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NEVADA BOARD OF PAROLE COMMISSIONERS

MINUTES

Meeting of the
Board of Parole Commissioners

November 29, 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 November 29, 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 Jackson and Chairman DeRicco. Present in the Las Vegas office were Commissioner Christiansen, Commissioner Verchio, and Commissioner Bailey. Commissioner Baker and Commissioner Weisenthal were absent, excused.

Support staff in attendance:
Katie Fraker, Executive Secretary
Kelly Mellinger, Hearings Examiner II
Lupe Garrison, Hearings Examiner I
Forrest Harter, Hearings Examiner I

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:
None

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.

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Public comment – Las Vegas, NV
No public comment.

III. **For possible action:** Review/Approval of minutes from the October 25, 2021 Board meeting.

Motion:	**Approve the minutes from the October 25, 2021 Board meeting.**
Made:	**Commissioner Verchio**
Seconded By:	**Commissioner Christiansen**
Votes in Favor:	**DeRicco, Jackson, Christiansen, Verchio, Bailey**
Votes Opposed:	**None**
Results:	**Motion passed**

IV. **Workshops, Public Comment, and Possible Action**: **The purpose of this workshop is to solicit comments from interested persons and for the Board to discuss modifying the following general topics that may be addressed in the proposed regulations: Topics: (1) The Board to discuss modifying its regulations pursuant to NAC 213.518. This proposed regulation is necessary to carry out the provisions of NRS 213.10885, NRS 213.110, and NRS 213.140, and is 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. (2) The Board to discuss modifying NAC 213.514. This proposed regulation change is necessary to carry out the provisions of NRS 213.10885, NRS 213.110, and NRS 213.140, and is a regulation relating to the determination of whether to grant parole: Assignment of risk level to prisoner. (3) The Board to discuss modifying NAC 213.516. This proposed regulation change is necessary to carry out the provisions of NRS 213.10885, NRS 213.110, and NRS 213.140, and is a regulation relating to the determination of whether to grant parole: Initial assessment. After receiving comments, the Board may take action to amend the regulations before they are sent to the Legislative Counsel for review for 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 (3) of NRS 241.020.**

Overview of Workshop

Board Members in attendance in the Carson City office:
Chairman DeRicco
Commissioner Jackson

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

Support staff in attendance:
Katie Fraker, Executive Secretary
Kelly Mellinger, Hearings Examiner II
Lupe Garrison, Hearings Examiner I
Forrest Harter, Hearings Examiner I

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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:
None

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 amending its regulation NAC 213.518 pursuant to NRS 213.10885, NRS 213.110, NRS 213.140, and NRS 213.1214; which makes language changes and re-organizes the language of the aggravating and mitigating factors that the Board may consider; and providing other matters properly relating thereto.

The Board to discuss amending its regulation NAC 213.514 pursuant to NRS 213.10885, NRS 213.110, NRS 213.140, and NRS 213.1214; which makes language changes to how the Board uses the NRS 213.1214 risk assessment for sexual offenders; and providing other matters properly relating thereto.

The Board to discuss amending its regulation NAC 213.514 pursuant to NRS 213.10885, NRS 213.110 and NRS 213.140; which makes language changes in the initial assessment table and adds the language "This initial assessment shall be considered in accordance with NAC 213.518(1);" and providing other matters properly relating thereto.

Summary of Testimony

Chairman DeRicco introduced Kelly Mellinger, Hearings Examiner II.

Kelly Mellinger facilitated and began the workshop by stating the reason for this workshop is for discussion of amending NAC 213.518, NAC 213.514 & NAC 213.516. 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 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 the first workshop is for discussion to amend regulation NAC 213.518 pursuant to NRS 213.10885, NRS 213.110, NRS 213.140, and NRS 213.1214; which makes language changes and re-organizes the language of the aggravating and mitigating factors that the Board may consider; and providing other matters properly relating thereto.

Ms. Mellinger provided that in the provided handouts the proposed language changes are in blue.

The floor was opened to discussion.

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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, NRS 213.110, NRS 213.1214, and NRS 213.140**.** Chairman DeRicco further stated the proposed language changes in all these NACs appear to conform with statute. In addition, Deputy Attorney General, Katie Brady, has also reviewed the provided documents and she provided input on them as well. Over the past couple of months NAC 213.518 has been reviewed, at the October Board meeting language was approved but Chairman DeRicco felt additional clarification should be made.

Chairman DeRicco asked if there was anyone 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
See attached written public comment from Evan Grant
See attached written public comment from Adam Garcia

Chairman DeRicco asked if there was any one in Las Vegas 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 language was stricken under subsection (2)(g) and (3)(k). The reason this is being requested is that the language only reflects language used in the Static 99, for example, "an above average risk," or "a below average risk." However, the SVR-20 is used for female inmates, which gives results of low, moderate, or high. With the Static-99, the Board previously determined what constitutes low, moderate, or high, per that assessment. By taking out the language approved at the last meeting, it will be much clearer the three categories being considered are low, moderate, and high, and that an aggravator or mitigator will be applied if someone is a "low" or "high." Additionally, if NDOC uses some other type of assessment in the future, this new language will likely cover this as well.

Chairman DeRicco asked if anyone had any questions or comments.

Commissioner Christiansen stated that he agrees that it creates greater consistency.

Chairman DeRicco stated that after considering all the comments provided here today, as well as the written documentation provided by Mr. Grant, Mr. Garcia, and Mr. Quintero, he's comfortable with what has been provided on this item and believes that it is sufficient to move forward to LCB.

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Motion:	**Approve the proposed draft regulation changes made today about NAC 213.518, for submittal to the Legislative Counsel Bureau for review, examination, and if appropriate, language revision**
Made:	**Chairman DeRicco**
Seconded By:	**Commissioner Jackson**
Votes in Favor:	**DeRicco, Jackson, Christiansen, Verchio, Bailey**
Votes Opposed:	**None**
Results:	**Motion Passed**

Chairman DeRicco closed discussion and turned back to Ms. Mellinger for the next workshop.

Ms. Mellinger stated the next workshop the discussion is to amend regulation NAC213.514 pursuant to NRS 213.10885, NRS 213.110, NRS 213.140, and NRS 213.1214; which makes language changes to how the Board uses the NRS 213.1214 risk assessment for sexual offenders; and providing other matters properly relating thereto.

The floor was opened to discussion.

Chairman DeRicco stated that this is the time for us as a Board to discuss and to solicit comments from any other interested persons. An additional attachment was provided that is meant to supersede the previously submitted version for NAC 213.514. To be clear, please use the new version where subsection (3) is removed in its entirety with a newly rewritten subsection (3) in blue. The new document was produced as a result of Mr. Grant's submitted documentation.

