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## **NEVADA BOARD OF PAROLE COMMISSIONERS**

# MINUTES Meeting of the Board of Parole Commissioners June 20, 2023

# MINUTES APPROVED ON JULY 20, 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 June 20, 2023, beginning at 1:37 PM 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 1:37 PM.

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 Kathi Baker, Management Analyst III Matt Thrasher, Management Analyst I Denise Davis, Management Analyst I Monica Howk, Program Officer I Kim Leberth, Administrative Assistant IV Meredith Salling, Administrative Assistant III Mary Flores, Administrative Assistant III Jeremy Meador, Administrative Assistant II Sirya Niemiec-Pearson, Administrative Assistant I Alex Root, Administrative Assistant II Hannah Branchcomb, Administrative Aide

Members of the public present in Carson City included:

## Katie Brady, Senior Deputy Attorney General

Members of the public present in Las Vegas included: None.

**II.** <u>**Public Comment.**</u> 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.

<u>Public comment – Carson City, NV</u> No public comment.

Public comment – Las Vegas, NV No public comment.

III. For possible action: Review/Approval of minutes from the May 31, 2023, Board meeting.

Motion:	Approve the minutes from the May 31, 2023, Board meeting as
	distributed.
Made:	Commissioner Jackson
Seconded By:	Commissioner Baker
Votes in Favor:	DeRicco, Jackson, Baker, Weisenthal, Christiansen, Bailey
Votes Opposed:	None
Results:	Motion passed

IV. <u>For discussion and possible action:</u> Review of recently passed legislation that may affect the Board. The Board may also review and discuss recently passed legislation which affects the Board. The Board may also act on changes to its procedures with regard to any of the recently passed legislation. This may include discussion on all bills passed in the 2023 session, including but not limited to: AB 32, AB 52, AB 159, AB 219, AB 225, AB 268, AB 462, AB 479, AB 480, AB 522, SB 25, SB 67, SB 309, and SB 511.

Chairman DeRicco opened this agenda item by explaining that this agenda item is intended to give a brief overview of certain legislation that was passed and signed by the Governor that may affect or pertain to the Board or its employees. He stated that no information will be included on any bills that have not yet been signed by the Governor. Chairman DeRicco thanked the staff that had been helping track bills this legislative session.

Katie Brady spoke about AB 219 as it relates to the Parole Board. She stated section 1 of AB 219 reorganizes the existing requirements for public comment periods into a new, separate section. She stated section 2 requires that if a meeting is held using remote technology and does not have a physical location where members of the general public are permitted to attend and participate, the agenda must include clear and complete instructions for members of the general public to call into the meeting to provide public comment. She stated that section 3 added a different requirement; requiring clear and complete instructions for the general public to call into the meeting to provide public comment to be made verbally before the first period of the day devoted to public comment. She stated this essentially just adds additional public comment.

Katie Brady then presented on AB 52 as it relates to the Parole Board. She stated section 2 of the bill specifies that if a vacancy occurs in the voting membership of the public body, the necessary quorum and number of votes necessary to take action on a matter is reduced as if the voting membership does not include the vacancy. She stated this provides clarification, but this is how the Board has operated in the past. She further explained that section 4 makes technical changes to reorganize the definition of a "meeting," to make it clear that a meeting does not occur for the purpose of open meeting law if the members of a public body, regardless of the presence of an actual or collection quorum of those members, do not deliberate or take action on a matter on which the public body has supervision, control, jurisdiction, or advisory power. She stated this language is very broad and means the Board members cannot talk about anything to which the Board has supervision, control, jurisdiction, or advisory power. She stated that changes to include remote technology systems as one of the means that public bodies are able to conduct meetings. She stated that all other sections are irrelevant to the Board.

Chairman DeRicco asked Katie Brady if these bills will change the way that the Board conducts its meetings. He stated that the Board does not currently allow call in public comment but that the Board does have public comment sections on the agendas. She stated she does not see any changes to the way the Board currently conducts its meetings.

