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**NEVADA BOARD OF PAROLE COMMISSIONERS**

**MINUTES**

**Meeting of the**

**Board of Parole Commissioners**

**March 31, 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 March 31, 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 Jackson, Commissioner Baker, Commissioner Weisenthal, and Chairman DeRicco. Present in the Las Vegas office were Commissioner Christiansen, Commissioner Verchio, and Commissioner Bailey.

Support staff in attendance:

- Katie Fraker, Executive Secretary
- Kelly Mellinger, Hearings Examiner I
- Mary Flores, Administrative Assistant III
- Alana Masi, Administrative Assistant I

Members of the public present in Carson City included:

- Katie Brady, Deputy Attorney General
- Keibi Mejia

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 February 28, 2022, Board meeting.

<b>Motion:</b>	<b>Approve the minutes from the February 28, 2022, Board meeting.</b>
<b>Made:</b>	<b>Commissioner Verchio</b>
<b>Seconded By:</b>	<b>Commissioner Baker</b>
<b>Votes in Favor:</b>	<b>DeRicco, Jackson, Baker, Weisenthal, Christiansen, Verchio, Bailey</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.

Chairman DeRicco introduced the first section for review, Geriatric Parole. He referred to the suggested changes as noted in the handout “Geriatric Parole.” He stated that at the last meeting there was a discussion that was brought up by Commissioner Weisenthal regarding whether the Board should disqualify specific types of cases that had ever happened in an offender’s history or to consider them on the offense geriatric parole was being sought. He stated additional research was done, and after further review of the statute NRS 213.12155, subsection 4 states that the determination lies with the Nevada Department of Corrections (NDOC), not with the Board. He explained that if the NDOC determines an inmate meets the qualifications in subsection 1, then they will be scheduled for a hearing, and if the NDOC says they do not meet the qualifications, then a response will be sent to the Board and the Board will notify the applicant. He stated that ultimately this is not our call, but rather the NDOCs. Chairman DeRicco read through the document in its entirety. Chairman DeRicco asked if there was any further discussion on this topic. He asked Commissioner Weisenthal if that answered his question from the last meeting. Commissioner Weisenthal concurred that it does answer his question.

Commissioner Verchio stated that it seems like an unnecessary step for the inmate or inmate’s proxy to send the application to the Board and for the Board to then forward it to the NDOC for them to make the determination if the inmate meets the criteria. She questioned why the application is not sent to the NDOC directly and then they notify the Board if the criteria are met.

Chairman DeRicco responded that statutorily that is how the law is written. He stated legally, the request is made to the Board and the Board sends it to the NDOC for determination. He stated that is how the law is written now.

There was no further discussion.

<b>Motion:</b>	<b>Approve the Geriatric Parole as distributed.</b>
<b>Made:</b>	<b>Commissioner Christiansen</b>
<b>Seconded By:</b>	<b>Commissioner Jackson</b>
<b>Votes in Favor:</b>	<b>DeRicco, Jackson, Baker, Weisenthal, Christiansen, Verchio, Bailey</b>
<b>Votes Opposed:</b>	<b>None</b>
<b>Results:</b>	<b>Motion Passed</b>

Chairman DeRicco introduced the second section for review, Lifetime Supervision Hearings. He referred to the suggested changes as noted in the handout “Lifetime Supervision Hearings (NRS 213.1243, 176.0931, NAC 213.290).” Chairman DeRicco read through the document in its entirety.

Commissioner Baker suggested moving the language “after 1995” in section 1 to read, “Offenders convicted after 1995 of the sexual offenses referred to in NRS 176.0931 are also sentenced to lifetime supervision.” The Board agreed.

There was no further discussion.

<b>Motion:</b>	<b>Approve the Lifetime Supervision Hearings as revised.</b>
<b>Made:</b>	<b>Commissioner Bailey</b>
<b>Seconded By:</b>	<b>Commissioner Baker</b>
<b>Votes in Favor:</b>	<b>DeRicco, Jackson, Baker, Weisenthal, Christiansen, Verchio, Bailey</b>
<b>Votes Opposed:</b>	<b>None</b>
<b>Results:</b>	<b>Motion Passed</b>

Chairman DeRicco introduced the next section for review, Notification of Parole Hearings. He referred to the suggested changes as noted in the handout “Notification of Parole Hearings.” Chairman DeRicco read through the document in its entirety.

<b>Motion:</b>	<b>Approve the Notification of Parole Hearings as distributed.</b>
<b>Made:</b>	<b>Commissioner Baker</b>
<b>Seconded By:</b>	<b>Commissioner Weisenthal</b>
<b>Votes in Favor:</b>	<b>DeRicco, Jackson, Baker, Weisenthal, Christiansen, Verchio, Bailey</b>
<b>Votes Opposed:</b>	<b>None</b>
<b>Results:</b>	<b>Motion Passed</b>

Chairman DeRicco introduced the next section for review, In Absentia (117) Hearings. He referred to the new section as noted in the handout “In Absentia (117) Hearings: (NRS 213.133).” Chairman DeRicco read through the document in its entirety.

<b>Motion:</b>	<b>Approve the newly developed In Absentia (117) Hearings as distributed.</b>
<b>Made:</b>	<b>Chairman DeRicco</b>
<b>Seconded By:</b>	<b>Commissioner Jackson</b>
<b>Votes in Favor:</b>	<b>DeRicco, Jackson, Baker, Weisenthal, Christiansen, Verchio, Bailey</b>
<b>Votes Opposed:</b>	<b>None</b>
<b>Results:</b>	<b>Motion Passed</b>

Chairman DeRicco introduced the next section for review, Review of Parole Eligible Prisoners In Absentia. He stated that at the last Board meeting, the Board was inadvertently reviewing the incorrect version of this document. He stated the discussion was tabled from last meeting to this meeting, so the newly revised document could be compared with the most recently approved version. He referred to the new section as noted in the handout “Review of Parole Eligible Inmates In Absentia.” He stated once this document is approved it will be placed in the Appendix of the Operation of the Board. Chairman DeRicco read through the document in its entirety.

<b>Motion:</b>	<b>Approve Review of Parole Eligible Inmates In Absentia as distributed.</b>
<b>Made:</b>	<b>Chairman DeRicco</b>
<b>Seconded By:</b>	<b>Commissioner Baker</b>
<b>Votes in Favor:</b>	<b>DeRicco, Jackson, Baker, Weisenthal, Christiansen, Verchio, Bailey</b>
<b>Votes Opposed:</b>	<b>None</b>
<b>Results:</b>	<b>Motion Passed</b>

Chairman DeRicco introduced the final section for review, Procedure When Legislation Which May Impact Parole Eligibility Dates is Passed into Law. He referred to the suggested changes as noted in the handout “Procedure When Legislation Which May Impact Parole Eligibility Dates is Passed into Law.” Chairman DeRicco read through the document in its entirety.

<b>Motion:</b>	<b>Approve Procedure When Legislation Which May Impact Parole Eligibility Dates is Passed into Law as distributed.</b>
<b>Made:</b>	<b>Chairman DeRicco</b>
<b>Seconded By:</b>	<b>Commissioner Christiansen</b>
<b>Votes in Favor:</b>	<b>DeRicco, Jackson, Baker, Weisenthal, Christiansen, Verchio, Bailey</b>
<b>Votes Opposed:</b>	<b>None</b>
<b>Results:</b>	<b>Motion Passed</b>

- V. **For discussion and possible action:** The Board will discuss and may take action to modify parole denial reasons to correspond with the revised aggravating and mitigating factors.

Chairman DeRicco introduced this agenda item by stating that recently the Executive Secretary has seen a pattern of appeals with regard to denial reason #24 which states, “Inmate was convicted of a new felony while serving a prior period of community supervision.” He stated he believes this is due to the fact that this denial reason does not mirror the current aggravating factor #24 which states, “Commission

of a crime while incarcerated, on bail, eluding, on escape status, or while under parole of probation supervision.” He stated that if these two mirror each other, they can be used interchangeably, which will provide clearer outcomes for the Board and inmates whenever this denial or aggravating factor is used.

He stated that one of the regulations that will be discussed later in the meeting addressed this language in one of the aggravating factors. He stated the Legislative Counsel Bureau (LCB) suggested the language in the regulation for NAC 213.518 read, “Whether the prisoner has committed a crime while incarcerated, during any period of release from confinement on bail, during any period of escape from an institution or facility, while eluding capture or while on probation or parole.” He stated that if language is approved for denial reason #24 that it should mirror this same language. He opened this agenda item for discussion.

Commissioner Christiansen agreed that the aggravating factor and denial reason should match and stated that if this is an avenue for an appeal that we should close that avenue and make it consistent. Chairman DeRicco stated that this change is not necessarily to close an avenue for an appeal but more to provide clarity and show that the denial reasons and aggravating factors were applied correctly.

<b>Motion:</b>	<b>Change denial reason #24 to “Committed a crime while incarcerated, during any period of release from confinement on bail, during any period of escape from an institution or facility, while eluding capture or while on probation or parole.”</b>
<b>Made:</b>	<b>Chairman DeRicco</b>
<b>Seconded By:</b>	<b>Commissioner Baker</b>
<b>Votes in Favor:</b>	<b>DeRicco, Jackson, Baker, Weisenthal, Christiansen, Verchio, Bailey</b>
<b>Votes Opposed:</b>	<b>None</b>
<b>Results:</b>	<b>Motion Passed</b>

**Summary of Testimony**

**VI. 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 DeRicco stated the purpose of this public comment session is regarding proposed regulation R114-21P. This proposed regulation revised language in the initial assessment table and adds a subsection (2); and providing other matters properly relating thereto. This change is requested to carry out the provision of NRS Chapter 213.516. Public comment will be limited to three minutes per person.

