

MINUTES
Of the meeting of the
BOARD OF PAROLE COMMISSIONERS
August 31, 2011

NOTE: The following minutes have not been approved and are subject to revision at the next meeting of the Board.

The Board of Parole Commissioners held a public meeting on August 31, 2011, beginning at 1:30 pm at the following locations:

Conference room at the central office of the Board of Parole Commissioners, located at 1677 Old Hot Springs Road, Ste. A, Carson City, NV. video conference to Parole Board Office, 4000 S. Eastern Avenue, Ste. 130, Las Vegas, NV.

I. Open Meeting, Call to order, roll call 1:30 p.m.

The meeting was called to order by Chairman Bisbee. Present in Carson City were Chairman Bisbee, Commissioner Corda, Commissioner Endel and Commissioner Jackson. Present in Las Vegas were Commissioner Keeler and Commissioner Silva. Commissioner Gray was not present – notice was given in advance to Chairman Bisbee regarding his absence. Chairman Bisbee thanked Ms. Brown for notifying her of an error on the August 15, 2011 agenda regarding the meeting start time, which is the reason the meeting was rescheduled for August 31, 2011 at 1:30 p.m.

Support staff in attendance:

Kathi Baker, Executive Secretary
David Smith, Hearing Examiner II
Lupe Garrison, Hearing Examiner I
Alan Jordan, Hearing Examiner I
Scott Weisenthal, Hearing Examiner I
Denise Davis, Administrative Assistant III

Members of the public present in Carson City included:

Tonya Brown, Advocate
Alexandra Davis, Advocate
Cynthia Davis, Advocate
Patrick Davis, Advocate
Elliezuar Graham
David Helgerman, Lieutenant, Division of Parole and Probation
Pat Hines, Advocate
David Tole, Lieutenant
Julie Towler, Deputy Attorney General, Office of the Attorney General

Members of the public present in Las Vegas included:

Flo Jones, Advocate
Laurie Johnson, Advocate/citizen

II. Public Comment. No action may be taken upon a matter raised during a period voted to comments by the general public until the matter itself has been specifically included on an agenda as an item upon which action may be taken pursuant to subparagraph (2) of NRS 241.020.

Chairman Bisbee asked any member of the public that would like to make comments regarding anything other than the items listed on the agenda to come forward and limit their comments to 3 minutes. Chairman Bisbee reminded public that no action can be taken under this item.

Public Comment – Las Vegas

No public comment.

Public Comment – Carson City, NV

Tonya Brown, advocate for the inmates made comment regarding re-discussing lifetime supervision conditions "Weapons". Ms. Brown stated this was discussed in a previous meeting and was not noted in the minutes. Ms. Brown would like this subject brought back up for discussion.

Patrick Davis, advocate read prepared remarks from a letter he stated as a member. The prepared remarks are an attachment to the minutes listed as attachment 1. Prepared remarks were in regard to the recidivism rates for lifetime supervision offenders in other States.

Alexandra Davis, advocate read prepared remarks. The prepared remarks are an attachment to the minutes listed as attachment 2. Prepared remarks were in regards to the injunctions placed in relation to the Adam Walsh Act and when it went into effect.

Pat Hines questioned the definition of certified programs Chairman Bisbee explained a certified program is taught by staff or a professional, has had an efficacy study that shows the program is an approved syllabus (STOP, OASIS, ARCH, APE) and any vocational training programs. Ms. Hines questioned the difference between a technical violation versus a new felony. Chairman Bisbee stated the Board is notified if a revocation is defined as a technical versus a new crime. Ms. Hines had questions regarding interim sanctions in which Chairman Bisbee referred Ms. Hines to the Division of Parole and Probation (P & P). The Chairman noted P & P is making a concerted effort to not bring people back before the Board if it's not absolutely necessary.

Cynthia Davis, member of Nevadans for Civil Liberties read prepared remarks. The prepared remarks are an attachment to the minutes listed as attachment 3. Prepared remarks were in regard to definitions related to conditions of lifetime supervision and improper search.

Ellie Graham, member of the public serving lifetime parole, discussed P & P supervision issues regarding his employment, regular pay stubs and residence and his supervising officer's directives. Mr. Graham submitted a letter of recommendation from his employer to the Board.

David Tole, member of Nevadans for Civil Liberties read prepared remarks. The prepared remarks are an attachment to the minutes listed as attachment 4. Prepared remarks were in regard to trends in sex offender management.

II. For possible action: Review/Approval of minutes from the January 20, 2011 and February 24, 2011 meetings. Comments from members of the public will be considered.

Chairman Bisbee noted the time and effort put into the January 20, 2011 and February 24, 2011 meeting minutes. Chairman Bisbee asked if any member of the public that would like to make comments regarding agenda item III.

Public Comment

Patrick Davis, advocate read prepared remarks from a letters. The prepared remarks are an attachment to the minutes listed as attachments 5 & 6. Prepared remarks were in regard to Mr. Davis' belief of bias in the minutes, the Board's representation of the meeting and items submitted for the record, issues downloading documents from the Board's website and meeting handout documents not available for pickup prior to the meeting. Chairman Bisbee stated the documents are physically available to the public at the same time they are made to the Board and that an error was made by not giving Mr. Davis the documents prior to the meeting, which will be corrected. Chairman Bisbee stated that the Board's best effort is made to get the meeting documents on the website; however the website is run by the Department of Correction (NDOC) and is at times unavailable.

Kathi Baker, Executive Secretary to the Board commented that minutes are not transcribed, but condensed and copies of meeting recordings are available upon request.

Motion: To approve the minutes of January 20, 2011 and February 24, 2011.
Made by: Commissioner Corda
Seconded by: Commissioner Jackson
Votes in Favor: Commissioners Keeler, Silva, Bisbee, Corda, Jackson, Endel
Votes Opposed: None
Motion Passed

III. For possible action: Conditions of Lifetime Supervision of Sex Offenders. The Board may consider changes, and may act to change, the standard conditions of Lifetime Supervision of Sex Offenders. Comments from members of the public will be considered.

