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NEVADA BOARD OF PAROLE COMMISSIONERS

Date: February 9, 2023

To: Parole Board Commissioners

From: Kelly Mellinger, Parole Hearings Examiner II *Km*

Re: Information for consideration for comprehensive review of regulations.

Executive Order 2023-003 section 1 states Every executive branch department, agency, board and commission shall undertake a comprehensive review of the regulations subject to its enforcement. On or before, May 1, 2023 each department, agency, board and commission shall provide a report to the Governor's office detailing how the regulation subject to its enforcement can be streamlined, clarified, reduced or otherwise improved to ensure those regulations provide for the general welfare of the State without unnecessarily inhibiting economic growth.

Additionally, NRS 233B.050(1)(e) requires that each agency review its regulations at least once every ten years to determine whether changes are necessary.

We are planning a public meeting on February 27, 2023, to conduct the review.

Attached is a list of the specific sections in NRS 213 which require, or permit, the Board to establish regulations.

Also, attached for your convenience, is a printout of the most current version of NAC 213. Please note that some of the regulations in NAC 213 pertain to NDOC, P&P and the Pardons Board.

If you have any questions, please feel free to contact me.



EXECUTIVE ORDER 2023-003

Order Freezing the Issuance of New Regulations and Requiring a Review of Existing Regulations by All Executive Branch Agencies, Departments, Boards and Commissions

WHEREAS, state regulations should protect workers, consumers and the environment, while promoting entrepreneurship and economic growth; and

WHEREAS, state regulations can become outdated, result in unintended consequences, create conflicts or impose an unnecessary burden on citizens, businesses or government entities; and

WHEREAS, it is in the best interest of the state of Nevada that its regulatory environment be concise, transparent, stable, balanced, predictable and thoughtfully constructed; and

WHEREAS, Nevada's current regulatory structure is too often unfocused and inefficient, contains regulations that are obsolete and includes regulations that are unnecessarily onerous, thereby limiting the economic potential of the State; and

WHEREAS, Article 5, Section 1 of the Nevada Constitution provides that, "The Supreme Executive Power of this State shall be vested in a Chief Magistrate who shall be Governor of the State of Nevada;

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and laws of the State of Nevada, it is hereby ordered as follows:

SECTION 1

Every executive branch department, agency, board and commission shall undertake a comprehensive review of the regulations subject to its enforcement. On or before, May 1, 2023 each department, agency, board and commission shall provide a report to the Governor's office detailing how the regulation subject to its enforcement can be streamlined, clarified, reduced or otherwise improved to ensure those regulations provide for the general welfare of the State without unnecessarily inhibiting economic growth.

SECTION 2:

As part of its report, every executive branch department, agency, board and commission shall provide a list of not less than ten (10) regulations recommended for removal, ranking them in descending order of priority.

SECTION 3:

Prior to submitting their respective reports, every executive branch department, agency, board and commission shall

hold a public hearing, after having provided reasonable notice consistent with Chapter 233B of the Nevada Revised Statutes, to key industry stakeholders, to: (i) vet their recommended changes; (ii) solicit input as to the merits of those changes and (iii) identify other regulatory changes stakeholders feel are worthy of consideration. Stakeholder input shall be reflected in the summary of findings and recommendations included in each submitted report.

SECTION 4:

Unless specifically exempt from this Executive Order as set forth in Section 5, no new regulations shall be proposed, approved or acted on by any executive branch agency, department, board or commission until such time as this Executive Order is rescinded.

SECTION 5:

The following regulations are not subject to the suspension set forth in Section 4:

- (a) Regulations that affect public health;
- (b) Regulations that affect public safety and security;
- (c) Regulations that are necessary in the pursuit of federal funds and certifications;
- (d) Regulations that affect the application of powers, functions and duties essential to the operation of the executive branch agency, department, board or commission at issue;
- (e) Regulations that affect pending judicial deadlines; and
- (f) Regulations necessary to comply with federal law.

Until the suspension of this Executive Order, each executive branch department, agency, board and commission that intends to continue with the enactment of a proposed regulation under an exception to the freeze set forth in Section 4 shall submit a report to the Governor's office identifying which exemption the proposed regulation falls within and detailing the problem the regulation addresses or the value to the public of the regulation, how the regulation addresses the problem or the benefits provided by the regulation, why alternate forms of regulation are insufficient to address the problem and whether other regulations currently address the problem.



IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Nevada to be affixed at the State Capitol in Carson City, this 12th day of January, in the year two thousand twenty-three.

Governor

Secretary of State

Deputy

Requirement for a Ten-Year Review of Regulations. NRS 233B.050

Adoption of rules of practice; public inspection and validity of rules of practice, regulations and final orders, decisions and opinions; review of rules of practice and regulations.

1. In addition to other regulation-making requirements imposed by law, each agency shall:

(a) Adopt rules of practice, setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the agency.

(b) Make available for public inspection all rules of practice and regulations adopted or used by the agency in the discharge of its functions and that part of the Nevada Administrative Code which contains its regulations.

(c) Make available for public inspection all final orders, decisions and opinions except those expressly made confidential or privileged by statute.

(d) Review its rules of practice at least once every 3 years and file with the Secretary of State a statement setting forth the date on which the most recent review of those rules was completed and describing any revisions made as a result of the review.

(e) Review its regulations at least once every 10 years to determine whether it should amend or repeal any of the regulations. Within 30 days after completion of the review, the agency shall submit a report to the Legislative Counsel for distribution to the next regular session of the Legislature. The report must include the date on which the agency completed its review of the regulations and describe any regulation that must be amended or repealed as a result of the review.

2. A regulation, rule, final order or decision of an agency is not valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been made available for public inspection as required in this section, except that this provision does not apply in favor of any person or party who has actual knowledge thereof.

(Added to NRS by [1965, 963](#); A [1977, 1386](#); [1979, 972](#); [1995, 129](#); [1997, 184](#); [1999, 2203](#))

Summary of Relevant NRS Sections and Relevant NAC Sections

NRS 213.10885 Board to adopt standards for granting or revocation of parole; sample form regarding probability of success on parole to be made available to public; review of effectiveness of standards; report to Legislature.

1. The Board **shall** adopt by regulation specific standards for each type of convicted person to assist the Board in determining whether to grant or revoke parole. The regulations must include standards for determining whether to grant or revoke the parole of a convicted person:

- (a) Who committed a capital offense.
- (b) Who was sentenced to serve a term of imprisonment for life.
- (c) Who was convicted of a sexual offense involving the use or threat of use of force or violence.
- (d) Who was convicted as a habitual criminal.
- (e) Who is a repeat offender.
- (f) Who was convicted of any other type of offense.

The standards must be based upon objective criteria for determining the person's probability of success on parole.

The regulations adopted pursuant to this section are NACs 213.512, 213.514/R116-21, 213.516/R114-21, 213.518/R115.21, 213.522, 213.524, 213.526, 213.532, 213.550 and 213.560.

NRS 213.110 Regulations regarding parole; suspension of parole to permit induction into military service.

1. Subject to the provisions of NRS 213.120, the Board **shall** establish rules and regulations under which any prisoner who is now or hereafter may be imprisoned in the state prison, or in another jurisdiction as provided in NRS 176.045, may be allowed to go upon parole outside of the buildings or enclosures, but to remain, while on parole, in the legal custody and under the control of the Board and subject at any time to be taken within the enclosure of the state prison.

The regulations adopted pursuant to this section are NACs 213.495, 213.500, 213.502, 213.504, 213.506, 213.512, 213.514/R116-21, 213.516/R114-21, 213.518/R115-21, 213.522, 213.524, 213.526, 213.532, 213.534, 213.536, 213.545, 213.550 and 213.560.

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.

5. The Board **may** adopt by regulation the manner in which the Board will consider an assessment prepared pursuant to this section in conjunction with the standards adopted by the Board pursuant to NRS 213.10885.

The regulation adopted pursuant to this section is NAC 213.514/R116-21.

NRS 213.12155 Geriatric parole: When authorized; application; list of eligible prisoners; hearing; considerations; determination; supervision; regulations.

13. The Board shall adopt any regulations necessary to carry out the provisions of this section.

The regulation adopted pursuant to this section is NAC R066-20.

NRS 213.1243 Release of sex offender: Program of lifetime supervision; required conditions of lifetime supervision; electronic monitoring device; penalties for violation of conditions; exception to conditions.

1. The Board shall establish by regulation a program of lifetime supervision of sex offenders to commence after any period of probation or any term of imprisonment and any period of release on parole. The program must provide for the lifetime supervision of sex offenders by parole and probation officers.

The regulation adopted pursuant to this section is NAC 213.290.

NRS 213.133 Delegation of Board's authority to hear and act upon parole of prisoner and issues before Board; when recommendation for prisoner's release on parole without meeting of Board is required.

5. The Board shall adopt regulations which establish the basic types of delegable cases and the size of the panel required for each type of case.

The regulations adopted pursuant to this section are NACs 213.290 and 213.565.

NRS 213.140 Board to consider parole of eligible prisoner; release may be authorized whether or not prisoner accepts parole; development of reentry plan; duties of Division when parole is authorized; payment by Division for transitional housing for indigent prisoner; adoption of regulations.

5. The Board may adopt any regulations necessary or convenient to carry out this section.

The regulations adopted pursuant to this section are NACs 213.512, 213.514/R116-21, 213.516/R114-21, 213.518/R115-21, 213.522, 213.524, 213.526, 213.532, 213.534, 213.536, 213.545, 213.550 and 213.560

NRS 213.150 Board's authority to adopt regulations covering conduct of parolees; Board's authority to retake parolees. The Board **may**:

1. Make and enforce regulations covering the conduct of paroled prisoners.
2. Retake or cause to be retaken and imprisoned any prisoner so upon parole, subject to the procedures prescribed in NRS 213.151 to 213.1519, inclusive.

The regulations adopted pursuant to this section are NACs 213.550 and 213.560

NRS 213.1543 Division to recommend early discharge of certain parolees; regulations.

4. The Board **may** adopt any regulations necessary to carry out the provisions of this section.

The regulation adopted pursuant to this section is NAC R118-19.

NRS 213.155 Restoration of civil rights after discharge from parole; limitations.

5. The Board **may** adopt regulations necessary or convenient for the purposes of this section.

The Board has not adopted any regulations with regard to NRS 213.155.

NRS 213.625 Judicial program: Referral of offender to reentry court; requirement of participating in program as condition of parole; powers and duties of Board.

5. The Board **shall** adopt regulations requiring persons who are ordered to participate in and complete a judicial program pursuant to this section to reimburse the reentry court and the Division for the cost of their participation in a judicial program, to the extent of their ability to pay.

The regulations adopted pursuant to this section are NACs 213.650/R065-20, 213.660, 213.670, 213.680/R065-20, 213.690, 213.700/R065-20.

NRS 213.632 Referral of prisoner or parolee to be considered for participation in correctional program; participation as condition of parole; considerations; regulations; limitations.

5. The Board **shall** adopt regulations requiring persons who are ordered to participate in and complete a correctional program pursuant to this section to reimburse the Department of Corrections and the Division for the cost of their participation in a correctional program, to the extent of their ability to pay.

The regulation adopted pursuant to this section is NAC R065-20.

CHAPTER 213 - PARDONS, PAROLES AND PROBATION; REMISSIONS OF FINES AND COMMUTATIONS OF PUNISHMENTS

PARDONS, REMISSIONS OF FINES, COMMUTATIONS OF PUNISHMENTS

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PARDONS, REMISSIONS OF FINES, COMMUTATIONS OF PUNISHMENTS

General Provisions

NAC 213.005 Definitions. ([NRS 233B.040](#)) As used in [NAC 213.005](#) to [213.205](#), inclusive, unless the context otherwise requires, the words and terms defined in [NAC 213.010](#) to [213.018](#), inclusive, have the meanings ascribed to them in those sections.

(Added to NAC by Bd. of Pardons Comm'rs by R085-09, eff. 8-13-2010)

NAC 213.010 "Board" defined. ([NRS 233B.040](#)) "Board" means the State Board of Pardons Commissioners.

(Supplied in codification; A by Bd. of Pardons Comm'rs by R085-09, 8-13-2010)

NAC 213.011 "Clemency" defined. ([NRS 233B.040](#)) "Clemency" means the remission or lessening of a punishment to which a person convicted of a crime was sentenced and includes the remission of a fine or forfeiture, the commutation of a punishment, the granting of a pardon and the restoration, in whole or in part, of the civil rights of a person convicted of a crime.

(Added to NAC by Bd. of Pardons Comm'rs by R085-09, eff. 8-13-2010)

NAC 213.012 "Commutation of a punishment" defined. ([NRS 233B.040](#)) "Commutation of a punishment" means the changing of the sentence of a person convicted of a crime to another sentence, resulting in a reduction or lessening of the sentence.

(Added to NAC by Bd. of Pardons Comm'rs by R085-09, eff. 8-13-2010)

NAC 213.013 "Department" defined. ([NRS 233B.040](#)) "Department" means the Department of Corrections.

(Added to NAC by Bd. of Pardons Comm'rs by R085-09, eff. 8-13-2010)

NAC 213.014 "Division" defined. ([NRS 233B.040](#)) "Division" means the Division of Parole and Probation of the Department of Public Safety.

(Added to NAC by Bd. of Pardons Comm'rs by R085-09, eff. 8-13-2010)

NAC 213.017 "Pardon" defined. ([NRS 233B.040](#)) "Pardon" means the forgiveness of a crime and the penalty associated with it.

(Added to NAC by Bd. of Pardons Comm'rs by R085-09, eff. 8-13-2010)

NAC 213.018 "Secretary" defined. ([NRS 233B.040](#)) "Secretary" means the Secretary of the Board.

(Added to NAC by Bd. of Pardons Comm'rs by R085-09, eff. 8-13-2010)

NAC 213.019 Declaration concerning pardons, remissions of fines, commutations of punishments and restorations of civil rights. ([NRS 233B.040](#), [233B.050](#)) The provisions of [NAC 213.005](#) to [213.205](#), inclusive, do not grant any person a right to the remission of a fine or forfeiture, the commutation of a punishment, the granting of a pardon or the restoration of any civil rights or restrict the authority granted to the Board by the Nevada Constitution, and it is not intended that the establishment of standards relating to the remission of fines or forfeitures, the commutation of punishments, the granting of pardons or the restoration of civil rights create any such right or interest in liberty or property or establish a basis for any cause of action against the State, its political subdivisions, agencies, boards, commissions, departments, officers or employees.

(Added to NAC by Bd. of Pardons Comm'rs by R085-09, eff. 8-13-2010)

State Board of Pardons Commissioners

NAC 213.020 Meetings. ([NRS 213.010](#), [233B.040](#), [233B.050](#))

1. The Board may meet semiannually or more often.
2. Meetings may be held during the second week of November and the second week of May on a date determined by the Board, unless otherwise designated by the Board.
3. Upon the recommendation of any member of the Board or the Secretary, and with the consent of the Governor, a special meeting of the Board may be held.
[Bd. of Pardons Comm'rs, No. 1, eff. 12-24-66] — (NAC A by Bd. of Pardons Comm'rs by R085-09, 8-13-2010)

NAC 213.030 Chair. ([NRS 233B.040](#)) The Governor is the Chair of the Board. [Bd. of Pardons Comm'rs, No. 2, eff. 12-24-66]

Applications

NAC 213.040 Availability and submission; time limit. ([NRS 213.020](#), [233B.040](#), [233B.050](#))

1. A person seeking clemency, or any person acting on behalf of such a person, must submit an application to the Board in accordance with the instructions prescribed by the Secretary. An application for clemency may be obtained from the Secretary at 1677 Old Hot Springs Road, Suite A, Carson City, Nevada 89706. In addition, an application for the commutation of a punishment may be obtained from the wardens of institutions and facilities of the Department in accordance with the instructions prescribed by the Secretary.
2. Except as otherwise provided in subsection 3, an application for a pardon, the remission of a fine or forfeiture or the commutation of a punishment must be submitted to the Secretary not less than 90 days before a semiannual meeting of the Board.
3. The Governor may prescribe a shorter period for a special hearing of the Board.
[Bd. of Pardons Comm'rs, No. 5, eff. 12-24-66; A 11-9-68] — (NAC A by Bd. of Pardons Comm'rs by R085-09, 8-13-2010)

NAC 213.050 Contents; applicability. ([NRS 213.020](#), [233B.040](#), [233B.050](#)) 1.

An application must include:

- (a) The name of the person making the application;
- (b) If the application is filed on behalf of another person, the name of the person in whose favor the application is made;
- (c) The court rendering judgment;
- (d) The amount of the fine or forfeiture, or the kind or character of the punishment;
- (e) The type of clemency or pardon being sought;
- (f) The grounds for the application; and
- (g) Any other information deemed necessary by the Secretary.

2. An application for clemency must relate to a violation of the laws of this State. A person may not apply for clemency if the offense for which clemency is sought was a violation of the laws of another state, the United States, a district, commonwealth, territory or insular possession of the United States or a foreign country.

[Bd. of Pardons Comm'rs, No. 4, eff. 12-24-66] — (NAC A by Bd. of Pardons Comm'rs by R085-09, 8-13-2010)

NAC 213.055 Procedures and criteria for selection of applications for consideration by Board; additional selections. ([NRS 213.017](#), [233B.040](#), [233B.050](#))

1. The Secretary shall establish procedures and criteria for the selection of applications for clemency to be considered by the Board at a meeting. The Secretary shall:
 - (a) Post the procedures and criteria on the Internet website maintained by the Board; and

(b) Make the procedures and criteria available for public inspection at the primary office of the Secretary.

2. Except as otherwise provided in subsection 4, a member of the Board may select an application for clemency for the consideration of the Board at a meeting notwithstanding the procedures and criteria established by the Secretary pursuant to subsection 1, any regulation of the Board or the recommendation or absence of a recommendation from the Director of the Department or the Chief Parole and Probation Officer. A member of the Board who wishes to select an application for the consideration of the Board must inform the Secretary of the selection not less than 50 days before the date of the meeting at which the Board will consider the application, unless the member demonstrates good cause for a shorter period of time.

3. Members of the State Board of Parole Commissioners and the Director of the Department may provide to the Secretary the names of inmates who may merit consideration for clemency.

4. Before a meeting of the Board, the Governor may remove from consideration any application for clemency that has been selected for the consideration of the Board.

(Added to NAC by Bd. of Pardons Comm'rs by R085-09, eff. 8-13-2010)

NAC 213.065 Pardons: Waiting period for eligibility to submit application; waiver.
([NRS 233B.040](#), [233B.050](#))

1. Except as otherwise provided in this section, a person may not submit an application for a pardon from a conviction for a:

⌚ Misdemeanor which constitutes domestic violence pursuant to [NRS 33.018](#) until 5 years after the date on which the person is released from actual custody or is no longer under a suspended sentence, whichever occurs later.

⌚ Category E felony until 6 years after the date on which the person is discharged from probation or parole or released from prison because of the expiration of the term of imprisonment to which the person was sentenced.

⌚ Category B, C or D felony for which the person was sentenced to probation until 8 years after the date on which the person is discharged from probation, except as otherwise provided in this paragraph. If the person was sentenced to probation upon a conviction for a category C or D felony and his or her probation was revoked, the person may not submit an application for a pardon until 9 years after the date on which the person is discharged from parole or released from prison because of the expiration of the term of imprisonment to which the person was sentenced. If the person was sentenced to probation upon a conviction for a category B felony and his or her probation was revoked, the person may not submit an application for a pardon until 10 years after the date on which the person is discharged from parole or released from prison because of the expiration of the term of imprisonment to which the person was sentenced.

⌚ Category C or D felony for which the person was sentenced to a term of imprisonment until 9 years after the date on which the person is discharged from parole or released from prison because of the expiration of the term of imprisonment to which the person was sentenced.

⌚ Category B felony for which the person was sentenced to a term of imprisonment until 10 years after the date on which the person is discharged from parole or released from prison because of the expiration of the term of imprisonment to which the person was sentenced.

⌚ Category A felony until 12 years after the date on which the person is discharged from probation or parole or released from prison because of the expiration of the term of imprisonment to which the person was sentenced.

2. If a person is convicted of a crime, other than a traffic offense, during the waiting period prescribed in subsection 1, the Board may require that the waiting period begin on the date of the conviction or on the date on which the person is discharged from probation or parole or released from prison because of the expiration of the term of imprisonment to which the person was sentenced.

3. With the consent of a member of the Board, the Secretary may waive the waiting period prescribed in subsection 1.

(Added to NAC by Bd. of Pardons Comm'rs by R085-09, eff. 8-13-2010)

NAC 213.073 Pardons: Investigation of applicant; rejection of application; list of rejected applications; written recommendation. ([NRS 213.017](#), [233B.040](#), [233B.050](#))

1. Upon receiving an application for a pardon from a person who meets the minimum qualifications set forth in [NAC 213.065](#), the Secretary shall request that the Division investigate the applicant as the Secretary deems necessary and appropriate. If the investigation reveals serious negative information which indicates that the Board may be unlikely to grant a pardon to the applicant, the Secretary may reject the application for consideration by the Board. The Secretary shall:

- (a) Create a list of all applicants investigated who are denied a hearing and the reason for the denial; and
- (b) Make the list available for the Board's consideration.

2. After the Division has completed the investigation required by subsection 1, the Chief Parole and Probation Officer shall provide to the Board a written recommendation regarding whether to grant a pardon to the applicant.

(Added to NAC by Bd. of Pardons Comm'rs by R085-09, eff. 8-13-2010)

NAC 213.077 Restoration of civil rights without Board meeting. ([NRS 213.017](#), [213.035](#), [233B.040](#), [233B.050](#))

1. If a person has applied for a pardon for the sole purpose of restoring his or her civil rights, the Board may grant the pardon and restore, in whole or in part, the civil rights of the applicant without a meeting if the following conditions are satisfied:

- (a) The offense for which the pardon is sought:
 - (1) Did not result in physical injury to a victim;
 - (2) Did not involve the use or threatened use of force or violence; and
 - (3) Was not a sexual offense.
- (b) The applicant has never been convicted of:
 - (1) An offense that resulted in physical injury to a victim;
 - (2) An offense involving the use or threatened use of force or violence; or
 - (3) A sexual offense.
- (c) There is no objection from the court in which the judgment was rendered.
- (d) There is no objection from the district attorney of the county in which the applicant was convicted.
- (e) The Board has not received a written request for notice concerning a meeting to consider an application for clemency from a victim of a crime committed by the applicant or, during the course of an investigation of the applicant, a victim of a crime committed by the applicant has not objected to the granting of a pardon to the applicant.

2. The Secretary shall identify applications that may meet the criteria set forth in subsection 1 before requesting the investigation required by [NAC 213.073](#). If the Secretary determines that an application meets the criteria set forth in subsection 1, the Secretary shall submit to the Division a notice of the intent to act on the application without a meeting of the Board. During the investigation, the Division shall provide notice of the intent to act on the application without a meeting of the Board to the court in which the applicant was convicted and to the district attorney of the county in which the applicant was convicted.

3. If the court in which the applicant was convicted and the district attorney of the county in which the applicant was convicted do not object to the Board taking action on the application without a meeting, the Secretary shall provide to the members of the Board the application, the results of the investigation required by [NAC 213.073](#) and any other material deemed relevant by the Secretary.

4. Within 30 days after receiving the information described in subsection 3, the Governor and Attorney General shall determine whether to grant the pardon and restore, in whole or in

part, the civil rights of the applicant. Within 45 days after receiving the information described in subsection 3, the Justices of the Supreme Court shall determine whether to grant the pardon and restore, in whole or in part, the civil rights of the applicant.

5. If a majority of the members of the Board, with the Governor being in the majority, agree to grant the pardon and restore, in whole or in part, the civil rights of the applicant, the Secretary shall prepare the documents described in [NAC 213.205](#) to reflect the action taken by the Board.

6. As used in this section, “sexual offense” has the meaning ascribed to it in [NRS 179D.097](#).

(Added to NAC by Bd. of Pardons Comm’rs by R085-09, eff. 8-13-2010)

NAC 213.080 Prisoners eligible for or denied parole. ([NRS 233B.040](#), [233B.050](#))

The Board will not accept the application of a prisoner for a pardon or the commutation of a punishment if the prisoner is eligible for release on parole to the community, or becomes eligible for release on parole to the community on a date less than 1 year after the date of the next meeting of the Board, unless the applicant shows extraordinary circumstances that merit consideration by the Board.

[Bd. of Pardons Comm’rs, No. 6 § (b), eff. 12-24-66; A 11-9-68] — (NAC A by Bd. of Pardons Comm’rs by R085-09, 8-13-2010)

NAC 213.085 Persons on parole. ([NRS 233B.040](#), [233B.050](#)) Except as otherwise provided in subsection 2 of [NAC 213.055](#), the Board will not consider an application for the remission of a fine or forfeiture or the commutation of a punishment submitted by a person on parole unless, pursuant to [NRS 176.033](#), the person has served one-half of the period of his or her parole, or 10 consecutive years on parole in the case of a person sentenced to life imprisonment, and:

1. The Division has provided the person a favorable recommendation for a modification of sentence pursuant to [NRS 176.033](#) and the State Board of Parole Commissioners has refused to file a petition for a modification of sentence pursuant to [NRS 176.033](#); or

2. The State Board of Parole Commissioners has filed a petition for a modification of sentence pursuant to [NRS 176.033](#) and the court has denied the petition.

(Added to NAC by Bd. of Pardons Comm’rs by R085-09, eff. 8-13-2010)

NAC 213.100 Effect of new criminal code. ([NRS 233B.040](#), [233B.050](#)) An application for the commutation of a punishment submitted by a person serving a sentence prescribed under a previous criminal law which is longer than now prescribed under current law will be considered on the merits of the case alone and not solely because, under the new law, the punishment has been reduced.

[Bd. of Pardons Comm’rs, No. 16, eff. 11-9-68] — (NAC A by Bd. of Pardons Comm’rs by R085-09, 8-13-2010)

NAC 213.103 Persons required to register as offender convicted of offense against child or sex offender. ([NRS 233B.040](#), [233B.050](#)) Except as otherwise provided in subsection 2 of [NAC 213.055](#), the Board will not consider an application for clemency if the applicant is required to register as an offender convicted of an offense against a child or a sex offender pursuant to [NRS 179D.010](#) to [179D.550](#), inclusive, as a result of the conviction for which the applicant is seeking clemency, unless, pursuant to [NRS 179D.490](#), the applicant is no longer required to register as an offender convicted of a crime against a child or a sex offender.

(Added to NAC by Bd. of Pardons Comm’rs by R085-09, eff. 8-13-2010)

NAC 213.107 Availability of judicial or administrative relief. ([NRS 233B.040](#), [233B.050](#)) Except as otherwise provided in subsection 2 of [NAC 213.055](#), the Board will not

consider an application for clemency if other forms of judicial or administrative relief are reasonably available to the applicant.

(Added to NAC by Bd. of Pardons Comm'rs by R085-09, eff. 8-13-2010)

NAC 213.110 Commutation of sentence of life without possibility of parole. ([NRS 233B.040](#), [233B.050](#)) The Board will not consider an application for the commutation of a sentence of life without the possibility of parole to life with the possibility of parole unless:

1. The applicant committed the crime before July 1, 1995; and
2. Nineteen calendar years have been served by the applicant.

[Bd. of Pardons Comm'rs, No. 15, eff. 11-9-68] — (NAC A by Bd. of Pardons Comm'rs by R085-09, 8-13-2010)

NAC 213.120 Death penalty. ([NRS 213.085](#), [233B.040](#), [233B.050](#))

1 Except as otherwise provided in subsection 2 of [NAC 213.055](#), the Board will not consider an application for a pardon or the commutation of a punishment submitted by a person sentenced to the death penalty unless the person has exhausted all available judicial appeals.

2 If a death penalty is being considered, the presence of the Governor is required and any judgment must be made by a majority of the members of the Board.

[Bd. of Pardons Comm'rs, No. 9, eff. 12-24-66] — (NAC A by Bd. of Pardons Comm'rs by R085-09, 8-13-2010)

NAC 213.125 Requirements for reapplication. ([NRS 233B.040](#), [233B.050](#)) Any person whose application for clemency has been considered by the Board and who has been denied favorable action by the Board may not reapply for clemency unless:

1. The person shows a substantial change of circumstance that merits consideration by the Board; or
2. The Board provided instructions to the person at a previous hearing and the person has demonstrated that he or she has complied fully with the instructions.

[Bd. of Pardons Comm'rs, No. 6 § (a), eff. 12-24-66; A 11-9-68] — (NAC A by Bd. of Pardons Comm'rs by R085-09, 8-13-2010) — (Substituted in revision for NAC 213.070)

Meetings and Hearings

NAC 213.183 Recommendation of Director to accompany application; approval of Secretary. ([NRS 213.017](#), [233B.040](#), [233B.050](#))

1. The application of an inmate who is selected for consideration by the Board must be accompanied by a recommendation by the Director of the Department to the Secretary.

2. Except as otherwise provided in [NAC 213.055](#), the Secretary has the final approval in placing an application on the agenda. Except as otherwise provided in [NAC 213.077](#), upon such approval, the applicant will be granted a hearing at a regularly or specially called meeting of the Board.

3. A list of all applicants who are denied a hearing and the reason for the denial must be available for the Board's consideration.

[Bd. of Pardons Comm'rs, No. 6 § (c), eff. 12-24-66; A 11-9-68] — (NAC A by Bd. of Pardons Comm'rs by R085-09, 8-13-2010) — (Substituted in revision for NAC 213.090)

NAC 213.185 Notice to certain persons of meeting to consider application; request for recommendations. ([NRS 213.020](#), [213.040](#), [233B.040](#), [233B.050](#)) Notice served pursuant to [NRS 213.020](#) must include:

1. An offer to the district judge who adjudicated the case involving the applicant, or the successor of that district judge, to provide comments and a recommendation to the Board;

2. A request for a statement of facts and any information affecting the merits of the application pursuant to [NRS 213.040](#) from the district attorney who prosecuted the case involving the applicant or the successor of that district attorney;

3. If the application is for the remission of a fine or forfeiture, a request for a recommendation concerning whether to remit the fine or forfeiture from the chair of the board of county commissioners of the county in which the applicant was convicted; and

4. An invitation for the district judge, the district attorney and, when applicable, the chair of the board of county commissioners to testify before the Board at the hearing.

[Bd. of Pardons Comm'rs, No. 7, eff. 12-24-66; A 11-9-68] — (NAC A by Bd. of Pardons Comm'rs by R085-09, 8-13-2010) — (Substituted in revision for NAC 213.060)

NAC 213.187 Notice to victim of meeting for consideration of clemency. ([NRS 213.017](#), [233B.040](#), [233B.050](#)) If an application for clemency is selected for the consideration of the Board at a meeting, the Secretary shall, in accordance with [NRS 213.010](#), notify any victim of the crime for which clemency is sought.

(Added to NAC by Bd. of Pardons Comm'rs by R085-09, eff. 8-13-2010)

NAC 213.190 Hearings to be informal. ([NRS 233B.040](#), [233B.050](#)) Hearings before the Board will be informal in nature, and regular rules of evidence or other formalities do not apply.

[Bd. of Pardons Comm'rs, No. 16, eff. 12-24-66; renumbered as No. 20, 11-9-68] — (NAC A by Bd. of Pardons Comm'rs by R085-09, 8-13-2010)

NAC 213.200 Testimony; presence of applicant; affidavits and depositions. ([NRS 233B.040](#), [233B.050](#)) The Board may:

1. Require all testimony to be given under oath.
2. Require the presence of the applicant.
3. Accept for consideration any affidavits or depositions taken and certified by a district judge, county clerk or notary public.

