

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED  
BY NRS 233B.066  
LCB FILE R114-21P**

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) Chapter 213.

**1. A clear and concise explanation of the need for the adopted regulation.**

This regulation is necessary to revise language in the initial assessment table and adds a subsection (2); and providing other matters properly related thereto.

**2. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.**

Copies of the proposed regulations, notices of workshop and notices of intent to act upon the regulation were sent by U.S. mail to persons who were known to have an interest in the subject as well as any persons who had specifically requested such notice. These documents were also made available at the website of the Board of Parole Commissioners, <https://parole.nv.gov/> and posted at the following locations:

Board of Parole Commissioners  
1677 Old Hot Springs Road, Ste. A  
Carson City, Nevada

Board of Parole Commissioners  
4000 S. Eastern Avenue  
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

A workshop was held on November 29, 2021, and the minutes of that meeting, attached as [Exhibit B](#) hereto, contain a summary of the discussion held regarding the proposed amendment.

Thereafter, on or about February 24, 2022, the Board of Parole Commissioners issued a Notice of Intent to Act Upon a Regulation, for public comment and for possible action on March 31, 2022. The minutes of that meeting, attached as [Exhibit C](#) hereto, contain a summary addressing all public comments and of the discussion held regarding the proposed amendment.

A copy of this summary of the public response to the proposed regulation may be obtained from the Board of Parole Commissioners, 1677 Old Hot Springs Rd., Ste. A, Carson City, Nevada 89706, 775-687-6505, or email to [kmellinger@parole.nv.gov](mailto:kmellinger@parole.nv.gov).

**3. The number persons who:**

**(a) Attended each hearing:** November 29, 2021 – 2; March 31, 2022 – 2

**(b) Testified at each hearing:** November 29, 2021 – 0; March 31, 2022 – 0

**(c) Submitted to the agency written comment:** November 29, 2021 – 3; March 31, 2022 – 3.

**4. A list of names and contact information, including telephone number, business address, business telephone number, electronic mail address, and name of entity or organization represented for each person identified above in #3, as provided to the agency, is attached as [Exhibit A](#).**

**5. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.**

Comments were solicited from affected businesses in the same manner as they were solicited from the public. The Board used informed, reasonable judgment in determining that there will not be an impact on small businesses due to the nature of the proposed regulation. The summary may be obtained as instructed in the response to question #2.

**6. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.**

The permanent regulation was issued on December 21, 2021, and on March 31, 2022, the Parole Board held a public meeting and unanimously voted to adopt the December 21, 2021 version of LCB File No. R114-21 as written. The minutes of the March 31, 2022 meeting, attached hereto as [Exhibit C](#), contain a summary of the reasons for adopting the regulation without change.

**7. The estimated economic effect of the adopted regulation on the businesses which it is to regulate and on the public. These must be stated separately, and each case must include:**

**(a) Both adverse and beneficial effects; and**

**(b) Both immediate and long-term effects.**

- (a) Both adverse and beneficial effects

Adverse effects: There are no known adverse economic effects on businesses or on the public based on the proposed regulation.

Beneficial effects: There are no known beneficial economic effects on businesses or on the public based on the proposed regulation.

- (b) Both immediate and long-term effects.

Immediate economic effects: There are no known immediate economic effects on businesses or on the public based on the proposed regulation.

Long-term economic effects: There are no known long-term economic effects on businesses or on the public based on the proposed regulation.

**8. The estimated cost to the agency for enforcement of the adopted regulation.**

There is no additional cost to the agency for enforcement of this regulation.

**9. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.**

There are no other state or government agency regulations that the proposed regulation duplicates.

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

There are no federal regulations that apply.

**11. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.**

This regulation does not provide a new fee or increase an existing fee.

## **Exhibit A**

Inmate Evan Grant, NDOC# 1159544  
Northern Nevada Correctional Center  
P.O Box 7000  
Carson City, NV 89702

Inmate John Quintero, NDOC# 93782  
Northern Nevada Correctional Center  
P.O Box 7000  
Carson City, NV 89702

Tonja Brown  
Advocates for the Inmates and the Innocent  
2907 Lukens Lane  
Carson City, NV 89706  
775.882.2744  
[nvmemorialfund@aol.com](mailto:nvmemorialfund@aol.com)

Keibi Mejia

Paige Barnes  
Crowley & Ferrato Public Affairs

Katie Brady, Deputy Attorney General  
Attorney General  
100 N Carson St  
Carson City, NV 89701  
775.684.1100

