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NEVADA BOARD OF PAROLE COMMISSIONERS

To: Board of Parole Commissioners
From: David M. Smith, Hearings Examiner II
Subject: Updated list of Common Aggravating and Mitigating Factors
RE: January 29, 2018 Agenda Item IX

Attached is an updated list of Aggravating and Mitigating Factors that are selectable in NOTIS. The list includes two new factors related to sex assessments that may be received from the Department of Corrections (NDOC) for a hearing. The new factors are:

Aggravating Factor:

NRS 213.1214 assessment results in an above-average or well above-average risk to reoffend.
This factor may be indicated if the inmate was assessed pursuant to NRS 213.1214 and the risk result is above average or well above average risk to reoffend sexually.

Mitigating Factor:

NRS 213.1214 assessment results in a low risk or below-average risk to reoffend.
This factor may be indicated if the inmate was assessed pursuant to NRS 213.1214 and the risk result is low risk or below average risk to reoffend sexually.

The list also contains a paragraph at the beginning of the document clarifying that the attached document was developed to assist the Board in applying the factors in a consistent manner. The paragraph cites the applicable sections of the Nevada Administrative Code (NAC) with respect to the factors, and also indicates that every factor is not required to be applied at a hearing.

Additionally, all of the definitions have been changed to state that a factor may be indicated rather than using language indicating that the factor should be indicated. This change is to clarify the Board's discretion in applying factors within the guideline.

Nevada Parole Guidelines

Aggravating and Mitigating Factors Definitions Rev -1/2018

These instructions were developed to assist the Parole Board in applying aggravating and mitigating factors in a consistent manner. The Board defines and determines how to apply each factor and whether to apply any factor. (See NRS 213.10885; NAC 213.518(1)). This document does not restrict the Board's ability to determine that the circumstances warrant the application of a factor in a manner inconsistent with these instructions. See NRS 213.10885(7)(a); NAC 213.560(2). The Board may apply any other factor as it deems appropriate, and in the manner in which it deems appropriate, pursuant to NAC 213.518(2)(p) and NAC 213.518(3)(m). The Board is not required to indicate every potential aggravating or mitigating factor that may apply to a case, and may select only those factors it deems most relevant to the hearing.

Aggravating Factors

***AOTHER**

Other Aggravating Factors:

Other aggravating factors may include, but are not limited to:

- Psychological evaluations/prognosis.
- Substantive statements including threats of harm against another person upon release, or other information provided during interview that concerns the Board that the inmate may be a risk to public safety if released on parole.

***DISC_SEG**

Housed in disciplinary segregation within 24 months.

This factor may be indicated if the prisoner has been housed in disciplinary segregation for any period of time during the 24 months prior to the month the hearing will take place.

***EXTREME**

The extreme or abnormal aspects of the crime.

This factor may be indicated when the details of the crime indicate that the crime was conducted in such a manner that shows sophistication in planning or carrying out an offense, or the nature of the conduct is shocking to a normal person. Examples may include but are not limited to: Mutilation or abuse of a corpse following a murder; serial murder; serial sexual assault or numerous victims of a sex offender; the torture of a person or animal.

***IMPACT**

Impact on victim(s) and/or community:

This factor may be indicated if the offense caused the death or disability to a person, or if a victim was assaulted or injured whether deliberately or accidentally. Indicate this factor if the financial loss to a victim was substantial. Indicate this factor if the crime shocked the community in such a way as to cause significant public outrage and contempt toward the offender.

***INST_BEHAVE**

Disruptive Institutional Behavior

This factor may be indicated if the prisoner has engaged in disruptive institutional behavior within 36 months of the hearing month. Examples include, but are not limited to:

- Aggravated Escape
- Use of Weapon in Custody
- Propelling of Bodily Fluid
- Rioting
- Assault or Battery

***NATURE**

Nature of criminal record is increasingly more serious.

This factor may be indicated if criminal conduct of the person has escalated over time to include violence toward victims or others, or the scale of criminal activity has increased over time. This factor is used as a possible indicator of serious activity in the future.

***NEW_CRIME**

Commission of a crime while incarcerated, on bail, eluding, on escape status, or while under parole or probation supervision.

