

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

LCB File No. R124-16

August 3, 2016

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

AUTHORITY: §1, NRS 213.110; §§2, 3, 5 and 8, NRS 213.110 and 213.140; §4, NRS 213.110 and 213.133; §§6 and 7, NRS 213.10885, 213.110 and 213.140.

A REGULATION relating to parole; establishing procedures for providing notice to a parolee of the conditions of parole; setting forth provisions establishing the effective date of and date of eligibility for the parole of a prisoner; establishing a procedure by which a parolee may request a modification of sentence; setting forth the circumstances under which certain actions relating to parole are vacated as a result of judicial actions; revising provisions relating to the establishment of an initial assessment whether to grant parole to a prisoner; establishing requirements for making a final determination of the date on which a prisoner must be released on mandatory parole; requiring approval of the State Board of Parole Commissioners for a prisoner to waive certain rights related to a meeting to consider the prisoner for parole; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 2 of this regulation prohibits the release of a prisoner on parole to the community or to a consecutive sentence until the prisoner has signed a document containing the conditions of parole, unless otherwise authorized by the State Board of Parole Commissioners. **Section 2** also sets forth the circumstances under which notice to a parolee of the conditions of parole will be deemed adequate.

Section 3 of this regulation set forth provisions for establishing the effective date of and date of eligibility for the parole of a prisoner.

Section 4 of this regulation establishes a procedure by which a parolee may apply to the Board to request a modification of sentence.

Section 5 of this regulation sets forth the circumstances under which actions taken with regard to parole, including the imposition of conditions of parole, are vacated as a result of certain actions by a court of competent jurisdiction.

Existing regulations include a table of risk levels to establish an initial assessment regarding whether to grant parole. (NAC 213.516) **Section 6** of this regulation revises the table

to include references to certain risk levels assigned to a prisoner who has ever been convicted of a sexual offense and evaluated using certain assessments to determine the risk that the prisoner will commit another sexual offense if released on parole.

Existing regulations require the Board to conduct a meeting to consider a prisoner for mandatory parole not sooner than 150 days before the date on which the prisoner must be released on mandatory parole. (NAC 213.532) **Section 7** of this regulation provides that the final determination of the date on which the prisoner must be released on mandatory parole must be based on the date of his or her eligibility for parole as verified or revised by the Department of Corrections at the time of that meeting.

Existing regulations provide that a prisoner may waive, in writing, certain rights related to meetings of the Board conducted to consider the prisoner for parole. (NAC 213.534) **Section 8** of this regulation provides that such a waiver is subject to the approval of the Board.

Section 1. Chapter 213 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this regulation.

Sec. 2. 1. *Except as otherwise authorized by the Board pursuant to NRS 213.140, a prisoner may not be released on parole to the community or to a consecutive sentence until the prisoner has signed a document which contains the conditions of parole pursuant to NRS 213.1218.*

2. A prisoner who has been released on parole without having first signed a document which contains the conditions of parole must be provided a copy of such a document.

3. Notice to a parolee of the conditions of parole shall be deemed to be adequate:

(a) If:

(1) The document which contains the conditions of parole is personally delivered to the parolee; and

(2) The document and a copy thereof are signed by the parolee and witnessed by the person who delivered the document; or

(b) If the parolee refuses to sign the document which contains the condition of parole, a copy of the document is signed by two employees of the Division or the Department of Corrections.

Sec. 3. 1. *The effective date of the parole of a prisoner:*

(a) Who is released from the custody of the Department of Corrections is the date on which the prisoner is actually released from custody.

(b) Who is released to a consecutive sentence is the date indicated in the court order which grants parole to the prisoner, but the parole does not become active until the prisoner has agreed to the conditions of parole and signed the document which contains the conditions of parole.

(c) May be retroactively applied to a sentence for which the prisoner is granted parole to a consecutive sentence if the prisoner signs a document which contains the conditions of parole after the effective date of his or her parole.

2. *Except as otherwise provided in subsections 3 and 4, without the prior consent of the Board, the effective date of the parole of a prisoner must not be altered as a result of a change in the sentence structure which was unknown to the Board at the time of the meeting to consider the prisoner for parole if:*

(a) The Board indicates on an order that the grant of parole is “effective when eligible”;
and

(b) The earliest date of eligibility for the parole of the prisoner is determined by the Department of Corrections.

3. *The provisions of subsection 2 do not apply to changes in a date of eligibility for the parole of a prisoner which result from:*

(a) The earning of credits for good behavior, merit or work; or

(b) The application of presentence credits which are received by the Board after a meeting to consider the prisoner for parole.

4. The Board may:

(a) Conduct a meeting to consider a change in a date of eligibility for the parole of a prisoner and act to affirm or modify a determination whether to grant parole and act to affirm or modify its determination based upon a change to a sentence structure; or

(b) Act to affirm or modify a determination whether to grant the parole of a prisoner without conducting a meeting by delivering, in writing, its approval of the affirmance or modification to the Executive Secretary of the Board.

Sec. 4. 1. Pursuant to NRS 176.033, a parolee may apply to the Board to request a modification of sentence after the parolee has served one-half of the period of parole or 10 consecutive years on parole in the case of a prisoner sentenced to life imprisonment.

