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NEVADA BOARD OF PAROLE COMMISSIONERS

MINUTES

**Meeting of the Board of Parole Commissioners
August 31 ,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 August 31, 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 Verchio.

Support staff in attendance:

- Katie Fraker, Administrative Assistant III
- Mary Flores, Administrative Assistant III

Members of the public present in Carson City included:

- Nathan Hastings, Office of the Attorney General via tele-conference
- Katie Brady, Office of the Attorney General via tele-conference

Members of the public present in Las Vegas included:

NONE

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

Public comment – Carson City, NV

No public comment.

Public comment – Las Vegas, NV

No public comment.

- III. For possible action:** Review/Approval of minutes from the May 28, 2020, Board meetings, and the June 8, 2020, Board Meeting.

Motion: Approve of minutes from the May 28, 2020, Board meetings, and the June 8, 2020, Board Meeting.

Made: Commissioner Jackson

Second: Commissioner Baker

Favor: Chairman DeRicco, Commissioner Baker, Commissioner Corda, Commissioner Jackson, Commissioner Christiansen, Commissioner Verchio

Opposed: None

Results: Motion Passed

- IV. For discussion and possible action:** The Board will consider and act on an anticipated Order issued by the United States District Court, District of Nevada in Does 1-35; and Unknown Named Does 1-1000 v. Adam Paul Laxalt, Attorney General of the State of Nevada; et al, Case No. 2:15-CV-01638-RFB-DJA. The Office of the Nevada Attorney General will provide the Board with an overview of the litigation in connection with our discussion of the expected order/injunction. The Board will determine how to proceed, which may include whether to appeal this ruling. The Board may interrupt the open meeting and exclude the public for the purpose of having an attorney-client discussion of this litigation pursuant to NRS 241.015(3)(b)(2).

Chairman DeRicco asked that this open meeting agenda item be interrupted to exclude the public for the purpose of having an attorney-client discussion of this litigation pursuant to NRS 241.015(3)(b)(2). Members of the public will be called back after the attorney client discussion.

Session Closed.

Session Opened 1:25 PM.

- V. For possible action:** Review of proposed regulation R-065-20 and solicitation of comments. This proposed regulation is necessary to carry out the provisions of NRS Chapter 213, pursuant to NRS 213.632, which established a system for persons who are ordered to participate 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.

Chairman DeRicco provided he reviewed the proposed language for R065-20 that was sent to the Legislative Counsel Bureau (LCB) and the revised language returned by LCB. Chairman DeRicco stated there were changes, but the revised language provided by LCB captures what the Parole Board (Board) submitted to LCB. Chairman DeRicco provided he is in favor of the changes to the proposed language as provided by LCB.

Commissioner Baker commented that the last sentence of Section 1 of the proposed regulation states: *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.*

However, Section 4 of the proposed regulation states: *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.*

Chairman DeRicco provided he may also see a conflict and asked if there were any other comments or discussion. No further comments were made. Chairman DeRicco stated the Board would likely need to amend the language and return the proposed regulation back to LCB for review.

Chairman DeRicco asked the Board if there were any suggested language changes.

Nathan Hastings (DAG) of the Nevada Attorney General's office provided that the Board has the flexibility to take items out of order and to come back to items discussed to be able to facilitate the most efficient way to handle this issue. Mr. Hastings provided that he is attending for Ms. Katie Brady, Deputy Attorney General (DAG) who is the Board's primarily attorney for the Board and that he is not substantively prepared to discuss items that the Board has identified as a potential conflict. He provided that Ms. Brady presumably does know the statutory issue and assisted the Board in the review of the drafted language for submission to LCB. Mr. Hastings stated that the Board may want to bypass agenda items V, VI and VII and move on to the next items with the hope that Ms. Brady (DAG) may be available to join the Board meeting.

Chairman DeRicco agreed with Mr. Hastings (DAG) suggestion and proposed to the Board to return to agenda items V, VI and VII later in hopes Ms. Brady (DAG) will be available and to move on to agenda item VIII.

VIII. For possible action: Review of proposed regulation R-066-20 and solicitation of comments. 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).

Chairman DeRicco provided that he reviewed the LCB changes to the proposed regulation and did not see any changes needed but asked if any members of the Board have any questions or comments regarding this proposed regulation. There were no comments by the Board.

