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NEVADA BOARD OF PAROLE COMMISSIONERS

MINUTES
Meeting of the
Board of Parole Commissioners
January 9, 2019

MINUTES APPROVED ON JULY 31, 2019

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 January 09, 2019 beginning at 9:00 AM 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, video conference to Parole Board Office, 4000 S. Eastern Avenue, Ste. 130, Las Vegas, NV.

I. Open Meeting, call to order, roll call 9:00 AM.

The meeting was called to order by Chairman DeRicco. Present in Carson City were Chairman DeRicco, Commissioner Corda, Commissioner Endel, and Commissioner Jackson. Present in the Las Vegas office were Commissioner Keeler, Commissioner Christiansen, and Commissioner De La Torre.

Support staff in attendance:

- Darla Foley, Executive Secretary
- Jeremy Meador, Administrative Assistant I
- David Smith, Hearing Examiner III

Members of the public present in Carson City included:

- Katie Brady, Deputy Attorney General
- Stephanie O'Rourke, Major, Division of Parole and Probation
- Tom Lawson, Captain, Division of Parole and Probation
- Paul Corrado
- Sean Sullivan, Washoe County Public Defenders Office

Members of the public present in Las Vegas included:

- Beth Stankus, Division of Parole and Probation
- Kristina Wildeveld
- Bryson Bellow

- 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.

Chairman DeRicco asked if anyone present would like to make a public comment.

Public comment – Carson City, NV

Paul Corrado discussed the handout “Nevada Parole Board Meeting Notes.” He explained that the reason behind creating the handout was to help inmates gain a better understanding of the process of going before the Board and how to properly prepare for their hearing. His goal is to have the handout available to inmates. He explained that this is one of three presentations that he would like to make to the Nevada Department of Corrections. He stated that he hoped to move forward and make the system effective for everyone involved.

Public comment - Las Vegas

No public comment.

- III. For possible action:** Review/Approval of minutes from the April 10, 2018 and November 7, 2018 Board meetings

Motion: To Approve minutes from the April 10, 2018 Board meeting.
Made: Commissioner Keeler
Seconded by: Commissioner Jackson
Votes in Favor: Corda, Jackson, DeRicco, Endel, Keeler, De La Torre, Christiansen
Votes Opposed: None
Motion passed

Motion: To Approve minutes from the November 7, 2019 Board meeting. With the correction of the spelling of Ms. Baker’s name on page one.
Made: Commissioner Corda
Seconded by: Commissioner Endel
Votes in Favor: Corda, Jackson, DeRicco, Endel, Keeler, De La Torre, Christiansen
Votes Opposed: None
Motion passed

- IV. For possible action:** The Board will consider and may act on requesting that the Waiver of Hearing to Modify Conditions of Parole form be used in all future modification requests of any conditions of parole including, but not limited to, placement of the parolee on residential confinement in lieu of revocation after an admission of a parole violation.

Chairman DeRicco referred the commissioners to the handout “Agenda Item IV” which included the “Waiver of Hearing to Modify Conditions of Parole” and “NRS 213.512”. He explained that the waiver was a collaborative effort with the Division of Parole and Probation to give parolees an option short of returning back before the Board for formal revocation proceedings. This form would also allow the Board to apply a condition of residential confinement.

Commissioner Keeler stated concerns about adopting this waiver without a policy from the Division concerning graduated sanctions.

Commissioner Christiansen stated that he felt the waiver would allow immediate sanctions for violators which would be less disruptive for the parolee and allow a parole officer to better supervise individuals.

Chairman DeRicco stated that the intent of this form is to give more options to keep people in the community to be supervised rather than risk uprooting their life and making it more difficult for them to succeed.

Stephanie O'Rourke with the Division of Parole and Probation stated that the Division does have a policy of graduated sanctions. She stated that the directions for the requested form will be completed if the Board approves the use of the form.

Tom Lawson with the Division of Parole and Probation stated that the form is another tool to prevent the Division from returning an individual to incarceration and destabilizing their environment.

Commissioner Keeler asked Mr. Lawson why the Division is not currently using the authority that they already have to place an individual on residential confinement per NRS 213.1517.

