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NEVADA BOARD OF PAROLE COMMISSIONERS

MINUTES
Of the meeting of the
BOARD OF PAROLE COMMISSIONERS

August 31, 2011

Minutes approved on March 12, 2012

The Board of Parole Commissioners held a public meeting on August 31, 2011, beginning at 1:30 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 1:30 p.m.

The meeting was called to order by Chairman Bisbee. Present in Carson City were Chairman Bisbee, Commissioner Corda, Commissioner Endel and Commissioner Jackson. Present in Las Vegas were Commissioner Keeler and Commissioner Silva. Commissioner Gray was not present – notice was given in advance to Chairman Bisbee regarding his absence. Chairman Bisbee thanked Ms. Brown for notifying her of an error on the August 15, 2011 agenda regarding the meeting start time, which is the reason the meeting was rescheduled for August 31, 2011 at 1:30 p.m.

Support staff in attendance:

- Kathi Baker, Executive Secretary
- David Smith, Hearing Examiner II
- Lupe Garrison, Hearing Examiner I
- Alan Jordan, Management Analyst III
- Scott Weisenthal, Hearing Examiner I
- Denise Davis, Administrative Assistant III

Members of the public present in Carson City included:

- Tonya Brown, Advocate
- Alexandra Davis, Advocate
- Cynthia Davis, Advocate
- Patrick Davis, Advocate
- Elliezuar Graham
- David Helgerman, Lieutenant, Division of Parole and Probation
- Pat Hines, Advocate
- David Tole, Lieutenant

Julie Towler, Deputy Attorney General, Office of the Attorney General

Members of the public present in Las Vegas included:

Flo Jones, Advocate

Laurie Johnson, Advocate/citizen

II. Public Comment. No action may be taken upon a matter raised during a period voted 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 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 – Las Vegas

No public comment.

Public Comment – Carson City, NV

Tonya Brown, advocate for the inmates made comment regarding re-discussing lifetime supervision conditions “Weapons”. Ms. Brown stated this was discussed in a previous meeting and was not noted in the minutes. Ms. Brown would like this subject brought back up for discussion.

Patrick Davis, advocate read prepared remarks from a letter he stated as a member. The prepared remarks are an attachment to the minutes listed as attachment 1. Prepared remarks were in regard to the recidivism rates for lifetime supervision offenders in other States.

Alexandra Davis, advocate read prepared remarks. The prepared remarks are an attachment to the minutes listed as attachment 2. Prepared remarks were in regards to the injunctions placed in relation to the Adam Walsh Act and when it went into effect.

Pat Hines questioned the definition of certified programs Chairman Bisbee explained a certified program is taught by staff or a professional, has had an efficacy study that shows the program is an approved syllabus (STOP, OASIS, ARCH, APE) and any vocational training programs. Ms. Hines questioned the difference between a technical violation versus a new felony. Chairman Bisbee stated the Board is notified if a revocation is defined as a technical versus a new crime. Ms. Hines had questions regarding interim sanctions in which Chairman Bisbee referred Ms. Hines to the Division of Parole and Probation (P & P). The Chairman noted P & P is making a concerted effort to not bring people back before the Board if it's not absolutely necessary.

Cynthia Davis, member of Nevadans for Civil Liberties read prepared remarks. The prepared remarks are an attachment to the minutes listed as attachment 3. Prepared remarks were in regard to definitions related to conditions of lifetime supervision and improper search.

Ellie Graham, member of the public serving lifetime parole, discussed P & P supervision issues regarding his employment, regular pay stubs and residence and his supervising officer's directives. Mr. Graham submitted a letter of recommendation from his employer to the Board.

David Tole, member of Nevadans for Civil Liberties read prepared remarks. The prepared remarks are an attachment to the minutes listed as attachment 4. Prepared remarks were in regard to trends in sex offender management.

II. For possible action: Review/Approval of minutes from the January 20, 2011 and February 24, 2011 meetings. Comments from members of the public will be considered.

Chairman Bisbee noted the time and effort put into the January 20, 2011 and February 24, 2011 meeting minutes. Chairman Bisbee asked if any member of the public that would like to make comments regarding agenda item III.