Chairman DeRicco asked if there were any other questions or discussion. No further discussion.

Katie Fraker spoke about AB 32. She referred the Board to the legislation that was provided. She stated this bill modifies NRS 213, specifically parole violations and parole violation sanctions. She stated the changes of this bill that affect the Board begin on page 19 of the handout. She then stated that one of the main changes is that the Board will no longer be setting supervision levels for parolees. She explained that the Board used to have the option of setting 'maximum supervision' for a parolee, but that has been stricken from section 6 and supervision levels will be set by the Division's risk and needs assessment tool. She then referred the Board to page 20 of the handout. She stated in section 7, as part of graduated sanctions, the Division is now able to impose confinement in a jail or detention facility for a period of not more than 10 days, or an aggregated period of 30 days. She stated this section also expands the Division's use of residential confinement and electronic monitoring.

Katie Fraker continued to present on AB 32. She referred the Board to page 21 of the handout. She stated that what constitutes a non-technical violation has changed. She stated new felony or gross misdemeanor, battery which constitutes domestic violence, DUI, crime of violence that is punishable as a misdemeanor, harassment or stalking, and violation of a TPO, and violation of a stay away order who is the victim of the crime are all still considered non-technical violations. She stated that new non-technical violations were added—violation of NRS 213.1245 (1)(h) and (k), NRS 213.1255, or NRS 213.1258. She explained these were all special sex offender conditions that were added that are now considered non-technical violations. She stated another non-technical violation that was added is termination from a program indicated in a parole release plan approved by the Division.

Katie Fraker then referred the Board to page 23 of the handout. She stated the sanctions for technical violations had changed. She stated the first temporary revocation for a technical violation is now 90 days, the second temporary revocation is 180 days, and the third or subsequent temporary revocation is now a full revocation. She stated another change in this section for technical violations is that the Board is able to revoke parole supervision at the request of the parolee. She stated the main other change in this

section is that in the case of technical violations, the Board must now award credit for any time served while the parolee is waiting for a hearing. She stated this includes jail time and their time in NDOC custody. She stated this time must be factored into the temporary revocation sanction. She concluded by stating these changes take effective July 1, 2023, and that Chairman DeRicco will be providing more information in a later agenda item.

Chairman DeRicco stated AB 32 was probably the biggest bill that impacted the Board and reiterated that he will go through some aspects in more detail in a later agenda item. Chairman DeRicco provided some background on the addition of the Board being allowed to revoke parolees who request to be revoked for technical violations and on the additional non-technical violation of termination from a program indicated in a parole release plan approved by the Division. Chairman DeRicco opened the floor for questions and discussion.

Commissioner Bailey asked for clarification on the credits that the Board must now give while a parolee is waiting for their hearing. Chairman DeRicco stated that once a hold is placed on a parolee by the Division, the Board will award time from the date the hold is placed. Chairman DeRicco stated it is a possibility that the Board may not see a parolee for a first temporary revocation until after 90 days, that the Board will do a first temporary revocation with a release that same day. He clarified that this was just for temporary revocations and technical violations.

Commissioner Baker asked if the graduated sanction of jail time up to 10 days was mandated. Chairman DeRicco stated it was not mandated, but rather another tool for the Division to use. He stated this allows parolees to do short stints for alleged violations without losing everything and not coming back before the Board.

There was no further discussion.

Kathi Baker presented on AB 225. She explained this is a confidentiality bill that allows employees of a government agency to petition the district court to have personal information marked confidential. She stated records from the county recorder, county assessor, secretary of state, or the county or city clerk can be petitioned to kept confidential. She stated the petition must have sufficient justification, including evidence of an existing threat within the last five years. She further stated it expires five years after the date of the order and that the county assessor must notify the person at least six months before the expiration date of the order. She stated the petition will be filed under seal with no filing fee. She also stated that an extension can be submitted, and the extension expires five years after the date of the extension. She stated the confidential personal information includes home address, home address of spouse, minor child, domestic partner, phone number, or electronic mail address. She stated this bill became effective May 30, 2023.

