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NEVADA BOARD OF PAROLE COMMISSIONERS

MINUTES
Meeting of the
Board of Parole Commissioners
November 7, 2018

MINUTES APPROVED ON JANUARY 09, 2019

The Board of Parole Commissioners held a public meeting on November 7, 2018 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
- Brian Stone, Administrative Assistant III
- David Smith, Hearing Examiner III
- Kathi Baker, Management Analyst III

Members of the public present in Carson City included:

- Katie Brady, Deputy Attorney General
- Lisa Pierrott, Lieutenant, Division of Parole and Probation
- Tom Lawson, Captain, Division of Parole and Probation
- Marc Chambers, Division of Parole and Probation

Members of the public present in Las Vegas included:

- Deborah Ferguson
- Lucy Trujillo
- Fred Trujillo
- Kristina Wildeveld
- Beth Stankus, Division of Parole and Probation
- Shane Brandon, Division of Parole and Probation

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

No public comment.

Public comment - Las Vegas

No public comment.

III. For possible action: The Board will consider and act on applications requesting that the Board petition the court of original jurisdiction to modify the sentences of the following parolees in accordance with subsection 2 of NRS 176.033. The Board will consider the reports and recommendation of the Division of Parole and Probation; written input received by interested parties; and any testimony by interested parties.

1) Deborah Ferguson, NDOC # 16486, Criminal Case # 46340

The Board may take no action, deny the request or give recommendation and act to petition the court of original jurisdiction to modify the sentence. Pursuant to subsection 5(c)(3) of NRS 241.020, all of the supporting documents are confidential and will not be provided to members of the public (see NRS 213.1075).

Katie Brady stated that there is a similar case currently before the Nevada Supreme Court that may be dispositive as to Ms. Ferguson's eligibility for sentence modification and suggests if the Board does vote to approve to petition the court that the approval be contingent upon the release of the Nevada Supreme Court decision and to move forward only if the Thompson decision does not foreclose relief in the form of a potential sentence modification for Ms. Ferguson.

Ms. Ferguson spoke on her reasons for requesting sentence modification. She told the Board that she is currently disabled and does not feel she is a threat to public safety. She has remorse for her participation in the crime.

Marc Chambers stated that the Division of Parole and Probation recommends that the application go forward. Ms. Chambers has had no violations, zero contact with law enforcement and this was her only offense on record.

Commissioner Corda suggests that due to the pending Nevada Supreme Court case, perhaps the Board should delay the review of Ms. Ferguson's application.

Chairman DeRicco also feels the Board may want to delay review.

Motion: To take no action until the resolution of the Thompson case.
Made: Commissioner Keeler
Seconded by: Commissioner Jackson
Votes in Favor: Corda, Jackson, DeRicco, Endel, Keeler, De La Torre, Christiansen
Motion passed

IV. **For possible action:** Review/Approval of minutes from the April 19, 2018 Board meeting.

Motion: To Approve minutes from the April 19, 2018 Board meeting.
Made: Commissioner Jackson
Seconded by: Commissioner Corda
Votes in Favor: Corda, Jackson, DeRicco, Endel, Keeler, De La Torre, Christiansen
Votes Opposed: None
Motion passed

V. **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.

Katie Brady stated that there may be a problem with this agenda item as it does not provide notice to individuals as to the potential changes to residential confinement.

Motion: To table Agenda Item V to a time that is set forth on the next Board meeting.
Made: Commissioner Christiansen
Seconded by: Commissioner Endel
Votes in Favor: Corda, Jackson, DeRicco, Endel, Keeler, De La Torre, Christiansen
Motion passed

VI. **For possible action:** The Board will consider and may act on requesting that changes be made to the Division of Parole and Probation's Violation report (VR).

Chairman DeRicco went over key points on the changes to be considered to include that violations of the rules at Casa Grande Transitional Housing should be treated like any halfway house violation and not as a violation of institutional rules. Parolees should be managed in the community if it is safe to do so, and any violation report should include steps taken by the Division to try to work with the parolee prior to violation. Any violation of parole should be listed independently instead of grouped together in a violation report. Alleged violations of parole on a violation report, excluding absconding, should not be any older than six months. The supervising officer should be available at violation hearings if the officer's statements are a basis of evidence for violation of parole. Supplemental violation reports are considered as extensions of the original violation report. Violation reports are considered allegations and are not evidence in and of themselves. If there are special conditions that mirror standard conditions in a report, only special conditions need to be alleged in the violation.

Katie Brady noted that the agenda item is limited to requested changes on the actual violation report.

Chairman DeRicco discussed using violations independently instead of grouped together in the violation report.