IX. Public Comment for R-066-20. 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 provided that the reason for this item is for public comment for the proposed regulation R-066-20. Chairman DeRicco opened the floor up for solicitation of public comments. Chairman DeRicco provided that a letter submitted by John Quintero will be considered for public comment regarding this agenda item as he was unable to attend this meeting. Chairman DeRicco stated that the Board needs to consider Mr. Quintero's comments and asked if there was any discussion regarding this letter. There was no discussion.

Chairman DeRicco asked if there was any other public comment regarding the proposed regulation R-066-0-20.

Public comment – Carson City, NV

No public present.

Public comment – Las Vegas, NV

No public present.

X. For Possible Action: Review of Intent to Adopt regulation R-066-20. The Board will consider public comments and any business impact and may act to amend and/or adopt the proposed regulation.

Chairman DeRicco provided to the Board that this is the time to consider public comment and any business impact and to act to amend and/or adopt the proposed regulation and asked if there was any further discussion.

Nathan Hastings (DAG) provided that Chapter 233B requires that the Board have in its minutes a statement of the Board's consideration of Mr. Quintero's comment and the rationale of the Board, and if the Board decides to move forward and adopt the regulation in spite of Mr. Quintero's comments, the Board's reasons why it has moved forward with adopting the regulation. Mr. Hastings provided the Board is required to openly discuss and consider what Mr. Quintero said and if the Board decides to move forward without amending to account for Mr. Quintero's comments, then the reason why the Board is doing so.

Commissioner Corda provided that Mr. Quintero's comments are requesting a copy of the application form for R-066-20 (Geriatric Parole) be provided in the prison.

Commissioner Baker provided that Mr. Quintero states that he would like the application form available through the Nevada Department of Corrections (NDOC) law library indexed as a fundamental first amendment right to redress grievances. Commissioner Baker provided that she does not believe Mr. Quintero's comments were a grievance and that she is unaware how these forms are provided to an inmate other than through the caseworkers, so Commissioner Baker did not know how to respond to Mr. Quintero. Commissioner Baker provided that Mr. Quintero is questioning how inmates are to be made aware of this provision.

Chairman DeRicco stated that he is not aware of how the Board can direct the NDOC on how to provide these forms, but Chairman DeRicco agreed that certain documents should be available to qualifying inmates. Chairman DeRicco stated he can reach out the NDOC to see how they can make the

form available to any inmate that may qualify. Chairman DeRicco provided that Mr. Quintero's comments seemed more for the NDOC rather than the Parole Board, but felt that the Board should entertain his comments and if the regulation passes, then Chairman DeRicco will reach out to the Director of the NDOC or the appropriate designee to see how this particular form can be available to inmates.

Chairman DeRicco asked if there were other comments.

Commissioner Corda provided that it could be as easy as the NDOC making a copy from the Board's website and sending it to the NDOC law library and the law library could make copies as needed.

Nathan Hastings (DAG) provided that for the purpose of the legal requirement, it can be as simple as saying we would like it reflected in the minutes that the Board deems that Mr. Quintero's concerns can be addressed without making any amendment to our filed regulation language, because the Board does not think that it is appropriate to address exactly how the NDOC handles Mr. Quintero's concerns in the regulation itself, but the Board deems it appropriate to address Mr. Quintero's concerns by communications with NDOC. Mr. Hastings provided this suggestion would accomplish the Board's legal mandate to have accounted for Mr. Quintero's comments.

Chairman DeRicco provided that the Board can address Mr. Quintero's concerns without changing the language of regulations through communication with the Parole Board and the NDOC.

Motion to adopt regulation R-066-20:

Made: Commissioner Corda moved to accept and approve R-066-20 as reviewed and written, dated July 2, 2020

Second Commissioner Jackson

Mr. Hastings (DAG) provided that the motion should be to adopt the proposed regulation.

Amended Motion to adopt regulation R-066-20

Made: Commissioner Corda moved to adopt R-066-20 as written.

Second Commissioner Jackson second the amended motion.

Favor: Chairman DeRicco, Commissioner Baker, Commissioner Corda, Commissioner Jackson, Commissioner Christiansen, Commissioner Verchio.

