

Evan Grant - 1159544
WNCC
P.O. Box 7000
Carson City, NV 89702

September 21, 2021

RE: NAC 213.518(1) Workshop Comments

Nevada Board of Parole Commissioners:

Thank you for holding this NAC 213.518(1) workshop in response to my NAC 213.518 NRS 233B.100 Petition. I have reviewed the proposed NAC 213.518(1) language and, while it is a step in the correct direction, the amendment falls short of what is needed to correct the legal issues within NAC 213.518(1).

NRS Chapter 233B grants the Board authority to adopt, file, amend and repeal Nevada Administrative Codes. NRS 233B.040(1) provides:

To the extent authorized by the statutes applicable to it, each agency may adopt reasonable regulations to aid it in carrying out the functions assigned to it by law and shall adopt such regulations as are necessary to the proper execution of those functions. ... In every instance, the power to adopt regulations to carry out a particular function is limited by the terms of the grant of authority pursuant to which the function was assigned.

Under the proposed amendment, NAC 213.518(1) would 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 additional aggravating and mitigating factors to determine whether to grant parole to a prisoner.

In three unique ways, the proposed NAC 213.518(1) language exceeds the grant of authority given to the Board in NRS 213.10885.

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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. The issue pertaining to NAC 213.518(1)'s dependency on NAC 213.516 lies in NRS 213.10885. NRS 213.10885 is an enabling statute of NAC 213.518 and provides in pertinent part:

2. In establishing the standards, the Board shall consider ... 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.

By stating "[T]he Board shall...", NRS 213.10885(2) mandates the Board consider "[A]ll other factors which are relevant..." In the case of Anselmo v. Bisbee, 396 P.3d 848 (Nev. 2017), the Nevada Supreme Court defined "relevant" as meaning "applicable". Therefore, any factor that applies to a prisoner must be considered by the Board.

Under the 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.

To fix this issue, NAC 213.518(1)'s dependency on the NAC 213.516 initial assessment must be repealed.

Second, 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, "[M]ay consider additional aggravating and mitigating factors...", the Board leaves consideration of those factors as a choice.

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.

To fix this issue, the words "may consider additional" in NAC 213.518(1) should be replaced with "relevant".

Third, 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 any NAC 213.518(2) or (3) factor.

Discretionary factor consideration is subjective, the opposite of objective. Per the Legislative intent of NRS 213.10885(1), any interested person should be able to read the Board's NACs and determine whether a prisoner should be granted or denied parole. Without specifying when or how any NAC 213.518(2) or (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 of applicable statutes.

To fix this issue, the Board must adopt NAC 213.518 language specifying when and how NAC 213.518 factors are to be considered.

Ultimately, the Board recognizing that there are mandatory elements to NRS 213.10885 and NRS 213.1099 is an improvement in NAC 213.518(1)'s language. However, for the reasons discussed in this submission, it is insufficient. The Legislature decides what the Board is required to do. The current and proposed NAC 213.518(1) language does not meet those requirements. The Board

has a duty to comply with its statutory obligations. Judging law breakers through a process, which itself, breaks laws, does not bring justice to Nevada's victims, it only creates more.

Evan Grant
Evan Grant

John Quintana #93282
NWCC PO Box 7000
Carson City NV 89

09/08/2021

Parole Commissioners
1677 Old Hot Springs Rd Ste A
CC NV 89206

Re: Comment for 09/29/2021 Workshop
To Be Placed into the Record

Greetings:

Please consider the following comments and proposed Amendments:

1) The word "will" is the helping verb similar to shall; will this mandatoryness ascribed to "shall" in definitions section be applied to "will"?

2) NRS 213.10885 (1) ~~uses~~ uses word "standards" is this word synonymous with "factors" for the purpose of parole consideration?

3) NRS 213.10885 (1)(F) states that the standard created by regulation "must be based on objective criteria for determining probability 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

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factors listing under NAC 213.518 (2) + (3)?
If affirmed are these objective criteria published?

4. In practice DOC 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 16 year olds recidivism rates are higher than 65 year olds, correct?

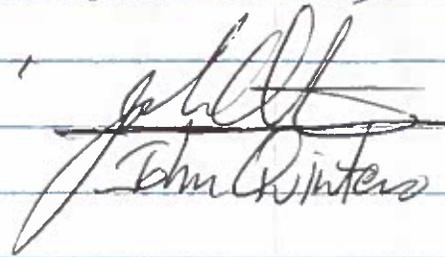
This question assumes facts not in evidence except by omission in the Regulation 213.518. Why does the Board deviate from the statutory command to be based on objective criteria by placing objective values on each factor listed under aggravating and mitigator in section (2) and (3) of 213.518?

Does not leaving these factors up to the CLINICAL JUDGMENT OF THE BOARD defeat the very purpose of the legislative mandate to use objective criteria to determine probability of success on parole?

Workshop Comments - 2 - Parole 09/29/2021

5. Based on anecdotal first hand experience the parole applicants are not given a copy of the Parole Board's additional risk assessment and guideline 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 chances at parole by addressing that report. Any concerning language could be redacted from text.

I wish to present formal requests to modify proposed language per NRS 233B.100 and these will be forthcoming due to current services interruptions due to lockdown COVID protocols. ~~Respectfully,~~ Respectfully,


John Winters

cc NV DAG 535 Wright Way CC

Workshop Comments - 3 - 09/08/21 for 09/29/2021

Patricia Adkisson

702-505-2861

faithandjoesmom@gmail.com

Nevada Board of Parole Commissioners

1677 Old Hot Springs Rd. Suite A Room 301

Carson City, NV. 89706

September. 25, 2021

RE; PUBLIC COMMENTS AGENDA ITEM IV- MEETING OF THE BOARD SEPTEMBER.29, 2021

Dear Board,

Please consider the following comments related to your discussion of the possible modification of NAC 213.518; In order to bring NAC 213.518 into compliance with the statutory authority conferred for its creation by the legislature pursuant to NRS 213.10885 and NRS 213.1099 this board **MUST** establish a **WEIGHTED VALUE** for each aggravating factor and each mitigating factor. Without the establishment of this objective measurement sought, no objective standard is defined. 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. Please establish a weighted known value for each factor related to NAC 213.518.

