

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

July 16, 2021


RE: Possible Missing Signatures On NRS 233B.100 Petitions

Nevada Board of Parole Commissioners:

On July 14, 2021, I mailed to your office five NRS 233B.100 Petitions. Upon a review of my records, it has come to my attention that you may have received unsigned copies. In the event your copies are unsigned, I have included a set of signed copies with this mailing.

If you did receive signed copies initially, please disregard this mailing.

Thank you for your time and consideration,



Evan Grant

RECEIVED

JUL 21 2021

HB
STATE OF NEVADA
PAROLE BOARD

Evan Grant
NNCC
1721 E. Snyder Ave.
Carson City, NV 89701

June 30, 2021

RE: Proposed Amendment And Repeal Of Illegal And Unconstitutional Nevada Board Of Parole Commissioner's Nevada Administrative Codes

Nevada Board of Parole Commissioners:

My name is Evan Grant. I am presently incarcerated at the Northern Nevada Correctional Center and have dedicated the past 15 months to the study of Nevada Statutory and Constitutional law. I hold a Bachelor's Degree from Louisiana State University, a Paralegal Certificate from Adams State University, and a Commercial Single and Multi-engine Pilot's License from the Federal Aviation Administration with my last job prior to incarceration being that of a Certified Flight Instructor. Additionally, I am currently studying to earn a Master of Business Administration Degree from Adams State University.

Upon an in-depth review of the Nevada Board of Parole Commissioner's Nevada Administrative Codes, NAC 213.495 through 213.565, inclusive, I have found 5 NACs whose language violates a controlling enabling statute, Nevada's Constitution, and/or Nevada and United States Supreme Court precedent. These NACs are NAC 213.512, 213.514, 213.516, 213.518 and 213.522.

Pursuant to NRS 233B.100, I have authored an NRS 233B.100 Petition for each affected NAC. I have taken the time to assess each of these affected NACs to offer the Board an objective resolution to each unique violation of Nevada law. These resolutions were crafted to preserve the intent of the NAC where possible and remove language only when absolutely essential. As a result, some of the affected NACs now properly make a grant of parole less likely, while others assist the Board in properly identifying prisoners fit for release.

Nevada's Legislature has mandated an objective parole consideration process. Through the amendments and repeals I am proposing, Nevada's parole consideration regulations will be in compliance with the minimum requirements expressed in the explicitly mandatory predicates of Nevada law. While there are discretionary aspects to parole consideration as deemed by the Legislature, only once the mandatory elements are satisfied, may the Board exercise that discretion.

With the current language of the indicated NACs, the Board is permitting itself discretion where discretion is not authorized. It is for these reasons that I have spent hundreds of hours studying Nevada's legal history and over 100 hours authoring the accompanying NRS 233B.100 Petitions.

It is my hope that these NRS 233B.100 Petitions are taken seriously and evaluated appropriately. "Upon submission of such a petition, the agency shall within 30 days either deny the petition in writing, stating its reasons, or initiate regulation-making proceedings." NRS 233B.100(1). Furthermore, as "Any regulation of any agency is subject to amendment or suspension by the governor pursuant to the provisions of NRS 416.060[,"] NRS 233B.100(2), I am additionally submitting these 5 petitions to the governor for review. Finally, if no reasonable action is taken to resolve the legal issues that I am hereby presenting, I intend to pursue legal action pursuant to NRS 233B.110 via the Uniform Declaratory Judgments Act, NRS Chapter 30, to acquire the necessary injunctions to compel appropriate performance from the Nevada Board of Parole Commissioners in regards to these matters.

I recommend reading the Petitions in the following order as their combined effect will be easier to understand: NAC 213.512, .522, .518, .516, .514.

Thank you for your time and consideration,

Evan Grant

NEVADA BOARD OF PAROLE COMMISSIONERS
NRS 233B.100 PETITION

Petitioner Name: EVAN SCOTT GRANT

Address: 1721 E. Snyder Ave.

Apt / Suite No: —

City: Carson City

State: Nevada

Zip Code: 89701

Title of Regulation: Determination of whether to grant parole: Assignment of severity level to crime.

NRS # / NAC #: NAC 213.512

Date Submitted: July 14, 2021

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1 Reason for petitioning for the adoption, filing, amendment or repeal of the
2 regulation, per NRS 233B.100:

3 For the following reasons, Petitioner respectfully requests that NAC 213.512
4 be REPEALED per NRS 233B.100:

5 NAC 213.512 must be REPEALED, in its entirety, as it is in violation of Nevada
6 Constitution Article 4, Section 20, and Nevada Supreme Court precedent. Nev. Const.
7 Art. 4, s. 20 provides:

8 Section 20. Certain local and special laws prohibited.
9 The legislature shall not pass local or special laws in
any of the following enumerated cases — that is to say:

10 ...

11 For the punishment of crimes and misdemeanors;

12 ...

13 NAC 213.512 was adopted by the Board through NRS 233B. As chapter 233B was
14 passed by the Nevada Legislature, ch. 233B could not provide for the creation of
15 Nevada Administrative Codes that violate Nev. Const. Art 4, s. 20, as doing so
16 would cause ch. 233B to violate that Constitutional provision. Simply stated, as
17 Nevada's Legislature was prohibited from creating local or special laws for the
18 punishment of crimes and misdemeanors, it could not create a law that permitted
19 State agencies to create local or special laws for the punishment of crimes and
20 misdemeanors. NACs "[H]ave the force of law and must be enforced...." NRS 233B.040(1).

21 To understand how NAC 213.512 violates Nev. Const. Art. 4, s. 20, the term
22 "local or special law" must first be defined. We begin by looking at the converse
23 known as a "general law" which is discussed in Nev. Const. Art. 4, s. 21:

24 Sec. 21. General laws to have uniform application. In all
25 cases enumerated in the preceding section, and in all
26 other cases where a general law can be made applicable,
all laws shall be general and of uniform operation
throughout the state.

27 When comparing Nev. Const. Art. 4, s. 20, to s. 21, the Nevada Supreme Court
28 observed that:

1 The leading division (of statutes) to be into "public or
2 general, private or special." Public or general statutes
3 are ... those which relate to or bind all within the
4 jurisdiction of the law-making power, limited as that
5 power may be in its territorial operations, or by
6 constitutional restraints. Private or special statutes
7 relate to certain individuals or particular classes of
8 men.

9 The State of Nevada Ex. Rel. Clarke v. Irwin, 5 Nev. 111, 120 (1869). (citation
10 omitted). This concept was put into easy to understand words in 1975 by the, then,
11 Nevada Attorney General, "A 'local law' is one operating over a particular locality
12 instead of over the whole territory of the State. A 'special law' is one operating
13 upon one or a portion of a class, instead of upon all of a class." 1975 Op. Atty.
14 Gen. Nev. 53, Opinion No. 194, citing State Ex. Rel. Clarke v. Irwin, 5 Nev. 111
15 (1869).

16 A "class" is a "group of people, things, qualities or activities that have
17 common characteristics or attributes[.]" Class, BLACK'S LAW DICTIONARY (abr. 10th
18 ed. 2015). Nevada's Constitution in Article 4 Section 20 groups those being
19 punished for crimes and misdemeanors, thereby, creating an identifiable class.

20 How does this all apply to NAC 213.512 when NAC 213.512 was not created by
21 the legislature? NAC 213.512(1) provides:

22 The Board will assign to each crime for which parole is
23 being considered a severity level of "highest," "high,"
24 "moderate," "low-moderate" or "low." The severity level
25 will be the same as the severity level assigned to the
26 crime by the Department of Corrections for the purpose of
27 classifying offenders pursuant to NRS 209.341.

28 In NAC 213.512, the Board confers authority to the Department of Corrections
to assign the severity level of a crime for parole consideration purposes. The
problem is that the Legislature did not authorize the Board to look beyond its
statutes when considering offense, or crime, severity in any of NAC 213.512's
enabling statutes, NRS 213.10885, 213.110 and 213.140.

///

///

1 To the extent authorized by the statutes applicable to
2 it, each agency may adopt reasonable regulations to aid
3 it in carrying out the functions assigned to it by law
and shall adopt such regulations as are necessary to the
proper execution of those functions.

4 NRS 233B.040(1) (2020). The sole enabling statute of NAC 213.512 that discusses
5 crime severity is NRS 213.10885, specifically NRS 213.10885(2)-(2)(a) which
6 provides:

7 2. In establishing the standards, the Board
8 shall consider ... all other factors which are relevant
9 in determining the probability that a convicted person
10 will live and remain at liberty without violating the law
if parole is granted or continued. The other factors the
Board considers must include, but are not limited to:

11 (a) The severity of the crime committed;

12 ...

13 In NRS 213.10885(2)-(2)(a), the Board's consideration of "The severity of the
14 crime committed" is mandated by the Legislature through stating, "[T]he Board
15 shall...." "Shall" is to be construed as mandatory when construing legislative
16 statutes, unless an exception is provided. Ewing v. Fahey, 86 Nev. 604, 607, 472
17 P.2d 347, 349 (1970). While an exception is provided, it bears no weight on the
18 issue presented here as subsection (2)(a) "must" be included in consideration.

19 "The maxim 'EXPRESSIO UNIVS EST EXCLUSIO ALTERIUS,' the expression of one
20 thing is the exclusion of another, has been repeatedly confirmed in this state."
21 Galloway v. Truesdell, 83 Nev. 13, 20, 422 P.2d 237, 242 (1967). "In the
22 Legislature rests the entire power of the people...." Id. at 23. The Legislature
23 has the power to determine what is or is not a crime and the appropriate penalty
24 for those who violate a criminal statute. See Anderson v. Eighth Judicial Dist.
25 Court, 448 P.3d 1120 (Nev. 2019).

26 By mandating only consideration of "The severity of the crime committed," the
27 Legislature did not vest in the Board the power to look beyond Nevada's statutes,
28 let alone defer to another state agency, to determine the severity of an offense.
"Every positive direction contains an implication against anything contrary to it

1 which would frustrate or disappoint the purpose of that provision." Galloway, 83
2 Nev. at 26, quoting People v. Draper, 15 N.Y. 544 (emphasis added).

3 Furthermore, NAC 213.512(1) references NRS 209.341 as the statute controlling
4 the Department of Corrections' assignment of severity level. However, a reading of
5 NRS 209.341 shows that it makes no mention of assigning a severity level to a
6 crime. In fact, the words "severity," "level" nor "crime" appear a single time in
7 NRS 209.341.

8 How then is the severity of a crime actually assigned in Nevada?

9 In determining whether an offense is petty or serious,
10 this "court must examine objective indications of the
11 seriousness with which society regards the offense," and
12 "[t]he best indicator of society's views is the maximum
13 penalty set by the Legislature." ... The word "penalty"
14 encompasses both a term of imprisonment as well as other
15 penalties proscribed by statute, but "[p]rimary emphasis
16 ... must be placed on the maximum authorized period of
17 incarceration."

18 Anderson, 448 P.3d at 1123. (citation omitted). The Court goes on to say that in
19 the case of Anderson, "[T]he right affected [] convinces us that the [] penalty is
20 so severe as to categorize the offense as serious." Id. at 1124. Anderson shows
21 us that the totality of a person's rights affected by a criminal conviction as
22 deemed by the Legislature, with emphasis placed on the maximum authorized period of
23 incarceration, determines the severity of an offense, i. e. a crime. This concept
24 is further supported by English v. State, 116 Nev. 828; 9 P.3d 60 (2000) where the
25 Court held that an enhancement from a misdemeanor to a Category C felony
26 constituted an increase in offense severity.

27 Therefore, as the Board is only considering those persons convicted of a
28 felony, it must look to NRS 193.130 and NRS 193.330, which provide the categories
of Nevada's felonies, to discover the severity of crimes as set by the
Legislature. Interestingly, the Board used this exact method in 2004. Per the
PBFORM-PS (REV. 12/10/04), the Board states in its own words:

///

1 The Board has adopted crime severity levels A, B, C, D &
2 E based on the statutory definitions set forth in NRS
3 193.130, 193.330 and as provided by specific criminal
4 statute. The Board has expanded levels A and B to A1, A2,
A3, A4, B1, B2, B3 & B4 to reflect the diverse minimum
and maximum sentencing ranges provided for Level A and B
felonies.

