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NEVADA BOARD OF PAROLE COMMISSIONERS

To: Board of Parole Commissioners

From: David M. Smith, Hearings Examiner II *DMS*

RE: Agenda Item VIII Consideration of the Safety of Victim, the Victims Family and the General Public at Parole Hearings in accordance with Marsy’s Law.
January 9, 2019 meeting of the Board

Attached is a copy of the Nevada Constitution pertaining to Marsy’s Law which was approved by the Voters and became effective November 27, 2018.

This agenda item addresses provisions of Marsy’s Law related to parole or other post judgement release decisions and setting release conditions. The two constitutional rights being considered on this agenda item are:

(c) The right to have the safety of the victim and the victim’s family considered as a factor in fixing the amount of bail and release conditions for the defendant¹.

(o) The right to have the safety of the victim, the victim’s family and the general public considered before any parole or other post judgment release decision is made.

The Board currently affirmatively states on the record at each hearing that the foregoing rights will be considered, and if release is granted, the same will be considered in fixing release conditions.

The following is one of a number of possible procedural changes the Board may make with respect to ensuring compliance with these two provisions of Marsy’s Law. Since it appears that the constitutional change requires an affirmative consideration rather than a passive

¹ This section of the constitution may be limited to release conditions of bail, but because the Board’s practice prior to Marsy’s Law has been to consider the victim in setting release conditions, this section is included for the purpose of discussion on this agenda item.

consideration, if there is a preference to discontinue making the affirmative statement on the record at each hearing, the following procedural change is recommended:

When there is a request for victim notification on a file, or when there is reasonable evidence of victim impact in a case, the panel recommending a parole grant will check an affirmation of consideration section on the parole worksheet; and include the following language on the order granting parole:

NOTE: Pursuant to Article 1 of the Constitution of the State of Nevada, Sec. 8A, the Board considered the safety of the victim, the victim's family and the general public before making the decision to grant parole and when setting release conditions.

In order to accomplish this, the parole hearing worksheet could be modified in the section where the panel indicates its reason types as follows (or something similar):

Reason Type (Circle): Grant Vic(15)___ Deny MPR Grant Vic(15)___ MPR Deny No Action Rescind

If "Grant" or "MPR Grant" is circled and the panel would like to include the written affirmation on the Grant Order, the panel would place an X or check above the line following the "Vic(15)" notation, and include grant reason #15 as the first reason listed in the *Reasons* section of the hearing worksheet².

Approving this procedure would eliminate the need to verbally state the consideration of the victims' rights at each hearing, and would result in the written affirmation that the victim's safety was considered only in those cases that are applicable to the constitutional requirement.

² The "Vic(15)" notation has been used as an example for the purpose of explaining this proposed process (with "15" being the next available number in the list of grant reason values in NOTIS). The final nomenclature or # may change if the Board approves this process.

Rights of a Victim of Crime According to Article I of the Constitution of the State of Nevada Effective November 27, 2018

Sec. 8A. Rights of victim of crime. [Effective November 27, 2018]

1. Each person who is the victim of a crime is entitled to the following rights:
 - (a) To be treated with fairness and respect for his or her privacy and dignity, and to be free from intimidation, harassment and abuse, throughout the criminal or juvenile justice process.
 - (b) To be reasonably protected from the defendant and persons acting on behalf of the defendant.
 - (c) To have the safety of the victim and the victim's family considered as a factor in fixing the amount of bail and release conditions for the defendant.
 - (d) To prevent the disclosure of confidential information or records to the defendant which could be used to locate or harass the victim or the victim's family.
 - (e) To refuse an interview or deposition request, unless under court order, and to set reasonable conditions on the conduct of any such interview to which the victim consents.
 - (f) To reasonably confer with the prosecuting agency, upon request, regarding the case.
 - (g) To reasonable notice of all public proceedings, including delinquency proceedings, upon request, at which the defendant and the prosecutor are entitled to be present and of all parole or other postconviction release proceedings, and to be present at all such proceedings.
 - (h) To be reasonably heard, upon request, at any public proceeding, including any delinquency proceeding, in any court involving release or sentencing, and at any parole proceeding.
 - (i) To the timely disposition of the case following the arrest of the defendant.
 - (j) To provide information to any public officer or employee conducting a presentence investigation concerning the impact of the offense on the victim and the victim's family and any sentencing recommendations before the sentencing of the defendant.
 - (k) To be informed, upon request, of the conviction, sentence, place and time of incarceration, or other disposition of the defendant, the scheduled release date of the defendant and the release of or the escape by the defendant from custody.
 - (l) To full and timely restitution.
 - (m) To the prompt return of legal property when no longer needed as evidence.
 - (n) To be informed of all postconviction proceedings, to participate and provide information to the parole authority to be considered before the parole of the offender and to be notified, upon request, of the parole or other release of the offender.
 - (o) To have the safety of the victim, the victim's family and the general public considered before any parole or other postjudgment release decision is made.
 - (p) To have all monetary payments, money and property collected from any person who has been ordered to make restitution be first applied to pay the amounts ordered as restitution to the victim.
 - (q) To be specifically informed of the rights enumerated in this section, and to have information concerning those rights be made available to the general public.
2. A victim has standing to assert the rights enumerated in this section in any court with jurisdiction over the case. The court shall promptly rule on a victim's request. A defendant does not have standing to assert the rights of his or her victim. This section does not alter the powers, duties or responsibilities of a prosecuting attorney. A victim does not have the status of a party in a criminal proceeding.
3. Except as otherwise provided in subsection 4, no person may maintain an action against this State or any public officer or employee for damages or injunctive, declaratory or other legal or equitable relief on behalf of a victim of a crime as a result of a violation of this section or any statute enacted by the Legislature pursuant thereto. No such violation authorizes setting aside a conviction.
4. A person may maintain an action to compel a public officer or employee to carry out any duty required by this section or any statute enacted by the Legislature pursuant thereto.
5. The granting of these rights to victims must not be construed to deny or disparage other rights possessed by victims. A parole authority shall extend the right to be heard at a parole hearing to any person harmed by the offender.
6. The Legislature shall by law provide any other measure necessary or useful to secure to victims of crime the benefit of the rights set forth in this section.
7. As used in this section, "victim" means any person directly and proximately harmed by the commission of a criminal offense under any law of this State. If the victim is less than 18 years of age, incompetent, incapacitated or deceased, the term includes the legal guardian of the victim or a representative of the victim's estate, member of the victim's family or any other person who is appointed by the court to act on the victim's behalf, except that the court shall not appoint the defendant as such a person.