[Bd. of Pardons Comm'rs, No. 14, eff. 12-24-66; A and renumbered as No. 18, 11-9-68]

NAC 213.205 Preparation of official documents for clemency. ([NRS 213.017](#), [233B.040](#), [233B.050](#))

1. If the Board grants clemency:

(a) The Secretary shall prepare two official documents which:

(1) Describe the fine, forfeiture, sentence or punishment that is the subject of the Board's action, the action taken by the Board and the consequences of that action, including, without limitation, any limitations or conditions on the action; and

(2) Are signed by the Secretary of State and attested with the Great Seal of the State of Nevada;

(b) Each member of the Board who voted in favor of the action shall sign the official documents prepared by the Secretary; and

(c) A member of the Board who voted against the granting of clemency may sign the official documents prepared by the Secretary to affirm that the official documents reflect the action taken by the Board.

2. Except as otherwise provided in this subsection, the Secretary may not prepare an official document if the Board refuses to grant clemency. If the Board has refused to grant clemency and instructs the Secretary to prepare an official document reflecting that action, the Secretary shall prepare an official document reflecting the Board's refusal to grant clemency.

3. If a member of the Board who voted in favor of granting clemency is no longer a member of the Board or is unable to sign the official documents prepared by the Secretary pursuant to subsection 1 and a majority of the members of the Board who voted in favor of the action are no longer members of the Board, the current Governor, Attorney General and Chief

Justice of the Supreme Court may sign an instrument of clemency certifying the action of the Board based on the transcripts and minutes taken at the meeting of the Board.

4. The Secretary shall:

(a) Keep at the primary office of the Secretary one official document prepared and signed pursuant to subsection 1.

(b) Provide to the person to whom clemency was granted one official document prepared pursuant to subsection 1.

5. The Secretary may certify a copy of an official document prepared pursuant to subsection 1.

(Added to NAC by Bd. of Pardons Comm'rs by R085-09, eff. 8-13-2010)

FEE FOR SUPERVISION

NAC 213.220 Applicability. ([NRS 213.1076](#))

1 Except as otherwise provided in subsection 2, the provisions of [NAC 213.220](#) to [213.280](#), inclusive, apply to every person living in this State who has been:

(a) Granted probation after suspension of sentence by a court of this or any other state; or

(b) Released on parole by the State Board of Parole Commissioners of this or any other state.

2 The provisions of [NAC 213.220](#) to [213.280](#), inclusive, do not apply to any probationer who was sentenced before March 16, 1983, or to any parolee who was released on parole before March 16, 1983.

(Added to NAC by Dep't of Parole & Probation, eff. 7-1-83; A 9-26-89)

NAC 213.230 Fee required; amount; exception. ([NRS 213.1076](#)) Each parolee or probationer shall, during the term of the parole or probation, pay a monthly fee of \$30 to the Division of Parole and Probation of the Department of Public Safety to help defray the cost of supervision unless he or she receives a waiver as provided in subsection 2 of [NRS 213.1076](#).

(Added to NAC by Dep't of Parole & Probation, eff. 7-1-83; A 7-22-85; 10-13-87; A by Div. of Parole & Probation by R111-00, 1-10-2001)

NAC 213.260 Postponement of payment. ([NRS 213.1076](#)) If the Chief Parole and Probation Officer grants a waiver of immediate collection of the fees upon condition of future payment, the parolee or probationer shall pay the back fees if at any time before the end of the term of parole or probation his or her income becomes sufficient to enable him or her to do so.

(Added to NAC by Dep't of Parole & Probation, eff. 7-1-83)

NAC 213.270 Form of payment; statement of account. ([NRS 213.1076](#))

1 A check or money order written to pay the fee set forth in [NAC 213.230](#) must be made payable to the "Division of Parole and Probation."

2 A check or money order written to pay for the use of any equipment required by the Division of Parole and Probation of the Department of Public Safety for the surveillance of a parolee or probationer under supervision by the Division must be made payable to the provider of the equipment that is approved by the Division.

3 A fee required to be paid pursuant to [NAC 213.230](#) or an amount required to be paid pursuant to subsection 2 is not payable in cash.

4 Upon request by a parolee or probationer, the Division will furnish him or her a statement of his or her account for payments of fees and any amounts due.

(Added to NAC by Dep't of Parole & Probation, eff. 7-1-83; A by Div. of Parole & Probation by R111-00, 1-10-2001)

NAC 213.280 Clarification of provisions regarding payment of fee. ([NRS 213.1076](#)) A person may obtain clarification of the provisions of [NAC 213.220](#) to [213.270](#), inclusive, information about waivers, or other information relating to those provisions from

the Division of Parole and Probation, 1445 Hot Springs Road, Suite 104, Carson City, Nevada 89711.

(Added to NAC by Dep't of Parole & Probation, eff. 7-1-83)

LIFETIME SUPERVISION

NAC 213.290 Notification; report; hearing; request to modify conditions. ([NRS 213.1243](#))

1. At least 120 days before the first day of the month in which a sex offender who has been sentenced to a special sentence of lifetime supervision is scheduled to be released from an institution or facility of the Department, the Department shall provide written notification to the Division of the date that the sex offender is scheduled to be released. If more than one such sex offender is scheduled to be released during the month, the Department shall provide notice for such sex offenders pursuant to this subsection in the form of a list that includes the name of each sex offender scheduled for release and the date on which each sex offender will be released.

2. At least 90 days before the first day of the month in which a sex offender who has been sentenced to a special sentence of lifetime supervision is scheduled to complete a term of parole or probation or is scheduled to be released from an institution or facility of the Department, the Division shall provide written notification to the Board of the date that the sex offender is scheduled to complete a term of parole or probation or to be released from an institution or facility of the Department. If more than one such sex offender is scheduled to complete a term of parole or probation or to be released from an institution or facility of the Department during the month, the Division shall provide notice for such sex offenders pursuant to this subsection in the form of a list that includes the name of each sex offender and the date on which each sex offender will complete his or her term or be released.

3. Upon receipt of written notification pursuant to subsection 2, the Board will schedule a hearing to establish the conditions of lifetime supervision for the sex offender. The Board will:

- (a) Determine an appropriate location for the hearing that may include, without limitation, the institution or facility at which the sex offender is housed or an office of the Board; and
- (b) Appoint a panel pursuant to [NRS 213.133](#) to conduct the hearing.

È The Board may establish the conditions of lifetime supervision for more than one sex offender at a hearing.

4. At least 30 days before the date on which a hearing is scheduled pursuant to subsection 3, the Division shall provide to the Board a report on the status of the sex offender who is the subject of the hearing. The report must include, without limitation:

- (a) A summary of the progress of the sex offender while on parole or probation or in an institution or facility of the Department, as applicable; and
- (b) Recommendations for conditions of lifetime supervision for the sex offender.

5. The Division may request the Board to modify the conditions of lifetime supervision of a sex offender. Upon receipt of such a request, the Board will schedule and hold a hearing in the same manner as provided in subsection 3. The Board may require the presence of the sex offender at the hearing.

6. As used in this section:

- (a) "Board" means the State Board of Parole Commissioners.
 - (b) "Department" means the Department of Corrections.
 - (c) "Division" means the Division of Parole and Probation of the Department of Public Safety.
 - (d) "Sex offender" has the meaning ascribed to it in [NRS 213.107](#).
- (Added to NAC by Bd. of Parole Comm'rs by R183-99, eff. 3-3-2000)

RELEASE ON AND REVOCATION OF PAROLE

NAC 213.495 Definitions. ([NRS 213.110](#)) As used in [NAC 213.495](#) to [13.565](#), inclusive, unless the context otherwise requires, the words and terms defined in [NAC 213.500](#) to [213.506](#), inclusive, have the meanings ascribed to them in those sections.

(Added to NAC by Bd. of Parole Comm'rs by R018-08, eff. 4-17-2008)

NAC 213.500 "Board" defined. ([NRS 213.110](#)) "Board" means the State Board of Parole Commissioners.

(Added to NAC by Bd. of Parole Comm'rs, 6-27-90, eff. 5-11-90; A by R018-08, 4-17-2008)

NAC 213.502 "Criminal gang" defined. ([NRS 213.110](#)) "Criminal gang" has the meaning ascribed to it in [NRS 213.1263](#).

(Added to NAC by Bd. of Parole Comm'rs by R018-08, eff. 4-17-2008)

NAC 213.504 "Division" defined. ([NRS 213.110](#)) "Division" means the Division of Parole and Probation of the Department of Public Safety.

(Added to NAC by Bd. of Parole Comm'rs by R018-08, eff. 4-17-2008)

NAC 213.506 "Property offense" defined. ([NRS 213.110](#)) "Property offense" means an offense or attempted offense involving:

- 1 Securities in violation of [NRS 90.650](#);
- 2 Commodities in violation of [NRS 91.340](#);
3. Fraud in violation of [NRS 119.330](#), [197.210](#), [205.365](#), [205.370](#), [205.435](#), [205.445](#) or [45.990](#);
- 4 Neglect of duty or malfeasance by a public officer in violation of [NRS 197.040](#), [204.030](#), [204.050](#), [281.230](#), [356.110](#), [583.543](#) or [658.155](#);
- 5 Falsely auditing or paying a claim or demand against the State or a county, town or city of this State in violation of [NRS 197.150](#);
- 6 Robbery in violation of [NRS 200.380](#);
- 7 The use or sale of liquid silicone in violation of [NRS 202.248](#);
- 8 The unlawful use of public money in violation of [NRS 204.020](#);
- 9 Arson with the intent to defraud an insurer in violation of [NRS 205.030](#);
- 0 Burglary in violation of [NRS 205.060](#) or [205.075](#);
- 1 Home invasion in violation of [NRS 205.067](#);
- 2 Theft in violation of [NRS 205.0832](#) or [205.2707](#);
- 3 An organized retail theft ring in violation of [NRS 205.08345](#);
14. Forgery in violation of [NRS 205.090](#), [205.110](#), [205.160](#) or [205.481](#);
- 5 False representations or statements in violation of [NRS 205.120](#), [205.370](#), [517.300](#), [68.015](#) or [668.095](#);
- 6 The issuance, or attempted issuance, of a check or draft without sufficient money or credit in violation of [NRS 205.130](#);
- 7 Counterfeiting in violation of [NRS 205.175](#), [205.180](#) or [205.185](#);
- 8 Sound recordings in violation of [NRS 205.217](#);
- 9 Grand larceny in violation of [NRS 205.220](#), [205.226](#) or [205.228](#);
- 0 Petit larceny in violation of [NRS 205.240](#);
- 2 The taking of property from the person of another under circumstances not amounting to robbery in violation of [NRS 205.270](#);
- 2 A stolen vehicle in violation of [NRS 205.273](#);
23. Stolen property in violation of [NRS 205.275](#);
- 4 Embezzlement in violation of [NRS 205.300](#) or [668.055](#);
- 3 Obtaining money, property or a signature by false pretenses in violation of [NRS 205.380](#) or [205.390](#);

6 The unauthorized collection of money for a benefit in violation of [NRS 205.415](#);
 2 Impersonating another person in violation of [NRS 205.450](#) or [205.455](#);
 8 Personal identifying information in violation of [NRS 205.463](#), [205.464](#) or [205.465](#);
 29. The unlawful use of a computer in violation of [NRS 205.4765](#) or [205.477](#);
 30. Documents of title in violation of [NRS 205.520](#), [205.540](#), [205.570](#), [205.580](#) or [205.590](#);
 3 Credit cards, debit cards or telephone calling cards in violation of [NRS 205.690](#) to [205.760](#), inclusive, or [205.770](#) to [205.800](#), inclusive;
 2 Obtaining telephone service with the intent to avoid payment for that service in violation of [NRS 205.920](#);
 3 The obtaining of a loan for another in violation of [NRS 205.950](#);
 4 An agreement to act as a qualified intermediary in violation of [NRS 205.960](#);
 3 A monetary instrument which is the proceeds of or derived from an unlawful activity in violation of [NRS 207.195](#);
 6 Public assistance in violation of [NRS 207.340](#), [422.366](#) to [22.369](#), inclusive, [22.410](#), [422.560](#) or [422A.700](#);
 3 Racketeering in violation of [NRS 207.400](#);
 8 The procuring or filing of a false or forged public record in violation of [NRS 239.330](#);
 9 A facsimile signature or seal on a public security or an instrument of payment in violation of [NRS 351.060](#);
 0 The giving of an unlawful receipt by a tax receiver in violation of [NRS 361.525](#);
 4 Unlawful licenses in violation of [NRS 364.090](#);
 2 The tax on cigarettes in violation of [NRS 370.380](#) or [370.382](#);
 43. An Indian burial site in violation of [NRS 383.180](#);
 4 A dead body of a human being, or any part thereof, in violation of [NRS 451.030](#);
 4 The sale of a vehicle in violation of [NRS 482.547](#);
 6 The failure to pay for farm products in violation of [NRS 576.125](#);
 7 Meat or poultry in violation of [NRS 583.495](#);
 8 A deceptive trade practice in violation of [NRS 598.0999](#);
 9 An unfair trade practice in violation of [NRS 598A.280](#);
 6 Telephone solicitation in violation of [NRS 599B.255](#);
 5 Industrial insurance in violation of [NRS 616D.300](#), [616D.310](#), [616D.370](#), [616D.390](#) or [616D.400](#) or a predecessor of those provisions;
 2 A fraudulent or excessive charge for drugs or medical supplies under a program of public assistance in violation of [NRS 639.2815](#);
 3 An escrow or trust account in violation of [NRS 645B.960](#) or a predecessor of that provision;
 4 Criminally receiving junk in violation of [NRS 647.145](#);
 5 The failure to follow a written order of the Commissioner of Financial Institutions in violation of [NRS 666.215](#);
 6 An insolvent bank in violation of [NRS 668.045](#);
 3 A trust company in violation of [NRS 669.290](#);
 8 A thrift company in violation of [NRS 677.810](#) or [677.850](#);
 9 Insurance in violation of [NRS 686A.290](#), [686A.291](#), [692B.040](#), [692C.480](#) or [93A.070](#);
 6 Public utilities in violation of [NRS 704.800](#); or
 6 The conduct set forth in subsections 1 to 60, inclusive, which violated a law of any other jurisdiction that prohibits the same or similar conduct.
 (Added to NAC by Bd. of Parole Comm'rs by R018-08, eff. 4-17-2008)

NAC 213.512 Determination of whether to grant parole: Assignment of severity level to crime. ([NRS 213.10885](#), [213.110](#), [213.140](#))

1. The Board will assign to each crime for which parole is being considered a severity level of "highest," "high," "moderate," "low moderate" or "low." The severity level will be the

same as the severity level assigned to the crime by the Department of Corrections for the purpose of classifying offenders pursuant to [NRS 209.341](#).

2. The Board will apply the severity level of the crime for which parole is being considered to establish an initial assessment regarding whether to grant parole in the manner set forth in [NAC 213.516](#).

(Added to NAC by Bd. of Parole Comm'rs by R018-08, eff. 4-17-2008)

~~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](#).~~

~~(Added to NAC by Bd. of Parole Comm'rs by R018-08, eff. 4-17-2008; A by R146-11, 5-30-2012)~~

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Governor's signature

Classification: **PROPOSED** **ADOPTED BY AGENCY** **EMERGENCY**

Brief description of action The Parole Board held a meeting on March 31, 2022 and approved the proposed amended regulation pursuant to NRS 213.10885, which was necessary to revise language to how the Board uses the NRS 213.1214 risk assessment for sexual offenders; and providing other matters properly related thereto .

Authority citation other than 233B NRS 213.10885

Notice date February 24, 2022

Date of Adoption by Agency

Hearing date March 31, 2022

March 31, 2022

**APPROVED REGULATION OF THE
STATE BOARD OF PAROLE COMMISSIONERS**

LCB File No. R116-21

Filed September 28, 2022

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: § 1, NRS 213.10885.

A REGULATION relating to parole; revising provisions relating to risk levels assigned to convicted persons being considered for parole; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the State Board of Parole Commissioners to adopt regulations setting forth specific standards to assist the Board in determining whether to grant or revoke the parole of a convicted person. The standards are required to be based upon objective criteria for determining the convicted person's probability of success on parole. (NRS 213.10885)

Existing law requires the Department of Corrections to conduct, before a scheduled parole hearing of a prisoner who has been convicted of a sexual offense, an assessment of the prisoner to determine his or her risk to reoffend in a sexual manner using a currently accepted standard of assessment. (NRS 213.1214) Existing regulations provide that the Board will assign a certain risk level to each prisoner being considered for parole according to the level of risk that he or she will commit a felony if released on parole. If the prisoner has been convicted of a sexual offense and has been evaluated using a currently accepted standard of assessment to determine his or her risk to reoffend in a sexual manner, the Board will assign a risk level which is the higher of the risk level initially assigned by the Board and the risk level determined by such an evaluation. (NAC 213.514) This regulation instead provides that the Board will consider the risk assessment conducted by the Department when determining whether to grant parole.

Section 1. NAC 213.514 is hereby amended to read as follows:

213.514 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. *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.*

4. 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 ~~+~~ *in accordance with NRS 213.1214*, the Board will ~~assign a~~ *consider the* risk ~~level to the prisoner which is the higher of the risk level assigned~~ *assessment conducted by the Department of Corrections* 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~~ *NRS 213.1214 when determining* whether to grant parole . ~~in the manner set forth in NAC 213.516.~~

~~—5.—~~ As used in this ~~section,~~ *subsection*, “sexual offense” has the meaning ascribed to it in NRS 213.1214.

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED
BY NRS 233B.066
LCB FILE R116-21P**

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) Chapter 213.

1. A clear and concise explanation of the need for the adopted regulation.

This regulation is necessary to revise language to how the Board uses the NRS 213.1214 risk assessment for sexual offenders; and providing other matters properly related thereto.

2. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

Copies of the proposed regulations, notices of workshop and notices of intent to act upon the regulation were sent by U.S. mail to persons who were known to have an interest in the subject as well as any persons who had specifically requested such notice. These documents were also made available at the website of the Board of Parole Commissioners, <https://parole.nv.gov/> and posted at the following locations:

Board of Parole Commissioners
1677 Old Hot Springs Road, Ste. A
Carson City, Nevada

Board of Parole Commissioners
4000 S. Eastern Avenue
Las Vegas, Nevada

Attorney General's office
100 S. Carson Street
Carson City, Nevada

Attorney General's office
555 E. Washington Avenue
Las Vegas, Nevada

A workshop was held on November 29, 2021, and the minutes of that meeting, attached as [Exhibit B](#) hereto, contain a summary of the discussion held regarding the proposed amendment.

Thereafter, on or about February 24, 2022, the Board of Parole Commissioners issued a Notice of Intent to Act Upon a Regulation, for public comment and for possible action on March 31, 2022. The minutes of that meeting, attached as [Exhibit C](#) hereto, contain a summary addressing all public comments and of the discussion held regarding the proposed amendment.

A copy of this summary of the public response to the proposed regulation may be obtained from the Board of Parole Commissioners, 1677 Old Hot Springs Rd., Ste. A, Carson City, Nevada 89706, 775-687-6505, or email to kmellinger@parole.nv.gov.

3. The number persons who:

- (a) Attended each hearing:** November 29, 2021 – 2; March 31, 2022 – 2
- (b) Testified at each hearing:** November 29, 2021 – 0; March 31, 2022 – 0
- (c) Submitted to the agency written comment:** November 29, 2021 – 3; March 31, 2022 – 3.

4. A list of names and contact information, including telephone number, business address, business telephone number, electronic mail address, and name of entity or organization represented for each person identified above in #3, as provided to the agency, is attached as [Exhibit A](#).

5. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.

Comments were solicited from affected businesses in the same manner as they were solicited from the public. The Board used informed, reasonable judgment in determining that there will not be an impact on small businesses due to the nature of the proposed regulation. The summary may be obtained as instructed in the response to question #2

6. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The permanent regulation was issued on December 21, 2021, and on March 31, 2022, the Parole Board held a public meeting and unanimously voted to adopt the December 21, 2021 version of LCB File No. R116-21 as written. The minutes of the March 31, 2022 meeting, attached hereto as [Exhibit C](#), contain a summary of the reasons for adopting the regulation without change.

7. The estimated economic effect of the adopted regulation on the businesses which it is to regulate and on the public. These must be stated separately, and each case must include:

- (a) Both adverse and beneficial effects; and**
- (b) Both immediate and long-term effects.**

- (a) Both adverse and beneficial effects**

Adverse effects: There are no known adverse economic effects on businesses or on the public based on the proposed regulation.

Beneficial effects: There are no known beneficial economic effects on businesses or on the public based on the proposed regulation.

(b) Both immediate and long-term effects.

Immediate economic effects: There are no known immediate economic effects on businesses or on the public based on the proposed regulation.

Long-term economic effects: There are no known long-term economic effects on businesses or on the public based on the proposed regulation.

8. The estimated cost to the agency for enforcement of the adopted regulation.

There is no additional cost to the agency for enforcement of this regulation.

9. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

There are no other state or government agency regulations that the proposed regulation duplicates.

10. If the regulation includes provisions that are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

There are no federal regulations that apply.

11. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

This regulation does not provide a new fee or increase an existing fee.

Exhibit A

Inmate Evan Grant, NDOC# 1159544
Northern Nevada Correctional Center
P.O Box 7000
Carson City, NV 89702

Inmate John Quintero, NDOC# 93782
Northern Nevada Correctional Center
P.O Box 7000
Carson City, NV 89702

Inmate Adam Garcia, NDOC# 82651
Northern Nevada Correctional Center
P.O Box 7000
Carson City, NV 89702

Tonja Brown
Advocates for the Inmates and the Innocent
2907 Lukens Lane
Carson City, NV 89706
775.882.2744
nvmemorialfund@aol.com

Keibi Mejia

Paige Barnes
Crowley & Ferrato Public Affairs

Katie Brady, Deputy Attorney General
Attorney General
100 N Carson St
Carson City, NV 89701
775.684.1100

Exhibit B

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MARY K. BAKER, *Member*
SCOTT WEISENTHAL, *Member*
KATIE FRAKER, *Executive Secretary*

STATE OF NEVADA
STEVE SISOLAK
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ERIC CHRISTIANSEN, *Member*
DONNA VERCHIO, *Member*
LAMICIA BAILEY, *Member*

NEVADA BOARD OF PAROLE COMMISSIONERS

MINUTES

Meeting of the Board of Parole Commissioners November 29, 2021

MINUTES APPROVED ON DECEMBER 28, 2021

The Board of Parole Commissioners held a public meeting on November 29, 2021, beginning at 1:00 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 1:00PM.

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

Support staff in attendance:

Katie Fraker, Executive Secretary
Kelly Mellinger, Hearings Examiner II
Lupe Garrison, Hearings Examiner I
Forrest Harter, Hearings Examiner I

Members of the public present in Carson City included:

Katie Brady, Deputy Attorney General
Paige Barnes, Crowley & Ferrato Public Affairs

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 NRS241.020.

Public comment – Carson City, NV
No public comment.

Public comment – Las Vegas, NV

No public comment.

- III. Workshops, Public Comment, and Possible Action:** The purpose of this workshop is to solicit comments from interested persons and for the Board to discuss modifying the following general topics that may be addressed in the proposed regulations: Topics: (1) The Board to discuss modifying its regulations pursuant to NAC 213.518. This proposed regulation is necessary to carry out the provisions of NRS 213.10885, NRS 213.110, and NRS 213.140, and is a regulation relating to the determination of whether to grant parole: Consideration of additional aggravating and mitigating factors; and providing other matters properly relating thereto. (2) The Board to discuss modifying NAC 213.514. This proposed regulation change is necessary to carry out the provisions of NRS 213.10885, NRS 213.110, and NRS 213.140, and is a regulation relating to the determination of whether to grant parole: Assignment of risk level to prisoner. (3) The Board to discuss modifying NAC 213.516. This proposed regulation change is necessary to carry out the provisions of NRS 213.10885, NRS 213.110, and NRS 213.140, and is a regulation relating to the determination of whether to grant parole: Initial assessment. After receiving comments, the Board may take action to amend the regulations before they are sent to the Legislative Counsel for review for drafting. No action may be taken upon a matter raised during a period devoted to comments by the general public until the matter itself has been specifically included on an agenda as an item upon which action may be taken pursuant to subparagraph (3) of NRS 241.020.

Overview of Workshop

Board Members in attendance in the Carson City office:

Chairman DeRicco

Commissioner Jackson

Board Members in attendance in the Las Vegas office:

Commissioner Christiansen

Commissioner Verchio

Commissioner Bailey

Support staff in attendance:

Katie Fraker, Executive Secretary

Kelly Mellinger, Hearings Examiner II

Lupe Garrison, Hearings Examiner I

Forrest Harter, Hearings Examiner I

Members of the public present in Carson City included:

Katie Brady, Deputy Attorney General

Paige Barnes, Crowley & Ferrato Public Affairs

Members of the public present in Las Vegas included:

None

Workshop

The purpose of this workshop is to solicit comments from interested persons on the following general topics that may be addressed in the proposed regulation:

The Board to discuss amending its regulation NAC 213.514 pursuant to NRS 213.10885, NRS 213.110, NRS 213.140, and NRS 213.1214; which makes language changes to how the Board uses the NRS 213.1214 risk assessment for sexual offenders; and providing other matters properly relating thereto.

Summary of Testimony

Chairman DeRicco introduced Kelly Mellinger, Hearings Examiner II.

Kelly Mellinger facilitated and began the workshop by stating the reason for this workshop is for discussion of amending NAC 213.518, NAC 213.514 & NAC 213.516. Ms. Mellinger stated workshops are to provide interested persons with a reasonable opportunity to meet informally with agency staff to discuss the general subject matter of the proposed regulation. Ms. Mellinger provided that the Board will be asking those in attendance for their thoughts, concerns, and suggestions regarding the proposed regulation. Ms. Mellinger provided that since the workshop is being video conferenced to our Southern office, speakers from both locations will be invited to participate and stated that the scope of this workshop is limited to the proposed regulation that will be discussed.

Ms. Mellinger stated the next workshop the discussion is to amend regulation NAC213.514 pursuant to NRS 213.10885, NRS 213.110, NRS 213.140, and NRS 213.1214; which makes language changes to how the Board uses the NRS 213.1214 risk assessment for sexual offenders; and providing other matters properly relating thereto.

The floor was opened to discussion.

Chairman DeRicco stated that this is the time for us as a Board to discuss and to solicit comments from any other interested persons. An additional attachment was provided that is meant to supersede the previously submitted version for NAC 213.514. To be clear, please use the new version where subsection (3) is removed in its entirety with a newly rewritten subsection (3) in blue. The new document was produced as a result of Mr. Grant's submitted documentation.

Chairman DeRicco asked if there was any one in Las Vegas that would care to make public comment on this regulation?

Public comment – Las Vegas, NV

No public comment

Chairman DeRicco asked if there was anyone in Carson City that would care to make public comment on this regulation?

Public comment – Carson City, NV

See attached written public comment from John Quintero

See attached written public comment from Evan Grant

See attached written public comment from Adam Garcia

Chairman DeRicco stated that he is aware of some documents that were received regarding this

regulation, and that the Board has copies of these documents. Chairman DeRicco provided that these documents may be incorporated into today's discussion.

Chairman DeRicco stated this topic came up some time ago at a Board meeting, approximately 2018, assigning a risk level of "high, moderate, or low." To establish that risk level the Board conducts an objective risk assessment using a combination of risk factors that predict recidivism. Under subsection (3) the regulation reads now, "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." In 2018, there were some questions regarding why the Board considers the higher of the two assessments for the risk level, and not let them stand alone as two separate assessments. In the current regulation, the Board has married the two risk assessments together and use the higher of the two, at least since 2012. However, as a part of this workshop, it is being requested to potentially alter the language in subsection (3) in its entirety. By doing this, the Board would consider the outcomes of the parole risk assessment on its own merits but also consider the sex offender assessment as an aggravating or mitigating factor, per the requested changes in NAC 213.518. This change will likely provide greater consistency, especially when an individual scores as a low on the parole risk assessment and is overridden to a high on the sex offender assessment. This change will not prohibit the Board from granting or denying parole in this instance, as the sex offender assessment can still be used as an aggravating or mitigating factor. But what this change does is that it provides the Board greater opportunity to review both assessments separately, so that the Board can determine the risk level in a more appropriate manner. Sometimes, these overrides appear to be too extensive, and with the proposed requested changes, the Board will consider the parole risk assessment on its own merits and use the sex offender assessment as a mitigating or aggravating factor. This coupled with all other available information in the file and at a hearing will likely afford the Board the opportunity to review these sex offender cases in a more consistent manner. The revised subsection (3) now reads: "3. If a prisoner has ever been convicted of a sexual offense as defined in NRS 213.1214 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 shall consider the risk assessment conducted by the Department of Corrections pursuant to NRS 213.1214 when deciding whether to grant parole."

Chairman DeRicco asked if anyone had any questions or comments.

Commissioner Christiansen asked for clarification, he read through the public comments, stating in the past the sex offender risk assessment superseded the parole risk assessment, but that now the Board would no longer be doing that.

Chairman DeRicco provided that supersede is not the correct word, and that the Board takes the higher of the two assessments. With the proposed regulation that would not be done anymore, and the two assessments would be stand alone assessments. The Board would consider it as it has always done in a hearing, and additionally now consider it as an aggravating and/or mitigating factor. Commissioner Christiansen agreed.

Commissioner Verchio asked if the Board would still use the override in NOTIS.

Chairman DeRicco stated that nothing is changing right now, and everything needs to be submitted and approved to LCB. But, if approved, the sex offender assessment would be considered as an aggravating or mitigating factor.

Commissioner Verchio answered her prior question by stating no the Board would not override the assessment. She provided that the cases could be assessed differently now if they are separate assessments, not one superseding or jumping the other.

Chairman DeRicco agreed, stating that is exactly what was being proposed. Both assessments will be considered, without giving one more or less weight than it should and using it now as an aggravating or mitigating factor.

Commissioner Jackson stated that she believes this is a very fair way to do it, by looking at each assessment independently, and then using it as an aggravating and mitigating factor. She liked it.

Chairman DeRicco asked for any further comments and working as suggested.

Chairman DeRicco stated that after considering all the comments provided here today, as well as the written documentation provided by Mr. Grant, Mr. Garcia, and Mr. Quintero, he's comfortable with what has been provided on this item and believes that it is sufficient to move forward to LCB.

| | |
|------------------------|--|
| Motion: | Approve the proposed draft regulation changes made today about NAC 213.514, for submittal to the Legislative Counsel Bureau for review, examination, and if appropriate, language revision. |
| Made: | Chairman DeRicco |
| Seconded By: | Commissioner Bailey |
| Votes in Favor: | DeRicco, Jackson, Christiansen, Verchio, Bailey |
| Votes Opposed: | None |
| Results: | Motion Passed |

Ms. Mellinger stated that discussion is now closed, a summary of any testimony that has been submitted will be prepared. All testimony will be carefully reviewed and considered. The minutes of the meeting will be available within 30 days of this meeting and will be posted on the Parole Board's website at www.parole.nv.gov. Minutes may also be requested by calling the Parole Board at 775-687-5049.

Exhibit C

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ERIC CHRISTIANSEN, *Member*
DONNA VERCHIO, *Member*
LAMICIA BAILEY, *Member*

NEVADA BOARD OF PAROLE COMMISSIONERS

MINUTES

Meeting of the Board of Parole Commissioners March 31, 2022

MINUTES APPROVED ON APRIL 27, 2022

The Board of Parole Commissioners held a public meeting on March 31, 2022, beginning at 1:00 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 1:00 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, Commissioner Verchio, and Commissioner Bailey.

