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NEVADA BOARD OF PAROLE COMMISSIONERS

MINUTES
Meeting of the
Board of Parole Commissioners
May 28, 2020

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

The Board of Parole Commissioners held a public meeting on May 28, 2020, 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 Chairman DeRicco, Commissioner Corda, Commissioner Baker and Commissioner Jackson. Present in the Las Vegas office were Commissioner Christiansen, and Commissioner De La Torre.

Support staff in attendance:

Darla Foley, Executive Secretary
Mary Flores, Administrative Assistant III
Kathi Baker, Management Analyst III
Debra Hausman, Management Analyst I

Members of the public present in Carson City included:

Katie Brady, Deputy Attorney General
Paul Corrado
Nick Shepach

Members of the public present in Las Vegas included:

Ariel Ashtamker, ACLU of NV

II. 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.

SEE PUBLIC COMMENT FOLLOWING AGENDA ITEM III INTRODUCTION

- III. Workshops, Public Comment, and Possible Action:** The purpose of the workshops is to solicit comments from interested persons on the following general topics that may be addressed in the proposed regulations: Topics: (1) The Board to discuss adding to its regulations pursuant to NRS 213.12155, which established a system for geriatric parole for inmates that meet the required criteria; application; hearing; considerations; determinations; and providing other matters properly relating thereto; (2) The Board to discuss adding to its regulations pursuant to NRS 213.632, which established a system for persons who are ordered to participate in and complete a correctional program and 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; and providing other matters properly relating thereto; (3) The Board to discuss adding to its regulations pursuant to NRS 233B.100, which established a system for any interested person may petition an agency requesting the adoption, filing, amendment or repeal of any regulation and shall accompany the petition with relevant data, views and arguments on a form developed by the Board; and providing other matters properly relating thereto. After receiving comments, the Board may take action to amend the proposed draft regulations before they are sent to the Legislative Counsel for review for drafting.

**Workshops for Proposed Regulations on NRS 213.12155, NRS 213.632,
and NRS 233B.100**

May 28, 2020

Overview of Workshops

A public workshop was held on Thursday, May 28, 2020, beginning at 1:00 PM at the office of the Board of Parole Commissioners (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 4000 S. Eastern Ave, Ste 130. Las Vegas, Nevada. The workshops were held as agenda item III on the Board's regularly schedule public meeting. No action was taken on this agenda item, as it was a workshop.

Board Members in attendance in the Carson City office:

Chairman DeRicco
Commissioner Corda
Commissioner Baker
Commissioner Jackson

Board Members in attendance in the Carson City office:

Commissioner Christiansen
Commissioner De La Torre
Commissioner Keeler – Absent excused

Support staff in attendance:

Darla Foley, Executive Secretary
Mary Flores, Administrative Assistant III

Katherine Baker, Management Analyst III
Debra Hausman, Management Analyst I

Members of the public present in Carson City included:

Katie Brady, Deputy Attorney General
Paul Corrado
Nick Shepach

Members of the public present in Las Vegas included:

Ariel Ashtamker, ACLU of NV

II Public comment - Las Vegas, NV

No public comment.

Public comment - Carson City, NV

Paul Corrado

Comments by Paul G. Corrado

Mr. Corrado's comments were presented to the Board as part of the Item III on the agenda for the referenced meeting:

1. Process: Is there any input from the person or persons who will be directly affected by the regulations you promulgate? If not, why not? This would include, but not be limited to, inmates and NVDOC staff, both of whom would be at risk of retaliation without a Union Rep. in the case of staff.
2. Assumption: These regulations are intended to facilitate the release of inmates over 65. Since this is indeed the case, what special considerations will be made to accommodate the requirements of persons with limited mobility, behavior health issues, costly meds and matriculation back into society?
3. What special provisions will be made to accommodate U.S. Veterans who qualify for this special parole category. How will Veteran's issues be addressed, both physical and mental? Can they be sent to a VA facility with a pre-existing condition? How will this and other Veteran's issues be addressed, including, but not limited to, housing, medical treatment, meds, clothes, food, etc.
4. What safeguards will be in place to assure that post parole, a released person will not become homeless? If a person does not have 40 quarters of Social Security Payments, and therefore is not eligible for Medicare, what provisions are in place to ensure the health, safety and general welfare of both the released person, and society at large? Is not one of your goals to reduce victimization?
5. If an inmate does not wish to be paroled, do they have the option to stay incarcerated, and receive the medical attention granted to them? Since NRS 213.12155 states in part, "2. Consideration for geriatric parole may be initiated. . . from: (a) a prison official or employee;" if an inmate meets the criteria for release identified in the law, she/he may be forced from prison. This is reminiscent of the days gone by when an inmate was released, given \$50, and dropped off in front of a liquor store in Reno.
6. What safeguards are in place, if any, to prevent the State of Nevada from paroling an inmate simply to save the cost of treating the inmate's infirmities? Or perhaps their new offense is now contracting COVID 19 virus while incarcerated.
This Board is one of the last places an inmate and society can benefit from the release of non-violent inmates. What regulations you put into place to help these people achieve their potential

to become productive, tax paying, happy citizens again is important work and I would like to thank you for all the effort you put in.

Workshop:

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

Topic 1:

The Board to discuss adding to its regulations pursuant to NRS 213.12155, which established a system for geriatric parole for inmates that meet the required criteria; application; hearing; considerations; determinations; and providing other matters properly relating thereto;

Kathi Baker, Management Analyst III facilitated each topic presented in the workshops and provided that the first workshop discussion would be on legislative changes to NRS 213.12155, Geriatric Parole, which has an effective date of July 1, 2020. This proposed regulation creates a form for the application of geriatric parole and includes verification from the Department of Corrections that the inmate meets the criteria for geriatric parole. If the inmate meets the criteria as verified by the Department, then the inmate will be placed on the next available parole eligibility list and a parole hearing will be conducted.

Public comment - Las Vegas

No public comment.

Public comment – Carson City, NV

No additional public comment

Summary of Testimony

Chairman DeRicco provided that the perfect language for the proposed regulation is not needed and explained that once the proposed regulation is approved by the Board, the proposed regulation will be sent to the Legislative Counsel Bureau (LCB) for review and re-write for the Board to adopt at a later date. Chairman DeRicco stated he previously reviewed the forms created for the proposed regulation and provided that the Nevada Department of Corrections (NDOC) provided input on and agreed with the forms.

Commissioner Corda stated that he had no concerns and felt that the proposed regulation was well written. Commissioner Baker stated that number five of the proposed regulation says the geriatric parole hearing would be conducted in the same general manner as other parole hearings and questioned if victims would be accommodated as well. Chairman DeRicco confirmed that victims would be accommodated in the same manner. There were no further comments regarding the proposed regulation on Geriatric Parole.

Chairman DeRicco addressed the application form and Commissioner Corda asked for clarification with regards to whether the inmate has been convicted of a crime against a child and asked if that meant if the inmate was ever convicted of that crime. Chairman DeRicco clarified that it meant if the inmate was ever convicted of a crime of violence, crime against the child, the sexual offense, vehicular homicide, etc. Chairman DeRicco provided that in order to qualify per

statute, the inmate can never have that conviction. Chairman DeRicco provided there are fewer than 10 inmates that qualify for geriatric parole. There were no more comments on the application for geriatric parole.

Chairman DeRicco provided that the verification form would be sent to NDOC for verification that the inmate qualifies for geriatric parole. Katie Brady of the Attorney General's Office (AG) pointed out that the agenda item regarding the proposed regulation for Geriatric Parole doesn't cover making any decisions on the forms and that the forms would need to be discussed at the next hearing. Ms. Brady provided that the agenda item is just for the proposed regulation and not the forms.