Commissioner Keeler addressed the history of the request.

Chairman DeRicco stated that the Board is requesting the change for clarity reasons.

Commissioner Christiansen agreed that clarification would help both the Parole Board and the parolee.

Katie Brady clarified that under this agenda item the Board can address format and content changes within the violation report.

Chairman DeRicco reiterated that the intent of the requested change was for clarification purposes.

David Smith discussed exactly what the Board can consider under this agenda item. This agenda item addresses format and content only, and how some of the items addressed in Chairman DeRicco's opening statement cannot be discussed as they pertain to policy. He also stated that Agenda Item XI would address evidence process.

Commissioner Keeler suggested that the Board table further discussion on Agenda Item VI until after Agenda Item XI.

The Board agrees to Commissioner Keeler's request.

Continued after Agenda Item XV

- VII. **For possible action:** The Board will consider adding a new condition to the list of potential conditions to provide something similar to, **“Residential Program Completion - Should your parole release plan include a residential program or half-way house, you shall enter and complete the program as approved by the Division of Parole and Probation, unless approved in advance by your supervising officer.”**

Lisa Pierrott stated that adding this condition will help discourage parolees from walking away from programming once released on parole and obligate them to complete the program. The Division has received money to assist parolees in paying for programming and some negative effects are that the parolee may not take the programming as seriously due the fact that it was paid for by the Division so the parolee no longer has a financial commitment to the program. Some inmates may feel that their release plan would be approved sooner if they were to go directly into programming. She also addressed concerns that the Board may have about seeing an increase in violators if this condition was added. She stated that precedence has been set previously by the approval of the additional condition *“You shall satisfy any outstanding warrants within 90 days of your release from custody”*. She stated that a violation of the *warrants* condition is not a violation that they would solely be arrested for, it is for making the inmate more accountable for making sure they have no active warrants. She states that that is what she is seeking with the addition of the requested programming condition.

Commissioner Corda expressed concerns about applying additional conditions to an offender and stated that the requested condition could fall under a current standard condition such as *Directives*.

Commissioner Keeler stated that maybe the rise in program failures may be a problem with the system and not a reason for adding a condition. He also stated that a parolee should have the option to opt out of a program.

Commissioner Christiansen asked if the reason that the Division was requesting the addition of the requested condition is solely to codify a plan that the Division requires so the inmate will take completing the program more seriously. Lt. Pierrott confirmed that is what the Division is requesting.

Chairman De La Torre stated she feels that the Board already has provisions that allow inmates to be violated for non-compliance.

Chairman DeRicco stated that he feels that parolees tend to do better when given specific conditions. He feels it may be better as a standard condition than a special condition.

Lisa Pierrott stated that the increase in parolees dropping out can also affected the success of programs due to loss of funding caused by unsuccessful completion. She stated that the loss of the Salvation Army program was an example of this.

Commissioner Corda suggested that maybe this condition could be added to the current residence condition.

Katie Brady stated that amending the standard condition of *residence* was not considered in the agenda item and suggested that it be placed on a future agenda item.

Commissioner Jackson stated that she does not feel that a new condition needs to be added as there are other conditions that would apply.

Motion: To take No Action to this agenda item at this time.
Made: Commissioner Keeler
Seconded by: Commissioner Corda
Votes in Favor: Corda, Jackson, DeRicco, Keeler, De La Torre, Christiansen
Votes Opposed: Endel
Motion passed

VIII. **For possible action:** The Board will consider adding a new condition to the list of potential conditions to provide something similar to, “Warrants – You shall satisfy any outstanding warrants within 90 days of your release from custody.”

David Smith provided background information on this agenda item. He explained that there have been several changes to how this condition has been applied. These changes arose because initially parolees releases were delayed due to the fact that Parole and Probation had to go through the process of requesting a new order changing the conditions to add “Must Satisfy all Warrants”. Due to the volume of these requests, the Board issued a blanket order stating that if it is discovered that this condition would need to be added, P&P could apply the condition to the case. The reason this item has come back before the Board is because there has been question to whether the Board had the power to delegate this authority.

Katie Brady provided the statutes and case law that may apply to the authority of the Board. She indicated that this condition could be included with the standard conditions set by the Board upon release of an inmate.

Commissioner Keeler asked if the Board could apply it as a special condition on all orders until it can be added to the standard condition of parole.

Katie Brady stated that it could be added as a special condition until the Board could address it again at a future Board meeting. She explained that the agenda item is worded in a way that does not suggest that the Board was considering this condition to be added as a standard condition of parole.

