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**NEVADA BOARD OF PAROLE COMMISSIONERS**

**MINUTES**

**Meeting of the**

**Board of Parole Commissioners**

February 28, 2022

**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 February 28, 2022, 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 Commissioner Baker, Commissioner Weisenthal, and Chairman DeRicco. Present in the Las Vegas office were Commissioner Christiansen and Commissioner Verchio. Commissioner Jackson and Commissioner Bailey were absent, excused.

Support staff in attendance:

Katie Fraker, Executive Secretary  
Mary Flores, Administrative Assistant III

Members of the public present in Carson City included:

Katie Brady, Deputy Attorney General

Members of the public present in Las Vegas included:

Patricia Adkisson

**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

Patricia Adkisson – see submitted public comment documents

**III. For possible action:** Review/Approval of minutes from the January 31, 2022, Board meeting.

|                        |  |
|------------------------|--|
| <b>Motion:</b>         | <b>Approve the minutes from the January 31, 2022, Board meeting.</b> |
| <b>Made:</b>           | <b>Commissioner Weisenthal</b>                                       |
| <b>Seconded By:</b>    | <b>Commissioner Baker</b>  |
| <b>Votes in Favor:</b> | <b>DeRicco, Baker, Weisenthal, Christiansen, Verchio</b>             |
| <b>Votes Opposed:</b>  | <b>None</b>  |
| <b>Results:</b>        | <b>Motion passed</b>   |

**IV. For discussion and possible action:** The Board will discuss and may take action to update and or modify the “Operation of the Board” document that outlines the procedural functioning of the Board. This document may be updated and modified in the future as needed.

Chairman DeRicco discussed the Board’s ongoing project of updating and reviewing selected sections in the Operation of the Board manual as discussed at previous Board meetings. Chairman DeRicco thanked the Hearings Examiners for their work and for initiating the first phase of reviewing the document and suggesting language changes, additions, or deletions. Chairman DeRicco provided that Deputy Attorney General, Katie Brady, reviewed proposed changes and suggested language changes as well. The new sections to be discussed were Geriatric Parole, Lifetime Supervision Hearings, Notification of Parole Hearings, In Absentia (117) Hearings, and Procedure When Legislation Which May Impact Parole Eligibility Dates is Passed into Law. He also stated that the updated “Operations of the Board” handout has been partially updated; the content in green having been approved, with the content in black still needing to be covered. He amended that there is no other content in black, as this project is almost complete. He stated the content in purple is what is being worked on currently.

Chairman DeRicco introduced the first section for discussion, Geriatric Parole. He provided that this is a brand-new section that was developed by Debra Hausman. He stated that this is the time to discuss the recommendations and determine if the new language is appropriate or if changes are necessary. He provided that this section is being added as a result of it being added to statute. He read through this section with the suggested language as noted in the handout “Geriatric Parole Hearings.” He then opened the floor to any discussion on the new section.

Commissioner Weisenthal questioned if section 1 needed clarifying language, such as, “on current sentence,” to determine if a person was eligible for geriatric parole. He further questioned if section 1 meant that a person was ineligible for geriatric parole if they had ever been convicted of one of the crimes listed, such as habitual criminal or any crime of violence. Commissioner Weisenthal stated that the way it reads could be interpreted either way.

Chairman DeRicco stated the language in section 1 was taken right from statute. He stated that it would be assumed that a person is being considered for geriatric parole for a particular sentence. He agreed that for clarification purposes, language could be added in section 1. He stated section 1 reads, “may grant geriatric parole to a prisoner,” so the Board would only be granting on a sentence. He asked Commissioner Weisenthal if he was asking about subsection (a) and whether a prisoner has been ever found guilty of a crime of violence. Commissioner Weisenthal responded that he first thought about the language in subsection (b) and whether a person had ever been convicted of habitual criminal, and if

adding the language, “on this sentence,” or “on current sentence,” might provide clarification. He further stated that if the language was taken from statute, then perhaps no change would be necessary.

Chairman DeRicco summarized what Commissioner Weisenthal was wanting to clarify with additional language by giving the example that if a person had a prior conviction of habitual criminal, completed their supervision term, and was now back in prison on a new charge and qualified for geriatric parole, that the Board does not disqualify them because of their prior habitual criminal conviction.