2. Upon receipt of a completed application for a modification of sentence in which a parolee indicates that he or she has paid all applicable restitution or, if all restitution has not been paid, the parolee includes a statement of hardship explaining the circumstances under which the restitution was not paid in full, the Executive Secretary of the Board shall submit the application to the Division with a request for a report which includes:

(a) The details of the conduct of the parolee while on parole;

(b) The amount of time the parolee has served on parole;

(c) The amount of time the parolee has remaining to serve on parole;

(d) The status of restitution to victims, if any; and

(e) A recommendation regarding the request for a modification of sentence. If the Division provides an unfavorable recommendation for a modification of sentence in the report, the Division must indicate the reasons for the unfavorable recommendation and may include any recommendations that might improve the possibility of a favorable recommendation in the future.

3. The Chief Parole and Probation Officer may submit a recommendation for a modification of sentence regardless of whether a parolee applies for a modification of sentence. A favorable recommendation initiated by the Chief Parole and Probation Officer in the absence of an application for a modification of sentence by a parolee must include a report which includes the items set forth in paragraphs (a) to (d), inclusive, of subsection 2.

4. Upon receiving a recommendation pursuant to subsection 2 or 3, the Board will schedule a meeting to consider the recommendation and application, if any, for a modification of sentence. Meetings to consider recommendations and applications for a modification of sentence may, at the discretion of the Board, be held annually or more often.

5. Pursuant to NRS 213.133, the Board may delegate the review of recommendations related to applications for modifications of sentences to a panel which consists of three members of the Board.

6. A majority of the members of the Board must concur to petition a court of original jurisdiction requesting a modification of sentence. The Board will not petition a court to modify a sentence if court-ordered restitution has not been paid in full to victims unless:

(a) Extraordinary circumstances exist; and

(b) The Board states those extraordinary circumstances in writing in the petition to the court.

7. If a majority of the members of the Board agree to petition a court of original jurisdiction requesting a modification of sentence, the Executive Secretary of the Board:

(a) Shall prepare the petition and submit the petition to the court.

(b) Shall give notice of the petition and hearing thereon to the Attorney General or district attorney who had jurisdiction in the original proceedings.

(c) May consult with or receive the assistance of the deputy attorney general assigned to the Board, as needed.

8. The Executive Secretary of the Board shall serve notice of the decision of the court upon the parolee who applied for the modification of sentence, if applicable, 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, the Executive Secretary of the Board shall also serve notice of the decision upon the Director of the Department of Corrections.

9. The Board may refer a case in which a court has denied a petition for a modification of sentence to the State Board of Pardons Commissioners for consideration pursuant to NAC 213.085. If the Board refers a case to the State Board of Pardons Commissioners pursuant to this subsection, the Board shall provide to the State Board of Pardons Commissioners:

(a) The report provided by the Division pursuant to subsection 2 or 3;

(b) The original petition by the Board; and

(c) The order of the court.

Sec. 5. 1. The conditions of parole are vacated upon the expiration of the sentence against which parole was granted.

2. *Any action taken with regard to parole which was granted against a sentence or conviction that is overturned by a court of competent jurisdiction shall be deemed to be vacated upon the enforcement of the court order which overturns the sentence or conviction.*

3. *Any action taken with regard to parole against a sentence that is the subject of a judgment of conviction that has been voided by a court of competent jurisdiction, regardless of whether the judgment of conviction has been replaced by a different or separate enforceable judgment of conviction, shall be deemed to be vacated upon the enforcement of the court order which voids the applicable judgment of conviction.*

4. *Any action taken with regard to parole against a structured sentence for which eligibility for parole has been seriously affected by an amended judgment of conviction or a corrected judgment of conviction shall be deemed to be vacated upon the enforcement of the amended judgment of conviction or corrected judgment of conviction.*

5. *The Board will not issue an order when an action taken with regard to parole is vacated pursuant to this section unless:*

(a) Good cause appears; and

(b) A request for such an order is made by:

(1) The Attorney General;

(2) The Chief Parole and Probation Officer; or

(3) The Director of the Department of Corrections.

6. *Nothing in this section prevents the Board from adding to, amending or changing the conditions of parole assigned to a parolee.*

7. *For the purposes of this section:*

(a) "Eligibility for parole has been seriously affected" means:

(1) A change to a structured sentence which adds or removes a concurrent or consecutive sentence; or

(2) A change in the date of eligibility for parole:

(I) Of more than 6 months after the date which was provided to the Board by the Department of Corrections pursuant to subsection 2 of NAC 213.532; and

(II) Which is not the result of an award of credits for merit, credits for participation in programs described in paragraph (b), (c) or (d) of subsection 1 of NAC 213.536 or credits for time served in jail before sentencing, or any combination thereof.

(b) Regardless of the manner in which the court order is captioned:

(1) “Amended judgment of conviction” means a judgment of conviction which amends a prior judgment of conviction to:

(I) Provide additional information; or

(II) Clarify the original intent,

↳ if the prior judgment of conviction omitted information or did not clearly articulate the details of a sentence.

(2) “Corrected judgment of conviction” means a judgment of conviction which is issued to replace a prior judgment of conviction because the prior judgment of conviction contained an error.

Sec. 6. NAC 213.516 is hereby amended to read as follows:

213.516 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

Sec. 7. NAC 213.532 is hereby amended to read as follows:

213.532 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 final determination by the Board of the date on which the prisoner must be released on mandatory parole must be based on the date of his or her eligibility for parole as verified or revised by the Department of Corrections at the time of the meeting.*

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 *paragraph (d) of* subsection ~~5~~ 6 of NRS 213.1214, ~~whether~~ *the risk level assigned to* 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. 8. NAC 213.534 is hereby amended to read as follows:

213.534 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. ~~{A}~~ *Subject to the approval of the Board, 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.