Public Comment

Patrick Davis, advocate read prepared remarks from a letters. The prepared remarks are an attachment to the minutes listed as attachments 5 & 6. Prepared remarks were in regard to Mr. Davis' belief of bias in the minutes, the Board's representation of the meeting and items submitted for the record, issues downloading documents from the Board's website and meeting handout documents not available for pickup prior to the meeting. Chairman Bisbee stated the documents are physically available to the public at the same time they are made to the Board and that an error was made by not giving Mr. Davis the documents prior to the meeting, which will be corrected. Chairman Bisbee stated that the Board's best effort is made to get the meeting documents on the website; however the website is run by the Department of Correction (NDOC) and is at times unavailable.

Kathi Baker, Executive Secretary to the Board commented that minutes are not transcribed, but condensed and copies of meeting recordings are available upon request.

Motion: To approve the minutes of January 20, 2011 and February 24, 2011.
Made by: Commissioner Corda
Seconded by: Commissioner Jackson
Votes in Favor: Commissioners Keeler, Silva, Bisbee, Corda, Jackson, Endel
Votes Opposed: None
Motion Passed

III. For possible action: Conditions of Lifetime Supervision of Sex Offenders. The Board may consider changes, and may act to change, the standard conditions of Lifetime Supervision of Sex Offenders. Comments from members of the public will be considered.

Chairman Bisbee asked Lt. Helgerman to discuss the meeting handout Memorandum dated July 27, 2011

made by the Division of Parole and Probation. David Helgerman, Lieutenant, read the meeting handout memorandum of July 27, 2011 and clarified the Division of Parole and Probation is requesting the wording for Rule 18 read as it did in NRS 213.1245 in 2005, prior to the Adam Walsh Law. Chairman Bisbee questioned "secluded environment". Lt. Helgerman did not have a legal definition for secluded environment but stated the dictionary definition states "an area removed from the view or presence of others" and believes most officers would abide by this definition.

Rule 20 – Search clause. Lt. Helgerman read the reason for this request from the meeting handout memorandum of July 27, 2011. Lt. Helgerman discussed that due to recent high profile cases where if the officer needed to establish reasonable cause first, the officer would not have found information which led to the rest of the search; which in one case, ultimately led to a person being charged with 3 counts of murder. Chairman Bisbee questioned and Lt. Helgerman confirmed that the Divisions request is consistent with California's search clauses. Lt. Helgerman discussed other States search clause language. Lt. Helgerman stated the Division does not train nor tolerate any officers conducting a harassing, capricious or arbitrary search. The Board had no questions for Lt. Helgerman.

Mr. David Smith, Hearings Examiner II discussed and explained the meeting handout Memorandum dated August 10, 2011 regarding suggested changes to the standard conditions of lifetime supervision. Mr. Smith reviewed the Legislative Counsel Bureau's booklet posted online regarding the effect of the injunction that was put against those bills that took place. Page 3 of the memorandum shows NRS213.1243 prior to the permanent injunction changes and then provided the revisions made after 2005. The revisions were not incorporated into the new version

listed on their website. Page 4 of the memorandum is the potential version of how the later revisions would be incorporated into the statute. When conditions were reviewed and the way the changes to the statutory revisions were made going back to the previous version, condition # 15 (no contact version) was changed more appropriately with the statute if properly revised.

Special condition # 2 – Residence - a mandatory condition of lifetime supervision had been implemented. Page 2 of the memorandum shows 2 suggested versions revisions to special condition #2 based on the mandatory condition. Version 1 doesn't read exactly the way the statute says it should read, but Mr. Smith believes the Board can word the version its way. Version #2 is the statutes requirements (change made in 2007 SB354) which were not part of the injunction. Chairman Bisbee clarified Mr. Smith is requesting additional changes to the conditions of lifetime supervision recommending a change on the no contact and residence rules. Mr. Smith provided NRS 213.1243 which refers that lifetime supervision shall be deemed a form of parole for the limited purposes of the applicability of certain statutory provisions. The Board had no questions for Mr. Smith.

Chairman Bisbee opened this item to members of the public who wish to make comment on agenda item IV.