Commissioner Keeler asked how the Board would address any violations of this condition if it was added by P&P prior to this meeting. Katie Brady and David Smith both indicated that the Board may proceed with any violations of this condition as they always have.

Motion: Add the condition “Warrants – You shall satisfy any outstanding warrants within 90 days of your release from custody” to the special conditions of parole effective immediately.
Made: Commissioner Keeler
Seconded by: Commissioner Corda
Votes in Favor: Corda, Jackson, DeRicco, Endel, Keeler, De La Torre, Christiansen
Motion passed

IX. **For Possible Action:** The Board will consider and may act on requiring that the Board will not entertain Modification of Sentence requests pursuant to NRS 176.033 without a supportive recommendation from the Division.

The Chairman began by recognizing Katie Brady from the Attorney General’s office, who reviewed the context of the Item. She stated that in the past the Parole Board has viewed the term “recommendation” in this Statute as having a positive connotation, in that only positive recommendations from the division would satisfy this Statute. However, Ms. Brady stated that in a previous Board meeting the Board had decided, as a matter of policy, to read the term “recommendation” in a neutral manner, implying that all recommendations from the Division (Of Parole and Probation) would satisfy the statutory requirements. This was prompted at the time by a lack of positive recommendations from the Division. The Item has been re-addressed as the Division has once again started to send positive recommendations, so the Item addresses if the Board wants to alter its policy regarding this wording.

The Board then deliberated on their understanding of the recommendation process, the substance of which included if the Board were to take a positive interpretation of the term “recommendation”, then the responsibility for and empowerment to recommend Modifications of Sentence would shift from the Board to the Division. The acceptance of the Courts for the previous policy of reading the term “recommendation” neutrally was considered. David Smith was recognized and spoke about a case, which Ms. Brady clarified was in the 10th Judicial District, which was rejected due to a lack of positive recommendation from the Division. David Smith also spoke about the importance of Modification of Sentence in the process of Aggregation of Sentence, and his concerns that shifting responsibility for initiating Modification of Sentence from the Board to the Division would negatively impact the intent of the of Aggregation of Sentences.

Captain Lawson from the Division of Parole and Probation spoke to the Board, indicating that the Chief of the Division will continue to not give many positive recommendations for Modification of Sentence, and that the Division will continue to interpret “recommendation” in the statute as being a positive recommendation, citing the 10th Judicial District case as evidentiary support of their view. Ms. Brady stated that despite the 10th Judicial District case, there was no controlling precedent in current Nevada law, as the neutral definition has been upheld by both the 2nd and 8th Judicial District courts.

Motion: Move to take No Action and leave the current policy in place.
Made: Commissioner Keeler
Seconded by: Commissioner Jackson
Votes in Favor: Corda, Jackson, DeRicco, Endel, Keeler, De La Torre, Christiansen
Motion passed

- X. **For possible action:** The Board will consider and may act on requiring that a majority of the Commissioners vote on and approve the holding of a hearing on all Sentence Modification requests before a hearing is conducted by the Board to determine whether the Board wants to petition the court to modify the individual's sentence pursuant to NRS 176.033.

The Chairman explained that currently, if only one commissioner wishes to hold a Sentence Modification hearing the hearing is held, even if the other six commissioners do not want to hear the case. In the interests of consistency this item would change that practice to requiring a majority vote, the common practice of the Board. This is as pertains to the holding and scheduling of the hearing only, not the outcome of any Sentence Modification hearing.

The Board then deliberated on their understanding of this process, the substance of which involved the concern that Sentence Modification hearings were complex issues, and given that the Board does not discuss Sentence Modification cases prior to a hearing, requiring a majority vote would stifle the opportunity for relief. David Smith brought up several concerns regarding the application of Open Meeting Law to this Item, and if requiring a majority vote would necessitate a Public Meeting. The deliberation also included whether this action was intended to solve a problem, or if it was strictly a pro-forma change for unanimity of practice. It was indicated that this was a pro-forma change for the sake of continuity.

Motion: **Move to table this matter, number ten, until a future date, and take no action at this time. Place this item on the next agenda.**
Made: **Commissioner Christiansen**
Seconded by: **Commissioner De La Torre**
Votes in Favor: **Corda, Jackson, DeRicco, Endel, Keeler, De La Torre, Christiansen**
Motion passed

- XI. **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.

