My name is Denise Bolanos, an activist with Return Strong. My husband Arturo Bolanos was wrongfully convicted 11 years ago and is currently incarcerated in NDOC. I joined Return Strong to learn more about the prison system in this state and to see how I could help make everyday life within the walls of NDOC better for my husband *while we fight this conviction*. It is disheartening but also not at all surprising to learn from the Nevada Independent that an audit conducted recently shows that NDOC has profited 10 million dollars between June 2019 and June 2021 specifically on the sales made in the inmate store. My first fight with Return Strong, was when NDOC was taking upwards of 80% of all deposits made on inmate accounts which they use primarily for buying necessities from the store like deodorant, laundry soap and shampoo among other things. TO now find out that not only were they taking this exorbitant amount but also making a profit of 40% on the funds that we as a one income household struggled so hard to be able to afford is infuriating. We have been calling for transparency and accountability from NDOC since the beginning and not only pertaining to how they handle the financial aspects of their organization but also on numerous other issues like the handling of COVID, Medical Neglect and many others. This audit only further verifies that an independent investigation into NDOC is needed and warranted and that they are not just coming from "family members complaining they can't get in" or from "offenders complaining they can't get services" but because there is a real substantiated concern that their abuse of power is not only financial and the thousands of people

housed in NDOC are first and foremost human beings and that in and of itself merits the issue being looked into.

Thank you

RECEIVED 2/2/22

Evan Grant - 1159544
NNCC
P.O. Box 7000
Carson City, NV 89702

January 31, 2022

RE: February 11, 2022, Meeting of the Nevada Sentencing Commission

Dear Victoria Gonzalez, State of Nevada Department of Sentencing Policy, and Nevada Sentencing Commission:

Thank you for the letter dated January 18, 2022, in regards to my submissions being included as public comment materials for the February 11, 2022, meeting of the Nevada Sentencing Commission. I greatly appreciate my efforts being heard as that has been one of the most difficult challenges I have faced over this past year.

When I began researching Nevada's proper parole consideration laws nearly two years ago, I did not expect to find so many inconsistencies between the Legislature's mandates and intentions and the Nevada Board of Parole Commissioners' (Parole Board) Nevada Administrative Codes, Policies, and Practices. Unfortunately, the Parole Board was not the only state agency that I found to be interfering with proper parole consideration.

Upon further investigation, the Nevada Department of Corrections (NDOC) is also failing to execute mandatory statutory provisions. NRS 213.1214 requires the NDOC to assess the recidivism risk of persons who have committed a sexual offense prior to the parole board's consideration of that person. Through documented, written correspondence signed and dated by NDOC officials, I discovered that the NDOC has not updated its Administrative Regulation governing such an assessment since 2010

(despite the method that was in use in 2010 being banned by the Legislature by Senate Bill 104 in 2013). Furthermore, while the NDOC is not following the banned method contained in its Regulations, it is currently utilizing a risk assessment instrument that is neither approved by those Regulations nor permitted under NRS 213.1214(1). The STATIC-99R assessment instrument, presently used by the NDOC, cannot identify high risk, a requirement of NRS 213.1214(1). Lastly, the NDOC has acknowledged, in writing, that it does not have a single policy or procedure discussing how the current assessment is to be conducted, contrary to specific requirements contained in NRS 213.1214(2).

Throughout all of my endeavors to bring Nevada's proper parole consideration issues to light, I have made it my mission to provide objective, fact-based analyses at every stage. I believe that the system of parole consideration set forth by the Legislature to be fair and just, provided it is followed as intended. Regretably, years of personal bias by Parole Board and NDOC officials has tainted a process designed to protect both prisoner and public.

Beyond the documents that I have already submitted to the Department of Sentencing Policy for review, I have initiated three legal actions in the First Judicial District Court of Nevada (Case No.'s 21 OC 00112 1B, 21 OC 00124 1B, and 21 OC 00158 1B). 00112 and 00158 challenge the Parole Board's lack of execution of mandatory Nevada Statutory and Constitutional provisions, while 00124 addresses the NDOC's failure to comply with NRS 213.1214 and its own internal regulations. Copies of each have been included with this letter for use as you see fit.

Where I feel the Legislature could reduce the risk of further proper parole consideration inequities is in increased oversight of these two state agencies. Currently, no Nevada law requires the NDOC to report on its execution of the NRS 213.1214 risk assessment nor its other mandated parole consideration duties under NRS 213.131. Additionally, the Parole Board is overseen in only two general ways. First, when proposing a Nevada Administrative Code, the Legislative Council Bureau reviews the Parole Board's proposed language, but solely within the limited scope called for in NRS Chapter 233B. Second, the Parole Board self-reports to the Legislature, pursuant to NRS 213.10885(7), without any third party verifying the accuracy of its self-assessment. Given these conditions, it is easy for improper parole consideration to occur and go unnoticed when the NDOC is free of oversight and the Parole Board's actions are only visible when it proposes significant changes to its operation and/or when it self-reports that its process failed pursuant to NRS 213.10885(7).

While parole in Nevada is a grace of the state under NRS 213.140(1), the same provision gives those incarcerated a state-created right to proper, per Nevada law, parole consideration. This right not only ensures a fair process for the prisoner, but protects the public from the early release of prisoners who are a high risk to recidivate. After all, the parole board's objective is to determine "[T]he probability that a convicted person will live and remain at liberty without violating the law if parole is granted or continued." NRS 213.10885(2) & (6). When those managing the parole consideration system fail to adhere to its Legislative design, everyone loses.

Correcting the actions of the Parole Board and the NDOC for the greater good of all, is why I am not seeking monetary damages in any of my on-going litigation. The goal is to focus attention on the issues in hopes of bringing about the most meaningful resolution possible.

Every person in Nevada's prisons has been convicted of a felony offense. This, however, does not negate what is also known about each of these individuals. They are human beings. They have friends and family who care about them. And, society benefits most from their successful re-integration upon release. A fractured parole consideration system does nothing to protect the public as it further promotes the same distrust and disdain for authority that has led many of the incarcerated to reject society's laws and ethical standards.

Ultimately, I ask those with the ability and authority to take action, to take appropriate action. Please do not hesitate to contact me if you feel that I can be of further assistance. And, remember, that judging law breakers by a system that, itself, breaks laws, does not bring justice to Nevada's victims, it only creates more.

Thank you for your time and consideration,

Evan Grant

Evan Grant

RECEIVED 8/12/22

Evan Grant, pro se
NNCC
P.O. Box 7000
Carson City, NV 89702

FIRST JUDICIAL DISTRICT COURT OF NEVADA
CARSON CITY

EVAN SCOTT GRANT, Petitioner, vs. MARY BAKER, Commissioner, Nevada Board of Parole Commissioners, SUSAN JACKSON, Commissioner, Nevada Board of Parole Commissioners, TONY CORDA, Commissioner, Nevada Board of Parole Commissioners, MICHEAL KEELER, Commissioner Nevada Board of Parole Commissioners, DARLA FOLEY, Execuative Secretary, Nevada Board of Parole Commissioners, and THE STATE OF NEVADA BOARD OF PAROLE COMMISSIONERS, Respondents.	CASE NO. 21 OC 00112 1B DEPARTMENT II

EVAN GRANT'S PETITION FOR WRIT OF MANDAMUS

Evan Grant
EVAN SCOTT GRANT

7/14/2021
DATE

I declare under penalty of perjury that the foregoing is true and correct.

Evan Grant
EVAN SCOTT GRANT

SUBJECT MATTER JURISDICTION

Petitioner EVAN SCOTT GRANT, pro se, incarcerated, respectfully submits this Petition for Writ of Mandamus to this Honorable Court pursuant to Nev. Const. Art. 6 s. 6 cl. 1 and NRS 34.150 - 34.310.

The District Courts of Nevada have original jurisdiction under Nev. Const. Art. 6 s. 6 cl. 1, to issue Writs of Mandamus. NRS 34.160 provides:

> The Writ may be issued by ... a district court or a judge of the district court, to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station[.]

To justify the issuance of a Writ of Mandamus to enforce the performance of an act by a public officer, the act must be one the performance of which the law requires as a duty resulting from the office, and there must be an actual omission on the part of the officer to perform it. State Ex. Rel. Lawton v. Public Service Comm. of Nevada, et al., 44 Nev. 102, 190 P. 284, 285 (1920). A Writ of Mandamus is available under NRS 34.160 and shall issue in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of the law. NRS 34.170; Stockmeier v. Psychological Review Panel, 122 Nev. 534, 538, 135 P.3d 807, 809 (2006).