Mr. Lawson stated that the time limit set by 213.1517 made it difficult to use effectively. He did not want to speak about the law further due to the Attorney General for the Division not being present and he did not want to paraphrase.

Motion: To table Agenda Item IV until such time that the Board receives the graduated sanctions policy from the Division so the Board can see how it will work. The Division had indicated that they are currently working on the policy and how to put in Residential Confinement. The Board should see how it will work prior to considering the agenda item.

Made: Commissioner Keeler

Seconded by: Commissioner Corda

Votes in Favor: Corda, Keeler

Votes Opposed: DeRicco, Jackson, Endel, De La Torre, Christiansen

Motion denied

Motion: The Board will act on requesting that the Waiver of Hearing to Modify Conditions of Parole form be used in all future modification requests of any conditions of parole including, but not limited to, placement of the parolee on residential confinement in lieu of revocation after an admission of a parole violation.

Made: Commissioner Christiansen

Seconded by: Commissioner Endel

Votes in Favor: Jackson, DeRicco, De La Torre, Christiansen, Endel

Votes Opposed: Keeler, Corda

Motion passed

- V. **For possible action:** The Board will consider and may act on requesting that the Division of Parole and Probation follow a new evidence process for Parole Violation hearings.

Chairman DeRicco began presenting this item by reminding the Board that this agenda item was discussed at a previous Board meeting. He then summarized his previous presentation of this item. This concern arose because of limited digital storage space in the Las Vegas office of the Board. Presently, the Board receives a detailed packet of evidence from the Division (of Parole and Probation) prior to a Parole Violation hearing. All of the information presented may not be considered at the parole violation hearing, as sufficient evidence may already exist without the entire packet, or the inmate may plead guilty, negating the need for evidentiary support. Presently, if the Board considers evidence it retains it. The packet of evidence submitted by the Division is retained in its entirety, even if not all the information is considered as evidence. This then requires the Board to make the information available for other legal proceedings even when the evidence was not considered. By changing the process, we can ensure that all evidence that is submitted moving forward will have actually been considered as evidence. With regard to the digital evidence, by requiring it to be submitted in a mobile, solid state format it can be stored with the physical file, rather than on digital servers. This negates the possibility of failing to disclose digital evidence, as individuals gathering information from a physical file may not realize that the digital evidence exists elsewhere, separate from the file. At the previous meeting when this was discussed, Captain Lawson with the Division indicated that they would be open to the proposal. In subsequent discussions with Major O'Rourke, it was indicated that the Division supports the request of the Board. Nothing substantial will change for the Division, other than not submitting any evidence until it is actually needed at the hearing itself.

Chairman DeRicco then recognized Captain Tom Lawson from the Division to speak. Captain Lawson then acknowledged several discussions held, both internal to the Division and between the Division and the Board, which culminated in the Division being open to streamlining processes to ensure efficiency. However, a concern was raised during internal discussions in the Division regarding increased burden of retention for their records. Because no decision has yet been reached, the Division therefore is unable to accommodate this request at this time, pending further investigations.

Chairman DeRicco then clarified that this concern is a recent one, as the previous conversations had all indicated that the Division would be able to accommodate this altered evidence process. Captain Lawson confirmed that it was a recent concern, and additionally raised the concern that the Las Vegas branch of the Division is currently already following this procedure and has been for some time.

Motion: To table Agenda Item V based upon information provided by the Division this morning. Once we have the information that everyone is on board, the item can then be placed on a future agenda.

Made: Commissioner Corda

Seconded by: Commissioner Jackson

Votes in Favor: Corda, Jackson, Endel, DeRicco, Keeler, De La Torre, Christiansen

Votes Opposed: None

Motion passed

VI. For possible action: The Board may act to revise the general conditions of parole supervision to comply with the constitutional provisions for victim’s rights effective November 27, 2018, (Marsy’s Law) and act to apply the revised conditions to each offender who is currently on parole and who will be released on parole on or after January 9, 2019, and related matters. The Board will consider adding a standard condition of parole to address a parolee’s contact with victims of crime, and to require a parolee to satisfy any outstanding warrants within 90 days of their release from custody.

