

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED
BY NRS 233B.066
LCB FILE R116-21P**

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 to how the Board uses the NRS 213.1214 risk assessment for sexual offenders; 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.

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. R116-21 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

Inmate Adam Garcia, NDOC# 82651
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

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

Exhibit B

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MARY K. BAKER, *Member*
SCOTT WEISENTHAL, *Member*
KATIE FRAKER, *Executive Secretary*

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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 213.514 pursuant to NRS 213.10885, NRS 213.110, NRS 213.140, and NRS 213.1214; which makes language changes to how the Board uses the NRS 213.1214 risk assessment for sexual offenders; 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 next workshop the discussion is to amend regulation NAC213.514 pursuant to NRS 213.10885, NRS 213.110, NRS 213.140, and NRS 213.1214; which makes language changes to how the Board uses the NRS 213.1214 risk assessment for sexual offenders; and providing other matters properly relating thereto.

The floor was opened to discussion.

Chairman DeRicco stated that this is the time for us as a Board to discuss and to solicit comments from any other interested persons. An additional attachment was provided that is meant to supersede the previously submitted version for NAC 213.514. To be clear, please use the new version where subsection (3) is removed in its entirety with a newly rewritten subsection (3) in blue. The new document was produced as a result of Mr. Grant's submitted documentation.

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

See attached written public comment from Adam Garcia

Chairman DeRicco stated that he is aware of some documents that were received regarding this

regulation, and that the Board has copies of these documents. Chairman DeRicco provided that these documents may be incorporated into today's discussion.

Chairman DeRicco stated this topic came up some time ago at a Board meeting, approximately 2018, assigning a risk level of "high, moderate, or low." To establish that risk level the Board conducts an objective risk assessment using a combination of risk factors that predict recidivism. Under subsection (3) the regulation reads now, "If a prisoner has ever been convicted of a sexual offense and has been evaluated using a currently accepted standard of assessment to determine the risk that the prisoner will commit another sexual offense if released on parole, the Board will assign a risk level to the prisoner which is the higher of the risk level assigned pursuant to this section and the risk level determined by such an evaluation." In 2018, there were some questions regarding why the Board considers the higher of the two assessments for the risk level, and not let them stand alone as two separate assessments. In the current regulation, the Board has married the two risk assessments together and use the higher of the two, at least since 2012. However, as a part of this workshop, it is being requested to potentially alter the language in subsection (3) in its entirety. By doing this, the Board would consider the outcomes of the parole risk assessment on its own merits but also consider the sex offender assessment as an aggravating or mitigating factor, per the requested changes in NAC 213.518. This change will likely provide greater consistency, especially when an individual scores as a low on the parole risk assessment and is overridden to a high on the sex offender assessment. This change will not prohibit the Board from granting or denying parole in this instance, as the sex offender assessment can still be used as an aggravating or mitigating factor. But what this change does is that it provides the Board greater opportunity to review both assessments separately, so that the Board can determine the risk level in a more appropriate manner. Sometimes, these overrides appear to be too extensive, and with the proposed requested changes, the Board will consider the parole risk assessment on its own merits and use the sex offender assessment as a mitigating or aggravating factor. This coupled with all other available information in the file and at a hearing will likely afford the Board the opportunity to review these sex offender cases in a more consistent manner. The revised subsection (3) now reads: "3. If a prisoner has ever been convicted of a sexual offense as defined in NRS 213.1214 and has been evaluated using a currently accepted standard of assessment to determine the risk that the prisoner will commit another sexual offense if released on parole, the Board shall consider the risk assessment conducted by the Department of Corrections pursuant to NRS 213.1214 when deciding whether to grant parole."

Chairman DeRicco asked if anyone had any questions or comments.

Commissioner Christiansen asked for clarification, he read through the public comments, stating in the past the sex offender risk assessment superseded the parole risk assessment, but that now the Board would no longer be doing that.

Chairman DeRicco provided that supersede is not the correct word, and that the Board takes the higher of the two assessments. With the proposed regulation that would not be done anymore, and the two assessments would be stand alone assessments. The Board would consider it as it has always done in a hearing, and additionally now consider it as an aggravating and/or mitigating factor. Commissioner Christiansen agreed.

Commissioner Verchio asked if the Board would still use the override in NOTIS.

Chairman DeRicco stated that nothing is changing right now, and everything needs to be submitted and approved to LCB. But, if approved, the sex offender assessment would be considered as an aggravating or mitigating factor.

Commissioner Verchio answered her prior question by stating no the Board would not override the assessment. She provided that the cases could be assessed differently now if they are separate assessments, not one superseding or jumping the other.

Chairman DeRicco agreed, stating that is exactly what was being proposed. Both assessments will be considered, without giving one more or less weight than it should and using it now as an aggravating or mitigating factor.

