Lifetime Supervision

This document is solely the opinion of its author and is not intended as legal advice. It is protected under the First Amendment of the U.S. Constitution as free/political speech to bring about positive social change, improve public safety, inform the public, and to vindicate rights.

This document provides raw argument and the rational for challenging Nevada's lifetime supervision laws. It was written for those making challenges using a Motion To Correct An Illegal Sentence pursuant to NRS 176.555. Time constraints and procedural defaults do not apply. These arguments can also be used in many other vehicles such as in a post-conviction habeas corpus pursuant to chapter 34 of the Nevada Revised Statutes ("NRS") where broader relief can be obtained.

A post-conviction habeas corpus is only cognizable if claims are made within one year after entry of the judgment of conviction or, if an appeal has been taken from the judgment, within one year after the Nevada Supreme Court issues its remittitur. See NRS 34.726. There are exceptions for delays if good cause is shown. See NRS 34.726(1) sections (a) and (b). Good cause must be shown if the habeas is a second or successive petition. See NRS 34.810. Good cause is usually demonstrated and attributed to circumstances beyond your control. Ignorance of the law is never an affirmative defense sufficient to sustain good cause.

It is highly recommended that you first use a post-conviction habeas corpus if it is cognizable in your situation in order to receive broader relief such as reversing your conviction or withdrawing a guilty plea or whatever relief is appropriate for your circumstance. It is absolutely imperative that you request an evidentiary hearing at each stage of your habeas proceedings.

The ground below that challenges the alleged "invalid hearing" by the State Board of Parole Commissioners ("Board") is arguably cognizable in a habeas corpus if you immediately and timely exhaust your administrative appeals with the Board and then file the habeas within one year after a final response to your appeals has been made. It will be up to you to determine how an administrative appeal is done with the board if there is any at all. Be diligent and check with the board on how to appeal. If there are no provisions for an appeal, proceed with a habeas corpus. Generally, a court will not entertain an action if the agency has not been given a full and fair opportunity to address you claims.

Propriety Of Motion To Correct Illegal Sentence

Motions to correct an illegal sentence pursuant to NRS 176.555 are for attacking "a sentence that is either facially illegal or is the result of a mistaken assumption regarding a criminal defendant's record." *Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996) (per curium). An illegal sentence is "one at variance with the controlling sentencing statute, or "illegal" in the sense that the court goes beyond its authority by acting without jurisdiction or imposing a sentence in excess of the statutory maximum provided…" *Id.* (quoting *Allen v. United State*, 495 A.2d 1145, 1149 (D.C. 1985)) (other citations omitted).

"[Lifetime] supervision *[permissibly]* increases the maximum range of an offender's sentence." *Palmer v. State*, 118 Nev. 823, 828-29, 59 P.3d 1192, 1195 (2002) (per curium). However, this increase is made under the presumption that the statute is constitutionally valid. See *Silvar v. Dist. Ct.*, 122 Nev. 289, 292, 129 P.3d 682, 684 (2006) (per curium) ("Statutes are presumed to be valid, and the challenger bears the burden of showing that a statute is unconstitutional."). Arguably, if lifetime supervision under NRS 176.0931 and/or 213.1243 is unconstitutional, the sentence is impermissibly *excessive* and would therefore be illegal in this sense. *Edwards*, at 708.

There are claims in this document that do not address the mistaken assumption regarding petitioner's record of recidivism and risks to public safety. Those claims exclusively challenge lifetime supervision's effect of being an *excessive* sentence based on the statute's alleged unconstitutionality which is within the scope of review pursuant to *Edwards*, at 708. It is necessary to resolve the statute's alleged unconstitutionality in order to determine if the sentence is impermissibly *excessive*.

GROUND ONE

Petitioner's sentence of lifetime supervision under NRS 176.0931 (2008) is disproportionate relative to the narrowly drawn legislative intent for offenders who are dangerous sexual predators, people with a high degree of likelihood of recidivism in violation of the Eighth and Fourteenth Amendments to the U.S. Constitution.

