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NEVADA BOARD OF PAROLE COMMISSIONERS

MINUTES

**Meeting of the
Board of Parole Commissioners
May 31, 2022**

MINUTES APPROVED ON NOVEMBER 30, 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 May 31, 2022, beginning at 1:30 PM at the following locations:

Conference room at the central office of the Board of Parole Commissioners, located at 1677 Old Hot Springs Road, Ste. A, Carson City, NV, 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 1:30 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 II
Darla Foley, Hearing Examiner I
Forrest Harter, Hearing Examiner I
Mary Flores, Administrative Assistant III

Members of the public present in Carson City included:

Katie Brady, Deputy Attorney General

Members of the public present in Las Vegas included:

Patricia Adkisson

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

Public comment – Carson City, NV

See attached written public comment from John Quintero #93282

Public comment – Las Vegas, NV

Patricia Adkisson – see submitted public comment documents

III. For possible action: Review/Approval of minutes from the April 27, 2022, Board meeting.

Motion:	Approve the minutes from the April 27, 2022, Board meeting.
Made:	Commissioner Jackson
Seconded By:	Commissioner Bailey
Votes in Favor:	DeRicco, Jackson, Baker, Weisenthal, Christiansen, Verchio, Bailey
Votes Opposed:	None
Results:	Motion passed

IV. For discussion and possible action: The Board will discuss and may take action to update and or modify the Aggravating and Mitigating Factors Definitions.

Chairman DeRicco opened this agenda item by stating that at the last meeting this document was reviewed, and suggested language changes were made for greater clarification. He also stated that previously the Board adopted regulation R115-21P that has now been sent to the Legislative Counsel Bureau to finalize. He stated that the proposed regulation revised and reorganized the language of the aggravating and mitigating factors that the Board may consider; and providing other matters properly relating thereto. He stated it is up to the Board to approve these definitions and this document. He stated he would read through all the definitions and entertain discussion on the document. He then read through the document with the proposed changes from the last meeting.

Under the second section ‘Prior conviction or delinquency adjudication for a sexual offense,’ Commissioner Weisenthal asked if the Board needed to define “prior.” Commissioner Weisenthal gave the example of an inmate who is serving a sentence for a sexual offense and has a consecutive sentence for a burglary. He questioned if the inmate in the above example discharged the sexual offense and moved to the consecutive sentence of the burglary if that would make the sexual offense a prior conviction. He asked if “prior” meant prior from the date of the hearing, prior from the sentence structure, or prior from the booking number. He stated he wanted to be clear that what is being defined as a prior sex conviction is consistent for everyone working-up files.

Commissioner Baker stated her question was what statute is being used to define a sex offense. She asked whether it was NRS 179D which requires mandatory conditions of parole or the NRS 213 definition. Commissioner Weisenthal stated that the Board can count misdemeanors and gross misdemeanors as sex offenses. Chairman DeRicco stated that the Board can count all types of prior sexual offenses.

Commissioner Weisenthal stated that he believed when an offense was part of an inmate’s current sentence structure that it could not be counted as a prior offense, because it was currently being served.

Commissioner Verchio stated the Board needs to use simple language and that to her, prior means prior.

Commissioner Weisenthal stated that he was speaking with Kelly Mellinger, and when she works up a file, if a sexual offense has discharged and the inmate is now serving a consecutive sentence, she will count the sexual offense as a prior conviction. Kelly Mellinger agreed that she will count that discharged sexual offense as a prior sex conviction.

Commissioner Christiansen stated that he believed prior meant prior to that period of incarceration.

Chairman DeRicco stated this is why the Board is discussing these definitions. Chairman DeRicco stated that if there was a sexual offense that happened prior to an inmate's current period of incarceration he would count that as a prior sex conviction. He then gave the example of a person that committed a string of burglaries and during one of the burglaries also committed a sexual assault. He stated the Board's current definition uses the phrase "prior conviction," and in this example the burglaries and sexual assault might have been convicted all on the same date. He stated with the current definition this example would not qualify as a prior sex conviction even if they are consecutive sentences. He also stated the current definition also excludes inmates convicted of sexual offenses while incarcerated. He stated those charges would not be prior to their current conviction. Chairman DeRicco suggested the possibility of removing the word "prior" in this aggravating factor definition.

Commissioner Christiansen stated that he would rather focus on a person's conduct than the timeframe. He stated that they could be seeing an inmate for a burglary conviction and due to DNA evidence, they have since been convicted of a sexual offense that happened prior to the burglary but was convicted of it after. He stated the conduct is more important to him.

