

Recommendations for Proposed Legislation Concerning Implementation of AB 236 (2019)

The Nevada Department of Sentencing Policy (NDSP), in collaboration with the Nevada Division of Parole and Probation (NPP), the Nevada Department of Corrections (NDOC), and the Nevada Board of Parole Commissioners met to discuss the implementation of Assembly Bill No. 236 (2019). The agencies discussed the policies which drive AB 236 and areas of opportunity where changes could be made to advance those policies, improve intended outcomes, and advance the administration of criminal justice in Nevada.

The NDSP analyzed the issues and recommendations that were discussed and presents the following to the Nevada Sentencing Commission which could be used for a bill draft request (BDR) for the 2023 or the 2025 legislative session depending on any additional vetting that may be required. Any recommendations approved by the Nevada Sentencing Commission could be included in the policy BDR submitted by NDSP and the NSC.

TEMPORARY REVOCATIONS

AB 236 Policies (as stated in the January 2019 Final Report of the Advisory Commission on the Administration of Justice)

- Improve the efficiency and effectiveness of community supervision
- Reduce returns to prison for technical violations
- Limit period of incarceration resulting from chronic and serious technical violations rather than revoke for remainder of sentence
- Expand the use of swift, certain, and proportional sanctions

Temporary Revocations for Parolees - NRS 213.1519

(NRS 176A.630 applies to probationers)

If the Nevada Board of Parole Commissioners (Board) finds that a parolee committed one or more technical violations of a condition of parole, the Board *may*:

- Continue parole or
- Order a temporary revocation and order a term of imprisonment of *not more than*:

1st temporary parole revocation	30 days
2nd temporary parole revocation	90 days
3rd temporary parole revocation	180 days
4th temporary parole revocation	Fully revoke and impose the remainder of the sentence

The Nevada Division of Parole and Probation (NPP) seeks a revocation of parole or probation after all graduated sanctions have been exhausted. (NPP is required to adopt a written system of graduated sanctions to use when responding to a technical violation.)

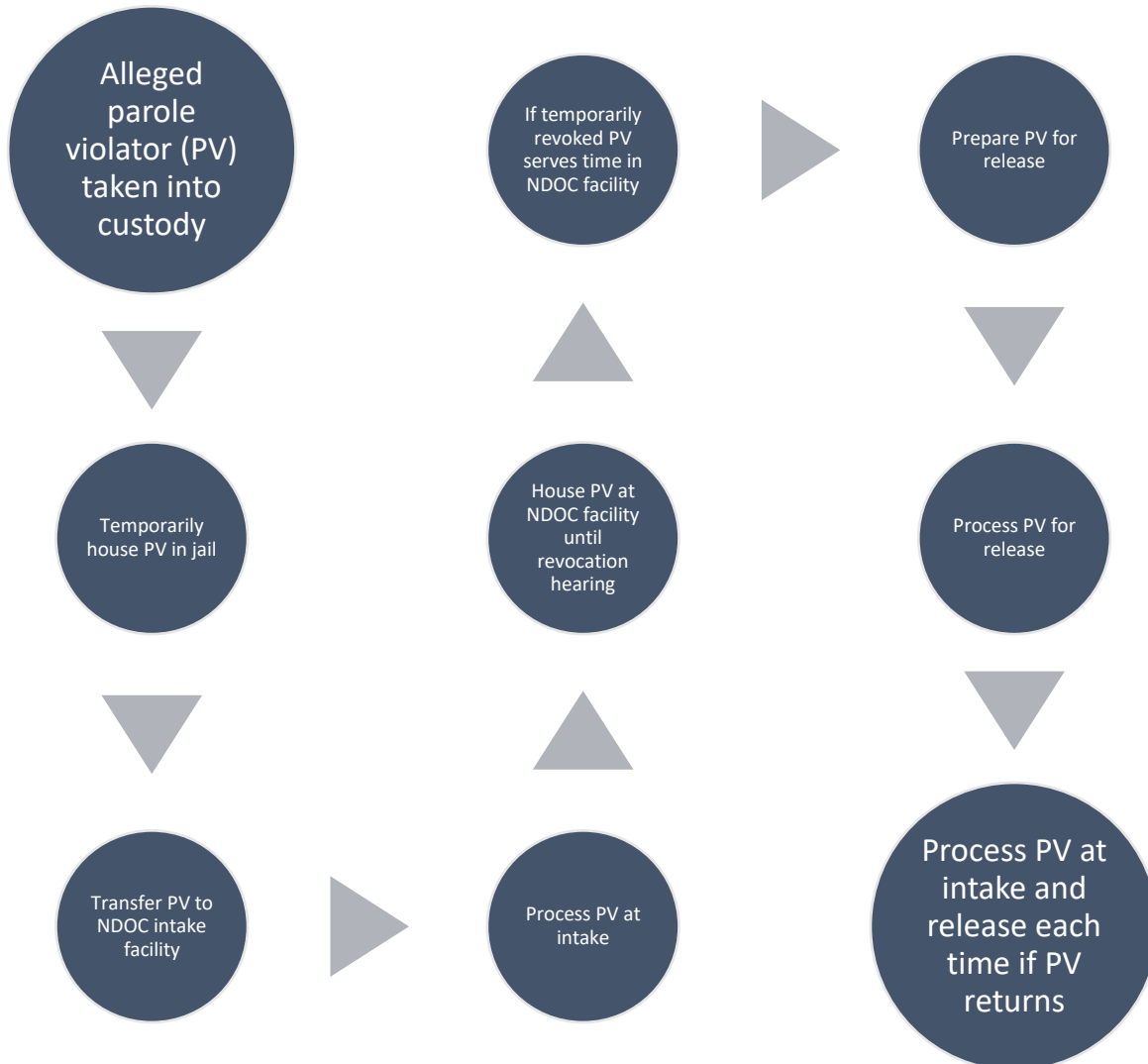
NOTE: At this point only temporary revocations as they apply to parolees are being evaluated. Temporary revocations as they apply to probationers will also be reviewed.