5 (Exhibit 1).

6 As you can see, the Board in 2004, after English was decided in 2000,
7 clearly understood its statutory duty and was in compliance with Nevada law.
8 However, in 2008, when the Board adopted NAC 213.512 by R018-08, it deviated
9 dramatically from its understood statutory duty. The NAC 213.512 severity levels of
10 "highest," "high," "moderate," "low moderate" and "low" do not exist in NRS
11 193.130, 193.330 nor 209.341. Furthermore, NAC 213.512 was adopted pursuant to NRS
12 Chapter 233B which cannot permit the Board to defer to the Department of
13 Corrections to circumvent Legislatively assigned severity levels for crimes in
14 Nevada as doing so would cause NRS Chapter 233B to become a special law pertaining
15 to the punishment of crimes and misdemeanors, a prohibited act under Nev. Const,
16 Art. 4 s. 20.

17 For these reasons, NAC 213.512 is an illegal and unconstitutional NAC and
18 must be REPEALED immediately pursuant to NRS Chapter 233B regulation-making
19 procedures.

20
21 Proposed language of the regulation to be adopted, filed or amended or the existing
22 language of the regulation to be repealed, as applicable:

23 ~~NAC 213.512 Determination of whether to grant parole: Assignment of severity~~
24 ~~level to crime. (NRS 213.10005, 213.110, 213.140)~~

25 ~~1. The Board will assign to each crime for which parole is being~~
26 ~~considered a severity level of "highest," "high," "moderate," "low moderate" or~~
27 ~~"low." The severity level will be the same as the severity level assigned to the~~
28 ~~crime by the Department of Corrections for the purpose of classifying~~

1 ~~offenders pursuant to NRS 209.341.~~

2 ~~2. The Board will apply the severity level of the crime for which parole~~
3 ~~is being considered to establish an initial assessment regarding whether to grant~~
4 ~~parole in the manner set forth in NAC 213.516.~~

5
6 The statutory authority for the adoption, filing, amendment or repeal of the
7 regulation:

8 "Any interested person may petition an agency requesting the adoption,
9 filing, amendment, or repeal of any regulation...." NRS 233B.100(1) (2020). "Upon
10 submission of such a petition, the agency shall within 30 days either deny the
11 petition in writing, stating its reasons, or initiate regulation-making
12 proceedings." Id. "To the extent authorized by the statutes applicable to it by
13 law, each agency shall adopt reasonable regulations to aid it in carrying out the
14 functions assigned to it by law and shall adopt such regulations as are necessary
15 to the proper execution of those functions." NRS 233B.040(1) (2020). An agency
16 may provide notice of intent to adopt, amend or repeal a permanent or temporary
17 regulation. NRS 233B.060 (2020). An agency may propose a permanent or temporary
18 regulation. NRS 233B.0607 (2020). An agency may propose an emergency regulation.
19 NRS 233B.0613 (2020).

20
21 Any relevant data, views and arguments that support the petition for the adoption,
22 filing, amendment or repeal of the regulation:

23 This NRS 233B.100 petition stems from the urgent need to REPEAL NAC 213.512
24 as it is illegal and unconstitutional pursuant to the limits of NRS Chapter 233B
25 and NRS 213.10885. Furthermore, NAC 213.512 frustrates Nevada Supreme Court
26 precedent that the Board, in its own words, agreed with. Supra pp. 4-5.

27 Nev. Const. Art. 4 s. 20 prohibits the Legislature from creating Special
28 Laws, i.e. statutes, that allow individuals to be treated differently from

1 each other for the punishment of crimes and misdemeanors. NAC 213.512 was adopted
2 under NRS Chapter 233B. As the Legislature was prohibited from allowing NRS Chapter
3 233B to permit different punishments for the same crime, the Board could not use
4 NRS Chapter 233B to adopt an NAC that punishes convicted persons differently for
5 the same crime. Since the Legislature determined the severity of each category of
6 Felony in NRS 193.130 and NRS 193.330, as acknowledged by the Board in PBFORM-PS
7 (REV. 12/10/04) (Exhibit 1), the Board is bound to follow the severities listed in
8 these statutes. Further supporting this concept, the Nevada Supreme Court has held
9 that increases in felony category constitute an increase in offense severity. See
10 Anderson, 448 P.3d; English, 116 Nev.

11 NAC 213.512 utilizing the Department of Corrections to assign a severity
12 level to crimes creates a situation where a person outside of the Board's
13 jurisdiction, i.e. in a sentencing court, is considered by the crime severity
14 assigned by the Legislature, while a person being considered by the Board is
15 considered based upon the crime severity assigned by the Department of Corrections.
16 As the Board determines how long a convicted person will actually be incarcerated,
17 upto the maximum term imposed by that person's sentencing court, every person
18 convicted of a felony will be punished by one crime severity when their sentencing
19 court determines their maximum term and a different crime severity, for the same
20 crime, when the Board determines how much of that maximum term is to be served
21 incarcerated.

22 In conclusion, it is for the reasons stated in this NRS 233B.100 petition
23 that NAC 213.512 must be REPEALED pursuant to NRS 233B regulation-making
24 proceedings. If the Board fails to reasonably act on this petition, Petitioner
25 intends to pursue legal action pursuant to NRS 233B.110 via the Uniform
26 Declaratory Judgments Act, NRS Chapter 30.

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28 ///

1 DATED this 14th day of July, 2021.

2
3 Thank you for your time and consideration.

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5 Respectfully Submitted,

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7 


8 _____
9 EVAN SCOTT GRANT

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VERIFICATION

Under penalty of perjury, the undersigned declares that he is the Petitioner named in the foregoing NRS 233B.100 Petition; that he knows the contents of the Petition; that the facts alleged in this Petition are true of his own knowledge, except as to those matters stated on information and belief; and that, as to those matters stated on information and belief, he believes the Petition to be true.

DATED this 14th day of July, 2021.



EVAN SCOTT GRANT
1721 E. Snyder Ave.
Carson City, NV 89701

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CERTIFICATE OF SERVICE

I hereby certify that I am the Petitioner, that I am incarcerated, and that on the 14th day of July, 2021, I served a true and correct copy of the foregoing NRS 233B.100 Petition, by leaving it with Nevada Department of Corrections Northern Nevada Correctional Center Employee Sgt. Wood to be placed in the outgoing mail and be mailed via U.S. Postal Service CERTIFIED MAIL, Tracking No. 9590 9402 4743 8344 3306 27, Article No. 7019 0140 0000 9267 5418, addressed to:

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

Evan Scott Grant
EVAN SCOTT GRANT

EXHIBIT

1

P B F O R M - P S

(R E V . 1 2 / 1 0 / 0 4)

PAROLE STANDARDS

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

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

Pursuant to NRS 213.10705, the release or continuation on parole is an act of grace of the State. In addition, pursuant to NRS 213.10705 and NAC 213.560, the Parole Board is not required to grant or deny parole based on the guideline-recommended time to serve, and the establishment of parole standards does not create any right or interest in liberty or property, does not give rise to any reasonable expectation of parole, and does not establish any basis for a cause of action against the State, its political subdivisions, agencies, boards, commissions, departments, officers or employees. See *Greenholtz v. Inmates of Nebraska Penal & Cor.*, 442 U.S. 1, 99 S.Ct 2100, 60 L.Ed^{2d} 668 (1979).

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

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

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

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

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

CONVICTIONS/ENHANCEMENTS: All adult including instant offense and consecutive sentences.

INCARCERATIONS: All adult including instant offense and previous CS terms.

WEAPONS: Instant offense only, actual, highest level, even if plead out.

VICTIMS: Instant offense only, actual, highest level, even if plead out.

EMPLOYMENT: Any full time job, school, SIIS or SSI for 6 months during year prior to instant offense.

DISCIPLINARY: Based on previous three years. 10 points maximum. Credit limit is 3. +2 points for each major violation. +1 points for each minor/general violation. -1 for none at 1st hearing or none during the previous year. -2 for none in the last two years. -3 for none in the last three years.

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

STATIC FACTORS

Age at First Arrest (juvenile or adult): 25 years or older = 0 points, 20-24 years = 1 point, 19 years or younger = 2 points.

Prior Probation/Parole Revocations: No parole or probation revocations = 0 points, One or more = 2 points.

Employment History (prior to incarceration): Satisfactory full-time employment for 1-2 years = 0 points, Employed less than full time or full time employment for less than one year = 1 point, Unsatisfactory employment / unemployed / unemployable = 2 points.

Current or prior convictions: Property crime, forgery, robbery = 2 points, all others = 0 points.

History of drug alcohol abuse: None = 0 points, some use, not severe disruption of functioning = 1 points, frequent abuse, serious disruption of functioning = 2 points.

Gender: Male = 1 point, female = 0 points.

DYNAMIC FACTORS

DRUGS/ALCOHOL: All convictions, including instant offense.

COURT ACTION: % of maximum sentence ordered.

PROGRAMMING: [10 is maximum] Inmate must provide case worker with original for verification and copies of each certificate and diploma to the Board. Programming counts only on current sentence (programming on prior sentences will not be counted on the guideline).

-3 points for either GED, high school diploma, or 12 college credits.

-2 points for long term substance abuse program, behavior modification, or literacy program. -1 for short term counseling, street readiness, job workshop, parenting, weekly AA/NA's, full time job (½ day or more), or other program deemed appropriate by the Board.

Current Age: 41 and above = -1 point, 31-40 = 0 points, 21-30 = 1 point, under 21 = 2 points.

Gang Membership: No = 0 points, Yes = 2 points.

Completed DOC certified education/vocational/treatment program: Yes or has existing GED/high school/college degree = -1 point, No = 0 points.

Disciplinary Conduct - Past year: No violations or single minor violation = -1 points, Multiple minor violations = 0 points, Major violation = 1, multiple major violations = 2 points

Current custody level: Minimum = -1 point, Medium = 0 points, Maximum or Administrative Segregation = 2 points.

TOTAL POINTS SCORE: 0-4=Low Risk, 5-10=Moderate Risk, 11-15=High Risk, 16+ points total or 8points on dynamic factors=Highest Risk.

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

NEVADA BOARD OF PAROLE COMMISSIONERS

NRS 233B.100 PETITION

1
2
3
4 Petitioner Name: EVAN SCOTT GRANT

5 Address: 1721 E. Snyder Ave.

6 Apt / Suite No: —

7 City: Carson City

State: Nevada

8 Zip Code: 89701
9

10
11 Title of Regulation: Reassessment of severity level of crime.

12 NRS # / NAC #: NAC 213.522
13

14 Date submitted: July 14, 2021
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1 Reason for petitioning for the adoption, filing, amendment or repeal of the
2 regulation, per NRS 233B.100:

3 For the following reasons, Petitioner respectfully requests that NAC 213.522
4 be AMENDED per NRS 233B.100:

5 NAC 213.522(1)(a) and (2) must be removed as they are a violation of Nev.
6 Const. Art. 4 s. 20 and Nevada Supreme Court precedent. Additionally, NAC 213.522(3)
7 must be removed as it is dependent upon NAC 213.522(2). Nev. Const. Art. 4 s. 20
8 provides:

9 Section 20. Certain local and special laws prohibited.
10 The Legislature shall not pass local or special laws in
any of the following enumerated cases — that is to say:

11 ...

12 For the punishment of crimes and misdemeanors;

13 NAC 213.522 was adopted by the Board through NRS 233B. As chapter 233B was
14 passed by the Nevada Legislature, ch. 233B could not provide for the creation of
15 Nevada Administrative Codes that violate Nev. Const. Art. 4 s. 20, as doing so
16 would cause ch. 233B to violate that Constitutional provision. Simply stated, as
17 Nevada's Legislature was prohibited from creating local or special laws for the
18 punishment of crimes and misdemeanors, it could not create a law that permitted
19 State agencies to create local or special laws for the punishment of crimes and
20 misdemeanors. NACs "[H]ave the force of law and must be enforced..." NRS 233B.040(1).

21 To understand how NAC 213.522 violates Nev. Const. Art. 4 s. 20, the term
22 "local or special law" must first be defined. We begin by looking at the converse
23 known as a "general law" which is discussed in Nev. Const. Art. 4 s. 21:

24 Sec. 21. General laws to have uniform application. In all
25 cases enumerated in the preceding section, and in all
26 other cases where a general law can be made applicable,
all laws shall be general and of uniform operation
throughout the state.

