CENTRAL OFFICE

1677 Old Hot Springs Rd., Ste. A
Carson City, Nevada 89706
http://parole.nv.gov
(775) 687-5049
Fax (775) 687-6736

CHRISTOPHER P. DERICCO, *Chairman*
SUSAN JACKSON, *Member*
MARY K. BAKER, *Member*
SCOTT WEISENTHAL, *Member*

KATIE FRAKER, *Executive Secretary*

STATE OF NEVADA
STEVE SISOLAK
Governor

LAS VEGAS OFFICE

4000 S. Eastern Ave., Ste.130
Las Vegas, Nevada 89119
http://parole.nv.gov
(702) 486-4370
Fax (702) 486-4376

CHRISTOPHER P. DERICCO, *Chairman*
ERIC CHRISTIANSEN, *Member*
DONNA VERCHIO, *Member*
LAMICIA BAILEY, *Member*

NEVADA BOARD OF PAROLE COMMISSIONERS

MINUTES

Meeting of the
Board of Parole Commissioners

October 25, 2021

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

The Board of Parole Commissioners held a public meeting on October 25, 2021, beginning at 1:00 PM at the following locations:

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

I. Open Meeting, call to order, roll call 1:00 PM.

The meeting was called to order by Chairman DeRicco. Present in Carson City were Commissioner Baker and Commissioner Weisenthal. Present in the Las Vegas office were Commissioner Verchio, Commissioner Bailey, and Chairman DeRicco. Commissioner Jackson and Commissioner Christiansen were absent, excused.

Support staff in attendance:
Katie Fraker, Executive Secretary
Kelly Mellinger, Hearings Examiner II
Jeremy Meador, Administrative Assistant II

Members of the public present in Carson City included:
Katie Brady, Deputy Attorney General
Paige Barnes, Crowley & Ferrato Public Affairs

Members of the public present in Las Vegas included:
Jared Frost, Senior Deputy Attorney General

II. Public Comment. No action may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken pursuant to subparagraph (2) of NRS 241.020.

Public comment – Carson City, NV
No public comment.

DRAFT

Public comment – Las Vegas, NV
No public comment.

III. **For possible action:** Review/Approval of minutes from the September 29, 2021 Board meeting.

Motion:	**Approve the minutes from the September 29, 2021 Board meeting.**
Made:	**Commissioner Verchio**
Seconded By:	**Commissioner Bailey**
Votes in Favor:	**DeRicco, Baker, Weisenthal, Verchio, Bailey**
Votes Opposed:	**None**
Results:	**Motion passed**

IV. **For possible action: The Board will consider and act on an Order issued by the United States District Court, District of Nevada in Does 1-35; and Unknown Named Does 1-1000 v. The State of Nevada ex rel. Aaron Ford, Attorney General of the State of Nevada; George Togliatti, Director of the Nevada Department of Public Safety; Natalie Wood, Chief Parole and Probation Division of the Nevada Department of Public Safety; Christopher DeRicco; Chair of the Nevada Board of Parole Commissioners; et al., Case No. 2:15-cv-01638-RFB-DJA. The Office of the Nevada Attorney General will provide the Board with an overview of the litigation in connection with our discussion of the Order. The Board will determine how to proceed, which may include whether to appeal this ruling. The Board may interrupt the open meeting and exclude the public for the purpose of having an attorney-client discussion of this litigation pursuant to NRS 241.015(3)(b)(2).**

Chairman DeRicco called for this open meeting agenda item to be interrupted to exclude the public for the purpose of having an attorney/client discussion of this matter, pursuant to NRS 241.015(3)(b)(2).

Chairman DeRicco called the public back into the room and the meeting back on record.

Motion:	**To appeal the denial of immunity to the individual defendants in the Order issued by the United States District Court, District of Nevada, in Does 1-35; and Unknown Named Does 1-1000 v. The State of Nevada ex rel. Aaron Ford, Attorney General of the State of Nevada; George Togliatti, Director of the Nevada Department of Public Safety; Natalie Wood, Chief Parole and Probation Division of the Nevada Department of Public Safety; Christopher DeRicco; Chair of the Nevada Board of Parole Commissioners; et al., Case No. 2:15-cv-01638-RFB-DJA, in the event the motion for reconsideration is unsuccessful.**
Made:	**Chairman DeRicco**
Seconded By:	**Commissioner Weisenthal**
Votes in Favor:	**DeRicco, Baker, Weisenthal, Verchio, Bailey**
Votes Opposed:	**None**
Results:	**Motion passed**

V. **For possible action: The purpose of this workshop is to solicit comments from interested persons and for the Board to discuss modifying NAC 213.518 (2) and (3). This proposed regulation is necessary to carry out the provisions of NRS Chapter 213, pursuant to NRS**

DRAFT

213.10885, and NRS 213.1099, a regulation relating to the determination of whether to grant parole: Consideration of additional aggravating and mitigating factors; and providing other matters properly relating thereto. After receiving comments, the Board may take action to amend the regulation before it is sent to the Legislative Counsel for review and drafting. No action may be taken upon a matter raised during a period devoted to comments by the general public until the matter itself has been specifically included on an agenda as an item upon which action may be taken pursuant to subparagraph (2) of NRS 241.020.

