex offenders. The only conditions P&P is allowed to enforce are residency,

electronic monitoring, no contact and fees—P&P cannot impose alcohol restrictions on the offender. There are specific provisions that can be enforced. It is not mandated that an offender reports to P&P. From a public safety standpoint, it is unlikely that P&P would allow a sex offender to live next door to his or her victim or witness. There are limited restrictions that P&P can actually enforce.

SENATOR HANSEN:

How many sex offenders are on lifetime supervision?

Ms. WOOD:

There are approximately 1,300 sex offenders on lifetime supervision.

SENATOR HANSEN:

That is disappointing. Are there any resources that are still constitutional? There are 1,300 high-risk individuals who have a potential to harm victims. We want to make sure that when sex offenders are placed on lifetime supervision, recidivism is low. We do not want any additional victims. Is there additional language that is needed in the statute?

Ms. WOOD:

We are in a neutral position. Specific provisions will be enforced by P&P. The Legislature can adopt laws that impact lifetime supervision.

SENATOR HANSEN:

I want to ensure that the P&P has the maximum amount of tools available to deal with this issue. The bill has to meet constitutional muster, and if the language of the statute is challenged, the Attorney General will have to defend it in court. We do not want a scenario where a sex offender is under lifetime supervision and the P&P cannot impose conditions on that sex offender.

SENATOR OHRENSCHALL:

With regard to NRS 213.1243, subsection 3, the statute references conditions of lifetime supervision to disallow a sex offender from living next door to his or her victim. Would the P&P approve a sex offender to live next door to his or her victim?



LISA PIERROTT (Division of Parole and Probation, Department of Public Safety):  
There would be conditions set forth by the Board of Parole Commissioners and the P&P would supervise the offender. The residence would be approved by the P&P, and a residence would be investigated. An inappropriate residence would be denied.

SENATOR OHRENSCHALL:

Residency restrictions are still imposed on sex offenders on lifetime supervision, correct?

Ms. PIERROTT:

Yes, that is correct.

CHRISTOPHER P. DERICCO (State Board of Parole Commissioners):

We are neutral on S.B. 8.

ATTORNEY GENERAL FORD:

As a former State Senator, I try to be conscious about protecting constitutional rights. We want to ensure constitutional rights are protected, including those who are in our prison systems. My office has worked to narrowly tailor S.B. 8 to protect the public and the constitutional rights of persons who have exited our prison system.

I would like to work with the proponents of the bill so that we can get the goal of this bill addressed. The goals are admirable and appropriate—we need to work together to find balance. I believe it would be too subjective to allow P&P to make a determination on certain instances—my office has worked to remove some of the subjectivity associated with a case-by-case basis. If there are any concerns about the language of the bill and the constitutionality of conditions proposed, we are open to accommodate concerns to ensure we can reduce the possibility this issue will be litigated in court again.

MR. GEORGE:

We will work toward reaching a better solution and take into consideration all amendment proposals. We agree that certain offenders must be under lifetime supervision. We have discussed alternatives, and S.B. 8 is in line with the Legislature's goal of meaningful criminal justice reform. If we do not offer a workable means for serious offenders to have reentry in society, the only other alternative would be to keep an offender in prison. There has been some

testimony that has been disingenuous. These people have paid their debts to society—lifetime supervision is a form of parole under NRS 213.1243, subsection 2. These offenders have not exhausted their debt to society. Lifetime supervision is a part of the payment to society. In exchange for freedom and reintegration to society, certain sex offenders must live under these conditions. These issues are sensitive, and it is a balancing act of civil liberties, criminal justice and victims. This bill attempts to navigate the concerns and considerations that led to the bill being introduced.

SENATOR PICKARD:

With respect to the polygraph, can we put that language back in the bill?

ATTORNEY GENERAL FORD:

As a general matter, polygraphs are not admissible in court because the examinations are unreliable. Utilizing polygraphs in a situation where liability is faulty would present legal issues. There are Fifth Amendment issues that arise.

CHAIR CANNIZZARO:

The hearing on S.B. 8 is closed. The hearing on S.B. 9 is open.

