

**REVISED PROPOSED REGULATION OF THE CHIEF OF
THE DIVISION OF PAROLE AND PROBATION OF
THE DEPARTMENT OF PUBLIC SAFETY**

LCB File No. R061-16

September 16, 2016

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

AUTHORITY: §§1-5, NRS 213.10988.

A REGULATION relating to the Division of Parole and Probation of the Department of Public Safety; revising provisions relating to standards for recommendations by the Chief Parole and Probation Officer regarding parole or probation; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the Chief Parole and Probation Officer of the Division of Parole and Probation of the Department of Public Safety to adopt by regulation standards to assist him or her in formulating a recommendation regarding the granting of probation or the revocation of parole or probation to a convicted person who is otherwise eligible for or on probation or parole. (NRS 213.10988) Existing regulations establish such standards. (NAC 213.570-213.630)

Existing regulations provide that, with certain exceptions, the Division will evaluate every person convicted of a felony for the purpose of enabling the Chief Parole and Probation Officer to make a recommendation to the court concerning sentencing. (NAC 213.580) **Section 1** of this regulation provides that the Division will conduct such an evaluation using an objective evidence-based assessment tool that incorporates the standards adopted by the Chief Parole and Probation Officer.

Existing regulations set forth certain acts and omissions occurring during a period of probation or parole that the Chief Parole and Probation Officer is authorized to consider for the purpose of making a recommendation concerning the continuation or revocation of probation, determining whether to certify an order of the State Board of Parole Commissioners for the arrest of any conditionally released or paroled prisoner or making a determination concerning the continuation or suspension of parole. (NAC 213.610, 213.620) **Sections 2 and 3** of this

regulation revise such acts and omissions occurring during a period of probation or parole, respectively, that the Chief Parole and Probation Officer may consider.

Section 5 of this regulation repeals certain obsolete provisions.

Section 1. NAC 213.580 is hereby amended to read as follows:

213.580 *1.* Except as otherwise provided by statute or directed by the court, the Division will evaluate every person who is convicted of a felony ~~[-The]~~ *for the* purpose of ~~[the evaluation is to enable]~~ *enabling* the Chief Parole and Probation Officer to make a recommendation to the court concerning sentencing.

2. The Division will conduct an evaluation pursuant to subsection 1 using an objective evidence-based assessment tool that incorporates the standards adopted by the Chief Parole and Probation Officer pursuant to NRS 213.10988 and is predictive of continued criminality. The Division may consider certain variables as part of an evaluation, including, without limitation, the criminal history, employment and residential stability, social and behavioral patterns, education, family situation, mental health and mental disabilities of and any substance abuse by the person being evaluated.

Sec. 2. NAC 213.610 is hereby amended to read as follows:

213.610 In making a recommendation pursuant to NRS 176A.630 concerning the continuation or revocation of probation, the Chief Parole and Probation Officer may consider any of the following acts or omissions occurring during the period of probation:

1. Failure of the ~~[convicted person]~~ *probationer* to participate in any program established for him or her by the Division, or to report to his or her supervising parole and probation officer or any other person designated by the Division.

2. Any change of employment or place of residence, or any departure from this State or the area of residence of the ~~{convicted person,}~~ *probationer*, that occurs without the consent of his or her supervising parole and probation officer.

3. Failure of the ~~{convicted person,}~~ *probationer* to submit each month a true and correct report in writing to his or her supervising parole and probation officer in the form prescribed by the Division.

4. Any use of alcoholic beverages to any extent or, as directed by the court, to the extent that the ~~{convicted person,}~~ *probationer* has ~~{0.10}~~ *0.08* percent or more by weight of alcohol in his or her blood.

5. Any unlawful purchase, use, possession, administration or sale or other transfer of any controlled substance or dangerous drug by the ~~{convicted person,}~~ *probationer*.

6. Failure of the ~~{convicted person,}~~ *probationer* to submit to a test for the presence of any controlled substance or dangerous drug in his or her blood or other bodily substance, as directed by his or her supervising parole and probation officer.