Proportionality of Sentence

"The concept of proportionality is central to the Eighth Amendment. Embodied in the Constitution's ban on cruel and unusual punishments is the 'precept of justice that punishment for crime should be graduated and proportional to [the] offense.'" *Graham v. Florida*, 176 L.Ed.2d 825, 835 (2010) (quoting *Weems v. United* States, 217 U.S. 349, 367 (1910)). In this case, it is not necessary to rely on consensus or subjective analysis to determine proportionality where the Nevada Legislature has narrowly drawn a clearly objective line to only the most dangerous offenders; "dangerous sexual predators, people with a high degree of likelihood of recidivism." *Palmer v. State*, 118 Nev. 823, 827, 59 P.3d 1192, 1195 (2002) (per curiam). To pass constitutional muster, a state law like lifetime supervision that infringes on personal liberty must be narrowly drawn to serve a compelling state interest. *Reno v. Flores*, 507 U.S. 292, 301-02 (1993).

Petitioner has not been adjudicated as a "dangerous sexual predator, [a person] with a high degree of likelihood of recidivism" but yet was sentenced to a term of lifetime supervision. Petitioner's sentence is therefore disproportionate relative to its narrowly drawn legislative intent in violation of the Eighth and Fourteenth Amendments.

Legislative Intent

It appears, without dispute, that the legislative intent of NRS 176.0931 is for "dangerous sexual predators, people with a high degree of likelihood of recidivism" as construed by the Nevada Supreme Court in *Palmer*, at 1195. Where a statute has been judicially construed and that construction has not evoked an amendment, it is presumed that the Legislature has acquiesced in the Court's determination of the Legislature's intent. *Nevada Industrial Commission v. Strange*, 84 Nev. 153, 158, 437 P.2d 873, 876 (1968); *Kilminster v. Day Management Corp.*, 323 Or. 618, 629-30, 919 P.2d 474, 480 (1996) (noting that a prior interpretation of a statute by the court "becomes part of the statute itself, as if it were written into the statute at the time of the statute's enactment."). NRS 176.0931 has been amended on numerous occasions since *Palmer* was decided and the Legislature has not disrupted the Court's determination of the above quoted legislative intent and therefore has approved of this judicial construction.

Interestingly, this legislative intent is missing from the plain text of the statute. "In interpreting statutes the court's objective is to 'ascertain the congressional intent and give effect to the legislative will.'" *Pressley v. Capital Credit & Collection Service, Inc*., 760 F.2d 922, 924 (9th Cir. 1985) (quoting *Philbrook v. Glodgett*, 421 U.S. 707, 713 (1975)). "*Legislative intent, however, is not always evident from the plain language of the statute* and in that event [as in this case], the courts must look to legislative

history for guidance." *Id.* "The plain meaning of legislation should be conclusive, except in the 'rare cases [as here] the literal application of a statute will produce a result demonstratably at odds with the intentions of its drafters.'" *U.S. v. Ron Pair Enterprises, Inc.,* 489 U.S. 235, 242 (1989) (quoting *Griffin v. Oceanic Contractors, Inc.,* 458 U.S. 564, 571 (1982)). "In such cases, the intentions of the drafters, rather than the strict language controls." *Id.* In other words, even if the plain language of NRS 176.0931 does not direct a court to find an offender as a "dangerous sexual predator[], people with a high degree of likelihood of recidivism," *Palmer*, 118 Nev., at 827, the legislative intent/history controls and such a finding is a constitutional mandate and a very significant element of the lifetime supervision sentence. To hold otherwise would "produce a result demonstratably at odds with the intentions of [the statute's] drafters." *Griffin*, 458 U.S., at 571.

There is other evidence that suggests an offender must be a dangerous sexual predator before serving a term of lifetime supervision: NRS 176.0931(3) states in pertinent part that a person under lifetime supervision may "petition the sentencing court or the State Board of Parole Commissioners" meeting certain requirements and served the minimum term where "the court or the Board <u>*shall*</u> grant a petition for release from a special sentence of lifetime supervision *if… 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." The term <u>*shall*</u> denotes mandatory language. Offenders who are "dangerous sexual predators, people with a high degree of likelihood of recidivism" clearly "pose a threat to the safety of others" and appear likely the target of the statute. It therefore logically follows that if an offender *must* be released if they no longer pose such a threat (where all statutory conditions are met), they would have to pose the same threat before being required to serve a term of lifetime supervision.

The Legislature did not intend to waste limited and valuable resources supervising offenders who are not found to be "dangerous sexual predators, people with a high degree of likelihood of recidivism." To hold to otherwise would be at odds with the Legislature's intent and compromises public safety while taxing this states crippling budget. A truly dangerous sexual predator would likely not oppose a statutory requirement that their supervision be compromised and diluted amongst offenders who are not dangerous sexual predators. Public safety demands more as intended by the Legislature's intent of this statute.

