SUMMARY—Revises provisions governing the conditions for lifetime supervision of sex offenders. (BDR 16-159)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.

Effect on the State: No.

Effect on the State Highway Fund: No.

AN ACT relating to sex offenders; revising provisions governing the conditions of lifetime supervision applicable to sex offenders whose supervision is transferred to another state pursuant to the Interstate Compact for Adult Offender Supervision; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law ratifies the Interstate Compact for Adult Offender Supervision, which: (1) provides the framework for the control and regulation of interstate movement of certain criminal offenders; (2) creates an Interstate Commission for Adult Offender Supervision to adopt rules governing the Interstate Compact; and (3) provides that those rules have the force and effect of statutory law in compacting states. (NRS 213.215) Existing law also requires the State Board of Parole Commissioners to impose certain conditions on sex offenders placed under a program of lifetime supervision. (NRS 213.1243) In *McNeill v. State*, 132 Nev. 551 (2016), the Nevada Supreme Court

held that the Board does not have the authority to impose conditions of lifetime supervision that are not among the conditions prescribed by the applicable statute. (NRS 213.1243)

Section 1 of this bill requires the Board to impose, as a condition of lifetime supervision, requirements that apply if a sex offender is transferred to another state pursuant to the Interstate Compact. Under those requirements, the sex offender must: (1) refrain from behavior that requires retaking as defined by the rules adopted by the Interstate Commission; and (2) comply with any additional conditions required by those rules. **Section 1** also makes it a gross misdemeanor for a sex offender whose supervision has been transferred pursuant to the Interstate Compact to engage in behavior requiring retaking, as defined by the rules adopted by the Interstate Commission. **Section 2** of this bill applies the condition of lifetime supervision required by **section 1** to sex offenders who are placed under a program of lifetime supervision before, on or after October 1, 2027.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN

SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 213.1243 is hereby amended to read as follows:

213.1243 1. The Board shall establish by regulation a program of lifetime supervision of sex offenders to commence after any period of probation or any term of imprisonment and any

period of release on parole. The program must provide for the lifetime supervision of sex offenders by parole and probation officers.

2. Lifetime supervision shall be deemed a form of parole for:

(a) The limited purposes of the applicability of the provisions of NRS 213.1076, subsection 9 of NRS 213.1095, NRS 213.1096 and subsection 2 of NRS 213.110; and

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

3. Except as otherwise provided in subsection ~~[9,]~~ ***10,*** the Board shall require as a condition of lifetime supervision that the sex offender reside at a location only if:

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

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

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

4. Except as otherwise provided in subsection ~~[9,]~~ ***10,*** the Board shall require as a condition of lifetime supervision that the sex offender, unless approved by the parole and probation officer assigned to the sex offender and by a psychiatrist, psychologist or counselor treating the sex offender, if any, not knowingly be within 500 feet of any place, or if the place is a structure, within 500 feet of the actual structure, that is designed primarily for use by or for children, including, without limitation, a public or private school, a school bus stop, a center or facility that provides day care services, a video arcade, an amusement park, a playground, a park, an athletic field or a

facility for youth sports, or a motion picture theater. The provisions of this subsection apply only to a sex offender who is a Tier 3 offender.

5. Except as otherwise provided in subsection ~~[9,]~~ ***10,*** if a sex offender is convicted of a sexual offense listed in subsection 6 of NRS 213.1255 against a child under the age of 14 years, the sex offender is a Tier 3 offender and the sex offender is sentenced to lifetime supervision, the Board shall require as a condition of lifetime supervision that the sex offender:

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

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

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

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

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

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

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

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

8. ***A sex offender whose supervision is transferred pursuant to the Interstate Compact for Adult Offender Supervision and who engages in behavior requiring retaking, as defined by the rules adopted by the Interstate Commission, is guilty of a gross misdemeanor.***

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

~~[9.]~~ ***10.*** The Board is not required to impose a condition pursuant to the program of lifetime supervision listed in subsections 3, 4 and 5 if the Board finds that extraordinary circumstances are present and the Board states those extraordinary circumstances in writing.

