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Respondent.

Docket 70587 Document 2017-16374

1 **DECLARATION OF WILLIAM M. WATERS**

2 1. I am an attorney licensed to practice law in the State of Nevada; I
3 am a deputy public defender assigned to handle the appeal of this matter; I am familiar
4 with the procedural history of this case.
5

6 2. The Clark County Public Defender's Office was **not** the attorney
7 of record during Appellant Lofthouse's trial.

8 3. At trial, Lofthouse was represented by Dimity Gurovich (*pro hac*
9 *vice*) and Nevada Attorney Jason Margolis.

10 4. The district court sentenced Lofthouse on May 17, 2016 and filed
11 the judgment of conviction on May 26, 2016.
12

13 5. On May 26, 2016, Attorneys Gurovich and Margolis filed a
14 Motion to withdraw as Counsel of Record.

15 6. The court granted the motion to withdraw and appointed the Clark
16 County Public Defender's Office to represent Lofthouse on June 14, 2016.¹
17

18 7. Lofthouse filed a pro per Notice of Appeal in this matter on June
19 16, 2016.

20 8. On July 27, 2016, this Honorable Court filed its Order Setting
21 Briefing Schedule adding the Clark County Public Defender's office as counsel for
22 appellant and making the Request for Transcripts due July 16, 2016. The Order further
23 set the Opening Brief's due date as November 28, 2016.
24

25
26
27 ¹ Declarant contacted Attorney Margolis in April 2017, in an attempt to procure
28 Lofthouse's file. Margolis indicated he did not have a copy of the file and directed
Declarant to contact Gurovich. Declarant contacted Gurovich who agreed to send a copy
of the file to Declarant. However, as of the date of this Motion, Declarant has not
received the file.

1 9. On August 5, 2016, Declarant filed Appellant's Request for
2 Certified Transcript of Proceedings and served Court Recorder Sison and Court Reporter
3 Riggio.

4 10. On September 16, 2016, Court Reporter Riggio filed a motion for
5 extension.
6

7 11. On September 19, 2016, this Honorable Court granted the
8 extension making the transcripts due October 14, 2016.

9 12. On November 17, 2016, Declarant filed Appellant's Stipulation to
10 file the Opening Brief making the new due date December 28, 2016.
11

12 13. On December 28, 2016, Declarant filed Appellant's Motion for an
13 Extension of Time to File the Opening Brief due to Missing Transcripts.

14 14. On January 4, 2017, this Honorable Court entered its Order
15 Directing the Filing of Compliant Transcript Request Form and Granting Motion for
16 Extension of Time. On January 4, 2017, this Honorable Court filed an order regarding
17 transcripts making the due date for all transcripts January 24, 2017.
18

19 15. On February 27, 2017, declarant filed a Motion for extension of
20 time due to the fact that 13 transcripts were outstanding and had yet to be filed in
21 Odyssey or received by Declarant.
22

23 16. On March 6, 2017, this Honorable Court granted an extension until
24 May 2, 2017.

25 17. On March 13, 2017 this Honorable Court filed its Order
26 Conditionally Imposing Sanctions.

27 18. On April 7, 2017, Court Reporter Riggio filed Proof of Payment of
28 Sanction.

1 19. On April 7, 2017, Court Reporter Riggio filed notice of requested
2 transcripts.

3 20. Appellate staff began printing and compiling the Appendix
4 immediately upon notification that the final transcript had been filed in the case.
5

6 21. The Appendix consists of six volumes and 1,463 pages. The trial
7 itself is a five day trial.

8 22. The Appendix was compiled, Bates stamped, the index prepared
9 and copied. A final copy of the appendix was then given to Declarant April 13, 2017.
10

11 23. Given his obligations and deadlines for other cases currently
12 pending in this Court, Declarant was unable to review the transcripts until April 27, 2017.

13 24. Lofthouse was convicted at jury trial for First Degree Kidnapping.
14 His case presents important issues regarding the scope of the kidnapping statute and also
15 the constitutionality of NRS 201.540, thus Declarant needs additional time to adequately
16 represent Lofthouse on appeal.
17

18 25. Finally, Declarant's wedding is currently scheduled for May 26,
19 2017, in Los Angeles, CA. Declarant will necessarily take some time off from work
20 given his pending nuptials. Thus, Declarant will need additional time to file Lofthouse's
21 appeal after Declarant returns from his wedding and associated events.
22

23 26. Accordingly, Declarant is asking for an extension of sixty (60)
24 days to prepare and file the Opening Brief in this case.

25 27. On May 9, 2017, Declarant received Notice from District Court
26 Department 20 that it was placing LOFTHOUSE's case on calendar for May 18, 2017,
27 for clarification of sentence. (See attached as Exhibit "A").
28

 28. After receiving this Notice, Declarant realized LOFTHOUSE's
sentence is illegal. As Declarant was not appointed to represent LOFTHOUSE until

1 after LOFTHOUSE filed his Notice of Appeal, Declarant could not litigate the
2 sentence's legality in the district court before the Notice of Appeal arguably divested the
3 district court of jurisdiction over LOFTHOUSE's case.

4
5 29. Declarant respectfully requests this Court remand LOFTHOUSE's
6 case to the district court for the limited purpose of addressing the illegality of his
7 sentence.

8
9 30. Additional reasons supporting Declarant's request for an extension
10 of time are addressed below.

11 I declare under penalty of perjury that the foregoing is true and correct.

12 EXECUTED on the 16th day of May, 2017.

13
14 /s/ William M. Waters
15 WILLIAM M. WATERS
16
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1 POINTS AND AUTHORITIES

2 A. Counsel's request for an extension of time was not based only on his caseload
3 and instead was based upon the late receipt of transcripts and his pending
4 wedding which is scheduled for May 26, 2017 in Los Angeles, CA.

5 Requests for extension of time are governed by NRAP 26(b)(1)(A) which states
6 pertinent, "[f]or good cause, the court may extend the time prescribed by these Rules or
7 by its order to perform any act, or may permit an act to be done after that time expires."

8 On May 2, 2017, LOFTHOUSE filed a Request for Extension of Time to file the
9 Opening Brief due to Late Receipt of Transcripts. On August 5, 2016, LOFTHOUSE
10 filed his request for transcripts. The court reporters finally filed all pertinent transcripts
11 on April 27, 2017, after being sanctioned by this Court. Each and every one of
12 LOFTHOUSE's requests for extension of time to file the Opening Brief was based solely
13 upon these missing transcripts. The Clark County Public Defender was NOT the
14 attorney of record in the district court and was only appointed to represent LOFTHOUSE
15 after his trial attorneys were allowed to withdraw. Thus, the Clark County Public
16 Defender knew absolutely nothing about LOFTHOUSE's case until it received ALL
17 transcripts. Once the CCPD received all transcripts, the Appendix was prepared.
18

19 In denying Counsel's request for an extension of time, this court has only given
20 LOFTHOUSE's attorney 33 days to read the 1,463 pages of transcripts and then visit
21 LOFTHOUSE at High Desert State Prison to discuss his case -- after finally having an
22 idea regarding what happened in the district court, research all applicable law, and write
23 and file a 30 page opening brief. Additionally, LOFTHOUSE's attorney must do this
24 while his wedding is currently scheduled for May 26, 2017. When counsel chose his
25 wedding date in September 2016 he had no idea the court reporters would delay filing the
26 transcripts until April 2017.
27
28