Chairman Bisbee asked Lt. Helgerman to discuss the meeting handout Memorandum dated July 27, 2011 made by the Division of Parole and Probation. David Helgerman, Lieutenant, read the meeting handout memorandum of July 27, 2011 and clarified the Division of Parole and Probation is requesting the wording for Rule 18 read as it did in NRS 213.1245 in 2005, prior to the Adam Walsh Law. Chairman Bisbee questioned "secluded environment". Lt. Helgerman did not have a legal definition for secluded environment but stated the dictionary definition states "an area removed from the view or presence of others" and believes most officers would abide by this definition.

Rule 20 – Search clause. Lt. Helgerman read the reason for this request from the meeting handout memorandum of July 27, 2011. Lt. Helgerman discussed that due to recent high profile cases where if the officer needed to establish reasonable cause first, the officer would not have found information which led to the rest of the search; which in one case, ultimately led to a person being charged with 3 counts of murder. Chairman Bisbee questioned and Lt. Helgerman confirmed that the Divisions request is consistent with California's search clauses. Lt. Helgerman discussed other States search clause language. Lt. Helgerman stated the Division does not train nor tolerate any officers conducting a harassing, capricious or arbitrary search. The Board had no questions for Lt. Helgerman.

Mr. David Smith, Hearings Examiner II discussed and explained the meeting handout Memorandum dated August 10, 2011 regarding suggested changes to the standard conditions of lifetime supervision. Mr. Smith reviewed the Legislative Counsel Bureau's booklet posted online regarding the effect of the injunction that was put against those bills that took place. Page 3 of the memorandum shows NRS213.1243 prior to the permanent injunction changes and then provided the revisions made after 2005. The revisions were not incorporated into the new version listed on their website. Page 4 of the memorandum is the potential version of how the later revisions would be incorporated into the statute. When conditions were reviewed and the way the changes to the statutory revisions were made going back to the previous version, condition # 15 (no contact version) was changed more appropriately with the statute if properly revised.

Special condition # 2 – Residence - a mandatory condition of lifetime supervision had been implemented. Page 2 of the memorandum shows 2 suggested versions revisions to special condition #2 based on the mandatory condition. Version 1 doesn't read exactly the way the statute says it should read, but Mr. Smith believes the Board can word the version its way. Version #2 is the statutes requirements (change made in 2007 SB354) which were not part of the injunction. Chairman Bisbee clarified Mr. Smith is requesting additional changes to the conditions of lifetime supervision recommending a change on the no contact and residence rules. Mr. Smith provided NRS 213.1243 which refers that lifetime supervision shall be deemed a form of parole for the limited purposes of the applicability of certain statutory provisions. The Board had no questions for Mr. Smith.

Chairman Bisbee opened this item to members of the public who wish to make comment on agenda item IV.

Public Comment

Tanya Brown, advocate recommended changes to lifetime supervision rules #5 & #6. Weapons to include "with the exception of steel toe work boots" stating if a person kicks someone wearing steel toe boots, they could be considered a deadly weapon and would receive an enhancement. Ms. Brown stated in the minutes dated January 20, 2011, page 6 Ms. Brown requested Rule #6 – Associates "not knowingly associate with ex-felons be considered. Ms. Brown requested this change be considered again.

Patrick Davis, advocate read prepared remarks. The prepared remarks are an attachment to the minutes listed as attachment 7. Comment also included various State Supreme Court decisions and First Amendment rights. Mr. Davis discussed Nevada, Supreme Court and Circuit Court decisions that consider the conditions of those put on parole and probation under a criminal offense. Mr. Davis stated those put on lifetime supervision are put under a civil offense. Mr. Davis feels Lt. Helgerman, the Division of Parole and Probation and the Board wish to apply the mandatory conditions of a criminal sentence and he feels NRS 213.1245 does not apply to lifetime supervision. Mr. Davis read different states Supreme Court decisions regarding the no contact condition. Also discussed was the condition of placing those on lifetime supervision on therapy without any fact finding in order to impose a condition of participation in mental health treatment and believes the Board must have reason to believe the defendant needs such treatment. Mr. Davis understands that parole is a matter of legislative grace and it's granted to a person on parole by the Board; but stated when parole is granted, the Board has also granted Constitutional Rights and that it is the most severe form of supervision that the Board is allowed. Mr. Davis stated a person on lifetime supervision is granted all of his Constitutional Rights because he is on a civil sentence – he has already served his criminal

sentence on parole, incarceration or probation. Chairman Bisbee stated that this may very well be litigated at some point and noted that Mr. Davis provided the Board with a lot of information going back to the original laws in 1992. Chairman Bisbee stated it appears that the Board acted on that legislature exactly the way the sponsor of the law intended it to be done. Mr. Davis responded in 1995 SB192, the legislative intent was that this be a non punitive tool to enforce the effective known whereabouts of the offender. No mandatory conditions of supervision were provided by the legislature. The legislature asked the Board to provide these in regulation. Mr. Davis believes the Board, in acting that regulation, did not put any mandatory conditions into the law, but he considers they are underneath the law and does not think is legal. Mr. Davis feels that 19 of the conditions are punitive in nature.

Ellie Graham made comment on the condition of no contact with a minor. Mr. Graham discussed supervision issues he had with the Division of Parole and Probation regarding being able to see family members due to this condition. Mr. Graham stated that his father is ill and more family members are visiting at his father's residence now. Mr. Graham has to leave if one of the minor family members arrives. Mr. Graham stated he was incarcerated 15 years and is no longer the person he was 20 years ago.

Lauri Johnson, advocate stated she is a previous victim of sexual abuse and a mother of a JSO serving an adult sex offender sentence and read prepared remarks. The prepared remarks are an attachment to the minutes listed as attachment 8. Prepared remarks were in regard to a recently published policy paper titled "A Reasoned Approach: Reshaping Sex Offender Policy to Prevent Child Sexual Abuse".

Alexandra Davis, advocate read prepared remarks. The prepared remarks are an attachment to the minutes listed as attachment 9. Prepared remarks were in regard to conditions of lifetime supervision and illegal search. Ms. Davis believes the Division of Parole and Probation has violated her constitutional rights and have misinterpreted the Board's authorization by enforcing the conditions of lifetime supervision against her and her personal property since her father is on lifetime supervision with whom Ms. Davis resides.

Cynthia Davis, advocate read prepared remarks. The prepared remarks are an attachment to the minutes listed as attachment 10. Prepared remarks were in regard to conditions of lifetime supervision and illegal search and seizure of items belonging to her and family members. Ms. Davis resides with a family member who is on lifetime supervision.