Commissioner Jackson stated that she believes this is a very fair way to do it, by looking at each assessment independently, and then using it as an aggravating and mitigating factor. She liked it.

Chairman DeRicco asked for any further comments and working as suggested.

Chairman DeRicco stated that 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.

Motion:	Approve the proposed draft regulation changes made today about NAC 213.514, for submittal to the Legislative Counsel Bureau for review, examination, and if appropriate, language revision.
Made:	Chairman DeRicco
Seconded By:	Commissioner Bailey
Votes in Favor:	DeRicco, Jackson, Christiansen, Verchio, Bailey
Votes Opposed:	None
Results:	Motion Passed

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. Minutes may also be requested by calling the Parole Board at 775-687-5049.

Exhibit C

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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 R116-21P. This proposed regulation revises language to how the Board uses the NRS 213.1214 risk assessment for sexual offenders; and providing other matters properly related thereto. 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.

- III. For Possible Action.** Review of proposed regulation R116-21P and solicitation of comments. This proposed regulation revises language to how the Board uses the NRS 213.1214 risk assessment for sexual offenders; and providing other matters properly related thereto.

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) Existing law requires the Department of Corrections to conduct, before a scheduled parole hearing of a prisoner who has been convicted of a sexual offense, an assessment of the prisoner to determine his or her risk to reoffend in a sexual manner using a currently accepted standard of assessment. (NRS 213.1214) The existing regulation provides that the Board will assign a certain risk level to each prisoner being considered for parole according to the level of risk that he or she will commit a felony if released on parole. The existing regulation provides that if the prisoner has been convicted of a sexual offense and has been evaluated using a currently accepted standard of assessment to determine his or her risk to reoffend in a sexual manner, the Board will assign a risk level which is the higher of the risk level initially assigned by the Board and the risk level determined by such an evaluation. (NAC 213.514) This amendment to the regulation instead provides that the Board will consider both risk assessments when determining whether to grant parole.

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 stated concerning NAC 213.514’s proposed language, he whole heartedly endorses the Board’s decision to recognize that the NRS 213.1214 risk assessment should be considered in conjunction with the Nevada parole risk assessment. This not only protects the Board from tainting the entire parole consideration process if the Department of Corrections fails in its execution of NRS 213.1214, but, additionally, distinguishes consideration of those convicted of a sexual offense from those who have not. With this in mind, he sees one issue with the proposed NAC 213.514(4) & (5) language. NRS 213.1214(4) mandates that “the board shall consider an assessment prepared pursuant to this section” NRS 213.1214 (6)(d)(20) requires the DOC to conduct an NRS 213.1214 assessment for “an offense of a sexual nature committed in another jurisdiction” unless, certain conditions are met. Regardless of the offense under consideration by the board for parole, if the DOC conducts and submits to the board an NRS 213.1214 assessment in accordance with the provisions of NRS 213.1214, the board is required to consider it. For these reasons, NAC 213.514(5) stating the board “may also consider this risk assessment.” is in violation of NRS 213.1214(4) which states “the board shall consider an assessment” Mr. Grant recommended striking NAC 213.514 (5) and amending NAC 213.514(4) to state “4. If a prisoner is being heard for parole for a sexual offense, or has ever been convicted of a sexual offense, as defined by NRS 213.1214, the board shall consider the risk assessment” This language would protect the board from accidentally not considering an NRS 213.1214 assessment that Nevada law requires to be considered.

Chairman DeRicco stated Mr. Grant stated that NAC 213.514(5) stating the Board “may also consider this risk assessment” conduct by NDOC is in violation of NRS 213.1214(4) which states “the Board shall consider an assessment” conduct by NDOC.

Chairman DeRicco further stated as a part of the wording in this proposed regulation, in accordance with NRS 213.1214, the Board will consider the risk assessment conducted by the Department of Corrections pursuant to NRS 213.1214 when determining whether to grant parole. As such, this point is no longer valid.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger read a written public comment dated 3.28.2022 from Evan Grant. Mr. Grant stated the following is his principal reason against R116-21P. As the boards execution of NAC 213.514(4) is located in the new NAC 213.518(2)(g) and (3)(k), NAC 213.514 (4) should reference NAC 213.518.

Chairman DeRicco stated Mr. Grant provides that because the Board's execution of NAC 213.514(4) is now located in NAC 213.518(2)(g) and (3)(k), NAC 213.514(4) should reference NAC 213.518.

Chairman DeRicco further stated this is unnecessary to add a reference to NAC 213.518. This NAC as written appears appropriate. For the purposes of this NAC, it indicates that the Board will now consider this assessment, but not use the higher risk level of the two assessments. As such, no addition is needed.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Mr. Grant stated NAC 213.514(4) stating that consideration will be "in accordance with NRS 213.1214." is too vague as NAC 213.514(4) simply mandates the Board consider the DOC's assessment. As the board has chosen to do so via NAC 213.518, it should be included by reference to NAC 213.514(4).