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| Motion: | Approve the proposed draft regulation made today in reference to NRS 213.12155 for submittal to the LCB for review, examination and if appropriate, language revision. |
| Made: | Chairman DeRicco |
| Seconded By: | Commissioner Jackson |
| Votes in Favor: | DeRicco, Jackson, Baker, Corda, De La Torre, Christiansen, |
| Votes Opposed: | None |
| Results: | Motion Passed |

Topic 2:

The Board to discuss adding to its regulations pursuant to NRS 213.632, which established a system for persons who are ordered to participate in and complete a correctional program and 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; and providing other matters properly relating thereto;

Kathi Baker, Management Analyst III provided that the next workshop is the proposed regulation for NRS 213.632 which relates to reimbursement to the Department of Corrections and the Division of Parole and Probation (Division) from a person ordered to participate in and complete a correctional program. If a parolee participates in a correctional program, the Board will require, as a condition of parole, that the parolee reimburse the NDOC and the Division for the cost of his or her participation, to the extent of their ability to pay.

Chairman DeRicco provided background as to why this item was placed on the agenda. Chairman DeRicco provided that he had to complete a project prior to a presentation before the Sunset Subcommittee back in February of this year. One of the items requested on this project was for Chairman DeRicco to list out the sections of interest that authorize or require the Board to adopt regulations and sections of the Nevada Revised Statutes (NAC) that contain the Board's regulations. Chairman DeRicco provided that he discovered that the Board did not have a regulation for NRS 213.632 which was amended in the 2013 Legislative Session.

The heading for this statute is entitled "referral of prisoner or parolee to be considered for participation in correctional program participation as a condition of parole considerations, regulation and limitations." Chairman DeRicco provided that the lack of a regulation appears to have been an oversight and noted that there is a very similar statute which is in NRS 213.625.

Commissioner Corda suggested the language “by the Department of Corrections” to be added after “participation in a correctional program as ordered: to eliminate any voluntary programs that an inmate might have to pay in order to participate. The statute reads that "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."

Katie Brady (AG) suggested adding “as ordered by the Board. Chairman DeRicco read the proposed regulation with the suggested language. “The Board will require as a condition of parole, that the parolee reimburse the Department of Corrections and the Division for the cost of his or her participation in a correctional program, as ordered by the Board, to the extent of the parolees ability to pay as determined by the Department of Corrections and the Division.” There were no other comments.

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| Motion: | Approve the proposed draft regulation changes made today in reference to NRS 213.632 for submittal to the LCB for review, examination and if appropriate, language revision. |
| Made: | Commissioner Baker |
| Seconded By: | Commissioner Corda |
| Votes in Favor: | DeRicco, Jackson, Baker, Corda, De La Torre, Christiansen, |
| Votes Opposed: | None |
| Results: | Motion Passed |

Topic 3:

The Board to discuss adding to its regulations pursuant to NRS 233B.100, which established a system for any interested person may petition an agency requesting the adoption, filing, amendment or repeal of any regulation and shall accompany the petition with relevant data, views and arguments on a form developed by the Board; and providing other matters properly relating thereto.

Kathi Baker, Management Analyst III provided that the next workshop is the proposed regulation for NRS 233B.100, which provides that any person may petition the Board for the adoption, filing amendment or repeal of any regulation. This proposed regulation creates a petition form and the items required on the form.

Chairman DeRicco provided that Katie Brady, DAG indicated to him that the Board needs to adopt a regulation with regards to NRS 233B.100. Ms. Brady provided that later on this meeting agenda, the Board will be dealing with a petition that would have been filed under this regulation had it existed at the time of the submission of the petition. Ms. Brady provided that this statute was enacted in 1965 and it appears that only six entities have adopted the regulation. Ms. Brady provided that because this regulation wasn't in place, the Board accepted Mr. Quintero's petition on whatever form he wanted to provide so that it could meet the requirements of the statute. Ms. Brady provided that this proposed regulation would formalize the process going forward for individuals to be able to challenge or ask for new regulations.

Chairman DeRicco asked Ms. Brady if the Board was able to approve the form that is part of this regulation and Ms. Brady stated she did not believe the agenda item would cover the approval of

the form, but suggested once the proposed regulation is returned from LCB, then the form could be put on an agenda for approval.

There was no public comment.

