

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED
BY NRS 233B.066
LCB FILE R115-21P**

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 the language and re-organizes the language of the aggravating and mitigating factors that the Board may consider; 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 September 29, 2021, and the minutes of that meeting, attached as [Exhibit B](#) hereto, contain a summary of the discussion held regarding the proposed amendment.

An additional workshop was held on October 25, 2021, and the minutes of that meeting, attached as [Exhibit C](#) hereto, contain a summary of the discussion held regarding the proposed amendment.

An additional workshop was held on November 29, 2021, and the minutes of that meeting, attached as [Exhibit D](#) 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 E](#) 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: September 29, 2021 – 2; October 25, 2021 – 3; November 29, 2021 – 2; March 31, 2022 – 2

(b) Testified at each hearing: September 29, 2021 – 1; October 25, 2021 – 0; November 29, 2021 – 0; March 31, 2022 – 0

(c) Submitted to the agency written comment: September 29, 2021 – 3; October 25, 2021 – 3; November 29, 2021 – 2; 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 February 1, 2022, and on March 31, 2022, the Parole Board held a public meeting and unanimously voted to adopt the February 1, 2022 version of LCB File No. R115-21 as written. The minutes of the March 31, 2022 meeting, attached hereto as [Exhibit E](#), 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

Patricia Adkisson
702.505.2861
faithandjoesmom@gmail.com

Tonja Brown
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2907 Lukens Lane
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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

Jared Frost, Senior Deputy Attorney General
Attorney General
555 E Washington Ave
Las Vegas, NV 89101
702.486.3420

Exhibit B

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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 September 29, 2021

MINUTES APPROVED ON OCTOBER 25, 2021

The Board of Parole Commissioners held a public meeting on September 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 Baker, Commissioner Jackson and Commissioner Weisenthal. Present in the Las Vegas office were Chairman DeRicco, Commissioner Bailey, Commissioner Christiansen, and Commissioner Verchio.

Support staff in attendance:

Katie Fraker, Executive Secretary
Jeremy Meador, Administrative Assistant II
Forrest Harter, Hearing Examiner I
Kelli Mellinger, Hearing Examiner II
Kathi Baker, Management Analyst III
Matt Thrasher, Management Analyst I

Members of the public present in Carson City included:

Katie Brady, Deputy Attorney General

Members of the public present in Las Vegas included:

Patricia Adkisson

- 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 NRS 241.020.

Public comment – Carson City, NV

No public comment.

Public comment – Las Vegas, NV

No public comment.

- III. Workshop, Public Comment, and Possible Action:** The purpose of this workshop is to solicit comments from interested persons and for the Board to discuss modifying NAC 213.518. This proposed regulation is necessary to carry out the provisions of NRS Chapter 213, pursuant to NRS 213.10885, and NRS 213.1099, 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. After receiving comments, the Board may take action to amend the regulation before it is sent to the Legislative Counsel for review and 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 (2) of NRS 241.020.

Workshop for Proposed Regulations on NAC 213.518(1)

Overview of Workshop

Board Members in attendance in the Carson City office:

Commissioner Jackson
Commissioner Baker
Commissioner Weisenthal

Board Members in attendance in the Las Vegas office:

Chairman DeRicco
Commissioner Christiansen
Commissioner Verchio
Commissioner Bailey

Support staff in attendance:

Katie Fraker, Executive Secretary
Jeremy Meador, Administrative Assistant II
Forrest Harter, Hearing Examiner I
Kelly Mellinger, Hearing Examiner II
Kathi Baker, Management Analyst III
Matt Thrasher, Management Analyst I

Members of the public present in Carson City included:

Katie Brady, Deputy Attorney General

Members of the public present in Las Vegas included:

Patricia Adkisson

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 modifying NAC 213.518. This proposed regulation is necessary to carry out the provisions of NRS Chapter 213, pursuant to NRS 213.10885, and NRS 213.1099, 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.

Summary of Testimony

Chairman DeRicco stated the purpose of this workshop is to solicit comments from interested persons and for the Board to discuss modifying NAC 213.518. Chairman DeRicco provided the proposed regulation is necessary to carry out the provisions of NRS Chapter 213, pursuant to NRS 213.10885, and NRS 213.1099, 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. Chairman DeRicco stated that after receiving comments, the Board may take action to amend the regulation before it is sent to the Legislative Counsel for review and drafting. Chairman DeRicco provided that 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 (2) of NRS 241.020.

Chairman DeRicco introduced Kelly Mellinger, Hearing Examiner II.

Kelly Mellinger facilitated and began the workshop by stating the reason for this workshop is for discussion of amending NAC 213.518(1). 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 provided that this workshop is for discussion to amend regulation NAC 213.518(1) to make language changes to make it clear that the factors contained in NRS 213.10885 and NRS 213.1099 are always considered after establishing an initial assessment to determine whether to grant parole to a prisoner.

Ms. Mellinger provided that the proposed changes are to Section 1 of NAC 213.518 to change the wording from, NAC 213.518 (1) "After establishing an initial assessment regarding whether to grant parole pursuant to NAC 213.516, the Board may consider additional aggravating and mitigating factors to determine whether to grant parole to a prisoner," to *NAC 213.518 (1) "After establishing an initial assessment regarding whether to grant parole pursuant to NAC 213.516, the Board will consider the factors contained in NRS 213.10885 and NRS 213.1099 and may consider additional aggravating and mitigating factors to determine whether to grant parole to a prisoner."*

Chairman DeRicco stated the perfect language is not needed on the draft regulation, as the Legislative Council Bureau (LCB) will review the draft and likely alter the language.

Chairman DeRicco provided that this regulation is in reference to NRS 213, pursuant to NRS 213.10885, and NRS 213.1099. Chairman DeRicco stated that the Board first reviewed this issue at our July 2021

meeting, and the Board voted to work on updating the language of this regulation. Chairman DeRicco provided that the proposed language change appears to conform with statute and that this is the time for us as a Board to discuss and to solicit comments from any other interested persons. Chairman DeRicco stated he would like to start with comments by any interested persons before moving on to Board members and asked if there is 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 #93282

See attached written public comment from Evan Grant #1159544

See attached written public comment from Patricia Adkisson

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

Public comment - Las Vegas

Patricia Adkisson provided the following statement

Good afternoon, I'm here to comment on Agenda Item Number IV, the applicable statutory scheme in Nevada. Chapter 213 confers limited authority to this Board, when taking any action related to parole consideration. The effective Nevada Administrative Code must establish clear objective criteria and standards. NAC 213.518 does not establish any such objective criteria, nor does it establish a standard. A weighted value must be applied in order to give an objective effect in the determination. The legislature mandates objective criteria and standards in order to ensure the uniform operation and application of this Board's determination related to parole action, as contemplated by NAC 4 Nevada constitution article 4. The legislative purpose is to safeguard against arbitrary and capricious determinations. Parole is a grace of the state, that grace must be applied in a manner consistent with a uniform application and operation of laws, as well as equal protection of our system of laws. Otherwise, this Board could simply ignore the standards and only grant grace of our state through personal biases. I actually had submitted written comments that I'd like to go ahead and read as well.