1 Moreover, because the Court gave counsel 14 days to file the opening brief, he
2 cannot exclude weekends and holidays from the computation (see NRAP 26(a)(2)) and
3 thus, he cannot exclude his wedding weekend which is May 26-28th. Counsel is **NOT**
4 **CANCELLING HIS WEDDING** in order to file this Opening Brief by May 30, 2017.
5 This Court's Order denying Counsel's request for extension of time is outrageous. Each
6 and every prior request for extension of time was based upon the court reporters' failure
7 to timely file the transcripts in this case. Counsel has never requested an extension of
8 time based upon anything other than his inability to prepare the brief due to the missing
9 transcripts. Counsel always diligently prepares his briefs and seldom requests extensions
10 of time absent extreme need. **COUNSEL'S WEDDING REPRESENTS EXTREME**
11 **NEED.** Given counsel's wedding **NEXT WEEKEND** he will not be able to file the
12 Opening Brief by May 30, 2017. Therefore, if this Court want's to pre-emptively
13 sanction Counsel now, it may do so. The callousness of this Court's Order denying an
14 additional extension of time leaves counsel no other options.

15
16
17
18 B. This Court should remand LOFTHOUSE's case to the district court for the
19 limited purpose of addressing his illegal sentence.

20 On May 9, 2017, Declarant received Notice from District Court Department 20
21 that it was placing LOFTHOUSE's case on calendar for May 18, 2017, for clarification
22 of sentence. (See attached as Exhibit "A"). After receiving this Notice, Declarant
23 realized LOFTHOUSE's sentence is illegal. As Declarant was not appointed to represent
24 LOFTHOUSE until **AFTER** LOFTHOUSE filed a proper person Notice of Appeal,
25 Declarant could not litigate the sentence's legality in the district court before the Notice
26 of Appeal arguably divested the district court of jurisdiction over LOFTHOUSE's case.

27
28 A judgment of conviction must set forth: (1) the plea; (2) the verdict or finding;
and (3) the adjudication and sentence including "a reference to the statute under which

1 the defendant is sentenced[.]” NRS 176.015(1)(a)-(c). Once the judgment of conviction
2 is “signed by the judge and entered by the clerk” the judgment is final and a defendant
3 begins serving his sentence. Bradley v. State, 109 Nev. 1090, 1095, 864 P.2d 1272, 1275
4 (1993); see also Miller v. Hayes, 95 Nev. 927, 929, 604 P.2d 117, 118 (1979).
5 Thereafter, the district court generally lack’s the power or jurisdiction to amend the
6 judgment of conviction. Campbell v. Eighth Judicial District Court, 114 Nev. 410, 413,
7 957 P.2d 1141, 1143 (1998).

8
9 However, NRS 176.555 states, “The court may correct an illegal sentence at any
10 time.” An “illegal” sentence is “one ‘at variance with the controlling sentencing statute,’
11 or ‘illegal’ in the sense that the court goes beyond its authority by acting without
12 jurisdiction or imposing a sentence in excess of the statutory maximum provided...”
13 Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996) (citing Allen v. United
14 States, 495 A.2d 1145, 1149 (D.C. 1985)).
15

16 Also, based upon due process the district court has inherent authority to correct a
17 judgment if the judgment is based upon materially untrue assumptions or mistakes which
18 work to the extreme detriment of a defendant. State v. Kimsey, 109 Nev. 519, 522, 853
19 P.2d 109, 111 (1993). The mistake(s) must be the result of the judge’s misapprehension
20 of a defendant’s criminal record. Edwards v. State, 112 Nev. 704, 707, 918 P.2d 321 324
21 (1996). In this sense, the district court can only modify its judgment if the modification
22 benefits the defendant, not the State. See Staley v. State, 106 Nev. 75, 80, 787 P.2d 396,
23 399 (1990); *overruled on other grounds by* Hodges v. State, 119 Nev. 479, 78 P.3d 67
24 (2003).
25

26
27 Finally, the district court can correct clerical mistakes in orders and judgments at
28 any time. NRS 176.565; see also In re: Humboldt River System, 77 Nev. 244, 248, 362
P.2d 265, 267 (1961). If none of these aforementioned three exceptions are applicable,

1 once a person begins serving his sentence, and is subject to the executive authority of the
2 parole board, "the power to alleviate the sentence rests entirely with the executive
3 branch." Kimsey, 109 Nev. at 523, 853 P.2d at 112; *citing* Creps v. State, 94 Nev. 351,
4 358, 581 P.2d 842, 847 (1978).

5
6 Although the aforementioned suggests the district court can amend a judgement
7 of conviction in limited circumstances, NRS 177.155 states:

8 The supervision and control of the proceedings on appeal
9 shall be in the appellate court from the time the notice of
10 appeal is filed with its clerk, except as otherwise provided
11 in this title. The appellate court may at any time entertain a
12 motion to dismiss the appeal, or for directions to the trial
13 court, or to modify or vacate any order made by the trial
14 court or by any judge or justice of the peace in relation to
15 the prosecution of the appeal, including any order fixing or
16 denying bail.

17 Therefore, it appears when a defendant files his Notice of Appeal in this Court the district
18 court loses jurisdiction to amend the judgment of conviction absent permission from this
19 Court. See Buffington v. State, 100 Nev. 124, 126, 868 P.2d 643644 (1994).

20 LOFTHOUSE's sentence is illegal in two respects. First, the sentence appears to
21 violate NRS 176.035(2)(b) and this is the reason the district court has placed
22 LOFTHOUSE's case on calendar for May 18, 2017. However, additionally,
23 LOFTHOUSE's sentence is illegal because the district court imposed lifetime supervision
24 pursuant to NRS 176.0931 as a condition of LOFTHOUSE's sentence when he is not
25 subject to lifetime supervision.

26 LOFTHOUSE was convicted of multiples counts of Sexual conduct between
27 certain employees of school or volunteers at school and pupil in violation of NRS
28 201.540. NRS 176.0931(1) currently states: "If a defendant is convicted of a sexual
offense, the court shall include in sentencing, in addition to any other penalties provided

1 by law, a special sentence of lifetime supervision.” Moreover, NRS 176.0931(5)(c)(1)
2 states:

3 As used in this section:

4 “Sexual offense” means:

5 A violation of NRS 200.366, subsection 4 of NRS
6 200.400, NRS 200.710, 200.720, subsection 2 of NRS
7 200.730, NRS 201.180, 201.230, 201.450, **201.540** or
8 201.550 or paragraph (a) or (b) of subsection 4 or
9 paragraph (a) or (b) of subsection 5 of NRS 201.560 NRS
201.540[.]

10 (emphasis added).

11 However, prior to 2015, NRS 176.0931(1),(5)(c)(1) stated:

12 If a defendant is convicted of a sexual offense, the court
13 shall include in sentencing, in addition to any other
14 penalties provided by law, a special sentence of lifetime
supervision.