27 When comparing Nev. Const. Art. 4 s. 20, to s. 21, the Nevada Supreme Court
28 observed that:

1 The leading division (of statutes) to be into "public or
2 general, private or special." Public or general statutes
3 are ... those which relate to or bind all within the
4 jurisdiction of the law making power, limited as that
5 power may be in its territorial operations, or by
6 constitutional restraints. Private or special statutes
7 relate to certain individuals or particular classes of
8 men.

9 The State of Nevada Ex. Rel. Clarke v. Irwin, 5 Nev. 111, 120 (1869). (citation
10 omitted). This concept was put into easy to understand words in 1975 by the, then,
11 Nevada Attorney General, "A 'local law' is one operating over a particular locality
12 instead of over the whole territory of the state. A 'special law' is one operating
13 upon one or a portion of a class, instead of upon all of a class." 1975 Op. Atty.
14 Gen. Nev. 53, Opinion No. 194, citing State Ex. Rel. Clarke v. Irwin, 5 Nev. 111
15 (1869).

16 A "class" is a "group of people, things, qualities or activities that have
17 common characteristics or attributes[.]" Class; BLACK'S LAW DICTIONARY (abr. 10th
18 ed. 2015). Nevada's Constitution in Article 4 Section 20 groups those being
19 punished for crimes and misdemeanors, thereby, creating an identifiable class.

20 How does this all apply to NAC 213.522 when NAC 213.522 was not created by
21 the Legislature? NAC 213.522 provides:

22 1. If the Board denies parole, the Board will not
23 consider a request for the Board to reassess the severity
24 level of the crime for which parole was denied unless:

25 (a) The Department of Corrections determines that the
26 severity assigned to the crime pursuant to NAC 213.512
27 should have been lower and advises the Board, in writing,
28 of its determination....

...

2. If the Board receives a request from a prisoner for
the Board to reassess the severity level of a crime and
the Department of Corrections has advised the Board that
the severity level assigned to the crime should have been
lower, the Executive Secretary of the Board or an
employee of the Board designated by the Board must apply
the lower severity level....

...

1 In NAC 213.522, the Board confers authority to the Department of Corrections
2 to assign the severity level of a crime for parole consideration purposes. The
3 problem is that the Legislature did not authorize the Board to look beyond its
4 statutes when considering offense, or crime, severity in any of NAC 213.522's
5 enabling statutes, NRS 213.10885, 213.110 and 213.140.

6 To the extent authorized by the statutes applicable to
7 it, each agency may adopt reasonable regulations to aid
8 it in carrying out the functions assigned to it by law
and shall adopt such regulations as are necessary to the
proper execution of those functions.

9 NRS 233B.040(1) (2020). The sole enabling statute of NAC 213.522 that discusses
10 crime severity is NRS 213.10885, specifically NRS 213.10885(2)-(2)(a) which
11 provides:

12 2. In establishing the standards, the Board
13 shall consider ... all other factors which are relevant
14 in determining the probability that a convicted person
15 will live and remain at liberty without violating the law
if parole is granted or continued. The other factors the
Board considers must include, but are not limited to:

16 (a) The severity of the crime committed;

17 ...

18 In NRS 213.10885(2)-(2)(a), the Board's consideration of "The severity of the
19 crime committed" is mandated by the Legislature through stating, "[T]he Board
20 shall..." "shall" is to be construed as mandatory when construing legislative
21 statutes, unless an exception is provided. Ewing v. Fahey, 86 Nev. 604, 607, 472
22 P.2d 347, 349 (1970). While an exception is provided, it bears no weight on the
23 issue presented here as subsection (2)(a) "must" be included in consideration.

24 "The maxim 'EXPRESSIO UNIUS EST EXCLUSIO ALTERIUS,' the expression of one
25 thing is the exclusion of another, has been repeatedly confirmed in this state."
26 Galloway v. Truesdell, 83 Nev. 13, 20, 422 P.2d 237, 242 (1967). "In the
27 Legislature rests the entire power of the people..." Id. at 23. The Legislature
28 has the power to determine what is or is not a crime and the appropriate penalty
for those who violate a criminal statute. See Anderson v. Eighth Judicial Dist.

1 Court, 448 P.3d 1120 (Nev. 2019).

2 By mandating only consideration of "The severity of the crime committed," the
3 Legislature did not vest in the Board the power to look beyond Nevada's statutes,
4 let alone defer to another state agency to determine the severity of a crime.

5 "Every positive direction contains an implication against anything contrary to it
6 which would frustrate or disappoint the purpose of that provision." Galloway, 83
7 Nev. at 26, quoting People v. Draper, 15 N.Y. 544 (emphasis added).

8 Furthermore, NAC 213.522(1)(a) states that the crime severity level is
9 assigned by the Department of Corrections "[P]ursuant to NAC 213.512..." NAC
10 213.512(1) references NRS 209.341 as the statute controlling the Department of
11 Corrections' assignment of severity level. However, a reading of NRS 209.341
12 shows that it makes no mention of assigning a severity level to a crime. In fact,
13 the words "severity," "level" nor "crime" appear a single time in NRS 209.341.

14 How then is the severity of a crime actually assigned in Nevada?

15 In determining whether an offense is petty or serious,
16 this "court must examine objective indications of the
17 seriousness with which society regards the offense," and
18 "[t]he best indicator of society's views is the maximum
19 penalty set by the Legislature." ... The word "penalty"
encompasses both a term of imprisonment as well as other
penalties proscribed by statute, but "[P]rimary emphasis
... must be placed on the maximum authorized period of
incarceration."

20 Anderson, 448 P.3d at 1123. (citation omitted). The Court goes on to say that in
21 the case of Anderson, "[T]he right affected [] convinces us that the [] penalty is
22 so severe as to categorize the offense as serious." Id. at 1124. Anderson shows
23 us that the totality of a person's rights affected by a criminal conviction as
24 deemed by the Legislature, with emphasis placed on the maximum authorized period
25 of incarceration, determines the severity of an offense, i. e. a crime. This concept
26 is further supported by English v. State, 116 Nev. 828, 9 P.3d 60 (2000) where the
27 Court held that an enhancement from a misdemeanor to a Category C felony
28 constituted an increase in offense severity.

1 Therefore, as the Board is only considering those persons convicted of a
2 felony, it must look to NRS 193.130 and NRS 193.330, which provide the categories
3 of Nevada's felonies, to discover the severity of crimes as set by the
4 Legislature. Interestingly, the Board used this exact method in 2004. Per the
5 PBFORM-PS (REV. 12/10/04), the Board states in its own words:

6 The Board has adopted crime severity levels A, B, C, D &
7 E based on the statutory definitions set forth in NRS
8 193.130, 193.330 and as provided by specific criminal
9 statute. The Board has expanded levels A and B to A1, A2,
A3, A4, B1, B2, B3 & B4 to reflect the diverse minimum
and maximum sentencing ranges provided for Level A and B
felonies.

10 (Exhibit 1).

11 As you can see, the Board in 2004, after English was decided in 2000,
12 clearly understood its statutory duty and was in compliance with Nevada law.
13 However, in 2008, when the Board adopted NAC 213.522 by R018-18, it deviated
14 dramatically from its understood statutory duty. The NAC 213.512 severity levels of
15 "highest," "high," "moderate," "low moderate" and "low," referred to in NAC
16 213.522(1)(a), do not exist in NRS 193.130, 193.330 nor 209.341. Furthermore, NAC
17 213.522 was adopted pursuant to NRS Chapter 233B which cannot permit the Board
18 to defer to the Department of Corrections to circumvent Legislatively assigned
19 severity levels for crimes in Nevada as doing so would cause NRS Chapter 233B to
20 become a special law pertaining to the punishment of crimes and misdemeanors, a
21 prohibited act under Nev. Const. Art. 4 s. 20.

22 For these reasons, NAC 213.522 is an illegal and unconstitutional NAC and
23 must be AMENDED immediately pursuant to NRS Chapter 233B regulation-making
24 procedures to remove NAC 213.522(1)(a) and (2). Additionally, NAC 213.522(3) must
25 be removed as it is dependent upon NAC 213.522(2).

26 ///

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1 Proposed language of the regulation to be adopted, filed or amended or the existing
2 language of the regulation to be repealed, as applicable:

3 NAC 213.522 Reassessment of severity level of crime. (NRS 213.10885,
4 213.110, 213.140)

5 1. If the Board denies parole, the Board will not consider a request for
6 the Board to reassess the severity level of the crime for which parole was denied
7 unless:

8 ~~(a) The Department of Corrections determines that the severity level~~
9 ~~assigned to the crime pursuant to NAC 213.512 should have been lower and advises~~
10 ~~the Board, in writing, of its determination; and~~

11 ~~(b) [(a)]~~ The prisoner mails a request to the State Board of Parole
12 Commissioners, 1677 Old Hot Springs Road, Suite A, Carson City, Nevada, 89706, not
13 later than 45 days after the meeting at which the Board considered whether to grant
14 parole.

15 ~~2. If the Board receives a request from a prisoner for the Board to~~
16 ~~reassess the severity level of a crime and the Department of Corrections has~~
17 ~~advised the Board that the severity level assigned to the crime should have been~~
18 ~~lower, the Executive Secretary of the Board or an employee of the Board designated~~
19 ~~by the Board must apply the lower severity level to establish a new initial~~
20 ~~assessment regarding whether to grant parole in the manner set forth in NAC~~
21 ~~213.516.~~

22 ~~3. If the new initial assessment established pursuant to subsection 2 is~~
23 ~~more favorable to the prisoner than the initial assessment established before the~~
24 ~~reassessment of the severity level, the Board will, as soon as practicable,~~
25 ~~schedule a meeting to reconsider whether to grant parole to the prisoner.~~

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1 The statutory authority for the adoption, filing, amendment or repeal of the
2 regulation:

3 "Any interested person may petition an agency requesting the adoption,
4 filing, amendment or repeal of any regulation..." NRS 233B.100(1) (2020). "Upon
5 submission of such a petition, the agency shall within 30 days either deny the
6 petition in writing, stating its reasons, or initiate regulation-making
7 proceedings." Id. "To the extent authorized by the statutes applicable to it by law,
8 each agency shall adopt reasonable regulations to aid it in carrying out the
9 functions assigned to it by law and shall adopt such regulations as are necessary
10 to the proper execution of those functions," NRS 233B.040(1) (2020). An agency
11 may provide notice of intent to adopt, amend or repeal a permanent or temporary
12 regulation. NRS 233B.060 (2020). An agency may propose a permanent or temporary
13 regulation. NRS 233B.0607 (2020). An agency may propose an emergency regulation.
14 NRS 233B.0613 (2020).

15
16 Any relevant data, views and arguments that support the petition for the adoption,
17 filing, amendment or repeal of the regulation:

18 This NRS 233B.100 petition stems from the urgent need to AMEND NAC 213.522
19 by removing NAC 213.522(1)(a) and (1) as they are illegal and unconstitutional
20 pursuant to the limits of NRS Chapter 233B and NRS 213.10885. Additionally, NAC
21 213.522(3) must be removed as it is dependent upon NAC 213.522(2). Furthermore,
22 NAC 213.522 frustrates Nevada Supreme Court precedent that the Board, in its own
23 words, agreed with. Supra p. 5.

24 Nev. Const. Art. 4 s. 20 prohibits the Legislature from creating special
25 laws, i.e. statutes, that allow individuals to be treated differently from
26 each other for the punishment of crimes and misdemeanors. NAC 213.522 was adopted
27 under NRS Chapter 233B. As the Legislature was prohibited from allowing NRS Chapter
28 233B to permit different punishments for the same crime, the Board could not use

1 NRS Chapter 233B to adopt an NAC that punishes convicted persons differently for
2 the same crime. Since the Legislature determined the severity of each category of
3 felony in NRS 193.130 and NRS 193.330, as acknowledged by the Board in PBFORM-PS
4 (REV. 12/10/04) (Exhibit 1), the Board is bound to follow the severities listed in
5 these statutes. Further supporting this concept, the Nevada Supreme Court has held
6 that increases in felony category constitute an increase in offense severity. See
7 Anderson, 448 P.3d; English, 116 Nev.