Thank you for your consideration,

Patricia Adkisson

Evan Grant - 1159544
NNCC
P.O. Box 7000
Carson City, NV 89702

October 12, 2021

RE: October 25, 2021, NAC 213.518 Workshop Comments

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Nevada Board of Parole Commissioners:

Thank you for holding this second NAC 213.518 Workshop in response to my NAC 213.518 NRS 233B.100 Petition and the public comments from the previous workshop. I have reviewed the proposed NAC 213.518(1), (2) & (3) language and would like to convey my appreciation to the Board for recognizing the importance of distinguishing relevant factor consideration. This marks a significant and meaningful shift in the Board's philosophy regarding when NAC 213.518(2) & (3) factors are to be considered and is a welcomed, additional step in the correct direction from the first NAC 213.518 amendment proposal.

However, 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 we observed in the Nevada Supreme Court case of Anselmo v. Bisbee, 396 P.3d 848 (Nev. 2017), the Board's guideline definitions of each NAC 213.518(2) & (3) factor are key in determining the proper application of each factor.

In Anselmo, the Board mistakenly applied an NAC 213.518(2) aggravating factor that was not relevant to Anselmo per the Board's definition of that factor. As a result, Anselmo's state-created right to proper parole consideration under NRS 213.140(1) was violated, his parole denial was vacated by the Court, and a

new parole hearing was ordered.

Anselmo shows us the consequences of the Board misunderstanding its own NAC 213.518 factor definition guidelines. For these reasons, as every enumerated factor in NAC 213.518(2) & (3) are proposed to change, the Board must amend its "Aggravating and Mitigating Factors Definitions" guideline document to precisely convey when one of the proposed factors is relevant to a Nevada inmate being considered for parole.

Furthermore, the three legal issues that I identified in my NAC 213.518 NRS 233B.100 Petition and in my public comments for the first NAC 213.518 workshop remain in NAC 213.518(1)'s proposed language. First, per NAC 213.518(1), consideration of any NAC 213.518 factor by the Board is still dependent upon the outcome of the NAC 213.516 initial assessment. 10 of the 15 NAC 213.516 initial assessment outcomes prohibit NAC 213.518 factor consideration. NRS 213.10885(2) mandates the Board consider "[A]ll other factors which are relevant"

Second, per NAC 213.518(1), NAC 213.518(2) & (3) factor consideration remains discretionary. Again, NRS 213.10885(2) mandates the Board consider "[A]ll other factors which are relevant" The Board does not have a choice in the factors it considers. The word "may" in NAC 213.518(1) gives the Board a choice.

Third, NAC 213.518 still does not contain language stating how NAC 213.518 factors are to be considered. NRS 213.10885(1) mandates the Board's standards, or NACs, "[M]ust be based on objective criteria" Without specific language stating how NAC 213.518 factors are to be considered, objective consideration cannot occur. Every time any given factor is considered without the

guidance of a step-by-step consideration method, the bias of individual Board members will unpredictably weight the value, good or bad, of the factor under consideration. This is not to say that Board members are deliberately biased, but inherently biased as they view the world, like all human beings do, through the filter of their unique life experiences, unless intentionally and objectively directed to do otherwise.

To correct the four issues presented in this submission, the Board must take four specific actions:

1. The Board must amend its "Aggravating and Mitigating Factors Definitions" to precisely convey when each of the proposed NAC 213.518(2) & (3) factors are relevant to an inmate being considered for parole.
2. The Board must remove the NAC 213.518(1) language linking the Board's consideration of NAC 213.518 factors to the outcome of the NAC 213.516 initial assessment.
3. The Board must remove the word "may" from NAC 213.518(1) to make NAC 213.518(2) & (3) factor consideration mandatory when relevant.
4. The Board must add language to NAC 213.518 to explain how NAC 213.518 factors are to be considered.

Ultimately, the Legislature decides what the Board is required to do. "In every instance, the power to adopt regulations to carry out a particular function is limited by the terms of the grant of authority pursuant to which the function was assigned." NRS 233B.040(1). As previously stated, NRS 213.10885 mandates the Board take specific actions. The Board is failing to do so in both the current and proposed NAC 213.518(1), (2) & (3) language.

Judging law breakers through a process, which itself, breaks laws,
does not bring justice to Nevada's victims, it only creates more.

Thank you for your time and consideration,

~~Evan Grant~~
Evan Grant

John Quintero #93782
NV CC PO Box 7000
Carson City NV 89702

Oct. 17 2021

Nevada Parole Board
1677 Old Hot Springs Rd Ste A
Carson City NV 89706

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OCT 21 2021

STATE OF NEVADA
PAROLE BOARD

Re: COMMENTS FOR THE RECORD OF WORKSHOP
OF OCTOBER 25 2021 PLEASE MAKE
RESPONSE ON THE RECORD

Greetings:

Please place following clarifications and concerns on the Record, which considers how to carry out NRS 213.10885 and 213.10999

1. This NAC Proposal does not address Section (1) of 213.10885, "shall adopt by regulation specific standards for each type of convicted person..."

Comment: This proposal is a catchall that does not obey the command of the sovereign. I object.

2. To clarify: The legal definition of "relevant" means "logically connected (evidence of fact) connected 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 7th

In 2012, the Board was advised by the attorney general in Opinion No. 2012-02
"Since the authorizing statute does not

2. (cont.)

~~we~~ contain safeguards for accuracy, the Division and Board should adopt measures reasonable safeguards for accuracy to identify erroneous information in the reports provided to the Board."

I have tried to raise such inaccuracies in writing and at my Parole Hearings and I have been punished for doing so which is evidenced by verbal and non-verbal messaging by Board (see audio-visuals) - the last hearing Ms. Jackson says "our information from PSI differs from what you have to say."

3.) the term "factor" indicates a ~~category of~~ 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 PSIs are per se evidence but reports of alleged acts based on evidence; such things are mere denunciations as used in aggressive unjust political systems such as facism, communism and the like;

10-17-21

-2- Comment to Board Workshop

4.) 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 ~~tabulated~~ scored and deducted or added to the NDOC and Parole Risk assessment; As it stands the Parole Board 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).