This factor may be indicated if the prisoner has ever been convicted of a crime while incarcerated, on bail, on escape status, or while under felony parole or probation supervision. Indicate this factor if the prisoner eluded or attempted to elude capture during a prior or current offense. Count misdemeanors and felony convictions or delinquency adjudications.

***PRIOR_PRISON**

Prior Prison term did not deter future criminal activity:

This factor may be indicated if the inmate served a separate period of incarceration not related to the current period of incarceration. 'Prior prison term' does not include periods of incarceration as a result of parole violations on the current period of incarceration. A 'period of incarceration' includes sentences that are served consecutively.

***PRIOR_SEX**

Prior sex conviction or delinquency adjudication:

This factor may be indicated if the prisoner has a prior sexual conviction or delinquency adjudication.

***PRIOR_VIOLEN**

Prior violent conviction or delinquency adjudication:

This factor may be indicated if the prisoner has a prior violent conviction or delinquency adjudication.

***REFUSE**

Refuse to participate in, or terminated for cause from treatment

This factor may be indicated if there is evidence that the prisoner refused to participate in appropriate treatment, or was terminated for cause from treatment. Termination from treatment due to medical issues, housing change or determination by a counselor that the treatment was not necessary or not appropriate is not considered cause.

***REMOVAL**

Removal from community supervision program (305/184/317/Casa Grande) on current period of incarceration.

This factor may be indicated if the prisoner has been released to a community supervision program such as the 305, 184 or 317 program, Casa Grande, etc, and been returned to custody because of program failure. Current period of incarceration only.

A program failure should not include a removal for reasons other than those caused by acts or omissions of the prisoner that occurred during the program participation (i.e., the prisoner is removed from participation because a new sentence is imposed for prior criminal activity which changed the prisoner's eligibility for participation).

***REPETITIVE**

Repetitive Similar Criminal Conduct

This factor may be indicated if there are two or more prior convictions or delinquency adjudications resulting from separate periods of similar criminal conduct. The prior repetitive conduct need not be similar to the instant offense. Do not count the instant offense as one of the prior convictions or delinquency adjudications. Count misdemeanor and felony convictions or delinquency adjudications, i.e., multiple property convictions and/or delinquency adjudications, multiple drug convictions and/or delinquency adjudications.

***HIGH_RISKSEX**

NRS 213.1214 assessment results in an above-average or well above-average risk to reoffend.

This factor may be indicated if the inmate was assessed pursuant to NRS 213.1214 and the risk result is above average or well above average risk to reoffend sexually.

***SIG_HIST**

Significant prior criminal history

This factor may be indicated if the offender has two or more prior felony convictions or delinquency adjudications related to separate periods of criminal activity. For example, three prior property convictions or delinquency adjudications related to the same crime spree should be counted as one event.

***THREE_REV**

Multiple prior parole/probation revocations.

This factor may be indicated if the prisoner has a history of three or more parole or probation revocations (felony or gross misdemeanor), or revocations of delinquency adjudications that result in re-commitment.

***VULNER**

Crime was targeted against a child or person at greater vulnerability because of age/disability. This factor may be indicated if the age of the victim was under 18 years old or over age 65, or if the PSI indicates that the victim suffered from a mental or physical disability prior to the crime. This factor may be used when the age of the victim is stated in the PSI even if the actual conviction does not take into consideration the age of the victim.

Mitigating Factors:

***LESSER**

Lesser involvement in the instant offense.

This factor may be indicated if there are co-offenders who received similar penalties, and the involvement of the inmate being considered for parole was markedly less than that of the co-offenders. An example is a person who acts as the driver of a get-away vehicle for a botched burglary which results in the murder of the victim. Although the driver in this example did not participate in the actual killing of the victim, Nevada's felony murder rule could result in the driver being convicted of 1st Degree Murder.

***LOW_RISKSEX**

NRS 213.1214 assessment results in a low risk or below-average risk to reoffend.

This factor may be indicated if the inmate was assessed pursuant to NRS 213.1214 and the risk result is low risk or below average risk to reoffend sexually.

***MANAGE**

Consistent in managing their mental illness as recommended by professionals, if the mental illness may be a contributing factor to criminal behavior.

This factor may be indicated when applicable, when there is evidence that the offender has been consistent in properly managing their mental illness.

***MOTHER**

Other Mitigating Factor:

***NOINFRACT**

Infraction free for two years or more to hearing month and not in disciplinary segregation.