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

Public comment – Las Vegas, NV
No public comment

Chairman DeRicco asked if there was anyone 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
See attached written public comment from Evan Grant
See attached written public comment from Adam Garcia

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 this topic came up some time ago at a Board meeting, approximately 2018, assigning a risk level of "high, moderate, or low." To establish that risk level the Board conducts an objective risk assessment using a combination of risk factors that predict recidivism. Under subsection (3) the regulation reads now, "If a prisoner has ever been convicted of a sexual offense and has been

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evaluated using a currently accepted standard of assessment to determine the risk that the prisoner will commit another sexual offense if released on parole, the Board will assign a risk level to the prisoner which is the higher of the risk level assigned pursuant to this section and the risk level determined by such an evaluation." In 2018, there were some questions regarding why the Board considers the higher of the two assessments for the risk level, and not let them stand alone as two separate assessments. In the current regulation, the Board has married the two risk assessments together and use the higher of the two, at least since 2012. However, as a part of this workshop, it is being requested to potentially alter the language in subsection (3) in its entirety. By doing this, the Board would consider the outcomes of the parole risk assessment on its own merits but also consider the sex offender assessment as an aggravating or mitigating factor, per the requested changes in NAC 213.518. This change will likely provide greater consistency, especially when an individual scores as a low on the parole risk assessment and is overridden to a high on the sex offender assessment. This change will not prohibit the Board from granting or denying parole in this instance, as the sex offender assessment can still be used as an aggravating or mitigating factor. But what this change does is that it provides the Board greater opportunity to review both assessments separately, so that the Board can determine the risk level in a more appropriate manner. Sometimes, these overrides appear to be too extensive, and with the proposed requested changes, the Board will consider the parole risk assessment on its own merits and use the sex offender assessment as a mitigating or aggravating factor. This coupled with all other available information in the file and at a hearing will likely afford the Board the opportunity to review these sex offender cases in a more consistent manner. The revised subsection (3) now reads: "3. If a prisoner has ever been convicted of a sexual offense as defined in NRS 213.1214 and has been evaluated using a currently accepted standard of assessment to determine the risk that the prisoner will commit another sexual offense if released on parole, the Board shall consider the risk assessment conducted by the Department of Corrections pursuant to NRS 213.1214 when deciding whether to grant parole."

Chairman DeRicco asked if anyone had any questions or comments.

Commissioner Christiansen asked for clarification, he read through the public comments, stating in the past the sex offender risk assessment superseded the parole risk assessment, but that now the Board would no longer be doing that.

Chairman DeRicco provided that supersede is not the correct word, and that the Board takes the higher of the two assessments. With the proposed regulation that would not be done anymore, and the two assessments would be stand alone assessments. The Board would consider it as it has always done in a hearing, and additionally now consider it as an aggravating and/or mitigating factor. Commissioner Christiansen agreed.

Commissioner Verchio asked if the Board would still use the override in NOTIS.

Chairman DeRicco stated that nothing is changing right now, and everything needs to be submitted and approved to LCB. But, if approved, the sex offender assessment would be considered as an aggravating or mitigating factor.

Commissioner Verchio answered her prior question by stating no the Board would not override the assessment. She provided that the cases could be assessed differently now if they are separate assessments, not one superseding or jumping the other.

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Chairman DeRicco agreed, stating that is exactly what was being proposed. Both assessments will be considered, without giving one more or less weight than it should and using it now as an aggravating or mitigating factor.

Commissioner Jackson stated that she believes this is a very fair way to do it, by looking at each assessment independently, and then using it as an aggravating and mitigating factor. She liked it.

Chairman DeRicco asked for any further comments and working as suggested.

Chairman DeRicco stated that after considering all the comments provided here today, as well as the written documentation provided by Mr. Grant, Mr. Garcia, and Mr. Quintero, he's comfortable with what has been provided on this item and believes that it is sufficient to move forward to LCB.

Motion:	**Approve the proposed draft regulation changes made today about NAC 213.514, for submittal to the Legislative Counsel Bureau for review, examination, and if appropriate, language revision.**
Made:	**Chairman DeRicco**
Seconded By:	**Commissioner Bailey**
Votes in Favor:	**DeRicco, Jackson, Christiansen, Verchio, Bailey**
Votes Opposed:	**None**
Results:	**Motion Passed**

Chairman DeRicco reiterated that nothing is currently changing, this is for a later point in time.

Chairman DeRicco closed discussion and turned back to Ms. Mellinger for the last workshop.

Ms. Mellinger stated the final workshop is the discussion to amend regulation NAC 213.516 pursuant to NRS 213.10885, NRS 213.110 and NRS 213.140; which makes language changes in the initial assessment table and adds the language "This initial assessment shall be considered in accordance with NAC 213.518(1);" and providing other matters properly relating thereto.

The floor was opened to discussion.

Chairman DeRicco stated this is the time for us as a Board to discuss and to solicit comments from any other interested persons.

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

Public comment – Las Vegas, NV
No public comment

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

Public comment – Carson City, NV

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See attached written public comment from John Quintero
See attached written public comment from Evan Grant
See attached written public comment from Adam Garcia

Chairman DeRicco stated that he is aware of documents that were received regarding this regulation, and that the Board has copies of these documents. These documents may be incorporated into today's discussion. If any of the comments made today or submitted documentation needs to be addressed today about language changes to present to LCB, please feel free to address this. If not, at a subsequent meeting, after LCB has had the opportunity to review the proposed language, these comments and submitted documentation will be addressed.

Chairman DeRicco began discussion by stated NAC 213.513 has been in effect since 2008. The changes proposed on this NAC removes certain language in the grid section and adds a statement below the grid that states, "This initial assessment shall be considered in accordance with NAC 213.518(1)." This additional statement refers to NAC 213.518(1) which the Board recently worked on the workshop today and indicates that after establishing the initial assessment regarding whether to grant parole or not, the Board will consider the initial assessment, the factors contained in NRS 213.10885 and NRS 213.1099 and may consider relevant aggravating and mitigating factors to determine whether to grant parole to a prisoner. By adding this new language below the grid, Chairman DeRicco believe that things will be much clearer showing that the Board considers the factors in all cases, not just when our current grid indicates consider factors. Certainly, the Board has granted parole on cases that initially come out as deny parole, just like having denied cases where the initial assessment says grant parole. The Board has always reviewed these additional or relevant factors and these changes just provide greater clarification that the Board does so on all cases. The grid just did not make that clear enough and this revision should help. As you are all aware, this grid essentially assigns the Board's risk level.