RELIEF SOUGHT

Petitioner, who is an inmate at the Nevada Department of Corrections Northern Nevada Correctional Center, respectfully requests that a Writ of Mandamus issue directed to Respondents MARY BAKER, Commissioner, Nevada Board of Parole Commissioners, SUSAN JACKSON, Commissioner, Nevada Board of Parole Commissioners,

TONY CORDA, Commissioner, Nevada Board of Parole Commissioners, MICHEAL KEELER, Commissioner, Nevada Board of Parole Commissioners, DARLA FOLEY, Executive Secretary, Nevada Board of Parole Commissioners, and THE STATE OF NEVADA BOARD OF PAROLE COMMISSIONERS ordering Respondents to cease their NRS 213.1214 "override" practice and consider the Petitioner's NRS 213.1214 assessment result as completed by the Department of Corrections pursuant to NRS 213.1214(4). Petitioner also requests the Writ of Mandamus include an order to the Respondents to apply and consider all applicable NAC 213.518 Mitigating Factors to the Petitioner. Additionally, Petitioner respectfully requests that the Writ of Mandamus include an order to the Respondents to, within 90 days of the order, vacate the Petitioner's February 26, 2020, ORDER DENYING PAROLE and conduct a new and proper parole consideration, within the limits of Nevada Statutory Law, including a Parole Hearing in which the Petitioner's Department of Corrections' completed NRS 213.1214 assessment result is not overridden and all applicable NAC 213.518 Mitigating Factors are applied to the Petitioner and considered. And, any other relief deemed appropriate by this Court.

STATEMENT OF THE LEGAL ISSUES PRESENTED

The legal issues presented in this Petition are:

1) Whether Respondents have a legal duty to follow the clear, unambiguous, and compulsory language of NRS 213.1214(4) to consider the Petitioner for parole pursuant to the NRS 213.1214 assessment's result as determined and completed by the Department of Corrections; and

2) Whether Respondents have a legal duty to consider all

applicable NAC 213.518 Mitigating Factors pursuant to NAC 213.516's clear, unambiguous, and compulsory enabling statutes NRS 213.140 and NRS 213.10885; and

3) Whether Respondents have a legal duty to follow the clear, unambiguous, and compulsory language of NRS 213.140(1) to properly consider the Petitioner for parole by vacating his February 26, 2020, ORDER DENYING PAROLE and conducting a new and proper parole consideration, including parole hearing, for the Petitioner.

HOW THE REMAINDER OF THIS PETITION IS ORGANIZED

As this Petition was originally filed in the Nevada Supreme Court on March 15, 2021, case no. 82627, and was subsequently denied on May 14, 2021, for the sole reason of the Court choosing to not exercise its original jurisdiction, Petitioner is following the Supreme Court's recommendation and filing the instant Petition for Writ of Mandamus in the District Court.

Having originally filed in the Nev. S. Ct., the Petitioner's original appendix was formatted in compliance with NRAP 30. Due to the physical limitations of being incarcerated, the Petitioner lacks the ability to easily change the handwritten page numbers of the original appendix to comply with FJDCR 3.25(c). For this reason, a "MOTION IN LIMINE TO SUSPEND FJDCR 3.25(c) PURSUANT TO FJDCR 1.2(c) DUE TO EXIGENT CIRCUMSTANCES" is accompanying this Petition and should be granted by this court in the interest of justice.

Since the Petitioner's "STATEMENT OF RELEVANT FACTS" and "MEMORANDUM OF POINTS AND AUTHORITIES" reference documents in the

Petitioner's Nev. S. Ct. Petition for Writ of Mandamus Case No. 82627 Appendix, the Petitioner has organized the remainder of this Petition for Writ of Mandamus as follows:

1) Physically attached to this Petition are Exhibits 1 and 2. Exhibit 2A is accompanying seperately. Exhibit 1 is the Denial Order from the Nev. S. Ct. for the Petitioner's Petition for Writ of Mandamus Case No. 82627. Exhibit 2 is a copy of the Petition For Writ of Mandamus filed in the Nev. S. Ct. for Case No. 82627. Exhibit 2A is a copy of the Petitioner's Appendix filed in the Nev. S. Ct. for Case No. 82627.

2) For this Petition's "STATEMENT OF RELEVANT FACTS", Petitioner respectfully directs the court to Exhibit 2, Nevada Supreme Court Case No. 82627 Petition For Writ of Mandamus, pages numbered 3 through 8. Each time a reference is made to "Pet'r App.", please refer to this Petition's Exhibit 2A, Petitioner's Appendix For Nevada Supreme Court Case No. 82627, utilizing the exhibit numbers and page numbers associated with the Petitioner's Appendix For Nevada Supreme Court Case No. 82627.

3) For this Petition's "MEMORANDUM OF POINTS AND AUTHORITIES", Petitioner respectfully directs the court to Exhibit 2, Nevada Supreme Court Case No. 82627 Petition For Writ of Mandamus, pages numbered 10 through 23. Each time a reference is made to "Pet'r App.", please refer to this Petition's Exhibit 2A, Petitioner's Appendix For Nevada Supreme Court Case No. 82627, utilizing the exhibit numbers and page numbers associated with the Petitioner's Appendix For Nevada Supreme Court Case No. 82627.

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4) For this Petition's "TABLE OF AUTHORITIES", Petitioner respectfully directs the court to Exhibit 2, Nevada Supreme Court Case No. 82627 Petition For Writ of Mandamus; pages numbered iii through iv.

In summary:

Section	Location	Pages
STATEMENT OF RELEVANT FACTS	Exhibit 2	3-8
MEMORANDUM OF POINTS AND AUTHORITIES	Exhibit 2	10-23
TABLE OF AUTHORITIES	Exhibit 2	iii-iv

Petitioner humbly apologizes to the court for any inconvenience this Petition's organization may cause.

When the Petitioner was denied parole by the Respondents in February of 2020, he received a two year dump. This would place the Petitioner's next parole consideration in February of 2022. For the relief sought in this Petition to be meaningful, a ruling would be needed by the end of November, 2021. Due to the large amount of time it would take to reorganize and re-handnumber the documents presented in support of this Petition, in addition to re-handwriting the STATEMENT OF RELEVANT FACTS, MEMORANDUM OF POINTS AND AUTHORITIES, and TABLE OF AUTHORITIES, the Petitioner believes the preceding method of presentation would best serve the court and Respondents to allow for the greatest amount of time possible to hear this case before the end of November, 2021.

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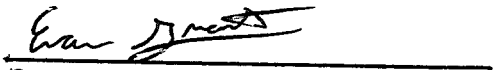
DATED this 14th day of July, 2021.

Thank you for your time and consideration.

Respectfully submitted,



EVAN SCOTT GRANT, pro se
NNCC
P.O. Box 7000
Carson City, NV 89702

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, EVAN GRANT'S PETITION FOR WRIT OF MANDAMUS, DOES NOT contain the social security number of any person.

DATED this 14th day of July, 2021.

Evan Grant
EVAN SCOTT GRANT, pro se

EXHIBIT 1

NEVADA SUPREME COURT

Case No. 82627

Denial Order

IN THE SUPREME COURT OF THE STATE OF NEVADA

EVAN SCOTT GRANT,
Petitioner,
vs.
MARY K. BAKER, COMMISSIONER, NEVADA BOARD OF PAROLE COMMISSIONERS; SUSAN JACKSON, COMMISSIONER, NEVADA BOARD OF PAROLE COMMISSIONERS; TONY CORDA, COMMISSIONER, NEVADA BOARD OF PAROLE COMMISSIONERS; MICHAEL KEELER, COMMISSIONER, NEVADA BOARD OF PAROLE COMMISSIONERS; DARLA FOLEY, COMMISSIONER, NEVADA BOARD OF PAROLE COMMISSIONERS; AND THE STATE OF NEVADA BOARD OF PAROLE COMMISSIONERS,
Respondents.