Chairman DeRicco stated this bill is available to all employees of the Board.

Kathi Baker spoke about AB 268. She stated the Governor approved AB 268 on April 4, 2023, which gave state employees a retention incentive of \$500 to each person who was employed on March 31, 2023, and June 16, 2023. She stated all employees have already received the first \$500 but have not received the second.

Kathi Baker then spoke about AB 480. She stated this bill allocates funding to the Interim Finance Committee for certain state agencies to implement language access plans per NRS 232.0081. She stated

that this statute states the head of each agency of the Executive Department shall designate one or more employees of the agency to be responsible for developing and biennially revising a language access plan that meets the requirements in this statute. She stated that it seemed like no departments had done this, and that is seems like this bill is giving the Interim Finance Committee money so that if an agency needs money to create a language access plan, funds would be available through the IFC.

Kathi Baker then presented on AB 522; the employee pay bill. She stated this bill gives a 12% salary increase to all classified and unclassified employees effective July 1, 2023, and a 4% increase effective July 1, 2024. She stated section 13 of this bill adds an additional 7% increase effective July 1, 2024, making the total increase for fiscal year 2025 an 11% increase. She reiterated that was a 12% increase this year and an 11% increase next year. She continued that section 26 of the bill adds a quarterly retention incentive of \$250 for employees who are employed on specific dates. She stated this means employees will get an additional \$1,000 per year to stay with the state. She stated these quarterly retention incentives begin September 30, 2023, and continue every three months after that. She stated section 32 of the bill bring back longevity pay. She stated that longevity pay starts for employees after eight years of continuous service, who are rated standard or above on their evaluations. She stated they would qualify for semi-annual payments of \$100.00. She stated that for every year of the employee's ninth through fourteenth years of service, they will receive an additional \$25, so that by the fourteenth year the employee would be getting \$250 twice a year. She stated this amount increases to \$50 for every year for an employee's fifteenth through twenty-fourth years of continuous service, so that by their twenty-fourth year the employee would be getting \$750 twice a year. She stated that for an employee's twenty-fifth through thirtieth year of continues service, the employee will receive an annual increase of \$75, so by their thirtieth year they would receive \$1,250 twice a year. She concluded this presentation by stating that all sections are effective July 1, 2023, except for the cost-of-living increase for fiscal year 2025.

The next bill that Kathi Baker spoke about was AB 413. She stated that AB 413 is a bill that revises the method for determining credits to reduce a sentence for good behavior in an amount of days equivalent to 35% off the minimum term and 35% off the maximum term. She stated this applies to an offender sentenced to prison for a crime committed on or after July 1, 2025, or before July 1, 2025, if the offender elects to be subject to the revised method. She stated that by having a set credit amount, eligibility dates will be less likely to move forward or backwards; allowing victims, supporters, and inmates to know exactly when their eligibility date will be. She also stated that the 35% credit reduction does not apply to an offender convicted of a felony involving the use or threatened use of force or violence against the victim, a sexual offense, DUI or controlled substance, or a category A or B felony.

Kathi Baker concluded that this bill will not go into effect until July 1, 2025, since the NOTIS software will need to be updated in order to properly calculate credits.

Chairman DeRicco stated that there were many discussions and debates about sentence credits this legislative session. He stated that while this does not directly impact the Board, he wanted the Board to be aware that credits will be changing but not for a couple of years.

There were no questions or discussion on these bills.

Kelly Mellinger spoke about SB 67. She stated that SB 67 revised the definition of sexual offense to be consistent within all sections of NRS 213. The definition of the term sexual offense now has the meaning ascribed to it in NRS 179D.097. She stated the main thing this affects is what offenses will

require a sex offender risk assessment. She stated this bill updates the definition for lifetime supervision and mandatory sex offender conditions but does not actually change anything; it just changes the list that the Board looks at. She stated this bill became effective on May 23, 2023.

