

PROPOSED REGULATION OF THE STATE BOARD OF PAROLE COMMISSIONERS

LCB File No. 124-16

Section 1 – Amendment: adds two risk-levels to the table to accommodate split-risk levels of “Moderate-High” and “Low-Moderate” on assessments provided in accordance with NRS 213.1214 by the Department of Corrections.

Section 2 Amendment: specifies that the determination of the 150 day time frame is based on the calculated date provided by the NDOC at the time of the hearing. This is to eliminate issues with changes in dates after a hearing because of credit earnings or losses. This amendment also accounts for the split risk levels that may be provided by the NDOC when providing an assessment pursuant to NRS 213.1214.

Section 3 Amendment: indicates that the Board has the discretion to accept a waiver of a personal hearing rather than automatically allow a prisoner to waive a personal hearing. This change is made to ensure that the rights of a prisoner are protected and the Board can ensure that any such waiver made is done so by the prisoner with understanding of any potential consequences.

Section 4 is a new section that establishes the process by which a prisoner on parole may apply for a modification of sentence once the parolee meets the minimum qualification set forth in NRS 176.033.

Section 5 is a new section to set rules related to the language and intent of parole board orders when granting parole.

Section 6 is a new section which pertains to the effect of changes to sentences after parole has been granted and when conditions of parole expire.

Section 1. NAC 213.516 is hereby amended to read as follows:

NAC 213.516 Determination of whether to grant parole: Initial assessment. (NRS 213.10885, 213.110, 213.140) In determining whether to grant parole to a prisoner, the Board will apply the severity level of the crime for which parole is being considered as assigned pursuant to NAC 213.512 and the risk level assigned to the prisoner pursuant to NAC 213.514 to establish an initial assessment regarding whether to grant parole. The initial assessment will correspond to the following table:

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

Highest	Deny parole	Consider factors set forth in NAC 213.518	Consider factors set forth in NAC 213.518
High	Deny parole	Consider factors set forth in NAC 213.518	Grant parole at first or second meeting to consider prisoner for parole
Moderate	Deny parole	Grant parole at first or second meeting to consider prisoner for parole	Grant parole at initial parole eligibility
Low Moderate	Consider factors set forth in NAC 213.518	Grant parole at first or second meeting to consider prisoner for parole	Grant parole at initial parole eligibility
Low	Consider factors set forth in NAC 213.518	Grant parole at initial parole eligibility	Grant parole at initial parole eligibility

Section 2. NAC 213.532 is hereby amended to read as follows:

NAC 213.532 Mandatory release of certain prisoners: Prerequisites; recommendation of panel that Board grant discretionary parole instead. (NRS 213.10885, 213.110, 213.140)

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 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. *The determination to consider release under mandatory parole shall be based on the eligible release date for mandatory parole provided to the Board by the Department of Corrections at the time of hearing.*

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 NAC 213.514;

(b) If the prisoner has been convicted of an offense listed in subsection ~~5~~ 6 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~~ *the risk level assigned to the prisoner in accordance with 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.

Section 3. NAC 213.534 is hereby amended to read as follows:

NAC 213.534 Notice to prisoner of meeting to consider whether to grant parole; waiver of certain rights by prisoner. (NRS 213.110, 213.140)

1. Unless a prisoner has waived the 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. *Subject to the approval of the Board, a [A]* prisoner may waive, in writing, the rights granted to him or her pursuant to subsections 9 and 10 of NRS 213.131.

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 the right to receive notice pursuant to subsection 5, the Board may:

- (a) Grant parole to the prisoner; or
- (b) Reschedule the meeting.

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

Chapter 213 of NAC is hereby amended by adding thereto the provisions set forth as sections 4, 5 and 5 of this regulation.

Section 4: *Release from Parole Supervision (NRS 213.110, 213.150, 176.033)*

1. A parolee may apply to the Board for a modification of sentence after having served one-half of the period of parole, or 10 consecutive years in the case of a prisoner sentence to life imprisonment. Upon receipt of a completed application for modification of sentence in which a parolee has indicated that all applicable restitution has been paid, or if it has not been paid, a statement of hardship from the parolee indicating why restitution could never be paid in full, the Secretary of the Board will submit the application to the Division of Parole and Probation requesting a report detailing the conduct of the prisoner while on parole, the amount of time the parolee has served on parole and the amount of time left to serve on parole, the status of the payment of restitution to the victim(s) if any, and a recommendation regarding the request for modification of sentence. If the Division does not provide a favorable recommendation for a modification of sentence, it will indicate its reasons for the unfavorable recommendation in the report, and may include any recommendations that might improve the possibility of receiving a favorable recommendation in the future.

2. Upon receiving a recommendation from the Division, the Board will schedule a meeting to consider the request for modification of sentence by the parolee. Meetings to consider applications for a modification of sentence may be held annually or more often, at the discretion of the Board.

3. The Board may delegate the review of recommendations related to requests for modification of sentence to a panel consisting of three members of the Board and a majority of the members of the Board must concur in petitioning the court for a modification of sentence pursuant to section 213.133 of NRS.

4. When a majority of the members of the Board agree to petition the Court for a modification of sentence, the Secretary of the Board shall prepare the petition and submit it to the court. The secretary shall give notice of the petition and hearing thereon to the Attorney General or district attorney who had jurisdiction in the original proceedings. The Secretary may consult with or receive the assistance of the Deputy Attorney General assigned to the Board as needed.