No. 82627

FILED

MAY 14 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

EVAN SCOTT GRANT,
Petitioner,
vs.
CHARLES DANIELS, DIRECTOR, NEVADA DEPARTMENT OF CORRECTIONS; HAROLD WICKHAM, DEPUTY DIRECTOR OF OPERATIONS, NEVADA DEPARTMENT OF CORRECTIONS; PERRY RUSSELL, WARDEN, NORTHERN NEVADA CORRECTIONAL CENTER; LISA WALSH, FORMER ASSOCIATE WARDEN OF PROGRAMS AND GRIEVANCE COORDINATOR, NORTHERN NEVADA CORRECTIONAL CENTER; NATHAN HUGHES, CORRECTIONAL CASEWORKER SPECIALIST III,

No. 82628

21-13934

NORTHER NEVADA CORRECTIONAL CENTER; TEJAY HARVEY, CORRECTIONAL CASEWORKER SPECIALIST, NORTHER NEVADA CORRECTIONAL CENTER; RONALD RAY HUDNALL, PSYCHOLOGIST III, WARM SPRINGS CORRECTIONAL CENTER; AND THE STATE OF NEVADA DEPARTMENT OF CORRECTIONS,
Respondents.

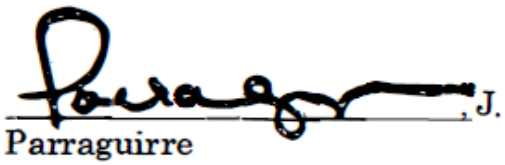
ORDER DENYING PETITIONS

These original petitions for a writ of a mandamus challenge the denial of parole based on a failure to follow NRS 213.1214 and to consider all of the mitigating circumstances, the risk-level assessment tool used by the Department of Corrections, and the Department's failure to provide procedures to challenge the risk-level assessment and update administrative regulations.[1] We have reviewed the documents submitted in these matters, and without deciding upon the merits of any claims raised therein, we decline to exercise our original jurisdiction. Petitioner should file a petition for a writ of mandamus challenging the actions of the respondents in the district court in the first instance. *See State v. Eighth Judicial Dist. Court (Armstrong),* 127 Nev. 927, 931, 267 P.3d 777, 779-80 (2011) (recognizing that the decision to entertain an extraordinary writ petition lies within our discretion); *Round Hill Gen. Improvement Dist. v. Newman,* 97 Nev. 601, 604, 637 P.2d 534, 536 (1981) (explaining that an appellate court is not suited to resolve factual disputes and therefore will not exercise its discretion to entertain a mandamus petition when there are

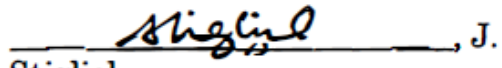
[1]We elect to consolidate these petitions for disposition. *See* NRAP 3(b)(2) (permitting court to consolidate matters upon its own motion).

factual questions). He can then appeal from any adverse decision. *See* NRS 2.090(2) (providing that an order granting or refusing to grant mandamus is appealable). Accordingly, we

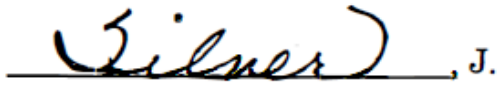
ORDER the petitions DENIED.



_____, J.
Parraguirre



_____, J.
Stiglich



_____, J.
Silver

cc: Evan Scott Grant
Attorney General/Carson City

EXHIBIT 2

NEVADA SUPREME COURT

Case No. 82627

Petition For Writ Of Mandamus

Filed 3/15/2021

NO. 82627

IN THE SUPREME COURT OF THE STATE OF NEVADA

EVAN SCOTT GRANT,

Petitioner,

vs.

MARY BAKER, Commissioner, Nevada Board of Parole Commissioners,
SUSAN JACKSON, Commissioner, Nevada Board of Parole Commissioners,
TONY CORDA, Commissioner, Nevada Board of Parole Commissioners,
MICHEAL KEELER, Commissioner, Nevada Board of Parole Commissioners,
DARLA FOLEY, Execuative Secretary, Nevada Board of Parole Commissioners, and
THE STATE OF NEVADA BOARD OF PAROLE COMMISSIONERS,

Respondents.

SUPREME COURT CASE NO.:

FILED
MAR 15 2021
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY _____
DEPUTY CLERK

PETITION FOR WRIT OF MANDAMUS

EVAN SCOTT GRANT, pro se
NNCC
P.O. BOX 7000
Carson City, NV 89702

RECEIVED
MAR 11 2021
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

IN THE SUPREME COURT OF THE STATE OF NEVADA

EVAN SCOTT GRANT, Petitioner, vs. MARY BAKER, Commissioner, Nevada Board of Parole Commissioners, SUSAN JACKSON, Commissioner, Nevada Board of Parole Commissioners, TONY CORDA, Commissioner, Nevada Board of Parole Commissioners, MICHEAL KEELER, Commissioner, Nevada Board of Parole Commissioners, DARLA FOLEY, Execuative Secretary, Nevada Board of Parole Commissioners, and THE STATE OF NEVADA BOARD OF PAROLE COMMISSIONERS, Respondents.	SUPREME COURT CASE NO.:

PETITION FOR WRIT OF MANDAMUS

EVAN SCOTT GRANT, pro se
NNCC
P.O. Box 7000
Carson City, NV 89702

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ROUTING STATEMENT

This Petition for Writ of Mandamus is presumptively assigned to the Court of Appeals pursuant to NRAP 17(b)(9), however, pursuant to NRAP 17(d), Petitioner respectfully requests this Petition be retained by the Supreme Court pursuant to NRAP 17(a)(12). The principle matters presented in this Petition raise questions concerning the proper statutory consideration of Nevada's sex offenders, and other prisoners, for the determination of parole release into the community and are, therefore, of statewide public importance.

PETITION AND RELIEF SOUGHT

Petitioner EVAN SCOTT GRANT, pro se, incarcerated, respectfully submits this Petition for Writ of Mandamus to this Honorable Court pursant to NRS 34.150 – 34.310, NRAP 21, and NRAP 32(5)(b) & (8).

Petitioner, who is an inmate at the Nevada Department of Corrections Northern Nevada Correctional Center, respectfully requests that a Writ of Mandamus issue directed to Respondents MARY BAKER, Commissioner, Nevada Board of Parole Commissioners, SUSAN JACKSON, Commissioner, Nevada Board of Parole Commissioners, TONY CORDA, Commissioner, Nevada Board of Parole Commissioners, MICHEAL KEELER, Commissioner, Nevada Board of Parole Commissioners, DARLA FOLEY, Execuative Secretary, Nevada Board of Parole Commissioners, and THE STATE OF NEVADA BOARD OF PAROLE COMMISSIONERS ordering Respondents to cease their NRS 213.1214 "override" practice and consider the Petitioner's NRS 213.1214 assessment result as completed by the Department of Corrections pursuant to NRS 213.1214(4). Petitioner also requests the Writ of

Mandamus include an order to the Respondents to apply and consider all applicable NAC 213.518 Mitigating Factors to the Petitioner. Additionally, Petitioner respectfully requests that the Writ of Mandamus include an order to the Respondents to, within 90 days of the order, vacate the Petitioner's February 26, 2020, ORDER DENYING PAROLE and conduct a new and proper parole consideration, within the limits of Nevada Statutory Law, including a Parole Hearing in which the Petitioner's Department of Corrections completed NRS 213.1214 assessment result is not overridden and all applicable NAC 213.518 Mitigating Factors are applied to the Petitioner and considered.

STATEMENT OF THE LEGAL ISSUES PRESENTED

The legal issues presented in this Petition are:

1) Whether Respondents have a legal duty to follow the clear, unambiguous, and compulsory language of NRS 213.1214(4) to consider the Petitioner for parole pursuant to the NRS 213.1214 assessment's result as determined and completed by the Department of Corrections; and

2) Whether Respondents have a legal duty to consider all applicable NAC 213.518 Mitigating Factors pursuant to NAC 213.516's clear, unambiguous, and compulsory enabling statutes NRS 213.140 and NRS 213.10885; and

3) Whether Respondents have a legal duty to follow the clear, unambiguous, and compulsory language of NRS 213.140(1) to properly consider the Petitioner for parole by vacating his February 26, 2020, ORDER DENYING PAROLE and conducting a new and proper parole consideration, including parole hearing, for the Petitioner.

STATEMENT OF RELEVANT FACTS

Recent History of the NRS 213.1214 Assessment

In 2013, the Governor approved SB104 (Pet'r App. Ex. 1) amending NRS 213.1214. SB104 replaced the requirement of the NRS 213.1214 assessment to be conducted by a panel with a process that requires the Department of Corrections (hereinafter "DOC") to assess the risk of a prisoner convicted of certain sexual offenses to reoffend in a sexual manner. NRS 213.1214(1) was amended to include mandatory predicates pertaining to the assessment instrument, including: "The completed assessment must return a risk level of low, moderate or high."