Mr. David Smith with the Board was recognized to introduce this item. He referenced the handout provided with respect to this item, as well as a copy of changes to the general conditions of parole. The first item on the handout references the need to add a general condition regarding satisfying warrants upon release, which had previously been a special condition and would now become a standard condition. The other item is regarding adding a general condition to accommodate the constitutional amendment commonly known as Marsy’s Law. This condition accounts for both the constitutional and statutory definition of “victim”.

Commissioner Corda had a concern regarding the placement of the “victims” condition under the “Directives” heading, and felt as though it should be its own section, due to its importance. Chairman DeRicco agreed with Commissioner Corda, that the victim condition should not be under “Directives” but should be treated as other Standard Conditions, such as Substance Abuse.

Motion: **Move that the Board act to revise the General Conditions of Parole Supervision to comply with the Constitutional provisions for victims’ Rights effective November 27, 2018 (Marsy’s Law) by including the “victims” condition, section J of the attachment, and that the Board also moves to act to include the “Warrants” condition in the General Conditions of Parole Supervision, section I of the handout, with the understanding that the “victims” condition be made a standalone condition, not under the “Directives”.**

Made: Commissioner Corda
Seconded by: Commissioner Endel
Votes in Favor: Corda, Jackson, Endel, DeRicco, Keeler, De La Torre, Christiansen
Votes Opposed: None
Motion passed

VII. For possible action: The Board will consider acting to approve an informational sheet detailing information relative to victim participation in parole hearings that may be provided to victims of crime or other interested persons.

David Smith introduced this item. Mr. Smith specifically referenced a provided handout entitled “Victim Information for Parole Hearings.” Prior to this time there has been no specific public documentation regarding the parole process for victims and their relative rights. With the passing of the Constitutional Amendment it was considered judicious to produce such a document. The presented document is a draft, open to corrections and revisions based upon any current Board practices or procedures not accounted for at the time of drafting. Mr. Smith then reviewed the impacts of the changes of the Constitutional Amendment (Marsy’s Law) has upon the standard operations of the Board. Though the Board has long considered victims’ rights for regular parole hearings, the biggest impact is that victims now have the right to testify at “any parole proceeding,” which means that victims likely now have the right to speak at

Parole Violation hearings. This would potentially create a conflict between victim’s right to speak, even if they were not directly affected by the violation, and the due process rights of the inmate.

A period of open discussion regarding the informational packet followed, the substance of which consisted of the following:

Commissioner Endel raised the concern that because there is due process in Parole Violation hearings, whether this might allow for cross-examination of victims. The Board might in the future find it necessary to create policies regarding behavior in violation hearings.

Commissioner Jackson inquired if the “Victim Information” sheet in question would be provided to the victims prior to the hearings, as well as the day of. Mr. Smith raised the concern that printing and distributing that number of informational sheets would be of prohibitive cost, and that the Board already distributes small informational leaflets to all victims. The “Victim Information” sheet in question would be available for download from the Board’s website, as well as available in hearing rooms.

Commissioner Keeler questioned if a certain phrase regarding the waiving of confidentiality for victims of certain sexual crimes was included, specifically that such victims would have to sign a waiver of confidentiality. Though this information was alluded to in the document, it was not specifically stated.

Commissioner Corda raised the concern that the information contained in the “Victims Information” sheet in question was subject to change, and that some verbiage to the effect that the document is not definitive or all-inclusive should be included. It was agreed that a disclaimer should be added to the document. The document is envisioned to be a dynamic document, with changes likely as situations change.

Motion: Motion to accept the “Victim Information for Parole Hearings” information sheet, with the inclusion of the waiver of confidentiality by victims of sexual assault to the “Victims of Certain Sexual Offenses” section, and to add a disclaimer for future changes that might occur.
Made: Commissioner Keeler
Seconded by: Commissioner Christiansen
Votes in Favor: Corda, Jackson, DeRicco, Endel, Keeler, De La Torre, Christiansen
Votes Opposed: None
Motion passed

VIII. For Possible Action: The Board may act to approve a parole hearing procedure to address situations where there is reasonable evidence in the parole hearing record that the case involves a victim to ensure the safety of the victim, the victim’s family and the general public is considered before granting parole and setting release conditions.

