

Suggested change to NRS 176.035 and NRS 213.1212

Aggregated Sentences & Parole Eligibility

Suggested Language and justification for change:

The aggregated sentencing law allows an inmate to “opt-in” to sentence aggregation and have consecutive sentences aggregated into one sentence for the purpose of parole eligibility and sentence expiration. However, because the statutory language was not clearly stated, it has been determined that sentences from dissimilar cases may not be aggregated.

Subsection 6 of NRS 176.035: changes language related to parole eligibility on sentences of death and life without parole, and provides that except as otherwise provided for in AB 267, a sentence of death or life without parole is executed without reference to eligibility for parole on any other sentence. This change is suggested because the current statutory version implies that a sentence of death or life without parole takes priority only if it is imposed for a crime committed while serving a term of imprisonment.

Subsection 8 of NRS 176.035: would allow a court and/or an inmate to aggregate dissimilar cases.

Subsection 9 of NRS 176.035: Specifies that a sentence imposed as an additional penalty shall be aggregated by the court and may be aggregated if the prisoner elects to have the sentences aggregated.

Subsection 3 of NRS 213.1212: Most dissimilar cases that are aggregated will be for crimes that occurred during a period of time in which one credit earning law would apply (for example, over the course of a week, an inmate commits robberies in multiple counties so there are multiple cases running consecutive to each other). For the most part, when aggregating these sentences, the credit law applied to the aggregated sentence will be the law in effect at the time the crime was committed. There are scenarios where an inmate committed multiple crimes over a period of time which spanned more than one credit earnings law. This change is designed to facilitate the aggregation of these types of scenarios.

Whether dissimilar cases and enhancements are aggregated by the court or an inmate opts to aggregate dissimilar cases or enhancements, NDOC will establish a fixed minimum term of each sentence based upon the credit law that would apply to the specific sentence. The minimum term will be based upon the assumption the inmate will earn the maximum projected credits available for them to earn at the time they aggregate. Once the minimum terms of the sentences to be aggregated have been determined, the NDOC will aggregate the sentences and establish a minimum aggregated sentence for parole eligibility which will not change based on future credit earnings.

Subsection 4 of NRS 213.1212: Once sentences for dissimilar cases have been aggregated, the current credit earnings law (NRS 209.4465 & NRS 209.4475) will be applied to reduce the maximum term of the aggregated sentence effective the date of aggregation.

Subsection 6 of NRS 213.1212: In an effort to facilitate original requests of inmates to aggregate dissimilar cases, this section will allow the NDOC, at the request of the inmate, to

disaggregate sentences that parole action has not been taken on, then re-aggregate all the cases and sentences into a single aggregated sentence

Subsection 7 of NRS 213.1212: Allows for the aggregation of separate aggregated sentences to be aggregated into one aggregated sentence.

Subsection 8 of NRS 213.1212: This section specifies that an inmate may not bring a cause of action against the State for credits they may have earned had they not aggregated.

NRS 176.035 Conviction of two or more offenses; concurrent and consecutive sentences; aggregating consecutive sentences.

1. Except as otherwise provided in subsection 3, whenever a person is convicted of two or more offenses, and sentence has been pronounced for one offense, the court in imposing any subsequent sentence may provide that the sentences subsequently pronounced run either concurrently or consecutively with the sentence first imposed. Except as otherwise provided in subsections 3 and 4, if the court makes no order with reference thereto, all such subsequent sentences run concurrently. For offenses committed on or after July 1, 2014, if the court imposes the sentences to run consecutively, the court must pronounce the minimum and maximum aggregate terms of imprisonment pursuant to subsection 2, unless the defendant is sentenced to life imprisonment without the possibility of parole or death.

2. When aggregating terms of imprisonment pursuant to subsection 1:

(a) If at least one sentence imposes a maximum term of imprisonment for life with the possibility of parole, the court must aggregate the minimum terms of imprisonment to determine the minimum aggregate term of imprisonment, and the maximum aggregate term of imprisonment shall be deemed to be imprisonment in the state prison for life with the possibility of parole.

(b) If all the sentences impose a minimum and maximum term of imprisonment, the court must aggregate the minimum terms of imprisonment to determine the minimum aggregate term of imprisonment and must aggregate the maximum terms of imprisonment to determine the maximum aggregate term of imprisonment.

3. Except as otherwise provided in this subsection, whenever a person under sentence of imprisonment for committing a felony commits another crime constituting a felony and is sentenced to another term of imprisonment for that felony, the latter term must not begin until the expiration of all prior terms, including the expiration of any prior aggregated terms. If the person is a probationer at the time the subsequent felony is committed, the court may provide that the latter term of imprisonment run concurrently with any prior terms or portions thereof. ~~If the person is sentenced to a term of imprisonment for life without the possibility of parole, the sentence must be executed without reference to the unexpired term of imprisonment and without reference to eligibility for parole.~~

4. Whenever a person under sentence of imprisonment commits another crime constituting a misdemeanor or gross misdemeanor, the court shall provide expressly whether the sentence subsequently pronounced runs concurrently or consecutively with the one first imposed.

5. Whenever a person under sentence of imprisonment commits another crime for which the punishment is death, the sentence must be executed without reference to the unexpired term of imprisonment.

6. *Except as otherwise provided for in Assembly Bill 267 of the 2015 Legislative Session, a sentence of death or life without the possibility of parole shall be executed without reference to eligibility for parole on any sentence the prisoner may be required to serve.*

~~6~~ 7. This section does not prevent the State Board of Parole Commissioners from paroling a person under consecutive sentences of imprisonment from a current term of imprisonment to a subsequent term of imprisonment.

