

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

LCB File No. R018-08

Effective April 17, 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 213.500 and sections 3, 4 and 5 of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Criminal gang” has the meaning ascribed to it in NRS 213.1263.*

Sec. 4. *“Division” means the Division of Parole and Probation of the Department of Public Safety.*

Sec. 5. *“Property offense” means an offense or attempted offense involving:*

- 1. Securities in violation of NRS 90.650;*
- 2. Commodities in violation of NRS 91.340;*
- 3. Fraud in violation of NRS 119.330, 197.210, 205.365, 205.370, 205.435, 205.445 or 645.990;*
- 4. Neglect of duty or malfeasance by a public officer in violation of NRS 197.040, 204.030, 204.050, 281.230, 356.110, 583.543 or 658.155;*
- 5. Falsely auditing or paying a claim or demand against the State or a county, town or city of this State in violation of NRS 197.150;*
- 6. Robbery in violation of NRS 200.380;*
- 7. The use or sale of liquid silicone in violation of NRS 202.248;*
- 8. The unlawful use of public money in violation of NRS 204.020;*
- 9. Arson with the intent to defraud an insurer in violation of NRS 205.030;*
- 10. Burglary in violation of NRS 205.060 or 205.075;*
- 11. Home invasion in violation of NRS 205.067;*
- 12. Theft in violation of NRS 205.0832 or 205.2707;*
- 13. An organized retail theft ring in violation of NRS 205.08345;*
- 14. Forgery in violation of NRS 205.090, 205.110, 205.160 or 205.481;*
- 15. False representations or statements in violation of NRS 205.120, 205.370, 517.300, 668.015 or 668.095;*

16. *The issuance, or attempted issuance, of a check or draft without sufficient money or credit in violation of NRS 205.130;*
17. *Counterfeiting in violation of NRS 205.175, 205.180 or 205.185;*
18. *Sound recordings in violation of NRS 205.217;*
19. *Grand larceny in violation of NRS 205.220, 205.226 or 205.228;*
20. *Petit larceny in violation of NRS 205.240;*
21. *The taking of property from the person of another under circumstances not amounting to robbery in violation of NRS 205.270;*
22. *A stolen vehicle in violation of NRS 205.273;*
23. *Stolen property in violation of NRS 205.275;*
24. *Embezzlement in violation of NRS 205.300 or 668.055;*
25. *Obtaining money, property or a signature by false pretenses in violation of NRS 205.380 or 205.390;*
26. *The unauthorized collection of money for a benefit in violation of NRS 205.415;*
27. *Impersonating another person in violation of NRS 205.450 or 205.455;*
28. *Personal identifying information in violation of NRS 205.463, 205.464 or 205.465;*
29. *The unlawful use of a computer in violation of NRS 205.4765 or 205.477;*
30. *Documents of title in violation of NRS 205.520, 205.540, 205.570, 205.580 or 205.590;*
31. *Credit cards, debit cards or telephone calling cards in violation of NRS 205.690 to 205.760, inclusive, or 205.770 to 205.800, inclusive;*
32. *Obtaining telephone service with the intent to avoid payment for that service in violation of NRS 205.920;*
33. *The obtaining of a loan for another in violation of NRS 205.950;*

34. *An agreement to act as a qualified intermediary in violation of NRS 205.960;*
35. *A monetary instrument which is the proceeds of or derived from an unlawful activity in violation of NRS 207.195;*
36. *Public assistance in violation of NRS 207.340, 422.366 to 422.369, inclusive, 422.410, 422.560 or 422A.700;*
37. *Racketeering in violation of NRS 207.400;*
38. *The procuring or filing of a false or forged public record in violation of NRS 239.330;*
39. *A facsimile signature or seal on a public security or an instrument of payment in violation of NRS 351.060;*
40. *The giving of an unlawful receipt by a tax receiver in violation of NRS 361.525;*
41. *Unlawful licenses in violation of NRS 364.090;*
42. *The tax on cigarettes in violation of NRS 370.380 or 370.382;*
43. *An Indian burial site in violation of NRS 383.180;*
44. *A dead body of a human being, or any part thereof, in violation of NRS 451.030;*
45. *The sale of a vehicle in violation of NRS 482.547;*
46. *The failure to pay for farm products in violation of NRS 576.125;*
47. *Meat or poultry in violation of NRS 583.495;*
48. *A deceptive trade practice in violation of NRS 598.0999;*
49. *An unfair trade practice in violation of NRS 598A.280;*
50. *Telephone solicitation in violation of NRS 599B.255;*
51. *Industrial insurance in violation of NRS 616D.300, 616D.310, 616D.370, 616D.390 or 616D.400 or a predecessor of those provisions;*

- 52. A fraudulent or excessive charge for drugs or medical supplies under a program of public assistance in violation of NRS 639.2815;*
- 53. An escrow or trust account in violation of NRS 645B.960 or a predecessor of that provision;*
- 54. Criminally receiving junk in violation of NRS 647.145;*
- 55. The failure to follow a written order of the Commissioner of Financial Institutions in violation of NRS 666.215;*
- 56. An insolvent bank in violation of NRS 668.045;*
- 57. A trust company in violation of NRS 669.290;*
- 58. A thrift company in violation of NRS 677.810 or 677.850;*
- 59. Insurance in violation of NRS 686A.290, 686A.291, 692B.040, 692C.480 or 693A.070;*
- 60. Public utilities in violation of NRS 704.800; or*
- 61. The conduct set forth in subsections 1 to 60, inclusive, which violated a law of any other jurisdiction that prohibits the same or similar conduct.*

Sec. 6. *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 section 7 of this regulation and the risk level assigned to the prisoner pursuant to section 8 of this regulation to establish an initial assessment regarding whether to grant parole. The initial assessment will correspond to the following table:*

<i>Severity Level</i>	<i>Risk Level</i>		
	<i>High</i>	<i>Moderate</i>	<i>Low</i>

<i>Highest</i>	<i>Deny parole</i>	<i>Consider factors set forth in section 9 of this regulation</i>	<i>Consider factors set forth in section 9 of this regulation</i>
<i>High</i>	<i>Deny parole</i>	<i>Consider factors set forth in section 9 of this regulation</i>	<i>Grant parole at first or second meeting to consider prisoner for parole</i>
<i>Moderate</i>	<i>Deny parole</i>	<i>Grant parole at first or second meeting to consider prisoner for parole</i>	<i>Grant parole at initial parole eligibility</i>
<i>Low Moderate</i>	<i>Consider factors set forth in section 9 of this regulation</i>	<i>Grant parole at first or second meeting to consider prisoner for parole</i>	<i>Grant parole at initial parole eligibility</i>
<i>Low</i>	<i>Consider factors set forth in section 9 of this regulation</i>	<i>Grant parole at initial parole eligibility</i>	<i>Grant parole at initial parole eligibility</i>

Sec. 7. 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 section 6 of this regulation.