Support staff in attendance:

Katie Fraker, Executive Secretary
Kelly Mellinger, Hearings Examiner I
Mary Flores, Administrative Assistant III
Alana Masi, Administrative Assistant I

Members of the public present in Carson City included:

Katie Brady, Deputy Attorney General
Keibi Mejia

Members of the public present in Las Vegas included:

None

Summary of Testimony

- 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 NRS241.020.

Chairman DeRicco stated the purpose of this public comment session is regarding proposed regulation R116-21P. This proposed regulation revises language to how the Board uses the NRS 213.1214 risk assessment for sexual offenders; and providing other matters properly related thereto. Public comment will be limited to three minutes per person.

Chairman DeRicco opened floor for public comment.

Chairman DeRicco asked if there was anyone in Las Vegas that would care to make public comment on this topic?

Public comment – Las Vegas, NV

No public comment.

Chairman DeRicco asked if there was anyone in Carson City that would care to make public comment on this topic?

Public comment – Carson City, NV

No public comment.

- III. **For Possible Action.** Review of proposed regulation R116-21P and solicitation of comments. This proposed regulation revises language to how the Board uses the NRS 213.1214 risk assessment for sexual offenders; and providing other matters properly related thereto.

Chairman DeRicco stated existing law requires the State Board of Parole Commissioners to adopt regulations setting forth specific standards to assist the Board in determining whether to grant or revoke the parole of a convicted person. The standards are required to be based upon objective criteria for determining the convicted person's probability of success on parole. (NRS 213.10885) Existing law requires the Department of Corrections to conduct, before a scheduled parole hearing of a prisoner who has been convicted of a sexual offense, an assessment of the prisoner to determine his or her risk to reoffend in a sexual manner using a currently accepted standard of assessment. (NRS 213.1214) The existing regulation provides that the Board will assign a certain risk level to each prisoner being considered for parole according to the level of risk that he or she will commit a felony if released on parole. The existing regulation provides that if the prisoner has been convicted of a sexual offense and has been evaluated using a currently accepted standard of assessment to determine his or her risk to reoffend in a sexual manner, the Board will assign a risk level which is the higher of the risk level initially assigned by the Board and the risk level determined by such an evaluation. (NAC 213.514) This amendment to the regulation instead provides that the Board will consider both risk assessments when determining whether to grant parole.

Chairman DeRicco continued by stating at the time and place set for hearing on the proposed regulation,

the agency must afford “[a]ll interested parties a reasonable opportunity to submit data, views, or arguments upon a proposed regulation” per NRS 233B.061(1). Further, “[T]he agency shall set a time and place for an oral public hearing” per NRS 233B.061(3). Alternatively, parties may submit their views and both oral and written submissions regarding the proposed regulation must be considered fully. The person or body with the authority to adopt the regulation must “consider fully” all oral and written comments received. NRS 233B.061(3)Boards or commissions considering the public comments on proposed regulations should retain in the minutes a record of their discussion regarding the public comment and their reasons for either amending the proposed rule in response to the comments or adopting the rule without change.

Chairman DeRicco introduced Kelly Mellinger, Hearing Examiner II, to provide some initial comments regarding publicly submitted documents and/or statements received regarding this regulation.

Ms. Mellinger read a written public comment dated 11.29.2021 from Evan Grant. Mr. Grant stated concerning NAC 213.514’s proposed language, he whole heartedly endorses the Board’s decision to recognize that the NRS 213.1214 risk assessment should be considered in conjunction with the Nevada parole risk assessment. This not only protects the Board from tainting the entire parole consideration process if the Department of Corrections fails in its execution of NRS 213.1214, but, additionally, distinguishes consideration of those convicted of a sexual offense from those who have not. With this in mind, he sees one issue with the proposed NAC 213.514(4) & (5) language. NRS 213.1214(4) mandates that “the board shall consider an assessment prepared pursuant to this section” NRS 213.1214 (6)(d)(20) requires the DOC to conduct an NRS 213.1214 assessment for “an offense of a sexual nature committed in another jurisdiction” unless, certain conditions are met. Regardless of the offense under consideration by the board for parole, if the DOC conducts and submits to the board an NRS 213.1214 assessment in accordance with the provisions of NRS 213.1214, the board is required to consider it. For these reasons, NAC 213.514(5) stating the board “may also consider this risk assessment.” is in violation of NRS 213.1214(4) which states “the board shall consider an assessment” Mr. Grant recommended striking NAC 213.514 (5) and amending NAC 213.514(4) to state “4. If a prisoner is being heard for parole for a sexual offense, or has ever been convicted of a sexual offense, as defined by NRS 213.1214, the board shall consider the risk assessment” This language would protect the board from accidentally not considering an NRS 213.1214 assessment that Nevada law requires to be considered.

Chairman DeRicco stated Mr. Grant stated that NAC 213.514(5) stating the Board “may also consider this risk assessment” conduct by NDOC is in violation of NRS 213.1214(4) which states “the Board shall consider an assessment” conduct by NDOC.

Chairman DeRicco further stated as a part of the wording in this proposed regulation, in accordance with NRS 213.1214, the Board will consider the risk assessment conducted by the Department of Corrections pursuant to NRS 213.1214 when determining whether to grant parole. As such, this point is no longer valid.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger read a written public comment dated 3.28.2022 from Evan Grant. Mr. Grant stated the following is his principal reason against R116-21P. As the boards execution of NAC 213.514(4) is located in the new NAC 213.518(2)(g) and (3)(k), NAC 213.514 (4) should reference NAC 213.518.

Chairman DeRicco stated Mr. Grant provides that because the Board's execution of NAC 213.514(4) is now located in NAC 213.518(2)(g) and (3)(k), NAC 213.514(4) should reference NAC 213.518.

Chairman DeRicco further stated this is unnecessary to add a reference to NAC 213.518. This NAC as written appears appropriate. For the purposes of this NAC, it indicates that the Board will now consider this assessment, but not use the higher risk level of the two assessments. As such, no addition is needed.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Mr. Grant stated NAC 213.514(4) stating that consideration will be "in accordance with NRS 213.1214." is too vague as NAC 213.514(4) simply mandates the Board consider the DOC's assessment. As the board has chosen to do so via NAC 213.518, it should be included by reference to NAC 213.514(4).

Chairman DeRicco stated Mr. Grant provides that NAC 213.514(4) stating that consideration will be "in accordance with NRS 213.1214." is too vague as NAC 213.514(4) simply mandates the Board consider the DOC's assessment.

Chairman DeRicco further stated this consideration does not appear to be too vague. If a prisoner has been convicted of a qualifying sexual offense, the Board has always considered this additional assessment. The Board is still considering it here now, but now the sex offender assessment results will not override the parole risk assessment. It will be considered as a part of a case, and it may be considered as an aggravating or mitigating factor.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger read a written public comment dated 3.28.2022 from Tonja Brown, Advocates for the Inmates and the Innocent. Ms. Brown stated requiring the Board to use ONLY the NDOC assessment doesn't seem to create a problem. The only part we question is why the NDOC eval only examines the probability of future sexual crimes. When initial assessment is made by the Board, everybody else gets looked at for the probability of the commission of any new crime. Why are sexual offender's only reviewed for further sex crimes. If they have a drug problem, e.g., any other crime will be more likely to occur.

Chairman DeRicco stated Ms. Brown provides that they question why the NDOC eval only examines the probability of future sexual crimes for sexual offenders and does not include the probability of any other crimes such as drug crimes.

Chairman DeRicco further stated pursuant to statute, this additional assessment is only for certain qualifying sex offenses. It is a sex offender assessment. This additional assessment is not for the purposes of considering other crimes such as drug crimes.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger read a written public comment dated 3.29.2022 from John Quintero. Mr. Quintero stated in the past practice of the Board NRS 213.1214 had been interpreted by the Board to give it permission to perform an "additional" evaluation that would serve to supersede or "override" the static-99 report sent to Board by some manner unclear from the record. Commissioner DeRicco answers "no" when asked by Commissioner Verchio asks "do we still override?" The correct purpose of NAC clarified by testimony is that when a parole applicant shows up to the Board without a static-99 due to a sex offense (conviction) on PSI missed by NDOC parole report preparers, a NO ACTION would issue. The static-99 shall be used and no "overrides" are permitted, required or suggested by the NRS 213.1214, as conveyed by the Feb 18 2021 letter of Commission to Garcia via Alan Erb, Esq. He will stand to be corrected in his understanding but, if he is right, then he's requesting the following questions to be considered as agenda items and placed on the agenda for subsequent hearing(s): Should the Board request an AG opinion regarding the question of answerability of the Board to the past practice of mal interpretation of NRS 213.1214, (a tradition passed on to the current Board and not initialed by this current commission); in other words for purposes of injunctive relief (not damages) should the Board be liable.

Chairman DeRicco stated Mr. Quintero suggests that the Board request an AG opinion regarding liability concerning the Board's past practice of its interpretation of NRS 213.1214, on injunctive relief challenges.

Chairman DeRicco further stated this is not necessary. The Board has previously followed its regulations with regard to this NAC. However, it is the opinion of this Board that we will still consider both assessments with regard to qualifying sex offenses, but that an override is not necessary if the sex offender assessment is higher than the parole risk assessment. This assessment may still be considered as an aggravating or mitigating factor.

Chairman DeRicco opened floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Mr. Quintero also asks if notice and opportunity for reconsideration will be voluntarily extended to inmates improperly considered in the past?

Chairman DeRicco stated Mr. Quintero asks if notice and opportunity for reconsideration will be voluntarily extended to inmates improperly considered in the past?

Chairman DeRicco further stated the Board does not believe that reconsideration is necessary as nothing was improperly applied. Rather, it is the opinion of this Board that the regulations should be changed, while still taking into account the assessment per statute. This assessment may be considered as an aggravating or mitigating factor, but the Board will no longer override a parole risk assessment if the sex offender assessment is higher.

Chairman DeRicco asked if there was further discussion regarding this specific regulation.

There was no discussion.

- IV. **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 NRS241.020.

Chairman DeRicco stated the purpose of this public comment session is regarding proposed regulation R116-21P. This proposed regulation revises language to how the Board uses the NRS 213.1214 risk assessment for sexual offenders; and providing other matters properly related thereto. Public comment will be limited to three minutes per person.

Chairman DeRicco opened floor for public comment.

Chairman DeRicco asked if there was anyone in Las Vegas that would care to make public comment on this topic?

Public comment – Las Vegas, NV

No public comment.

Chairman DeRicco asked if there was anyone in Carson City that would care to make public comment on this topic?

Public comment – Carson City, NV

No public comment.

- V. **For Possible Action:** Review of Intent to Adopt regulation R116-21P. The Board will consider public comments and any business impact and may act to amend and/or adopt the proposed regulation.

Chairman DeRicco stated having already discussed this item as a Board on Agenda Item XV and allowing the opportunity for public comment on this issue on Agenda Items XIV and XVI, this is the time to consider those comments and any business impact before acting to amend and/or adopt the proposed regulation.

Chairman DeRicco asked if there was any further discussion necessary at this time before requesting a motion.

There was no discussion.

Chairman DeRicco asked if any corrections should be made to the regulation as submitted by LCB as distributed.

There was no discussion.

| | |
|----------------|---|
| Motion: | The Nevada Board of Parole Commissioners adopt regulation R116-21P as reviewed and submitted by LCB. |
| Made: | Chairman DeRicco |

| | |
|------------------------|---|
| Seconded By: | Commissioner Jackson |
| Votes in Favor: | DeRicco, Jackson, Baker, Weisenthal, Christiansen, Verchio |
| Votes Opposed: | None |
| Results: | Motion passed |

~~NAC 213.516—Determination of whether to grant parole: Initial assessment. (NRS 213.10885, 213.110, 213.140) In determining whether to grant parole to a prisoner, the Board will apply the severity level of the crime for which parole is being considered as assigned pursuant to NAC 213.512 and the risk level assigned to the prisoner pursuant to NAC 213.514 to establish an initial assessment regarding whether to grant parole. The initial assessment will correspond to the following table:~~

| Severity Level | Risk Level | | |
|----------------|-------------|--|--|
| | High | Moderate | Low |
| Highest | Deny parole | Consider factors set forth in NAC 213.518 | Consider factors set forth in NAC 213.518 |
| High | Deny parole | Consider factors set forth in NAC 213.518 | Grant parole at first or second meeting to consider prisoner for parole |
| Moderate | Deny parole | Grant parole at first or second meeting to consider prisoner for parole | Grant parole at initial parole eligibility |

| | | | |
|-------------------------|--|--|---|
| Low-Moderate | Consider factors set forth in NAC 213.518 | Grant parole at first or second meeting to consider prisoner for parole | Grant parole at initial parole eligibility |
| Low | Consider factors set forth in NAC 213.518 | Grant parole at initial parole eligibility | Grant parole at initial parole eligibility |

~~(Added to NAC by Bd. of Parole Comm'rs by R018-08, eff. 4-17-2008)~~

SECRETARY OF STATE
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**Form For Filing
Administrative Regulations**

Agency Board of Parole Commissioners

FOR EMERGENCY
REGULATIONS ONLY

Effective date _____

Expiration date _____

Governor's signature

Classification: PROPOSED **ADOPTED BY AGENCY** EMERGENCY

Brief description of action The Parole Board held a meeting on March 31, 2022 and approved the proposed amended regulation pursuant to NRS 213.10885, which was necessary to revise language in the initial assessment table and adds a subsection (2); and providing other matters properly related thereto.

Authority citation other than 233B NRS 213.10885

Notice date February 24, 2022

Date of Adoption by Agency

Hearing date March 31, 2022

March 31, 2022

**APPROVED REGULATION OF THE
STATE BOARD OF PAROLE COMMISSIONERS**

LCB File No. R114-21

Filed September 28, 2022

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: § 1, NRS 213.10885.

A REGULATION relating to parole; revising provisions concerning initial assessments regarding whether to grant parole to eligible prisoners; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the State Board of Parole Commissioners to adopt regulations setting forth specific standards to assist the Board in determining whether to grant or revoke the parole of a convicted person. The standards are required to be based upon objective criteria for determining the convicted person's probability of success on parole. (NRS 213.10885)

Existing regulations provide that the Board will establish an initial assessment regarding whether to grant parole to a prisoner by applying the severity level of the crime for which parole is being considered and the risk level assigned to the prisoner concerning his or her risk to reoffend. (NAC 213.516) This regulation: (1) makes technical changes to the description of certain possible outcomes of an initial assessment; and (2) provides that after an initial assessment is established, the Board will consider the initial assessment when determining whether to grant parole to a prisoner.

Section 1. NAC 213.516 is hereby amended to read as follows:

213.516 *1.* In determining whether to grant parole to a prisoner, the Board will apply the severity level of the crime for which parole is being considered as assigned pursuant to NAC 213.512 and the risk level assigned to the prisoner pursuant to NAC 213.514 to establish an

initial assessment regarding whether to grant parole. The initial assessment will correspond to the following table:

| Severity Level | Risk Level | | |
|----------------|--|---|---|
| | High | Moderate | Low |
| Highest | Deny parole | Consider factors {set forth in NAC 213.518} | Consider factors {set forth in NAC 213.518} |
| High | Deny parole | Consider factors {set forth in NAC 213.518} | Grant parole at first or second meeting to consider prisoner for parole |
| Moderate | Deny parole | Grant parole at first or second meeting to consider prisoner for parole | Grant parole at initial parole eligibility |
| Low Moderate | Consider factors {set forth in NAC 213.518} | Grant parole at first or second meeting to consider prisoner for parole | Grant parole at initial parole eligibility |

| | | | |
|-----|--|--|--|
| Low | Consider factors set forth in NAC 213.518 | Grant parole at initial parole eligibility | Grant parole at initial parole eligibility |
|-----|--|--|--|

2. After an initial assessment is established pursuant to subsection 1, the Board will consider the initial assessment in accordance with NAC 213.518.

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED
BY NRS 233B.066
LCB FILE R114-21P**

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) Chapter 213.

1. A clear and concise explanation of the need for the adopted regulation.

This regulation is necessary to revise language in the initial assessment table and adds a subsection (2); and providing other matters properly related thereto.

2. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

Copies of the proposed regulations, notices of workshop and notices of intent to act upon the regulation were sent by U.S. mail to persons who were known to have an interest in the subject as well as any persons who had specifically requested such notice. These documents were also made available at the website of the Board of Parole Commissioners, <https://parole.nv.gov/> and posted at the following locations:

Board of Parole Commissioners
1677 Old Hot Springs Road, Ste. A
Carson City, Nevada

Board of Parole Commissioners
4000 S. Eastern Avenue
Las Vegas, Nevada

Attorney General's office
100 S. Carson Street
Carson City, Nevada

Attorney General's office
555 E. Washington Avenue
Las Vegas, Nevada

A workshop was held on November 29, 2021, and the minutes of that meeting, attached as [Exhibit B](#) hereto, contain a summary of the discussion held regarding the proposed amendment.

Thereafter, on or about February 24, 2022, the Board of Parole Commissioners issued a Notice of Intent to Act Upon a Regulation, for public comment and for possible action on March 31, 2022. The minutes of that meeting, attached as [Exhibit C](#) hereto, contain a summary addressing all public comments and of the discussion held regarding the proposed amendment.

A copy of this summary of the public response to the proposed regulation may be obtained from the Board of Parole Commissioners, 1677 Old Hot Springs Rd., Ste. A, Carson City, Nevada 89706, 775-687-6505, or email to kmellinger@parole.nv.gov.

3. The number persons who:

- (a) Attended each hearing:** November 29, 2021 – 2; March 31, 2022 – 2
- (b) Testified at each hearing:** November 29, 2021 – 0; March 31, 2022 – 0
- (c) Submitted to the agency written comment:** November 29, 2021 – 3; March 31, 2022 – 3.

4. A list of names and contact information, including telephone number, business address, business telephone number, electronic mail address, and name of entity or organization represented for each person identified above in #3, as provided to the agency, is attached as Exhibit A.

5. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.

Comments were solicited from affected businesses in the same manner as they were solicited from the public. The Board used informed, reasonable judgment in determining that there will not be an impact on small businesses due to the nature of the proposed regulation. The summary may be obtained as instructed in the response to question #2.

6. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The permanent regulation was issued on December 21, 2021, and on March 31, 2022, the Parole Board held a public meeting and unanimously voted to adopt the December 21, 2021 version of LCB File No. R114-21 as written. The minutes of the March 31, 2022 meeting, attached hereto as Exhibit C, contain a summary of the reasons for adopting the regulation without change.

7. The estimated economic effect of the adopted regulation on the businesses which it is to regulate and on the public. These must be stated separately, and each case must include:

- (a) Both adverse and beneficial effects; and**
- (b) Both immediate and long-term effects.**

(a) Both adverse and beneficial effects

Adverse effects: There are no known adverse economic effects on businesses or on the public based on the proposed regulation.

Beneficial effects: There are no known beneficial economic effects on businesses or on the public based on the proposed regulation.

(b) Both immediate and long-term effects.

Immediate economic effects: There are no known immediate economic effects on businesses or on the public based on the proposed regulation.

Long-term economic effects: There are no known long-term economic effects on businesses or on the public based on the proposed regulation.

8. The estimated cost to the agency for enforcement of the adopted regulation.

There is no additional cost to the agency for enforcement of this regulation.

9. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

There are no other state or government agency regulations that the proposed regulation duplicates.

10. If the regulation includes provisions that are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

There are no federal regulations that apply.

11. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

This regulation does not provide a new fee or increase an existing fee.

Exhibit A

Inmate Evan Grant, NDOC# 1159544
Northern Nevada Correctional Center
P.O Box 7000
Carson City, NV 89702

Inmate John Quintero, NDOC# 93782
Northern Nevada Correctional Center
P.O Box 7000
Carson City, NV 89702

Tonja Brown
Advocates for the Inmates and the Innocent
2907 Lukens Lane
Carson City, NV 89706
775.882.2744
nvmemorialfund@aol.com

Keibi Mejia

Paige Barnes
Crowley & Ferrato Public Affairs

Katie Brady, Deputy Attorney General
Attorney General
100 N Carson St
Carson City, NV 89701
775.684.1100

Exhibit B

CENTRAL OFFICE

1677 Old Hot Springs Rd., Ste. A
Carson City, Nevada 89706

<http://parole.nv.gov>

(775) 687-5049

Fax (775) 687-6736

CHRISTOPHER P. DERICCO, *Chairman*

SUSAN JACKSON, *Member*

MARY K. BAKER, *Member*

SCOTT WEISENTHAL, *Member*

KATIE FRAKER, *Executive Secretary*

STATE OF NEVADA

STEVE SISOLAK
Governor



LAS VEGAS OFFICE

4000 S. Eastern Ave., Ste 130
Las Vegas, Nevada 89119

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(702) 486-4370

Fax (702) 486-4376

CHRISTOPHER P. DERICCO, *Chairman*

ERIC CHRISTIANSEN, *Member*

DONNA VERCHIO, *Member*

LAMICIA BAILEY, *Member*

NEVADA BOARD OF PAROLE COMMISSIONERS

MINUTES

Meeting of the Board of Parole Commissioners

November 29, 2021

MINUTES APPROVED ON DECEMBER 28, 2021

The Board of Parole Commissioners held a public meeting on November 29, 2021, beginning at 1:00 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 1:00PM.

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

Support staff in attendance:

Katie Fraker, Executive Secretary
Kelly Mellinger, Hearings Examiner II
Lupe Garrison, Hearings Examiner I
Forrest Harter, Hearings Examiner I

Members of the public present in Carson City included:

Katie Brady, Deputy Attorney General
Paige Barnes, Crowley & Ferrato Public Affairs

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 NRS241.020.

Public comment – Carson City, NV

No public comment.

Public comment – Las Vegas, NV

No public comment.

- III. Workshops, Public Comment, and Possible Action:** The purpose of this workshop is to solicit comments from interested persons and for the Board to discuss modifying the following general topics that may be addressed in the proposed regulations: Topics: (1) The Board to discuss modifying its regulations pursuant to NAC 213.518. This proposed regulation is necessary to carry out the provisions of NRS 213.10885, NRS 213.110, and NRS 213.140, and is a regulation relating to the determination of whether to grant parole: Consideration of additional aggravating and mitigating factors; and providing other matters properly relating thereto. (2) The Board to discuss modifying NAC 213.514. This proposed regulation change is necessary to carry out the provisions of NRS 213.10885, NRS 213.110, and NRS 213.140, and is a regulation relating to the determination of whether to grant parole: Assignment of risk level to prisoner. (3) The Board to discuss modifying NAC 213.516. This proposed regulation change is necessary to carry out the provisions of NRS 213.10885, NRS 213.110, and NRS 213.140, and is a regulation relating to the determination of whether to grant parole: Initial assessment. After receiving comments, the Board may take action to amend the regulations before they are sent to the Legislative Counsel for review for drafting. No action may be taken upon a matter raised during a period devoted to comments by the general public until the matter itself has been specifically included on an agenda as an item upon which action may be taken pursuant to subparagraph (3) of NRS 241.020.

Overview of Workshop

Board Members in attendance in the Carson City office:

Chairman DeRicco

Commissioner Jackson

Board Members in attendance in the Las Vegas office:

Commissioner Christiansen

Commissioner Verchio

Commissioner Bailey

Support staff in attendance:

Katie Fraker, Executive Secretary

Kelly Mellinger, Hearings Examiner II

Lupe Garrison, Hearings Examiner I

Forrest Harter, Hearings Examiner I

Members of the public present in Carson City included:

Katie Brady, Deputy Attorney General

Paige Barnes, Crowley & Ferrato Public Affairs

Members of the public present in Las Vegas included:

None

Workshop

The purpose of this workshop is to solicit comments from interested persons on the following general topics that may be addressed in the proposed regulation:

The Board to discuss amending its regulation NAC 213.516 pursuant to NRS 213.10885, NRS 213.110 and NRS 213.140; which makes language changes in the initial assessment table and adds the language "This initial assessment shall be considered in accordance with NAC 213.518(1);" and providing other matters properly relating thereto.

Summary of Testimony

Chairman DeRicco introduced Kelly Mellinger, Hearings Examiner II.

Kelly Mellinger facilitated and began the workshop by stating the reason for this workshop is for discussion of amending NAC 213.518, NAC 213.514 & NAC 213.516. Ms. Mellinger stated workshops are to provide interested persons with a reasonable opportunity to meet informally with agency staff to discuss the general subject matter of the proposed regulation. Ms. Mellinger provided that the Board will be asking those in attendance for their thoughts, concerns, and suggestions regarding the proposed regulation. Ms. Mellinger provided that since the workshop is being video conferenced to our Southern office, speakers from both locations will be invited to participate and stated that the scope of this workshop is limited to the proposed regulation that will be discussed.

Ms. Mellinger stated the final workshop is the discussion to amend regulation NAC 213.516 pursuant to NRS 213.10885, NRS 213.110 and NRS 213.140; which makes language changes in the initial assessment table and adds the language "This initial assessment shall be considered in accordance with NAC 213.518(1);" and providing other matters properly relating thereto.

The floor was opened to discussion.

Chairman DeRicco stated this is the time for us as a Board to discuss and to solicit comments from any other interested persons.

Chairman DeRicco asked if there was any one in Las Vegas that would care to make public comment on this regulation?

Public comment – Las Vegas, NV

No public comment

Chairman DeRicco asked if there was anyone in Carson City that would care to make public comment on this regulation?

Public comment – Carson City, NV

See attached written public comment from John Quintero

See attached written public comment from Evan Grant

Chairman DeRicco stated that he is aware of documents that were received regarding this regulation, and that the Board has copies of these documents. These documents may be incorporated into today's discussion. If any of the comments made today or submitted documentation needs to be addressed today about language changes to present to LCB, please feel free to address this. If

not, at a subsequent meeting, after LCB has had the opportunity to review the proposed language, these comments and submitted documentation will be addressed.

Chairman DeRicco began discussion by stated NAC 213.516 has been in effect since 2008. The changes proposed on this NAC removes certain language in the grid section and adds a statement below the grid that states, "This initial assessment shall be considered in accordance with NAC 213.518(1)." This additional statement refers to NAC 213.518(1) which the Board recently worked on the workshop today and indicates that after establishing the initial assessment regarding whether to grant parole or not, the Board will consider the initial assessment, the factors contained in NRS 213.10885 and NRS 213.1099 and may consider relevant aggravating and mitigating factors to determine whether to grant parole to a prisoner. By adding this new language below the grid, Chairman DeRicco believe that things will be much clearer showing that the Board considers the factors in all cases, not just when our current grid indicates consider factors. Certainly, the Board has granted parole on cases that initially come out as deny parole, just like having denied cases where the initial assessment says grant parole. The Board has always reviewed these additional or relevant factors and these changes just provide greater clarification that the Board does so on all cases. The grid just did not make that clear enough and this revision should help. As you are all aware, this grid essentially assigns the Board's risk level.

Chairman DeRicco further stated one change that he would like to propose is that the Board remove the subsection (1) at the end of the language and just state that it refers to the entire NAC 213.518 regulation. That way if there are changes in the future, the Board will still be covered.

Chairman DeRicco stated that he goes through the documents many times trying to make sure things were correct and found one additional mistake, in the table in regard to not crossing out "set forth," it should have been struck through also.

Chairman DeRicco asked if anyone had any questions or comments.

There was no discussion.

Chairman DeRicco stated after considering all the comments provided here today, as well as the written documentation provided by Mr. Grant, Mr. Garcia, and Mr. Quintero, he's comfortable with what has been provided on this item and believes that it is sufficient to move forward to LCB.

| | |
|----------------|--|
| Motion: | Approve the proposed draft regulation changes made today about NAC 213.516, for submittal to the Legislative Counsel Bureau for review, examination, and if appropriate, language revision. |
| Made: | Chairman DeRicco |

| | |
|------------------------|--|
| Seconded By: | Commissioner Jackson |
| Votes in Favor: | DeRicco, Jackson, Christiansen, Verchio, Bailey |
| Votes Opposed: | None |
| Results: | Motion Passed |

Chairman DeRicco turned the discussion back to Ms. Mellinger for closing comments.

Ms. Mellinger stated that discussion is now closed, a summary of any testimony that has been submitted will be prepared. All testimony will be carefully reviewed and considered. The minutes of the meeting will be available within 30 days of this meeting and will be posted on the Parole Board's website at www.parole.nv.gov. Minutes may also be requested by calling the Parole Board at 775-687-5049.

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MARY K. BAKER, *Member*
SCOTT WEISENTHAL, *Member*
KATIE FRAKER, *Executive Secretary*

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STEVE SISOLAK
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CHRISTOPHER P. DERICCO, *Chairman*
ERIC CHRISTIANSEN, *Member*
DONNA VERCHIO, *Member*
LAMICIA BAILEY, *Member*

NEVADA BOARD OF PAROLE COMMISSIONERS
MINUTES

Meeting of the
Board of Parole Commissioners
March 31, 2022

MINUTES APPROVED ON APRIL 27, 2022

The Board of Parole Commissioners held a public meeting on March 31, 2022, beginning at 1:00 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 1:00PM.

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, Commissioner Verchio, and Commissioner Bailey.

Support staff in attendance:

Katie Fraker, Executive Secretary
Kelly Mellinger, Hearings Examiner I
Mary Flores, Administrative Assistant III
Alana Masi, Administrative Assistant I

Members of the public present in Carson City included:

Katie Brady, Deputy Attorney General
Keibi Mejia

Members of the public present in Las Vegas included:

None

Summary of Testimony

- 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 NRS241.020.

Chairman DeRicco stated the purpose of this public comment session is regarding proposed regulation R114-21P. This proposed regulation revised language in the initial assessment table and adds a subsection (2); and providing other matters properly relating thereto. This change is requested to carry out the provision of NRS Chapter 213.516. Public comment will be limited to three minutes per person.

Chairman DeRicco opened the floor for public comment.

Chairman DeRicco asked if there was anyone in Las Vegas that would care to make public comment on this topic?

Public comment – Las Vegas, NV

No public comment.

Chairman DeRicco asked if there was anyone in Carson City that would care to make public comment on this topic?

Public comment – Carson City, NV

No public comment.

III. For Possible Action. Review of proposed regulation R114-21P and solicitation of comments. This proposed regulation revises language in the initial assessment table and adds a subsection (2); and providing other matters properly relating thereto. This change is requested to carry out the provisions of NRS Chapter 213.516.

Chairman DeRicco stated existing law requires the State Board of Parole Commissioners to adopt regulations setting forth specific standards to assist the Board in determining whether to grant or revoke the parole of a convicted person. The standards are required to be based upon objective criteria for determining the convicted person's probability of success on parole. (NRS 213.10885) The existing regulation provides that the Board will establish an initial assessment regarding whether to grant parole to a prisoner by applying the severity level of the crime for which parole is being considered and the risk level assigned to the prisoner concerning his or her risk to reoffend. (NAC 213.516). This amended regulation: (1) makes technical changes to the description of certain possible outcomes of an initial assessment; and (2) provides that after an initial assessment is established, the Board will consider the initial assessment when determining whether to grant parole to a prisoner.

Chairman DeRicco continued by stating at the time and place set for hearing on the proposed regulation, the agency must afford "[a]ll interested parties . . . a reasonable opportunity to submit data, views, or arguments upon a proposed regulation" per NRS 233B.061(1). Further, "[T]he agency shall set a time and place for an oral public hearing" per NRS 233B.061(3). Alternatively, parties may submit their views and both oral and written submissions regarding the proposed regulation must be considered fully. The person or body with the authority to adopt the regulation must "consider fully" all oral and written comments received. NRS 233B.061(3). Boards or commissions considering the public comments on proposed regulations should retain in the minutes a record of their discussion regarding the public comment and their reasons for either amending the proposed rule in response to the comments or adopting the rule without change.