Chairman DeRicco stated this bill was proposed by the Board. He stated the main purpose for this bill was to clean up the legislation so there was one clear definition for a sexual offense which is captured under NRS 179D.097.

Kelly Mellinger than spoke about SB 309 which established the crime of fertility fraud. She stated that section 5 of this bill provides that a provider of health care who, in rendering services for assisted reproduction, knowingly implants his or her own human reproductive material in a patient without the express consent of the patient is guilty of fertility fraud. She further stated that this crime is a category B felony, a sexual offense, and the offender will need to register as a sex offender and comply with mandatory conditions. She stated this crime has also been added to the list of crimes for which a special sentence of lifetime supervision is imposed, and the Board will require a sex offender risk assessment prior to their hearing. She stated this goes into effect July 1, 2023.

Kathi Baker asked if lifetime supervision will need to update their forms or applications to include this new crime. Chairman DeRicco stated that no updates need to be done at this time. He stated at this time, the Board just needs to be aware that this crime is now out there and that it qualifies for lifetime supervision.

There was no further discussion.

Kelly Mellinger continued by speaking about AB 159. She stated this bill added NRS 574.100 which adds certain crimes against animals to the list of offenses for which credits earned by offenders may not be reduced from the minimum term imposed by a sentence. She stated this statute was also added to the list for which the court may not defer judgment and sets the maximum period of probation or suspended sentence at sixty months. She stated this statute was also added to the list of offenses for which a person must not have been convicted in order to be eligible for early discharge from probation. She stated that this bill is more informational and does not have a direct impact on the Board. She concluded that this bill went into effect on May 31, 2023.

There were no questions or further discussion.

Matt Thrasher spoke about SB 25 which modified existing legislation regarding the Public Works Division's long-term plan to decrease the amount of office space leased from third party vendors. He stated it is the state's intent to either purchase those spaces it currently leases or relocate agencies, division, etc., into existing or future state-owned properties. He stated that the Board should be aware of this legislation as both the Carson City and Las Vegas locations occupy leased space. He stated either, or both, offices may be required to relocate to a state-owned property in the future. He stated that there is no language within the legislation that requires an existing lease to expire before a relocation is required, the Carson City's lease expires on December 31, 2029, and the Las Vegas lease expires September 31, 2028. He further stated that it is possible that the state may opt to purchase the Board's existing leased spaces.

There were no questions regarding this bill.

Chairman DeRicco spoke about SB 38. He stated that section 2 of this bill adds new language which includes the addition of a new sexual offense. He then read this section of the bill. He further stated that existing law similarly requires the Board to require that certain persons convicted of an offense that involved the use of a computer or network not own or use a computer. He stated section 18 of this bill adds certain violations of section 2 to the list of offenses for which the Board is required to impose this condition of parole.

Next, Chairman DeRicco spoke about SB511, stating this was the Board's budget bill. He stated that the Board received approval and funding to create an Executive Director position within the Board. He stated the budget also included the approval for increased funding for the Board's state vehicle in Carson City. He explained this request was sought to minimize the potential for vehicle damage or catalytic converter theft, as the vehicle is parked at the office in an unsecured location. He stated funding was requested and approved for the Chairman of the Board to store the vehicle at home. Lastly, he stated the Board was approved for additional disk space storage.

Chairman DeRicco spoke about AB462. He stated that this bill was a result of the Executive Director position being approved and funded in SB511. He stated statutory language changes were necessary to create the position and add it to NRS 213. He explained this Executive Director position will be appointed and supervised by the Chairman, allowing the Chairman to delegate some of the administrative duties to the Executive Director. He further stated this bill also moves the supervision of the Executive Secretary from the Board to the Executive Director, however, the Executive Secretary will still be appointed by the Board. He stated as it stands now, the Executive Director will supervise the Executive Secretary, Hearings Examiner II, and Management Analyst III. He concluded this new position will be effective October 1, 2023.