Sec. 8. *1. The Board will assign to each prisoner who is being considered for parole a risk level of “high,” “moderate” or “low” according to the level of risk that the prisoner will commit a felony if released on parole.*

2. To establish the risk level, the Board will conduct an objective risk assessment using a combination of risk factors that predict recidivism.

3. If a prisoner has ever been convicted of a sexual offense and has been evaluated using a currently accepted standard of assessment to determine the risk that the prisoner will commit another sexual offense if released on parole, the Board will assign a risk level to the prisoner which is the higher of the risk level assigned pursuant to this section and the risk level determined by such an evaluation.

4. The Board will apply the risk level assigned to a prisoner who is being considered for parole to establish an initial assessment regarding whether to grant parole in the manner set forth in section 6 of this regulation.

5. As used in this section, “sexual offense” means an offense listed in subsection 3 of NRS 176.133 or an offense committed in another jurisdiction that, if committed in this State, would be an offense listed in subsection 3 of NRS 176.133.

Sec. 9. *1. After establishing an initial assessment regarding whether to grant parole pursuant to section 6 of this regulation, the Board may consider additional aggravating and mitigating factors to determine whether to grant parole to a prisoner.*

2. The aggravating factors which the Board may consider in determining whether to grant parole to a prisoner include, without limitation:

(a) Whether the nature of the crime committed by the prisoner was severe, extreme or abnormal;

(b) Whether the prisoner has previously been convicted of a crime;

(c) The number of occasions on which the prisoner has been incarcerated;

(d) Whether the prisoner has failed to complete probation or parole on three or more occasions;

(e) Whether the prisoner has committed a crime while incarcerated, during any period of release from confinement on bail, during any period of escape from an institution or facility or while on probation or parole;

(f) The extent to which the prisoner attempted to elude capture during or following the commission of a crime;

(g) The extent of the injury or loss suffered by the victim of the crime for which parole is being considered;

(h) Whether the prisoner has engaged in repetitive criminal conduct;

(i) Whether the prisoner has engaged in disruptive behavior while incarcerated;

(j) Whether the Department of Corrections has ever ordered the prisoner to be confined in disciplinary segregation;

(k) Whether the prisoner has committed increasingly serious crimes;

(l) Whether the prisoner has a history of failing to comply with the orders of a mental health professional for the treatment of a mental illness, including, without limitation, failing to comply with prescriptions for medication to treat a mental illness;

(m) Whether the prisoner demonstrates that he does not understand the nature of any diagnosed mental illness and whether that lack of understanding may contribute to future criminal behavior;

(n) Whether, in committing the crime for which parole is being considered, the prisoner targeted a child under the age of 18 years or a person who is vulnerable because of his age or disability;

(o) Whether the prisoner has a history of possessing or using a weapon during the commission of a crime; and

(p) Any other factor which indicates an increased risk that the release of the prisoner on parole would be dangerous to society or the prisoner.

3. The mitigating factors which the Board may consider to determine whether to grant parole to a prisoner include, without limitation:

(a) Whether the prisoner has participated in programs which address the behaviors of the prisoner which led to the commission of the crime for which parole is being considered;

(b) Whether the prisoner has no prior history, or a minimal history, of criminal convictions;

(c) Whether the prisoner has not had any infractions of the rules of the institution or facility in which he has been incarcerated during the most recent 2 years if the lack of infractions is not a result of the confinement of the prisoner in disciplinary segregation;

(d) Whether the prisoner has adjusted positively to a program for reentry of offenders and parolees into the community established by the Director of the Department of Corrections pursuant to NRS 209.4887 or a program of work release established by the Department of Corrections pursuant to NRS 213.300;

- (e) Whether the prisoner had less involvement in the commission of the crime for which parole is being considered than other persons who participated in the commission of the crime;*
- (f) Whether the prisoner previously completed probation or parole successfully, other than probation imposed and supervised by a court;*
- (g) Whether the prisoner has support available to him in the community or from his family;*
- (h) Whether a stable release plan exists for the prisoner;*
- (i) Whether the release of the prisoner is not a significant risk to society because the prisoner will be paroled to another jurisdiction for prosecution or deportation;*
- (j) Whether the presentence investigation indicates that the crime for which parole is being considered was situational and that the prisoner did not intend to cause harm;*
- (k) Whether the presentence investigation indicates that, prior to his arrest for the crime for which parole is being considered, the prisoner demonstrated immediate remorse for committing the crime by immediately and voluntarily turning himself in to the proper authority, immediately and voluntarily seeking treatment to address his criminal behavior, immediately and voluntarily making restitution to the victims of the crime or taking any other voluntary action which demonstrates remorse;*
- (l) Whether the prisoner has consistently managed a mental illness which may contribute to criminal behavior in the manner recommended by mental health professionals; and*
- (m) Any other factor which indicates that the release of the prisoner on parole would benefit, or would not be dangerous to, society or the prisoner.*

Sec. 10. 1. *If the Board denies parole, the Board will not consider a request for the Board to reassess the severity level of the crime for which parole was denied unless:*

(a) The Department of Corrections determines that the severity level assigned to the crime pursuant to section 7 of this regulation should have been lower and advises the Board, in writing, of its determination; and

(b) The prisoner mails a request to the State Board of Parole Commissioners, 1677 Old Hot Springs Road, Suite A, Carson City, Nevada 89706, not later than 45 days after the meeting at which the Board considered whether to grant parole.

