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MINERVA DE LA TORRE, *Member*

NEVADA BOARD OF PAROLE COMMISSIONERS
MINUTES

Meeting of the
Board of Parole Commissioners
December 19, 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 December 19, 2019, 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, video conference to 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 Chairman DeRicco, Commissioner Corda, Commissioner Baker 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
Katherine Baker, Management Analyst III

Members of the public present in Carson City included:

Katie Brady, Deputy Attorney General
Stephanie O'Rourke, Department of Public Safety (DPS), Division of Parole and Probation

(NPP)

Paul Corrado
Karen Gedy

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.

Chairman DeRicco asked if anyone present would like to make a public comment to exclude any comments specifically for Agenda Item IV, workshop. Comments concerning the workshop will be delayed until right before the workshop so that the information will transition smoothly into the workshop.

Public comment – Carson City, NV

No public comment.

Public comment - Las Vegas

No public comment.

- III. For possible action:** Review/Approval of minutes from the October 31, 2019, Board meeting, to include the separate workshop minutes.

Motion: To Approve minutes from the October 31, 2019 Board meeting to include workshop minutes.
Made: Commissioner Jackson
Seconded by: Commissioner Keeler
Votes in Favor: Corda, DeRicco, Jackson, Baker, Keeler, De La Torre, Christiansen
Votes Opposed: None
Motion passed

- IV. For discussion:** Presentation on the *Parole Board v. Second Judicial District* (Marlin Thompson) decision by the Nevada Supreme Court in case no. 76024, 135 Nev. Adv. Op. 53, by DAG Katie Brady. This discussion will include the potential impact of the case on the Board's use of NRS 176.033(2) in future sentence modification requests.

Deputy Attorney General Katie Brady discussed the Nevada Supreme Court ruling in favor of the Parole Board in the Marlin Thompson case. The published opinion allows the Parole Board to utilize NRS 176.033 for an individual who has served a sentence of life with the possibility of parole after a certain amount of time. The Court in that case answered the primary question of what is the minimum term or limit for the purposes of NRS 176.033(2) when the applicable penal statute only provided for a life sentence either with or without the possibility of parole. The Court concluded in that circumstance the parole eligibility term described by the penal statute sets the limit for reducing the life sentence under NRS 176.033. The Court issued a Writ of Mandamus and made several rulings concerning arguments raised during the case. The first argument that the Court addressed was brought by respondents, wherein they argued that the Parole Board lacked standing to pursue a writ petition concerning an interpretation of a statutory provision contained in NRS Chapter 176. The Court disagreed and determined that the Parole Board has a beneficial interest in how NRS 176.033(2) is applied. The Court also determined that the 1987 version of the statute applied, allowing people with life sentences to apply for

release from parole. The Court further determined that the District Court could reduce Mr. Thompson's sentence to less than life because the language of the 1995 version of the statute was ambiguous as to the meaning of the minimum limit and so the Court looked to the legislative history and purpose behind the statute. The Court noted that it appeared that the Legislature intended to allow the Parole Board to seek modification of sentences, which would allow the District Court to modify sentences. The Court vacated the District Court's decision and remanded for the District Court to consider the Parole Board's petition. Ms. Brady explained that from this point going forward, until the statute changes on July 1, 2020, the Board may use the statute to petition the courts to modify sentences.

- V. **Workshop, public comment, and possible action:** 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 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 policy 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. After receiving comments, the Board may take action to amend the proposed draft regulation before it is sent to the Legislative Counsel for review and drafting.

Minutes are attached.

Motion: The Board approve the proposed draft regulations changes made today in reference to NRS 213 in Assembly Bill 236, Section 93.7 from the 2019 Legislative session for submittal to the Legislative Counsel Bureau for review, examination, and if appropriate, language revision.

Made: Chairman DeRicco
Seconded by: Commissioner Corda
Votes in Favor: Corda, DeRicco, Jackson, Baker, Keeler, De La Torre, Christiansen

- VI. **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.

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

Motion: To adjourn meeting.

Made: Commissioner Baker

Seconded by: Commissioner De La Torre

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

DRAFT

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NEVADA BOARD OF PAROLE COMMISSIONERS

MINUTES

**Workshop for Proposed Regulation on Assembly Bill 236, Section 93.7
December 19, 2019**

Overview of Workshop

A public workshop was held on Thursday, December 19, 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 V 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 Baker
- Commissioner Corda
- Commissioner Jackson

Board Members in attendance in the Las Vegas office:

- Commissioner Christiansen
- Commissioner De La Torre
- Commissioner Keeler

Support staff in attendance:

- Darla Foley, Executive Secretary
- Katherine Baker, Management Analyst III

Members of the public present in Carson City included:

- Katie Brady, Deputy Attorney General
- Stephanie O’Rourke, Department of Public Safety, Division of Parole and Probation
- Claudia Stieber, Department of Public Safety, Division of Parole and Probation
- Luanne Pillar
- Karen Gedny, MD
- Paul G. Corado

Members of the public present in Las Vegas included:

None

Public comment - Las Vegas

No public comment.

Public comment – Carson City, NV

No public comment

Chairman DeRicco read the purpose and topic of the workshop.