Lastly, Chairman DeRicco spoke about AB479. He stated this bill replaces all desktop computer with laptops. He explained that only the four recording laptops in the hearing room will stay fixed, and the rest will be laptops with docking stations in the hearing rooms and in everyone's workspace. He stated most of these will be replaced in fiscal year 2025. He concluded that this bill was effective upon passage, although the funds will not be available for fiscal year 2024 until July 1, 2023.

There was no further discussion or questions.

V. <u>For discussion and possible action:</u> The Board will discuss and may take action to update and or modify certain sections of the "Operation of the Board" document that outlines the procedural functioning of the Board. This document may be updated and modified in the future as needed. This may include the following sections including but not limited to: Parole Grants to Sex Offenders, Mandatory Parole Release and Parole Violations and Sanctions (Appendix).

Chairman DeRicco stated that as discussed in the previous agenda item, there were some legislative changes in the past session that makes it necessary to review and potentially amend some sections of the Operation of the Board document. He stated the sections to be discussed have been worked on by staff and reviewed by the AG's office, to include the suggested language changes.

The first topic discussed was Parole Grants to Sex Offenders. He then read through the document, "Parole Grants to Sex Offenders," in its entirety. He asked for any discussion regarding the changes to the document. There were no questions or discussion.

Motion:	To approve the newly developed Parole Grants to Sex Offenders
	section as distributed.
Made:	Commissioner Baker
Seconded By:	Commissioner Jackson
Votes in Favor:	DeRicco, Jackson, Baker, Weisenthal, Christiansen, Bailey
Votes Opposed:	None
<b>Results:</b>	Motion passed

Chairman DeRicco stated that he visited High Desert State Prison and learned of additional levels of segregation. He stated that disciplinary segregation is not the only level of segregation that the prison is utilizing. He stated there is a lower level of segregation that the prison may use if an inmate is sanctioned called the BMU (Behavioral Modification Unit) and the SMU (Special Management Unit). He then read the changed section of this document, stating that this was updated to capture the other levels of segregation.

Commissioner Weisenthal asked if the BMU or SMU are disciplinary sanctions. Chairman DeRicco stated that was correct.

Commissioner Baker stated that there was a bill in this legislative session pertaining to segregation. She asked if that bill pertains to these levels of segregation. Chairman DeRicco stated that bill did not pertain to this. Chairman DeRicco stated he did not know if that bill passed, but that bill was limiting the number of hours or days an inmate could spend in 'the hole.'

Commissioner Baker stated that she has seen inmates in the BMU for mental health reasons or because they are on medication. She asked that this change would only affect those who were in the BMU due to disciplinary conduct. Chairman DeRicco stated that yes, this change is to only capture those who are in other levels of segregation due to disciplinary conduct.

Commissioner Weisenthal asked if there would be any changes for inmates who are moved from general population to administrative segregation, not due to a disciplinary infraction. Chairman DeRicco stated there were no changes with regards to administrative segregation.

Motion:	To approve the updated Mandatory Parole Release section as
	revised.
Made:	Commissioner Weisenthal
Seconded By:	Commissioner Christiansen
Votes in Favor:	DeRicco, Jackson, Baker, Weisenthal, Christiansen, Bailey
Votes Opposed:	None
<b>Results:</b>	Motion passed

Chairman DeRicco then moved to the final section, Parole Violations and Sanctions (Appendix). He stated this document is updated due to the changes previously discussed as part of AB32. He recommended striking the second to last sentence on the face sheet of the document. He then read through the revised sections of the document.

Commissioner Baker asked if the language on page 5, under Temporary Revocation of Parole, should include language regarding the hold date in order for the Board to determine credit for time served. Chairman DeRicco stated the language in this section is pulled from statute.

Chairman DeRicco called for a brief recess.

Chairman DeRicco called the meeting back to order.