2. If the Board receives a request from a prisoner for the Board to reassess the severity level of a crime and the Department of Corrections has advised the Board that the severity level assigned to the crime should have been lower, the Executive Secretary of the Board or an employee of the Board designated by the Board must apply the lower severity level to establish a new initial assessment regarding whether to grant parole in the manner set forth in section 6 of this regulation.

3. If the new initial assessment established pursuant to subsection 2 is more favorable to the prisoner than the initial assessment established before the reassessment of the severity level, the Board will, as soon as practicable, schedule a meeting to reconsider whether to grant parole to the prisoner.

Sec. 11. 1. *A prisoner who wishes to request that the Board reassess the risk level assigned to the prisoner pursuant to section 8 of this regulation must:*

(a) Mail a request for the Board to reassess the risk level to the State Board of Parole Commissioners, 1677 Old Hot Springs Road, Suite A, Carson City, Nevada 89706, not later than 45 days after the meeting at which the Board considered whether to grant parole; and

(b) Base the request on circumstances which existed at the time that the Board assigned the risk level.

2. If a prisoner does not mail a request in compliance with subsection 1 or bases the request on a change of circumstances since the Board assigned the risk level, the Board will not consider the request.

3. As soon as practicable after receiving a request for the Board to reassess the risk level assigned to a prisoner, the Executive Secretary of the Board or an employee of the Board designated by the Board shall determine whether the Board, in assigning the risk level, did not consider a factor set forth in the sample form created by the Board pursuant to NRS 213.10885 or did not give such a factor the appropriate weight. If such a determination is made, the Executive Secretary or the employee designated by the Board must reassess the risk level of the prisoner by considering only the facts which existed at the time of the original assignment.

4. If, after reassessing the risk level assigned to a prisoner, it is determined that the risk level is the same or higher than the previously assigned risk level, the Executive Secretary of the Board or the employee designated by the Board must affirm the denial of parole. If, after reassessing the risk level assigned to a prisoner, the risk level is lower than the previously assigned risk level, the Executive Secretary or the employee designated by the Board must apply the lower risk level to establish a new initial assessment regarding whether to grant parole in the manner set forth in section 6 of this regulation.

5. If the new initial assessment established pursuant to subsection 3 is more favorable to the prisoner than the initial assessment established before the reassessment of the risk level,

the Board will, as soon as practicable, schedule a meeting to reconsider whether to grant parole to the prisoner.

Sec. 12. 1. *A prisoner who wishes to request that the Board reconsider a denial of parole, other than a request pursuant to section 10 or 11 of this regulation, must:*

(a) Mail the request to the State Board of Parole Commissioners, 1677 Old Hot Springs Road, Suite A, Carson City, Nevada 89706, not later than 45 days after the meeting at which the Board considered whether to grant parole; and

(b) Base the request on circumstances which existed at the time of the meeting at which the Board considered whether to grant parole.

2. *As soon as practicable after receiving a request to reconsider a denial of parole pursuant to subsection 1, the Executive Secretary of the Board or an employee of the Board designated by the Board shall consider the request and determine whether to deny the request or submit the request to the members of the Board.*

3. *If, after considering a request to reconsider a denial of parole pursuant to subsection 1, the Executive Secretary of the Board or the employee of the Board determines that the Board:*

(a) Knew about the circumstances on which the request is based at the time of the Board denied parole or that the circumstances on which the request is based are not factors which the Board considers when determining whether to grant parole, the Executive Secretary or employee shall deny the request.

(b) Did not have knowledge of the circumstances on which the request is based at the time Board denied parole and that the circumstances on which the request is based are factors which the Board considers when determining whether to grant parole, the Executive Secretary or employee shall submit the request to the Board.

4. If a request to reconsider a denial of parole is submitted to the members of the Board pursuant to paragraph (b) of subsection 3 and a majority of the members of the Board state in writing that:

(a) The Board should schedule a meeting to reconsider the denial of parole, the Board will, as soon as practicable, schedule a meeting to reconsider the denial of parole.

(b) The Board should not schedule a meeting to reconsider the denial of parole, the Board will not schedule a meeting to reconsider the denial of parole.

5. The provisions of this section do not limit the power of the Director of the Department of Corrections or his designee to notify the Board of a significant change in the status of a prisoner or prevent the Board from reconsidering a denial of parole if a significant change in the status of a prisoner occurs.

Sec. 13. 1. A prisoner may not be released on mandatory parole pursuant to NRS 213.1215 unless the Board has approved the release and the Division has established a program for the prisoner's activities during his parole.

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 on mandatory parole.

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) The risk level assigned to the prisoner pursuant to section 8 of this regulation;

(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;

(h) Whether the prisoner has previously failed to successfully complete probation or parole and whether that failure was the result of violent or criminal actions by the prisoner;

(i) Whether the criminal history of the prisoner indicates that the crimes committed by the prisoner have increased in severity over time;

(j) Whether the prisoner has demonstrated an attitude or behavior which indicates that the prisoner favors a criminal lifestyle, including, without limitation, whether the prisoner has been actively involved in a criminal gang, the planning of prison escapes or other criminal activity; and

(k) Any other factor which demonstrates a reasonable probability that the prisoner will be a danger to public safety while on parole.

4. If a panel to which the Board has delegated its authority pursuant to NRS 213.133 determines that it will recommend that the Board grant mandatory parole to a prisoner and that the prisoner has not been considered and is eligible for discretionary parole pursuant to NRS 213.1099, the panel may recommend that the Board grant discretionary parole to the prisoner rather than mandatory parole.

Sec. 14. 1. Unless a prisoner has waived his right to receive notice pursuant to subsection 5, the Board will provide to a prisoner notice of the meeting to consider whether to grant parole to the prisoner. The notice will consist of:

(a) Personal delivery of written notice to the prisoner not later than 5 working days before the meeting; or

(b) The mailing, by certified mail, of written notice, addressed to the prisoner, to the residence, institution or facility at which the prisoner is confined not later than 21 working days before the meeting.

2. The Board will provide the notice required by subsection 1 only for a meeting to consider whether to grant parole to the prisoner.