Overview of Workshop

Board Members in attendance in the Carson City office:
Commissioner Baker
Commissioner Weisenthal

Board Members in attendance in the Las Vegas office:
Chairman DeRicco
Commissioner Verchio
Commissioner Bailey

Support staff in attendance:
Katie Fraker, Exexutive Secretary
Jeremy Meador Administrative Assistant II
Kelly Mellinger, Hearings Examiner II

Members of the public present in Carson City included:
Katie Brady, Deputy Attorney General
Paige Barnes, Crowley & Ferrato Public Affairs

Members of the public present in Las Vegas included:
Jared Frost, Senior Deputy Attorney General

Workshop

The purpose of this workshop is to solicit comments from interested persons on the following general topics that may be addressed in the proposed regulation:

The Board to discuss modifying NAC 213.518 (2) and (3). This proposed regulation is necessary to carry out the provisions of NRS Chapter 213, pursuant to NRS 213.10885, and NRS 213.1099, and is a regulation relating to the determination of whether to grant parole: Consideration of additional aggravating and mitigating factors; and providing other matters property relating thereto.

Summary of Testimony

Chairman DeRicco read the agenda item introduced Kelly Mellinger, Hearings Examiner II.

Kelly Mellinger facilitated and began the workshop by stating that the reason for this workshop is for discussion of amending NAC 213.518 (2) and (3). Ms. Mellinger stated workshops are to provide interested persons with a reasonable opportunity to meet informally with agency staff to discuss the general subject matter of the proposed regulation. Ms. Mellinger provided that the Board will be asking those in attendance

DRAFT

for their thoughts, concerns, and suggestions regarding the proposed regulation. Ms. Mellinger provided that since the workshop is being video conferenced to our Southern office, speakers from both locations will be invited to participate and stated that the scope of this workshop is limited to the proposed regulation that will be discussed.

Ms. Mellinger provided that this workshop is for discussion to amend regulation NAC 213.518 (2) and (3) to make language changes and re-organize the language to reflect duplication of the Boards existing aggravating and mitigating factors.

Ms. Mellinger provided that in the provided handouts the proposed language changes to NAC 213.815 (2) and (3) are in blue.

The floor was opened to discussion.

Chairman DeRicco stated the perfect language is not needed on the draft regulation, as the Legislative Council Bureau (LCB) will review the draft and likely alter the language.

Chairman DeRicco provided that this regulation is in reference to NRS 213, pursuant to NRS 213.10885, and NRS 213.1099. Chairman DeRicco further stated the issue was first reviewed at the July 2021 meeting and at that time the Board voted to work on updated the language of this regulation. At the last meeting the Board voted on language to amend subsection (1), and that today (2) and (3) were being looked at. Chairman DeRicco asked if there was any one in Carson City that would care to make public comment on this regulation?

Public comment – Carson City, NV
See attached written public comment from John Quintero #93282
See attached written public comment from Evan Grant #1159544
See attached written public comment from Patricia Adkisson

Chairman DeRicco asked if there was any one in Carson City that would care to make public comment on this regulation?

Public comment – Las Vegas, NV
No public comment

Chairman DeRicco stated that he is aware of some documents that were received regarding this regulation, and that the Board has copies of these documents. Chairman DeRicco provided that these documents may be incorporated into today's discussion.

Chairman DeRicco stated that before the workshop could continue a correction needed to be made on record. The notice of workshop document currently reads on the right in bold NAC regulations but lists NRS's. This was an error and should instead read NAC 213.518.

Chairman DeRicco asked if anyone had any comments before going through the proposed changes to the regulation, and offered there would be more time later for comments.

Commissioner Baker asked if the regulation was going to be reviewed line by line, and stated she would like to discuss subsection (2) under aggravating factors letter (g), whether the prisoners NRS 213.1214

DRAFT

assessment results in an above average risk to reoffend sexually. Commissioner Baker stated she thinks it should say an above average or higher risk.

Chairman DeRicco affirmed each line would be reviewed, and that much of the language was just being put in a different order, and providing extra clarification.

Chairman DeRicco asked if anyone had any questions or comments.
There was no discussion.

Chairman DeRicco began with subsection 2; the aggravating factors which the Board may consider in determining whether to grant parole to a prisoner include, without limitation. He read the proposed language as provided in the supporting materials.

Commissioner Verchio brought up specificity and asked about the word significant. She further asked when does a criminal history become significant, and stated she feels that a number should be assigned for clarity.