Chairman DeRicco stated that the Board had received a copy of that statement that Ms. Adkisson was going to read.

Ms. Adkisson asked the Board to please consider the following comments related to your discussion of the possible modification of NAC 213.518:

In order to bring NAC 213.518 into compliance with the statutory authority conferred for its creation by the legislature pursuant to NRS 213.10885 and NRS 213.1099 this Board must establish a weighted value for each aggravating factor and each mitigating factor. Without the establishment of this objective measurement sought, no objective standard is defined. The use of any factor contemplated pursuant to NAC 213.518 for Parole action, based upon an undefined standard, is simply a subjective review and prevents a fair hearing. Parole is a grace of the state, but the Board is not permitted to grant or deny parole as a whim based on subjective standards not sufficiently defined with a weighted value. Parole action in this manner can never be said to be applied in a manner consistent with concepts of a fair hearing. It implicates equal protection issues and runs afoul of principles related to the uniform operation and application of general laws as enshrined in the Nevada constitution Article 4 subsection 21. Please establish a weighted known value for each factor related to NAC 213.518. Thank you for your consideration,

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 discussions. Chairman DeRicco indicated that the Board members should feel free to address any comments or submitted documentation concerning language changes to present to LCB. Chairman DeRicco provided that if there are not any changes to the proposed draft regulation, 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 asked if any of the Commissioner’s cared to discuss or comment on NAC 213.518? There was no discussion.

Chairman DeRicco stated that after considering all the comments provided today, as well as the written documentation provided by Mr. Grant, Ms. Adkisson, and Mr. Quintero, I am comfortable with what has been provided on this item and I believe that it is sufficient to move forward to LCB. Chairman DeRicco provided that regarding Mr. Grant’s submitted documentation, that Chairman DeRicco requested a small change to NAC 213.518(1). This change is to replace the word “additional” with the word “relevant.” Chairman DeRicco stated he is requesting that NAC 213.518(1) now read, *“After establishing an initial assessment regarding whether to grant parole pursuant to NAC 213.516, the Board will consider 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.”*

Chairman DeRicco provided that after further review of this regulation, he believes that the Board should conduct another workshop on this same statute, to address subsections (2) and (3). Chairman DeRicco provided that the Board may want to clean up some of the language included in these sections for greater clarity.

Motion:	The Board approve the proposed draft regulation changes made today in reference to NAC 213.518(1), for submittal to the Legislative Counsel Bureau for review, examination, and if appropriate, language revision.
Made:	Chairman DeRicco
Seconded By:	Commissioner Verchio
Votes in Favor:	DeRicco, Jackson, Baker, Weisenthal, Christiansen, Bailey, Verchio
Votes Opposed:	None
Results:	Motion Passed

Exhibit C

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LAMICIA BAILEY, *Member*

NEVADA BOARD OF PAROLE COMMISSIONERS

MINUTES

Meeting of the Board of Parole Commissioners October 25, 2021

MINUTES APPROVED ON NOVEMBER 29, 2021

The Board of Parole Commissioners held a public meeting on October 25, 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 Baker and Commissioner Weisenthal. Present in the Las Vegas office were Commissioner Verchio, Commissioner Bailey, and Chairman DeRicco. Commissioner Jackson and Commissioner Christiansen were absent, excused.

Support staff in attendance:

Katie Fraker, Executive Secretary
Kelly Mellinger, Hearings Examiner II
Jeremy Meador, Administrative Assistant II

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:

Jared Frost, Senior Deputy Attorney General

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. **For possible action:** The purpose of this workshop is to solicit comments from interested persons and for the Board to discuss modifying NAC 213.518 (2) and (3). This proposed regulation is necessary to carry out the provisions of NRS Chapter 213, pursuant to NRS 213.10885, and NRS 213.1099, 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. After receiving comments, the Board may take action to amend the regulation before it is sent to the Legislative Counsel for review and 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 (2) of NRS 241.020.

Overview of Workshop

Board Members in attendance in the Carson City office:

Commissioner Baker

Commissioner Weisenthal

Board Members in attendance in the Las Vegas office:

Chairman DeRicco

Commissioner Verchio

Commissioner Bailey

Support staff in attendance:

Katie Fraker, Exexutive Secretary

Jeremy Meador Administrative Assistant II

Kelly Mellinger, Hearings Examiner II

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:

Jared Frost, Senior Deputy Attorney General

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 modifying NAC 213.518 (2) and (3). This proposed regulation is necessary to carry out the provisions of NRS Chapter 213, pursuant to NRS 213.10885, and NRS 213.1099, and is a regulation relating to the determination of whether to grant parole: Consideration of additional aggravating and mitigating factors; and providing other matters property relating thereto.

Summary of Testimony

Chairman DeRicco read the agenda item introduced Kelly Mellinger, Hearings Examiner II.

Kelly Mellinger facilitated and began the workshop by stating that the reason for this workshop is for discussion of amending NAC 213.518 (2) and (3). 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 provided that this workshop is for discussion to amend regulation NAC 213.518 (2) and (3) to make language changes and re-organize the language to reflect duplication of the Boards existing aggravating and mitigating factors.

Ms. Mellinger provided that in the provided handouts the proposed language changes to NAC 213.815 (2) and (3) are in blue.

The floor was opened to discussion.

Chairman DeRicco stated the perfect language is not needed on the draft regulation, as the Legislative Council Bureau (LCB) will review the draft and likely alter the language.