Evidentiary Standard

"Lifetime supervision is a form of punishment because the affirmative disabilities and restraints it places on the sex offender have a direct and immediate effect on the range of punishment imposed." *Palmer,* at 1196. The mere fact that a defendant is convicted of a "sexual offense" as defined under NRS 176.0931(5)(2)(c) is not necessarily evidence in and of itself that an offender is in fact a "*dangerous sexual predator*, [a person] with a high degree of likelihood of *recidivism*" that warrants the imposition of lifetime supervision. If it were, then no one could possibly apply under NRS 176.0931(3) to be released since the mere fact of their conviction would be evidence enough to eternally and perpetually keep them on supervision. A statute should not be construed to make its words or phrases superfluous or to make a provision nugatory or insignificant. *Hibbs v. Winn, 542 U.S. 88, 101 (2004); Butler v. State*, 120 Nev. 879, 892-893, 102 P.3d 71, 81 (2004). Failure to follow the legislative intent of the lifetime

supervision statute will broadly sweep entire categories of offenders to be supervised where many do not pose a high degree of likelihood of recidivism.

The standard of proof required to find an offender a "dangerous sexual predator, [a person] with a high degree of likelihood of recidivism" should be beyond a reasonable doubt in light of the liberty interest at stake (one's freedom from punitively restrictive supervision) and the stigmatation that follows being labeled a dangerous sexual predator. *In re Winship*, 397 U.S. 358, 363, (1973).

Winship stands for the proposition that no one should lose their liberty and suffer stigmatation without due process of law in both civil and criminal matters alike. It is not necessarily the finding of guilt or other adjudications, but the consequences of such that are the target such as (for example) loss of liberty to incarceration, probation, parole, and its stigmatizing effects. The loss or restraint of liberty under lifetime supervision is significant enough to meet the *Winship* standard for proof beyond a reasonable doubt.

Public Safety Analysis

Pursuant to NRS 176.0931(1) an offender must be sentenced to a term of lifetime supervision if convicted of a "sexual offense" as defined by paragraph 5(2)(c) without a finding that they are "dangerous sexual predators, people with a high degree of likelihood of recidivism." The fact that the statute uses this classification as the touchstone, "sweeping in a significant number of people who [do not pose a high degree of likelihood of recidivism], serves to feed suspicion that something more than regulation of safety is going on. There is room for serious argument that the ulterior purpose is to revisit past crimes, not prevent future ones." *Smith v. Doe,* 538 U.S. 84, 109 (2003) (Souter, J., concurring in judgment). "Ensuring public safety is, of course, a fundamental regulatory goal and this objective should be given serious weight in the analysis." *Id*., at 108. "But at the same time, it would be naive to look no further, given pervasive attitudes toward sex offenders." *Id*., 109.

Prejudice

Petitioner has been wrongly sentenced to a term of lifetime supervision where he has not been adjudicated as a "dangerous sexual predator, people with a high degree of likelihood of recidivism." He now must suffer a very serious restriction of his liberty which is punitive and be stigmatized as a "*dangerous sexual predator*, people with a high degree of likelihood of *recidivism"* which is defamingly characteristic of the statute's legislative intent.

GROUND TWO

The lifetime supervision statute (NRS 176.0931 (2008)) is arbitrary and capricious where the procedural protections in determining whether an offender is a dangerous sexual predator, people with a high degree of likelihood of recidivism, are completely absent from its text in opposition to the statute's narrowly drawn legislative intent in violation of the Due Process Clause of the Fourteenth Amendment.

Due Process

"The touchstone of due process is protection of the individual against arbitrary action of government," *District Attorney's Office v. Osborne,* 129 S.Ct. 2308, 2337 (2009) (Stevens, J. dissenting) (citing *Meachum v. Fano,* 427 U.S. 215, 226 (1976); *Wolf v. McDonnell,* 418 U.S. 539, 558 (1974); *County of Sacramento v. Lewis*, 523 U.S. 833, 845-846 (1998)) (When government action is so lacking in justification that it "can properly be characterized as arbitrary, or conscience shocking, in a constitutional sense," *Collins v. Harker Heights,* 503 U.S. 115, 128 (1992), it violets due process). *Osborne,* at 2337.