Chairman DeRicco introduced Kelly Mellinger, Hearing Examiner II, to provide some initial comments regarding publicly submitted documents and/or statements received regarding this regulation.

Ms. Mellinger read a written public comment dated 11.29.2021 from Evan Grant. Mr. Grant raises two issues. First, added to the bottom of NAC 213.516 is the language “this initial assessment shall be considered in accordance with NAC 213.518(1).” He applauds the Board for recognizing that it cannot arbitrarily grant or deny parole without considering factors referenced in NRS 213.10885 and 213.1099, every time, before making a grant or denial determination, the added .518(1) language to .516 he claims is currently meaningless. Nowhere in NAC 213.518(1) does it state how the Board will consider the initial assessment result. He questioned what does a result of “deny parole” or “grant parole at initial parole eligibility” mean in relation to NAC 213.518? How does the board know what to do if the initial assessment result is “grant parole at first or second meeting to consider prisoner for parole”? Under what conditions is the grant at the first meeting appropriate or inappropriate? He states these questions must be answered in the NAC’s language pursuant to NRS 213.10855(1) which states “standards must be based upon objective criteria.” In *Anselmo v Bisbee* 396 p 3d 848 (Nev. 2017), the Nevada supreme court stated that the board’s “standards” are their NACs. For a standard to be objective it must state a step by step process that any person can easily follow and replicate. As every person will “consider” the initial assessment result differently, it is critical that the Board state how it will consider that result. Therefore, how the NAC 213.516 initial assessment will be considered in the context of NAC 213.518(1) must be stated in NAC 213.516 or NAC 213.518(1).

Chairman DeRicco stated Mr. Grant first argues that NAC 213.518(1) needs to state how the Board will consider the initial assessment result and under which conditions parole will be granted at the first or second meetings.

Chairman DeRicco further stated parole is an act of grace. After contemplating the initial assessment regarding whether to grant parole pursuant to NRS 213.516, the Board will consider the initial assessment and the factors set forth in NRS 213.10885 and 213.1099 and may consider the relevant aggravating and mitigating factors set forth in subsection 2 and 3 respectively to determine whether to grant parole to a prisoner. The proposed regulation explains how the Board considers the initial assessment result but defining under which conditions parole will be granted at first or second meetings is not definable. In addition, defining under which conditions parole will be granted at first or second meetings would improperly strip the Board of its discretion to determine the offender's risk to the public if they are released. This is not the system that was set up by the Legislature when it determined that the Parole Board was tasked with considering whether there is a reasonable probability that the prisoner will live and remain at liberty without violating the laws and whether the release is incompatible with the welfare of society. NRS 213.1099.

Commissioner Verchio stated that she feels what is being asked of the Board is to provide their deliberative process, and there needs to be some protection of the deliberative process and how they weigh the factors as individual commissioners. Given that the whole process has objective guidelines that are available for the public to view.

Chairman DeRicco opened floor for discussion.

There was no further discussion

Ms. Mellinger continued to read, Mr. Grant's second issue was, NAC 213.516 utilizes NAC 213.512 crime severity levels as assigned pursuant to NAC 213.512 by the DOC per NRS 209.341. There are two issues here. First NRS 209.341 does not grant the DOC authority to assign a severity level to a crime. In fact, the words "severity" "level" nor "crime" appear a single time in NRS 209.341. Second, the crime severity levels of "Highest" "High" "Moderate" "low moderate" and "Low" do not exist in Nevada law. According to the Nevada supreme court, only the Legislature has the power to determine what is or is not a crime and the appropriate penalty for those who violate a criminal statute. See *Anderson v Eighth Judicial District Court*, 448 p. 3d 1120 (Nev. 2019) Additionally, the Supreme Court ruled that an enhancement from a misdemeanor to a category C felony constituted an increase in offense severity. *English v State*, 116 Nev 818 (2000). Therefore, as the Board is only considering those persons convicted of a felony, they must look to NRS 193.130 and 193.330. which provide the categories of Nevada's felonies, to discover the severity level of crimes assigned by the Legislature. The Board used this exact method in 2004. "As you can see, the board in 2004 after *English* was decided in 2000, clearly understood its statutory duty and was in compliance with Nevada law. However, in 2008 when the board adopted NAC 213.512 & 213.516 it deviated dramatically from its understood statutory duty." Mr. Grant recommended that NAC 213.512 be repealed, and NAC 213.516 be amended to remove all mention of the "Highest" "High" "Moderate" "low moderate" and "Low" crime severity levels and replace them with A, B, C, D, & E crime severity levels as assigned by Nevada's legislature. He states this is an easy replacement as both sets of severity have 5 levels.

Chairman DeRicco stated Mr. Grant next argues that NAC 213.516 cannot utilizes NAC 213.512 crime severity levels as assigned by the DOC and must instead use NRS Chapter 193 because

- NRS 209.341 does not grant the DOC authority to assign a severity level to a crime;
- the crime severity levels of "Highest" "High" "Moderate" "low moderate" and "Low" do not exist in Nevada law; and
- only the legislature has the power to determine what is or is not a crime and the appropriate penalty for those who violate a criminal statute.

Chairman DeRicco further stated per NAC 213.512, which has been effective since April 17, 2008, the Board will assign to each crime for which parole is being considered a severity level of "highest," "high," "moderate," "low moderate" or "low." The severity level will be the same as the severity level assigned to the crime by the Department of Corrections for the purpose of classifying offenders pursuant to NRS 209.341. Further, the Board will apply the severity level of the crime for which parole is being considered to establish an initial assessment regarding whether to grant parole in the manner set forth in NAC 213.516. The Board has already determined this is the most appropriate way to assign the severity level. The Legislature provided the Board with discretion. It could have but did not point to the NRS 193 severity levels in the statute. Parole is an act of grace, there is no right to parole, and the decision of whether to grant or deny parole always remains within the penalty or sentence imposed by the court.

Chairman DeRicco opened floor for discussion.

There was no further discussion

Ms. Mellinger read a written public comment dated 3.28.22 from Evan Grant. Mr. Grant starts out by saying thank you for holding this workshop concerning LCB File No. R114-21P, R115-21P and R116-21P. He has reviewed the proposed changes to NAC 213.516, 213.518 & 213. 514. Unfortunately, he does not agree with the proposed language and is therefore against their adoption in their current form.

The proposed language continues to not satisfy explicitly mandatory requirements of certain Nevada statutory law. He continued that he is quite certain that Deputy Attorney General Kathleen Brady has informed this body that his civic actions in relation to these NACs and their subservient policies and practices have been denied and dismissed. However, she should have additionally informed you that he has appealed both cases to the Nevada Supreme Court as the denial was entered in violation of the courts rules and the dismissal was not signed by a sitting Nevada judge. Both instances violate multiple rules under the Nevada code of judicial conduct and are being reported to the Nevada commission on judicial discipline as judicial misconduct. The following are his principle reasons against R114-21P. NAC 213.516 continues to rely on NDOC crime severity levels. NRS 213.10885(2)(a) explicitly mandates the boards consideration of the severity of the crime committed. Nowhere in Nevada law, including NRS 213.10885, is the NDOC authorized to determine the severity of Nevada's crimes. Nevada's legislature established the severity level of each type of crime in the A,B,C,D & E category structure of NRS 193.130 and NRS 193.330. As NRS 213.10885(2)(a) does not provide discretion to consider anything other than the severity of the crime committed, the board is statutorily bound to the legislatures A, B, C, D, & E severity level designations.

Chairman DeRicco stated Mr. Grant reiterates his arguments that NAC 213.516 cannot rely on NDOC crime severity levels and provides that Nevada law does not authorize NDOC to determine the severity of Nevada's crimes. He argues that the board is statutorily bound to the Legislature's A,B,C,D & E severity level designations in NRS 193.

Chairman DeRicco further stated this issue was previously addressed. Under the plain language of the statute, the Legislature did not bind the Board to the NRS 193 designations.

Chairman DeRicco opened floor for discussion.

There was no further discussion

Ms. Mellinger continued to read, Mr. Grant goes on to state the NAC 213.516 Initial Assessment Table does not state what "deny parole" "grant parole at first or second meeting to consider parole eligibility" nor "grant parole at initial parole eligibility" mean in relation to the proposed NAC 213.516(2) language. NAC 213.516 nor NAC213.518 state how NAC 213.518 factors are to be considered if NAC 213.516 concludes grant or deny prior to NAC 213.518 factor consideration. Without specifying under what circumstances parole should be granted at the first or second meeting, how can the board properly make that determination? NRS 213.10885(1) requires the board's standards to be based on "objective" criteria. NAC 213.516 and NAC 213.518 are void of all criteria to indicate proper application of these NAC 213.516 Initial Assessment results.

Chairman DeRicco stated Mr. Grant reiterates his argument that NAC 213.516 is void of all necessary criteria to state how the board will consider the initial assessment result. He indicates that the NAC 213.516 Initial Assessment Table does not state what "deny parole" "grant parole at first or second meeting to consider parole eligibility" nor "grant parole at initial parole eligibility" mean in relation to the proposed NAC 213.516(2) language.

Chairman DeRicco further stated this issue has already been previously addressed. The NAC 213.516 initial assessment is just that, an initial assessment.

Chairman DeRicco opened floor for discussion.

There was no further discussion

Ms. Mellinger read a written public comment dated 11.29.2021 from John Quintero. Mr. Quintero stated the Board's proposal for NAC 213.516 relies on the assumption that NAC 213.512 "severity level" is authorized by statute, which he claims it is not. He wrote NAC 213.512 is based on the misrepresentation that the "severity level" in NRS 213.10885(2)(a) can be determined by another statute 209.341 regarding duties of NDOC director and contains no mandate that allows the parole board to utilize it, and states only a custody-driven purpose, not a parole readiness purpose. If it is clear that NRS 213.10885(2)(a) requires that the board of parole commissioners not the department of corrections make the determination of the "severity" based on this the board is requested to rescind and modify the language of NAC 213.512 to conform to the limits of the statute 213.10885(2)(a).

Chairman DeRicco stated Mr. Quintero argues that the Board's proposal for NAC 213.516 relies on the assumption that the NAC 213.512 "severity level" is authorized by statute, but he states that NRS 213.10885(2)(a) requires that the Board not the NDOC make the determination of the "severity."

Chairman DeRicco further stated as previously stated with regard to Grants comments, Per NAC 213.512, which has been effective since April 17, 2008, the Board will assign to each crime for which parole is being considered a severity level of "highest," "high," "moderate," "low moderate" or "low." The severity level will be the same as the severity level assigned to the crime by the Department of Corrections for the purpose of classifying offenders pursuant to NRS 209.341. Further, the Board will apply the severity level of the crime for which parole is being considered to establish an initial assessment regarding whether to grant parole in the manner set forth in NAC 213.516. The Board has already determined this is the most appropriate way to assign the severity level. The Legislature provided the Board with discretion. It could have but did not point to the NRS 193 severity levels in the statute. Parole is an act of grace, there is no right to parole, and the decision of whether to grant or deny parole always remains within the penalty or sentence imposed by the court.

Chairman DeRicco opened floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Mr. Quintero further stated the practices and custom to rely on an NDOC document is problematic for several reasons: 1. there is no evidence this NDOC document which is used to automatically populate the NOTIS parole board report was approved by the board of prison commissioners which makes it a fugitive document; & 2. there is no evidence NDOC conformed with open meeting law NRS 241, bringing its legitimacy into question: The severity table used to automatically populate the application, being overbroad, creates a table at NRS 213.516 which deviant because it deprives the "highest" severity of even any hope of "grant parole" expectation given to high moderate, low – mod, low categories; this deprivation is cruel and unusual.

Chairman DeRicco stated Mr. Quintero argues that the NDOC document is fugitive as no evidence was provided that it was approved by the Board of Prison Commissioners or that its enactment conformed with open meeting law NRS 241, and he argues that it is overbroad.

Chairman DeRicco further stated per NRS 213.10885, the Board shall adopt by regulation specific standards for each type of convicted person to assist in determining whether to grant or revoke parole.

The Board has adopted NAC 213.512 and the determinations contained within date back to 2008. This regulation was approved in 2008 by the Legislative Commission and the Legislature has had ample time to clarify the law had it wanted to.

Chairman DeRicco opened floor for discussion.

There was no further discussion.

Ms. Mellinger read a written public comment dated March 28, 2022 from Tonja Brown, Advocates for the Inmates and the Innocent. Ms. Brown stated "Consider factors" in NAC 213.516 negates the intent of NRS 213.10885. Parole board guidelines are intended to establish specific standards to assist the board in making parole decisions. NRS 213.10885(1). The proposed amendment to NAC 213.516 does not meet that criteria. LCB R114-21 proposes to modify the table in NAC 213.516 which the board uses to make their initial assessment regarding whether to grant parole. The table generally recommends parole be denied when an inmate's risk level is high (top left-hand area of the table). The table mostly recommends that parole be granted at the initial parole eligibility for inmates whose risk factor is low (bottom right-band section of the table). When the inmate's risk factor is moderate (and for some high-risk factor inmates) the table does not establish a standard to which the board's decision may be compared.

Chairman DeRicco stated Ms. Brown argues that each category in the table of NAC 213.516 must contain a recommended parole decision outcome to which the boards actual decision may be compared in order to meet the requirement that the Board establish specific standards to assist the board in making parole decisions pursuant to NRS 213.10885(1).

Chairman DeRicco further stated our quarterly and yearly statistics are posted on the Board's website which capture this data. This information is readily available.

Chairman DeRicco opened floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Ms. Brown stated each category in the table of NAC 213.516 must contain a recommended parole decision outcome to which the boards actual decision may be compared. Decisions which deviate from those standards should then be reported at each regular session of the Nevada Legislature: NRS 213.10885 (7)(a) requires the Parole Board to report to the Legislature on its parole decisions. This report enables the Legislature to ensure the board's decisions are consistent and justifiable. The "Consider factors" wording in NAC 213.516 does not permit a comparison to nor deviation from a standard result. For that reason, there can be no conflictions nor deviations to report to the legislature pursuant to NRS 213.10885 (7)(a). This absurd result renders the reporting requirement and thus NRS 213.10885 null and void. Ms. Brown stated she still goes back to the proposition that "consider factors" is not an objective guideline for making a parole decision. She thinks the guidelines should make a recommendation as to the outcome.

Chairman DeRicco stated Ms. Brown argues that deviations can then be tracked through the reporting to the Legislative pursuant to NRS 213.10885(7)(a). She provides that as written this renders the reporting requirement and thus NRS 213.10885 null and void.

Chairman DeRicco further stated once again, this information is readily available on the Parole Boards website. In addition, this information is reported to the Legislature.

Chairman DeRicco asked if there was further discussion regarding this specific regulation. There was no discussion.

- IV. **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 NRS241.020.

Chairman DeRicco stated, the purpose of this public comment session is regarding proposed regulation R114-21P. This proposed regulation revises language in the initial assessment table and adds a subsection (2); and providing other matters properly relating thereto. This change is requested to carry out the provisions of NRS Chapter 213.516. Public comment will be limited to three minutes per person.

Chairman DeRicco opened floor for public comment.

Chairman DeRicco asked if there was anyone in Las Vegas that would care to make public comment on this topic?

Public comment – Las Vegas, NV

No public comment.

Chairman DeRicco asked if there was anyone in Carson City that would care to make public comment on this topic?

Public comment – Carson City, NV

No public comment.

- V. **For Possible Action:** Review of Intent to Adopt regulation R114-21P. The Board will consider public comments and any business impact and may act to amend and/or adopt the proposed regulation.

Chairman DeRicco stated having already discussed this item as a Board on Agenda Items VII and allowing the opportunity for public comment on this issue on Agenda Items VI and VIII, this is the time to consider those comments and any business impact before acting to amend and/or adopt the proposed regulation. During Board meetings late last year, the Board discussed and crafted language that was approved by the Board and submitted to the Legislative Counsel Bureau for approval for this regulation. The Board has reviewed what was previously submitted to LCB and what they have returned, and LCB did make language changes, but they did capture everything that needed to be captured. Chairman DeRicco continued by stating after review, he is in favor of the language for the regulation as suggested by LCB.

Chairman DeRicco asked if there was any further discussion necessary at this time before requesting a motion.

There was no discussion.

Chairman DeRicco asked if any corrections should be made to the regulation as submitted by LCB as distributed.

There was no discussion.

| | |
|------------------------|---|
| Motion: | The Nevada Board of Parole Commissioners adopt regulation R114-21P as reviewed and submitted by LCB. |
| Made: | Chairman DeRicco |
| Seconded By: | Commissioner Baker |
| Votes in Favor: | DeRicco, Jackson, Baker, Weisenthal, Christiansen, Verchio, Bailey |
| Votes Opposed: | None |
| Results: | Motion passed |

Chairman DeRicco stated on record that Commissioner Bailey had to leave and is absent, excused.

~~NAC 213.518—Determination of whether to grant parole: Consideration of additional aggravating and mitigating factors. (NRS 213.10885, 213.110, 213.140)~~

~~1.—After establishing an initial assessment regarding whether to grant parole pursuant to NAC 213.516, the Board may consider additional aggravating and mitigating factors to determine whether to grant parole to a prisoner.~~

~~2.—The aggravating factors which the Board may consider in determining whether to grant parole to a prisoner include, without limitation:~~

~~(a) Whether the nature of the crime committed by the prisoner was severe, extreme or abnormal;~~

~~(b) Whether the prisoner has previously been convicted of a crime; (c)~~

~~The number of occasions on which the prisoner has been incarcerated;~~

~~(d) Whether the prisoner has failed to complete probation or parole on three or more occasions;~~

~~(e) Whether the prisoner has committed a crime while incarcerated, during any period of release from confinement on bail, during any period of escape from an institution or facility or while on probation or parole;~~

~~(f) The extent to which the prisoner attempted to elude capture during or following the commission of a crime;~~

~~(g) The extent of the injury or loss suffered by the victim of the crime for which parole is being considered;~~

~~(h) Whether the prisoner has engaged in repetitive criminal conduct; (i)~~

~~Whether the prisoner has engaged in disruptive behavior while incarcerated;~~

~~(j) Whether the Department of Corrections has ever ordered the prisoner to be confined in disciplinary segregation;~~

~~(k) Whether the prisoner has committed increasingly serious crimes;~~

~~(l) Whether the prisoner has a history of failing to comply with the orders of a mental health professional for the treatment of a mental illness, including, without limitation, failing to comply with prescriptions for medication to treat a mental illness;~~

~~(m) Whether the prisoner demonstrates that he or she does not understand the nature of any diagnosed mental illness and whether that lack of understanding may contribute to future criminal behavior;~~

~~(n) Whether, in committing the crime for which parole is being considered, the prisoner targeted a child under the age of 18 years or a person who is vulnerable because of his or her age or disability;~~

~~(o) Whether the prisoner has a history of possessing or using a weapon during the commission of a crime; and~~

~~(p) Any other factor which indicates an increased risk that the release of the prisoner on parole would be dangerous to society or the prisoner.~~

~~3.—The mitigating factors which the Board may consider to determine whether to grant parole to a prisoner include, without limitation:~~

- ~~(a) Whether the prisoner has participated in programs which address the behaviors of the prisoner that led to the commission of the crime for which parole is being considered;~~
 - ~~(b) Whether the prisoner has no prior history, or a minimal history, of criminal convictions;~~
 - ~~(c) Whether the prisoner has not had any infractions of the rules of the institution or facility in which he or she has been incarcerated during the most recent 2 years if the lack of infractions is not a result of the confinement of the prisoner in disciplinary segregation; (d) Whether the prisoner has adjusted positively to a program for reentry of offenders and parolees into the community established by the Director of the Department of Corrections pursuant to NRS 209.4887 or a program of work release established by the Department of Corrections pursuant to NRS 213.300;~~
 - ~~(e) Whether the prisoner had less involvement in the commission of the crime for which parole is being considered than other persons who participated in the commission of the crime;~~
 - ~~(f) Whether the prisoner previously completed probation or parole successfully, other than probation imposed and supervised by a court;~~
 - ~~(g) Whether the prisoner has support available to him or her in the community or from his or her family;~~
 - ~~(h) Whether a stable release plan exists for the prisoner;~~
 - ~~(i) Whether the release of the prisoner is not a significant risk to society because the prisoner will be paroled to another jurisdiction for prosecution or deportation;~~
 - ~~(j) Whether the presentence investigation indicates that the crime for which parole is being considered was situational and that the prisoner did not intend to cause harm;~~
 - ~~(k) Whether the presentence investigation indicates that, prior to his or her arrest for the crime for which parole is being considered, the prisoner demonstrated immediate remorse for committing the crime by immediately and voluntarily turning himself or herself in to the proper authority, immediately and voluntarily seeking treatment to address the criminal behavior, immediately and voluntarily making restitution to the victims of the crime or taking any other voluntary action which demonstrates remorse;~~
 - ~~(l) Whether the prisoner has consistently managed a mental illness which may contribute to criminal behavior in the manner recommended by mental health professionals; and~~
 - ~~(m) Any other factor which indicates that the release of the prisoner on parole would benefit, or would not be dangerous to, society or the prisoner.~~
- ~~(Added to NAC by Bd. of Parole Comm'rs by R018-08, eff. 4-17-2008)~~

SECRETARY OF STATE
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**Form For Filing
Administrative Regulations**

Agency Board of Parole Commissioners

FOR EMERGENCY
REGULATIONS ONLY

Effective date _____

Expiration date _____

Governor's signature

Classification: **PROPOSED** **ADOPTED BY AGENCY** **EMERGENCY**

Brief description of action The Parole Board held a meeting on March 31, 2022 and approved the proposed amended regulation pursuant to NRS 213.10885, which was necessary to revise the language and re-organizes the language of the aggravating and mitigating factors that the Board may consider; and providing other matters properly related thereto.

Authority citation other than 233B NRS 213.10885

Notice date February 24, 2022

Date of Adoption by Agency

Hearing date March 31, 2022

March 31, 2022

**APPROVED REGULATION OF THE
STATE BOARD OF PAROLE COMMISSIONERS**

LCB File No. R115-21

Filed September 28, 2022

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: § 1, NRS 213.10885.

A REGULATION relating to parole; revising certain factors that the State Board of Parole Commissioners may consider when determining whether to grant parole to a prisoner; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the State Board of Parole Commissioners to adopt regulations setting forth specific standards to assist the Board in determining whether to grant or revoke the parole of a convicted person. The standards are required to be based upon objective criteria for determining the convicted person's probability of success on parole. (NRS 213.10885)

Existing regulations set forth certain aggravating and mitigating factors that the Board is authorized to consider when determining whether to grant parole to a prisoner. (NAC 213.518) This regulation revises such aggravating and mitigating factors and also provides that the Board will consider certain other factors set forth in existing law when determining whether to grant parole to a prisoner.

Section 1. NAC 213.518 is hereby amended to read as follows:

213.518 1. After establishing an initial assessment regarding whether to grant parole pursuant to NAC 213.516, the Board ~~may~~:

(a) Will consider the initial assessment and the factors set forth in NRS 213.10885 and 213.1099; and

(b) *May* consider ~~additional~~ *the relevant* aggravating and mitigating factors *set forth in subsections 2 and 3, respectively*, to determine whether to grant parole to a prisoner.

2. The aggravating factors which the Board may consider in determining whether to grant parole to a prisoner include, without limitation:

(a) Whether ~~the nature of the crime committed~~ *a prior prison term served* by the prisoner ~~was severe, extreme or abnormal;~~ *did not deter subsequent criminal activity;*

(b) Whether the prisoner has previously been convicted of ~~a crime;~~ *or adjudicated delinquent for a sexual offense;*

(c) ~~The number of occasions on which~~ *Whether* the prisoner has ~~been incarcerated;~~ *previously been convicted of or adjudicated delinquent for a violent offense;*

(d) Whether the prisoner has ~~failed to complete probation or parole on three or more occasions;~~ *engaged in repetitive similar criminal conduct;*

(e) Whether the prisoner has ~~committed a crime while incarcerated, during any period of release from confinement on bail, during any period of escape from an institution or facility or while on probation or parole;~~ *a significant prior criminal history;*

(f) ~~The extent to which~~ *Whether* the prisoner ~~attempted to elude capture during or following the commission of a crime;~~ *has engaged in disruptive institutional behavior;*

(g) ~~The extent of the injury or loss suffered by the victim of the crime for which parole is being considered;~~ *Whether the results of any assessment of the prisoner conducted pursuant to NRS 213.1214 indicate a high risk that the prisoner will reoffend in a sexual manner;*

(h) Whether the prisoner has ~~engaged in repetitive criminal conduct;~~ *multiple prior probation or parole revocations;*

- (i) Whether the *nature of the criminal record of the prisoner* ~~{has engaged in disruptive behavior while incarcerated;}~~ *is increasingly more serious;*
- (j) Whether ~~{the Department of Corrections has ever ordered}~~ , *in committing the crime for which parole is being considered*, the prisoner ~~{to be confined in disciplinary segregation;}~~ *targeted a child under the age of 18 years or a person who is vulnerable because of his or her age or disability;*
- (k) ~~{Whether}~~ *The impact on the community and each victim of the crime for which parole is being considered if the prisoner* ~~{has committed increasingly serious crimes;}~~ *is released on parole;*
- (l) ~~{Whether the prisoner has a history of failing to comply with the orders of a mental health professional for the treatment of a mental illness, including, without limitation, failing to comply with prescriptions for medication to treat a mental illness;}~~ *The extreme or abnormal aspects of the crime for which parole is being considered;*
- (m) Whether the prisoner ~~{demonstrates that he or she does not understand the nature of any diagnosed mental illness and whether that lack of understanding may contribute to future criminal behavior;}~~ *refused to participate in or was terminated for cause from any treatment;*
- (n) Whether ~~{in committing the crime for which parole is being considered;}~~ the prisoner ~~{targeted a child under the age of 18 years or a person who is vulnerable because of his or her age or disability;}~~ *has been removed from a correctional program for reentry or a program of work release during the period of his or her current incarceration;*
- (o) Whether the prisoner has ~~{a history of possessing or using a weapon during the commission of}~~ *committed a crime* ~~{; and}~~ *while incarcerated, during any period of release*

from confinement on bail, during any period of escape from an institution or facility, while eluding capture or while on probation or parole;

(p) *Whether the prisoner has been confined in disciplinary segregation at any time during the 24 months immediately preceding the month in which the parole hearing takes place; and*

(q) Any other factor which indicates an increased risk that the release of the prisoner on parole would be dangerous to society or the prisoner.

3. The mitigating factors which the Board may consider to determine whether to grant parole to a prisoner include, without limitation:

(a) ~~Whether the prisoner has participated in programs which address the behaviors of the prisoner that led to the commission of the crime for which parole is being considered;~~

~~—(b)~~ Whether the prisoner has no prior history, or a minimal history, of criminal convictions ~~or delinquency adjudications;~~

~~(c)~~ (b) Whether the prisoner has not had any infractions of the rules of the institution or facility in which he or she has been incarcerated ~~during the most recent 2 years if the lack of infractions is not a result of the confinement of the prisoner~~ and has not been confined in disciplinary segregation ~~at any time during the 24 months immediately preceding the month in which the parole hearing takes place;~~

(c) *Whether the prisoner has participated in programs specific to addressing the behaviors of the prisoner that led to his or her incarceration;*

(d) Whether the prisoner has adjusted positively to a *correctional* program for reentry ~~of offenders and parolees into the community established by the Director of the Department of Corrections pursuant to NRS 209.4887~~ or a program of work release ~~established by the~~

~~Department of Corrections pursuant to NRS 213.300;~~ *during the period of his or her current incarceration;*

(e) ~~{Whether the prisoner had less involvement in the commission of the crime for which parole is being considered than other persons who participated in the commission of the crime;~~

~~—(f)}~~ *Whether the prisoner previously completed probation or parole **supervision** successfully, other than ~~{probation imposed and supervised by a court;}~~ **summary or court-based supervision;***

(f) Whether a stable release plan exists for the prisoner;

(g) *Whether ~~{the prisoner has support available to him or her in the community or from his or her family;~~*

~~—(h) Whether a stable release plan exists for the prisoner;~~

~~—(i) Whether the release of the prisoner is not a significant risk to society because the prisoner will be paroled to} another jurisdiction ~~{for prosecution or deportation;~~~~

~~—(j)}~~ *has lodged a detainer against the prisoner;*

(h) Whether a consecutive sentence is pending against the prisoner;

(i) Whether the prisoner has support available to him or her in the community or from his or her family;

(j) Whether the prisoner had less involvement in the commission of the crime for which parole is being considered than other persons who participated in the commission of the crime;

(k) Whether the results of any assessment of the prisoner conducted pursuant to NRS 213.1214 indicate a low risk that the prisoner will reoffend in a sexual manner;

(l) If the prisoner has a mental illness that may be a contributing factor to criminal behavior, whether the prisoner has consistently managed the mental illness in the manner recommended by mental health professionals;

(m) Whether the case history of the prisoner demonstrates remorse by the prisoner;

*(n) Whether the presentence investigation **report** indicates that the crime for which parole is being considered was situational and **there is no evidence** that the prisoner ~~did not intend~~ **intended** to cause harm;*

~~[(k) Whether the presentence investigation indicates that, prior to his or her arrest for the crime for which parole is being considered, the prisoner demonstrated immediate remorse for committing the crime by immediately and voluntarily turning himself or herself in to the proper authority, immediately and voluntarily seeking treatment to address the criminal behavior, immediately and voluntarily making restitution to the victims of the crime or taking any other voluntary action which demonstrates remorse;~~

~~—(l) Whether the prisoner has consistently managed a mental illness which may contribute to criminal behavior in the manner recommended by mental health professionals;]~~ and

~~[(m)]~~ *(o) Any other factor which indicates that the release of the prisoner on parole would benefit, or would not be dangerous to, society or the prisoner.*

4. As used in this section, “sexual offense” has the meaning ascribed to it in NRS 213.1214.

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED
BY NRS 233B.066
LCB FILE R115-21P**

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) Chapter 213.

1. A clear and concise explanation of the need for the adopted regulation.

This regulation is necessary to revise the language and re-organizes the language of the aggravating and mitigating factors that the Board may consider; and providing other matters properly related thereto.

2. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

Copies of the proposed regulations, notices of workshop and notices of intent to act upon the regulation were sent by U.S. mail to persons who were known to have an interest in the subject as well as any persons who had specifically requested such notice. These documents were also made available at the website of the Board of Parole Commissioners, <https://parole.nv.gov/> and posted at the following locations:

Board of Parole Commissioners
1677 Old Hot Springs Road, Ste. A
Carson City, Nevada

Board of Parole Commissioners
4000 S. Eastern Avenue
Las Vegas, Nevada

Attorney General's office
100 S. Carson Street
Carson City, Nevada

Attorney General's office
555 E. Washington Avenue
Las Vegas, Nevada

A workshop was held on September 29, 2021, and the minutes of that meeting, attached as Exhibit B hereto, contain a summary of the discussion held regarding the proposed amendment.

An additional workshop was held on October 25, 2021, and the minutes of that meeting, attached as Exhibit C hereto, contain a summary of the discussion held regarding the proposed amendment.

An additional workshop was held on November 29, 2021, and the minutes of that meeting, attached as [Exhibit D](#) hereto, contain a summary of the discussion held regarding the proposed amendment.

Thereafter, on or about February 24, 2022, the Board of Parole Commissioners issued a Notice of Intent to Act Upon a Regulation, for public comment and for possible action on March 31, 2022. The minutes of that meeting, attached as [Exhibit E](#) hereto, contain a summary addressing all public comments and of the discussion held regarding the proposed amendment.

A copy of this summary of the public response to the proposed regulation may be obtained from the Board of Parole Commissioners, 1677 Old Hot Springs Rd., Ste. A, Carson City, Nevada 89706, 775-687-6505, or email to kmellinger@parole.nv.gov.

