

From: Michelle [mailto:Justice4Kirstin@cox.net]
Sent: Saturday, March 15, 2008 07:51 AM
To: 'aginfo@ag.state.nv.us'
Cc: 'cmguerici@ag.state.nv.us'; 'governor@GOV.NV.GOV'; 'dburns@dps.state.nv.us'; 'h_munford@cox.net'; 'bbuckley@asm.state.nv.us'; 'jackson@nvcourts.nv.gov'; 'cimarron1@frontiernet.net'; 'mshull@nvcourts.nv.gov'; 'leerowland@earthlink.net'; 'profrgs@cox.net'; 'siegel@unr.edu'; Assembly (Parks, David); 'McLetchie@aclunv.org'; 'clee@sos.nv.state'
Subject: Complaint regarding misuse of powers

Dear Attorney General Masto:

Governor Gibbons signed an emergency executive order on December 17, 2007 (copy attached) which changes Nevada Revised Statute 213.1215. Governor Gibbons does not have the power or authority to change laws.

Article 3, Sec. 1 of the State of Nevada Constitution states clearly that the laws can only be amended or changed by the Legislature who created them. Therefore the Governor's Emergency Executive order violates the separation of powers act which effectively undermines the authority of the Nevada Legislature. The power to make or change laws is vested solely in the Legislature.

N.R.S. 213.1215 (as from the Legislative law enacted by the 2007 Legislature in AB510 effective July 1, 2007, Sec. 8.55), "the [inmate] must be released on parole 12 months before the end of his maximum term as reduced by any credits he has earned to reduce his sentence . . ." was effectively changed by the Governor's Emergency Executive order.

#9. CONSIDERATIONS REGARDING THE GRANTING OF MANDATORY PAROLE (NRS 213.1215) (from the Governors Emergency Executive order) "The Board shall consider eligible prisoners for release under the provisions of Mandatory Parole at least 60 days prior to their projected release. . ." This is a change in the law and violates the above statute. If this change is unchallenged it will create a precedent for future law and allows changes to the laws at the discretion of the staff and departments of the state government through executive power. This is a direct violation of the Nevada Constitution.

Advisory Commission, on Admin. of Justice

Exhibit Q pg 1 of 9 Date: 3-17-08

On March 7, 2007 during public comment at the Parole Board Meeting Flo Jones questioned the change in NRS 213.1215 by the Executive Emergency Order from the legislated 12 months release to parole to the 60 days for a hearing. Both Parole Board Chairman Salling and Parole Board Analyst III David Smith told Ms. Jones that she misunderstood the information and that they were not changing the law. Mr. Smith went on to state that the Legislative Counsel Bureau Regulations would be ready March 13, 2008 and that those regulations would revert back to the release on Mandatory Parole 12 months before the expiration of an inmate's sentence. (an auditory tape of this meeting has been requested).

However, today (March 14, 2008) **THE PROPOSED REGULATION OF THE STATE BOARD OF PAROLE COMMISSIONERS LCB (Legislative Counsel Bureau) File No. R18-08 dated March 11, 2008** has been received. In **Section 1. Page 1, "Chapter 213 of NAC [Nevada Administrative Code] is hereby amended by adding thereto the provisions set forth as sections 2-17 inclusive, of this regulation. Sec.13. Page 15 (2.)** "The Board [Board of Parole Commissioners] will conduct a meeting to consider a prisoner for mandatory parole pursuant to NRS 213.1215 not sooner than 150 days before the date on which the prisoner must be released."

Here is an overview of the changes to NRS 213.1215

Legislative Session

July 1, 2007

inmate **MUST BE RELEASED** on parole 12 months before the end of his maximum term.

Gov. Gibbons Emergency Regulation for the Parole Board

December 17, 2007

The Board **SHALL CONSIDER** eligible prisoners for release . . . at least 60 days prior to their projected release

Legislative Counsel Bureau Proposed Regulations for the Parole Board

March 11, 2008

The Board **WILL CONDUCT A MEETING TO CONSIDER** a prisoner for mandatory parole pursuant to NRS 213.1215 not sooner than 150 DAYS BEFORE THE DATE ON WHICH THE PRISONER MUST BE RELEASED.