**SENATE BILL 9**: Revises provisions governing the time for commencing a criminal prosecution for crimes associated with murder, sexual assault and sex trafficking. (BDR 14-422)

ATTORNEY GENERAL FORD:

My office will present S.B. 9.

MR. GEORGE:

We have provided written testimony in support of S.B. 9 ([Exhibit J](#)).

SENATOR SCHEIBLE:

If a victim of a sexual assault is outside of the context of a murder in which the sexual assault took place, is there an opportunity to criminally prosecute after the death of the victim?

MR. GEORGE:

We address this issue in the proposed amendment ([Exhibit K](#)) in section 1. This topic is addressed in NRS 171.080, subsection 1, as well. This new language is

only limited to the same circumstance as the murder; if the victim subsequently dies, it is not covered under the proposed amendment.

SENATOR SCHEIBLE:

If we have someone who has been systematically victimized and sexually assaulted by a perpetrator over the course of many years and that perpetrator ultimately murders the victim, would we be able to file charges against the perpetrator for every instance of sexual assault?

ATTORNEY GENERAL FORD:

My office will analyze and provide an answer offline.

SENATOR SCHEIBLE:

Yes, please provide additional information.

MR. CALLAWAY:

We support S.B. 9.

MR. JONES:

We support S.B. 9.

MR. SPRATLEY:

We support S.B. 9.

MR. SOLFERINO:

We support S.B. 9.

MR. LEDFORD:

We support S.B. 9.

MS. COFFEE:

We are neutral to S.B. 9.

ATTORNEY GENERAL FORD:

We can provide a quick answer to the question raised by Senator Scheible. Yes, the perpetrator could be prosecuted if the crime fell within the statute of limitations. The statute of limitations is 20 years or 38 years for sexual assault if the victim was under the age of 18 when the assault occurred.

Senate Committee on Judiciary  
March 18, 2019  
Page 20

CHAIR CANNIZZARO:

The hearing on S.B. 9 is closed. The hearing on S.B. 2 is now open.

**SENATE BILL 2**: Revises provisions relating to the Advisory Commission on the Administration of Justice. (BDR 14-407)

ATTORNEY GENERAL FORD:

My office will present S.B. 2.

CHRISTINE JONES BRADY (Office of the Attorney General):

We have provided written testimony ([Exhibit L](#)) and statement of intent with proposed amendments ([Exhibit M](#)). We support S.B. 2. The Washoe County Family Drug program was a model court program. This program assisted families in becoming clean and sober from a variety of substance abuse disorders. This program included a team of people who worked on the program to see a higher rate of people becoming clean and sober.

SENATOR PICKARD:

With regard to section 4 of [Exhibit M](#), is it standard to have the Attorney General chair a subcommittee for victims of crime? We generally prefer to have neutral, nonpartisan individuals chairing the committees. Does the Attorney General chair any other subcommittees? Perhaps it may be in our best interest if we have a nonpartisan person chair the committee.

MS. JONES BRADY:

We have many resources in place to address victims' rights. We have other options and we will take into consideration all suggestions. It would be appropriate to have the Attorney General as the chair of the subcommittee because of the different laws in place. We are trying to bring victims to have a voice at the table.

ATTORNEY GENERAL FORD:

The subcommittee referenced in section 4 of [Exhibit M](#) is for victims of crime under the Office of the Attorney General. It makes sense that my office would be engaged in that. Statutorily, the Attorney General chairs many different committees. If the Committee wants a different chairperson, that is fine too.

SENATOR PICKARD:

Is this the first committee where the Attorney General is chairing on specialty courts?

ATTORNEY GENERAL FORD:

When there have been subcommittees created, nonpartisan individuals may not always chair the meetings. This situation would not be an anomaly in that regard.

CHAIR CANNIZZARO:

The Attorney General chairs the Committee on Domestic Violence Batterers' Treatment Subcommittee and the Victims of Crime Subcommittee. It is not uncommon for Legislators to chair committee meetings as well.