Chairman DeRicco opened the floor for public comment.

Chairman DeRicco asked if there was anyone in Las Vegas that would care to make public comment on this topic?

**Public comment – Las Vegas, NV**

No public comment.

Chairman DeRicco asked if there was anyone in Carson City that would care to make public comment on this topic?

Public comment – Carson City, NV

No public comment.

**VII. For Possible Action.** Review of proposed regulation R114-21P and solicitation of comments. This proposed regulation revises language in the initial assessment table and adds a subsection (2); and providing other matters properly relating thereto. This change is requested to carry out the provisions of NRS Chapter 213.516.

Chairman DeRicco stated existing law requires the State Board of Parole Commissioners to adopt regulations setting forth specific standards to assist the Board in determining whether to grant or revoke the parole of a convicted person. The standards are required to be based upon objective criteria for determining the convicted person’s probability of success on parole. (NRS 213.10885) The existing regulation provides that the Board will establish an initial assessment regarding whether to grant parole to a prisoner by applying the severity level of the crime for which parole is being considered and the risk level assigned to the prisoner concerning his or her risk to reoffend. (NAC 213.516). This amended regulation: (1) makes technical changes to the description of certain possible outcomes of an initial assessment; and (2) provides that after an initial assessment is established, the Board will consider the initial assessment when determining whether to grant parole to a prisoner.

Chairman DeRicco continued by stating at the time and place set for hearing on the proposed regulation, the agency must afford “[a]ll interested parties . . . a reasonable opportunity to submit data, views, or arguments upon a proposed regulation” per NRS 233B.061(1). Further, “[T]he agency shall set a time and place for an oral public hearing” per NRS 233B.061(3). Alternatively, parties may submit their views and both oral and written submissions regarding the proposed regulation must be considered fully. The person or body with the authority to adopt the regulation must “consider fully” all oral and written comments received. NRS 233B.061(3). .... Boards or commissions considering the public comments on proposed regulations should retain in the minutes a record of their discussion regarding the public comment and their reasons for either amending the proposed rule in response to the comments or adopting the rule without change.

Chairman DeRicco introduced Kelly Mellinger, Hearing Examiner II, to provide some initial comments regarding publicly submitted documents and/or statements received regarding this regulation.

Ms. Mellinger read a written public comment dated 11.29.2021 from Evan Grant. Mr. Grant raises two issues. First, added to the bottom of NAC 213.516 is the language “this initial assessment shall be considered in accordance with NAC 213.518(1).” He applauds the Board for recognizing that it cannot arbitrarily grant or deny parole without considering factors referenced in NRS 213.10885 and 213.1099, every time, before making a grant or denial determination, the added .518(1) language to .516 he claims is currently meaningless. Nowhere in NAC 213.518(1) does it state how the Board will consider the initial assessment result. He questioned what does a result of “deny parole” or “grant parole at initial parole eligibility” mean in relation to NAC 213.518? How does the board know what to do if the initial assessment result is “grant parole at first or second meeting to consider prisoner for parole”? Under what conditions is the grant at the first meeting appropriate or inappropriate? He states these questions must be answered in the NAC’s language pursuant to NRS 213.10855(1) which states “standards must be based

upon objective criteria.” In *Anselmo v Bisbee* 396 p 3d 848 (Nev. 2017), the Nevada supreme court stated that the board’s “standards” are their NACs. For a standard to be objective it must state a step by step process that any person can easily follow and replicate. As every person will “consider” the initial assessment result differently, it is critical that the Board state how it will consider that result. Therefore, how the NAC 213.516 initial assessment will be considered in the context of NAC 213.518(1) must be stated in NAC 213.516 or NAC 213.518(1).

Chairman DeRicco stated Mr. Grant first argues that NAC 213.518(1) needs to state how the Board will consider the initial assessment result and under which conditions parole will be granted at the first or second meetings.

Chairman DeRicco further stated parole is an act of grace. After contemplating the initial assessment regarding whether to grant parole pursuant to NRS 213.516, the Board will consider the initial assessment and the factors set forth in NRS 213.10885 and 213.1099 and may consider the relevant aggravating and mitigating factors set forth in subsection 2 and 3 respectively to determine whether to grant parole to a prisoner. The proposed regulation explains how the Board considers the initial assessment result but defining under which conditions parole will be granted at first or second meetings is not definable. In addition, defining under which conditions parole will be granted at first or second meetings would improperly strip the Board of its discretion to determine the offender's risk to the public if they are released. This is not the system that was set up by the Legislature when it determined that the Parole Board was tasked with considering whether there is a reasonable probability that the prisoner will live and remain at liberty without violating the laws and whether the release is incompatible with the welfare of society. NRS 213.1099.

Commissioner Verchio stated that she feels what is being asked of the Board is to provide their deliberative process, and there needs to be some protection of the deliberative process and how they weigh the factors as individual commissioners. Given that the whole process has objective guidelines that are available for the public to view.

Chairman DeRicco opened floor for discussion.

There was no further discussion

Ms. Mellinger continued to read, Mr. Grant’s second issue was, NAC 213.516 utilizes NAC 213.512 crime severity levels as assigned pursuant to NAC 213.512 by the DOC per NRS 209.341. There are two issues here. First NRS 209.341 does not grant the DOC authority to assign a severity level to a crime. In fact, the words “severity” “level” nor “crime” appear a single time in NRS 209.341. Second, the crime severity levels of “Highest” “High” “Moderate” “low moderate” and “Low” do not exist in Nevada law. According to the Nevada supreme court, only the Legislature has the power to determine what is or is not a crime and the appropriate penalty for those who violate a criminal statute. See *Anderson v Eighth Judicial District Court*, 448 p. 3d 1120 (Nev. 2019) Additionally, the Supreme Court ruled that an enhancement from a misdemeanor to a category C felony constituted an increase in offense severity. *English v State*, 116 Nev 818 (2000). Therefore, as the Board is only considering those persons convicted of a felony, they must look to NRS 193.130 and 193.330. which provide the categories of Nevada’s felonies, to discover the severity level of crimes assigned by the Legislature. The Board used this exact method in 2004. “As you can see, the board in 2004 after *English* was decided in 2000, clearly understood its statutory duty and was in compliance with Nevada law. However, in 2008 when the board adopted NAC 213.512 & 213.516 it deviated dramatically from its understood statutory duty.” Mr. Grant recommended that NAC

213.512 be repealed, and NAC 213.516 be amended to remove all mention of the “Highest” “High” “Moderate” “low moderate” and “Low” crime severity levels and replace them with A, B, C, D, & E crime severity levels as assigned by Nevada’s legislature. He states this is an easy replacement as both sets of severity have 5 levels.

Chairman DeRicco stated Mr. Grant next argues that NAC 213.516 cannot utilize NAC 213.512 crime severity levels as assigned by the DOC and must instead use NRS Chapter 193 because

- o NRS 209.341 does not grant the DOC authority to assign a severity level to a crime;
- o the crime severity levels of “Highest” “High” “Moderate” “low moderate” and “Low” do not exist in Nevada law; and
- o only the legislature has the power to determine what is or is not a crime and the appropriate penalty for those who violate a criminal statute.

Chairman DeRicco further stated per NAC 213.512, which has been effective since April 17, 2008, the Board will assign to each crime for which parole is being considered a severity level of “highest,” “high,” “moderate,” “low moderate” or “low.” The severity level will be the same as the severity level assigned to the crime by the Department of Corrections for the purpose of classifying offenders pursuant to NRS 209.341. Further, the Board will apply the severity level of the crime for which parole is being considered to establish an initial assessment regarding whether to grant parole in the manner set forth in NAC 213.516. The Board has already determined this is the most appropriate way to assign the severity level. The Legislature provided the Board with discretion. It could have but did not point to the NRS 193 severity levels in the statute. Parole is an act of grace, there is no right to parole, and the decision of whether to grant or deny parole always remains within the penalty or sentence imposed by the court.

Chairman DeRicco opened floor for discussion.

There was no further discussion

Ms. Mellinger read a written public comment dated 3.28.22 from Evan Grant. Mr. Grant starts out by saying thank you for holding this workshop concerning LCB File No. R114-21P, R115-21P and R116-21P. He has reviewed the proposed changes to NAC 213.516, 213.518 & 213.514. Unfortunately, he does not agree with the proposed language and is therefore against their adoption in their current form. The proposed language continues to not satisfy explicitly mandatory requirements of certain Nevada statutory law. He continued that he is quite certain that Deputy Attorney General Kathleen Brady has informed this body that his civic actions in relation to these NACs and their subservient policies and practices have been denied and dismissed. However, she should have additionally informed you that he has appealed both cases to the Nevada Supreme Court as the denial was entered in violation of the courts rules and the dismissal was not signed by a sitting Nevada judge. Both instances violate multiple rules under the Nevada code of judicial conduct and are being reported to the Nevada commission on judicial discipline as judicial misconduct. The following are his principle reasons against R114-21P. NAC 213.516 continues to rely on NDOC crime severity levels. NRS 213.10885(2)(a) explicitly mandates the boards consideration of the severity of the crime committed. Nowhere in Nevada law, including NRS 213.10885, is the NDOC authorized to determine the severity of Nevada’s crimes. Nevada’s legislature established the severity level of each type of crime in the A,B,C,D & E category structure of NRS 193.130 and NRS 193.330. As NRS 213.10885(2)(a) does not provide discretion to consider anything other than the severity of the crime committed, the board is statutorily bound to the legislatures A, B, C, D, & E severity level designations.