5.) 213.10885 (4) states Board must provide greater punishment as related to recidivist patterns ~~and~~ or who commits a serious crime, with a violent crime considered the MOST SERIOUS -- the Board is not regulating the degrees of ~~of~~ seriousness, but have allowed ~~as~~ another agency to make that determination -- the Nev. Dept. of Corrections.

(see NRS 209.341, and 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" (Both attached). This issue must be raised now insofar as its relevant.

10-17-21

- 3 - Comment to Board workshop

5.) (~~consider~~ continued)

The issue is relevant because the Board is considering the authorizing statute NRS 213.10885 and as it stands, the "Highest Severity" is a category that always must "consider factors" where as 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 ~~the highest~~ "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..."

6.) Lastly I object the Board's neglect in adapting the necessary notice and opportunity as suggested in my letter to Board dated 09/08/2021; the choice to use aggravators and mitigators is done in a government action outside presence of inmate applicant; this puts

10-17-21

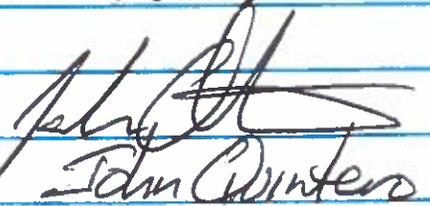
-4- Comment to Board Workshop

6.) (cont.)

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, at time of hearing; considering I will (nor anybody, pre-classified by NDOC to "Highest severity" will ALWAYS have mitigating ~~factor~~ 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 chances 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.

Respectfully submitted,


John Winters

cc K. Brady NV DAG 555 Wright Way CC NV 89711
Attachments (3)

10-17-21

5 Comment to Board N/Shop

Index of Attachments

1. NAC 213.512
2. NRS 209.341
3. NAC 213.516

10-17-21

6 Comments Board Workshop

NEVADA ADMINISTRATIVE CODE

CHAPTER 213- PARDONS, PAROLES AND PROBATION; REMISSIONS OF FINES AND COMMUTATIONS OF PUNISHMENTS

RELEASE ON AND REVOCATION OF PAROLE

213.512 Determination of whether to grant parole: Assignment of severity level to crime. (NRS 213.10885, 213.110, 213.140)

1. 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.

2. 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.

209.341. Director to establish system of initial classification and evaluation for offenders; assignment of offender to appropriate institution or facility of department.

The director shall:

1. Establish, with the approval of the board, a system of initial classification and evaluation for offenders who are sentenced to imprisonment in the state prison; and

2. Assign every person who is sentenced to imprisonment in the state prison to an appropriate institution or facility of the department. The assignment must be based on an evaluation of the offender's records, particular needs and requirements for custody.

HISTORY:

1977, p. 849; 1979, p. 1125; 1983, p. 722; 1987, ch. 807, § 2, p. 2238; 1997, ch. 257, § 2, p. 906.

Research References and Practice Aids

Cross references.

As to receipt and return of offender by Director, see NRS 176.335 and 176.345.

As to neglect or refusal to receive offender as unlawful, see NRS 199.260.

NEVADA ADMINISTRATIVE CODE

CHAPTER 213 PARDONS, PAROLES AND PROBATION; REMISSIONS OF FINES AND COMMUTATIONS OF PUNISHMENTS

RELEASE ON AND REVOCATION OF PAROLE

213.516 Determination of whether to grant parole: Initial assessment. (NRS 213.10885, 213.110, 213.140)

In determining whether to grant parole to a prisoner, the Board will apply the severity level of the crime for which parole is being considered as assigned pursuant to NAC 213.512 and the risk level assigned to the prisoner pursuant to NAC 213.514 to establish an initial assessment regarding whether to grant parole. The initial assessment will correspond to the following table:

Severity Level	Risk Level		
	High	Moderate	Low ^{SD}
Highest	Deny parole	Consider factors set forth in NAC 213.518	Consider factors set forth in NAC 213.51
High	Deny parole	Consider factors set forth in NAC 213.518	Grant parole at first or second meeting to consider prisoner for parole
Moderate	Deny parole	Grant parole at first or second meeting to consider prisoner for parole	Grant parole at initial parole eligibility
Low Moderate	Consider factors set forth in NAC 213.518	Grant parole at first or second meeting to consider prisoner for parole	Grant parole at initial parole eligibility
Low	Consider factors	Grant parole at initial	Grant parole at

set forth in
NAC 213.518

parole eligibility

initial parole
eligibility

HISTORY

(Added to NAC by Bd. of Parole Comm'rs by R018-08, eff. 4-17-2008)

Patricia Adkisson

702-505-2861

faithandjoesmom@gmail.com

Board of Parole Commissioners

1677 Old Hot Springs Road

Ste. A Room 201

Carson City, NV. 89706

Oct. 21, 2021

Public Comment – Board of Parole Commissioners meeting10/20/21

Good afternoon Board Members,

As emphasized, at the previous meeting, related to aggravating and mitigating factors considered by NAC 213.518, this board MUST establish an objective criteria with standards. The failure to provide a weighted value, means no standard is established by the aggravating or mitigating factors. This renders the consideration of aggravating and mitigating factors subjectively. Once the board considers subjective factors in this matter, it renders the otherwise objective criteria to be applied in a manner that renders them invalid. We oppose any aggravating and mitigating factors that do not have a stated weighted value for points or otherwise. Thank you for your consideration. Patricia Adkisson

Evan Grant - 1159544
HNCC
P.O. Box 7000
Carson City, NV 89702

November 15, 2021

RE: Nov. 29, 2021, NAC 213.514, .516 & .518 Workshop Comments

Nevada Board of Parole Commissioners:

Thank you for holding this third NAC 213.518 Workshop and expanding it to include NAC 213.514 and 213.516 in response to my NRS 233B.100 Petitions and previous comments. I have reviewed the proposed language for NAC 213.514, .516 & .518 and once again would like to convey my appreciation to the Board for taking steps towards bringing the Board's parole consideration NACs closer to being in compliance with NRS 213.10885 and, now, NRS 213.1214 as well.