SENATOR OHRENSCHALL:

Assemblywoman Genie Ohrenschall sponsored A.B. No. 219 of the 73rd Session which created the Nevada Council for the Prevention of Domestic Violence, chaired by the Attorney General. In November 2018, I was appointed to the Advisory Commission on the Administration of Justice. In your experience, do you feel that therapeutic courts are successful?

MS. JONES BRADY:

Yes. Addiction-related crimes are difficult to address. Oftentimes, specialty courts can provide resources to clients who can adequately address their addiction. I have had many former clients contact me about their sobriety and how the specialty courts have helped them. Mental health court in Washoe County was successful—however, there is a long waiting list. About 95 percent of former clients were rejected by the mental health court because of the long waiting list.

SENATOR OHRENSCHALL:

I am glad to hear about the success of the specialty courts.

ATTORNEY GENERAL FORD:

Washoe County has a system of diversion courts, such as a re-entry court. It is limited to approximately 20 people, and the success rate is 90 percent. A person who does not participate in the re-entry court has a recidivism rate of 80 percent.

Senate Committee on Judiciary  
March 18, 2019  
Page 22

MR. CALLAWAY:

We support S.B. 2. As a member of the Advisory Commission on the Administration of Justice, I support S.B. 2.

MR. JONES:

We support S.B. 2.

MR. SPRATLEY:

We support S.B. 2.

MR. SOLFERINO:

We support S.B. 2.

TONY YARBROUGH (Veterans of Foreign Wars):

We support S.B. 2. We represent nearly half a million military veterans and their families. We believe that one of the most important healing events that takes place after war is being able to try to correct the wrongs. We want to make a person whole again through veterans treatment courts.

MS. COFFEE:

We are neutral to S.B. 2 and have provided written testimony ([Exhibit N](#)).

Remainder of page intentionally left blank; signature page to follow.

Senate Committee on Judiciary  
March 18, 2019  
Page 23

CHAIR CANNIZZARO:

The hearing on S.B. 2 is closed. The meeting is adjourned at 10:35 a.m.

RESPECTFULLY SUBMITTED:

---

Jeanne Mortimer,  
Committee Secretary

APPROVED BY:

---

Senator Nicole J. Cannizzaro, Chair

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

| <b>EXHIBIT SUMMARY</b> |                                 |    |                                                        |                                             |
|------------------------|---------------------------------|----|--------------------------------------------------------|---------------------------------------------|
| <b>Bill</b>            | <b>Exhibit /<br/># of pages</b> |    | <b>Witness / Entity</b>                                | <b>Description</b>                          |
|                        | A                               | 1  |                                                        | Agenda                                      |
|                        | B                               | 6  |                                                        | Attendance Roster                           |
| S.B. 7                 | C                               | 3  | Alissa Engler / Office of the Attorney General         | Written Testimony                           |
| S.B. 7                 | D                               | 4  | Kyle George / Office of the Attorney General           | Written Testimony                           |
| S.B. 7                 | E                               | 10 | Office of the Attorney General                         | Statement of Intent and Proposed Amendments |
| S.B. 7                 | F                               | 2  | Kimberly Mull                                          | Written Testimony                           |
| S.B. 8                 | G                               | 3  | Kyle George / Office of the Attorney General           | Written Testimony                           |
| S.B. 8                 | H                               | 6  | Office of the Attorney General                         | Statement of Intent and Proposed Amendments |
| S.B. 8                 | I                               | 3  | Nevada Attorneys for Criminal Justice                  | Proposed Amendment                          |
| S.B. 9                 | J                               | 2  | Kyle George / Office of the Attorney General           | Written Testimony                           |
| S.B. 9                 | K                               | 5  | Office of the Attorney General                         | Statement of Intent and Proposed Amendments |
| S.B. 2                 | L                               | 3  | Christine Jones Brady / Office of the Attorney General | Written Testimony                           |
| S.B. 2                 | M                               | 7  | Office of the Attorney General                         | Statement of Intent and Proposed Amendments |
| S.B. 2                 | N                               | 2  | Nevada Attorneys for Criminal Justice                  | Letter of Opposition                        |