

MINUTES
of the meeting of the
BOARD OF PAROLE COMMISSIONERS

January 20, 2011

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 January 20, 2011, 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., video conference to Parole Board Office, 4000 S. Eastern Avenue, Ste. 130, Las Vegas, NV.

I. Open Meeting, Call to order, roll call 1:10 p.m.

The meeting was called to order by Chairman Bisbee. Present in Carson City were Chairman Bisbee, Commissioner Corda, and Commissioner Jackson. Present in Las Vegas were Commissioner Keeler, Commissioner Silva and Commissioner Gray. Commissioner Endel was not present.

Support staff in attendance:

Kathi Baker, Executive Secretary
David Smith, Hearing Examiner III
Denise Davis, Administrative Assistant III

Members of the public present in Carson City included:

Tony DeCrona, Lieutenant, Division of Parole and Probation
Nancy Tiffany, Division of Parole and Probation
Julie Towler, Deputy Attorney General, Office of the Attorney General
Geoff Dornan, Journalist, Nevada Appeal
Tonya Brown, Advocate
Alexandra Davis
Patrick S. Davis

Members of the public present in Las Vegas included:

B. Stankus, Sergeant, Division of Parole and Probation
Linda Waskom, Management Analyst II, Division of Parole and Probation
Lieutenant Tomely, Division of Parole and Probation
Amy Dillinger, Department of Public Safety
Mike Sliva, Sergeant, Division of Parole and Probation
Toni Billich, Parole Officer, Division of Parole and Probation
Flo Jones

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 any member of the public that would like to make comments regarding anything other than the items listed on the agenda to come forward and limit their comments to 3 minutes. Chairman Bisbee reminded public that no action can be taken under this item.

Public comment – Carson City, NV

Tanya Brown, advocate for the inmates and advocate for the innocent. A copy of the document Ms. Brown submitted will be included in the physical minutes of the Board. Ms. Brown discussed her thoughts on quasi-judicial meetings.

Mr. Patrick Davis approached for public comment regarding lifetime supervision recidivism rates in several other states. (No copies were submitted.)

Public comment - Las Vegas

Flo Jones, Advocate. Ms. Jones had questions regarding the handout packet and Assembly Bill 18 (AB18). Ms. Jones inquired if the study done by Dr. Austin regarding programming and the recidivism rate will be available to the public and also made comment regarding lifetime supervision and controlled substances.

III. Review/Approval of minutes from the September 2, 2010 and October 12, 2010 agendas.

Motion: Approve minutes of September 2, 2010
Made by: Commissioner Gray
Seconded by: Commissioner Jackson
Votes in Favor: Gray, Keeler, Silva, Bisbee, Corda, Jackson
Votes Opposed: None

Motion: Approve minutes of October 12, 2010
Made by: Commissioner Keeler
Seconded by: Commissioner Jackson
Votes in Favor: Gray, Keeler, Silva, Bisbee, Corda, Jackson
Votes Opposed: None

IV. Discussion and possible action regarding the Operations of the Board. The Board may act to approve the revised version of the Operations of the Board.

Due to law changes over the last several sessions, virtually the entire Operations of the Board (OOB) was no longer relevant when compared to statute and regulations, and a major revision has been completed. Chairman Bisbee asked the Board for any comments or recommendations and stated there will be changes in the format, but not content if the Board approves the OOB as drafted. A cover sheet and table of contents will be added to the OOB.

Commissioner Jackson commented on the Nevada Board of Parole Commissioners Code of Ethics and questioned if it would be appropriate to include *in recognition and acceptance of the responsibilities inherent in the profession of corrections and public safety.*

Motion: To change the Code of Ethics statement to add *“the profession of corrections and public safety.”*
Made by: Commissioner Jackson
Seconded by: Commissioner Corda
Votes in Favor: Gray, Keeler, Silva, Bisbee, Corda, Jackson
Votes Opposed: None

Motion: To accept the revision as presented in the packet on the Operations of the Parole Board.
Made by: Commissioner Silva
Seconded by: Commissioner Corda
Votes in Favor: Gray, Keeler, Silva, Bisbee, Corda, Jackson
Votes Opposed: None

V. Consideration and possible action by the Board for changes to standard and special conditions of supervision.

Chairman Bisbee explained the different documents under agenda item # V.