There are somewhere between three and four thousand inmates who could be effected by this executive misuse of the separation of powers. They are those inmates in minimum security custody who have already been determined by the NV Department of Corrections NOT TO BE A THREAT TO SOCIETY per their own Administrative Regulation #521. Therefore, the Board of Parole Commissioners exception (NRS 213.1215 (3)) "that an inmate may not be paroled if there is a reasonable probability that the prisoner will be a danger to public safety" is not valid.

These inmates now being held without any jurisdiction by the NDOC will cost the taxpayers more money to settle civil litigation caused by the Governor's Emergency Executive Order and the Board of Parole Commissioners not following the law as written by the Legislature. This is a potentially huge liability to the State of Nevada and could run millions of dollars every month (daily cost of holding an inmate without jurisdiction times the 3,000 to 4,000 inmates). I think this money would be much better spent on educating our children and infrastructure issues such as transportation and medical care.

The cost of keeping these inmates that should have been released to parole custody in prison hard beds that cost an estimated \$60,000 per year (when buildings and the cost of land is included), will also be passed on to the taxpayer. Let us not forget to mention the new prison buildings and expansions currently underway which may be unnecessary once these prisoners are released on parole.

As a law abiding taxpayer in this state, I ask that your office investigate this violation and notify me of the outcome at your earliest convenience.

Sincerely,

Michelle Ravell

5813 Santa Catalina Ave

Las Vegas, NV 89108

(702) 656-7579

Appendix E

SECRETARY OF STATE
FILING DATA

ROSS MILLER
SECRETARY OF STATE
2007 DEC 17 3:41
CARSON CITY
NEVADA

Form For Filing
Administrative Regulations

Agency Nevada Board of Parole

Commissioners _____

FOR EMERGENCY
REGULATIONS ONLY

Effective date December 17, 2007

Expiration date April 15, 2008

Jim Gibbons
Governor's signature

Classification: ☐ PROPOSED ☐ ADOPTED BY AGENCY ☒ EMERGENCY

Brief description of action AN EMERGENCY REGULATION relating to parole standards; Establishes considerations and factors regarding the granting of discretionary parole; Notice to prisoner of the parole decisions; considerations regarding the granting of Mandatory Parole; and providing other matters properly relating thereto.

Authority citation other than 233B NRS 213.10885

Notice date N/A

Date of Adoption by Agency

Hearing date N/A

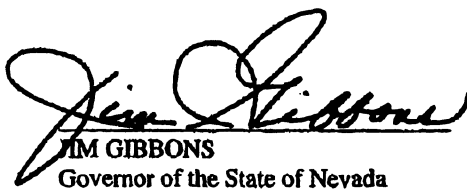
December 11, 2007

GOVERNOR'S ENDORSEMENT

I, Governor Jim Gibbons, endorse the Nevada Board of Parole Commissioners' Statement of Emergency.

DATE

Dated this 17th of December, 2007.


JIM GIBBONS
Governor of the State of Nevada

- (e). The prisoner should disassociate from involvement with a gang.