15 As used in this section:

16 Sexual offense means:

17 A violation of NRS 200.366, subsection 4 of NRS
18 200.400, NRS 200.710, 200.720, subsection 2 of NRS
19 200.730, NRS 201.180, 201.230 or 201.450 or paragraph
20 (a) or (b) of subsection 4 or paragraph (a) or (b) of
subsection 5 of NRS 201.560[.]

21 NRS 176.0931 (2013)

22 Clearly, the pre-2015 version of NRS 176.0931(5)(c)(1) did not include NRS
23 201.540 within the list of “sexual offenses” subject to lifetime supervision. The 2015
24 amendment essentially added NRS 201.540 to the list of sexual offenses which subject a
25 defendant to lifetime supervision upon conviction and sentencing. However, and most
26 importantly, the 2015 amendment to NRS 176.0931 was only applicable to offenses
27 which occurred **“on or after October 1, 2015.”** See attached as Exhibit B.
28

1 LOFTHOUSE's offenses occurred in May 2015 and thus before October 1, 2015.
2 Essentially, NRS 176.0931 does not apply to LOFTHOUSE and the district court could
3 not impose lifetime supervision as a condition of LOFTHOUSE's sentence.
4 Accordingly, LOFTHOUSE's sentence is illegal as it is "at variance with the controlling
5 sentencing statute" which is the 2013 version of NRS 176.0931.
6

7
8 **CONCLUSION**

9 LOFTHOUSE requests this Court reconsider its Order denying an additional
10 extension of time to file the Opening Brief based upon the late receipt of transcripts and
11 Counsel's wedding which is currently scheduled for May 26, 2017. Additionally, or
12 alternatively, Counsel requests this Court suspend briefing and remand LOFTHOUSE's
13 case to the district court for the limited purpose of correcting the illegal sentence in his
14 case. Briefing can resume once the district court rules on LOFTHOUSE's request to
15 correct illegal sentence.
16
17

18 DATED this 16th day of May, 2017.

19
20 PHILIP J. KOHN
21 CLARK COUNTY PUBLIC DEFENDER

22
23 By /s/ William M. Waters
24 WILLIAM M. WATERS, #9546
25 Deputy Public Defender
26 309 So. Third Street, Suite #226
27 Las Vegas, Nevada 89155-2610
28 (702) 455-4685

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ADAM LAXALT
STEVEN S. OWENS

WILLIAM M. WATERS
HOWARD S. BROOKS

JASON RICHARD LOFTHOUSE
NDOC No. 1159974
c/o High Desert State Prison
P.O. Box 650
Indian Springs, NV 89070

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EXHIBIT A

Dept. 20

5/18/17

April 24, 2017

Attached is a letter (or letters) from NDC reflecting errors in the JOCs prepared and forwarded to them.

They have described the requested corrections. In some cases, the matter may need to be put back on calendar.

Once the corrections have been made, please return these copies to me and I will pass them along to our JOC Clerks to prepare the amended documents. If you determine that a correction will not be necessary, please notify NDC of your decision and copy me on your response.

Thank you for your assistance.

Barbara Belt
Legal Office Services Supervisor
671-0660

01/18/2017

To Whom it may concern:

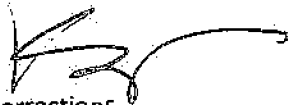
These requests were sent a while back and we have not received any Amended Judgment (if applicable) or any memo, (if no corrections are to be made). I apologize if something was sent; it never made it to our office. Please review requests and either send a Certified Amended Judgment if it applies or a simple memo as to why it will not be changed if you feel no corrections are to be made. We are attempting to resolve these issues / concerns / confirmations as soon as we can, as if any changes may affect the inmates release dates with NDOC.

You can also send the memo via email to myself or just a simple email as to why no corrections will be made will suffice. My e-mail address is kwinters@doc.nv.gov. This is the best form of contact for me, as I am not always available via telephone, but I will make every attempt to return your call, if a message was given to me.

If any are at the 4th attempt, then that will be the last attempt to resolve this issue.

Thank you for your time.

Kristy Rodriguez



Nevada Department of Corrections

Offender Management Division

All Certified Amended JOC's / or memos can be sent to:

Nevada Department of Corrections

Attn: Kristy Rodriguez Offender Management Division

PO Box 7011

Carson City, NV 89702

RECEIVED
APR 18 2017

Board of State
Prison Commissioners

BRIAN SANDOVAL
Governor

BARBARA CEGAVSHE
Secretary of State

ADAM PAUL LAXALT
Attorney General



STATE OF NEVADA
DEPARTMENT OF CORRECTIONS

Offender Management Division
5500 Snyder Avenue, Carson City, NV 89702
Phone: (775) 887-3285 - Fax: (775) 887-3138



BRIAN SANDOVAL
Governor

James E. Dzurenda
Director

DWAYNE DEAL
Offender Management
Administrator

Dept. 20

August 16, 2016

SECOND REQUEST

4-11-17

Clark County Clerk's Office
Barbara Belt
200 Lewis Avenue, 3rd Floor, Room 3114
Las Vegas, Nevada 89101

Re: NDOC #1159974 Lofthouse, Jason
Criminal Case # C307937-1

Dear Sir/Madam:

The Nevada Department of Corrections has received a conflicting Judgment of Conviction in the above referenced case. We are unable to determine the proper sentence structure without additional or corrected information. Please review the information and advise us that the judgment will not be changed or forward a certified copy of the corrected judgment to:

Description of Discrepancy: The Judgment of Conviction was given a total maximum aggregation of 180 months maximum, according to our calculations it is a 19 year maximum. Please clarify?

Nevada Department of Corrections
Attn: Kristy Rodriguez Offender Management
P.O. Box 7011
Carson City, Nevada 89702

Thank you for your prompt attention in this matter.

Sincerely,

Kristy Rodriguez

Kristy Rodriguez
Administrative Assistant IV
775-887-3207
kwinters@doc.nv.gov

RECEIVED

APR 18 2017

1159974

Electronically Filed
05/20/2016 02:10:16 PM

Alvin L. Blum

CLERK OF THE COURT

JOC

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JASON RICHARD LOFTHOUSE
#7019775

Defendant.

CASE NO. C307937-1

DEPT. NO. XX

JUDGMENT OF CONVICTION
(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNTS 1, 3, 4, 5, 6, 7, 9, 10, 11 and 12 – SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR VOLUNTEERS OF SCHOOL AND PUPIL (Category C Felony) in violation of NRS 201.540; COUNTS 2 and 8 – FIRST DEGREE KIDNAPPING (Category A Felony) in violation of NRS 200.310, 200.320; and the matter having been tried before a jury and the Defendant having been found guilty of the crimes of COUNTS 1, 3, 4, 5, 6, 7, 9, 10, 11 and 12 – SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR VOLUNTEERS OF SCHOOL AND PUPIL (Category C Felony) in violation of NRS 201.540; COUNTS 2 and 8 – FIRST DEGREE KIDNAPPING

1 (Category A Felony) in violation of NRS 200.310, 200.320; thereafter, on the 17th day of
2 May, 2016, the Defendant was present in court for sentencing with counsel JASON
3 MARGOLIS, ESQ., and good cause appearing,
4