Document #1 - standard parole agreement.

Document #2 - standard conditions for current parolees.

Document #2A - NRS 213.1245

Document # 3 - additional conditions for a person convicted of a sexual offense on a child under the age of fourteen.

Document # 4 - list of special conditions which are mainly used, but others can be added as needed.

Document # 5 - recommended agreement for institutional parole. The Board has found when parole is granted, standard conditions of parole that would be given to an inmate paroling to the street, are not necessarily relevant to someone that is currently incarcerated and is paroling to a consecutive sentence.

Document # 6 - illustrates a portion of the Adam Walsh law (#21 & #22 is part of the Adam Walsh law that has a current injunction). The short period of time that law was imposed in Nevada, those two conditions were added as mandatory for lifetime supervision. Chairman Bisbee directed these mandatory conditions be removed from Division's database as someone could be given the incorrect parole agreement in error.

Document #7 - current lifetime supervision agreement - mandatory conditions of supervision. NRS allows the Board to make exceptions to the mandatory conditions, but exceptions require the Board be very explicit in writing why a particular condition of supervision would be omitted. Item 18 and 19 of Document #7 are frequently excluded by the Board when there is a sex offense involving two adults with no indication that there is any danger to children in a sexual manner.

Document #8 & #9 - lifetime supervision for sex offender's worksheet which mirrors the conditions (Document # 7), (shows the Board reasons for exclusion of particular conditions and how lifetime supervision hearings are worked up).

Document # 10 is NRS 213.1243

Document #11 does not exist.

Document #12 is NAC 213.290

Additional document – Divisions recommended changes to lifetime supervision rules and conditions.

Discussion regarding new parole agreement for institutional parole with an explanation given by Mr. David Smith stating that if an offender is granted parole to a consecutive sentence and then they are granted parole to the community on the subsequent sentence, the current order states that the conditions that are set at that hearing apply to all previously granted paroles. When the offender receives the order granting parole on the consecutive sentence, they would apply that order as far as the conditions, to that case and the previously granted one. So a new parole agreement would be created stating such. If they expire the subsequent sentence, this fact and prior conditions set requires them to create a release plan and for the Board to set any special conditions. Then the Board needs to set conditions before they are released. This is the process. Mr. Smith questioned if the Division had any issues regarding the two parole agreements and asked if they would like to make a statement. Lieutenant Tony DeCrona, of the Division stated the agreements were reviewed and the Division has no issues with the document.

Lt. DeCrona explained the Division recommended changes to lifetime supervision document #7. Condition # 4 - Controlled Substances. Current language does not address "Failure to submit to testing constitutes a violation." On the lifetime supervision agreement failure to submit to a test for intoxicants does constitute a violation. The Division is asking the requested language be included in condition #4 (Controlled Substances). It was determined that the request to change the wording is for consistency. Commissioner Jackson stated she believe the language should be consistent with intoxicants (rule #3) and controlled substances (rule #4).

Rule # 5 - Weapons. Chairman Bisbee understood this change actually makes it easier for a person on lifetime supervision that has jobs that require the use of box cutters and particular tools. That the person gets it approved all at once, the Division is aware of what the person is doing and the person is not in violation of the weapon rule. Lt. DeCrona confirmed.

Associates - The Division does not want to allow people to go back to their old cellmates and have contact with them, unless they have a family member incarcerated, which is where permission would be afforded. This would include association with other people that the Division supervises that may have a gross misdemeanor. Commissioner Jackson stated the rule already does read the person needs permission prior to associating with and ex-felon, etc.