Chairman DeRicco further stated one change that he would like to propose is that the Board remove the subsection (1) at the end of the language and just state that it refers to the entire NAC 213.518 regulation. That way if there are changes in the future, the Board will still be covered.

Chairman DeRicco stated that he goes through the documents many times trying to make sure things were correct and found one additional mistake, in the table in regard to not crossing out "set forth," it should have been struck through also.

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

Chairman DeRicco stated after considering all the comments provided here today, as well as the written documentation provided by Mr. Grant, Mr. Garcia, and Mr. Quintero, he's comfortable with what has been provided on this item and believes that it is sufficient to move forward to LCB.

Motion:	**Approve the proposed draft regulation changes made today about NAC 213.516, for submittal to the Legislative Counsel Bureau for review, examination, and if appropriate, language revision.**
Made:	**Chairman DeRicco**

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Seconded By:	**Commissioner Jackson**
Votes in Favor:	**DeRicco, Jackson, Christiansen, Verchio, Bailey**
Votes Opposed:	**None**
Results:	**Motion Passed**

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

Ms. Mellinger stated that discussion is now closed, a summary of any testimony that has been submitted will be prepared. All testimony will be carefully reviewed and considered. 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. Minutes may also be requested by calling the Parole Board at 775-687-5049.

V. <u>For discussion:</u> Chairman DeRicco and the Board will discuss having staff include all relevant mitigating and aggravating factors on each parole grant or denial order.

Chairman DeRicco provided the purpose of this agenda item is to provide greater clarity for all commissioners, hearing examiners, and support staff when working up a file prior to a hearing, and for when we are considering information at a hearing. He stated that in the past, this issue has been discussed, on how to best apply these relevant or additional factors. He stated that the Board considers these factors on each case, but that does not necessarily mean that each factor that has been considered gets listed on the final order when a recommendation to grant or deny parole has been made. Chairman DeRicco then stated that the Board receives appeals that argue that the Board did not consider certain factors when the Board did. He stated that by listing all aggravating and mitigating factors considered on the worksheet, at the hearing, and on the final order, this should reduce any confusion on an inmate's part where they think certain factors were not considered. He stated that if an additional factor is added or removed at a hearing, it should be added or deleted on the worksheet after the hearing. He stated that it should have been put on record at the hearing that a factor is being added or removed, and once these changes are made, they will be included on the final order. He added support staff will need to check the worksheets after the hearing to assure that no additions or deletions were made. He reasoned that this way if an appeal does come in requesting further review of a particular factor, the Board will know for certain whether it was considered because it will be on the worksheet, on the record, and on the final order. He added that this will prove useful down the road if any litigation occurs. He asked Ms. Brady from the Attorney General's office if she had additional comments regarding this topic.

Katie Brady stated that she spoke with attorneys in the AG's office in Las Vegas who handle the Parole Board cases and they have been noticing an uptick in the number of cases arguing that aggravating and mitigating factors have not been considered. She provided that, however, when you listen to the hearing those factors clearly were considered, just not listed on the order. She stated from a litigation perspective, their recommendation is to list all the relevant factors on the order.

Chairman DeRicco stated that when it comes to working up a case, if there is an aggravating or mitigating factor that applies to the case, it should be listed. He stated that way the Board will know which ones were considered.

Commissioner Verchio asked Chairman DeRicco for clarification regarding the final action. She asked if this meant all the mitigating and aggravating factors will be listed on the final order that after the fourth vote a commissioner then signs. He stated that if the aggravating and mitigating factors are listed on the

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worksheet, they should be placed into NOTIS, and the factors that are in NOTIS will generate onto the final order that is produced and then signed. She stated that she understood.

Commissioner Verchio stated that sometimes when she is working up a file there may eight or nine aggravating or mitigating factors and she may feel like one is more important than another. She asked Katie Brady what the ramifications could be for leaving off an aggravating factor such as, "Record is increasingly more serious."

Katie Brady stated that the consequences of leaving off aggravating factors are low because inmates are not as concerned with aggravators being left off an order. She stated that they are concerned with mitigating factors being left off an order and not being listed. She stated that it is important that all mitigators are listed and that the inmates can always argue that an aggravating factor does not apply to them. She also stated that through the judicial process the court typically does not review the evidence before the Board, so as long as the Board is not clearly misapplying its guidelines, the court is not going to reverse per the *Anselmo* case.

Commissioner Verchio stated that she understood that listing every mitigating factor is very important, but that sometimes she feels like listing every aggravating factor is just piling on the inmate and not necessary, especially when they are a habitual criminal and have eight or nine aggravating factors.

Chairman DeRicco stated that by having each factor listed on the order, on any appeals that are received the Board will know exactly what was considered.

Commissioner Jackson stated that the panel goes over the risk assessment and the aggravating and mitigating factors with each inmate at the hearing. She stated it is rare that inmate will correct them during the hearing regarding their factors, but that it does happen occasionally. She also stated that if the other panel member is conducting the hearing she will listen to those factors and make changes if necessary. She stated it is in the inmate's best interest to make sure the factors are correct.

Commissioner Verchio stated that many times information becomes available at the time of the hearing that was not available during the time of the work-up. Chairman DeRicco stated those are the factors that need to be added into the system to ensure that their order is correct. This way during the appeal process the Board knows what factors were considered, and then the Board can determine whether they want to proceed with granting the inmate a new hearing, doing a corrected order, or a different option.

Commissioner Christiansen asked whether the comments that are used during workups are produced on the final orders. Chairman DeRicco stated no.

Katie Brady clarified that the Board has a statute, NRS 213.1075, that protects all Board documents. She stated that in the past, nothing with notes on it has been released. She stated that the Board order is the only thing that gets released to the public.

Commissioner Jackson stated that sometimes the Parole Board reports that are received from the Nevada Department of Corrections are incomplete. She stated that sometimes in the sections that are to be filled out by the inmate, it may say, "Will present to Board." She stated that this makes it difficult to know what aggravating factors to use because she does not know going into the hearing if there is a stable release plan or family support so she will make sure to ask the inmate at the hearing.

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Commissioner Bailey confirmed Commissioner Jackson's statement. She stated that oftentimes an inmate will not fill out their parole board report and will rather just speak to the Board. Commissioner Jackson stated that many times those things that they want to say are mitigating factors.

Chairman DeRicco stated that if a factor is considered or added, make sure it gets put into the system so we can show the inmate exactly what was considered, good and bad.