The literal text of NRS 176.0931(1) imposes lifetime supervision on *anyone* convicted of a "sexual offense" as defined under paragraph 5(2)(c) arbitrarily sweeping in vast numbers of offenders *without regard* to the Legislature's intent that they be "dangerous sexual predators, people with a high degree of likelihood of recidivism." *Palmer v. State*, 118 Nev. 823, 827, 59 P.3d 1192, 1195 (2002) (per curiam). Without first making such a finding before imposing this sentence, the statute is arbitrary and capricious in violation of due process under the Fourteenth Amendment. To pass constitutional muster, a state law like lifetime supervision that infringes on personal liberty must be narrowly drawn to serve a compelling state interest. *Reno v. Flores*, 507 U.S. 292, 301-02 (1993).

Legislative Intent

It appears, without dispute, that the legislative intent of NRS 176.0931 is for "dangerous sexual predators, people with a high degree of likelihood of recidivism" as construed by the Nevada Supreme Court in *Palmer*, at 1195. Where a statute has been judicially construed and that construction has not evoked an amendment, it is presumed that the Legislature has acquiesced in the Court's determination of the Legislature's intent. *Nevada Industrial Commission v. Strange*, 84 Nev. 153, 158, 437 P.2d 873, 876 (1968); *Kilminster v. Day Management Corp.*, 323 Or. 618, 629-30, 919 P.2d 474, 480 (1996) (noting that a prior interpretation of a statute by the court "becomes part of the statute itself, as if it were written into the statute at the time of the statute's enactment."). NRS 176.0931 has been amended on numerous occasions since *Palmer* was decided and the Legislature has not disrupted the Court's determination of the above quoted legislative intent and therefore has approved of this judicial construction.

Interestingly, this legislative intent is missing from the plain text of the statute. "In interpreting statutes the court's objective is to 'ascertain the congressional intent and give effect to the legislative will.'" *Pressley v. Capital Credit & Collection Service, Inc*., 760 F.2d 922, 924 (9th Cir. 1985) (quoting

Philbrook v. Glodgett, 421 U.S. 707, 713 (1975)). "*Legislative intent, however, is not always evident from the plain language of the statute* and in that event [as in this case], the courts must look to legislative history for guidance." *Id.* "The plain meaning of legislation should be conclusive, except in the 'rare cases [as here] the literal application of a statute will produce a result demonstratably at odds with the intentions of its drafters.'" *U.S. v. Ron Pair Enterprises, Inc.,* 489 U.S. 235, 242 (1989) (quoting *Griffin v. Oceanic Contractors, Inc.,* 458 U.S. 564, 571 (1982)). "In such cases, the intentions of the drafters, rather than the strict language controls." *Id.* In other words, even if the plain language of NRS 176.0931 does not direct a court to find an offender as a "dangerous sexual predator[], people with a high degree of likelihood of recidivism," *Palmer*, 118 Nev., at 827, the legislative intent/history controls and such a finding is a constitutional mandate and a very significant element of the lifetime supervision sentence. To hold otherwise would "produce a result demonstratably at odds with the intentions of [the statute's] drafters." *Griffin*, 458 U.S., at 571.

There is other evidence that suggests an offender must be a dangerous sexual predator before serving a term of lifetime supervision: NRS 176.0931(3) states in pertinent part that a person under lifetime supervision may "petition the sentencing court or the State Board of Parole Commissioners" meeting certain requirements and served the minimum term where "the court or the Board <u>*shall*</u> grant a petition for release from a special sentence of lifetime supervision *if… 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." The term <u>*shall*</u> denotes mandatory language. Offenders who are "dangerous sexual predators, people with a high degree of likelihood of recidivism" clearly "pose a threat to the safety of others" and appear likely the target of the statute. It therefore logically follows that if an offender *must* be released if they no longer pose such a threat (where all statutory conditions are met), they would have to pose the same threat before being required to serve a term of lifetime supervision.

The Legislature did not intend to waste limited and valuable resources supervising offenders who are not found to be "dangerous sexual predators, people with a high degree of likelihood of recidivism." To hold to otherwise would be at odds with the Legislature's intent and compromises public safety while taxing this states crippling budget. A truly dangerous sexual predator would likely not oppose a statutory requirement that their supervision be compromised and diluted amongst offenders who are not dangerous sexual predators. Public safety demands more as intended by the Legislature's intent of this statute.