Chairman DeRicco stated Mr. Grant reiterates his arguments that NAC 213.516 cannot rely on NDOC crime severity levels and provides that Nevada law does not authorize NDOC to determine the severity of Nevada's crimes. He argues that the board is statutorily bound to the Legislature's A,B,C,D & E severity level designations in NRS 193.

Chairman DeRicco further stated this issue was previously addressed. Under the plain language of the statute, the Legislature did not bind the Board to the NRS 193 designations.

Chairman DeRicco opened floor for discussion.

There was no further discussion

Ms. Mellinger continued to read, Mr. Grant goes on to state the NAC 213.516 Initial Assessment Table does not state what "deny parole" "grant parole at first or second meeting to consider parole eligibility" nor "grant parole at initial parole eligibility" mean in relation to the proposed NAC 213.516(2) language. NAC 213.516 nor NAC213.518 state how NAC 213.518 factors are to be considered if NAC 213.516 concludes grant or deny prior to NAC 213.518 factor consideration. Without specifying under what circumstances parole should be granted at the first or second meeting, how can the board properly make that determination? NRS 213.10885(1) requires the board's standards to be based on "objective" criteria. NAC 213.516 and NAC 213.518 are void of all criteria to indicate proper application of these NAC 213.516 Initial Assessment results.

Chairman DeRicco stated Mr. Grant reiterates his argument that NAC 213.516 is void of all necessary criteria to state how the board will consider the initial assessment result. He indicates that the NAC 213.516 Initial Assessment Table does not state what "deny parole" "grant parole at first or second meeting to consider parole eligibility" nor "grant parole at initial parole eligibility" mean in relation to the proposed NAC 213.516(2) language.

Chairman DeRicco further stated this issue has already been previously addressed. The NAC 213.516 initial assessment is just that, an initial assessment.

Chairman DeRicco opened floor for discussion.

There was no further discussion

Ms. Mellinger read a written public comment dated 11.29.2021 from John Quintero. Mr. Quintero stated the Board's proposal for NAC 213.516 relies on the assumption that NAC 213.512 "severity level" is authorized by statute, which he claims it is not. He wrote NAC 213.512 is based on the misrepresentation that the "severity level" in NRS 213.10885(2)(a) can be determined by another statute 209.341 regarding duties of NDOC director and contains no mandate that allows the parole board to utilize it, and states only a custody-driven purpose, not a parole readiness purpose. If it is clear that NRS 213.10885(2)(a) requires that the board of parole commissioners not the department of corrections make the determination of the "severity" based on this the board is requested to rescind and modify the language of NAC 213.512 to conform to the limits of the statute 213.10885(2)(a).

Chairman DeRicco stated Mr. Quintero argues that the Board's proposal for NAC 213.516 relies on the assumption that the NAC 213.512 "severity level" is authorized by statute, but he states that NRS 213.10885(2)(a) requires that the Board not the NDOC make the determination of the "severity."

Chairman DeRicco further stated as previously stated with regard to Grants comments, Per NAC 213.512, which has been effective since April 17, 2008, the Board will assign to each crime for which parole is being considered a severity level of "highest," "high," "moderate," "low moderate" or "low." The severity level will be the same as the severity level assigned to the crime by the Department of Corrections for the purpose of classifying offenders pursuant to NRS 209.341. Further, the Board will apply the severity level of the crime for which parole is being considered to establish an initial assessment regarding whether to grant parole in the manner set forth in NAC 213.516. The Board has already determined this is the most appropriate way to assign the severity level. The Legislature provided the Board with discretion. It could have but did not point to the NRS 193 severity levels in the statute. Parole is an act of grace, there is no right to parole, and the decision of whether to grant or deny parole always remains within the penalty or sentence imposed by the court.

Chairman DeRicco opened floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Mr. Quintero further stated the practices and custom to rely on an NDOC document is problematic for several reasons: 1. there is no evidence this NDOC document which is used to automatically populate the NOTIS parole board report was approved by the board of prison commissioners which makes it a fugitive document; & 2. there is no evidence NDOC conformed with open meeting law NRS 241, bringing its legitimacy into question: The severity table used to automatically populate the application, being overbroad, creates a table at NRS 213.516 which deviant because it deprives the "highest" severity of even any hope of "grant parole" expectation given to high moderate, low – mod, low categories; this deprivation is cruel and unusual.

Chairman DeRicco stated Mr. Quintero argues that the NDOC document is fugitive as no evidence was provided that it was approved by the Board of Prison Commissioners or that its enactment conformed with open meeting law NRS 241, and he argues that it is overbroad.

Chairman DeRicco further stated per NRS 213.10885, the Board shall adopt by regulation specific standards for each type of convicted person to assist in determining whether to grant or revoke parole. The Board has adopted NAC 213.512 and the determinations contained within date back to 2008. This regulation was approved in 2008 by the Legislative Commission and the Legislature has had ample time to clarify the law had it wanted to.

Chairman DeRicco opened floor for discussion.

There was no further discussion.

Ms. Mellinger read a written public comment dated March 28, 2022 from Tonja Brown, Advocates for the Inmates and the Innocent. Ms. Brown stated "Consider factors" in NAC 213.516 negates the intent of NRS 213.10885. Parole board guidelines are intended to establish specific standards to assist the board in making parole decisions. NRS 213.10885(1). The proposed amendment to NAC 213.516 does not meet that criteria. LCB R114-21 proposes to modify the table in NAC 213.516 which the board uses

to make their initial assessment regarding whether to grant parole. The table generally recommends parole be denied when an inmate's risk level is high (top left-hand area of the table). The table mostly recommends that parole be granted at the initial parole eligibility for inmates whose risk factor is low (bottom right-band section of the table). When the inmate's risk factor is moderate (and for some high-risk factor inmates) the table does not establish a standard to which the board's decision may be compared.

Chairman DeRicco stated Ms. Brown argues that each category in the table of NAC 213.516 must contain a recommended parole decision outcome to which the boards actual decision may be compared in order to meet the requirement that the Board establish specific standards to assist the board in making parole decisions pursuant to NRS 213.10885(1).

Chairman DeRicco further stated our quarterly and yearly statistics are posted on the Board's website which capture this data. This information is readily available.

Chairman DeRicco opened floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Ms. Brown stated each category in the table of NAC 213.516 must contain a recommended parole decision outcome to which the boards actual decision may be compared. Decisions which deviate from those standards should then be reported at each regular session of the Nevada Legislature: NRS 213.10885 (7)(a) requires the Parole Board to report to the Legislature on its parole decisions. This report enables the Legislature to ensure the board's decisions are consistent and justifiable. The "Consider factors" wording in NAC 213.516 does not permit a comparison to nor deviation from a standard result. For that reason, there can be no conflictions nor deviations to report to the legislature pursuant to NRS 213.10885 (7)(a). This absurd result renders the reporting requirement and thus NRS 213.10885 null and void. Ms. Brown stated she still goes back to the proposition that "consider factors" is not an objective guideline for making a parole decision. She thinks the guidelines should make a recommendation as to the outcome.

Chairman DeRicco stated Ms. Brown argues that deviations can then be tracked through the reporting to the Legislative pursuant to NRS 213.10885(7)(a). She provides that as written this renders the reporting requirement and thus NRS 213.10885 null and void.

Chairman DeRicco further stated once again, this information is readily available on the Parole Boards website. In addition, this information is reported to the Legislature.

Chairman DeRicco asked if there was further discussion regarding this specific regulation. There was no discussion.

**VIII. 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 DeRicco stated, the purpose of this public comment session is regarding proposed regulation R114-21P. This proposed regulation revises language in the initial assessment table and adds a subsection (2); and providing other matters properly relating thereto. This change is requested to carry

out the provisions of NRS Chapter 213.516. Public comment will be limited to three minutes per person.

Chairman DeRicco opened floor for public comment.

Chairman DeRicco asked if there was anyone in Las Vegas that would care to make public comment on this topic?

Public comment – Las Vegas, NV

No public comment.

Chairman DeRicco asked if there was anyone in Carson City that would care to make public comment on this topic?

Public comment – Carson City, NV

No public comment.

**IX. For Possible Action:** Review of Intent to Adopt regulation R114-21P. The Board will consider public comments and any business impact and may act to amend and/or adopt the proposed regulation.

Chairman DeRicco stated having already discussed this item as a Board on Agenda Items VII and allowing the opportunity for public comment on this issue on Agenda Items VI and VIII, this is the time to consider those comments and any business impact before acting to amend and/or adopt the proposed regulation. During Board meetings late last year, the Board discussed and crafted language that was approved by the Board and submitted to the Legislative Counsel Bureau for approval for this regulation. The Board has reviewed what was previously submitted to LCB and what they have returned, and LCB did make language changes, but they did capture everything that needed to be captured. Chairman DeRicco continued by stating after review, he is in favor of the language for the regulation as suggested by LCB.

Chairman DeRicco asked if there was any further discussion necessary at this time before requesting a motion.

There was no discussion.

Chairman DeRicco asked if any corrections should be made to the regulation as submitted by LCB as distributed.

There was no discussion.

<b>Motion:</b>	<b>The Nevada Board of Parole Commissioners adopt regulation R114-21P as reviewed and submitted by LCB.</b>
<b>Made:</b>	<b>Chairman DeRicco</b>
<b>Seconded By:</b>	<b>Commissioner Baker</b>
<b>Votes in Favor:</b>	<b>DeRicco, Jackson, Baker, Weisenthal, Christiansen, Verchio, Bailey</b>
<b>Votes Opposed:</b>	<b>None</b>

<b>Results:</b>	<b>Motion passed</b>
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Chairman DeRicco stated on record that Commissioner Bailey had to leave and is absent, excused.