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 Boards ongoing project of updating and reviewing selected sections in the Operation of the Board manual as discussed at the October 25, 2021 Board meeting.

Chairman DeRicco introduced the first section for review, Parole Grants. He referred to the suggested changes as noted in the handout "Parole Grant: (NRS 213.1218, NRS 213.140, NRS 213.142)." Board members agreed that the suggested language changes were appropriate as distributed.

Motion:	**Approve the Parole Grants as distributed.**
Made:	**Commissioner Bailey**
Seconded By:	**Commissioner Jackson**
Votes in Favor:	**DeRicco, Jackson, Christiansen, Verchio, Bailey**
Votes Opposed:	**None**
Results:	**Motion Passed**

Chairman DeRicco introduced the second section for review, Parole Grants to Sex Offenders. He referred to the suggested changes as noted in the handout "Parole Grant: (NRS 213.1214)."

Chairman DeRicco asked Katie Brady if it would be appropriate to remove listing subsections (6)(d) after NRS 213.1214 in section 2 in case there were ever any legislation changes that caused the subsections to change. Katie Brady did not see any issues with removing the subsections since it is clear where the sexual offenses are found in that statute.

Board members agreed that the suggested language changes were appropriate as revised.

Motion:	**Approve the Parole Grants to Sex Offenders as revised.**
Made:	**Commissioner Christiansen**
Seconded By:	**Commissioner Verchio**
Votes in Favor:	**DeRicco, Jackson, Christiansen, Verchio, Bailey**
Votes Opposed:	**None**
Results:	**Motion Passed**

Chairman DeRicco introduced the next section for review, Parole Grants to Consecutive Sentences and Expiration of Subsequent Sentence. He referred to the suggested changes as noted in the handout "Parole Grants to Consecutive Sentences and Expiration of Subsequent Sentence." Board members agreed that the suggested language changes were appropriate as distributed.

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Motion:	**Approve the Parole Grants to Consecutive Sentences and Expiration of Subsequent Sentence as distributed.**
Made:	**Chairman DeRicco**
Seconded By:	**Commissioner Jackson**
Votes in Favor:	**DeRicco, Jackson, Christiansen, Verchio, Bailey**
Votes Opposed:	**None**
Results:	**Motion Passed**

Chairman DeRicco introduced the fourth section for review, Parole Denials. He referred to the suggested changes as noted in the handout "Parole Denials: NRS 213.1215, NRS 213.131, NRS 213.142 and NAC 213.536)." Board members agreed that the suggested language changes were appropriate as distributed.

Motion:	**Approve the Parole Denials as distributed.**
Made:	**Commissioner Verchio**
Seconded By:	**Commissioner Bailey**
Votes in Favor:	**DeRicco, Jackson, Christiansen, Verchio, Bailey**
Votes Opposed:	**None**
Results:	**Motion Passed**

Chairman DeRicco introduced the final section for review, Parole Violation Hearings. He referred to the suggested changes as noted in the handout "Parole Violation Hearings (NRS 213.150-NRS 213.153, NAC 213.550)." Board members agreed that the suggested language changes were appropriate as distributed.

Motion:	**Approve the Parole Violation Hearings as distributed.**
Made:	**Chairman DeRicco**
Seconded By:	**Commissioner Verchio**
Votes in Favor:	**DeRicco, Jackson, Christiansen, Verchio, Bailey**
Votes Opposed:	**None**
Results:	**Motion Passed**

Chairman DeRicco stated that Hearings Examiner Harter noticed that throughout the Operations of the Board document, there were different terms being used for Chairman. He stated that within the document, the word Chairman, Chair, and Chairperson had all been used. He asked the Board if they preferred one term over another. He stated that the substance of the document was not being changed, but rather wanted to ensure the language throughout the document was consistent.

Commissioner Jackson stated that she felt Chairman was appropriate, even if it was a female down the line in that position. Commissioners Bailey, Verchio, and Christiansen all agreed that Chairman was neutral.

Chairman DeRicco asked Katie Brady if a formal vote needed to take place to clean up language in the Operations of the Board manual. Katie Brady did not think a formal vote was necessary for the open meeting law but said the Board could take a vote to be safe.

Motion:	**Use the term Chairman throughout the Operations of the Board document and if any changes are needed in the future**

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Made:	**Chairman DeRicco**
Seconded By:	**Commissioner Jackson**
Votes in Favor:	**DeRicco, Jackson, Christiansen, Verchio, Bailey**
Votes Opposed:	**None**
Results:	**Motion Passed**

VII. **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.

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

Motion:	**To adjourn the November 29, 2021 meeting of the Nevada Board of Parole Commissioners**
Made:	**Commissioner DeRicco**
Seconded By:	**Commissioner Christiansen**
Votes in Favor:	**DeRicco, Jackson, Christiansen, Verchio, Bailey**
Votes Opposed:	**None**
Results:	**Motion passed**

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

November 15, 2021

RE: Nov. 29, 2021, NAC 213.514, .516 & .518 Workshop Comments

Nevada Board of Parole Commissioners:

Thank you for holding this third NAC 213.518 Workshop and expanding it to include NAC 213.514 and 213.516 in response to my NRS 233B.100 Petitions and previous comments. I have reviewed the proposed language for NAC 213.514, .516 & .518 and once again would like to convey my appreciation to the Board for taking steps towards bringing the Board's parole consideration NACs closer to being in compliance with NRS 213.10885 and, now, NRS 213.1214 as well.

It is my hope, that the few remaining steps between where these NAC Amendment Proposals are, and where they need to be per Nevada law, will soon be taken resulting in a new and fair parole consideration process. A process that strikes a balance between the desire of the people of Nevada to feel safe and their desire for Nevada's prisoners to go home to their families and friends.

A balance encapsulated in NRS 213.10885(2)'s language calling for the Board to determine "[T]he probability that a convicted person will live and remain at liberty without violating the law if parole is granted or continued." The idea, presented in these words, is that a convicted person, who has followed the rules while incarcerated and betters himself or herself through educational and rehabilitative programs, has indicated that he or she is ready

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to live within society's laws. These-are-the-people who have not only EARNED an opportunity to be welcomed back to society, but, per Nevada's Legislature, should be graced with it as well.

It is for all of the incarcerated who have made that positive effort to be reunited with those who love them, that I have dedicated nearly two years of my life to bring us to this point. While it took me becoming one of the incarcerated to gain awareness of the issues this Board now seeks to amend, I view this undertaking as my civic duty and will see it through on behalf of all those affected.

As there are now three NACs under amendment consideration, the remainder of these comments will be divided into four sections. One for each NAC followed by a brief conclusion.