3. The number persons who:

(a) **Attended each hearing:** September 29, 2021 – 2; October 25, 2021 – 3; November 29, 2021 – 2; March 31, 2022 – 2

(b) **Testified at each hearing:** September 29, 2021 – 1; October 25, 2021 – 0; November 29, 2021 – 0; March 31, 2022 – 0

(c) **Submitted to the agency written comment:** September 29, 2021 – 3; October 25, 2021 – 3; November 29, 2021 – 2; March 31, 2022 – 3.

4. A list of names and contact information, including telephone number, business address, business telephone number, electronic mail address, and name of entity or organization represented for each person identified above in #3, as provided to the agency, is attached as [Exhibit A](#).

5. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.

Comments were solicited from affected businesses in the same manner as they were solicited from the public. The Board used informed, reasonable judgment in determining that there will not be an impact on small businesses due to the nature of the proposed regulation. The summary may be obtained as instructed in the response to question #2.

6. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The permanent regulation was issued on February 1, 2022, and on March 31, 2022; the Parole Board held a public meeting and unanimously voted to adopt the February 1, 2022 version of LCB File No. R115-21 as written. The minutes of the March 31, 2022 meeting, attached hereto as [Exhibit E](#), contain a summary of the reasons for adopting the regulation without change.

7. The estimated economic effect of the adopted regulation on the businesses which it is to regulate and on the public. These must be stated separately, and each case must include:

- (a) Both adverse and beneficial effects; and**
- (b) Both immediate and long-term effects.**

(a) Both adverse and beneficial effects

Adverse effects: There are no known adverse economic effects on businesses or on the public based on the proposed regulation.

Beneficial effects: There are no known beneficial economic effects on businesses or on the public based on the proposed regulation.

(b) Both immediate and long-term effects.

Immediate economic effects: There are no known immediate economic effects on businesses or on the public based on the proposed regulation.

Long-term economic effects: There are no known long-term economic effects on businesses or on the public based on the proposed regulation.

8. The estimated cost to the agency for enforcement of the adopted regulation.

There is no additional cost to the agency for enforcement of this regulation.

9. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

There are no other state or government agency regulations that the proposed regulation duplicates.

10. If the regulation includes provisions that are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

There are no federal regulations that apply.

11. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

This regulation does not provide a new fee or increase an existing fee.

Exhibit A

Inmate Evan Grant, NDOC# 1159544
Northern Nevada Correctional Center
P.O Box 7000
Carson City, NV 89702

Inmate John Quintero, NDOC# 93782
Northern Nevada Correctional Center
P.O Box 7000
Carson City, NV 89702

Inmate Adam Garcia, NDOC# 82651
Northern Nevada Correctional Center
P.O Box 7000
Carson City, NV 89702

Patricia Adkisson
702.505.2861
faithandjoesmom@gmail.com

Tonja Brown
Advocates for the Inmates and the Innocent
2907 Lukens Lane
Carson City, NV 89706
775.882.2744
nvmemorialfund@aol.com

Keibi Mejia

Paige Barnes
Crowley & Ferrato Public Affairs

Katie Brady, Deputy Attorney General
Attorney General
100 N Carson St
Carson City, NV 89701
775.684.1100

Jared Frost, Senior Deputy Attorney General
Attorney General
555 E Washington Ave
Las Vegas, NV 89101
702.486.3420

Exhibit B

CENTRAL OFFICE

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KATIE FRAKER, *Executive Secretary*

STATE OF NEVADA
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ERIC CHRISTIANSEN, *Member*
DONNA VERCHIO, *Member*
LAMICIA BAILEY, *Member*

NEVADA BOARD OF PAROLE COMMISSIONERS

MINUTES

Meeting of the Board of Parole Commissioners September 29, 2021

MINUTES APPROVED ON OCTOBER 25, 2021

The Board of Parole Commissioners held a public meeting on September 29, 2021, beginning at 1:00 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 1:00PM.

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

Support staff in attendance:

Katie Fraker, Executive Secretary
Jeremy Meador, Administrative Assistant II
Forrest Harter, Hearing Examiner I
Kelli Mellinger, Hearing Examiner II
Kathi Baker, Management Analyst III
Matt Thrasher, Management Analyst I

Members of the public present in Carson City included:

Katie Brady, Deputy Attorney General

Members of the public present in Las Vegas included:

Patricia Adkisson

- 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 NRS241.020.

Public comment – Carson City, NV

No public comment.

Public comment – Las Vegas, NV

No public comment.

- III. **Workshop, Public Comment, and Possible Action:** The purpose of this workshop is to solicit comments from interested persons and for the Board to discuss modifying NAC 213.518. This proposed regulation is necessary to carry out the provisions of NRS Chapter 213, pursuant to NRS 213.10885, and NRS 213.1099, a regulation relating to the determination of whether to grant parole: Consideration of additional aggravating and mitigating factors; and providing other matters properly relating thereto. After receiving comments, the Board may take action to amend the regulation before it is sent to the Legislative Counsel for review and drafting. No action may be taken upon a matter raised during a period devoted to comments by the general public 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.

Workshop for Proposed Regulations on NAC 213.518(1)

Overview of Workshop

Board Members in attendance in the Carson City office:

Commissioner Jackson
Commissioner Baker
Commissioner Weisenthal

Board Members in attendance in the Las Vegas office:

Chairman DeRicco
Commissioner Christiansen
Commissioner Verchio
Commissioner Bailey

Support staff in attendance:

Katie Fraker, Executive Secretary
Jeremy Meador, Administrative Assistant II
Forrest Harter, Hearing Examiner I
Kelly Mellinger, Hearing Examiner II
Kathi Baker, Management Analyst III
Matt Thrasher, Management Analyst I

Members of the public present in Carson City included:

Katie Brady, Deputy Attorney General

Members of the public present in Las Vegas included:

Patricia Adkisson

Workshop:

The purpose of this workshop is to solicit comments from interested persons on the following general topics that may be addressed in the proposed regulation:

The Board to discuss modifying NAC 213.518. This proposed regulation is necessary to carry out the provisions of NRS Chapter 213, pursuant to NRS 213.10885, and NRS 213.1099, a regulation relating to the determination of whether to grant parole: Consideration of additional aggravating and mitigating factors; and providing other matters properly relating thereto.

Summary of Testimony

Chairman DeRicco stated the purpose of this workshop is to solicit comments from interested persons and for the Board to discuss modifying NAC 213.518. Chairman DeRicco provided the proposed regulation is necessary to carry out the provisions of NRS Chapter 213, pursuant to NRS 213.10885, and NRS 213.1099, a regulation relating to the determination of whether to grant parole consideration of additional aggravating and mitigating factors; and providing other matters properly relating thereto. Chairman DeRicco stated that after receiving comments, the Board may take action to amend the regulation before it is sent to the Legislative Counsel for review and drafting. Chairman DeRicco provided that no action may be taken upon a matter raised during a period devoted to comments by the general public 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.

Chairman DeRicco introduced Kelly Mellinger, Hearing Examiner II.

Kelly Mellinger facilitated and began the workshop by stating the reason for this workshop is for discussion of amending NAC 213.518(1). Ms. Mellinger stated workshops are to provide interested persons with a reasonable opportunity to meet informally with agency staff to discuss the general subject matter of the proposed regulation. Ms. Mellinger provided that the Board will be asking those in attendance for their thoughts, concerns, and suggestions regarding the proposed regulation. Ms. Mellinger provided that since the workshop is being video conferenced to our Southern office, speakers from both locations will be invited to participate and stated that the scope of this workshop is limited to the proposed regulation that will be discussed.

Ms. Mellinger provided that this workshop is for discussion to amend regulation NAC 213.518(1) to make language changes to make it clear that the factors contained in NRS 213.10885 and NRS 213.1099 are always considered after establishing an initial assessment to determine whether to grant parole to a prisoner.

Ms. Mellinger provided that the proposed changes are to Section 1 of NAC 213.518 to change the wording from, NAC 213.518 (1) "After establishing an initial assessment regarding whether to grant parole pursuant to NAC 213.516, the Board may consider additional aggravating and mitigating factors to determine whether to grant parole to a prisoner," to *NAC 213.518 (1) "After establishing an initial assessment regarding whether to grant parole pursuant to NAC 213.516, the Board will consider the factors contained in NRS 213.10885 and NRS 213.1099 and may consider additional aggravating and mitigating factors to determine whether to grant parole to a prisoner."*

Chairman DeRicco stated the perfect language is not needed on the draft regulation, as the Legislative Council Bureau (LCB) will review the draft and likely alter the language.

Chairman DeRicco provided that this regulation is in reference to NRS 213, pursuant to NRS 213.10885, and NRS 213.1099. Chairman DeRicco stated that the Board first reviewed this issue at our July 2021

meeting, and the Board voted to work on updating the language of this regulation. Chairman DeRicco provided that the proposed language change appears to conform with statute and that this is the time for us as a Board to discuss and to solicit comments from any other interested persons. Chairman DeRicco stated he would like to start with comments by any interested persons before moving on to Board members and asked if there is anyone in Carson City that would care to make public comment on this regulation?

Public comment – Carson City, NV

See attached written public comment from John Quintero #93282

See attached written public comment from Evan Grant #1159544

See attached written public comment from Patricia Adkisson

Chairman DeRicco asked if there is there anyone in Las Vegas that would care to make public comment on this regulation?

Public comment - Las Vegas

Patricia Adkisson provided the following statement

Good afternoon, I'm here to comment on Agenda Item Number IV, the applicable statutory scheme in Nevada. Chapter 213 confers limited authority to this Board, when taking any action related to parole consideration. The effective Nevada Administrative Code must establish clear objective criteria and standards. NAC 213.518 does not establish any such objective criteria, nor does it establish a standard. A weighted value must be applied in order to give an objective effect in the determination. The legislature mandates objective criteria and standards in order to ensure the uniform operation and application of this Board's determination related to parole action, as contemplated by NAC 4 Nevada constitution article 4. The legislative purpose is to safeguard against arbitrary and capricious determinations. Parole is a grace of the state, that grace must be applied in a manner consistent with a uniform application and operation of laws, as well as equal protection of our system of laws. Otherwise, this Board could simply ignore the standards and only grant grace of our state through personal biases. I actually had submitted written comments that I'd like to go ahead and read as well.

Chairman DeRicco stated that the Board had received a copy of that statement that Ms. Adkisson was going to read.

Ms. Adkisson asked the Board to please consider the following comments related to your discussion of the possible modification of NAC 213.518:

In order to bring NAC 213.518 into compliance with the statutory authority conferred for its creation by the legislature pursuant to NRS 213.10885 and NRS 213.1099 this Board must establish a weighted value for each aggravating factor and each mitigating factor. Without the establishment of this objective measurement sought, no objective standard is defined. The use of any factor contemplated pursuant to NAC 213.518 for Parole action, based upon an undefined standard, is simply a subjective review and prevents a fair hearing. Parole is a grace of the state, but the Board is not permitted to grant or deny parole as a whim based on subjective standards not sufficiently defined with a weighted value. Parole action in this manner can never be said to be applied in a manner consistent with concepts of a fair hearing. It implicates equal protection issues and runs afoul of principles related to the uniform operation and application of general laws as enshrined in the Nevada constitution Article 4 subsection 21. Please establish a weighted known value for each factor related to NAC 213.518. Thank you for your consideration,

Chairman DeRicco stated that he is aware of some documents that were received regarding this regulation, and that the Board has copies of these documents. Chairman DeRicco provided that these documents may be incorporated into today's discussions. Chairman DeRicco indicated that the Board members should feel free to address any comments or submitted documentation concerning language changes to present to LCB. Chairman DeRicco provided that if there are not any changes to the proposed draft regulation, at a subsequent meeting, after LCB has had the opportunity to review the proposed language, these comments and submitted documentation will be addressed.

Chairman DeRicco asked if any of the Commissioner's cared to discuss or comment on NAC 213.518? There was no discussion.

Chairman DeRicco stated that after considering all the comments provided today, as well as the written documentation provided by Mr. Grant, Ms. Adkisson, and Mr. Quintero, I am comfortable with what has been provided on this item and I believe that it is sufficient to move forward to LCB. Chairman DeRicco provided that regarding Mr. Grant's submitted documentation, that Chairman DeRicco requested a small change to NAC 213.518(1). This change is to replace the word "additional" with the word "relevant." Chairman DeRicco stated he is requesting that NAC 215.518(1) now read, *"After establishing an initial assessment regarding whether to grant parole pursuant to NAC 213.516, the Board will consider the factors contained in NRS 213.10885 and NRS 213.1099 and may consider relevant aggravating and mitigating factors to determine whether to grant parole to a prisoner."*

Chairman DeRicco provided that after further review of this regulation, he believes that the Board should conduct another workshop on this same statute, to address subsections (2) and (3). Chairman DeRicco provided that the Board may want to clean up some of the language included in these sections for greater clarity.

| | |
|------------------------|---|
| Motion: | The Board approve the proposed draft regulation changes made today in reference to NAC 213.518(1), for submittal to the Legislative Counsel Bureau for review, examination, and if appropriate, language revision. |
| Made: | Chairman DeRicco |
| Seconded By: | Commissioner Verchio |
| Votes in Favor: | DeRicco, Jackson, Baker, Weisenthal, Christiansen, Bailey, Verchio |
| Votes Opposed: | None |
| Results: | Motion Passed |

Exhibit C

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DONNA VERCHIO, *Member*
LAMICIA BAILEY, *Member*

NEVADA BOARD OF PAROLE COMMISSIONERS

MINUTES

Meeting of the Board of Parole Commissioners October 25, 2021

MINUTES APPROVED ON NOVEMBER 29, 2021

The Board of Parole Commissioners held a public meeting on October 25, 2021, beginning at 1:00 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 1:00PM.

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

Support staff in attendance:

Katie Fraker, Executive Secretary
Kelly Mellinger, Hearings Examiner II
Jeremy Meador, Administrative Assistant II

Members of the public present in Carson City included:

Katie Brady, Deputy Attorney General
Paige Barnes, Crowley & Ferrato Public Affairs

Members of the public present in Las Vegas included:

Jared Frost, Senior Deputy Attorney General

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 NRS241.020.

Public comment – Carson City, NV
No public comment.

Public comment – Las Vegas, NV
No public comment.

- III. **For possible action:** The purpose of this workshop is to solicit comments from interested persons and for the Board to discuss modifying NAC 213.518 (2) and (3). This proposed regulation is necessary to carry out the provisions of NRS Chapter 213, pursuant to NRS 213.10885, and NRS 213.1099, a regulation relating to the determination of whether to grant parole: Consideration of additional aggravating and mitigating factors; and providing other matters properly relating thereto. After receiving comments, the Board may take action to amend the regulation before it is sent to the Legislative Counsel for review and drafting. No action may be taken upon a matter raised during a period devoted to comments by the general public 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.

Overview of Workshop

Board Members in attendance in the Carson City office:

Commissioner Baker
Commissioner Weisenthal

Board Members in attendance in the Las Vegas office:

Chairman DeRicco
Commissioner Verchio
Commissioner Bailey

Support staff in attendance:

Katie Fraker, Exexutive Secretary
Jeremy Meador Administrative Assistant II
Kelly Mellinger, Hearings Examiner II

Members of the public present in Carson City included:

Katie Brady, Deputy Attorney General
Paige Barnes, Crowley & Ferrato Public Affairs

Members of the public present in Las Vegas included:

Jared Frost, Senior Deputy Attorney General

Workshop

The purpose of this workshop is to solicit comments from interested persons on the following general topics that may be addressed in the proposed regulation:

The Board to discuss modifying NAC 213.518 (2) and (3). This proposed regulation is necessary to carry out the provisions of NRS Chapter 213, pursuant to NRS 213.10885, and NRS 213.1099, and is a regulation relating to the determination of whether to grant parole: Consideration of additional aggravating and mitigating factors; and providing other matters property relating thereto.

Summary of Testimony

Chairman DeRicco read the agenda item introduced Kelly Mellinger, Hearings Examiner II.

Kelly Mellinger facilitated and began the workshop by stating that the reason for this workshop is for discussion of amending NAC 213.518 (2) and (3). Ms. Mellinger stated workshops are to provide interested persons with a reasonable opportunity to meet informally with agency staff to discuss the general subject matter of the proposed regulation. Ms. Mellinger provided that the Board will be asking those in attendance for their thoughts, concerns, and suggestions regarding the proposed regulation. Ms. Mellinger provided that since the workshop is being video conferenced to our Southern office, speakers from both locations will be invited to participate and stated that the scope of this workshop is limited to the proposed regulation that will be discussed.

Ms. Mellinger provided that this workshop is for discussion to amend regulation NAC 213.518 (2) and (3) to make language changes and re-organize the language to reflect duplication of the Boards existing aggravating and mitigating factors.

Ms. Mellinger provided that in the provided handouts the proposed language changes to NAC 213.815 (2) and (3) are in blue.

The floor was opened to discussion.

Chairman DeRicco stated the perfect language is not needed on the draft regulation, as the Legislative Council Bureau (LCB) will review the draft and likely alter the language.

Chairman DeRicco provided that this regulation is in reference to NRS 213, pursuant to NRS 213.10885, and NRS 213.1099. Chairman DeRicco further stated the issue was first reviewed at the July 2021 meeting and at that time the Board voted to work on updated the language of this regulation. At the last meeting the Board voted on language to amend subsection (1), and that today (2) and (3) were being looked at. Chairman DeRicco asked if there was any one in Carson City that would care to make public comment on this regulation?

Public comment – Carson City, NV

See attached written public comment from John Quintero #93282

See attached written public comment from Evan Grant #1159544

See attached written public comment from Patricia Adkisson

Chairman DeRicco asked if there was any one in Carson City that would care to make public comment on this regulation?

Public comment – Las Vegas, NV

No public comment

Chairman DeRicco stated that he is aware of some documents that were received regarding this regulation, and that the Board has copies of these documents. Chairman DeRicco provided that these documents may be incorporated into today's discussion.

Chairman DeRicco stated that before the workshop could continue a correction needed to be made on record.

The notice of workshop document currently reads on the right in bold NAC regulations but lists NRS's. This was an error and should instead read NAC213.518.

Chairman DeRicco asked if anyone had any comments before going through the proposed changes to the regulation, and offered there would be more time later for comments.

Commissioner Baker asked if the regulation was going to be reviewed line by line, and stated she would like to discuss subsection (2) under aggravating factors letter (g), whether the prisoners NRS 213.1214 assessment results in an above average risk to reoffend sexually. Commissioner Baker stated she thinks it should say an above average or higher risk.

Chairman DeRicco affirmed each line would be reviewed, and that much of the language was just being put in a different order, and providing extra clarification.

Chairman DeRicco asked if anyone had any questions or comments.
There was no discussion.

Chairman DeRicco began with subsection 2; the aggravating factors which the Board may consider in determining whether to grant parole to a prisoner include, without limitation. He read the proposed language as provided in the supporting materials.

Commissioner Verchio brought up specificity and asked about the word significant. She further asked when does a criminal history become significant, and stated she feels that a number should be assigned for clarity.

Chairman DeRicco stated that there are definitions for each aggravating and mitigating factor, and that NAC is similar to a heading. He provided that once collectively agreed upon, the language reworked by LCB and that the definitions document will be reviewed at a later time.

Commissioner Verchio affirmed that she understood, and was in agreement.

Chairman DeRicco asked if anyone had any questions or comments.
There was no discussion.

Chairman DeRicco referenced Commissioner Baker's earlier comment about adding high risk to the proposed language, and asserted that he was in agreement to adding it; with no one opposing the addition.

Chairman DeRicco stated that he wanted to close out this section before moving onto subsection (3), asking if anyone had anything else to add.
There was no discussion.

Chairman DeRicco began discussing subsection (3) the mitigating factors which the Board may consider to determine whether to grant parole to an inmate.

Chairman DeRicco asked if there was anything to discuss in subsection (3).

Commissioner Baker stated that she would like to discuss (1) whether the prisoner has been consistently

managing their mental illness. She has not seen many inmates consistently managing their mental illness and wanted to make sure substance use disorder was also being considered in that factor as it is recognized in the DSM5 as mental illness. Chairman DeRicco asked for others' thoughts and stated that the language being removed in red (I) was whether the prisoner has consistently managed a mental illness which may contribute to criminal behavior in the manner recommended by mental health professionals, and that the proposed language is in keeping with the mental health topic, but that did not mean something could not be added regarding substance abuse.

Commissioner Baker reiterated her previous comment that substance abuse disorder is now considered a mental illness under the diagnostic and statistical manual, and if both are being considered it would be incorporated into mental illness.

Chairman DeRicco stated that would be his understanding also.

There were nods of agreement from the Board members.

Chairman DeRicco stated that he did not have anything further to add other than what was added by Commissioner Baker in subsection (2)(g). Chairman DeRicco reiterated that three documents were received for comment, and that they have all been reviewed and taken into account and that a response to those will come at a later time.

Chairman DeRicco asked if anyone had comments regarding NAC 213.518 (2) or (3) only. There was no discussion.

Chairman DeRicco turned the discussion back to Kelly Mellinger for closing comments.

Kelly Mellinger stated that discussion is now closed, a summary of any testimony that has been submitted will be prepared. She provided that all testimony will be carefully reviewed and considered. She further provided that the minutes of the meeting will be available within 30 days of this meeting and will be posted on the Parole Board's website at www.parole.nv.gov, and may also be requested by calling the Parole Board at 775-687-5049.

Exhibit D

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ERIC CHRISTIANSEN, *Member*
DONNA VERCHIO, *Member*
LAMICIA BAILEY, *Member*

NEVADA BOARD OF PAROLE COMMISSIONERS

MINUTES

Meeting of the Board of Parole Commissioners November 29, 2021

MINUTES APPROVED ON DECEMBER 28, 2021

The Board of Parole Commissioners held a public meeting on November 29, 2021, beginning at 1:00 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 1:00PM.

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

Support staff in attendance:

Katie Fraker, Executive Secretary
Kelly Mellinger, Hearings Examiner II
Lupe Garrison, Hearings Examiner I
Forrest Harter, Hearings Examiner I

Members of the public present in Carson City included:

Katie Brady, Deputy Attorney General
Paige Barnes, Crowley & Ferrato Public Affairs

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 NRS241.020.

Public comment – Carson City, NV

No public comment.

Public comment – Las Vegas, NV
No public comment.

- III. **Workshops, Public Comment, and Possible Action:** The purpose of this workshop is to solicit comments from interested persons and for the Board to discuss modifying the following general topics that may be addressed in the proposed regulations: Topics: (1) The Board to discuss modifying its regulations pursuant to NAC 213.518. This proposed regulation is necessary to carry out the provisions of NRS 213.10885, NRS 213.110, and NRS 213.140, and is a regulation relating to the determination of whether to grant parole: Consideration of additional aggravating and mitigating factors; and providing other matters properly relating thereto. (2) The Board to discuss modifying NAC 213.514. This proposed regulation change is necessary to carry out the provisions of NRS 213.10885, NRS 213.110, and NRS 213.140, and is a regulation relating to the determination of whether to grant parole: Assignment of risk level to prisoner. (3) The Board to discuss modifying NAC 213.516. This proposed regulation change is necessary to carry out the provisions of NRS 213.10885, NRS 213.110, and NRS 213.140, and is a regulation relating to the determination of whether to grant parole: Initial assessment. After receiving comments, the Board may take action to amend the regulations before they are sent to the Legislative Counsel for review for drafting. No action may be taken upon a matter raised during a period devoted to comments by the general public until the matter itself has been specifically included on an agenda as an item upon which action may be taken pursuant to subparagraph (3) of NRS 241.020.

Overview of Workshop

Board Members in attendance in the Carson City office:

Chairman DeRicco
Commissioner Jackson

Board Members in attendance in the Las Vegas office:

Commissioner Christiansen
Commissioner Verchio
Commissioner Bailey

Support staff in attendance:

Katie Fraker, Executive Secretary
Kelly Mellinger, Hearings Examiner II
Lupe Garrison, Hearings Examiner I
Forrest Harter, Hearings Examiner I

Members of the public present in Carson City included:

Katie Brady, Deputy Attorney General
Paige Barnes, Crowley & Ferrato Public Affairs

Members of the public present in Las Vegas included:

None

Workshop

The purpose of this workshop is to solicit comments from interested persons on the following general topics that may be addressed in the proposed regulation:

The Board to discuss amending its regulation NAC 213.518 pursuant to NRS 213.10885, NRS 213.110, NRS 213.140, and NRS 213.1214; which makes language changes and re-organizes the language of the aggravating and mitigating factors that the Board may consider; and providing other matters properly relating thereto.

Summary of Testimony

Chairman DeRicco introduced Kelly Mellinger, Hearings Examiner II.

Kelly Mellinger facilitated and began the workshop by stating the reason for this workshop is for discussion of amending NAC 213.518, NAC 213.514 & NAC 213.516. Ms. Mellinger stated workshops are to provide interested persons with a reasonable opportunity to meet informally with agency staff to discuss the general subject matter of the proposed regulation. Ms. Mellinger provided that the Board will be asking those in attendance for their thoughts, concerns, and suggestions regarding the proposed regulation. Ms. Mellinger provided that since the workshop is being video conferenced to our Southern office, speakers from both locations will be invited to participate and stated that the scope of this workshop is limited to the proposed regulation that will be discussed.

Ms. Mellinger provided that the first workshop is for discussion to amend regulation NAC 213.518 pursuant to NRS 213.10885, NRS 213.110, NRS 213.140, and NRS 213.1214; which makes language changes and re-organizes the language of the aggravating and mitigating factors that the Board may consider; and providing other matters properly relating thereto.

Ms. Mellinger provided that in the provided handouts the proposed language changes are in blue.

The floor was opened to discussion.

Chairman DeRicco stated the perfect language is not needed on the draft regulation, as the Legislative Council Bureau (LCB) will review the draft and likely alter the language.

Chairman DeRicco provided that this regulation is in reference to NRS 213, pursuant to NRS 213.10885, NRS 213.110, NRS 213.1214, and NRS 213.140. Chairman DeRicco further stated the proposed language changes in all these NACs appear to conform with statute. In addition, Deputy Attorney General, Katie Brady, has also reviewed the provided documents and she provided input on them as well. Over the past couple of months NAC 213.518 has been reviewed, at the October Board meeting language was approved but Chairman DeRicco felt additional clarification should be made.

Chairman DeRicco asked if there was anyone in Carson City that would care to make public

comment on this regulation?

Public comment – Carson City, NV

See attached written public comment from John Quintero

See attached written public comment from Evan Grant

See attached written public comment from Adam Garcia

Chairman DeRicco asked if there was any one in Las Vegas that would care to make public comment on this regulation?

Public comment – Las Vegas, NV

No public comment

Chairman DeRicco stated that he is aware of some documents that were received regarding this regulation, and that the Board has copies of these documents. Chairman DeRicco provided that these documents may be incorporated into today's discussion.

Chairman DeRicco stated that language was stricken under subsection (2)(g) and (3)(k). The reason this is being requested is that the language only reflects language used in the Static 99, for example, "an above average risk," or "a below average risk." However, the SVR-20 is used for female inmates, which gives results of low, moderate, or high. With the Static-99, the Board previously determined what constitutes low, moderate, or high, per that assessment. By taking out the language approved at the last meeting, it will be much clearer the three categories being considered are low, moderate, and high, and that an aggravator or mitigator will be applied if someone is a "low" or "high." Additionally, if NDOC uses some other type of assessment in the future, this new language will likely cover this as well.

Chairman DeRicco asked if anyone had any questions or comments.

Commissioner Christiansen stated that he agrees that it creates greater consistency.

Chairman DeRicco stated that after considering all the comments provided here today, as well as the written documentation provided by Mr. Grant, Mr. Garcia, and Mr. Quintero, he's comfortable with what has been provided on this item and believes that it is sufficient to move forward to LCB.

| | |
|------------------------|---|
| Motion: | Approve the proposed draft regulation changes made today about NAC 213.518, for submittal to the Legislative Counsel Bureau for review, examination, and if appropriate, language revision |
| Made: | Chairman DeRicco |
| Seconded By: | Commissioner Jackson |
| Votes in Favor: | DeRicco, Jackson, Christiansen, Verchio, Bailey |
| Votes Opposed: | None |
| Results: | Motion Passed |

Chairman DeRicco turned the discussion back to Ms. Mellinger for closing comments.

Ms. Mellinger stated that discussion is now closed, a summary of any testimony that has been submitted will be prepared. All testimony will be carefully reviewed and considered. The minutes of the meeting will be available within 30 days of this meeting and will be posted on the Parole Board's website at www.parole.nv.gov. Minutes may also be requested by calling the Parole Board at 775-687-5049.

Exhibit E

CENTRAL OFFICE

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SUSAN JACKSON, *Member*
MARY K. BAKER, *Member*
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STATE OF NEVADA
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ERIC CHRISTIANSEN, *Member*
DONNA VERCHIO, *Member*
LAMICIA BAILEY, *Member*

NEVADA BOARD OF PAROLE COMMISSIONERS

MINUTES

Meeting of the Board of Parole Commissioners March 31, 2022

MINUTES APPROVED ON APRIL 27, 2022

The Board of Parole Commissioners held a public meeting on March 31, 2022, beginning at 1:00 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 1:00 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, Commissioner Verchio, and Commissioner Bailey.

Support staff in attendance:

Katie Fraker, Executive Secretary
Kelly Mellinger, Hearings Examiner I
Mary Flores, Administrative Assistant III
Alana Masi, Administrative Assistant I

Members of the public present in Carson City included:

Katie Brady, Deputy Attorney General
Keibi Mejia

Members of the public present in Las Vegas included:

None

Summary of Testimony

- 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 NRS241.020.

Chairman DeRicco stated the purpose of this public comment session is regarding proposed regulation R115-21P. This proposed regulation revises language and re-organizes the language of the aggravating and mitigating factors that the Board may consider; and providing other matters properly relating thereto. Public comment will be limited to three minutes per person.

Chairman DeRicco opened floor for public comment.

Chairman DeRicco asked if there was anyone in Las Vegas that would care to make public comment on this topic?

Public comment – Las Vegas, NV

No public comment.

Chairman DeRicco asked if there was anyone in Carson City that would care to make public comment on this topic?

Public comment – Carson City, NV

No public comment.

III. For Possible Action. Review of proposed regulation R115-21P and solicitation of comments. This proposed regulation revises language and re-organizes the language of the aggravating and mitigating factors that the Board may consider; and providing other matters properly relating thereto.

Chairman DeRicco stated existing law requires the State Board of Parole Commissioners to adopt regulations setting forth specific standards to assist the Board in determining whether to grant or revoke the parole of a convicted person. The standards are required to be based upon objective criteria for determining the convicted person's probability of success on parole. (NRS 213.10885) The existing regulation sets forth certain aggravating and mitigating factors that the Board is authorized to consider when determining whether to grant parole to a prisoner. (NAC 213.518) This amended regulation revises such aggravating and mitigating factors and also provides that the Board will consider certain other factors set forth in existing law when determining whether to grant parole to a prisoner.

Chairman DeRicco continued by stating at the time and place set for hearing on the proposed regulation, the agency must afford "[a]ll interested parties a reasonable opportunity to submit data, views, or arguments upon a proposed regulation" per NRS 233B.061(1). Further, "[T]he agency shall set a time and place for an oral public hearing" per NRS 233B.061(3). Alternatively, parties may submit their views and both oral and written submissions regarding the proposed regulation must be considered fully. The person or body with the authority to adopt the regulation must "consider fully" all oral and written comments received. NRS 233B.061(3). Boards or commissions considering the public comments on proposed regulations should retain in the minutes a record of their discussion regarding the public comment and their reasons for either amending the proposed rule in response to the comments or adopting the rule without change.