**CENTRAL OFFICE**

1677 Old Hot Springs Rd., Ste. A  
Carson City, Nevada 89706  
<http://parole.nv.gov>  
(775) 687-5049  
Fax (775) 687-6736

CHRISTOPHER P. DERICCO, *Chairman*  
SUSAN JACKSON, *Member*  
MARY K. BAKER, *Member*  
SCOTT WEISENTHAL, *Member*  
  
KATIE FRAKER, *Executive Secretary*

**STATE OF NEVADA**

STEVE SISOLAK  
Governor



**LAS VEGAS OFFICE**

4000 S. Eastern Ave., Ste.130  
Las Vegas, Nevada 89119  
<http://parole.nv.gov>  
(702) 486-4370  
Fax (702) 486-4376

CHRISTOPHER P. DERICCO, *Chairman*  
ERIC CHRISTIANSEN, *Member*  
DONNA VERCHIO, *Member*  
LAMICIA BAILEY, *Member*

**NEVADA BOARD OF PAROLE COMMISSIONERS**

**MINUTES**

**Meeting of the  
Board of Parole Commissioners  
November 29, 2021**

MINUTES APPROVED ON DECEMBER 28, 2021

The Board of Parole Commissioners held a public meeting on November 29, 2021, beginning at 1:00 PM at the following locations:

Conference room at the central office of the Board of Parole Commissioners, located at 1677 Old Hot Springs Road, Ste. A, Carson City, NV, and video conference at the Parole Board Office, 4000 S. Eastern Avenue, Ste. 130, Las Vegas, NV.

**I. Open Meeting, call to order, roll call 1:00PM.**

The meeting was called to order by Chairman DeRicco. Present in Carson City were Commissioner Jackson and Chairman DeRicco. Present in the Las Vegas office were Commissioner Christiansen, Commissioner Verchio, and Commissioner Bailey. Commissioner Baker and Commissioner Weisenthal were absent, excused.

Support staff in attendance:

Katie Fraker, Executive Secretary  
Kelly Mellinger, Hearings Examiner II  
Lupe Garrison, Hearings Examiner I  
Forrest Harter, Hearings Examiner I

Members of the public present in Carson City included:

Katie Brady, Deputy Attorney General  
Paige Barnes, Crowley & Ferrato Public Affairs

Members of the public present in Las Vegas included:

None

**II. Public Comment.** No action may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken pursuant to subparagraph (2) of NRS241.020.

Public comment – Carson City, NV  
No public comment.

Public comment – Las Vegas, NV

No public comment.

- III. **Workshops, Public Comment, and Possible Action:** The purpose of this workshop is to solicit comments from interested persons and for the Board to discuss modifying the following general topics that may be addressed in the proposed regulations: **Topics:** (1) The Board to discuss modifying its regulations pursuant to NAC 213.518. This proposed regulation is necessary to carry out the provisions of NRS 213.10885, NRS 213.110, and NRS 213.140, and is a regulation relating to the determination of whether to grant parole: **Consideration of additional aggravating and mitigating factors; and providing other matters properly relating thereto.** (2) The Board to discuss modifying NAC 213.514. This proposed regulation change is necessary to carry out the provisions of NRS 213.10885, NRS 213.110, and NRS 213.140, and is a regulation relating to the determination of whether to grant parole: **Assignment of risk level to prisoner.** (3) The Board to discuss modifying NAC 213.516. This proposed regulation change is necessary to carry out the provisions of NRS 213.10885, NRS 213.110, and NRS 213.140, and is a regulation relating to the determination of whether to grant parole: **Initial assessment.** After receiving comments, the Board may take action to amend the regulations before they are sent to the Legislative Counsel for review for drafting. No action may be taken upon a matter raised during a period devoted to comments by the general public until the matter itself has been specifically included on an agenda as an item upon which action may be taken pursuant to subparagraph (3) of NRS 241.020.