7. Any possession, ownership or use of a weapon by the ~~{convicted person,}~~ *probationer*.

8. Any association *or contact* by the ~~{convicted person,}~~ *probationer* with any person ~~{who is of bad reputation or}~~ who has been ~~{confined to a penal institution,}~~ *convicted of a felony or is incarcerated or on probation or parole, or any other person who is deemed by the Division to be detrimental to the success of the probationer, except as specifically authorized in writing by the probationer's supervising parole and probation officer.*

9. Failure of the ~~{convicted person}~~ *probationer* to cooperate with his or her supervising parole and probation officer, or to obtain the written consent of the officer before marrying, engaging in business, incurring debt or purchasing any real property or any automobile.

10. Failure of the ~~{convicted person}~~ *probationer* to conduct himself or herself as a good citizen or to obey any federal, state, county or municipal law or ordinance.

11. Failure of the ~~{convicted person}~~ *probationer* to seek and maintain employment, or to participate in the program of employment established for him or her by the Division.

12. Failure of the ~~{convicted person}~~ *probationer* to ~~{make}~~ *pay all court-ordered fines and fees, including, without limitation, making* any restitution ordered by the court as a condition of probation.

13. *Unless the probationer has received a waiver pursuant to subsection 2 of NRS 213.1076, failure of the probationer to pay the monthly fee required pursuant to NAC 213.230.*

14. Any violation by the probationer of any curfew established by the Division.

15. Any violation by the ~~{convicted person}~~ *probationer* of any other condition of probation established by the court.

Sec. 3. NAC 213.620 is hereby amended to read as follows:

213.620 1. In determining whether to certify an order of the Board pursuant to NRS 213.151, or in making a determination pursuant to NRS 213.1517 concerning the continuation or suspension of parole, the Chief Parole and Probation Officer may consider any of the following acts or omissions occurring during the period of parole:

(a) Failure of the parolee to participate in the program established for him or her by the Division, or to report to his or her supervising parole and probation officer or any other person designated by the Division.

(b) Any change of residence of the parolee or any departure from this State that occurs without the consent of his or her supervising parole and probation officer.

(c) Failure of the parolee to seek and maintain employment, or to participate in the program of employment established for him or her by the Division.

(d) Failure of the parolee to submit a true and correct report in writing to his or her supervising parole and probation officer each month in the form prescribed by the Division.

(e) Any use of alcoholic beverages to any extent or, as directed by the Board, to the extent that the parolee has ~~10.10~~ 0.08 percent or more by weight of alcohol in his or her blood.

(f) Failure of the parolee to submit to a search of his or her person, place of residence or automobile by a parole and probation officer.

(g) Any unlawful purchase, use, possession, administration or sale or other transfer of any controlled substance or dangerous drug by the parolee.

(h) Failure of the parolee to submit to a test for the presence of any controlled substance or dangerous drug in his or her blood or other bodily substance, as directed by his or her supervising parole and probation officer.

(i) Any possession, ownership or use of a weapon by the parolee.

(j) Any association or ~~correspondence~~ *contact* by the parolee with any person ~~who is of bad reputation or~~ who has been ~~confined to a penal institution,~~ *convicted of a felony or is incarcerated or on probation or parole, or any other person who is deemed by the Division to*

be detrimental to the success of the parolee, except as specifically authorized in writing by the parolee's supervising parole and probation officer.

(k) Failure of the parolee to cooperate with his or her supervising parole and probation officer, or to obtain the written consent of the officer before marrying, incurring debt, changing employment or purchasing any motor vehicle.

(l) Failure of the parolee to conduct himself or herself as a good citizen or to obey any federal, state, county or municipal law or ordinance.

(m) *Failure of the parolee to pay all court-ordered fines and fees and, unless the parolee has received a waiver pursuant to subsection 2 of NRS 213.1076, the monthly fee required pursuant to NAC 213.230.*

(n) Any violation by the parolee of any curfew established by the Division.