3. Notice to a prisoner pursuant to paragraph (a) of subsection 1 will be deemed adequate if written notice was personally delivered to the prisoner and a copy of the written notice was returned to the Board and signed by:

(a) The prisoner and the employee of the Department of Corrections or the Department of Public Safety who witnessed the delivery of the written notice; or

(b) Two persons employed by the Department of Corrections or the Department of Public Safety who witnessed the prisoner refuse to accept the written notice.

4. Notice to a prisoner pursuant to paragraph (b) of subsection 1 will be deemed adequate if the Board has received a return receipt of delivery from the United States Postal Service.

5. A prisoner may waive, in writing, the rights granted to him pursuant to subsections 9 and 10 of NRS 213.130.

6. If the Board finds that notice was not provided to a prisoner in accordance with this section and that the prisoner did not waive his right to receive notice pursuant to subsection 5, the Board may:

(a) Grant parole to the prisoner; or

(b) Reschedule the meeting.

Sec. 15. *1. The recommendations which the Board may provide pursuant to NRS 213.130 to a prisoner to whom parole is denied to improve his possibility of receiving parole may include, without limitation, a recommendation that the prisoner:*

(a) Not engage in misconduct which may lead to disciplinary action;

(b) Participate in a program that addresses the behavior of the prisoner which led to his incarceration;

(c) Participate in an educational, occupational or vocational program;

(d) Participate in a program which encourages the development of empathy for victims of crime;

(e) Avoid participation in, and association with, a criminal gang; or

(f) Take any other action, or refrain from any other action, which the Board deems appropriate.

2. Any recommendation provided to a prisoner pursuant to NRS 213.130 is not intended to create an expectation that the Board will grant parole to the prisoner if the prisoner follows

the recommendations and does not create an interest in liberty or property when the Board considers the prisoner for parole at a subsequent hearing.

Sec. 16. 1. *After the Board has granted parole to a prisoner but before the prisoner is released from prison, the Board may rescind the parole of the prisoner.*

2. If the Department of Corrections or the Division becomes aware of information which provides grounds to rescind the parole of a prisoner and the prisoner is scheduled to be released on parole less than 3 working days after the Department or the Division becomes aware of the information, the Department or the Division may:

(a) Delay the release of the prisoner on parole for not more than 3 working days after the date on which the prisoner is scheduled to be released;

(b) Provide to any member of the Board written notification of the grounds to rescind parole and that the release of the prisoner has been delayed; and

(c) Request that a member of the Board order the further delay of the release of the prisoner.

3. If a member of the Board becomes aware of information which provides grounds to rescind the parole of a prisoner or receives written notification of grounds to rescind parole pursuant to subsection 2, the member may order the delay of the release of the prisoner to allow time for the Board to consider whether to rescind the parole of the prisoner.

4. If a member of the Board has received written notification of grounds to rescind parole pursuant to subsection 2 and does not order the delay of the release of the prisoner on parole within 3 working days after the date on which the prisoner is scheduled to be released on parole, the prisoner must be released.

5. If a member of the Board orders the delay of the release of a prisoner on parole pursuant to subsection 3, the Board will, as soon as practicable:

- (a) Schedule a meeting to consider whether to rescind the parole of the prisoner; or*
- (b) If a majority of the members of the Board state in writing that the parole of the prisoner should not be rescinded, authorize the release of the prisoner.*

Sec. 17. *When authorized pursuant to NRS 213.133, the Board may delegate its authority to hear, consider and act upon the parole of a prisoner and on any issue before the Board to a panel consisting of:*

- 1. Two or more members of the Board, two of whom constitute a quorum; or*
- 2. One member of the Board who is assisted by a case hearing representative chosen from the list of persons eligible to serve as case hearing representatives established and maintained by the Board pursuant to NRS 213.135.*

Sec. 18. NAC 213.500 is hereby amended to read as follows:

213.500 ~~[As used in NAC 213.500 to 213.560, inclusive, unless the context otherwise requires,]~~ “Board” means the State Board of Parole Commissioners.

Sec. 19. NAC 213.560 is hereby amended to read as follows:

213.560 1. The standards contained in NAC ~~[213.510 to 213.550, inclusive, may]~~ **213.550 and sections 6 to 9, inclusive, of this regulation may** be considered by the Board in determining whether to grant, deny, continue or revoke parole, but nothing contained in those sections shall be construed to restrict the authority of the Board to:

- (a) Deny or revoke parole in any case in which application of the standards indicates that parole should be granted or continued; or

(b) Grant or continue parole in any case in which application of the standards indicates that parole should be denied or revoked,

↪ if the decision of the Board is otherwise authorized by the provisions of chapter 213 of NRS.

2. The Board may deviate from the standards contained in NAC ~~[213.510 to 213.550,]~~ *213.550 and sections 6 to 9*, inclusive, *of this regulation* based upon ~~the~~:

- ~~—(a) The seriousness of the offense committed by the convicted person;~~
- ~~—(b) The prior record of criminal activity of the convicted person or the absence of such a record;~~
- ~~—(c) The conduct of the convicted person during his imprisonment;~~
- ~~—(d) Recommendations received by the Board from the judge before whom the convicted person was convicted, the prosecuting attorney, a law enforcement agency, the victim, any officer or employee of the Department of Corrections who is familiar with the convicted person or any other person who has an interest in the proceedings;~~
- ~~—(e) The history of supervision of the convicted person;~~
- ~~—(f) The factors involved in the offense committed by the convicted person, including, without limitation, the use of a weapon or the infliction of any injury or financial loss to a victim;~~
- ~~—(g) The failure of the convicted person to attain certification by a psychological screening panel;~~
- ~~—(h) The need for further evaluation of the convicted person;~~
- ~~—(i) The opinion of the Board that continued confinement of the convicted person is necessary to protect the public from further criminal activity by the convicted person;~~
- ~~—(j) Participation by the convicted person in positive programming during his imprisonment;~~
- ~~—(k) The existence of stable release plans for the convicted person;~~

~~—(l) The youth of the convicted person if he does not have a prior record of criminal activity as a juvenile;~~

~~—(m) Parole of the convicted person to another jurisdiction for prosecution or deportation; or~~

~~—(n) Any other circumstances the Board deems appropriate.]~~ *any factor, or combination of factors, set forth in section 9 of this regulation or any other factor which the Board deems relevant to the determination of whether to grant, deny, continue or revoke parole.*

3. *If the Board takes an action contrary to the initial assessment regarding whether to grant parole which is established pursuant to section 6 of this regulation, the Board will state in its order the reasons for deviating from the initial assessment.*

4. For statistical purposes only, the Board will maintain a written record of any case in which its decision conflicts with the standards contained in NAC ~~[213.510 to 213.550, inclusive.]~~ *213.550 and sections 6 to 9, inclusive, of this regulation.*

Sec. 20. NAC 213.510, 213.520, 213.530 and 213.540 are hereby repealed.