Tonya Brown, advocate concurred with Ms. Davis' comments and stated her opinion that if a search is performed on females, then a female parole officer should be the person conducting the search. Ms. Brown believes a psychological profile should be conducted on male parole officers conducting searches on females related to and residing with those on lifetime supervision.

David Tole, member of Nevadans for Civil Liberty read prepared remarks. The prepared remarks are an attachment to the minutes listed as attachment 11. Prepared remarks were in regard to violations of offender's Constitutional Liberties and First Amendment Rights and reference to various letters previously submitted to the Board, Nevada Legislative Judiciary Committees, the Nevada Legislature and the Division of Parole and Probation.

End of Public Comment

Chairman Bisbee questioned Lt. Helgerman regarding the Division's search policy when an offender is not at his residence. Lt. Helgerman discussed most instances would not require an officer to enter the residence if an offender is not present unless an officer wanted to speak to others residing at the residence at which time the officer would ask to enter to speak to that individual or family member. Lt. Helgerman gave scenarios regarding this issue.

Chairman Bisbee asked Lt. Helgerman the Division's position regarding steel toe boots as weapons. Lt. Helgerman believed if the boots are worn for work purposes, and if no criminal history indicates the offender has used these types of boots as a weapon in the past, a parole officer would not prevent them from wearing steel toe boots. Also discussed were other tools required for employment and the Division's clarification with the offender regarding use of these tools.

Chairman Bisbee asked Lt. Helgerman if the Division would have an issue of changing the language on Rule 6 to reflect you will not "knowingly" associate with ex-felons. Lt. Helgerman believed it would not be an issue.

Commissioner Jackson questioned Lt. Helgerman on the Divisions specific supervising protocol and standards. Lt. Helgerman stated the Division has policy which covers 3rd party search areas in regards to family members.

David Smith, Hearing Examiner II addressed comments regarding counseling and stated in the past few years the Board has changed the condition to indicate that a parolee be evaluated and continue to be treated until released by a qualified treatment provider. Lifetime supervision mandatory conditions states it is mandatory the offender participate in professional counseling if deemed necessary by the Division. Mr. Smith stated the Board may want to consider changing this lifetime supervision condition to be consistent with special conditions of parole. Mr. Smith also commented that the Board is authorized to require any reasonable condition and that the mandatory conditions of parole do not apply to lifetime supervision. They only apply under certain circumstances, but nothing prohibits the Board from using similar or the same language if deemed appropriate.

The Board discussed the Divisions requested changes to Rule 18 (No Contact Persons Under 18) and Rule 20 (Search).

The Board discussed Mr. Smith's suggested change to Special Condition 2 (Residence) and Special Condition 15 (No Contact - Victim).

The Board discussed Ms. Brown's suggested changes to Rule 5 (Weapons) and Rule 6 (Associates).

Rule 18 (No Contact under 18)

Motion: Move that Rule 18 remain unchanged.
Made by: Commissioner Jackson
Seconded by: Commissioner Keeler
Votes in Favor: Keeler, Silva, Bisbee, Corda, Jackson, Endel
Votes Opposed: None
Motion Passed - Division's request for changes to Rule 18 was declined by the Board.

Rule 20 (Search)

Motion: Move that Rule 20 be accepted with the changes as requested by the Division of Parole and Probation.
Made by: Commissioner Corda
Seconded by: Commissioner Silva
Votes in Favor: Keeler, Silva, Bisbee, Corda, Jackson, Endel
Votes Opposed: None
Motion Passed

Special Condition 15 (No Contact with Victim)

Motion: Move that the Board accept the recommendation by Mr. Smith that the Board add the term "unless approved by the Chief or his designee and a written agreement is entered into and signed" and that the Board strike "without permission from your supervising officer". Also "a victim of sexual offense" be added.
Made by: Commissioner Endel
Seconded by: Commissioner Corda
Votes in Favor: Keeler, Silva, Bisbee, Corda, Jackson, Endel
Votes Opposed: None
Motion Passed

Special Condition 2 - Residence

Motion: Move to accept version 2 and that the Board add Mandatory Condition of Lifetime Supervision as written by Mr. Smith that "you may reside at a location only if:" and the three (3) exceptions listed in this version.
Made by: Commissioner Endel
Seconded by: Commissioner Jackson
Votes in Favor: Commissioners Keeler, Silva, Bisbee, Corda, Jackson, Endel
Votes Opposed: None
Motion Passed

Rule 5 – Weapons

Motion: Move that Rule # 5 (Weapons) remain unchanged. "You shall not possess, own carry, or have under your control, any type of firearm or illegal weapon."
Made by: Commissioner Jackson
Seconded by: Commissioner Corda
Votes in Favor: Keeler, Silva, Bisbee, Corda, Jackson, Endel
Votes Opposed: None
Motion Passed

Rule 6 – Associates

Motion: Move that Rule # 6 (Associates) make change to read: "You shall not knowingly associate with any ex-felons or any person who is required to register as a sex offender under Nevada law without permission from your supervising officer."
Made by: Commissioner Jackson
Seconded by: Commissioner Endel
Votes in Favor: Keeler, Silva, Bisbee, Corda, Jackson, Endel
Votes Opposed: None
Motion Passed

Board discussion regarding Rule 13 - Counseling

Rule 13 – Counseling

Motion: Move that Rule # 13 - Counseling on Lifetime Supervision Agreement to read "Participate in professional counseling if deemed necessary by a qualified provider upon referral by the Division of Parole and Probation."
Made by: Commissioner Corda
Seconded by: Commissioner Jackson
Votes in Favor: Keeler, Silva, Bisbee, Corda, Jackson, Endel
Votes Opposed: None
Motion Passed

Recess

Motion: To take a five (5) minute recess
Made by: Chairman Bisbee
Seconded by: Commissioner Jackson
Votes in Favor: Keeler, Silva, Bisbee, Corda, Jackson, Endel
Votes Opposed: None
Motion Passed

Meeting Reconvened at 3:32 pm

Chairman Bisbee commented that changes to supervision conditions are from this date forward. Any changes to existing conditions must be a modification which the offender would be provided their rights to a hearing and appear before the Board.

IV. For possible action: Standard Conditions of Parole. The Board may consider changes, and may act to change, the standard conditions of parole. Comments from members of the public will be considered.