Chairman DeRicco stated that there are definitions for each aggravating and mitigating factor, and that NAC is similar to a heading. He provided that once collectively agreed upon, the language reworked by LCB and that the definitions document will be reviewed at a later time.

Commissioner Verchio affirmed that she understood, and was in agreement.

Chairman DeRicco asked if anyone had any questions or comments.
There was no discussion.

Chairman DeRicco referenced Commissioner Baker's earlier comment about adding high risk to the proposed language, and asserted that he was in agreement to adding it; with no one opposing the addition.

Chairman DeRicco stated that he wanted to close out this section before moving onto subsection (3), asking if anyone had anything else to add.
There was no discussion.

Chairman DeRicco began discussing subsection (3) the mitigating factors which the Board may consider to determine whether to grant parole to an inmate.

Chairman DeRicco asked if there was anything to discuss in subsection (3).

Commissioner Baker stated that she would like to discuss (l) whether the prisoner has been consistently managing their mental illness. She has not seen many inmates consistently managing their mental illness and wanted to make sure substance use disorder was also being considered in that factor as it is recognized in the DSM5 as mental illness.

Chairman DeRicco asked for others' thoughts and stated that the language being removed in red (l) was whether the prisoner has consistently managed a mental illness which may contribute to criminal behavior in the manner recommended by mental health professionals, and that the proposed language is in keeping with the mental health topic, but that did not mean something could not be added regarding substance abuse.

DRAFT

Commissioner Baker reiterated her previous comment that substance abuse disorder is now considered a mental illness under the diagnostic and statistical manual, and if both are being considered it would be incorporated into mental illness.

Chairman DeRicco stated that would be his understanding also.

There were nods of agreement from the Board members.

Chairman DeRicco stated that he did not have anything further to add other than what was added by Commissioner Baker in subsection (2)(g). Chairman DeRicco reiterated that three documents were received for comment, and that they have all been reviewed and taken into account and that a response to those will come at a later time.

Chairman DeRicco asked if anyone had comments regarding NAC 213.518 (2) or (3) only.
There was no discussion.

Chairman DeRicco turned the discussion back to Kelly Mellinger for closing comments.

Kelly Mellinger stated that discussion is now closed, a summary of any testimony that has been submitted will be prepared. She provided that all testimony will be carefully reviewed and considered. She futher provided that the minutes of the meeting will be available within 30 days of this meeting and will be posted on the Parole Board's website at www.parole.nv.gov, and may also be requested by calling the Parole Board at 775-687-5049.

VI. <u>For discussion and possible action:</u> The Board will discuss and may take action to update and or modify the "Operation of the Board" document that outlines the procedural functioning of the Board. This document may be updated and modified in the future as needed.

Chairman DeRicco discussed the Board's ongoing project of updating and reviewing selected sections in the Operation of the Board manual as discussed at previous Board meetings. Chairman DeRicco thanked the Hearings Examiners for their work and for initiating the first phase of reviewing the document and suggesting language changes, additions, or deletions. Chairman DeRicco provided that Deputy Attorney General, Katie Brady, reviewed proposed changes and suggested language changes as well. The new sections to be discussed were Parole Grants, Parole Grants to Sex Offenders, Parole Grants to Consecutive Sentences and Expiration of Subsequent Sentence, and Parole Denials. There was one section previously updated and approved by the Board, that has since been revised. This section was Parole Violation hearings.

Chairman DeRicco introduced the first section for discussion, Parole Grants. He provided that Hearings Examiner Lupe Garrison worked on this section and suggested wording change as noted in the handout "Parole Grants: (NRS 213.1218, NRS 213.140, NRS 213.142)". He then opened the floor to any discussion on the proposed changes.

Commissioner Baker suggested the word "prisoner" be changed to word "inmate" in section 1.

Katie Brady suggested the wording change in section 3 from, "the Division will assist in developing an alternative reentry plan, before *being* released on parole," to "the Division will assist in developing an alternative reentry plan, before *the inmate is* released on parole."

Commissioner Bailey questioned the reentry process described in section 3 between the NDOC and the Division. Chairman DeRicco read NRS 213.140 and explained that the initial plan is developed by the inmate and the caseworker, then goes to the imbedded pre-release specialist, and then the Division field office to verify the plan. If the plan is not verified, the Division would then have to assist in developing a new plan. He explained that the development of the plan may go back and forth between the NDOC and the Division a few times before a release plan is ultimately approved. Commissioner Bailey agreed that is the process.

The next section discussed was Parole Grants to Sex Offenders. He provided that Hearings Examiner Forrest Harter worked on this section and Chairman DeRicco read through this section with the suggested wording change as noted in the handout "Parole Grants to Sex Offenders: (NRS 213.1214)".