- X. 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 DeRicco stated the purpose of this public comment session is regarding proposed regulation R115-21P. This proposed regulation revises language and re-organizes the language of the aggravating and mitigating factors that the Board may consider; and providing other matters properly relating thereto. Public comment will be limited to three minutes per person.

Chairman DeRicco opened floor for public comment.

Chairman DeRicco asked if there was anyone in Las Vegas that would care to make public comment on this topic?

Public comment – Las Vegas, NV

No public comment.

Chairman DeRicco asked if there was anyone in Carson City that would care to make public comment on this topic?

Public comment – Carson City, NV

No public comment.

- XI. For Possible Action.** Review of proposed regulation R115-21P and solicitation of comments. This proposed regulation revises language and re-organizes the language of the aggravating and mitigating factors that the Board may consider; and providing other matters properly relating thereto.

Chairman DeRicco stated existing law requires the State Board of Parole Commissioners to adopt regulations setting forth specific standards to assist the Board in determining whether to grant or revoke the parole of a convicted person. The standards are required to be based upon objective criteria for determining the convicted person’s probability of success on parole. (NRS 213.10885) The existing regulation sets forth certain aggravating and mitigating factors that the Board is authorized to consider when determining whether to grant parole to a prisoner. (NAC 213.518) This amended regulation revises such aggravating and mitigating factors and also provides that the Board will consider certain other factors set forth in existing law when determining whether to grant parole to a prisoner.

Chairman DeRicco continued by stating at the time and place set for hearing on the proposed regulation, the agency must afford “[a]ll interested parties a reasonable opportunity to submit data, views, or arguments upon a proposed regulation” per NRS 233B.061(1). Further, “[T]he agency shall set a time and place for an oral public hearing” per NRS 233B.061(3). Alternatively, parties may submit their views and both oral and written submissions regarding the proposed regulation must be considered fully.

The person or body with the authority to adopt the regulation must “consider fully” all oral and written comments received. NRS 233B.061(3). Boards or commissions considering the public comments on proposed regulations should retain in the minutes a record of their discussion regarding the public comment and their reasons for either amending the proposed rule in response to the comments or adopting the rule without change.

Chairman DeRicco introduced Kelly Mellinger, Hearing Examiner II, to provide some initial comments regarding publicly submitted documents and/or statements received regarding this regulation.

Ms. Mellinger read a written public comment dated 9.29.2021 from Evan Grant. Mr. Grant stated in three unique ways, the proposed NAC 213.518(1) language exceeds the grant of authority given to the board in NRS 213.10885. First NAC 213.518(1) would still rely on the NAC 213.516 initial assessment to determine when the board can execute NAC 213.518. 10 of the 15 NAC 213.516 initial assessment results grant or deny parole without any execution of NAC 213.518.

Chairman DeRicco stated Mr. Grant first argues that NAC 213.518(1) language exceeds the grant of authority given to the board in NRS 213.10885 because NAC 213.518(1) would rely on the NAC 213.516 initial assessment to determine when the board can execute NAC 213.518.

Chairman DeRicco further stated the Board has adopted by regulation specific standards for each type of convicted person to assist the Board in determining whether to grant or revoke parole. NAC 213.518(1) language does not exceed the grant of authority given to the Board in NRS 213.10885. The initial assessment is just that, an initial assessment, and it does not provide that the Board cannot or will not look to the NAC 213.518 factors. Instead, it provides an initial guide that the Board considers when considering whether there is a reasonable probability that the prisoner will live and remain at liberty without violating the laws and whether the release is incompatible with the welfare of society. NRS 213.1099.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Mr. Grant stated under current and proposed language NAC 213.518(1) being dependent upon NAC 213.516 does not conform to the Legislature’s NRS 213.10885(2)-(2)(f) mandate. Every time the NAC 213.516 initial assessment does not order NAC 213.518 factor consideration, NAC 213.518(1) impermissibly allows for the board to skip consideration of every applicable NAC 213.518(2) & (3) factor and with the amendment all 6 of the enumerated factors contained in NRS 213.10885(2)(a)-(f). Per NRS 233B.040(1), the board is limited in its authority to adopt regulations pursuant to the requirements of applicable statutes. NRS 213.10885(2) is applicable and requires the board to consider all relevant factors, including those contained in NRS 213.10885(2)(a)-(f). For these reasons, the Board must consider every NAC 213.518 factor that applies to a prisoner every time that prisoner is considered for parole. He suggested to fix this issue, NAC 213.518(1)’s dependency on the NAC 213.516 initial assessment must be repealed.

Chairman DeRicco stated Mr. Grant provides that NRS 213.10885(2) requires the Board to consider all relevant factors every time that prisoner is considered for parole.

Chairman DeRicco further stated the Board considers all other factors which are relevant in determining the probability that a convicted person will live and remain at liberty without violating the law if parole is granted or continued. The other factors the Board considers must include, but are not limited to:

- (a) The severity of the crime committed;
- (b) The criminal history of the person;
- (c) Any disciplinary action taken against the person while incarcerated;
- (d) Any previous parole violations or failures;
- (e) Any potential threat to society or to the convicted person; and
- (f) The length of his or her incarceration.

The Board may also consider the relevant aggravating and mitigating factors set forth in subsections 2 and 3, respectively to determine whether to grant parole to a prisoner per NAC 213.518.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Mr. Grant stated the NAC 213.518 (1) amendment would continue to leave NAC 213.518(2) & (3) factor consideration discretionary when the Board executes NAC 213.518. By retaining the NAC 213.518(1) language, “may consider additional aggravating and mitigating factors...” The Board leaves consideration of those factors as a choice.

He goes on to state, as previously stated NRS 213.10885(2) states that all relevant factors shall be considered, therefore, the Board does not get to choose which NAC 213.518 (2) & (3) factors it wishes to consider or not consider. If an NAC 213.518 factor is relevant meaning applicable, the board does not legally have a choice. The factor must be considered. Again, per NRS 233B.040(1), the board is limited in its authority to adopt regulations pursuant to the requirements of applicable statutes. He suggested to fix this issue the words “may consider additional” in NAC 213.518(1) should be replaced with “relevant.”

Chairman DeRicco stated Mr. Grant next argues that the amendment to NAC 213.518(1) would continue to leave NAC 213.518(2) & (3) factor consideration discretionary. He provides that NRS 213.10885(2) states that all relevant factors shall be considered, therefore, the board does not get to choose which NAC 213.518 (2) & (3) factors it wishes to consider or not consider.

Chairman DeRicco stated that previously, as a result of this request by Grant, the Board requested a small change to NAC 213.518(1). This change was to replace the word “additional” with the word “relevant.” The request reworded NAC 213.518(1) to read, “After establishing an initial assessment regarding whether to grant parole pursuant to NAC 213.516, the Board will consider the factors contained in NRS 213.10885 and NRS 213.1099 and may consider relevant aggravating and mitigating factors to determine whether to grant parole to a prisoner.” Further, after incorporating this change, the Board conducted another workshop on this same statute, to address subsections (2) and (3). This was done to clean up some of the language included in these sections for greater clarity. The Board considers the NRS 213.10885 (2) factors and in addition may consider the aggravating and mitigating factors in NAC 213.518 subsections (2) and (3).

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Mr. Grant goes on to state NRS 213.10885(1) provides, in part: “The Board’s standards must be based upon objective criteria for determining the person’s probability of success on parole” Presently and under the proposed amendment, as use of the word “may” makes NAC 213.518 (2) & (3) factor consideration absolutely discretionary NAC 213.518 does not contain language stating when or how the Board considers and NAC 213.518 (2) & (3) factor.

Chairman DeRicco stated Mr. Grant argues that the use of the word “may” makes NAC 213.518 (2) & (3) factor consideration discretionary, but NRS 213.10885(1) provides that the Board’s standards must be based upon objective criteria.

Chairman DeRicco further stated as previously discussed, the Board has discretion to consider which aggravating and mitigating factors may be applied and will consider all relevant factors, all of which are based on objective criteria.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Mr. Grant stated discretionary factor consideration is subjective, the opposite of objective. Per Legislative intent of NRS 213.10885(1), any interested person should be able to reason the boards NACs and determine whether a prisoner should be granted or denied parole. Without specifying when or how any NAC 213.518(2) & (3) factor is to be considered, it is literally impossible for anyone, including the Board at large, to determine if a prisoner should be granted or denied parole as each parole consideration will be influenced by the subjective bias of the participating Board members. Once again per NRS 233B.040(1), the Board is limited in its authority to adopt regulations pursuant to the requirements to applicable statues. He suggested to fix this issue, the Board must adopt NAC 213.518 language specifying when and how NAC 213.518 factors are to be considered.

Chairman DeRicco stated Mr. Grant argues that discretionary factor consideration is subjective, the opposite of objective and argues that the Board must adopt NAC 213.518 language specifying when and how NAC 213.518 factors are to be considered.

Chairman DeRicco further stated as previously discussed, the Board may consider these factors as appropriate. Further, after adoption of the regulations, the Board will further review the definitions for their aggravating and mitigating factors. The factors are objective and that there seems to be some misunderstanding as to what objective versus subjective factors are. The standards contained in the NACs are all objective, none are based on perceptions, feelings or intentions and they are all externally verifiable.

Chairman DeRicco provided some definitions which he wanted placed on the record from Black’s Law Dictionary (11<sup>th</sup> Edition) that help provide some clarity.