Mr. Smith discussed the memorandum of August 8, 2011 - suggested changes to the standard conditions of parole regarding Rule 13 - Intoxicants. Mr. Smith recommends intoxicants be put back on the standard conditions as listed on agenda item V. And that the Special Conditions would be added as listed on the memorandum of agenda Item V.

Public Comment

Pat Hines commented this condition is a long time coming.

Ellie Graham misunderstood the changes to the condition. Chairman Bisbee clarified.

Motion: To modify the Standard Condition Parole Agreement Rule 13 – Intoxicants as recommended.
Made by: Chairman Keeler
Seconded by: Commissioner Silva
Votes in Favor: Keeler, Silva, Bisbee, Corda, Jackson, Endel
Opposed: None
Motion Passed

V. Public Comment. No action may be taken upon a matter raised during a period devoted to comments by the general public until the matter itself has been specifically included on an agenda as an item upon which action may be taken pursuant to subparagraph (2) of NRS 241.020.

Patrick Davis, advocate discussed concerns regarding polygraph and requested the Board and the Division of Parole and Probation do an internal audit for clarification and an Attorney General Opinion. Mr. Davis requested the Board look into the legality of consent versus submit. Mr. Davis made comment in regards to the search clause the Board voted recently voted on. Mr. Davis requested the Board look into offenders who have conditions that are not enforced on their sign conditions.

Tanya Brown, advocate discussed quasi-judicial parole hearings and items submitted by victims to the Board as confidential. Ms. Brown commented this is not fair to the inmate.

Laurie Johnson asked the Board where she would go to introduce the ARAI's in regards to Rule 13 – Counseling. Ms. Johnson asked how to change the instruments the State uses to evaluate a sex offender. Chairman Bisbee stated the Board is currently looking at a validation process for Nevada's sex offenders.

Mr. Smith commented that the Legislative Counsel Bureau made an extensive 6 month audit of the Board which included the Board's policies and procedures including notification to victims and notification to inmates. The Legislative Counsel Bureau determined the Board is following the law.

Motion: To adjourn
Made by: Chairman Keeler
Seconded by: Commissioner Corda
Votes in Favor: Keeler, Silva, Bisbee, Corda, Jackson, Endel
Votes Opposed: None

Meeting adjourned at 3:48 p.m.

ATTACHMENT 1

August 15, 2011

Honorable Board of Parole Commissioners
1677 Old Hot Springs Road, Suite A
Carson City, NV 89706

Jordan Nakao
Member
Nevadans for Civil Liberties
P.O. Box 60672
Reno, NV 89506
info@nevadans-for-civil-liberties.org

RE: Recidivism Statistics

Honorable Board Members:

I am a member of the public, a citizen and registered voter of the State of Nevada, and a member of Nevadans for Civil Liberties.

I am asking the Board of Parole Commissioners to review these recidivism statistics. Our organization is bringing these statistics to your attention in relation to the fallacy of high rates of recidivism for sexual offenses by previous offenders.

We are supplying the following statistics to inform you of the very low rates of recidivism across the country. We are asking you to include these statistics in the minutes of the meeting today, and are further requesting that they be available online, just the same as any document submitted by the Division of Parole and Probation.

The statistics we are supplying are as follows:

- In a 2003 study by the Department of Justice, the recidivism rate is 3.5% for a new sex crime within 3 years of the date of being placed on supervision, and this statistic relates to all sex offenders.
- In Maryland, in a study done from July of 2008 to December of 2009 following over 2300 offenders, the recidivism rate for Lifetime Supervision is less than one third of one percent, (.033%).
- In Colorado, in a study conducted in 2009, less than 1% of offenders actively supervised on Lifetime Supervision committed a new sex offense.
- In Arizona, in a study from May of 1993 to August of 2000, 2,344 offenders under active Lifetime Supervision during the course of this study, and the recidivism rate for new sex offenses was 1.8%.
- In a report by Illinois Voices for Freedom, they state that the recidivism rate for sex offenders is the second lowest rate in the country in relation to new offenses of any kind.
- In a recent study in California released in July of 2011, very few sex offenders

are deemed to be violent predators. In actual fact, in a study of over 31,000 offenders, only one third of one percent were deemed to be a sexually violent predator.

- When the Board looks to imposing any condition upon an offender, they should refer to the actual statistics that are being generated in study after study that are confirming the mis-information presented to the public that sex offenders have the highest recidivism rate.

As a member of the public, I am very concerned about the implementation of conditions that do not take actual facts into account, and which are proven by States that have implemented studies and by the United States Government. I am asking the Board of Parole Commissioners to further review the statistics related to recidivism before they proceed with any other decisions on sexual offenders subject to Lifetime Supervision.

Thank you for your time and effort in regards to this very serious matter.

Sincerely,

Jordan Nakao

ATTACHMENT 2

August 15, 2011

Honorable Board of Parole Commissioners
1677 Old Hot Springs Road, Suite A
Carson City, NV 89706

Alexandra Davis
Member
Nevadans for Civil Liberties
P.O. Box 60672
Reno, NV 89506
info@nevadans-for-civil-liberties.org

RE: Temporary and Permanent Injunction of ACLU v. Masto

Honorable Board Members:

I am a member of the public, a citizen and registered voter of the State of Nevada, and am here representing myself and as a member of Nevadans for Civil Liberties.

I would like to address a serious misconception that the Board of Parole Commissioners has about the Injunctions placed in relation to the Adam Walsh Act. This became apparent during the open public meeting on January 20, 2011. This is further confirmed in the minutes of the meeting.

The Board states that the law went into actual effect for a short period of time. According to our research, a preliminary injunction was put into place in June of 2008 by District Judge Wall, and was further extended by U.S. District Judge Mahan a few days after Judge Wall's ruling.

A permanent injunction was granted in September of 2008, further enjoining the entire law at that time from ever being enforced.

At no time was this law ever in effect, but the Division and the Board have enforced conditions like it was, and continue to do so today, which is illegal.

We are providing copies of 2 news articles discussing this issue, and will further inquire into the legality of the Board's actions in relation to this, by obtaining copies of the actual rulings to present at the next open public meeting.

We believe that this law was never active, and that anything the Board or the Division might have done during that time is illegal. Anything that was done during this time could be a grave injustice to an offender, and be a cause for action.