Opposed: None

Results: Motion Passed

- XI. For Possible Action:** Review of proposed regulation R-070-20 and solicitation of comments. This proposed regulation is necessary to carry out the provisions of NRS Chapter 213, pursuant to NRS 233B.100, which established a system for any interested person to 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.

Chairman DeRicco provided that the proposed regulation R-070-20 was reviewed at the Board's May 28, 2020 meeting. At the May 28, 2020 Board meeting, the Board reviewed and discussed language and

submitted the proposed language to LCB for approval. Chairman DeRicco asked if any members of the Board would like to discuss this regulation returned from LCB. There was no discussion or questions.

- 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 DeRicco open the floor for public comment on R-070-20 and solicitation of comments.

Public comment – Carson City, NV

No public present.

Public comment – Las Vegas, NV

No public present.

Chairman DeRicco provided that the letter received by Mr. Quintero applies to agenda X and also applies to agenda item VII. Chairman DeRicco provided that as Commissioner Baker previously stated that Mr. Quintero would like the forms for the proposed regulations available. As previously discussed, the Board believes this to be a good idea to reach out to the NDOC to see if the NDOC can make copies of the forms from our website to be available to inmates.

Chairman DeRicco asked the Board if there was any comment regarding Mr. Quintero's written letter, and if there is no comment, does the Board agree that Mr. Quintero's request can be addressed without changing the language to the proposed regulation, R-070-20.

Commissioner Verchio provided she believes Mr. Quintero would like to see language in the proposed regulation that NDOC or the Division will ensure that there is notice of the proposed regulations and the forms be in the law library. Commissioner Verchio provided she has never seen a regulation that proscribed such a request. Commissioner Verchio provided that the Board is not NDOC and the Board can only ask NDOC to make these forms available and give a notice that the entitlement or eligibility is there. Commissioner Verchio said that she does not believe Mr. Quintero's request can be in the language of the proposed regulation directing NDOC to follow this procedure.

Commissioner Jackson provided that she believes that Mr. Quintero would just like these forms available as he references the Pardons Board application as it's available to him at the NDOC. Commissioner Jackson provided that as long as the forms and applications are available to him then that would suffice.

Commissioner Christiansen asked if the form developed by the Parole Board will be the process? Chairman DeRicco confirmed that is correct.

Commissioner Corda stated that the Board could proceed knowing Mr. Quintero's concerns regarding the forms and that the Board can proceed with the LCB language for R-070-20 and that the Board will subsequently work with the NDOC to provide copies of forms to the NDOC programs.

Chairman DeRicco provided that Mr. Quintero concerns and comments have been addressed without changing the language to R-070-20. And these will be reflected as a part of this meetings minutes.

- XIII. For Possible Action:** Review of Intent to Adopt regulation R-070-20. The Board will consider public comments and any business impact and may act to amend and/or adopt the proposed regulation.

Chairman DeRicco provided that the Board has discussed this proposed regulation on May 28, 2020 and again at today's meeting in agenda item XI and has allowed public comment on agenda item XII. He provided that this is a time to consider those comments and any business impact before acting to amend and/or to adopt the proposed regulation. Chairman DeRicco asked if there was any further discussion at this time before a motion is requested. There was no further discussion. Chairman DeRicco asked if there were any corrections to the LCB language. There were no corrections.

Motion to adopt regulation R-070-20:

Made: Commissioner Baker moved to adopt R-070-20 submitted by the LCB.

Second Commissioner Christiansen

Favor: Chairman DeRicco, Commissioner Baker, Commissioner Corda, Commissioner Jackson, Commissioner Christiansen, Commissioner Verchio.

Opposed: None

Results: Motion Passed

Chairman DeRicco provided that the Board will now move back to agenda item V. Chairman DeRicco asked Mr. Hastings if the Board take a five-minute break to see if Ms. Brady would be available to provide guidance on agenda items V, VI and VII. Mr. Hastings stated that Ms. Brady is now available.

Ms. Katie Brady (DAG) joined the meeting via conference call.

Chairman DeRicco provided that agenda items were taken out of order and most agenda items have been addressed except items V, VI, and VII. Chairman DeRicco provided that the Board had an issue and would like Ms. Brady's advice. Chairman DeRicco called agenda item V.