NAC 213.514

Concerning NAC 213.514's proposed language, I whole heartedly endorse the Board's decision to recognize that the NRS 213.1214 risk assessment should be considered in conjunction with the Nevada Parole Risk Assessment. This not only protects the Board from tainting the ENTIRE parole consideration process if the Department of Corrections (DOC) fails in its execution of NRS 213.1214, but, additionally, distinguishes consideration of those convicted of a sexual offense from those who have not.

This is significant as the Revalidation of the Nevada Parole Risk Assessment Instrument (2017) states average recidivism across all offenses in Nevada is 34%. While the current NRS 213.1214 risk assessment, the STATIC-99R, states that average sex offender recidivism is 5.3% per the STATIC-99R & STATIC-2002R Evaluators' Workbook (October 19, 2016).

Therefore, those convicted of a sexual offense are 6.4 times LESS likely to reoffend compared to those not convicted of a sexual offense. While these individuals should be considered per the Nevada Parole Risk Assessment as they have offended in Nevada, they should also be considered, via the NRS 213.1214 assessment, seperately, as they, on average, are far less likely to reoffend.

With this in mind, I see one issue with the proposed NAC 213.514(4) & (5) language. NRS 213.1214(4) mandates that "The Board shall consider an assessment prepared pursuant to this section ...." NRS 213.1214(6)(d)(20) requires the DOC to conduct an NRS 213.1214 assessment for "An offense of a sexual nature committed in another jurisdiction ...," unless, certain conditions are met. Therefore, regardless of the offense under consideration by the Board for parole, if the DOC conduets and submits to the Board an NRS 213.1214 assessment in accordance with the provisions of NRS 213.1214, the Board is required to consider it.

For these reasons, NAC 213.514(5) stating the Board "[M]ay also consider the risk assessment ..." is in violation of NRS 213.1214(4) which states "The Board shall consider an assessment ...." Therefore, I recommend striking NAC 213.514(5) and amending NAC 213.514(4) to state "4. If a prisoner is being heard for parole for a sexual offense, or has ever been convicted of a sexual offense, as defined by NRS 213.1214, the Board shall consider the risk assessment ...." This language would protect the Board from accidentally NOT considering an NRS 213.1214 assessment that Nevada law requires to be considered.

NAC 213.516

Concerning NAC 213.516, I see two issues. FIRST, added to the bottom of NAC 213.516 is the language "This initial assessment shall be considered in accordance with NAC 213.518(1)." While I applaud the Board for recognizing that it cannot arbitrarily grant or deny parole without considering factors referenced in NRS 213.10885 and 213.1099, every time, before making a grant or denial determination, the added .518(1) language to .516 is currently meaningless. Nowhere in NAC 213.518(1) does it state HOW the Board will consider the initial assessment result.

What does a result of "Deny parole" or "Grant parole at initial parole eligibility" mean in relation to NAC 213.518? How does the Board know what to do if the initial assessment result is "Grant parole at first or second meeting to consider prisoner for parole"? Under what conditions is the grant at the first meeting appropriate or inappropriate?

These are questions that must be answered in the NAC's language pursuant to NRS 213.10885(1) which states, "[S]tandards must be based upon objective criteria ...." In Anselmo v. Bisbee, 396 P.3d 848 (Nev. 2017), the Nevada Supreme Court stated that the Board's "standards" are their NACs. For a standard to be objective, it must state a step-by-step process that any person can easily follow and replicate. As every person will "consider" the initial assessment result differently, it is critical that the Board state HOW it will consider that result.

Therefore, HOW the NAC 213.516 Initial Assessment will be considered in the context of NAC 213.518(1) must be stated in NAC 213.516 or NAC 213.518(1). Doing so will protect the Board from

challenges to the initial assessment result's consideration as the Board could defend itself by pointing to a tangible standard and definitively state that consideration was done correctly.

SECOND, NAC 213.516 utilizes NAC 213.512 crime severity levels as assigned pursuant to NAC 213.512 by the DOC per NRS 209.341. There are two issues here.

First, NRS 209.341 does not grant the DOC authority to assign a severity level to a crime. In Fact, the words "severity", "level" nor "crime" appear a single time in NRS 209.341. Second, the crime severity levels of "Highest," "High," "Moderate," "Low Moderate" and "Low" do not exist in Nevada law.

How then is the severity of a crime actually assigned per Nevada law?

According to the Nevada Supreme Court, only the Legislature has the power to determine what is or is not a crime and the appropriate penalty for those who violate a criminal statute. See Anderson v. Eighth Judicial District Court, 448 P.3d 1120 (Nev. 2019). Additionally, the Supreme Court ruled that an enhancement from a misdemeanor to a Category C felony constituted an increase in offense severity. English v. State, 116 Nev. 828 (2000).

Therefore, as the Board is only considering those persons convicted of a felony, they must look to NRS 193.130 and 193.330, which provide the Categories of Nevada's felonies, to discover the severity level of crimes as assigned by the Legislature. Interestingly, the Board used this exact method in 2004. Per the PBFORM-PS (REV. 12/10/04), attached to these comments as EXHIBIT 1, the Board stated in its own words:

> The Board has adopted crime severity levels A, B, C, D & E based on the statutory definitions set forth in NRS 193.130, 193.330 and as provided by specific criminal statute.

As you can see, the Board in 2004, after English was decided in 2000, clearly understood its statutory duty and was in compliance with Nevada law. However, in 2008, when the Board adopted NAC 213.512 and 213.516, it deviated dramatically from its understood statutory duty. The current NAC 213.512 and NAC 213.516 crime severity levels of "Highest," "High," "Moderate," "Low Moderate" and "Low" DO NOT EXIST in NRS 193.130, 193.330, 209.341 nor any other NRS.

To this day, as it was in 2004, the A, B, C, D & E Categories of felony are the Legislature's assignment of crime severity level per NRS 193.130, 193.330 and as provided by specific criminal statute. Never, in the history of Nevada, has the Legislature authorized the DOC to determine the severity level of actions that the Legislature identifies as crimes. The Legislature speaks for the State of Nevada, NOT the DOC.

For these reasons, I recommend that NAC 213.512 be REPEALED, and NAC 213.516 be AMENDED to remove all mention of the "Highest," "High," "Moderate," "Low Moderate" and "Low" crime severity levels and replace them with the A, B, C, D & E crime severity levels as assigned by Nevada's Legislature. This is an easy replacement as both sets of severity have 5 levels.