Sincerely,

Alexandra Davis

ATTACHMENT 3

August 15, 2011

Honorable Board of Parole Commissioners
1677 Old Hot Springs Road, Suite A
Carson City, NV 89706

Cynthia A. Davis
Member
Nevadans for Civil Liberties
P.O. Box 60672
Reno, NV 89506
info@nevadans-for-civil-liberties.org

RE: Conditions of Lifetime Supervision and Improper Search

Honorable Board Members:

I am a member of the public, a citizen of the State of Nevada, a registered voter in the State, and a member of Nevadans for Civil Liberties.

In September of 2010, we asked the Board of Parole Commissioners for a definition concerning a secluded environment. At the open public meeting of the Board on January 20, 2011, we further discussed this issue of a definition. At this time, we are again asking for a legal definition of a secluded environment.

Due to the issues presented by Officers of the Division of Parole and Probation in interpreting the Board's authority and intent, we are asking the Board of Parole Commissioners to further define the following issues:

- Again, I am asking what is a definition of a secluded environment, in relation to a minor? Has the Board looked at defining this issue as we have asked?
- What constitutes "submit" to a test? In regards to a urine test, and why does the offender not need to sign a consent form? And especially in relation to a polygraph test, are the NRS laws superseded by the submittal?
- What defines cooperation or non-cooperation for an offender? Is there a Policy and Procedure that addresses this issue? When an offender has a different viewpoint on an issue, the supervising Officer usually threatens a violation of this condition with no definition of cooperation? I am asking for one from the Board..
- What is the legal definition of an illegal weapon? At this time a box cutter, utility knife, or exacto knife, is considered an illegal weapon by the Officers in the Division.
- What is the definition of dangerous drugs? As defined by who? This should be defined by someone qualified to make this determination, such as a medical practitioner who would work with the Division and the Board..
- What is "Maintain a program of employment" as approved by the Division? Why does the Division feel that they need to look at bank statements, receipts of where you spend your money, and tax returns? These are violations of

confidentiality.

- What is "If deemed necessary" to participate in counseling? Who makes the determination? Shouldn't it be someone qualified to make that decision, such as a psychologist? Why is there no determination or fact finding hearing on whether an offender should even be participating in therapy?
- What does "You shall not be in or near" a school, etc. mean? How close is near? When walking by? When driving by? Ever, under any circumstances, even voting?
- What is the definition of "submit to a search". Who's property or personal possessions? Does this submittal give the Officer the right to search anyone else's property, person, or possessions? Why do the Officers search anything that they feel like? They say it is because you have given them the authority.
- I would like the board to define access in relation to an offender's residence and the third party areas of other persons in relation to the offender?

Our organization is seeking the definitions of these issues, and we will continue to address these concerns until such a time as definitions or clarifications are offered. We hope the Board understands their obligation to provide these definitions, as many absurd results happen because of the Division's interpretation of the issues. A clear, definition that can be understood by a reasonable person of ordinary intelligence is needed in relation to these issues.

Thank you for your time and effort in regards to this very serious matter.

Sincerely,

Cynthia A. Davis

ATTACHMENT 4

August 15, 2011

Honorable Board of Parole Commissioners
1677 Old Hot Springs Road, Suite A
Carson City, NV 89706

David L. Tole
Member
Nevadans for Civil Liberties
P.O. Box 60672
Reno, NV 89506
info@nevadans-for-civil-liberties.org

RE: Letters to the Legislature

Honorable Board Members:

I am a member of the public, a citizen of the State of Nevada, a registered voter in the State, and a member of Nevadans for Civil Liberties.

I would like to take the opportunity to present the Board with the following information concerning recent empirical studies reflecting the emerging trends in sex offender management. Many of these are based off of the true recidivism rates of offenders and some issues that State Governments have had to deal with in relation to the criminal justice system:

- Kentucky-Smart on Crime, Overhaul of the Criminal Justice System.
- Advancing Sex Offender Management Efforts Through State-Level Policy Groups.
- Sex Offenders-A Reality Based Discussion.
- Criminal Justice Reform-Not just a Cause for Progressives.
- Texas Parolees must get sex-offender hearings with due process.
- Supervision Study for Behavior Change

Our organization hopes this information will further help the Board of Parole Commissioners in the performance of their duties. Any discussion of issues relating to any conditions imposed by the Board in relation to parole, probation, or Lifetime Supervision should include a review of these studies.

I am asking that these studies be included in the minutes of the meeting, and in any documentation concerning the meeting as exhibits, the same as granted to the Division of Parole and Probation.

Thank you for your time in allowing me to present this information.

Sincerely,

David L. Tole

ATTACHMENT 5

August 15, 2011

Honorable Board of Parole Commissioners
1677 Old Hot Springs Road, Suite A
Carson City, NV 89706

Patrick Davis
Member
Nevadans for Civil Liberties
P.O. Box 60672
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info@nevadans-for-civil-liberties.org

RE: Minutes of the Meetings

Honorable Board Members:

I am a member of the public, a citizen of the State of Nevada, and a member of Nevadans for Civil Liberties.

I am asking the Board that they delay a vote on all on the minutes of the meetings today, due to what I feel is the bias shown by the Board in not demonstrating a fair representation of the issues and documented letters and exhibits presented.

It seems the Board favors any representation by themselves or the Division of Parole and Probation over any other information presented.

As I was present and also addressed the Board and provided information, none of that information was clearly presented in the minutes of the meeting as shown, and none of the letters submitted were included as exhibits.

We feel that the Board needs to document the issues presented by the citizens of the State in a better format and include any information presented with the same weight that the grant to the Division of Parole and Probation.

Thank you for your time and effort in regards to this very serious matter.

Sincerely,

Patrick Davis

ATTACHMENT 6

August 15, 2011

Honorable Board of Parole Commissioners
1677 Old Hot Springs Road, Suite A
Carson City, NV 89706

Patrick Davis
Member
Nevadans for Civil Liberties
P.O. Box 60672
Reno, NV 89506
info@nevadans-for-civil-liberties.org

RE: Inclusion of new term concerning public comment and vote

Honorable Board Members:

I am a member of the public, a citizen of the State of Nevada, and a member of Nevadans for Civil Liberties.

