Treatment of Mentally Ill Offenders

Legislative Counsel Bureau

Bulletin No. 97-7

January 1997

TREATMENT OF MENTALLY ILL OFFENDERS

BULLETIN NO. 97-7

JANUARY 1997

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SUMMARY OF RECOMMENDATIONS

This summary presents the recommendations approved by the Legislative Commission's Subcommittee to Study the Treatment of Mentally Ill Offenders in the Criminal Justice System (Senate Concurrent Resolution No. 59, File No. 164, *Statutes of Nevada 1995*). The subcommittee submits these proposals to the 69th Session of the Nevada Legislature.

RECOMMENDATIONS CONCERNING THE INCARCERATION AND TREATMENT OF SEX OFFENDERS IN GENERAL (PRIMARILY ADULTS)

Sentencing, Incarceration, and Treatment

1. **Include a statement in the final report recommending that prosecution should be included in all intervention measures regarding sex offenders. Prosecutors should vigorously seek convictions.**

2. **Amend the *Nevada Revised Statutes* (NRS) to require that, to assist judges in determining the appropriate sentence, the Division of Parole and Probation (DP&P), Nevada's Department of Motor Vehicles and Public Safety (DMV&PS), include a psychosexual evaluation in the report of the presentence investigation of each convicted sex offender. The psychosexual evaluation should be conducted using a standardized assessment methodology. Furthermore, the evaluation should be performed by a licensed mental health professional who has received sex offender specific training. (BDR 14-284)**

3. **Include a statement in the final report recommending that treatment provided to sex offenders should be directed toward changing their sexually offending behaviors. It should not be viewed as an alternative to punishment and should supplement incarceration.**

4. **Include a statement in the final report supporting the implementation of external controls (e.g., house arrest, increased supervision by parole and probation officers, and polygraph examinations) for sex offenders on parole or probation. Adult sex offenders who eventually will be released from prison should be placed in highly structured, realistic, and responsible treatment programs while they are incarcerated.**

5. **Include a statement in the final report recommending that, subject to legislative appropriation, all convicted sex offenders, particularly inmates in Nevada's Department of Prisons (DOP), receive appropriate treatment to reduce the chance that they will reoffend.**

6. **Draft and enact legislation to authorize the use of chemical castration or the chemical alteration of an individual's hormonal system for the treatment of certain sex offenders incarcerated in DOP or being supervised by the DP&P. In addition, include a statement in the final report recommending research and statistical reporting on the effectiveness of such treatment on each sex offender who receives this treatment. In particular, the study should track the long-term effectiveness of such treatment after such an offender is released from a term of imprisonment, parole, or probation. (BDR 39-285)**

7. **Draft and enact legislation to authorize the civil commitment of sex offenders. Such legislation should include a provision that repeat sex offenders be civilly committed until they no longer pose a threat to society. In addition, include a statement in the final report recommending that the Legislature give special consideration to Minnesota's "Psychopathic Personality Law." (BDR 39-286)**

8. **Include a statement in the final report recommending that the Legislature provide adequate funding for the following:**

    a. **Community corrections personnel (e.g., parole and probation officers) to monitor sex offenders as they make a transition from prison into a community;**

    b. **Continuing education for all personnel involved in the treatment of sex offenders (e.g., district attorneys, judges, parole commissioners, treatment providers); and**

    c. **Inpatient as well as outpatient follow-up treatment for sex offenders.**

9. **Include a statement in the final report recommending that treatment for sex offenders be provided by therapists who specialize in sex offender specific therapy.**

Certification for Release by the "Psych Panel" (which currently must approve the release of offenders convicted of certain sex-related crimes)

10. Include a statement in the final report supporting legislation, recommended by Nevada's Attorney General, to amend NRS 200.375, "Limitations on parole," to clarify that:

    a. Inmates convicted of sex offenses do not have a liberty interest in certification by the "psych panel" so they can be considered for parole;

    b. The "psych panel" in its sole discretion may revoke such certification at any time; and

    c. Recertification may be required for any inmate who has reentered Nevada's prison system.

11. Amend the NRS to expand the requirement for certification prior to release by the "psych panel" to those inmates who are found guilty but mentally ill. (BDR 16-287)

12. Amend the NRS to add the "psych panel" screening requirement to the following sexual offenses for which the panel is not currently required: battery with intent to commit sexual assault, child abuse, child pornography, incest, and sexual seduction. In addition, require the certification for coercion, which is the crime most frequently agreed upon as a result of plea bargaining a sexual criminal charge. (BDR 15-288)

RECOMMENDATIONS REGARDING JUVENILE SEX OFFENDERS

13. Include a statement in the final report urging judges to exercise their discretion under existing law to close to the general public court proceedings involving juvenile sex offenders when the presence of the news media may have an adverse effect upon a youth's chances of success in treatment and preventing recidivism.

14. Draft and enact legislation that requires the juvenile division of each district court to notify, in writing, the appropriate school district prior to the release of a juvenile sex offender. Include in the legislation a provision that prohibits a juvenile sex offender from attending the same school as his victim. (BDR 5-289)

15. **Include a statement in the final report supporting continued legislative appropriations to the Division of Child and Family Services (DCFS), Nevada's Department of Human Resources, for the division's existing or authorized programs and facilities for the assessment and treatment of juvenile sex offenders. In addition, include a statement recommending that the Legislature provide adequate funding for the DCFS to expand its programs for juvenile sex offender treatment, particularly programs at the Caliente Youth Center and the development of programs at the Nevada Youth Training Center in Elko.**

16. **Include a statement in the final report recommending that the Legislature and the local governments provide adequate funding for the treatment of juvenile sex offenders. In addition, the Legislature should support the development and use of an increased number of in-state treatment programs. The treatment programs and related services should be provided in or near the community of residence of the offender and the offender's family. Consideration should be given for these services to be provided at the local (county) level.**

RECOMMENDATIONS FOR TRACKING AND MONITORING SEX OFFENDERS

17. **Draft and adopt a resolution directing the DOP, DP&P, and the Central Repository for Nevada Records of Criminal History (Nevada Highway Patrol Division, DMV&PS) to conduct a study of the recidivism rates of sex offenders in Nevada, particularly those offenses for which an offender may receive a sentence of lifetime supervision or for which community notice may be required. The study should also track juvenile sex offenders through the adult criminal justice system to determine the long-term effects of treatment. Furthermore, the study should be ongoing and the updated results should be reported to the Legislature and the Advisory Commission on Sentencing at the beginning of every regular legislative session. (BDR 14-290)**

18. **Draft and enact legislation to establish a program whereby anytime an adult or juvenile is found guilty of committing a sexual or violent offense, the court must provide the victims and witnesses with documentation which includes a form to request notification. The documentation should advise them of their rights to be informed of the movements of the defendant through the criminal justice system. (BDR 14-291)**

19. **Include a statement in the final report supporting Senator Mark A. James' BDR (BDR 15-76) to amend the NRS to:**

    a. **Require that a sex offender convicted in another state who moves to Nevada will be subject to the registration, lifetime supervision, and community notification requirements enacted in 1995 under Senator James' Senate Bill 192 (Chapter 256, *Statutes of Nevada 1995*) which increased the penalties for certain sex-related offenses;**

    b. **Increase the penalty for failure to register as a sex offender from a misdemeanor to a felony;**

    c. **Allow for a statewide repository of sex offender registration; and**

    d. **Include juvenile sex offenders in the community notification provisions of S.B. 192.**

20. **Include a statement in the final report supporting Senator Mark A. James' BDR (BDR 15-76) to authorize public access to the registry of sex offenders. The BDR would authorize the implementation of a sex offender registration hot line similar to the one used in California. Various employers and the public would be allowed to contact a centralized place to determine if a person is a registered sex offender.**

RECOMMENDATION CONCERNING EDUCATIONAL PROGRAMS

21. **Include a statement in the final report supporting programs that educate children in recognizing, preventing, and reporting sexual abuse.**

RECOMMENDATIONS REGARDING MENTALLY ILL OFFENDERS

22. **Include a statement in the final report recommending that one method of effectively managing mentally ill offenders in jail or prison is to have them involved in work programs and other productive activities that maximize the use of their time.**

23. **Amend the NRS to require lifetime supervision for offenders who are found guilty but mentally ill and convicted of crimes of violence, such as armed robbery, arson, battery, and murder. The lifetime supervision of such offenders would follow the expiration of a term of imprisonment, parole, or probation. (BDR 14-292)**

RECOMMENDATION CONCERNING THE FISCAL EFFECT OF PROPOSED LEGISLATION

24. **Include a statement in the final report urging the various state and local agencies that deal with sex offenders and/or mentally ill offenders to review and analyze the recommendations adopted by this subcommittee, the subcommittee's final report, and the BDRs contained in the report. Most importantly, these agencies should immediately begin the analysis and planning necessary to advise the Legislature on the fiscal effect that these proposals may have on their budgets.**

REPORT TO THE 69TH SESSION OF THE NEVADA LEGISLATURE BY THE LEGISLATIVE COMMISSION'S SUBCOMMITTEE TO STUDY THE TREATMENT OF MENTALLY ILL OFFENDERS IN THE CRIMINAL JUSTICE SYSTEM

I. INTRODUCTION

The 68th Session of the Nevada Legislature adopted Senate Concurrent Resolution No. 59 (File No. 164, *Statutes of Nevada 1995*, pages 3037-3038) which directed the Legislative Commission to conduct an interim study of the treatment of mentally ill offenders, particularly sex offenders, in the criminal justice system. See Appendix A for the text of the resolution. The commission appointed a subcommittee of six legislators (three Senators and three Assemblywomen) to carry out the provisions of the resolution.

The following legislators served on the S.C.R. 59 Subcommittee:

Senator Mark A. James, Chairman
Senator Maurice E. Washington, Vice Chairman
Senator O. C. Lee
Assemblywoman Maureen Elizabeth Brower
Assemblywoman Jan Evans
Assemblywoman Genie Ohrenschall

Legislative Counsel Bureau (LCB) staff services for the subcommittee were provided by Donald O. Williams, Chief Principal Research Analyst, of the Research Division; Scott G. Wasserman, Chief Deputy Legislative Counsel, and Bradley A. Wilkinson, Principal Deputy Legislative Counsel, of the Legal Division; and Debby Richards, Principal Research Secretary, of the Research Division.

The subcommittee held four meetings, including a work session, during the course of the study. One of the meetings was in Las Vegas and the other three were in Carson City. These public hearings were conducted through simultaneous video conferences between meeting rooms at the Legislative Building in Carson City and the Grant Sawyer State Office Building in Las Vegas.

During the course of this interim study, the subcommittee received extensive expert and public testimony concerning sex offenders and mentally ill offenders in Nevada's criminal justice system. The subcommittee reviewed various laws and treatment programs which other states have enacted to deal with sex offenders, and it considered the results of

research conducted by psychologists and psychiatrists who are prominent in the field of sex offender treatment. It obtained testimony and correspondence from concerned citizens, district attorneys, judges, juvenile probation officers, police officers, sex offender therapists, victims of crime, and representatives of state criminal justice and mental health agencies. State and local officials who deal with mentally ill offenders and/or sex offenders contributed information and suggestions throughout the study.

At its final meeting and work session, the subcommittee adopted 24 recommendations, including nine bill draft requests (BDRs), for consideration by the 1997 Legislature. The recommendations address the following major topics:

- Incarceration and treatment of adult sex offenders;
- Treatment of juvenile sex offenders;
- Tracking and monitoring sex offenders; and
- Managing and supervising mentally ill offenders.

See Appendix D for the subcommittee's suggested legislation (BDRs).

This report contains information on Nevada's recently enacted legislation regarding sex offenders and mentally ill offenders. In addition, it presents an overview of treatment programs for sex offenders in various jurisdictions nationwide. The report also contains a discussion of the other topics under which the subcommittee made its recommendations.

In this document, the subcommittee has attempted to present its findings and recommendations in a concise form. A great amount of data was gathered during this study, and much of the information was provided in exhibits that became part of the minutes of the subcommittee's meetings. All supporting documents and minutes of meetings are on file with the Research Library of the LCB.

II. RECENT LEGISLATION IN NEVADA

During the 1995 Legislative Session, Senator Mark A. James, Chairman of the Senate Committee on Judiciary, sponsored two bills that enhanced the punishment for sex offenders and a bill that abolished the insanity defense. All of these important measures were enacted into law and relate directly to the work of the Legislative Commission's

Subcommittee to Study the Treatment of Mentally Ill Offenders in the Criminal Justice System (S.C.R. 59). These laws are summarized below.

A. Sex Offenders

1. Senate Bill 192 of 1995

Senate Bill 192 (Chapter 256, *Statutes of Nevada 1995*) increases the penalties for certain sex-related offenses, provides for community notification of the release of offenders who have committed sexual offenses, and imposes a sentence of lifetime supervision on such offenders.

Under this measure, a person who commits a sexual assault against a child under 16 years of age that results in substantial bodily harm must be punished by imprisonment for life without the possibility of parole. If no substantial bodily harm to the victim results, the person must be punished by imprisonment for life with the possibility of parole after a minimum of 20 years has been served or for a period of 5 to 10 years without the possibility of parole.

Senate Bill 192 also provides that a person convicted of battery with the intent to commit a sexual assault resulting in substantial bodily harm must be punished by life in prison with or without the possibility of parole. If the crime does not result in substantial bodily harm and the victim is over 16 years of age, the penalty is imprisonment for 2 to 10 years. If the victim is under 16, a sentence of 5 to 15 years in prison without the possibility of parole must be imposed.

Lifetime Sentence

Under the provisions of S.B. 192, the judge must include a special sentence of lifetime supervision for individuals convicted of certain sex-related offenses. This lifetime supervision begins after the conclusion of any term of imprisonment or any period of probation or parole. Upon a petition, the court may release an individual from lifetime supervision if the person has not committed a crime for 15 years since being released from incarceration or last convicted, whichever occurs later, and is not likely to pose a threat to the safety of others.

The State Board of Parole Commissioners must establish the program of lifetime supervision. Any violation of a condition of lifetime supervision is a felony.

Central Repository for Nevada Records of Criminal History

Senate Bill 192 adds the crimes of battery with intent to commit a sexual assault, possession of child pornography, solicitation of a minor to engage in acts constituting the crime against nature, indecent or obscene exposure, necrophilia, molestation or annoyance of a minor, or any attempt to commit one of these offenses to the list of crimes for which the court is required to submit the results of blood and saliva tests to the Central Repository for Nevada Records of Criminal History.

Community Notification

Senate Bill 192 creates an advisory council for community notification composed of three members appointed by the Governor and four members appointed by the Legislative Commission. The council must consult with and provide recommendations to the Attorney General concerning the guidelines for community notification upon the release of a sex offender on parole. The Attorney General is responsible for establishing these guidelines, which must identify factors relevant to the risk of recidivism. These factors include therapy, treatment, advanced age, debilitating illness, and the criminal history of the offender.

The law enforcement agency responsible for the jurisdiction in which the offender is to be released provides the notification required by the guidelines. Three levels of notification must be established by the Attorney General. If the risk of recidivism is low, other law enforcement agencies must be notified. If the risk is moderate, law enforcement agencies, schools, and religious and youth organizations must be notified. If the risk is high, members of the public likely to encounter the offender must be notified in addition to the entities in the other two categories.

Sexual Offenses

An offender may receive a sentence of lifetime supervision and community notification may be required if the offender is convicted of a sexual offense or other crime deemed sexually motivated. The court must conduct a separate hearing into the issue of sexual motivation if the prosecuting attorney requests such a hearing prior to the trial and notifies the defendant of the intent to request the hearing. This hearing must be conducted before the court imposes its sentence or before a separate penalty hearing. Only evidence regarding the issue of whether the crime was sexually motivated may be presented, and the court must enter its finding on the record. An act is sexually motivated if one of the reasons the person committed the act was sexual gratification.

Following are the sexual offenses for which an offender may receive a sentence of lifetime supervision or for which community notice may be required:

- Sexual assault;
- Battery with the intent to commit sexual assault;
- Using a minor in producing pornography;
- Promotion of the sexual performance of a minor;
- Subsequent offense of possession of visual presentation depicting the sexual conduct of a person under 16 years of age;
- Incest;
- Solicitation of a minor to engage in acts constituting the crime against nature where the minor engaged in the act;
- Subsequent offense of solicitation of a minor to engage in acts constituting the crime against nature where a minor did not engage in such acts;
- Lewdness with a child under 14 years of age;
- Necrophilia; or
- An attempt to commit any of the crimes listed above.

Also see Appendix C of this report.

2. Senate Bill 416 of 1995

Senate Bill 416 (Chapter 443, *Statutes of Nevada 1995*) modifies the sentencing of persons convicted of felony sex offenses and other crimes that are felonies. Under this measure, the judge must sentence such a person to a minimum and a maximum term of imprisonment within the limits prescribed by statute. The minimum sentence imposed must not be more than 40 percent of the maximum sentence. An offender is required to serve the minimum sentence imposed by the judge, and there is no parole eligibility during this period. In addition, no credits earned in prison apply to reduce the minimum sentence. After serving

the minimum sentence, the offender is eligible for parole and sentence reducing credits which are applied to reduce the maximum.

Senate Bill 416 places each felony in State law into one of the following five categories based on the type of sentence that may be imposed:

- *Category A* contains the felonies for which the judge may impose a sentence of life or life without the possibility of parole. Felonies carrying a potential sentence of death are also included in this category.

- *Category B* contains the felonies for which the judge may impose a sentence that is not less than 1 year nor more than 20 years.

- *Category C* contains the felonies for which the judge may impose a sentence not less than 1 year nor more than 5 years.

- *Category D* contains the felonies for which the judge may impose a sentence not less than 1 year nor more than 4 years.

- *Category E* contains the felonies for which probation is mandatory, but the judge imposes an underlying prison sentence of not less than 1 year nor more than 4 years.

This legislation also increases the penalty for certain felonies, including murder, rape, burglary, and child abuse, and decreases the penalty for other felonies, such as possession and trafficking of controlled substances.

Senate Bill 416 authorizes judges to design programs unique to an offender's situation and requires the judge to monitor the program to determine whether the offender is responding appropriately. Offenders may be required to obtain a private bond, if they have the financial resources to do so, as a condition of probation or an alternative program.

The new law also creates a "super" habitual criminal provision, which is a Category A felony. Under this measure, the prosecutor must charge the offender as a habitual felon if the offender's current charge is one of the violent or sex-related felonies listed in these provisions and the offender has two prior convictions for such felonies. If an offender is convicted, the penalty is life without the possibility of parole, life with the possibility of parole after 10 years, or a definite term of 25 years with parole eligibility after 10 years have been served. Such a conviction only operates to increase, not reduce, the sentence for the principal crime.

Senate Bill 416 also prohibits the State Board of Pardons Commissioners from reducing a sentence of death or life without the possibility of parole to a sentence that allows parole.

B. Mentally Ill Offenders

Senate Bill 314 (Chapter 637, *Statutes of Nevada 1995*) abolishes the defense of insanity and adds the plea of guilty but mentally ill. A defendant who enters such a plea is subject to the same penalties as the defendant who pleads guilty, and this plea is not a defense to the alleged offense.

The measure provides that, prior to accepting a plea of guilty but mentally ill, the court must hold a hearing to determine whether the defendant was mentally ill at the time of the offense. The court may order an examination of the defendant and receive testimony of expert witnesses.

If a court accepts a plea of guilty but mentally ill, S.B. 314 requires the court to provide the opportunity to present evidence of the defendant's present mental condition prior to sentencing. If the court determines that the defendant is mentally ill at sentencing, it shall include in the sentence an order that the defendant receive during confinement such treatment as is available for the illness. Before ordering treatment, the court must also determine that relative risks and benefits of the treatment are such that a reasonable man would consent to the treatment. The bill authorizes the Department of Prisons to provide treatment pursuant to existing law.

III. SEX OFFENDER TREATMENT PROGRAMS

A. Sex Offender Treatment in the United States

Sex offenders include persons who commit crimes ranging in severity from indecent exposure to violent rape. Although reporting of sex crimes has increased significantly in recent years, most sex crimes are still not reported. The incarceration rate for sex offenders in the U.S. increased over eight times between 1980 and 1992, and this increase has been attributed to increased reporting, laws that expanded the definitions of sex offenses, and more aggressive law enforcement and prosecution.[1]

Those offenders convicted of serious sex crimes are usually sentenced to prison. Almost 107,000 sex offenders were inmates in the nation's prisons in 1995, and this number

[1]Lotke, 1996, p. 2.

represented approximately 11 percent of the total inmate population.[2] Most sex offenders sentenced to prison do not receive psychological treatment, and many offenders sentenced to probation are not required to receive such treatment.