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.

Chairman DeRicco also stated that after receiving comments, the Board may act to amend the proposed draft regulation before it is sent to the Legislative Counsel Bureau (LCB) for review and drafting. Chairman DeRicco encouraged public comment specifically devoted to this agenda item which is the workshop. Chairman DeRicco asked if there were any members of the public that would like to make public comment on the workshop in the Las Vegas office or the Carson City office. There was no public comment in either locations.

Chairman DeRicco stated that after comments and discussions on this workshop, the Board may act to amend the proposed draft regulation before it is sent to LCB for review and drafting. LCB will almost certainly be making changes to whatever is approved at this workshop today. Chairman DeRicco stated it is his intention to spend as much time as necessary to have a product approved today that can be submitted to LCB for review and drafting. Once LCB makes any changes, this topic will likely appear as a future agenda item to finalize and approve, as a Board, the language of the regulation.

Chairman DeRicco discussed the workshop held on October 31, 2019, and Commissioner Keeler's suggestions that should be included in the original draft regulation. Commissioner DeRicco tasked Commissioner Keeler to work with Ms. Baker to draft proposed language that would strengthen the originally proposed draft regulation and commended both for their hard work on this project.

Chairman DeRicco encouraged the Board members to make suggestions and stated as a Board, decisions are made as a Board. At the October 31, 2019, workshop some comments were made hoping not to restrict the Board's decisions on parolees for early discharge from parole. Chairman DeRicco asked for comments from all interested persons and asked to specifically hear from all Commissioners so a decision, as a Board, can be made and what is best to include in this draft regulation. Commissioner Jackson and Commissioner Baker were not in attendance at the October 31, 2019, workshop, so they may have additional comments.

Kathi Baker, Management Analyst III facilitated the workshop and re-capped AB236, Section 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 in the amount equal to the time remaining on any sentence to reduce the sentence to time served.

Ms. Baker stated after the discussion at the October 31, 2019, workshop, Commissioner Keeler and herself worked on the new proposed regulation, which will be discussed at today's workshop.

Ms. Baker opened the floor for discussion.

Summary of Testimony

No written comments were received.

Chairman DeRicco asked Commissioner Keeler if there was anything primarily to add to the regulation. Commissioner Keeler stated the proposed draft regulation represents the thoughts that he had at the last meeting.

Chairman DeRicco commented he met with Parole and Probation (Division) on the regulation since they received a copy at the same time it was posted. Chairman DeRicco met with the Division in person and, also had a follow-up tele-conference with both Major O'Rourke and Major Sleeva.

Chairman DeRicco wanted to bring up a few topics of discussion to see if there may be a way to strengthen some things or to present some issues from the Division. Chairman DeRicco felt there are areas that can be improved or where the Division is specifically requesting modified language. Chairman DeRicco will take the questions in the same order as the Sections (Section) listed on the regulation and stated some of the questions are his own and some are from the Division.

The Division was present at the workshop and indicated they are fine with the Chairman presenting the Division's opinion on the proposed draft regulation. Chairman DeRicco stated if there is anything portrayed inaccurately or not correct in what was portrayed in at least two meetings with them this week, the Division will provide clarification.

Chairman DeRicco broke down specific sections of the regulation where he felt there may be some possible discussions or ways to strengthen the document.

Section 2 (b) the current Proposed Draft Regulation language is:
“Verification that the parolee has not violated any condition of parole during the immediately preceding 12 months.”

The Division wanted to be clear on what the term “violated” meant. During the Chairman's meetings with the Division, Chairman DeRicco explained to the Division, in his opinion, there would need to be a finding by the Board that a parolee violated a condition. In the Chairman's opinion, “violated” does not mean alleged violations or intermediate sanctions that may have been imposed by the Division. The Division ultimately agreed with Chairman DeRicco's definition and understood how the Chairman was interpreting “violated”. The Chairman wanted

to discuss this with the Board and went on to state the Division requested some additional clarity on Section 2 (b). Chairman DeRicco suggested amended language to section 2.b which might provide clarification for the Division and the Board that might strengthen this regulation.

Chairman DeRicco suggested to strike the language in full and to change the language to: *“Verification that the Board has not found the parolee in violation of any conditions of supervision during the immediately preceding 12 months.”*

Chairman DeRicco felt this statement provides clarity to the Division and to the Board and asked if there were any comments on the amended language.

Commissioner Corda agreed with the amended language and stated it clarified the specifics on the violation.

Commissioner Keeler commented that although he likes the changed language, that the proposed draft language was lifted out of statute and questioned if that language could be modified. Commissioner Keeler questioned if the definition of “violated” was discussed by the Legislature at the AB236, Section 93.7 hearings, because the Board is modifying the language taken out of statute and modifying it to say the “Board’s” finding.

Chairman DeRicco discussed the language states “has violated”, which is past tense and Chairman DeRicco wanted to make sure it was not anything allegedly or some type of intermediate sanctions so it was in discussion that Chairman DeRicco’s view was that “violated” would need to have that finding of guilt. Chairman DeRicco deferred to the Attorney General’s office.