Chairman DeRicco provided that this regulation is in reference to NRS 213, pursuant to NRS 213.10885, and NRS 213.1099. Chairman DeRicco further stated the issue was first reviewed at the July 2021 meeting and at that time the Board voted to work on updated the language of this regulation. At the last meeting the Board voted on language to amend subsection (1), and that today (2) and (3) were being looked at. Chairman DeRicco asked if there was any one 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 #93282

See attached written public comment from Evan Grant #1159544

See attached written public comment from Patricia Adkisson

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

Public comment – Las Vegas, NV

No public comment

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 that before the workshop could continue a correction needed to be made on record.

The notice of workshop document currently reads on the right in bold NAC regulations but lists NRS's. This was an error and should instead read NAC213.518.

Chairman DeRicco asked if anyone had any comments before going through the proposed changes to the regulation, and offered there would be more time later for comments.

Commissioner Baker asked if the regulation was going to be reviewed line by line, and stated she would like to discuss subsection (2) under aggravating factors letter (g), whether the prisoners NRS 213.1214 assessment results in an above average risk to reoffend sexually. Commissioner Baker stated she thinks it should say an above average or higher risk.

Chairman DeRicco affirmed each line would be reviewed, and that much of the language was just being put in a different order, and providing extra clarification.

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

Chairman DeRicco began with subsection 2; the aggravating factors which the Board may consider in determining whether to grant parole to a prisoner include, without limitation. He read the proposed language as provided in the supporting materials.

Commissioner Verchio brought up specificity and asked about the word significant. She further asked when does a criminal history become significant, and stated she feels that a number should be assigned for clarity.

Chairman DeRicco stated that there are definitions for each aggravating and mitigating factor, and that NAC is similar to a heading. He provided that once collectively agreed upon, the language reworked by LCB and that the definitions document will be reviewed at a later time.

Commissioner Verchio affirmed that she understood, and was in agreement.

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

Chairman DeRicco referenced Commissioner Baker's earlier comment about adding high risk to the proposed language, and asserted that he was in agreement to adding it; with no one opposing the addition.

Chairman DeRicco stated that he wanted to close out this section before moving onto subsection (3), asking if anyone had anything else to add.
There was no discussion.

Chairman DeRicco began discussing subsection (3) the mitigating factors which the Board may consider to determine whether to grant parole to an inmate.

Chairman DeRicco asked if there was anything to discuss in subsection (3).

Commissioner Baker stated that she would like to discuss (1) whether the prisoner has been consistently

managing their mental illness. She has not seen many inmates consistently managing their mental illness and wanted to make sure substance use disorder was also being considered in that factor as it is recognized in the DSM5 as mental illness. Chairman DeRicco asked for others' thoughts and stated that the language being removed in red (1) was whether the prisoner has consistently managed a mental illness which may contribute to criminal behavior in the manner recommended by mental health professionals, and that the proposed language is in keeping with the mental health topic, but that did not mean something could not be added regarding substance abuse.

Commissioner Baker reiterated her previous comment that substance abuse disorder is now considered a mental illness under the diagnostic and statistical manual, and if both are being considered it would be incorporated into mental illness.

Chairman DeRicco stated that would be his understanding also.

There were nods of agreement from the Board members.

Chairman DeRicco stated that he did not have anything further to add other than what was added by Commissioner Baker in subsection (2)(g). Chairman DeRicco reiterated that three documents were received for comment, and that they have all been reviewed and taken into account and that a response to those will come at a later time.

Chairman DeRicco asked if anyone had comments regarding NAC 213.518 (2) or (3) only. There was no discussion.

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

Kelly Mellinger stated that discussion is now closed, a summary of any testimony that has been submitted will be prepared. She provided that all testimony will be carefully reviewed and considered. She further provided that 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, and may also be requested by calling the Parole Board at 775-687-5049.

Exhibit D

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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 213.518 pursuant to NRS 213.10885, NRS 213.110, NRS 213.140, and NRS 213.1214; which makes language changes and re-organizes the language of the aggravating and mitigating factors that the Board may consider; 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 provided that the first workshop is for discussion to amend regulation NAC 213.518 pursuant to NRS 213.10885, NRS 213.110, NRS 213.140, and NRS 213.1214; which makes language changes and re-organizes the language of the aggravating and mitigating factors that the Board may consider; and providing other matters properly relating thereto.

Ms. Mellinger provided that in the provided handouts the proposed language changes are in blue.

The floor was opened to discussion.

Chairman DeRicco stated the perfect language is not needed on the draft regulation, as the Legislative Council Bureau (LCB) will review the draft and likely alter the language.

Chairman DeRicco provided that this regulation is in reference to NRS 213, pursuant to NRS 213.10885, NRS 213.110, NRS 213.1214, and NRS 213.140. Chairman DeRicco further stated the proposed language changes in all these NACs appear to conform with statute. In addition, Deputy Attorney General, Katie Brady, has also reviewed the provided documents and she provided input on them as well. Over the past couple of months NAC 213.518 has been reviewed, at the October Board meeting language was approved but Chairman DeRicco felt additional clarification should be made.

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 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 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 that language was stricken under subsection (2)(g) and (3)(k). The reason this is being requested is that the language only reflects language used in the Static 99, for example, "an above average risk," or "a below average risk." However, the SVR-20 is used for female inmates, which gives results of low, moderate, or high. With the Static-99, the Board previously determined what constitutes low, moderate, or high, per that assessment. By taking out the language approved at the last meeting, it will be much clearer the three categories being considered are low, moderate, and high, and that an aggravator or mitigator will be applied if someone is a "low" or "high." Additionally, if NDOC uses some other type of assessment in the future, this new language will likely cover this as well.

Chairman DeRicco asked if anyone had any questions or comments.

Commissioner Christiansen stated that he agrees that it creates greater consistency.

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 213.518, for submittal to the Legislative Counsel Bureau for review, examination, and if appropriate, language revision
Made:	Chairman DeRicco
Seconded By:	Commissioner Jackson
Votes in Favor:	DeRicco, Jackson, Christiansen, Verchio, Bailey
Votes Opposed:	None
Results:	Motion Passed

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

Exhibit E

CENTRAL OFFICE

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

STATE OF NEVADA
STEVE SISOLAK
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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 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 1:00PM.

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 DeRiccio stated the purpose of this public comment session is regarding proposed regulation R115-21P. This proposed regulation revises language and re-organizes the language of the aggravating and mitigating factors that the Board may consider; and providing other matters properly relating thereto. Public comment will be limited to three minutes per person.

Chairman DeRiccio opened floor for public comment.

Chairman DeRiccio 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 DeRiccio 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 R115-21P and solicitation of comments. This proposed regulation revises language and re-organizes the language of the aggravating and mitigating factors that the Board may consider; and providing other matters properly relating thereto.