On May 27, 2015, the Governor approved AB45 (Pet'r App. Ex. 2) with the support of, then, Nevada Attorney General Adam Laxalt (Pet'r App. Ex. 3). The purpose of AB45 (2015) was to revise the NRS 213.1214 assessment to, at a minimum, return a risk level of high, instead of mandating low, moderate or high.[1] The reason, per Laxalt, was the DOC preferred assessment instrument, the 2009 version of the STATIC-99R (Pet'r App. Ex. 4) (hereinafter "STATIC-99R (2009)"), returned risk levels of low, low-moderate, moderate-high or high which could not be used pursuant to the SB104 (2013) NRS 213.1214(1) mandated three level language.

History of the STATIC-99R Since AB45 (2015) Approval

At the time of AB45 (2015)'s approval, the STATIC-99R (2009) returned risk results of low, low-moderate, moderate-high, or high. Id. However, in 2016, the Publishers of the STATIC-99R, through the STATIC-99R Coding Rules Revised-2016 (Pet'r App. Ex. 5), revised the instrument to its current version removing the

FN1 The AB45 (2015) NRS 213.1214 language is the current language.

common language terms low, low-moderate, moderate-high and high. (Pet'r App. at 29 & 111). The Publishers' stated reasoning was to eliminate the subjectivity of those common language terms by replacing them with the empirically based United States Council of State Governments Justice Center's proposed risk levels: Level I- Very low risk, Level II - Below average risk, Level III - Average risk, Level IVa - Above average risk and Level IVb - Well above average risk. Id. at 28 - 29.

Effect of NRS 213.1214(1) on the 2016 STATIC-99R Revision

In a similar manner to the STATIC-99R (2009) prior to AB45 (2015), David M. Smith, Hearings Examiner II, in a January 29, 2018, Nevada Board of Parole Commissioners' Memo (Pet'r App. Ex. 6) (hereinafter "Smith's Memo"), stated that the 2016 version of the STATIC-99R (hereinafter "STATIC-99R (2016)") was not in compliance with NRS 213.1214(1). Smith discusses, in detail, the failure of the DOC to comply with NRS 213.1214(1) and the resulting "override" practice developed by the Nevada Board of Parole Commissioners (hereinafter "Board") to increase the DOC NRS 213.1214 assessment result for parole consideration purposes.

"[T]he practice has been to deviate upward to the next risk level in an effort to not understate the risk to reoffend in a sexual manner." Id. NRS 213.1214(1) provides, in part, "The Director [of the DOC] shall ensure a completed assessment is provided to the Board...." NRS 213.10885(1) provides, in part, that "The [Board's] standards must be based on objective criteria...."

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Effect of the Respondents' NRS 213.1214 "Override" Practice on the Petitioner

On May 10, 2016, the Honorable District Court Judge Susan H. Johnson sentenced the Petitioner for two attempted violations of NRS 201.230 to two consecutive 24 to 96 month sentences of incarceration aggregated to a minimum term of 4 years to a maximum of 16 years. With credit for time served, the Petitioner's Parole Eligibility Date was set on May 2, 2020. Due to an attempted violation of NRS 201.230 being listed in NRS 213.1214(6)(d), when the Petitioner was considered for parole in early 2020, he was assessed pursuant to NRS 213.1214.

On the Petitioner's February 26, 2020, ORDER DENYING PAROLE (hereinafter "ODP"), the result of Respondents Mary Baker, Susan Jackson, Tony Corda and Micheal Keeler's NRS 213.140(1) parole consideration of the Petitioner, the Petitioner received 1 "Parole Risk Assessment" point and a Moderate "Guideline Risk." [Pet'r App. Ex. 7]. Per the Nevada Parole Risk Assessment Instrument, effective March 6, 2019 (Pet'r App. Ex. 8) (hereinafter "NPRA (2019)"), a score of 0 to 7 indicates Low risk to reoffend. Per the ODP, the Petitioner's STATIC-99R (2016) result was Above-average. The "override" practice detailed in Smith's Memo states that "Above-average" STATIC-99R is to be overridden to the "Corresponding Parole Board Risk Level" of "Moderate Risk." Once a risk level is assigned, all offenders, regardless of offense, are considered similarly by the assigned risk level. NAC 213.516 (2018).

Upon a review of the STATIC-99R (2016), the Petitioner received 4 points on his STATIC-99R assessment. The STATIC-99R &

STATIC-2002R Evaluators' Workbook (Pet'r App. Ex. 9) (hereinafter "99R Eval. Workbook") states that a STATIC-99R (2016) score of 4 equates to an 11% estimated recidivism risk. Pet'r App. at 128.

In response to the Petitioner's November 4, 2020, demand letter to the Board (Pet'r App. Ex. 10) requesting, in part, Nevada's recidivism data, Respondent Darla Foley sent the Petitioner the Revalidation of the Nevada Parole Risk Assessment Instrument (2017) (Pet'r App. Ex. 11) (hereinafter "Revalidation"). Per the NPRA (2019) "Moderate" risk is between a score of 8 and 13 points. Pet'r App. at 119. Per the Revalidation, a score of 8 equates to a 29.5% recidivism risk and 13 equates to 46.9%. Pet'r App. at 188.

The published statistical recidivism data clearly shows that when the terms "Above average" and "Moderate" are viewed in their respective recidivism risk percentages, the Petitioner's STATIC-99R (2016) "Above average" percentage of 11% was overridden to an NPRA (2019) "Moderate" range of 29.5 to 46.9. The DOC Director "[S]hall ensure a completed assessment is provided to the Board." NRS 213.1214(1) (2019). "The Board shall consider an assessment pursuant this section...." NRS 213.1214(4) (2019).

Furthermore, the Revalidation states that Nevada's overall average recidivism risk percentage is 32%. (Pet'r App. at 175). The STATIC-99R (2016) average, or score of 2, upon which that instrument is based, is 5.6% as it is specific to sex offender recidivism. Pet'r App. at 128. The Petitioner's ODP states the denial reason "Above average risk to reoffend." Pet'r App. at 116. The ODP is literally stating that the Petitioner's STATIC-99R (2016) Above average, 11%, risk result was considered

by Nevada's overall average, 32%, instead of the sex offender average, 5.6%, as the denial reason only states "risk to reoffend" and does not specify "risk to reoffend in a sexual manner." Smith's Memo did state that the Board increases completed STATIC-99R risk levels. Additionally, NAC 213.516 states that all offenders are considered similarly by the Board once a risk level is assigned.

Misapplication of NAC 213.518 Mitigating Factors

Pursuant to NAC 213.516, when NAC 213.516 does not specify a Grant or Denial of parole "Consider factors set forth in NAC 213.518." On the ODP, 4 NAC 213.518 Mitigating Factors were indicated. Per the Nevada Parole Guidelines Aggravating and Mitigating Factors Definitions Rev-3/6/2019 (Pet'r App. Ex. 12) (hereinafter "Aggravating and Mitigating Factors Definitions"), the Petitioner satisfied the criteria for 2 additional Mitigating Factors: "Stable Release Plans" and "Case History Demonstrates Remorse."

On April 1, 2020, the Petitioner submitted an NAC 213.526 Request to Reconsider Denial of Parole (Pet'r App. Ex. 14) (hereinafter "Reconsideration Request"). In the Reconsideration Request, the Petitioner stated that no record of consideration pertaining to those two factors was provided to him. Id. at 216.

On May 7, 2020, Respondent Foley authored a 1 page response to the Petitioner's Reconsideration Request (Pet'r App. Ex. 13) (hereinafter "Reconsideration Response"). In the Reconsideration Response, Foley states, "[The Commissioners] were also aware of your release plans, remorse, and other factors." Pet'r App. at 197.

NAC 213.516 mandates the Board "consider" NAC 213.518 Mitigating Factors not simply be "aware" of them. Furthermore, the Reconsideration Request quoted Anselmo v. Bisbee, 396 P.3d 848, 852 (Nev. 2017), "[N]evada law clearly confers a right to be 'consider[ed]' for parole." Pet'r App. at 218. By the Petitioner quoting Anselmo in the Reconsideration Request, Foley knew that Nevada law mandates consideration, not awareness, and chose to deny reconsideration in spite of this.