Katie Brady of the Attorney General’s Office (DAG) didn’t believe she could opine as to whether the language suggested by Chairman DeRicco is appropriate, but she could provide that the provision in the statute and the provision that has been proposed by the Chairman are consistent, in her opinion.

There were no further comments on Section 2 (b). Chairman DeRicco stated he wasn’t sure if Commissioner Keeler opposed the language. Commissioner Keeler was not in opposition of the proposed language, he was concerned if the language could be changed since it was lifted out of the statute, but since Ms. Brady, DAG, state the proposed language is consistent, he felt no issues with the language.

Chairman DeRicco stated if there are no more comments on Section 2 (b), then he would like to amend Section 2 (b) with the new proposed draft regulation language to: *“Verification that the Board has not found the parolee in violation of any conditions of supervision during the immediately preceding 12 months.”*

Chairman DeRicco also stated that this would be an action item later to approve the document in its entirety.

Chairman DeRicco moved on to Section 3.

Section 3 The current Proposed Draft Regulation language is: **“The Division will attach a current copy of the parolee’s Nevada Risk Assessment System (NRAS) that includes the needs level in each of the criminogenic factors to the written recommendation submitted to the Board.”**

Chairman DeRicco stated in meetings held with the Division in person and a subsequent follow up tele-conference, the Division requested the following change to the proposed language in Section 3. The Division would like to strike all of Section 3 and have the Board include:

“The Division will include the parolee’s risk assessment level, according to the Nevada Risk Assessment System (NRAS), or its successor risk assessment tool, in the written early discharge recommendation submitted to the Board.”

Chairman DeRicco stated this would be in accordance with what the Division submits as a part of the violation reports and this will be able to be accomplished by the Division without any major adjustments to their work product and this language will account for any future tools that will be used by the Division aside from the NRAS, so this section of the regulation wouldn’t need to be updated down the road. Chairman DeRicco’s opinion is that this language is a better substitute for Section 3 and opened the floor for discussion.

Commissioner Corda requested the suggested language be read again. Chairman DeRicco re-read the suggested new language for Section 3.

Commissioner Christiansen commented he thought the suggested language was reasonable since the Board doesn’t know what the future holds as far as the Division’s risk assessments and it would be ridiculous to go back and forth, and it is an all-encompassing type of NAC, so Commissioner Christiansen concurred with the proposed language.

Chairman DeRicco put on record to propose that Section 3 as presently written be deleted and changed to:

“The Division will include the parolee’s risk assessment level, according to the Nevada Risk Assessment System (NRAS), or its successor risk assessment tool, in the written early discharge recommendation submitted to the Board.”

Section 4 The current Proposed Draft Regulation language is:
“If the Division opposes early discharge of parole, the Division will provide a detailed description for the opposition.”

Chairman DeRicco stated the Division is requesting this section be deleted in its entirety. In the Division’s opinion, if a parolee meets the statutory provisions as outlined in AB236, Section 93.7, the Division will send the early discharge recommendation to the Board. The Division does not want to or are they statutorily mandated to provide their opinions on whether a parolee deserves an early discharge. The Division will review their cases and determine if a parolee meets the identified criteria and forward the appropriate cases to the Board to make the final determination. Chairman DeRicco reported that the Division said a parolee will either meet the requirements or they won’t. Additionally, this would be similar to the process for what the Division follows for lifetime sex offenders. In collaboration with the Division and in the spirit of the statute, Chairman DeRicco believes that Section 4 should be removed in its entirety. Chairman DeRicco stated in the discussions with the Division, the Division didn’t want this section of the proposed regulation, it isn’t required statutorily, and the Division just wants to state if a parolee meets the requirements per the statute, then it meets the requirements per the statute, and they will send it to the Board. The Division “shall” according to statute make a recommendation of

early discharge, but the Board “may” award the credits. So, it is ultimately up to the Board whether to award those credits.

Commissioner Keeler stated if that is the Divisions position, then he doesn’t have a problem with it and stated that what sparked the language in Section 4 of the proposed draft regulation was at the last meeting, our Deputy Attorney General (DAG) had indicated that “shall” did not lock the Division in to recommending early discharge or not. That they could oppose it just as easy as they could support it or stay neutral on it and it sounds as though their position is, they will stay neutral 100 % of the time and if that’s the case, then Section 4 isn’t needed.

Chairman DeRicco confirmed that was the Divisions position.

There was no other discussion on Section 4 and Chairman DeRicco proposed that Section 4 be removed in its entirety.

Section 5 The current Proposed Draft Regulation language is:
“Upon receipt from the Division of a written recommendation for early discharge of a parolee from parole, the Board will consider the parolee for early discharge either in absentia or a public hearing, at the Board’s discretion. The Board will not consider the parolee for early discharge without a hearing, if a victim has requested a hearing notification.”

Chairman DeRicco suggested additional language added to the proposed draft regulation *“The Board may grant early discharge without a hearing, but the Board must not deny early discharge to a parolee unless the parolee has been given reasonable written notice of the hearing and the opportunity to be present. If the Division fails to provide written notice of the hearing to the parolee, the Board will reschedule the meeting.”*

Chairman DeRicco stated this language was pulled from other Board statutes and he was looking for the same consistency. The language was just a suggestion and Chairman DeRicco was curious to thoughts on adding the proposed additional language.