18 – no contact with person under 18 years of age. The recommendation is to remove "in a secluded environment". The Board noticed per NRS 213.1245(k) has the correct language. The Board needs to change the language on the lifetime supervision agreement under # 18 to read as listed in NRS 213.1245 – which is the recommendation of the Division. Written permission from the supervising officer was discussed. Lt. DeCrona stated the on-call officers have a laptop they share amongst themselves and have access to OTIS at all times – chronos can be entered – they can go into an offenders record and find out if there's a chronological entry that someone has gotten permission. Commissioner Keeler inquired how practically someone would live with the wording "no contact with someone under 18" as there's always going to be contact in the community and why "in a secluded environment" was excluded from the proposed language. Lt. DeCrona stated if the current rule is to include the final sentence of NRS2131245 (k), then "secluded environment" would be included. Chairman Bisbee stated the only thing the Board needs to decide on is if they change the language to include written permission also. Commissioner Jackson said the question has come up as well as "what exactly is secluded?" She asked if there was any definition of "secluded" anywhere with the division. Lt. DeCrona did not have a definition of secluded, but he explained when he supervised lifetime offenders, he would tell offenders that if they were in the same room with their stepchild under the age of 18 and the Stepmother is present that if the Stepmother left the room, then the offender should leave the room.

Mr. Smith stated regular paroles have standard conditions that there is never a time the Board doesn't include at least one of those conditions. But on the lifetime supervision agreement, the Board has conditions that they wouldn't necessarily impose in every single case. Mr. Smith proposed setting those conditions that are automatic to everyone no matter what their situation is and then have a worksheet with special conditions. Particularly like "not to be around a playground" because there are going to be people that this condition doesn't apply. Chairman Bisbee stated that the most commonly excluded conditions are # 18 & #19.

Rule # 20. The Division wants to add "vehicle and areas under your control" and add "its agent". Mr. Smith said this recommendation would allow a sheriff or agent of the Division do unwarranted searches for a person on lifetime supervision. Chairman Bisbee asked Lt. DeCrona to give an explanation as to why the Division would not be present with another law enforcement agent present. Lt. DeCrona stated when the officer gets a call in the middle of the night that the person is stopped or there's information as far as some violation within the home. It would allow a Division supervising officer to give the law enforcement officer the authority to go ahead and search prior to their arrival on the scene. Chairman Bisbee stated this was confusing because if there was an officer responding to an incident at home, they already have the right to search if it had to do with

the fact that they were there to begin with. Lt. DeCrona stated it would depend upon the circumstances.

Lt. DeCrona questioned the Board in reference to the ACLU vs. Masto decision and the agreements that were provided to persons between the time of the law instituted and the time the injunction hit and if they needed to be changed. Chairman Bisbee responded yes, they need to be changed, which is why the Board is requiring the removal of that document out of the Division database. Lt. DeCrona stated the Division will remove it.

Lt. DeCrona also questioned if those conditions are no longer valid, do modifications need to be submitted? Chairman Bisbee said it wouldn't need to be modified because it's not valid. Mr. Smith stated conditions 21 & 22 these were specifically written to apply only to tier 3 offenders. Chairman Bisbee stated the Board needed to seek some counsel on this subject.

Motion: To close the meeting to seek counsel on what direction the Board should be giving the Division of Parole and Probation.
Made by: Chairman Bisbee
Seconded by: Commissioner Jackson
Votes in Favor: Gray, Keeler, Silva, Bisbee, Corda, Jackson
Votes Opposed: None

Closed session began at 2:13 p.m.

Motion: To go move to go back into open session
Made by: Chairman Bisbee
Seconded by: Commissioner Silva
Votes in Favor: Gray, Keeler, Silva, Bisbee, Corda, Jackson
Votes Opposed: None

Open session began at 2:19 p.m.

Chairman Bisbee stated the Board would receive additional information from counsel on whether retroactive changes need to be made to lifetime supervision on conditions #21 & 22, document #7.

Board had no further comments. Chairman Bisbee opened to public comment prior the Board taking action on any of the items.

Public Comment – Las Vegas

Sergeant Manoukian, Parole and Probation addressed parole agreement regarding intoxicants and controlled substances. Would like uniformity in the language between rule # 3 and rule #4 and suggests the portion of rule # 4 that reads "You shall not use, purchase or possess "should also be used for rule #3 – intoxicants.

Lt. Tom Ely, Parole and Probation stated they were unaware these documents discussed were on the agenda. The Southern Parole and Probation office will be reviewing the documents and providing input to Lt. DeCrona if the Board puts these items back on the next agenda to be re-addressed at next Board meeting.