The Chairman recognized Mr. David Smith to give information on this topic. In response to the recent constitutional amendment known as “Marsy’s Law,” it became necessary to include some formal acknowledgement at parole hearings that the rights and safety of the victims, victims’ families, and general public were being considered in the Board’s decisions. At present, after the passing of the Amendment, a statement to that effect has been read aloud at the beginning of every parole hearing. Other options to address this concern were also considered, including adding a blanket statement on the Parole Grant orders, however this would cause conflict for cases in which there was no victim to

consider. It was provided that the Board cannot provide for something that does not apply in an order and that the Board could possibly add a notation in the grant reasons.

Chairman DeRicco then stated that, having considered many options, he felt that the best solution was to simply continue making the verbal statement at all of the violation hearings, and that would meet the spirit of the constitutional requirement. The floor was then opened to discussion.

Commissioner Endel raised the possibility of including the statement on the notification of hearing form signed by the inmates. While there are currently plans to include this statement on that form, the concern was raised that this only tells the inmate that the safety of the victims, victims' families, and general public would be considered. Concerns were also raised that it does not address the spirit of the constitutional amendment, as it does not inform anyone else that the Board considered these factors prior to granting parole. Commissioner Corda stated that he felt that adding the verbal statement on the record actually served two purposes, as it informed as to both for reasons to grant and reasons to deny parole. Commissioner Christiansen raised the question as to whether this statement would also need to be made at violation hearings. Katie Brady with the Attorney General's office spoke to this effect, stating that the extent to which Marsy's Law applies to Parole Board proceedings has not been definitively ruled on by the courts. She provided that, in the spirit of caution, the Board is in a better legal position if it treats all parole hearings, including violation hearings as being subject to the tenants of the constitutional amendment.

Motion: **Move to address this agenda item by continuing to make the verbal statement to the effect that the Board will consider the safety of the victims, victim's families, and the general public at all parole hearings and parole proceedings, including Parole Violation hearings.**
Made: **Chairman DeRicco**
Seconded by: **Commissioner Jackson**
Votes in Favor: **Corda, Jackson, DeRicco, Endel, Keeler, De La Torre, Christiansen**
Votes Opposed: **None**
Motion passed

IX. For possible action: The Board will consider and may act on requesting that the Board may authorize the Chairman to designate the Hearings Examiner II or any of the Commissioners of the Board to attend and represent the Board at judicial mediation or settlement conferences. The Board may establish parameters that allow preliminary settlement authority with final approval of a majority of the Board.

Mr. David Smith introduced this topic, referencing the handout provided with respect to agenda item IX. Previously, at a meeting in 2016, the Board had designated the Chairman and the Hearings Examiner II to act on behalf of the Board at any judicial mediation or settlement conferences. This item would amend that to give the Chairman the ability to designate any member of the Board, or the Hearings Examiner II to act in these proceedings. This would provide increased flexibility, as there would be more members of the Board available for such proceedings. A draft of the motion was included in the handout.

Motion: **Move that the Board authorize the Chairman of the Board to designate any member of the Board (including the Chair) and/or the Parole Hearings Examiner II, to attend and negotiate judicial settlements on behalf of the Board. Furthermore, the Board authorizes the designee to**

indicate during settlement negotiations that, generally, the position of the Board is to ratify a settlement that would result only in a new parole hearing without any expectation of the outcome of that new parole hearing, and without any admission of wrongdoing or a monetary settlement. Any other negotiated agreement made by the designee would be considered by the Board, but the designee should advise the mediator that any other agreement is less likely to be approved, but not necessarily rejected. Lastly, any negotiated settlement is subject to the final approval of a majority of the Members of the Board at a public meeting.

Made: Commissioner Jackson
Seconded by: Commissioner De La Torre
Votes in Favor: Corda, Jackson, DeRicco, Endel, Keeler, De La Torre, Christiansen
Votes Opposed: None
Motion passed

- X. 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

No public comment.

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

Motion: To adjourn meeting.
Made: Commissioner DeRicco
Seconded by: Commissioner Corda
Votes in Favor: Corda, Jackson, DeRicco, Endel, Keeler, De La Torre, Christiansen
Motion passed