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NEVADA BOARD OF PAROLE COMMISSIONERS

MINUTES

Workshop for Proposed Regulation on Assembly Bill 236, Section 93.7

October 31, 2019

Minutes Approved on December 19, 2019

Overview of Workshop

A public workshop was held on Thursday, October 31, 2019, beginning at 1:15 PM at the office of the Board of Parole Commissioners (Board) located at 1677 Old Hot Springs Rd, Ste. A, Carson City, Nevada and video-conferenced to the office of the Parole Board located at 4000 S. Eastern Ave, Ste 130. Las Vegas, Nevada. The workshop was held as agenda item III on the Board's regularly schedule public meeting. No action was taken on this agenda item, as it was a workshop.

Board Members in attendance in the Carson City office:

Chairman DeRicco
Commissioner Corda
Commissioner Endel – Absent Excused
Commissioner Jackson – Absent Excused

Board Members in attendance in the Carson City office:

Commissioner Christiansen
Commissioner De La Torre
Commissioner Keeler

Support staff in attendance:

Katie Fraker, Administrative Assistant III
David Smith, Hearing Examiner II
Katherine Baker, Management Analyst III
Debra Hausman, Management Analyst I
Allondra Thibault, Administrative Assistant II

Members of the public present in Carson City included:

Katie Brady, Deputy Attorney General
Tonya Brown, Advocate for Inmates and the Innocent
Stephanie O'Rourke, Department of Public Safety, Division of Parole and Probation
Claudia Stieber, Department of Public Safety, Division of Parole and Probation

Members of the public present in Las Vegas included:
Ariel Ashtamker, ACLU of NV

Public comment - Las Vegas

No public comment.

Public comment – Carson City, NV

Tonya Brown – Advocate for the Inmates and the Innocent

Ms. Brown made comment in the Board meeting portion of public comments that she later indicated were meant for the workshop portion of public comments. Ms. Brown commented that she reached out to some parolees and they felt that twelve months on parole is an awfully short period and should be extended to twenty-four months. A year goes quickly after release, re-establishment and demonstrating a record of success should be reviewed after at least twenty-four months. Ms. Brown stated that the parolees thought it might be worth asking for a review for long term ten to fifteen, year success parolees. These parolee's thought it to be a waste to continue supervision after that long because rehabilitation is shown to have occurred.

Ms. Brown made a general comment regarding a computer glitch going back several years ago. Ms. Brown stated that back in 2011, it was discovered that when the Nevada Department of Corrections (NDOC) re-installed and re-implemented the Nevada Offender Tracking Information System (NOTIS), it put false felony charges in inmate's files. Ms. Brown asked that when an inmate appears before the Parole Board (Board), that the Board really listen to what the inmate has to say when an inmate denies new charges, because false information is continuing to happen to this day. Ms. Brown stated she received a call from a parolee in Clark County Detention Center (CCDC) who claimed additional information showed up on the parolee's file. Ms. Brown contacted the inmate's attorney to provide the computer glitch information.

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

Topic: The Board to discuss adding to its regulations pursuant to the changes made to NRS 213 in Assembly Bill (AB) 236, Section 93.7 from the 2019 Legislative session, which established a system for early discharge from parole. The Board will consider adding regulations to establish the Division's recommendation requirements to the Board for the early discharge of a person from parole; the Board procedures for determining if the parolee meets criteria for early release; notice to the parolee if a hearing is to be held; victim notification; and providing other matters properly relating thereto.

Kathi Baker, Management Analyst III facilitated the workshop and re-capped AB236, Sec. 93.7 as it relates to an early discharge of a person on parole. If the Board receives a recommendation from the Division of Parole and Probation (Division), for an early release of a parolee and if the parolee meets the criteria for early release, then the Board may award credits equal to the time remaining on any sentence to reduce the sentence to time served.

Ms. Baker went on to read the proposed draft regulations for the record and then opened the floor up to comments.

Summary of Testimony

No written comments were received.

Commissioner Keeler stated some of his thoughts on this subject may better be presented in the Operations of the Board manual or into procedures. Commissioner Keeler went on to discuss section three of the proposed draft and questioned if there would be a process or any criteria to determine if the parolee would be seen in absentia and what would trigger an in-person hearing. If the process would follow the current absentia hearing process, Commissioner Keeler felt that there should be criteria to determine how the person would be heard.

Commissioner Corda felt that Commissioner Keeler was talking about the actual process and that the Nevada Administrative Code (NAC) is more generalized and a more detailed process would need to be determined at another time. Commissioner Keeler agreed.

Commissioner Keeler stated that another issue is the criteria that could go into the NAC. He asked if there is a victim notification, could that parolee ever be considered in absentia or would that be an exclusion since the victim has a right to be heard? Commissioner Keeler asked questions regarding the proposed regulation and if the criteria would be included.