### **Overview of Workshop**

Board Members in attendance in the Carson City office:

Chairman DeRicco  
Commissioner Jackson

Board Members in attendance in the Las Vegas office:

Commissioner Christiansen  
Commissioner Verchio  
Commissioner Bailey

Support staff in attendance:

Katie Fraker, Executive Secretary  
Kelly Mellinger, Hearings Examiner II  
Lupe Garrison, Hearings Examiner I  
Forrest Harter, Hearings Examiner I

Members of the public present in Carson City included:

Katie Brady, Deputy Attorney General  
Paige Barnes, Crowley & Ferrato Public Affairs

Members of the public present in Las Vegas included:

None

## **Workshop**

The purpose of this workshop is to solicit comments from interested persons on the following general topics that may be addressed in the proposed regulation:

The Board to discuss amending its regulation NAC 213.516 pursuant to NRS 213.10885, NRS 213.110 and NRS 213.140; which makes language changes in the initial assessment table and adds the language “This initial assessment shall be considered in accordance with NAC 213.518(1);” and providing other matters properly relating thereto.

## **Summary of Testimony**

Chairman DeRicco introduced Kelly Mellinger, Hearings Examiner II.

Kelly Mellinger facilitated and began the workshop by stating the reason for this workshop is for discussion of amending NAC 213.518, NAC 213.514 & NAC 213.516. Ms. Mellinger stated workshops are to provide interested persons with a reasonable opportunity to meet informally with agency staff to discuss the general subject matter of the proposed regulation. Ms. Mellinger provided that the Board will be asking those in attendance for their thoughts, concerns, and suggestions regarding the proposed regulation. Ms. Mellinger provided that since the workshop is being video conferenced to our Southern office, speakers from both locations will be invited to participate and stated that the scope of this workshop is limited to the proposed regulation that will be discussed.

Ms. Mellinger stated the final workshop is the discussion to amend regulation NAC 213.516 pursuant to NRS 213.10885, NRS 213.110 and NRS 213.140; which makes language changes in the initial assessment table and adds the language “This initial assessment shall be considered in accordance with NAC 213.518(1);” and providing other matters properly relating thereto.

The floor was opened to discussion.

Chairman DeRicco stated this is the time for us as a Board to discuss and to solicit comments from any other interested persons.

Chairman DeRicco asked if there was any one in Las Vegas that would care to make public comment on this regulation?

### **Public comment – Las Vegas, NV**

No public comment

Chairman DeRicco asked if there was anyone in Carson City that would care to make public comment on this regulation?

### **Public comment – Carson City, NV**

See attached written public comment from John Quintero

See attached written public comment from Evan Grant

Chairman DeRicco stated that he is aware of documents that were received regarding this regulation, and that the Board has copies of these documents. These documents may be incorporated into today’s discussion. If any of the comments made today or submitted documentation needs to be addressed today about language changes to present to LCB, please feel free to address this. If

not, at a subsequent meeting, after LCB has had the opportunity to review the proposed language, these comments and submitted documentation will be addressed.

Chairman DeRicco began discussion by stated NAC 213.516 has been in effect since 2008. The changes proposed on this NAC removes certain language in the grid section and adds a statement below the grid that states, “This initial assessment shall be considered in accordance with NAC 213.518(1).” This additional statement refers to NAC 213.518(1) which the Board recently worked on the workshop today and indicates that after establishing the initial assessment regarding whether to grant parole or not, the Board will consider the initial assessment, the factors contained in NRS 213.10885 and NRS 213.1099 and may consider relevant aggravating and mitigating factors to determine whether to grant parole to a prisoner. By adding this new language below the grid, Chairman DeRicco believe that things will be much clearer showing that the Board considers the factors in all cases, not just when our current grid indicates consider factors. Certainly, the Board has granted parole on cases that initially come out as deny parole, just like having denied cases where the initial assessment says grant parole. The Board has always reviewed these additional or relevant factors and these changes just provide greater clarification that the Board does so on all cases. The grid just did not make that clear enough and this revision should help. As you are all aware, this grid essentially assigns the Board’s risk level.

Chairman DeRicco further stated one change that he would like to propose is that the Board remove the subsection (1) at the end of the language and just state that it refers to the entire NAC 213.518 regulation. That way if there are changes in the future, the Board will still be covered.

Chairman DeRicco stated that he goes through the documents many times trying to make sure things were correct and found one additional mistake, in the table in regard to not crossing out “set forth,” it should have been struck through also.

Chairman DeRicco asked if anyone had any questions or comments.  
There was no discussion.

Chairman DeRicco stated after considering all the comments provided here today, as well as the written documentation provided by Mr. Grant, Mr. Garcia, and Mr. Quintero, he’s comfortable with what has been provided on this item and believes that it is sufficient to move forward to LCB.