Chairman DeRicco explained there were two sections for subsection 1 on the handout: The first section 1, with the black, red, and blue revisions had been done by Forrest Harter. He further provided that the second section 1, in green, had been rewritten by himself. Chairman DeRicco provided that the Board can choose which wording they prefer. Chairman DeRicco read through both options.

Commissioner Baker stated that the second version of section 1 was much clearer. Commissioner Verchio stated the second version was more streamlined and easier to understand for the general public. There was no opposition to the second version.

For section 2 of subsection 1, Chairman DeRicco noted that Forrest Harter requested this section be stricken entirely. Chairman DeRicco proposed section 2 with alternative, revised wording as noted in section 2 on the handout, which he read.

Commissioner Baker asked why the Board would need to request an assessment when NRS 213.1214 requires the NDOC to provide one. Chairman DeRicco explained that under NRS 213.1214(6)(d), not all the offenses listed qualify for requiring a sex offender assessment, but this gives the Board the ability to request a sex offender assessment on those offenses, if necessary. Commissioner Bailey then thought the wording would need to be amended to "an inmate who *is not serving a sexual offense but* has been convicted of an offense listed in NRS 213.1214(6)(d)". Chairman DeRicco further explained that under the interpretation of the statute this would be for the underlying offense or any other offense. Commissioner Baker stated that clarified the need for the request if there was a prior offense that the NDOC had missed, even though they generally do provide the assessment.

Commissioner Baker asked if the Board was limited to the offenses listed in NRS 213.1214(6)(d) legally. Katie Brady advised that the legislative history of this statute was that initially the Board was attempting to use NRS 179D in reference to sexual offenses. At that time, the Adam Walsh Act was enjoined, and the legislature put in the Adam Walsh Act sex offenses that existed at that time in NRS 213.1214(6)(d). She stated the Board may want to look at amending the statute in the future to reflect the list of sex offenses listed in NRS 179D now that the statutes are not enjoined. Commissioner Baker asked if the Board is to request a sex offender assessment are they limited to the list of offenses in NRS 213.1214(6)(d). Katie Brady replied in the affirmative.

DRAFT

Commissioner Verchio stated that she understood that if there was a sexual offense at any time during an inmate's criminal history, a sex offender assessment would be required by law. Chairman DeRicco affirmed that statement. Commissioner Verchio asked for an example of when it might be necessary for the Board to request a sex offender assessment. Commissioner Baker gave an example of a hearing she recently conducted in which a sexual offense was listed in a pre-sentence investigation for one case, but not in a pre-sentence investigation for a different case. Commissioner Verchio asked what the rationale and necessity was for section 2. Katie Brady indicated that she thought that section 2 may be repetitive to section 1, and suggested that they might be merged. She suggested adding the word 'ever' to section 1, making section 1 read, "the NDOC shall assess each inmate who has *ever* been convicted of a sexual offense". Chairman DeRicco stated that NDOC gets most of these assessments to the Board on time and when they are missing, they are prompt in getting the missing assessments to the Board. Chairman DeRicco felt with the addition of the word 'ever' in section 1, the second sentence of section 2 could be removed, and the remaining sentence could be incorporated into section 1.

Commissioner Bailey suggested section 2 be removed in its entirety. Commissioner Weisenthal agreed with Commissioner Bailey. Commissioner Baker stated the only reason she could see to have section 2 included is that since this is the operations manual, is if a new person becomes employed by the Board, they could see that they are allowed to request a sex offender assessment if they do not have one.

Katie Fraker, Executive Secretary, explained that after a 'No Action' is taken at a hearing due to a missing sex offender assessment, no one at the Board requests a sex offender assessment from the NDOC. The only time the Board requests a sex offender assessment is when an inmate has been scheduled multiple times and the NDOC has failed to provide a sex offender assessment, or prior to a hearing if one has not been received when the file is being worked-up by a commissioner or a hearing examiner.

Commissioner Bailey stated that the only time the Board is requesting a sex offender assessment is when the NDOC did not provide one to the Board when required, not because the Board wanted one. Commissioner Verchio stated that the responsibility is on the NDOC to provide the assessment to the Board per the statute, and this section could shift that responsibility to the Board to request the assessment.

The Commissioners and Chairman DeRicco agreed to remove section 2. Chairman DeRicco asked Katie Brady is she saw any legal issue with removing that section of the document, and she indicated that she did not.

Chairman DeRicco then referred back to section 1 of the document and adding the word 'ever' that had been previously discussed. He read NRS 213.1214. He explained that the statute does not include the word 'ever,' therefore, it cannot be included in the wording in this section. Katie Brady explained that while the statute does not include the word 'ever,' the corresponding NAC does provide that the Board can request a sex offender assessment for anyone who has ever been convicted of a sex offense. Chairman DeRicco referenced NAC 213.514 and stated that is uses the 'ever' language. He clarified that section 1 of the document, as it reads on the handout, uses the same language that is in the statute. He provided that the NAC allows the Board to request a sex offender assessment for an offender who has ever been convicted of a sexual offense. He proposed the Board go forward with section 1 as it stands in green on the handout. The Commissioners agreed.