Flo Jones commented under rule # 3 (intoxicants) and rule # 4 (controlled substances) in addition to the person not using or being in possession, but add not be in the company of anyone who is doing so.

Public Comment – Carson City

Alexandra Davis read a statement regarding condition #20 (Search) of the Lifetime Supervision Agreement, document # 7. The Board allowed Ms. Davis to read a letter on behalf of her Mother, Cynthia Davis, which addressed the same issues presented by Ms. Davis.

Patrick Davis, private citizen discussed changes proposed by Parole and Probation. NRS 213.1245 is referred to as conditions. Mr. Davis felt lifetime supervision fell under NRS 213.1243 and these are mandatory conditions. Mr. Davis stated in reading the law, he sees no mandatory conditions to be placed except the requirement to have your supervising officer made aware of your residence each month. Concern that a separate law is being used to define the conditions of lifetime supervision, which is supposed to be a civil penalty as defined in Senate Bill 192 (SB192, 1995) not to be punitive in nature. By instituting the mandatory conditions, Mr. Davis feels it is punitive in nature.

Tonya Brown, advocate for the inmates discussed the definition of what is considered a deadly weapon, suggested a change in association to read "you shall not *knowingly* associate with ex-felons" and a polygraph should be allowed.

Motion: Go into a ten minute recess
Made by: Chairman Bisbee
Seconded by: Commissioner Jackson
Votes in Favor: Gray, Keeler, Silva, Bisbee, Corda, Jackson
Votes Opposed: None

Recess began at 2:45 pm

Motion: To reconvene the meeting of the Nevada Board of Parole Commissioners
Made by: Chairman Bisbee
Seconded by: Commissioner Silva
Votes in Favor: Gray, Keeler, Silva, Bisbee, Corda, Jackson
Votes Opposed: None

Meeting reconvened at 2:57 pm

Document #1 – Parole Agreement

Motion: That special condition # 3 – Intoxicants be removed from the standard conditions and moved to a special condition and be added in addition to the currently special condition noted as number 8 (no drinking whatsoever) and have the language written "to an excess".
Made by: Commissioner Corda
Seconded by: Commissioner Jackson
Votes in Favor: Gray, Keeler, Silva, Bisbee, Corda, Jackson
Votes Opposed: None

Document # 5 – Proposed Institutional Parole Agreement

Motion: To accept the Institutional Parole Agreement as presented.
Made by: Commissioner Keeler
Seconded by: Commissioner Silva
Votes in Favor: Gray, Keeler, Silva, Bisbee, Corda, Jackson
Votes Opposed: None

Document # 6 –Lifetime Supervision Agreement

Motion: To direct the Division of Parole and Probation to remove condition 21 and 22 from the Lifetime Supervision Agreement.
Made by: Commissioner Jackson
Seconded by: Commissioner Corda
Votes in Favor: Gray, Keeler, Silva, Bisbee, Corda, Jackson
Votes Opposed: None

Document # 7 – Current Lifetime Supervision Agreement

Motion: To table Document # 7 – Current Lifetime Supervision Agreement to a future date.
Made by: Commissioner Gray
Seconded by: Commissioner Keeler
Votes in Favor: Gray, Keeler, Silva, Bisbee, Corda, Jackson
Votes Opposed: None

VI. Discussion and possible action regarding medical marijuana issues and the impact on supervision.

Chairman Bisbee requested the Division of Parole and Probation present issues the Division is having with Lifetime Supervision and medical marijuana rules. Specific people are not to be discussed, just the topic in general.

