

PROPOSED REGULATION OF THE DIVISION OF PAROLE AND PROBATION OF THE DEPARTMENT OF PUBLIC SAFETY

LCB File No. R061-16

Initial Agency Draft-Summary of changes proposed to NAC Chapter 213

Section 213.580 is 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.

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

NAC 213.600 is 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).

Section 213.610(1-13) is 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.

Section 213.610(14-15) is amended to reflect changes in the supervision standards of the Division.

Section 213.620(e) is amended to reflect the change in federal blood alcohol content (BAC) limits for driving under the influence of alcohol.

Section 213.620(j) is 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.

Section 213.620(n-o) is amended to reflect changes in the supervision standards of the Division.

Section 213.630 is amended to eliminate an administrative [position] title that no longer exists within the Division.

NAC 213.570 “Division” defined. (NRS 213.10988) As used in NAC 213.570 to 213.630, inclusive, unless the context otherwise requires, “Division” means the Division of Parole and Probation of the Department of Public Safety.
(Added to NAC by Dep’t of Parole & Probation, 4-18-90, eff. 4-16-90)

NAC 213.580 Evaluation by Division. (NRS 213.10988) Except as otherwise provided by statute or directed by the court, the Division will evaluate every person who is convicted of a felony *using an evidence based assessment tool which incorporates and/or constitutes the standards referenced in NRS 213.10988(1) and is predictive of continued criminality. The assessment tool may consider variables such as, but not limited to criminal history, employment and residential stability and substance abuse.* The purpose of the evaluation is to enable the Chief Parole and Probation Officer to make a recommendation to the court concerning sentencing.

(Added to NAC by Dep't of Parole & Probation, 4-18-90, eff. 4-16-90; A by Div. of Parole & Probation by R225-05, 9-18-2006)

~~[NAC 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.~~

~~(Added to NAC by Dep't of Parole & Probation, 4-18-90, eff. 4-16-90; A by Div. of Parole & Probation by R225-05, 9-18-2006)}~~

~~[NAC 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.~~

~~(Added to NAC by Dep't of Parole & Probation, 4-18-90, eff. 4-16-90)}~~

NAC 213.610 Considerations for recommending continuation or revocation of probation.

(NRS 213.10988) 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 *or 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 *or probationer*, that occurs without the consent of his or her supervising parole and probation officer.

3. Failure of the convicted person *or 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 *or probationer* has ~~10.10~~ *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 *or probationer*.

6. Failure of the convicted person *or 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 *or probationer*.

8. Any association or *contact with any person convicted of a felony, any incarcerated or imprisoned person, any person on probation or parole supervision or any other person(s) 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. [by the convicted person with any person who is of bad reputation or who has been confined to a penal institution.]~~

9. Failure of the convicted person *or 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 *or 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 *or 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 *or probationer* to make any restitution ordered by the court as a condition of probation.

13. Any violation by the convicted person *or probationer* of any other condition of probation established by the court.

14. *Failure of the probationer to pay any and all court ordered fines and fees, including supervision fees authorized and assessed pursuant to NAC 213.230.*

15. Violation of any curfew as established by the Division.

(Added to NAC by Dep't of Parole & Probation, 4-18-90, eff. 4-16-90)

NAC 213.620 Considerations regarding certification of order to arrest parolee or for recommending continuation or suspension of parole. (NRS 213.10988)

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 contact with any person convicted of a felony, any incarcerated or imprisoned person, any person on probation or parole supervision or any other person(s) deemed by the Division to be detrimental to the success of the parolee* ~~for correspondence by the parolee with any person who is of bad reputation or who has been confined to a penal~~

~~institution,]~~ 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) Any violation of any other condition of parole established by the Board.

(n). Failure of the parolee to pay any and all court ordered fines and fees, including supervision fees authorized and assessed pursuant to NAC 213.230.

(o). Violation of any curfew as established by the Division.

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

(Added to NAC by Dep't of Parole & Probation, 4-18-90, eff. 4-16-90)

NAC 213.630 Additional considerations; deviation from standards; approval of recommendations. (NRS 213.10988)

1. In making:

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

(b) Any determination described in NAC 213.620,

È 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 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.

(Added to NAC by Dep't of Parole & Probation, 4-18-90, eff. 4-16-90)

NRS 213.10988 Chief to adopt standards for recommendations regarding parole or probation.

1. The Chief Parole and Probation Officer shall 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.

The standards must be based upon objective criteria for determining the person's probability of success on parole or probation.

2. In establishing standards, the Chief Parole and Probation Officer shall first consider all factors which are relevant in determining the probability that a convicted person will live and remain at liberty without violating the law if parole is continued or probation is granted or continued.

3. The Chief Parole and Probation Officer shall adjust the standards to provide a recommendation of greater punishment for a convicted person who has a history of repetitive criminal conduct or who commits a serious crime, with a violent crime considered the most serious, than for a convicted person who does not have a history of repetitive crimes and did not commit a serious crime.

4. When adopting regulations pursuant to this section, the Chief Parole and Probation Officer shall follow the procedure set forth in chapter 233B of NRS for the adoption of regulations.

5. The Chief Parole and Probation Officer shall report to each regular session of the Legislature:

(a) The number and percentage of recommendations made regarding parole and probation which conflicted with the standards; and

(b) Any recommendations regarding the standards.

(Added to NRS by 1989, 1885)