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ED GRAY, JR., *Member*
MICHAEL KEELER, *Member*

NEVADA BOARD OF PAROLE COMMISSIONERS

MINUTES
Meeting of the
Board of Parole Commissioners
January 29, 2018

Minutes approved on April 10, 2018

The Board of Parole Commissioners held a public meeting on January 29, 2018 beginning at 9:00 AM at the following locations:

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

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

The meeting was called to order by Chairman Bisbee. Present in Carson City were Chairman Bisbee, Commissioner DeRicco, Commissioner Corda, and Commissioner Jackson. Present in Las Vegas were Commissioner Keeler, and Commissioner Gray.

Commissioner Endel was absent.

Support staff in attendance:

Darla Foley, Executive Secretary
Brian Stone, Administrative Assistant III
David Smith, Hearing Examiner II

Members of the public present in Carson City included:

Katie Brady, Deputy Attorney General, Office of the Attorney General
Sonnette Caldwell-Barr, Psychologist II. NDOC
Verne Lewis, Psychologist III. NDOC
Stephanie O'Rourke, Major, Division of Parole and Probation
Jorge Pierrott, Division of Parole and Probation
Tom Lawson, Captain, Division of Parole and Probation
Nathaniel Woods, NDOC
Jennifer Sexton, NDOC

Ken Ward, Attorney for Anthony Leake
Anthony Leake
Nancy Leake

Members of the public present in Las Vegas included:

Kim Thomas, NDOC
Whitney Lewis, NDOC
Jeanine Abel, NDOC
Kristina Wildeveld, Attorney for Richard Athey
Richard Athey

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

Chairman Bisbee asked if anyone present would like to make a public comment.

Public comment – Carson City, NV

No public comment.

Public comment - Las Vegas

No public comment.

III. For possible action: Review/Approval of minutes from the October 5, 2017 Board meeting.

Commissioner Corda noted an error on Page 3 of the minutes and requests that Chairman Corda be changed to Commissioner Corda.

Motion: Approve the minutes of October 5, 2017 Board Meeting with corrections as suggested.

Made: Commissioner DeRicco

Seconded by: Commissioner Jackson

Votes in Favor: Gray, Keeler, Corda, Jackson, Bisbee, DeRicco

Votes Opposed: None

IV. For possible action: The Board will consider and act on applications requesting that the Board petition the court of original jurisdiction to modify the sentences of the following parolees in accordance with subsection 2 of NRS 176.033. The Board will consider the reports and recommendation of the Division of Parole and Probation; written input received by interested parties; and any testimony by interested parties.

1) Wesley Lorenzo McGordon, NDOC # 22285, Criminal Case # C72612

2) Richard Lewis Athey, NDOC #27393, Criminal Case #83880

3) Anthony Paul Leake, NDOC #49235, Criminal Case #953130

The Board may take no action, deny the request or give recommendation and act to petition the court of original jurisdiction to modify the sentence. Pursuant to subsection 5(c)(3) of NRS 241.020, all of the supporting documents are confidential and will not be provided to members of the public (see NRS 213.1075).

Chairman Bisbee moved forward with the applicants for sentence modification and introduced the first applicant, Wesley Gordon, who is addressing the Board via telephone from his home in Los Angeles, California, due to medical problems that prevented him from appearing at the Parole Board office.

Chairman Bisbee introduced herself and the Commissioners to Mr. McGordon and requested that he give reason to the Board as to why he is requesting release from parole supervision. Mr. McGordon thanked the Board for the opportunity to be recommended for modification of sentence. He explained his current medical conditions and stated that he has completed 22 years on parole in California and that he feels that he meets all requirements. He is a Vietnam vet who has had many medical complications over the years. He also addressed the pain and hurt he has caused and has been through and requested his life and freedom back. Mr. McGordon explained that he is a wheelchair bound double amputee.

Chairman Bisbee addressed the initial crime, the 2nd degree murder of his ex-wife and asked Mr. McGordon about why the crime occurred. The offender stated that he cannot remember certain details of the crime but admitted to killing his ex-wife with a knife but does not remember why the crime happened. Chairman Bisbee confirmed with the offender that he had minimal criminal history and minimal use of drugs and alcohol. He used some drugs due to his medical condition and denied any use of cocaine even though he did test positive in 1998. Chairman Bisbee also noted that supervision in California has recommended that the offender be released from parole supervision for the last 15 years. The offender was charged with two domestic disputes but after investigation no charges were filed. Prior to his disability the offender was employed for 15-16 years as a machinist. The offender does not have any family left and lives by himself and collects some social security benefits and stated if he was released on parole he would qualify for additional benefits.