TEXT OF REPEALED SECTIONS

213.510 Considerations regarding granting of parole: Severity of crime. (NRS 213.10885, 213.110, 213.140)

1. In determining whether to grant parole to a convicted person, the Board will consider the severity of the crime for which the conviction was had.

2. If a person has been convicted of more than one crime, the Board will consider the severity of his most serious crime.

3. For the purposes of this section, the Board may use the following table to assist it in determining the severity of a crime:

A1 A crime classified as a category A felony pursuant to paragraph (a) of subsection 2 of NRS 193.130, with eligibility for parole beginning when a minimum of 20 years has been served

A2 A crime classified as a category A felony pursuant to paragraph (a) of subsection 2 of NRS 193.130, with eligibility for parole beginning when a minimum of 15 years has been served

A3 A crime classified as a category A felony pursuant to paragraph (a) of subsection 2 of NRS 193.130, with eligibility for parole beginning when a minimum of 10 years has been served

A4 A crime classified as a category A felony pursuant to paragraph (a) of subsection 2 of NRS 193.130, with eligibility for parole beginning when a minimum of 5 years has been served

B1A crime classified as a category B felony pursuant to paragraph (b) of subsection 2 of NRS 193.130, for which the maximum term of imprisonment that may be imposed is 20 years

B2A crime classified as a category B felony pursuant to paragraph (b) of subsection 2 of NRS 193.130, for which the maximum term of imprisonment that may be imposed is 15 years

B3A crime classified as a category B felony pursuant to paragraph (b) of subsection 2 of NRS 193.130, for which the maximum term of imprisonment that may be imposed is 10 years

B4A crime classified as a category B felony pursuant to paragraph (b) of subsection 2 of NRS 193.130, for which the maximum term of imprisonment that may be imposed is 6 years

C A crime classified as a category C felony pursuant to paragraph (c) of subsection 2 of NRS 193.130

D A crime classified as a category D felony pursuant to paragraph (d) of subsection 2 of NRS 193.130

E A crime classified as a category E felony pursuant to paragraph (e) of subsection 2 of NRS 193.130

213.520 Considerations regarding granting of parole: Probability of successful completion. (NRS 213.10885, 213.110, 213.140) In determining whether to grant parole to a convicted person, the Board may consider the probability that he will complete parole successfully. In assessing that probability, the Board may consider, without limitation, the following standards:

1. The number of prior convictions sustained by the person, both as a juvenile and as an adult;
2. The number of prior criminal charges brought against the person, including any charge dismissed as the result of a plea negotiation;

3. The number of occasions, including the present offense, on which the person has been incarcerated;
4. Any previous failure by the person to complete probation or parole;
5. Whether the person has a history of drug or alcohol abuse;
6. Whether the person was a full-time student, was receiving disability benefits from the Social Security Administration, was receiving workers' compensation or was fully employed, for at least 6 months during the year preceding the present offense;
7. The extent of injury or loss suffered by the victim of the present offense;
8. Whether a weapon was used, threatened to be used, displayed or possessed in the commission of the present offense;
9. The number of times disciplinary action was taken against the person while incarcerated and the nature and circumstances of each infraction for which disciplinary action was taken;
10. The nature and duration of any educational, occupational or other programming successfully completed by the person while incarcerated;
11. The length of time the person has been incarcerated for the present offense;
12. Whether the present offense was a sexual offense involving the use or threatened use of force or violence; and
13. Any other factors that indicate whether the person poses a threat to society or to himself.

213.530 Considerations regarding granting of parole: Minimum periods of imprisonment. (NRS 213.10885, 213.110, 213.140) Giving consideration to the severity of the crime for which a person has been convicted and the probability that he will complete parole successfully, the Board may grant parole to the convicted person after he has served the period of imprisonment set forth in the following table:

Excellent	Good	Average	Poor	Very Poor
0-10	11-20	21-30	31-40	41+

Crime Severity

Level	Minimum Period of Imprisonment (Months)				
A1	240-276	276-312	312-348	348-384	384-420
A2	180-216	216-252	252-288	288-324	324-360
A3	120-150	150-180	180-210	210-240	240-270
A4	60-84	84-108	108-132	132-156	156-180
B1	24-48	48-72	72-108	108-144	Expiration
B2	18-30	30-48	48-66	66-84	Expiration
B3	12-24	24-36	36-48	48-60	Expiration
B4	12-18	18-24	24-30	30-36	Expiration
C	12-16	16-20	20-24	24-28	Expiration
D	12-15	15-18	18-21	21-24	Expiration
E	12-15	15-18	18-21	21-24	Expiration

213.540 Considerations regarding granting of parole: Requests for recomputation.

(NRS 213.10885, 213.110, 213.140)

1. Any convicted person who believes that the Board has:
 - (a) Miscalculated the severity of the crime for which he was convicted; or

(b) Misapplied any factor set forth in NAC 213.520,

↳ may submit a request for recomputation to the Board.

2. A request submitted pursuant to this section must be sent to the Board within 30 days after its hearing of the matter. The request must be sent to: State Board of Parole Commissioners, 1445 Hot Springs Road, Suite 108 B, Carson City, Nevada 89711.