Ms. Katie Brady, DAG noted as the statute stands right now, it doesn’t indicate there are any liberty interests in the early release from parole. There are currently no due process requirements. Ms. Brady researched this as it has to do with criteria because at the last workshop, the Board asked whether additional criteria needed to be included in the regulation. Ms. Brady stated additional criteria would be up to the Board and whether the Board wants to lock themselves into having a hearing when there’s no due process requirement that a hearing must be held. Ms. Brady said it was up to the Board and Ms. Brady didn’t think there was anything mandated by the law. Ms. Brady did suggest removing the word “public” from the proposed draft regulation language in Section 5, since parole hearings are not subject to the open meeting law. The Board does allow the public to attend hearings, but the Board wouldn’t want to make it look like the Board is subjecting themselves to the open meeting law, so Ms. Brady recommended striking the word “public” in the provision.

Commissioner Keeler agreed with striking the word “public” from Section 5 and not add additional verbiage that would lock the Board into additional hearings for those not considered. Commissioner Corda agreed with Commissioner Keeler.

Chairman DeRicco proposed under Section 5 that the only change to be made is to remove the word “public”.

Commissioner Corda questioned the last sentence in Section 5 “The Board will not consider the parolee for early discharge without a hearing, if a victim has requested a hearing notification.” Commissioner Corda wanted confirmation that the stamp on the front of the Board’s inmate files would notify victims of all parole hearings. Chairman DeRicco confirmed.

Commissioner Corda stated then that’s when the Board would hold a hearing even if a victim just notified the Board, 8, 12, 15 years ago that they wanted to be notified of a hearing. Not whether they would want to attend the hearing, or submit any information, it’s just if they requested notification.

Chairman DeRicco stated that is correct. If it is a victim notify case, then a hearing would be scheduled. Commissioner Corda stated he just wanted clarification.

Section 5 was put on record to read *“Upon receipt from the Division of a written recommendation for early discharge of a parolee from parole, the Board will consider the parolee for early discharge either in absentia or a hearing, at the Board’s discretion. The Board will not consider the parolee for early discharge without a hearing, if a victim has requested a hearing notification.”*

Section 6 The current Proposed Draft Regulation language is:
“If the Board determines that a hearing is to be held, a hearing notification will be delivered to the parolee by the Division not later than 5 working days before the hearing and the Board will notify any victim not later than 5 days after the early discharge hearing date has been scheduled. If the victim has requested notification in writing and has provided his or her current address or if the victim’s current address is otherwise known by the Board, the victim of a parolee being considered for early discharge from parole may submit documents to the Board and may testify at the meeting held to consider the parolee for the early discharge from parole. A parolee must not be considered for the early discharge from parole until the Board has notified any victim of his or her rights pursuant to this subsection and the victim is given the opportunity to exercise those rights. If a current address is not provided to or otherwise known by the Board, the Board must not be held responsible if such notification is not received by the victim.”

Chairman DeRicco suggest the word “written” should be inserted in the first sentence of Section 6 to solidify the fact that if an inmate received a “written” notification of a hearing for the early discharge from parole, then the inmate would know if a paper notification was received, they would know they would be having a hearing.

Chairman DeRicco also suggested a sentence to add to the end of Section 6 which is *“The Board may deliberate in private after a hearing to consider the early discharge of a parolee.”* Chairman DeRicco discussed if the Board would be giving decisions at the hearing or after the fact, if there are victims. Chairman DeRicco wanted to keep this section consistent to how hearings are currently held by the Board. If the Board holds an early discharge hearing, the hearing is held and if any victims are present or not present, the Board deliberates and decides on a case and once ratified, then notifications to the victim are made.

Commissioner Jackson agreed with the consistency and stated all the Board's deliberations are in private and Commissioner Jackson believed early discharge from parole hearings should be as well. Commissioner Jackson liked the additional language suggested by Chairman DeRicco.

Commissioner De La Torre agreed with Commissioner Jackson to keep the early discharge from parole hearings the same as the Board's other hearings.

Chairman DeRicco discussed proposed changes in the first sentence to add the word "written" and to add an additional sentence at the bottom of Section 6 to read "*The Board may deliberate in private after a hearing to consider the early discharge of a parolee.*"

Section 5 was put on record to read "If the Board determines that a hearing is to be held, a written hearing notification will be delivered to the parolee by the Division not later than 5 working days before the hearing and the Board will notify any victim not later than 5 days after the early discharge hearing date has been scheduled. If the victim has requested notification in writing and has provided his or her current address or if the victim's current address is otherwise known by the Board, the victim of a parolee being considered for early discharge from parole may submit documents to the Board and may testify at the meeting held to consider the parolee for the early discharge from parole. A parolee must not be considered for the early discharge from parole until the Board has notified any victim of his or her rights pursuant to this subsection and the victim is given the opportunity to exercise those rights. If a current address is not provided to or otherwise known by the Board, the Board must not be held responsible if such notification is not received by the victim. The Board may deliberate in private after a hearing to consider the early discharge of a parolee."