(o) Any violation by the parolee of any other condition of parole established by the Board.

2. As used in this section, "Board" means the State Board of Parole Commissioners.

Sec. 4. NAC 213.630 is hereby amended to read as follows:

213.630 1. In making:

(a) Any recommendation concerning the continuation or revocation of probation; or

(b) Any determination described in NAC 213.620,

➡ based upon any act or omission described in NAC 213.610 or 213.620, the Chief Parole and Probation Officer may consider any mitigating factor which influenced or contributed to the act or omission.

2. In making any such recommendation or determination, the Chief Parole and Probation Officer may also consider:

(a) Any prior criminal history of the ~~convicted person~~ *probationer* or parolee;

(b) The nature of the person's present offense;

(c) Any pattern of previous offenses; and

(d) The circumstances of the person's present and previous offenses,

↳ in determining whether the act or omission is a significant indicator of the person's success or failure on parole or probation.

3. Nothing contained in NAC 213.570 to 213.620, inclusive, shall be deemed to restrict the authority of the Chief Parole and Probation Officer, in any case he or she deems appropriate, to make any recommendation concerning sentencing or the continuation or revocation of probation, or any determination described in NAC 213.620, that deviates from the standards contained in those sections.

4. Before any recommendation described in subsection 3 is transmitted to the court on behalf of the Chief Parole and Probation Officer, it must be approved by the ~~district administrator~~ *supervisor* having authority over the case or by a person designated thereof.

5. The Chief Parole and Probation Officer will keep a record of the number and percentage of recommendations and determinations that deviate from the standards contained in NAC 213.570 to 213.620, inclusive.

Sec. 5. NAC 213.590 and 213.600 are hereby repealed.

TEXT OF REPEALED SECTIONS

213.590 Use of Probation Success Probability form. (NRS 213.10988)

1. Each convicted person will first be evaluated using the Probation Success Probability form adopted by the Division. The form generates a numeric score based upon consideration of the following factors:

- (a) The number of prior criminal convictions sustained by the convicted person;
- (b) The number of other criminal prosecutions pending against the person;
- (c) The number of occasions on which the person has been incarcerated;
- (d) If the person is 23 years of age or younger, the number of occasions on which he or she has been committed to a correctional facility for juveniles;
- (e) The number of years that have elapsed since the person's most recent previous conviction, whether the conviction was sustained as a juvenile or as an adult;
- (f) The number of occasions on which the person has been supervised as an adult or juvenile probationer;
- (g) The tendency of the person to have engaged in crimes of increasing or decreasing severity, or in crimes involving violence;
- (h) The circumstances of the person's arrest for the present offense;

- (i) The nature of the present offense and the number of persons victimized;
- (j) The degree of psychological, physical and financial harm caused to the victim of the present offense;
- (k) If the present offense involved controlled substances, the nature of the conduct involved in the offense;
- (l) The sophistication of the present offense and the degree of premeditation involved in the offense;
- (m) The benefits received by the person as the result of any plea negotiation in the present proceeding;
- (n) The use of any weapon in connection with the present offense;
- (o) The involvement in the present offense of any other offender;
- (p) The existence and nature of any motive for the present offense;
- (q) The age and education of the person;
- (r) The support provided to the person by his or her immediate family;
- (s) The person's history of employment and record of military service;
- (t) The employability of the person;
- (u) The person's financial self-sufficiency;
- (v) The ties or connections between the person and the community in which he or she lives;
- (w) The person's history of substance abuse;
- (x) The availability to the person of rehabilitative or other programs in the community;
- (y) Participation by the person in a mental health or substance abuse program, if such a program is warranted by the nature of the case;

(z) The person's honesty and cooperation in dealing with an employee of the Division who is performing the evaluation; and

(aa) The attitude of the person concerning the present offense and toward supervision on probation.

2. The numeric score derived from the use of the Probation Success Probability form may be used by the Chief Parole and Probation Officer in making a recommendation concerning:

(a) The granting or denial of probation; and

(b) The length of any term of confinement to be served by the convicted person, as provided in NAC 213.600.