8 NAC 213.522 utilizing the Department of Corrections to assign a severity
9 level to crimes creates a situation where a person outside of the Board's
10 jurisdiction, i.e. in a sentencing court, is considered by the crime severity
11 assigned by the Legislature, while a person being considered by the Board is
12 considered based upon the crime severity assigned by the Department of Corrections.
13 As the Board determines how long a convicted person will actually be incarcerated,
14 upto the maximum term imposed by that person's sentencing court, every person
15 convicted of a felony will be punished by one crime severity when their sentencing
16 court determines their maximum term and a different crime severity, for the same
17 crime, when the Board determines how much of that maximum term is to be served
18 incarcerated.

19 By removing NAC 213.522(1)(a), (2) & (3), the intent of NAC 213.522 will be
20 preserved while correcting the statutory and Constitutional violations. Prisoners
21 assessed by the Board, who feel their severity level was misassigned, will retain
22 the ability to request severity level reassessment.

23 In conclusion, it is for the reasons stated in this NRS 233B.100 petition
24 that NAC 213.522 must be AMENDED pursuant to NRS 233B regulation-making
25 proceedings. NAC 213.522(1)(a) & (2) must be removed as they are in violation of
26 Nev. Const. Art. 4 s. 20 and Nevada Supreme Court precedent. Additionally, NAC
27 213.522(3) must be removed as it is dependent upon NAC 213.522(2). If the Board

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Fails to reasonably act on this petition, Petitioner intends to pursue legal action pursuant to NRS 233B.110 via the Uniform Declaratory Judgments Act, NRS Chapter 30.

DATED this 14th day of July, 2021.

Thank you for your time and consideration.


Respectfully submitted,


EVAN SCOTT GRANT

VERIFICATION

1
2 Under penalty of perjury, the undersigned declares that he is the Petitioner
3 named in the foregoing NRS 233B.100 Petition; that he knows the contents of the
4 Petition; that the facts alleged in this Petition are true of his own knowledge,
5 except as to those matters stated on information and belief; and that, as to those
6 matters stated on information and belief, he believes the Petition to be true.

7 DATED this 14th day of July, 2021.
8
9
10

11
12 
13 _____
14 EVAN SCOTT GRANT
15 1721 E. Snyder Ave.
16 Carson City, NV 89701
17
18
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CERTIFICATE OF SERVICE

I hereby certify that I am the Petitioner, that I am incarcerated, and that on the 14th day of July, 2021, I served a true and correct copy of the foregoing NRS 233B.100 Petition, by leaving it with Nevada Department of Corrections Northern Nevada Correctional Center Employee Sgt. Wood to be placed in the outgoing mail and be mailed via U.S. Postal Service CERTIFIED MAIL, Tracking No. 9590 9402 4743 8344 3306 27, Article No. 7019 0140 0000 9267 5418, addressed to:

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


EVAN SCOTT GRANT

EXHIBIT

1

P B F O R M - P S

(R E V . 1 2 / 1 0 / 0 4)

PAROLE STANDARDS

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

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

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

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

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

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

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

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

CONVICTIONS/ENHANCEMENTS: All adult including instant offense and consecutive sentences.

INCARCERATIONS: All adult including instant offense and previous CS terms.

WEAPONS: Instant offense only, actual, highest level, even if plead out.

VICTIMS: Instant offense only, actual, highest level, even if plead out.

EMPLOYMENT: Any full time job, school, SIIS or SSI for 6 months during year prior to instant offense.

DISCIPLINARY: Based on previous three years. 10 points maximum. Credit limit is 3. +2 points for each major violation. +1 points for each minor/general violation. -1 for none at 1st hearing or none during the previous year. -2 for none in the last two years. -3 for none in the last three years.

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

STATIC FACTORS

Age at First Arrest (juvenile or adult): 25 years or older = 0 points, 20-24 years = 1 point, 19 years or younger = 2 points.

Prior Probation/Parole Revocations: No parole or probation revocations = 0 points, One or more = 2 points.

Employment History (prior to incarceration): Satisfactory full-time employment for 1-2 years = 0 points, Employed less than full time or full time employment for less than one year = 1 point, Unsatisfactory employment / unemployed / unemployable = 2 points.

Current or prior convictions: Property crime, forgery, robbery = 2 points, all others = 0 points.

History of drug alcohol abuse: None = 0 points, some use, not severe disruption of functioning = 1 points, frequent abuse, serious disruption of functioning = 2 points.

Gender: Male = 1 point, female = 0 points.

DYNAMIC FACTORS

DRUGS/ALCOHOL: All convictions, including instant offense.

COURT ACTION: % of maximum sentence ordered.

PROGRAMMING: [10 is maximum] Inmate must provide case worker with original for verification and copies of each certificate and diploma to the Board. Programming counts only on current sentence (programming on prior sentences will not be counted on the guideline).

-3 points for either GED, high school diploma, or 12 college credits.

-2 points for long term substance abuse program, behavior modification, or literacy program. -1 for short term counseling, street readiness, job workshop, parenting, weekly AA/NA's, full time job (½ day or more), or other program deemed appropriate by the Board.

Current Age: 41 and above = -1 point, 31-40 = 0 points, 21-30 = 1 point, under 21 = 2 points.

Gang Membership: No = 0 points, Yes = 2 points.

Completed DOC certified education/vocational/treatment program: Yes or has existing GED/high school/college degree = -1 point, No = 0 points.

Disciplinary Conduct - Past year: No violations or single minor violation = -1 points, Multiple minor violations = 0 points, Major violation = 1, multiple major violations = 2 points

Current custody level: Minimum = -1 point, Medium = 0 points, Maximum or Administrative Segregation = 2 points.

TOTAL POINTS SCORE: 0-4=Low Risk, 5-10=Moderate Risk, 11-15=High Risk, 16+ points total or 8points on dynamic factors=Highest Risk.

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

1 NEVADA BOARD OF PAROLE COMMISSIONERS

2 NRS 233B.100 PETITION

3
4 Petitioner Name: EVAN SCOTT GRANT

5 Address: 1721 E. Snyder Ave.

6 Apt /Suite No: —

7 City: Carson City

State: Nevada

8 Zip Code: 89701

9
10
11 Title of Regulation: Determination of whether to grant parole: Consideration of
12 additional aggravating and mitigating factors.

13 NRS # / NAC #: NAC 213.518

14
15 Date Submitted: July 14, 2021

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1 Reason for petitioning for the adoption, filing, amendment or repeal of the
2 regulation, per NRS 233B.100:

3 For the following reasons, Petitioner respectfully requests that NAC 213.518
4 be AMENDED per NRS 233B.100:

5 This NRS 233B.100 petition stems from the urgent need to bring NAC 213.518's
6 conditional execution and capricious subjectivity into compliance with certain
7 mandatory predicates of NAC 213.518's enabling statute NRS 213.10885. In the case
8 of Anselmo v. Bisbee, 396 P.3d 848 (Nev. 2017), the Nevada Supreme Court held that:

9 Generally, an inmate does not have a protectable
10 due process or liberty interest in release on parole,
11 unless that right is created by state statute, ... Id. at
12 849. Nonetheless, eligible Nevada inmates do have a
13 statutory right [pursuant to NRS 213.140(1)] to be
14 considered for parole by the Board. When the Board
misapplies its own internal guidelines in assessing
whether to grant parole, this court cannot say that the
inmate received the consideration to which they are
statutorily entitled. Id.

15 ...

16 Pursuant to NRS 213.1099(2) and NRS 213.10885(1),
17 the Board must promulgate detailed standards to determine
18 whether the release of an inmate is appropriate. These
standards are codified in the Nevada Administrative Code.
Id. at 851.

19 In addition to NRS 213.10885, NRS 213.140 is an enabling statute of NAC
20 213.518. Therefore, Nevada inmates being considered for parole by the Board through
21 the execution of NAC 213.518, have a statutory right to proper application of the
22 standards set forth in NAC 213.518. To be properly applied, those standards must be
23 in compliance with the explicitly mandatory language of NRS 213.10885 as NRS
24 213.10885 is an enabling statute of NAC 213.518. Presently, NAC 213.518 is not in
25 compliance with certain explicitly mandatory predicates of NRS 213.10885. The
26 following is an analysis of how NAC 213.518 violates NRS 213.10885 in three unique
27 ways:

28 ///

///

1 First;

2 NRS 213.10885(2) provides:

3 In establishing the standards, the Board shall
4 consider the information on decisions regarding parole
5 that is compiled and maintained pursuant to NRS 213.10887
6 and all other factors which are relevant in determining
7 the probability that a convicted person will live and
8 remain at liberty without violating the law if parole is
9 granted or continued. The other factors the Board
10 considers must include, but are not limited to:

- 11 (a) The severity of the crime committed;
12 (b) The criminal history of the person;
13 (c) Any disciplinary action taken against the
14 person while incarcerated;
15 (d) Any previous parole violations or failures;
16 (e) Any potential threat to society or to the
17 convicted person; and
18 (f) The length of his or her incarceration.

19 In NRS 213.10885(2) sentence one, the word "shall" immediately appears after
20 "the Board." "Shall" is to be construed as mandatory when construing legislative
21 statutes, unless an exception is provided. Ewing v. Fahey, 86 Nev. 604, 607, 472
22 P.2d 347, 349 (1970).

23 An exception is provided in NRS 213.10885(2) sentence one. "[W]hich are
24 relevant..." substantively limits the Board's discretion by specifying which of the
25 "[A]ll other factors..." shall be considered by the Board. The Nevada Supreme
26 Court gave meaning to this exception in Anselmo, 396 P.3d at 853, by stating, "This
27 Court cannot say that the inmate receives proper consideration when the Board's
28 decision is based in part on an inapplicable [] factor." "Applicable" is defined as,
29 "[H]aving direct relevance," Applicable, BLACK'S LAW DICTIONARY (abr. 10th ed.
30 2015). Thus, it is the Board's consideration of inapplicable factors that is
31 prohibited under the "[W]hich are relevant..." exception.

32 Therefore, NRS 213.10885(2) sentence one explicitly mandates the
33 consideration of all applicable factors. As consideration of all applicable factors
34 is explicitly mandated, NRS 213.10885(2) sentence one "[C]reate[s] a protected
35 liberty interest by placing substantive limitations on official discretion." Olim
36 v. Wakinekona, 461 U.S. 238, 249, 75 L.Ed.2d 813, 103 S.Ct. 1741 (1983). As

1 "[E]ligible Nevada inmates do have a statutory right [pursuant to NRS 213.140(1)]
2 to be considered for parole by the Board[,]" Anselmo, 396 P.3d at 849, any
3 abrogation of NRS 213.10885(2) Sentence One would inadvertently abrogate every
4 inmate's state-created right to proper parole consideration recognized by the
5 Nevada Supreme Court.

6 Consideration of relevant NAC 213.518 factors is explicitly mandated by
7 NRS 213.10885(2) Sentence One. The adoption of the word "may" in NAC 213.518(1)
8 affords impermissible discretion in the Board's consideration of the 29 NAC
9 213.518 factors. "May" is construed as permissive when construing legislative
10 statutes. Ewing, 86 Nev. at 607. BLACK'S LAW DICTIONARY (abr. 10th ed. 2015)
11 defines permissive as: "Recommending or tolerating, but not compelling or
12 prohibiting; giving power of choice[.]"

13 As NRS 213.10885(2) Sentence One explicitly mandates the consideration of
14 "[A]ll other factors which are relevant[,]" the Board giving itself the power of
15 choice as to whether to consider factors set forth in NAC 213.518, in spite of
16 relevance, is a blatant abrogation of NRS 213.10885(2) Sentence One. Therefore,
17 the Board has a duty to initiate NRS Chapter 233B Regulation-making proceedings to
18 AMEND NAC 213.518, remove the permissive words "may consider" from NAC 213.518(1),
19 and replace the "may consider" in NAC 213.518(1) with the mandatory words "shall
20 consider relevant". Doing so will require the Board to evaluate NAC 213.518(2) &
21 (3) factors for relevance and subsequent consideration in keeping with NRS
22 213.10885(2) Sentence One's explicitly mandatory predicates.

23 Second;

24 NRS 213.10885(2)(a)-(f) specify "The other factors the Board must include,
25 but are not limited to...." NRS 213.10885(2). "Must" is defined as "An absolute
26 requirement," Must, WEBSTER'S NEW POCKET DICTIONARY (2007).

