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NEVADA BOARD OF PAROLE COMMISSIONERS

MINUTES

Meeting of the

Board of Parole Commissioners

April 27, 2023

MINUTES APPROVED ON MAY 31, 2023

NOTE: The following minutes have not been approved and are subject to revision at the next meeting of the Board.

The Board of Parole Commissioners held a public meeting on April 27, 2023, beginning at 9:00 AM at the following locations:

Conference room at the central office of the Board of Parole Commissioners, located at 1677 Old Hot Springs Road, Ste. A, Carson City, NV, and video conference at the Parole Board Office, 4000 S. Eastern Avenue, Ste. 130, Las Vegas, NV.

I. Open Meeting, call to order, roll call 9:00 AM.

The meeting was called to order by Chairman DeRicco. Present in Carson City were Commissioner Jackson, Commissioner Baker, Commissioner Weisenthal, and Chairman DeRicco. Present in the Las Vegas office were Commissioner Christiansen and Commissioner Bailey. Commissioner Verchio was absent, excused.

Support staff in attendance:

- Katie Fraker, Executive Secretary
- Kelly Mellinger, Hearings Examiner II
- Forrest Harter, Hearings Examiner I
- Matt Thrasher, Management Analyst I
- Mary Flores, Administrative Assistant III
- Heather Bryant, Administrative Assistant II
- Siryia Niemiec-Pearson, Administrative Assistant I

Members of the public present in Carson City included:

- Katie Brady, Senior Deputy Attorney General
- Laurie Ginn, Deputy Attorney General
- Patricia Adkisson

Members of the public present in Las Vegas included:

None.

II. Public Comment. No action may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken pursuant to subparagraph (2) of NRS 241.020.

Public comment – Carson City, NV

See attached written public comment from Patricia Adkisson.

Public comment – Las Vegas, NV

No public comment.

III. For possible action: Review/Approval of minutes from the March 29, 2023, Board meeting.

Motion:	Approve the minutes from the March 29, 2023, Board meeting as corrected.
Made:	Commissioner Baker
Seconded By:	Commissioner Jackson
Votes in Favor:	DeRicco, Jackson, Baker, Weisenthal, Christiansen, Bailey
Votes Opposed:	None
Results:	Motion passed

IV. For possible action: Comprehensive Review of Parole Standards (NRS 213.10885). Presentation by the JFA Institute on the revalidation of the Nevada Parole Risk Assessment. The Board must make a determination of whether the standards are effective in predicting the probability that a convicted person will live and remain at liberty without violating the law if parole is granted or continued. If a standard is found to be ineffective, the Board shall not use that standard in its decisions regarding parole [NRS 213.10885(6)]. The Board may take action to make changes to the parole guideline and risk assessment and the elements contained within, make a determination regarding the effectiveness of the current risk assessment and guideline, and discontinue the use of an element on the parole guideline and risk assessment if it is found to be ineffective.

Chairman DeRicco introduced James Austin, with JFA Associates, stating that Dr. Austin will be leading this agenda item and provide an overview of the comprehensive review along with any recommendations.

Dr. Austin began by giving some background, stating he does a lot of these studies with parole boards around the country. He stated that in his opinion, Nevada is one of the premiere parole boards in terms of its risk assessments and standards and the Board is building upon a good foundation in this state. He stated that it is a good thing that the risk assessment is looked at every 5 years to see if it is still working as designed.

Dr. Austin further went on to state that 2004 was the first assessment that was developed for Nevada. He stated since then there have been three revalidation studies and adjustments have been made based upon the results. He stated that after he goes through the report today, he will be making a recommendation to go back through and make some adjustments and provide a final report in 30 days with his final recommendation.

Dr. Austin read through the “JFA Risk Revalidation Presentation Slides” PowerPoint document. Dr. Austin stated that there are three options, instead of the two presented (slide 9), stating that Option #3 would be to retain both dynamic factors (current classification level and misconduct), because they have been shown previously to be predictive. He further stated his recommendation is Option #3, which is not to change the instrument at this point, stating there may be an anomaly with the data. He stated he would like an additional 30 days to work with the NDOC to run some additional analysis.

Dr. Austin ended his presentation and asked if any of the Board members had any questions.

Commissioner Baker asked where the cut-off would be for Mandatory parole regarding the new “Low, Moderate, Higher” points. Dr. Austin asked if she could clarify her question. Commissioner Baker stated that the Board is required to release an inmate on Mandatory parole six months prior to their expiration unless they are determined to be high risk to re-offend, currently that would be 14 points. Dr. Austin stated that it would be 9 points if he were to remove the two dynamic factors, but he is not recommending removing them.