NAC 213.518

Concerning NAC 213.518, I see two issues. FIRST, NAC 213.518(1) states, "[T]he Board will consider the initial assessment, the factors contained in NRS 213.10885 and NRS 213.1099 . . .," but does not state HOW this consideration will

take place. As previously stated, the Board's NACs mark step-by-step HOW consideration is to take place per NRS 213.10885(1). Again, as every person, regardless of who they are, will "consider" that information differently, the Board has a duty, and is required by Nevada law, to codify in the NACs HOW it will "consider" that information.

This codified process of consideration is ultimately to carry out NRS 213.10885(2) which provides, in pertinent part:

> In establishing the standards, the Board shall consider ... all other factors which are relevant in determining the probability that a convicted person will live and remain at liberty without violating the law if parole is granted or continued.

"Determining the probability" is the HOW that must be defined in the Board's consideration standards.

Does this mean: that if a convicted person has more mitigating factors than aggravating, parole should be granted?; That regardless of the ratio of mitigating to aggravating factors, if a certain aggravating factor is relevant, parole should be denied?; If the initial assessment result is "Grant parole at initial parole eligibility", then provided aggravating factors does not exceed mitigating factors by 3, parole should be granted?; Or, for example, if a convicted person has the initial assessment result of "Grant parole at first or second meeting" and has an equal number of aggravating and mitigating factors, then parole should be denied, a new hearing scheduled in one year, and parole should be granted at that time unless that person has an increase in his or her NAC 213.516 initial assessment risk level?

Ultimately, what does "consider" mean to the Board?

The Board must define consideration in its NACs if it wishes to defend itself in Court against litigation brought by inmates alleging that they were not properly considered. The Nevada Supreme Court has determined that inmates have a right to "proper" consideration per NRS 213.140(1) and, as shown in Anselmo v. Bisbee, will order the Board to vacate and redo improper considerations. If the Board does not state HOW it will "consider", then the Court will have no choice but to side with the inmate as the Board will have nothing tangible with which to defend itself.

SECOND, NAC 213.518(1) still says the Board "[M]ay consider relevant aggravating and mitigating factors ...." Once again, NRS 213.10885(2) states, "In establishing the standards, the Board shall consider ... all other factors which are relevant ...." The Board does not get to choose which "other factors", aggravating or mitigating, it considers. The word "may" in NAC 213.518(1) gives the Board the power of choice as to which factors it considers in violation of NRS 213.10885(2).

As the Board has a legal duty to consider "all other factors which are relevant", imagine the liability if the Board granted parole to a dangerous prisoner because it chose not to consider relevant aggravating factors the language of NRS 213.10885(2) requires. Immunity is not available if the Board knew that it was violating the law. Do not give this scenario the possibility of occurring.

To correct this, the words "may consider" in NAC 213.518(1) must be struck so that NAC 213.518(1) reads "[T]he Board will consider the initial assessment, the factors contained in NRS 213.10885 and NRS 213.1099 and relevant aggravating and

mitigating factors ...." Furthermore, as the Board is looking to change every NAC 213.518(2) & (3) aggravating and mitigating factor, the Board must amend its Aggravating and Mitigating Factors Definitions for each NAC 213.518(2) & (3) factor to reflect their new meanings.

CONCLUSION

As stated in my opening comments, I appreciate the progress the Nevada Board of Parole Commissioners has made thus far and am optimistic that the Board will take those final steps towards NRS parole consideration compliance. I meant what I wrote about undertaking these efforts on behalf of everyone affected. This is why I am not pursuing monetary relief in any of my ongoing litigation in regards to these matters.

Following the law as passed by the Legislature is to the benefit of all Nevadans and to those who visit this State. Please remember that 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

EXHIBIT 1

Nevada Board of Parole Commissioners'

PBFORM-PS

(REV. 12/10/04)

PAROLE STANDARDS

Offenders will appear before or be considered in absentia by a panel of the Parole Board for parole consideration when they have served the minimum time required to attain parole eligibility as provided by Nevada law. If the offender is serving concurrent sentences for multiple offenses, the most severe offense will determine the crime severity level.

Pursuant to NRS 213.10885, the Board has adopted by regulation standards for release on or revocation of parole. The regulations are set forth in Chapter 213 of the Nevada Administrative Code (NAC) at sections 213.510 through 213.560. The Guideline Recommended Months (GRM) to serve calculated under the Board's parole standards is a suggested range of months to be served and is based on a combination of offense and offender characteristics.

Pursuant to NRS 213.10705, the release or continuation on parole is an act of grace of the State. In addition, pursuant to NRS 213.10705 and NAC 213.560, the Parole Board is not required to grant or deny parole based on the guideline-recommended time to serve, and the establishment of parole standards does not create any right or interest in liberty or property, does not give rise to any reasonable expectation of parole, and does not establish any basis for a cause of action against the State, its political subdivisions, agencies, boards, commissions, departments, officers or employees. See Greenholtz v. Inmates of Nebraska Penal & Cor., 442 U.S. 1, 99 S.CT 2100, 60 L.Ed2[d] 668 (1979).

These parole standards are designed to aid the Board in making consistent decisions. The Board will also consider any recommendations from the Court, law enforcement agencies, prosecutors, prison personnel, and victims as provided in NRS 213.130. Further, the Board will take into account the considerations set forth in NRS 213.1099. In exercising its unlimited discretion to deviate from the time periods recommended under its guidelines, the Board will consider the factors set forth in NAC 213.560, and any other mitigating or aggravating factors which the Board deems relevant. The Board is not required to provide an offender with any reasons concerning a decision to deny parole, Weakland v. Board of Parole Comm'rs, 100 Nev. 218, 678 P.2d 1158 (1984), but may elect to do so in those cases where its decision deviates from the guideline-recommended time to serve.

The Board's current standards were adopted effective August 11, 1998. All offenders being considered for parole release, except those being considered pursuant to the provisions of NRS 213.1215, will be evaluated under the Board's current guidelines, regardless of offense date, date of conviction, or any standards previously utilized in considering the offender for parole release. These standards serve as guidelines only, the Board is not required to adhere to the guidelines, and they are not laws for purposes of ex post facto analysis. Offenders do not have a right to be considered for parole under any previously existing set of parole standards. Smith v. U.S. Parole Com'n, 875 F.2d 1361 (9th Cir. 1989); Vermouth v. Corrothers, 827 F.2d 599 (9th Cir. 1987); Wallace v. Christensen, 802 F.2d 1539 (9th Cir. 1986).

The Board has adopted crime severity levels A, B, C, D & E based on the statutory definitions set forth in NRS 193.130, 193.330 and as provided by specific criminal statute. The Board has expanded levels A and B to A1, A2, A3, A4, B1, B2, B3 & B4 to reflect the diverse minimum and maximum sentencing ranges provided for by statute for level A and B felonies.