27 ///

28 ///

1 NAC 213.518(1) provides:

2 After establishing an initial assessment regarding
3 whether to grant parole pursuant to NAC 213.516, the
4 Board may consider additional aggravating and mitigating
factors to determine whether to grant parole to a
prisoner.

5 Of the 15 outcomes of the NAC 213.516 initial assessment, only 5 permit the
6 Board to consider NAC 213.518 factors. Permitting execution of NAC 213.518 factor
7 consideration to be dependent upon conditional direction from NAC 213.516
8 impermissibly violates NRS 213.10885(2)-(2)(F). The following are three, of many,
9 examples of how these violations have been occurring:

10 1. NRS 213.10885(2)(b) states that the Board must consider "The
11 criminal history of the person[.]" Yet, if NAC 213.516 does not permit the Board
12 to consider NAC 213.518 factors, then the Board is prohibited from considering
13 "Whether the prisoner has a history of possessing or using a weapon during the
14 commission of a crime[.]" NAC 213.518(2)(o).

15 2. NRS 213.10885(2)(d) states that the Board must consider "Any
16 previous parole violations or failures[.]" Yet, if NAC 213.516 does not permit the
17 Board to consider NAC 213.518 factors, then the Board is prohibited from
18 considering "Whether the prisoner previously completed probation or parole
19 successfully[.]" NAC 213.518(3)(f).

20 3. NRS 213.10885(2)(e) states that the Board must consider "Any
21 potential threat to society or the convicted person[.]" Yet, if NAC 213.516 does
22 not permit the Board to consider NAC 213.518 factors, then the Board is prohibited
23 from considering "Whether the prisoner has a history of failing to comply with
24 orders from mental health professionals for the treatment of mental illness,
25 including, without limitation, failing to comply with prescriptions for medication
26 to treat mental illness[.]" NAC 213.518(2)(1).

27 ///

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1 It is due to this impermissible abrogation of NRS 213.10885(2)-(2)(f)
2 that NAC 213.518(1) must be AMENDED. The NAC 213.518(1) language, "After
3 establishing an initial assessment regarding whether to grant parole pursuant to NAC
4 213.516,..." must be removed to permit the Board unimpeded consideration of
5 relevant NAC 213.518 factors as explicitly mandated by NRS 213,10885(2)-(2)(f).

6 Third;

7 NRS 213.10885(1) provides:

8 The Board shall adopt by regulation specific
9 standards for each type of convicted person to assist the
Board in determining whether to grant or revoke parole.

10 ...

11 The standards must be based on objective criteria
12 for determining the person's probability of success on
parole.

13 BLACK'S LAW DICTIONARY (abr. 10th ed. 2015) defines objective as: "Of, relating to,
14 or based on externally verifiable phenomena, as opposed to an individual's
15 perceptions, feelings, or intentions... 2. Without bias or prejudice,
16 disinterested...."

17 Presently, NAC 213.518 is titled, in part, "Consideration of additional
18 aggravating and mitigating factors," yet absent from its language is criteria that
19 specifies how these aggravating and mitigating factors are to be considered. By not
20 codifying anywhere within NAC 213.495 through 213.565, inclusive, how
21 consideration of NAC 213.518 factors is to be executed, consideration of each
22 factor will vary based upon the Parole Commissioners assigned to a given inmate's
23 parole consideration. This will, and likely has, resulted in inconsistent and
24 unpredictable consideration of any given factor. Therefore, a subsection
25 specifying how applicable aggravating and mitigating factors will be considered is
26 necessary to satisfy the objectivity requirement of NRS 213, 10885(1) and give
27 meaning to NAC 213,518's title: "Consideration of additional aggravating and
28 mitigating factors."

1 "[T]he title of a statute and the heading of a section are tools available
2 for the resolution of a doubt about the meaning of a statute." Porter v. Nussel,
3 534 U.S. 516, 528, 152 L.Ed.2d 12, 122 S.Ct. 983 (2002). While an NAC is not an
4 NRS, the same concept applies. NAC 213.518's title indicates that the regulation
5 pertains to the "Consideration of additional aggravating and mitigating factors"
6 and, furthermore, utilizes NRS 213.10885 as an enabling statute, thus, objective
7 consideration of additional aggravating and mitigating factors is the intent of
8 NAC 213.518. Further supporting this derived intent, the Nevada Legislature
9 stated, "It is the policy of this state that every regulation of an agency be ...
10 expressed in clear and concise language." NRS 233B.062(1) (2020).

11 Regardless of the intent derived from NAC 213.518 itself, NRS 213.10885(1)
12 mandates that the Board adopt standards based on "objective criteria" and NRS
13 213.10885(2) mandates that the Board "consider" "[A]ll other factors which are
14 relevant..." Therefore, as NAC 213.518, and all other Nevada Board of Parole
15 Commissioners related NACs, fail to specify how NAC 213.518 aggravating and
16 mitigating factors are to be considered, the Board has a duty to initiate NRS
17 chapter 233B regulation-making proceedings to AMEND NAC 213.518 to add a new
18 subsection detailing how those additional aggravating and mitigating factors are
19 to be considered.

20 While the Petitioner can suggest a consideration method, as no objective
21 consideration method presently exists and the process of consideration is for the
22 Board to determine through its expertise, provided it is in compliance with all
23 applicable Nevada and Federal law, the Petitioner yields the construction of the
24 standard to the Board. Regardless of the language, an objective standard for NAC
25 213.518 aggravating and mitigating factor consideration must be adopted.

26 Ultimately, if the Board decides to subjectively deviate from its new
27 objective standard for NAC 213.518 factor consideration, it has the discretion
28 to do so, provided the Board complies with NAC 213.560 and NRS

1 213.10895(7)(a). However, as there is currently no objective standard to consider
2 NAC 213.518 factors, NAC 213.560 and NRS 213.10895(7)(a) are moot as no subjective
3 deviation is possible because the current process is purely subjective.

4 For these reasons, the Board must initiate NRS Chapter 233B regulation-making
5 proceedings to adopt a new subsection of NAC 213.518 specifying how NAC 213.518
6 factors are to be considered.

7 Conclusion;

8 For the reasons stated in this NRS 233B.100 petition, NAC 213.518 must be
9 AMENDED pursuant to NRS Chapter 233B regulation-making proceedings. NAC 213.518(1)
10 must be AMENDED to remove the permissive words "may consider" and replace them with
11 the mandatory words "shall consider relevant". Furthermore, NAC 213.518(1) must be
12 AMENDED to remove the conditionally dependent execution of NAC 213.518 factor
13 consideration by removing the language: "After establishing an initial assessment
14 regarding whether to grant parole pursuant to NAC 213.516". And, NAC 213.518 must
15 be AMENDED to add an additional subsection detailing how NAC 213.518 aggravating
16 and mitigating factors are to be considered.

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1 Proposed language of the regulation to be adopted, filed or amended or the
2 existing language of the regulation to be repealed, as applicable:

3 NAC 213.518 Determination of whether to grant parole: Consideration of
4 additional aggravating and mitigating factors. (NRS 213.10885, 213.110, 213.140)

5 1. ~~After establishing an initial assessment regarding whether to grant~~
6 ~~parole pursuant to NAC 213.516, the [The] Board may consider [shall consider~~
7 relevant] additional aggravating and mitigating factors to determine whether to
8 grant parole to a prisoner.

9 2. The aggravating factors which the Board may consider in determining
10 whether to grant parole to a prisoner include, without limitation:

11 ...

12 3. The mitigating factors which the Board may consider to determine whether
13 to grant parole to a prisoner include, without limitation:

14 ...

15 [4. The Board shall consider every applicable aggravating and mitigating
16 factor in the following manner:]

17 (Remaining language for Subsection 4 to
18 be determined by the Board to support
19 its duty to provide objective and proper
20 factor consideration pursuant to NAC
21 213.518's enabling statutes.)

21 The statutory authority for the adoption, filing, amendment or repeal of the
22 regulation:

23 "Any interested person may petition an agency requesting the adoption,
24 filing, amendment, or repeal of any regulation...." NRS 233B.100(1) (2020). "Upon
25 submission of such a petition, the agency shall within 30 days either deny the
26 petition in writing, stated its reasons, or initiate regulation-making
27 proceedings." Id. "To the extent authorized by the statutes applicable to it by
28 law, each agency shall adopt reasonable regulations to aid it in carrying out the

1 functions assigned to it by law and shall adopt such regulations as are necessary
2 to the proper execution of those functions." NRS 233B.040(1) (2020). An agency may
3 provide notice of intent to adopt, amend or repeal a permanent or temporary
4 regulation. NRS 233B.060 (2020). An agency may propose a permanent or temporary
5 regulation. NRS 233B.0607 (2020). An agency may propose an emergency regulation.
6 NRS 233B.0613 (2020).

7
8 Any relevant data, views and arguments that support the petition for the adoption,
9 filing, amendment or repeal of the regulation:

10 For the following reasons, Petitioner respectfully requests that NAC 213.518
11 be AMENDED per NRS 233B.100:

12 1. NAC 213.518(1) must be AMENDED as it utilizes the permissive word
13 "may" making its execution discretionary in violation of NAC 213.518's enabling
14 statute NRS 213.10885. NRS 213.10885(2) explicitly mandates the consideration of
15 "[A]ll other factors which are relevant..." established by the Board in its adopted
16 standards. Supra pp. 2-3. Therefore, the word "may" in NAC 213.518(1) impermissably
17 allows for applicable NAC 213.518 aggravating and mitigating factors to not be
18 considered. To correct this, the words "may consider" must be AMENDED to the words
19 "shall consider relevant" to bring NAC 213.518(1) closer into compliance with NRS
20 213.10885(2) as "shall" is construed by the courts to be mandatory.

21 2. NAC 213.518(1) must further be AMENDED as its execution is
22 conditionally dependent upon NAC 213.516. Only when NAC 213.516 specifies "Consider
23 factors set forth in NAC 213.518" is the Board permitted to consider NAC 213.518
24 factors. This again violates NRS 213.10885(2)'s explicitly mandatory language
25 concerning the Board's consideration of "[A]ll other factors which are
26 relevant...." Supra pp. 3-5. To correct this, the language "After establishing an
27 initial assessment regarding whether to grant parole pursuant to NAC 213.516"
28 must be removed from NAC 213.518(1).

1 3. NAC 213.518 must be AMENDED to include an additional subsection, NAC
2 213.518(4), to bring it into compliance with NAC 213.518's enabling statute NRS
3 213.10885. NRS 213.10885(1) states that "The [Board's] standards must be based on
4 objective criteria for determining the person's probability of success on parole."
5 Nowhere in NAC 213.495 through 213.565, inclusive, does the Board state how
6 applicable NAC 213.518 factors are to be considered. This results in NAC 213.518
7 factor consideration that is based on Parole Commissioners' perceptions or
8 feelings instead of an objective, disinterested process. This will, and likely has,
9 resulted in inconsistent and unpredictable consideration of any given factor. While
10 the Petitioner can suggest a consideration method, as no objective consideration
11 method presently exists and the process of consideration is for the Board to
12 determine through its expertise, provided it is in compliance with Nevada and
13 Federal law, the Petitioner yields the construction of the standard for NAC 213.518
14 factor consideration to the Board. Regardless of the language, an objective
15 standard for NAC 213.518 aggravating and mitigating factor consideration must be
16 adopted to bring NAC 213.518 into compliance with NRS 213.10885(1).

17 If the Board fails to reasonably act on this Petition, Petitioner intends to
18 pursue legal action pursuant to NRS 233B.110 via the Uniform Declaratory Judgments
19 Act, NRS Chapter 30.

20 DATED this 14th day of July, 2021.

21
22 Thank you for your time and consideration.

23
24 Respectfully submitted,


25
26
27 

28 EVAN SCOTT GRANT

VERIFICATION

1
2 Under penalty of perjury, the undersigned declares that he is the Petitioner
3 named in the foregoing NRS 233B.100 Petition; that he knows the contents of the
4 Petition; that the facts alleged in this Petition are true of his own knowledge,
5 except as to those matters stated on information and belief; and that, as to those
6 matters stated on information and belief, he believes the Petition to be true.