NOTICE OF ADOPTION OF REGULATION

The State Board of Parole Commissioners adopted regulations assigned LCB File No. R018-08, which pertain to chapter 213 of the Nevada Administrative Code

INFORMATIONAL STATEMENT

1.A description of how comment from public and affected businesses was solicited:

Copies of the proposed regulations, notices of workshop and notices of intent to act upon the regulations were sent by U.S. mail to all law enforcement agencies in the State of Nevada, to each Nevada District Court, to each Nevada District Attorney, and to all persons on the Board of Parole Commissioner's ('Parole Board' or 'Board') mailing list who have requested to receive notice of meetings related to the adoption of regulations. These documents were also made available at the web site of the Parole Board, <http://parole.nv.gov/>, mailed to all county libraries in Nevada and posted in the following locations:

Parole Board office
1677 Old Hot Springs Road, Ste A
Carson City, Nevada

Parole Board office
4000 S. Eastern Avenue Ste. 130
Las Vegas, Nevada

Attorney General's office
100 S. Carson Street
Carson City, Nevada

Attorney General's office
555 E. Washington Avenue
Las Vegas, Nevada

Carson City Library
900 N. Roop Street
Carson City, Nevada

Clark County Court House
200 S. Third Street
Las Vegas, Nevada

Clark County Main Library/reference section
833 Las Vegas Blvd
Las Vegas, Nevada

2. A statement indicating the number of persons who attended each meeting, testified at each meeting, and submitted written statements regarding the proposed regulations:

A public workshop was held on Thursday, March 28, 2008 at the office of the Parole Board located at 1677 Old Hot Springs Rd, Ste. A, Carson City, Nevada video tele-conference to the office of the Parole Board located at 4000 S. Eastern Ave, Ste 130, Las Vegas Nevada.

Number of persons who attended the public workshop:

Las Vegas: 8
Carson City: 2

Number of persons who testified at the public workshop:

Las Vegas: 2
Carson City: 2

Number of persons who submitted written statements prior to the public workshop: 1

The meeting to adopt the regulations was held on Tuesday, April 1, 2008, at the office of the Parole Board located at 1677 Old Hot Springs Rd, Ste. A, Carson City, Nevada video teleconference to the office of the Parole Board located at 4000 S. Eastern Ave, Ste 130, Las Vegas Nevada. Following the public workshop, additional written comments were submitted. The Parole Board extended the deadline for written comments and accepted the written comments for consideration at the meeting to adopt the regulations:

Number of persons who attended the meeting to adopt the regulations:

Las Vegas: 1
Carson City: 2

Number of persons who testified at the meeting to adopt regulations:

Las Vegas: 0
Carson City: 1

Number of written statements (in addition to written statements submitted at the public workshop) regarding the proposed regulation: 2

3. Summary of response from public and affected businesses:

The following is a summary of testimony and written comments received from the public. A copy of the written comments received are attached.

1. Summary of testimony from Florence Jones on March 28, 2007: Ms. Jones commented that the law states that an inmate must be released on MPR 12 months prior to the expiration of their term. She also stated that inmates who are housed in minimum custody may not be denied their MPR for being a danger to public safety because they are housed in minimum custody. Ms. Jones stated that inmates may not be housed in minimum custody if they are dangerous.
2. Summary of testimony from Donald Hinton on March 28, 2008: Mr. Hinton commented that he wanted to reiterate what Ms. Jones had said. Mr. Hinton also stated that the Board is circumventing the system, and he resents the Board wasting his tax dollars.

3. Summary of testimony from Tonya Brown on March 28, 2008: Ms. Brown stated that she agreed with Ms. Jones and Mr. Hinton. Ms. Brown stated that the Board should not use the fact that an inmate shows remorse as an admission of guilt, because sometimes an inmate would not admit remorse if an inmate has an appeal pending or a psych panel pending. Ms. Brown also stated that inmates are sometimes labeled as being “gang active” if they have even the most minor interaction with gang members. Ms. Brown gave as an example, if a paralegal is assisting a gang member on a case, the paralegal will be identified as being a gang member. Ms. Brown asked whether the Board considers what type of segregation an inmate might be under and if they are penalized if they are in administrative segregation. Ms. Brown inquired as to how many inmates have been seen, and a decision rendered by the Board, without having a prison progress report available.
4. Summary of testimony from Teresa Warner on March 28, 2008: Ms. Warner commented that she feels the changes to the guidelines are good, but was concerned about the process related to the reconsideration of a negative parole hearing decision.
5. Summary of testimony from Pat Hines on April 1, 2008: Ms. Hines stated that the offense severity list should be included in the regulation. She was concerned that if someone wants to know what the offense severity is, it will not be listed anywhere. Ms. Hines stated that she is concerned that the severity of the inmate will be rated at intake and might change over time. Ms. Hines stated that the points assessed on the risk assessment should be included in the regulations, and the forms the Board uses should also be included. Ms. Hines stated that the order of information in section 8 of the regulation did not flow well and paragraph 3 and 4 in section 8 should be reversed. Ms. Hines commented that one of the aggravating factors should be better defined. Ms. Hines was concerned that if the Board delegated authority to staff, that they might not be qualified to make a decision. Ms. Hines stated that she was concerned that the permissible language in section 15 was contrary to the legislative intent. Lastly, Ms. Hines asked if more consideration may be given before final approval.

4. Explanation of how interested persons may obtain a copy of the summary:

A copy of this summary of the public response to the proposed regulation may be obtained from the Office of the Board of Parole Commissioners, 1677 Old Hot Springs Road, Suite A, Carson City, NV 89706, tel. 775-687-5049.

5. If regulation was adopted without change, summary of reasons for adopting without change:

The initial wording of this regulation was issued on March 11, 2008. Following the public workshop on March 28, 2008, it was revised on March 31, 2008 to: Clarify the intent of the Board pertaining to the scheduling of prisoners for the consideration of release on mandatory parole; provide for the notice to prisoners who are confined outside of the NDOC’s physical

custody and provide for proof of reasonable notice to those prisoners; allow the Board to grant parole if an inmate is not provided certain rights, and provide a definition to the term “remorse” as used by the Board.

On April 1, 2008, the Board reviewed and discussed the written comments submitted by John Witherow, Florence Jones, and Pat Hines and made changes to the regulations as follows:

1) Section 9. 2(d): The Board changed this aggravating factor to be three or more failures by the prisoner to complete probation or parole.

2) Section 12: The Board changed this section entirely to allow for an inmate to appeal directly to the Board without a recommendation from the Department of Corrections, and clarified that the section does not prevent the Board from considering a previous denial of parole when a significant change in the status of a prisoner occurs.