I am asking the Board that they delay a vote on all of the issues defined on the agenda today. I am requesting a delay for the following reasons:

- All of the information on the website was not available to be printed or downloaded. None of the links to the documents worked.
- The Board states that the agenda and posting for this meeting happened on Monday, August 8, 2011, but the website did not show this agenda until Thursday morning, August 11, 2011.
- We would like to ask the Board to confirm the posting date and the online posting date of their notice, to confirm proper notification according to their own notice.
- In trying to reach the Board on Friday to discuss these issues, the Board is closed on Friday, negating one of the business days needed for proper notification.
- There are 2 times listed on the notice form, 8:00 am and 4:00 pm, leaving the public unable to decide how to attend and present their information.
- We are not asking for this meeting to be canceled, as many people did decide to attend, we are asking for the vote to be delayed on the issues presented, but that all testimony will be allowed today to further the process and allow the attendees to provide the information they wished to present.

We have noticed a change in the Board agenda form, stating that the Board may refuse to consider public comment. The Board has even quoted NRS 233B.126. According to our reading of this statute, the language contained in this notice is not the same as the language in the statute. The Board is not rendering a decision or making a finding of fact in a contested case during an open public meeting with a specific agenda.

An open public meeting does not usually deal with contested cases, and the Board is not actually acting in a quasi-judiciary manner during an open public meeting. They are actually acting in an administrative capacity. There is a difference as defined in a few Nevada Supreme Court rulings.

I would hope the Board would allow all public attendance and the right to present issues as delineated in NRS 241.020, which states that:

- Except as otherwise provided by specific statute, all meetings of public bodies must be open and public, and all persons must be permitted to attend any meeting of these public bodies.

Any infraction of these rules could cause a complaint to be issued to the Nevada Equal Rights Commission as delineated in NRS 233.002 to NRS 233.270 inclusive. If the complaint was found valid for the constitutional rights of a person being denied at an open public meeting, any and all votes taken during such a contested open public meeting could be void or illegal.

Thank you for your time and effort in regards to this very serious matter.

Sincerely,

Patrick Davis

ATTACHMENT 7

August 15, 2011

Honorable Board of Parole Commissioners
1677 Old Hot Springs Road, Suite A
Carson City, NV 89706

Patrick Davis
Member
Nevadans for Civil Liberties
P.O. Box 60672
Reno, NV 89506
info@nevadans-for-civil-liberties.org

RE: Lifetime Supervision Condition relating to permission with a minor

Honorable Board Members:

I am a member of the public, a citizen of the State of Nevada, and a member of Nevadans for Civil Liberties.

I am asking the Board to consider this issue in a new light. While our organization has many State Supreme Court and United States Supreme Court decisions that we could present to you today, we would like to take the opportunity to read part of the decision in *Lathrop v. State*, an opinion by the Iowa Supreme Court considering this very issue that the Board is discussing today.

We feel that the Nevada Supreme Court would follow this ruling, as it cites many other rulings by various State Supreme Courts which have looked to similar issues.

Our organization believes that the Board of Parole Commissioners has violated many constitutional liberties of an offender when imposing the conditions of Lifetime Supervision, including many restraints of First Amendment Rights.

This includes ex post facto concerns, double jeopardy concerns, due process concerns, violations of the overbreadth doctrine of the First Amendment, and the fact that these statutes are void for vagueness. Hopefully, these issues will be resolved soon to the best interests of everyone involved, including the rights of the offender.

We are presently pursuing many avenues with the Board, the Division, and the Nevada Legislature in regards to our concerns about these conditions of Lifetime Supervision.

Thank you for your time and effort in regards to this very serious matter.

Sincerely,

Patrick Davis

ATTACHMENT 8

Good afternoon, Chairman Bisbee & honored members of the Nevada Board of Parole Commissioners. My name is Laurie Johnson (spell last name) for the record. I come before you this morning as a Citizen of Nevada, as a previous victim of child sexual abuse and as a mother of a JSO serving as an Adult S.O. on his 1st round with the justice system & I can honestly say that it's in reconciling home 1st, that I appear before each of you today.

With respect to the Revisions for Lifetime Supervision, I am submitting for the record, the most recently published, 54 page policy paper, titled, A Reasoned Approach: Reshaping Sex Offender Policy to Prevent Child Sexual Abuse, from the Association for the Treatment of Sexual Abusers/ATSA.com. It is Imperative that anyone in a position which deals with Sex Offenders be familiar with this 2011 Policy Paper. On this journey with my family it is has become my mission from above to educate Nevada by providing evidence based facts & research for this crisis at hand. This policy paper has participation from Sex Offender experts nationally, including, S.O. treatment specialist, Dr Jill Levenson, writer of ACLU's 2008 NV Affidavit, for the litigation here in our state regarding AB579 & SB471 and victim advocacy groups, Stop It Now to name only 2. I've testified several other times throughout the 76th legislative session, as well as in front of the Legislative Commission on June 6, 2011 and this is the thorough, professionally completed version of allot of what I've gone on record to say, as I've been whole heartedly involved on both ends for numerous years now. In this journey all I've found to be true is the truth shall set us all free...but we must be willing to learn the truth thru most current research and facts available to date. Today I've empowered all of you with just that!

A Reasoned Approach offers

- insights into current research about those who sexually abuse,
- an analysis of policy trends related to sex offenders,
- information about innovations in legislative and community responses to those who sexually abuse

and recommendations for policy change to facilitate the prevention of child sexual abuse.

I've gained access to the author, Alisa Klein and she's pleased with my efforts here in NV, as well as my going on record with their policy paper for the 2nd time now. I'm happy to say that Alisa's made herself available to the State of Nevada to Present on the topics covered in the report. My contact info has been submitted to the Las Vegas Staff for each of your personal knowledge, as well as the policy paper and link provided here

<http://atsa.com/sites/default/files/ppReasonedApproach.pdf>

Again my name is Laurie Johnson (spell last name) for the record and I thank you, Chairman Bisbee & your Commission Members, for allowing me to share my conviction in Prevention, Intervention & our Focus on Families being 3 equally important main objectives in any decisions relating to sex offenders.

ATTACHMENT 9

August 15, 2011

Honorable Board of Parole Commissioners
1677 Old Hot Springs Road, Suite A
Carson City, NV 89706

Alexandra Davis
Member
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info@nevadans-for-civil-liberties.org

RE: Conditions of Lifetime Supervision and Illegal Search

Honorable Board Members:

I am a member of the public, a citizen and registered voter of the State of Nevada, and am here representing myself and as a member of Nevadans for Civil Liberties.