- **objective** *adj.* (17c) **1.** Of, relating to, or based on externally verifiable phenomena, as opposed to an individual's perceptions, feelings, or intentions <the objective facts>. **2.** Without bias or prejudice; disinterested.
- **subjective** *adj.* (18c) **1.** Based on an individual's perceptions, feelings, or intentions, as opposed to externally verifiable phenomena ... **2.** Personal; individual.
- - **objective standard.** (1915) A legal standard that is based on conduct and perceptions external to a particular person. • In tort law, for example, the reasonable-person standard is considered an

objective standard because it does not require a determination of what the defendant was thinking.

- - **subjective standard.** (1915) A legal standard that is peculiar to a particular person and based on the person's individual views and experiences. • In criminal law, for example, a subjective standard applies to determine premeditation because it depends on the defendant's mental state.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger read a written public comment dated 10.18.2021 from Evan Grant. Mr. Grant stated the proposed changes to NAC 213.518 (2) & (3) create a new issue. The proposed changes to NAC 213.518 (2) & (3) changes every enumerated aggravating and mitigating factor. As every enumerated factor in NAC 213.518 (2) & (3) are proposed to change, the Board must amend its “Aggravating & Mitigating factors definitions” guideline document to precisely convey when once of the proposed factors is relevant to a Nevada inmate being considered for parole. The three legal issues that he identified in his NAC 213.518 NRS 233B.100 petition and in his public comments for the first NAC 213.518 workshop remain in NAC213.518(1)’s proposed language.

Chairman DeRicco stated Mr. Grant argues that because the proposed changes change every enumerated aggravating and mitigating factor, the board must amend its “Aggravating & Mitigating factors definitions” guideline document.

Chairman DeRicco further stated while all of the definitions may not need to be updated, the Board will be tackling this project after approval of the regulations. NAC 213.518 subsections (2) and (3) primarily reordered the factors already in place and corresponded the language with that already in the guidelines rather than provided new language.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger read a written public comment dated 11.29.2021 from Evan Grant. Mr. Grant stated concerning NAC 213.518 he sees two issues. His first issue, NAC 213.518(1) states, “the Board will consider the initial assessment, the factors contained in NRS 213.10885 and NRS 213.1099...” but does not state how this consideration will take place. The Board’s NACs mark step by step how consideration is to take place per NRS 213.10885(1). He states, as every person, regardless of who they are, will “consider” that information differently, the board has a duty, and is required by Nevada law, to codify in the NAC’s how it will “consider” that information.

Chairman DeRicco stated Mr. Grant first provides that NAC 213.518 needs to provide in a step-by-step manner how the consideration of the initial assessment and the factors will take place.

Chairman DeRicco further stated there does not need to be a step-by-step guide on this. The initial assessment is completed first by NDOC staff, further reviewed by the Board, and considered along with NRS 213.10885 and 213.1099. Subsequent to this the Board may also consider the relevant aggravating and mitigating factors set forth in NAC 213(2) and (3).

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Mr. Grant's second issue was, NAC 213.518(1) still says the Board "May consider relevant aggravating and mitigating factors." stating once again, NRS 213.10885(2) states, in establishing the standards, the Board shall consider. All other factors which are relevant" the board does not get to choose which 'other factors' aggravating or mitigating, it considers. The word "may" in NAC 213518(1) give the Board the power of choice as to which factors it considers in violation of NRS 213.10885(2). He suggests to correct this, the words "may consider" in NAC 213.518(1) must be struck so that NAC 23.518(1) reads "the Board will consider the initial assessment, the factors contained in NRS 213.10885 & NRS 213.1099 and relevant aggravating and mitigating factors." Furthermore, as the Board is looking to change every NAC 213.518 (2) & (3) aggravating and mitigating factor, the board must amend its Aggravating and Mitigating factors definitions for each NAC 213.518 (2) & (3) factor to reflect their new meanings.

Chairman DeRicco stated Mr. Grant second argument is that the word "may" in NAC 213518(1) improperly gives the Board the power of choice as to which factors it considers in violation of NRS 213.10885(2).

Chairman DeRicco further stated the word "may" refers to the aggravating and mitigating factors as a part of NAC 213.518, not to NRS 213.10885(2). The Board will consider all relevant factors, but all factors may not be relevant, so the word "may" is used.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger read a written public comment dated 3.28.2021 from Evan Grant. Mr. Grant stated NAC 213.518 (1)(b) utilizes the word "may" concerning relevant aggravating and mitigating factor consideration by the Board. NRS 213.10885(2) provides, "In establishing the standards, the Board shall consider all other factors which are relevant. The word "may" in NAC 213.518(1)(b) affords discretion that is impermissible under NRS 213.10885 (2). The Board must consider every applicable factor.

Chairman DeRicco stated Mr. Grant repeats his argument that the word "may" in NAC 213.518(1)(b) affords discretion that is impermissible under NRS 213.10885 (2).

Chairman DeRicco further stated this issue has been previously addressed.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Mr. Grant states NAC 213.518 does not specify how NAC 213.518 (2) & (3) factors are to be considered. NRS 213.10885(1) states that the Board's "standards must be based upon objective criteria... without specifying how NAC 213.518(2) & (3) factors are to be considered, they cannot be considered objectively as each parole commissioner will then consider each factor based on personal bias resulting in subjective consideration.

Chairman DeRicco stated Mr. Grant also repeats his argument that without specifying how NAC 213.518(2) & (3) factors are to be considered, they cannot be considered objectively pursuant to NRS 213.10885(1) as each parole commissioner will then consider each factor based on personal bias resulting in subjective consideration.

Chairman DeRicco further stated this issue has already been addressed. The factors and the consideration are objective.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger read a written public comment from Patricia Adkisson. She made 3 substantially similar comments - one oral comment at the 9/29/21 workshop, one letter submitted on 9/25/21, and one letter dated 10/21/21. Ms. Adkisson provided that: Chapter 213 confers limited authority to this Board, when taking any action related to parole consideration. The effective Nevada Administrative Code must establish clear objective criteria and standards. NAC 213.518 does not establish any such objective criteria, nor does it establish a standard. A weighted value must be applied in order to give an objective effect in the determination. The legislature mandates objective criteria and standards in order to ensure the uniform operation and application of this Board's determination related to parole action, as contemplated by NAC 4 Nevada constitution article 4. The legislative purpose is to safeguard against arbitrary and capricious determinations. Parole is a grace of the state, that grace must be applied in a manner consistent with a uniform application and operation of laws, as well as equal protection of our system of laws. Otherwise, this Board could simply ignore the standards and only grant grace of our state through personal biases. The use of any factor contemplated pursuant to NAC 213.518 for Parole action, based upon an undefined standard, is simply a subjective review and prevents a fair hearing. Parole is a grace of the state, but the board is not permitted to grant or deny parole as a whim based on subjective standards not sufficiently defined with a weighted value. Parole action in this manner can never be said to be applied in a manner consistent with concepts of a fair hearing. It implicates equal protection issues and runs afoul of principles related to the uniform operation and application of general laws as enshrined in the Nevada constitution Article 4 subsection 21. Ms. Adkisson is requesting the Board to establish a weighted known value for each factor related to NAC 213.518.

Chairman DeRicco stated Ms. Adkisson argues that NAC 213.518 does not establish clear objective criteria and standards as mandated by the Legislature. She argues that a weighted value must be applied in order to give an objective effect in the determination and to ensure uniform operation and application.

Chairman DeRicco further stated there is not a way to assign a weighted value to all of the aggravating and mitigating factors in NAC 213.518. Depending on the case being considered, certain aspects of either an aggravating or mitigating factor may be considerably different. For instance, a person may be the victim of a fraud, or a victim of a violent offense. In what is requested in a weighted system, a case involving a victim would likely be weighted high, but given the circumstances of a particular case, may need to be weighted as low. This weighted request removes the discretion of the Board to determine the impact on individual cases. This is not fair to an inmate, or a victim if it were set in stone. That should be left to the Board's determination to determine the factors that may apply and use that information to make a determination whether or not parole is suitable.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger read a written public comment dated 9.29.2021 from John Quintero. Mr. Quintero requested the Board to consider the following comments and proposed amendments:

The word “will” is the helping very similarly to shall, will this mandatoriness ascribed to “shall” in definitions section be applied to “will”?

Chairman DeRicco stated Mr. Quintero asks if the mandatoriness ascribed to “shall” be applied to “will”?

Chairman DeRicco responded that essentially, yes.

Chairman DeRicco opened floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Mr. Quintero stated NRS 213.10885(1) uses words “standards” is this word synonymous with “factors” for the purpose of parole consideration?

Chairman DeRicco stated Mr. Quintero further asks if the use of the word "standards" in NRS 213.10885(1) is synonymous with “factors” for the purpose of parole consideration?

Chairman DeRicco further stated the standards are the regulations. Further, the term “factors” is not mentioned in NRS 213.10885(1). Factors are mentioned in NRS 213.10885(2) and in NAC 213518(2) and (3). They are not standards.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Mr. Quintero further stated NRS 213.10885 (1)(f) states that the standard created by regulation “must be based on objective criteria for determining improbability of success on parole” Has the Board researched and established the “objective criteria” which would be the justifying cause to invoke any mitigating or aggravating factors listing under NAC 213.518 (2) & (3)? If affirmed are these objective criteria published?

Chairman DeRicco stated Mr. Quintero also asks if the Board has researched and established the “objective criteria” which would be the justifying cause to invoke any mitigating or aggravating factors? And, if so, are these objective criteria published?

Chairman DeRicco further stated current NAC 213.518 standards have been in place since 2008. The guidelines that further define the aggravating and mitigating factors are published on the Parole Board website.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Mr. Quintero stated in practice NDOC makes a parole report and includes a crime related risk assessment that is derived from the cumulative weighted score of measurement criteria, then the board does its own predictive weighted risk assessment, the scores of which fluctuate in relation to actuarial studies that tabulate the recidivism rates of occurrence, such that 18 year olds recidivism rates are higher than 65 year olds, correct?