3) Section 16: The Board changed the number of days in which to consider delaying when appropriate, the release of a prisoner on parole from 2 days to 3 days.

4) Section 18: The Board asked that LCB ensure that the definition of “Board” as it pertains to the Board of Parole Commissioners, only applies to those sections of NAC 213 relating to the Parole Board, that it not be confused with another section of NAC 213 which defines “Board” as the State Board of Pardons Commissioners.

The Board unanimously voted to adopt the amendments, and to adopt the March 31, 2008 revised version of LCB File No. R018-08 as amended.

6. Estimated economic effect on public and businesses affected: adverse and beneficial, immediate and long-term:

(a) Both adverse and beneficial effects;

Adverse effects: The proposed regulations do not appear to have any adverse economic effects.

Beneficial effects: The proposed regulations will assist the Parole Board in determining the risk of a prisoner to commit a new felony if released on parole. By identifying certain low risk inmates who are suitable for release, incarceration costs may decrease as suitable lower risk inmates are released sooner. By identifying high risk prisoners, the Board may deny parole which in turn reduces the risk of further criminal activity that may be perpetrated against the public.

Other beneficial effects include: Compliance with new statutory requirements should decrease lengthy legal challenges pertaining to parole hearings.

(b) Both immediate and long-term effects:

Immediate effects: This regulation should expedite the release from prison of certain inmates who waive their right to a hearing, when the Board finds them suitable for release on parole. This may save time and money, and also help to reduce the prison

population. Section 13 of the regulation may also assist the Board in expediting the hearings on certain other prisoners.

Long-term effects: The potential reduction of incarceration costs of certain prisoners who may otherwise be denied parole and the potential reduction in costs of litigation which may arise without clear regulatory processes pertaining to parole hearings.

7. Cost of enforcing the regulation:

The agency estimates that there are no additional costs as a result of the adoption of the proposed regulation.

8. Explanation of any other regulations which this regulation duplicates or overlaps, and why the duplication of overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, a statement of the name of the federal agency:

The agency is unaware of any other federal, state or local governmental agency regulations that the proposed regulation may overlap or duplicate.

The proposed regulations may appear to overlap the guidelines for the tier assessment of sexual offenders, however, the parole guidelines are separate and apart from the tier assessment. A tier assessment is not performed prior to the consideration of a prisoner for release on parole. The new parole regulations apply to all offenders being considered for parole, not just sex offenders.

9. If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, a summary of such provisions:

The regulation does not include provisions which are more stringent than a federal regulation that regulates the same activity.

10. Whether the proposed regulation establishes a new fee or increases an existing fee:

The proposed regulation does not establish a new fee or increase an existing fee.

11. Is the proposed regulation likely to impose a direct and significant economic burden on a small business or directly restricts for formation, operation or expansion of a small business? What methods did the agency use in determining the impact of the regulation on small business?:

The proposed regulation is not likely to impose an economic burden on a small business, nor does it restrict the formation, operation or expansion of a small business. The Board of Parole Commissioners does not have jurisdiction over matters pertaining to small businesses.

12. Regulation adopted on:

The regulation was adopted with amendments on April 1, 2008.

13. Statement, if any, to interested person explaining principal reasons for and against adopting regulation and reason(s) for overruling the consideration urged against its adoption:

The Board received a written statement from John Witherow objecting to the adoption of the regulations. Ms. Florence Jones also submitted a letter objecting to a portion of the regulations, and Ms. Pat Hines asked for more consideration of matters related to the regulation. None of the written submissions asked for a statement from the Board of the principal reasons for overruling the objections made in the written comments. The following information is nevertheless provided in response to the objections made by John Witherow and Florence Jones:

Objections made by John Witherow:

1. Mr. Witherow stated that the regulations frustrates the intent and expectation given when the legislature created the system of parole.

Response: The legislature declared in NRS 213.10705, that the release or continuation of a person on parole or probation is an act of grace of the State. No person has a right to parole or probation, or to be placed in residential confinement, and it is not intended that the establishment of standards relating thereto create any such right or interest in liberty or property or establish a basis for any cause of action against the State, its political subdivisions, agencies, boards, commissions, departments, officers or employees. The legislature clearly intended that the creation of parole did not create an expectation for release on parole as declared in NRS 213.10705.

2. Mr. Witherow stated that the creation of new guidelines would create an *Ex Post Facto* violation if applied to prisoners whose crime was committed prior to the adoption of the regulation.

Response: There is sufficient case law providing that the establishment or revision of standards do not cause an *Ex Post Facto* violation. The Parole Board does not have the authority to increase the punishment or sentence of an offender. Punishments and prison sentences are imposed by the Court. Parole standards are required by law, and may be revised from time to time. The use of standards does not increase the punishment to an offender. Since there is no right to parole, nor may the establishment of standards be the basis for any cause of action against the State, there can be no *Ex Post Facto* violation.

3. Mr. Witherow states that it is a violation of law to double count factors on a parole guideline. The example cited by Mr. Witherow pertains to the risk assessment which assesses points if a person has failed a period of supervision, and a separate aggravating factor which provided for the same.

Response: The Board considered this statement and revised the aggravating factor to read as originally intended by the Board, “*three or more failures by the prisoner to complete probation or parole.*” It is the intention of the Board that aggravating factors described in the guidelines

are more serious or of greater magnitude than those factors specified on the risk assessment. The risk assessment simply provides the statistical risk of a prisoner to commit another felony if released. The aggravating and mitigating factors take into effect elements of criminal conduct and rehabilitation that, when considered, may be cause to deviate from the guideline recommendation.

4. Mr. Witherow points out sections 10 and 12 of the regulation impose a requirement upon the Nevada Department of Corrections. In doing so, Mr. Witherow states that the Parole Board does not have authority over the Department of Corrections, nor does the Department of Corrections have a regulation that would facilitate the procedures specified in Sections 10 and 12. Mr. Witherow further states that the NDOC has a policy prohibiting employees of the Department of Corrections from submitting information in support of an inmate to the Parole Board.