Issues

The agencies worked to implement this policy but there are some areas of opportunity that need to be explored, including:

- Analyzing the data related to temporary revocations for parolees
- Evaluating the graduated sanctions
- Assessing the existing statutory mechanism for processing parolees awaiting revocation hearings

Process for Temporary Revocations



Possible Recommendations for a BDR

When the policies leading to the enactment of AB 236 were developed, various options for temporary revocations were discussed and in recent discussions, alternatives were discussed again. Some of those options are identified below along with how these changes could advance the policies and improve desired outcomes. The recommendations propose to revise the timeframes of the temporary revocations and the manner in which the temporary revocations are applied.

#	Recommendation	Improved Implementation of AB 236 Policies and Other Policies Relating to Supervision
1	Eliminate 30-day temporary revocation and replace with flash incarcerations (i.e., serving 48 hours to 10 days in jail or residential confinement) per the discretion of NPP	<ul style="list-style-type: none"> - Improve the efficiency and effectiveness of community supervision - Reduce returns to prison for technical violations - Reduce recidivism to an NDOC facility - Focus prison resources on serious and violent offenders
2	Serve 30 days on the weekends/over time in a jail or on residential confinement per the discretion and supervision of NPP	<ul style="list-style-type: none"> - Improve the efficiency and effectiveness of community supervision - Reduce returns to prison for technical violations

TECHNICAL VIOLATIONS

AB 236 Policies

- Improve the efficiency of community supervision
- Expand the use of swift, certain, and proportional sanctions
- Reduce revocations admitted to prison for technical violations
- Establish effective sanctions for changing offender behavior

Definition of Technical Violation

(The same definition for technical violation is provided for probationers in NRS 176A.510 and in NRS 213.1519 for parolees)

A technical violation is an alleged violation of parole or probation that does not constitute absconding or termination from a specialty court program and is not the commission of a:

- New felony or gross misdemeanor
- Battery which constitutes domestic violence
- Certain DUI offenses
- Administration of a controlled substance to aid commission of crime of violence that is punishable as a misdemeanor

- Harassment, stalking, or aggravated stalking
- Violation of certain protection orders
- Violation of a stay away order

Issues

The definition of technical violation does not exclude the violation of statutorily required conditions for sexual offenders. (NRS 213.1245, 213.1255, and 213.1258 provide the mandatory conditions of parole for an offender convicted of sexual offenses.) The statutory scheme governing the conditions of sex offenders can conflict with technical violations or temporary revocations for such offenders.

The definition of technical violation also does not exclude an offender whose conditions order participation in certain treatment programs. Where an offender does not complete such a program and a temporary revocation is ordered for a technical violation, the length of the temporary revocation may be less than if the offender had completed certain programs. This means a temporary revocation for up to 30 or 90 days could be ordered for an offender leaving a 6-month treatment program.