5. The Secretary of the Board shall serve notice of the decision of the Court upon the applicant, the Attorney General or district attorney who had jurisdiction in the original proceedings and the Chief Parole and Probation Officer. If the Court modifies the sentence of the parolee, the Secretary of the Board shall also serve notice of the decision upon the Director of the Department of Corrections.

6. The Chief Parole and Probation Officer may submit recommendations for modifications of sentence without a parolee initiating an application for modification of sentence. A favorable recommendation initiated without an application from the parolee shall include a report detailing the conduct of the prisoner while on parole, the amount of time the parolee has

served on parole and the amount of time left to serve on parole and the status of the payment of restitution to the victim(s) if any.

7. The Board will not petition the court to modify a sentence if court-ordered restitution to the victim(s) has not been paid in full, unless extraordinary circumstances exist, and the Board states those extraordinary circumstances in writing in the petition to the Court.

8. The Board may refer a case in which a Court has denied a Petition for modification of sentence to the State Board of Pardons Commissioners. When referring a case to the State Board of Pardons Commissioners, the Board shall include the report of the Division, the original petition of the Board, and the Order of the Court.

Section 5: Parole Board Orders and Conditions of Parole (NRS 213.110, 213.140)

1. Except when authorized by the Board pursuant to NRS 213.140, a prisoner who is granted parole may not be released on parole to the community or to a consecutive sentence until the prisoner has signed a document containing the conditions of parole in accordance with NRS 213.1218.

2. The effective date of parole of a prisoner being released from the custody of the Department of Corrections shall be the date released from actual custody. The effective date of parole of a prisoner being released to a consecutive sentence shall be the date indicated in the Order granting parole, but the parole shall not become active until the prisoner has signed and agreed to the conditions of parole listed in the document. The effective date of parole may be retroactively applied to a sentence being granted parole to a consecutive sentence if the prisoner signs the document accepting the conditions of parole after the effective date of parole.

4. When the Board indicates on its order that a parole grant is “effective when eligible” with minimum eligibility as determined by the Department of Corrections, the effective date of parole may not be altered because of a change in sentence structure unknown to the Board at the time of the hearing, without the prior consent of the Board. This provision does not apply to fluctuations in eligibility dates due to earnings of good time, work or merit credits, or the application of presentence credits received after the parole hearing. The Board may set a rehearing to consider the change in eligibility and act to affirm or change its decision based upon the change to the sentence structure, or act without a hearing by delivering written approval to the Executive Secretary of the Board.

5. A prisoner who has been released on parole without having first signed the document containing the conditions of parole and who refuses to sign the document after release shall be arrested as a parole violator and returned to the custody of the Department of Corrections. The Division shall prepare a violation report detailing the circumstances surrounding the release, its efforts to obtain a signature on the parole agreement document, and any other information deemed relevant for the Board to consider at the violation hearing.

6. A prisoner who has been released to a consecutive sentence without having first signed the document containing the conditions of parole and refuses to sign the document after beginning to serve the consecutive sentence shall be scheduled for a parole violation hearing as soon as practicable. The Division shall prepare a violation report detailing the circumstances surrounding the release, its efforts to obtain a signature on the parole agreement document, and any other information deemed relevant for the Board to consider at the violation hearing.

Section 6: *Effect of Changes to Sentence Structure after Parole Action has been taken (213.110, 213.140)*

- 1. The conditions of parole are vacated upon the expiration of the sentence the conditions were applied against.*
- 2. Any parole action taken against a sentence or conviction that has been overturned by a court of competent jurisdiction is vacated upon the enforcement of the court order overturning the sentence or conviction.*
- 3. Any parole action taken against a sentence that is the subject of a judgement of conviction that has been voided by a court of competent jurisdiction is vacated upon the enforcement of the court order voiding the applicable judgement of conviction.*
- 4. Any parole action taken against a sentence for which eligibility for parole has been seriously affected by an amended judgement of conviction or a corrected judgement of conviction shall be vacated upon the enforcement of the amended or corrected judgement of conviction. The Board may review such a change to determine whether an order granting or denying parole should be rescinded or the action should be reaffirmed against the sentence structure executed against the amended or corrected judgement of conviction.*
- 5. No Parole Board Order shall be issued when parole actions are vacated pursuant to sections 1, 2 or 3 of this subsection except when good cause appears and a request for such an Order is requested by the Attorney General, the Chief Parole and Probation Officer or the Director of the Department of Corrections.*
- 6. For the purposes of this subsection:*
 - a. Regardless of how the court order is captioned, a “corrected judgement of conviction” means a judgement that has been issued to replace the original judgement of conviction because the original judgement of conviction contained an error and the correction removes the error.*
 - b. Regardless of how the court order is captioned, an “amended judgement of conviction” means a judgement of conviction that omitted information or did not clearly articulate the details of the sentence and the amended judgement of conviction includes the missing information or clarifies the original intent.*
 - c. Regardless of how the court order is captioned, a “voided judgement of conviction” means a judgement of conviction that has been declared void by a court of competent jurisdiction which may or may not have been replaced by a different or separate enforceable judgement of conviction.*
 - d. “eligibility for parole has been seriously affected” means a change to a sentence structure which adds or removes concurrent or consecutive sentence, or a change in eligibility of more than 6 months from the eligibility date presented by the Department of Corrections at the time of the parole hearing which not caused by the awarding of presentence jail credit, merit or program credits or a combination thereof.*
- 7. Nothing in this section prevents the Board from adding, amending or changing the conditions of a parole assigned to a parolee.*