7 DATED this 14th day of July, 2021.
8
9
10
11

12 
13 _____
14 EVAN SCOTT GRANT
15 1721 E. Snyder Ave.
16 Carson City, NV 89701
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CERTIFICATE OF SERVICE

1
2 I hereby certify that I am the Petitioner, that I am incarcerated, and that
3 on the 14th day of July, 2021, I served a true and correct copy of the
4 foregoing NRS 233B.100 Petition, by leaving it with Nevada Department of
5 Corrections Northern Nevada Correctional Center Employee Sgt. Wood
6 to be placed in the outgoing mail and be mailed via U.S. Postal Service
7 CERTIFIED MAIL, Tracking No. 9590 9402 4743 8344 3306 27, Article No. 7019 0140
8 0000 9267 5418, addressed to:

9
10 Nevada Board of Parole Commissioners
11 1677 Old Hot Springs Road, Suite A
12 Carson City, NV 89706
13
14
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16
17

18 
19 _____
20 EVAN SCOTT GRANT
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NEVADA BOARD OF PAROLE COMMISSIONERS

NRS 233B.100 PETITION

Petitioner Name: EVAN SCOTT GRANT

Address: 1721 E. Snyder Ave.

Apt / Suite No: —

City: Carson City

State: Nevada

Zip Code: 89701

Title of Regulation: Determination of whether to grant parole: Initial assessment.

NRS # / NAC #: NAC 213.516

Date Submitted: July 14, 2021.

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3	Anderson v. Eighth Judicial District Court, 448 P.3d 1120 (Nev. 2019)	7,8
4	Anselmo v. Bisbee, 396 P.3d 848 (Nev. 2017)	2
5	English v. State, 116 Nev. 828, 9 P.3d 60 (2000)	8,9
6	Ewing v. Fahey, 86 Nev. 604, 607, 472 P.2d 347, 349 (1970)	1,7
7	Galloway v. Truesdell, 83 Nev. 13, 422 P.2d 237 (1967)	7,8
8	Olim v. Wakinekona, 461 U.S. 238, 249, 75 L.Ed.2d 813, 103 S.Ct. 1741 (1983)	2
9	The State of Nevada Ex. Rel. Clarke v. Irwin, 5 Nev. 111 (1869)	6

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11	NRS 193.130	8,9
12	NRS 193.330	8,9
13	NRS 209.341	6,8,9
14	NRS 213.10885	1,6,7,10
15	NRS 213.10885(1)	4
16	NRS 213.10885(1), (2) & (2)(a)-(f)	4
17	NRS 213.10885(2)	1,3,9
18	NRS 213.10885(2)-(2)(a)	7
19	NRS 213.10885(2)(a)-(f)	4
20	NRS 213.10885(2)(b)	4
21	NRS 213.10885(2)(d)	4
22	NRS 213.10885(2)(e)	4
23	NRS 213.10885(2) Sentence One	1,2,11
24	NRS 213.110	6,10
25	NRS 213.140	6,10
26	NRS 213.140(1)	2
27	NRS 233B.040(1)	5,7,11
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1	NRS 233B.0607	11
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4	NRS 233B.100(1)	11
5	NRS 233B.110	13
6	<u>Nevada Administrative Codes</u>	
7	NAC 213.512	2,6,7,9,10
8	NAC 213.512(1)	6,8
9	NAC 213.514	2
10	NAC 213.516	1,2,4,5,6,9,10,11,12
11	NAC 213.518	3,4,10,11
12	NAC 213.518(2)	9,11
13	NAC 213.518(2)(1)	4
14	NAC 213.518(2)(o)	4
15	NAC 213.518(3)	9,12
16	NAC 213.518(3)(f)	4
17	<u>Constitutional Provisions</u>	
18	Nev. Const. Art. 4 s. 20	1,4,5,6,9
19	Nev. Const. Art. 4 s. 20 to s. 21	5
20	Nev. Const. Art. 4 s. 21	5
21	<u>Attorney General Opinions</u>	
22	1975 Op. Atty. Gen. Nev. 53, Opinion No. 194	6
23	<u>Documents</u>	
24	ADOPTED REGULATION OF THE NEVADA BOARD OF PAROLE COMMISSIONERS LCB FILE No. R018-08 (effective April 17, 2008)	9
25	NEVADA BOARD OF PAROLE COMMISSIONERS, OPERATION OF THE BOARD 4 (effective February 24, 2011)	12
27	<u>Books</u>	
28	BLACK'S LAW DICTIONARY (abr. 10th ed. 2015)	2,6

1 Reason for petitioning for the adoption, filing, amendment or repeal of the
2 regulation, per NRS 233B.100:

3 For the following reasons, Petitioner respectfully requests that NAC
4 213.516 be REPEALED, in its entirety, per NRS 233B.100:

5 NAC 213.516 must be REPEALED, in its entirety, as the entire regulation
6 violates NRS 213.10885, and Nevada Constitution Article 4 Section 20 and Nevada
7 Supreme Court precedent. Each of the two violations is unique and independently
8 damning to the entire regulation resulting in NAC 213.516's immediate REPEAL to be
9 of paramount importance. The following is an analysis of these violations:

10 First;

11 NRS 213.10885 is an enabling statute of NAC 213.516. NRS 213.10885(2)
12 provides:

13 In establishing the standards, the Board shall
14 consider the information on decisions regarding parole
15 that is compiled and maintained pursuant to NRS 213.10987
16 and all other factors which are relevant in determining
17 the probability that a convicted person will live and
18 remain at liberty without violating the law if parole is
19 granted or continued. The other factors the Board
20 considers must include, but are not limited to:

- 17 (a) The severity of the crime committed;
18 (b) The criminal history of the person;
19 (c) Any disciplinary action taken against the
20 person while incarcerated;
21 (d) Any previous parole violations or failures;
22 (e) Any potential threat to society or to the
23 convicted person; and
24 (f) The length of his or her incarceration.

21 In NRS 213.10885(2) sentence One, the word "shall" immediately appears after
22 "the Board." "Shall" is to be construed as mandatory when construing legislative
23 statutes, unless an exception is provided. Ewing v. Fahey, 86 Nev. 604, 607, 472
24 P.2d 347, 349 (1970).

25 As an exception is provided in NRS 213.10885(2) sentence One, the Board is
26 bound to comply with it. "[W]hich are relevant..." substantively limits the Board's
27 discretion by specifying which of the "[A]ll other factors..." shall be considered
28 by the Board. The Nevada Supreme Court gave meaning to this exception in

1 Anselmo v. Bisbee, 396 P.3d 848, 853 (Nev. 2017), by stating, "This Court cannot
2 say that the inmate receives proper consideration when the Board's decision is
3 based in part on an inapplicable [] factor." "Applicable" is defined as, "[H]aving
4 direct relevance." Applicable, BLACK'S LAW DICTIONARY (abr. 10th ed. 2015). Thus,
5 it is the Board's consideration of inapplicable factors that is prohibited under
6 the "[W]hich are relevant..." exception.

7 Therefore, NRS 213.10885(2) Sentence One explicitly mandates the
8 consideration of all applicable factors. As consideration of all applicable factors
9 is explicitly mandated, NRS 213.10885(2) Sentence One "[C]reate[s] a protected
10 liberty interest by placing substantive limitations on official discretion." Olim
11 v. Wakinekona, 461 U.S. 238, 249, 75 L.Ed.2d 813, 103 S.Ct. 1741 (1983). As
12 "[E]ligible Nevada inmates do have a statutory right [pursuant to NRS 213.140(1)]
13 to be considered for parole by the Board[,] " Anselmo, 396 P.3d at 849, any
14 abrogation of NRS 213.10885(2) Sentence One would inadvertently abrogate every
15 inmate's state-created right to proper parole consideration recognized by the
16 Nevada Supreme Court.

17 NAC 213.516 contains a table with the X-axis deriving its three values from
18 the three risk levels (High, Moderate, Low) assignable pursuant to NAC 213.514 and
19 the Y-axis with the five severity levels (Highest, High, Moderate, Low Moderate,
20 Low) assignable pursuant to NAC 213.512. Pursuant to NAC 213.516, the Board
21 utilizes the risk and severity levels assigned to the prisoner being considered
22 for parole to make the initial assessment of whether to grant or deny parole. The
23 table is illustrated below and is hereinafter referred to as ".516 Table":

24 ///

25 ///

26 ///

27 ///

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Severity Level	Risk Level		
	High	Moderate	Low
Highest	Deny parole	Consider factors set forth in NAC 213.518	Consider factors set forth in NAC 213.518
High	Deny Parole	Consider factors set forth in NAC 213.518	Grant parole at first or second meeting to consider prisoner for parole
Moderate	Deny parole	Grant parole at first or second meeting to consider prisoner for parole	Grant parole at initial parole eligibility
Low Moderate	Consider factors set forth in NAC 213.518	Grant parole at first or second meeting to consider prisoner for parole	Grant parole at initial parole eligibility
Low	Consider factors set forth in NAC 213.518	Grant parole at initial parole eligibility	Grant parole at initial parole eligibility

As you can clearly see, the .516 Table permits four possible actions: "Deny parole"; "Consider factors set forth in NAC 213.518"; "Grant parole at first or second meeting to consider prisoner for parole"; "Grant parole at initial parole eligibility". Only one (1) authorizes the Board to consider NAC 213.518 factors.

Therefore, of the 15 outcomes of the "initial assessment," ONLY 5 ALLOW THE BOARD TO CONSIDER THE 29 FACTORS OF NAC 213.518. Three outcomes "Deny parole" without determining if any of the 13 NAC 213.518 mitigating factors are relevant and must therefore be considered pursuant to NRS 213.10885(2). Four outcomes "Grant parole at initial parole eligibility" without determining if any of the 16 aggravating factors are relevant and must be considered. And, three outcomes allow the Board to defer a grant of parole from the first to second meeting without any determination of relevance or consideration of the 29 NAC 213.518 factors. This

1 makes the grant or denial at the first meeting subjective, capricious and a clear
2 violation of NRS 213.10885(1) which states that "The [Board's] standards must be
3 based on objective criteria...."

4 Furthermore, permitting execution of NAC 213.518 factor consideration to be
5 dependent upon conditional direction from NAC 213.516 impermissably violates NRS
6 213.10885(2)(a)-(f). The following are three examples, of many, detailing how these
7 violations have been occurring:

8 1. NRS 213.10885(2)(b) states that the Board must consider "The
9 criminal history of the person[.]" Yet, if NAC 213.516 does not permit the Board to
10 consider NAC 213.518 factors, then the Board is prohibited from considering
11 "Whether the prisoner has a history of possessing or using a weapon during the
12 commission of a crime[.]" NAC 213.518(2)(o).

13 2. NRS 213.10885(2)(d) states that the Board must consider "Any
14 previous parole violations or failures[.]" Yet, if NAC 213.516 does not permit the
15 Board to consider NAC 213.518 factors, then the Board is prohibited from
16 considering "Whether the prisoner previously completed probation or parole
17 successfully[.]" NAC 213.518(3)(f).

18 3. NRS 213.10885(2)(e) states that the Board must consider "Any
19 potential threat to society or the convicted person[.]" Yet, if NAC 213.516 does
20 not permit the Board to consider NAC 213.518 factors, then the Board is prohibited
21 from considering "Whether the prisoner has a history of failing to comply with
22 orders from mental health professionals for the treatment of mental illness,
23 including, without limitation, failing to comply with prescriptions for medication
24 to treat mental illness[.]" NAC 213.518(2)(1).

25 Ultimately, 10 of the 15 NAC 213.516 outcomes prevent the Board from
26 exercising its statutory duty pursuant to NRS 213.10885(1), (2) & (2)(a)-(f). It
27 is for this reason that NAC 213.516 must be REPEALED, in its entirety, pursuant to
28 NRS Chapter 233B regulation-making proceedings.

1 Second;

2 NAC 213.516 must be REPEALED, in its entirety, as it is in violation of Nevada
3 Constitution Article 4 Section 20 and Nevada Supreme Court precedent. Nev. Const. Art.
4 4 s. 20 provides:

5 Section 20. Certain local and special laws prohibited.
6 The legislature shall not pass local or special laws in
7 any of the following enumerated cases — that is to say:

8 ...

9 For the punishment of crimes and misdemeanors;

10 ...