Lieutenant Tom Ely discussed serious issues with sex offenders and lifetime supervision offender applying for medical marijuana. The way NRS Chapter 453 reads; there is very little the Division can do once an offender has applied. The only rule is that those applying cannot have been convicted of an offense in dealing drugs. An offender can have a criminal history including drug abuse and sex crimes and per the statute, the offender can still qualify for medical marijuana. Most offenders are using the medical marijuana to get around the Board and the rules and to gain access to drugs. The Division has offender that have used reasons on their applications that include flat feet to anxiety. Although some may feel these reasons qualify for a debilitating medical condition, the Division feels there needs to be a fair process for both the Board and for the Health Division. The Health Division issue would have to be addressed legislatively. The Division believes the Board can develop a process to give approval for an offender to gain access to medical marijuana. Concern over how the Division can effectively manage an offender who continues to use drugs through this program. If an offender continues to abuse drugs, rehabilitation will not be effective. The Division is looking for a process to make it both fair and reasonable for the offender, Division and the Board.

NRS 453.050 addresses the amount of marijuana in a person's possession, but not how much can be used and lists the medical reasons for issuing medical marijuana. This includes any medical condition that is classified as a chronic or a debilitating medical condition. It's more likely an offender will fall into recidivism if they are continuing to abuse a drug even if it's legal for them. Chairman Bisbee inquired if Lt. Ely (while during his research) found that the Board would have the ability to impose or enforce such a condition – if a condition was placed. No statutory authority was found to override the law, but there's nothing in NRS 453 that prevents the Board from establishing a process where the offender would apply to the Board for permission to ask for a medical marijuana card. Lt. Ely suggested for those requesting a medical marijuana card, that a hearing be held with a competent medical authority present to give valid reasons for the inmate receiving a medical marijuana card and if the Board approves it, then they can go ahead with their application process. The Division is not looking to deny those who need the relief but looking to deny those who are using it as an excuse to continue to get high.

Lt. Ely stated once they have the marijuana card from the Nevada Department of Health, a prescription is no longer needed. It can be bought, get it from someone that is growing it, or they

can grow it themselves. There will be some requested changes in the statute by the LVMPD for the legislative session because of issues with the grow houses. Not enough definition or control. Lt. Ely stated that marijuana is detrimental to the medical and mental success of most offenders. Chairman Bisbee stated she would not question a legitimate prescription produced by a medical authority. She understands the issue, but there's no indication under NRS that the Board can impose not using a legal prescription. Technically it could be a condition for lifetime supervision that marijuana cannot be used in any manner, but it cannot be enforced because the law clearly states if they have legitimate legal marijuana, that they can't be prosecuted. Lt. Ely would like the offender to have to ask the Board for permission to submit an application to the Health Board. Commissioner Corda stated that the Board has no medical background and couldn't deny any request that's been submitted through a medical professional. Lt. Ely wants to give the parolee a process to apply, asks the Division of Parole and Probation first and supply with the information, if it's reasonable, then the Board would grant them permission to apply for medical marijuana. The parolee's doctor could appear before the Board and explain the reason.

Mr. Smith read NRS 213.123 which talks about imposition of tests to determine use of controlled substance as a condition of parole. "Upon granting of parole to a prisoner the Board may, when the circumstances warrant, require as a condition of parole that the parolee submit to periodic tests to determine whether the parolee is using any controlled substance. Any such use, except the use of marijuana in accordance with provisions of Chapter 455A of NRS or any failure or refusal to submit to a test is grounds for revocation." So even if a process was set up, the statute says you can't revoke.

The Division is interested in possibly exploring possible legislation on this subject. Linda Waskom, Management Analyst II, Division of Parole and Probation discussed how other states are handling the issue of medical marijuana. Sgt. Mike Sliva of Parole and Probation parolees are not allowed to use any type of narcotics which includes marijuana while under therapy according to ATSA which is the governing body of treatment providers. Chairman Bisbee stated as of now, the statutes are very clear as to the abilities of the Board.

Motion: The subject warrants further discussion and legislation action and to table item VI to a later date, with additional information provided to the Board
Made by: Commissioner Jackson
Seconded by: Commissioner Corda
Votes in Favor: Gray, Keeler, Silva, Bisbee, Corda, Jackson
Votes Opposed: None

Motion: To adjourn the meeting of January 20, 2011
Made by: Commissioner Silva
Seconded by: Commissioner Gray
Votes in Favor: Gray, Keeler, Silva, Bisbee, Corda, Jackson
Votes Opposed: None

Meeting adjourned at 3:30 p.m.