Response: Section 10 pertains to the crime severity level applied to the sentence of each prisoner. The Department of Corrections is required to create a system of classification. In doing so, the Department of Corrections assigns a severity level to each crime. After reviewing the severity levels assigned by the Department of Corrections, the Board agreed, in consultation with an outside expert in the field of Parole and Probation, to adopt the same severity levels for the parole standards. Section 10 states that the Board will not consider an appeal on the severity of a crime unless the Department of Corrections mis-applied the severity level to a sentence. Since the Board has stated that it shall rely on the severity level used in the corrections classification system, the Board must rely on the Department of Corrections to correct any errors that may affect the Parole Board.

Section 12 pertained to other appeals. Upon further review of Section 12, the Board revised it entirely, and does not rely on the Department of Corrections to make a recommendation regarding an appeal made by a prisoner.

6. Mr. Witherow objects that the Board is considering arrests without convictions and cites NAC 213.520(2) .

Response: The section Mr. Witherow refers to, subsection 2 of NAC 213.520, is being repealed in the action to adopt the regulations and will no longer apply.

7. Mr. Witherow states that the Board ignores the minimum procedural requirements of proceedings which are deemed to be “quasi-judicial.”

Response: The Nevada Supreme Court addressed this issue in 123 Nev., Advance Opinion 33 which stated that the legislature, in declaring that parole hearings “are quasi-judicial,” also stated that “[n]o rights other than those conferred pursuant to this section or pursuant to specific statute concerning meetings to consider prisoners for parole are available to any person with respect to such meetings.”

The minimum procedural requirements which Mr. Witherow claims to exist do not apply.

Objections made by Florence Jones:

1. Ms. Jones stated that inmates who are housed in minimum custody are deemed to not be a danger to public safety, therefore, these inmates may not be denied mandatory parole.

Response: The Department of Corrections makes determinations for placement into minimum security custody. The Parole Board makes determinations to release prisoners from custody. The assessments and determinations made are distinct and separate, and the determination that a prisoner should be placed in minimum custody does not mean that they would not be a danger to public safety if they were released on parole.

2. Ms. Jones stated that the risk/severity matrix in Section 6 jumps from “deny parole” to “grant parole” without a separate step to “consider factors.”

Response: The guideline matrix is set up to provide greater consideration for release to lower risk/lower crime severity prisoners, and less consideration to higher risk/higher crime severity prisoners. The ‘jump’ Ms. Jones refers to is central in the matrix. The guideline suggests that a moderate risk prisoner who is serving a sentence for a moderate severity crime should be granted parole at the first or second hearing. The guideline suggests that the factors be considered when evaluating the release of a moderate risk prisoner serving a high severity crime (the next level up). The guideline suggests denial in only three instances; high risk prisoners serving sentences of severity designated as ‘highest,’ ‘high,’ and ‘moderate.’

3. Ms. Jones states that without actual numbers (recommended months to serve), the Board can not report to the legislature whether the Board is complying with the guidelines. The guideline recommendation to “consider factors” does not suggest a person should be released or retained.

Response: The guideline does not create an expectation of release. It simply assists the Board in making decisions. The purpose of considering the case factors is to allow more emphasis on consideration into the specific behaviors and details of the criminal history, as opposed to simply granting or denying parole. The types of cases that fall into these ranges are those which require much more consideration. If the Board considers the case factors in making a decision to grant or deny parole, then the Board did comply with the guidelines.

4. Ms. Jones stated that the points applied in the risk assessment form should also be placed into the regulation.

Response: The points used on the risk document were validated by an outside expert. If, during the comprehensive review, an outside expert suggests a modification to the points to ensure the continued validity of the document, the points may be changed immediately to reflect an accurate risk document. The Board has no intention of altering the risk points, as those were determined independently, unless a new statistical review determines that an adjustment should be made.

5. Ms. Jones expressed concern about the NDOC's severity listing matching the Parole Board's severity listing and suggested that the severity levels be incorporated into the regulation.

Response: The Board uses the information system of the Department of Corrections and relies on the information contained in the classification system which designates the crime severity levels. The Board originally placed the severity levels into the draft to LCB, however, since the severity levels are determined by the NDOC in accordance with their statutes, and the Board relies on the determination made by the NDOC, the severity levels were removed.

6. Ms. Jones stated that the forms being used by the Board need to be incorporated into the regulations.

Response: NRS 233B.062 1. (b) states: Every permanent regulation must be incorporated, excluding any forms used by the agency, any publication adopted by reference, the title, any signature and other formal parts, in the Nevada Administrative Code, and every emergency or temporary regulation must be distributed in the same manner as the Nevada Administrative Code.

7. Ms. Jones was concerned about the points assessed based on custody, since the inmate has no control over where an inmate is placed.

Response: The Department of Corrections informed the Board that the information system shared by the Board and the Department provides for the 'assigned custody' of the prisoner. This means that if a prisoner is designated as a minimum custody inmate, the custody level will be 'assigned' regardless of placement. If an inmate is housed in protective segregation at a close custody level, but is 'assigned' a minimum custody level, the risk assessment will score the inmate as a minimum custody, to the benefit of the inmate.

8. Ms. Jones objected to criteria regarding whether an inmate has ever been placed in disciplinary segregation. She suggested the guideline should limit the time frame from 2 to 5 years.

Response: Placement in disciplinary segregation is a punishment for committing a serious offense while confined in the Department of Corrections. The Board is not limited from considering the conduct of a prisoner, and should consider conduct that may indicate a person is a danger to public safety. The Board considers the most recent conduct and gives credit as a mitigating factor for good behavior.

9. Ms. Jones questioned why "*other than probation imposed and supervised by a court*" was indicated in section 9 of the regulation.

Response: The Board did not intend to give informal supervision by a court the same weight as supervision by a parole and probation officer.

10. Ms. Jones stated the DOC does not allow employees to write statements on behalf of inmates and objected to this requirement in section 12.

Response: The Board completely revised section 12 and took out requirements of statements to the Board by employees of the Department of Corrections.

11. Ms. Jones objected to the absence of statutory requirements that she suggested should be contained in the regulations.

Response: These regulations are not intended to duplicate statutory provisions. Upon reviewing the suggestions of Ms. Jones, it was determined that the regulations either provided information related to her area of concern, or duplicated a statutory requirement.

Included with this Informational Statement is a copy of the written comments submitted by John Witherow, Florence Jones, and Pat Hines.