<b>Motion:</b>	<b>Approve the proposed draft regulation changes made today about NAC 213.516, for submittal to the Legislative Counsel Bureau for review, examination, and if appropriate, language revision.</b>
<b>Made:</b>	<b>Chairman DeRicco</b>



<b>Seconded By:</b>	<b>Commissioner Jackson</b>
<b>Votes in Favor:</b>	<b>DeRicco, Jackson, Christiansen, Verchio, Bailey</b>
<b>Votes Opposed:</b>	<b>None</b>
<b>Results:</b>	<b>Motion Passed</b>

Chairman DeRicco turned the discussion back to Ms. Mellinger for closing comments.

Ms. Mellinger stated that discussion is now closed, a summary of any testimony that has been submitted will be prepared. All testimony will be carefully reviewed and considered. The minutes of the meeting will be available within 30 days of this meeting and will be posted on the Parole Board's website at [www.parole.nv.gov](http://www.parole.nv.gov). Minutes may also be requested by calling the Parole Board at 775-687-5049.

**CENTRAL OFFICE**

1677 Old Hot Springs Rd., Ste. A  
Carson City, Nevada 89706  
<http://parole.nv.gov>  
(775) 687-5049  
Fax (775) 687-6736

CHRISTOPHER P. DERICCO, *Chairman*  
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**LAS VEGAS OFFICE**

4000 S. Eastern Ave., Ste.130  
Las Vegas, Nevada 89119  
<http://parole.nv.gov>  
(702) 486-4370  
Fax (702) 486-4376

CHRISTOPHER P. DERICCO, *Chairman*  
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LAMICIA BAILEY, *Member*

**NEVADA BOARD OF PAROLE COMMISSIONERS**

**MINUTES**

**Meeting of the  
Board of Parole Commissioners  
March 31, 2022**

*MINUTES APPROVED ON APRIL 27, 2022*

The Board of Parole Commissioners held a public meeting on March 31, 2022, beginning at 1:00 PM at the following locations:

Conference room at the central office of the Board of Parole Commissioners, located at 1677 Old Hot Springs Road, Ste. A, Carson City, NV, and video conference at the Parole Board Office, 4000 S. Eastern Avenue, Ste. 130, Las Vegas, NV.

**I. Open Meeting, call to order, roll call 1:00 PM.**

The meeting was called to order by Chairman DeRicco. Present in Carson City were Commissioner Jackson, Commissioner Baker, Commissioner Weisenthal, and Chairman DeRicco. Present in the Las Vegas office were Commissioner Christiansen, Commissioner Verchio, and Commissioner Bailey.

Support staff in attendance:

- Katie Fraker, Executive Secretary
- Kelly Mellinger, Hearings Examiner I
- Mary Flores, Administrative Assistant III
- Alana Masi, Administrative Assistant I

Members of the public present in Carson City included:

- Katie Brady, Deputy Attorney General
- Keibi Mejia

Members of the public present in Las Vegas included:

None

**Summary of Testimony**

**II. Public Comment.** No action may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken pursuant to subparagraph (2) of NRS241.020.

Chairman DeRicco stated the purpose of this public comment session is regarding proposed regulation R114-21P. This proposed regulation revised language in the initial assessment table and adds a subsection (2); and providing other matters properly relating thereto. This change is requested to carry out the provision of NRS Chapter 213.516. Public comment will be limited to three minutes per person.

Chairman DeRicco opened the floor for public comment.

Chairman DeRicco asked if there was anyone in Las Vegas that would care to make public comment on this topic?

Public comment – Las Vegas, NV

No public comment.

Chairman DeRicco asked if there was anyone in Carson City that would care to make public comment on this topic?

Public comment – Carson City, NV

No public comment.

**III. For Possible Action.** Review of proposed regulation R114-21P and solicitation of comments. This proposed regulation revises language in the initial assessment table and adds a subsection (2); and providing other matters properly relating thereto. This change is requested to carry out the provisions of NRS Chapter 213.516.

Chairman DeRicco stated existing law requires the State Board of Parole Commissioners to adopt regulations setting forth specific standards to assist the Board in determining whether to grant or revoke the parole of a convicted person. The standards are required to be based upon objective criteria for determining the convicted person’s probability of success on parole. (NRS 213.10885) The existing regulation provides that the Board will establish an initial assessment regarding whether to grant parole to a prisoner by applying the severity level of the crime for which parole is being considered and the risk level assigned to the prisoner concerning his or her risk to reoffend. (NAC 213.516). This amended regulation: (1) makes technical changes to the description of certain possible outcomes of an initial assessment; and (2) provides that after an initial assessment is established, the Board will consider the initial assessment when determining whether to grant parole to a prisoner.