Chairman DeRiccio 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 sets forth certain aggravating and mitigating factors that the Board is authorized to consider when determining whether to grant parole to a prisoner. (NAC 213.518) This amended regulation revises such aggravating and mitigating factors and also provides that the Board will consider certain other factors set forth in existing law when determining whether to grant parole to a prisoner.

Chairman DeRiccio 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 DeRiccio 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 9.29.2021 from Evan Grant. Mr. Grant stated in three unique ways, the proposed NAC 213.518(1) language exceeds the grant of authority given to the board in NRS 213.10885. First NAC 213.518(1) would still rely on the NAC 213.516 initial assessment to determine when the board can execute NAC 213.518. 10 of the 15 NAC 213.516 initial assessment results grant or deny parole without any execution of NAC 213.518.

Chairman DeRicco stated Mr. Grant first argues that NAC 213.518(1) language exceeds the grant of authority given to the board in NRS 213.10885 because NAC 213.518(1) would rely on the NAC 213.516 initial assessment to determine when the board can execute NAC 213.518.

Chairman DeRicco further stated the Board has adopted by regulation specific standards for each type of convicted person to assist the Board in determining whether to grant or revoke parole. NAC 213.518(1) language does not exceed the grant of authority given to the Board in NRS 213.10885. The initial assessment is just that, an initial assessment, and it does not provide that the Board cannot or will not look to the NAC 213.518 factors. Instead, it provides an initial guide that the Board considers when 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.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Mr. Grant stated under current and proposed language NAC 213.518(1) being dependent upon NAC 213.516 does not conform to the Legislature's NRS 213.10885(2)-(2)(f) mandate. Every time the NAC 213.516 initial assessment does not order NAC 213.518 factor consideration, NAC 213.518(1) impermissibly allows for the board to skip consideration of every applicable NAC 213.518(2) & (3) factor and with the amendment all 6 of the enumerated factors contained in NRS 213.10885(2)(a)-(f). Per NRS 233B.040(1), the board is limited in its authority to adopt regulations pursuant to the requirements of applicable statutes. NRS 213.10885(2) is applicable and requires the board to consider all relevant factors, including those contained in NRS 213.10885(2)(a)-(f). For these reasons, the Board must consider every NAC 213.518 factor that applies to a prisoner every time that prisoner is considered for parole. He suggested to fix this issue, NAC 213.518(1)'s dependency on the NAC 213.516 initial assessment must be repealed.

Chairman DeRicco stated Mr. Grant provides that NRS 213.10885(2) requires the Board to consider all relevant factors every time that prisoner is considered for parole.

Chairman DeRicco further stated the Board considers all other factors which are relevant in determining the probability that a convicted person will live and remain at liberty without violating the law if parole is granted or continued. The other factors the Board considers must include, but are not limited to:

- (a) The severity of the crime committed;
- (b) The criminal history of the person;
- (c) Any disciplinary action taken against the person while incarcerated;
- (d) Any previous parole violations or failures;
- (e) Any potential threat to society or to the convicted person; and

- (f) The length of his or her incarceration.

The Board may also consider the relevant aggravating and mitigating factors set forth in subsections 2 and 3, respectively to determine whether to grant parole to a prisoner per NAC 213.518.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Mr. Grant stated the NAC 213.518 (1) amendment would continue to leave NAC 213.518(2) & (3) factor consideration discretionary when the Board executes NAC 213.518. By retaining the NAC 213.518(1) language, “may consider additional aggravating and mitigating factors....” The Board leaves consideration of those factors as a choice.

He goes on to state, as previously stated NRS 213.10885(2) states that all relevant factors shall be considered, therefore, the Board does not get to choose which NAC 213.518 (2) & (3) factors it wishes to consider or not consider. If an NAC 213.518 factor is relevant meaning applicable, the board does not legally have a choice. The factor must be considered. Again, per NRS 233B.040(1), the board is limited in its authority to adopt regulations pursuant to the requirements of applicable statutes. He suggested to fix this issue the words “may consider additional” in NAC 213.518(1) should be replaced with “relevant.”

Chairman DeRicco stated Mr. Grant next argues that the amendment to NAC 213.518(1) would continue to leave NAC 213.518(2) & (3) factor consideration discretionary. He provides that NRS 213.10885(2) states that all relevant factors shall be considered, therefore, the board does not get to choose which NAC 213.518 (2) & (3) factors it wishes to consider or not consider.

Chairman DeRicco stated that previously, as a result of this request by Grant, the Board requested a small change to NAC 213.518(1). This change was to replace the word “additional” with the word “relevant.” The request reworded NAC 213.518(1) to read, “After establishing an initial assessment regarding whether to grant parole pursuant to NAC 213.516, the Board will consider 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.” Further, after incorporating this change, the Board conducted another workshop on this same statute, to address subsections (2) and (3). This was done to clean up some of the language included in these sections for greater clarity. The Board considers the NRS 213.10885 (2) factors and in addition may consider the aggravating and mitigating factors in NAC 213.518 subsections (2) and (3).

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Mr. Grant goes on to state NRS 213.10885(1) provides, in part: “The Board’s standards must be based upon objective criteria for determining the person’s probability of success on parole” Presently and under the proposed amendment, as use of the word “may” makes NAC 213.518 (2) & (3) factor consideration absolutely discretionary NAC 213.518 does not contain language stating when or how the Board considers and NAC 213.518 (2) & (3) factor.

Chairman DeRicco stated Mr. Grant argues that the use of the word “may” makes NAC 213.518 (2) & (3) factor consideration discretionary, but NRS 213.10885(1) provides that the Board’s standards must be based upon objective criteria.

Chairman DeRicco further stated as previously discussed, the Board has discretion to consider which aggravating and mitigating factors may be applied and will consider all relevant factors, all of which are based on objective criteria.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Mr. Grant stated discretionary factor consideration is subjective, the opposite of objective. Per Legislative intent of NRS 213.10885(1), any interested person should be able to reason the boards NACs and determine whether a prisoner should be granted or denied parole. Without specifying when or how any NAC 213.518(2) & (3) factor is to be considered, it is literally impossible for anyone, including the Board at large, to determine if a prisoner should be granted or denied parole as each parole consideration will be influenced by the subjective bias of the participating Board members. Once again per NRS 233B.040(1), the Board is limited in its authority to adopt regulations pursuant to the requirements to applicable statues. He suggested to fix this issue, the Board must adopt NAC 213.518 language specifying when and how NAC 213.518 factors are to be considered.