Chairman DeRicco read section 3 in its entirety. Commissioner Baker suggested the word "prisoner" be changed to word "inmate." There was no further discussion.

DRAFT

Chairman DeRicco introduced the next section for discussion, Parole Grants to Consecutive Sentences and Expiration of Subsequent Sentence. He provided that Hearings Examiner Darla Foley worked on this section. Chairman DeRicco read through this section with the suggested changes as noted in the handout "Parole Grants to Consecutive Sentences and Expiration of Subsequent Sentence." No additional changes were suggested.

The next section discussed was Parole Denials. Chairman DeRicco provided that Hearings Examiner Kelly Mellinger worked on this section. Chairman DeRicco read through this section with the suggested changes as noted in the handout "Parole Denials (NRS 213.1215, NRS 213.131, NRS 213.142 and NAC 213.536)."

Commissioner Verchio suggested the word "prisoner" be changed to word "inmate" in section 3.

Commissioner Verchio asked for clarification on the "written statement" in sections 3 and 4. She asked if this was the order that was produced and provided to the inmate or if this was a separate document. Chairman DeRicco verified that the "written statement" is the order. Chairman DeRicco referenced NRS 213.1215(6) which uses the language "written statement".

No additional changes were suggested.

The final section discussed was Parole Violation Hearings. Chairman DeRicco provided that the Board reviewed and updated this section at the September, 2021 meeting.

Chairman DeRicco proposed updating language in section 8 after a recent Supreme Court decision. He also proposed updated language in sections 7, 9, 10, and 13 as referenced in the handout. No additional changes were suggested. There was no discussion.

VII. <u>For discussion and possible action:</u> The Board will discuss and may act on how to address pending Nevada Department of Corrections disciplinary actions at an inmate's parole hearing.

Chairman DeRicco introduced this agenda item as requested by Commissioner Weisenthal. Commissioner Weisenthal stated that the Board is seeing more pending disciplinaries at parole hearings and suggested this could be due to staffing issues at NDOC causing delays. Commissioner Weisenthal stated the disciplinaries that the Board should be concerned with are the disciplinaries that may change the risk assessment. He suggested taking a 'No Action' until the pending disciplinary can be completed by the NDOC. Commissioner Weisenthal also listed specific disciplinaries that may not affect the risk assessment but may affect the Board's decision when determining whether to grant or deny an inmate's parole. These examples were assault, assault on staff, and introduction of narcotics. He stated that in his opinion it was better to take a 'No Action' at the hearing to let the disciplinary be resolved before moving forward with the hearing. He felt there did not need to be a blanket rule when determining when to take a 'No Action' and when to proceed but reiterated that when a disciplinary would change a risk assessment or when it could affect the Board's decision that it might be best to wait.

Chairman DeRicco stated that while it is the goal of the Board to take as few 'No Actions' as possible, he agrees that in some circumstances we need additional information, such as pending disciplinaries that have not been completed. He also noted that this could benefit the inmate by letting the disciplinary resolve, and if they are found not guilty, they could stay in the same risk level. Chairman DeRicco also noted the different severity levels of disciplinary misconduct and how they may be viewed by the Board.

Commissioner Bailey asked if someone at the Board is able to reach out to the NDOC to ask them to expedite the resolution of the pending disciplinaries for those inmates that have an upcoming parole hearing. Chairman DeRicco said that he would reach out to the NDOC.

Commissioner Verchio stated that there should be consistency in how disciplinaries how are handled between commissioners and the offices.

Commissioner Baker agreed that the Board should not go forward with a hearing if the inmate has a pending disciplinary if it will change their risk assessment. She also stated for her she will look at what the pending disciplinary is and how serious or severe it is. She will also look at the inmate's prior disciplinary record to see if another disciplinary would make a difference in her decision. She will also confer with the other members on the panel before deciding whether to go forward with the hearing or not.

Commissioner DeRicco closed this section by stating that there is no hard or fast rule concerning disciplinaries, but every commissioner should use their best judgement when determining how to handle pending disciplinaries.

VIII. **Public Comment.** No action may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken pursuant to subparagraph (2) of NRS 241.020.

Public comment – Carson City, NV
No public comment.

Public comment – Las Vegas, NV
No public comment.