Evidentiary Standard

"Lifetime supervision is a form of punishment because the affirmative disabilities and restraints it places on the sex offender have a direct and immediate effect on the range of punishment imposed." *Palmer,* at 1196. The mere fact that a defendant is convicted of a "sexual offense" as defined under NRS 176.0931(5)(2)(c) is not necessarily evidence in and of itself that an offender is in fact a "*dangerous sexual predator*, [a person] with a high degree of likelihood of *recidivism*" that warrants the imposition of lifetime supervision. If it were, then no one could possibly apply under NRS 176.0931(3) to be released since the mere fact of their conviction would be evidence enough to eternally and perpetually keep them on supervision. A statute should not be construed to make its words or phrases superfluous

or to make a provision nugatory or insignificant. *Hibbs v. Winn, 542 U.S. 88, 101 (2004); Butler v. State*, 120 Nev. 879, 892-893, 102 P.3d 71, 81 (2004). Failure to follow the legislative intent of the lifetime supervision statute will broadly sweep entire categories of offenders to be supervised where many do not pose a high degree of likelihood of recidivism.

The standard of proof required to find an offender a "dangerous sexual predator, [a person] with a high degree of likelihood of recidivism" should be beyond a reasonable doubt in light of the liberty interest at stake (one's freedom from punitively restrictive supervision) and the stigmatation that follows being labeled a dangerous sexual predator. *In re Winship*, 397 U.S. 358, 363, (1973).

Winship stands for the proposition that no one should lose their liberty and suffer stigmatation without due process of law in both civil and criminal matters alike. It is not necessarily the finding of guilt or other adjudications, but the consequences of such that are the target such as (for example) loss of liberty to incarceration, probation, parole, and its stigmatizing effects. The loss or restraint of liberty under lifetime supervision is significant enough to meet the *Winship* standard for proof beyond a reasonable doubt.

Public Safety Analysis

Pursuant to NRS 176.0931(1) an offender must be sentenced to a term of lifetime supervision if convicted of a "sexual offense" as defined by paragraph 5(2)(c) without a finding that they are "dangerous sexual predators, people with a high degree of likelihood of recidivism." The fact that the statute uses this classification as the touchstone, "sweeping in a significant number of people who [do not pose a high degree of likelihood of recidivism], serves to feed suspicion that something more than regulation of safety is going on. There is room for serious argument that the ulterior purpose is to revisit past crimes, not prevent future ones." *Smith v. Doe,* 538 U.S. 84, 109 (2003) (Souter, J., concurring in judgment). "Ensuring public safety is, of course, a fundamental regulatory goal and this objective should be given serious weight in the analysis." *Id*., at 108. "But at the same time, it would be naive to look no further, given pervasive attitudes toward sex offenders." *Id*., 109.

Prejudice

Petitioner has been wrongly sentenced to a term of lifetime supervision where he has not been adjudicated as a "dangerous sexual predator, people with a high degree of likelihood of recidivism." He now must suffer a very serious restriction of his liberty which is punitive and be stigmatized as a "*dangerous sexual predator*, people with a high degree of likelihood of *recidivism"* which is defamingly characteristic of the statute's legislative intent.

GROUND THREE

Petitioner's lifetime supervision hearing is null and void where the State Board of Parole Commissioners acted without an adjudication that he is in fact a dangerous sexual predator, people with a high degree of likelihood of recidivism in violation of the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution.

Invalid Hearing

Petitioner was under the impression that he would indeed have to serve a term of lifetime supervision provided at some point before serving the sentence that he would be adjudicated as a "dangerous sexual predator, [a person] with a high degree of likelihood of recidivism" as intended by the Legislature. See *Palmer v. State*, 118 Nev. 823, 827, 59 P.3d 1192, 1195 (2002) (per curiam). Since such adjudication was never made, the terms and conditions imposed on petitioner by the State Board of Parole Commissioners are wholly null and void.

Legislative Intent

It appears, without dispute, that the legislative intent of NRS 176.0931 is for "dangerous sexual predators, people with a high degree of likelihood of recidivism" as construed by the Nevada Supreme Court in *Palmer*, at 1195. Where a statute has been judicially construed and that construction has not evoked an amendment, it is presumed that the Legislature has acquiesced in the Court's determination of the Legislature's intent. *Nevada Industrial Commission v. Strange*, 84 Nev. 153, 158, 437 P.2d 873, 876 (1968); *Kilminster v. Day Management Corp.*, 323 Or. 618, 629-30, 919 P.2d 474, 480 (1996) (noting that a prior interpretation of a statute by the court "becomes part of the statute itself, as if it were written into the statute at the time of the statute's enactment."). NRS 176.0931 has been amended on numerous occasions since *Palmer* was decided and the Legislature has not disrupted the Court's determination of the above quoted legislative intent and therefore has approved of this judicial construction.