Chairman DeRicco stated Mr. Grant argues that discretionary factor consideration is subjective, the opposite of objective and argues that the Board must adopt NAC 213.518 language specifying when and how NAC 213.518 factors are to be considered.

Chairman DeRicco further stated as previously discussed, the Board may consider these factors as appropriate. Further, after adoption of the regulations, the Board will further review the definitions for their aggravating and mitigating factors. The factors are objective and that there seems to be some misunderstanding as to what objective versus subjective factors are. The standards contained in the NACs are all objective, none are based on perceptions, feelings or intentions and they are all externally verifiable.

Chairman DeRicco provided some definitions which he wanted placed on the record from Black’s Law Dictionary (11th Edition) that help provide some clarity.

- **objective** *adj.* (17c) **1.** Of, relating to, or based on externally verifiable phenomena, as opposed to an individual's perceptions, feelings, or intentions <the objective facts>. **2.** Without bias or prejudice; disinterested.
- **subjective** *adj.* (18c) **1.** Based on an individual's perceptions, feelings, or intentions, as opposed to externally verifiable phenomena.... **2.** Personal; individual.
- - **objective standard.** (1915) A legal standard that is based on conduct and perceptions external to a particular person. • In tort law, for example, the reasonable-person standard is considered an objective standard because it does not require a determination of what the defendant was thinking.
- - **subjective standard.** (1915) A legal standard that is peculiar to a particular person and based on the person's individual views and experiences. • In criminal law, for example, a subjective standard applies to determine premeditation because it depends on the defendant's mental state.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger read a written public comment dated 10.18.2021 from Evan Grant. Mr. Grant stated the proposed changes to NAC 213.518 (2) & (3) create a new issue. The proposed changes to NAC 213.518 (2) & (3) changes every enumerated aggravating and mitigating factor. As every enumerated factor in NAC 213.518 (2) & (3) are proposed to change, the Board must amend its “Aggravating & Mitigating factors definitions” guideline document to precisely convey when once of the proposed factors is relevant to a Nevada inmate being considered for parole. The three legal issues that he identified in his NAC 213.518 NRS 233B.100 petition and in his public comments for the first NAC 213.518 workshop remain in NAC213.518(1)’s proposed language.

Chairman DeRicco stated Mr. Grant argues that because the proposed changes change every enumerated aggravating and mitigating factor, the board must amend its “Aggravating & Mitigating factors definitions” guideline document.

Chairman DeRicco further stated while all of the definitions may not need to be updated, the Board will be tackling this project after approval of the regulations. NAC 213.518 subsections (2) and (3) primarily reordered the factors already in place and corresponded the language with that already in the guidelines rather than provided new language.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger read a written public comment dated 11.29.2021 from Evan Grant. Mr. Grant stated concerning NAC 213.518 he sees two issues. His first issue, NAC 213.518(1) states, “the Board will consider the initial assessment, the factors contained in NRS 213.10885 and NRS 213.1099...” but does not state how this consideration will take place. The Board’s NACs mark step by step how consideration is to take place per NRS 213.10885(1). He states, as every person, regardless of who they are, will “consider” that information differently, the board has a duty, and is required by Nevada law, to codify in the NAC’s how it will “consider” that information.

Chairman DeRicco stated Mr. Grant first provides that NAC 213.518 needs to provide in a step-by-step manner how the consideration of the initial assessment and the factors will take place.

Chairman DeRicco further stated there does not need to be a step-by-step guide on this. The initial assessment is completed first by NDOC staff, further reviewed by the Board, and considered along with NRS 213.10885 and 213.1099. Subsequent to this the Board may also consider the relevant aggravating and mitigating factors set forth in NAC 213(2) and (3).

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Mr. Grant’s second issue was, NAC 213.518(1) still says the Board “May consider relevant aggravating and mitigating factors.” stating once again, NRS 213.10885(2) states, in establishing the standards, the Board shall consider. All other factors which are relevant” the

board does not get to choose which ‘other factors’ aggravating or mitigating, it considers. The word “may” in NAC 213518(1) give the Board the power of choice as to which factors it considers in violation of NRS 213.10885(2). He suggests to correct this, the words “may consider” in NAC 213.518(1) must be struck so that NAC 23.518(1) reads “the Board will consider the initial assessment, the factors contained in NRS 213.10885 & NRS 213.1099 and relevant aggravating and mitigating factors.” Furthermore, as the Board is looking to change every NAC 213.518 (2) & (3) aggravating and mitigating factor, the board must amend its Aggravating and Mitigating factors definitions for each NAC 213.518 (2) & (3) factor to reflect their new meanings.

Chairman DeRicco stated Mr. Grant second argument is that the word “may” in NAC 213518(1) improperly gives the Board the power of choice as to which factors it considers in violation of NRS 213.10885(2).

Chairman DeRicco further stated the word “may” refers to the aggravating and mitigating factors as a part of NAC 213.518, not to NRS 213.10885(2). The Board will consider all relevant factors, but all factors may not be relevant, so the word "may" is used.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger read a written public comment dated 3.28.2021 from Evan Grant. Mr. Grant stated NAC 213.518 (1)(b) utilizes the word “may” concerning relevant aggravating and mitigating factor consideration by the Board. NRS 213.10885(2) provides, “In establishing the standards, the Board shall consider all other factors which are relevant. The word “may” in NAC 213.518(1)(b) affords discretion that is impermissible under NRS 213.10885 (2). The Board must consider every applicable factor.

Chairman DeRicco stated Mr. Grant repeats his argument that the word “may” in NAC 213.518(1)(b) affords discretion that is impermissible under NRS 213.10885 (2).

Chairman DeRicco further stated this issue has been previously addressed.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Mr. Grant states NAC 213.518 does not specify how NAC 213.518 (2) & (3) factors are to be considered. NRS 213.10885(1) states that the Board’s “standards must be based upon objective criteria... without specifying how NAC 213.518(2) & (3) factors are to be considered, they cannot be considered objectively as each parole commissioner will then consider each factor based on personal bias resulting in subjective consideration.

Chairman DeRicco stated Mr. Grant also repeats his argument that without specifying how NAC 213.518(2) & (3) factors are to be considered, they cannot be considered objectively pursuant to NRS 213.10885(1) as each parole commissioner will then consider each factor based on personal bias resulting in subjective consideration.