Chairman DeRicco introduced Kelly Mellinger, Hearing Examiner II, to provide some initial comments

regarding publicly submitted documents and/or statements received regarding this regulation.

Ms. Mellinger read a written public comment dated 9.29.2021 from Evan Grant. Mr. Grant stated in three unique ways, the proposed NAC 213.518(1) language exceeds the grant of authority given to the board in NRS 213.10885. First NAC 213.518(1) would still rely on the NAC 213.516 initial assessment to determine when the board can execute NAC 213.518. 10 of the 15 NAC 213.516 initial assessment results grant or deny parole without any execution of NAC 213.518.

Chairman DeRicco stated Mr. Grant first argues that NAC 213.518(1) language exceeds the grant of authority given to the board in NRS 213.10885 because NAC 213.518(1) would rely on the NAC 213.516 initial assessment to determine when the board can execute NAC 213.518.

Chairman DeRicco further stated the Board has adopted by regulation specific standards for each type of convicted person to assist the Board in determining whether to grant or revoke parole. NAC 213.518(1) language does not exceed the grant of authority given to the Board in NRS 213.10885. The initial assessment is just that, an initial assessment, and it does not provide that the Board cannot or will not look to the NAC 213.518 factors. Instead, it provides an initial guide that the Board considers when considering whether there is a reasonable probability that the prisoner will live and remain at liberty without violating the laws and whether the release is incompatible with the welfare of society. NRS 213.1099.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Mr. Grant stated under current and proposed language NAC 213.518(1) being dependent upon NAC 213.516 does not conform to the Legislature's NRS 213.10885(2)-(2)(f) mandate. Every time the NAC 213.516 initial assessment does not order NAC 213.518 factor consideration, NAC 213.518(1) impermissibly allows for the board to skip consideration of every applicable NAC 213.518(2) & (3) factor and with the amendment all 6 of the enumerated factors contained in NRS 213.10885(2)(a)-(f). Per NRS 233B.040(1), the board is limited in its authority to adopt regulations pursuant to the requirements of applicable statutes. NRS 213.10885(2) is applicable and requires the board to consider all relevant factors, including those contained in NRS 213.10885(2)(a)-(f). For these reasons, the Board must consider every NAC 213.518 factor that applies to a prisoner every time that prisoner is considered for parole. He suggested to fix this issue, NAC 213.518(1)'s dependency on the NAC 213.516 initial assessment must be repealed.

Chairman DeRicco stated Mr. Grant provides that NRS 213.10885(2) requires the Board to consider all relevant factors every time that prisoner is considered for parole.

Chairman DeRicco further stated the Board considers all other factors which are relevant in determining the probability that a convicted person will live and remain at liberty without violating the law if parole is granted or continued. The other factors the Board considers must include, but are not limited to:

- (a) The severity of the crime committed;
- (b) The criminal history of the person;
- (c) Any disciplinary action taken against the person while incarcerated;
- (d) Any previous parole violations or failures;
- (e) Any potential threat to society or to the convicted person; and

- (f) The length of his or her incarceration.

The Board may also consider the relevant aggravating and mitigating factors set forth in subsections 2 and 3, respectively to determine whether to grant parole to a prisoner per NAC 213.518.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Mr. Grant stated the NAC 213.518 (1) amendment would continue to leave NAC 213.518(2) & (3) factor consideration discretionary when the Board executes NAC 213.518. By retaining the NAC 213.518(1) language, “may consider additional aggravating and mitigating factors...” The Board leaves consideration of those factors as a choice.

He goes on to state, as previously stated NRS 213.10885(2) states that all relevant factors shall be considered, therefore, the Board does not get to choose which NAC 213.518 (2) & (3) factors it wishes to consider or not consider. If an NAC 213.518 factor is relevant meaning applicable, the board does not legally have a choice. The factor must be considered. Again, per NRS 233B.040(1), the board is limited in its authority to adopt regulations pursuant to the requirements of applicable statutes. He suggested to fix this issue the words “may consider additional” in NAC 213.518(1) should be replaced with “relevant.”

Chairman DeRicco stated Mr. Grant next argues that the amendment to NAC 213.518(1) would continue to leave NAC 213.518(2) & (3) factor consideration discretionary. He provides that NRS 213.10885(2) states that all relevant factors shall be considered, therefore, the board does not get to choose which NAC 213.518 (2) & (3) factors it wishes to consider or not consider.

Chairman DeRicco stated that previously, as a result of this request by Grant, the Board requested a small change to NAC 213.518(1). This change was to replace the word “additional” with the word “relevant.” The request reworded NAC 213.518(1) to read, “After establishing an initial assessment regarding whether to grant parole pursuant to NAC 213.516, the Board will consider the factors contained in NRS 213.10885 and NRS 213.1099 and may consider relevant aggravating and mitigating factors to determine whether to grant parole to a prisoner.” Further, after incorporating this change, the Board conducted another workshop on this same statute, to address subsections (2) and (3). This was done to clean up some of the language included in these sections for greater clarity. The Board considers the NRS 213.10885 (2) factors and in addition may consider the aggravating and mitigating factors in NAC 213.518 subsections (2) and (3).

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Mr. Grant goes on to state NRS 213.10885(1) provides, in part: “The Board’s standards must be based upon objective criteria for determining the person’s probability of success on parole” Presently and under the proposed amendment, as use of the word “may” makes NAC 213.518 (2) & (3) factor consideration absolutely discretionary NAC 213.518 does not contain language stating when or how the Board considers and NAC 213.518 (2) & (3) factor.

Chairman DeRicco stated Mr. Grant argues that the use of the word “may” makes NAC 213.518 (2) & (3) factor consideration discretionary, but NRS 213.10885(1) provides that the Board’s standards must be based upon objective criteria.

Chairman DeRicco further stated as previously discussed, the Board has discretion to consider which aggravating and mitigating factors may be applied and will consider all relevant factors, all of which are based on objective criteria.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Mr. Grant stated discretionary factor consideration is subjective, the opposite of objective. Per Legislative intent of NRS 213.10885(1), any interested person should be able to reason the boards NACs and determine whether a prisoner should be granted or denied parole. Without specifying when or how any NAC 213.518(2) & (3) factor is to be considered, it is literally impossible for anyone, including the Board at large, to determine if a prisoner should be granted or denied parole as each parole consideration will be influenced by the subjective bias of the participating Board members. Once again per NRS 233B.040(1), the Board is limited in its authority to adopt regulations pursuant to the requirements to applicable statutes. He suggested to fix this issue, the Board must adopt NAC 213.518 language specifying when and how NAC 213.518 factors are to be considered.

Chairman DeRicco stated Mr. Grant argues that discretionary factor consideration is subjective, the opposite of objective and argues that the Board must adopt NAC 213.518 language specifying when and how NAC 213.518 factors are to be considered.

Chairman DeRicco further stated as previously discussed, the Board may consider these factors as appropriate. Further, after adoption of the regulations, the Board will further review the definitions for their aggravating and mitigating factors. The factors are objective and that there seems to be some misunderstanding as to what objective versus subjective factors are. The standards contained in the NACs are all objective, none are based on perceptions, feelings or intentions and they are all externally verifiable.

Chairman DeRicco provided some definitions which he wanted placed on the record from Black’s Law Dictionary (11th Edition) that help provide some clarity.

- **objective adj.** (17c) 1. Of, relating to, or based on externally verifiable phenomena, as opposed to an individual's perceptions, feelings, or intentions <the objective facts>. 2. Without bias or prejudice; disinterested.
- **subjective adj.** (18c) 1. Based on an individual's perceptions, feelings, or intentions, as opposed to externally verifiable phenomena.... 2. Personal; individual.
- - **objective standard.** (1915) A legal standard that is based on conduct and perceptions external to a particular person. • In tort law, for example, the reasonable-person standard is considered an objective standard because it does not require a determination of what the defendant was thinking.
- - **subjective standard.** (1915) A legal standard that is peculiar to a particular person and based on the person's individual views and experiences. • In criminal law, for example, a subjective standard applies to determine premeditation because it depends on the defendant's mental state.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger read a written public comment dated 10.18.2021 from Evan Grant. Mr. Grant stated 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 every enumerated factor in NAC 213.518 (2) & (3) are proposed to change, the Board must amend its "Aggravating & Mitigating factors definitions" guideline document to precisely convey when once of the proposed factors is relevant to a Nevada inmate being considered for parole. The three legal issues that he identified in his NAC 213.518 NRS 233B.100 petition and in his public comments for the first NAC 213.518 workshop remain in NAC213.518(1)'s proposed language.

Chairman DeRicco stated Mr. Grant argues that because the proposed changes change every enumerated aggravating and mitigating factor, the board must amend its "Aggravating & Mitigating factors definitions" guideline document.

Chairman DeRicco further stated while all of the definitions may not need to be updated, the Board will be tackling this project after approval of the regulations. NAC 213.518 subsections (2) and (3) primarily reordered the factors already in place and corresponded the language with that already in the guidelines rather than provided new language.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger read a written public comment dated 11.29.2021 from Evan Grant. Mr. Grant stated concerning NAC 213.518 he sees two issues. His first issue, NAC 213.518(1) states, "the Board will consider the initial assessment, the factors contained in NRS 213.10885 and NRS 213.1099...." but does not state how this consideration will take place. The Board's NACs mark step by step how consideration is to take place per NRS 213.10885(1). He states, as every person, regardless of who they are, will "consider" that information differently, the board has a duty, and is required by Nevada law, to codify in the NAC's how it will "consider" that information.

Chairman DeRicco stated Mr. Grant first provides that NAC 213.518 needs to provide in a step-by-step manner how the consideration of the initial assessment and the factors will take place.

Chairman DeRicco further stated there does not need to be a step-by-step guide on this. The initial assessment is completed first by NDOC staff, further reviewed by the Board, and considered along with NRS 213.10885 and 213.1099. Subsequent to this the Board may also consider the relevant aggravating and mitigating factors set forth in NAC 213(2) and (3).

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Mr. Grant's second issue was, NAC 213.518(1) still says the Board "May consider relevant aggravating and mitigating factors." stating once again, NRS 213.10885(2) states, in establishing the standards, the Board shall consider. All other factors which are relevant" the

board does not get to choose which 'other factors' aggravating or mitigating, it considers. The word "may" in NAC 213.518(1) give the Board the power of choice as to which factors it considers in violation of NRS 213.10885(2). He suggests to correct this, the words "may consider" in NAC 213.518(1) must be struck so that NAC 213.518(1) reads "the Board will consider the initial assessment, the factors contained in NRS 213.10885 & NRS 213.1099 and relevant aggravating and mitigating factors." Furthermore, as the Board is looking to change every NAC 213.518 (2) & (3) aggravating and mitigating factor, the board must amend its Aggravating and Mitigating factors definitions for each NAC 213.518 (2) & (3) factor to reflect their new meanings.

Chairman DeRicco stated Mr. Grant second argument is that the word "may" in NAC 213.518(1) improperly gives the Board the power of choice as to which factors it considers in violation of NRS 213.10885(2).

Chairman DeRicco further stated the word "may" refers to the aggravating and mitigating factors as a part of NAC 213.518, not to NRS 213.10885(2). The Board will consider all relevant factors, but all factors may not be relevant, so the word "may" is used.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger read a written public comment dated 3.28.2021 from Evan Grant. Mr. Grant stated NAC 213.518 (1)(b) utilizes the word "may" concerning relevant aggravating and mitigating factor consideration by the Board. NRS 213.10885(2) provides, "In establishing the standards, the Board shall consider all other factors which are relevant. The word "may" in NAC 213.518(1)(b) affords discretion that is impermissible under NRS 213.10885 (2). The Board must consider every applicable factor.

Chairman DeRicco stated Mr. Grant repeats his argument that the word "may" in NAC 213.518(1)(b) affords discretion that is impermissible under NRS 213.10885 (2).

Chairman DeRicco further stated this issue has been previously addressed.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Mr. Grant states NAC 213.518 does not specify how NAC 213.518 (2) & (3) factors are to be considered. NRS 213.10885(1) states that the Board's "standards must be based upon objective criteria... without specifying how NAC 213.518(2) & (3) factors are to be considered, they cannot be considered objectively as each parole commissioner will then consider each factor based on personal bias resulting in subjective consideration.

Chairman DeRicco stated Mr. Grant also repeats his argument that without specifying how NAC 213.518(2) & (3) factors are to be considered, they cannot be considered objectively pursuant to NRS 213.10885(1) as each parole commissioner will then consider each factor based on personal bias resulting in subjective consideration.

Chairman DeRicco further stated this issue has already been addressed. The factors and the consideration are objective.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger read a written public comment from Patricia Adkisson. She made 3 substantially similar comments - one oral comment at the 9/29/21 workshop, one letter submitted on 9/25/21, and one letter dated 10/21/21. Ms. Adkisson provided that: Chapter 213 confers limited authority to this Board, when taking any action related to parole consideration. The effective Nevada Administrative Code must establish clear objective criteria and standards. NAC 213.518 does not establish any such objective criteria, nor does it establish a standard. A weighted value must be applied in order to give an objective effect in the determination. The legislature mandates objective criteria and standards in order to ensure the uniform operation and application of this Board's determination related to parole action, as contemplated by NAC 4 Nevada constitution article 4. The legislative purpose is to safeguard against arbitrary and capricious determinations. Parole is a grace of the state, that grace must be applied in a manner consistent with a uniform application and operation of laws, as well as equal protection of our system of laws. Otherwise, this Board could simply ignore the standards and only grant grace of our state through personal biases. The use of any factor contemplated pursuant to NAC 213.518 for Parole action, based upon an undefined standard, is simply a subjective review and prevents a fair hearing. Parole is a grace of the state, but the board is not permitted to grant or deny parole as a whim based on subjective standards not sufficiently defined with a weighted value. Parole action in this manner can never be said to be applied in a manner consistent with concepts of a fair hearing. It implicates equal protection issues and runs afoul of principles related to the uniform operation and application of general laws as enshrined in the Nevada constitution Article 4 subsection 21. Ms. Adkisson is requesting the Board to establish a weighted known value for each factor related to NAC 213.518.

Chairman DeRicco stated Ms. Adkisson argues that NAC 213.518 does not establish clear objective criteria and standards as mandated by the Legislature. She argues that a weighted value must be applied in order to give an objective effect in the determination and to ensure uniform operation and application.

Chairman DeRicco further stated there is not a way to assign a weighted value to all of the aggravating and mitigating factors in NAC 213.518. Depending on the case being considered, certain aspects of either an aggravating or mitigating factor may be considerably different. For instance, a person may be the victim of a fraud, or a victim of a violent offense. In what is requested in a weighted system, a case involving a victim would likely be weighted high, but given the circumstances of a particular case, may need to be weighted as low. This weighted request removes the discretion of the Board to determine the impact on individual cases. This is not fair to an inmate, or a victim if it were set in stone. That should be left to the Board's determination to determine the factors that may apply and use that information to make a determination whether or not parole is suitable.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger read a written public comment dated 9.29.2021 from John Quintero. Mr. Quintero requested the Board to consider the following comments and proposed amendments:

The word "will" is the helping very similarly to shall, will this mandatoriness ascribed to "shall" in definitions section be applied to "will"?

Chairman DeRicco stated Mr. Quintero asks if the mandatoriness ascribed to "shall" be applied to "will"?

Chairman DeRicco responded that essentially, yes.

Chairman DeRicco opened floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Mr. Quintero stated NRS 213.10885(1) uses words "standards" is this word synonymous with "factors" for the purpose of parole consideration?

Chairman DeRicco stated Mr. Quintero further asks if the use of the word "standards" in NRS 213.10885(1) is synonymous with "factors" for the purpose of parole consideration?

Chairman DeRicco further stated the standards are the regulations. Further, the term "factors" is not mentioned in NRS 213.10885(1). Factors are mentioned in NRS 213.10885(2) and in NAC 213518(2) and (3). They are not standards.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Mr. Quintero further stated NRS 213.10885 (1)(f) states that the standard created by regulation "must be based on objective criteria for determining improbability of success on parole" Has the Board researched and established the "objective criteria" which would be the justifying cause to invoke any mitigating or aggravating factors listing under NAC 213.518 (2) & (3)? If affirmed are these objective criteria published?

Chairman DeRicco stated Mr. Quintero also asks if the Board has researched and established the "objective criteria" which would be the justifying cause to invoke any mitigating or aggravating factors? And, if so, are these objective criteria published?

Chairman DeRicco further stated current NAC 213.518 standards have been in place since 2008. The guidelines that further define the aggravating and mitigating factors are published on the Parole Board website.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Mr. Quintero stated in practice NDOC makes a parole report and includes a crime related risk assessment that is derived from the cumulative weighted score of measurement criteria, then the board does its own predictive weighted risk assessment, the scores of which fluctuate in relation

to actuarial studies that tabulate the recidivism rates of occurrence, such that 18 year olds recidivism rates are higher than 65 year olds, correct?

Chairman DeRicco stated Mr. Quintero asks if the Board's predictive weighted risk assessment scores fluctuates in relation to actuarial studies that tabulate the recidivism rates of occurrence, such that 18-year old's recidivism rates are higher than 65-year old's?

Chairman DeRicco further stated our risk assessment must be revalidated regularly in accordance with statute and believes that Nevada was one of the first states to use a risk assessment, dating back to 2003. Our risk assessment will be going through the revalidation process in accordance with statute later this year. After the research is complete, on the Board will review the findings at a subsequent meeting.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Mr. Quintero stating this question assumes facts not evidence except by omission in the regulation 213.518 why does the board deviate from the statutory command to be based on objective criteria by placing objective values on each factor listed under aggravating and mitigator in section (2) & (3) of NAC 213.518? Does not leaving these factors up to the clinical judgement of the Board defeat the very purpose of the legislative mandate to use objective criteria to determine probability of success on parole?

Chairman DeRicco stated Mr. Quintero then argues that leaving the aggravating and mitigating factors up to the clinical judgement of the Board defeats the very purpose of the legislative mandate to use objective criteria to determine probability of success on parole.

Chairman DeRicco further stated the aggravating and mitigating factors are not a part of the initial assessment. After the initial assessment is complete, the Board will consider this initial assessment, along with the factors set forth in NRS 213.10885 and 213.1099 and may consider additional aggravating and mitigating factors. As previously explained, the entire process is objective.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Mr. Quintero stated based on anecdotal first-hand experience the parole applicants are not give a copy of the Parole Board's additional risk assessment and guidelines prior to the parole hearing. This official non-disclosure does not allow the inmate applicant any fair notice or opportunity to prepare for the hearing to improve his chances to be granted parole. Based on this what governmental interest exists that would outweigh the individual's fundamental right to notice of the assessment and opportunity to improve his changes at parole by addressing that report.

Chairman DeRicco stated Mr. Quintero next argues that the Board's failure to provide the parole applicants a copy of the boards risk assessment and guidelines prior to the parole hearing does not allow the inmate applicant fair notice or opportunity to prepare for the hearing. He asks what governmental interest exists that would outweigh the individual's fundamental right to notice of the assessment and opportunity to improve his chances at parole by addressing that report.

Chairman DeRicco further stated the risk assessment is first completed through the NDOC, which is a part of the Board report that each inmate signs before it is delivered to the Parole Board. As such, the results are available to all inmates prior to a Parole Board hearing. Further, these results are made a part of the record at each hearing and are placed on record and all inmates are afforded the opportunity to let the Board know if something has been calculated in error. When an error is encountered during a hearing, changes are made to correct the assessment. Further, the Nevada Parole Risk Assessment can be found on the Parole Board's website along with the Nevada Parole Recidivism Risk and & Crime Severity Guidelines, along with many other documents. The guideline document is publicly available.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger read a written public comment dated 10.25.2021 from John Quintero. Mr. Quintero requested to place following clarifications and concerns on the record, which considers how to carry out NRS 213.10885 and 213.1099. 1. This NAC proposal does not address section (1) of 213.10885, "shall adopt by regulation specific standards for each type of convicted person..." He commented: this proposal is a catchall that does not obey the command of the sovereign, he objects.

Chairman DeRicco stated Mr. Quintero argues that his NAC proposal does not address section (1) of NRS 213.10885, which provides that the Board "shall adopt by regulation specific standards for each type of convicted person"

Chairman DeRicco further stated this has been previously addressed.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Mr. Quintero states to clarify: The legal definition of "relevant" means "logically connected (evidence of fact) tending to prove a matter in issue (or disprove) having appreciable probative value, rationally tending to persuade of the probability or possibility of some alleged fact, Black's Law Dictionary 7th. He stated in 2012, the Board was advised by the attorney general in Opinion No 2012-02 "since the authorizing statute does not contain safeguards for accuracy, the division and Board should adopt reasonable safeguards to identify erroneous information in the reports provided to the board." Mr. Quintero further stated he has tried to raise such inaccuracies in writing and at his parole hearings and he has been punished for doing so which is evidence by verbal and non-verbal messaging by board, the last hearing Ms. Jackson said "our information from PSI differs from what you have to say" The term "factor" indicates a category of reality, not merely a category of mind (an opinion or false proposition) NRS 213.10885 states in (1) the "standards must be based upon objective criteria" (category of reality) That means each aggravator and mitigator must have a basis in fact not opinion; therefore the board is obligated to avoid arbitrary and capricious acts based on facts not in evidence – it is comment law that police reports nor PSI's are per se evidence but reports of alleged acts based on evidence; such things are mere denunciations as used in oppressive unjust political systems such as fascism, communism and the like.

Chairman DeRicco stated Mr. Quintero contends that each aggravator and mitigator must have a basis in fact not opinion; therefore, the Board is obligated to avoid arbitrary and capricious acts based on facts not in evidence – such as facts from police reports or PSI's. He argues that the Board should adopt reasonable safeguards to identify erroneous information in the reports provided to the Board.

Chairman DeRicco further stated definitions of each aggravating and mitigating factor can be found on our website. Further, after this regulation is finalized, these definitions will be reviewed as well. The Board may consider other factors as appropriate. An inmate has a chance to challenge the factual content of the PSI (which may be based on police reports) before sentencing pursuant to NRS 176.156 and can do so if they believe that the facts are not accurate. Furthermore, the PSI statute is clear that it may be used at future hearings, such as board meetings. The Board relies on presentence reports, and if information is not accurate, individuals have an avenue to get them corrected. Additionally, Board reports submitted by NDOC also require inmate signature, so if something there is inaccurate, the inmate should work with the NDOC to correct an issue prior to signature.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Mr. Quintero stated all the mitigators and aggravators should be actuarially weighted and each category tabulated in a format which tabulates whether the factor is present and what degree of weight is scored and deducted or added to the NDOC and Parole Risk assessment; As it stands the Parole Board's acts of negating the indications of the low risk on recidivist probability are done so based NOT on factors, (categories of reality) but on categories of mind about the unpopularity or political mood of the class of crimes considered, (opinions).

Chairman DeRicco stated Mr. Quintero contends that the mitigators and aggravators should be actuarially weighted and each category tabulated in a format which tabulates whether the factor is present and what degree of weight is scored and deducted or added to the NDOC and Parole Risk assessment.

Chairman DeRicco further stated there is not a way to compare apples with oranges. The factors either apply, or they do not. When they do apply, the Board may consider them. A weighted factor in one case will likely not be of the same weight in another. This is how the Legislature set up the system. Had it wanted an inflexible actuarial system, it could have done so in statute. But, instead, the Legislature chose an approach that prioritizes the consideration of whether there is a reasonable probability that the prisoner will live and remain at liberty without violating the laws and whether the release is incompatible with the welfare of society. NRS 213.1099.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Mr. Quintero states that NRS 213.10885 (4) states that the Board must provide greater punishment as related to recidivist patterns or who commits a serious crime, with a violent crime considered the most serious – the Board is not regulating the degrees of seriousness, but have allowed another agency to make that determination – the Nevada Dept of Corrections (see NRS 209.341 & NAC 213.512). This violates the mandate of 213.10885 (4) which does not contemplate

NDOC's construction and does not authorize said construction or use or creation of a "severity level." This issue must be raised now insofar as its relevant.

Chairman DeRicco stated Mr. Quintero argues that the Board's failure to assign the degrees of seriousness itself violates the mandate of 213.10885 (4) which does not contemplate NDOC's construction and does not authorize said construction or use or creation of a "severity level."

Chairman DeRicco further stated the standards adopted by the Board provide for a greater punishment for a convicted person who has a history of repetitive criminal conduct or who commits a serious crime, with a violent crime considered the most serious, than for a convicted person who does not have a history of repetitive crimes and did not commit a serious crime, in accordance with statute. Per NAC 213.512, which has been effective since April 17, 2008, the Board will assign to each crime for which parole is being considered a severity level of "highest," "high," "moderate," "low moderate" or "low." The severity level will be the same as the severity level assigned to the crime by the Department of Corrections for the purpose of classifying offenders pursuant to NRS 209.341. Further, the Board will apply the severity level of the crime for which parole is being considered to establish an initial assessment regarding whether to grant parole in the manner set forth in NAC 213.516. The Board has already determined this is the most appropriate way to assign the severity level. The Legislature provided the Board with discretion. It could have but did not point to the NRS 193 severity levels in the statute. Parole is an act of grace, there is no right to parole, and the decision of whether to grant or deny parole always remains within the penalty or sentence imposed by the court.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Mr. Quintero stated the issue is relevant because the Board is considering the authorization statute NRS 213.10885, and as it stands, the "highest severity" is a category that always must "consider factors" whereas all other categories high, moderate low moderate low & low all at some point receive a grade grant parole which makes the entire scheme patently unfair because NDOC has made the vast majority of crimes "highest" and both agencies escape responsibility or answerability to any rational challenge and is based on "categories of mind" or mere sentiment, popularity of crime in general or in particular; neither does NRS 213.1099 contemplate NDOC's determination of crime severity or any power to make such a regulation as 213.1099(c) says "Board shall consider (c) the seriousness of the offense and the history of criminal conduct...."

Chairman DeRicco stated Mr. Quintero contends that because NDOC has made the vast majority of crimes "highest," both agencies escape responsibility or answerability to any rational challenge and the decision is based on mere sentiment or popularity of the crime in general.

Chairman DeRicco further stated the Board has determined that the severity level will be the same as the severity level assigned to the crime by the Department of Corrections for the purpose of classifying offenders pursuant to NRS 209.341. If there is further concern here, Mr. Quintero should address this issue with NDOC.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Mr. Quintero stated he objects the Board's neglect in adopting the necessary notice and opportunity as suggested in his letter to Board dated 9.8.2021; the choice to use aggravators and mitigators is done in a government action outside presence of inmate applicant this puts the applicant at disadvantage because it deprives him or her the necessary information to speak to the issues to be used against her or him during opening statement

Chairman DeRicco stated Mr. Quintero argues that the choice to use aggravators and mitigators outside of the presence of inmate applicant puts the applicant at disadvantage because it deprives him or her the necessary information to speak to the issues to be used against her or him during the opening statement.

Chairman DeRicco further stated as previously stated, the definitions of the aggravating and mitigating factors are available on our website. All inmates can view them prior to a hearing to determine which may apply to their case, and when there are discrepancies, the Board allows input from an inmate at a hearing if one of these factors appear in error. These factors which are applied are put on record at each hearing. If an error is found at the time of the hearing, a factor can either be added or removed. Bottom line, the Board just wants to ensure accurate aggravating and mitigating factors are considered for all inmates appearing before the Board.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Mr. Quintero stated at the time of hearing, considering he will (nor anybody re-classified by NDOC to "highest severity" will always have mitigating and aggravating factors considered, and never received the guarantee of "grant parole" as outlined in attached copy of NAC 213.516 the lack of prior notice to prepare an opening statement to improve chance to demonstrate suitability for parole constitutes unfair surprise. If unfair surprise is valid under state or federal constitution then we need new ones, because when any form of government threatens basic fairness in government process it is time to alter the operational principles that guide the government.

Chairman DeRicco stated Mr. Quintero argues that anyone classified by NDOC to "highest severity" will always have mitigating and aggravating factors considered, and never received the guarantee of "grant parole."

Chairman DeRicco further stated the assessment is an objective tool and the starting point in this process. Parole is an act of grace, and no inmate has a guarantee of "grant parole." The Board considers the initial assessment, and the factors set forth in NRS 213.10885 and 213.1099 and may consider additional aggravating and mitigating factors. This is done in cases where the initial assessment is to deny parole all the way to when the initial assessment is to grant parole at initial eligibility. Per this revalidated assessment, you are correct that anyone with a "highest" severity level will not have an initial assessment to grant parole.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger read a written public comment dated 11.29.2021 from Adam Garcia. Mr. Garcia submitted a letter from his lawyer Alan Erb to Board and the Board's response dated Feb 18, 2021, please note 3rd paragraph of Board response made by Eric Christiansen "According to NRS 213.1214 and additional evaluation is required for convicted sex offenders that supersedes the initial risk assessment" Mr. Garcia stated nothing in that statute mentions an "additional evaluation" ... that supersedes the initial risk assessment. This relates to proposed aggravator (2)(g) of NAC 213.518. Mr. Garcia is requesting to take note into consideration in our upcoming regulation workshop on 11.29.21 this organizational deviation from the law, and place his evidence into record, and answer on the record how this misrepresentation by Christiansen can be explained and take steps to assure the Board's future reliance on this falsehood will be foreclosed by regulation.

Chairman DeRicco stated Mr. Garcia provides that nothing in NRS 213.1214 mentions an additional evaluation that supersedes the initial risk assessment that is now provided for in proposed aggravator (2)(g) of NAC 213.518.

Chairman DeRicco further stated this is correct, however, pursuant to NRS 213.1214: 4. The Board shall consider an assessment prepared pursuant to this section before determining whether to grant or revoke the parole of a person convicted of a sexual offense. And 5. The Board may adopt by regulation the manner in which the Board will consider an assessment prepared pursuant to this section in conjunction with the standards adopted by the Board pursuant to NRS 213.10885. The Board meets these requirements with this NAC.

Chairman DeRicco opened the floor for discussion.

Commissioner Christensen stated he wrote the letter in question and wanted to place on the record that they do consider that evaluation as required by law.

Ms. Mellinger read a written public comment dated 3.28.2022 from Tonja Brown, Advocates for the Inmates and the Innocent. Ms. Brown stated they agree with most of these amendments. However, the guidelines should be objective. Aggravating factors based upon a feeling or opinion of a Board member should not be allowed.

Chairman DeRicco stated Ms. Brown provides that the guidelines should be objective and that aggravating factors based upon a feeling or opinion of a board member should not be allowed.

Chairman DeRicco further stated aggravating factors are not based upon feeling or opinion, they are objective. Definitions for aggravating factors can be found on the Board's website.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Ms. Brown stated extreme or abnormal aspects of a crime to one member may not be considered as such by most people. Ask them to stick to numbers or yes or no factors. Eliminate this subjective subsection.

Chairman DeRicco stated Ms. Brown also provides that extreme or abnormal aspects of a crime to one member may not be considered as such by most people and is subjective.

Chairman DeRicco further stated as provided for in the guideline definitions, 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. For the record, this factor is applied sparingly.

Chairman DeRicco asked if there was further discussion regarding this specific regulation.
There was no discussion.

- IV. **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 NRS241.020.

Chairman DeRicco stated that the purpose of this public comment session is regarding proposed regulation R115-21P. This proposed regulation revises language and re-organizes the language of the aggravating and mitigating factors that the Board may consider; and providing other matters properly relating thereto. Public comment will be limited to three minutes per person.

Chairman DeRicco opened floor for public comment.

Chairman DeRicco asked if there was anyone in Las Vegas that would care to make public comment on this topic?