Chairman DeRicco recommended striking the word "prior" from the definition, so it reads, "Conviction or delinquency adjudication for a sexual offense." He stated that it would be an aggravating factor in his mind if the inmate has a conviction or delinquency adjudication for a sexual offense. Commissioner Baker asked if that would include the instant offense. Chairman DeRicco stated he would not count it on the sexual offense.

Commissioner Jackson stated that "prior" means "previous." She stated that "prior" is used throughout the entire document, in both aggravating and mitigating factors. She stated that to her "prior" means prior to the instant offense. She asked if the Board changes it in this section is the Board going to change it in the other sections, such as prior violent convictions. She stated she thinks the Board is overcomplicating it and that "prior" means previous.

Commissioner Verchio agreed with Commissioner Jackson. She stated that "prior" happened at a different time and there was time for the inmate to change or learn from their behavior from their prior acts.

Chairman DeRicco stated that his main concern with the definition as it is now is that a person could be convicted of a serious sexual offense through DNA evidence during their incarceration for a lesser crime. He stated that there could be a serial sexual rapist who through DNA evidence is convicted, but because our aggravating factor definition says, "prior conviction," the Board will not be able to use that factor because they were convicted after the instant offense even though the conduct occurred prior to the instant offense.

Commissioner Verchio stated that at some point the past conduct will be a prior conviction if the person commits more crimes in the future. Chairman DeRicco understood and agreed that is how it is with the current definition. He posed the question to the Board of whether that was right, or if it should be changed to include sex offenses that the convictions occurred after the instant offense, but the conduct occurred before.

Commissioner Baker recommended changing the definition to read, “The factor may be indicated if the inmate has a prior sexual conviction or delinquency adjudication, or the sexual conviction offense occurred prior to the offense being considered but the conviction was later.” She stated this would allow the Board to consider the circumstances where DNA evidence was found or a conviction happened later, but before the hearing for which the person was being considered.

Chairman DeRicco stated he was not opposed to that change. He stated he was also not opposed to leaving the definition as it currently reads where prior means prior. He stated the Board needs to come to a conclusion so the definition can be applied consistently.

Commissioner Weisenthal stated the reason he originally brought this up was because he was concerned about this aggravating factor being used when the sexual offense was part of the inmate’s current sentence structure. He stated that during the time he has been a commissioner, he has not been applying that aggravating factor in these cases, where others have. Chairman DeRicco stated that at the top of the document it states, “The Board *may* apply any other factor as it deems appropriate.” He stated this gives the Board some leeway as it does not say must or shall, and it is up to each person as to whether they deem a factor appropriate or not. He added that the Board could add in the definition wording about the sentence structure and that the definition does not apply to consecutive sentences.

Commissioner Jackson suggested that since these examples happen so infrequently, the Board could use the “Other Aggravating Factors” and keep this aggravating factor as is. Chairman DeRicco stated that he liked that suggestion and agreed that the previous examples were uncommon.

Katie Brady suggested changing the definition to read, “This factor may be indicated if the inmate has a prior sexual offense resulting in a conviction or delinquency adjudication.” She explained this way, the prior would be related to the offense and not the conviction. She stated the Board could also add, “This factor does not apply if the prior conviction is part of the current sentence structure,” if the Board wanted.

Chairman DeRicco and Commissioner Baker agreed that language clarified the Board’s intent.

Darla Foley asked the Board to clarify between sentence structure and booking number. She explained that sentence structure may be three different counts and the booking number may be three different cases.

Commissioner Baker stated that she thought sentence structure should refer to the same case. She gave an example of a probation violator whose probation is revoked because they are convicted of a new offense, and that the Board cannot count that probation revocation on the risk assessment as a prior conviction because they then come to prison for the probation revocation and the new conviction under the same booking number. She stated for that reason, she thinks it should be by case and not by booking number.

Commissioner Christiansen stated that he thinks it should be the date of the conduct. He stated this can easily be found on the Judgment of Conviction. He stated that if it happened at the same time as the instant offense, it would not be counted as a prior, but if it happened five years prior to the instant offense, then it would be used as an aggravating factor.

Commissioner Weisenthal asked if every probation violator that gets revoked will receive a prior felony. Commissioner Baker responded that if a probationer is convicted of a new offense, and they now have a sentence for the new offense, their original sentence that was suspended is now a prison sentence; in her opinion that is a prior offense.