Katie Brady, Deputy Attorney General (DAG), clarified that a workshop is a discussion, that it is a platform to gather ideas and direct responses do not need to be addressed to every question, that comes later in the regulation process. This is the preliminary phase where information is gathered to see what issues exist.

Ms. Baker commented that Commissioner Corda is correct that the NAC clarifies the Nevada Revised Statutes (NRS) and provides more detail. She commented that a procedure will be created from the NAC which would entail another meeting.

Commissioner Keeler commented that he would like to see some victim verbiage added into the NAC and doesn't feel any case involving victim notification should be heard in absentia. He commented that it should be made part of the NAC that no case with victim notification should be heard in absentia to ensure the rights of the victims.

Commissioner Corda commented that he agreed because that would be concurrent with the way absentia hearings are held. Chairman DeRicco provided that he felt that it was Ms. Baker's intention to follow how the Board currently holds in absentia hearings. Ms. Baker concurred and stated the NRS' referred to in the proposed regulation were referred to in order to follow the same path as the criteria used to determine if an AB117 hearing should be heard in absentia. Commissioner Keeler stated that he believed that it's not currently in the operations of the board manual.

Chairman DeRicco questioned if Commissioner Keeler liked the way the criteria are listed in the current NAC's rather than a referral to statute, so that the criteria language would be included in the proposed regulation? Commissioner Keeler commented that he felt that a simple sentence added after NRS 213.133(8) in the proposed regulation such as: *no victim notification case can be considered in absentia* would work. He provided that it doesn't need to be expansive, it just

needs to exclude any parolee with a victim not be heard in absentia. Chairman DeRicco stated that he read the proposed regulation to read what Commissioner Keeler suggested, but there isn't exact language that clarifies, and agreed that it is a good point.

Commissioner Keeler also discussed that the new NRS states that the Division "shall" recommend early release, but it later states that the Board "may" choose to award early release, leaving the Board open to award credits or not. The NRS gave the Board authority to make the decision. He asked whether the Board would want to establish an appropriate reason to deny the early release so there are criteria set or would that be more procedure or operational?

Katie Brady, DAG, provided that the "shall" language in the new NRS does not state the Division "shall" make a positive recommendation to award credits. She further provided that this is the forum for any thoughts such as for criteria to be placed on the record and be flushed out.

Commissioner Keeler stated that the Board may hear something from victims that may be of great concern, so the Board may want to keep the parolee on supervision and wants the Board to have the authority to award credits or not award credits. He indicated that private testimony from victims can make an impact.

Chairman DeRicco referred to the new statute and stated that there is nothing in the statute regarding the victims. However, victims were considered as a part of the NAC. Chairman DeRicco agreed with Commissioner Keeler that some criteria might be beneficial to include to determine what may constitute a case to receive an early discharge or what differentiates an early discharge from another. Chairman DeRicco sees it more as a procedure other than a NAC.

Commissioner Corda provided that he reads the statute to state that it is at the discretion of the Board to give an early release. If certain criteria are added, then that would restrict the Board's decisions in terms of discretion. Ultimately, it is the discretion of the Board. He provided that victim impact would be one of the criteria. He had no other comments.

Commissioner Keeler agreed that we wouldn't want to confine too much, but also stated that throughout statute, it requires the Board to make guidelines and to be transparent to the public and, in that spirit, the Board should establish something so there is an understanding of what is going on. Commissioner Keeler felt if left unattended, then it wouldn't be transparent enough, and should be like of the other Board processes. He provided that while victim impact is not mentioned in AB236, it is throughout the statutes before a parole judgement or a release decision is made.

Chairman DeRicco stated Marcy's law is very important to the Board. Chairman DeRicco discussed if victim consideration should be vetted out further through the NAC or vetted out further through policies and procedures. Chairman DeRicco provided that he looks at the proposed regulation as the framework and he discussed putting the rest into procedures.

Katie Brady, DAG, pointed out that the Board has the authority to adopt any regulations necessary to carry out the provisions of the section, so since the Legislature has given the Board that broad authority, if the Board wants to make any policies, her recommendation is that it

would need to be in the regulation. She pointed out that the Board could refer to other NACs or could list criteria, like the Board does in existing NACs.

Public comment – Carson City, NV

Tanya Brown, Advocate for the Inmates and the Innocent.

Ms. Brown was concerned the absentia hearings where victims have been seen privately or, submitted their information to the Board for decades. She provided that victims give false testimony and false information about the case. Ms. Brown stated that she feels that the inmate has every right to face their accuser, and to defend themselves against accusations because the Board does not know for sure if everything that the victim stated happened is true. Especially if the victim is deceased and it's the family members speaking on behalf of their loved ones. Ms. Brown discussed a case where the family came to hearings and for years provided false information to the Board. She provided that it was straightened out after thirty years and then the inmate was paroled. Ms. Brown stated that she doesn't like the idea that a victim can write to the Board and they don't have to testify at the parole hearing or even appear, so it's thought to be true.

Public comment - Las Vegas

No public comment.