Chairman DeRicco further stated this issue has already been addressed. The factors and the consideration are objective.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger read a written public comment from Patricia Adkisson. She made 3 substantially similar comments - one oral comment at the 9/29/21 workshop, one letter submitted on 9/25/21, and one letter dated 10/21/21. Ms. Adkisson provided that: Chapter 213 confers limited authority to this Board, when taking any action related to parole consideration. The effective Nevada Administrative Code must establish clear objective criteria and standards. NAC 213.518 does not establish any such objective criteria, nor does it establish a standard. A weighted value must be applied in order to give an objective effect in the determination. The legislature mandates objective criteria and standards in order to ensure the uniform operation and application of this Board's determination related to parole action, as contemplated by NAC 4 Nevada constitution article 4. The legislative purpose is to safeguard against arbitrary and capricious determinations. Parole is a grace of the state, that grace must be applied in a manner consistent with a uniform application and operation of laws, as well as equal protection of our system of laws. Otherwise, this Board could simply ignore the standards and only grant grace of our state through personal biases. The use of any factor contemplated pursuant to NAC 213.518 for Parole action, based upon an undefined standard, is simply a subjective review and prevents a fair hearing. Parole is a grace of the state, but the board is not permitted to grant or deny parole as a whim based on subjective standards not sufficiently defined with a weighted value. Parole action in this manner can never be said to be applied in a manner consistent with concepts of a fair hearing. It implicates equal protection issues and runs afoul of principles related to the uniform operation and application of general laws as enshrined in the Nevada constitution Article 4 subsection 21. Ms. Adkisson is requesting the Board to establish a weighted known value for each factor related to NAC 213.518.

Chairman DeRicco stated Ms. Adkisson argues that NAC 213.518 does not establish clear objective criteria and standards as mandated by the Legislature. She argues that a weighted value must be applied in order to give an objective effect in the determination and to ensure uniform operation and application.

Chairman DeRicco further stated there is not a way to assign a weighted value to all of the aggravating and mitigating factors in NAC 213.518. Depending on the case being considered, certain aspects of either an aggravating or mitigating factor may be considerably different. For instance, a person may be the victim of a fraud, or a victim of a violent offense. In what is requested in a weighted system, a case involving a victim would likely be weighted high, but given the circumstances of a particular case, may need to be weighted as low. This weighted request removes the discretion of the Board to determine the impact on individual cases. This is not fair to an inmate, or a victim if it were set in stone. That should be left to the Board's determination to determine the factors that may apply and use that information to make a determination whether or not parole is suitable.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger read a written public comment dated 9.29.2021 from John Quintero. Mr. Quintero requested the Board to consider the following comments and proposed amendments:

The word “will” is the helping very similarly to shall, will this mandatoriness ascribed to “shall” in definitions section be applied to “will”?

Chairman DeRicco stated Mr. Quintero asks if the mandatoriness ascribed to “shall” be applied to “will”?

Chairman DeRicco responded that essentially, yes.

Chairman DeRicco opened floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Mr. Quintero stated NRS 213.10885(1) uses words “standards” is this word synonymous with “factors” for the purpose of parole consideration?

Chairman DeRicco stated Mr. Quintero further asks if the use of the word "standards" in NRS 213.10885(1) is synonymous with “factors” for the purpose of parole consideration?

Chairman DeRicco further stated the standards are the regulations. Further, the term “factors” is not mentioned in NRS 213.10885(1). Factors are mentioned in NRS 213.10885(2) and in NAC 213518(2) and (3). They are not standards.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Mr. Quintero further stated NRS 213.10885 (1)(f) states that the standard created by regulation “must be based on objective criteria for determining improbability of success on parole” Has the Board researched and established the “objective criteria” which would be the justifying cause to invoke any mitigating or aggravating factors listing under NAC 213.518 (2) & (3)? If affirmed are these objective criteria published?

Chairman DeRicco stated Mr. Quintero also asks if the Board has researched and established the “objective criteria” which would be the justifying cause to invoke any mitigating or aggravating factors? And, if so, are these objective criteria published?

Chairman DeRicco further stated current NAC 213.518 standards have been in place since 2008. The guidelines that further define the aggravating and mitigating factors are published on the Parole Board website.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Mr. Quintero stated in practice NDOC makes a parole report and includes a crime related risk assessment that is derived from the cumulative weighted score of measurement criteria, then the board does its own predictive weighted risk assessment, the scores of which fluctuate in relation

to actuarial studies that tabulate the recidivism rates of occurrence, such that 18 year olds recidivism rates are higher than 65 year olds, correct?

Chairman DeRicco stated Mr. Quintero asks if the Board's predictive weighted risk assessment scores fluctuates in relation to actuarial studies that tabulate the recidivism rates of occurrence, such that 18-year old's recidivism rates are higher than 65-year old's?

Chairman DeRicco further stated our risk assessment must be revalidated regularly in accordance with statute and believes that Nevada was one of the first states to use a risk assessment, dating back to 2003. Our risk assessment will be going through the revalidation process in accordance with statute later this year. After the research is complete, on the Board will review the findings at a subsequent meeting.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Mr. Quintero stating this question assumes facts not evidence except by omission in the regulation 213.518 why does the board deviate from the statutory command to be based on objective criteria by placing objective values on each factor listed under aggravating and mitigator in section (2) & (3) of NAC 213.518? Does not leaving these factors up to the clinical judgement of the Board defeat the very purpose of the legislative mandate to use objective criteria to determine probability of success on parole?

Chairman DeRicco stated Mr. Quintero then argues that leaving the aggravating and mitigating factors up to the clinical judgement of the Board defeats the very purpose of the legislative mandate to use objective criteria to determine probability of success on parole.

Chairman DeRicco further stated the aggravating and mitigating factors are not a part of the initial assessment. After the initial assessment is complete, the Board will consider this initial assessment, along with the factors set forth in NRS 213.10885 and 213.1099 and may consider additional aggravating and mitigating factors. As previously explained, the entire process is objective.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Mr. Quintero stated based on anecdotal first-hand experience the parole applicants are not give a copy of the Parole Board's additional risk assessment and guidelines prior to the parole hearing. This official non-disclosure does not allow the inmate applicant any fair notice or opportunity to prepare for the hearing to improve his chances to be granted parole. Based on this what governmental interest exists that would outweigh the individual's fundamental right to notice of the assessment and opportunity to improve his changes at parole by addressing that report.