After reviewing the results of major research studies on sex offender treatment, Robert J. McGrath concludes that treatment programs for sex offenders can reduce recidivism rates for certain offenders, but he acknowledges that not all treatments work equally well. He notes that rapists appear to be the most difficult sex offenders to rehabilitate.[3]

The average recidivism rate for an untreated sex offender sentenced to prison is reported to be 18.5 percent, but an analysis of major research studies has found that recidivism rates after treatment drop to an average of 10.5 percent.[4] The recidivism rates appear to be lowest when treatment is targeted to certain types of offenders. Treatment appears to reduce the recidivism rates among exhibitionists and child molesters by more than half, and it appears to work best with juvenile offenders. Rapists appear to be the most difficult sex offenders to rehabilitate, and, on average, treatment reduces their recidivism rates by only a few percent. Because recidivism rates for sex offenders tend to increase after several years, there is a need for sex offenders to receive supplemental treatment for many years.

Peter Finn identifies the three general approaches used to treat sex offenders as follows: **cognitive-behavioral techniques** (relapse prevention; social and life skills development; and education); **conditioning therapy** (aversive therapy, covert sensitization, and masturbatory satiation); and **pharmacotherapy** (Depo-Provera, and psychiatric drugs such as Prozac and lithium).[5]

Sex offender treatment can be expensive (between $5,000 and $15,000 per year for intense supervision and treatment), but a full year of treatment costs considerably less than an additional year of prison. The average cost of building a new prison cell is about $55,000 and the average cost of operating it for a year is $22,000.[6] If treated offenders can be

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[2]Wees, 1996, p. 10.

[3]McGrath, 1995, pp. 24-26.

[4]Lotke, 1996, pp. 2-3.

[5]Finn, 1995, pp. 250-252.

[6]Lotke, 1996, p. 3.

rehabilitated and integrated back into society, the cost of treatment can be considered affordable.

A 1996 survey by *Corrections COMPENDIUM* found that 24 prison systems in the United States operated special facilities for sex offenders—either separate program sites, units within facilities, or special barracks. Most were identified as treatment facilities, but some were described as assessment or diagnostic centers. Treatment is voluntary in the majority of the institutions, but some states require inmates to receive treatment before they can be eligible for parole. Minnesota and Missouri were the only states that reported that treatment for sex offenders is mandatory.[7]

According to an earlier (1993) survey of sex offender treatment programs in the prison systems of the U.S. and Canada, the most common treatment programs available in prison systems in the U.S. include individual counseling (42 systems), group counseling (46 systems), inmate support groups (25 systems), medical treatment (11 systems), and victim-offender reconciliation programs (at least four systems with others considering implementing such programs). Eighteen systems also use other types of treatment, including: Depo-Provera which is a synthetic progesterone that reduces the production and effects of the male hormone, testosterone; physiological assessment and behavioral therapy; relapse prevention; aversion therapy; and other special types of educational and therapeutic approaches.[8]

Almost all jurisdictions in the U.S. impose special conditions on those sex offenders who are released on parole. Common requirements include notification of law enforcement officials in the area of residence, intensive or "lifetime" supervision, travel or workplace restrictions, and continued participation in sex offender treatment programs. Most states also monitor those sex offenders who were not paroled but had completed their sentence. Many prison systems now track the recidivism of sex offenders who are released into the community, but some systems track only those offenders who participate in treatment programs.[9]

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[7]Wees, 1996, p. 11.

[8]Lillis, 1993, pp. 7-16.

[9]Wees, 1996, p. 11.

B. Nevada's Treatment Programs

1. Treatment for Inmates

According to the 1996 survey conducted by *Corrections COMPENDIUM*, Nevada's Department of Prisons (DOP) reported that there were 1,072 sex offense inmates in the prison system at the end of 1995. The DOP provided the subcommittee with a report that indicated that sex offenders comprised 13.4 percent of the total prison population as of October 12, 1995.[10] The acting mental health director at DOP reported, however, that only 338 of these inmates were receiving treatment for their sex offenses.[11] The voluntary treatment consisted of individual or group counseling sessions conducted by psychiatrists or psychologists.

2. Treatment for Adult Parolees and Probationers

Nevada's Division of Parole and Probation provided the S.C.R. 59 Subcommittee with a directory of mental health services available in each of the division's four districts (District I--Carson City, District II—Reno, District III—Elko, and District IV—Las Vegas). The directory includes the specific providers used to treat sex offenders who are under the supervision of each district office.

If the sentencing court or the State Board of Parole Commissioners orders mental health treatment as a condition for an offender to be released on parole or probation, the policy of DP&P is to require the supervising officer to ensure that an offender receives such treatment and continues it until such time as the condition may be satisfied or the order is modified. Although sex offender treatment is available in each of the division's districts, there are only a few providers and most of them are private therapists who charge at an hourly rate which may range from $40 to $150. Following an evaluation of the offender by the treatment provider, the treatment may involve individual, group, or family counseling sessions.[12]

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[10]Nevada's Department of Prisons, November 1, 1995, p. 3.

[11]Molde, 1995, p. 2.

[12]Concha, 1995, pp. 2-7.

3. Treatment for Juvenile Offenders

In 1989, the Nevada Legislature approved funding for a 12-bed residential treatment program for mild to moderate juvenile sex offenders. This Specialized Adolescent Treatment Program, located in Las Vegas, is operated by the Division of Child and Family Services (DCFS), Department of Human Resources. This treatment facility provides intensive residential care with 24-hour staff supervision, on-site treatment, psychotherapy, educational services, medical support, and psychiatric services. The average length of stay is 327 days, and 67 youths have been served since the program's inception in 1990. Only two of the youths treated in this program have been reported as reoffending after their discharge (approximately 3 percent recidivism rate).[13]

The 1991 Legislature allocated money to DCFS to provide juvenile sex offenders with evaluations specific to sex offenses and train professionals to evaluate and work with such offenders. Since 1992, community professionals have received intensive training. Since 1993, trained clinicians have conducted evaluations (specific to sex offenses) on most adjudicated juvenile sex offenders.

According to information presented by the Nevada Task Force/Network on Juvenile Sex Offenders, the number of youths referred by the courts to juvenile probation services for sexual offenses was 181 in 1990, 210 in 1991, 229 in 1992, 273 in 1993, and 234 in 1994. The decrease in the number in 1994 and a similar projected decrease in 1995 may be attributed in part to the fact that, in the most recent years, most of these offenders, approximately 171 in 1995, have been placed in treatment programs.[14] The treatment programs are provided through DCFS residential facilities, private group homes located in Nevada, outpatient treatment provided by local therapists, and private facilities located in other states.

In Fiscal Year (FY) 1995-1996, the DCFS provided services to 129 adolescent sexual offenders, ages 10 to 18. This number is almost twice that served in 1991 (68 adolescents). Of the youths served in FY 1996, 67 percent have been placed in the custody of the division. The other 33 percent of these juvenile offenders have been referred by county juvenile probation departments and are either wards of the court or in parental custody. Half of these juvenile offenders served by the division are under the age of 15. Most are of normal intelligence and suffer from conduct or impulse control disorders. These youths have committed an average of 1.5 sex offenses, ranging from

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[13]Peterson, 1996, p. 10.

[14]Curley, 1995, pp. 1-2.

lewdness to sexual assault. Less than 20 percent of them are considered to be high risk offenders.[15]

The DCFS provides sex offender evaluations through its Children's Resource Bureau offices throughout the state. In addition to the Specialized Adolescent Treatment Program, the division contracts with in-state treatment providers in Las Vegas and Reno and out-of-state facilities located in Utah and South Carolina. The number of adolescent sex offenders placed by DCFS in out-of-state facilities has ranged from 6 in 1992, to 40 in 1994 (at a total cost of more than $3 million), to 26 in 1996 (at an average cost of $275 per day).[16]

In response to questions raised during the S.C.R. 59 Subcommittee's meeting on February 1, 1996, Dr. Christa Peterson, Deputy Director, Treatment Services, DCFS, stated that certain juvenile sexual offenders are placed in the Caliente Youth Center (CYC) in Caliente, Nevada, or the Nevada Youth Training Center (NYTC) in Elko, Nevada. She explained that the CYC and NYTC provide a general treatment program that involves a peer group counseling model designed to help children with a variety of delinquent behaviors. Youthful sex offenders do not necessarily receive sex offense specific treatment while they are in these facilities. However, all of the adolescent sex offenders who have attended the CYC and NYTC during the 1995-1996 fiscal year have received such treatment prior to entering or upon release from these programs. Dr. Peterson estimated that at any given time, a total of 20 to 25 juvenile sex offenders is enrolled at the CYC and NYTC, and she indicated that the average length of stay at the NYTC is six to nine months.[17]

C. Laws and Programs in Selected States

Minnesota and Washington are recognized as states with good sex offender treatment laws and programs. California and Oregon had good programs in recent years until state budget problems caused the programs to be eliminated or drastically reduced in scope. The State of Utah, although not identified as having a model program, has been very active in studying sex offender treatment issues and recommending increased state appropriations to provide such treatment.

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[15]Peterson, 1996, pp. 2-3.

[16]Peterson, 1996, p. 4.

[17]S.C.R. 59 Subcommittee, February 1, 1996, p. 22.

1. Minnesota's Psychopathic Personality Law

Minnesota enacted its "psychopathic personality" law in 1939 (*Minnesota Statutes* §§ 526.09 through 526.11). This law provides for the indefinite civil commitment of dangerous sex offenders to the Department of Human Services for treatment. Although a majority of states enacted similar "sexual psychopath," "psychopathic personality," or "mentally disordered sex offender" laws between 1940 and 1970, most of those states later repealed their statutes.

Minnesota's psychopathic personality law was used infrequently until 1991. Over the past few years, the state's Attorney General and county attorneys have increasingly used the statute to civilly commit (under *Minnesota Statutes,* Chapter 253B) sex offenders to the Minnesota Security Hospital at St. Peter upon their release from prison.

According to a report by Minnesota's Legislative Auditor, Minnesota's law was initially challenged in 1939, and the Minnesota Supreme Court upheld its constitutionality, a decision subsequently affirmed by the United States Supreme Court—*State ex rel. Pearson v. Probate Court*, 205 Minn. 545, 287 N.W. 297, 302 (1939), affirmed 309 U.S. 270, 60 Supreme Court 523 (1940). Recently, the law has been challenged again. Lower court decisions in more than 30 cases have been appealed to the Minnesota Court of Appeals alleging that the law is unconstitutional because it arbitrarily deprives people of their liberty and fails to provide adequate due process protections. The Appeals Court has consistently upheld the constitutionality of the law, and the Minnesota Supreme Court upheld its constitutionality in a 4 to 3 decision in 1994.[18]

When the psychopathic personality law was first enacted, it was used primarily to divert sex offenders into treatment instead of sending them to prison. Today, the law is being increasingly used to commit sex offenders at high risk to reoffend to mental health facilities after they have served their prison sentences. Commitments have increased primarily because the Department of Corrections now routinely screens all sex offenders scheduled to be released from prison and refers cases to county attorneys to consider commitment proceedings.

To accommodate the current and projected increase in psychopathic personality commitments, the 1993 Legislature authorized construction of a new $20.05 million treatment facility at Moose Lake. In addition, the Legislature appropriated $8.5 million to improve security and expand capacity at the Minnesota Security Hospital for psychopathic personalities and other dangerous patients.

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[18]Nobles, 1994, p. 1.

2. Sex Offender Treatment in Minnesota

Minnesota has more inmates in prison for sex offenses than any other category of crime. In 1995, sex offenders represented approximately 22 percent of Minnesota's total inmate population or more than twice the national average. Unlike most states, Minnesota has developed a wide range of treatment program options for sex offenders.

Although it is commonly believed that sex offenders return to prison for sex crimes more often than other offenders return to prison, the Minnesota Department of Corrections has found that this is not the case with its inmates. For example, a 1992 review of sex offenders released from Minnesota correctional facilities since 1985 indicates that only 4.6 percent returned to prison with a new sex offense.[19]

Stephen J. Huot is Director of the Sex Offender/Chemical Dependency Services unit at the Minnesota Department of Corrections. According to Mr. Huot, his department operates a number of different sex offender programs at various institutions. The intent is to create programs that target different types of offenders. For example, the department's psychoeducational programs are intended to meet the needs of offenders who are either minimizing or denying their offenses and those offenders who do not have time to benefit from an intensive therapy program because they have shorter sentences. Minnesota has developed a program specifically for individuals who function at a lower intellectual level, and it has a long-term intensive chemical dependency and sex offender program to deal with the most recidivistic and dangerous offenders. Finally, the state has developed transitional programs during the last year of the offender's incarceration.[20]

3. Sex Offender Treatment in Washington State

The State of Washington operates two institutional programs for the treatment of convicted sex offenders. One program is operated by the Department of Corrections and is located at the Twin Rivers Corrections Center in Monroe, Washington. Arthur Gordon, Ph.D., is the program's director.

The other program is the Sexual Predator Program (SPP) at the Special Commitment Center which is administered and operated by Washington's Department of Social and Health Services, but located within the Department of Corrections' complex at Monroe. The mission of the SPP is to provide for the "control, care and treatment" of the sexually

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[19]Minnesota Department of Corrections, 1995, p. 1.

[20]Huot, 1995, p. 2.

violent predator committed to custody "until such time as the person's mental abnormality or personality disorder has so changed that the person is safe to be at large, or to be released to a less restrictive alternative."[21]

4. Utah's Policy Recommendations for Sex Offender Treatment

On December 21, 1995, the Utah Sentencing Commission presented its 1995-1996 annual report to the Governor, Legislature, and Courts of the State of Utah. In its report, the commission recommended mandatory minimum sentences for sex offenders. The commission also made the following recommendations for the treatment of sex offenders:

- That treatment be provided for imprisoned sex offenders in the Department of Corrections who are found to be treatable.

- That an additional $1.95 million be appropriated specifically for the Department of Corrections' sex offender treatment program—$200,000 of this to be earmarked for evaluating treatment success and $250,000 to be a one-time expenditure for construction and remodeling. (The department estimates that this appropriation will enable its clinicians to provide treatment for every sex offender currently in prison.)

- That a certification program for sex offender therapists be developed.

- That a presentence psychosexual evaluation of sex offenders be provided to the court to assist the sentencing judge in determining whether to place an offender on probation or in prison.

- That the results of both ongoing assessment of sex offenders and of objective diagnostic testing be made available to sentencing and release authorities.[22]

IV. RECOMMENDATIONS

At its final meeting and work session on June 20, 1996, the S.C.R. 59 Subcommittee adopted 24 recommendations under the topics of incarceration and treatment of adult sex offenders; treatment of juvenile sex offenders; tracking and monitoring sex offenders; educational programs; mentally ill offenders; and fiscal effect. These proposals, which

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[21]Department of Social and Health Services, State of Washington, 1994, p. 5.

[22]Utah Sentencing Commission, 1995, pp. 8-9.

include nine BDRs, are submitted for consideration by the 1997 Legislature. Appendix D contains the BDRs.

Organized by topic headings, the following sections of the report discuss the subcommittee's recommendations.

A. Incarceration and Treatment of Adult Sex Offenders

1. Sentencing, Incarceration, and Treatment

At the subcommittee's meeting in Las Vegas on February 1, 1996, Lieutenant Brad Simpson, Section Commander for the Crimes Against Youth and Family Section of the Las Vegas Metropolitan Police Department (Metro), testified that community protection must be the highest priority in dealing with sex offenders. In response to his concerns, the subcommittee agreed to:

- **Include a statement in the final report recommending that prosecution should be included in all intervention measures regarding sex offenders. Prosecutors should vigorously seek convictions.** (Recommendation No. 1)

Also appearing at the meeting in Las Vegas, William O'Donohue, Ph.D., Associate Professor in the Department of Psychology at the University of Nevada, Reno, suggested that the subcommittee consider the program used by the State Forensic Service in Maine. In this program, presentence psychological evaluations are prepared to assist judges in determining the appropriate sentences for sex offenders.

Amy Wright, Unit Manager, Division of Parole and Probation (DP&P), Nevada's Department of Motor Vehicles and Public Safety (DMV&PS), suggested that the:

- *Nevada Revised Statutes* be amended to require that DP&P include a psychological evaluation in the report of the presentence investigation of each convicted sex offender.

- Psychological evaluation of sex offenders be standardized.

John Pacult, Program Manager, Family and Child Treatment (FACT) of Southern Nevada, Las Vegas, recommended that the sex offense specific evaluation be standardized and completed by an expert who has certain qualifications in working with sex offenders.

Based on this testimony, Senator James proposed that the subcommittee recommend a BDR to require a psychosexual evaluation for any sex offender before sentencing. He further noted that "sex offender" should be defined as broadly as possible using the same definition, including attempted sexual assault, that covers sex offenders under lifetime supervision and the "psych panel" evaluation. Senator James explained that the definition of "sex offender" would include the following sexual offenses:

- Battery with intent to commit sexual assault;
- Child abuse;
- Child pornography;
- Coercion;
- Incest; and
- Sexual seduction.

Ms. Wright requested that an attempt to commit any of the above-mentioned crimes also be included, and Chairman James suggested that "attempt to commit" any of these crimes be added to the proposed BDR.

The subcommittee agreed with the proposal and recommended that the Legislature:

- **Amend the *Nevada Revised Statutes* (NRS) to require that, to assist judges in determining the appropriate sentence, the Division of Parole and Probation (DP&P), Nevada's Department of Motor Vehicles and Public Safety (DMV&PS), include a psychosexual evaluation in the report of the presentence investigation of each convicted sex offender. The psychosexual evaluation should be conducted using a standardized assessment methodology. Furthermore, the evaluation should be performed by a licensed mental health professional who has received sex offender specific training. (BDR 14-284)** (Recommendation No. 2)

Lieutenant Simpson with Metro testified that treatment for sex offenders must not be viewed as a substitute for criminal penalties, and he again emphasized that community protection should be the highest priority. In response to his additional concerns about the purpose of such treatment, the subcommittee voted to:

- **Include a statement in the final report recommending that treatment provided to sex offenders should be directed toward changing their sexually offending behaviors. It should not be viewed as an alternative to punishment and should supplement incarceration.** (Recommendation No. 3)

At the subcommittee's initial meeting (November 2, 1995), Robert Stuyvesant, Licensed Clinical Social Worker (L.C.S.W.) and Marriage and Family Therapist, of Reno, testified regarding his 14 years of experience in treating sex offenders. He explained that he is an active member of the Association for the Treatment of Sexual Abusers (ATSA) which reviews treatment methods and issues regarding sexual aggressors. Based on the testimony by Mr. Stuyvesant, the subcommittee members acted to:

- **Include a statement in the final report supporting the implementation of external controls (e.g., house arrest, increased supervision by parole and probation officers, and polygraph examinations) for sex offenders on parole or probation. Adult sex offenders who eventually will be released from prison should be placed in highly structured, realistic, and responsible treatment programs while they are incarcerated.** (Recommendation No. 4)

In his opening remarks at the first meeting, Senator James stated that sex offenders who are not treated are motivated to continue and escalate their crimes. He explained that at least seven research groups have analyzed sex offender treatment studies during the last 15 years and all but one have found overall positive effects of treatment. Chairman James also indicated that a national study of sex offenders in 1993 found that the recidivism rate of treated individuals was 10.9 percent versus 18.5 percent for untreated offenders.

At the subcommittee's meeting in Las Vegas (February 1, 1996), Dr. Arthur Gordon, Director of the Sex Offender Treatment Program at the Twin Rivers Corrections Center, Department of Corrections, State of Washington, stated that treatment can reduce recidivism, particularly with high-risk sex offenders, but it must be tailored to specific subgroups of sex offenders to be effective. He stated that although treatment is most effective with high-risk offenders, it should be available to all offenders. Dr. Gordon revealed that his treatment program has only a 4.4 percent failure rate among all sex offenders who have received treatment.[23]

Senator James said that sexual offenders are a "tremendous" problem in Nevada and that a majority of inmates who have committed sex offenses eventually are released from

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[23]Gordon, 1996, pp. 1-3.

prison. He asked the subcommittee to support efforts to treat such offenders and, therefore, reduce their rate of recidivism. In response, the subcommittee voted to:

- **Include a statement in the final report recommending that, subject to legislative appropriation, all convicted sex offenders, particularly inmates in Nevada's Department of Prisons (DOP), receive appropriate treatment to reduce the chance that they will reoffend.** (Recommendation No. 5)

Chemical Castration

The most famous drug used for "chemically castrating" sex offenders is Depo-Provera, which has been the subject of a good deal of controversy when applied to this population. Depo-Provera was first used with male sex offenders in 1966 and has been used, albeit rather sparingly and cautiously, since then. Depo-Provera can legally be prescribed for sex offenders even though the Food and Drug Administration (FDA) has not specifically approved its use for this purpose. Otherwise, Depo-Provera is primarily used as a female contraceptive and to treat a variety of medical conditions.