~~[10.]~~ ***11.*** The Board shall require as a condition of lifetime supervision that the sex offender not have contact or communicate with a victim of the sexual offense or a witness who testified against the sex offender or solicit another person to engage in such contact or communication on behalf of the sex offender, unless approved by the Chief or his or her designee and a written agreement is entered into and signed.

~~[11.]~~ ***12.*** The Board shall require as a condition of lifetime supervision, in addition to any other condition imposed pursuant to this section, that the sex offender:

(a) Participate in and complete a program of professional counseling approved by the Division, unless, before commencing a program of lifetime supervision, the sex offender previously completed a program of professional counseling recommended or ordered by the Board or the court upon conviction of the sexual offense for which the sex offender will be placed under a program of lifetime supervision.

(b) Not use aliases or fictitious names.

(c) Not possess any sexually explicit material that is harmful to minors as defined in NRS 201.257.

(d) Not enter, visit or patronize an establishment which offers a sexually related form of entertainment as its primary business.

(e) Inform the parole and probation officer assigned to the sex offender of any post office box used by the sex offender.

~~[12.]~~ ***13.*** If the sex offender is convicted of a sexual offense involving the use of the Internet, the Board shall require, in addition to any other condition imposed pursuant to this section, that

the sex offender not possess any electronic device capable of accessing the Internet and not access the Internet through any such device or any other means, unless the sex offender installs a device or subscribes to a service which enables the parole and probation officer assigned to the sex offender to regulate the sex offender's use of the Internet. The provisions of this subsection do not apply to a device used by a sex offender within the course and scope of his or her employment.

~~[13.]~~ ***14.*** If the sex offender is convicted of a sexual offense involving the use of alcohol, cannabis or a controlled substance, the Board shall require, in addition to any other condition imposed pursuant to this section, that the sex offender participate in and complete a program of counseling pertaining to substance use disorders approved by the Division, unless, before commencing a program of lifetime supervision, the sex offender previously completed a program of counseling pertaining to substance use disorders recommended or ordered by the Board or the court upon conviction of the sexual offense for which the sex offender will be placed under a program of lifetime supervision.

~~[14.]~~ ***15.*** If a court issues a warrant for arrest for a violation of this section, the court shall cause to be transmitted, in the manner prescribed by the Central Repository for Nevada Records of Criminal History, notice of the issuance of the warrant for arrest in a manner which ensures that such notice is received by the Central Repository within 3 business days.

~~[15.]~~ ***16.*** For the purposes of prosecution of a violation by a sex offender of a condition imposed upon him or her pursuant to the program of lifetime supervision:

(a) In which the violation occurred outside this State, the violation shall be deemed to have occurred in, and may only be prosecuted in, the county in which the court that imposed the sentence

of lifetime supervision pursuant to NRS 176.0931 is located, regardless of whether the acts or conduct constituting the violation took place, in whole or in part, outside that county or outside this State; or

(b) In which the violation occurred within this State, the violation shall be deemed to have occurred in, and may only be prosecuted in, the county in which the violation occurred.

~~[16.]~~ ***17. The Board shall require, as a condition of lifetime supervision, that if the sex offender is transferred to the supervision of another state pursuant to the Interstate Compact for Adult Offender Supervision, the sex offender must:***

(a) Refrain from engaging in behavior requiring retaking as defined by the rules adopted by the Interstate Commission; and

(b) Comply with any additional conditions required by the rules adopted by the Interstate Commission.

18. As used in this section, "sex offender" means any person who has been convicted of a sexual offense as defined in paragraph (b) of subsection 5 of NRS 176.0931.

Sec. 2. The amendatory provisions of section 1 of this act that prescribe a condition of lifetime supervision apply to a person who is placed under a program of lifetime supervision before, on or after October 1, 2027. For a person who is placed under a program of lifetime supervision before October 1, 2027, the condition prescribed by section 1 of this act applies on October 1, 2027, without further action by the State Board of Parole Commissioners.