Commissioner Gray asked about any violence that may have occurred with the offender's ex-wife prior to the instant offense. The offender denied any violence prior to the offense.

Commissioner Corda asked the offender about how he felt his life would change if released from parole. The offender stated that his life would be easier by allowing him more freedom and opportunity to vote and to allow him to do things he is currently unable to do.

Commissioner Jackson asked the offender if he is remorseful for a person losing their life. The offender stated that he was remorseful and agreed that the crime had great impact on the victim's family in this case.

Chairman Bisbee asked if there was anyone from the Nevada Division of Parole and Probation that would like to make a statement. No one from Parole and Probation came forward. Chairman Bisbee asked for any comment from the Board.

Motion: To grant parolee's request of release of lifetime parole and forward the Board's recommendation and petition the court of original jurisdiction to modify sentence.
Made: Commissioner Gray
Seconded by: Commissioner Keeler
Votes in Favor: Gray, Keeler, Corda, Jackson, Bisbee, DeRicco
Votes Opposed: None

Chairman Bisbee introduced the next applicant for sentence modification recommendation, Richard Athey, and his representative, Kristina Wildeveld. Both were present in the Las Vegas office. Chairman Bisbee requested that he give reason to the Board on why he is requesting a recommendation for sentence modification.

Mr. Athey stated that he has been on parole since 2002 and has never committed a new crime. He stated that he felt he was a good citizen that gets along well with people. He has had a hard time getting a job since being released on parole and has had to get work through friends and would like to be off parole.

Chairman Bisbee referred to a report from Nevada Parole and Probation that stated that the offender had recent problems with alcohol and has had multiple relapses dating back to 2012. Chairman Bisbee referred to P&P's concerns and how they placed the offender on increased surveillance and into treatment programs. Chairman Bisbee stated her concern over the offender not showing any long term sobriety. Mr. Athey stated the alcohol problems started when a business venture that he had with his son failed and he couldn't find another job and lost his life savings. The offender stated he started going to AA meetings and it is no longer a problem. Chairman Bisbee stated that the offender was brought back to Nevada in 2013 and was heard by the Board in 2013 due to a violation involving the use of alcohol and it concerned her. The offender stated that his behavior at that time was not good but he is doing much better now. Chairman Bisbee asked the offender if he still maintained his innocence in the instant offense. The offender stated that he does not maintain his innocence and was ashamed of his crime and pressured by his father to take it to trial and not accept the plea bargain. Chairman Bisbee asked if there was any drug use involved in the commission of the crime or if there was any prior abuse. The offender denied any use of drugs or prior abuse to children.

Commissioner Gray asked why Nevada had to extradite him back to Nevada and why he wanted off parole. The offender was not sure why he was extradited and stated that he has a hard time finding employment, rental housing, and would like to move forward.

Commissioner Corda summarized what may have contributed to the offense and mentioned a previous conviction for DUI which suggests that there may be more of an alcohol problem than the offender believed. Commissioner Corda also addressed how the offender has come to terms with admitting culpability for the crime.

Commissioner DeRicco asked the offender to expand on the difficulties that he has had securing employment. The offender stated that he has not been able to find a job and has only been able to secure a job through a friend even though he has searched diligently. He also stated that he has been turned down for employment multiple times due to his parole status. Commissioner DeRicco asked about his current living situation. The offender stated that last June he had to leave his residence but was able to secure a residence through the help of his employer. Commissioner DeRicco also asked if the offender was currently in any type treatment for alcohol abuse, the offender stated he was not.

Chairman Bisbee introduced Mr. Athey's council, Kristina Wildeveld.

Kristina Wildeveld explained the hardships that the offender is having due to being on parole to include not being able to reside near his ailing parents. Ms. Wildeveld also spoke about the offender's current family situation, history with alcohol and treatment plans, extradition issues,

housing, how being released from parole would benefit the offender, employment, and his positive recommendation for release by Arizona Parole and Probation.

Commissioner Keeler stated he does not feel the offender is a good candidate for recommendation for sentence modification at this time.

Commissioner Gray stated that the use of alcohol by the offender concerns him and he would like to see the offender remain under supervision at this time.

Commissioner DeRicco stated that he is also not comfortable with recommending sentence modification at this time.

Commissioner Jackson stated that she would like to see the offender seek treatment for his alcohol problems.

Commissioner Corda stated that he would be inclined to recommend the offenders sentence modification.

Chairman Bisbee stated that she would also be willing to recommend modification of sentence.