Public comment – Las Vegas, NV

No public comment.

Chairman DeRicco asked if there was anyone in Carson City that would care to make public comment on this topic?

Public comment – Carson City, NV

No public comment.

- V. **For Possible Action:** Review of Intent to Adopt regulation R115-21P. The Board will consider public comments and any business impact and may act to amend and/or adopt the proposed regulation.

Chairman DeRicco stated having already discussed this item as a Board on Agenda Item XI and allowing the opportunity for public comment on this issue on Agenda Items X and XII, this is the time to consider those comments and any business impact before acting to amend and/or adopt the proposed regulation.

Chairman DeRicco asked if there was further discussion regarding this specific regulation.

There was no discussion.

Chairman DeRicco asked if any corrections should be made to the regulation as submitted by LCB as distributed.

There was no discussion.

| | |
|------------------------|---|
| Motion: | The Nevada Board of Parole Commissioners adopt regulation R115-21P as reviewed and submitted by LCB. |
| Made: | Chairman DeRicco |
| Seconded By: | Commissioner Weisenthal |
| Votes in Favor: | DeRicco, Jackson, Baker, Weisenthal, Christiansen, Verchio |
| Votes Opposed: | None |
| Results: | Motion passed |

NAC 213.522 Reassessment of severity level of crime. ([NRS 213.10885](#), [213.110](#), [213.140](#))

1. If the Board denies parole, the Board will not consider a request for the Board to reassess the severity level of the crime for which parole was denied unless:

(a) The Department of Corrections determines that the severity level assigned to the crime pursuant to [NAC 213.512](#) should have been lower and advises the Board, in writing, of its determination; and

(b) The prisoner mails a request to the State Board of Parole Commissioners, 1677 Old Hot Springs Road, Suite A, Carson City, Nevada 89706, not later than 45 days after the meeting at which the Board considered whether to grant parole.

2. If the Board receives a request from a prisoner for the Board to reassess the severity level of a crime and the Department of Corrections has advised the Board that the severity level assigned to the crime should have been lower, the Executive Secretary of the Board or an employee of the Board designated by the Board must apply the lower severity level to establish a new initial assessment regarding whether to grant parole in the manner set forth in [NAC 213.516](#).

3. If the new initial assessment established pursuant to subsection 2 is more favorable to the prisoner than the initial assessment established before the reassessment of the severity level, the Board will, as soon as practicable, schedule a meeting to reconsider whether to grant parole to the prisoner.

(Added to NAC by Bd. of Parole Comm'rs by R018-08, eff. 4-17-2008)

NAC 213.524 Reassessment of risk level assigned to prisoner. ([NRS 213.10885, 213.110, 213.140](#))

1. A prisoner who wishes to request that the Board reassess the risk level assigned to the prisoner pursuant to [NAC 213.514](#) must:

(a) Mail a request for the Board to reassess the risk level to the State Board of Parole Commissioners, 1677 Old Hot Springs Road, Suite A, Carson City, Nevada 89706, not later than 45 days after the meeting at which the Board considered whether to grant parole; and

(b) Base the request on circumstances which existed at the time that the Board assigned the risk level.

2. If a prisoner does not mail a request in compliance with subsection 1 or bases the request on a change of circumstances since the Board assigned the risk level, the Board will not consider the request.

3. As soon as practicable after receiving a request for the Board to reassess the risk level assigned to a prisoner, the Executive Secretary of the Board or an employee of the Board designated by the Board shall determine whether the Board, in assigning the risk level, did not consider a factor set forth in the sample form created by the Board pursuant to [NRS 213.10885](#) or did not give such a factor the appropriate weight. If such a determination is made, the Executive Secretary or the employee designated by the Board must reassess the risk level of the prisoner by considering only the facts which existed at the time of the original assignment.

4. If, after reassessing the risk level assigned to a prisoner, it is determined that the risk level is the same or higher than the previously assigned risk level, the Executive Secretary of the Board or the employee designated by the Board must affirm the denial of parole. If, after reassessing the risk level assigned to a prisoner, the risk level is lower than the previously assigned risk level, the Executive Secretary or the employee designated by the Board must apply the lower risk level to establish a new initial assessment regarding whether to grant parole in the manner set forth in [NAC 213.516](#).

5. If the new initial assessment established pursuant to subsection 4 is more favorable to the prisoner than the initial assessment established before the reassessment of the risk level, the Board will, as soon as practicable, schedule a meeting to reconsider whether to grant parole to the prisoner.

(Added to NAC by Bd. of Parole Comm'rs by R018-08, eff. 4-17-2008)

NAC 213.526 Requests to reconsider denial of parole. ([NRS 213.10885, 213.110, 213.140](#))

1. A prisoner who wishes to request that the Board reconsider a denial of parole, other than a request pursuant to [NAC 213.522](#) or [213.524](#), must:

(a) Mail the request to the State Board of Parole Commissioners, 1677 Old Hot Springs Road, Suite A, Carson City, Nevada 89706, not later than 45 days after the meeting at which the Board considered whether to grant parole; and

(b) Base the request on circumstances which existed at the time of the meeting at which the Board considered whether to grant parole.

2. As soon as practicable after receiving a request to reconsider a denial of parole pursuant to subsection 1, the Executive Secretary of the Board or an employee of the Board designated by the Board shall consider the request and determine whether to deny the request or submit the request to the members of the Board.

3. If, after considering a request to reconsider a denial of parole pursuant to subsection 1, the Executive Secretary of the Board or the employee of the Board determines that the Board:

(a) Knew about the circumstances on which the request is based at the time the Board denied parole or that the circumstances on which the request is based are not factors which the Board considers when determining whether to grant parole, the Executive Secretary or employee shall deny the request.

(b) Did not have knowledge of the circumstances on which the request is based at the time the Board denied parole and that the circumstances on which the request is based are factors

which the Board considers when determining whether to grant parole, the Executive Secretary or employee shall submit the request to the Board.

4. If a request to reconsider a denial of parole is submitted to the members of the Board pursuant to paragraph (b) of subsection 3 and a majority of the members of the Board state in writing that:

(a) The Board should schedule a meeting to reconsider the denial of parole, the Board will, as soon as practicable, schedule a meeting to reconsider the denial of parole.

(b) The Board should not schedule a meeting to reconsider the denial of parole, the Board will not schedule a meeting to reconsider the denial of parole.

5. The provisions of this section do not limit the power of the Director of the Department of Corrections or a designee thereof to notify the Board of a significant change in the status of a prisoner or prevent the Board from reconsidering a denial of parole if a significant change in the status of a prisoner occurs.

(Added to NAC by Bd. of Parole Comm'rs by R018-08, eff. 4-17-2008)

NAC 213.532 Mandatory release of certain prisoners: Prerequisites; recommendation of panel that Board grant discretionary parole instead. ([NRS 213.10885](#), [213.110](#), [213.140](#))

1 A prisoner may not be released on mandatory parole pursuant to [NRS 213.1215](#) unless the Board has approved the release and the Division has established a program for the prisoner's activities during parole.

2 The Board will conduct a meeting to consider a prisoner for mandatory parole pursuant to [NRS 213.1215](#) not sooner than 150 days before the date on which the prisoner must be released on mandatory parole.

3 Before approving the mandatory parole of a prisoner, the Board will determine whether there is a reasonable probability that the prisoner will be a danger to public safety while on parole by considering:

⌚ The risk level assigned to the prisoner pursuant to [NAC 213.514](#);

⌚ If the prisoner has been convicted of an offense listed in subsection 5 of [NRS 213.1214](#), whether the prisoner has been certified as not presenting a high risk to reoffend pursuant to the provisions of subsection 1 of [NRS 213.1214](#);

⌚ Whether the prisoner has made any statements indicating that the prisoner will refuse to comply with the terms and conditions of parole;

⌚ Whether the prisoner has made any threats to harm others;

⌚ The number and nature of any prior convictions of the prisoner, including, without limitation, whether the prisoner has a history of conviction for violent crimes;

⌚ Whether the prisoner has engaged in violent behavior while incarcerated;

⌚ Whether the prisoner has been convicted of multiple felony offenses involving driving or being in actual physical control of a vehicle while under the influence of intoxicating liquor or a controlled substance;

⌚ Whether the prisoner has previously failed to successfully complete probation or parole and whether that failure was the result of violent or criminal actions by the prisoner;

⌚ Whether the criminal history of the prisoner indicates that the crimes committed by the prisoner have increased in severity over time;

⌚ Whether the prisoner has demonstrated an attitude or behavior which indicates that the prisoner favors a criminal lifestyle, including, without limitation, whether the prisoner has been actively involved in a criminal gang, the planning of prison escapes or other criminal activity; and

⌚ Any other factor which demonstrates a reasonable probability that the prisoner will be a danger to public safety while on parole.

4 If a panel to which the Board has delegated its authority pursuant to [NRS 213.133](#) determines that it will recommend that the Board grant mandatory parole to a prisoner and that the prisoner has not been considered and is eligible for discretionary parole pursuant to [NRS](#)

[213.1099](#), the panel may recommend that the Board grant discretionary parole to the prisoner rather than mandatory parole.

(Added to NAC by Bd. of Parole Comm'rs by R018-08, eff. 4-17-2008)

NAC 213.534 Notice to prisoner of meeting to consider whether to grant parole; waiver of certain rights by prisoner. ([NRS 213.110](#), [213.140](#))

1. Unless a prisoner has waived the right to receive notice pursuant to subsection 5, the Board will provide to a prisoner notice of the meeting to consider whether to grant parole to the prisoner. The notice will consist of:

(a) Personal delivery of written notice to the prisoner not later than 5 working days before the meeting; or

(b) The mailing, by certified mail, of written notice, addressed to the prisoner, to the residence, institution or facility at which the prisoner is confined not later than 21 working days before the meeting.

2. The Board will provide the notice required by subsection 1 only for a meeting to consider whether to grant parole to the prisoner.

3. Notice to a prisoner pursuant to paragraph (a) of subsection 1 will be deemed adequate if written notice was personally delivered to the prisoner and a copy of the written notice was returned to the Board and signed by:

(a) The prisoner and the employee of the Department of Corrections or the Department of Public Safety who witnessed the delivery of the written notice; or

(b) Two persons employed by the Department of Corrections or the Department of Public Safety who witnessed the prisoner refuse to accept the written notice.

4. Notice to a prisoner pursuant to paragraph (b) of subsection 1 will be deemed adequate if the Board has received a return receipt of delivery from the United States Postal Service.

5. A prisoner may waive, in writing, the rights granted to him or her pursuant to subsections 9 and 10 of [NRS 213.131](#).

6. If the Board finds that notice was not provided to a prisoner in accordance with this section and that the prisoner did not waive the right to receive notice pursuant to subsection 5, the Board may:

(a) Grant parole to the prisoner; or

(b) Reschedule the meeting.

(Added to NAC by Bd. of Parole Comm'rs by R018-08, eff. 4-17-2008)

NAC 213.536 Recommendations to improve possibility of receiving parole. ([NRS 213.110](#), [213.140](#))

1. The recommendations which the Board may provide pursuant to [NRS 213.131](#) to a prisoner to whom parole is denied to improve the possibility of receiving parole may include, without limitation, a recommendation that the prisoner:

(a) Not engage in misconduct which may lead to disciplinary action;

(b) Participate in a program that addresses the behavior of the prisoner which led to his or her incarceration;

(c) Participate in an educational, occupational or vocational program;

(d) Participate in a program which encourages the development of empathy for victims of crime;

(e) Avoid participation in, and association with, a criminal gang; or

(f) Take any other action, or refrain from any other action, which the Board deems appropriate.

2. Any recommendation provided to a prisoner pursuant to [NRS 213.131](#) is not intended to create an expectation that the Board will grant parole to the prisoner if the prisoner follows the recommendations and does not create an interest in liberty or property when the Board considers the prisoner for parole at a subsequent hearing.

(Added to NAC by Bd. of Parole Comm'rs by R018-08, eff. 4-17-2008)

NAC 213.545 Rescission of parole before release of prisoner: Procedure; delay of release. ([NRS 213.110](#), [213.140](#))

1. After the Board has granted parole to a prisoner but before the prisoner is released from prison, the Board may rescind the parole of the prisoner.

2. If the Department of Corrections or the Division becomes aware of information which provides grounds to rescind the parole of a prisoner and the prisoner is scheduled to be released on parole less than 3 working days after the Department or the Division becomes aware of the information, the Department or the Division may:

(a) Delay the release of the prisoner on parole for not more than 3 working days after the date on which the prisoner is scheduled to be released;

(b) Provide to any member of the Board written notification of the grounds to rescind parole and that the release of the prisoner has been delayed; and

(c) Request that a member of the Board order the further delay of the release of the prisoner.

3. If a member of the Board becomes aware of information which provides grounds to rescind the parole of a prisoner or receives written notification of grounds to rescind parole pursuant to subsection 2, the member may order the delay of the release of the prisoner to allow time for the Board to consider whether to rescind the parole of the prisoner.

4. If a member of the Board has received written notification of grounds to rescind parole pursuant to subsection 2 and does not order the delay of the release of the prisoner on parole within 3 working days after the date on which the prisoner is scheduled to be released on parole, the prisoner must be released.

5. If a member of the Board orders the delay of the release of a prisoner on parole pursuant to subsection 3, the Board will, as soon as practicable:

(a) Schedule a meeting to consider whether to rescind the parole of the prisoner; or

(b) If a majority of the members of the Board state in writing that the parole of the prisoner should not be rescinded, authorize the release of the prisoner.

(Added to NAC by Bd. of Parole Comm'rs by R018-08, eff. 4-17-2008)

NAC 213.550 Determination of whether to revoke parole. ([NRS 213.10885](#), [213.110](#), [13.140](#), [213.150](#)) In determining whether to revoke the parole of a person for a violation of his or her parole, the Board may consider whether the person has, while on parole:

1. Been convicted of any crime committed after his or her release and, if so, whether the crime involved the use of a weapon or resulted in injury or substantial harm to the victim;

2. Engaged in a pattern of behavior similar to that which resulted in his or her imprisonment;

3. Used drugs or alcohol and whether confinement for counseling or classification is advisable;

4. Demonstrated an unwillingness to conform to the expectations and requirements of parole; or

5. Engaged in any other conduct that makes him or her a danger to the community and indicates a need for further treatment in a controlled environment.

(Added to NAC by Bd. of Parole Comm'rs, 6-27-90, eff. 5-11-90; A 7-19-96; R080-98, 8-11-98)

NAC 213.560 Use of or deviation from standards; deviation from initial assessment. ([NRS 213.10885](#), [213.110](#), [213.140](#), [213.150](#))

1 The standards contained in [NAC 213.512](#) to [213.518](#), inclusive, and [213.550](#) may be considered by the Board in determining whether to grant, deny, continue or revoke parole, but nothing contained in those sections shall be construed to restrict the authority of the Board to:

(a) Deny or revoke parole in any case in which application of the standards indicates that parole should be granted or continued; or

(b) Grant or continue parole in any case in which application of the standards indicates that parole should be denied or revoked,

Ê if the decision of the Board is otherwise authorized by the provisions of [chapter 213](#) of NRS.

2 The Board may deviate from the standards contained in [NAC 213.512](#) to [213.518](#), inclusive, and [213.550](#) based upon any factor, or combination of factors, set forth in [NAC 213.518](#) or any other factor which the Board deems relevant to the determination of whether to grant, deny, continue or revoke parole.

3 If the Board takes an action contrary to the initial assessment regarding whether to grant parole which is established pursuant to [NAC 213.516](#), the Board will state in its order the reasons for deviating from the initial assessment.

4 For statistical purposes only, the Board will maintain a written record of any case in which its decision conflicts with the standards contained in [NAC 213.512](#) to [213.518](#), inclusive, and [213.550](#).

(Added to NAC by Bd. of Parole Comm'rs, 6-27-90, eff. 5-11-90; A 7-19-96; R080-98, 8-11-98; R018-08, 4-17-2008)

NAC 213.565 Delegation of certain authority of Board to panel. ([NRS 213.133](#))
When authorized pursuant to [NRS 213.133](#), the Board may delegate its authority to hear, consider and act upon the parole of a prisoner and on any issue before the Board to a panel consisting of:

1. Two or more members of the Board, two of whom constitute a quorum; or
2. One member of the Board who is assisted by a case hearing representative chosen from the list of persons eligible to serve as case hearing representatives established and maintained by the Board pursuant to [NRS 213.135](#).

(Added to NAC by Bd. of Parole Comm'rs by R018-08, eff. 4-17-2008)

STANDARDS FOR RECOMMENDATIONS REGARDING PAROLE OR PROBATION

REVISER'S NOTE.

The provisions of [NAC 213.570](#) to [213.630](#), inclusive, were originally adopted by the Chief Parole and Probation Officer on April 6, 1990. Pursuant to ch. 790, Stats. 1989, those provisions became effective 10 days after that date.

NAC 213.570 "Division" defined. ([NRS 213.10988](#)) As used in [NAC 213.570](#) to [13.630](#), inclusive, unless the context otherwise requires, "Division" means the Division of Parole and Probation of the Department of Public Safety.

(Added to NAC by Dep't of Parole & Probation, 4-18-90, eff. 4-16-90)

NAC 213.580 Evaluation by Division. ([NRS 213.10988](#))

1. Except as otherwise provided by statute or directed by the court, the Division will evaluate every person who is convicted of a felony for the purpose of enabling the Chief Parole and Probation Officer to make a recommendation to the court concerning sentencing.

2 The Division will conduct an evaluation pursuant to subsection 1 using an objective evidence-based assessment tool that incorporates the standards adopted by the Chief Parole and Probation Officer pursuant to [NRS 213.10988](#) and is predictive of continued criminality. The Division may consider certain variables as part of an evaluation, including, without limitation, the criminal history, employment and residential stability, social and behavioral patterns, education, family situation, mental health and mental disabilities of and any substance abuse by the person being evaluated.

(Added to NAC by Dep't of Parole & Probation, 4-18-90, eff. 4-16-90; A by Div. of Parole & Probation by R225-05, 9-18-2006; R061-16, 12-21-2016)

NAC 213.610 Considerations for recommending continuation or revocation of probation. ([NRS 213.10988](#)) In making a recommendation pursuant to [NRS 176A.630](#) concerning the continuation or revocation of probation, the Chief Parole and Probation Officer may consider any of the following acts or omissions occurring during the period of probation:

1. Failure of the probationer to participate in any program established for him or her by the Division, or to report to his or her supervising parole and probation officer or any other person designated by the Division.

2. Any change of employment or place of residence, or any departure from this State or the area of residence of the probationer, that occurs without the consent of his or her supervising parole and probation officer.

3. Failure of the probationer to submit each month a true and correct report in writing to his or her supervising parole and probation officer in the form prescribed by the Division.

4. Any use of alcoholic beverages to any extent or, as directed by the court, to the extent that the probationer has 0.08 percent or more by weight of alcohol in his or her blood.

5. Any unlawful purchase, use, possession, administration or sale or other transfer of any controlled substance or dangerous drug by the probationer.

6. Failure of the probationer to submit to a test for the presence of any controlled substance or dangerous drug in his or her blood or other bodily substance, as directed by his or her supervising parole and probation officer.

7. Any possession, ownership or use of a weapon by the probationer.

8. Any association or contact by the probationer with any person who has been convicted of a felony or is incarcerated or on probation or parole, or any other person who is deemed by the Division to be detrimental to the success of the probationer, except as specifically authorized in writing by the probationer's supervising parole and probation officer.

9. Failure of the probationer to cooperate with his or her supervising parole and probation officer, or to obtain the written consent of the officer before marrying, engaging in business, incurring debt or purchasing any real property or any automobile.

10. Failure of the probationer to conduct himself or herself as a good citizen or to obey any federal, state, county or municipal law or ordinance.

11. Failure of the probationer to seek and maintain employment, or to participate in the program of employment established for him or her by the Division.

12. Failure of the probationer to pay all court-ordered fines and fees, including, without limitation, making any restitution ordered by the court as a condition of probation.

13. Unless the probationer has received a waiver pursuant to subsection 2 of [NRS 213.1076](#), failure of the probationer to pay the monthly fee required pursuant to [NAC 213.230](#).

14. Any violation by the probationer of any curfew established by the Division.

15. Any violation by the probationer of any other condition of probation established by the court.

(Added to NAC by Dep't of Parole & Probation, 4-18-90, eff. 4-16-90; A by Div. of Parole & Probation by R061-16, 12-21-2016)

NAC 213.620 Considerations regarding certification of order to arrest parolee or for recommending continuation or suspension of parole. ([NRS 213.10988](#))

1 In determining whether to certify an order of the Board pursuant to [NRS 213.151](#), or in making a determination pursuant to [NRS 213.1517](#) concerning the continuation or suspension of parole, the Chief Parole and Probation Officer may consider any of the following acts or omissions occurring during the period of parole:

(a) Failure of the parolee to participate in the program established for him or her by the Division, or to report to his or her supervising parole and probation officer or any other person designated by the Division.

(b) Any change of residence of the parolee or any departure from this State that occurs without the consent of his or her supervising parole and probation officer.

(c) Failure of the parolee to seek and maintain employment, or to participate in the program of employment established for him or her by the Division.

(d) Failure of the parolee to submit a true and correct report in writing to his or her supervising parole and probation officer each month in the form prescribed by the Division.

(e) Any use of alcoholic beverages to any extent or, as directed by the Board, to the extent that the parolee has 0.08 percent or more by weight of alcohol in his or her blood.

(f) Failure of the parolee to submit to a search of his or her person, place of residence or automobile by a parole and probation officer.

(g) Any unlawful purchase, use, possession, administration or sale or other transfer of any controlled substance or dangerous drug by the parolee.

(h) Failure of the parolee to submit to a test for the presence of any controlled substance or dangerous drug in his or her blood or other bodily substance, as directed by his or her supervising parole and probation officer.

(i) Any possession, ownership or use of a weapon by the parolee.

(j) Any association or contact by the parolee with any person who has been convicted of a felony or is incarcerated or on probation or parole, or any other person who is deemed by the Division to be detrimental to the success of the parolee, except as specifically authorized in writing by the parolee's supervising parole and probation officer.

(k) Failure of the parolee to cooperate with his or her supervising parole and probation officer, or to obtain the written consent of the officer before marrying, incurring debt, changing employment or purchasing any motor vehicle.

(l) Failure of the parolee to conduct himself or herself as a good citizen or to obey any federal, state, county or municipal law or ordinance.

(m) Failure of the parolee to pay all court-ordered fines and fees and, unless the parolee has received a waiver pursuant to subsection 2 of [NRS 213.1076](#), the monthly fee required pursuant to [NAC 213.230](#).

(n) Any violation by the parolee of any curfew established by the Division.

(o) Any violation by the parolee of any other condition of parole established by the Board.

2. As used in this section, "Board" means the State Board of Parole Commissioners.

(Added to NAC by Dep't of Parole & Probation, 4-18-90, eff. 4-16-90; A by Div. of Parole & Probation by R061-16, 12-21-2016)

NAC 213.630 Additional considerations; deviation from standards; approval of recommendations. ([NRS 213.10988](#))

1. In making:

(a) Any recommendation concerning the continuation or revocation of probation; or

(b) Any determination described in [NAC 213.620](#),

È based upon any act or omission described in [NAC 213.610](#) or [213.620](#), the Chief Parole and Probation Officer may consider any mitigating factor which influenced or contributed to the act or omission.

2 In making any such recommendation or determination, the Chief Parole and Probation Officer may also consider:

(a) Any prior criminal history of the probationer or parolee;

(b) The nature of the person's present offense;

(c) Any pattern of previous offenses; and

(d) The circumstances of the person's present and previous offenses,

È in determining whether the act or omission is a significant indicator of the person's success or failure on parole or probation.

3 Nothing contained in [NAC 213.570](#) to [213.620](#), inclusive, shall be deemed to restrict the authority of the Chief Parole and Probation Officer, in any case he or she deems appropriate, to make any recommendation concerning sentencing or the continuation or revocation of probation, or any determination described in [NAC 213.620](#), that deviates from the standards contained in those sections.

4 Before any recommendation described in subsection 3 is transmitted to the court on behalf of the Chief Parole and Probation Officer, it must be approved by the supervisor having authority over the case or by a person designated thereof.

5 The Chief Parole and Probation Officer will keep a record of the number and percentage of recommendations and determinations that deviate from the standards contained in [NAC 213.570](#) to [213.620](#), inclusive.

(Added to NAC by Dep't of Parole & Probation, 4-18-90, eff. 4-16-90; A by Div. of Parole & Probation by R061-16, 12-21-2016)

PROGRAMS OF REENTRY INTO COMMUNITY

~~NAC 213.650 Definitions. (NRS 213.625) As used in NAC 213.650 to 213.700, inclusive, unless the context otherwise requires, the words and terms defined in NAC 213.660 to 213.690, inclusive, have the meanings ascribed to them in those sections.~~
(Added to NAC by Bd. of Parole Comm'rs by R086-01, eff. 11-29-2001)

NAC 213.660 "Board" defined. (NRS 213.625) "Board" means the State Board of Parole Commissioners.
(Added to NAC by Bd. of Parole Comm'rs by R086-01, eff. 11-29-2001)

NAC 213.670 "Division" defined. (NRS 213.625) "Division" means the Division of Parole and Probation of the Department of Public Safety.
(Added to NAC by Bd. of Parole Comm'rs by R086-01, eff. 11-29-2001)

~~NAC 213.680 "Program" defined. (NRS 213.625) "Program" means a program for reentry of parolees into the community that is established in a judicial district pursuant to NRS 209.4883.~~
(Added to NAC by Bd. of Parole Comm'rs by R086-01, eff. 11-29-2001)

NAC 213.690 "Reentry court" defined. (NRS 213.625) "Reentry court" means the court in a judicial district that has established a program.
(Added to NAC by Bd. of Parole Comm'rs by R086-01, eff. 11-29-2001)

~~NAC 213.700 Reimbursement for cost of participation in program. (NRS 5) The Board will require as a condition of parole that the parolee reimburse the reentry court and the Division for the cost of his or her participation in a program, as determined by the reentry court, to the extent that the parolee has the ability to pay.~~
(Added to NAC by Bd. of Parole Comm'rs by R086-01, eff. 11-29-2001)

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Expiration date _____

Governor's signature

Classification: **PROPOSED** **ADOPTED BY AGENCY** **EMERGENCY**

Brief description of action The Parole Board held a meeting on August 31, 2020 and approved the proposed regulation pursuant to 1 and 2, NRS 213.632 and 4, NRS 213.625, which was necessary to meet the requirements of NRS 213.632.

Authority citation other than 233B NRS 213.632 (1,2) and NRS 213.625 (4)

Notice date October 3, 2020

Date of Adoption by Agency

Hearing date August 31, 2020

August 31, 2020

**APPROVED REGULATION OF THE
STATE BOARD OF PAROLE COMMISSIONERS**

LCB File No. R065-20

Effective November 2, 2020

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §§1 and 2, NRS 213.632; §§3 and 4, NRS 213.625.

A REGULATION relating to parole; establishing provisions requiring certain persons as a condition of parole to reimburse the Department of Corrections and the Division of Parole and Probation of the Department of Public Safety for the cost of participating in a correctional program; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes the State Board of Parole Commissioners to order certain persons to participate in and complete a correctional program as a condition of parole. Existing law requires the Board to adopt regulations requiring such persons to reimburse the Department of Corrections and the Division of Parole and Probation of the Department of Public Safety for the cost of participating in the correctional program, to the extent that the person has the ability to pay. (NRS 213.632)

Section 1 of this regulation requires, as a condition of parole, any person who is ordered to participate in and complete a correctional program to reimburse the Department and the Division for the cost of participating in the correctional program. **Section 1** of this regulation limits the amount of such reimbursement to the extent that the person has the ability to pay, as determined by the Department and the Division. **Sections 3 and 4** of this regulation make conforming changes.

Section 1. Chapter 213 of NAC is hereby amended by adding thereto a new section to read as follows:

The Board will require as a condition of parole that a person who is ordered to participate in and complete a correctional program pursuant to NRS 213.632 reimburse the Department

of Corrections and the Division for the cost of participating in the correctional program, to the extent that the person has the ability to pay, as determined by the Department and the Division.

Sec. 2. NAC 213.650 is hereby amended to read as follows:

213.650 As used in NAC 213.650 to 213.700, inclusive, *and section 1 of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 213.660 to 213.690, inclusive, have the meanings ascribed to them in those sections.

Sec. 3. NAC 213.680 is hereby amended to read as follows:

213.680 ~~["Program"]~~ *"Judicial program"* means a program for reentry of parolees into the community that is established in a judicial district pursuant to NRS 209.4883.

Sec. 4. NAC 213.700 is hereby amended to read as follows:

213.700 The Board will require as a condition of parole that the parolee reimburse the reentry court and the Division for the cost of his or her participation in a *judicial* program, as determined by the reentry court, to the extent that the parolee has the ability to pay.

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED BY
NRS 233B.066
LCB FILE R065-20**

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) Chapter 213

1. A clear and concise explanation of the need for the adopted regulation.

Existing law requires the Board to adopt regulations requiring such persons to reimburse the Department of Corrections and the Division of Parole and Probation of the Department of Public Safety for the cost of participating in the correctional program, to the extent that the person has the ability to pay. (NRS 213.632).

2. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

Copies of the proposed regulations, notices of workshop and notices of intent to act upon the regulation were sent by U.S. mail to all law enforcement agencies in the State of Nevada, to each Nevada District Court, to each Nevada District Attorney, and to all persons on the Board of Parole Commissioner's ('Parole Board' or 'Board') mailing list who have requested to receive notice of meetings related to the adoption of regulations. These documents were also made available at the web site of the Parole Board, <http://parole.nv.gov/>, mailed to all county libraries in Nevada and posted in the following locations:

Parole Board office
1677 Old Hot Springs Road, Ste. A
Carson City, Nevada

Parole Board office
4000 S. Eastern Avenue
Las Vegas, Nevada

Carson City Library
900 N. Roop Street
Carson City, Nevada

Clark County Main Library/Reference section
833 Las Vegas Boulevard
Las Vegas, Nevada

Attorney General's office
100 S. Carson Street
Carson City, Nevada

Attorney General's office
555 E. Washington Avenue
Las Vegas, Nevada

A workshop was held on Thursday, May 28, 2020 at the office of the Parole Board located at 1677 Old Hot Springs Rd., Ste. A, Carson City, Nevada and video conferenced to the office of the Parole Board located at 400 S. Eastern Blvd., Ste. 130, Las Vegas, Nevada to discuss public, Parole and Probation and Board member comments and suggestions to the proposed regulation. A public meeting and Notice of Intent to Adopt was scheduled for public comment and for possible action on August 31, 2020. Workshops were schedule on March 30, 2020 and April 30, 2020. Both meetings were cancelled

due to the Coronavirus.

A public meeting and Notice of Intent to Adopt was scheduled for public comment and for possible action on August 31, 2020. The Parole Board motioned to adopt the proposed regulations.

- (a) Summary of testimony – There was not any public testimony made on R065-20 at the May 28, 2020 Workshop or at the August 31, 2020 Intent to Adopt the Proposed Regulation meeting.

A copy of the meeting minutes of the proposed regulation may be obtained from the Board of Parole Commissioners website at <http://parole.nv.gov/>, or at 1677 Old Hot Springs Rd., Ste. A, Carson City, Nevada 89706, 775-687-5049, or email to kjbaker@parole.nv.gov.

3. The number persons who:

- (a) **Attended each hearing:** May 28, 2020 – 12; August 31, 2020 - 10
(b) **Testified at each hearing:** May 28, 2020 – 0; August 31, 2020 - 0
(c) **Written comments submitted to the agency:** May 28, 2020- No written comments were submitted; August 31, 2020 – No written comments were submitted.