Public Comment

Tanya Brown, advocate recommended changes to lifetime supervision rules #5 & #6. Weapons to include "*with the exception of steel toe work boots*" stating if a person kicks someone wearing steel toe boots, they could be considered a deadly weapon and would receive an enhancement. Ms. Brown stated in the minutes dated January 20, 2011, page 6 Ms. Brown requested Rule #6 – Associates "*not knowingly* associate with ex-felons be considered. Ms. Brown requested this change be considered again.

Patrick Davis, advocate read prepared remarks. The prepared remarks are an attachment to the minutes listed as attachment 7. Comment also included various State Supreme Court decisions and First Amendment rights. Mr. Davis discussed Nevada, Supreme Court and Circuit Court decisions that consider the conditions of those put on parole and probation under a criminal offense. Mr. Davis stated those put on lifetime supervision are put under a civil offense. Mr. Davis feels Lt. Helgerman, the Division of Parole and Probation and the Board wish to apply the mandatory conditions of a criminal sentence and he feels NRS 213.1245 does not apply to lifetime supervision. Mr. Davis read different states Supreme Court decisions regarding the no contact condition. Also discussed was the condition of placing those on lifetime supervision on therapy without any fact finding in order to impose a condition of participation in mental health treatment and believes the Board must have reason to believe the defendant needs such treatment. Mr. Davis understands that parole is a matter of legislative grace and it's granted to a person on parole by the Board; but stated when parole is granted, the Board has also granted Constitutional Rights and that it is the most severe form of supervision that the Board is allowed. Mr. Davis stated a person on lifetime supervision is granted all of his Constitutional Rights because he is on a civil sentence – he has already served his criminal sentence on parole, incarceration or probation. Chairman Bisbee stated that this may very well be litigated at some point and noted that Mr. Davis provided the Board with a lot of information going back to the original laws in 1992. Chairman Bisbee stated it appears that the Board acted on that legislature exactly the way the sponsor of the law intended it to be done. Mr. Davis responded in 1995 SB192, the legislative intent was that this be a non punitive tool to enforce the effective known whereabouts of the offender. No mandatory conditions of supervision were provided by the legislature. The legislature asked the Board to provide these in regulation. Mr. Davis believes the Board, in acting that regulation, did not put any mandatory conditions into the law, but he considers they are underneath the law and does not think is legal. Mr. Davis feels that 19 of the conditions are punitive in nature.

Ellie Graham made comment on the condition of no contact with a minor. Mr. Graham discussed supervision issues he had with the Division of Parole and Probation regarding being able to see family members due to this condition. Mr. Graham stated that his father is ill and more family members are visiting at his father's residence now. Mr. Graham has to leave if one of the minor

family members arrives. Mr. Graham stated he was incarcerated 15 years and is no longer the person he was 20 years ago.

Lauri Johnson, advocate stated she is a previous victim of sexual abuse and a mother of a JSO serving an adult sex offender sentence and read prepared remarks. The prepared remarks are an attachment to the minutes listed as attachment 8. Prepared remarks were in regard to a recently published policy paper titled "A Reasoned Approach: Reshaping Sex Offender Policy to Prevent Child Sexual Abuse".

Alexandra Davis, advocate read prepared remarks. The prepared remarks are an attachment to the minutes listed as attachment 9. Prepared remarks were in regard to conditions of lifetime supervision and illegal search. Ms. Davis believes the Division of Parole and Probation has violated her constitutional rights and have misinterpreted the Board's authorization by enforcing the conditions of lifetime supervision against her and her personal property since her father is on lifetime supervision with whom Ms. Davis resides.

Cynthia Davis, advocate read prepared remarks. The prepared remarks are an attachment to the minutes listed as attachment 10. Prepared remarks were in regard to conditions of lifetime supervision and illegal search and seizure of items belonging to her and family members. Ms. Davis resides with a family member who is on lifetime supervision.

Tonya Brown, advocate concurred with Ms. Davis' comments and stated her opinion that if a search is performed on females, then a female parole officer should be the person conducting the search. Ms. Brown believes a psychological profile should be conducted on male parole officers conducting searches on females related to and residing with those on lifetime supervision.