The Board will review an offender's disciplinary and programming scores at the time of each hearing. Any change from a previous score will be noted and may result in a change to the offender's net parole success likelihood score and guideline-recommended time to serve.

SCORE	0-10	11-20	21-30	31-40	41-UP	LEVEL	SENTENCE STRUCTURE BY STATUTE
A1	240-276	276-312	312-348	348-384	384-420	"A" CRIME	20 YEAR OR MORE MINIMUM
A2	180-216	216-252	252-288	288-324	324-360	"A" CRIME	15 YEAR MINIMUM
A3	120-150	150-180	180-210	210-240	240-270	"A" CRIME	10 YEAR MINIMUM
A4	60-84	84-108	108-132	132-156	156-180	"A" CRIME	5 YEAR MINIMUM
B1	24-48	48-72	72-108	108-144	EXPIRE	"B" CRIME	20 YEAR MAXIMUM
B2	18-30	30-48	48-66	66-84	EXPIRE	"B" CRIME	15 YEAR MAXIMUM
B3	12-24	24-36	36-48	48-60	EXPIRE	"B" CRIME:	10 YEAR MAXIMUM
B4	12-18	18-24	24-30	30-36	EXPIRE	"B" CRIME:	6 YEAR MAXIMUM
C	12-16	16-20	20-24	24-28	EXPIRE	"C" CRIME	5 YEAR MAXIMUM
D/E	12-15	15-18	18-21	21-24	EXPIRE	"D/E" CRIME:	4 YEAR MAXIMUM

CONVICTIONS/ENHANCEMENTS: All adult including instant offense and consecutive sentences.
INCARCERATIONS: All adult including instant offense and previous CS terms.
WEAPONS: Instant offense only, actual, highest level, even if plead out.
VICTIMS: Instant offense only, actual, highest level, even if plead out.
EMPLOYMENT: Any full time job, school, SIIS or SSI for 6 months during year prior to instant offense.
DISCIPLINARY: Based on previous three years. 10 points maximum. Credit limit is 3. +2 points for each major violation. +1 points for each minor/general violation. -1 for none at 1st hearing or none during the previous year. -2 for none in the last two years. -3 for none in the last three years.
DRUGS/ALCOHOL: All convictions, including instant offense.
COURT ACTION: % of maximum sentence ordered.
PROGRAMMING: [10 is maximum] Inmate must provide case worker with original for verification and copies of each certificate and diploma to the Board. Programming counts only on current sentence (programming on prior sentences will not be counted on the guideline).
-3 points for either GED, high school diploma, or 12 college credits.
-2 points for long term substance abuse program, behavior modification, or literacy program. -1 for short term counseling, street readiness, job workshop, parenting, weekly AA/NA's, full time job (½ day or more), or other program deemed appropriate by the Board.

STATISTICAL RISK ASSESSMENT: The risk assessment is based on a study of factors applied to inmates who were released on parole or discharged their prison sentence in 1999 and returned with a new felony conviction within 3 years. The risk assessment does not provide the risk of failure or probability of success on parole. It does not take into consideration other factors the Board considers when evaluating inmates for release on parole. The risk assessment is one component used to assist the Board in making decisions. The risk assessment is not compiled by the Board but is based on data existing in the Nevada Criminal Information System which is maintained by the Nevada Department of Corrections (NDOC). The Board will not entertain claims of errors in the risk assessment. Any errors must be corrected by the NDOC. The Board will only consider a request for re-hearing based on an error in the computation of the risk assessment if the correction made by the NDOC results in a change to a lower risk category and the request is made in writing by a representative of the NDOC and routed to the Board through the Chief of the Offender Management Division. The factors used on the risk assessment are as follows:

STATIC FACTORS

Age at First Arrest (juvenile or adult): 25 years or older = 0 points, 20-24 years = 1 point, 19 years or younger = 2 points.
Prior Probation/Parole Revocations: No parole or probation revocations = 0 points, One or more =2 points.
Employment History (prior to incarceration): Satisfactory full-time employment for 1-2 years = 0 points, Employed less than full time or full time employment for less than one year = 1 point, Unsatisfactory employment / unemployed / unemployable = 2 points.
Current or prior convictions: Property crime, forgery, robbery = 2 points, all others = 0 points.
History of drug alcohol abuse: None = 0 points, some use, not severe disruption of functioning = 1 points, frequent abuse, serious disruption of functioning = 2points.
Gender: Male = 1 point, female = 0 points.

DYNAMIC FACTORS

Current Age: 41 and above = -1 point, 31-40 = 0 points, 21-30 = 1 point, under 21 = 2 points.
Gang Membership: No = 0 points, Yes = 2 points.
Completed DOC certified education/vocational/treatment program: Yes or has existing GED/high school/college degree = -1 point, No = 0 points.
Disciplinary Conduct - Past year: No violations or single minor violation = -1 points, Multiple minor violations = 0 points, Major violation = 1, multiple major violations = 2 points
Current custody level: Minimum = -1 point, Medium = 0 points, Maximum or Administrative Segregation = 2 points.
TOTAL POINTS SCORE: 0-4=Low Risk, 5-10=Moderate Risk, 11-15=High Risk, 16+ points total or 8points on dynamic factors=Highest Risk.

PBFORM-PS (REV. 12/10/04)

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

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PAROLE BOARD

Nov. 15 2021

Nevada Board of Parole
1677 Old Hot Springs Rd. Ste. A
Carson City NV 89706

Re: Workshop of November 29 2021 / 233B Request
Proposed Language Modification to 213.512

Greetings:

The board's proposal for NAC 213.516 relies on the assumption that NAC 213.512 "Severity Level" is authorized by statute, which it is not. This NAC 213.512 is based on the misrepresentation that the "severity level" in NRS 213.10885 (2)(a) can be determined by another statute 209.341 regarding duties of NDOC director, and contains no mandate that allows the Parole Board to utilize it, and states only a custody-driven purpose, not a parole readiness purpose. NRS 209.341 does not contain the words "severity", "level" nor "crime."

It is clear that NRS 213.10885 (2)(a) requires that the Board of Parole Commissioners not the Department of Corrections make the determination of the "severity;" based on this the Board is requested to rescind and modify

the language of VAC 213.512 to conform to the limits of the statute 213.10885(2)(a),

Proposal Part 1

213.512(1) "The Board shall use an objective actuarial assessment of static factors and dynamic factors to individually determine the severity level of the crime for which the parole applicant was committed to prison, and shall report determination prior to hearing."