It is my hope, that the few remaining steps between where these NAC Amendment Proposals are, and where they need to be per Nevada law, will soon be taken resulting in a new and fair parole consideration process. A process that strikes a balance between the desire of the people of Nevada to feel safe and their desire for Nevada's prisoners to go home to their families and friends.

A balance encapsulated in NRS 213.10885(2)'s language calling for the Board to determine "[T]he probability that a convicted person will live and remain at liberty without violating the law if parole is granted or continued." The idea, presented in these words, is that a convicted person, who has followed the rules while incarcerated and bettered himself or herself through educational and rehabilitative programs, has indicated that he or she is ready

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to live within society's laws. These-are-the-people who have not only EARNED an opportunity to be welcomed back to society, but, per Nevada's Legislature, should be graced with it as well.

It is for all of the incarcerated who have made that positive effort to be reunited with those who love them, that I have dedicated nearly two years of my life to bring us to this point. While it took me becoming one of the incarcerated to gain awareness of the issues this Board now seeks to amend, I view this undertaking as my civic duty and will see it through on behalf of all those affected.

As there are now three NACs under amendment consideration, the remainder of these comments will be divided into four sections. One for each NAC followed by a brief conclusion.

NAC 213.514

Concerning NAC 213.514's proposed language, I whole heartedly endorse 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 (DOC) fails in its execution of NRS 213.1214, but, additionally, distinguishes consideration of those convicted of a sexual offense from those who have not.

This is significant as the Revalidation of the Nevada Parole Risk Assessment Instrument (2017) states average recidivism across all offenses in Nevada is 34%. While the current NRS 213.1214 risk assessment, the STATIC-99R, states that average sex offender recidivism is 5.3% per the STATIC-99R & STATIC-2002R Evaluators' Workbook (October 19, 2016).

Therefore, those convicted of a sexual offense are 6.4 times LESS likely to reoffend compared to those not convicted of a sexual offense. While these individuals should be considered per the Nevada Parole Risk Assessment as they have offended in Nevada, they should also be considered, via the NRS 213.1214 assessment, separately, as they, on average, are far less likely to reoffend.

With this in mind, I see 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. Therefore, 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 "[M]ay also consider the risk assessment . . ." is in violation of NRS 213.1214(4) which states "The Board shall consider an assessment" Therefore, I recommend 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.

NAC 213.516

Concerning NAC 213.516, I see 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)." While I applaud the Board for recognizing that it cannot arbitrarily grant or deny parole without considering factors referenced in NRS 213.10885 and 213.1099, everytime, before making a grant or denial determination, the added .518(1) language to .516 is currently meaningless. Nowhere in NAC 213.518(1) does it state HOW the Board will consider the initial assessment result.

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?

These are questions that must be answered in the NAC's language pursuant to NRS 213.10885(1) which states, "[S]tandards 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). Doing so will protect the Board from

challenges to the initial assessment result's consideration as the Board could defend itself by pointing to a tangible standard and definitively state that consideration was done correctly.

SECOND, 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.

How then is the severity of a crime actually assigned per 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. 828 (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 as assigned by the Legislature.

Interestingly, the Board used this exact method in 2004. Per the PBFORM-PS (REV. 12/10/04), attached to these comments as EXHIBIT 1, the Board stated in its own words:

The Board has adopted crime severity levels A, B, C, D & E based on the statutory definitions set forth in NRS 193.130, 193.330 and as provided by specific criminal statute.

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 and 213.516, it deviated dramatically from its understood statutory duty. The current NAC 213.512 and NAC 213.516 crime severity levels of "Highest," "High," "Moderate," "Low Moderate" and "Low" DO NOT EXIST in NRS 193.130, 193.330, 209.341 nor any other NRS.

To this day, as it was in 2004, the A, B, C, D & E Categories of felony are the Legislature's assignment of crime severity level per NRS 193.130, 193.330 and as provided by specific criminal statute. Never, in the history of Nevada, has the Legislature authorized the DOC to determine the severity level of actions that the Legislature identifies as crimes. The Legislature speaks for the State of Nevada, NOT the DOC.

For these reasons, I recommend 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 the A, B, C, D & E crime severity levels as assigned by Nevada's Legislature. This is an easy replacement as both sets of severity have 5 levels.

NAC 213.518

Concerning NAC 213.518, I see two issues. FIRST, NAC 213.518(1) states, "[T]he 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. As previously stated, the Board's NACs mark step-by-step HOW consideration is to take place per NRS 213.10885(1).

Again, 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 NACs HOW it will "consider" that information.

This codified process of consideration is ultimately to carry out NRS 213.10885(2) which provides, in pertinent part:

In establishing the standards, the Board shall consider ... 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.

"Determining the probability" is the HOW that must be defined in the Board's consideration standards.

Does this mean: that if a convicted person has more mitigating factors than aggravating, parole should be granted?; That regardless of the ratio of mitigating to aggravating factors, if a certain aggravating factor is relevant, parole should be denied?; If the initial assessment result is "Grant parole at initial parole eligibility", then provided aggravating factors does not exceed mitigating factors by 3, parole should be granted?; Or, for example, if a convicted person has the initial assessment result of "Grant parole at first or second meeting" and has an equal number of aggravating and mitigating factors, then parole should be denied, a new hearing scheduled in one year, and parole should be granted at that time unless that person has an increase in his or her NAC 213.516 initial assessment risk level?

Ultimately, what does "consider" mean to the Board?

The Board must define consideration in its NACs if it wishes to defend itself in Court against litigation brought by inmates alleging that they were not properly considered. The Nevada Supreme Court has determined that inmates have a right to "proper" consideration per NRS 213.140(1) and, as shown in Anselmo v. Bisbee, will order the Board to vacate and redo improper considerations. If the Board does not state HOW it will "consider", then the Court will have no choice but to side with the inmate as the Board will have nothing tangible with which to defend itself.

SECOND, NAC 213.518(1) still says the Board "[M]ay consider relevant aggravating and mitigating factors" 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 213.518(1) gives the Board the power of choice as to which factors it considers in violation of NRS 213.10885(2).