Petitioner's Exercise of Administrative Remedy

NAC 213.526 is the Administrative Remedy procedure provided by the Board for parole denial reconsideration. The Petitioner filed his Reconsideration Request within the 45 day time limit, NAC 213.526(1)(a), and complied with the scope requirements of NAC 213.526(1)(b). In the Reconsideration Request, the Petitioner argued that the ODP was in violation of parole consideration statutes NRS 213.10885, 213.1214, and 213.140. In response to the 23 page Reconsideration Request, Respondent Foley, in a total of 6 sentences, acknowledged that the written record did not indicate consideration of all applicable Mitigating Factors, ignored most of the Petitioner's stated NRS 213.1214 issue, and denied the Petitioner's request for reconsideration. Pet'r App. at 197.

Pursuant to NAC 213.526, there is no further administrative remedy process available to the Petitioner.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. THIS HONORABLE COURT HAS JURISDICTION TO GRANT A WRIT OF MANDAMUS IN THIS CASE

The Supreme Court has original jurisdiction under Nev. Const. Art. 6 s. 4, to issue Writs of Mandamus. State v. Second Judicial Dist. Court, 120 Nev. 254, 258, 89 P.3d 663, 665 (2004). NRS 34.160 provides:

> The writ may be issued by the Supreme Court... to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station[.]

To justify the issuance of a Writ of Mandamus to enforce the performance of an act by a public officer, the act must be one the performance of which the law requires as a duty resulting from the office, and there must be an actual omission on the part of the officer to perform it. State Ex. Rel. Lawton v. Public Service Comm. of Nevada, et al., 44 Nev. 102, 190 P. 284, 285 (1920). A Writ of Mandamus is available under NRS 34.160 and shall issue in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of the law. NRS 34.170; Stockmeier v. Psychological Review Panel, 122 Nev. 534, 538, 135 P.3d 807, 809 (2006). Notwithstanding that the Supreme Court may question a policy or the expediency of a statute, it is bound to compel a state officer to perform an act required by such statute under NRS 34.160. State Bar v. List, 97 Nev. 367, 368, 632 P.2d 341, 342 (1981).

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II. RESPONDENTS HAVE A DUTY UNDER THE CLEAR, UNAMBIGUOUS, AND COMPULSORY LANGUAGE OF NRS 213.1214(4) TO CONSIDER THE PETITIONER FOR PAROLE PURSUANT TO THE NRS 213.1214 ASSESSMENT'S RESULT AS DETERMINED AND COMPLETED BY THE DEPARTMENT OF CORRECTIONS.

NRS 213.1214(4) provides, "The Board shall consider an assessment prepared pursuant to this section before determining whether to grant or revoke parole of a person convicted of a sexual offense." While several mandatory predicates exist governing an assessment prepared pursuant to NRS 213.1214, this Writ of Mandamus focuses on NRS 213.1214(1) which provides:

> The Department of Corrections shall assess each prisoner who has been convicted of a sexual offense to determine the prisoner's risk to reoffend in a sexual manner using a currently accepted standard of assessment. The completed assessment must include, without limitation, a determination of the prisoner's level of risk to reoffend in a sexual manner, including, without limitation, whether the prisoner is a high risk to reoffend in a sexual manner for the purposes of subsection 3 of NRS 213.1215. The Director shall ensure a completed assessment is provided to the Board...

In NRS 213.1214(1) & (4), the word "shall" immediately appears after "The Board," "The Department of Corrections" and "The Director." "Shall" is to be construed as mandatory when construing Legislative statutes, unless an exception is provided. Ewing v. Fahey, 86 Nev. 604, 607, 472 P.2d 347, 349 (1970). As no exceptions are provided, the actions specified in both subsections are explicitly mandatory. Being explicitly mandatory, these State laws "[C]reate [] a protected liberty interest by placing substanitive limitations on official discretion." Olim v. Wakinekona, 461 U.S. 238, 249, 75 L.Ed.2d 813, 103 S.Ct. 1741 (1983).

Therefore, the Petitioner has a right pursuant to NRS 213.1214(4) to Board consideration of the DOC's completed NRS 213.1214 assessment result prior to parole determination. Furthermore, as "[E]ligible Nevada inmates do have a statutory right [pursuant to NRS 213.140(1)] to be considered for parole by the Board[,]" Anselmo, 396 P.3d at 849, any abrogation of NRS 213.1214(1) or (4) would inadvertantly abrogate the Petitioner's state-created right to proper parole consideration recognized by this Court.

A. THE RESPONDENTS' NRS 213.1214 ASSESSMENT "OVERRIDE" PRACTICE ARBITRARILY INCREASED THE DEPARTMENT OF CORRECTIONS' RESULT ABROGATING THE PETITIONER'S RIGHT TO PROPER PAROLE CONSIDERATION

At the time AB45 (2015) revised NRS 213.1214(1) to its current language, supra p. 3, the STATIC-99R (2009) was capable of returning a high risk result[2] and was, therefore, in compliance with NRS 213.1214(1)'s high risk requirement.[3] However, in 2016, the Publishers of the STATIC-99R revised the instrument and removed the high risk level. Pet'r App. at 29 & 111. In explaining why high risk was removed, the Publishers stated, "[W]e are not currently able to empirically identify a group of sex offenders who are 'virtually certain' to reoffend."[4] Id. at 29. In spite of this, to this day, the STATIC-99R (2016) is still in use by the

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FN2 The STATIC-99R (2009) had 4 possible risk results, including high. Pet'r App. at 16.

FN3 According to former Nevada Attorney General Adam Laxalt, the four risk level STATIC-99R (2009), the DOC's preferred NRS 213.1214 assessment instrument in 2015, did not satisfy the pre-AB45 (2015) NRS 213.1214(1) mandated low, moderate, or high language, therefore, until AB45 (2015) was approved, the STATIC-99R (2009) could not be used by the DOC per Nevada law. Pet'r App. at 14.

FN4 This statement concerned only the STATIC-99R and does not extend to other actuarial assessment instruments.

DOC[5] in violation of NRS 213.1214(1).

This has resulted in the Respondent's creation and exercise of an "override" practice to circumvent their mandatory duty under NRS 213.1214(4). In Smith's Memo, Pet'r App. at 114, the Respondent's "override" practice is discussed in detail and is structured as follows:

Static-99R risk level	Corresponding Parole Board Risk Level/overrides
I-Very Low Risk	Low Risk
II-Below Average Risk	Moderate
III-Average Risk	Moderate Risk
IVa-Above Average Risk	Moderate Risk
IVb-Well Above Average Risk	High Risk

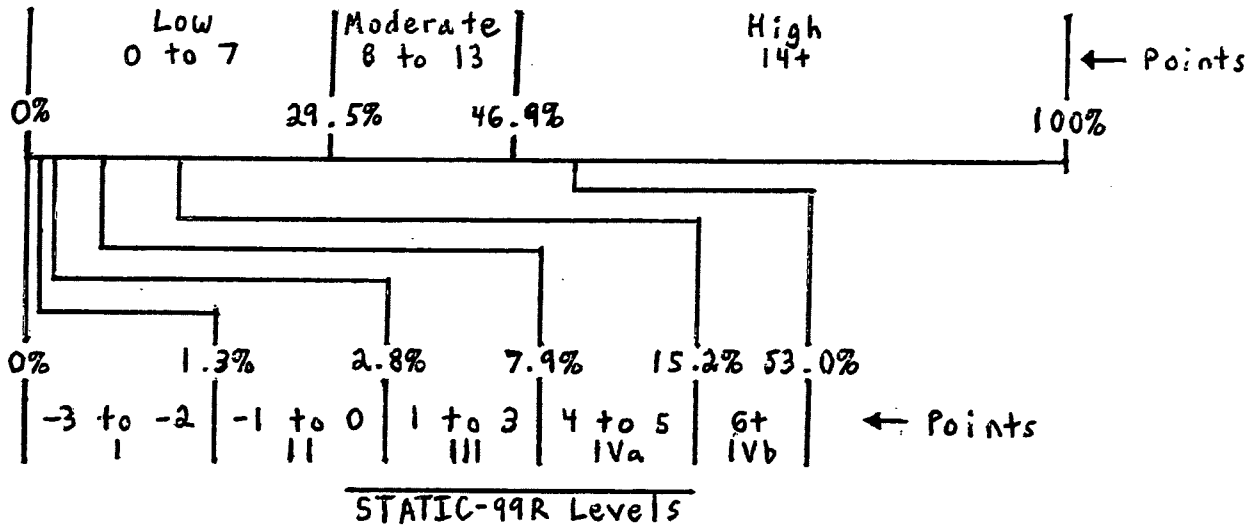
Per the ODP, Pet'r App. at 117, the Petitioner received 1 Parole Risk Assessment point and a Moderate "Guideline Risk." However, with 1 point, per the NPRA (2019) instrument, Pet'r App. at 119, the Petitioner's Parole Board Risk Level was Low. This Low versus Moderate discrepency clearly shows that the Respondent's "override" practice was applied to the Petitioner as the Petitioner was assessed by the STATIC-99R, supra note 5, and was found to be Above average, supra p. 5.