This factor may be indicated if the inmate has been infraction free within the last two years from the hearing month, and had not been housed in disciplinary segregation during that time.

***NOPRIOR**

No prior/minimal criminal conviction or delinquency adjudication history.

This factor may be indicated if the offender has no prior felony convictions, no prior Gross Misdemeanor convictions, no Misdemeanor convictions or delinquency adjudications for indecent exposure or violence, and no more than three prior non-violent Misdemeanor convictions or delinquency adjudications. Failure to appear, civil protective custody and traffic offenses are excluded.

***PARTICIPATE**

Participation in programs specific to addressing the behavior that led to their incarceration. This factor may be indicated if the report or documentation provided by the NDOC indicates that the inmate has successfully participated (or is currently participating) in a program that specifically addresses behaviors that led to incarceration. For example, an inmate serving a sentence for a drug related crime who has participated in a DOC certified substance abuse program, or a sex offender who has received specific sex-offender therapy.

***PENDING**

Pending CS sentence or detainer lodged by other jurisdiction.

This factor may be indicated if the inmate has a consecutive sentence to serve, or there is a detainer from another jurisdiction that would cause the continued detention or possible deportation of the inmate.

***POSITIVE**

Positive adjustment to halfway house/work release program.

This factor may be indicated if the reports from the NDOC or P&P indicate that the person being considered is adjusting favorably to a house arrest program, work release program or position as a community trustee. Some examples include housed in Casa Grande or restitution center, any of the house arrest programs, assigned to work as a community trustee (motor pool, printing office, working for NDF, etc).

***REMORSE**

Case history demonstrates remorse.

This factor may be indicated if the pre-sentence investigation indicates that the offender demonstrated immediate remorse. Examples of this are, the offender immediately turned himself in to authorities, or immediately sought treatment or paid restitution. This type of action should be completely voluntary, and not as a result of any negotiation or other impending action. Weight to this factor is given to the display of remorse prior to arrest as opposed to subsequent to arrest.

***SITUATIONAL**

Crime was situational without evidence of intent to harm as information derived from PSI.

This factor may be indicated if the pre-sentence investigation indicates evidence that the crime was situational without evidence to harm another. An example is a person who is convicted of DUI with injury, without any prior conviction or delinquency adjudications for DUI.

***STABLE**

Stable release plans.

This factor may be indicated if there is documentation indicating that the inmate has a job opportunity as well as a place to live and the means to travel there upon release. Transition through a residential treatment program counts as stable release plans.

***SUCCESS**

Prior successful completion of parole or probation supervision other than summary or court-based supervision.

This factor may be indicated if the inmate has successfully completed (honorable discharge only) a period of parole or probation (other than summary or court-based supervision). If the type of discharge is not indicated or indeterminable, indicate this factor unless there is evidence of criminal conduct during the period of supervision.

***SUPPORT**

Community and/or family support

This factor may be indicated if the progress report or other document indicates community support such as family, church, friends, etc. This factor should also be indicated if there is no documentation, but supporters attend the parole hearing.

List of factors and codes without explanation

Aggravating Factors

- *AOTHER - Other Aggravating Factors:
- *DISC_SEG - Housed in disciplinary segregation within 24 months.
- *EXTREME - The extreme or abnormal aspects of the crime.
- *IMPACT - Impact on victim(s) and/or community:
- *INST_BEHAVE - Disruptive Institutional Behavior
- *NATURE - Nature of criminal record is increasingly more serious.
- *NEW_CRIME - Commission of a crime while incarcerated, on bail, eluding, on escape status, or while under parole or probation supervision.
- *PRIOR_PRISON - Prior Prison term did not deter future criminal activity:
- *PRIOR_SEX - Prior sex conviction or delinquency adjudication:
- *PRIOR_VIOLEN - Prior violent conviction or delinquency adjudication:
- *REFUSE - Refuse to participate in, or terminated for cause from treatment
- *REMOVAL - Removal from community supervision program (305/184/317/Casa Grande) on current period of incarceration.
- *REPETITIVE - Repetitive Similar Criminal Conduct
- *HIGH_RISKSEX - NRS 213.1214 assessment results in an above-average or well above-average risk to reoffend.
- *SIG_HIST - Significant prior criminal history
- *THREE_REV - Multiple prior parole/probation revocations.
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