As the Board has a legal duty to consider "all other factors which are relevant", imagine the liability if the Board granted parole to a dangerous prisoner because it chose not to consider relevant aggravating factors the language of NRS 213.10885(2) requires. Immunity is not available if the Board knew that it was violating the law. Do not give this scenario the possibility of occurring.

To correct this, the words "may consider" in NAC 213.518(1) must be struck so that NAC 213.518(1) reads "[T]he Board will consider the initial assessment, the factors contained in NRS 213.10885 and 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.

CONCLUSION

As stated in my opening comments, I appreciate the progress the Nevada Board of Parole Commissioners has made thus far and am optimistic that the Board will take those final steps towards NRS parole consideration compliance. I meant what I wrote about undertaking these efforts on behalf of everyone affected. This is why I am not pursuing monetary relief in any of my ongoing litigation in regards to these matters.

Following the law as passed by the Legislature is to the benefit of all Nevadans and to those who visit this State. Please remember that judging law breakers through a process, which itself, breaks laws, does not bring justice to Nevada's victims, it only creates more.

Thank you for your time and consideration,


Evan Grant

EXHIBIT

1

Nevada Board of

Parole

Commissioners'

PBFORM-PS

(REV. 12/10/04)

PAROLE STANDARDS

Offenders will appear before or be considered in absentia by a panel of the Parole Board for parole consideration when they have served the minimum time required to attain parole eligibility as provided by Nevada law. If the offender is serving concurrent sentences for multiple offenses, the most severe offense will determine the crime severity level.

Pursuant to NRS 213.10885, the Board has adopted by regulation standards for release on or revocation of parole. The regulations are set forth in Chapter 213 of the Nevada Administrative Code (NAC) at sections 213.510 through 213.560. The Guideline Recommended Months (GRM) to serve calculated under the Board's parole standards is a suggested range of months to be served and is based on a combination of offense and offender characteristics.

Pursuant to NRS 213.10705, the release or continuation on parole is an act of grace of the State. In addition, pursuant to NRS 213.10705 and NAC 213.560, the Parole Board is not required to grant or deny parole based on the guideline-recommended time to serve, and the establishment of parole standards does not create any right or interest in liberty or property, does not give rise to any reasonable expectation of parole, and does not establish any basis for a cause of action against the State, its political subdivisions, agencies, boards, commissions, departments, officers or employees. See *Greenholtz v. Inmates of Nebraska Penal & Cor.*, 442 U.S. 1, 99 S.Ct 2100, 60 L.Ed2d 668 (1979).

These parole standards are designed to aid the Board in making consistent decisions. The Board will also consider any recommendations from the Court, law enforcement agencies, prosecutors, prison personnel, and victims as provided in NRS 213.130. Further, the Board will take into account the considerations set forth in NRS 213.1099. In exercising its unlimited discretion to deviate from the time periods recommended under its guidelines, the Board will consider the factors set forth in NAC 213.560, and any other mitigating or aggravating factors which the Board deems relevant. The Board is not required to provide an offender with any reasons concerning a decision to deny parole. *Weakland v. Board of Parole Comm'rs*, 100 Nev. 218, 678 P.2d 1158 (1984), but may elect to do so in those cases where its decision deviates from the guideline-recommended time to serve.

The Board's current standards were adopted effective August 11, 1998. All offenders being considered for parole release, except those being considered pursuant to the provisions of NRS 213.1215, will be evaluated under the Board's current guidelines, regardless of offense date, date of conviction, or any standards previously utilized in considering the offender for parole release. These standards serve as guidelines only, the Board is not required to adhere to the guidelines, and they are not laws for purposes of ex post facto analysis. Offenders do not have a right to be considered for parole under any previously existing set of parole standards. *Smith v. U.S. Parole Com'n*, 875 F.2d 1361 (9th Cir. 1989); *Vermouth v. Corrothers*, 827 F.2d 599 (9th Cir. 1987); *Wallace v. Christensen*, 802 F.2d 1539 (9th Cir. 1986).

The Board has adopted crime severity levels A, B, C, D & E based on the statutory definitions set forth in NRS 193.130, 193.330 and as provided by specific criminal statute. The Board has expanded levels A and B to A1, A2, A3, A4, B1, B2, B3 & B4 to reflect the diverse minimum and maximum sentencing ranges provided for by statute for level A and B felonies.

The Board will review an offender's disciplinary and programming scores at the time of each hearing. Any change from a previous score will be noted and may result in a change to the offender's net parole success likelihood score and guideline-recommended time to serve.

SCORE	0-10	11-20	21-30	31-40	41-UP	LEVEL	SENTENCE STRUCTURE BY STATUTE
A1	240-276	276-312	312-348	348-384	384-420	"A" CRIME	20 YEAR OR MORE MINIMUM
A2	180-216	216-252	252-288	288-324	324-360	"A" CRIME	15 YEAR MINIMUM
A3	120-150	150-180	180-210	210-240	240-270	"A" CRIME	10 YEAR MINIMUM
A4	60-84	84-108	108-132	132-156	156-180	"A" CRIME	5 YEAR MINIMUM
B1	24-48	48-72	72-108	108-144	EXPIRE	"B" CRIME	20 YEAR MAXIMUM
B2	18-30	30-48	48-66	66-84	EXPIRE	"B" CRIME	15 YEAR MAXIMUM
B3	12-24	24-36	36-48	48-60	EXPIRE	"B" CRIME:	10 YEAR MAXIMUM
B4	12-18	18-24	24-30	30-36	EXPIRE	"B" CRIME:	6 YEAR MAXIMUM
C	12-16	16-20	20-24	24-28	EXPIRE	"C" CRIME	5 YEAR MAXIMUM
D/E	12-15	15-18	18-21	21-24	EXPIRE	"D/E" CRIME:	4 YEAR MAXIMUM

CONVICTIONS/ENHANCEMENTS: All adult including instant offense and consecutive sentences.

INCARCERATIONS: All adult including instant offense and previous CS terms.

WEAPONS: Instant offense only, actual, highest level, even if plead out.

VICTIMS: Instant offense only, actual, highest level, even if plead out.

EMPLOYMENT: Any full time job, school, SIIS or SSI for 6 months during year prior to instant offense.