Depo-Provera presumably suppresses or lessens the frequency of erection and ejaculation, and it also lessens the desire for sexual behavior, including deviant acts. However, men receiving doses of Depo-Provera can still be sexually active. In short, the drug simply causes a significant reduction in the rapidity with which an individual responds to external sexual stimulus. Depo-Provera may produce several short-term side effects, including high blood pressure, fatigue, and weight gain. Long-term consequences have not been well researched. When patients discontinue Depo-Provera, their sex drive returns to normal within seven to ten days.[24]

California's Assembly Bill 3339 was introduced in February 1996 and addresses the punishment of sex offenders by the use of chemical castration. More specifically, this bill adds to the *California Penal Code* a requirement that certain sex offenders, who are convicted for a second sex offense involving the molestation of a child under 13 years old, be chemically castrated prior to release from prison. Once in the community, these offenders are required to receive such hormonal injections until a panel of experts deems it no longer necessary. Further, as an alternative to chemical castration, eligible sex offenders may choose permanent, surgical castration.

The California measure was signed into law on September 17, 1996, and became effective on January 1, 1997.

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[24]Jenson, 1996, p. 1.

According to the National Conference of State Legislatures, a number of measures concerning chemical castration have previously been introduced in various other states, including Alabama, Florida, and Washington.

In using Depo-Provera, legal issues arise regarding enforced medication or the right to resist intrusive treatment interventions. During the subcommittee's work session, Senator James noted that no federal or state court in the U.S. has ruled directly that chemical castration, as punishment, constitutes cruel and unusual punishment under the Eighth Amendment to the *United States Constitution*.

When the subcommittee discussed this issue at its final meeting, Assemblywoman Jan Evans advised the members that the 1987 Legislature had considered a bill that proposed to make an appropriation for a "pilot program" to study the use of Depo-Provera on certain offenders in the state prison. This measure, A.B. 405, would have appropriated $250,000 from the State General Fund to the Department of Prisons to study the use of Depo-Provera on sex offenders in state prison. The Director of DOP would have been required to administer the program and submit a report of the study to the next session of the Legislature. Assembly Bill 405 died in the Assembly Committee on Ways and Means.

Assemblywoman Maureen Brower proposed that chemical castration be used in conjunction with therapy to treat sex offenders. Assemblywoman Genie Ohrenschall proposed that the subcommittee recommend research and statistical reporting on the effectiveness of chemical castration.

After deliberation, the subcommittee recommended the following action:

- **Draft and enact legislation to authorize the use of chemical castration or the chemical alteration of an individual's hormonal system for the treatment of certain sex offenders incarcerated in DOP or being supervised by the DP&P. In addition, include a statement in the final report recommending research and statistical reporting on the effectiveness of such treatment on each sex offender who receives this treatment. In particular, the study should track the long-term effectiveness of such treatment after such an offender is released from a term of imprisonment, parole, or probation. (BDR 39-285)** (Recommendation No. 6)

Civil Commitment

At the S.C.R. 59 Subcommittee's final meeting and work session (June 20, 1996), Senator James proposed that the subcommittee request a BDR to authorize the civil commitment of sex offenders. After acknowledging that this proposal involves a cost, he stated that there is a question as to whether persons committed under this program would be housed within the state prison system or another type of facility. During the discussion on the proposal, Assemblywoman Evans requested the subcommittee's legal counsel to present background information on the topic. In response, Bradley A. Wilkinson, Principal Deputy Legislative Counsel, presented the following information:

- The original version of Senate Bill 192 (Chapter 256, *Statutes of Nevada 1995*), which makes various changes related to provisions pertaining to sexual deviants, contained a civil commitment procedure which was based largely on the State of Washington's civil commitment law. Washington's statute was upheld by the Washington Supreme Court, struck down by a federal district court in that state, and has been appealed to the Ninth Circuit Court of Appeals. The civil commitment provisions were deleted, by amendment, from S.B. 192.

- In 1995, California passed a civil commitment statute which is similar to Washington's. It has been upheld by at least one trial court and that decision has been appealed.

- Kansas' civil commitment law is similar to Washington's. Recently, it was struck down by the Kansas Supreme Court and has been appealed to the United States Supreme Court.

The subcommittee also discussed Minnesota's civil commitment law, "Psychopathic Personality Law," which has been upheld by the courts for many years.

After considering all the aforementioned information, the subcommittee voted to:

- **Draft and enact legislation to authorize the civil commitment of sex offenders. Such legislation should include a provision that repeat sex offenders be civilly committed until they no longer pose a threat to society. In addition, include a statement in the final report recommending that the Legislature give special consideration to Minnesota's "Psychopathic Personality Law." (BDR 39-286)** (Recommendation No. 7)

Throughout the course of the study, the subcommittee received considerable testimony regarding the need to provide adequate monitoring and supervision of convicted sex offenders when they are released back into the community. In addition, the testimony supported continued treatment for these offenders. In response to a proposal made by Dr. William O'Donohue, the subcommittee adopted the following:

- **Include a statement in the final report recommending that the Legislature provide adequate funding for the following:**

  a. **Community corrections personnel (e.g., parole and probation officers) to monitor sex offenders as they make a transition from prison into a community;**

  b. **Continuing education for all personnel involved in the treatment of sex offenders (e.g., district attorneys, judges, parole commissioners, treatment providers); and**

  c. **Inpatient as well as outpatient follow-up treatment for sex offenders.**

  (Recommendation No. 8)

Diane Mercier, Ph.D., Clinical Psychologist, of Reno, was one of several sex offender therapists who appeared before the subcommittee and suggested that sex offenders are not effectively served by treatment providers who do not have sex offender specific training and certification in the most recent treatment methods. Based on these concerns, the subcommittee acted to:

- **Include a statement in the final report recommending that treatment for sex offenders be provided by therapists who specialize in sex offender specific therapy.** (Recommendation No. 9)

2. Certification by the "Psych Panel"

By law, an offender convicted of certain sex offenses may not be paroled until a board consisting of the Administrator of the Mental Hygiene and Mental Retardation Division of the Department of Human Resources, the Director of DOP, or their designees, and a psychologist or psychiatrist licensed to practice in Nevada, has certified that the offender was under observation while confined in an institution of DOP and is not a menace to the

health, safety, or morals of others. This board is commonly referred to as the "psych panel."[25]

Appearing before the subcommittee at the first meeting, David F. Sarnowski, Chief Deputy for the Criminal Justice Division, Office of the Attorney General, presented the recommendations of Nevada Attorney General Frankie Sue Del Papa. According to Attorney General Del Papa, inmates convicted of sexual offenses have, from time to time, filed civil rights lawsuits claiming a right to certification by the "psych panel" so they can be considered for parole. Arguments presented have included (1) the alleged lack of adequate mental health treatment to enable inmates to "pass" the psych panel, (2) a protected liberty interest in due process with respect to certification, and (3) that once certification is given, it cannot be revoked. To date, Nevada's federal and state courts have denied these and related inmate sex offender claims under this statute. However, it is always possible that a new judge or a Ninth Circuit Court of Appeals' panel could decide to construe this statute otherwise.[26]

Therefore, the Attorney General recommended that NRS 200.375 be amended to clarify that inmates do not have a liberty interest in certification; that the psych panel in its sole discretion may revoke certification at any time; and that recertification may be required for any inmate who has reentered the prison system. The purpose of this proposal is to avoid the potential for a court misconstruing the statute, and it should also discourage certain inmates from filing legal challenges.

Endorsing the Attorney General's legislative proposal, the subcommittee voted to:

- **Include a statement in the final report supporting legislation, recommended by Nevada's Attorney General, to amend NRS 200.375, "Limitations on parole," to clarify that:**

  a. Inmates convicted of sex offenses do not have a liberty interest in certification by the "psych panel" so they can be considered for parole;

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[25]Crimes for which a "psych panel" certification is required include sexual assault or attempted sexual assault (NRS 200.375); solicitation of a minor to engage in acts constituting infamous crime against nature (NRS 201.195); open or gross lewdness (NRS 201.210); indecent or obscene exposure (NRS 201.220); and lewdness with a child under 14 years of age (NRS 201.230).

[26]Del Papa, 1995, pp. 1-2.

b. The "psych panel" in its sole discretion may revoke such certification at any time; and

c. Recertification may be required for any inmate who has reentered Nevada's prison system.

(Recommendation No. 10)

Bryn Armstrong, former Chairman of the State Board of Parole Commissioners, proposed that the Legislative Commission's Subcommittee to Study the System of Parole and Probation (S.C.R. 52 [File No. 163, *Statutes of Nevada 1995*]) recommend legislation to expand the "psych panel" certification requirement to violent crimes not involving sexual misconduct, such crimes as armed robbery, arson, battery, and murder. The S.C.R. 52 Subcommittee referred this proposal to the S.C.R. 59 Subcommittee.

According to DOP research, approximately 3,000 additional inmates would be subject to the "psych panel" requirement proposed by Mr. Armstrong.[27]

At the work session, Senator James suggested a compromise proposal that would not have the significant cost that would result from Mr. Armstrong's proposal. Senator James recommended that the statutes be amended to apply the "psych panel" requirement to those inmates who are found guilty but mentally ill. The subcommittee agreed to recommend legislation to:

- **Amend the NRS to expand the requirement for certification prior to release by the "psych panel" to those inmates who are found guilty but mentally ill. (BDR 16-287)** (Recommendation No. 11)

Donald L. Denison, Chairman of the State Board of Parole Commissioners, proposed that the Parole and Probation Subcommittee (S.C.R. 52) recommend legislation to expand the "psych panel" provision to certain sex offenses not currently required and to sex offenses where an offender, as a result of plea bargaining, is allowed to plead guilty to the lesser offense of coercion. This recommendation was later referred to the S.C.R. 59 Subcommittee.

In the discussion at the work session, Senator James advised the subcommittee that DOP research indicates that Mr. Denison's proposal would involve approximately 200 inmates. In response to this recommendation, the S.C.R. 59 Subcommittee voted to:

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[27]Bayer, May 11, 1996, p. 1.

- **Amend the NRS to add the "psych panel" screening requirement to the following sexual offenses for which the panel is not currently required: battery with intent to commit sexual assault, child abuse, child pornography, incest, and sexual seduction. In addition, require the certification for coercion, which is the crime most frequently agreed upon as a result of plea bargaining a sexual criminal charge. (BDR 15-288)** (Recommendation No. 12)

B. Juvenile Sex Offenders

1. Court Proceedings and School Procedures

Prior to July 1, 1995, Nevada law provided that juvenile court proceedings were confidential. Assembly Bill 317 of the 1995 Legislative Session (Section 7 of Chapter 444, *Statutes of Nevada 1995*, at pages 1346-1348) changed the law to require that such proceedings be open to the public, unless the court determines that closing the proceedings would be in the best interests of the juvenile or the general public.

At the subcommittee's first meeting, Diane Crowe, Chief Trial Deputy in the Carson City Office of the State Public Defender, and Ian Curley, Juvenile Probation Officer with the Carson City Juvenile Probation Department and Chairman of the Nevada Task Force/Network on Juvenile Sex Offenders, testified that court cases involving juvenile sex offenders should not be open to the news media because such action will have an adverse effect upon family cooperation and support during a youth's treatment.

Rather than proposing an amendment to the existing law, Senators James and Washington suggested that the subcommittee urge judges to exercise their discretion and close such proceedings when the presence of the news media may have an adverse effect upon a youth's treatment. The subcommittee agreed and acted to:

- **Include a statement in the final report urging judges to exercise their discretion under existing law to close to the general public court proceedings involving juvenile sex offenders when the presence of the news media may have an adverse effect upon a youth's chances of success in treatment and preventing recidivism.** (Recommendation No. 13)

At the Las Vegas meeting, Sandra Youngen, Program Administrator for the Juvenile Rehabilitation Administration in the State of Washington's Department of Social and Health Services, testified that Washington law requires her division to notify, in writing, the appropriate school district prior to the release of a juvenile sex offender. She also noted that a new Washington law prohibits a youthful offender from attending the same

school as his victim. Senator James proposed that Nevada consider enacting similar legislation, and the subcommittee voted to:

- **Draft and enact legislation that requires the juvenile division of each district court to notify, in writing, the appropriate school district prior to the release of a juvenile sex offender. Include in the legislation a provision that prohibits a juvenile sex offender from attending the same school as his victim. (BDR 5-289)** (Recommendation No. 14)

2. Treatment

Noting that most sex offenders begin their criminal careers as adolescents, Senator James revealed that:

- Sixty-nine percent to 80 percent of adult sex offenders reported offending as adolescents.

- Child sexual abuse reports demonstrate adolescents perpetrate more than 50 percent of the molestation of boys and at least 25 percent of the sexual abuse of girls.

- One research study found that juvenile sexual offenders will commit an average of 360 sex offenses in their lifetime if they do not receive treatment.

He stated that the treatment of adolescents who commit sexual offenses is critical.

Judith V. Becker, Ph.D., Professor of Psychiatry and Psychology, University of Arizona, appeared before the subcommittee in Las Vegas. Dr. Becker noted that she and a colleague conducted the study previously mentioned by Senator James. She said that their research found that 58 percent of a large sample of adult sex offenders began offending as juveniles and each committed approximately 360 offenses during their lifetime.

During her presentation, Dr. Becker noted that:

- It is estimated that 20 percent of reported rapes and 40 percent of child molestation incidents in the U.S. are committed by youth under the age of 18 years. Therefore, early intervention with youths who present these types of problems is important. Researchers of delinquency and children who have conduct disorders can identify youth who begin to show sexual behavior problems or are at risk of showing such problems by six years of age.

- Many varieties of treatment are used for youthful sex offenders and their family members.

- Cognitive behavioral treatment in a relapse prevention model is an effective approach for both adult and youthful sex offenders:

  - Cognitive behavioral intervention requires offenders to examine their behavior and learn to believe it is inappropriate and harmful to the victims. The behavioral part of this therapy teaches offenders self-control techniques for their behavior.

  - The goal of the relapse prevention model is for an offender not to relapse.

- It is critical that juvenile offenders and their family members receive a "good" evaluation by someone who is trained to work with this population. An evaluation will assist in determining the treatment needs of the youth and their family as well as the best placement for the youth. A continuum of care or services within a state is an important component of a treatment program.

- The critical point in treatment occurs when an offender returns to a community. Adequate monitoring and supervision in the community as well as a close relationship between therapists and the adult and/or juvenile justice systems are important.

- The available data indicates that the earlier identification and intervention occur with juvenile sex offenders, the more the effectiveness of treatment will increase. Reports of outcome data regarding the effectiveness of treatment indicate recidivism rates of less than 12 percent if a youngster receives specific treatment. Specific treatment involves a therapist working with the offender's sexual behavior as well as his family and school. The only study with a comparison group evaluated a multicomponent treatment program against a nonspecific type of treatment. During a three-year period, it found that 75 percent of youthful offenders who received nonspecific treatment sexually reoffended, and 12 percent of the youth who received the multicomponent treatment committed a subsequent sexual offense.

- A treatment program for youthful sex offenders must include a range of services (e.g., outpatient, residential, secure) to meet their individual needs.[28]

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[28]S.C.R. 59 Subcommittee, February 1, 1996, pp. 11-14.

Ken Patterson, Administrator of DCFS, testified at the subcommittee's meeting on April 11, 1996. He referenced the following recommendations made by Dr. Christa Peterson in her presentation on February 1, 1996:

- Continued funding should be provided for the Specialized Adolescent Treatment Program.

- Continued funding should be provided for sex offender assessment training through the Children's Resource Bureau, DCFS.

- Additional funding should be provided for intermediate levels of care including outpatient services and day treatment, therapeutic foster care that is specific to sex offenders, and group care. These community-based services can be effectively delivered at the county level. The DCFS could share in the cost of developing these services through enhanced funding of its probation subsidy program.

- Additional funding should be provided for electronic monitoring equipment as well as funding for intensive in-home supervision by paraprofessionals.

- Continued funding should be provided for construction and staffing of a 56-bed adolescent treatment facility in southern Nevada.

During the subcommittee's discussion of Mr. Patterson's presentation, Senator Maurice E. Washington suggested that the 1997 Legislature consider supporting the development of sex offender treatment programs for juvenile sex offenders at the Nevada Youth Training Center (NYTC) in Elko, Nevada, and housing the most serious or high-risk offenders at NYTC instead of sending them out of state. Assemblywoman Evans suggested that the 1997 Legislature consider supporting the development of appropriate treatment programs for juvenile sex offenders at all facilities and programs operated by DCFS.

In response to these suggestions, the subcommittee recommended to:

- **Include a statement in the final report supporting continued legislative appropriations to the Division of Child and Family Services (DCFS), Nevada's Department of Human Resources, for the division's existing or authorized programs and facilities for the assessment and treatment of juvenile sex offenders. In addition, include a statement recommending that the Legislature provide**

adequate funding for the DCFS to expand its programs for juvenile sex offender treatment, particularly programs at the Caliente Youth Center and the development of programs at the Nevada Youth Training Center in Elko. (Recommendation No. 15)

Throughout the course of the study, representatives of the Nevada Task Force/Network on Juvenile Sex Offenders emphasized the need for an adequately funded continuum of care for juvenile sex offenders. Officials of DCFS revealed that a significant number of juvenile sex offenders are being treated in facilities outside of Nevada, and they advised of the need for more community-based services delivered at the local level. In response to these concerns, Senators James and Washington suggested that the subcommittee recommend that the Legislature and the local governments provide adequate funding to treat juvenile sex offenders in or near their community of residence. The subcommittee agreed to:

- **Include a statement in the final report recommending that the Legislature and the local governments provide adequate funding for the treatment of juvenile sex offenders. In addition, the Legislature should support the development and use of an increased number of in-state treatment programs. The treatment programs and related services should be provided in or near the community of residence of the offender and the offender's family. Consideration should be given for these services to be provided at the local (county) level.** (Recommendation No. 16)

C. Tracking and Monitoring Sex Offenders

1. Recidivism Study

At the beginning of this interim study, the subcommittee's staff requested the DOP, DP&P, and other state and local criminal justice agencies to provide information on the recidivism rates of sex offenders in Nevada. The DCFS presented some limited information regarding the recidivism rate for juveniles treated through its Specialized Adolescent Treatment Program (2.9 percent recidivism rate). Although the DOP was not able to provide recidivism data on all sex offenders who have been in prison in Nevada, the department did present statistics which indicated that 11 percent of the sex offenders currently in prison have prior felony sex convictions (117 of the 1,065 sex offenders in DOP custody, as reported on January 26, 1996).[29] Except for these statistics, the recidivism information was not presented. Instead, the subcommittee learned that, except

[29]Bayer, January 26, 1996, pp. 3-4.

in special cases, the Nevada agencies currently do not collect recidivism data on sex offenders.

Recognizing the importance of collecting and reporting recidivism rates, Senators James and Washington proposed that DOP, DP&P, and the Central Repository for Nevada Records of Criminal History conduct an ongoing study of the recidivism rates of sex offenders in Nevada and report the results at the beginning of every legislative session. At the first meeting, Ian Curley told the subcommittee that authorization is needed to track juvenile sex offenders through the adult criminal justice system to determine the long-term effects of treatment. Based on these suggestions, the subcommittee voted to:

- **Draft and adopt a resolution directing the DOP, DP&P, and the Central Repository for Nevada Records of Criminal History (Nevada Highway Patrol Division, DMV&PS) to conduct a study of the recidivism rates of sex offenders in Nevada, particularly those offenses for which an offender may receive a sentence of lifetime supervision or for which community notice may be required. The study should also track juvenile sex offenders through the adult criminal justice system to determine the long-term effects of treatment. Furthermore, the study should be ongoing and the updated results should be reported to the Legislature and the Advisory Commission on Sentencing at the beginning of every regular legislative session. (BDR 14-290)** (Recommendation No. 17)

2. <u>Victim Notification</u>

Sandra Youngen of Washington State testified that her state's sex offender statutes provide for a "Victim Witness Program" whereby anytime an adult or juvenile is found guilty of committing a sexual or violent offense, the court must provide the victims and witnesses with an enrollment form. This document advises them of their rights to be informed of the movements of the defendant through the criminal justice system. A designated agency notifies, in writing, the victims and witnesses when an offender is about to be released.