Commissioner Corda questioned the proposed regulation language that states that the Board shall “notify the petitioner in writing of the Board’s decision regarding the petition within 30 days after the date when the petitioner filed a petition.”. He felt that there might be a period of time for discussion regarding the petition. Ms. Brady (AG) provided that the statute states the petitioner will be notified within thirty days of receipt of the petition.

No further comment.

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| Motion: | Approve the proposed draft regulation made today in reference to NRS 21233B.100 for submittal to the LCB for review, examination and if appropriate, language revision. |
| Made: | Chairman DeRicco |
| Seconded By: | Commissioner Christiansen |
| Votes in Favor: | DeRicco, Jackson, Baker, De La Torre, Christiansen |
| Votes Opposed: | Commissioner Corda |
| Results: | Motion Passed |

Public comment – Carson City

No public comment

Public comment - Las Vegas

No public comment.

- IV. For possible action:** Review of Petition submitted by John Quintero, for Adoption, Filing, Amendment, or Repeal of Regulation NAC 213.512 per NRS 233B.100. The Board to consider the petition and shall either deny the petition in writing, stating its reasons, or initiate regulation-making proceedings.

Katie Brady gave a summary of Mr. Quintero’s arguments. In his petition Mr. Quintero requested a repeal of NAC 213.512 arguing that it’s detrimental to the common good and creates conflict of law. Mr. Quintero argues that it’s the Boards responsibility to create the severity matrix and seeks that the Board alters its regulations to sever its connection to the NDOC severity table. He asks that the Board to amend the NAC’s to be strictly in compliance with NRS 213.10885 requirement that the standards be based on objective criteria. He also contends that while the Boards previous 55 cell matrix was purportedly removed for being ineffective, there was no indication that the previous matrix was ineffective. He further argues that in 2007 the Board made a patently false representation to the Governor that implies the unstated presumption that the NDOC table is objected, was tested by the Nevada Administrative Procedures Act, contains due process protections, and is not a gross over generalization. He argues that because NDOC has never promulgated the table in a regulation subject to the due process protections of NRS chapter 233B, he was deprived of notice and a means to meaningfully challenge the classification. He argues that the regulation creates a conflict of law because the severity table applies the status of a crime

to the weapons enhancement statute which declares itself specifically not to be an offense. He also argues that because the table was not put into the regulation, the regulation is therefore void. He contends that the regulation is a rouse to categorize the greatest number of inmates to be the highest severity level to justify the greater number of parole denials.

Chairman DeRicco stated that he reviewed the petition and believed that NAC 213.512 is appropriate and sees no reason it should be changed at this time.

Commissioner Jackson asked how often the NDOC reviews the severity level table.

Katie Brady stated that although she does not know how often the table is reviewed, there is an internal appeals process through NDOC should an offender believe that the severity level is incorrectly scored and that there is also NAC 213.522 that provides for reassessment by the Board should NDOC correct a severity level.

Commissioner Christiansen asked if Mr. Quintero's concerns about the crime severity table would be better addressed to NDOC.

Katie Brady clarified that Mr. Quintero's petition is to remove all references to the NDOC crime severity table from NAC 213.512 and have the Board use its own severity table.

Chairman DeRicco asked if there were any other discussion from the Board.

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| Motion: | The Board deny John Quintero's petition, in writing, indicating that the Board assigns a severity level for each crime for which parole is being considered and that such a severity level should be the same level assigned to the crime by the Department of Corrections for the purpose of classifying offenders pursuant to NRS 209.341. |
| Made: | Chairman DeRicco |
| Seconded By: | Commissioner Christiansen |
| Votes in Favor: | DeRicco, Jackson, Baker, Corda, De La Torre, Christiansen |
| Votes Opposed: | None |
| Results: | Motion Passed |

- V. 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.

Public comment - Las Vegas, NV

No public comment.

Public comment - Carson City, NV

No public comment.

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

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| Motion: | To adjourn the May 28, 2020, meeting of the Nevada Board of Parole Commissioners. |
| Made: | Commissioner Corda |
| Seconded By: | Commissioner Baker |
| Votes in Favor: | DeRicco, Jackson, Baker, Corda, De La Torre, Christiansen |
| Votes Opposed: | None |
| Results: | Motion Passed |

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