When the terms "Above average" and "Moderate" are considered based upon their corresponding recidivism risk percentages, the problem with the "override" practice, beyond the STATIC-99R (2016) not being in compliance with NRS 213.1214(1), becomes clear. The following is a scale illustration of the recidivism risk percentages derived from scientific studies cited in the STATIC-99R & STATIC-2002R Evaluators' Workbook, Pet'r App. Ex. 9, p. 128, and the Revalidation of the Nevada Parole Risk

FN5 Dr. Capriles, Psychologist III, Nevada Department of Corrections, confirmed the STATIC-99R's use on the Petitioner. Pet'r App. Ex. 15.

Assessment Instrument (2017), Pet'r App. Ex. 11, p. 188, in relation to their corresponding risk level terms[6]:

Nevada Parole Risk Assessment Levels



The preceding illustration clearly shows that the Petitioner's IVa-Above average risk level is firmly in the lower half of the Respondents' Low risk level. Why, then, do the Respondents "override" "Above average" to "Moderate?" "[I]t [is] common for professionals to have very different interpretations of what labels like 'low,' 'moderate,' and 'high' risk mean...." 99R Eval. Workbook, Pet'r App. at 123. Due to the Respondents' confusion concerning the STATIC-99R (2016) risk levels, "[T]he practice has been to deviate upward to the next risk level in an effort to not understate the risk to reoffend in a sexual manner."

FN6 Due to the small sample size associated with the Revalidation, NPRA (2019) recidivism risk percentages in the high risk range fluctuate irradically. Pet'r App. at 188. The result is the publishing of statistically insignificant data causing, for example, the maximum NPRA (2019) score of 18 to be assigned the Low risk recidivism percentage of 25.0%. Id. Due to the Revalidation's high risk recidivism percentages not indicating a clear maximum percentage detectable by the NPRA (2019) assessment instrument, none is indicated on the illustration contrary to the STATIC-99R (2016) maximum of 53.0%.

Smith's Memo, Pet'r App. at 114.

The absurd result we are left with is that the highest STATIC-99R risk level, IVb-Well above average, intersects all three of the Respondents' risk levels simultaneously, yet the Respondents "override" IVb-Well above average to high risk. Furthermore, the only way for a STATIC-99R result to be overridden to Low is if the STATIC-99R recidivism risk percentage is, at most, 22.7 times lower than the Respondents' maximum Low risk percentage.[7]

Not only are the Respondents abrogating the Petitioner's right to be considered pursuant to the NRS 213.1214 assessment by considering the STATIC-99R (2016) result in violation of NRS 213.1214(1) & (4), supra pp. 10-11, but are arbitrarily changing the Petitioner's risk level and considering the Petitioner based upon an unjustified and prejudiced increased risk. Individually, each action abrogates proper parole consideration mandated under NRS 213.140(1) pursuant to Anselmo, 396 P.3d, and NRS 213.10885(1) which mandates the Board's standards are to be "objective."

"The touchstone of due process is the protection of the individual against arbitrary action of government." Dent v. West Virginia, 129 U.S. 114, 123, 32 L.Ed.2d 623, 9 S.Ct. 231 (1899). "A writ of mandamus is available to compel the performance of an act the law requires... or to control an arbitrary or capricious exercise of discretion." Int'l Game Tech, Inc. v. Second Judicial Dist. Court, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). "An arbitrary or capricious exercise of discretion is one founded on prejudice or preference rather than on reason, or contrary to the

FN7 29.5% ÷ 1.3% = 22.7

evidence or established rules of law." State v. Eighth Judicial Dist. Court (Armstrong), 127 Nev. 927, 931-932, 267 P.3d 777, 780 (2011) (citation omitted) (internal quotation marks omitted).

While it has been established that the Respondents' consideration of the DOC completed NRS 213.1214 assessment is mandatory, supra pp. 10-11, the Respondents have exercised unauthorized discretion in its mandatory consideration of said assessment by altering the completed assessment's result. The practice of "overriding" the DOC's completed assessment result, regardless of actuarial assessment utilized by the DOC, is a direct abrogation of NRS 213.1214(1) & (4).

One would have thought that upon discovery of the STATIC-99R (2016) being out of compliance with NRS 213.1214(1), the Respondents would have pursued a change in the law as was done with AB45 (2015), supra p. 3, or, notified the DOC that it had to cease use of the STATIC-99R (2016), or, at worst, filed a Writ of Mandamus to Force the DOC to change its NRS 213.1214 assessment instrument. Regardless, the Respondents' exercise of any NRS 213.1214 "override" practice violates the Petitioner's right to proper consideration pursuant to NRS 213.1214 and 213.140(1).

B. THE RESPONDENTS' FAILURE TO RECOGNIZE THE INTENT OF NRS 213.1214 LITERALLY RESULTED IN THE PETITIONER'S 11% RISK TO REOFFEND TO BE IMPROPERLY CONSIDERED AS THOUGH IT WAS HIGHER THAN NEVADA'S OVERALL AVERAGE OF 32%.

The intent of NRS 213.1214 is clearly stated in NRS 213.1214(1), "[A]ssess each prisoner who has been convicted of a sexual offense to determine the prisoner's risk to reoffend in a sexual manner...." "It is well established in Nevada that words in a statute should be given their plain meaning...." Mckay v. Bd of

Supervisors, 120 Nev. 644, 648, 730 P.2d 438, 441 (1986).

The STATIC-99R, which is the DOC's preferred NRS 213.1214 assessment instrument, is an actuarial assessment instrument designed to specifically assess the recidivism risk of persons convicted of a sexual offense. Pet'r App. at 23. The NPRA (2019), upon which the Respondents' risk levels are based, is designed to assess all of Nevada's offenders regardless of offense. NAC 213.514(1) & (2) (2018). As a result of these differences, the STATIC-99R's average recidivism risk percentage, upon which its risk levels are based, is 5.6%. Pet'r App. at 128. At the same time, the NPRA (2019) average recidivism risk percentage is 32% and is Nevada's overall recidivism average. Pet'r App. at 175. Therefore, when applying the term "Above average" during parole consideration, the origin of the term becomes significant. Above 5.6% does not necessarily mean above 32%.

When the Petitioner was assessed pursuant to NRS 213.1214, he was assessed using the STATIC-99R (2016), received 4 points, and was identified as Above average risk. Supra pp. 5-6. 4 points on the STATIC-99R (2016) equate to an 11% recidivism risk. Pet'r App. at 128. While 11% is above 5.6%, it is NOT above 32%.

On the ODP, the Petitioner received the Denial Reason "Above average risk to reoffend[.]" Pet'r App. at 116. As the origin of the term "Above average" came from the 5.6% STATIC-99R (2016) average and the Denial Reason specifically stated "risk to reoffend", the Petitioner's "Above average" risk was considered by the Respondents in the wrong context. "Risk to reoffend" versus

"risk to reoffend in a sexual manner" have entirely different meanings and are related to entirely different recidivism risk averages. Again, 11% is above 5.6%, but NOT above 32%.

Consideration of a sex offender specific assessment in any other context, such as an "override" or subjectively modifying its terminology, negates the assessment's validity and potentially endangers the public as its results will likely be misinterpreted. Furthermore, the Petitioner has a right to have his NRS 213.1214 assessment, as completed, considered by the Respondents. NRS 213.1214(1) & (4) (2019). Any deviation from the mandatory predicates of NRS 213.1214 abrogate the Petitioner's right to assessment as Legislatively intended, in addition, to proper parole consideration guaranteed under NRS 213.140(1) pursuant to Anselmo, 396 P.3d at 849.

III. RESPONDENTS HAVE A DUTY TO CONSIDER ALL APPLICABLE NAC 213.518 MITIGATING FACTORS PURSUANT TO NAC 213.516 AND 213.518'S CLEAR, UNAMBIGUOUS, AND COMPULSORY ENABLING STATUTES NRS 213.140 AND NRS 213.10885.