DISCIPLINARY: Based on previous three years. 10 points maximum. Credit limit is 3. +2 points for each major violation. +1 points for each minor/general violation. -1 for none at 1st hearing or none during the previous year. -2 for none in the last two years. -3 for none in the last three years.

STATISTICAL RISK ASSESSMENT: The risk assessment is based on a study of factors applied to inmates who were released on parole or discharged their prison sentence in 1999 and returned with a new felony conviction within 3 years. The risk assessment does not provide the risk of failure or probability of success on parole. It does not take into consideration other factors the Board considers when evaluating inmates for release on parole. The risk assessment is one component used to assist the Board in making decisions. The risk assessment is not compiled by the Board but is based on data existing in the Nevada Criminal Information System which is maintained by the Nevada Department of Corrections (NDOC). The Board will not entertain claims of errors in the risk assessment. Any errors must be corrected by the NDOC. The Board will only consider a request for re-hearing based on an error in the computation of the risk assessment if the correction made by the NDOC results in a change to a lower risk category and the request is made in writing by a representative of the NDOC and routed to the Board through the Chief of the Offender Management Division. The factors used on the risk assessment are as follows:

STATIC FACTORS

Age at First Arrest (juvenile or adult): 25 years or older = 0 points, 20-24 years = 1 point, 19 years or younger = 2 points.

Prior Probation/Parole Revocations: No parole or probation revocations = 0 points, One or more = 2 points.

Employment History (prior to incarceration): Satisfactory full-time employment for 1-2 years = 0 points, Employed less than full time or full time employment for less than one year = 1 point, Unsatisfactory employment / unemployed / unemployable = 2 points.

Current or prior convictions: Property crime, forgery, robbery = 2 points, all others = 0 points.

History of drug alcohol abuse: None = 0 points, some use, not severe disruption of functioning = 1 points, frequent abuse, serious disruption of functioning = 2 points.

Gender: Male = 1 point, female = 0 points.

DYNAMIC FACTORS

DRUGS/ALCOHOL: All convictions, including instant offense.

COURT ACTION: % of maximum sentence ordered.

PROGRAMMING: [10 is maximum] Inmate must provide case worker with original for verification and copies of each certificate and diploma to the Board. Programming counts only on current sentence (programming on prior sentences will not be counted on the guideline).

-3 points for either GED, high school diploma, or 12 college credits.

-2 points for long term substance abuse program, behavior modification, or literacy program. -1 for short term counseling, street readiness, job workshop, parenting, weekly AA/NA's, full time job (½ day or more), or other program deemed appropriate by the Board.

Current Age: 41 and above = -1 point, 31-40 = 0 points, 21-30 = 1 point, under 21 = 2 points.

Gang Membership: No = 0 points, Yes = 2 points.

Completed DOC certified education/vocational/treatment program: Yes or has existing GED/high school/college degree = -1 point, No = 0 points.

Disciplinary Conduct - Past year: No violations or single minor violation = -1 points, Multiple minor violations = 0 points, Major violation = 1, multiple major violations = 2 points

Current custody level: Minimum = -1 point, Medium = 0 points, Maximum or Administrative Segregation = 2 points.

TOTAL POINTS SCORE: 0-4=Low Risk, 5-10=Moderate Risk, 11-15=High Risk, 16+ points total or 8points on dynamic factors=Highest Risk.

PBFORM-PS (REV. 12/10/04)

John Wintero #9378
NVCC PO Box 7000
Carson City NV 89702

RECEIVED

NOV 22 2021

STATE OF NEVADA
PAROLE BOARD

Nov. 15 2021

Nevada Board of Parole
1677 Old Hot Springs Rd. Ste. A
Carson City NV 89706

Re: Workshop of November 29 2021 / 233B Request
Proposed Language Modification to 213.512

Greetings:

The board's proposal for NAC 213.516 relies on the assumption that NAC 213.512 "Severity Level" is authorized by statute, which it is not. This 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. NRS 209.341 does not contain the words "severity", "level" nor "crime."

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),

Proposal Part 1

213.512(1) "The Board shall use an objective actuarial assessment of static factors and dynamic factors to individually determine the severity level of the crime for which the parole applicant was committed to prison, and shall report determination prior to hearing."

The practices and custom to rely on an NDOC document is problematic for several reasons:

- 1.) there is no evidence this NDOC Document ^{Severity Tables} which is used to automatically populate the NOTIS Parole Board report was approved by the Board of Prison Commissioners ~~at~~ which makes it a fugitive document;
- 2.) there is no evidence NDOC conformed with Open Meeting Law NRS 241, bringing its legitimacy into question;
- 3.) 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-Med, Low categories; this deprivation is cruel and unusual.
I see attached letter from Parole Board dtd 4-1-21

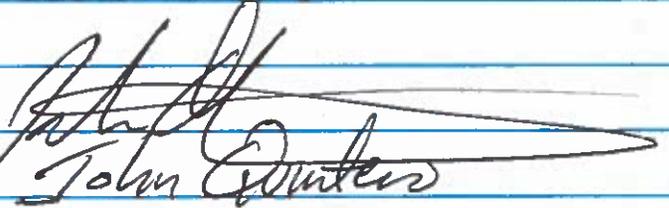
Proposal Part II

213.512(2) ¹The Board shall provide notice and opportunity for ~~confront~~ ~~inmate~~ to confront the severity Level determination by allowing written and oral rebuttal as to the accuracy of the records, evidence and other data relied on to determine the Highest Severity Level or any other determination of severity level. ²

Please consider the above at the Hearing of Nov. 29, 2021, and as a separate NRS 233B.100 Petition which requires a Statement-of-reasons response; as well, I wish the LCB to weigh in on this as I have rebutted the assumptions of regularity of the "Severity Tables" under 233B.090

Please place this proposal in the record of the hearing of the 29 Nov. 2021

Very Respectfully,


John Quinters

Attachment: Hr from Board/ dty 4-1-21
cc Brady, NV DAG SSS Wright Way CC NV 89711
² See Nevada Attorney General Opinion 2012 NevAG
Lexis 1, Opinion No. 2012-02, May 7 2012