213.600 Use of Sentence Recommendation Selection Scale form. (NRS 213.10988)

Any recommended term of confinement for a convicted person may be derived using the Sentence Recommendation Selection Scale form adopted by the Division. The form may be used to apply the numeric score obtained from the Probation Success Probability form to the range of sentences provided by law for the offense, resulting in a recommended term of confinement.

Brian Sandoval
Governor



James M. Wright
Director

Natalie A. Wood
Chief

DIVISION OF PAROLE AND PROBATION

HEADQUARTERS
1445 Old Hot Springs Road, Suite 104
Carson City, NV 89706

NOTICE OF INTENT TO ACT UPON A REGULATION

NOTICE OF HEARING FOR THE ADOPTION AND AMENDMENT OF CHAPTER 213 OF THE NEVADA ADMINISTRATIVE CODE

The Division of Parole and Probation, 1445 Hot Springs Road 3104, Carson City, Nevada 89706, telephone number (775)684-2600 will hold a public hearing at 9:00 am, on October 27, 2016, at the Gaming Control Board, 1919 College Parkway, Carson City, Nevada 89701, with video conferencing to the Gaming Control Board, 555 E. Washington Ave. Suite 2450, Las Vegas, Nevada. The purpose of the hearing is to receive comments from all interested persons regarding the amendment of certain regulations pertaining to Chapter 213 of the Nevada Administrative Code.

The following information is provided pursuant to the requirements of NRS 233B.0603:

1. The Division is amending and updating the existing regulations to comply with existing statute and the current state of practice in the industry, including the implementation of an evidence based assessment tool for making sentencing recommendations to the Court; elimination of various outdated or obsolete forms, terminology and job titles; updating the list of negative behaviors to be considered in the assessment process to conform with statutory requirements and industry practice; and updating references to current federal standards related to blood alcohol content.
2. To obtain a copy of the approved and revised text of the proposed regulation prepared by the Legislative Counsel Bureau, contact Major Stephanie O'Rourke telephonically at (775)684-2645 or by e-mail at sorourke@dps.state.nv.us.
3. It is proposed that section 213.580 be amended to allow the Division to use any evidenced based assessment tool that incorporates and/or constitutes the standards referenced in NRS 213.10988(1), for the purpose of making a recommendation to the court concerning sentencing.

It is proposed that section 213.590 be amended (deleted in its entirety) as the language is specific only to the assessment tool adopted and implemented by the Division in 1990.

It is proposed that section 213.600 be amended (deleted in its entirety) as a specific form is not required or referenced by NRS 21.310988(1). The proposed amendments to Section 213.580 allowing the Division broader authority in adopting an assessment tool would also address the additional sentencing assessment criteria contemplated by NRS 213.10988(3).

It is proposed that section 213.610(1-13) be amended to reflect changes in statute and corresponding case law that require the Division to supervise offenders who are on diversionary grants in which a judgment of conviction has not been entered.

It is proposed that section 213.610(14-15) be amended to reflect changes in the supervision standards of the Division.

It is proposed that section 213.620(e) be amended to reflect the change in federal blood alcohol content (BAC) limits for driving under the influence of alcohol.

It is proposed that section 213.620(j) be amended to reflect changes in statute and corresponding case law that require the Division to supervise offenders who are on diversionary grants in which a judgment of conviction has not been entered.

It is proposed that section 213.620(n-o) be amended to reflect changes in the supervision standards of the Division.

It is proposed that section 213.630 be amended to eliminate an administrative [position] title that no longer exists within the Division.

At the conclusion of the public comments hearing, the Division will discuss the potential adoption of the proposed regulations, referenced as LCB File No. R061-16.