5 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in
6 addition to the \$25.00 Administrative Assessment Fee and \$150.00 DNA Analysis Fee
7 including testing to determine genetic marks plus \$3.00 DNA Collection Fee, the
8 Defendant is SENTENCED to the Nevada Department of Corrections (NDC) as follows:
9

10 **COUNT 1** - a MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM Parole
11 Eligibility of TWELVE (12) MONTHS; **COUNT 2** - a MAXIMUM of FIFTEEN (15) YEARS
12 with a MINIMUM Parole Eligibility of FIVE (5) YEARS, CONSECUTIVE to COUNT 1;
13 **COUNT 3** - a MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM Parole
14 Eligibility of TWELVE (12) MONTHS, CONSECUTIVE to COUNT 1, CONCURRENT
15 with COUNT 2; **COUNT 4** - a MAXIMUM of FORTY-EIGHT (48) MONTHS with a
16 MINIMUM Parole Eligibility of TWELVE (12) MONTHS, CONCURRENT with COUNTS
17 2 and 3; **COUNT 5** - a MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM
18 Parole Eligibility of TWELVE (12) MONTHS, CONCURRENT with COUNTS 2 and 4;
19 **COUNT 6** - a MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM Parole
20 Eligibility of TWELVE (12) MONTHS, CONCURRENT with COUNTS 2 and 5; **COUNT 7**
21 - a MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM Parole Eligibility of
22 TWELVE (12) MONTHS, CONSECUTIVE to COUNT 3, CONCURRENT with COUNT
23 2; **COUNT 8** - a MAXIMUM of FIFTEEN (15) YEARS with a MINIMUM Parole Eligibility
24 of FIVE (5) YEARS, CONCURRENT with COUNTS 2 and 7; **COUNT 9** - a MAXIMUM
25 of FORTY-EIGHT (48) MONTHS with a MINIMUM Parole Eligibility of TWELVE (12)
26 MONTHS, CONSECUTIVE to COUNT 7, CONCURRENT with COUNT 2; **COUNT 10** -
27
28

1 a MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM Parole Eligibility of
2 TWELVE (12) MONTHS, CONCURRENT with COUNTS 2 and 9; COUNT 11 - a
3 MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM Parole Eligibility of
4 TWELVE (12) MONTHS, CONCURRENT with COUNTS 2 and 10; and COUNT 12 - a
5 MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM Parole Eligibility of
6 TWELVE (12) MONTHS, CONCURRENT with COUNTS 2 and 11; with THREE
7 HUNDRED FORTY-SEVEN (347) DAYS credit for time served. The AGGREGATE
8 TOTAL sentence is ONE HUNDRED EIGHTY (180) MONTHS MAXIMUM with a
9 MINIMUM PAROLE ELIGIBILITY OF SEVENTY-TWO (72) MONTHS.
10
11

12 FURTHER ORDERED, a SPECIAL SENTENCE of LIFETIME SUPERVISION
13 is imposed to commence upon release from any term of imprisonment, probation or
14 parole. In addition, before the Defendant is eligible for parole, a panel consisting of
15 the Administrator of the Mental Health and Development Services of the Department
16 of Human Resources or his designee; the Director of the Department of corrections or
17 his designee; and a psychologist licensed to practice in this state; or a psychiatrist
18 licensed to practice medicine in Nevada must certify that the Defendant does not
19 represent a high risk to re-offend based on current accepted standards of assessment.
20
21

22 ADDITIONALLY, the Defendant is ORDERED to REGISTER as a sex offender
23 in accordance with NRS 179D.460 within FORTY-EIGHT (48) HOURS after any
24 release from custody.

25 DATED this 19 day of May, 2016

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ERIC JOHNSON
DISTRICT COURT JUDGE

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EXHIBIT B

2015 Nevada Laws Ch. 287 (S.B. 192)

NEVADA 2015 SESSION LAWS

REGULAR SESSION OF THE 78TH LEGISLATURE (2015)

Additions are indicated by **Text**; deletions by

~~Text~~.

Vetoed are indicated by ~~Text~~;

stricken material by ~~Text~~.

Ch. 287

S.B. No. 192

SCHOOL EMPLOYEES—CRIMES—SEX OFFENSES

AN ACT relating to crimes; providing that certain employees of or volunteers at a school who are convicted of engaging in sexual conduct with certain pupils are subject to various statutory provisions relating to sex offenders; providing that certain employees of a college or university who are convicted of engaging in sexual conduct with certain students are also subject to various statutory provisions relating to sex offenders; revising provisions relating to certain employees of or volunteers at a school who engage in sexual conduct with certain pupils; prohibiting certain employees of or volunteers at a school from engaging in sexual conduct with certain pupils; prohibiting certain employees of a college or university from engaging in sexual conduct with certain students; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law: (1) requires a court to include a special sentence of lifetime supervision for any person convicted of certain sexual offenses; and (2) provides certain conditions of lifetime supervision. (NRS 176.0931, 213.1243) **Sections 1 and 12** of this bill add to the list of sexual offenses that require a sentence of lifetime supervision and for which certain conditions of lifetime supervision apply: (1) an offense involving sexual conduct between certain employees of or volunteers at a school and certain pupils; and (2) an offense involving sexual conduct between certain employees of a college or university and certain students.

Existing law also: (1) requires a person convicted of certain sexual offenses to undergo a psychosexual evaluation as part of the presentence investigation and report prepared by the Division of Parole and Probation of the Department of Public Safety; and (2) prohibits the court from granting probation to or suspending the sentence of a person convicted of certain sexual offenses, unless the person who conducts the psychosexual evaluation certifies that the person convicted of the sexual offense does not represent a high risk to reoffend. (NRS 176.133, 176.135, 176A.110) **Sections 2 and 3** of this bill add to the list of sexual offenses which require a psychosexual evaluation as part of the presentence investigation and report and a certification that the person convicted does not represent a high risk to reoffend before the person may be granted probation or have his or her sentence suspended: (1) an offense involving sexual conduct between certain employees of or volunteers at a school and certain pupils; and (2) an offense involving sexual conduct between certain employees of a college or university and certain students.

Existing law requires the prosecuting attorney, sheriff or chief of police, upon request, to inform a victim or witness of certain sexual offenses: (1) when the defendant is released from custody at any time before or during the defendant's trial; and (2) of the final disposition of the case involving the victim or witness. (NRS 178.5698) **Section 4** of this bill adds to the list of sexual offenses that are subject to such requirements concerning notification of a victim or witness: (1) an offense involving sexual conduct between certain employees of or volunteers at a school and certain pupils; and (2) an offense involving sexual conduct between certain employees of a college or university and certain students.

Existing law allows a person convicted of certain offenses to petition the court for the sealing of all records relating to the conviction, but does not authorize the sealing of records relating to a conviction of certain sexual offenses. (NRS 179.245)

Section 5 of this bill adds to the list of sexual offenses for which the sealing of records is not authorized: (1) an offense involving sexual conduct between certain employees of or volunteers at a school and certain pupils; and (2) an offense involving sexual conduct between certain employees of a college or university and certain students.

Existing law also defines the term "sexual offense" for the purpose of requiring persons convicted of certain sexual offenses to register as a sex offender, to comply with certain mandatory conditions of probation or parole and to fulfill certain other requirements. (NRS 118A.335, 176A.410, 179D.097, 213.1099, 213.1245) Section 6 of this bill revises the list of sexual offenses to which these statutory provisions apply to include: (1) an offense involving sexual conduct between certain employees of or volunteers at a school and certain pupils; and (2) an offense involving sexual conduct between certain employees of a college or university and certain students.