Senator James proposed that Nevada enact a victim program similar to that in Washington, and the subcommittee voted to:

- **Draft and enact legislation to establish a program whereby anytime an adult or juvenile is found guilty of committing a sexual or violent offense, the court must provide the victims and witnesses with documentation which includes a form to request notification. The documentation should advise them of their rights to be informed of the movements of the defendant through the criminal justice system. (BDR 14-291)** (Recommendation No. 18)

3. Registration, Supervision, and Community Notification

Lieutenant Simpson of Metro testified that tracking and registration of offenders is a vital component of deterring future predation and apprehending a sexual predator when other types of intervention are unsuccessful. He explained that the tracking and/or registering of sexual offenders offers many benefits to law enforcement agencies, the public, and researchers. Lieutenant Simpson suggested that the existing registration laws should be amended to: (1) allow for a statewide repository of offender registration; (2) include those offenders who are not addressed in the provisions enacted under S.B. 192 of 1995; (3) upgrade the penalty for violation of sex offender registration laws to a felony; and (4) include juvenile offenders. (See Appendix B, "Registration of Sexually Violent Offenders.")

Senator James advised the subcommittee members that he personally requested a BDR that addresses Lieutenant Simpson's concerns and requires that sex offenders convicted in another state who move to Nevada be subject to Nevada's registration, lifetime supervision, and community notification requirements. (See Appendix C, "Sexual Offenses for Which Lifetime Supervision and Consideration of Community Notification are Required.")

Agreeing to endorse Senator James' proposal, the subcommittee acted to:

- **Include a statement in the final report supporting Senator Mark A. James' BDR (BDR 15-76) to amend the NRS to:**

  a. **Require that a sex offender convicted in another state who moves to Nevada will be subject to the registration, lifetime supervision, and community notification requirements enacted in 1995 under Senator James' Senate Bill 192 (Chapter 256, *Statutes of Nevada 1995*) which increased the penalties for certain sex-related offenses;**

  b. **Increase the penalty for failure to register as a sex offender from a misdemeanor to a felony;**

  c. **Allow for a statewide repository of sex offender registration; and**

  d. **Include juvenile sex offenders in the community notification provisions of S.B. 192.**

  (Recommendation No. 19)

Dennis DeBacco, Supervisor, Central Repository for Nevada Records of Criminal History (hereinafter referred to as the Repository), testified at the subcommittee's meeting in Las Vegas. He presented the following information:

- A statewide registry of ex-felons and sex offenders who register with Nevada's sheriffs will be operational in 1997.

- Nevada's Attorney General has asked representatives of the Repository to study the possibility of implementing a sex offender registration hot line similar to the one used in California. It allows various employers and the public to contact a centralized place to determine if a person is a registered sex offender.

- Representatives of the Repository will ask the 1997 Session of the Nevada Legislature for direction and guidance concerning the level of services it can and cannot provide. Presently, sex offenders must register at the local level, but state law is not clear if the Repository can collect and release this data.

Senator James noted the importance of specifying in any proposed legislation who may have access to information within the Repository. In addition, he stated that safeguards for the above-mentioned hot line would be necessary.

Senator James advised the subcommittee that his previously mentioned BDR would authorize public access to the sex offender registry and allow for a sex offender hot line. Expressing support for this proposal, the subcommittee agreed to:

- **Include a statement in the final report supporting Senator Mark A. James' BDR (BDR 15-76) to authorize public access to the registry of sex offenders. The BDR would authorize the implementation of a sex offender registration hot line similar to the one used in California. Various employers and the public would be allowed to contact a centralized place to determine if a person is a registered sex offender.** (Recommendation No. 20)

D. Other Recommendations

1. Educational Programs

The Nevada law that requires pupils to receive instruction relating to sexual abuse is NRS 389.075, and it reads as follows:

389.075 Instruction relating to child abuse.

1. The board of trustees of a school district shall establish a program of instruction relating to child abuse for pupils in kindergarten and grades 1 to 6, inclusive.

2. The program must include, without limitation, instruction relating to the types of child abuse and the methods used to recognize, report, prevent and stop child abuse.

(Added to NRS by 1993, 488)

Keith Rheault, Deputy Superintendent for Instructional, Research, and Evaluative Services at the State Department of Education, reported that Nevada's school districts have included the required instruction on child abuse, including sexual abuse, within the health curriculum for all elementary school pupils (kindergarten and grades one through six).

Senator James stated that the subcommittee needs to make a strong statement in support of programs that educate children regarding sexual abuse, particularly programs that may assist in preventing children from being abused. The subcommittee agreed and recommended to:

- **Include a statement in the final report supporting programs that educate children in recognizing, preventing, and reporting sexual abuse.** (Recommendation No. 21)

2. Mentally Ill Offenders

Richard Kirkland, Sheriff of Washoe County, presented testimony at the first meeting of the subcommittee. He recommended that the state should take steps to use jails and prisons to effectively manage mentally ill offenders and reduce the operational costs of these facilities. In addition, Sheriff Kirkland suggested that such inmates should participate in a broad scale of jail or prison industries for long periods of time.

During the work session, Senator Washington discussed Sheriff Kirkland's proposal and suggested that the subcommittee recommend that mentally ill offenders in jail or prison should be involved in work and other productive activities that keep these inmates occupied. As proposed by Senator Washington, the subcommittee recommended to:

- **Include a statement in the final report recommending that one method of effectively managing mentally ill offenders in jail or prison is to have them involved in work programs and other productive activities that maximize the use of their time.** (Recommendation No. 22)

Eva Collenberger, representative of Families of Murder Victims, Las Vegas, testified at the Las Vegas meeting. She suggested that certain mentally ill offenders who may be a danger to the community be supervised on an ongoing basis.

Senator James proposed that the subcommittee recommend legislation to require lifetime supervision for offenders who are found guilty but mentally ill and convicted of crimes of violence. The subcommittee concurred with Senator James and voted to:

- **Amend the NRS to require lifetime supervision for offenders who are found guilty but mentally ill and convicted of crimes of violence, such as armed robbery, arson, battery, and murder. The lifetime supervision of such offenders would follow the expiration of a term of imprisonment, parole, or probation. (BDR 14-292)** (Recommendation No. 23)

3. Fiscal Effect of Proposed Legislation

At the subcommittee's work session, Assemblywoman Evans suggested that the subcommittee urge the state and local agencies that work with sex offenders and/or mentally ill offenders to analyze the fiscal effect of the proposed legislation. Senator James expressed his support for the proposal, and the subcommittee acted to:

- **Include a statement in the final report urging the various state and local agencies that deal with sex offenders and/or mentally ill offenders to review and analyze the recommendations adopted by this subcommittee, the subcommittee's final report, and the BDRs contained in the report. Most importantly, these agencies should immediately begin the analysis and planning necessary to advise the Legislature on the fiscal effect that these proposals may have on their budgets.** (Recommendation No. 24)

V. SELECTED REFERENCES

Bayer, Bob. (1996, January 26). Letter, with attachments, to Mark A. James, State of Nevada Senate. Administrative Office, Nevada's Department of Prisons.

Bayer, R. (1996, May 11). "Response to Question #41/S.C.R. 52." Memorandum to Allison Combs, Senior Research Analyst, Legislative Counsel Bureau. Office of the Director, Nevada's Department of Prisons.

Concha, Carlos. (1995, October 30). "SCR-59 Request For Information." Letter, with attachments, to Donald O. Williams, Chief Principal Research Analyst, Legislative Counsel Bureau. Division of Parole and Probation, Department of Motor Vehicles, Carson City, Nevada.

Curley, Ian. (1995, November 2). "Current Placements of Juvenile Sex-Offenders." Memorandum to the Legislative Commission's Subcommittee to Study the Treatment of Mentally Ill Offenders in the Criminal Justice System.

Del Papa, Frankie Sue. (1995, November 2). Letter to the Legislative Commission's Subcommittee to Study the Treatment of Mentally Ill Offenders in the Criminal Justice System. Office of the Attorney General, Carson City, Nevada.

Department of Social and Health Services, State of Washington. (1994, November). *Sexual Predator Program: An Overview.*

Finn, Peter. (1995, March-April). "Do sex offender treatment programs work?" *Judicature* (*78*), pp. 250-252.

Gordon, Arthur. (1996, February 1). "Presentation to Nevada Legislature." Sex Offender Treatment Program, Twin Rivers Corrections Center, Monroe, Washington.

Huot, Stephen. (1995, December 21). Letter, with attachments, to Don Williams, Chief Principal Research Analyst, Legislative Counsel Bureau. Sex Offender/Chemical Dependency Services Unit, Minnesota Department of Corrections, St. Paul, Minnesota.

Jenson, Juliann. (1996, May 17). "Chemical Castration of Sex Offenders." Memorandum. Research Division, Legislative Counsel Bureau.

S.C.R. 59 Subcommittee. (1996, February 1). "Minutes of the Meeting of the Legislative Commission's Subcommittee to Study the Treatment of Mentally Ill Offenders in the Criminal Justice System, Las Vegas, Nevada."

Lillis, Jamie. (1993, November). "Survey Summary—Incarcerated Sex Offenders Total Nearly 100,000," *Corrections COMPENDIUM* (Volume XVIII, No. 11), pp. 7-16.

Lotke, Eric. (1996, May). "Sex Offenders—Does Treatment Work?" *Corrections COMPENDIUM* (Volume XXI, No. 5), pp. 1-3.

McGrath, Robert J. (1995, Winter). "Sex Offender Treatment: Does It Work?" American Probation and Parole Association's *Perspectives* (Volume 19, No. 1), pp. 24-26.

Minnesota Department of Corrections. (1995, February 10). "Backgrounder: Sex Offender Facts." Minnesota Department of Corrections, St. Paul, Minnesota.

Molde, Don. (1995, November 8). "Status of Sex Offender Treatment by Institution." Memorandum to Robert Bayer, Director, and Michael Fitting, D.O., Acting Medical Director, Nevada's Department of Prisons.

Nevada's Department of Prisons. (1995, November 1). "Nevada Department of Prisons Statistical Abstract."

Nobles, James. (1994, February). *Psychopathic Personality Law*. Program Evaluation Division, Office of the Legislative Auditor, State of Minnesota, Saint Paul, Minnesota.

Peterson, Christa. (1996, February 1). "Division of Child and Family Services—Presentation to the Legislative Subcommittee to Study the Treatment of the Mentally Ill Offender in the Criminal Justice System."

Utah Sentencing Commission. (1995, December 21). *Utah Sentencing Commission—Annual Report 1995-1996*. Salt Lake City, Utah.

Wees, Greg. (1996, May). "Survey Summary—Sex Offenders in State and Federal Prisons Top 100,000 Mark," *Corrections COMPENDIUM* (Volume XXI, No. 5), pp. 10-11.

VI. APPENDICES

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APPENDIX A

Senate Concurrent Resolution No. 59 of the 1995 Legislative Session
(File No. 164, *Statutes of Nevada 1995*)

Senate Concurrent Resolution No. 59—Committee on Judiciary

FILE NUMBER 164

SENATE RESOLUTION—Directing the Legislative Commission to conduct an interim study of the treatment of mentally ill offenders in the criminal justice system.

WHEREAS, A large percentage of offenders in Nevada prisons were convicted of offenses relating to sexually deviant behavior; and

WHEREAS, Many of these same offenders have been diagnosed as mentally ill; and

WHEREAS, To avoid recidivism upon their release into society, they must receive appropriate punishment as well as adequate treatment while fulfilling their sentences; now, therefore, be it

RESOLVED BY THE SENATE OF THE STATE OF NEVADA, THE ASSEMBLY CONCURRING, That the Legislative Commission is hereby directed to conduct an interim study of the punishment of and treatment provided for mentally ill offenders in the criminal justice system, with an emphasis on those offenders who were convicted of offenses involving sexually deviant behavior; and be it further

RESOLVED, That the study must include:

1. An evaluation of the effectiveness of the current programs for treatment provided for mentally ill offenders in the criminal justice system;

2. A survey of treatment programs used in states other than Nevada;

3. The rate of recidivism of those offenders who have been convicted of offenses involving sexually deviant behavior and who received the current treatment before their release;

4. An analysis of the cost, length of treatment and expected results of the different types of treatment programs which are currently available but not used in Nevada; and

5. A consideration of any other matters deemed relevant to the punishment of and treatment provided for mentally ill offenders and the criminally insane; and be it further

RESOLVED, That no action may be taken by the study committee on recommended legislation unless it receives a majority vote of the senators on the committee and a majority vote of the assemblymen on the committee; and be it further

RESOLVED, That the results of the study and any recommended legislation be reported to the 69th session of the Nevada Legislature.

APPENDIX B

REGISTRATION OF SEXUALLY VIOLENT OFFENDERS

REGISTRATION OF SEXUALLY VIOLENT OFFENDERS

Under *Nevada Revised Statutes* (NRS) 207.151 through 207.157, offenders convicted of the following sex-related crimes must register with the appropriate law enforcement agency (usually the sheriff or chief of police, depending upon the location) within 48 hours after his arrival in the county in which he intends to reside or will be temporarily present for 48 hours or more:

- Assault with intent to commit a sexual assault (NRS 200.417 and 200.366, generally);
- Sexual assault (NRS 200.366);
- Statutory sexual seduction (NRS 200.368);
- Unlawful use of a minor in producing pornography or as a subject of sexual portrayal in performance (NRS 200.710);
- Promotion of sexual performance of minor (NRS 200.720);
- Preparing, advertising, or distributing materials depicting pornography involving a minor (NRS 200.725);
- Possession of visual presentation depicting sexual conduct of a person under 16 years of age (NRS 200.730);
- Incest (NRS 201.180);
- Open or gross lewdness (NRS 201.210);
- Indecent or obscene exposure (NRS 201.220);
- Lewdness with a child under 14 years of age (NRS 201.230); and
- Any attempt to commit one of the above crimes.

In addition, any offense committed in another state which would be punishable in Nevada as one of the above crimes also requires registration as a sex offender. This list is different from the sexual offenses that require a special condition of lifetime supervision or community notification upon release. (See Appendix C.) Within ten days of changing his address, a registered sex offender must notify the law enforcement agency with which he

last registered, and this agency must forward the registration information to the agency that will have jurisdiction of the offender in his new residence.

Information Included in Registration

The registration consists of a photograph of the offender, his fingerprints, and a statement signed by him containing the following information: name, aliases, complete physical description, list of the sexual offenses (as noted above) for which he was convicted, the name and location of each hospital or penal institution to which he was committed for each offense, where he resides, how long he has resided and expects to reside there, and how long he expects to remain in the county and the State of Nevada.

Penalty for Failure to Register and Duty to Inform the Offender of the Registration Requirements

Any person who is required to register and fails to do so, or fails to inform the law enforcement agency of a change in address is guilty of a misdemeanor. Upon the release of a person required to register under these provisions, the head of the institution (hospital, prison, or school) from which the offender was released or the court prior to release on probation must notify the offender of his duty to register, require the offender to sign a statement acknowledging the notification, and mail a copy of the statement to the law enforcement agency in the area in which the offender is expected to reside.

If the person committed one of the sex-related offenses against a person under the age of 18 years, the court or person in charge of the institution from which the person was released must contact the law enforcement agency in the area in which the person is expected to reside within 72 hours to confirm that the person registered. If the person fails to register, all information available must be mailed to the law enforcement agency.

Inspection of the Registration Data

Under NRS 207.155, only peace officers may inspect the statements, photographs, or fingerprints contained in the registration file. However, if the sheriff of a county receives registration information regarding an offender who committed his crime against a victim under the age of 18 years, the sheriff must provide the data to the board of trustees of the county school district in which the sex offender expects to reside. The data may be released by the board of trustees to any licensed teacher or educational personnel if it determines that such a release is reasonably necessary for public protection. Any employee to whom the information is released is prohibited from sharing the information with any other person without prior approval of the board.

When the Registration Requirement Ends

An offender may apply to the district court for relief from duty of further registration. The court must hold a hearing on the application and any interested persons may present witnesses. If the court is satisfied that the offender is rehabilitated, the court must grant an order relieving him of the duty to register.

Excerpted from "1994 Federal Legislation Regarding Registration of Sex Offenders," Memorandum by Allison Combs, Senior Research Analyst, Research Division, Legislative Counsel Bureau, May 29, 1996, pp. 1-3.

APPENDIX C

SEXUAL OFFENSES FOR WHICH LIFETIME SUPERVISION AND CONSIDERATION OF COMMUNITY NOTIFICATION ARE REQUIRED

SEXUAL OFFENSES FOR WHICH LIFETIME SUPERVISION AND CONSIDERATION OF COMMUNITY NOTIFICATION ARE REQUIRED

People convicted of the following sexual offenses are considered sex offenders for the purposes of lifetime supervision[30] and community notification[31]:

- Sexual assault;
- Battery with the intent to commit sexual assault;
- Using a minor in producing pornography;
- Promotion of the sexual performance of a minor;
- A subsequent offense of possession of a visual presentation depicting the sexual conduct of a person under the age of 16 years;
- Incest;
- Solicitation of a minor to engage in acts which constitute the infamous crime against nature, and the minor engaged in such an act;
- A subsequent offense of solicitation of a minor to engage in acts which constitute the infamous crime against nature, notwithstanding the fact that the minor did not engage in such an act;
- Lewdness with a child under the age of 14 years;
- Sexual penetration on the dead body of a human being;
- An attempt to commit any of the offenses listed above; or
- An act of murder in the first or second degree, kidnaping in the first or second degree, false imprisonment, burglary or invasion of the home if the act is determined to be sexually motivated.

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[30]For provisions governing lifetime supervision, see NRS 176.113 and 213.1243.

[31]For provisions governing community notification, see NRS 213.107, 213.1099, 213.1247, and 213.1253.

APPENDIX D

Suggested Legislation

SUMMARY—Requires juvenile court to notify certain school officials before juvenile sex offender returns to school and prohibits such juvenile from attending same school as victim. (BDR 5-289)

FISCAL NOTE: Effect on Local Government: Yes.

Effect on the State or on Industrial Insurance: No.

AN ACT relating to juvenile offenders; requiring the juvenile court to notify certain school officials before a juvenile adjudicated delinquent for certain sexual offenses returns to school; prohibiting such a juvenile from attending the same school as a victim; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 62 of NRS is hereby amended by adding thereto a new section to read as follows:

1. In addition to the options set forth in NRS 62.211 and 62.213, if a child is adjudicated delinquent for committing a sexual offense, the court:

(a) Shall enter an order prohibiting the child from attending a school that a victim of the sexual offense is attending.

(b) Shall provide notification to the board of trustees of the county school district in which the child will reside that the child is a juvenile sex offender and, if the child will be attending a private school within this state, shall provide notification to the executive head of the private school that the child is a juvenile sex offender. Notification provided pursuant to this paragraph must include the name of a victim if the victim is attending a public or private school within this state.

(c) May authorize a board of trustees or the executive head of a private school to notify other appropriate educational personnel that the child is a juvenile sex offender.

(d) Shall order the parents or guardians of the child, to the extent of their financial ability, to reimburse all or part of the additional costs of transporting the child, if such costs are incurred by a board of trustees pursuant to section 5 of this act.

(e) Shall inform the parents or guardians of the child of the requirements of this section and sections 3 to 7, inclusive, and 11 to 14, inclusive, of this act.

2. If the child is ordered to serve a term of confinement in a public or private correctional or institutional facility for the sexual offense, the court may order the facility in which the child is confined to notify a board of trustees or the executive head of a private school of the date the child is to be released from confinement.

3. As used in this section:

(a) "Private school" has the meaning ascribed to it in NRS 394.103, unless the school or educational program is conducted exclusively for children who have been adjudicated delinquent.

(b) "Public school" has the meaning ascribed to it in NRS 385.007, unless the school or educational program is conducted exclusively for children who have been adjudicated delinquent.

(c) "Sexual offense" means an act that, if committed by an adult, would constitute one or more of the following offenses:

(1) Sexual assault pursuant to NRS 200.366;

(2) Battery with intent to commit sexual assault pursuant to NRS 200.400;

(3) An offense involving pornography and a minor pursuant to NRS 200.710 to 200.730, inclusive;

(4) Open or gross lewdness pursuant to NRS 201.210;

(5) Indecent or obscene exposure pursuant to NRS 201.220;

(6) Lewdness with a child pursuant to NRS 201.230;

(7) Sexual penetration of a dead human body pursuant to NRS 201.450;

(8) Annoyance or molestation of a minor pursuant to NRS 207.260; or

(9) An attempt to commit an offense listed in this paragraph.