Chairman DeRicco continued by stating at the time and place set for hearing on the proposed regulation, the agency must afford “[a]ll interested parties . . . a reasonable opportunity to submit data, views, or arguments upon a proposed regulation” per NRS 233B.061(1). Further, “[T]he agency shall set a time and place for an oral public hearing” per NRS 233B.061(3). Alternatively, parties may submit their views and both oral and written submissions regarding the proposed regulation must be considered fully. The person or body with the authority to adopt the regulation must “consider fully” all oral and written comments received. NRS 233B.061(3). .... Boards or commissions considering the public comments on proposed regulations should retain in the minutes a record of their discussion regarding the public comment and their reasons for either amending the proposed rule in response to the comments or adopting the rule without change.

Chairman DeRicco introduced Kelly Mellinger, Hearing Examiner II, to provide some initial comments regarding publicly submitted documents and/or statements received regarding this regulation.

Ms. Mellinger read a written public comment dated 11.29.2021 from Evan Grant. Mr. Grant raises two issues. First, added to the bottom of NAC 213.516 is the language “this initial assessment shall be considered in accordance with NAC 213.518(1).” He applauds the Board for recognizing that it cannot arbitrarily grant or deny parole without considering factors referenced in NRS 213.10885 and 213.1099, every time, before making a grant or denial determination, the added .518(1) language to .516 he claims is currently meaningless. Nowhere in NAC 213.518(1) does it state how the Board will consider the initial assessment result. He questioned what does a result of “deny parole” or “grant parole at initial parole eligibility” mean in relation to NAC 213.518? How does the board know what to do if the initial assessment result is “grant parole at first or second meeting to consider prisoner for parole”? Under what conditions is the grant at the first meeting appropriate or inappropriate? He states these questions must be answered in the NAC’s language pursuant to NRS 213.10855(1) which states “standards must be based upon objective criteria.” In *Anselmo v Bisbee* 396 p 3d 848 (Nev. 2017), the Nevada supreme court stated that the board’s “standards” are their NACs. For a standard to be objective it must state a step by step process that any person can easily follow and replicate. As every person will “consider” the initial assessment result differently, it is critical that the Board state how it will consider that result. Therefore, how the NAC 213.516 initial assessment will be considered in the context of NAC 213.518(1) must be stated in NAC 213.516 or NAC 213.518(1).

Chairman DeRicco stated Mr. Grant first argues that NAC 213.518(1) needs to state how the Board will consider the initial assessment result and under which conditions parole will be granted at the first or second meetings.

Chairman DeRicco further stated parole is an act of grace. After contemplating the initial assessment regarding whether to grant parole pursuant to NRS 213.516, the Board will consider the initial assessment and the factors set forth in NRS 213.10885 and 213.1099 and may consider the relevant aggravating and mitigating factors set forth in subsection 2 and 3 respectively to determine whether to grant parole to a prisoner. The proposed regulation explains how the Board considers the initial assessment result but defining under which conditions parole will be granted at first or second meetings is not definable. In addition, defining under which conditions parole will be granted at first or second meetings would improperly strip the Board of its discretion to determine the offender's risk to the public if they are released. This is not the system that was set up by the Legislature when it determined that the Parole Board was tasked with considering whether there is a reasonable probability that the prisoner will live and remain at liberty without violating the laws and whether the release is incompatible with the welfare of society. NRS 213.1099.

Commissioner Verchio stated that she feels what is being asked of the Board is to provide their deliberative process, and there needs to be some protection of the deliberative process and how they weigh the factors as individual commissioners. Given that the whole process has objective guidelines that are available for the public to view.

Chairman DeRicco opened floor for discussion.