CENTRAL OFFICE

1677 Old Hot Springs Rd., Ste. A
Carson City, Nevada 89706
<http://parole.nv.gov>
(775) 687-5049
Fax (775) 687-6736

CHRISTOPHER P. DERICCO, *Chairman*
SUSAN JACKSON, *Member*
MARY K. BAKER, *Member*
SCOTT WEISENTHAL, *Member*

STATE OF NEVADA

STEVE SISOLAK
Governor



LAS VEGAS OFFICE

4000 S. Eastern Ave., Ste. 130
Las Vegas, Nevada 89119
<http://parole.nv.gov>
(702) 486-4370
Fax (702) 486-4376

CHRISTOPHER P. DERICCO, *Chairman*
ERIC CHRISTIANSEN, *Member*
DONNA VERCHIO, *Member*
LAMICIA BAILEY, *Member*

DARLA FOLEY, *Executive Secretary*

NEVADA BOARD OF PAROLE COMMISSIONERS

April 1, 2021

John Quintero, NDOC #93782
Northern Nevada Correctional Center
P.O. Box 7000
Carson City, Nevada 89702

Re: Your letter received March 25, 2021.

Mr. Quintero,

I have reviewed your letter asking if there was a policy change concerning risk assessments. The Parole Board has not sent out a risk assessment prior to an inmate hearing anytime in at least the last 20 years. You may be referring to a past risk assessment done by an NDOC caseworker? Your written risk assessment with mitigating and aggravating factors will be attached to your 03/17/2021 Parole Board order.

Signed,

A handwritten signature in cursive script that reads "Darla Foley".

Darla Foley
Executive Secretary

Adam Garcia # 82651
N.W.C.C.
Carson City, NV 89702

NOV 15 2021

Board of Parole Commissioners
1677 Old Hot Springs Rd Ste. A.
Carson City, NV 89706-0677

RE: Workshop Evidence for NOV 29 2021

Dear Board:

I attached a letter from my lawyer Alan Erb, to board and the board's response dtd. Feb, 18, 2021, please note 3rd paragraph of board response made by Eric Christiansen: "According to NRS 213.1219 an additional evaluation is required for convicted sex offenders that superceeds the initial Risk Assessment."

NOTHING in that statute mentions an "additional evaluation". "That superceeds the initial risk assessment, this relates to proposed aggravator (2)(g) of Nac 213.518

Please take note into consideration in your upcoming regulation workshop on 11-29-21 This organizational deviation from the law, and place my 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.

RECEIVED

Adam Garcia

cc. Attorney General

NOV 23 2021

STATE OF NEVADA
PAROLE BOARD

CENTRAL OFFICE

1677 Old Hot Springs Road
Suite A
Carson City, Nevada 89706-0677
<http://parole.nv.gov>
(775) 687-5049
Fax (775) 687-6736

CHRISTOPHER P. DERICCO, *Chairman*
TONY CORDA, *Member*
ADAM ENDEL, *Member*
SUSAN JACKSON, *Member*

DARLA FOLEY, *Executive Secretary*

STATE OF NEVADA

STEVE SISOLAK
Governor



LAS VEGAS OFFICE

4000 S. Eastern Avenue
Suite 130
Las Vegas, Nevada 89119
<http://parole.nv.gov>
(702) 486-4370
FAX (702) 486-4376

CHRISTOPHER P. DERICCO, *Chairman*
ERIC CHRISTIANSEN, *Member*
DONNA VERCHIO, *Member*
LANICIA BAILEY, *Member*

BOARD OF PAROLE COMMISSIONERS

February 18, 2021

Alan R. Erb, Attorney
P.O. Box 133
Gardnerville, NV 89706

RE: Inmate: GARCIA, Adam R.
NDOC #: 82651

Nevada Parole Board Hearing November 16, 2020

Dear Sir,

On November 16, 2020, the above-named inmate appeared via video conference at a scheduled and noticed parole hearing. At that time, the inmate presented his reasons why the State of Nevada should provide him with "an act of grace" by granting him parole pursuant to N.R.S. 213.10705. Subsequently, his request of parole was denied by the vote of four Commissioners.

The Nevada Parole Board has received your letter dated January 11, 2021, whereby you expressed some concern regarding the hearing. Specifically, you advised that your client never had a prior prison sentence and that the Risk Assessment did not accurately represent your client.

In response, our information gleaned from the Pre-Sentence Investigation indicates that Mr. Garcia was in fact sentenced in Bridgeport, California, on February 26, 2002, to 60 months probation and 365 days jail for Indecent Exposure with Prior Offenses, a felony. The Board did not consider that felony conviction in reference to a prison time but did correctly note that arrest as a felony criminal sex offense conviction. In addition, your letter indicated that Inmate Garcia was considered a Low Risk on the Risk Assessment and that the Board erroneously placed Garcia as a High Risk to reoffend. According to N.R.S. 213.1214, an additional evaluation is required for convicted Sex Offenders that superceeds the initial Risk Assessment. Garcia scored a "Well Above Average Risk" to reoffend sexually in the that evaluation causing his score to be adjusted to High Risk.

I hope this correspondence has clarified the issues you have raised. Thank you for your time and effort. Should you have any questions, please do not hesitate to call me at [REDACTED]


Eric Christiansen, Commissioner,
Nevada Parole Board

Alan R. Erb
Attorney & Counselor
at Law
Post Office Box 133
Gardnerville, Nevada 89410
(775) 782-7334

January 11, 2021

Board of Parole Commissioners
1677 Old Hot Springs Road, Suite A
Carson City, NV 89706

RE: Adam Garcia #82651

Dear Sir or Madam,

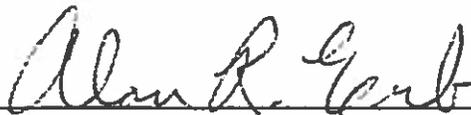
Mr. Garcia went before the Southern Nevada Parole Board on November 16, 2020. I had faxed a packet of material that morning, which the Board acknowledged receiving. At the time, I thought I could appear in the Carson City office remotely. I was told the only way I could appear would be to go to Las Vegas. This was impossible.