When NAC 213.516 does not specify a Grant or Denial of parole, "Consider factors set forth in NAC 213.518." NAC 213.516 (2018). As the Petitioner's guideline risk was "Moderate" and severity was "Highest," Pet'r App. at 117, NAC 213.516 mandated consideration of NAC 213.518 factors. The Petitioner's ODP indicated 3 Aggravating and 4 Mitigating Factors. Id. Per the Aggravating and Mitigating Factors Definitions, Pet'r App. Ex. 12, the Petitioner satisfied the criteria for 2 additional Mitigating Factors: "Stable Release Plans" and "Case History Demonstrates Remorse." In the Petitioner's Reconsideration Request, he explained how each criteria was met and that no written record of

those Factors' consideration was provided to him. Supra p. 7.

"Written records of proceedings will thus protect the inmate against collateral consequences based upon a misunderstanding of the nature of the original proceeding. Wolff v. McDonnell, 418 U.S. 539, 565, 41 L.Ed.2d 935, 94 S.Ct. 2963 (1974). "[A] written record helps to ensure that administrators, faced with possible scrutiny... will act fairly...." Id.

In response to the Request, Respondent Foley wrote, "[The Commissioners] were also aware of your release plans, remorse, and other factors. The Board considers many aggravating and mitigating factors that, although considered during Board diliberations, may not be listed on the deny order." Pet'r App. at 197. Foley's response is an admission of eligibility for the "Stable Release Plans" and "Case History Demonstrates Remorse" Mitigating Factors. However, without a written record of their consideration, there is no way for the Petitioner, or this Court, to verify that consideration of these factors actually took place as mandated by NAC 213.516. Furthermore, Foley claims that the Board was "aware" of the Petitioner's release plans and remorse, but stops short of specifically stating that either was "considered."

"Generally, an inmate does not have a protectable due process or liberty interest in release on parole...." Anselmo: 396 P.3d at 849. "Nonetheless, eligible Nevada inmates do have a statutory right to be considered for parole by the Board. When the Board misapplies its own internal guidelines in assessing whether to grant parole, this Court cannot say that the inmate received the consideration to which they are statutorily entitled." Id.

In Anselmo, the Board considered an inapplicable Aggravating Factor. In this instance, the Petitioner was NOT considered for two applicable Mitigating Factors. As in Anselmo, the scales of parole consideration falsely tipped toward denial.

Both NAC 213.516 and 213.518 utilize NRS 213.140 and 213.10885 as enabling statutes. Anselmo establishes NRS 213.140(1) as a liberty interest in proper parole consideration, thus, a written record of parole consideration proceedings is of vital importance to confront any challenge to the nature of the proceeding itself. "Pursuant to... NRS 213.10885(1), the Board must promulgate detailed standards to determine whether the release of an inmate is appropriate. These standards are codified in the Nevada Administrative Code." Anselmo, 396 P.3d at 851. "[T]he Board is [] obligated to act within established parameters." Id. at 852-853.

NAC 213.516 states, "Consider factors set forth in NAC 213.518." The eligibility criteria for NAC 213.518 factors are located in the Aggravating and Mitigating Factors Definitions, supra p. 17. Respondent Foley acknowledges Petitioner's eligibility for "Stable Release Plans" and "Case History Demonstrates Remorse" Mitigating Factors and that no written record indicates consideration of those factors took place. Supra p. 18. As the Petitioner was eligible for those Mitigating Factors, "The Board must follow its internal guidelines[,]" Anselmo, 396 P.3d at 851, consider them and provide a written record of that consideration. If Nevada's inmates have a

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"[S]tatutory right to receive proper consideration for parole[,]" Anselmo, 396 P.3d at 853, and "This Court cannot say that an inmate receives proper consideration when the Board's decision is based in part on an inapplicable aggravating factor[,]" Id., the same must hold true for omitted Mitigating Factors.

IV. RESPONDENTS HAVE A DUTY PURSUANT TO NRS 213.140(1) TO VACATE PETITIONER'S FEBRUARY 26, 2020, ORDER DENYING PAROLE AND CONDUCT A NEW AND PROPER PAROLE CONSIDERATION, INCLUDING PAROLE HEARING, FOR THE PETITIONER.

For the reasons stated in this Writ of Mandamus, supra, the Respondents have failed to perform their duty to properly consider the Petitioner for parole pursuant to NRS 213.140(1) that provides, "When a prisoner becomes eligible for parole pursuant to this chapter, the Board shall consider and may authorize the release of the prisoner on parole as provided in this chapter." Thus, while "[A]n inmate does not have a protectable due process or liberty interest in release on parole...[,]" Anselmo, 396 P.3d at 849, "[E]ligible Nevada inmates do have a statutory right to be considered for parole by the Board." Id. "[T]he State having created the right... the prisoner's interest has real substance and... entitle[s] him to those minimum procedures appropriate under the circumstances and required by the Due Process Clause to ensure the state-created right is not arbitrarily abrogated." Wolff, 418 U.S. at 557. In this instance, NRS 213.1214(1) & (4), 213.10885(1), NAC 213.516, 213.518, and the Respondents' own Nevada Parole Guidelines Aggravating and Mitigating Factors Definitions Rev-3/6/2019 mandate certain minimum procedures for the proper parole consideration of Nevada's prisoners.

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"Anselmo [] argues that he is entitled to a new parole hearing because the Board failed to follow its internal guidelines... This Court agrees." Anselmo, 396 P.3d at 851. "Therefore, we grant Anselmo's petition for extraordinary relief, and... issue a writ of mandamus instructing the Board to vacate its [] denial of parole and conduct a new hearing...." Id. at 853.

Here, not only have the Respondents failed to follow the same internal guidelines from which Anselmo originated, but, additionally, failed to follow explicitly mandatory statutory law governing the consideration of the Petitioner's completed NRS 213.1214 assessment. See supra Part II & III. As this Court held in Anselmo that a new hearing was necessary for Anselmo to receive proper parole consideration, the same must hold true for the Petitioner.

V. PETITIONER HAS NO PLAIN, SPEEDY, AND ADEQUATE REMEDY UNDER THE LAW.

Petitioner has no plain, speedy, and adequate remedy under the law pursuant to NRS 34.170 to cure the Respondents' failure to perform their duty. Despite the Petitioner having brought a Reconsideration Request, Pet'r App. Ex. 14, to the Respondents pursuant to NAC 213.526 concerning their duty under NRS 213.1214 and their omission of two applicable NAC 213.518 Mitigating Factors, Respondent Foley denied parole reconsideration for the Petitioner, Pet'r App. Ex. 13, thus, exhausting the NAC 213.526 process.

Furthermore, it is apparent that the Respondents are committed to abrogating Nevada's statutory law as they are exercising a practice to arbitrarily increase the risk level of prisoners convicted of certain sexual offenses to circumvent their

statutory duty under NRS 213.1214(4). See supra Section II.A. Even if additional administrative remedy procedures existed to afford the Respondents further opportunities to correct their conduct, given they have chosen for years to abrogate Nevada's statutory law per Smith's Memo dated January 29, 2018, supra p. 12, it is unlikely that the Respondents would act honorably in any further administrative proceeding. Therefore, the only remaining legal option for the Petitioner to seek relief for the Respondents' failure to perform their duty is to petition this Court for the extraordinary Writ of Mandamus.

Because the Respondents have a statutory duty to properly consider the Petitioner for parole, have failed to do so for the reasons stated in this Writ of Mandamus, and the Petitioner has no plain, speedy, and adequate remedy under the law to cure the Respondents' failure, this Court has jurisdiction over and may grant Petitioner's Writ of Mandamus ordering Respondents to perform their statutory duty.

VI. CONCLUSION.

This honorable Court has jurisdiction to issue a Writ of Mandamus to compel the Respondents to perform their duty as delineated by the clear, unambiguous, and compulsory language of: NRS 213.1214(4) to consider the Petitioner's NRS 213.1214 assessment result completed by the DOC through ending the Respondents' NRS 213.1214 "override" practice; NAC 213.516 to consider all NAC 213.518 Mitigating Factors applicable to the Petitioner pursuant to both NAC's enabling statutes NRS 213.140 and NRS 213.10885; and, NRS 213.140(1) to properly consider the Petitioner for parole.