There was no further discussion

Ms. Mellinger continued to read, Mr. Grant's second issue was, NAC 213.516 utilizes NAC 213.512 crime severity levels as assigned pursuant to NAC 213.512 by the DOC per NRS 209.341. There are two issues here. First NRS 209.341 does not grant the DOC authority to assign a severity level to a crime. In fact, the words "severity" "level" nor "crime" appear a single time in NRS 209.341. Second, the crime severity levels of "Highest" "High" "Moderate" "low moderate" and "Low" do not exist in Nevada law. According to the Nevada supreme court, only the Legislature has the power to determine what is or is not a crime and the appropriate penalty for those who violate a criminal statute. See *Anderson v Eighth Judicial District Court*, 448 p. 3d 1120 (Nev. 2019) Additionally, the Supreme Court ruled that an enhancement from a misdemeanor to a category C felony constituted an increase in offense severity. *English v State*, 116 Nev 818 (2000). Therefore, as the Board is only considering those persons convicted of a felony, they must look to NRS 193.130 and 193.330. which provide the categories of Nevada's felonies, to discover the severity level of crimes assigned by the Legislature. The Board used this exact method in 2004. "As you can see, the board in 2004 after *English* was decided in 2000, clearly understood its statutory duty and was in compliance with Nevada law. However, in 2008 when the board adopted NAC 213.512 & 213.516 it deviated dramatically from its understood statutory duty." Mr. Grant recommended that NAC 213.512 be repealed, and NAC 213.516 be amended to remove all mention of the "Highest" "High" "Moderate" "low moderate" and "Low" crime severity levels and replace them with A, B, C, D, & E crime severity levels as assigned by Nevada's legislature. He states this is an easy replacement as both sets of severity have 5 levels.

Chairman DeRicco stated Mr. Grant next argues that NAC 213.516 cannot utilize NAC 213.512 crime severity levels as assigned by the DOC and must instead use NRS Chapter 193 because

- o NRS 209.341 does not grant the DOC authority to assign a severity level to a crime;
- o the crime severity levels of "Highest" "High" "Moderate" "low moderate" and "Low" do not exist in Nevada law; and
- o only the legislature has the power to determine what is or is not a crime and the appropriate penalty for those who violate a criminal statute.

Chairman DeRicco further stated per NAC 213.512, which has been effective since April 17, 2008, 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. Further, 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 NAC 213.516. The Board has already determined this is the most appropriate way to assign the severity level. The Legislature provided the Board with discretion. It could have but did not point to the NRS 193 severity levels in the statute. Parole is an act of grace, there is no right to parole, and the decision of whether to grant or deny parole always remains within the penalty or sentence imposed by the court.

Chairman DeRicco opened floor for discussion.

There was no further discussion

Ms. Mellinger read a written public comment dated 3.28.22 from Evan Grant. Mr. Grant starts out by saying thank you for holding this workshop concerning LCB File No. R114-21P, R115-21P and R116-21P. He has reviewed the proposed changes to NAC 213.516, 213.518 & 213. 514. Unfortunately, he does not agree with the proposed language and is therefore against their adoption in their current form.

The proposed language continues to not satisfy explicitly mandatory requirements of certain Nevada statutory law. He continued that he is quite certain that Deputy Attorney General Kathleen Brady has informed this body that his civic actions in relation to these NACs and their subservient policies and practices have been denied and dismissed. However, she should have additionally informed you that he has appealed both cases to the Nevada Supreme Court as the denial was entered in violation of the courts rules and the dismissal was not signed by a sitting Nevada judge. Both instances violate multiple rules under the Nevada code of judicial conduct and are being reported to the Nevada commission on judicial discipline as judicial misconduct. The following are his principle reasons against R114-21P. NAC 213.516 continues to rely on NDOC crime severity levels. NRS 213.10885(2)(a) explicitly mandates the boards consideration of the severity of the crime committed. Nowhere in Nevada law, including NRS 213.10885, is the NDOC authorized to determine the severity of Nevada's crimes. Nevada's legislature established the severity level of each type of crime in the A,B,C,D & E category structure of NRS 193.130 and NRS 193.330. As NRS 213.10885(2)(a) does not provide discretion to consider anything other than the severity of the crime committed, the board is statutorily bound to the legislatures A, B, C, D, & E severity level designations.

Chairman DeRicco stated Mr. Grant reiterates his arguments that NAC 213.516 cannot rely on NDOC crime severity levels and provides that Nevada law does not authorize NDOC to determine the severity of Nevada's crimes. He argues that the board is statutorily bound to the Legislature's A,B,C,D & E severity level designations in NRS 193.

Chairman DeRicco further stated this issue was previously addressed. Under the plain language of the statute, the Legislature did not bind the Board to the NRS 193 designations.

Chairman DeRicco opened floor for discussion.