4. A list of names and contact information, including telephone number, business address, business telephone number, electronic mail address, and name of entity or organization represented, for each person identified above in #3, as provided to the agency, Exhibit A.

5. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.

Comments were solicited from affected businesses in the same manner as they were solicited from the public. The Parole Board used informed, reasonable judgement in determining that there will not be an impact on small businesses due to the nature of the proposed regulation.

6. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The permanent regulation was issued on June 23, 2020 and on August 31, 2020, the Parole Board held a public meeting and unanimously voted to adopt the June 23, 2020 version of LCB File No. R065-20 as written.

7. The estimated economic effect of the adopted regulation on the businesses which it is to regulate and on the public. These must be stated separately, and each case must include:
(a) **Adverse effects:** There are no known adverse economic effects of the proposed regulation to the Division or to the public.

(b) **Beneficial effects:** The beneficial economic effects of the proposed regulation are a possible reimbursement to the Division of Parole and Probations for correctional programs. There are no known beneficial economic effects of the proposed regulation on the public.

- (c) **Immediate effects:** There are no known immediate economic effects to the Division or to

the public.

- (d) **Long-term effects:** There are no known long-term economic effects to the Division or to the public.

8. The estimated cost to the agency for enforcement of the adopted regulation.

There is no additional cost to the agency for enforcement of this regulation.

9. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

There are no other state or government agency regulations that the proposed regulation duplicates.

10. If the regulation includes provisions that are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

There are no federal regulations that apply.

11. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

This regulation does not provide a new fee or increase an existing fee.

EXHIBIT A

May 28, 2020 Workshop

| NAME | TITLE/AGENCY IF APPLICABLE | CITY, STATE |
|-------------|----------------------------|-----------------|
| Katie Brady | Deputy Attorney General | Carson City, NV |

August 31, 2020 Meeting

| NAME | TITLE/AGENCY IF APPLICABLE | CITY, STATE |
|-----------------|----------------------------|-----------------|
| Katie Brady | Deputy Attorney General | Carson City, NV |
| Nathan Hastings | Deputy Attorney General | Carson City, NV |

CHANGE OF DISHONORABLE DISCHARGE TO HONORABLE DISCHARGE

NAC 213.720 Definitions. (§ 16 of ch. 476, Stats. 2005) As used in [NAC 213.720](#) to [13.790](#), inclusive, unless the context otherwise requires, the words and terms defined in [NAC 213.730](#), [213.740](#) and [213.750](#) have the meanings ascribed to them in those sections.
(Added to NAC by Div. of Parole & Probation by R212-05, eff. 5-4-2006)

NAC 213.730 “Applicant” defined. (§ 16 of ch. 476, Stats. 2005) “Applicant” means a person who submits an application to the Division to change his or her dishonorable discharge from probation or parole to an honorable discharge from probation or parole in accordance with the provisions of section 16 of chapter 476, Statutes of Nevada 2005.
(Added to NAC by Div. of Parole & Probation by R212-05, eff. 5-4-2006)

NAC 213.740 “Chief” defined. (§ 16 of ch. 476, Stats. 2005) “Chief” means the Chief Parole and Probation Officer.
(Added to NAC by Div. of Parole & Probation by R212-05, eff. 5-4-2006)

NAC 213.750 “Division” defined. (§ 16 of ch. 476, Stats. 2005) “Division” means the Division of Parole and Probation of the Department of Public Safety.
(Added to NAC by Div. of Parole & Probation by R212-05, eff. 5-4-2006)

NAC 213.760 Submission of application and supporting documentation and information; action upon receipt. (§ 16 of ch. 476, Stats. 2005)

1. To request that his or her dishonorable discharge from probation or parole be changed to an honorable discharge from probation or parole, an applicant must submit to the office of the Chief:

- (a) A completed application, in the form prescribed by the Division;
- (b) Documentation of his or her current income; and
- (c) Any other information requested by the Division.

2. Upon receipt of an application and the supporting documentation and information from an applicant, the Chief shall obtain from the Division the discharge summary pertaining to the applicant and a summary of restitution and fees for supervision paid by the applicant. If necessary, the Chief may request from the Division an audit of the payments made by the applicant.

(Added to NAC by Div. of Parole & Probation by R212-05, eff. 5-4-2006)

NAC 213.770 Action upon determination of eligibility of applicant; monthly payments by applicant. (§ 16 of ch. 476, Stats. 2005)

1. If the Division determines that an applicant is not eligible to change his or her dishonorable discharge to an honorable discharge, the Chief shall:

- (a) Notify the applicant, in writing, that the application has been denied and state the reasons for the denial; and
- (b) Retain copies of the application, the discharge summary, the summary of restitution and fees paid by the applicant, the written notification provided to the applicant pursuant to paragraph (a) and any other supporting documentation or information received from the applicant or considered by the Division.

2. If the Division determines that an applicant is eligible to change his or her dishonorable discharge to an honorable discharge, the Chief shall establish a schedule of payments for the applicant to make over the period for repayment established pursuant to subsection 4. Except as otherwise provided in subsection 3, an applicant must be required to pay a minimum monthly payment in an amount that is equal to four times the hourly wage earned by the applicant.

3. If the Division determines that the applicant has demonstrated an economic hardship, the applicant must be required to pay a minimum monthly payment in the amount of \$20.

4. The period for repayment for an applicant must be:

- (a) One year; or
- (b) A period equal to one-half of the time that the applicant was under the supervision of the Division,
Ë whichever is longer.

(Added to NAC by Div. of Parole & Probation by R212-05, eff. 5-4-2006)

NAC 213.780 Grant or denial of application. (§ 16 of ch. 476, Stats. 2005)

1 If, at the end of the period for repayment established by the Division pursuant to [NAC 13.770](#), the Division determines that the applicant has made an effort in good faith and has made satisfactory progress towards making the required payments, the Division will submit its recommendation that the application should be granted to the court or the State Board of Parole Commissioners, whichever is applicable. Upon notification from the court or the State Board of Parole Commissioners that an application has been granted, the Division will:

- (a) Notify the applicant, in writing, that the application has been granted;
- (b) Forward to the applicant from the court or the State Board of Parole Commissioners, whichever is applicable, the official document which:

(1) Provides that he or she has received an honorable discharge from probation or parole; and

(2) States, as applicable, the dates on which his or her civil rights to vote, to serve as a juror in a civil action, to hold office and to serve as a juror in a criminal action will be restored to him or her;

(c) Forward a copy of the official document to the Central Repository for Nevada Records of Criminal History; and

(d) Retain a copy of the official document.

2 If, at the end of the period for repayment established by the Division pursuant to [NAC 13.770](#), the Division determines that the applicant has not made an effort in good faith and has not made satisfactory progress towards making the required payments, the Division will:

(a) Deny the application of the applicant; and

(b) Notify the applicant that the application has been denied.

(Added to NAC by Div. of Parole & Probation by R212-05, eff. 5-4-2006)

NAC 213.790 Availability of information and forms. (§ 16 of ch. 476, Stats. 2005) The Division will make available at its offices, on its website and by mail:

1. A written explanation of the provisions of section 16 of chapter 476, Statutes of Nevada 2005, and [NAC 213.720](#) to [213.790](#), inclusive; and

2. The form for an application.

(Added to NAC by Div. of Parole & Probation by R212-05, eff. 5-4-2006)

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Classification: **PROPOSED** **ADOPTED BY AGENCY** **EMERGENCY**

Brief description of action The Parole Board held a meeting on May 28, 2020 and approved the proposed regulation pursuant to NRS 213.1543, which was necessary to carry out the provisions of a recent change to NRS Chapter 213 by the Nevada Legislature in Assembly Bill 236, Section 93.7 of the 2019 Legislative session, effective July 1, 2020.

Authority citation other than 233B NRS 213.1543

Notice date April 1, 2020

Date of Adoption by Agency

Hearing date May 28, 2020

May 28, 2020

**APPROVED REGULATION OF THE
STATE BOARD OF PAROLE COMMISSIONERS**

LCB File No. R118-19

Filed August 26, 2020

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §1, NRS 213.1543.

A REGULATION relating to parole; establishing provisions relating to the early discharge of certain persons from parole; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the Division of Parole and Probation of the Department of Public Safety to recommend to the State Board of Parole Commissioners the early discharge of a person from parole, other than any person who is sentenced to lifetime supervision because he or she was convicted of a sexual offense, if the person meets certain qualifications. Existing law authorizes the Board to adopt any regulations necessary to carry out the provisions of law relating to the early discharge of such a person from parole. (NRS 213.1543)

This regulation: (1) requires the Division to determine whether a parolee qualifies for early discharge from parole and, if so, make a written recommendation to the Board for early discharge from parole and include certain information in such a written recommendation; (2) provides that the Board, in its discretion, will consider a parolee for early discharge from parole with or without a hearing, but requires a hearing to be held if a victim of the parolee has requested notification of a hearing; (3) establishes certain notice requirements regarding a hearing to be given to a parolee and certain victims of the parolee; (4) authorizes any victim who is provided notification of a hearing to submit documents to the Board and testify at the hearing; (5) authorizes the Board to deliberate in private to consider whether to approve the early discharge of a parolee from parole and to take into consideration certain factors; and (6) provides that any credits awarded by the Board to reduce the sentence of a parolee must not exceed 12 months.

Section 1. Chapter 213 of NAC is hereby amended by adding thereto a new section to read as follows:

1. The Division shall determine whether a parolee meets the qualifications for early discharge from parole pursuant to NRS 213.1543 and, if the parolee meets such qualifications, make a written recommendation to the Board for the early discharge of the parolee from parole.

2. A written recommendation for early discharge from parole made by the Division pursuant to subsection 1 must include, without limitation:

(a) Verification that the parolee has served at least 12 calendar months on parole supervision in the community and is projected to have not more than 12 calendar months of community supervision remaining to serve on any sentence;

(b) Verification that the Board has not found the parolee in violation of any condition of parole during the immediately preceding 12 months;

(c) Verification that the parolee is current with any fee to defray the costs of his or her supervision charged by the Division pursuant to NRS 213.1076;

(d) Verification that the parolee has paid restitution in full or, because of economic hardship that is verified by the Division, the parolee has been unable to make restitution as ordered by the court;

(e) If applicable, verification that the parolee has completed any program of substance use treatment or mental health treatment or a specialty court program as mandated by the Board; and

(f) The risk assessment level of the parolee according to the Nevada Risk Assessment System or its successor risk assessment tool.

3. *Upon receipt of a written recommendation for early discharge from parole made by the Division pursuant to subsection 1, the Board will consider the parolee for early discharge from parole with or without a hearing, in the discretion of the Board. The Board will not consider the parolee for early discharge from parole without a hearing if a victim of the parolee has requested notification of a hearing.*

4. *If the Board determines that a hearing will be held to consider a parolee for early discharge from parole:*

(a) *The Division shall, not later than 5 working days before the hearing, deliver a written hearing notification to the parolee.*

(b) *The Board will, not later than 5 calendar days after the hearing date is scheduled, notify any victim of the parolee who has requested notification of a hearing in writing and who has provided his or her current address to or whose current address is otherwise known by the Board.*

(c) *Any victim who is provided notification of a hearing pursuant to paragraph (b) may submit documents to the Board and may testify at the hearing. A parolee must not be considered for early discharge from parole pursuant to this section until the Board has notified any victim of his or her rights pursuant to this paragraph and the victim is given the opportunity to exercise those rights. If a current address of the victim is not provided to or otherwise known by the Board, the Board must not be held responsible if such notification is not received by the victim.*

5. *If a hearing is held to consider a parolee for early discharge from parole, the Board may, after the hearing, deliberate in private to consider whether to approve the early discharge*

from parole. Before determining whether to approve a parolee for early discharge from parole, the Board may consider, without limitation:

- (a) Any further potential risk posed to the community or the victims of the parolee; and*
- (b) Whether further supervision is necessary.*

6. If a victim is notified of a hearing to consider a parolee for early discharge from parole pursuant to subsection 4, the Board will, upon making a final decision concerning the early discharge of the parolee from parole, notify the victim of its final decision.

7. Any credits awarded by the Board to reduce a sentence pursuant to subsection 2 of NRS 213.1543 must not exceed 12 months.

8. As used in this section:

- (a) "Board" means the State Board of Parole Commissioners.*
- (b) "Division" means the Division of Parole and Probation of the Department of Public Safety.*
- (c) "Victim" has the meaning ascribed to it in NRS 213.005.*

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED BY
NRS 233B.066
LCB FILE R118-19**

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) Chapter 213

1. A clear and concise explanation of the need for the adopted regulation.

This proposed regulation is necessary to carry out the provisions of a recent change to NRS Chapter 213 by the Nevada Legislature in Assembly Bill 236, Section 93.7 of the 2019 Legislative session, effective July 1, 2020. This proposed regulation relates to the early discharge of a person from parole if the Board receives a recommendation from the Division of Parole and Probation (Division) of the Department of Public Safety. If the Division verifies specific criteria have been met, the Board may award credits to reduce the sentence to time served, but not to exceed 12 calendar months.

2. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

Copies of the proposed regulations, notices of workshop and notices of intent to act upon the regulation were sent by U.S. mail to U.S. mail to all law enforcement agencies in the State of Nevada, to each Nevada District Court, to each Nevada District Attorney, and to all persons on the Board of Parole Commissioner's ('Parole Board' or 'Board') mailing list who have requested to receive notice of meetings related to the adoption of regulations. These documents were also made available at the web site of the Parole Board, <http://parole.nv.gov/>, mailed to all county libraries in Nevada and posted in the following locations:

Parole Board office
1677 Old Hot Springs Road, Ste. A
Carson City, Nevada

Parole Board office
4000 S. Eastern Avenue
Las Vegas, Nevada

Carson City Library
900 N. Roop Street
Carson City, Nevada

Clark County Main Library/Reference section
833 Las Vegas Boulevard
Las Vegas, Nevada

Attorney General's office
100 S. Carson Street
Carson City, Nevada

Attorney General's office
555 E. Washington Avenue
Las Vegas, Nevada

A workshop was held on Thursday, October 31, 2019 at the office of the Parole Board located at 1677 Old Hot Springs Rd., Ste. A, Carson City, Nevada and video conferenced to the office of the Parole Board located at 400 S. Eastern Blvd., Ste. 130, Las Vegas, Nevada. Thereafter, on December 19, 2019,

an additional workshop was held to discuss public, Parole and Probation and Board member comments and suggestions to the proposed regulation. A public meeting and Notice of Intent to Adopt was scheduled for public comment and for possible action on March 30, 2020 and April 30, 2020. Both meetings were cancelled due to the Coronavirus.

A public meeting and Notice of Intent to Adopt was scheduled for public comment and for possible action on May 28, 2020. The Parole Board motioned to adopt the proposed regulations.

- (a) Summary of testimony from Tanya Brown, Advocate for the inmates and the innocent on October 31, 2019: Ms. Brown commented in agenda item II of the October 31, 2019 Workshop and Meeting of the Board of Parole Commissioners. While commenting under agenda item III, Ms. Brown noted that her comment under agenda item II was meant to be under agenda item III. Ms. Brown commented she spoke to parolees that felt twelve months is too short of a period for review to demonstrate a record of success, and the time for review should be extended to twenty-four months. Ms. Brown also commented on the fairness to the victims being seen in private or submitting information to the Board and that victims give false testimony and false information about the case. Ms. Brown felt an inmate has every right to face their accuser and defend themselves. Ms. Brown felt this especially happens when the victim is deceased, and the family members are speaking on behalf of their loved ones.
- (b) Summary of testimony received by Chairman DeRicco through a meeting with the Division of Parole and Probation (Division) and in a tele-conference with both Major O'Rourke and Major Sleevea of the Division. The Division wanted to be clear on what the term "violated" meant. According to the Division, there would need to be a finding by the Board that a parolee violated a condition. The Division requested some additional clarity on Section 2(b) of the December 19, 2019 proposed regulation. Chairman DeRicco suggested striking the language in full and to changing the language to: *"Verification that the Board has not found the parolee in violation of any conditions of supervision during the immediately preceding 12 months."*
- (c) The Division requested that the proposed language in Section 3 of the December 19, 2019 proposed regulation be stricken and have the Board include: *"The Division will include the parolee's risk assessment level, according to the Nevada Risk Assessment System (NRAS), or its successor risk assessment tool, in the written early discharge recommendation submitted to the Board."* The Board adopted this change.
- (d) The Division requested that Section 4 of the December 19, 2019 proposed draft regulation language in this section be deleted in its entirety. the Division provided that if a parolee meets the statutory provisions as outlined in AB 236, Section 93.7, the Division will send the early discharge recommendation to the Board. The Division does not believe that it is statutorily mandated to provide its opinion on whether a parolee deserves an early discharge. The Division provided that it will review their cases and determine if a parolee meets the identified criteria and forward the appropriate cases to the Board to make the final determination. The Board adopted this change.

A copy of this summary of the public response to the proposed regulation may be obtained from the Board of Parole Commissioners, 1677 Old Hot Springs Rd., Ste. A, Carson City, Nevada 89706, 775-687-5049, or email to kjbaker@parole.nv.gov.

3. The number persons who:

- (a) **Attended each hearing:** October 31, 2019 – 16; December 19, 2019 – 15
May 28, 2020 - 12

(b) **Testified at each hearing:** October 31, 2019 – 1; December 19, 2019 – 0
May 28, 2020 - 0

(c) **Written comments submitted to the agency:** October 31, 2019 - No written comments were submitted; December 19, 2019 – No written comments were submitted; May 28, 2020 – No written comments were submitted.

4. **A list of names and contact information, including telephone number, business address, business telephone number, electronic mail address, and name of entity or organization represented, for each person identified above in #3, as provided to the agency, is attached as Exhibit A.**
5. **A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.**

Comments were solicited from affected businesses in the same manner as they were solicited from the public. The Parole Board used informed, reasonable judgement in determining that there will not be an impact on small businesses due to the nature of the proposed regulation.

6. **If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.**

Ms. Browns comments addressed the statute and not the proposed regulation, so no changes to the regulation were made based on her comments in the October 31, 2019 meeting.

The comments provided by the Division of Parole and Probation through Chairman DeRicco were addressed at the December 19, 2019 and no other changes were made to the adopted regulation.

The permanent regulation was issued on January 21, 2020 and on May 28, 2020, the Parole Board held a public meeting and unanimously voted to adopt the January 21, 2020 version of LCB File No. R118-19 as written.

7. **The estimated economic effect of the adopted regulation on the businesses which it is to regulate and on the public. These must be stated separately, and each case must include:**
 - (a) **Adverse effects:** There are no known adverse economic effects of the proposed regulation to the Division or to the public.
 - (b) **Beneficial effects:** The beneficial economic effects of the proposed regulation are a possible decrease in costs by the Division of Parole and Probations for parole supervision. There are no known beneficial economic effects of the proposed regulation on the public.
 - (c) **Immediate effects:** There are no known immediate economic effects to the Division or to the public.
 - (d) **Long-term effects:** There are no known long-term economic effects to the Division or to the public.

8. The estimated cost to the agency for enforcement of the adopted regulation.

There is no additional cost to the agency for enforcement of this regulation.

9. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

There are no other state or government agency regulations that the proposed regulation duplicates.

10. If the regulation includes provisions that are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

There are no federal regulations that apply.

11. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

This regulation does not provide a new fee or increase an existing fee.

SECRETARY OF STATE
FILING DATA

**Form For Filing
Administrative Regulations**

FOR EMERGENCY
REGULATIONS ONLY

Effective date _____

Expiration date _____

Agency Parole Board

Governor's signature

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2020 NOV 2 AM 11:25

Classification: **PROPOSED** **ADOPTED BY AGENCY** **EMERGENCY**

Brief description of action The Parole Board held a meeting on August 31, 2020 and approved the proposed regulation pursuant to NRS 213.12155, which was necessary to carry out the provisions of a recent change to NRS Chapter 213 by the Nevada Legislature in Assembly Bill 236, Section 93.3 of the 2019 Legislative session, effective July 1, 2020.

Authority citation other than 233B NRS 213.12155

Notice date October 15, 2020

Date of Adoption by Agency

Hearing date August 31, 2020

August 31, 2020

**APPROVED REGULATION OF THE
STATE BOARD OF PAROLE COMMISSIONERS**

LCB File No. R066-20

Effective November 2, 2020

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1-6, NRS 213.12155.

A REGULATION relating to parole; establishing provisions relating to geriatric parole; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes the State Board of Parole Commissioners to grant geriatric parole to certain prisoners who: (1) are 65 years of age or older; (2) have not been convicted of a crime of violence, certain offenses committed against a child, a sexual offense, vehicular homicide or driving under the influence of alcohol or a prohibited substance and causing the death of or substantial bodily harm to another person; (3) have not been found to be a habitual criminal; (4) have served at least the majority of the maximum term or maximum aggregate term of his or her sentence; (5) are not serving a sentence of life imprisonment without the possibility of parole and have not been sentenced to death; and (6) do not pose a significant and articulable risk to public safety. Existing law requires the Board to adopt regulations necessary to carry out the provisions relating to geriatric parole. (NRS 213.12155)

Section 5 of this regulation establishes the process by which a prisoner, or any person acting on behalf of the prisoner, may apply in writing for geriatric parole. **Section 5** of this regulation prescribes the information to be included in a form for application for geriatric parole. **Section 5** of this regulation also provides that the Board will make the form for application for geriatric parole available: (1) on its Internet website; and (2) upon written request to the Board, in paper copy.

Section 6 of this regulation provides that: (1) the Board will, within 15 days of receiving a form for application and any supporting documentation from a prisoner applying for geriatric parole, request verification from the Department of Corrections that the prisoner qualifies for geriatric parole; (2) if the Department verifies that the prisoner is eligible for geriatric parole, the Board will schedule a hearing for geriatric parole, and notify the prisoner, person acting on behalf of the prisoner, if applicable, and any victims and other interested persons, of the date,

time and location of the geriatric parole hearing; and (3) if the Department verifies that the prisoner is not eligible for geriatric parole, the Board will notify the prisoner and the person acting on behalf of the prisoner, if applicable, that the prisoner does not qualify for geriatric parole. **Sections 3 and 4** of this regulation define the terms "Board" and "Department" for the purposes of this regulation.

Section 1. Chapter 213 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 6, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 and 4 of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *"Board" means the State Board of Parole Commissioners.*

Sec. 4. *"Department" means the Department of Corrections.*

Sec. 5. *1. A prisoner applying for geriatric parole pursuant to NRS 213.12155, or any person acting on behalf of the prisoner, must submit to the Board:*

(a) A written application, on a form prescribed by the Board; and

(b) Any supporting documentation required by the Board.

2. The form must include, without limitation:

(a) The name of the prisoner;

(b) The date of birth of the prisoner;

(c) The Department identification number of the prisoner;

(d) A list of any offenses for which the prisoner was convicted and the corresponding case numbers relating to those convictions;

(e) The reason that the prisoner is requesting geriatric parole; and

(f) The name, address and contact information of the person submitting the form.

3. The Board will provide the form, for completion of the written application:

(a) On the Internet website maintained by the Board; and

(b) Upon written request to the Board, in paper copy.

Sec. 6. 1. Not later than 15 days after receipt of the written application and any supporting documentation pursuant to section 5 of this regulation, the Board will request verification from the Department that the prisoner requesting geriatric parole meets the criteria set forth in subsection 1 of NRS 213.12155.

2. If the Department determines that the prisoner applying for geriatric parole:

(a) Meets the criteria set forth in subsection 1 of NRS 213.12155, the Board will:

(1) Schedule a hearing to consider the geriatric parole of the eligible prisoner whose name appears on the list prepared pursuant to NRS 209.254;

(2) Give notification of the date, time and location of the geriatric parole hearing to:

(I) The prisoner applying for geriatric parole;

(II) The person who submitted the application on behalf of the prisoner, if applicable; and

(III) Any victim or other interested person who requested notification from the Board.

(b) Does not meet the criteria set forth in subsection 1 of NRS 213.12155, the Board will notify the prisoner, and the person who submitted the application on behalf of the prisoner, if applicable, that the prisoner is not eligible for geriatric parole.

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED BY
NRS 233B.066
LCB FILE R066-20**

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) Chapter 213

1. A clear and concise explanation of the need for the adopted regulation.

This proposed regulation is necessary to carry out the provisions of a recent change to NRS Chapter 213 by the Nevada Legislature in Assembly Bill 236, Section 93.3 of the 2019 Legislative session, effective July 1, 2020. This proposed regulation allows the State Board of Parole Commissioners to grant geriatric parole to certain prisoners who: (1) are 65 years of age or older; (2) have not been convicted of a crime of violence, certain offenses committed against a child, a sexual offense, vehicular homicide or driving under the influence of alcohol or a prohibited substance and causing the death of or substantial bodily harm to another person; (3) have not been found to be a habitual criminal; (4) have served at least the majority of the maximum term or maximum aggregate term of his or her sentence; (5) are not serving a sentence of life imprisonment without the possibility of parole and have not been sentenced to death; and (6) do not pose a significant and articulable risk to public safety. Existing law requires the Board to adopt regulations necessary to carry out the provisions relating to geriatric parole. (NRS 213.12155)

2. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

Copies of the proposed regulations, notices of workshop and notices of intent to act upon the regulation were sent by U.S. mail to all law enforcement agencies in the State of Nevada, to each Nevada District Court, to each Nevada District Attorney, and to all persons on the Board of Parole Commissioner's ('Parole Board' or 'Board') mailing list who have requested to receive notice of meetings related to the adoption of regulations. These documents were also made available at the web site of the Parole Board, <http://parole.nv.gov/>, mailed to all county libraries in Nevada and posted in the following locations:

Parole Board office
1677 Old Hot Springs Road, Ste. A
Carson City, Nevada

Carson City Library
900 N. Roop Street
Carson City, Nevada

Attorney General's office
100 S. Carson Street
Carson City, Nevada

Parole Board office
4000 S. Eastern Avenue
Las Vegas, Nevada

Clark County Main Library/Reference section
833 Las Vegas Boulevard
Las Vegas, Nevada

Attorney General's office
555 E. Washington Avenue
Las Vegas, Nevada

A workshop was held on Thursday, May 28, 2020 at the office of the Parole Board located at 1677 Old Hot Springs Rd., Ste. A, Carson City, Nevada and video conferenced to the office of the Parole Board located at 400 S. Eastern Blvd., Ste. 130, Las Vegas, Nevada. A public meeting and Notice of Intent to Adopt was scheduled for public comment and for possible action on March 30, 2020 and April 30, 2020. Both meetings were cancelled due to the Coronavirus.

A public meeting and Notice of Intent to Adopt was scheduled for public comment and for possible action on August 31, 2020. The Parole Board motioned to adopt the proposed regulations.

- (a) Summary of testimony from Paul G. Corrado, on May 28, 2020 Mr. Corrado submitted and read a written statement during public comment and also on agenda item III of the May 28, 2020 Workshop and Meeting of the Board of Parole Commissioners. Mr. Corrado read a written statement regarding special considerations made to accommodate the requirements of persons with limited mobility, behavior health issues, costly meds and matriculation back into society. Mr. Corrado's written statement also addressed what provisions will be made to accommodate U.S. Veterans who qualify for this special parole category and how Veterans issues are to be addressed both mentally and physically. There is no contact information for Mr. Corrado.
- (b) Summary of written testimony received by John Quintero, inmate at High Desert State Prison, was addressed by the Board at the August 31, 2020 Intent to Adopt and Board meeting. Mr. Quintero stated he would like the application form for geriatric parole available through the Nevada Department of Corrections (NDOC) law library indexed as a fundamental first amendment right to redress grievances. Chairman DeRicco provided that the Board can address Mr. Quintero's concerns without changing the language of the regulation through communication with the Parole Board and the NDOC.

A copy of this summary of the public response to the proposed regulation may be obtained from the Board of Parole Commissioners, 1677 Old Hot Springs Rd., Ste. A, Carson City, Nevada 89706, 775-687-5049, or email to kjbaker@parole.nv.gov.

3. The number persons who:

- (a) **Attended each hearing:** May 28, 2020 – 14; August 28, 2020 – 10
- (b) **Testified at each hearing:** May 28, 2020 – 1; August 31, 2020 – 0
- (c) **Written comments submitted to the agency:** May 28, 2020 - 1; August 31, 2020 – 1

4. A list of names and contact information, including telephone number, business address, business telephone number, electronic mail address, and name of entity or organization represented, for each person identified above in #3, as provided to the agency, is attached as Exhibit A.

5. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.

Comments were solicited from affected businesses in the same manner as they were solicited from the public and through a questionnaire emailed to various small businesses. There was no response

from the small businesses that were sent emails.

6. **If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.**

Mr. Corrado's comments addressed issues regarding Veterans, Social Security and future medical and not the proposed regulation, so no changes to the regulation were made based on his comments in the May 28, 2020 meeting.

The comments provided by Mr. Quintero, inmate at High Desert State Prison, were addressed at the August 31, 2020 meeting and it was determined Mr. Quintero's concerns to make the application available in the NDOC law library could be addressed without changing the language of the regulation through communication with the Parole Board and the NDOC.

The permanent regulation was issued on July 2, 2020 and on August 31, 2020, the Parole Board held a public meeting and unanimously voted to adopt the July 2, 2020 version of LCB File No. R066-20 as written.

7. **The estimated economic effect of the adopted regulation on the businesses which it is to regulate and on the public. These must be stated separately, and each case must include:**
- (a) **Adverse effects:** There are no known adverse economic effects of the proposed regulation to the Division or to the public.
 - (b) **Beneficial effects:** The beneficial economic effects of the proposed regulation are a possible decrease in incarceration costs by the Department of Corrections. There are no known beneficial economic effects of the proposed regulation on the public.
 - (c) **Immediate effects:** There are no known immediate economic effects to the Division or to the public.
 - (d) **Long-term effects:** There are no known long-term economic effects to the Division or to the public.

8. **The estimated cost to the agency for enforcement of the adopted regulation.**

There is no additional cost to the agency for enforcement of this regulation.

9. **A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.**

There are no other state or government agency regulations that the proposed regulation duplicates.

10. **If the regulation includes provisions that are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.**

There are no federal regulations that apply.

- 11. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.**

This regulation does not provide a new fee or increase an existing fee.

EXHIBIT AMay 28, 2020 Workshop

| NAME | TITLE/AGENCY IF APPLICABLE | CITY, STATE |
|-----------------|----------------------------|-----------------|
| Ariel Ashtamker | ACLU of NV | Las Vegas, NV |
| Katie Brady | Deputy Attorney General | Carson City, NV |
| Paul G. Corrado | Public | Carson City, NV |
| Nick Shepach | Public | Carson City, NV |

August 31, 2020 Meeting

| NAME | TITLE/AGENCY IF APPLICABLE | CITY, STATE |
|-----------------|----------------------------|-----------------|
| Katie Brady | Deputy Attorney General | Carson City, NV |
| Nathan Hastings | Deputy Attorney General | Carson City, NV |

EXHIBIT AMay 28, 2020 Workshop

| NAME | TITLE/AGENCY IF APPLICABLE | CITY, STATE |
|-----------------|----------------------------|-----------------|
| Ariel Ashtamker | ACLU of NV | Las Vegas, NV |
| Katie Brady | Deputy Attorney General | Carson City, NV |
| Paul G. Corrado | Public | Carson City, NV |
| Nick Shepach | Public | Carson City, NV |

August 31, 2020 Meeting

| NAME | TITLE/AGENCY IF APPLICABLE | CITY, STATE |
|-----------------|----------------------------|-----------------|
| Katie Brady | Deputy Attorney General | Carson City, NV |
| Nathan Hastings | Deputy Attorney General | Carson City, NV |