Very recently, I was advised that Mr. Garcia was denied parole. Obviously, I did not witness the hearing, so I can only speak to what I have been told. I have been in touch with Mr. Garcia, as well as his brother. I have also seen a copy of the Order Denying Parole. Mr. Garcia raised some concerns which I would like to get answers for.

The paperwork indicates a prior prison term. Mr. Garcia told me he has never been in prison before his current sentence. The paperwork indicates a determination of high risk. Mr. Garcia told me he was told at his hearing he was low risk. He has participated in many programs over the last nearly eighteen years of incarceration, as indicated in his packet. I was most impressed by the community and family support Mr. Garcia has.

I would appreciate a response and answers to these questions. I wish I could have attended the hearing, but we are in unusual times. That having been said, I can only rely upon you for these answers. Thank you.

Respectfully,



Alan R. Erb

ARE/re
cc: Mr. Adam Garcia

RECEIVED

JAN 12 2021

STATE OF NEVADA
PAROLE BOARD

COPY

Evan Grant #1159544
NNCC
P.O. Box 7000
Carson City, NV 89702

March 24, 2022

RE: March 31, 2022, LCB Filing Workshop

Dear Nevada Board of Parole Commissioners

Thank you for holding this Workshop concerning LCB File No. R114-21P, R115-21P, and R116-21P. I have reviewed the proposed changes to NAC 213.516, 213.518, and 213.514. Unfortunately, I do not agree with the proposed language and am therefore against their adoption in their current form. The proposed language continues to not satisfy explicitly mandatory requirements of certain Nevada Statutory Law.

I am quite certain that Deputy Attorney General Kathleen Brady has informed this body that my civil 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 I have appealed both cases to the Nevada Supreme Court as the denial was entered in violation of the court's 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.

In keeping with the Board's Notice of Intent to Act Upon A Regulation, the remainder of this public comment will itemize my principle reasons against the adoption of LCB File No. R114-21P, R115-21P, and R116-21P.

-|-

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MAR 28 2022

STATE OF NEVADA
PAROLE BOARD

R114-21P

The following are my principle reasons against LCB File No. R114-21P:

1. NAC 213.516 continues to rely on Nevada Department of Corrections' crime severity levels. NRS 213.10885(2)(a) explicitly mandates the Board's consideration of the severity of the crime committed. Nowhere in Nevada law, including NRS 213.10885, is the Nevada Department of Corrections 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, and 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 Legislature's A, B, C, D, and E severity level designations.

2. 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 NAC 213.518 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.

R115-21P

The following are my principle reasons against LCB File No. R115-21P:

1. 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.

2. 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 "[s]tandards 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.

R116-21P

The following is my principle reason against LCB File No. R116-21P:

1. As the Board's execution of NAC 213.514(4) is located in the new NAC 213.518(2)(g) & (3)(k), NAC 213.514(4) should reference NAC 213.518. NAC 213.514(4) stating that consideration will be "[I]n accordance with NRS 213.1214 ..." is too vague as NRS 213.1214(4) simply mandates the Board consider the Department of Corrections' assessment. As the Board has chosen to do so via NAC 213.518, it should be included by reference in NAC 213.514(4).

CONCLUSION

For the principle reasons stated in this public comment submission, I am against LCB File No. R114-21P, R115-21P, and R116-21P. It is my hope that the Board will consider further amendments to NAC 213.516, 213.518, and 213.514 to bring them further into compliance with NRS 213.10885, 193.130, and 193.330.

Thank you for your time and consideration.


Evan Grant

March 31, 2022

Re: Meeting of the Board of Parole Commissioners Notice and Agenda

We, Advocates for the Inmates and the Innocent are submitting our written Public Comments for the following Agenda Items, II, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI, XVII, XVIII for the March 31, 2022, public meeting.

“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.

Agenda Items IX, X

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 who’s risk factor is low (bottom right-hand 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.

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. It reads:

“The Board shall report to each regular session of the Legislature:

(a) The number and percentage of the Board’s decisions that conflicted with the standards”

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

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from a standard result. For that reason, there can be no conflicts 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.

We still go back to the proposition that "consider factors" is not an objective guideline for making a parole decision. I think the guidelines should make a recommendation as to the outcome.

Agenda XII, XIII

R115-21P

we 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. "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.

AGENDA XIV, XV, XVI, XVIII

R116-21P

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 SO's only reviewed for further sex crimes. If they have a drug problem, e.g., any other crime will be more likely to occur.

4... to determine the risk that the prisoner will commit another sexual offense ...

Respectfully,

Tonja Brown, Advocates for the Inmates and the Innocent
2907 Lukens Lane Carson City, NV 89706
775-882-2744
nvmemorialfund@aol.com

John Quintero #93782
NNCC PO Box 7000
Cowson City NV 89702

March 24 2022

Nevada Parole Commission
1677 Old Hot Springs Rd Ste A
CC NV 89706-0677

Re: Public Comment for Hearing of March
Regarding 213.518 and NRS 213.1214

Dear Board:

I would like this comment placed in the record and considered for placement on the agenda of subsequent meetings per NRS 233B.

Background: I read the letters of the lawyer Alan Erb, the response of Board Commissioner and the letter of prisoner Adam Garcia dtd 11-15-21 on the record for November 29 2021 hearing I listened to and transcribed the audio-visual record of discussions about amending NAC 213 518. My understanding is as follows:

In the past practice of the Board, NRS 213.1214 had been interpreted by the Board to give it permission to perform an "additional" evaluation that would serve to supercede or "override" the State-99 report sent to Board by some manner unclear from the record. Commissioner Derrico answers NO when asked by commissioner Merccio asks "do we still override?" The correct

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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.

I will stand to be corrected in my understanding; but if I am right, then I request the following questions to be considered as agenda items and placed on the Agenda for the subsequent hearing(s):

1. Should the Board request an AG Opinion regarding the question of answerability of the Board to the past practice of mis-interpretation of NRS 213.1214, (a tradition passed on to the current board and not initiated by this current commission); in other words for purposes of injunctive relief (not damages) should the board be liable, and if so notice and opportunity for reconsideration be voluntarily extended to inmate improperly considered in the past?

Very respectfully,