Sec. 2. Chapter 392 of NRS is hereby amended by adding thereto the provisions set forth as sections 3 to 7, inclusive, of this act.

Sec. 3. *As used in sections 3 to 7, inclusive, of this act, unless the context otherwise requires:*

1. "Notification" means notification which indicates that a child is a juvenile sex offender, includes the name of a victim of the sexual offense if the victim is attending a public or private school within this state and is received from:

(a) The court pursuant to section 1 of this act;

(b) A board of trustees pursuant to sections 3 to 7, inclusive, of this act; or

(c) The executive head of a private school pursuant to sections 11 to 14, inclusive, of this act.

2. "Offender" means a child identified in a notification as a juvenile sex offender.

3. "Private school" has the meaning ascribed to it in NRS 394.103.

4. "Victim" means a child identified in a notification as a victim of the sexual offense committed by the offender.

Sec. 4. *1. If a board of trustees of a school district receives notification and a victim identified in the notification is a pupil in the school district, the board shall not permit the offender to attend the school that the victim is attending.*

2. Except as otherwise provided in subsection 3, if the school district in which the offender resides does not have another school in the district for the offender to attend, the board of trustees of that school district shall enter into an agreement with the board of trustees of an adjoining school district within this state for the offender to attend a school in that adjoining school district. The board of trustees of the adjoining school district shall admit the offender. The agreement must comply with the provisions of subsections 2 and 3 of NRS 392.010 and must be approved by the superintendent of public instruction.

3. If the school district in which the offender resides does not have another school in the district for the offender to attend, the board of trustees may enter into an agreement with the board of trustees of an adjoining school district in an adjoining state for the offender to attend a school in that adjoining school district. The agreement must comply with the provisions of subsections 2 and 3 of NRS 392.010 and must be approved by the superintendent of public instruction.

4. Before entering into an agreement pursuant to this section, the board of trustees of the school district in which the offender resides shall provide notification to the board of trustees of the adjoining school district.

5. A board of trustees may terminate an agreement entered into pursuant to this section if, because of a change in circumstances, the offender is able to attend a school in the school district in which he resides without violating subsection 1.

Sec. 5. *If a board of trustees incurs additional costs for transporting the offender because he is prohibited from attending a school that a victim is attending, the board is entitled to reimbursement of all or part of those costs from the offender's parents or guardians to the extent ordered by the court pursuant to section 1 of this act. The board or the offender's parents or guardians may petition the court to reconsider the amount of reimbursement ordered by the court.*

Sec. 6. *1. If the offender leaves the public school he is attending to attend a public school in another school district within this state, the board of trustees of the school*

district the offender is leaving shall provide notification to the board of trustees of the school district in which the offender will be attending school.

2. If the offender leaves the public school he is attending to attend a private school within this state, the board of trustees of the school district shall provide notification to the executive head of the private school the offender will be attending.

Sec. 7. *1. A board of trustees that receives notification shall not release the name of the offender or the name of a victim to another person unless required by law or authorized by an order of the court.*

2. A person who obtains the name of the offender or the name of a victim pursuant to law or an order of the court shall not release the name of the offender or the name of a victim to another person unless required by law or authorized by an order of the court.

3. A board of trustees or a person who obtains the name of the offender or the name of a victim pursuant to law or an order of the court and who, in good faith, releases or fails to release the name of the offender or the name of a victim is immune from criminal or civil liability for releasing or failing to release the name of the offender or the name of a victim unless the board or person acted with gross negligence.

Sec. 8. NRS 392.010 is hereby amended to read as follows:

392.010 Except as to the attendance of a pupil pursuant to NRS 392.015 or a pupil who is ineligible for attendance pursuant to NRS 392.4675 [:] *and except as otherwise provided in sections 4 and 5 of this act:*

1. The board of trustees of any school district may, with the approval of the superintendent of public instruction:

(a) Admit to the school or schools of the school district any pupil or pupils living in an adjoining school district within this state or in an adjoining state when the school district of residence in the adjoining state adjoins the receiving Nevada school district; or

(b) Pay tuition for pupils residing in the school district but who attend school in an adjoining school district within this state or in an adjoining state when the receiving district in the adjoining state adjoins the school district of Nevada residence.

2. With the approval of the superintendent of public instruction, the board of trustees of the school district in which the pupil or pupils reside and the board of trustees of the school district in which the pupil or pupils attend school shall enter into an agreement providing for the payment of such tuition as may be agreed upon, but transportation costs must be paid by the board of trustees of the school district in which the pupil or pupils reside:

(a) If any are incurred in transporting a pupil or pupils to an adjoining school district within the state; and

(b) If any are incurred in transporting a pupil or pupils to an adjoining state, as provided by the agreement.

3. In addition to the provisions for the payment of tuition and transportation costs for pupils admitted to an adjoining school district as provided in subsection 2, the agreement may contain provisions for the payment of reasonable amounts of money to defray the cost

of operation, maintenance and depreciation of capital improvements which can be allocated to such pupils.

Sec. 9. NRS 392.350 is hereby amended to read as follows:

392.350 1. [When] *Except as otherwise provided in section 5 of this act, if* the daily transportation of a pupil is not practical or economical, the board of trustees, in lieu of furnishing transportation, may pay to the parents or guardian of the pupil an amount of money not to exceed $10 per day of attendance at school to assist the parents or guardian in defraying the cost of board, lodging and other subsistence expenses of the pupil to attend a public school in a city or town in this state or in an adjoining state. If the public school is in an adjoining county or state, costs for tuition and subsistence must be fixed by agreement between the boards of trustees of the school district in which the pupil resides and the school district in which the pupil attends school.

2. Payment of money in lieu of furnishing transportation may be made only if:

(a) The guardian or parents have been residents in the area for a period set by the board of trustees; and

(b) The superintendent of public instruction determines that the arrangements comply with regulations of the state board . [of education.]

Sec. 10. Chapter 394 of NRS is hereby amended by adding thereto the provisions set forth as sections 11 to 14, inclusive, of this act.

Sec. 11. *As used in sections 11 to 14, inclusive, of this act, unless the context otherwise requires:*

1. "Notification" means notification which indicates that a child is a juvenile sex offender, includes the name of a victim of the sexual offense if the victim is attending a public or private school within this state and is received from:

(a) The court pursuant to section 1 of this act;

(b) A board of trustees pursuant to sections 3 to 7, inclusive, of this act; or

(c) The executive head of a private school pursuant to sections 11 to 14, inclusive, of this act.

2. "Offender" means a child identified in a notification as a juvenile sex offender.

3. "Victim" means a child identified in a notification as the victim of a sexual offense committed by the offender.

Sec. 12. *If the executive head of a private school receives notification and a victim identified in the notification is attending a private school under his authority, he shall not permit the offender to attend the school that the victim is attending.*

Sec. 13. *1. If the offender leaves the private school he is attending to attend a public school within this state, the executive head of the private school the offender is leaving shall provide notification to the board of trustees of the school district in which the public school is located.*

2. If the offender leaves the private school he is attending to attend another private school within this state, the executive head of the private school the offender is leaving shall provide notification to the executive head of the private school the offender will be attending.

Sec. 14. *1. If the executive head of a private school receives notification, he shall not release the name of the offender or the name of a victim to another person unless required by law or authorized by an order of the court.*

2. A person who obtains the name of the offender or the name of a victim pursuant to law or an order of the court shall not release the name of the offender or the name of a victim to another person unless required by law or authorized by an order of the court.

3. The executive head of a private school or a person who obtains the name of the offender or the name of a victim pursuant to law or an order of the court and who, in good faith, releases or fails to release the name of the offender or the name of a victim is immune from criminal or civil liability for releasing or failing to release the name of the offender or the name of a victim unless the board or person acted with gross negligence.

Sec. 15. The provisions of subsection 1 of NRS 354.599 do not apply to any additional expenses of a local government that are related to the provisions of this act.

SUMMARY—Requires that presentence investigation of certain sex offenders include psychosexual evaluation. (BDR 14-284)

FISCAL NOTE: Effect on Local Government: Yes.

Effect on the State or on Industrial Insurance: Yes.

AN ACT relating to sex offenders; requiring that the presentence investigation of certain sex offenders include a psychosexual evaluation; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 176 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. *As used in sections 2 and 3 of this act and NRS 176.135 and 176.145, unless the context otherwise requires:*

1. "Person professionally qualified to conduct psychosexual evaluations" means a person who has received training in conducting psychosexual evaluations and is:

(a) A psychiatrist licensed to practice medicine in this state and certified by the American Board of Psychiatry and Neurology;

(b) A psychologist licensed to practice in this state;

(c) A social worker holding a master's degree in social work and licensed in this state as a clinical social worker;

(d) A registered nurse holding a master's degree in the field of psychiatric nursing and licensed to practice professional nursing in this state; or

(e) A marriage and family therapist licensed in this state pursuant to chapter 641A of NRS.

2. "Psychosexual evaluation" means an evaluation conducted pursuant to section 3 of this act.

3. "Sexual offense" means:

(a) Sexual assault pursuant to NRS 200.366;

(b) Statutory sexual seduction pursuant to NRS 200.368, if punished as a felony;

(c) Battery with intent to commit sexual assault pursuant to NRS 200.400;

(d) Abuse of a child pursuant to NRS 200.508, if the abuse involved sexual abuse or sexual exploitation and is punished as a felony;

(e) An offense involving pornography and a minor pursuant to NRS 200.710 to 200.730, inclusive;

(f) Incest pursuant to NRS 201.180;

(g) Solicitation of a minor to engage in acts constituting the infamous crime against nature pursuant to NRS 201.195, if punished as a felony;

(h) Open or gross lewdness pursuant to NRS 201.210, if punished as a felony;

(i) Indecent or obscene exposure pursuant to NRS 201.220, if punished as a felony;

(j) Lewdness with a child pursuant to NRS 201.230;

(k) Sexual penetration of a dead human body pursuant to NRS 201.450;

(l) Annoyance or molestation of a minor pursuant to NRS 207.260, if punished as a felony;

(m) An attempt to commit an offense listed in paragraphs (a) to (l), inclusive, if punished as a felony; or

(n) An offense that is determined to be sexually motivated pursuant to NRS 175.547 or 207.190.

Sec. 3. *1. If a defendant is convicted of a sexual offense, the division shall arrange for a psychosexual evaluation of the defendant as part of the division's presentence investigation and report to the court.*

2. The psychosexual evaluation of the defendant must be conducted by a person professionally qualified to conduct psychosexual evaluations.

3. The person who conducts the psychosexual evaluation of the defendant must use diagnostic tools that are generally accepted as being within the standard of care for the evaluation of sex offenders, and the psychosexual evaluation of the defendant must include:

(a) A comprehensive clinical interview with the defendant;

(b) A review of all investigative reports relating to the defendant's sexual offense and all statements made by victims of that offense;

(c) A review of records relating to previous criminal offenses committed by the defendant; and

(d) A review of records relating to previous evaluations and treatment of the defendant.

4. The psychosexual evaluation of the defendant may include:

(a) A review of the defendant's records from school;

(b) Interviews with the defendant's parents, the defendant's spouse or other persons who may be significantly involved with the defendant or who may have relevant information relating to the defendant's background; and

(c) The use of psychological testing, polygraphic examinations and arousal assessment.

5. The person who conducts the psychosexual evaluation of the defendant must be given access to all records of the defendant that are necessary to conduct the evaluation, and the defendant shall be deemed to have waived all rights of confidentiality and all privileges relating to those records for the limited purpose of the evaluation.

6. The person who conducts the psychosexual evaluation of the defendant shall prepare a comprehensive written report of the results of the evaluation and shall provide a copy of that report to the division.

Sec. 4. NRS 176.135 is hereby amended to read as follows:

176.135 1. [The] *Except as otherwise provided in this section, the* division shall make a presentence investigation and report to the court on each defendant who pleads guilty, guilty but mentally ill or nolo contendere to or is found guilty of a felony. [The]

2. If a defendant is convicted of a felony that is a sexual offense, the presentence investigation and report must be made before the imposition of sentence or the granting of probation and must include a psychosexual evaluation of the defendant.

3. If a defendant is convicted of a felony other than a sexual offense, the presentence investigation and report must be made before the imposition of sentence or the granting of probation [except when:] *unless:*

(a) A sentence is fixed by a jury; or

(b) Such an investigation and report on the defendant has been made by the division within the 5 years immediately preceding the date initially set for sentencing on the most recent offense.

[2.] *4.* Upon request of the court, the division shall make presentence investigations and reports on defendants who plead guilty, guilty but mentally ill or nolo contendere to or are found guilty of gross misdemeanors.

Sec. 5. NRS 176.145 is hereby amended to read as follows:

176.145 1. The report of the presentence investigation must contain:

(a) Any prior criminal record of the defendant;

(b) Such information about his characteristics, his financial condition, the circumstances affecting his behavior and the circumstances of the offense, as may be helpful in imposing sentence, in granting probation or in the correctional treatment of the defendant;

(c) Information concerning the effect that the crime committed by the defendant has had upon the victim, including, but not limited to, any physical or psychological harm or financial loss suffered by the victim, to the extent that such information is available from the victim or other sources, but the provisions of this subsection do not require any particular examination or testing of the victim, and the extent of any investigation or examination is solely at the discretion of the court or division and the extent of the information to be included in the report is solely at the discretion of the division;

(d) Information concerning whether the defendant has an obligation for the support of a child, and if so, whether he is in arrears in payment on that obligation;

(e) The results of the evaluation of the defendant conducted pursuant to NRS 484.3796, if an evaluation is required pursuant to that section;

(f) A recommendation of a minimum term and a maximum term of imprisonment or other term of imprisonment authorized by statute, or a fine, or both;

(g) A recommendation, if the division deems it appropriate, that the defendant undergo a program of regimental discipline pursuant to NRS 176.2248; [and]

(h) *A written report of the results of a psychosexual evaluation of the defendant, if the defendant is convicted of a sexual offense; and*

(i) Such other information as may be required by the court.

2. The division may include in the report such additional information as it believes will be helpful in imposing a sentence, in granting probation or in correctional treatment.

Sec. 6. NRS 207.190 is hereby amended to read as follows:

207.190 1. It is unlawful for a person, with the intent to compel another to do or abstain from doing an act which the other person has a right to do or abstain from doing, to:

(a) Use violence or inflict injury upon the other person or any of his family, or upon his property, or threaten such violence or injury;

(b) Deprive the person of any tool, implement or clothing, or hinder him in the use thereof; or

(c) Attempt to intimidate the person by threats or force.

2. A person who violates the provisions of subsection 1 shall be punished:

(a) Where physical force or the immediate threat of physical force is used, for a category B felony 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.

(b) Where no physical force or immediate threat of physical force is used, for a misdemeanor.

3. Except as otherwise provided in subsection 6, if a person is convicted of a violation of subsection 1 where physical force or the immediate threat of physical force is used, the court shall, at the request of the prosecuting attorney, conduct a separate hearing to determine whether the offense was sexually motivated. A request for such a hearing may not be submitted to the court unless the prosecuting attorney, before the commencement of

the trial, files and serves upon the defendant a written notice of his intention to request such a hearing.

4. A hearing requested pursuant to subsection 3 must be conducted before:

(a) The court imposes its sentence; or

(b) A separate penalty hearing is conducted.

5. At the hearing, only evidence concerning the question of whether the offense was sexually motivated may be presented. The prosecuting attorney must prove beyond a reasonable doubt that the offense was sexually motivated.

6. A person may stipulate that his offense was sexually motivated before a hearing held pursuant to subsection 3 or as part of an agreement to plead guilty, guilty but mentally ill or nolo contendere.

7. The court shall enter in the record:

(a) Its finding from a hearing held pursuant to subsection 3; or

(b) A stipulation made pursuant to subsection 6.

8. For the purposes of this section, an offense is "sexually motivated" if one of the purposes for which the person committed the offense was his sexual gratification.

Sec. 7. The provisions of subsection 1 of NRS 354.599 do not apply to any additional expenses of a local government that are related to the provisions of this act.

SUMMARY—Requires director of department of motor vehicles and public safety to establish program to compile and analyze data concerning sex offenders and juveniles who commit delinquent acts relating to sex. (BDR 14-290)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: Yes.

AN ACT relating to deviant sexual acts; requiring the director of the department of motor vehicles and public safety to establish a program to compile and analyze data concerning sex offenders and juveniles who commit delinquent acts relating to sex; requiring the division of child and family services of the department of human resources to provide certain information to the program; requiring that the director report statistical data and findings from the program to the legislature and the advisory commission on sentencing; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 179A of NRS is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this act.

Sec. 2. *The legislature hereby finds and declares that:*

1. A significant number of offenders in Nevada have been convicted of sexual offenses. Many of these offenders have been convicted of sexual offenses on more than one occasion and many of these offenders began committing sexual offenses as juveniles.

2. There is a great need for a continuing statistical analysis regarding the recidivism of offenders who commit sexual offenses so that the most appropriate punishment and treatment may be identified to prevent these offenders from committing further sexual offenses.

Sec. 3. *As used in sections 2, 3 and 4 of this act:*

1. "Juvenile sex offender" means a child adjudicated delinquent for an act that, if committed by an adult, would be a sexual offense.

2. "Sexual offense" means:

(a) Sexual assault pursuant to NRS 200.366;

(b) Statutory sexual seduction pursuant to NRS 200.368;

(c) Battery with intent to commit sexual assault pursuant to NRS 200.400;

(d) An offense involving pornography and a minor pursuant to NRS 200.710 to 200.730, inclusive;

(e) Incest pursuant to NRS 201.180;

(f) Solicitation of a minor to engage in acts constituting the infamous crime against nature pursuant to NRS 201.195;

(g) Open or gross lewdness pursuant to NRS 201.210;

(h) Indecent or obscene exposure pursuant to NRS 201.220;

(i) Lewdness with a child pursuant to NRS 201.230;

(j) Sexual penetration of a dead human body pursuant to NRS 201.450;

(k) Annoyance or molestation of a minor pursuant to NRS 207.260;

(l) An attempt to commit an offense listed in paragraphs (a) to (k), inclusive;

(m) An offense that is determined to be sexually motivated pursuant to NRS 175.547; or

(n) An offense committed in another jurisdiction that, if committed in this state, would be an offense listed in this subsection.

Sec. 4. *1. The director of the department shall establish within the central repository a program to compile and analyze data concerning offenders who commit sexual offenses. The program must be designed to:*

(a) Provide statistical data relating to the recidivism of offenders who commit sexual offenses; and

(b) Use the data provided by the division of child and family services of the department of human resources pursuant to section 5 of this act to:

(1) Provide statistical data relating to the recidivism of juvenile sex offenders after they become adults; and

(2) Assess the effectiveness of programs for the treatment of juvenile sex offenders.

2. The division of parole and probation and the department of prisons shall assist the director of the department in obtaining data and in carrying out the program.

3. The director of the department shall report the statistical data and findings from the program to:

(a) The legislature at the beginning of each regular session.

(b) The advisory commission on sentencing on or before January 31 of each even-numbered year.

4. The data acquired pursuant to this section is confidential and must be used only for the purpose of research. The data and findings generated pursuant to this section must not contain information that may reveal the identity of a juvenile sex offender or the identity of an individual victim of a crime.

Sec. 5. Chapter 62 of NRS is hereby amended by adding thereto a new section to read as follows:

1. For each child adjudicated delinquent for an act that, if committed by an adult, would be a sexual offense, the division of child and family services of the department of human resources shall collect from the juvenile courts, local juvenile probation departments, and the staff of the youth correctional services as directed by the department of human resources:

(a) The information listed in subsections 2 and 3 of NRS 62.420;

(b) The name of the child; and

(c) All information concerning programs of treatment in which the child participated that were directly related to the delinquent act committed by the child or were designed or utilized to prevent the commission of another such act by the child in the future.

2. The division shall provide the information collected pursuant to subsection 1 to the central repository for Nevada records of criminal history for use in the program established pursuant to sections 2, 3 and 4 of this act.

3. All information containing the name of the child and all information relating to programs of treatment in which the child participated is confidential and must not be used for a purpose other than that provided for in this section and section 4 of this act.

4. As used in this section, "sexual offense" has the meaning ascribed to it in section 3 of this act.

Sec. 6. NRS 62.360 is hereby amended to read as follows:

62.360 1. The court shall make and keep records of all cases brought before it.

2. The records may be opened to inspection only by order of the court to persons having a legitimate interest therein except that a release without a court order may be made of any:

(a) Records of traffic violations which are being forwarded to the department of motor vehicles and public safety;

(b) Records which have not been sealed and are required by the division of parole and probation of the department of motor vehicles and public safety for preparation of presentence reports pursuant to NRS 176.135; [and]

(c) Information maintained in the standardized system established pursuant to NRS 62.420 [.] *; and*

(d) Information that must be collected by the division of child and family services of the department of human resources pursuant to section 5 of this act.