Section 7 The current Proposed Draft Regulation language is:
"Before determining whether to approve a parolee for early discharge from parole, the Board may consider:

- a. Whether the parolee has made any threats to harm others;
- b. The number and nature of any prior convictions of the parolee, including, without limitation, whether the parolee has a history of conviction for violent or sexually related crimes;
- c. Whether the parolee engaged in violent behavior while on parole;
- d. Whether the parolee has been convicted of multiple offenses involving driving or being in actual physical control of a vehicle while under the influence of intoxicating liquor or a controlled substance;
- e. Whether the parolee has a previous pattern of failed community supervision while on probation and/or parole, and/or whether that failure was the result of violent or criminal actions by the parolee;
- f. Whether the criminal history of the parolee indicates that the crimes committed by the parolee have increased in severity over time;
- g. Whether the parolee has demonstrated an attitude or behavior which indicates that the parolee favors a criminal lifestyle, including, without limitation, whether the parolee has been actively involved in a criminal gang, the planning of a prison escape or other criminal activity;
- h. The Division's opposition to the early discharge of parole;

- i. Victim impact; and**
- j. Any other factor which demonstrates a continued need for community supervision.”**

Chairman DeRicco requested Ms. Brady to start the discussion with information that will be useful to the Board.

Ms. Brady, DAG stated at the last Board meeting there was a discussion of whether criteria needed to be added to the proposed regulation. Ms. Brady researched Nevada case law and case law across the country and the consensus seems to be in the case law that there is no liberty interest in early release from parole so there are no due process requirements. This means it's up to the Board as to whether specific criteria are included in the proposed draft regulation.

Ms. Brady pointed out that there are some legal pros and cons, but also stated it is up to the Board if specific criteria is added. If criteria are added as the guide to the decision-making process, it is less likely the decision could be challenged being arbitrary and capricious. But it is more likely there will be litigation over the criteria and how the criteria were applied. However, if there are no criteria, the decisions can be attacked for not approving a request if it meets the requirements of subsection 1 of the statute that the Division must certify, so someone could say I met all the requirements, so you must grant me. Ms. Brady stated it is up to the Board which decision they would like to make as to whether to adopt criteria and pointed out that if the Board does decide to have criteria, the Board should take care not to create any type of entitlement to a release, as that could create due process issues for the Board going forward. As it stands, Ms. Brady doesn't see that as an issue, but she did want to point it out to the Board.

Chairman DeRicco stated this information was brought up to him before the meeting and said the Board could go either way on whether to add criteria. During discussions at the October 31, 2019, workshop, Chairman DeRicco recalled Commissioner Corda stating the Board shouldn't be limited with criteria. Commissioner Keeler felt there should be criteria. Chairman DeRicco stated adding criteria should be decided as a Board and that clearly Section 7 of the proposed draft regulation breaks the criteria down and ultimately ends up with Section 7 (j) which states "Any other factor which demonstrates a continued need for community supervision." So, there is a catchall as well.

Commissioner Keeler stated the Board has options either way and discussed that perhaps the Board should think about the end-product. For example, if a parolee is not approved, how will that be conveyed to the parolee and the Division? Will it be in the form of an order? If it is in the form of an order and it just states "not approved", Commissioner Keeler felt that would be lacking in the communication that's required. If a form letter is reviewed and standard language is used stating "not approved after considering all the factors, etc.", then that might work, but Commissioner Keeler wanted to know what the end-product was that the parolee and the Division would be receiving to determine if Commissioner Keeler would want criteria or not.

Commissioner Christiansen stated he believes that less is more, other than more is more. Commissioner Christiansen felt the only criteria should be that the Board determines if there is any risk to the community and if further supervision would not be necessary. Commissioner Christiansen's stated he could support the language in Section 7, but that his philosophy is less is more versus locking the Board into individual criteria.

Commissioner Jackson spoke and agreed with Commissioner Christiansen. Commissioner Jackson stated that although she was not in attendance at the October 31, 2019, workshop, the Division is submitting these individuals to the Board that meet the requirements and they are also recommending that these individuals be discharged early from parole supervision.

Commissioner Corda discussed that the Division is not actually recommending the parolees to the Board, the Division is sending the parolees to the Board because they meet the statutory criteria. Earlier Chairman DeRicco's stated that the Division would not be recommending a parolee for early discharge from parole, the Division would be sending the request to the Board based upon meeting the statutory criteria.

Commissioner Corda did agree with Commissioner Jackson but thought perhaps an addition of four words to the end of the first sentence in Section 7 that would be "but not limited to". Commissioner Keeler agreed with adding Commissioner Corda's additional language suggestion.

Commissioner Corda stated, if a person has been granted a parole based on considerations of many of these same criteria listed in Section 7, and they have been exemplary on parole for however many years leading up to their early discharge request, then why would the same factors be used to deny giving them credit?

Commissioner Keeler discussed the thought behind the listed criteria. Commissioner Keeler felt a person could have a very serious conviction history, multiple violent criminal convictions, robbery, kidnapping, and could be eligible for early discharge on a current sentence for a burglary case for which he has done twelve months on a parole and has less than twelve months remaining. Because of the criminal conviction history, the Board may have concerns about allowing early discharge. Maybe along with that violent conviction there may be a history of supervision revocations. Maybe the parolee has no honorable completions of parole or probation. So, to take them off early parole, Commissioner Keeler doesn't think he equates to giving parole and giving an opportunity to be supported in the community to be successful. A parolee with some histories, the Board may want to allow them to continue supervision.