David Tole, member of Nevadans for Civil Liberty read prepared remarks. The prepared remarks are an attachment to the minutes listed as attachment 11. Prepared remarks were in regard to violations of offender's Constitutional Liberties and First Amendment Rights and reference to various letters previously submitted to the Board, Nevada Legislative Judiciary Committees, the Nevada Legislature and the Division of Parole and Probation.

End of Public Comment

Chairman Bisbee questioned Lt. Helgerman regarding the Division's search policy when an offender is not at his residence. Lt. Helgerman discussed most instances would not require an officer to enter the residence if an offender is not present unless an officer wanted to speak to others residing at the residence at which time the officer would ask to enter to speak to that individual or family member. Lt. Helgerman gave scenarios regarding this issue.

Chairman Bisbee asked Lt. Helgerman the Division's position regarding steel toe boots as weapons. Lt. Helgerman believed if the boots are worn for work purposes, and if no criminal history indicates the offender has used these types of boots as a weapon in the past, a parole officer would not prevent them from wearing steel toe boots. Also discussed were other tools required for employment and the Division's clarification with the offender regarding use of these tools.

Chairman Bisbee asked Lt. Helgerman if the Division would have an issue of changing the language on Rule 6 to reflect you will not "knowingly" associate with ex-felons. Lt. Helgerman believed it would not be an issue.

Commissioner Jackson questioned Lt. Helgerman on the Divisions specific supervising protocol and standards. Lt. Helgerman stated the Division has policy which covers 3rd party search areas in regards to family members.

David Smith, Hearing Examiner II addressed comments regarding counseling and stated in the past few years the Board has changed the condition to indicate that a parolee be evaluated and continue to be treated until released by a qualified treatment provider. Lifetime supervision mandatory conditions states it is mandatory the offender participate in professional counseling if deemed necessary by the Division. Mr. Smith stated the Board may want to consider changing

this lifetime supervision condition to be consistent with special conditions of parole. Mr. Smith also commented that the Board is authorized to require any reasonable condition and that the mandatory conditions of parole do not apply to lifetime supervision. They only apply under certain circumstances, but nothing prohibits the Board from using similar or the same language if deemed appropriate.

The Board discussed the Divisions requested changes to Rule 18 (No Contact Persons Under 18) and Rule 20 (Search).

The Board discussed Mr. Smith's suggested change to Special Condition 2 (Residence) and Special Condition 15 (No Contact - Victim).

The Board discussed Ms. Brown's suggested changes to Rule 5 (Weapons) and Rule 6 (Associates).

Rule 18 (No Contact under 18)

Motion: Move that Rule 18 remain unchanged.
Made by: Commissioner Jackson
Seconded by: Commissioner Keeler
Votes in Favor: Keeler, Silva, Bisbee, Corda, Jackson, Endel
Votes Opposed: None

Motion Passed - Division's request for changes to Rule 18 was declined by the Board.

Rule 20 (Search)

Motion: Move that Rule 20 be accepted with the changes as requested by the
Division of Parole and Probation.
Made by: Commissioner Corda
Seconded by: Commissioner Silva
Votes in Favor: Keeler, Silva, Bisbee, Corda, Jackson, Endel
Votes Opposed: None
Motion Passed

Special Condition 15 (No Contact with Victim)

Motion: Move that the Board accept the recommendation by Mr. Smith that the Board
add the term "unless approved by the Chief or his designee and a written
agreement is entered into and signed" and that the Board strike "without permission from
your supervising officer". Also "a victim of sexual offense" be added.
Made by: Commissioner Endel
Seconded by: Commissioner Corda
Votes in Favor: Keeler, Silva, Bisbee, Corda, Jackson, Endel
Votes Opposed: None
Motion Passed

Special Condition 2 - Residence

Motion: Move to accept version 2 and that the Board add Mandatory Condition of
Lifetime Supervision as written by Mr. Smith that "you may reside at a location only if:"
and the three (3) exceptions listed in this version.
Made by: Commissioner Endel
Seconded by: Commissioner Jackson
Votes in Favor: Commissioners Keeler, Silva, Bisbee, Corda, Jackson, Endel
Votes Opposed: None
Motion Passed