IX. **For possible action**: The Board may act to adjourn the meeting.

Motion:	**To adjourn the October 25, 2021 meeting of the Nevada Board of Parole Commissioners**
Made:	**Commissioner Bailey**
Seconded By:	**Commissioner Baker**
Votes in Favor:	**DeRicco, Baker, Weisenthal, Verchio, Bailey**
Votes Opposed:	**None**
Results:	**Motion passed**

DRAFT

Patricia Adkisson

702-505-2861

faithandjoesmom@gmail.com

Board of Parole Commissioners

1677 Old Hot Springs Road

Ste. A Room 201

Carson City, NV. 89706

Oct. 21, 2021

Public Comment – Board of Parole Commissioners meeting10/20/21

Good afternoon Board Members,

As emphasized, at the previous meeting, related to aggravating and mitigating factors considered by NAC 213.518, this board MUST establish an objective criteria with standards. The failure to provide a weighted value, means no standard is established by the aggravating or mitigating factors. This renders the consideration of aggravating and mitigating factors subjectively. Once the board considers subjective factors in this matter, it renders the otherwise objective criteria to be applied in a manner that renders them invalid. We oppose any aggravating and mitigating factors that do not have a stated weighted value for points or otherwise. Thank you for your consideration. Patricia Adkisson

Evan Grant - 1159544
NNCC
P.O. Box 7000
Carson City, NV 89702

RECEIVED
OCT 18 2021
STATE OF NEVADA
PAROLE BOARD

October 12, 2021

RE: October 25, 2021, NAC 213.518 Workshop Comments

Nevada Board of Parole Commissioners:

Thank you for holding this second NAC 213.518 Workshop in response to my NAC 213.518 NRS 233B.100 Petition and the public comments from the previous workshop. I have reviewed the proposed NAC 213.518(1), (2) & (3) language and would like to convey my appreciation to the Board for recognizing the importance of distinguishing relevant factor consideration. This marks a significant and meaningful shift in the Board's philosophy regarding when NAC 213.518(2) & (3) factors are to be considered and is a welcomed, additional step in the correct direction from the first NAC 213.518 amendment proposal.

However, the proposed changes to NAC 213.518(2) & (3) create a new issue. The proposed changes to NAC 213.518(2) & (3) changes every enumerated aggravating and mitigating factor. As we observed in the Nevada Supreme Court case of Anselmo v. Bisbee, 396 P.3d 848 (Nev. 2017), the Board's guideline definitions of each NAC 213.518(2) & (3) factor are key in determining the proper application of each factor.

In Anselmo, the Board mistakenly applied an NAC 213.518(2) aggravating factor that was not relevant to Anselmo per the Board's definition of that factor. As a result, Anselmo's state-created right to proper parole consideration under NRS 213.140(1) was violated, his parole denial was vacated by the Court, and a

new parole hearing was ordered.

Anselmo shows us the consequences of the Board misunderstanding its own NAC 213.518 factor definition guidelines. For these reasons, as every enumerated factor in NAC 213.518(2) & (3) are proposed to change, the Board must amend its "Aggravating and Mitigating Factors Definitions" guideline document to precisely convey when one of the proposed factors is relevant to a Nevada inmate being considered for parole.

Furthermore, the three legal issues that I identified in my NAC 213.518 NRS 233B.100 Petition and in my public comments for the first NAC 213.518 workshop remain in NAC 213.518(1)'s proposed language. First, per NAC 213.518(1), consideration of any NAC 213.518 factor by the Board is still dependent upon the outcome of the NAC 213.516 initial assessment. 10 of the 15 NAC 213.516 initial assessment outcomes prohibit NAC 213.518 factor consideration. NRS 213.10885(2) mandates the Board consider "[A]ll other factors which are relevant ...."

Second, per NAC 213.518(1), NAC 213.518(2) & (3) factor consideration remains discretionary. Again, NRS 213.10885(2) mandates the Board consider "[A]ll other factors which are relevant ...." The Board does not have a choice in the factors it considers. The word "may" in NAC 213.518(1) gives the Board a choice.

Third, NAC 213.518 still does not contain language stating <u>how</u> NAC 213.518 factors are to be considered. NRS 213.10885(1) mandates the Board's standards, or NACs, "[M]ust be based on objective criteria ...." Without specific language stating <u>how</u> NAC 213.518 factors are to be considered, objective consideration cannot occur. Every time any given factor is considered without the

guidance of a step-by-step consideration method, the bias of individual Board members will unpredictably weight the value, good or bad, of the factor under consideration. This is not to say that Board members are deliberately biased, but inherently biased as they view the world, like all humanbeings do, through the filter of their unique life experiences, unless intentionally and objectively directed to do otherwise.

To correct the four issues presented in this submission, the Board must take four specific actions:

1. The Board must amend its "Aggravating and Mitigating Factors Definitions" to precisely convey when each of the proposed NAC 213.518(2) & (3) factors are relevant to an inmate being considered for parole.
2. The Board must remove the NAC 213.518(1) language linking the Board's consideration of NAC 213.518 factors to the outcome of the NAC 213.516 initial assessment.
3. The Board must remove the word "may" from NAC 213.518(1) to make NAC 213.518(2) & (3) factor consideration mandatory when relevant.
4. The Board must add language to NAC 213.518 to explain <u>how</u> NAC 213.518 factors are to be considered.