Motion: To grant parolee's request and forward the Board's recommendation to the court of original jurisdiction to modify sentence.
Made: Commissioner Corda
Seconded by: Commissioner Jackson
Votes in Favor: Bisbee, Corda, Jackson
Votes Opposed: Keeler, Gray, DeRicco
Motion denied

Chairman Bisbee introduced the final applicant for sentence modification recommendation, Anthony Leake, and his council Mr. Ken Ward.

Mr. Ward spoke to the Board about the offenders accomplishments while in prison and gave background on the offender's family and living situation.

Chairman Bisbee had some question on whether the offender would still be subject to lifetime supervision if released from life parole.

Counsel Kathleen Brady suggested that the Board include in the motion that the issue be raised with the District Court if the Board decides to petition the court for modification of sentence.

Commissioner Keeler suggested that the Board not go forward until the commissioners know whether or not the offender would need to serve lifetime supervision.

Mr. Ward suggested that it would be best to be brought before the court at a later date if the Board decides to petition the court for sentence modification.

Chairman Bisbee asked the Board if they would like to postpone the hearing until a determination is made about the offender's lifetime supervision. Her vote is to go forward with the hearing.

Commissioner Corda stated he would like to go forward.

Commissioner Gray stated he would like to go forward.

Commissioner Jackson stated she would like to go forward.

The Board majority would like to move forward with the hearing.

Mr. Leake spoke of his time in prison and the impact it had on the victim, himself, and on his family. He also spoke of programs he has completed since the instant offense and the goals he has accomplished. He stated he would like to be off parole so he can help his family, further his job goals, and travel.

Chairman Bisbee asked about an incident of molestation with a second victim, his step daughters cousin. The offender stated that it was that incident that made him aware that he needed to stop all inappropriate contact and stated no other incidents happened after that. The offender also stated he had admitted guilt when questioned by the police.

Commissioner Jackson asked the offender about what he has learned from the counseling and programming that he has participated in. Whether he feels he has the tools to be successful and if he feels that his crime had impact on the victim.

The offender stated that he has learned to understand and control his behavior and feels he has the tools to be successful. The Offender realizes that his offense had significant impact on not only the victim but also the victim's family and he has remorse about the hurt he has caused the victim.

Commissioner Corda asked the offender about being caught with pornography. The offender stated that the pornography was unintentional and he was viewing pictures of Burning Man and discontinued as soon as he realized the content.

Chairman Bisbee questioned the offender's use of his wife's muscle relaxant. The offender stated that his Dr. told him to try his wife's medication to see if it would work for him.

Motion: To grant parolee's request and forward the Board's recommendation to the court of original jurisdiction to modify sentence and to maintain lifetime supervision if it is so ordered.
Made: Commissioner Corda
Seconded by: Commissioner Jackson
Votes in Favor: Bisbee, Corda, Jackson
Votes Opposed: Gray, DeRizzo
Abstained: Keeler
Motion denied

V. **For possible action.** Presentation by the Division of Parole and Probation (the Division) on the Division's supervision policies related to the placement of parolees into independent reporting centers; the use of residential confinement as a sanction for parole violations; any written guidelines related to responses to technical violations aimed at avoiding the return to prison when alternative responses are available; and, any other efforts

related to policy changes which pertain to the supervision of parolees. Consideration of a request by the Division to have the Board establish a condition authorizing the Division to place a parolee onto residential confinement and may set topics of future Board meetings relative to the presentation and discussion.

No action was taken on the agenda item due to needing more information.

- VI. **For possible action:** Consideration of a request by the Division to limit the authority of peace officers who are not employed by the Division to search parolees without a search warrant or cause as a condition of parole only when authorized by the Division. The Board may act to modify the current parole agreement template and also authorize the change to be applied to all parolees currently under the Division’s supervision.

Chairman Bisbee introduced Major O’Rourke from the Division of Parole and Probation.

Major O’Rourke stated that there were concerns about the wording of the search clause on the current parole agreement because some law enforcement officers may interpret this as being able to conduct some searches without cause. The new wording suggested was “search by a parole officer or at the discretion or approval of another officer within the Division of Parole and Probation”.

Chairman Bisbee asked if Major O’Rourke has had any problems from peace officers concerning the change to the clause. Major O’Rourke stated that she has not and does not anticipate any.

Commissioner Keeler stated that he feels that the new language may need to be more specific to show documentation that the Division has approved the search.

Major O’Rourke stated that she is certain that the current procedure is that the approval is documented by the Division of Parole and Probation.

Captain Tom Lawson with Parole and Probation stated that when he previously worked for Highway Patrol as a field officer that anytime a peace officer was given approval to search by P&P that the permission was well documented with the names of the P&P agents approving the search for legal reasons.