Rule 5 – Weapons

Motion: Move that Rule # 5 (Weapons) remain unchanged. "You shall not possess,
own carry, or have under your control, any type of firearm or illegal weapon."
Made by: Commissioner Jackson
Seconded by: Commissioner Corda
Votes in Favor: Keeler, Silva, Bisbee, Corda, Jackson, Endel

Votes Opposed: None
Motion Passed

Rule 6 – Associates

Motion: Move that Rule # 6 (Associates) make change to read: “You shall not knowingly associate with any ex-felons or any person who is required to register as a sex offender under Nevada law without permission from your supervising officer.”
Made by: Commissioner Jackson
Seconded by: Commissioner Endel
Votes in Favor: Keeler, Silva, Bisbee, Corda, Jackson, Endel
Votes Opposed: None
Motion Passed

Board discussion regarding Rule 13 - Counseling

Rule 13 – Counseling

Motion: Move that Rule # 13 - Counseling on Lifetime Supervision Agreement to read “Participate in professional counseling if deemed necessary by a qualified provider upon referral by the Division of Parole and Probation.”
Made by: Commissioner Corda
Seconded by: Commissioner Jackson
Votes in Favor: Keeler, Silva, Bisbee, Corda, Jackson, Endel
Votes Opposed: None
Motion Passed

Recess

Motion: To take a five (5) minute recess
Made by: Chairman Bisbee
Seconded by: Commissioner Jackson
Votes in Favor: Keeler, Silva, Bisbee, Corda, Jackson, Endel
Votes Opposed: None
Motion Passed

Meeting Reconvened at 3:32 pm

Chairman Bisbee commented that changes to supervision conditions are from this date forward. Any changes to existing conditions must be a modification which the offender would be provided their rights to a hearing and appear before the Board.

IV. For possible action: Standard Conditions of Parole. The Board may consider changes, and may act to change, the standard conditions of parole. Comments from members of the public will be considered.

Mr. Smith discussed the memorandum of August 8, 2011 - suggested changes to the standard conditions of parole regarding Rule 13 - Intoxicants. Mr. Smith recommends intoxicants be put back on the standard conditions as listed on agenda item V. And that the Special Conditions would be added as listed on the memorandum of agenda Item V.

Public Comment

Pat Hines commented this condition is a long time coming.

Ellie Graham misunderstood the changes to the condition. Chairman Bisbee clarified.

Motion: To modify the Standard Condition Parole Agreement Rule 13 – Intoxicants as recommended.
Made by: Commissioner Keeler
Seconded by: Commissioner Silva
Votes in Favor: Keeler, Silva, Bisbee, Corda, Jackson, Endel

Opposed: None
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.

Patrick Davis, advocate discussed concerns regarding polygraph and requested the Board and the Division of Parole and Probation do an internal audit for clarification and an Attorney General Opinion. Mr. Davis requested the Board look into the legality of consent versus submit. Mr. Davis made comment in regards to the search clause the Board voted recently voted on. Mr. Davis requested the Board look into offenders who have conditions that are not enforced on their sign conditions.

Tanya Brown, advocate discussed quasi-judicial parole hearings and items submitted by victims to the Board as confidential. Ms. Brown commented this is not fair to the inmate.

Laurie Johnson asked the Board where she would go to introduce the ARAI's in regards to Rule 13 – Counseling. Ms. Johnson asked how to change the instruments the State uses to evaluate a sex offender. Chairman Bisbee stated the Board is currently looking at a validation process for Nevada's sex offenders.

Mr. Smith commented that the Legislative Counsel Bureau made an extensive 6 month audit of the Board which included the Board's policies and procedures including notification to victims and notification to inmates. The Legislative Counsel Bureau determined the Board is following the law.

Motion: To adjourn
Made by: Commissioner Keeler
Seconded by: Commissioner Corda
Votes in Favor: Keeler, Silva, Bisbee, Corda, Jackson, Endel
Votes Opposed: None

Meeting adjourned at 3:48 p.m.