Chairman DeRicco stated Mr. Quintero asks if the Board's predictive weighted risk assessment scores fluctuates in relation to actuarial studies that tabulate the recidivism rates of occurrence, such that 18-year old's recidivism rates are higher than 65-year old's?

Chairman DeRicco further stated our risk assessment must be revalidated regularly in accordance with statute and believes that Nevada was one of the first states to use a risk assessment, dating back to 2003. Our risk assessment will be going through the revalidation process in accordance with statute later this year. After the research is complete, on the Board will review the findings at a subsequent meeting.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Mr. Quintero stating this question assumes facts not evidence except by omission in the regulation 213.518 why does the board deviate from the statutory command to be based on objective criteria by placing objective values on each factor listed under aggravating and mitigator in section (2) & (3) of NAC 213.518? Does not leaving these factors up to the clinical judgement of the Board defeat the very purpose of the legislative mandate to use objective criteria to determine probability of success on parole?

Chairman DeRicco stated Mr. Quintero then argues that leaving the aggravating and mitigating factors up to the clinical judgement of the Board defeats the very purpose of the legislative mandate to use objective criteria to determine probability of success on parole.

Chairman DeRicco further stated the aggravating and mitigating factors are not a part of the initial assessment. After the initial assessment is complete, the Board will consider this initial assessment, along with the factors set forth in NRS 213.10885 and 213.1099 and may consider additional aggravating and mitigating factors. As previously explained, the entire process is objective.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Mr. Quintero stated based on anecdotal first-hand experience the parole applicants are not give a copy of the Parole Board's additional risk assessment and guidelines prior to the parole hearing. This official non-disclosure does not allow the inmate applicant any fair notice or opportunity to prepare for the hearing to improve his chances to be granted parole. Based on this what governmental interest exists that would outweigh the individual's fundamental right to notice of the assessment and opportunity to improve his changes at parole by addressing that report.

Chairman DeRicco stated Mr. Quintero next argues that the Board's failure to provide the parole applicants a copy of the boards risk assessment and guidelines prior to the parole hearing does not allow the inmate applicant fair notice or opportunity to prepare for the hearing. He asks what governmental interest exists that would outweigh the individual's fundamental right to notice of the assessment and opportunity to improve his chances at parole by addressing that report.

Chairman DeRicco further stated the risk assessment is first completed through the NDOC, which is a part of the Board report that each inmate signs before it is delivered to the Parole Board. As such, the results are available to all inmates prior to a Parole Board hearing. Further, these results are made a part of the record at each hearing and are placed on record and all inmates are afforded the opportunity to let the Board know if something has been calculated in error. When an error is encountered during a hearing, changes are made to correct the assessment. Further, the Nevada Parole Risk Assessment can be found on the Parole Board's website along with the Nevada Parole Recidivism Risk and & Crime Severity Guidelines, along with many other documents. The guideline document is publicly available.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger read a written public comment dated 10.25.2021 from John Quintero. Mr. Quintero requested to place following clarifications and concerns on the record, which considers how to carry out NRS 213.10885 and 213.1099. 1. This NAC proposal does not address section (1) of 213.10885, "shall adopt by regulation specific standards for each type of convicted person..." He commented: this proposal is a catchall that does not obey the command of the sovereign, he objects.

Chairman DeRicco stated Mr. Quintero argues that his NAC proposal does not address section (1) of NRS 213.10885, which provides that the Board "shall adopt by regulation specific standards for each type of convicted person"

Chairman DeRicco further stated this has been previously addressed.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Mr. Quintero states to clarify: The legal definition of "relevant" means "logically connected (evidence of fact) tending to prove a matter in issue (or disprove) having appreciable probative value, rationally tending to persuade of the probability or possibility of some alleged fact, Black's Law Dictionary 7<sup>th</sup>. He stated in 2012, the Board was advised by the attorney general in Opinion No 2012-02 "since the authorizing statute does not contain safeguards for accuracy, the division and Board should adopt reasonable safeguards to identify erroneous information in the reports provided to the board." Mr. Quintero further stated he has tried to raise such inaccuracies in writing and at his parole hearings and he has been punished for doing so which is evidence by verbal and non-verbal messaging by board, the last hearing Ms. Jackson said "our information from PSI differs from what you have to say" The term "factor" indicates a category of reality, not merely a category of mind (an opinion or false proposition) NRS 213.10885 states in (1) the "standards must be based upon objective criteria" (category of reality) That means each aggravator and mitigator must have a basis in fact not opinion; therefore the board is obligated to avoid arbitrary and capricious acts based on facts not

in evidence – it is common law that police reports nor PSI's are per se evidence but reports of alleged acts based on evidence; such things are mere denunciations as used in oppressive unjust political systems such as fascism, communism and the like.

Chairman DeRicco stated Mr. Quintero contends that each aggravator and mitigator must have a basis in fact not opinion; therefore, the Board is obligated to avoid arbitrary and capricious acts based on facts not in evidence – such as facts from police reports or PSI's. He argues that the Board should adopt reasonable safeguards to identify erroneous information in the reports provided to the Board.

Chairman DeRicco further stated definitions of each aggravating and mitigating factor can be found on our website. Further, after this regulation is finalized, these definitions will be reviewed as well. The Board may consider other factors as appropriate. An inmate has a chance to challenge the factual content of the PSI (which may be based on police reports) before sentencing pursuant to NRS 176.156 and can do so if they believe that the facts are not accurate. Furthermore, the PSI statute is clear that it may be used at future hearings, such as board meetings. The Board relies on presentence reports, and if information is not accurate, individuals have an avenue to get them corrected. Additionally, Board reports submitted by NDOC also require inmate signature, so if something there is inaccurate, the inmate should work with the NDOC to correct an issue prior to signature.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Mr. Quintero stated all the mitigators and aggravators should be actuarially weighted and each category tabulated in a format which tabulates whether the factor is present and what degree of weight is scored and deducted or added to the NDOC and Parole Risk assessment; As it stands the Parole Board's acts of negating the indications of the low risk on recidivist probability are done so based NOT on factors, (categories of reality) but on categories of mind about the unpopularity or political mood of the class of crimes considered, (opinions).

Chairman DeRicco stated Mr. Quintero contends that the mitigators and aggravators should be actuarially weighted and each category tabulated in a format which tabulates whether the factor is present and what degree of weight is scored and deducted or added to the NDOC and Parole Risk assessment.

Chairman DeRicco further stated there is not a way to compare apples with oranges. The factors either apply, or they do not. When they do apply, the Board may consider them. A weighted factor in one case will likely not be of the same weight in another. This is how the Legislature set up the system. Had it wanted an inflexible actuarial system, it could have done so in statute. But, instead, the Legislature chose an approach that prioritizes the consideration of whether there is a reasonable probability that the prisoner will live and remain at liberty without violating the laws and whether the release is incompatible with the welfare of society. NRS 213.1099.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Mr. Quintero states that NRS 213.10885 (4) states that the Board must provide greater punishment as related to recidivist patterns or who commits a serious crime, with a

violent crime considered the most serious – the Board is not regulating the degrees of seriousness, but have allowed another agency to make that determination – the Nevada Dept of Corrections (see NRS 209.341 & NAC 213.512). This violates the mandate of 213.10885 (4) which does not contemplate NDOC’s construction and does not authorize said construction or use or creation of a “severity level.” This issue must be raised now insofar as its relevant.

Chairman DeRicco stated Mr. Quintero argues that the Board's failure to assign the degrees of seriousness itself violates the mandate of 213.10885 (4) which does not contemplate NDOC’s construction and does not authorize said construction or use or creation of a “severity level.”

Chairman DeRicco further stated the standards adopted by the Board provide for a greater punishment for a convicted person who has a history of repetitive criminal conduct or who commits a serious crime, with a violent crime considered the most serious, than for a convicted person who does not have a history of repetitive crimes and did not commit a serious crime, in accordance with statute. Per NAC 213.512, which has been effective since April 17, 2008, the Board will assign to each crime for which parole is being considered a severity level of “highest,” “high,” “moderate,” “low moderate” or “low.” The severity level will be the same as the severity level assigned to the crime by the Department of Corrections for the purpose of classifying offenders pursuant to NRS 209.341. Further, the Board will apply the severity level of the crime for which parole is being considered to establish an initial assessment regarding whether to grant parole in the manner set forth in NAC 213.516. The Board has already determined this is the most appropriate way to assign the severity level. The Legislature provided the Board with discretion. It could have but did not point to the NRS 193 severity levels in the statute. Parole is an act of grace, there is no right to parole, and the decision of whether to grant or deny parole always remains within the penalty or sentence imposed by the court.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Mr. Quintero stated the issue is relevant because the Board is considering the authorization statute NRS 213.10885, and as it stands, the “highest severity” is a category that always must “consider factors” whereas all other categories high, moderate low moderate low & low all at some point receive a grade grant parole which makes the entire scheme patently unfair because NDOC has made the vast majority of crimes “highest” and both agencies escape responsibility or answerability to any rational challenge and is based on “categories of mind” or mere sentiment, popularity of crime in general or in particular; neither does NRS 213.1099 contemplate NDOC’s determination of crime severity or any power to make such a regulation as 213.1099(c) says “Board shall consider (c) the seriousness of the offense and the history of criminal conduct....”

Chairman DeRicco stated Mr. Quintero contends that because NDOC has made the vast majority of crimes “highest,” both agencies escape responsibility or answerability to any rational challenge and the decision is based on mere sentiment or popularity of the crime in general.