4. There are no known estimated economic effects of the regulation on the business it regulates or the public.
5. There is no known additional cost to the agency of enforcing the amended regulation.
6. The proposed regulations do not overlap or duplicate any other existing regulation.
7. The regulation is not required pursuant to federal law.
8. The regulation does not include provisions that are more stringent than federal regulations nor is there any other federal regulation that regulates the same activity.
9. The new regulation does not establish or increase an existing fee.

Persons wishing to comment upon the proposed action of the Division of Parole and Probation may appear at the scheduled public hearing or may address their comments, data, views, or arguments, in written form to the Division of Parole and Probation, 1445 Old Hot Springs Road #104, Carson City, Nevada 89706. Written submission must be received by the Division of Parole and Probation on or before October 20, 2016. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Division of Parole and Probation may proceed immediately to act upon any written submissions.

A copy of this notice and the regulation to be amended will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and regulation will be available at the meeting locations, the Nevada State Library, Archives and Public records, to the librarian of the main public library in each county; the Divisions' public website, the Nevada Office of the Attorney General Public Notice Website and the Legislative Counsel Bureau's website.

Dated this 21st day of SEPTEMBER, 2016



Natalie A. Wood
Chief, Parole and Probation

**NOTICE OF HEARING FOR THE ADOPTION AND AMENDMENT OF CHAPTER 213 OF
THE NEVADA ADMINISTRATIVE CODE**

Nevada Gaming Control Board
1919 College Parkway
Carson City, Nevada 89701

VIDEO CONFERENCING TO:

Nevada Gaming Control Board
555 E. Washington Ave. Suite 2450
Las Vegas, Nevada 89101

AGENDA

DATE: October 27, 2016 at 9:00 a.m.

Note: Items on the agenda may be taken in a different order than listed.
Items may be combined for consideration by the Division of Parole and Probation.
Items may be pulled or removed from the agenda at any time.

1. Call to Order/Introduction of those in attendance
2. Public Comment (Including written public comment submitted in advance)
3. Review and update to the regulations of the Division to comply with existing statute and current state of practice in the industry, including the implementation of an evidence-based assessment tool for making sentencing recommendations to the Court; elimination of various outdated or obsolete forms, terminology and job titles; updating the list of negative behaviors to be considered in the assessment process to conform to current statutory requirements and industry practice; updating references to current federal standards related to blood alcohol content; and other matters properly related thereto.
4. Public Comment*
5. Adoption of Regulations (as appropriate)
5. Adjournment

*The purpose of this item is to receive public comment on any issue and discussion of those items; provided that any comments will be limited to and within the authority of areas relevant the Nevada Division of Parole and Probation.

For supporting materials, or additional information please contact Major Stephanie O'Rourke of the Division of Parole and Probation, 1445 Old Hot Springs Road #104, Carson City, Nevada 89703, by calling (775)684-2600, or by e-mail at sorourke@dps.state.nv.us. A reasonable fee for copy work may be charged.

**Public Workshop Agenda
LCB File No. R061-16**

This Notice of Intent to Act Upon a Regulation and corresponding Agenda have been sent to all persons who have requested placement on the Nevada Division of Parole and Probation's mailing list for receipt of proposed administrative regulations and posted on the Nevada Division of Parole and Probation's official website: <http://npp.dps.nv.gov>, the Nevada Legislatures' website at <https://www.leg.state.nv.us>, the Nevada Public Notice Website at <https://notice.nv.gov/>, and at the following locations:

Nevada Division of Parole and Probation field offices:

Carson City Fax: 775-684-2449
Elko Fax: 775-753-1306
Winnemucca Fax: 775-623-6542

Reno Fax: 775-684-2399
Pahrump Fax: 775-751-3548
Las Vegas Fax: 702-486-3076

Fallon Fax: 775-423-1319
Tonopah Fax: 775-482-6494
Ely Fax: 775-289-1638

Carson City Library
900 Roop Street
Carson City, NV 89702
Fax: 775-887-2273

Department of Public Safety Headquarters
555 Wright Way
Carson City, NV 89711
Fax: 775-684-4809

Churchill County Library
553 South Main Street
Fallon, Nevada 89406
Fax: 775-423-7766