Ultimately, the Legislature decides what the Board is required to do. "In every instance, the power to adopt regulations to carry out a particular function is limited by the terms of the grant of authority pursuant to which the function was assigned." NRS 233B.040(1). As previously stated, NRS 213.10885 mandates the Board take specific actions. The Board is failing to do so in both the current and proposed NAC 213.518(1), (2) & (3) language.

Judging law breakers through a process, which itself, breaks laws, does not bring justice to Nevada's victims, it only creates more.

Thank you for your time and consideration,

Evan Grant
Evan Grant

John Quintero #93782
NNCC PO Box 7000
Carson City NV 89702

Oct. 17 2021

Nevada Parole Board
1677 Old Hot Springs Rd ste A
Carson City NV 89706

RECEIVED
OCT 21 2021
STATE OF NEVADA
PAROLE BOARD

Re: COMMENTS FOR THE RECORD OF WORKSHOP OF OCTOBER 25 2021 PLEASE MAKE RESPONSE ON THE RECORD

Greetings:

Please place following clarifications and concerns on the Record, which considers how to carry out NRS 213.10885 and 213.1099

1. This NAC Proposal does not address Section (1) of 213.10885, "shall adopt by regulation specific standards for each type of convicted person..."

Comment: This proposal is a catchall that does not obey the command of the sovereign. I object.

2. To clarify: The legal definition of "relevant" means "logically connected (evidence of fact) ~~connected~~ tending to prove a matter in issue (or disprove) having appreciable probative value, rationally tending to persuade of the probability or possibility of some alleged fact, Black's Law Dictionary 7th

In 2012, the Board was advised by the attorney general in Opinion No. 2012-02 "Since the authorizing statute does not

2. (cont.)

~~sa~~ contain safeguards for accuracy, the Division and Board should adopt ~~measures~~ reasonable safeguards ~~for accuracy~~ to identify erroneous information in the reports provided to the Board."

I have tried to raise such inaccuracies in writing and at my Parole Hearings and I have been punished for doing so which is evidenced by verbal and non-verbal messaging by Board (see audio-visuals) — the last hearing Ms. Jackson says "our information from PSI differs from what you have to say."

3.) the term "factor" indicates a ~~a~~ category of reality, not merely a category of mind (an opinion or false proposition); NRS 213.10885 states in (1) the "standards must be based upon objective criteria" (category of reality) That means each aggravator and mitigator must have a basis in fact not opinion; Therefore the Board is obligated to avoid arbitrary and capricious acts based on facts not in evidence — it is common law that police reports nor PSIs are per se evidence but reports of alleged acts based on evidence; such things are mere denunciations as used in oppressive unjust political systems such as facism, communism and the like;

4) All the mitigators and aggravators should be actuarially weighted and each category tabulated in a format which tabulates whether the factor is present and what degree of weight is ~~tabulated~~ scored and deducted or added to the NDOC and Parole Risk assessment; As it stands the Parole Board acts of negating the indications of the low risk or recidivist probability are done so based NOT on factors, (categories of reality) but on categories of mind about the unpopularity or political mood of the class of crimes considered, (opinions).

5) 213.10885 (4) states Board must provide greater punishment as related to recidivist patterns ~~and~~ "or who commits a serious crime, with a violent crime considered the MOST SERIOUS -- the Board is not regulating the degrees of ~~the~~ seriousness, but have allowed ~~an~~ another agency to make that determination -- the Nev. Dept. of Corrections. (see NRS 209.341, and NAC 213.512) This violates the mandate of 213.10885 (4) which does NOT contemplate NDOC's construction and does not authorize said construction & use or creation of a "severity level" (Both attached) This issue must be raised now insofar as its relevant.

5.) (continued)
The issue is relevant because the Board is considering the authorizing statute NRS 213.10885 and as it stands, the "Highest Severity" is a category that always must "consider factors" where as all other categories High, Moderate Low Moderate Low & Low all at some point recieve a grade grant parole which makes the entire scheme patently unfair because NDOC has made the vast majority of crimes "Highest" and both agencies escape responsibility or answerability to any rational challenge and is based on "categories of mind" or mere sentiment, popularity of crime in general or in particular; Neither does NRS 213.1099 contemplate NDOC's determination of crime severity or any power to make such a regulation as 213.1099(c) says "Board shall consider (c) the seriousness of the offense and the history of criminal conduct..."