Existing law requires the Department of Corrections to assess each prisoner who has been convicted of a sexual offense to determine the prisoner's risk to reoffend in a sexual manner. The State Board of Parole Commissioners must consider the assessment before determining whether to grant or revoke the parole of a person convicted of a sexual offense. (NRS 213.1214) Section 13 of this bill adds to the list of sexual offenses which require such an assessment: (1) an offense involving sexual conduct between certain employees of or volunteers at a school and certain pupils; and (2) an offense involving sexual conduct between certain employees of a college or university and certain students.

Existing law generally provides that a person who: (1) is 21 years of age or older; (2) is or was employed in a position of authority by or is or was volunteering in a position of authority at a public or private school; and (3) engages in sexual conduct with a pupil, is guilty of a category C felony if the pupil is 16 or 17 years of age or a category B felony if the pupil is 14 or 15 years of age. (NRS 201.540) Section 10 of this bill: (1) removes the requirement that such a person be employed or volunteer in a position of authority; and (2) prohibits such a person from engaging in sexual conduct with a pupil who is 16 years of age or older and who has not received a high school diploma, a general educational development certificate or an equivalent document. Similarly, existing law generally provides that a person who: (1) is 21 years of age or older; (2) is employed in a position of authority by a college or university; and (3) engages in sexual conduct with a student who is 16 or 17 years of age and enrolled in or attending the college or university, is guilty of a category C felony. (NRS 201.550) Section 11 of this bill prohibits such a person from engaging in sexual conduct with a student who is 16 years of age or older and who is enrolled in or attending the college or university but has not received a high school diploma, a general educational development certificate or an equivalent document.

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

Section 1. NRS 176.0931 is hereby amended to read as follows:

<< NV ST 176.0931 >>

1. If a defendant is convicted of a sexual offense, the court 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 commences after any period of probation or any term of imprisonment and any period of release on parole.

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

(a) The person has complied with the requirements of the provisions of NRS 179D.010 to 179D.550, inclusive;

(b) The person has not been convicted of an offense that poses a threat to the safety or well-being of others for an interval of at least 10 consecutive years after the person's last conviction or release from incarceration, whichever occurs later; and

(c) The person is not likely to pose a threat to the safety of others, as determined by a person professionally qualified to conduct psychosexual evaluations, if released from lifetime supervision.

4. A person who is released from lifetime supervision pursuant to the provisions of subsection 3 remains subject to the provisions for registration as a sex offender and to the provisions for community notification, unless the person is otherwise relieved from the operation of those provisions pursuant to the provisions of NRS 179D.010 to 179D.550, inclusive.

5. As used in this section:

(a) "Offense that poses a threat to the safety or well-being of others" includes, without limitation:

(1) An offense that involves:

(I) A victim less than 18 years of age;

(II) A crime against a child as defined in NRS 179D.0357;

(III) A sexual offense as defined in NRS 179D.097;

(IV) A deadly weapon, explosives or a firearm;

(V) The use or threatened use of force or violence;

(VI) Physical or mental abuse;

(VII) Death or bodily injury;

(VIII) An act of domestic violence;

(IX) Harassment, stalking, threats of any kind or other similar acts;

(X) The forcible or unlawful entry of a home, building, structure, vehicle or other real or personal property; or

(XI) The infliction or threatened infliction of damage or injury, in whole or in part, to real or personal property.

(2) Any offense listed in subparagraph (1) that is committed in this State or another jurisdiction, including, without limitation, an offense prosecuted in:

(I) A tribal court.

(II) A court of the United States or the Armed Forces of the United States.

(b) "Person professionally qualified to conduct psychosexual evaluations" has the meaning ascribed to it in NRS 176.133.

(c) "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, 201.230, or 201.450, 201.540 or 201.550 or paragraph (a) or (b) of subsection 4 or paragraph (a) or (b) of subsection 5 of NRS 201.560;

(2) An attempt to commit an offense listed in subparagraph (1); or

(3) An act of murder in the first or second degree, kidnapping 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.

Sec. 2. NRS 176.133 is hereby amended to read as follows:

<< NV ST 176.133 >>

As used in NRS 176.133 to 176.161, inclusive, 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, Inc.;
- (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;
- (e) A marriage and family therapist licensed in this State pursuant to chapter 641A of NRS; or
- (f) A clinical professional counselor licensed in this State pursuant to chapter 641A of NRS.

2. "Psychosexual evaluation" means an evaluation conducted pursuant to NRS 176.139.

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) Open or gross lewdness pursuant to NRS 201.210, if punished as a felony;
- (h) Indecent or obscene exposure pursuant to NRS 201.220, if punished as a felony;
- (i) Lewdness with a child pursuant to NRS 201.230;
- (j) Sexual penetration of a dead human body pursuant to NRS 201.450;
- (k) Sexual conduct between certain employees of a school or volunteers at a school and a pupil pursuant to NRS 201.540;
- (l) Sexual conduct between certain employees of a college or university and a student pursuant to NRS 201.550;
- (m) Luring a child or a person with mental illness pursuant to NRS 201.560, if punished as a felony;
- (n) An attempt to commit an offense listed in paragraphs (a) to (k), (m), inclusive, if punished as a felony; or

~~(m)~~ (o) An offense that is determined to be sexually motivated pursuant to NRS 175.547 or 207.193.

Sec. 3. NRS 176A.110 is hereby amended to read as follows:

<< NV ST 176A.110 >>

1. The court shall not grant probation to or suspend the sentence of a person convicted of an offense listed in subsection 3 unless:

(a) If a psychosexual evaluation of the person is required pursuant to NRS 176.139, the person who conducts the psychosexual evaluation certifies in the report prepared pursuant to NRS 176.139 that the person convicted of the offense does not represent a high risk to reoffend based upon a currently accepted standard of assessment; or

(b) If a psychosexual evaluation of the person is not required pursuant to NRS 176.139, a psychologist licensed to practice in this State who is trained to conduct psychosexual evaluations or a psychiatrist licensed to practice medicine in this State who is certified by the American Board of Psychiatry and Neurology, Inc., and is trained to conduct psychosexual evaluations certifies in a written report to the court that the person convicted of the offense does not represent a high risk to reoffend based upon a currently accepted standard of assessment.

2. This section does not create a right in any person to be certified or to continue to be certified. No person may bring a cause of action against the State, its political subdivisions, or the agencies, boards, commissions, departments, officers or employees of the State or its political subdivisions for not certifying a person pursuant to this section or for refusing to consider a person for certification pursuant to this section.

3. The provisions of this section apply to a person convicted of any of the following offenses:

(a) Attempted sexual assault of a person who is 16 years of age or older 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) Abuse or neglect of a child pursuant to NRS 200.508.

(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) Open or gross lewdness pursuant to NRS 201.210.

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

(i) Sexual penetration of a dead human body pursuant to NRS 201.450.

(j) Sexual conduct between certain employees of a school or volunteers at a school and a pupil pursuant to NRS 201.540.