Commissioner Baker stated that previously the Board had discussed considering time served from the date the hold was placed. She asked if this should be included somewhere in the document. Chairman DeRicco stated that he did not think this language should be included. He explained that a person could be arrested before the Division places a hold and the intent of this bill was that the parole violator receive credit for any time served. He stated that since this date could be an arrest or hold date, he did not think that the Board should include specific language. He stated that the Board should be giving parole violators credit from the earliest date that they were awaiting their hearing.

Commissioner Bailey asked if 'credit' means days or credit because those are not the same. Chairman DeRicco clarified that in this instance, 'credit' means days. He stated that the Board should be calculating the days an offender has been waiting for their hearing and factor in those days when determining the temporary violation sanction.

Commissioner Weisenthal asked if this effects the statute that requires the Board to see a parole violator within 60 days of their return to the NDOC. Chairman DeRicco stated there have been no changes to that statute.

Chairman DeRicco stated ultimately, the Board will know the date of the warrant and the date a hold was placed, and the Board will need to determine which date was first and give the offender days credit from the earliest date. Commissioner Baker agreed that her initial question about adding additional language was not necessary and that the Board should use the date that gives the most benefit to the offender.

Chairman DeRicco stated that the section titled, "Commencement of a Temporary Revocation," on page 5 of the document was removed due to it being unnecessary with the legislative changes.

Chairman DeRicco read through the final section of the document titled, "Effect of Prior Revocations on Violations Adjudicated after July 1, 2023." He explained that the thought behind this section was so that the Board is acting fairly towards parole violators who had previously had a temporary revocation before the legislative change, and upon their return for another temporary revocation the punishment will not be as extreme. The Board agreed that this is clear and fair. Katie Brady, SDAG, recommended to Chairman DeRicco that the sentence on the cover sheet, "This document has not been approved as policy by the Board and may be revised from time to time without notice," be revised to, "This document may be revised from time to time without notice."

Motion:	To adopt the Parole Violations and Sanctions (Appendix) as
	corrected.
Made:	Chairman DeRicco
Seconded By:	Commissioner Baker
Votes in Favor:	DeRicco, Jackson, Baker, Weisenthal, Christiansen, Bailey
Votes Opposed:	None

There was no further discussion.

VI. <u>For discussion and possible action:</u> The Board will discuss and may take action to update and or modify the Aggravating and Mitigating Factors Definitions. This may include the following sections including, but not limited to: Housed in disciplinary segregation within 24 months of the parole hearing.

Kelly Mellinger explained that the NDOC has restructured their housing levels to include specialized housing for disciplinary reasons that are more restrictive than general population, but less restrictive than disciplinary segregation. She stated that the Board may be missing inmates that this aggravating factor would apply. She stated at High Desert State Prison, these housing units are called the BMU (Behavioral Modification Unit) and the SMU (Special Management Unit). She stated that inmates in these units must earn their way out of these units with good behavior. She recommended this aggravating factor definition be updated from "disciplinary segregation" to "disciplinary housing," in the title and definition.

Motion:	To modify the aggravating factor "Housed in disciplinary segregation within 24 months of the parole hearing," to "Housed in disciplinary housing within 24 months of the parole hearing – This factor may be indicated if the inmate has been housed in disciplinary housing for any period of time during the 24 months prior to the month the hearing will take place."
Made:	Chairman DeRicco
Seconded By:	Commissioner Baker
Votes in Favor:	DeRicco, Jackson, Baker, Weisenthal, Christiansen, Bailey
Votes Opposed:	None
Results:	Motion passed

VII. <u>Public Comment</u>. 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 No public comment.

<u>Public comment – Las Vegas, NV</u> No public comment.

VIII. <u>For possible action</u>: The Board may act to adjourn the meeting.

Motion:	To adjourn the June 20, 2023, meeting of the Nevada Board of
	Parole Commissioners.
Made:	Commissioner Baker
Seconded By:	Chairman DeRicco
Votes in Favor:	DeRicco, Jackson, Baker, Weisenthal, Christiansen, Bailey
Votes Opposed:	None
<b>Results:</b>	Motion passed