Chairman DeRicco stated Mr. Quintero next argues that the Board's failure to provide the parole applicants a copy of the boards risk assessment and guidelines prior to the parole hearing does not allow the inmate applicant fair notice or opportunity to prepare for the hearing. He asks what governmental interest exists that would outweigh the individual's fundamental right to notice of the assessment and opportunity to improve his chances at parole by addressing that report.

Chairman DeRicco further stated the risk assessment is first completed through the NDOC, which is a part of the Board report that each inmate signs before it is delivered to the Parole Board. As such, the results are available to all inmates prior to a Parole Board hearing. Further, these results are made a part of the record at each hearing and are placed on record and all inmates are afforded the opportunity to let the Board know if something has been calculated in error. When an error is encountered during a hearing, changes are made to correct the assessment. Further, the Nevada Parole Risk Assessment can be found on the Parole Board's website along with the Nevada Parole Recidivism Risk and & Crime Severity Guidelines, along with many other documents. The guideline document is publicly available.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger read a written public comment dated 10.25.2021 from John Quintero. Mr. Quintero requested to place following clarifications and concerns on the record, which considers how to carry out NRS 213.10885 and 213.1099. 1. This NAC proposal does not address section (1) of 213.10885, "shall adopt by regulation specific standards for each type of convicted person..." He commented: this proposal is a catchall that does not obey the command of the sovereign, he objects.

Chairman DeRicco stated Mr. Quintero argues that his NAC proposal does not address section (1) of NRS 213.10885, which provides that the Board "shall adopt by regulation specific standards for each type of convicted person"

Chairman DeRicco further stated this has been previously addressed.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Mr. Quintero states to clarify: The legal definition of "relevant" means "logically connected (evidence of fact) tending to prove a matter in issue (or disprove) having appreciable probative value, rationally tending to persuade of the probability or possibility of some alleged fact, Black's Law Dictionary 7th. He stated in 2012, the Board was advised by the attorney general in Opinion No 2012-02 "since the authorizing statute does not contain safeguards for accuracy, the division and Board should adopt reasonable safeguards to identify erroneous information in the reports provided to the board." Mr. Quintero further stated he has tried to raise such inaccuracies in writing and at his parole hearings and he has been punished for doing so which is evidence by verbal and non-verbal messaging by board, the last hearing Ms. Jackson said "our information from PSI differs from what you have to say" The term "factor" indicates a category of reality, not merely a category of mind (an opinion or false proposition) NRS 213.10885 states in (1) the "standards must be based upon objective criteria" (category of reality) That means each aggravator and mitigator must have a basis in fact not opinion; therefore the board is obligated to avoid arbitrary and capricious acts based on facts not in evidence – it is comment law that police reports nor PSI's are per se evidence but reports of alleged acts based on evidence; such things are mere denunciations as used in oppressive unjust political systems such as fascism, communism and the like.

Chairman DeRicco stated Mr. Quintero contends that each aggravator and mitigator must have a basis in fact not opinion; therefore, the Board is obligated to avoid arbitrary and capricious acts based on facts not in evidence – such as facts from police reports or PSI's. He argues that the Board should adopt reasonable safeguards to identify erroneous information in the reports provided to the Board.

Chairman DeRicco further stated definitions of each aggravating and mitigating factor can be found on our website. Further, after this regulation is finalized, these definitions will be reviewed as well. The Board may consider other factors as appropriate. An inmate has a chance to challenge the factual content of the PSI (which may be based on police reports) before sentencing pursuant to NRS 176.156 and can do so if they believe that the facts are not accurate. Furthermore, the PSI statute is clear that it may be used at future hearings, such as board meetings. The Board relies on presentence reports, and if information is not accurate, individuals have an avenue to get them corrected. Additionally, Board reports submitted by NDOC also require inmate signature, so if something there is inaccurate, the inmate should work with the NDOC to correct an issue prior to signature.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Mr. Quintero stated all the mitigators and aggravators should be actuarially weighted and each category tabulated in a format which tabulates whether the factor is present and what degree of weight is scored and deducted or added to the NDOC and Parole Risk assessment; As it stands the Parole Board's acts of negating the indications of the low risk on recidivist probability are done so based NOT on factors, (categories of reality) but on categories of mind about the unpopularity or political mood of the class of crimes considered, (opinions).

Chairman DeRicco stated Mr. Quintero contends that the mitigators and aggravators should be actuarially weighted and each category tabulated in a format which tabulates whether the factor is present and what degree of weight is scored and deducted or added to the NDOC and Parole Risk assessment.

Chairman DeRicco further stated there is not a way to compare apples with oranges. The factors either apply, or they do not. When they do apply, the Board may consider them. A weighted factor in one case will likely not be of the same weight in another. This is how the Legislature set up the system. Had it wanted an inflexible actuarial system, it could have done so in statute. But, instead, the Legislature chose an approach that prioritizes the consideration of 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.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Mr. Quintero states that NRS 213.10885 (4) states that the Board must provide greater punishment as related to recidivist patterns or who commits a serious crime, with a violent crime considered the most serious – the Board is not regulating the degrees of seriousness, but have allowed another agency to make that determination – the Nevada Dept of Corrections (see NRS 209.341 & NAC 213.512). This violates the mandate of 213.10885 (4) which does not contemplate

NDOC's construction and does not authorize said construction or use or creation of a "severity level." This issue must be raised now insofar as its relevant.

Chairman DeRicco stated Mr. Quintero argues that the Board's failure to assign the degrees of seriousness itself violates the mandate of 213.10885 (4) which does not contemplate NDOC's construction and does not authorize said construction or use or creation of a "severity level."

Chairman DeRicco further stated the standards adopted by the Board provide for a greater punishment for a convicted person who has a history of repetitive criminal conduct or who commits a serious crime, with a violent crime considered the most serious, than for a convicted person who does not have a history of repetitive crimes and did not commit a serious crime, in accordance with statute. 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 the floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Mr. Quintero stated the issue is relevant because the Board is considering the authorization statute NRS 213.10885, and as it stands, the "highest severity" is a category that always must "consider factors" whereas all other categories high, moderate low moderate low & low all at some point receive a grade grant parole which makes the entire scheme patently unfair because NDOC has made the vast majority of crimes "highest" and both agencies escape responsibility or answerability to any rational challenge and is based on "categories of mind" or mere sentiment, popularity of crime in general or in particular; neither does NRS 213.1099 contemplate NDOC's determination of crime severity or any power to make such a regulation as 213.1099(c) says "Board shall consider (c) the seriousness of the offense and the history of criminal conduct...."