(k) Sexual conduct between certain employees of a college or university and a student pursuant to NRS 201.550.

(l) Luring a child or a person with mental illness pursuant to NRS 201.560, if punished as a felony.

~~(m)~~ (m) A violation of NRS 207.180.

- ~~(h)~~ (n) An attempt to commit an offense listed in paragraphs (b) to ~~(k)~~, (m), inclusive.
- ~~(m)~~ (o) Coercion or attempted coercion that is determined to be sexually motivated pursuant to NRS 207.193.

Sec. 4. NRS 178.5698 is hereby amended to read as follows:

<< NV ST 178.5698 >>

1. The prosecuting attorney, sheriff or chief of police shall, upon the request of a victim or witness, inform the victim or witness:
 - (a) When the defendant is released from custody at any time before or during the trial, including, without limitation, when the defendant is released pending trial or subject to electronic supervision;
 - (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 the victim or witness was directly involved.
2. A request for information pursuant to subsection 1 must be made:
 - (a) In writing; or
 - (b) By telephone through an automated or computerized system of notification, if such a system is available.
3. 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 5;
 - (2) The form that the witness must use to request notification in writing; 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 4, documentation that includes:
 - (1) A form advising the person of the right to be notified pursuant to subsection 5 or 6 and NRS 176.015, 176A.630, 178.4715, 209.392, 209.3925, 209.521, 213.010, 213.040, 213.095 and 213.131 or NRS 213.10915;
 - (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.
4. The following persons are entitled to receive documentation pursuant to paragraph (b) of subsection 3:
 - (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.

5. Except as otherwise provided in subsection 6, if the 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 a current address, notify the victim or witness at that address when the offender is released from the prison.

6. If the offender was convicted of a violation of subsection 3 of NRS 200.366 or a violation of subsection 1, paragraph (a) of subsection 2 or subparagraph (2) of paragraph (b) 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 a current address; and
- (c) The victim, if the victim will be 18 years of age or older at the time of the release and has provided a current address,

before the offender is released from prison.

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

8. As used in this section:

(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 201.180;
- (6) Open or gross lewdness pursuant to NRS 201.210;
- (7) Indecent or obscene exposure pursuant to NRS 201.220;
- (8) Lewdness with a child pursuant to NRS 201.230;
- (9) Sexual penetration of a dead human body pursuant to NRS 201.450;
- (10) Sexual conduct between certain employees of a school or volunteers at a school and a pupil pursuant to NRS 201.540;
- (11) Sexual conduct between certain employees of a college or university and a student pursuant to NRS 201.550;
- (12) Luring a child or a person with mental illness pursuant to NRS 201.560, if punished as a felony;

- ~~(11)~~ (13) An offense that, pursuant to a specific statute, is determined to be sexually motivated; or
- ~~(12)~~ (14) An attempt to commit an offense listed in this paragraph.

Sec. 5. NRS 179.245 is hereby amended to read as follows:

<< NV ST 179.245 >>

1. Except as otherwise provided in subsection 5 and NRS 176A.265, 176A.295, 179.259, 453.3365 and 458.330, a person may petition the court in which the person was convicted for the sealing of all records relating to a conviction of:

- (a) A category A or B felony after 15 years from the date of release from actual custody or discharge from parole or probation, whichever occurs later;
- (b) A category C or D felony after 12 years from the date of release from actual custody or discharge from parole or probation, whichever occurs later;
- (c) A category E felony after 7 years from the date of release from actual custody or discharge from parole or probation, whichever occurs later;
- (d) Any gross misdemeanor after 5 years from the date of release from actual custody or discharge from probation, whichever occurs later;
- (e) A violation of NRS 484C.110 or 484C.120 other than a felony, or a battery which constitutes domestic violence pursuant to NRS 33.018 other than a felony, after 7 years from the date of release from actual custody or from the date when the person is no longer under a suspended sentence, whichever occurs later; or
- (f) Any other misdemeanor after 2 years from the date of release from actual custody or from the date when the person is no longer under a suspended sentence, whichever occurs later.

2. A petition filed pursuant to subsection 1 must:

- (a) Be accompanied by the petitioner's current, verified records received from:
 - (1) The Central Repository for Nevada Records of Criminal History; and
 - (2) All agencies of criminal justice which maintain such records within the city or county in which the conviction was entered;
- (b) If the petition references NRS 453.3365 or 458.330, include a certificate of acknowledgment or the disposition of the proceedings for the records to be sealed from all agencies of criminal justice which maintain such records;
- (c) Include a list of any other public or private agency, company, official or other custodian of records that is reasonably known to the petitioner to have possession of records of the conviction and to whom the order to seal records, if issued, will be directed; and
- (d) Include information that, to the best knowledge and belief of the petitioner, accurately and completely identifies the records to be sealed, including, without limitation, the:
 - (1) Date of birth of the petitioner;
 - (2) Specific conviction to which the records to be sealed pertain; and

(3) Date of arrest relating to the specific conviction to which the records to be sealed pertain.

3. Upon receiving a petition pursuant to this section, the court shall notify the law enforcement agency that arrested the petitioner for the crime and:

(a) If the person was convicted in a district court or justice court, the prosecuting attorney for the county; or

(b) If the person was convicted in a municipal court, the prosecuting attorney for the city.

The prosecuting attorney and any person having relevant evidence may testify and present evidence at the hearing on the petition.

4. If, after the hearing, the court finds that, in the period prescribed in subsection 1, the petitioner has not been charged with any offense for which the charges are pending or convicted of any offense, except for minor moving or standing traffic violations, the court may order sealed all records of the conviction which are in the custody of any agency of criminal justice or any public or private agency, company, official or other custodian of records in the State of Nevada, and may also order all such records of the petitioner returned to the file of the court where the proceeding was commenced from, including, without limitation, the Federal Bureau of Investigation, the California Bureau of Criminal Identification and Information and all other agencies of criminal justice which maintain such records and which are reasonably known by either the petitioner or the court to have possession of such records.

5. A person may not petition the court to seal records relating to a conviction of:

(a) A crime against a child;

(b) A sexual offense;

(c) A violation of NRS 484C.110 or 484C.120 that is punishable as a felony pursuant to paragraph (c) of subsection 1 of NRS 484C.400;

(d) A violation of NRS 484C.430;

(e) A homicide resulting from driving or being in actual physical control of a vehicle while under the influence of intoxicating liquor or a controlled substance or resulting from any other conduct prohibited by NRS 484C.110, 484C.130 or 484C.430;

(f) A violation of NRS 488.410 that is punishable as a felony pursuant to NRS 488.427; or

(g) A violation of NRS 488.420 or 488.425.

6. If the court grants a petition for the sealing of records pursuant to this section, upon the request of the person whose records are sealed, the court may order sealed all records of the civil proceeding in which the records were sealed.

7. As used in this section:

(a) "Crime against a child" has the meaning ascribed to it in NRS 179D.0357.

(b) "Sexual offense" means:

(1) Murder of the first degree committed in the perpetration or attempted perpetration of sexual assault or of sexual abuse or sexual molestation of a child less than 14 years of age pursuant to paragraph (b) of subsection 1 of NRS 200.030.

(2) Sexual assault pursuant to NRS 200.366.