Chairman DeRicco explained the reason why the Chairman had Ms. Brady start with this section was so the Board understood they could go either way on this section. And the reason why the Chairman didn't want to move into breaking down each one of the criteria in Section 7 was in case the Board decided not to include the criteria and not to limit the Board and Section 7 was removed, the Chairman didn't want to waste the Board's time going through each one.

Chairman DeRicco agreed with Commissioner Christiansen and for the most part he has no issues with the criteria listed in Section 7. Chairman DeRicco understands there may be some wording changes that might want to be discussed, but the Chairman is also of the opinion that less is more in a lot of respects. Chairman DeRicco is looking for assistance on if the Board should not include Section 7 in the proposed draft regulation and asked if it should be stricken.

Commissioner Keeler's thoughts for discussion returned to questioning the end-product. Will the end-product be a form letter stating your case was reviewed and has met the criteria and the Board will award credits? Or a letter stating the parolee has met criteria and after considering all

the factors in this case, the Board does not support the early discharge of parole? Or will an order be produced that requires more specific reasons for not approving the early discharge of a parolee on parole. If it will be personalized for each individual, Commissioner Keeler feels the criteria needs to be included. If it will be a general letter, then striking it makes sense to Commissioner Keeler. Commissioner Keeler again stated he wants to know the end-product and how it will be delivered in order to make the decision to strike it or clean up Section 7.

Commissioner Christiansen discussed that the two questions that need to be asked regarding Section 7 is 1: Is there any risk to the community? and 2: Is further supervision necessary? Everyone of the outlined conditions in Section 7 basically ask those questions. Is there a risk to the community to giving a parolee an early discharge from parole and is further supervision necessary?

Commissioner Baker stated if there is going to be criteria in Section 7, then it needs to be objective rather than subjective. Commissioner Baker stated there is some subjective language in Section 7 and she agrees with Commissioner Christiansen regarding the two primary questions that should be asked. What is the risk and is further supervision necessary? If that's what the Board is going to ask, then maybe that's what should be listed in Section 7. (a) and (b) and Commissioner Corda's statement "but not limited to".

Commissioner Keeler again questioned what is the end-product the Board will provide? Commissioner Keeler said that would be remiss if the Board doesn't answer that question since the Board is setting regulations. Is this going to be an order or is this going to be a form letter? An approval form letter, a denial form letter, what's the end-product?

Chairman DeRicco agreed Commissioner Keeler had a valid question and the Chairman agreed that the Board would need to determine the end-product. For example, if the Board denied a request either through a hearing or in absentia, what would the order or letter look like? If the Board has reviewed the early discharge request of a person from parole and considered the risk to the community and whether further supervision is necessary, the Board has chosen at this time not to award credits in an amount equal to the time remaining on the sentence to reduce the sentence to time served. If that language was used, that the Board has chosen to award it or not, maybe that's the easiest way since it goes back to statute.

Commissioner Keeler requested to ask Ms. Brady, DAG if there is a formalized way the decision must be communicated since the Board makes decisions as a panel, would the decision need to be on an order, or could it be in a letter. Depending on the end-product would depend on how Commissioner Keeler feels about Section 7.

Commissioner Keeler asked Ms. Brady, DAG if the Board has a choice in the end-product, or is it required to be a certain way?

Ms. Brady, DAG hasn't done research on this question, but would assume since a panel of the Board would be making the decision and normally the Board makes decisions on orders, that it would be completed on an order. Ms. Brady stated she assumed that is how it would be done, but she could investigate whether it could be done in a letter as well. Ms. Brady asked if that answer helped and Commissioner Keeler stated it does.

Chairman DeRicco asked if there were any other comments. The Chairman agreed with Ms. Brady since the Board ratifies their votes and puts the determination on an order, these determinations should be done on an order as well.

Commissioner Jackson agreed with the Chairman stating all the Board's decisions are given to individuals per order.

Commissioner De La Torre agrees as well stating it keeps consistency.

Commissioner Christiansen concurs and believes it should be on an order that way the person can see exactly what it is and why it is.

Commissioner Keeler stated it makes sense for the decision to be put on an order because all the Board's order, when the Board makes decisions, are personalized to an individual, so that leads Commissioner Keeler to more enumerated reasons if the Board's denies. Commissioner Keeler felt Section 7 could be limited to fewer options, but it would be remiss if it wasn't personalized because all the Board's orders to this point are personalized and are required to be personalized.