8. *Except as provided in subsection 3, dissimilar cases may be aggregated pursuant to a judgement of conviction or subsection 5 of NRS 213.1212.*

9. *When imposing additional penalties pursuant to sections 193.161, 193.162, 193.165, 193.166, 193.167, 193.1675, 193.168 and 193.1685 of NRS, the court shall aggregate the sentence imposed for the additional penalty with the sentence imposed for the commission of the underlying offense. A prisoner may elect to have a sentence imposed as an additional penalty in this subsection aggregated in accordance with NRS 213.1212.*

NRS 213.1212 Eligibility for parole of prisoner whose sentences have been aggregated; written request to aggregate sentences.

1. Notwithstanding any other provision of law, if a prisoner is sentenced pursuant to [NRS 176.035](#) to serve two or more consecutive sentences, the terms of which have been aggregated:

(a) The prisoner shall be deemed to be eligible for parole from all such sentences after serving the minimum aggregate term of imprisonment; and

(b) The Board is not required to consider the prisoner for parole until the prisoner has served the minimum aggregate term of imprisonment.

2. *Except as otherwise provided for in subsection 3, for ~~For~~ purposes of determining parole eligibility, a prisoner whose sentences have been aggregated may earn credit pursuant to [NRS 209.433](#) to [209.449](#), inclusive, which must be deducted from the minimum aggregate term of imprisonment or the maximum aggregate term of imprisonment, as applicable. Such credits may be earned only to the extent that the credits would otherwise be earned had the sentences not been aggregated.*

3. *When aggregating sentences that are subject to a different credit earning laws as provided for in sections 209.433, 209.443, 209.446, 209.4465, 209.447 and 209.4475 of NRS, the department shall determine the minimum term of each sentence to be aggregated to establish a minimum aggregated term for parole eligibility as follows:*

a. *If the minimum term of a sentence to be aggregated is eligible to earn credits pursuant to subsection 8 of NRS 209.4465, the minimum term of the sentence to be aggregated shall be the minimum term set by the court, and subsection 9 of NRS 209.4465 shall apply to the sentence when it is aggregated.*

b. *If the minimum term of a sentence to be aggregated is not eligible for the reduction of credits, the minimum term of the sentence to be aggregated shall be the term pronounced by the court or the minimum term required by law if the minimum term is not pronounced by the court.*

c. *If eligibility for parole on a sentence is determined based upon credit earnings pursuant to NRS 209.433, the department shall establish a fixed minimum term for that sentence based upon the assumption the prisoner would earn all future credits to reduce that sentence as provided for by NRS 209.433, except for credits not already earned for donating blood and additional credits for educational achievements pursuant to subsection 2 of NRS 209.433. Credits for donating blood or for educational achievements awarded after the sentences are aggregated in accordance*

with this subsection shall be applied to reduce only the maximum term of the aggregated sentence.

d. If eligibility for parole on a sentence is determined based upon credit earnings pursuant to NRS 209.443, the department shall establish a fixed minimum term for that sentence based upon the assumption the prisoner would earn all future credits to reduce that sentence as provided for by NRS 209.443, except for credits not already earned for donating blood and additional credits for educational achievements pursuant to subsection 3 of NRS 209.443. Credits for donating blood or for educational achievements awarded after the sentences are aggregated in accordance with this subsection shall be applied to reduce only the maximum term of the aggregated sentence.

e. If eligibility for parole on a sentence is determined based upon credit earnings pursuant to NRS 209.446, the department shall establish a fixed minimum term for that sentence based upon the assumption the prisoner would earn all future credits to reduce that sentence as provided for by NRS 209.446, except for credits not already earned for educational achievements pursuant to subsection 2 of NRS 209.446 or those credits not already awarded for meritorious service pursuant to NRS 209.446. Meritorious service credits and credits for educational achievements awarded after the sentences are aggregated in accordance with this subsection shall be applied to reduce only the maximum term of the aggregated sentence.

4. Sentences which have been aggregated pursuant to subsection 3 shall earn credit to reduce the maximum term pursuant to NRS 209.4465 and NRS 209.4475 effective the date the election to aggregate the sentence was made, or effective on the sentence date, as reduced by any presentence credits stipulated in the judgement of conviction or similar conviction documents when dissimilar cases are aggregated by the court.

3.5. Except as otherwise provided in subsection 3 of [NRS 176.035](#), a prisoner who is serving consecutive sentences which have not been aggregated may, by submitting a written request to the Director of the Department of Corrections, make an irrevocable election to have the sentences aggregated. If the prisoner makes such an irrevocable election to have the sentences aggregated and:

*(a) The prisoner has not been considered for parole on any of the **requested** sentences, the Department of Corrections shall aggregate the sentences in the manner set forth in [NRS 176.035 and this section](#), and the Board is not required to consider the prisoner for parole until the prisoner has served the minimum aggregate term of imprisonment.*

(b) The prisoner has been considered for parole on one or more of the sentences, the Department of Corrections shall aggregate only the sentences for which parole has not been considered. The Board is not required to consider the prisoner for parole on the aggregated sentences until the prisoner has served the minimum aggregate term of imprisonment.

6. At the request of a prisoner, the Department of Corrections may disaggregate previously aggregated sentences that have not had parole action taken on them to aggregate them with other cases pursuant to this section or [NRS 176.035](#).

7. Except as otherwise provided for in subsection 3 of [NRS 176.035](#), when aggregating sentences which may be comprised of sentences which make up separate aggregated sentences, the department may aggregate all the consecutive sentences to make a single aggregated sentence.