Chairman Bisbee stated that she feels that the modified language used is sufficient.

Major O’Rourke stated for the record that the Division is currently working on updating their violation manual and feels that the need for documentation on search approvals can easily be addressed in the manual.

Motion: To modify the parole agreement to add language “who has received authorization to perform a search from a sworn officer employed by the Division”.

Made: Commissioner Jackson

Seconded by: Commissioner DeRicco

Votes in Favor: Keeler, Bisbee, Corda, Jackson, Gray, DeRicco

Votes Opposed: None

Motion passed

Chairman Bisbee asked if there was any public comment before closing the morning session.

Public comment – Carson City, NV

No public comment.

Public comment - Las Vegas

No public comment.

Recess called until 1:00 PM.

The meeting was called back into order by Chairman Bisbee. Present in Carson City were Chairman Bisbee, Commissioner DeRicco, Commissioner Corda, and Commissioner Jackson. Present in Las Vegas were Commissioner Keeler, and Commissioner Gray.

Commissioner Endel was absent.

Chairman Bisbee asked if there was any public comment.

Public comment – Carson City, NV

No public comment.

Public comment - Las Vegas

No public comment.

VII. **Information Only:** Presentation by the Department of Corrections on the Nevada Risk Assessment System.

Dr. Whitney Lewis from the Nevada Department of Corrections discussed the NRAS (Nevada Risk Assessment System) prison intake tool. She explained how the Department is implementing assessments to help determine level of need for programming and the best program for individual offenders. She explained the PIT (prison intake tool) and supplemental entry tool.

Commissioner Keeler asked if the assessments would be in-depth. Ms. Lewis explained that the questions would be open-ended and include discussion with the inmate.

Jeanine Abel with NDOC stated that there is an interview guide and the questions asked are based on the interview guide but there are also probing questions. She also explained some of the training for the interviewers.

Ms. Lewis went into detail on how certain factors are determined.

Chairman Bisbee asked which staff would be conducting the interviews. Ms. Davis stated that the psychologists, program officers and substance abuse counselors would be conducting the interviews but caseworkers would also be trained.

Ms. Lewis went on to explain how the final report would look and how the scores are determined.

Chairman Bisbee asked what programs listed in the handout would be eligible as a long term program on the risk assessment.

Ms. Lewis stated that all the programs on the handout are evidence based and should count towards the risk assessment.

Kim Thomas stated that the NDOC should have the new assessments in place as soon as possible.

Ms. Lewis stated that they hope to have everything implemented within a year.

David Smith stated that Dr. Austin testified that the Parole Board should start applying the programs that the NDOC has determined to be evidence based to the risk assessment. The credit should be given only on completed programs.

Ms. Lewis explained how the NDOC has removed two of the three Anger Management classes. (SAMHSA) Anger Management for substance abuse and mental health clients is now the only anger management class.

Commissioner Corda asked about Victim Impact - Listen and Learn class and the Relapse Prevention class.

Ms. Lewis stated that the Relapse Prevention class is just for sex offenders and the Victim Impact class is for all offenders.

Ms. Jackson asked if Relapse Prevention can only be taken after all four phases of STOP have been completed. Ms. Lewis stated that an offender would be able to take relapse prevention without going through the STOP program but it would be more ideal for the inmate to complete all phases of STOP before taking Relapse Prevention.

Commissioner Keeler asked if only high risk sex offenders qualify for the STOP program. Ms. Lewis stated that they try to stay away from programming low risk offenders but do allow low risk inmates to participate in the reentry program.

VIII. **For possible action:** Discussion on the manner in which the Board will apply the result of a sexual assessment prepared in accordance with NRS 213.1214. The Board may act to set policy on what sexual assessment results will override the Nevada Parole Risk Assessment (NPRA). The Board may also act to set policy to apply an aggravating or mitigating factor when the NPRA is not overridden.

David Smith explained that due to the change over to the Static-99 R the Board is receiving a different assessment level for the sex offenders. He recommended that if the inmate receives an assessment of moderate-high that the inmate be scored as a moderate risk.

Dr. Lewis from NDOC spoke of the need to re-examine sex assessments scores and the placement, especially those that score at a 4 or 5. He explained the variances in the statistical risk to re-offend and the (SOTAPS) Sex Offender Treatment and Progress Scale. He also addressed the criminal element in some sex offenders. He also spoke of evidence based practice for sex offenders.

Commissioner Keeler asked if the Parole Board might start seeing some additional information in future risk assessments to include any information that the Board should take into consideration when reviewing a sex assessment. Dr. Lewis stated that the Board may see additional information

depending on the level of knowledge the interviewer had on a particular inmate and some interviewers may not feel comfortable in offering a personal judgement.