3. The clerk of the court shall prepare and cause to be printed forms for social and legal records and other papers as may be required.

4. Whenever the conduct of a juvenile with respect to whom the jurisdiction of the juvenile court has been invoked may be the basis of a civil action, any party to the civil action may petition the court for release of the child's name, and upon satisfactory showing to the court that the purpose in obtaining the information is for use in a civil action brought or to be brought in good faith, the court shall order the release of the child's name and authorize its use in the civil action.

Sec. 7. NRS 62.370 is hereby amended to read as follows:

62.370 1. In any case in which a child is taken into custody by a peace officer, is taken before a probation officer, or appears before a judge or master of a juvenile court, district court, justice's court or municipal court, the child or a probation officer on his behalf may petition for the sealing of all records relating to the child, including records of

arrest, but not including records relating to misdemeanor traffic violations, in the custody of the juvenile court, district court, justice's court or municipal court, probation officer, law enforcement agency, or any other agency or public official, if:

(a) Three years or more have elapsed after termination of the jurisdiction of the juvenile court; or

(b) Three years or more have elapsed since the child was last referred to the juvenile court and the child has never been declared a ward of the court.

2. The court shall notify the district attorney of the county and the probation officer, if he is not the petitioner. The district attorney, probation officer, any of their deputies or any other persons having relevant evidence may testify at the hearing on the petition.

3. If, after the hearing, the court finds that, since such termination of jurisdiction, the child has not been convicted of a felony or of any misdemeanor involving moral turpitude and that rehabilitation has been attained to the satisfaction of the court, it shall order all records, papers and exhibits in the juvenile's case in the custody of the juvenile court, district court, justice's court, municipal court, probation officer, law enforcement agency or any other agency or public official sealed. Other records relating to the case, in the custody of such other agencies and officials as are named in the order, must also be ordered sealed. All juvenile records must be automatically sealed when the person reaches 24 years of age.

4. The court shall send a copy of the order to each agency and official named therein. Each agency and official shall, within 5 days after receipt of the order:

(a) Seal records in its custody, as directed by the order.

(b) Advise the court of its compliance.

(c) Seal the copy of the court's order that it or he received.

As used in this section, "seal" means placing the records in a separate file or other repository not accessible to the general public.

5. If the court orders the records sealed, all proceedings recounted in the records are deemed never to have occurred and the minor may properly reply accordingly to any inquiry concerning the proceedings and the events which brought about the proceedings.

6. The person who is the subject of records sealed pursuant to this section may petition the court to permit inspection of the records by a person named in the petition and the court may order the inspection.

7. The court may, upon the application of a district attorney or an attorney representing a defendant in a criminal action, order an inspection of the records for the purpose of obtaining information relating to persons who were involved in the incident recorded.

8. The court may, upon its own motion and for the purpose of sentencing a convicted adult who is under 21 years of age, inspect any records of that person which are sealed pursuant to this section.

9. An agency charged with the medical or psychiatric care of a person may petition the court to unseal his juvenile records.

10. The provisions of this section do not apply to [any] information maintained in the standardized system established pursuant to NRS 62.420 **[.]** *or information that must be collected by the division of child and family services of the department of human resources pursuant to section 5 of this act.*

SUMMARY—Requires certain information to be provided to victims of and witnesses to sexual or violent offenses. (BDR 14-291)

FISCAL NOTE: Effect on Local Government: Yes.

Effect on the State or on Industrial Insurance: Yes.

AN ACT relating to criminal procedure; requiring the court to provide certain information to victims of and witnesses to sexual or violent offenses; requiring the prosecuting attorney to provide certain information to victims of sexual or violent offenses committed by juveniles; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 178.569 is hereby amended to read as follows:

178.569 As used in NRS 178.5692 to 178.5698, inclusive, [“victim of a crime” or “victim” includes a relative of any person:

1.] *unless the context otherwise requires:*

1. “Relative” has the meaning ascribed to it in NRS 217.060.

2. "Victim of a crime" or "victim" includes a relative of a person:

(a) Against whom a crime has been committed; or

[2.] *(b)* Who has been injured or killed as a direct result of the commission of a crime.

[For the purpose of this section, "relative" has the meaning ascribed to it in NRS 217.060.]

Sec. 2. NRS 178.5698 is hereby amended to read as follows:

178.5698 1. The prosecuting attorney, sheriff or chief of police shall, upon the written request of a victim or witness, inform him:

(a) When the defendant is released from custody at any time before or during the trial;

(b) If the defendant is so released, the amount of bail required, if any; and

(c) Of the final disposition of the criminal case in which he was directly involved.

2. If an offender is convicted of a sexual offense or an offense involving the use or threatened use of force or violence against the victim, the court shall provide:

(a) To each witness, documentation that includes:

(1) A form advising the witness of the right to be notified pursuant to subsection 4;

(2) The form that the witness must use to request notification; and

(3) The form or procedure that the witness must use to provide a change of address after a request for notification has been submitted.

(b) To each person listed in subsection 3, documentation that includes:

(1) A form advising the person of the right to be notified pursuant to subsection 4 or 5, NRS 176.015, 176.221, 209.392, 209.521, 213.010, 213.040, 213.095 and 213.130;

(2) The forms that the person must use to request notification; and

(3) The forms or procedures that the person must use to provide a change of address after a request for notification has been submitted.

3. The following persons are entitled to receive documentation pursuant to paragraph (b) of subsection 2:

(a) A person against whom the offense is committed.

(b) A person who is injured as a direct result of the commission of the offense.

(c) If a person listed in paragraph (a) or (b) is under the age of 18 years, each parent or guardian who is not the offender.

(d) Each surviving spouse, parent and child of a person who is killed as a direct result of the commission of the offense.

(e) A relative of a person listed in paragraphs (a) to (d), inclusive, if the relative requests in writing to be provided with the documentation.

4. Except as otherwise provided in subsection [3,] *5,* if the [crime] *offense* was a felony and the offender is imprisoned, the warden of the prison shall, if the victim or witness so requests in writing and provides his current address, notify him at that address when the offender is released from the prison.

[3.] *5.* If the offender was convicted of a violation of [paragraph (c) of subsection 2] *subsection 3* of NRS 200.366 or a violation of subsection 2 of NRS 200.508, the warden of the prison shall notify:

(a) The immediate family of the victim if the immediate family provides their current address;

(b) Any member of the victim's family related within the third degree of consanguinity, if the member of the victim's family so requests in writing and provides his current address; and

(c) The victim, if he will be 18 years of age or older at the time of the release and has provided his current address,

before the offender is released from prison.

[4.] *6.* The warden must not be held responsible for any injury proximately caused by his failure to give any notice required pursuant to this section if no address was provided to him or if the address provided is inaccurate or not current.

[5.] *7.* As used in this section **[**, "immediate**]** *:*

(a) "Immediate family" means any adult relative of the victim living in the victim's household.

(b) "Sexual offense" means:

(1) Sexual assault pursuant to NRS 200.366;

(2) Statutory sexual seduction pursuant to NRS 200.368;

(3) Battery with intent to commit sexual assault pursuant to NRS 200.400;

(4) An offense involving pornography and a minor pursuant to NRS 200.710 to 200.730, inclusive;

(5) Incest pursuant to NRS 210.180;

(6) Solicitation of a minor to engage in acts constituting the infamous crime against nature pursuant to NRS 201.195;

(7) Open or gross lewdness pursuant to NRS 201.210;

(8) Indecent or obscene exposure pursuant to NRS 201.220;

(9) Lewdness with a child pursuant to NRS 201.230;

(10) Sexual penetration of a dead human body pursuant to NRS 201.450;

(11) Annoyance or molestation of a minor pursuant to NRS 207.260;

(12) An offense that, pursuant to a specific statute, is determined to be sexually motivated; or

(13) An attempt to commit an offense listed in this paragraph.

Sec. 3. Chapter 62 of NRS is hereby amended by adding thereto a new section to read as follows:

1. If a petition filed pursuant to the provisions of this chapter contains allegations that a child committed an act which would be a sexual offense if committed by an adult or which involved the use or threatened use of force or violence against the victim, the prosecuting attorney shall provide to the victim and a parent or guardian of the victim, as soon as practicable after the petition is filed, documentation that includes:

(a) A form advising the victim and the parent or guardian of their rights pursuant to the provisions of this chapter; and

(b) The form or procedure that must be used to request disclosure pursuant to subsection 12 of NRS 62.193.

2. As used in this section, "sexual offense" means:

(a) Sexual assault pursuant to NRS 200.366;

(b) Battery with intent to commit sexual assault pursuant to NRS 200.400;

(c) An offense involving pornography and a minor pursuant to NRS 200.710 to 200.730, inclusive;

(d) Open or gross lewdness pursuant to NRS 201.210;

(e) Indecent or obscene exposure pursuant to NRS 201.220;

(f) Lewdness with a child pursuant to NRS 201.230;

(g) Sexual penetration of a dead human body pursuant to NRS 201.450;

(h) Annoyance or molestation of a minor pursuant to NRS 207.260; or

(i) An attempt to commit an offense listed in this subsection.

Sec. 4. The provisions of subsection 1 of NRS 354.599 do not apply to any additional expenses of a local government that are related to the provisions of this act.

SUMMARY—Requires lifetime supervision of certain mentally ill offenders. (BDR 14-292)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: Yes.

AN ACT relating to mentally ill offenders; requiring lifetime supervision of certain mentally ill offenders; providing a penalty; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 176 of NRS is hereby amended by adding thereto a new section to read as follows:

1. If a defendant is convicted pursuant to a plea of guilty but mentally ill of a felony involving the use or threatened use of force or violence against the victim, the judge shall include in sentencing, in addition to any other penalties provided by law, a special sentence of lifetime supervision.

2. The special sentence of lifetime supervision begins upon the defendant's completion of a period of probation, a period of parole or a term of imprisonment.

3. A person sentenced to lifetime supervision may petition the court for release from lifetime supervision. The court shall grant a petition for release from a special sentence of lifetime supervision if:

(a) The person has not committed a crime for 15 years after his last conviction or release from incarceration, whichever occurs later; and

(b) The person is not likely to pose a threat to the safety of others if released from supervision.

Sec. 2. Chapter 213 of NRS is hereby amended by adding thereto a new section to read as follows:

1. The board shall establish by regulation a program of lifetime supervision for offenders convicted pursuant to a plea of guilty but mentally ill of a felony involving the use or threatened use of force or violence against the victim and sentenced to lifetime supervision pursuant to section 1 of this act. The program must provide for the lifetime supervision of offenders by parole and probation officers.

2. Lifetime supervision of the offender begins upon the offender's completion of a period of probation, a period of parole or a term of imprisonment.

3. Lifetime supervision shall be deemed a form of parole for 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.

4. An offender who violates a condition imposed on him pursuant to the program of lifetime supervision is guilty of a category C felony and shall be punished pursuant to NRS

193.130. Lifetime supervision of an offender who is convicted pursuant to this subsection resumes upon the offender's completion of a period of probation, a period of parole or a term of imprisonment for that conviction.

Sec. 3. NRS 213.107 is hereby amended to read as follows:

213.107 As used in NRS 213.107 to 213.157, inclusive, *and section 2 of this act,* unless the context otherwise requires:

1. "Board" means the state board of parole commissioners.

2. "Chief" means the chief parole and probation officer.

3. "Division" means the division of parole and probation of the department of motor vehicles and public safety.

4. "Residential confinement" means the confinement of a person convicted of a crime to his place of residence under the terms and conditions established by the board.

5. "Sex offender" means any person who has been or is convicted of a sexual offense.

6. "Sexual offense" means:

(a) A violation of NRS 200.366, subsection 3 of NRS 200.400, NRS 200.710, 200.720, subsection 2 of NRS 200.730, NRS 201.180, paragraph (a) or subparagraph (2) of paragraph (b) of subsection 1 of NRS 201.195, NRS 201.230 or 201.450;

(b) An attempt to commit any offense listed in paragraph (a); or

(c) An act of murder in the first or second degree, kidnaping in the first or second degree, false imprisonment, burglary or invasion of the home if the act is determined to be sexually motivated at a hearing conducted pursuant to NRS 175.547.

7. "Standards" means the objective standards for granting or revoking parole or probation which are adopted by the board or the chief.

Sec. 4. The amendatory provisions of section 1 of this act do not apply to an offense that was committed before October 1, 1997.

SUMMARY—Requires certification by panel before offenders convicted of certain crimes may be released on probation or parole. (BDR 15-288)

FISCAL NOTE: Effect on Local Government: Yes.

Effect on the State or on Industrial Insurance: Yes.

AN ACT relating to crimes; requiring certification by a panel before offenders convicted of certain crimes may be released on probation or parole; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 200 of NRS is hereby amended by adding thereto a new section to read as follows:

A person convicted of violating the provisions of NRS 200.710 to 200.730, inclusive, must not be:

1. Paroled unless a board consisting of:

(a) The administrator of the mental hygiene and mental retardation division of the department of human resources;

(b) The director of the department of prisons; and

(c) A psychologist licensed to practice in Nevada or a psychiatrist licensed to practice medicine in Nevada,

certifies that the person so convicted was under observation while confined in an institution of the department of prisons and is not a menace to the health, safety or morals of others. For the purposes of this subsection, the administrator and the director may each designate a person to represent him on the board.

2. Released on probation unless a psychologist licensed to practice in Nevada or a psychiatrist licensed to practice medicine in Nevada certifies that the person so convicted is not a menace to the health, safety or morals of others.

Sec. 2. NRS 200.359 is hereby amended to read as follows:

200.359 1. A person having a limited right of custody to a child by operation of law or pursuant to an order, judgment or decree of any court, including a judgment or decree which grants another person rights to custody or visitation of the child, or any parent having no right of custody to the child, who:

(a) In violation of an order, judgment or decree of any court willfully detains, conceals or removes the child from a parent, guardian or other person having lawful custody or a right of visitation of the child; or

(b) In the case of an order, judgment or decree of any court that does not specify when the right to physical custody or visitation is to be exercised, removes the child from the

jurisdiction of the court without the consent of either the court or all persons who have the right to custody or visitation,

is guilty of a category D felony and shall be punished as provided in NRS 193.130.

2. A parent who has joint legal custody of a child pursuant to NRS 125.465 shall not willfully conceal or remove the child from the custody of the other parent with the specific intent to deprive the other parent of the parent and child relationship. A person who violates this subsection shall be punished as provided in subsection 1.

3. If the mother of a child has primary physical custody pursuant to subsection 2 of NRS 126.031, the father of the child shall not willfully conceal or remove the child from the physical custody of the mother. If the father of a child has primary physical custody pursuant to subsection 2 of NRS 126.031, the mother of the child shall not willfully conceal or remove the child from the physical custody of the father. A person who violates this subsection shall be punished as provided in subsection 1.

4. Before an arrest warrant may be issued for a violation of this section, the court must find that:

(a) This is the home state of the child, as defined in subsection 5 of NRS 125A.040; and

(b) There is cause to believe that the entry of a court order in a civil proceeding brought pursuant to chapter 125 or 125A of NRS will not be effective to enforce the rights of the parties and would not be in the best interests of the child.

5. Upon conviction for a violation of this section, the court shall order the defendant to pay restitution for any expenses incurred in locating or recovering the child.

6. The prosecuting attorney may recommend to the judge that the defendant be sentenced as for a misdemeanor and the judge may impose such a sentence if he finds that:

(a) The defendant has no prior conviction for this offense and the child has suffered no substantial harm as a result of the offense; or

(b) The interests of justice require that the defendant be punished as for a misdemeanor.

7. A person who aids or abets any other person to violate this section shall be punished as provided in subsection 1.

8. This section does not apply to a person who detains, conceals or removes a child to protect the child from the imminent danger of abuse or neglect or to protect himself from imminent physical harm, and reported the detention, concealment or removal to a law enforcement agency or an agency which provides protective services within 24 hours after detaining, concealing or removing the child, or as soon as the circumstances allowed. As used in this subsection:

(a) "Abuse or neglect" has the meaning ascribed to it in paragraph (a) of subsection [3] *4* of NRS 200.508.

(b) "Agency which provides protective services" has the meaning ascribed to it in NRS 432B.030.

Sec. 3. NRS 200.368 is hereby amended to read as follows:

200.368 *1.* A person who commits statutory sexual seduction shall be punished:

[1.] *(a)* If he is 21 years of age or older, for a category C felony as provided in NRS 193.130.

[2.] *(b)* If he is under the age of 21 years, for a gross misdemeanor.

2. A person convicted of violating the provisions of subsection 1 must not be:

(a) Paroled unless a board consisting of:

(1) The administrator of the mental hygiene and mental retardation division of the department of human resources;

(2) The director of the department of prisons; and

(3) A psychologist licensed to practice in Nevada or a psychiatrist licensed to practice medicine in Nevada,

certifies that the person so convicted was under observation while confined in an institution of the department of prisons and is not a menace to the health, safety or morals of others. For the purposes of this paragraph, the administrator and the director may each designate a person to represent him on the board.

(b) Released on probation unless a psychologist licensed to practice in Nevada or a psychiatrist licensed to practice medicine in Nevada certifies that the person so convicted is not a menace to the health, safety or morals of others.

Sec. 4. NRS 200.375 is hereby amended to read as follows:

200.375 1. A person convicted of sexual assault or attempted sexual assault [may] *must* not be paroled unless a board consisting of:

(a) The administrator of the mental hygiene and mental retardation division of the department of human resources;

(b) The director of the department of prisons; and

(c) A psychologist licensed to practice in Nevada or a psychiatrist licensed to practice medicine in Nevada,

certifies that the person so convicted was under observation while confined in an institution of the department of prisons and is not a menace to the health, safety or morals of others.

2. For the purposes of [this section,] *subsection 1,* the administrator and the director may each designate a person to represent him on the board.

3. A person convicted of attempted sexual assault of a person who is 16 years of age or older must not be released on probation unless a psychologist licensed to practice in Nevada or a psychiatrist licensed to practice medicine in Nevada certifies that the person so convicted is not a menace to the health, safety or morals of others.

Sec. 5. NRS 200.400 is hereby amended to read as follows:

200.400 1. As used in this section, "battery" means any willful and unlawful use of force or violence upon the person of another.

2. A person who is convicted of battery with the intent to commit mayhem, robbery or grand larceny 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 2 years and a maximum term of not more than 10 years, and may be further punished by a fine of not more than $10,000.

3. A person who is convicted of battery with the intent to kill 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 2 years and a maximum term of not more than 20 years.

4. A person who is convicted of battery with the intent to commit sexual assault shall be punished:

(a) If the crime results in substantial bodily harm to the victim, for a category A felony by imprisonment in the state prison:

(1) For life without the possibility of parole;

(2) For life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served; or

(3) For a definite term of 25 years, with eligibility for parole beginning when a minimum of 10 years has been served,

as determined by the verdict of the jury, or the judgment of the court if there is no jury.

(b) If the crime does not result in substantial bodily harm to the victim and the victim is 16 years of age or older, for a category B felony by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 15 years.

(c) If the crime does not result in substantial bodily harm to the victim and the victim is a child under the age of 16, for a category B felony by imprisonment in the state prison for a minimum term of not less than 5 years and a maximum term of not more than 15 years.

In addition to any other penalty, a person convicted pursuant to this subsection may be punished by a fine of not more than $10,000.

5. A person convicted of violating the provisions of subsection 4 must not be:

(a) Paroled unless a board consisting of:

(1) The administrator of the mental hygiene and mental retardation division of the department of human resources;

(2) The director of the department of prisons; and

(3) A psychologist licensed to practice in Nevada or a psychiatrist licensed to practice medicine in Nevada,

certifies that the person so convicted was under observation while confined in an institution of the department of prisons and is not a menace to the health, safety or morals of others. For the purposes of this paragraph, the administrator and the director may each designate a person to represent him on the board.

(b) Released on probation unless a psychologist licensed to practice in Nevada or a psychiatrist licensed to practice medicine in Nevada certifies that the person so convicted is not a menace to the health, safety or morals of others.

Sec. 6. NRS 200.508 is hereby amended to read as follows:

200.508 1. A person who:

(a) Willfully causes a child who is less than 18 years of age to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect or to be placed in a situation where the child may suffer physical pain or mental suffering as the result of abuse or neglect; or

(b) Is responsible for the safety or welfare of a child and who permits or allows that child to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect

or to be placed in a situation where the child may suffer physical pain or mental suffering as the result of abuse or neglect,

is guilty of a gross misdemeanor unless a more severe penalty is prescribed by law for an act or omission which brings about the abuse, neglect or danger.