There was no further discussion

Ms. Mellinger continued to read, Mr. Grant goes on to state the NAC 213.516 Initial Assessment Table does not state what "deny parole" "grant parole at first or second meeting to consider parole eligibility" nor "grant parole at initial parole eligibility" mean in relation to the proposed NAC 213.516(2) language. NAC 213.516 nor NAC213.518 state how NAC 213.518 factors are to be considered if NAC 213.516 concludes grant or deny prior to NAC 213.518 factor consideration. Without specifying under what circumstances parole should be granted at the first or second meeting, how can the board properly make that determination? NRS 213.10885(1) requires the board's standards to be based on "objective" criteria. NAC 213.516 and NAC 213.518 are void of all criteria to indicate proper application of these NAC 213.516 Initial Assessment results.

Chairman DeRicco stated Mr. Grant reiterates his argument that NAC 213.516 is void of all necessary criteria to state how the board will consider the initial assessment result. He indicates that the NAC 213.516 Initial Assessment Table does not state what "deny parole" "grant parole at first or second meeting to consider parole eligibility" nor "grant parole at initial parole eligibility" mean in relation to the proposed NAC 213.516(2) language.

Chairman DeRicco further stated this issue has already been previously addressed. The NAC 213.516 initial assessment is just that, an initial assessment.

Chairman DeRicco opened floor for discussion.

There was no further discussion

Ms. Mellinger read a written public comment dated 11.29.2021 from John Quintero. Mr. Quintero stated the Board's proposal for NAC 213.516 relies on the assumption that NAC 213.512 "severity level" is authorized by statute, which he claims it is not. He wrote NAC 213.512 is based on the misrepresentation that the "severity level" in NRS 213.10885(2)(a) can be determined by another statute 209.341 regarding duties of NDOC director and contains no mandate that allows the parole board to utilize it, and states only a custody-driven purpose, not a parole readiness purpose. If it is clear that NRS 213.10885(2)(a) requires that the board of parole commissioners not the department of corrections make the determination of the "severity" based on this the board is requested to rescind and modify the language of NAC 213.512 to conform to the limits of the statute 213.10885(2)(a).

Chairman DeRicco stated Mr. Quintero argues that the Board's proposal for NAC 213.516 relies on the assumption that the NAC 213.512 "severity level" is authorized by statute, but he states that NRS 213.10885(2)(a) requires that the Board not the NDOC make the determination of the "severity."

Chairman DeRicco further stated as previously stated with regard to Grants comments, Per NAC 213.512, which has been effective since April 17, 2008, 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. Further, 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 NAC 213.516. The Board has already determined this is the most appropriate way to assign the severity level. The Legislature provided the Board with discretion. It could have but did not point to the NRS 193 severity levels in the statute. Parole is an act of grace, there is no right to parole, and the decision of whether to grant or deny parole always remains within the penalty or sentence imposed by the court.

Chairman DeRicco opened floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Mr. Quintero further stated the practices and custom to rely on an NDOC document is problematic for several reasons: 1. there is no evidence this NDOC document which is used to automatically populate the NOTIS parole board report was approved by the board of prison commissioners which makes it a fugitive document; & 2. there is no evidence NDOC conformed with open meeting law NRS 241, bringing its legitimacy into question: The severity table used to automatically populate the application, being overbroad, creates a table at NRS 213.516 which deviant because it deprives the "highest" severity of even any hope of "grant parole" expectation given to high moderate, low – mod, low categories; this deprivation is cruel and unusual.

Chairman DeRicco stated Mr. Quintero argues that the NDOC document is fugitive as no evidence was provided that it was approved by the Board of Prison Commissioners or that its enactment conformed with open meeting law NRS 241, and he argues that it is overbroad.

Chairman DeRicco further stated per NRS 213.10885, the Board shall adopt by regulation specific standards for each type of convicted person to assist in determining whether to grant or revoke parole.

The Board has adopted NAC 213.512 and the determinations contained within date back to 2008. This regulation was approved in 2008 by the Legislative Commission and the Legislature has had ample time to clarify the law had it wanted to.

Chairman DeRicco opened floor for discussion.

There was no further discussion.

Ms. Mellinger read a written public comment dated March 28, 2022 from Tonja Brown, Advocates for the Inmates and the Innocent. Ms. Brown stated "Consider factors" in NAC 213.516 negates the intent of NRS 213.10885. Parole board guidelines are intended to establish specific standards to assist the board in making parole decisions. NRS 213.10885(1). The proposed amendment to NAC 213.516 does not meet that criteria. LCB R114-21 proposes to modify the table in NAC 213.516 which the board uses to make their initial assessment regarding whether to grant parole. The table generally recommends parole be denied when an inmate's risk level is high (top left-hand area of the table). The table mostly recommends that parole be granted at the initial parole eligibility for inmates whose risk factor is low (bottom right-band section of the table). When the inmate's risk factor is moderate (and for some high-risk factor inmates) the table does not establish a standard to which the board's decision may be compared.