I am respectfully presenting to you a true situation concerning the application of the Conditions of Lifetime Supervision. These conditions are being enforced against me by the Division of Parole and Probation, who informs me that they are placed upon me under your authority. I am a family member of an offender who resides with the offender. My father is currently serving a special sentence of Lifetime Supervision per NRS 176.0931. I am a person who has never been convicted of a crime, and I am not under any form of supervision by the Division of Parole and Probation or under any authority of the Board of Parole Commissioners.

I am extremely worried and concerned about the illegal searches that have been continually performed against me by the Division of Parole and Probation under your authority, allegedly under the authority of NRS 213.1243. I am not subject to this statute. I am a designated third party who has not given consent to search my personal areas or personal property. Recently, I have never even been asked for consent by the Officers to search my personal property. I do not have to submit to an illegal search of my personal property or person.

While my father was serving his time on probation for his suspended sentence, all of the Officers in the Division were very respectful to me, and never searched my personal property without my consent and presence. I cannot say the same for the Officers in the Division in the last year, while my father has been on Lifetime Supervision. They have been rude, have asked improper questions, have called me a liar, and have stated that they have the right to search anything I have in my possession at any time, including my vehicle, my phone, and my computer, which they have actually tried to do.

In the last 6 months, my father's supervising officer has informed him that I must open the door to the Officer when he visits our residence, even if my father is not present at the time, and even when I am home alone. I have no faith in the Officers of the

Division, and I do not trust them. In the past few years that my father has been on Lifetime Supervision, they have continually searched my personal possessions, rifled through my underwear drawer, have searched my medicine cabinet and have scrutinized my prescriptions. They have done this without my consent or presence, or any other family member's consent or presence. The Division informs me that I must do this as" they only enforce the conditions that the Board has authorized".

By making that statement, they have informed me that you have authorized these violations of my civil rights. I would like to take this opportunity to ask the Board if this is correct.

As a young female, with all of the recent situations concerning sexual impropriety by parole officers, I do not believe that it is appropriate for me to answer the door when I am alone. This is for my personal safety. I am aware of the recent instances of parole officers using improper tactics to perform these improper and illegal acts.

I would like the Board to know that I am not under their supervision or authority, and I am protecting myself from anything that might occur. I suspect the Division will now use this complaint as a means to tell my father that he may no longer live with us, due to our family trying to protect me. I would hope that the Board of Parole Commissioners is more professional than that, and will inform the Division and its Officers to cease and desist this improper behavior against me.

I am asking the Board of Parole Commissioners to not take a vote today on the ability of the Division to continue their improper search techniques against me until the Board looks into these issues further. They relate not only to me, but to other daughters of offenders. This is a serious issue, and I have hope that the Board will question the "Gestapo tactics" that the Division employs against the family members of offenders to intimidate and harass them.

All of the conditions need to be looked at, as I believe they have been improperly and illegally applied to the offenders placed under this sentence, and that they are constitutionally illegal. During the last year, our family has had to research many issues of law relating to the legality of these conditions and protecting ourselves from the tactics that the Division employs against me under their interpretation of your authorization.

I believe the Division of Parole and Probation has violated my constitutional rights, and have mis-interpreted the Board's authorization to enforcing the conditions of Lifetime Supervision against me, and my personal property. I am asking you to clarify this to the Division of Parole and Probation and their Officers.

Sincerely,

Alexandra Davis

ATTACHMENT 10

August 15, 2011

Honorable Board of Parole Commissioners
1677 Old Hot Springs Road, Suite A
Carson City, NV 89706

Cynthia A. Davis
Member
Nevadans for Civil Liberties
P.O. Box 60672
Reno, NV 89506
info@nevadans-for-civil-liberties.org

RE: Conditions of Lifetime Supervision and Improper Search

Honorable Board Members:

I am a member of the public, a citizen of the State of Nevada, a registered voter in the State, and a member of Nevadans for Civil Liberties.

I am respectfully presenting to you a true situation concerning the application of the Conditions of Lifetime Supervision. These conditions are being enforced against me by the Division of Parole and Probation, who informs me that they are placed upon me under your authority. I am a family member of an offender who ^{also} resides with the offender. My husband is currently serving a special sentence of Lifetime Supervision per NRS 176.0931. I am a person who has never been convicted of a crime, and I am not under any form of supervision by the Division of Parole and Probation or under any authority of the Board of Parole Commissioners.

I am extremely concerned about the illegal search and seizure that has been performed against me by the Division of Parole and Probation under your authority and under NRS 213.1243. I am not subject to this statute. I am a designated third party who has not given consent to search my personal areas or personal property. I have never even been asked for consent by the Officers to search my personal property. I do not have to submit to an illegal search of my personal property or person.

My concerns over these grave matters and violations of my civil liberties, including the violation of the Fourth Amendment of the United States Constitution, under your authority continue to fall upon deaf ears. I am hoping you will listen to these concerns and take action. I am asking you to stop the Division of Parole and Probation from performing these illegal searches and seizures of the personal property of me, my daughter and other offender's families under any sentence. I hope the Board will research and consider the legal decisions and opinions that the Nevada Supreme Court, the 9th Circuit Court of Appeals, and the United States Supreme Court has made concerning this specific issue. I am including a number of these decisions for your review in context to each situation that might present itself.

"On August 1, 2010, a Lifetime Supervision home visit was conducted by Officer Howald and Officer Avilla who illegally seized my computer, from my designated home office, which had been approved by the Division of Parole and Probation at the onset of my husband's probation. This was absolutely done without my knowledge or consent, and more importantly, without probable cause and without a warrant. For the last six years my computer has been password protected and under my control per the request of the Division of Parole and Probation. My husband is no longer on probation; he is currently on Lifetime Supervision and under a different set of civil laws and conditions."

"On the afternoon of September 22, 2010 a Lifetime Supervision visit was conducted by Officer's Howald and Officer Perrott at our home. I was not at home at the time of this visit but fortunately my 18 year old daughter, Alexandra, was present and upstairs to witness what I believe to be another unnecessary and illegal search. My "personal property", not the lifetime supervision client's property, was searched without any probable cause or reason to believe that rules were violated and evidence would be found. I believe that this search was conducted for the purpose of harassment under your authority", because of previous complaints that I had filed against the Division.