2. A person who violates any provision of subsection 1, if substantial bodily or mental harm results to the child, 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 2 years and a maximum term of not more than 20 years.

3. *A person convicted of violating the provisions of subsection 1 must not be:*

(a) Paroled unless a board consisting of:

(1) The administrator of the mental hygiene and mental retardation division of the department of human resources;

(2) The director of the department of prisons; and

(3) A psychologist licensed to practice in Nevada or a psychiatrist licensed to practice medicine in Nevada,

certifies that the person so convicted was under observation while confined in an institution of the department of prisons and is not a menace to the health, safety or morals of others. For the purposes of this paragraph, the administrator and the director may each designate a person to represent him on the board.

(b) Released on probation unless a psychologist licensed to practice in Nevada or a psychiatrist licensed to practice medicine in Nevada certifies that the person so convicted is not a menace to the health, safety or morals of others.

4. As used in this section:

(a) "Abuse or neglect" means physical or mental injury of a nonaccidental nature, sexual abuse, sexual exploitation, negligent treatment or maltreatment of a child under the age of 18 years, as set forth in NRS 432B.070, 432B.090, 432B.100, 432B.110, 432B.140 and 432B.150, under circumstances which indicate that the child's health or welfare is harmed or threatened with harm.

(b) "Allow" means to do nothing to prevent or stop the abuse or neglect of a child in circumstances where the person knows or has reason to know that the child is abused or neglected.

(c) "Permit" means permission that a reasonable person would not grant and which amounts to a neglect of responsibility attending the care, custody and control of a minor child.

(d) "Substantial mental harm" means an injury to the intellectual or psychological capacity or the emotional condition of a child as evidenced by an observable and substantial impairment of the ability of the child to function within his normal range of performance or behavior.

Sec. 7. NRS 200.700 is hereby amended to read as follows:

200.700 As used in NRS 200.700 to 200.760, inclusive, *and section 1 of this act,* unless the context otherwise provides:

1. "Performance" means any play, film, photograph, computer-generated image, electronic representation, dance or other visual presentation.

2. "Promote" means to produce, direct, procure, manufacture, sell, give, lend, publish, distribute, exhibit, advertise or possess for the purpose of distribution.

3. "Sexual conduct" means sexual intercourse, lewd exhibition of the genitals, fellatio, cunnilingus, bestiality, anal intercourse, excretion, sado-masochistic abuse, masturbation, or the penetration of any part of a person's body or of any object manipulated or inserted by a person into the genital or anal opening of the body of another.

4. "Sexual portrayal" means the depiction of a person in a manner which appeals to the prurient interest in sex and which does not have serious literary, artistic, political or scientific value.

Sec. 8. NRS 201.180 is hereby amended to read as follows:

201.180 *1.* Persons being within the degree of consanguinity within which marriages are declared by law to be incestuous and void, who intermarry with each other, or who commit fornication or adultery with each other, shall be punished for a category B felony by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 10 years, and may be further punished by a fine of not more than $10,000.

2. A person convicted of violating the provisions of subsection 1 must not be:

(a) Paroled unless a board consisting of:

(1) The administrator of the mental hygiene and mental retardation division of the department of human resources;

(2) The director of the department of prisons; and

(3) A psychologist licensed to practice in Nevada or a psychiatrist licensed to practice medicine in Nevada,

certifies that the person so convicted was under observation while confined in an institution of the department of prisons and is not a menace to the health, safety or morals of others. For the purposes of this paragraph, the administrator and the director may each designate a person to represent him on the board.

(b) Released on probation unless a psychologist licensed to practice in Nevada or a psychiatrist licensed to practice medicine in Nevada certifies that the person so convicted is not a menace to the health, safety or morals of others.

Sec. 9. NRS 207.190 is hereby amended to read as follows:

207.190 1. It is unlawful for a person, with the intent to compel another to do or abstain from doing an act which the other person has a right to do or abstain from doing, to:

(a) Use violence or inflict injury upon the other person or any of his family, or upon his property, or threaten such violence or injury;

(b) Deprive the person of any tool, implement or clothing, or hinder him in the use thereof; or

(c) Attempt to intimidate the person by threats or force.

2. A person who violates the provisions of subsection 1 shall be punished:

(a) Where physical force or the immediate threat of physical force is used, for a category B felony 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.

(b) Where no physical force or immediate threat of physical force is used, for a misdemeanor.

3. Except as otherwise provided in subsection 6, if a person is convicted of a violation of subsection 1 where physical force or the immediate threat of physical force is used, the court shall, at the request of the prosecuting attorney, conduct a separate hearing to determine whether the offense was sexually motivated. A request for such a hearing may not be submitted to the court unless the prosecuting attorney, before the commencement of the trial, files and serves upon the defendant a written notice of his intention to request such a hearing.

4. A hearing requested pursuant to subsection 3 must be conducted before:

(a) The court imposes its sentence; or

(b) A separate penalty hearing is conducted.

5. At the hearing, only evidence concerning the question of whether the offense was sexually motivated may be presented. The prosecuting attorney must prove beyond a reasonable doubt that the offense was sexually motivated.

6. A person may stipulate, before a hearing held pursuant to subsection 3 or as part of an agreement to plead guilty, guilty but mentally ill or nolo contendere, that his offense was sexually motivated.

7. The court shall enter in the record:

(a) Its finding from a hearing held pursuant to subsection 3; or

(b) A stipulation made pursuant to subsection 6.

8. A person who is convicted of a violation of subsection 1 that was sexually motivated must not be:

(a) Paroled unless a board consisting of:

(1) The administrator of the mental hygiene and mental retardation division of the department of human resources;

(2) The director of the department of prisons; and

(3) A psychologist licensed to practice in Nevada or a psychiatrist licensed to practice medicine in Nevada,

certifies that the person so convicted was under observation while confined in an institution of the department of prisons and is not a menace to the health, safety or morals of others. For the purposes of this paragraph, the administrator and the director may each designate a person to represent him on the board.

(b) Released on probation unless a psychologist licensed to practice in Nevada or a psychiatrist licensed to practice medicine in Nevada certifies that the person so convicted is not a menace to the health, safety or morals of others.

9. For the purposes of this section, an offense is "sexually motivated" if one of the purposes for which the person committed the offense was his sexual gratification.

Sec. 10. NRS 176.185 is hereby amended to read as follows:

176.185 1. Except as otherwise provided in this section **[**,**]** *or by specific statute,* whenever a person is found guilty in a district court of a crime upon verdict or plea, except in cases of murder of the first or second degree, kidnaping in the first degree, sexual assault, attempted sexual assault of a child who is less than 16 years of age, an offense for which the suspension of sentence or the granting of probation is expressly forbidden, or where the person is found to be a habitual criminal pursuant to NRS 207.010, a habitually fraudulent felon pursuant to NRS 207.014 or a habitual felon pursuant to NRS 207.012, the court:

(a) If the person is found guilty of a category E felony, shall suspend the execution of the sentence imposed and grant probation to the person pursuant to NRS 193.130; or

(b) If the person is found guilty of any other felony, a gross misdemeanor or a misdemeanor, may suspend the execution of the sentence imposed and grant probation as the court deems advisable.

2. In determining whether to place a person on probation, the court shall not consider whether the person has the financial ability to participate in a program of probation secured by a surety bond established pursuant to NRS 176.1851 to 176.18525, inclusive.

3. **[**The court may grant probation to a person convicted of indecent or obscene exposure or of lewdness only if a certificate of a psychologist or psychiatrist, as required by

NRS 201.210, 201.220 or 201.230, is received by the court.] The court shall consider the standards adopted pursuant to NRS 213.10988 and the recommendation of the chief parole and probation officer, if any, in determining whether to grant probation.

4. If the court determines that a defendant is otherwise eligible for probation but requires more supervision than would normally be provided to a person granted probation, the court may, in lieu of sentencing him to a term of imprisonment, grant him probation pursuant to the program of intensive supervision established pursuant to NRS 176.198.

5. The court shall not, except as otherwise provided in this subsection, grant probation to a person convicted of a felony until the court receives a written report from the chief parole and probation officer. The chief parole and probation officer shall submit a written report not later than 45 days following a request for a probation investigation from the county clerk, but if a report is not submitted by the chief parole and probation officer within 45 days the district judge may grant probation without the written report.

6. If the court determines that a defendant is otherwise eligible for probation, the court shall when determining the conditions of that probation consider the imposition of such conditions as would facilitate timely payments by the defendant of his obligation, if any, for the support of a child and the payment of any such obligation which is in arrears.

Sec. 11. The amendatory provisions of section 9 of this act apply to offenses committed on or after October 1, 1997.

Sec. 12. The provisions of subsection 1 of NRS 354.599 do not apply to any additional expenses of a local government that are related to the provisions of this act.

SUMMARY—Requires certification by panel before offender who pleaded guilty but mentally ill may be released on parole. (BDR 16-287)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: Yes.

AN ACT relating to mentally ill offenders; requiring certification by a panel before an offender who pleaded guilty but mentally ill may be released on parole; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 213.1099 is hereby amended to read as follows:

213.1099 1. Except as otherwise provided in this section and NRS 213.1215, the board may release on parole a prisoner who is otherwise eligible for parole pursuant to NRS 213.107 to 213.157, inclusive.

2. In determining whether to release a prisoner on parole, the board shall consider:

(a) Whether there is a reasonable probability that the prisoner will live and remain at liberty without violating the laws;

(b) Whether the release is incompatible with the welfare of society;

(c) The seriousness of the offense and the history of criminal conduct of the prisoner;

(d) The standards adopted pursuant to NRS 213.10885 and the recommendation, if any, of the chief; and

(e) Any documents or testimony submitted by a victim notified pursuant to NRS 213.130.

3. When a person is convicted of a felony and is punished by a sentence of imprisonment, he remains subject to the jurisdiction of the board from the time he is released on parole under the provisions of this chapter until the expiration of the maximum term of imprisonment imposed by the court less any credits earned to reduce his sentence pursuant to chapter 209 of NRS.

4. Except as otherwise provided in NRS 213.1215, the board may not release on parole a prisoner whose sentence to death or to life without possibility of parole has been commuted to a lesser penalty unless it finds that the prisoner has served at least 20 consecutive years in the state prison, is not under an order to be detained to answer for a crime or violation of parole or probation in another jurisdiction, and that he does not have a history of:

(a) Recent misconduct in the institution, and that he has been recommended for parole by the director of the department of prisons;

(b) Repetitive criminal conduct;

(c) Criminal conduct related to the use of alcohol or drugs;

(d) Repetitive sexual deviance, violence or aggression; or

(e) Failure in parole, probation, work release or similar programs.

5. In determining whether to release a prisoner on parole pursuant to this section, the board shall not consider whether the prisoner will soon be eligible for release pursuant to NRS 213.1215.

6. The board shall not release on parole a sex offender until the law enforcement agency in whose jurisdiction a sex offender will be released on parole has been provided an opportunity to give the notice required by the attorney general pursuant to NRS 213.1253.

7. The board shall not release on parole a prisoner convicted of a felony pursuant to a plea of guilty but mentally ill unless a panel consisting of:

(a) The administrator of the mental hygiene and mental retardation division of the department of human resources;

(b) The director of the department of prisons; and

(c) A psychologist licensed to practice in Nevada or a psychiatrist licensed to practice medicine in Nevada,

certifies that the prisoner was under observation while confined in an institution of the department of prisons and is not a menace to the health, safety or morals of others. For the purposes of this subsection, the administrator and the director may each designate a person to represent him on the panel.

SUMMARY—Provides for treatment of certain recidivist sex offenders with chemical compounds. (BDR 39-285)

FISCAL NOTE: Effect on Local Government: Yes.

Effect on the State or on Industrial Insurance: Yes.

AN ACT relating to sex offenders; providing for the use of chemical compounds to treat certain sex offenders; allowing a district attorney to file a petition alleging that a person is a recidivist sex offender in need of treatment with a chemical compound; establishing the procedures for hearing and deciding such a petition; requiring the mental hygiene and mental retardation division of the department of human resources to adopt certain regulations concerning the program for the treatment of recidivist sex offenders with a chemical compound; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 433A of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 26, inclusive, of this act.

Sec. 2. *The legislature hereby finds and declares that:*

1. Certain sex offenders pose a grave danger to the public because they are likely to commit sexual offenses repeatedly. Traditional methods of treatment are not adequate for many of these recidivist sex offenders because such methods of treatment do not address the physiological balance of hormones and chemicals in the body that, in combination with a mental disorder, render the offender dangerous to the public and likely to commit sexual offenses repeatedly.

2. If certain recidivist sex offenders are treated only with traditional methods of treatment, they will be denied the help they need to become productive and contributing members of the community, and they will pose a grave danger to the public. To ensure that these recidivist sex offenders receive proper treatment and care, and to protect the public from the grave danger these offenders pose, it is necessary to provide for a program for the treatment of these offenders with a chemical compound. The purpose of the program for the treatment of recidivist sex offenders with a chemical compound is not to punish or exact retribution against these offenders because they have previously committed sexual offenses. Rather, the purpose of the program of treatment is to provide appropriate treatment and care that otherwise would not be provided to these offenders.

Sec. 3. *As used in sections 2 to 26, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 4 to 14, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 4. *"Chemical compound" means medroxyprogesterone acetate or another compound that has the same or similar effects as medroxyprogesterone acetate.*

Sec. 5. *"Court" means the district court having jurisdiction over a proceeding held pursuant to sections 2 to 26, inclusive, of this act.*

Sec. 6. *"Likely to commit sexual offenses repeatedly" means that a person more probably than not will commit sexual offenses repeatedly.*

Sec. 7. *"Mental disorder" means a congenital or acquired condition affecting the emotional or volitional capacity of a person which predisposes that person to commit criminal sexual acts repeatedly. The term includes, but is not limited to, a mental disorder or personality disorder that is listed in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.*

Sec. 8. *"Overt act" means a sexually motivated act that causes harm or creates a reasonable apprehension of harm.*

Sec. 9. *"Petition" means a petition filed pursuant to section 15 of this act alleging that the person named therein is a recidivist sex offender in need of treatment with a chemical compound.*

Sec. 10. *"Program of treatment" means the program for the treatment of recidivist sex offenders with a chemical compound that is established by the division pursuant to subsection 1 of section 24 of this act.*

Sec. 11. *"Qualified psychiatrist" means a psychiatrist who possesses the professional qualifications, as established by the division pursuant to subsection 2 of section 24 of this act, to:*

1. Evaluate whether a person is a recidivist sex offender in need of treatment with a chemical compound; and

2. Treat such a recidivist sex offender with a chemical compound.

Sec. 12. *"Recidivist sex offender in need of treatment with a chemical compound" means a person:*

1. Who has been convicted of two or more sexual offenses;

2. Who suffers from a mental disorder;

3. Who is dangerous to the public because he is likely to commit sexual offenses repeatedly; and

4. For whom the program of treatment is medically appropriate in relation to the physical health of the person.

Sec. 13. *"Sexual offense" means:*

1. A violation of NRS 200.366, subsection 4 of NRS 200.400, NRS 200.710, 200.720, subsection 2 of NRS 200.730, NRS 201.180, paragraph (a) or subparagraph (2) of paragraph (b) of subsection 1 of NRS 201.195, NRS 201.230 or 201.450;

2. An attempt to commit an offense listed in subsection 1;

3. An act of murder in the first or second degree, kidnaping in the first or second degree, false imprisonment, burglary or invasion of the home if the act is determined to be sexually motivated at a hearing conducted pursuant to NRS 175.547; or

4. An offense committed in another jurisdiction that, if committed in this state, would be an offense listed in this section.

Sec. 14. *"Sexually motivated" means that one of the purposes for which the person committed the act was his sexual gratification.*

Sec. 15. *1. If the district attorney of the county where a person resides or, if the person is in confinement, where the person expects to reside upon release, has reasonable cause to believe that the person is a recidivist sex offender in need of treatment with a chemical compound, the district attorney may file a petition in the district court of the county alleging that the person is a recidivist sex offender in need of treatment with a chemical compound.*

2. The petition must contain sufficient facts to support the allegation of the district attorney that the person is a recidivist sex offender in need of treatment with a chemical compound. If the person named in the petition is not in confinement when the petition is filed, the petition must allege that the person has recently committed an overt act which, when considered in conjunction with the other facts alleged in the petition, is sufficient to establish that there is reasonable cause to believe the person is a recidivist sex offender in need of treatment with a chemical compound.

Sec. 16. *1. The person named in a petition may retain counsel to represent him in all proceedings held before the court pursuant to sections 2 to 26, inclusive, of this act. If the person is indigent and requests counsel, the court shall appoint counsel, who may be the public defender or his deputy, to represent the person in all such proceedings before the court.*

2. The court shall award compensation to counsel appointed pursuant to subsection 1 for his services in an amount determined by the court to be fair and reasonable. Compensation for appointed counsel must be charged against the county in which the petition is brought.

3. The district attorney or a deputy district attorney shall represent the state in all proceedings that are held pursuant to sections 2 to 26, inclusive, of this act.

Sec. 17. *1. Not later than 5 days after a petition is filed, the court shall hold a hearing to determine whether probable cause exists to believe that the person named in the petition is a recidivist sex offender in need of treatment with a chemical compound.*

2. If, at the conclusion of the hearing, the court determines that probable cause exists, the court shall:

(a) Order the person named in the petition to submit to an evaluation by a qualified psychiatrist. The psychiatrist who conducts the evaluation shall prepare a report concerning his conclusions regarding whether the person named in the petition is a recidivist sex offender in need of treatment with a chemical compound. The psychiatrist

shall provide a copy of the report to the district attorney and the person named in the petition or his counsel.

(b) Order the person named in the petition to submit to a physical examination by a physician licensed to practice medicine in this state. The physician who conducts the examination shall prepare a report concerning his conclusions regarding whether treatment with a chemical compound is medically appropriate in relation to the physical health of the person named in the petition. The physician shall provide a copy of the report to the district attorney and the person named in the petition or his counsel.

(c) Schedule a hearing to determine whether the person named in the petition is a recidivist sex offender in need of treatment with a chemical compound. The hearing must be held not later than 15 days after the finding of probable cause is made.

Sec. 18. *In all proceedings that are held pursuant to sections 2 to 26, inclusive, of this act:*

1. The court, within its discretion, may hear and consider all relevant evidence, including, but not limited to:

(a) The testimony of qualified psychiatrists who have examined the person named in the petition;

(b) The testimony of experts or other qualified persons; and

(c) The testimony of other witnesses.

2. If the person named in the petition is indigent, upon his request or the request of his counsel, the court shall assist the person in obtaining an expert or other qualified person to perform an evaluation or examination of him or to testify on his behalf.

3. The person named in the petition must be present at the proceeding and, at the discretion of the court, may testify.

4. A witness who is subpoenaed to testify must be paid the same fees and mileage as is paid to a witness in the courts of this state.

Sec. 19. *At a hearing to determine whether the person named in the petition is a recidivist sex offender in need of treatment with a chemical compound:*

1. The court shall address the person named in the petition personally and inform him of the nature of the program of treatment and the intended effects and typical adverse effects associated with the chemical compound.

2. The court shall act as the finder of fact.

3. The court shall order the person named in the petition to submit to the program of treatment if the district attorney proves by clear and convincing evidence that:

(a) The person named in the petition has been convicted of two or more sexual offenses;

(b) The person named in the petition suffers from a mental disorder;

(c) The person named in the petition is dangerous to the public because he is likely to commit sexual offenses repeatedly; and

(d) The program of treatment is medically appropriate in relation to the physical health of the person named in the petition.

For purposes of paragraph (a), a certified copy of a conviction is prima facie evidence of that conviction.

Sec. 20. *1. If a person is ordered to submit to the program of treatment, the court shall hold a hearing once per year, and may hold a hearing more often if necessary, to determine whether the person requires continued participation in the program of treatment.*

2. At a hearing held pursuant to subsection 1, the court shall terminate the program of treatment upon the stipulation of the district attorney or if the person proves by clear and convincing evidence that:

(a) He no longer suffers from a mental disorder;

(b) He no longer is dangerous to the public; or

(c) The program of treatment is no longer medically appropriate in relation to his physical health.

Sec. 21. *1. The administrator may suspend the program of treatment for medical reasons if he determines that the program of treatment poses a present and substantial danger to the physical health of the person.*

2. If the administrator suspends the program of treatment for medical reasons, he shall notify the district attorney within 48 hours after his decision.