Clark County District Library
833 Las Vegas Boulevard North
Las Vegas, Nevada 89100
Fax: 702-507-3540

Douglas County Library
1625 Library Lane
Minden, Nevada 89423
Fax: 775-782-5754

Elko County Library
720 Court Street
Elko, Nevada 89801
Fax: 775-738-8262

Esmeralda County Library
Corner of Crook and 4th Street
Goldfield, Nevada 89013
Fax: 775-485-3236

Eureka County Library
210 South Monroe
Eureka, Nevada 89316
Fax: 775-237-5307

Humboldt County Library
85 East 5th Street
Winnemucca, Nevada 89445
Fax: 775-623-6300

Lander County Library
625 South Broad Street
Battle Mountain, Nevada 89820
Fax: 775-635-0332

Lincoln County Library
63 Main Street
Pioche, Nevada 89043
Fax: 775-962-5244

Lyon County Library
20 Nevin Way
Yerington, Nevada 89447
Fax: 775-463-6646

Mineral County Library
110 1st Street
Hawthorne, Nevada 89413
Fax: 775-945-0703

Nye County Library
167 Central Street
Tonopah, Nevada 89049
Fax: 775-482-5143

**Public Workshop Agenda
LCB File No. R061-16**

Pershing County Library
1125 Central Avenue
Lovelock, Nevada 89419
Fax: 775-273-0421

Tonopah Public Library
PO Box 449
Tonopah, NV 89049
Fax: 775-482-5143

Washoe County Library
301 South Center Street
Reno, Nevada 89501
Fax: 775-345-8106

Battle Mountain Branch Library
625 South Broad Street
Battle Mountain, NV 89820
Fax: c/o Elko County Library 775-738-8262

Nevada State Bar Association
Northern Nevada office
9456 Double R Blvd, Suite B
Reno, NV 89521
Fax: 775-329-0522

Nevada Board of Parole and Pardon
Commissioners
1677 Old Hot Springs Road, Suite A
Carson City, NV 89706
Fax: 775-687-6736

State Public Defender's Office
511 East Robinson Street, #1
Carson City, Nevada 89701
Fax: 775-687-4993

Office of the Nevada Attorney General
Northern Nevada office
100 North Carson Street
Carson City, NV 89701
Fax: 775-684-1108

Office of the Clark County District Attorney
Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89155
Fax: 702-455-2294

Storey County Clerk
Drawer D
Virginia City, Nevada 89440
Fax: 775-847-0921

Las Vegas-Clark County Library HQ
833 Las Vegas Blvd. NV 89101
Las Vegas, NV 89101
Fax: 702-507-3540

White Pine County Library
950 Compton Street
Ely, Nevada 89301
Fax: 775-289-1555

Nevada State Library and Archives
100 N Stewart St
Carson City, NV 89701
Fax: 775-684-3399

Nevada State Bar Association
Southern Nevada office
3100 W. Charleston Blvd. Suite 100
Las Vegas, NV 89102
Fax: 702-385-2878

Judicial Council of the State of Nevada
Administrative Office of the Courts
201 South Carson Street Suite 250
Carson City NV 89701-4702
Fax: 775-684-1723

Advisory Counsel for Prosecuting Attorneys
100 North Carson Street
Carson City, NV 89701
Fax: 775-684-1108

Office of the Attorney General
Southern Nevada office
555 East Washington Avenue, Suite 3900
Las Vegas, NV 89101
Fax: 775-486-3768

Office of the Clark County Public Defender
309 S. Third Street Suite 226
Las Vegas, NV 89155
Fax: 702-455-5112

**Public Workshop Agenda
LCB File No. R061-16**

**Nevada Advisory Commission
on the Administration of Justice
401 South Carson Street
Carson City, NV 89701
Fax: 775-684-6761**

**Nevada State Library and Archives
100 N Stewart Street
Carson City, NV 89701
Fax: 775-684-3311**

Before 9 a.m. on September 21, 2016

Signature