6.) Lastly I object the Board's neglect in adopting the necessary notice and opportunity as suggested in my letter to Board dated 09/08/2021; the choice to use aggravators and mitigators is done in a government action outside presence of inmate applicant; this puts

6.)(cont.)
the applicant at disadvantage because it deprives him or her the necessary information to speak to the issues to be used against her or him during OPENING STATEMENT, at time of hearing; considering I will (nor anybody pre-classified by NDOC to "Highest Severity" will ALWAYS have mitigating ~~factor~~ and aggravating factors considered, and NEVER received the guarantee of "Grant parole" as outlined in attached copy of NAC 213.516 the lack of prior notice to prepare an opening statement to improve chances to demonstrate suitibility for parole constitutes

UNFAIR SURPRISE

If unfair surprise is valid under state or federal constitution then we need new ones, because when any form of government threatens basic fairness in government process it is time to alter the operational principles that guide the government.

Respectfully submitted.

John Quintero

cc K. Brady NV DAG 555 Wright Way CC NV 89711

Attachments (3)

10-17-21 5 Comment to Board NKShop

Index of Attachments

1. NAC 213.512
2. NRS 209.341
3 NAC 213.576

10-17-21 6 Comments Board WKShop

NEVADA ADMINISTRATIVE CODE

CHAPTER 213- PARDONS, PAROLES AND PROBATION; REMISSIONS OF FINES AND COMMUTATIONS OF PUNISHMENTS

RELEASE ON AND REVOCATION OF PAROLE

213.512 Determination of whether to grant parole: Assignment of severity level to crime. (NRS 213.10885, 213.110, 213.140)

1. The Board will assign to each crime for which parole is being considered a severity level of "highest," "high," "moderate," "low moderate" or "low." The severity level will be the same as the severity level assigned to the crime by the Department of Corrections for the purpose of classifying offenders pursuant to NRS 209.341.

2. The Board will apply the severity level of the crime for which parole is being considered to establish an initial assessment regarding whether to grant parole in the manner set forth in NAC 213.516.

© 2020 Matthew Bender & Company, Inc., a member of the LexisNexis Group. All rights reserved. Use of this product is subject to the restrictions and terms and conditions of the Matthew Bender Master Agreement.

209.341. Director to establish system of initial classification and evaluation for offenders; assignment of offender to appropriate institution or facility of department.

The director shall:

1. Establish, with the approval of the board, a system of initial classification and evaluation for offenders who are sentenced to imprisonment in the state prison; and

2. Assign every person who is sentenced to imprisonment in the state prison to an appropriate institution or facility of the department. The assignment must be based on an evaluation of the offender's records, particular needs and requirements for custody.

HISTORY:
1977, p. 849; 1979, p. 1125; 1983, p. 722; 1987, ch. 807, § 2, p. 2238; 1997, ch. 257, § 2, p. 906.

Research References and Practice Aids

Cross references.

As to receipt and return of offender by Director, see NRS 176.335 and 176.345.

As to neglect or refusal to receive offender as unlawful, see NRS 199.260.

© 2016 Matthew Bender & Company, Inc., a member of the LexisNexis Group. All rights reserved. Use of this product is subject to the restrictions and terms and conditions of the Matthew Bender Master Agreement.

NEVADA ADMINISTRATIVE CODE

CHAPTER 213 PARDONS, PAROLES AND PROBATION; REMISSIONS OF FINES AND COMMUTATIONS OF PUNISHMENTS

RELEASE ON AND REVOCATION OF PAROLE

213.516 Determination of whether to grant parole: Initial assessment. (NRS 213.10885, 213.110, 213.140)

In determining whether to grant parole to a prisoner, the Board will apply the severity level of the crime for which parole is being considered as assigned pursuant to NAC 213.512 and the risk level assigned to the prisoner pursuant to NAC 213.514 to establish an initial assessment regarding whether to grant parole. The initial assessment will correspond to the following table:

Severity Level	Risk Level		
	High	Moderate	Low$D
Highest	Deny parole	Consider factors set forth in NAC 213.518	Consider factors set forth in NAC 213.51
High	Deny parole	Consider factors set forth in NAC 213.518	Grant parole at first or second meeting to consider prisoner for parole
Moderate	Deny parole	Grant parole at first or second meeting to consider prisoner for parole	Grant parole at initial parole eligibility
Low Moderate	Consider factors set forth in NAC 213.518	Grant parole at first or second meeting to consider prisoner for parole	Grant parole at initial parole eligibility
Low	Consider factors	Grant parole at initial	Grant parole at

© 2017 Matthew Bender & Company, Inc., a member of the LexisNexis Group. All rights reserved. Use of this product is subject to the restrictions and terms and conditions of the Matthew Bender Master Agreement.

set forth in NAC 213.518	parole eligibility	initial parole eligibility

HISTORY

(Added to NAC by Bd. of Parole Comm'rs by R018-08, eff. 4-17-2008)

© 2017 Matthew Bender & Company, Inc., a member of the LexisNexis Group. All rights reserved. Use of this product is subject to the restrictions and terms and conditions of the Matthew Bender Master Agreement.