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NEVADA BOARD OF PAROLE COMMISSIONERS

To: Board of Parole Commissioners

From: David M. Smith, Hearings Examiner II

Subject: Application of NRS 213.1214 Assessment Results to the Nevada Parole Guideline

RE: January 29, 2018 Agenda Item VIII

Agenda Item VIII pertains to the manner in which the Board will apply the result of a sexual assessment prepared in accordance with NRS 213.1214. The Board will override the result of the Nevada Parole Risk Assessment (NPRA) when an assessment returns a higher result on a sexual assessment prepared pursuant to NRS 213.1214. This policy is codified in NAC 213.514 as follows:

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

- 1. The Board will assign to each prisoner who is being considered for parole a risk level of "high," "moderate" or "low" according to the level of risk that the prisoner will commit a felony if released on parole.*
- 2. To establish the risk level, the Board will conduct an objective risk assessment using a combination of risk factors that predict recidivism.*
- 3. If a prisoner has ever been convicted of a sexual offense and has been evaluated using a currently accepted standard of assessment to determine the risk that the prisoner will commit another sexual offense if released on parole, the Board will assign a risk level to the prisoner which is the higher of the risk level assigned pursuant to this section and the risk level determined by such an evaluation.*
- 4. The Board will apply the risk level assigned to a prisoner who is being considered for parole to establish an initial assessment regarding whether to grant parole in the manner set forth in [NAC 213.516](#).*
- 5. As used in this section, "sexual offense" has the meaning ascribed to it in [NRS 213.1214](#).*

NRS 213.1214 and NRS 213.1215 specifically refer to a result of "high risk to reoffend in a sexual manner" as follows:

NRS 213.1214 Evaluation of certain prisoners by Department of Corrections before parole hearing; Director of Department to establish procedure for assessment of prisoners; immunity; regulations.

- 1. The Department of Corrections shall assess each prisoner who has been convicted of a sexual offense to determine the prisoner's risk to reoffend in a sexual manner using a currently accepted standard of assessment. The completed assessment must include, without limitation, a determination of the prisoner's level of risk to reoffend in a sexual manner, including, without limitation, **whether the prisoner is a high risk to reoffend in a sexual manner for the purposes of subsection 3 of [NRS 213.1215](#)**. The Director shall ensure a completed assessment is provided to the Board before, but not sooner than 120 days before, a scheduled parole hearing.*

NRS 213.1215 Mandatory release of certain prisoners.

- 3. If a prisoner who meets the criteria set forth in subsection 2 is **determined to be a high risk to reoffend in a sexual manner pursuant to [NRS 213.1214](#)**, the Board is not required to release the prisoner on parole pursuant to this section. If the prisoner is not granted parole, a rehearing date must be scheduled pursuant to [NRS 213.142](#).*

The Board uses a three tiered risk assessment which does not adequately take into consideration the multiple levels of assessment that can be produced in the assessments prepared pursuant to NRS 213.1214. In the past, the practice has been as follows:

Static-99R risk level	Corresponding Parole Board Risk Level/overrides
I – Very Low Risk	Low Risk
II – Below Average Risk	Moderate
III – Average Risk	Moderate Risk
IVa – Above Average Risk	High Risk
IVb – Well Above Average Risk	High Risk

Since “Below Average Risk” does not equal “Low Risk,” and “Above Average Risk” does not equal “Moderate Risk” the practice has been to deviate upward to the next risk level in an effort to not understate the risk to reoffend in a sexual manner.

In an effort to recognize the various degrees of risk produced from the Static-99R, the following change is offered for the Board’s discussion:

Static-99R risk level	Corresponding Parole Board Risk Level/overrides
I – Very Low Risk	Low Risk - Include Mitigating Factor of low risk or below average risk to reoffend
II – Below Average Risk	Moderate – Include Mitigating Factor of low risk or below average risk to reoffend
III – Average Risk	Moderate Risk
IVa – Above Average Risk	<u>Moderate Risk</u> – Include Aggravating Factor of risk is above average or well above average risk to reoffend sexually
IVb – Well Above Average Risk	High Risk - Include Aggravating Factor of risk is above average or well above average risk to reoffend sexually