Chairman DeRicco further stated the Board has determined that the severity level will be the same as the severity level assigned to the crime by the Department of Corrections for the purpose of classifying offenders pursuant to NRS 209.341. If there is further concern here, Mr. Quintero should address this issue with NDOC.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Mr. Quintero stated he objects the Board's neglect in adopting the necessary notice and opportunity as suggested in his letter to Board dated 9.8.2021; the choice to use aggravators and mitigators is done in a government action outside presence of inmate applicant this puts the applicant at disadvantage because it deprives him or her the necessary information to speak to the issues to be used against her or him during opening statement

Chairman DeRicco stated Mr. Quintero argues that the choice to use aggravators and mitigators outside of the presence of inmate applicant puts the applicant at disadvantage because it deprives him or her the necessary information to speak to the issues to be used against her or him during the opening statement.

Chairman DeRicco further stated as previously stated, the definitions of the aggravating and mitigating factors are available on our website. All inmates can view them prior to a hearing to determine which may apply to their case, and when there are discrepancies, the Board allows input from an inmate at a hearing if one of these factors appear in error. These factors which are applied are put on record at each hearing. If an error is found at the time of the hearing, a factor can either be added or removed. Bottom line, the Board just wants to ensure accurate aggravating and mitigating factors are considered for all inmates appearing before the Board.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Mr. Quintero stated at the time of hearing, considering he will (nor anybody re-classified by NDOC to "highest severity" will always have mitigating and aggravating factors considered, and never received the guarantee of "grant parole" as outlined in attached copy of NAC 213.516 the lack of prior notice to prepare an opening statement to improve chance to demonstrate suitability for parole constitutes unfair surprise. If unfair surprise is valid under state or federal constitution then we need new ones, because when any form of government threatens basic fairness in government process it is time to alter the operational principles that guide the government.

Chairman DeRicco stated Mr. Quintero argues that anyone classified by NDOC to "highest severity" will always have mitigating and aggravating factors considered, and never received the guarantee of "grant parole."

Chairman DeRicco further stated the assessment is an objective tool and the starting point in this process. Parole is an act of grace, and no inmate has a guarantee of "grant parole." The Board considers the initial assessment, and the factors set forth in NRS 213.10885 and 213.1099 and may consider additional aggravating and mitigating factors. This is done in cases where the initial assessment is to deny parole all the way to when the initial assessment is to grant parole at initial eligibility. Per this revalidated assessment, you are correct that anyone with a "highest" severity level will not have an initial assessment to grant parole.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger read a written public comment dated 11.29.2021 from Adam Garcia. Mr. Garcia submitted a letter from his lawyer Alan Erb to Board and the Board's response dated Feb 18, 2021, please note 3<sup>rd</sup> paragraph of Board response made by Eric Christiansen "According to NRS 213.1214 and additional evaluation is required for convicted sex offenders that supersedes the initial risk assessment" Mr. Garcia stated nothing in that statute mentions an "additional evaluation" ... that supersedes the initial risk assessment. This relates to proposed aggravator (2)(g) of NAC 213.518. Mr. Garcia is requesting to take note into consideration in our upcoming regulation workshop on 11.29.21 this organizational deviation from the law, and place his evidence into record, and answer on the record how this misrepresentation by Christiansen can be explained and take steps to assure the Board's future reliance on this falsehood will be foreclosed by regulation.

Chairman DeRicco stated Mr. Garcia provides that nothing in NRS 213.1214 mentions an additional evaluation that supersedes the initial risk assessment that is now provided for in proposed aggravator (2)(g) of NAC 213.518.

Chairman DeRicco further stated this is correct, however, pursuant to NRS 213.1214: 4. The Board shall consider an assessment prepared pursuant to this section before determining whether to grant or revoke the parole of a person convicted of a sexual offense. And 5. The Board may adopt by regulation the manner in which the Board will consider an assessment prepared pursuant to this section in conjunction with the standards adopted by the Board pursuant to NRS 213.10885. The Board meets these requirements with this NAC.

Chairman DeRicco opened the floor for discussion.

Commissioner Christensen stated he wrote the letter in question and wanted to place on the record that they do consider that evaluation as required by law.

Ms. Mellinger read a written public comment dated 3.28.2022 from Tonja Brown, Advocates for the Inmates and the Innocent. Ms. Brown stated they agree with most of these amendments. However, the guidelines should be objective. Aggravating factors based upon a feeling or opinion of a Board member should not be allowed.

Chairman DeRicco stated Ms. Brown provides that the guidelines should be objective and that aggravating factors based upon a feeling or opinion of a board member should not be allowed.

Chairman DeRicco further stated aggravating factors are not based upon feeling or opinion, they are objective. Definitions for aggravating factors can be found on the Board's website.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Ms. Brown stated extreme or abnormal aspects of a crime to one member may not be considered as such by most people. Ask them to stick to numbers or yes or no factors. Eliminate this subjective subsection.

Chairman DeRicco stated Ms. Brown also provides that extreme or abnormal aspects of a crime to one member may not be considered as such by most people and is subjective.

Chairman DeRicco further stated as provided for in the guideline definitions, this factor may be indicated when the details of the crime indicate that the crime was conducted in such a manner that shows sophistication in planning or carrying out an offense, or the nature of the conduct is shocking to a normal person. Examples may include but are not limited to: Mutilation or abuse of a corpse following a murder; serial murder; serial sexual assault or numerous victims of a sex offender; the torture of a person or animal. For the record, this factor is applied sparingly.

Chairman DeRicco asked if there was further discussion regarding this specific regulation. There was no discussion.

**XII. 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 DeRicco stated that the purpose of this public comment session is regarding proposed regulation R115-21P. This proposed regulation revises language and re-organizes the language of the aggravating and mitigating factors that the Board may consider; and providing other matters properly relating thereto. Public comment will be limited to three minutes per person.

Chairman DeRicco opened floor for public comment.

Chairman DeRicco asked if there was anyone in Las Vegas that would care to make public comment on this topic?

Public comment – Las Vegas, NV

No public comment.

Chairman DeRicco asked if there was anyone in Carson City that would care to make public comment on this topic?

Public comment – Carson City, NV

No public comment.

**XIII. For Possible Action:** Review of Intent to Adopt regulation R115-21P. The Board will consider public comments and any business impact and may act to amend and/or adopt the proposed regulation.

Chairman DeRicco stated having already discussed this item as a Board on Agenda Item XI and allowing the opportunity for public comment on this issue on Agenda Items X and XII, this is the time to consider those comments and any business impact before acting to amend and/or adopt the proposed regulation.

Chairman DeRicco asked if there was further discussion regarding this specific regulation.

There was no discussion.

Chairman DeRicco asked if any corrections should be made to the regulation as submitted by LCB as distributed.

There was no discussion.

<b>Motion:</b>	<b>The Nevada Board of Parole Commissioners adopt regulation R115-21P as reviewed and submitted by LCB.</b>
<b>Made:</b>	<b>Chairman DeRicco</b>
<b>Seconded By:</b>	<b>Commissioner Weisenthal</b>
<b>Votes in Favor:</b>	<b>DeRicco, Jackson, Baker, Weisenthal, Christiansen, Verchio</b>
<b>Votes Opposed:</b>	<b>None</b>
<b>Results:</b>	<b>Motion passed</b>

**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.

Chairman DeRicco stated the purpose of this public comment session is regarding proposed regulation R116-21P. This proposed regulation revises language to how the Board uses the NRS 213.1214 risk assessment for sexual offenders; and providing other matters properly related thereto. Public comment will be limited to three minutes per person.

Chairman DeRicco opened floor for public comment.

Chairman DeRicco asked if there was anyone in Las Vegas that would care to make public comment on this topic?

Public comment – Las Vegas, NV

No public comment.

Chairman DeRicco asked if there was anyone in Carson City that would care to make public comment on this topic?

Public comment – Carson City, NV

No public comment.

**XV. For Possible Action.** Review of proposed regulation R116-21P and solicitation of comments. This proposed regulation revises language to how the Board uses the NRS 213.1214 risk assessment for sexual offenders; and providing other matters properly related thereto.

Chairman DeRicco stated existing law requires the State Board of Parole Commissioners to adopt regulations setting forth specific standards to assist the Board in determining whether to grant or revoke the parole of a convicted person. The standards are required to be based upon objective criteria for determining the convicted person's probability of success on parole. (NRS 213.10885) Existing law

requires the Department of Corrections to conduct, before a scheduled parole hearing of a prisoner who has been convicted of a sexual offense, an assessment of the prisoner to determine his or her risk to reoffend in a sexual manner using a currently accepted standard of assessment. (NRS 213.1214) The existing regulation provides that the Board will assign a certain risk level to each prisoner being considered for parole according to the level of risk that he or she will commit a felony if released on parole. The existing regulation provides that if the prisoner has been convicted of a sexual offense and has been evaluated using a currently accepted standard of assessment to determine his or her risk to reoffend in a sexual manner, the Board will assign a risk level which is the higher of the risk level initially assigned by the Board and the risk level determined by such an evaluation. (NAC 213.514) This amendment to the regulation instead provides that the Board will consider both risk assessments when determining whether to grant parole.

Chairman DeRicco continued by stating at the time and place set for hearing on the proposed regulation, the agency must afford “[a]ll interested parties a reasonable opportunity to submit data, views, or arguments upon a proposed regulation” per NRS 233B.061(1). Further, “[T]he agency shall set a time and place for an oral public hearing” per NRS 233B.061(3). Alternatively, parties may submit their views and both oral and written submissions regarding the proposed regulation must be considered fully. The person or body with the authority to adopt the regulation must “consider fully” all oral and written comments received. NRS 233B.061(3). .... Boards or commissions considering the public comments on proposed regulations should retain in the minutes a record of their discussion regarding the public comment and their reasons for either amending the proposed rule in response to the comments or adopting the rule without change.