The practices and custom to rely on an VDOC document is problematic for several reasons:

1.) there is no evidence this VDOC Document Severity Tables which is used to automatically populate the VOTES Parole Board report was approved by the Board of Prison Commissioners ~~of~~ which makes it a fugitive document;

2.) there is no evidence VDOC conformed with Open Meeting Law VRS 241, bringing its legitimacy into question;

3.) the Severity Table used to automatically populate the application, being overbroad, creates a table at VRS 213.516 which deviant because it deprives the "Highest" Severity of even any hope of "Grant Parole" expectation given to High, Moderate, Low-Med, Low categories; this deprival is cruel and unusual. I see attached letter from Parole Board dtd 4-1-21

Proposal Part II

213.512 (2) "The Board shall provide notice and opportunity for ~~confront~~ inmate to confront the Severity Level determination by allowing written and oral rebuttal as to the accuracy of the records, evidence and other data relied on to determine the ~~Highest~~ Severity Level or any other determination of severity level." [2]

Please consider the above at the Hearing of Nov. 29, 2021, and as a separate NRS 233B.100 Petition which requires a statement-of-reasons response; as well, I wish the LCB to weigh in on this as I have rebutted the assumptions of regularity of the "Severity Tables" under 233B.090

Please place this proposal in the record of the hearing of the 29 Nov. 2021

Very Respectfully,

John Winters

Attachment: Hr from Board / dtg 4-1-21

cc Brady, NV DAG 555 Wright Way CC NV 89711

2 See Nevada Attorney General Opinion 2012 NevAG Lexis 1, Opinion No. 2012-02, May 7 2012

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NEVADA BOARD OF PAROLE COMMISSIONERS

April 1, 2021

John Quintero, NDOC #93782
Northern Nevada Correctional Center
P.O. Box 7000
Carson City, Nevada 89702

Re: Your letter received March 25, 2021.

Mr. Quintero,

I have reviewed your letter asking if there was a policy change concerning risk assessments. The Parole Board has not sent out a risk assessment prior to an inmate hearing anytime in at least the last 20 years. You may be referring to a past risk assessment done by an NDOC caseworker? Your written risk assessment with mitigating and aggravating factors will be attached to your 03/17/2021 Parole Board order.

Signed,

Darla Foley

Darla Foley
Executive Secretary

Adam Garcia #62651
N.N.C.C.
Carson City, NV 89702

NOV 15 2021

Board of Parole commissioners
1677 Old Hot Springs Rd Ste. A.
Carson City, NV 89706-0677

RE: Workshop Evidence for NOV 29 2021

Dear Board:

I attached a letter from my lawyer Alan Erb, to board and the board's response dtd. Feb, 18, 2021, please note 3rd paragraph of board response made by Eric Christiansen.

"According to NRS 213.1214 an additional evaluation is is required for convicted sex offenders that Superceeds the initial Risk Assessment."

NOTHING in that statute mentions an "additional evaluation". "That Superceeds the intial risk assessment. This relates to proposed aggravator (2)(g) of NAC 213.518

Please take note into consideration in your upcoming regulation workshop on 11-29-21 This organizational deviation from the law, and place my evidence into record, and answer on the record how this misrepresentation by Christiansen can be explained and take steps to assure the boards future reliance on this falsehood will be forclosed by regulation.

Adam Garcia

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NOV 23 2021
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c.c. Attorney General

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BOARD OF PAROLE COMMISSIONERS

February 18, 2021

Alan R. Erb, Attorney
P.O. Box 133
Gardnerville, NV 89706

RE: Inmate: GARCIA, Adam R.
NDOC #: 82651

Nevada Parole Board Hearing November 16, 2020

Dear Sir,

On November 16, 2020, the above-named inmate appeared via video conference at a scheduled and noticed parole hearing. At that time, the inmate presented his reasons why the State of Nevada should provide him with "an act of grace" by granting him parole pursuant to N.R.S. 213.10705. Subsequently, his request of parole was denied by the vote of four Commissioners.

The Nevada Parole Board has received your letter dated January 11, 2021, whereby you expressed some concern regarding the hearing. Specifically, you advised that your client never had a prior prison sentence and that the Risk Assessment did not accurately represent your client.

In response, our information gleaned from the Pre-Sentence Investigation indicates that Mr. Garcia was in fact sentenced in Bridgeport, California, on Febraury 26, 2002, to 60 months probation and 365 days jail for Indecent Exposure with Prior Offenses, a felony. The Board did not consider that felony conviction in reference to a prison time but did correctly note that arrest as a felony criminal sex offense conviction. In addition, your letter indicated that Inmate Garcia was considered a Low Risk on the Risk Assessment and that the Board erroniously placed Garcia as a High Risk to reoffend. According to N.R.S. 213.1214, an additional evaluation is required for convicted Sex Offenders that superceeds the intial Risk Assessment. Garcia scored a "Well Above Average Risk" to reoffend sexually in the that evaluation causing his score to be adjusted to High Risk.

I hope this correspondence has clarified the issues you have raised. Thank you for your time and effort. Should you have any questions, please do not hesitate to call me at [redacted]

Eric Christiansen, Commissioner,
Nevada Parole Board

Alan R. Erb
Attorney & Counselor at Law
Post Office Box 133
Gardnerville, Nevada 89410
(775) 782-7334

January 11, 2021

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

RE: Adam Garcia #82651

Dear Sir or Madam,

Mr. Garcia went before the Southern Nevada Parole Board on November 16, 2020. I had faxed a packet of material that morning, which the Board acknowledged receiving. At the time, I thought I could appear in the Carson City office remotely. I was told the only way I could appear would be to go to Las Vegas. This was impossible.

Very recently, I was advised that Mr. Garcia was denied parole. Obviously, I did not witness the hearing, so I can only speak to what I have been told. I have been in touch with Mr. Garcia, as well as his brother. I have also seen a copy of the Order Denying Parole. Mr. Garcia raised some concerns which I would like to get answers for.

The paperwork indicates a prior prison term. Mr. Garcia told me he has never been in prison before his current sentence. The paperwork indicates a determination of high risk. Mr. Garcia told me he was told at his hearing he was low risk. He has participated in many programs over the last nearly eighteen years of incarceration, as indicated in his packet. I was most impressed by the community and family support Mr. Garcia has.

I would appreciate a response and answers to these questions. I wish I could have attended the hearing, but we are in unusual times. That having been said, I can only rely upon you for these answers. Thank you.

Respectfully,

Alan R. Erb

Alan R. Erb

ARE/re
cc: Mr. Adam Garcia

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