Chairman DeRicco suggested a statement on the order could read: *"The Board has chosen to award, or not award, credits in an amount equal to (fill in the amount of credits, because the amount of credits doesn't have to be time served, it could be up to time served.) on your sentence to reduce the sentence to time served."* In the same manner as the Board returns stat time, but on an order. Chairman DeRicco did not believe the wording on the order needs to be approved at this workshop. Once the Board decides what wording will be on the proposed draft regulation that will be sent to LCB, there will ultimately be changes and the Board can discuss the language on the order once the LCB changes have been reviewed. Chairman DeRicco felt the Board needed to move forward to whether the Board would like to follow Commissioner Christiansen's suggestion of, *"Before determining whether to approve a parolee for early discharge from parole, the Board may consider the risk to the community and whether further supervision is necessary."* Or if the Board would like to consider Commissioner Corda's suggestion if the Board keeps the criteria listed in Section 7, to add the four words to Section 7 *"but not limited to"*.

Chairman DeRicco asked the Board if they would like to go through each of the items in Section 7 or add additional items.

Commissioner Keeler thought perhaps there was a way to condense the items in Section 7 into 3 options, at least then the order was personalized to some degree. Or make the listed criteria more detailed. Commissioner Keeler felt if there is only 1 option, then it is generic and might as well be a form letter to the parolee, or the items could be more detailed, the Board could look at it either way.

Commissioner Corda agreed with Commissioner Keeler's suggestion. Commissioner Corda believed the intent of the legislature was to provide a means to reduce the length of a parole term and the law basically rewards the parolee for good behavior on parole. Positive behavior on parole may relate to positive changes in lifestyles for these parolees, so this law lets the parolee know if they are good, they can reduce their sentence by a certain number of months. Commissioner Corda felt the Board shouldn't limit the parolee with extra conditions or reasons to deny these requests. Commissioner Corda did not believe there would not be a lot of these

parolees that the Board would deny since the parolee would meet the initial criteria that the legislature imposed. Commissioner Corda questioned if the Board adds in so many extra reasons to possibly deny, then what good is the law?

Ms. Brady, DAG asked Commissioner Corda for clarification, if Commissioner Corda was suggesting an additional Section to the proposed draft regulation be included regarding the behavior on parole as a consideration. Ms. Brady questioned if Commissioner Corda was including his suggestion as part of the suggestion made by Commissioner Christiansen, that the Board consider the risk to the community and whether further supervision is recommended, and the behavior of the parolee also be considered as a third factor? Commissioner Corda confirmed Ms. Brady's question, but did not recommend a long list, Commissioner Corda recommended reducing the number of items being considered by the Board.

Commissioner Baker suggested to strike "Whether the parolee has demonstrated an attitude or behavior which indicates that the parolee favors a criminal lifestyle" and modify it to a more positive statement and whether the parolee's behavior indicates the parolee has changed their criminal lifestyle. Commissioner Baker asked if that was Commissioner Corda's intent.

Commissioner Corda stated he hadn't gone through the specific items under Section 7. Commissioner Corda was looking at Section 7 more general and asked does the Board want to eliminate the specific items under Section 7 completely and send out an order to the inmate stating "It has been determined by the Board that continued supervision is required based upon things the Board will discuss, or "It has been determined by the Board it will give credit for time served for the remainder of your sentence."? Very simple, on an order, or does the Board want to list specific reason like Commissioner Keeler suggested? Such as, "You've made threats to harm others", which is one of the criteria of Section 7. Commissioner Corda questioned, was the threat ten years ago or the other day? Commissioner Corda felt there will be a lot of things to look at if the specific criteria are left in Section 7.

Commissioner Keeler liked the idea of finding a way to create two or three items to cover all the concerns in a more general sense. Use a couple items and not necessarily try to encompass everything, but to determine what the Board considers important in two or three items and not try to ferret out each one to make it too specific. Commissioner Keeler questioned if that was what Commissioner Corda was suggesting. Commissioner Corda confirmed and Commissioner Keeler went on to suggest setting aside Section 7 and create a more generalized language.

Commissioner Corda stated to also add the "*but not limited to*" he suggested so the Board is not committed to just the three items to be determined by the Board.

Chairman DeRicco stated if Section 7 was to be stricken in its entirety, he suggested "*Before determining whether to approve a parolee for early discharge from parole, the Board may consider, but is not limited to the potential risk posed by the parolee in the community, whether or not further supervision is necessary and the behavior of the parolee under supervision.*" Based on Commissioner Keeler's comments and Commissioner Corda's comments, Chairman DeRicco thought a paragraph hitting on the essence of the items that the Board believes are important for the Board to consider with an early discharge request. Chairman DeRicco asked if any Board members felt any changes were needed to his suggested language.

Commissioner Baker agreed with Chairman DeRicco's suggested language but proposed adding "*victim*" to the section of the language that stated, "potential risk posed by a parolee to any *victim* or the community".

Commissioner Keeler suggested if the Board comes up with the ideas needed to be included in the proposed draft language and then the Board empowers the Chairman and Ms. Baker to finalize the language if it includes the concepts and the ideas of the Board. The Chairman and Ms. Baker could word smith the language when more time is available.

Chairman DeRicco stated he would like something set to send to LCB today and that LCB will review the proposed draft regulation and will see the Board's intent and the wording will likely be changed by LCB. So, the language for the proposed draft regulation doesn't need to be perfect at this point. Chairman DeRicco stated if the Board gets close to what they would like in the language for the proposed draft regulation, knowing there will be an LCB re-write, ultimately, the final proposed draft regulation will need to be approved by the Board. Determining the language that the Board agrees on moves the process forward so LCB can review.