Chairman DeRicco introduced Kelly Mellinger, Hearing Examiner II, to provide some initial comments regarding publicly submitted documents and/or statements received regarding this regulation.

Ms. Mellinger read a written public comment dated 11.29.2021 from Evan Grant. Mr. Grant stated concerning NAC 213.514’s proposed language, he whole heartedly endorses the Board’s decision to recognize that the NRS 213.1214 risk assessment should be considered in conjunction with the Nevada parole risk assessment. This not only protects the Board from tainting the entire parole consideration process if the Department of Corrections fails in its execution of NRS 213.1214, but, additionally, distinguishes consideration of those convicted of a sexual offense from those who have not. With this in mind, he sees one issue with the proposed NAC 213.514(4) & (5) language. NRS 213.1214(4) mandates that “the board shall consider an assessment prepared pursuant to this section” NRS 213.1214 (6)(d)(20) requires the DOC to conduct an NRS 213.1214 assessment for “an offense of a sexual nature committed in another jurisdiction” unless, certain conditions are met. Regardless of the offense under consideration by the board for parole, if the DOC conducts and submits to the board an NRS 213.1214 assessment in accordance with the provisions of NRS 213.1214, the board is required to consider it. For these reasons, NAC 213.514(5) stating the board “may also consider this risk assessment.” is in violation of NRS 213.1214(4) which states “the board shall consider an assessment” Mr. Grant recommended striking NAC 213.514 (5) and amending NAC 213.514(4) to state “4. If a prisoner is being heard for parole for a sexual offense, or has ever been convicted of a sexual offense, as defined by NRS 213.1214, the board shall consider the risk assessment” This language would protect the board from accidentally not considering an NRS 213.1214 assessment that Nevada law requires to be considered.

Chairman DeRicco stated Mr. Grant stated that NAC 213.514(5) stating the Board “may also consider this risk assessment” conduct by NDOC is in violation of NRS 213.1214(4) which states “the Board shall consider an assessment” conduct by NDOC.

Chairman DeRicco further stated as a part of the wording in this proposed regulation, in accordance with NRS 213.1214, the Board will consider the risk assessment conducted by the Department of Corrections pursuant to NRS 213.1214 when determining whether to grant parole. As such, this point is no longer valid.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger read a written public comment dated 3.28.2022 from Evan Grant. Mr. Grant stated the following is his principal reason against R116-21P. As the boards execution of NAC 213.514(4) is located in the new NAC 213.518(2)(g) and (3)(k), NAC 213.514 (4) should reference NAC 213.518.

Chairman DeRicco stated Mr. Grant provides that because the Board's execution of NAC 213.514(4) is now located in NAC 213.518(2)(g) and (3)(k), NAC 213.514(4) should reference NAC 213.518.

Chairman DeRicco further stated this is unnecessary to add a reference to NAC 213.518. This NAC as written appears appropriate. For the purposes of this NAC, it indicates that the Board will now consider this assessment, but not use the higher risk level of the two assessments. As such, no addition is needed.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Mr. Grant stated NAC 213.514(4) stating that consideration will be "in accordance with NRS 213.1214." is too vague as NAC 213.514(4) simply mandates the Board consider the DOC's assessment. As the board has chosen to do so via NAC 213.518, it should be included by reference to NAC 213.514(4).

Chairman DeRicco stated Mr. Grant provides that NAC 213.514(4) stating that consideration will be "in accordance with NRS 213.1214." is too vague as NAC 213.514(4) simply mandates the Board consider the DOC's assessment.

Chairman DeRicco further stated this consideration does not appear to be too vague. If a prisoner has been convicted of a qualifying sexual offense, the Board has always considered this additional assessment. The Board is still considering it here now, but now the sex offender assessment results will not override the parole risk assessment. It will be considered as a part of a case, and it may be considered as an aggravating or mitigating factor.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger read a written public comment dated 3.28.2022 from Tonja Brown, Advocates for the Inmates and the Innocent. Ms. Brown stated requiring the Board to use ONLY the NDOC assessment doesn't seem to create a problem. The only part we question is why the NDOC eval only examines the probability of future sexual crimes. When initial assessment is made by the Board, everybody else gets

looked at for the probability of the commission of any new crime. Why are sexual offender's only reviewed for further sex crimes. If they have a drug problem, e.g., any other crime will be more likely to occur.

Chairman DeRicco stated Ms. Brown provides that they question why the NDOC eval only examines the probability of future sexual crimes for sexual offenders and does not include the probability of any other crimes such as drug crimes.

Chairman DeRicco further stated pursuant to statute, this additional assessment is only for certain qualifying sex offenses. It is a sex offender assessment. This additional assessment is not for the purposes of considering other crimes such as drug crimes.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger read a written public comment dated 3.29.2022 from John Quintero. Mr. Quintero stated in the past practice of the Board NRS 213.1214 had been interpreted by the Board to give it permission to perform and "additional" evaluation that would serve to supersede or "override" the static-99 report sent to Board by some manner unclear from the record. Commissioner DeRicco answers "no" when asked by Commissioner Verchio asks "do we still override?" The correct purpose of NAC clarified by testimony is that when a parole applicant shows up to the Board without a static-99 due to a sex offense (conviction) on PSI missed by NDOC parole report preparers, a NO ACTION would issue. The static-99 shall be used and no "overrides" are permitted, required or suggested by the NRS 213.1214, as conveyed by the Feb 18 2021 letter of Commission to Garcia via Alan Erb, Esq. He will stand to be corrected in his understanding but, if he is right, then he's requesting the following questions to be considered as agenda items and placed on the agenda for subsequent hearing(s): Should the Board request an AG opinion regarding the question of answerability of the Board to the past practice of mal interpretation of NRS 213.1214, (a tradition passed on to the current Board and not initialed by this current commission); in other words for purposes of injunctive relief (not damages) should the Board be liable.

Chairman DeRicco stated Mr. Quintero suggests that the Board request an AG opinion regarding liability concerning the Board's past practice of its interpretation of NRS 213.1214, on injunctive relief challenges.

Chairman DeRicco further stated this is not necessary. The Board has previously followed its regulations with regard to this NAC. However, it is the opinion of this Board that we will still consider both assessments with regard to qualifying sex offenses, but that an override is not necessary if the sex offender assessment is higher than the parole risk assessment. This assessment may still be considered as an aggravating or mitigating factor.

Chairman DeRicco opened floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Mr. Quintero also asks if notice and opportunity for reconsideration will be voluntarily extended to inmates improperly considered in the past?

Chairman DeRicco stated Mr. Quintero asks if notice and opportunity for reconsideration will be voluntarily extended to inmates improperly considered in the past?

Chairman DeRicco further stated the Board does not believe that reconsideration is necessary as nothing was improperly applied. Rather, it is the opinion of this Board that the regulations should be changed, while still taking into account the assessment per statute. This assessment may be considered as an aggravating or mitigating factor, but the Board will no longer override a parole risk assessment if the sex offender assessment is higher.

Chairman DeRicco asked if there was further discussion regarding this specific regulation.

There was no discussion.

**XVI. 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 DeRicco stated the purpose of this public comment session is regarding proposed regulation R116-21P. This proposed regulation revises language to how the Board uses the NRS 213.1214 risk assessment for sexual offenders; and providing other matters properly related thereto. Public comment will be limited to three minutes per person.

Chairman DeRicco opened floor for public comment.

Chairman DeRicco asked if there was anyone in Las Vegas that would care to make public comment on this topic?

Public comment – Las Vegas, NV

No public comment.

Chairman DeRicco asked if there was anyone in Carson City that would care to make public comment on this topic?

Public comment – Carson City, NV

No public comment.

**XVII. For Possible Action:** Review of Intent to Adopt regulation R116-21P. The Board will consider public comments and any business impact and may act to amend and/or adopt the proposed regulation.

Chairman DeRicco stated having already discussed this item as a Board on Agenda Item XV and allowing the opportunity for public comment on this issue on Agenda Items XIV and XVI, this is the time to consider those comments and any business impact before acting to amend and/or adopt the proposed regulation.

Chairman DeRicco asked if there was any further discussion necessary at this time before requesting a motion.

There was no discussion.

Chairman DeRicco asked if any corrections should be made to the regulation as submitted by LCB as distributed.

There was no discussion.

<b>Motion:</b>	<b>The Nevada Board of Parole Commissioners adopt regulation R116-21P as reviewed and submitted by LCB.</b>
<b>Made:</b>	<b>Chairman DeRicco</b>
<b>Seconded By:</b>	<b>Commissioner Jackson</b>
<b>Votes in Favor:</b>	<b>DeRicco, Jackson, Baker, Weisenthal, Christiansen, Verchio</b>
<b>Votes Opposed:</b>	<b>None</b>
<b>Results:</b>	<b>Motion passed</b>

**XVIII. 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

Chairman DeRicco stated that while these regulations have been voted on and adopted by the Board, they still must be sent off and approved by the Legislative Counsel Bureau. He further stated that it will be business as usual, and nothing changes until the Board receives approval back from LCB and the Commissioners are notified.

Public comment – Las Vegas, NV

No public comment.

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

<b>Motion:</b>	<b>To adjourn the March 31, 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, Jackson, Baker, Weisenthal, Christiansen, Verchio</b>
<b>Votes Opposed:</b>	<b>None</b>
<b>Results:</b>	<b>Motion passed</b>