The Chairman, assisted by Katie Brady from the Attorney General's office and David Smith, gave a brief background of this issue, stating that the initial impetus for addressing this concern arose out of a limited digital storage capacity in the Las Vegas office of the Board. Currently, the Board receives a detailed packet of evidence from the Division prior to a Parole Violation hearing. Not all the evidence in this packet will necessarily be considered at the Parole Violation hearing, as sufficient evidence may exist without the entire packet or the inmate may plead guilty, negating the need for evidentiary support. Currently, if the Board does consider evidence it must retain it. The packet of evidence being submitted by the Division must therefore currently be retained in its entirety, even if not all the information is considered as evidence. This often includes large digital files, such as Body Cam footage or other video footage that the Board may not necessarily consider. All of this evidence must also be made available for other legal proceedings.

The Board therefore, requests that all digital evidence must be submitted in a mobile, solid state format which can be stored with the inmates physical file, rather than in the digital servers of the Board. This will also negate the possibility of failing to disclose digital evidence, as individuals gathering information primarily from a physical file may not realize that digital information exists separate from the file. Additionally, the Board will request that the Division will only send and enter as evidence that

information which is actually considered at the hearing, rather than have the Division submit a large packet prior to the hearing.

Captain Tom Lawson from the Division of Parole and Probation stated that the Division would be open to this proposal, but they had logistical concerns surrounding the submission of the evidence. He felt that divorcing the evidence from the Violation Report might result in a loss of information, as these are currently treated as a single unit by the Division. This concern was addressed, stating that currently the Board received the Warrant and Violation report, and the evidence packet was already submitted after the inmate was scheduled for a hearing. The Division then could simply bring the evidence to the hearing and submit it then if needed.

Motion: Take No Action on this Item and consider it at a future Board meeting after working with the Division to put a process in place.
Made: Commissioner DeRicco
Seconded by: Commissioner Keeler
Votes in Favor: Corda, Jackson, DeRicco, Endel, Keeler, De La Torre, Christiansen
Motion passed

XII. **For possible action:** The Board will consider and may act on requesting that the Department of Corrections have all parolee’s awaiting parole violation proceedings be required to sign the parole violation (PV) Notice.

The Chairman introduced David Smith to provide background information on this Item. Mr. Smith referenced a draft document to be provided to the inmates prior to a Parole Violation hearing. This draft document was provided with the agenda and is attached here. It was noted that this document is similar in nature and usage to the form provided to inmates prior to discretionary hearings, which indicates that the inmate was properly notified of his hearing date and time. This document also includes some of the language of the Admonition, a document normally signed at Parole Violation hearings, so this new document may in the future replace the Admonition document. This document could also lead to a change in Policy regarding the issuance of Orders at Parole Violation hearings, altering the current practice to providing only a Panel Recommendation at the PV hearing, rather than an Order. It was noted by the Chairman that this document also worked to provide continuity within Board policy.

The Board deliberations included discussions of the practicality of implementing this document, required timelines for notification, and working with the Division to alter current practice regarding agendas for Parole Violation hearings. It was the hope of both the Board and the Division that agendas could be finalized at least a week prior to the hearing dates, to allow for five working days’ notice to the inmate. This included the concern regarding hearings continued to the next week. The solution was suggested that notices be available at the hearings, and if a hearing is continued to the next week, the inmate sign the document at the previous hearing.

Motion: I move that we utilize the new Notice of Hearing before the Nevada Board of Commissioners Parole Violation Proceedings notice that we have before us today, and make that effective as soon as practicable.
Made: Commissioner Corda
Seconded by: Commissioner Jackson
Votes in Favor: Corda, Jackson, DeRicco, Endel, Keeler, De La Torre, Christiansen
Motion passed

XIII. **For possible action:** The Board will consider and may act on requesting that any employee serving in an unclassified position with the Board who wants to undertake secondary employment must complete a Secondary Employment Disclosure form and submit it for approval by the agency head, in accordance with NRS 284.143, and NAC 284.738, 284.742, 284.742, and 284.766 or any other appropriate NRS or NAC.

The Chairman made the introductory remarks, to the effect that this form is available by statute and NAC, but that it was not currently Board policy.

The Board deliberated, with a raised concern being that in NRS 284.143, an individual can obtain secondary employment upon approval of their supervisor. The primary concern was that, for Commissioners the only clear and direct supervisor would be the Governor, and does the Governor have a policy in place regarding this? It was decided that Katie Brady from the Attorney General's office would conduct additional research to determine the accepted interpretation of "supervisor" regarding appointed positions such as commissioner.

Another concern raised regarded NRS 213.1087, which specifically states that members of the Board should devote their entire time and attention to the Board and not pursue any other employment that detracts from their focus on the work of the Board. Some discussion ensued regarding whether it would then be legal for any Commissioners to have secondary employment. However, Ms. Brady of the Attorney General's office clarified that this was only for employment that detracted from the work of the Board. Commissioners under this statute are still permitted to seek secondary employment when not working for the Board, for example on the weekends. However, to be safe, specific permission would need to be given for every instance of secondary employment, to ensure compliance with NRS 213.1087.