Commissioner Jackson agrees with the language the Chairman suggested since an early discharge of a parolee from parole is public safety.

Chairman DeRicco re-read the suggested language again, "*Before determining whether to approve a parolee for early discharge from parole the Board may consider but is not limited to the potential risk posed by the parolee in the community, to any victims, or...* Commissioner Corda stated the word "*further*" is missing from the Chairman's language and asked the Chairman to re-read his suggested language. Commissioner Corda felt there needs to be "*further risk*" because the parolee is on parole and has been on parole and is doing good. So there needs to be something that says the parolee can't be removed from parole because of a certain suggested risk.

Commissioner Christiansen meant his suggestion to be more generalized and not even mentioning the parolee. Just in general using the language "*any risk to the community*" Commissioner Christiansen believed vague is better than direct in this matter.

Commissioner Corda questioned if the language should state "*further risk*" because the Board is talking about future risk. Commissioner Christiansen stated he would think about striking the word "parolee" and just say "*risk to the community*", since that's what the Board considers at all hearings. Commissioner Christiansen also commented that this individual or parolee has been scrutinized basically to get parole through the Board's Risk Assessment as well as being paroled by the Board at a parole hearing. Then the parolee was scrutinized by a parole officer, scrutinized by NRAS and many other types of risk assessments and now the parolee is doing well and wants to have an early discharge from parole and yet again the Board is scrutinizing the parolee with the specific list of items, (a) through (j) in Section 7. Commissioner Christiansen stated the parolee shouldn't even be here at this point because he has been scrutinized enough and now is the time to determine if he is still a risk to the community, should the State continue to pay for his supervision. Commissioner Christiansen feels the decision will be the parolee is not a risk, he is good to go versus another area of scrutiny that he must go through.

Commissioner Corda agreed with Commissioner Christiansen's thoughts.

Chairman DeRicco read the new version *"Before determining whether to approve an early discharge request, the Board may consider but is not limited to the further potential risk posed to the community, any victims, and whether or not further supervision is necessary."*

Commissioners Jackson, Keeler and Corda agreed with the language.

Chairman DeRicco confirmed the Board will strike Section 7(a – j) and will replace it with *"Before determining whether to approve an early discharge request, the Board may consider but is not limited to, the further potential risk posed to the community, any victims, and whether or not further supervision is necessary"*.

Ms. Brady, DAG questioned if the language is meant to have the meaning of any further risk to the victims or that the Board needs to consider the victims? The way the language is currently written, the Board would just need to consider the victims.

Chairman DeRicco suggested alternative language *"Before determining whether to approve an early discharge request, the Board may consider but is not limited to, the further potential risk posed to the community or any victim, and whether or not further supervision is necessary."* Chairman DeRicco will have Ms. Baker remove the current language from Section 7 and replace it with the agreed upon version.

Section 8 The current Proposed Draft Regulation language is:
"The Board may award credits in an amount equal to the time remaining on any sentence to reduce the sentence to time served, but not to exceed 12 months."

Chairman DeRicco stated under subsection 2 of Section 93.7 of the statute, reads "The Board may award credits in an amount equal to the time remaining on any sentence to reduce the sentence to time served". The language of the proposed draft regulation adds "not to exceed 12 months". Chairman DeRicco doesn't believe the additional language is necessary since per statute, the parolee can't have more than 12 months remaining to qualify for early discharge from parole. Chairman DeRicco's thought is to strike the additional language and asked for any thoughts from the Board members.

Commissioner Corda thought it is a reminder that a parolee can't have more than 12 months of credit remaining, but Commissioner Corda was neutral on the removal of the language. Chairman DeRicco stated that since the statute didn't say "not to exceed 12 months", that perhaps it should be removed since the Board won't see the parolee unless there are 12 months or less remaining on his parole.

Commissioner Keeler suggested keeping the language just for clarification. Commissioner Keeler felt it is no different than Section 2 (b) where the language was added to the statute reading "Verification that the Board has not found the parolee in violation of any condition of supervision during the immediately preceding 12 months" when the only way a parolee can be violated is by the Board and the Board added language to what was already existing language for clarification and Section 8 is doing the same thing with the additional language. Commissioner

Keeler suggested leaving the language in Section 8 of the proposed draft regulation. **None of the Board members felt the existed language in Section 8 needed changes.**

Closing Discussion

Chairman DeRicco stated that was all the items he had to discuss on the proposed draft regulation and commended Ms. Baker and Commissioner Keeler for their work on this document and Chairman DeRicco believes, as a Board, the document has been crafted together. Chairman DeRicco asked if there were any other items to discuss in the proposed draft regulation.

Commissioner Corda wanted clarification that (a) through (j) would be removed from Section 7. Chairman DeRicco stated Section 7 in its entirety would be struck. Section 7 will be replaced with *“Before determining whether to approve an early discharge request, the Board may consider, but is not limited to, the further potential risk posed to the community or any victims and whether or not further supervision is necessary”*.

With no further discussion, the Board approved the proposed draft regulation changes made today in reference to NRS 213, AB 236, Section 93.7 from the 2019 Legislative Session for submittal to LCB.