Katie Brady agreed that the statute could be interpreted either way; that it is the current sentence or ever been convicted. She stated that she could look at the legislative history to see if she could find any additional information. She stated she believed this was written during changes to AB236 and that there likely would not be any legislative history but that she could look and provide that information prior to the next meeting.

Chairman DeRicco suggested that the Board keep the language as it is now, have Katie Brady look at the legislative history, and potentially if there are suggested language changes in section 1 have those included for the next meeting and they can be altered at that time, if necessary.

Commissioner Weisenthal agreed to that solution.

Commissioner Verchio stated that by adding “in the current sentence,” to subsection (a) was a simple solution, but only if that is what the legislative intent was.

Chairman DeRicco agreed that adding that phrase would make sense and noted that phrase. He stated that after legal counsel reviews, the language could possibly be added to designate the offense that the Board is looking to grant geriatric parole on. He stated he believes that is what the intent of the statute was, or else a lot more people would be disqualified from geriatric parole, and he does not believe that was the intent. He stated he believes that the intent was for more people to qualify for geriatric parole. He concluded that the language is noted and on the table to possibly be added after legislative review.

Commissioner Christiansen suggested adding the language “on the underlying offense,” to subsection (a) if that is the direction the Board goes after legislative review. Commissioner Verchio stated that could also be added to the first sentence of section 1 instead of subsection (a). She also suggested that the phrase “in the current sentence,” could be added to the first sentence of section 1 instead of subsection (a) as she had previously suggested.

Chairman DeRicco suggested subsection (a) as, “The underlying offense is not a conviction for...”.

Commissioner Baker stated that since this language is taken right out of statute that she is hesitant to change that language.

Chairman DeRicco stated that perhaps the language could be changed at the beginning of section 1, but that no changes will be made until the legislative intent is reviewed. He asked if there was any further discussion on this section.

Commissioner Verchio asked if the Board’s receipt of verification in section 4 should also have a timeframe. She stated in the other sections there are timeframes, such as “within 15 days,” “within 30

days,” and then the Board’s verification is wide open. She stated this is the one place that does not have a timeframe and everywhere else does.

Chairman DeRicco agreed that the Board should have a timeframe. He stated that in the document it shows the NDOC has a timeframe to verify in section 3 and the Board has 10 days to notify in section 6. He asked the other members of the Board that if they wanted to hold themselves to a timeframe and what they suggested. He asked if they wanted a certain number of days or as soon as practicable. Chairman DeRicco stated that he thought 30 days would be a reasonable timeframe because if they are eligible for geriatric parole, they will have already been placed on the list by the NDOC, and then scheduled. He further stated that if they are not eligible then that will give the Board time to get everything together and processed to send to the inmate. He asked if the other Board members were okay with the 30-day timeframe. The Commissioners agreed. There was no further discussion.

The next section discussed was Lifetime Supervision Hearings. Chairman DeRicco provided that Hearings Examiner Lupe Garrison and Debra Hausman worked on this section. He read through this section with the suggested wording changes as noted in the handout “Lifetime Supervision Hearings NRS 213.1243, 176.0931, NAC 213.290.” He then opened the floor to any discussion on the proposed changes.

Commissioner Baker stated that this version is much better than the old version and commended the staff who worked on this version.

There was no further discussion.

Chairman DeRicco introduced the next section for discussion, Notification of Parole Hearings. He provided that Hearings Examiner Darla Foley worked on this section. He read through this section with the suggested wording changes as noted in the handout “Notification of Parole Hearings.” He stated that some of the language changes made in this section mirror and reflect what is stated in NRS 213.1085. He then opened the floor to any discussion on the proposed changes. There was no further discussion.

The next section discussed was In Absentia (117) Hearings. Chairman DeRicco provided that this is a new section and that Hearings Examiner Kelly Mellinger worked on this section. He added that a previously approved document entitled “Review of Parole Eligible Prisoners In Absentia” is a part of this section and would be included in the appendix of the Operations of the Board. He stated that there are proposed changes to both documents, and both would be reviewed, so this section could be completed in its entirety. He read through the new section with the suggested wording as noted in the handout “In Absentia (117) Hearings: (NRS 213.133).” He then opened the floor to any discussion on the new section.