Motion: To table this and take no Action and move this to a future agenda, pending the advice of the Attorney General's office with regard to the definition of Supervisor for the Commissioners.
Made: Commissioner DeRicco
Seconded by: Commissioner Endel
Votes in Favor: Corda, Jackson, DeRicco, Endel, Keeler, De La Torre
Votes Opposed: Christiansen
Motion passed

XIV. **For possible action:** The Board will consider and may act on requesting that the Chairman of the Board be the appointed authority to serve on the Nevada Sentencing Commission and the Advisory Commission on the Administration of Justice (ACAJ).

The Chairman made the introductory remarks to the effect that this vote would shift the responsibility for these positions to the title of Chairman, rather than a named individual, as is currently the practice.

The Board then deliberated, with the substance of the conversation including the explicit acknowledgement that this topic had been discussed at a prior Board meeting, dated June 25, 2009, agenda item #7. There was some opposition to this item, stating that there was no particular need to have it always be the Chairman who held these appointments, as the law allows any Board Member to hold them. In the future, other members of the Board may wish to hold these appointments, and restricting these to only the Chairman might be detrimental to the interest of the Board. It would be in the better interest of the Board to leave the policy that only named individuals be appointed to these positions, rather than encapsulate these appointments within the title of Chairman.

Motion: Move that the Board would act on requesting that Chairman Chris DeRicco be the Board appointed authority to act on the Nevada Sentencing Commission and the Advisory Council for the Administration of Justice (ACAJ).

Made: Commissioner Jackson

Seconded by: Commissioner Endel

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

Votes Opposed: Corda

Motion passed

Commissioner Corda stated that he didn't know what appointment entails, and would like to look into what the appointment duties were to determine whether he would also like to also consider the appointment.

XV. **For possible action:** The Board shall comprehensively review the standards adopted by the Board pursuant to NRS 213.10885 in Nevada Administrative Code (NAC) Chapter 213 and may act on determining whether the standards are effective in predicting the probability that a convicted person will live and remain in liberty without violating the law if parole is granted or continued. If a standard is found to be ineffective, the Board shall not use that standard in its decisions regarding parole and shall adopt revised standards as soon as practicable after the review.

Kathi Baker provided the introductory commentary for this Item. The Board held a previous meeting on August 28, 2017, where Dr. Austin of JFA Institutes presented to the Board on the revalidation of the Nevada Board Risk Assessment. Dr. Austin stated at that time that the Risk Assessment continued to be a valid predictor of recidivism, as measured by return to prison within three years. Dr. Austin at that time recommended that the Board modify the level factors of Prior Employment, Current Age, and Prison Custody. At this public meeting in August of 2017, the Board passed the motion that they had certified standards that were effective, and that they would implement the recommended changes as soon as possible. As of this time, the risk assessment has not been updated to comply with these recommendations, due to technical integration errors within NOTIS. However, these technical difficulties are being resolved and, barring unforeseen additional difficulties, the new risk assessment will be available for use on or about the 1st of January 2019.

David Smith addressed the technical difficulties in more detail, and noted that even with a January 1 implementation date there will be a period of time where both assessments are in valid use. However, this period should only be one month in duration. Commissioner Keeler requested the date of the next validation study, and Mr. Smith spoke about a request moving forward to alter the requirement for re-validation of the risk assessment from every two years to every three, due to a need for a larger data set to determine efficacy. The data, therefore, for the current re-validation, is the same as that considered in the 2017 meeting. The act now to re-validate is simply to be in strict compliance with the Statute.

Motion: I move that the Parole Board find that the current Parole standards are effective in predicting the probability that a convicted person will live and remain at liberty without violating the law when Parole is granted or continued. Furthermore, that the changes to the Parole Risk Assessment approved by the Board on August 28, 2017, after the 2017 re-validation prepared by the JFA proceed as planned.

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

VI. Continued.

Chairman Dericco briefly went over what was discussed earlier in the day concerning this agenda item and asked if anyone would like to make additional comment.

Commissioner Keeler asked if the Board was also considering adding the supervision level. Katie Brady stated that it could be considered at this time.

Motion: To accept the proposed violation report by the Division of Parole and Probation in the format that each violation is identified and supported separately and include the supervision level as it is on the current violation report.
Made: Commissioner Keeler
Seconded by: Commissioner Jackson
Votes in Favor: Corda, Jackson, DeRicco, Endel, Keeler, De La Torre, Christiansen
Motion passed

XVI. 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.

XVII. 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