11 NAC 213.516 was adopted by the Board through NRS 233B. As chapter 233B was
12 passed by the Nevada Legislature, Ch. 233B could not provide for the creation of
13 Nevada Administrative Codes that violate Nev. Const. Art. 4 s. 20, as doing so
14 would cause ch. 233B to violate that Constitutional provision. Simply stated, as
15 Nevada's legislature was prohibited from creating local or special laws for the
16 punishment of crimes and misdemeanors, it could not create a law that permitted
17 state agencies to create local or special laws for the punishment of crimes and
18 misdemeanors. NACs "[H]ave the force of law and must be enforced..." NRS
19 233B.040(1).

20 To understand how NAC 213.516 violates Nev. Const. Art. 4 s. 20, the term
21 "local or special law" must first be defined. We begin by looking at the converse
22 known as a "general law" which is discussed in Nev. Const. Art. 4 s. 21:

23 Sec. 21. General laws to have uniform application. In all
24 cases enumerated in the preceding section, and in all
25 other cases where a general law can be made applicable,
26 all laws shall be general and of uniform operation
27 throughout the state.

28 When comparing Nev. Const. Art. 4 s. 20 to s. 21, the Nevada Supreme Court
observed that:

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1 The leading division (of statutes) to be into "public or
2 general, private or special." Public or general statutes
3 are ... those which relate to or bind all within the
4 jurisdiction of the law-making power, limited as that
5 power may be in its territorial operations, or by
6 constitutional restraints. Private or special statutes
7 relate to certain individuals or particular classes of
8 men.

9 The State of Nevada Ex. Rel. Clarke V. Irwin, 5 Nev. 111, 120 (1869). (citation
10 omitted). This concept was put into easy to understand words in 1975 by the, then,
11 Nevada Attorney General, "A 'local law' is one operating over a particular locality
12 instead of over the whole territory of the state. A 'special law' is one operating
13 upon one or a portion of a class, instead of upon all of a class," 1975 Op. Atty.
14 Gen. Nev. 53, Opinion No. 194, Citing State Ex. Rel. Clarke V. Irwin, 5 Nev. 111
15 (1869).

16 A "class" is a "group of people, things, qualities or activities that have
17 common characteristics or attributes[.]" Class, BLACK'S LAW DICTIONARY (abr. 10th
18 ed. 2015). Nevada's Constitution in Article 4 Section 20 groups those being
19 punished for crimes and misdemeanors, thereby, creating an identifiable class.

20 How does all this apply to NAC 213.516 when NAC 213.516 was not created by
21 the Legislature?

22 The NAC 213.516 language, including the .516 Table, utilizes NAC 213.512
23 severity levels. NAC 213.512(1) provides:

24 The Board will assign to each crime for which parole is
25 being considered a severity level of "highest," "high,"
26 "moderate," "low-moderate" or "low." The severity level
27 will be the same as the severity level assigned to the
28 crime by the Department of Corrections for the purpose of
classifying offenders pursuant to NRS 209.341.

29 In NAC 213.512, the Board confers authority to the Department of Corrections
30 to assign the severity level of a crime for parole consideration purposes. The
31 problem is that the Legislature did not authorize the Board to look beyond its
32 statutes when considering offense, or crime, severity in any of NAC 213.512's
33 enabling statutes, NRS 213.10885, 213.110 and 213.140.

1 To the extent authorized by statutes applicable to it,
2 each agency may adopt reasonable regulations to aid it in
3 carrying out the functions assigned to it by law and
4 shall adopt such regulations as are necessary to the
5 proper execution of those functions.

6 NRS 233B.040(1) (2020). The sole enabling statute of NAC 213.512 that discusses
7 crime severity is NRS 213.10885, specifically NRS 213.10885(2)-(2)(a) which
8 provides:

9 2. In establishing the standards, the Board
10 shall consider... all other factors which are relevant
11 in determining the probability that a convicted person
12 will live and remain at liberty without violating the law
13 if parole is granted or continued. The other factors the
14 Board considers must include, but are not limited to:

15 (a) The severity of the crime committed;

16 ...

17 In NRS 213.10885(2)-(2)(a), the Board's consideration of the "severity of the
18 crime committed" is mandated by the Legislature through stating, "[T]he Board
19 shall...." "shall" is to be construed as mandatory when construing Legislative
20 statutes, unless an exception is provided. Ewing, 86 Nev. at 607. While an exception
21 is provided, it bears no weight on the issue presented here.

22 "The maxim 'EXPRESSIO UNIS EST EXCLUSIO ALTERIUS,' the expression of one
23 thing is the exclusion of another, has been repeatedly confirmed in this State."
24 Galloway v. Truesdell, 83 Nev. 13, 20, 422 P.2d 237, 242 (1967). "In the
25 Legislature rests the entire power of the people...." Id. at 23. The Legislature
26 has the power to determine what is or is not a crime and the appropriate penalty
27 for those who violate a criminal statute. See Anderson v. Eighth Judicial Dist.
28 Court, 448 P.3d 1120 (Nev. 2019).

By mandating only consideration of the "severity of the crime committed,"
the Legislature did not vest in the Board the power to look beyond Nevada's
statutes, let alone defer to another state agency to determine the severity of an
offense. "Every positive direction contains an implication against anything

///

1 contrary to it which would frustrate or disappoint the purpose of that provision."
2 Galloway, 83 Nev. at 26, quoting People v. Draper, 15 N.Y. 544 (emphasis added).

3 Furthermore, NAC 213.512(1) references NRS 209.341 as the statute controlling
4 the Department of Corrections' assignment of severity level. However, a reading of
5 NRS 209.341 shows that it makes no mention of assigning a severity level to a
6 crime. In fact, the words "severity," "level" nor "crime" appear a single time in
7 NRS 209.341.

8 How then is the severity of a crime actually assigned in Nevada?

9 In determining whether an offense is petty or serious,
10 this "court must examine objective indications of the
11 seriousness with which society regards the offense," and
12 "[+]he best indicator of society's views is the maximum
13 penalty set by the Legislature." ... The word "penalty"
encompasses both a term of imprisonment as well as other
penalties proscribed by statute, but "[p]rimary emphasis
... must be placed on the maximum authorized period of
incarceration."

14 Anderson, 448 P.3d at 1123. (citation omitted). The Court goes on to say that in
15 the case of Anderson, "[T]he right affected [] convinces us that the [] penalty is
16 so severe as to categorize the offense as serious." Id. at 1124. Anderson shows us
17 that the totality of a person's rights affected by a criminal conviction as deemed
18 by the Legislature, with emphasis placed on the maximum authorized period of
19 incarceration, determines the severity of an offense, i.e. a crime. This concept is
20 further supported by English v. State, 116 Nev. 928, 4 P.3d 60 (2000) where the
21 Court held that an enhancement from a misdemeanor to a Category C felony
22 constituted an increase in offense severity.

23 Therefore, as the Board is only considering those persons convicted of a
24 felony, it must look to NRS 193.130 and NRS 193.330, which provide the categories
25 of Nevada's felonies, to discover the severity of crimes as set by the
26 Legislature. Interestingly, the Board used this exact method in 2004. Per the
27 PBFORM-PS (REV. 12/10/04), the Board states in its own words:

28 ///

1 The Board has adopted crime severity levels A, B, C, D &
2 E based on the statutory definitions set forth in NRS
3 193.130, 193.330 and as provided by specific criminal
4 statute. The Board has expanded levels A and B to A1, A2,
5 A3, A4, B1, B2, B3 & B4 to reflect the diverse minimum
6 and maximum sentencing ranges provided for Level A and B
7 felonies.

8 (Exhibit 1).

9 As you can see, the Board in 2004, after English was decided in 2000,
10 clearly understood its statutory duty and was in compliance with Nevada law.
11 However, in 2008, when the Board adopted NAC 213.512 by R018-08, it deviated
12 dramatically from its understood statutory duty. The NAC 213.512 severity levels of
13 "highest," "high," "moderate," "low moderate" and "low" do not exist in NRS
14 193.130, 193.330 nor 209.341. Furthermore, NAC 213.512 was adopted pursuant to NRS
15 Chapter 233B which cannot permit the Board to defer to the Department of
16 Corrections to circumvent Legislatively assigned severity levels for crimes in
17 Nevada as doing so would cause NRS Chapter 233B to become a special law pertaining
18 to the punishment of crimes and misdemeanors, a prohibited act under Nev. Const.
19 Art. 4 s. 20.

20 Therefore, as the NAC 213.516 language and the .516 Table are utilizing the
21 Nevada Department of Corrections to circumvent legislatively assigned severity
22 levels, NAC 213.516 is illegal, unconstitutional and must be REPEALED immediately
23 pursuant to NRS Chapter 233B regulation-making procedures.

24 Conclusion;

25 For two entirely different reasons, the construction of NAC 213.516 violates
26 Nevada law. One unlawfully denies Nevada prisoners their state-created right to
27 consideration of "[A]ll other factors which are relevant..." NRS 213.10895(2).
28 This denial injures both the convicted person, if parole is denied without
complete and relevant NAC 213.518(3) mitigating factor consideration, and the
Public, if parole is granted without complete and relevant NAC 213.518(2)
aggravating factor consideration. The other permits the Department of

1 Corrections to illegally and unconstitutionally assign a severity level to a crime
2 to circumvent legislative authority which is subsequently used by the Board to
3 grant or deny parole via the .516 Table.

4 For both reasons, NAC 213.516 must be immediately REPEALED, in its entirety,
5 pursuant to NRS chapter 233B regulation-making procedures.

6
7 Proposed language of the regulation to be adopted, filed or amended or the
8 existing language to be repealed, as applicable:

9 ~~NAC 213.516 Determination of whether to grant parole: Initial assessment.~~
10 ~~(NRS 213.10885, 213.110, 213.140) In determining whether to grant parole to a~~
11 ~~prisoner, the Board will apply the severity level of the crime for which parole is~~
12 ~~being considered as assigned pursuant to NAC 213.512 and the risk level assigned to~~
13 ~~the prisoner pursuant to NAC 213.514 to establish an initial assessment regarding~~
14 ~~whether to grant parole. The initial assessment will correspond to the following~~
15 ~~table:~~

Severity Level	Risk Level		
	High	Moderate	Low
Highest	Deny parole	Consider factors set forth in NAC 213.518	Consider factors set forth in NAC 213.518
High	Deny parole	Consider factors set forth in NAC 213.518	Grant parole at first or second meeting to consider prisoner for parole
Moderate	Deny parole	Grant parole at first or second meeting to consider prisoner for parole	Grant parole at initial parole eligibility
Low Moderate	Consider factors set forth in NAC 213.518	Grant parole at first or second meeting to consider prisoner for parole	Grant parole at initial parole eligibility

Low	Consider factors set forth in NAC 213.518	Grant parole at initial parole eligibility	Grant parole at initial parole eligibility
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5 The statutory authority for the adoption, filing, amendment or repeal of the
6 regulation:

7 "Any interested person may petition an agency requesting the adoption,
8 filing, amendment or repeal of any regulation...." NRS 233B.100(1) (2020). "Upon
9 submission of such a petition, the agency shall within 30 days either deny the
10 petition in writing, stating its reasons, or initiate regulation-making
11 proceedings." Id. "To the extent authorized by the statutes applicable to it by law,
12 each agency shall adopt reasonable regulations to aid it in carrying out the
13 functions assigned to it by law and shall adopt such regulations as are necessary
14 to the proper execution of those functions." NRS 233B.040(1) (2020). An agency
15 may provide notice of intent to adopt, amend or repeal a permanent or temporary
16 regulation. NRS 233B.060 (2020). An agency may propose a permanent or temporary
17 regulation. NRS 233B.0607 (2020). An agency may propose an emergency regulation.
18 NRS 233B.0613 (2020).

20 Any relevant data, views and arguments that support the petition for the adoption,
21 filing, amendment or repeal of the regulation:

22 The immediate REPEAL of NAC 213.516, in its entirety, empowers the Board to
23 consider "[A]ll other factors which are relevant..." as is explicitly mandated by
24 NRS 213.10885(2) Sentence One. The Legislature intended for this type of
25 consideration to occur as it is in the best interests of both Nevada's public and
26 prisoners.

27 The consideration of every applicable NAC 213.518(2) aggravating factor is
28 vital to protecting the public. Failing to do so could cause the Board to release

1 dangerous prisoners into the community who, due to the reduced visibility of
2 aggravating factors caused by the limitations of NAC 213.516, should remain
3 incarcerated.