Commissioner Verchio asked if the word “meeting” should be changed to “hearing”.

Chairman DeRicco stated that the word “meeting” is taken directly from statute, but that it means hearing.

There was no further discussion on the new document.

Chairman DeRicco began the review of the document “Review of Parole Eligible Prisoners In Absentia.” He stated that for consistency the word “prisoners” was changed to “inmates” on the front

page. He noted on page 1 of the document there were no changes. He read through the document with the suggested wording changes as noted beginning on page 2.

Commissioner Weisenthal asked if the second paragraph on page 4 of the document was necessary. He stated that he thought it could be combined with the first paragraph, which states who conducts the initial review and includes case hearing representatives.

Chairman DeRicco agreed that the second paragraph may not be necessary.

Commissioner Baker stated that she agreed with Commissioner Weisenthal that the second half of paragraph 2 could be added to paragraph 1 and read, "The initial review of eligible cases may be conducted by parole commissioners, parole hearings examiners and case hearing representatives who make a recommendation to grant parole on cases that are most likely to be granted if scheduled for an in-person hearing."

Commissioner Baker also stated on page 2, subsections 8, 9, and 10, are out of the statute, but in this section on page 4, it says case hearing representative, and that does not include a case hearings examiner. She asked if it is clear that Board members, case hearings examiners, and case hearing representatives can do this.

Chairman DeRicco stated that at a Board meeting approximately six months ago, the Board designated who are the case hearing representatives, and they included the case hearings examiners. He stated they are on record as being case hearing representatives. Commissioner Baker nodded in agreement.

Commissioner Verchio indicated that in regard to keeping paragraph 2 on page 4, that paragraph particularizes that position. She stated that it specifies that historically the contracted case hearing representatives do this particular job at the Board, and that if this position ever needed defending, this paragraph shows the history that a contracted person has done this job.

Chairman DeRicco stated that paragraph 2 is accurate. He stated that generally the case hearing representatives start the process for the in-absentia cases, but that does not prohibit or preclude the hearings examiners or parole commissioners from doing so. He stated that during Covid and office closures the parole commissioners were reviewing files so see who may qualify for in-absentia. He agreed with Commissioner Verchio and stated that by leaving the paragraph in there, the document is more accurate and specific. He stated he now thinks the paragraph should be left in the document.

Commissioner Weisenthal agreed with Commissioner Verchio's statement, and stated that it should be left in. Commissioner Baker agreed.

Commissioner Weisenthal then asked about the second to last paragraph on page 4 of the document, "If a Board Member does not want to grant parole in-absentia, they should indicate by notating "deny" on the worksheet, then pass the file to the next Member who has not reviewed the file and recommendation." Commissioner Weisenthal stated that this has not been the normal practice, at least for the commissioners in the northern office. He stated that if the first commissioner who reviews a file believes the inmate should have a hearing, they reject that file for in-absentia, and give it to the Executive Secretary. He stated they do not continue to pass it around. He also stated that he does not recall ever sending a split vote for an in-absentia hearing.

Chairman DeRicco stated that he thought he remembered that before this document was approved in 2019, the common practice was that if the first commissioner reviewing the file did not want to grant in-absentia, that the file was rejected and returned to the Executive Secretary. He stated then, in 2019 when this document was being developed and approved, that was when the change was made that if the first commissioner did not want to grant parole, the file would be passed to another commissioner for review.

Commissioner Weisenthal stated that if that was the case, he had not been doing that. He asked if that was going to be the process going forward, along with the processes on pages 5 and 6 involving split votes.

Chairman DeRicco stated that from what he recalled was that the first commissioner would just have too much power if they wanted to schedule an inmate for a hearing versus passing the file on for review by the other commissioners. He stated this way all the files would be able to be reviewed by multiple commissioners. Chairman DeRicco stated that if the Board wanted to go back to allowing one commissioner to schedule a hearing that could be discussed.

Commissioner Weisenthal stated that after some research, the old document states, "If any of the first three Board Members reviewing a case in-absentia do not concur in the recommendation to grant parole, the case will be rejected for parole consideration in-absentia." Chairman DeRicco asked where that was found. Katie Fraker stated that was on the previous version of this document. Chairman DeRicco stated that should still be on this document and was struck out. He stated the individual who put this document together may have taken out previous wording in error. He stated this document would need to be tabled and move it to the next meeting for continued review and discussion.