Chairman Bisbee stated that the Parole Board would welcome any additional information that may help the Board in considering sexual risk.

Commissioner Corda asked Dr. Lewis about how taking a sex offender program may affect risk. Dr. Lewis stated that an inmate who completed a program such as STOP should have additional SOTAPS information included in the assessment.

David Smith asked if there were any questions about the memo pertaining to agenda item VIII. Mr. Smith stated that the primary concern with the way that the Board is assigning the above average risk is that it may not necessarily translate as a high-risk. He also stated that the Board may want to apply mitigating or aggravating factors to those that fall in a certain risk.

Commissioner Keeler questioned if the Board should be trying to marry the sex offender risk assessment level into the Boards current risk assessment and that it should be something that the Board considers at a later date.

Chairman Bisbee concurred with Commissioner Keeler's uncertainty with combining the two assessments instead of considering them individually.

David Smith stated that current regulations mandated that the Board apply the higher risk level of the two and the Board will need to work within the current regulation. At this point the Board is only able to determine at what score an offender should be considered low, moderate, and high on the sex assessment.

Dr. Caldwell-Barr stated that the psychologists are hesitant about adding additional comments on a sex assessment because they are not comfortable with the Board repeating this information to the inmate. She also had a problem with the Board suggesting to the inmate that they question their score with the psychologists because the statc-99 is a static assessment and the score does not change.

Chairman Bisbee stated that she does not know why the Board would feel that they need to name the psychologists or their comments when discussing the sex assessment at a parole hearing. She issued an administrative directive to no longer discuss with the inmate details of the sex assessment and who performed the assessment. She also noted that this item should be placed on the agenda of the next Parole Board meeting.

David Smith suggested that the Board decide at what point they will call the outcome a high risk and if they would like to establish mitigating and aggravating factors for risk levels.

Chairman Bisbee stated that she is comfortable with a 6 being a high, an average and above average being moderate, and the low and the very low are low.

Motion: Low and very low be low, average, above average and well above average up to six is average, and six and above is high.
Made: Chairman Bisbee
Seconded by: Commissioner Gray

Motion withdrawn

Commissioner Corda had suggestions for applying factors based on the sex assessment score.

David Smith stated that aggravating and mitigating factors will be discussed under agenda item IX.

Motion: That very low to below average be low, average and above average is moderate, and well above average and high be high.
Made: Chairman Bisbee
Seconded by: Commissioner Corda
Votes in Favor: Keeler, Bisbee, Corda, Jackson, Gray, DeRicco
Votes Opposed: None
Motion passed

IX. **For possible action:** Review of the current parole guideline mitigating and aggravating factors. The Board will review and may modify the language and instructions for the use of the most commonly used mitigating and aggravating factors that may be assigned to appear on an order granting or denying parole. The Board may add one or more factors to the standard list of common aggravating and mitigating factors and establish instructions for the assignment of the new factor(s), if any. The Board may remove one or more factors from the standard list of common factors that may no longer be used by the Board.

David Smith introduced item IX and discussed the requested changes as outlined in the memo handout, "Updated list of Common Aggravating and Mitigating factors".

Chairman Bisbee stated she is happy with the suggested changes as outlined in the memo.

Chairman Corda requested to amend the aggravating factor "Institutional Behavior" and feels that this factor should be able to be used in a broader sense to include multiple write-ups.

David Smith agreed that this factor could be changed to include multiple disciplinaries.

Chairman Bisbee asked the Board if there were any other suggestions for revisions. There were no other suggestions.

Motion: Apply the aggravating and mitigating factors as provided in the document provided by Mr. Smith with the exception of the aggravating factor of "High Risk" to remove "well above average" risk. To amend the Institutional Behavior factor to show destructive and or poor institutional behavior that may indicate an uncooperative attitude.
Made: Commissioner Corda
Seconded by: Commissioner Jackson
Votes in Favor: Keeler, Bisbee, Corda, Jackson, Gray, DeRicco
Votes Opposed: None
Motion passed

X. **Information Only:** Update on the status of the request to Board of Examiners for approval of the Parole Board agency travel policy.

Chairman Bisbee stated the policy was approved and has signed acknowledgement and is closed.

- XII. Public Comment. 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 Bisbee asked if there was any public comment.

Public comment – Carson City, NV

No public comment.

Public comment - Las Vegas

No public comment.

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

Motion:	To adjourn meeting.
Made:	Commissioner Gray
Seconded by:	Commissioner Jackson
Votes in Favor:	Keeler, Bisbee, Corda, Jackson, Gray, DeRicco