9. Considerations regarding the granting of Mandatory Parole (NRS 213.1215)

1. The Board shall consider eligible prisoners for release under the provisions of Mandatory Parole at least 60 days prior to their projected release, or as soon as practicable following the determination that a prisoner is eligible for release under NRS 213.1215.
2. A prisoner may not be released on Mandatory Parole until the Board has approved the release and the Division of Parole and Probation has established a program of the prisoner's activities during his parole.
3. Prior to making a final decision to grant Mandatory Parole, the Board shall consider whether there is a reasonable probability that the prisoner would be a danger to public safety if released on parole.
4. In considering whether there is a reasonable probability that the prisoner would be a danger to public safety while on parole, the Board shall consider the following:
 - (a). Whether the prisoner is a high risk to re-offend based on a validated risk assessment as specified in section 2 of this emergency regulation;
 - (b). The risk of the prisoner if he has been convicted of a sex offense listed in sub-paragraph 5 of NRS 213.1214;
 - (c). Whether the prisoner has ever made any substantive statements regarding their refusal to comply with the terms of parole, or made threats to harm others;
 - (d). Whether the prisoner has a history of violent convictions;
 - (e). Whether the prisoner has engaged in any assaultive or combative institutional behavior;
 - (f). Whether the prisoner has been convicted of multiple felony offenses of Driving under the Influence;
 - (g). Whether there is any history of supervision failures related to violence or whether additional crimes have been committed while on supervision;
 - (h). Whether the history of criminal conduct of the prisoner has been increasing in severity;
 - (i). Whether the prisoner has demonstrated pro-criminal attitude and behaviors such as active gang involvement or planning escapes or other criminal activity; and
 - (j). Any other factor that would demonstrate that there is a reasonable probability that the prisoner would be a danger to public safety if released on parole.

10. Crime severity table:

The following is a table of offenses referred to in section 2 of this emergency regulation:

OFF CODE	CRIME	SEVERITY
495	AGGREGATED ESCAPE	HIGHEST
294	ARSON I	HIGHEST

Stockmen changed how pay panels are used

1. The Board shall not release on parole a prisoner convicted of an offense listed in subsection 5 unless a panel consisting of:

(a) The Administrator of the Division of Mental Health and Developmental Services of the Department of Health and Human Services or his designee;

(b) The Director of the Department of Corrections or his designee; and

(c) A psychologist licensed to practice in this State or a psychiatrist licensed to practice medicine in this State, *certifies that the prisoner was under observation while confined in an institution of the Department of Corrections and does not represent a high risk to reoffend based upon a currently accepted standard of assessment.*

2. A prisoner who has been certified pursuant to subsection 1 and who returns for any reason to the custody of the Department of Corrections may not be paroled unless a panel recertifies him in the manner set forth in subsection 1.

3. The panel may revoke the certification of a prisoner certified pursuant to subsection 1 at any time.

4. This section does not create a right in any prisoner to be certified or to continue to be certified. No prisoner may bring a cause of action against the State, its political subdivisions, or the agencies, boards, commissions, departments, officers or employees of the State or its political subdivisions for not certifying a prisoner pursuant to this section or for refusing to place a prisoner before a panel for certification pursuant to this section.

5. The provisions of this section apply to a prisoner convicted of any of the following offenses:

(a) Sexual assault pursuant to NRS 200.366.

(b) Statutory sexual seduction pursuant to NRS 200.368.

(c) Battery with intent to commit sexual assault pursuant to NRS 200.400.

(d) Abuse or neglect of a child pursuant to NRS 200.508.

(e) An offense involving pornography and a minor pursuant to NRS 200.710 to 200.730, inclusive.

(f) Incest pursuant to NRS 201.180.

(g) Solicitation of a minor to engage in acts constituting the infamous crime against nature pursuant to NRS 201.195.

(h) Open or gross lewdness pursuant to NRS 201.210.

(i) Indecent or obscene exposure pursuant to NRS 201.220.

(j) Lewdness with a child pursuant to NRS 201.230.

(k) Sexual penetration of a dead human body pursuant to NRS 201.450.

(l) Luring a child or a person with mental illness pursuant to NRS 201.560, if punished as a felony.

(m) An attempt to commit an offense listed in paragraphs (a) to (l), inclusive.

(n) An offense that is determined to be sexually motivated pursuant to NRS 175.547.

(o) Coercion or attempted coercion that is determined to be sexually motivated pursuant to NRS 207.193.

(Added to NRS by 1997, 2506; A 1999, 108; 2001, 1640, 2799; 2001 Special Session, 201; 2003, 289, 306, 1392; 2005, 2878)

NRS 213.1215 Mandatory release of certain prisoners.

1. Except as otherwise provided in subsections 3, 4 and 5 and in cases where a consecutive sentence is still to be served, if a prisoner sentenced to imprisonment for a term of 3 years or more:

(a) Has not been released on parole previously for that sentence; and

(b) *Is not otherwise ineligible for parole, minimum can trump the mandatory parole*
he must be released on parole 12 months before the end of his maximum term, as reduced by any credits he has earned to reduce his sentence pursuant to chapter 209 of NRS. The Board shall prescribe any conditions necessary for the orderly conduct of the parolee upon his release.