And recently, a home visit was conducted on February 12, 2011 and another illegal search of my and our daughter's personal property was conducted while I was present and with no consent given by me. This illegal search was performed by Officer Evans, Officer Ashby, and Sergeant Helgerman. Consent was not asked for per the Division Directive 6.2.109 regarding search and seizure as directed. I am including a copy of this Division Directive for your review. As you will notice, this policy and procedure concerning a search is for criminal offenders, not civil offenders, and it is not legally permissible to conduct a search on any third party who is not on supervision. This search creates other issues relating to training, as both of these Officers searched areas of the residence against policy and procedure, with their illegal activities being condoned by the Sergeant of the Division, who also searched areas and items improperly.

And finally, the Division chose to search my personal computer on 3/31/2011 and 4/1/2011, which they had previously seized on August 1, 2010. This was done by Officer Evans, under the authority of Sgt. Helgerman, and supposedly under the authority of the Board of Parole Commissioners and the Deputy Attorney General who authorized the search.

In my short acquaintance with these specific Officers it appears as though they have been authorized by you to do as they please with a total disregard for the legal consequences of their actions, and any liabilities they may impose, when pertaining to myself, my family and other families of offenders. I have discussed this issue of illegal search with other families of offenders subject to Lifetime Supervision who report the same concerns and treatment by Officers in the Division. The Division's mantra is that "We only enforce the conditions placed upon you by the Board". They perform these actions under the authority you grant them pertaining to offenders placed on Lifetime Supervision, and their families.

An interesting situation presents itself, that while my husband was under the Court's supervision while serving his sentence of probation, none of these illegal issues

occurred, as my husband was under the authority of the Court at that time. Since the expiration of that sentence, and being placed under Lifetime Supervision, and under the Board's authority, the level of violations of civil liberties not only against him, but also against us, his family, has risen dramatically. This has been further verified by my conversations with other family members who also live with an offender sentenced to Lifetime Supervision.

According to my research of the relevant United States Circuit Court Decisions and Nevada Supreme Court decisions addressing the myriad of issues surrounding illegal search and seizure of persons or their personal property, there remains a stringent proof a burden for obtaining a warrant. Therefore, I would bet that the proof of burden is as stringent in these instances that I have included for your review. In regards to me, even though I am a family member who resides with an offender, any search of me or my personal property would most certainly require a warrant. This is even more of an issue, since my husband is serving a civil sentence which the Board has been authorized to oversee by the Legislature.

I am asking the Board of Parole Commissioners to not take a vote today on the ability of the Division to continue their improper search techniques against me, my family, or other families of offenders until the Board looks into these constitutional issues further.

I would hope that the Board members are as professional as I believe them to be, and not allow the Division to separate our family, due to our continued advocacy in relation to our constitutional rights.

Thank you for your time and effort in regards to this very serious matter.

Sincerely,

Cynthia A. Davis

ATTACHMENT 11

August 15, 2011

Honorable Board of Parole Commissioners
1677 Old Hot Springs Road, Suite A
Carson City, NV 89706

David L. Tole
Member
Nevadans for Civil Liberties
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Reno, NV 89506
info@nevadans-for-civil-liberties.org

RE: Letters to the Legislature

Honorable Board Members:

I am a member of the public, a citizen of the State of Nevada, a registered voter in the State, and a member of Nevadans for Civil Liberties. I believe I am a responsible and well-informed citizen of the State, as I am currently a 2 LT. in the United States Army. I am also a parent of a minor child who interacts with an offender, as I am the son of an offender, and my daughter is the granddaughter of an offender.

As a member of an organization that advocates for my rights and other person's rights in relation to a State Agency, we have the belief that the Board of Parole Commissioners and the Division of Parole and Probation are illegally implementing and enforcing the conditions of Lifetime Supervision on offenders subject to this sentence. Any further discussion of these conditions should take these concerns addressed in these letters into account and be documented in the minutes and exhibits.

The statute as drafted by the Nevada Legislature in 1995 in SB 192 does not include any punitive measures or conditions. Our organization believes the Board and the Division have violated the Constitutional Liberties of offenders that have been sentenced to this civil penalty, including restraints of First Amendment Rights.

We have presented the following information that our organization believes to be true and correct to the Nevada Legislature, and its members, and we are now presenting this information to you, entitled Letters to the Legislature.

Due to this open public meeting being concerned with issues relating to the conditions of Lifetime Supervision, we feel that this information concerning the constitutional issues we are presenting to the Legislature would be helpful to the Board when considering the further ramifications of their actions in regards to this civil sentence.

First, even though the Board has a copy of this letter supplied by another member, we would like to include in today's record, the letter entitled:

- Lifetime Supervision, A Civil Penalty.

March 1, 2011.

Second, after submitting this letter to the Board, we provided this letter to the members of the Nevada Legislative Judiciary Committees along with a letter entitled:

- Lifetime Supervision. March 13, 2011.

Then we drafted a letter concerning the ability of the Division of Parole and Probation to effectively administer this civil sentence of Lifetime Supervision and also provided an article on the State of Kentucky and how they looked to revamping their system of criminal justice and they are entitled:

- Effective Administration of Lifetime Supervision May 10, 2011.
- Kentucky-Smart on Crime April 23, 2011.

We went further and considered the implementation of NAC 213.290 and provided a letter concerning the hearings of Lifetime Supervision and the lack of due process, and we also provided the Legislature with a decision in Texas concerning conditions and the Parole Board in Texas illegally applying those conditions entitled:

- Lifetime Supervision Hearings per NAC 213.290. May 15, 2011.
- Texas Parolees and hearings. May 5, 2011.

And finally, we presented a letter to the Legislature concerning a discussion of Lifetime Supervision Conditions entitled:

- A Discussion of Lifetime Supervision Conditions: July 21, 2011
The Violations of Constitutional Liberties, including
First Amendment Rights, and how it is imposed and
Enforced in a punitive manner.

Our organization feels that is extremely important that the Board of Parole Commissioners consider the issues we have presented to the Nevada Legislature before taking any vote on the implementation of conditions.

We are asking that this information be included in the minutes of the meeting and in any examples or documentation, the same as would be accorded any document supplied by the Division of Parole and Probation.

Thank you for your time in allowing me to present this information to the Board of Parole Commissioners.

Sincerely,

David L. Tole