Commissioner Baker stated that she found the original document that was approved September 30, 2019, and it has the language that Commissioner Weisenthal read into the record. Katie Fraker stated that there was a section on the original document entitled "Rejection of In-absentia Parole Grant Recommendations" that is not included in this document. Chairman DeRicco stated that he would have this document updated for the next meeting.

Commissioner Baker asked how the Board wanted to proceed and that perhaps Ms. Mellinger intended to change the language so the in-absentia files would be reviewed by more commissioners. She stated it is up to the Board as to whether they want to keep allowing one commissioner to reject a file and return it to the Executive Secretary or pass it all around.

Chairman DeRicco stated that the Board cannot move forward without having the correct document and posting it for the public, since the current document has errors and is not correct. There was no further discussion.

The final section discussed was Procedure When Legislation Which May Impact Parole Eligibility Dates is Passed into Law. Chairman DeRicco provided that Hearings Examiner Forrest Harter worked on this section. He read through this section with the suggested wording changes as noted in the handout "Procedure When Legislation Which May Impact Parole Eligibility Dates is Passed Into Law." He then opened the floor to any discussion on the proposed changes. There was no further discussion.

- V. **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.

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

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| <b>Motion:</b>         | <b>To adjourn the February 28, 2022, meeting of the Nevada Board of Parole Commissioners</b> |
| <b>Made:</b>           | <b>Commissioner Verchio</b>  |
| <b>Seconded By:</b>    | <b>Commissioner Baker</b>  |
| <b>Votes in Favor:</b> | <b>DeRicco, Baker, Weisenthal, Christiansen, Verchio</b>                                     |
| <b>Votes Opposed:</b>  | <b>None</b>  |
| <b>Results:</b>        | <b>Motion passed</b>   |

DRAFT

Patricia Adkisson

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702-505-2861

Board of Parole Commissioners

February. 27, 2022

4000 S. Eastern Ave Suite 130

Las Vegas, NV. 89119

### Board of Parole Commissioners Meeting- Public Comment 2/28/22

Good afternoon, my name is Patricia Adkisson. My comments today relate to agenda item "Operation of the Board". First, we wish to point out, that the operation of the minimum standard of notice of hearings is deficient. For purposes of the intent to provide meaningful opportunity, the purpose of a three-day notice appears to contemplate submission of written materials. To accommodate this consideration, the notice must be posted in the appropriate time frame, we suggest 10 days in advance. The board deals with incarcerated persons, their families, and with victims of those in prison. We notice that meetings are often unattended by any non-governmental persons. This lack of participation may be indirectly caused by the very short minimum notice. Can the board amend its operations to notify NDOC inmates through law library postings? They are also interested parties, and they can motivate family to attend.

Second, on December 14th, 2021, the Board sent us a letter that affirms that the board relies upon and is dependent upon NDOC custody officials to supply representations of fact. This interdepartmental dependency appears to us, to be highly problematic and not done pursuant to an approved interlocal agreement. For example, NRS 193.165 states in the text that it is NOT a separate offense, yet the local District Attorneys operate on a legal fiction that it is a crime, and file complaints alleging violations of a non-criminal statute. The local judiciary then pronounces sentences for violation of the non-criminal statute. That legally can only be interpreted as a de facto civil commitment, then NDOC has to make up a category of offense. The legislature provides Categories A, B, C, D, and E. since the text of NRS 193.165 declares itself, not to be a separate crime, NDOC makes up categories, including category F, for the non-offense. Then, because of the board's improper dependence on NDOC, they unwittingly become principles through acts of other State and local agencies. Can something go into the boards operational rules to establish a policy of protecting their independence? The board is a quasi-judicial agency, an extension of the sentencing court. Should not the board then assert their independence from other agencies and in doing so ensure that the facts upon which they make parole decisions are double checked and arrived at independently consistent with the legislative command.

Third, we moved to suggest the idea that the Board incorporate into its rules of operations NRS 179.2405 which is an act in legislature in 2017 announcing the public policy of giving second chances to offenders who are rehabilitated. Can you state for the record whether you have adopted this new policy statement? Thank you for your time and I look forward to seeing you at the next board meeting.