Commissioner Christiansen stated that in Commissioner Baker's example that could be captured in aggravating factor #24 (commission of a crime while incarcerated, on bail, on escape status, eluding, or while under parole or probation supervision). He reiterated that to him the date of conduct is what is important to him. He stated in Chairman DeRicco's previous example of DNA evidence being found, if that conduct happened five years earlier, even if the conviction happened later, he thinks that should be an aggravating factor.

Commissioner Verchio stated she thinks prior has to be a conviction prior to the offenses the Board is conducting the hearing on. She stated the Board must stick to the offenses that are in play at the time of the hearing. She stated that inmates are allowed to aggregate consecutive sentences, which does not allow the Board to consider one sentence prior to another. She stated she does not think the date of the conduct is more important than the date of conviction or when the sentence structure is handed down. She reiterated that the Board needs to keep it simple where any person on the street would be able to understand what prior conviction means.

Commissioner Bailey agreed with Commissioner Verchio and Commissioner Jackson. She stated that the Board is making something very simple very complicated. She stated she could understand adding the language that Katie Brady incorporated, but ultimately feels that prior conviction is very simple.

Commissioner Christiansen stated that when a person goes out on parole and is picked up on an old warrant, the Board does not punish them for that crime because it happened before their parole. He stated that is why he is focused more on conduct than the time period. He stated that the aggravating factors focus on conduct. He also stated that if something is close, he will most likely fall on the side on the offender.

Chairman DeRicco stated that everyone has made excellent points and that there has been great discussion. He stated that as the definition reads currently is very simple and that a prior conviction is a prior conviction. He stated that this is very black and white and is clear for everyone, including the public and inmates, about when this factor should be used. Chairman DeRicco read the definition as it currently stands with no changes. Commissioner Jackson agreed that no changes needed to be made. Commissioner Verchio stated that hearing examiners, hearing representatives, and commissioners need to be consistent when working-up files. Chairman DeRicco stated that this factor should only be applied if there is a prior sexual conviction. The Board agreed.

There was no further discussion on this section.

Chairman DeRicco continued to read through the document.

Under the section ‘Multiple prior parole or probation revocations,’ Commissioner Baker asked that when the Board does not count a deferred sentence or diversion term, this often includes drug court, and she wanted to know why. Chairman DeRicco responded that he believed this is because it is not a conviction.

Chairman DeRicco continued to read through the document.

After reading through the aggravating factor definitions, Chairman DeRicco asked if there was any further discussion. There was no further discussion.

Chairman DeRicco began reading the mitigating factor definitions.

Kelly Mellinger asked about the documentation required in the definition for ‘Stable Release Plan.’ She stated in the past, the hearings examiners would take the information in the Parole Board Report as proof of stable release plan if the inmate put an address for residence and listed planned employment. She asked if that would still be sufficient proof to use this mitigating factor or if the Board would require additional documentation.

Chairman DeRicco stated that the discussion from the last meeting was that the hearing panel could determine if they could substantiate the stable release plan, whether that was through additional documentation or through the hearing. Ms. Mellinger asked if the hearings examiners should indicate ‘stable release plans’ during their work-ups if both are indicated in the Board Report. Chairman DeRicco affirmed they should, and it would be up to the Board to substantiate that information at the hearing.

There was no further discussion regarding the mitigating factors.

Chairman DeRicco then read through other factors.

There was no further discussion.

Chairman DeRicco stated there were a couple strikethroughs that he failed to remove from the document, but other than that, there were no changes to the document that came from today’s meeting.

Motion:	Approve the Aggravating and Mitigating Factors Definitions document as distributed, contingent upon the by the Legislative Counsel Bureau
Made:	Chairman DeRicco
Seconded By:	Commissioner Jackson
Votes in Favor:	DeRicco, Jackson, Baker, Weisenthal, Christiansen, VERCHIO, Bailey
Votes Opposed:	None
Results:	Motion passed

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

Public comment – Carson City, NV
No public comment.

Public comment – Las Vegas, NV
No public comment.

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

Motion:	To adjourn the May 31, 2022, meeting of the Nevada Board of Parole Commissioners.
Made:	Commissioner Baker
Seconded By:	Commissioner Christiansen
Votes in Favor:	DeRicco, Jackson, Baker, Weisenthal, Christiansen, Verchio, Bailey
Votes Opposed:	None
Results:	Motion passed