4 At the same time, consideration of every applicable NAC 213.518(3) mitigating
5 factor is vital to protect the prisoner. Failing to do so could cause the Board to
6 deny parole to prisoners who, due to the reduced visibility of mitigating factors
7 caused by the limitations of NAC 213.516, have earned a grant of parole.

8 In an effort to ensure public safety, the Board of
9 Parole Commissioners (Board) renders fair and just
10 decisions on parole matters based on the law, the impact
11 on victims and the community, and the goal of
12 successfully reintegrating offenders back into society.

11 ...

12 The Board strongly believes in the parole process
13 and is committed to ethical, unbiased and professional
14 performance of its duties, and will continue to strive
15 for excellence and consistent fairness. ... The Board
16 recognizes its responsibility, not only to the citizens
17 of Nevada and the victims of crime, but also to the
18 offenders who appear before it. With this in mind, the
19 Board will render objective, just and informed decisions
20 that are free of improper external influences, while
21 being mindful of the needs of the offender and the
22 community.

18 NEVADA BOARD OF PAROLE COMMISSIONERS, OPERATION OF THE BOARD 4 (effective February
19 24, 2011).

20 In keeping with the spirit of the Board's own philosophy, NAC 213.516 must be
21 REPEALED, in its entirety, as its illegal and unconstitutional nature, Supra pp.
22 1-10, endanger both Nevada's citizens and prisoners. The community has a right to
23 be protected. Convicted persons have a right to proper, objective and informed
24 parole consideration.

25 For these reasons, NAC 213.516 must be REPEALED, in its entirety, pursuant to

26 ///

27 ///

28 ///

1 NRS Chapter 233B regulation-making proceedings, If the Board fails to reasonably
2 act on this petition, Petitioner intends to pursue legal action pursuant to NRS
3 233B.110 via the Uniform Declaratory Judgments Act, NRS Chapter 30.

4 DATED this 14th day of July, 2021.

5
6 Thank you for your time and consideration.

7
8 Respectfully submitted,

9
10
11 
12 EVAN SCOTT GRANT

CERTIFICATE OF SERVICE

I hereby certify that I am the Petitioner, that I am incarcerated, and that on the 14th day of July, 2021, I served a true and correct copy of the foregoing NRS 233B.100 Petition, by leaving it with Nevada Department of Corrections Northern Nevada Correctional Center Employee Sgt. Wood to be placed in the outgoing mail and be mailed via U.S. Postal Service CERTIFIED MAIL, Tracking No. 9590 9402 4743 8344 3306 27, Article No. 7019 0140 0000 9267 5418, addressed to:

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


EVAN SCOTT GRANT

EXHIBIT

1

P B F O R M - P S

(R E V . 1 2 / 1 0 / 0 4)

PAROLE STANDARDS

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

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

Pursuant to NRS 213.10705, the release or continuation on parole is an act of grace of the State. In addition, pursuant to NRS 213.10705 and NAC 213.560, the Parole Board is not required to grant or deny parole based on the guideline-recommended time to serve, and the establishment of parole standards does not create any right or interest in liberty or property, does not give rise to any reasonable expectation of parole, and does not establish any basis for a cause of action against the State, its political subdivisions, agencies, boards, commissions, departments, officers or employees. See *Greenholtz v. Inmates of Nebraska Penal & Cor.*, 442 U.S. 1, 99 S.Ct 2100, 60 L.Ed2d 668 (1979).

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

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

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

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

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

CONVICTIONS/ENHANCEMENTS: All adult including instant offense and consecutive sentences.

INCARCERATIONS: All adult including instant offense and previous CS terms.

WEAPONS: Instant offense only, actual, highest level, even if plead out.

VICTIMS: Instant offense only, actual, highest level, even if plead out.

EMPLOYMENT: Any full time job, school, SIIS or SSI for 6 months during year prior to instant offense.

DISCIPLINARY: Based on previous three years. 10 points maximum. Credit limit is 3. +2 points for each major violation. +1 points for each minor/general violation. -1 for none at 1st hearing or none during the previous year. -2 for none in the last two years. -3 for none in the last three years.

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

STATIC FACTORS

Age at First Arrest (juvenile or adult): 25 years or older = 0 points, 20-24 years = 1 point, 19 years or younger = 2 points.

Prior Probation/Parole Revocations: No parole or probation revocations = 0 points, One or more = 2 points.

Employment History (prior to incarceration): Satisfactory full-time employment for 1-2 years = 0 points, Employed less than full time or full time employment for less than one year = 1 point, Unsatisfactory employment / unemployed / unemployable = 2 points.

Current or prior convictions: Property crime, forgery, robbery = 2 points, all others = 0 points.

History of drug alcohol abuse: None = 0 points, some use, not severe disruption of functioning = 1 points, frequent abuse, serious disruption of functioning = 2 points.

Gender: Male = 1 point, female = 0 points.

DYNAMIC FACTORS

DRUGS/ALCOHOL: All convictions, including instant offense.

COURT ACTION: % of maximum sentence ordered.

PROGRAMMING: [10 is maximum] Inmate must provide case worker with original for verification and copies of each certificate and diploma to the Board. Programming counts only on current sentence (programming on prior sentences will not be counted on the guideline).

-3 points for either GED, high school diploma, or 12 college credits.

-2 points for long term substance abuse program, behavior modification, or literacy program. -1 for short term counseling, street readiness, job workshop, parenting, weekly AA/NA's, full time job (½ day or more), or other program deemed appropriate by the Board.

Current Age: 41 and above = -1 point, 31-40 = 0 points, 21-30 = 1 point, under 21 = 2 points.

Gang Membership: No = 0 points, Yes = 2 points.

Completed DOC certified education/vocational/treatment program: Yes or has existing GED/high school/college degree = -1 point, No = 0 points.

Disciplinary Conduct - Past year: No violations or single minor violation = -1 points, Multiple minor violations = 0 points, Major violation = 1, multiple major violations = 2 points

Current custody level: Minimum = -1 point, Medium = 0 points, Maximum or Administrative Segregation = 2 points.

TOTAL POINTS SCORE: 0-4=Low Risk, 5-10=Moderate Risk, 11-15=High Risk, 16+ points total or 8 points on dynamic factors=Highest Risk.

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

NEVADA BOARD OF PAROLE COMMISSIONERS
NRS 233B.100 PETITION

Petitioner Name: EVAN SCOTT GRANT

Address: 1721 E. Snyder Ave.

Apt / Suite No: —

City: Carson City

State: Nevada

Zip Code: 89701

Title of Regulation: Determination of whether to grant parole: Assignment of risk level to prisoner.

NRS # / NAC #: NAC 213.514

Date Submitted: July 14, 2021

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1 Reason for petitioning for the adoption, filing, amendment or repeal of the
2 regulation, per NRS 233B.100:

3 For the following reasons, Petitioner respectfully requests that NAC 213.514
4 be AMENDED per NRS 233B.100:

5 This NRS 233B.100 petition is being submitted to conform NAC 213.514 with
6 the changes requested by the Petitioner in the accompanying NRS 233B.100 petition
7 pertaining to NAC 213.516. In the Petitioner's NAC 213.516, NRS 233B.100 petition,
8 Petitioner requests the REPEAL of NAC 213.516, in its entirety, due to multiple
9 violations of Nevada's statutes and Constitution in NAC 213.516's language and
10 operation.

11 NAC 213.514(4) provides:

12 4. The Board will apply the risk level assigned
13 to a prisoner who is being considered for parole to
14 establish an initial assessment regarding whether to
grant parole in the manner set forth in NAC 213.516.

15 Provided the Board fulfills the Petitioner's request to REPEAL NAC 213.516,
16 NAC 213.514(4) will be directing the Board to apply a prisoner's NAC 213.514 risk
17 level in a manner that no longer exists. For this reason, Petitioner requests NAC
18 213.514 be AMENDED to remove NAC 213.514(4).

19 Doing so will shift the NAC 213.514 risk level consideration process from NAC
20 213.516 to NAC 213.518. NAC 213.518(2)(p) provides for the consideration of "Any
21 other factor which indicates an increased risk that release of the prisoner on
22 parole would be dangerous to society or the prisoner." And, NAC 213.518(3)(m)
23 provides for consideration of "Any other factor which indicates that the release of
24 the prisoner on parole would benefit, or would not be dangerous to, society or the
25 prisoner." Therefore, a mechanism is already in place to consider the NAC 213.514
26 risk levels of high and low, if NAC 213.516 were to be REPEALED. If moderate risk
27 were to be assigned, the Board could simply not apply either NAC 213.514(2)(p) or
28 (3)(m) to reflect a "middle of the road" risk level.

For these reasons, if NAC 213.516 were to be REPEALED as requested by the

1 Petitioner, NAC 213.514(4) would need to be removed to conform NAC 213.514 to the
2 absence of NAC 213.516. As previously indicated, this would not affect the Board's
3 ability to consider NAC 213.514 risk levels. The absence of NAC 213.516 would
4 trigger NAC 213.518(2)(p) & (3)(m) for the Board's consideration of NAC 213.514
5 risk levels. Therefore, if NAC 213.516 were to be REPEALED, NAC 213.514 must be
6 AMENDED to remove NAC 213.514(4).

7
8 Proposed language of the regulation to be adopted, filed or amended or the existing
9 language of the regulation to be repealed, as applicable:

10 NAC 213.514 Determination of whether to grant parole: Assignment of risk
11 level to prisoner. (NRS 213.10885, 213.110, 213.140)

12 ...

13 ~~4. The Board will apply the risk level assigned to a prisoner who is being~~
14 ~~considered for parole to establish an initial assessment regarding whether to grant~~
15 ~~parole in the manner set forth in NAC 213.516.~~

16 5. [4.] As used in this section, "sexual offense" has the meaning ascribed
17 to it in NRS 213.1214.

18
19 The statutory authority for the adoption, filing, amendment or repeal of the
20 regulation:

21 "Any interested person may petition an agency requesting the adoption, filing,
22 amendment, or repeal of any regulation...." NRS 233B.100(1) (2020). "Upon
23 submission of such a petition, the agency shall within 30 days either deny the
24 petition in writing, stating its reasons, or initiate regulation-making
25 proceedings." Id. "To the extent authorized by the statutes applicable to it by
26 law, each agency shall adopt reasonable regulations to aid it in carrying out the
27 functions assigned to it by law and shall adopt such regulations as are necessary
28 to the proper execution of those functions." NRS 233B.040(1) (2020). An agency may

1 provide notice of intent to adopt, amend or repeal a permanent or temporary
2 regulation. NRS 233B.060 (2020). An agency may propose a permanent or temporary
3 regulation. NRS 233B.0607 (2020). An agency may propose an emergency regulation.
4 NRS 233B.0613 (2020).

5
6 Any relevant data, views and arguments that support the petition for the adoption,
7 filing, amendment or repeal of the regulation:

8 Petitioner feels this NRS 233B.100 petition is simple and easy to understand.
9 Therefore, no further data, views or arguments will be presented.

10 DATED this 14th day of July, 2021.

11
12 Thank you for your time and consideration.

13
14 Respectfully submitted,

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18 EVAN SCOTT GRANT
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VERIFICATION

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Under penalty of perjury, the undersigned declares that he is the Petitioner named in the foregoing NRS 233B.100 Petition; that he knows the contents of the Petition; that the facts alleged in this Petition are true of his own knowledge, except as to those matters stated on information and belief; and that, as to those matters stated on information and belief, he believes the Petition to be true.

DATED this 14th day of July, 2021.



EVAN SCOTT GRANT
1721 E. Snyder Ave.
Carson City, NV 89701

CERTIFICATE OF SERVICE

I hereby certify that I am the Petitioner, that I am incarcerated, and that on the 14th day of July, 2021, I served a true and correct copy of the foregoing NRS 233B.100 Petition, by leaving it with Nevada Department of Corrections Northern Nevada Correctional Center Employee Sgt. Wood to be placed in the outgoing mail and be mailed via U.S. Postal Service CERTIFIED MAIL, Tracking No. 9590 9402 4743 8344 3306 27, Article No. 7019 0140 0000 9267 5418, addressed to:

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



EVAN SCOTT GRANT