Chairman DeRicco stated Ms. Brown argues that each category in the table of NAC 213.516 must contain a recommended parole decision outcome to which the boards actual decision may be compared in order to meet the requirement that the Board establish specific standards to assist the board in making parole decisions pursuant to NRS 213.10885(1).

Chairman DeRicco further stated our quarterly and yearly statistics are posted on the Board's website which capture this data. This information is readily available.

Chairman DeRicco opened floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Ms. Brown stated each category in the table of NAC 213.516 must contain a recommended parole decision outcome to which the boards actual decision may be compared. Decisions which deviate from those standards should then be reported at each regular session of the Nevada Legislature: NRS 213.10885 (7)(a) requires the Parole Board to report to the Legislature on its parole decisions. This report enables the Legislature to ensure the board's decisions are consistent and justifiable. The "Consider factors" wording in NAC 213.516 does not permit a comparison to nor deviation from a standard result. For that reason, there can be no conflicts nor deviations to report to the legislature pursuant to NRS 213.10885 (7)(a). This absurd result renders the reporting requirement and thus NRS 213.10885 null and void. Ms. Brown stated she still goes back to the proposition that "consider factors" is not an objective guideline for making a parole decision. She thinks the guidelines should make a recommendation as to the outcome.

Chairman DeRicco stated Ms. Brown argues that deviations can then be tracked through the reporting to the Legislative pursuant to NRS 213.10885(7)(a). She provides that as written this renders the reporting requirement and thus NRS 213.10885 null and void.



Chairman DeRicco further stated once again, this information is readily available on the Parole Boards website. In addition, this information is reported to the Legislature.

Chairman DeRicco asked if there was further discussion regarding this specific regulation. There was no discussion.

- IV. Public Comment.** No action may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken pursuant to subparagraph (2) of NRS241.020.

Chairman DeRicco stated, the purpose of this public comment session is regarding proposed regulation R114-21P. This proposed regulation revises language in the initial assessment table and adds a subsection (2); and providing other matters properly relating thereto. This change is requested to carry out the provisions of NRS Chapter 213.516. Public comment will be limited to three minutes per person.

Chairman DeRicco opened floor for public comment.

Chairman DeRicco asked if there was anyone in Las Vegas that would care to make public comment on this topic?

Public comment – Las Vegas, NV

No public comment.

Chairman DeRicco asked if there was anyone in Carson City that would care to make public comment on this topic?

Public comment – Carson City, NV

No public comment.

- V. For Possible Action:** Review of Intent to Adopt regulation R114-21P. The Board will consider public comments and any business impact and may act to amend and/or adopt the proposed regulation.

Chairman DeRicco stated having already discussed this item as a Board on Agenda Items VII and allowing the opportunity for public comment on this issue on Agenda Items VI and VIII, this is the time to consider those comments and any business impact before acting to amend and/or adopt the proposed regulation. During Board meetings late last year, the Board discussed and crafted language that was approved by the Board and submitted to the Legislative Counsel Bureau for approval for this regulation. The Board has reviewed what was previously submitted to LCB and what they have returned, and LCB did make language changes, but they did capture everything that needed to be captured. Chairman DeRicco continued by stating after review, he is in favor of the language for the regulation as suggested by LCB.

Chairman DeRicco asked if there was any further discussion necessary at this time before requesting a motion.

There was no discussion.

Chairman DeRicco asked if any corrections should be made to the regulation as submitted by LCB as distributed.

There was no discussion.

<b>Motion:</b>	<b>The Nevada Board of Parole Commissioners adopt regulation R114-21P as reviewed and submitted by LCB.</b>
<b>Made:</b>	<b>Chairman DeRicco</b>
<b>Seconded By:</b>	<b>Commissioner Baker</b>
<b>Votes in Favor:</b>	<b>DeRicco, Jackson, Baker, Weisenthal, Christiansen, Verchio, Bailey</b>
<b>Votes Opposed:</b>	<b>None</b>
<b>Results:</b>	<b>Motion passed</b>

Chairman DeRicco stated on record that Commissioner Bailey had to leave and is absent, excused.