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RE: October 25, 2021, NAC 213.518 Workshop Comments

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STATE OF NEVADA
PAROLE BOARD

Nevada Board of Parole Commissioners:

Thank you for holding this second NAC 213.518 Workshop in response to my NAC 213.518 NRS 233B.100 Petition and the public comments from the previous workshop. I have reviewed the proposed NAC 213.518(1), (2) & (3) language and would like to convey my appreciation to the Board for recognizing the importance of distinguishing relevant factor consideration. This marks a significant and meaningful shift in the Board's philosophy regarding when NAC 213.518(2) & (3) factors are to be considered and is a welcomed, additional step in the correct direction from the first NAC 213.518 amendment proposal.

However, the proposed changes to NAC 213.518(2) & (3) create a new issue. The proposed changes to NAC 213.518(2) & (3) changes every enumerated aggravating and mitigating factor. As we observed in the Nevada Supreme Court case of Anselmo v. Bisbee, 396 P.3d 848 (Nev. 2017), the Board's guideline definitions of each NAC 213.518(2) & (3) factor are key in determining the proper application of each factor.

In Anselmo, the Board mistakenly applied an NAC 213.518(2) aggravating factor that was not relevant to Anselmo per the Board's definition of that factor. As a result, Anselmo's state-created right to proper parole consideration under NRS 213.140(1) was violated, his parole denial was vacated by the Court, and a

new parole hearing was ordered.

Anselmo shows us the consequences of the Board misunderstanding its own NAC 213.518 factor definition guidelines. For these reasons, as every enumerated factor in NAC 213.518(2) & (3) are proposed to change, the Board must amend its "Aggravating and Mitigating Factors Definitions" guideline document to precisely convey when one of the proposed factors is relevant to a Nevada inmate being considered for parole.

Furthermore, the three legal issues that I identified in my NAC 213.518 NRS 233B.100 Petition and in my public comments for the first NAC 213.518 workshop remain in NAC 213.518(1)'s proposed language. First, per NAC 213.518(1), consideration of any NAC 213.518 factor by the Board is still dependent upon the outcome of the NAC 213.516 initial assessment. 10 of the 15 NAC 213.516 initial assessment outcomes prohibit NAC 213.518 factor consideration. NRS 213.10885(2) mandates the Board consider "[A]ll other factors which are relevant"

Second, per NAC 213.518(1), NAC 213.518(2) & (3) factor consideration remains discretionary. Again, NRS 213.10885(2) mandates the Board consider "[A]ll other factors which are relevant" The Board does not have a choice in the factors it considers. The word "may" in NAC 213.518(1) gives the Board a choice.

Third, NAC 213.518 still does not contain language stating how NAC 213.518 factors are to be considered. NRS 213.10885(1) mandates the Board's standards, or NACs, "[M]ust be based on objective criteria" Without specific language stating how NAC 213.518 factors are to be considered, objective consideration cannot occur. Every time any given factor is considered without the

guidance of a step-by-step consideration method, the bias of individual Board members will unpredictably weight the value, good or bad, of the factor under consideration. This is not to say that Board members are deliberately biased, but inherently biased as they view the world, like all human beings do, through the filter of their unique life experiences, unless intentionally and objectively directed to do otherwise.

To correct the four issues presented in this submission, the Board must take four specific actions:

1. The Board must amend its "Aggravating and Mitigating Factors Definitions" to precisely convey when each of the proposed NAC 213.518(2) & (3) factors are relevant to an inmate being considered for parole.
2. The Board must remove the NAC 213.518(1) language linking the Board's consideration of NAC 213.518 factors to the outcome of the NAC 213.516 initial assessment.
3. The Board must remove the word "may" from NAC 213.518(1) to make NAC 213.518(2) & (3) factor consideration mandatory when relevant.
4. The Board must add language to NAC 213.518 to explain how NAC 213.518 factors are to be considered.

Ultimately, the Legislature decides what the Board is required to do. "In every instance, the power to adopt regulations to carry out a particular function is limited by the terms of the grant of authority pursuant to which the function was assigned." NRS 233B.040(1). As previously stated, NRS 213.10885 mandates the Board take specific actions. The Board is failing to do so in both the current and proposed NAC 213.518(1), (2) & (3) language.

Judging law breakers through a process, which itself, breaks laws,
does not bring justice to Nevada's victims, it only creates more.

Thank you for your time and consideration,

~~Evan Grant~~
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