Possible Recommendations

#	Recommendation for a BDR	Improved Implementation of AB 236 Policies and Other Policies Relating to Supervision
3	Exclude the violation of statutorily required conditions for sex offenders from the definition of technical violation	- Will not frustrate the statutory scheme that specifically governs the supervision of sex offenders
4	Exclude offenders whose conditions order participation in a treatment program	- Ensure those who leave a treatment program, which was ordered as a condition, receive a swift, certain, and proportional sanction

ABSCONDING

AB 236 Policies

- Improve the efficiency of community supervision
- Expand the use of swift, certain, and proportional sanctions
- Reduce revocations admitted to prison for technical violations
- Effective sanctions for changing offender behavior

NRS 176A.630 (paragraph (a) of subsection 5) provides the definition for absconding

“Absconding” means that a person is actively avoiding supervision by making his or her whereabouts unknown to the Division of Parole and Probation for a continuous period of 60 days or more.

Issues

The definition of absconding does not exempt offenders who leave a treatment program which was ordered as a condition of supervision. To be considered an absconder, the offender needs to be absent for 60 days. An offender who has left a treatment program ordered as a condition of supervision could pose a risk to the offender or the public if the offender is not getting the treatment that was ordered.

Additionally, in general the time frame which defines absconding as being absent for 60 days might be too long to be effective and may pose a risk to the offender and the public.

Possible Recommendations

#	Recommendation for BDR	Improved Implementation of AB 236 Policies and Other Policies Relating to Supervision
5	Create a path to absconding rather than a prescribed number of days (provide conditions and factors to consider when evaluating whether someone has absconded)	- Ensure there are swift, certain, and proportional sanctions that can change offender behavior
6	Exclude from the definition of absconding the unauthorized departure from a treatment facility which was ordered as a condition of supervision	- Ensure there are swift, certain, and proportional sanctions intended to change offender behavior in certain situations
7	If a prescribed set of days is desired, revise to 30 days	- Provide consistent sanctions for all offenders on supervision - Promote the swift, certain, and proportional application of sanctions

CLEAN-UP

During the 2021 Legislative Session, Assembly Bill No. 393 (AB 393) functioned as the clean-up bill to AB 236 (2019) including creating similar sections in chapter 176A of NRS and chapter 213 of NRS as they apply to probationers and parolees, respectively. This recommendation is to make a conforming change in NRS 213.1078 to align with the language in section 8 of AB 393.

Section 8 (subsection 5) of AB 393 provides:

5. Upon a finding that a term or condition of probation ordered pursuant to subsection 1 of NRS 176A.450 or the level of supervision set pursuant to this section does not align with the results of a risk and needs assessment administered pursuant to subsection 1 or 2:

- (a) The supervising officer shall notify the court of the finding; and
- (b) The court may modify the terms and conditions of probation pursuant to subsection 1 of NRS 176A.450.

The proposed change would amend subsection 8 of NRS 213.1078 as follows:

8. Upon a finding that a condition of parole or the level of parole supervision set pursuant to this section does not align with the results of a risk and needs assessment administered pursuant to subsection 1 or 4 ~~the~~:

(a) The supervising officer shall ~~submit a request to~~ notify the Board ~~to~~ of the finding; and

(b) The Board may modify the condition or level of supervision set by the Board.

↩ The Division shall provide written notification to the parolee of any modification.

#	Recommendation for BDR	Improved Implementation of AB 236 Policy and Other Policies Relating to Supervision
8	Amend NRS 213.1078 to conform with section 8 of AB 393	Ensure consistent and effective supervision of offenders

FUNDING OF EXISTING AND PROPOSED POLICIES

In general, each agency will need additional funding to ensure the policies are implemented successfully.

Additionally, as more criminal justice reform is enacted where offenders are shifted from incarceration to supervision, there needs to be appropriate resources provided to NPP to ensure effective supervision.

The NDSP will monitor these issues during the legislative session and offer support and analysis where appropriate and possible.

NSC RECOMMENDATIONS

NEXT STEP: Decide which recommendations are ready to move forward for a BDR recommendation and which need more evaluation and vetting before making a decision. Status of each recommendation could be:

- Approve to include in BDR for 2023 Legislative Session
- Needs more evaluation and vetting
- Tentatively approve to include in BDR for 2025 Legislative Session

#	Description	Legislative Session	Status
1	Eliminate 30-day temporary revocation and replace with flash incarcerations		
2	Serve 30-day temporary revocation over time in a jail or residential confinement		
3	Exclude sex offenders from definition of technical violation		
4	Exclude offenders ordered to a treatment program as a condition of supervision from the definition of technical violation		
5	Create a path to absconding rather than a prescribed number of days		
6	Exclude offenders ordered to a treatment program as a condition of supervision from the definition of absconding		
7	Revise time for absconding to 30 days		
8	Revise NRS 213.1078 to conform with section 8 of AB 393		