Chairman DeRicco stated he had a follow up comment, about page 9 option #2, stating that the cutoff categories for high, moderate, and low would be adjusted as proposed based on “table 7.” If either option is chosen, removed, or readjusted “table 7” applies to both.

Dr. Austin stated that is correct. The points would drop because negative points would be given, so the table would be adjusted.

Chairman DeRicco noted an error on the Executive Summary page of the “Revalidation of the Nevada Parole Board Risk Assessment Instrument” document. He explained that in one place the documents say, “Since 2002 the Nevada Parole Board has been using the validated risk assessment,” but the following page states, “In 2004 the Board being using the risk instrument.” He stated the document should be changed to reflect the correct year. He stated he believed it was 2003 but would have to check to make sure.

Chairman DeRicco further stated in reference to the anomalies of the two dynamic factors, due to the onset of COVID the system as a whole worked very hard, including Parole & Probation, to not bring someone back on a technical violation because no one knew what was going on with COVID at the time. Dr. Austin stated that 6,000 people were in the release cohort, but they had to reduce it as nearly half of those examined were with the old instrument scores and half were with the new instrument scores, so the cohort was 3,366. These were releases between April 1, 2019, to March 31, 2020. He provided that this is when the pandemic was really hitting and when social restrictions were just beginning. He stated that was the sweet spot with the follow-up with the 12 months after, so that was where the mitigation factors were affecting the revocation rates and therefore the recidivism rates. He acknowledged that some of the data to be problematic, clarifying that it doesn't have errors, but stated he is not as confident in the data as he has been, with representing what has been going on and that is why he would not recommend the second option. He expanded that the static factors are looking good, and all the dynamic factors are looking very good besides the two previously mentioned (current classification level and misconduct). He further went on to state the Board could take the option, and ultimately may do the minus 1 point for minimum custody and minus 1 point for the lack of disciplinaries. He stated that the Board will get the same effect of rewarding people on the risk assessment for behaving in the prison system.

Chairman DeRicco followed up with an additional question regarding changing “high risk” to “higher risk”, meaning higher than moderate, would the Board then also change “low” to “lower than moderate?” Dr. Austin stated no, it would just be low. He further went on to state that while doing pre-trial release assessments, with failure to appear, and they use low based assessments also, and Nevada has an assessment he built, and he thinks they use the terminology “higher” instead of “high”. He gave an example of going to the doctor, where you have a family history of colon cancer. One would have an elevated risk of cancer, its not a high risk of getting it, its just a higher risk. He stated it is the same as with an inmate, that they do not have a high risk to recidivate, it is just a higher risk to recidivate. He feels it is important in the decision-making process to understand the terminology. Chairman DeRicco stated in regard to the two dynamic factors, they have been considered for 20 plus years with continued revalidations why now are they not showing a correlation. He stated he likes the idea of option #3.

Dr. Austin asked a question, asking if the assessors are doing the rating?

Chairman DeRicco stated yes.

Dr. Austin asked if they are the ones looking at the NDOC documentation?

Chairman DeRicco clarified that the risk assessment is first completed at NDOC, then is looked at by the Commissioners or other trained staff, and double checked. The Board will re-do them if errors are found. They are all looked at a second time, and then a third time during the hearing to make sure they are accurate.

Dr. Austin stated when you do repeat studies, you’ll find that there can be some inconsistencies, but the overwhelming inconsistency is that these two factors are predictive. He would be remiss to recommend getting rid of them based on one study when he has three studies that show that they do work. He further stated that he is going to do some work with the DOC to look further into it to his satisfaction to classify it properly. He stated that if he comes back with the same results, he will modify the report stating that despite the current results he recommends retaining the current instrument because from a scientific point of view, it makes sense.

Chairman DeRicco asked if after Dr. Austin has re-worked up the report and looked at the additional information from NDOC, would the new options be ranked as best potential option for this tool, or just pick one?

Dr. Austin stated he would give some guidance on which to choose. He would not recommend option #1 and he was already coming up with a variation for option #2, fixing the classification and disciplinary variables. He stated he is going to find a way to retain them since they are statistically proper; deleting them should not be an option at this point. He was only showing what could be done, but no need to do at this point. There are also practical concerns with changing the database. He does not like to see change unless it is clearly needed. He further went on to say it will be to retain what the Board has exactly or a slight modification of the scoring from positive points to negative points. He again referenced “table 7” stating that the Board would see the same kind of results.

Commissioner Baker asked if there was a distinction between a minor disciplinary and a major disciplinary in terms of recidivism.

Dr. Austin stated he would have to get with NDOC to get that kind of information and see what he can extract from their database for him to utilize. NDOC has been very supportive, and they might find that information useful also.