(3) Statutory sexual seduction pursuant to NRS 200.368, if punishable as a felony.

- (4) Battery with intent to commit sexual assault pursuant to NRS 200.400.
- (5) An offense involving the administration of a drug to another person with the intent to enable or assist the commission of a felony pursuant to NRS 200.405, if the felony is an offense listed in this paragraph.
- (6) An offense involving the administration of a controlled substance to another person with the intent to enable or assist the commission of a crime of violence pursuant to NRS 200.408, if the crime of violence is an offense listed in this paragraph.
- (7) Abuse of a child pursuant to NRS 200.508, if the abuse involved sexual abuse or sexual exploitation.
- (8) An offense involving pornography and a minor pursuant to NRS 200.710 to 200.730, inclusive.
- (9) Incest pursuant to NRS 201.180.
- (10) Open or gross lewdness pursuant to NRS 201.210, if punishable as a felony.
- (11) Indecent or obscene exposure pursuant to NRS 201.220, if punishable as a felony.
- (12) Lewdness with a child pursuant to NRS 201.230.
- (13) Sexual penetration of a dead human body pursuant to NRS 201.450.
- (14) **Sexual conduct between certain employees of a school or volunteers at a school and a pupil pursuant to NRS 201.540.**
- (15) **Sexual conduct between certain employees of a college or university and a student pursuant to NRS 201.550.**
- (16) Luring a child or a person with mental illness pursuant to NRS 201.560, if punishable as a felony.
- ~~(15)~~ (17) An attempt to commit an offense listed in this paragraph.

Sec. 6. NRS 179D.097 is hereby amended to read as follows:

<< NV ST 179D.097 >>

1. "Sexual offense" means any of the following offenses:

- (a) Murder of the first degree committed in the perpetration or attempted perpetration of sexual assault or of sexual abuse or sexual molestation of a child less than 14 years of age pursuant to paragraph (b) of subsection 1 of NRS 200.030.
- (b) Sexual assault pursuant to NRS 200.366.
- (c) Statutory sexual seduction pursuant to NRS 200.368.
- (d) Battery with intent to commit sexual assault pursuant to subsection 4 of NRS 200.400.
- (e) An offense involving the administration of a drug to another person with the intent to enable or assist the commission of a felony pursuant to NRS 200.405, if the felony is an offense listed in this subsection.
- (f) An offense involving the administration of a controlled substance to another person with the intent to enable or assist the commission of a crime of violence pursuant to NRS 200.408, if the crime of violence is an offense listed in this section.
- (g) Abuse of a child pursuant to NRS 200.508, if the abuse involved sexual abuse or sexual exploitation.

- (h) An offense involving pornography and a minor pursuant to NRS 200.710 to 200.730, inclusive.
 - (i) Incest pursuant to NRS 201.180.
 - (j) Open or gross lewdness pursuant to NRS 201.210.
 - (k) Indecent or obscene exposure pursuant to NRS 201.220.
 - (l) Lewdness with a child pursuant to NRS 201.230.
 - (m) Sexual penetration of a dead human body pursuant to NRS 201.450.
 - (n) Sexual conduct between certain employees of a school or volunteers at a school and a pupil pursuant to NRS 201.540.
 - (o) Sexual conduct between certain employees of a college or university and a student pursuant to NRS 201.550.
 - (p) Luring a child or a person with mental illness pursuant to NRS 201.560, if punished as a felony.
 - ~~(q)~~ (q) Sex trafficking pursuant to NRS 201.300.
 - ~~(p)~~ (r) Any other offense that has an element involving a sexual act or sexual conduct with another.
 - ~~(q)~~ (s) An attempt or conspiracy to commit an offense listed in paragraphs (a) to ~~(p)~~, (r), inclusive.
 - ~~(r)~~ (t) An offense that is determined to be sexually motivated pursuant to NRS 175.547 or 207.193.
 - ~~(s)~~ (u) An offense committed in another jurisdiction that, if committed in this State, would be an offense listed in this subsection. This paragraph includes, without limitation, an offense prosecuted in:
 - (1) A tribal court.
 - (2) A court of the United States or the Armed Forces of the United States.
 - ~~(t)~~ (v) An offense of a sexual nature committed in another jurisdiction, whether or not the offense would be an offense listed in this section, if the person who committed the offense resides or has resided or is or has been a student or worker in any jurisdiction in which the person is or has been required by the laws of that jurisdiction to register as a sex offender because of the offense. This paragraph includes, without limitation, an offense prosecuted in:
 - (1) A tribal court.
 - (2) A court of the United States or the Armed Forces of the United States.
 - (3) A court having jurisdiction over juveniles.
2. The Except for the offenses described in paragraphs (n) and (o) of subsection 1, the term does not include an offense involving consensual sexual conduct if the victim was:
- (a) An adult, unless the adult was under the custodial authority of the offender at the time of the offense; or
 - (b) At least 13 years of age and the offender was not more than 4 years older than the victim at the time of the commission of the offense.

Sec. 7. (Deleted by amendment.)

Sec. 8. NRS 179D.495 is hereby amended to read as follows:

<< NV ST 179D.495 >>

If a person who is required to register pursuant to NRS 179D.010 to 179D.550, inclusive, has been convicted of an offense described in paragraph (p) of subsection 1 of NRS 179D.097, paragraph (e) of subsection 1 or subsection 3 of NRS 179D.115 or subsection 7 or 9 of NRS 179D.117, the Central Repository shall determine whether the person is required to register as a Tier I offender, Tier II offender or Tier III offender.

Sec. 9. (Deleted by amendment.)

Sec. 10. NRS 201.540 is hereby amended to read as follows:

<< NV ST 201.540 >>

1. Except as otherwise provided in subsection 4, 3, a person who:

(a) Is 21 years of age or older;

(b) Is or was employed in a position of authority by a public school or private school or is or was volunteering in a position of authority at a public or private school; and

(c) Engages in sexual conduct with a pupil who is 16 or 17 years of age or older, who has not received a high school diploma, a general educational development certificate or an equivalent document and:

(1) Who is or was enrolled in or attending the public school or private school at which the person is or was employed or volunteering; or

(2) With whom the person has had contact in the course of performing his or her duties as an employee or volunteer,

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

2. Except as otherwise provided in subsection 4, 3, a person who:

(a) Is 21 years of age or older;

(b) Is or was employed in a position of authority by a public school or private school or is or was volunteering in a position of authority at a public or private school; and

(c) Engages in sexual conduct with a pupil who is 14 or 15 years of age and:

(1) Who is or was enrolled in or attending the public school or private school at which the person is or was employed or volunteering; or

(2) With whom the person has had contact in the course of performing his or her duties as an employee or volunteer,

is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years, and may be further punished by a fine of not more than \$5,000.