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Prejudice

Petitioner has been wrongly sentenced to a term of lifetime supervision where he has not been adjudicated as a "dangerous sexual predator, people with a high degree of likelihood of recidivism." He now must suffer a very serious restriction of his liberty which is punitive and be stigmatized as a "*dangerous sexual predator*, people with a high degree of likelihood of *recidivism"* which is defamingly characteristic of the statute's legislative intent.

GROUND FOUR

Lifetime supervision (NRS 176.0931 (2008)) is a second and multiple punishment served in addition to punishment petitioner was already sentenced to under NRS xxx.xxx (fill in x's) in violation of the Double jeopardy Clause of the Fifth Amendment thereby denying petitioner his right to Equal Protection and Due Process as guaranteed by the Fourteenth Amendment to the U.S. Constitution.

On (fill in date) petitioner was convicted and sentenced under NRS xxx.xxx (fill in x's). In addition to this punishment, the court imposed a sentence of lifetime supervision under NRS 176.0931.

Lifetime supervision is a form of punishment because the affirmative disabilities and restrictions it places on the sex offender have a direct and immediate effect on the range of punishment involved. In certain instances the conditions imposed may limit an offender's right to travel, live or work in a particular place. Additionally, those subject to lifetime supervision are often prohibited from engaging in a variety of activities. See *Palmer v. State,* 59 P.3d 1192, 1196 (Nev. 2002).

The legislative intent of lifetime supervision in Senate Bill 192 was to "provide law enforcement personnel with a non-punitive tool to assist them in solving crimes." *Palmer,* at 1195. Lifetime supervision is served in addition to any term of imprisonment, probation or parole as a matter of law *and is a form of punishment*. *Id.,* at 1196. It appears that lifetime supervision goes against its own legislative intent as a non-punitive tool and is in violation of the Double Jeopardy Clause because it is punishment that is served in addition to other statutory punishments.

The Double Jeopardy Clause of the Fifth Amendment protects against three abuses: (1) second prosecution for same offense after acquittal; (2) second prosecution for same offense after conviction; and (3) *multiple punishments for same offense* (emphasis added). Petitioner is essentially being punished for the same offense under two different statutes.

Imposing multiple punishments violates the Double Jeopardy Clause if proof of the same elements satisfies both statutes. *Blockburger v. United States,* 284 U.S. 299, 304 (1932); *Wilson v. State,* 121 Nev. 345, 359, 114 P.3d 285, 294-295 (2005) ("the test ultimately resolves itself on whether the provisions of each of the different statutes require proof of a fact that the other does not") (citing *Blockburger*, at 304) "The assumption underlying the *Blockburger* rule is that Congress ordinarily does not intend to punish the same offense under two different statut**e**s." *Ball v. U.S.,* 470 U.S. 856, 861 (1985).

Lifetime supervision (NRS 176.0931) appears to pass the *Blockburger* rule where it not only requires proof of the same elements of another criminal offense, it requires an actual conviction of that offense as listed under paragraph (5)(2)(c) *without proof of additional facts.*

Petitioner has a Fifth Amendment right not to be twice put in double jeopardy for life or limb for the same offense and that extends to him in a state criminal prosecution through the Fourteenth Amendment right to due process of law. *Benton v. Maryland,* 395 U.S. 784 (1969).

Petitioner was sentenced to a term of lifetime supervision which is a second and multiple punishment for the same crime he has already been or is being punished for under NRS xxx.xxx (fill in x's) and thus, constitutes a violation of the Double Jeopardy Clause and his right to due process of law pursuant to the Fifth and Fourteenth Amendments to the U.S. Constitution. Petitioner's sentence is unconstitutional.

Prejudice

Petitioner has been wrongly sentenced to a term of lifetime supervision where he has not been adjudicated as a "dangerous sexual predator, people with a high degree of likelihood of recidivism." He now must suffer a very serious restriction of his liberty which is punitive and be stigmatized as a "*dangerous sexual predator*, people with a high degree of likelihood of *recidivism"* which is defamingly characteristic of the statute's legislative intent.