Chairman DeRicco stated Mr. Grant provides that NAC 213.514(4) stating that consideration will be "in accordance with NRS 213.1214." is too vague as NAC 213.514(4) simply mandates the Board consider the DOC's assessment.

Chairman DeRicco further stated this consideration does not appear to be too vague. If a prisoner has been convicted of a qualifying sexual offense, the Board has always considered this additional assessment. The Board is still considering it here now, but now the sex offender assessment results will not override the parole risk assessment. It will be considered as a part of a case, and it may be considered as an aggravating or mitigating factor.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger read a written public comment dated 3.28.2022 from Tonja Brown, Advocates for the Inmates and the Innocent. Ms. Brown stated requiring the Board to use ONLY the NDOC assessment doesn't seem to create a problem. The only part we question is why the NDOC eval only examines the probability of future sexual crimes. When initial assessment is made by the Board, everybody else gets looked at for the probability of the commission of any new crime. Why are sexual offender's only reviewed for further sex crimes. If they have a drug problem, e.g., any other crime will be more likely to occur.

Chairman DeRicco stated Ms. Brown provides that they question why the NDOC eval only examines the probability of future sexual crimes for sexual offenders and does not include the probability of any other crimes such as drug crimes.

Chairman DeRicco further stated pursuant to statute, this additional assessment is only for certain qualifying sex offenses. It is a sex offender assessment. This additional assessment is not for the purposes of considering other crimes such as drug crimes.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger read a written public comment dated 3.29.2022 from John Quintero. Mr. Quintero stated in the past practice of the Board NRS 213.1214 had been interpreted by the Board to give it permission to perform an “additional” evaluation that would serve to supersede or “override” the static-99 report sent to Board by some manner unclear from the record. Commissioner DeRicco answers “no” when asked by Commissioner Verchio asks “do we still override?” The correct purpose of NAC clarified by testimony is that when a parole applicant shows up to the Board without a static-99 due to a sex offense (conviction) on PSI missed by NDOC parole report preparers, a NO ACTION would issue. The static-99 shall be used and no “overrides” are permitted, required or suggested by the NRS 213.1214, as conveyed by the Feb 18 2021 letter of Commission to Garcia via Alan Erb, Esq. He will stand to be corrected in his understanding but, if he is right, then he’s requesting the following questions to be considered as agenda items and placed on the agenda for subsequent hearing(s): Should the Board request an AG opinion regarding the question of answerability of the Board to the past practice of mal interpretation of NRS 213.1214, (a tradition passed on to the current Board and not initialed by this current commission); in other words for purposes of injunctive relief (not damages) should the Board be liable.

Chairman DeRicco stated Mr. Quintero suggests that the Board request an AG opinion regarding liability concerning the Board’s past practice of its interpretation of NRS 213.1214, on injunctive relief challenges.

Chairman DeRicco further stated this is not necessary. The Board has previously followed its regulations with regard to this NAC. However, it is the opinion of this Board that we will still consider both assessments with regard to qualifying sex offenses, but that an override is not necessary if the sex offender assessment is higher than the parole risk assessment. This assessment may still be considered as an aggravating or mitigating factor.

Chairman DeRicco opened floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Mr. Quintero also asks if notice and opportunity for reconsideration will be voluntarily extended to inmates improperly considered in the past?

Chairman DeRicco stated Mr. Quintero asks if notice and opportunity for reconsideration will be voluntarily extended to inmates improperly considered in the past?

Chairman DeRicco further stated the Board does not believe that reconsideration is necessary as nothing was improperly applied. Rather, it is the opinion of this Board that the regulations should be changed, while still taking into account the assessment per statute. This assessment may be considered as an aggravating or mitigating factor, but the Board will no longer override a parole risk assessment if the sex offender assessment is higher.

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 R116-21P. This proposed regulation revises language to how the Board uses the NRS 213.1214 risk assessment for sexual offenders; and providing other matters properly related thereto. 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 R116-21P. 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 Item XV and allowing the opportunity for public comment on this issue on Agenda Items XIV and XVI, this is the time to consider those comments and any business impact before acting to amend and/or adopt the proposed regulation.

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.

Motion:	The Nevada Board of Parole Commissioners adopt regulation R116-21P as reviewed and submitted by LCB.
Made:	Chairman DeRicco

Seconded By:	Commissioner Jackson
Votes in Favor:	DeRicco, Jackson, Baker, Weisenthal, Christiansen, Verchio
Votes Opposed:	None
Results:	Motion passed