2. Each parolee so released must be supervised closely by the Division, in accordance with the plan for supervision developed by the Chief pursuant to NRS 213.122.

3. If the Board finds, at least 2 months before a prisoner would otherwise be paroled pursuant to subsection 1, that there is a reasonable probability that the prisoner will be a danger to public safety while on parole, the Board may require the prisoner to serve the balance of his sentence and not grant the parole provided for in subsection 1. If, pursuant to this subsection, the Board does not grant the parole provided for in subsection 1, the Board shall provide to the prisoner a written statement of its reasons for denying parole.

4. If the prisoner is the subject of a lawful request from another law enforcement agency that he be held or detained for release to that agency, the prisoner must not be released on parole, but released to that agency.

5. *If the Division has not completed its establishment of a program for the prisoner's activities during his parole pursuant to this section, the prisoner must be released on parole as soon as practicable after the prisoner's program is established.*

*Change Credits to 1 day
New for 1*

**PROPOSED REGULATION OF THE
STATE BOARD OF PAROLE COMMISSIONERS**

LCB File No. R018-08

March 11, 2008

EXPLANATION – Matter in *italics* is new; matter in brackets [omitted+material] is material to be omitted.

AUTHORITY: §§1-16, 18, 19 and 20, NRS 213.10885, 213.110 and 213.140; §17, NRS 213.133.

A REGULATION relating to parole; establishing standards which the State Board of Parole Commissioners will use to determine whether to grant parole to a prisoner; providing the time within which a meeting to consider a prisoner for mandatory parole must be held; authorizing the Board to consider a prisoner for discretionary parole at a meeting to consider the prisoner for mandatory parole; adopting factors which the Board will consider to determine whether the mandatory parole of a prisoner should be denied because the prisoner will be a danger to public safety; providing for notice of parole hearings to prisoners; providing for the waiver of certain rights by prisoners; providing certain specific recommendations which the Board may provide to a prisoner upon the denial of parole to improve the possibility of granting parole; providing for the delay of the release of a prisoner in certain circumstances so that the Board may consider grounds for the rescission of parole; authorizing the Board to delegate its authority to certain panels; repealing existing regulations pertaining to the standards for determining whether to grant parole to a prisoner; and providing other matters properly relating thereto.

Section 1. Chapter 213 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 17, inclusive, of this regulation.

Sec. 2. *As used in NAC 213.500, 213.550 and 213.560 and sections 2 to 17, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in NAC*

2. *The Board will conduct a meeting to consider a prisoner for mandatory parole pursuant to NRS 213.1215 not sooner than 150 days before the date on which the prisoner must be released.*

3. *Before approving the mandatory parole of a prisoner, the Board will determine whether there is a reasonable probability that the prisoner will be a danger to public safety while on parole by considering:*

(a) *Whether the risk level assigned to the prisoner pursuant to section 8 of this regulation indicates that there is a high risk that prisoner will commit a felony if released on parole;*

(b) *If the prisoner has been convicted of an offense listed in subsection 5 of NRS 213.1214, whether the prisoner has been certified as not presenting a high risk to reoffend pursuant to the provisions of subsection 1 of NRS 213.1214;*

(c) *Whether the prisoner has made any statements indicating that the prisoner will refuse to comply with the terms and conditions of parole;*

(d) *Whether the prisoner has made any threats to harm others;*

(e) *The number and nature of any prior convictions of the prisoner, including, without limitation, whether the prisoner has a history of conviction for violent crimes;*

(f) *Whether the prisoner has engaged in violent behavior while incarcerated;*

(g) *Whether the prisoner has been convicted of multiple felony offenses involving driving or being in actual physical control of a vehicle while under the influence of intoxicating liquor or a controlled substance;*

and whether the prisoner has previously failed to successfully complete probation or parole.

[Signature]