3. The district attorney may file with the court a request for a hearing, and the court shall hold a hearing not later than 5 days after the request is filed.

4. At the hearing:

(a) If the court determines that a present and substantial danger to the physical health of the person does not exist, the court shall order that the program of treatment be resumed.

(b) If the court determines that a present and substantial danger to the physical health of the person exists and that the danger is the result of a temporary medical condition, the court shall suspend the program of treatment until the program of treatment no longer poses a danger to the physical health of the person.

(c) If the court determines that a present and substantial danger to the physical health of the person exists and that the danger is the result of a permanent medical condition, the court shall terminate the program of treatment.

Sec. 22. *1. In response to a petition filed by the district attorney pursuant to section 15 of this act, the person named in the petition may stipulate that he is a recidivist sex offender in need of treatment with a chemical compound and may voluntarily submit to the program of treatment with the approval of the court.*

2. If a person voluntarily submits to the program of treatment with the approval of the court, the person is subject to the provisions of sections 2 to 26, inclusive, of this act as if the court had ordered the person to submit to the program of treatment.

Sec. 23. *An appeal may be taken from a judgment or an order of the court entered pursuant to sections 2 to 26, inclusive, of this act in the same manner and under the same circumstances as an appeal taken from a civil case originating in a district court.*

Sec. 24. *1. The division shall adopt regulations establishing the program for the treatment of recidivist sex offenders with a chemical compound, including regulations specifying guidelines for:*

(a) Administering the program of treatment; and

(b) Administering any psychological counseling that the division makes available to a recidivist sex offender ordered to submit to the program of treatment.

2. The division shall adopt regulations setting forth the professional qualifications that a psychiatrist must possess to:

(a) Evaluate whether a person is a recidivist sex offender in need of treatment with a chemical compound; and

(b) Treat such a recidivist sex offender with a chemical compound.

Sec. 25. *Notwithstanding another provision of law, the informed consent of a person ordered to submit to the program of treatment is not required for the division, or a person designated by the division, to administer treatment with a chemical compound pursuant to the program of treatment.*

Sec. 26. *This state and its agencies and political subdivisions and the officers, employees, and independent contractors of this state and its agencies and political subdivisions are immune from liability for damages arising from:*

1. The administration or use of a chemical compound pursuant to sections 2 to 26, inclusive, of this act; and

2. An act or omission related to the administration or use of a chemical compound pursuant to sections 2 to 26, inclusive, of this act.

Sec. 27. The provisions of subsection 1 of NRS 354.599 do not apply to any additional expenses of a local government that are related to the provisions of this act.

Sec. 28. The amendatory provisions of sections 2 to 26, inclusive, of this act apply to all persons who have been convicted of a sexual offense, as defined in section 13 of this act, whether or not:

1. The offense was committed before, on or after October 1, 1997;
2. The person was sentenced for the offense before, on or after October 1, 1997; or
3. The person was released from confinement before, on or after October 1, 1997.

SUMMARY—Provides for involuntary civil commitment of sexually violent predators.

(BDR 39-286)

FISCAL NOTE: Effect on Local Government: Yes.

Effect on the State or on Industrial Insurance: Yes.

AN ACT relating to sexually violent predators; providing for the involuntary civil commitment of sexually violent predators; requiring the mental hygiene and mental retardation division of the department of human resources to adopt certain regulations; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 433A of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 32, inclusive, of this act.

Sec. 2. *The legislature hereby finds and declares that:*

1. A small group of sexually violent predators suffers from mental disorders that render them dangerous to the public and likely to commit sexually violent offenses.

2. The existing procedures for involuntary court-ordered admission are inadequate to address the high risk that sexually violent predators will commit sexually violent offenses upon release from detention. Sexually violent predators do not have access to potential victims while detained and therefore may not engage in observable behavior which demonstrates that they remain dangerous to others and that further treatment would be in their best interests, as required by NRS 433A.310 to renew their detention. Sexually violent predators also require different modalities of treatment for a longer period of time than that offered by public or private mental health facilities as the result of traditional involuntary court-ordered admissions.

3. In order to ensure that the public is protected from sexually violent predators and that sexually violent predators receive proper treatment and care, it is necessary to provide for the involuntary civil commitment of sexually violent predators to the custody of the program for the treatment of sexually violent predators established by the division pursuant to subsection 1 of section 32 of this act. The program is not established to punish or to exact retribution against persons who have previously committed sexually violent offenses, but to provide appropriate treatment and care for such persons in a secure facility.

Sec. 3. *As used in sections 2 to 32, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 4 to 15, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 4. *"Alternative course of treatment" and "course of treatment" mean a course of treatment, established by the division pursuant to subsection 2 of section 32 of this act, which is conducted in an environment that is less restrictive than the environment of the program.*

Sec. 5. *"Convicted" and "conviction" include an adjudication or judgment from a court having jurisdiction over juveniles if the adjudication or judgment involved an act that, if committed by an adult, would be a sexually violent offense.*

Sec. 6. *"Court" means the district court having jurisdiction over a proceeding pursuant to sections 2 to 32, inclusive, of this act.*

Sec. 7. *"Likely to commit a sexually violent offense" means that the person more probably than not will commit such an offense.*

Sec. 8. *"Mental disorder" means a congenital or acquired condition affecting the emotional or volitional capacity of a person which predisposes that person to the commission of violent sexual acts. The term includes, but is not limited to, mental disorders and personality disorders that are listed in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.*

Sec. 9. *"Overt act" means a sexually motivated act that causes harm or creates a reasonable apprehension of harm.*

Sec. 10. *"Petition" means a petition filed pursuant to section 16 of this act alleging that the person named therein is a sexually violent predator.*

Sec. 11. *"Program" means the program for the treatment of sexually violent predators established by the division pursuant to subsection 1 of section 32 of this act.*

Sec. 12. *"Qualified professional" means a person who possesses the professional qualifications, as established by the division pursuant to subsection 3 of section 32 of this act, to evaluate a person alleged to be a sexually violent predator.*

Sec. 13. *"Sexually motivated" means that one of the purposes for which the person committed the act was his sexual gratification.*

Sec. 14. *"Sexually violent offense" means:*

1. Sexual assault pursuant to NRS 200.366.

2. Battery with intent to commit sexual assault pursuant to NRS 200.400.

3. A violation of the provisions of NRS 201.195, 201.210, 201.220, 201.230 or 207.260 if:

(a) At the time of sentencing, the violation was found to have involved the use or the threatened use of violence or force against the victim; or

(b) During the hearing of a petition to determine whether the person named therein is a sexually violent predator, the district attorney proves beyond a reasonable doubt that the violation involved the use or the threatened use of violence or force against the victim.

4. An act of murder in the first or second degree, kidnaping in the first or second degree, false imprisonment, burglary or invasion of the home if:

(a) The act was found to have been sexually motivated pursuant to NRS 175.547; or

(b) During the hearing of a petition to determine whether the person named therein is a sexually violent predator, the district attorney proves beyond a reasonable doubt that the act was sexually motivated.

5. An attempt to commit an act or offense listed in subsections 1 to 4, inclusive.

6. An act or offense committed as a juvenile that, if committed by an adult, would be an act or offense listed in subsections 1 to 5, inclusive.

7. An act or offense committed in another jurisdiction that, if committed in this state, would be an act or offense listed in this section.

Sec. 15. *"Sexually violent predator" means a person who has previously been convicted of a sexually violent offense and who:*

1. Suffers from a mental disorder; and

2. Is dangerous to the public because he is likely to commit a sexually violent offense.

Sec. 16. *1. A district attorney may file a petition in the district court alleging that a person is a sexually violent predator if the district attorney has reasonable cause to believe that the person is a sexually violent predator.*

2. A petition filed pursuant to this section must contain sufficient facts to support the allegation of the district attorney that the person is a sexually violent predator. If the person named in the petition is not in confinement when the petition is filed, the petition must allege that the person has recently committed an overt act which, when considered in

conjunction with the other facts alleged in the petition, is sufficient to establish that there is reasonable cause to believe the person is a sexually violent predator.

3. The district attorney may file a petition pursuant to this section:

(a) Before or after the person completes a sentence for a sexually violent offense; or

(b) Before or after the person completes a term of confinement as a juvenile for a sexually violent offense.

Sec. 17. *1. The person named in a petition filed pursuant to section 16 of this act may retain counsel to represent him in all proceedings held before the court pursuant to sections 2 to 32, inclusive, of this act. If the person is indigent and requests counsel, the court shall appoint counsel, who may be the public defender or his deputy, to represent the person in all such proceedings before the court.*

2. The court shall award compensation to counsel appointed pursuant to subsection 1 for his services in an amount determined by the court to be fair and reasonable. Compensation for appointed counsel must be charged against the county in which the petition is brought.

3. The district attorney or a deputy district attorney shall represent the state in all proceedings that are held pursuant to sections 2 to 32, inclusive, of this act.

Sec. 18. *1. Not later than 72 hours after a petition is filed pursuant to section 16 of this act, the court shall hold a hearing to determine whether probable cause exists to believe that the person named in the petition is a sexually violent predator. Upon the*

request of counsel for the person named in the petition, the court shall grant a recess in the hearing to give counsel an opportunity to prepare for the hearing. The recess must not exceed 5 days.

2. If, at the conclusion of the hearing, the court determines that probable cause exists, the court shall:

(a) Order that the person named in the petition be taken into custody and detained at a mental health facility for examination by a qualified professional.

(b) Schedule a hearing to be held before a jury to determine whether the person named in the petition is a sexually violent predator. The hearing must be held not later than 45 days after the finding of probable cause is made.

Sec. 19. *1. A hearing to determine whether a person is a sexually violent predator must be held before a jury of 12 persons.*

2. The court may direct that not more than four jurors in addition to the regular jurors be called and impaneled to sit as alternate jurors. The court shall replace regular jurors who become unable or disqualified to perform their duties with alternate jurors in the order in which the alternate jurors were called. If an alternate juror is required to replace a regular juror after the jury has retired to consider its verdict, the judge shall recall the jury, seat the alternate and resubmit the decision regarding the petition to the jury.

3. The district attorney and the person named in the petition each may exercise three peremptory challenges in the impanelment of the regular jurors. If alternate jurors are to

be impaneled, the district attorney and the person named in the petition each has one additional peremptory challenge that may be used only against an alternate juror.

Sec. 20. *1. To prove that the person named in the petition is a sexually violent predator, the district attorney must prove beyond a reasonable doubt that the person named in the petition:*

(a) Has been convicted of a sexually violent offense;

(b) Suffers from a mental disorder; and

(c) Is dangerous to the public because he is likely to commit a sexually violent offense.

For purposes of paragraph (a), a certified copy of a conviction is prima facie evidence of that conviction.

2. To prove that the person named in the petition requires commitment to the program, the district attorney must prove beyond a reasonable doubt that an alternative course of treatment:

(a) Is not in the best interests of the person; or

(b) Will not adequately protect the public.

3. The jury must reach a unanimous verdict:

(a) To find that the person named in the petition is a sexually violent predator; and

(b) To find that the person named in the petition requires commitment to the program.

4. If the jury finds by unanimous verdict that the person named in the petition is a sexually violent predator and that the person requires commitment to the program, the court shall enter an order committing the person to the custody of the program.

5. If the jury finds by unanimous verdict that the person named in the petition is a sexually violent predator but does not reach a unanimous verdict that the person requires commitment to the program, the court shall enter an order that the person be conditionally released to undergo an alternative course of treatment pursuant to the provisions of sections 29 and 30 of this act.

6. If the jury does not reach a unanimous verdict that the person named in the petition is a sexually violent predator, the court shall enter an order that the person be released.

Sec. 21. *In all proceedings that are held pursuant to sections 2 to 32, inclusive, of this act:*

1. The court, within its discretion, may hear and consider all relevant evidence, including, but not limited to:

(a) The testimony of qualified professionals who have examined the person named in the petition;

(b) The testimony of experts or other qualified persons retained by the person named in the petition; and

(c) The testimony of other witnesses.

2. Except as otherwise provided in subsection 3 of section 25 of this act, the person named in the petition must be present and, at the discretion of the court, may testify.

3. A witness who is subpoenaed to testify must be paid the same fees and mileage as is paid to a witness in the courts of this state.

Sec. 22. *If the person named in the petition is subjected to an examination by a qualified professional pursuant to sections 2 to 32, inclusive, of this act:*

1. The person may retain experts or other qualified persons to perform an examination on his behalf.

2. The division shall permit an expert or other qualified person retained by the person named in the petition to have reasonable access to the person named in the petition and to all relevant medical and psychological records and reports.

3. If the person named in the petition is indigent, upon his request or the request of his counsel, the court shall assist the person named in the petition in obtaining an expert or other qualified person to perform an examination or to testify on behalf of the person named in the petition.

Sec. 23. *1. If a person is committed to the custody of the program, the division shall select a qualified professional to conduct a complete examination of the person at least once per year to evaluate his mental condition. The qualified professional selected by the division must have access to all records concerning the person committed.*

2. In conducting his examination, the qualified professional selected by the division shall consider whether conditional release to an alternative course of treatment is in the best interests of the person committed and whether such conditional release will adequately protect the public.

3. Upon completion of his examination of the person committed, the qualified professional selected by the division shall prepare a report of his conclusions regarding the mental condition of the person committed and shall submit that report to the administrator. The administrator shall provide a copy of the report to the court.

Sec. 24. *1. If the administrator determines, as a result of an annual examination or at any other time during the period of commitment, that a person committed to the custody of the program:*

(a) No longer suffers from a mental disorder;

(b) No longer is dangerous to the public; or

(c) Is suitable for conditional release to an alternative course of treatment,

the administrator, within 5 days after this determination, shall file with the court a certified request for release of the person committed and shall provide a copy of the certified request for release to the person committed and the district attorney.

2. The court shall hold a hearing on the merits of a certified request for release not later than 45 days after the date on which the certified request for release is filed.

3. The court shall conduct a hearing on the merits of a certified request for release pursuant to the provisions of sections 27 and 28 of this act.

Sec. 25. *1. A person committed to the custody of the program may file an uncertified request for release with the court not more than once every 6 months. If the court determines that an uncertified request for release filed by a person committed does not comply with the provisions of this subsection, the court shall summarily deny the uncertified request for release without a hearing.*

2. Except as otherwise provided in subsection 1, if an uncertified request for release is filed with the court, the court shall schedule a hearing to show cause not later than 30 days after the date the uncertified request for release is filed.

3. The person committed may be represented by counsel at a hearing to show cause, but the person committed may not be present at the hearing.

4. At the hearing to show cause, the court shall determine whether probable cause exists to believe that the mental condition or the dangerousness of the person committed has so changed that a hearing on the merits of the uncertified request for release is warranted.

5. If, at the hearing to show cause, the court determines that probable cause exists to believe that the mental condition or the dangerousness of the person committed has so changed that a hearing on the merits of the uncertified request for release is warranted, the

court shall schedule a hearing on the merits of the uncertified request for release not later than 45 days after the date of the determination of the court.

6. The court shall conduct a hearing on the merits of an uncertified request for release pursuant to the provisions of sections 27 and 28 of this act.

Sec. 26. *1. The administrator shall file an uncertified request for release on behalf of a person committed to the custody of the program if during the preceding 12 months:*

(a) The person committed did not file an uncertified request for release; and

(b) The administrator did not file a certified request for release of the person committed.

2. An uncertified request for release filed pursuant to subsection 1 shall be deemed an uncertified request for release filed pursuant to section 25 of this act, and the court shall proceed in accordance with the provisions of section 25 of this act.

Sec. 27. *1. A hearing on the merits of a certified or uncertified request for release must be conducted in the same manner as a hearing to determine whether the person is a sexually violent predator pursuant to section 19 of this act, and the person must be afforded the same rights that are provided in a hearing to determine whether a person is a sexually violent predator.*

2. The district attorney may request, not later than 30 days before the date of a hearing on the merits of a certified or uncertified request for release, that the person

committed submit to an examination by a qualified professional selected by the district attorney.

Sec. 28. *At a hearing on the merits of a certified or uncertified request for release:*

1. To prove that the person committed remains a sexually violent predator, the district attorney must prove beyond a reasonable doubt that the person committed:

(a) Continues to suffer from a mental disorder; and

(b) Continues to be dangerous to the public because he is likely to commit a sexually violent offense.

2. To prove that the person committed requires continued commitment to the program, the district attorney must prove beyond a reasonable doubt that an alternative course of treatment:

(a) Is not in the best interests of the person committed; or

(b) Will not adequately protect the public.

3. The jury must reach a unanimous verdict:

(a) To find that the person committed remains a sexually violent predator; and

(b) To find that the person committed requires continued commitment to the program.

4. If the jury finds by unanimous verdict that the person committed remains a sexually violent predator and that the person requires continued commitment to the program, the court shall enter an order denying the certified or uncertified request for release.

5. If the jury finds by unanimous verdict that the person committed remains a sexually violent predator but does not reach a unanimous verdict that the person requires continued commitment to the program, the court shall enter an order that the person be conditionally released to undergo an alternative course of treatment pursuant to the provisions of sections 29 and 30 of this act.

6. If the jury does not reach a unanimous verdict that the person committed remains a sexually violent predator, the court shall enter an order that the person be released.

Sec. 29. *1. If the court enters an order conditionally releasing a person to undergo an alternative course of treatment, the court shall impose conditions on the person to ensure that the person complies with the course of treatment and to protect the public.*

2. If the district attorney has reasonable cause to believe that a person conditionally released to undergo an alternative course of treatment has violated a condition imposed by the court, the district attorney shall request that the court hold a hearing to determine if such a violation has occurred.

3. Upon receipt of a request by the district attorney for a hearing on an alleged violation, the court shall order that the person be taken into custody and detained at a mental health facility until a hearing on the alleged violation is held. The court shall hold the hearing on the alleged violation not later than 5 days after the date the person is taken into custody.

4. If the court determines at the hearing that the person violated a condition imposed by the court, the court shall enter an order committing the person to the custody of the program.

5. If the court determines at the hearing that the person did not violate a condition imposed by the court, the court shall enter an order reinstating the conditional release of the person. As part of such an order, the court may:

(a) Select a different course of treatment for the person;

(b) Modify the conditions imposed on the person; or

(c) Impose additional conditions on the person.

Sec. 30. *1. If a person is conditionally released to undergo an alternative course of treatment, the court shall hold a hearing once per year, and may hold a hearing more often, to determine whether the person requires continued participation in an alternative course of treatment.*

2. At the conclusion of the hearing, the court may:

(a) Release the person from participating in an alternative course of treatment;

(b) Select a different course of treatment for the person;

(c) Modify the conditions imposed on the person; or

(d) Impose additional conditions on the person.

Sec. 31. *An appeal may be taken from a judgment or an order of the court entered pursuant to sections 2 to 32, inclusive, of this act in the same manner and under the same circumstances as an appeal taken from a civil case originating in a district court.*

Sec. 32. *1. The division shall adopt regulations establishing the program, including regulations:*

(a) Specifying guidelines for the treatment and care of persons committed to the custody of the program;

(b) Ensuring that persons committed to the custody of the program are securely confined and that appropriate procedures are followed to protect the safety of persons in the custody of the program and the safety of the public; and

(c) Providing that a person committed to the custody of the program is permitted to:

(1) Wear his own clothing and to keep and use his personal possessions, except when the deprivation of such possessions is necessary for his treatment, protection or safety, for the protection or safety of others or for the protection of property within the facility;

(2) Have access to reasonable space for the storage of personal possessions, within the limitations of the facility;

(3) Have approved visitors within reasonable limitations;

(4) Have reasonable access to a telephone to make and receive telephone calls;

(5) Have reasonable access to materials to write letters; and

(6) Receive and send correspondence through the mail within reasonable limitations.

2. The division shall adopt regulations establishing alternative courses of treatment. An alternative course of treatment may include reasonable periods of confinement and restrictions on movement.

3. The division shall adopt regulations setting forth the professional qualifications that are required for a person to be a qualified professional for the purpose of evaluating sexually violent predators.

4. The division shall, in conjunction with the department of prisons, make available mental health facilities for persons committed to the custody of the program or ordered to undergo alternative courses of treatment.

Sec. 33. The provisions of subsection 1 of NRS 354.599 do not apply to any additional expenses of a local government that are related to the provisions of this act.

Sec. 34. The amendatory provisions of sections 2 to 32, inclusive, of this act apply to all persons who have been convicted of a sexually violent offense, as defined in section 14 of this act, whether or not:

1. The offense was committed before, on or after October 1, 1997;
2. The person was sentenced for the offense before, on or after October 1, 1997; or
3. The person was released from confinement before, on or after October 1, 1997.