~~3. For the purposes of subsections 1 and 2, a person shall be deemed to be or have been employed in a position of authority by a public school or private school or deemed to be or have been volunteering in a position of authority at a public or private school if the person is or was employed or volunteering as:~~

~~(a) A teacher or instructor;~~

~~(b) An administrator;~~

~~(c) A head or assistant coach; or~~

~~(d) A teacher's aide or an auxiliary, nonprofessional employee who assists licensed personnel in the instruction or supervision of pupils pursuant to NRS 391.100.~~

4. The provisions of this section do not apply to a person who is married to the pupil.

4. The provisions of this section must not be construed to apply to sexual conduct between two pupils.

Sec. 11. NRS 201.550 is hereby amended to read as follows:

<< NV ST 201.550 >>

1. Except as otherwise provided in subsection 3, a person who:

(a) Is 21 years of age or older;

(b) Is employed in a position of authority by a college or university; and

(c) Engages in sexual conduct with a student who is 16 or 17 years of age and or older, who has not received a high school diploma, a general educational development certificate or an equivalent document and who is enrolled in or attending the college or university at which the person is employed,

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

2. For the purposes of subsection 1, a person shall be deemed to be employed in a position of authority by a college or university if the person is employed as:

(a) A teacher, instructor or professor;

(b) An administrator; or

(c) A head or assistant coach.

3. The provisions of this section do not apply to a person who is married to the student.

4. The provisions of this section must not be construed to apply to sexual conduct between two students.

Sec. 12. NRS 213.107 is hereby amended to read as follows:

<< NV ST 213.107 >>

As used in NRS 213.107 to 213.157, inclusive, 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 Public Safety.
4. "Residential confinement" means the confinement of a person convicted of a crime to his or her 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 4 of NRS 200.400, NRS 200.710, 200.720, subsection 2 of NRS 200.730, NRS 201.180, 201.230, or 201.450, **201.540 or 201.550** or paragraph (a) or (b) of subsection 4 or paragraph (a) or (b) of subsection 5 of NRS 201.560;
 - (b) An attempt to commit any offense listed in paragraph (a); or
 - (c) An act of murder in the first or second degree, kidnapping 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. 13. NRS 213.1214 is hereby amended to read as follows:

<< NV ST 213.1214 >>

1. The Department of Corrections shall assess each prisoner who has been convicted of a sexual offense to determine the prisoner's risk to reoffend in a sexual manner using a currently accepted standard of assessment. The completed assessment must return a risk level of low, moderate or high. The Director shall ensure a completed assessment is provided to the Board before, but not sooner than 120 days before, a scheduled parole hearing.
2. The Director shall:
 - (a) Ensure that any employee of the Department who completes an assessment pursuant to subsection 1 is properly trained to assess the risk of an offender to reoffend in a sexual manner.
 - (b) Establish a procedure to:
 - (1) Ensure the accuracy of each completed assessment provided to the Board; and
 - (2) Correct any error occurring in a completed assessment provided to the Board.
3. This section does not create a right in any prisoner to be assessed or reassessed more frequently than the prisoner's regularly scheduled parole hearings or under a current or previous standard of assessment and does not restrict the Department from conducting additional assessments of a prisoner if such assessments may assist the Board in determining whether parole should be granted or continued. No cause of action may be brought against the State, its political subdivisions,

or the agencies, boards, commissions, departments, officers or employees of the State or its political subdivisions for assessing, not assessing or considering or relying on an assessment of a prisoner, if such decisions or actions are made or conducted in compliance with the procedures set forth in this section.

4. The Board shall consider an assessment prepared pursuant to this section before determining whether to grant or revoke the parole of a person convicted of a sexual offense.

5. The Board may adopt by regulation the manner in which the Board will consider an assessment prepared pursuant to this section in conjunction with the standards adopted by the Board pursuant to NRS 213.10885.

6. As used in this section:

(a) "Director" means the Director of the Department of Corrections.

(b) "Reoffend in a sexual manner" means to commit a sexual offense.

(c) "Sex offender" means a person who, after July 1, 1956, is or has been:

(1) Convicted of a sexual offense; or

(2) Adjudicated delinquent or found guilty by a court having jurisdiction over juveniles of a sexual offense listed in subparagraph ~~(18)~~ (20) of paragraph (d).

The term includes, but is not limited to, a sexually violent predator or a nonresident sex offender who is a student or worker within this State.

(d) "Sexual offense" means any of the following offenses:

(1) Murder of the first degree committed in the perpetration or attempted perpetration of sexual assault or of sexual abuse or sexual molestation of a child less than 14 years of age pursuant to paragraph (b) of subsection 1 of NRS 200.030.

(2) Sexual assault pursuant to NRS 200.366.

(3) Statutory sexual seduction pursuant to NRS 200.368.

(4) Battery with intent to commit sexual assault pursuant to NRS 200.400.

(5) An offense involving the administration of a drug to another person with the intent to enable or assist the commission of a felony pursuant to NRS 200.405, if the felony is an offense listed in this paragraph.

(6) An offense involving the administration of a controlled substance to another person with the intent to enable or assist the commission of a crime of violence pursuant to NRS 200.408, if the crime of violence is an offense listed in this paragraph.

(7) Abuse of a child pursuant to NRS 200.508, if the abuse involved sexual abuse or sexual exploitation.

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

(9) Incest pursuant to NRS 201.180.

(10) Open or gross lewdness pursuant to NRS 201.210.

(11) Indecent or obscene exposure pursuant to NRS 201.220.

(12) Lewdness with a child pursuant to NRS 201.230.

(13) Sexual penetration of a dead human body pursuant to NRS 201.450.

~~(14)~~ Sexual conduct between certain employees of a school or volunteers at a school and a pupil pursuant to NRS 201.540.

~~(15)~~ Sexual conduct between certain employees of a college or university and a student pursuant to NRS 201.550.

~~(16)~~ Luring a child or a person with mental illness pursuant to NRS 201.560, if punished as a felony.

~~(15)~~ ~~(17)~~ An attempt or conspiracy to commit an offense listed in subparagraphs (1) to ~~(14)~~, ~~(16)~~, inclusive.

~~(16)~~ ~~(18)~~ An offense that is determined to be sexually motivated pursuant to NRS 175.547 or 207.193.

~~(17)~~ ~~(19)~~ An offense committed in another jurisdiction that, if committed in this State, would be an offense listed in this paragraph. This subparagraph includes, but is not limited to, an offense prosecuted in:

(I) A tribal court.

(II) A court of the United States or the Armed Forces of the United States.

~~(18)~~ ~~(20)~~ An offense of a sexual nature committed in another jurisdiction, whether or not the offense would be an offense listed in this paragraph, if the person who committed the offense resides or has resided or is or has been a student or worker in any jurisdiction in which the person is or has been required by the laws of that jurisdiction to register as a sex offender because of the offense. This subparagraph includes, but is not limited to, an offense prosecuted in:

(I) A tribal court.

(II) A court of the United States or the Armed Forces of the United States.

(III) A court having jurisdiction over juveniles.

The Except for the offenses described in subparagraphs 14 and 15, the term does not include an offense involving consensual sexual conduct if the victim was an adult, unless the adult was under the custodial authority of the offender at the time of the offense, or if the victim was at least 13 years of age and the offender was not more than 4 years older than the victim at the time of the commission of the offense.

Sec. 14: The amendatory provisions of:

1. Sections 1 to 4, inclusive, 10 and 11 of this act apply to offenses committed on or after October 1, 2015.
2. Sections 5 to 8, inclusive, 12 and 13 of this act apply to offenses committed before, on or after October 1, 2015.

Approved by the Governor May 29, 2015.

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