- V. For possible action:** Review of proposed regulation R-065-20 and solicitation of comments. This proposed regulation is necessary to carry out the provisions of NRS Chapter 213, pursuant to NRS 213.632, which established a system for persons who are ordered to participate 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.

For the record, Chairman DeRicco brought up previous items discussed so Ms. Brady would be aware of what was discussed earlier in the meeting. Chairman DeRicco provided that the Board discussed the language for R-070-20 in the May 28, 2020 workshop. The proposed language was sent to LCB and LCB has returned the re-written language.

Chairman DeRicco provided Commissioner Baker brought forward a potential conflict in the regulation. Chairman DeRicco provided that under Section 1 of the proposed regulation it appears it may conflict with Section 4 on who determines if the inmate pays for the correctional programs. Chairman DeRicco asked if Ms. Brady (DAG) agrees if there is a conflict within the regulation and if so, what remedies are suggested for corrections.

Mr. Hastings (DAG) provided he will be signing off since Ms. Brady is available to attend the meeting via tele-conference.

Ms. Brady provided that her understanding is that Section 1 refers to correctional programs and Section 4 refers to judicial programs.

Chairman DeRicco provided that what was previously discussed was that Section 1 states “as determine by the Department and the Division”, as far as the reimbursement costs and Section 4 indicates “as determined by the re-entry court”. Chairman DeRicco provided the Board saw these sections as a potential conflict.

Katie Brady provided that Section 1 refers to when an individual is ordered to complete a correctional program which NDOC would facilitate, which is why the NDOC and the Division work together to determine the ability to pay. Ms. Brady provided Section 4 refers to a judicial program would be ordered to complete by the court, so the court would be better able to determine the ability to pay for that program.

Chairman DeRicco provided that he wants to ensure the correct people are ordering the reimbursement. Chairman DeRicco inquired if Ms. Brady (DAG) saw any conflicts in the regulation as written in this proposed regulation.

Ms. Brady provided she did not see any conflicts and that both sections point to the appropriate agency that would make the determinations based on whether the program is a correctional program or a judicial program. Ms. Brady provided this determination is her opinion based on the regulation language.

Chairman DeRicco asked the Board if there was further discussion.

Commissioner Baker provided that she agreed with Ms. Brady’s explanation and understands that Section 1 funding goes to the NDOC and the Division and Section 4 funding goes to the court.

Chairman DeRicco asked if there was further discussion.

- VI. 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 DeRicco provided that the purpose for this public comment session is regarding the proposed regulation R-065-20 and open the floor for solicitation of comments.

Public comment – Carson City, NV

No public present.

Public comment – Las Vegas, NV

No public present.

- VII. For possible action:** Review of Intent to Adopt regulation R-065-20. The Board will consider public comments and any business impact and may act to amend and/or adopt the proposed regulation.

Chairman DeRicco provided that having discussed this agenda item at this meeting and the May 28, 2020 meeting and allowing the opportunity for public comment on this agenda item and agenda item VI and any business impact, the Board may act to amend and/or adopt the proposed regulation.

Chairman DeRicco asked if there was any further discussion prior to requesting a motion. There were no additional comments.

Katie Brady (DAG) provided that Chairman DeRicco needed to state for the record that the Board did not receive any public comment. Chairman DeRicco provided for the record that the Board did not receive any public comment for this proposed regulation.

Motion to adopt regulation R-065-20:

Made: Commissioner Corda moved to adopt R-065-20 as written and amended by the LCB on June 23, 2020

Second Commissioner Jackson

Favor: Chairman DeRicco, Commissioner Baker, Commissioner Corda, Commissioner Jackson, Commissioner Christiansen, Commissioner Verchio.

Opposed: None

Results: Motion Passed

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

Public comment – Carson City, NV

No public present.

Public comment – Las Vegas, NV

No public present.

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

Motion to adjourn the August 31, 2020 meeting:

Made: Commissioner Baker motion to adjourn the August 31, 2020 meeting of the Board of Parole Commissioners

Second Commissioner Verchio

Favor: Chairman DeRicco, Commissioner Baker, Commissioner Corda, Commissioner Jackson, Commissioner Christiansen, Commissioner De La Torre.

Opposed: None

Results: Motion Passed