Commissioner Weisenthal stated in the past the Board used to look at what kind of disciplinary it was, minor or major and the points were changed, and he doesn't see any problem if the Board were to go back to something like that.

Chairman DeRicco stated that was changed during a revalidation that showed there was no correlation, and that's why it is where it is now. It's a dynamic risk assessment and can change based on what the data shows.

Dr. Austin asked if there was anything the Board would like to see included in the risk assessment?

No one from the Board stated in the affirmative.

Dr. Austin further went on to state the Board has a solid instrument and will continue with a proven instrument.

Chairman DeRicco asked if anyone had any other follow up, and thanked Dr. Austin for his presentation. He went on to state based on the potential of a third option he does not think it would behoove the Board to decide today and would like to table the discussion until the next meeting.

Chairman DeRicco asked if there was any disagreement with that.

None was provided.

- V. **Public Comment.** No action may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken pursuant to subparagraph (2) of NRS 241.020.

Public comment – Carson City, NV

Patricia Adkisson – See attached public comment dated April 26, 2023.

Public comment – Las Vegas, NV

No public comment.

- VI. **For possible action:** The Board may act to adjourn the meeting.

Motion:	To adjourn the April 27, 2023, meeting of the Nevada Board of Parole Commissioners.
Made:	Commissioner Baker
Seconded By:	Commissioner Weisenthal
Votes in Favor:	DeRicco, Jackson, Baker, Weisenthal, Christiansen, Bailey
Votes Opposed:	None
Results:	Motion passed

Patricia Adkisson

Faihandjoesmom@gmail.com

4/26/23

Board of Parole Commissioners Meeting 4/27/23

Public Comment

Good morning, my name is Patricia Adkisson. My comments today relate to the mandatory comprehensive review of Parole standards. However, before I begin, I would like to acknowledge this Board's efforts and results in the performance of a difficult job. Thank you.

The legislative command for today's review and related determinations pursuant to NRS.213.10885 is couched in mandatory terms.

The results, conclusions, and any changes in the Board's standards, policies, procedures, programs, or forms that have been or will be made, must be done on or before January.1st, in order to meet the minimum statutory legislative reporting requirements.

This Board is required to complete this process and shall report to each regular session of the legislature. The deadline for final submissions to the legislature, to our understanding, has now passed. For this reason, it is our belief and understanding that today's attempt to review parole standards for revalidation or any other purpose contemplated by NRS. 213.10885 are defective and cannot satisfy the statutory requirements.

This unfortunate circumstance implicates the described validation of many new policies and procedures outlined in the "Operation of the Board." When we consider the Board's regulations, many promised to create a standard, but failed to do so. NAC. 213.512 contemplates that the Board will assign to each crime a standard of - highest, high, moderate, low-moderate, or low, for which the crime for which parole is being considered, but utterly fails to identify any correlation to any crime and severity categories. This regulation is a promise to create a standard that applies to each crime, but that fails to state any correlating crime. The explanation by the Board is that the Board never adopted or created any such crime severity, only categories of severity without any crime.

Because of this circumstance it is impossible to utilize NAC.213.522. In order to trigger a reconsideration related to an incorrect crime severity, the board must first promulgate actual standards that identify the crime with a correlating severity.

Recent US Supreme Court decisions describe the weaponization of executive branch functions related to actions that violate the Separation of Powers Doctrine. In this discussion related to validated standards, this board continues to ignore the legislative standards that define a crime and its category of felony. This Board routinely considers Parole where NO CRIME is under consideration when considering NRS. 193.165- Use of a Deadly Weapon- there is NO category of felony offense or conviction.

This board's unilateral determination to rely upon representations made by the Department of Corrections stating the offense and category felony for the board use appears to be an act of nonfeasance to a ministerial duty outlined by the legislature pursuant to NRS.179A.090.

This board has a duty to first make an inquiry of the Central Repository for dissemination of conviction records. As far as this Board's reliance on the Department for the designation of crime severity, there is no way for the board to "validate" a standard that is not even under consideration by the Board. The Department has been engaged in unilateral approval of their regulations including the department severity table.

This is the definition of an executive branch agency becoming weaponized against the very public it serves.

This is why we support Senate Bill 105. The Board of Prison Commissioners has been asleep at the wheel, it was their duty to provide oversight, as the Board has never been exempt from 233B. Unilateral adoption of regulations implicates violation of Separation of Powers and creates a condition upon which when this Board relies upon representations by the Department, the Board unwittingly is acting without authority.

Finally, this Board cannot utilize impact to victim as a denial reason. This is NOT a standard contemplated by NRS. 213.10885. Thank you for your time.