Chairman DeRicco stated Mr. Quintero contends that because NDOC has made the vast majority of crimes "highest," both agencies escape responsibility or answerability to any rational challenge and the decision is based on mere sentiment or popularity of the crime in general.

Chairman DeRicco further stated the Board has determined that 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. If there is further concern here, Mr. Quintero should address this issue with NDOC.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Mr. Quintero stated he objects the Board's neglect in adopting the necessary notice and opportunity as suggested in his letter to Board dated 9.8.2021; the choice to use aggravators and mitigators is done in a government action outside presence of inmate applicant this puts the applicant at disadvantage because it deprives him or her the necessary information to speak to the issues to be used against her or him during opening statement

Chairman DeRicco stated Mr. Quintero argues that the choice to use aggravators and mitigators outside of the presence of inmate applicant puts the applicant at disadvantage because it deprives him or her the necessary information to speak to the issues to be used against her or him during the opening statement.

Chairman DeRicco further stated as previously stated, the definitions of the aggravating and mitigating factors are available on our website. All inmates can view them prior to a hearing to determine which may apply to their case, and when there are discrepancies, the Board allows input from an inmate at a hearing if one of these factors appear in error. These factors which are applied are put on record at each hearing. If an error is found at the time of the hearing, a factor can either be added or removed. Bottom line, the Board just wants to ensure accurate aggravating and mitigating factors are considered for all inmates appearing before the Board.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Mr. Quintero stated at the time of hearing, considering he will (nor anybody re-classified by NDOC to "highest severity" will always have mitigating and aggravating factors considered, and never received the guarantee of "grant parole" as outlined in attached copy of NAC 213.516 the lack of prior notice to prepare an opening statement to improve chance to demonstrate suitability for parole constitutes unfair surprise. If unfair surprise is valid under state or federal constitution then we need new ones, because when any form of government threatens basic fairness in government process it is time to alter the operational principles that guide the government.

Chairman DeRicco stated Mr. Quintero argues that anyone classified by NDOC to "highest severity" will always have mitigating and aggravating factors considered, and never received the guarantee of "grant parole."

Chairman DeRicco further stated the assessment is an objective tool and the starting point in this process. Parole is an act of grace, and no inmate has a guarantee of "grant parole." The Board considers the initial assessment, and the factors set forth in NRS 213.10885 and 213.1099 and may consider additional aggravating and mitigating factors. This is done in cases where the initial assessment is to deny parole all the way to when the initial assessment is to grant parole at initial eligibility. Per this revalidated assessment, you are correct that anyone with a "highest" severity level will not have an initial assessment to grant parole.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger read a written public comment dated 11.29.2021 from Adam Garcia. Mr. Garcia submitted a letter from his lawyer Alan Erb to Board and the Board's response dated Feb 18, 2021, please note 3rd paragraph of Board response made by Eric Christiansen "According to NRS 213.1214 and additional evaluation is required for convicted sex offenders that supersedes the initial risk assessment" Mr. Garcia stated nothing in that statute mentions an "additional evaluation" ... that supersedes the initial risk assessment. This relates to proposed aggravator (2)(g) of NAC 213.518. Mr. Garcia is requesting to take note into consideration in our upcoming regulation workshop on 11.29.21 this organizational deviation from the law, and place his evidence into record, and answer on the record how this misrepresentation by Christiansen can be explained and take steps to assure the Board's future reliance on this falsehood will be foreclosed by regulation.

Chairman DeRicco stated Mr. Garcia provides that nothing in NRS 213.1214 mentions an additional evaluation that supersedes the initial risk assessment that is now provided for in proposed aggravator (2)(g) of NAC 213.518.

Chairman DeRicco further stated this is correct, however, pursuant to NRS 213.1214: 4. The Board shall consider an assessment prepared pursuant to this section before determining whether to grant or revoke the parole of a person convicted of a sexual offense. And 5. The Board may adopt by regulation the manner in which the Board will consider an assessment prepared pursuant to this section in conjunction with the standards adopted by the Board pursuant to NRS 213.10885. The Board meets these requirements with this NAC.

Chairman DeRicco opened the floor for discussion.

Commissioner Christensen stated he wrote the letter in question and wanted to place on the record that they do consider that evaluation as required by law.

Ms. Mellinger read a written public comment dated 3.28.2022 from Tonja Brown, Advocates for the Inmates and the Innocent. Ms. Brown stated they agree with most of these amendments. However, the guidelines should be objective. Aggravating factors based upon a feeling or opinion of a Board member should not be allowed.

Chairman DeRicco stated Ms. Brown provides that the guidelines should be objective and that aggravating factors based upon a feeling or opinion of a board member should not be allowed.

Chairman DeRicco further stated aggravating factors are not based upon feeling or opinion, they are objective. Definitions for aggravating factors can be found on the Board's website.

Chairman DeRicco opened the floor for discussion.

There was no further discussion.

Ms. Mellinger continued to read, Ms. Brown stated extreme or abnormal aspects of a crime to one member may not be considered as such by most people. Ask them to stick to numbers or yes or no factors. Eliminate this subjective subsection.

Chairman DeRicco stated Ms. Brown also provides that extreme or abnormal aspects of a crime to one member may not be considered as such by most people and is subjective.

Chairman DeRicco further stated as provided for in the guideline definitions, this factor may be indicated when the details of the crime indicate that the crime was conducted in such a manner that shows sophistication in planning or carrying out an offense, or the nature of the conduct is shocking to a normal person. Examples may include but are not limited to: Mutilation or abuse of a corpse following a murder; serial murder; serial sexual assault or numerous victims of a sex offender; the torture of a person or animal. For the record, this factor is applied sparingly.

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 that the purpose of this public comment session is regarding proposed regulation R115-21P. This proposed regulation revises language and re-organizes the language of the aggravating and mitigating factors that the Board may consider; and providing other matters properly relating 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 R115-21P. 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 XI and allowing the opportunity for public comment on this issue on Agenda Items X and XII, 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 further discussion regarding this specific regulation.

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 R115-21P as reviewed and submitted by LCB.
Made:	Chairman DeRicco
Seconded By:	Commissioner Weisenthal
Votes in Favor:	DeRicco, Jackson, Baker, Weisenthal, Christiansen, Verchio
Votes Opposed:	None
Results:	Motion passed