Therefore, Petitioner respectfully requests that a Writ of Mandamus issue to compel Respondents to cease their NRS 213.1214 assessment "override" practice and consider the Petitioner's NRS 213.1214 assessment result as completed by the DOC pursuant to NRS 213.1214(4), apply and consider all applicable NAC 213.518 Mitigating Factors to the Petitioner, and, within 90 days of the order, vacate the Petitioner's February 26, 2020, ORDER DENYING PAROLE and conduct a new and proper parole consideration, within the limits of Nevada's statutory law, including a parole hearing, in which the Petitioner's Department of Corrections completed NRS 213.1214 assessment is not overridden and all applicable NAC 213.518 Mitigating Factors are applied to the Petitioner and considered.

DATED this 10th day of March, 2021.

Thank you for your time and consideration.

Respectfully submitted,

Evan Grant

Evan Scott Grant, pro se
NNCC
P.O. Box 7000
Carson City, NV 89702

VERIFICATION

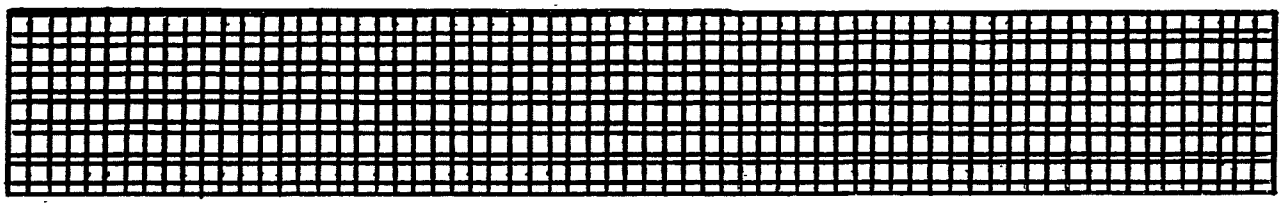
Under penalty of perjury, the undersigned declares that he is the Petitioner, pro se, named in the foregoing Petition for Writ of Mandamus; that he knows the contents of the Petition; that the facts alleged in this Petition are true of his own knowledge, except as to those matters stated on information and belief; and that, as to those matters stated on information and belief, he believes the Petition to be true.

DATED this 10th day of March, 2021.

EVAN SCOTT GRANT, pro se
NNCC
P.O. BOX 7000
Carson City, NV 89702

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this Petition for Writ of Mandamus complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the handwritting requirements of NRAP 32(8) as the Petitioner is pro se and incarcerated. This Petition has been prepared in a monospaced typeface using handwritting with a 10.125 character per inch grid, an example of which is illustrated below:



2. I further certify that this Petition complies with the type-volume limitations of NRAP 21(d) because, excluding the parts of the Petition exempted by NRAP 32(a)(7)(C), it is monospaced, has 10.5 or fewer characters per inch, and contains 641 lines of text.

3. Finally, I hereby certify that I have read this Petition for Writ of Mandamus, and to the best of my knowledge, information, and belief, it is not frivolus or interposed for any improper purpose. I further certify that this Petition complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertation in the Petition regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript

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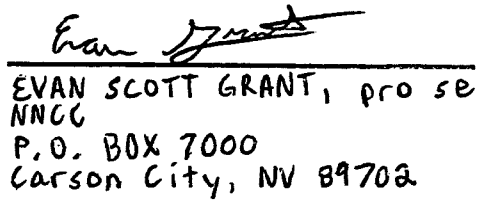
or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying Petition is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 10th day of March, 2021.



EVAN SCOTT GRANT, pro se
NNCC
P.O. BOX 7000
Carson City, NV 89702

CERTIFICATE OF SERVICE

I hereby certify that I am the Petitioner, pro se, incarcerated, and that on the 10th day of March, 2021, I served a true and correct copy of the foregoing Petition for Writ of Mandamus, by leaving it with Nevada Department of Corrections Northern Nevada Correctional Center Employee Sergeant Wood to be placed in the outgoing mail and be mailed via U.S. Postal Service FIRST CLASS, addressed to:

Attorney General Aaron Ford
State of Nevada
Office of the Attorney General
100 North Carson Street
Carson City, NV 89701

Evan Grant

EVAN SCOTT GRANT, pro se

RECEIVED 2021

Evan Grant, pro se
NNCC
P.O. Box 7000
Carson City, NV 89702

FIRST JUDICIAL DISTRICT COURT OF NEVADA
CARSON CITY

EVAN SCOTT GRANT, Petitioner, vs. CHARLES DANIELS, Director, Nevada Department of Corrections, HAROLD WICKHAM, Deputy Director of Operations, Nevada Department of Corrections, PERRY RUSSEL, Warden, Northern Nevada Correctional Center, LISA WALSH, Former Associate Warden of Programs and Grievance Coordinator, Northern Nevada Correctional Center, NATHAN HUGHES, Correctional Caseworker Specialist III, Northern Nevada Correctional Center, TEJAY HARVEY, Correctional Caseworker Specialist, Nevada Department of Corrections, RODGER HUDNALL, Psychologist II, Warm Springs Correctional Center, and THE NEVADA DEPARTMENT OF CORRECTIONS, Respondents.	CASE NO. 21 OC 00124 1B DEPARTMENT II

EVAN GRANT'S PETITION FOR WRIT OF MANDAMUS

EVAN SCOTT GRANT

7/14/2021
DATE

I declare under penalty of perjury that the foregoing is true and correct.

EVAN SCOTT GRANT

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SUBJECT MATTER JURISDICTION

Petitioner EVAN SCOTT GRANT, pro se, incarcerated, respectfully submits this Petition for Writ of Mandamus to this Honorable Court pursuant to Nev. Const. Art. 6 s. 6 cl. 1 and NRS 34.150 – 34.310.

The District Courts of Nevada have original jurisdiction under Nev. Const. Art. 6 s. 6 cl. 1, to issue Writs of Mandamus. NRS 34.160 provides:

> The writ may be issued by ... a district court or a judge of the district court, to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station[.]

To justify the issuance of a Writ of Mandamus to enforce the performance of an act by a public officer, the act must be one the performance of which the law requires as a duty resulting from the office, and there must be an actual omission on the part of the officer to perform it. State Ex. Rel. Lawton v. Public Service Comm. of Nevada, et al., 44 Nev. 102, 190 P. 284, 285 (1920). A Writ of Mandamus is available under NRS 34.160 and shall issue in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of the law. NRS 34.170; Stockmeier v. Psychological Review Panel, 122 Nev. 534, 538, 135 P.3d 807, 809 (2006).

RELIEF SOUGHT

Petitioner, who is an inmate at the Nevada Department of Corrections Northern Nevada Correctional Center, respectfully requests that a Writ of Mandamus issue directed to Respondents CHARLES DANIELS, Director, Nevada Department of Corrections, HAROLD WICKHAM, Deputy Director of Operations, Nevada Department

of Corrections, PERRY RUSSEL, Warden, Northern Nevada Correctional Center, LISA WALSH, Former Associate Warden of Programs and Grievance Coordinator, Northern Nevada Correctional Center, NATHAN HUGHES, Correctional Caseworker Specialist III, Northern Nevada Correctional Center, TEJAY HARVEY, Correctional Caseworker Specialist, Nevada Department of Corrections, RODGER HUDNALL, Psychologist II, Warm Springs Correctional Center, and THE NEVADA DEPARTMENT OF CORRECTIONS to:

1) Cease use of the STATIC-99R actuarial assessment instrument for the NRS 213.1214 assessment as its use is in violation of NRS 213.1214(1); and,

2) Establish a procedure to ensure the accuracy of each completed NRS 213.1214 assessment as mandated by NRS 213.1214(2)(b)(1); and,

3) Establish a procedure to correct any error occurring in a completed NRS 213.1214 assessment as mandated by NRS 213.1214(2)(b)(2); and,

4) Recind Nevada Department of Corrections Administrative Regulation 537.03 as it solely inhibits Department employees from carrying out their mandatory duty under NRS 213.1214; and,

5) Within 90 days of the order, conduct a new and proper NRS 213.1214 assessment of the Petitioner and provide it to the Nevada Board of Parole Commissioners pursuant to NRS 213.1214(1) as the Petitioner's January 8, 2020, NRS 213.1214 assessment was conducted using only the STATIC-99R actuarial assessment instrument in violation of NRS 213.1214(1); and,

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6) Execute the Nevada Department of Corrections' Inmate Administrative Remedy Procedure, presently Administrative Regulation 740, as prescribed pursuant to the Respondents' duty under Administrative Regulation 740's enabling statutes NRS 41.0322 and NRS 209.243 and United States Supreme Court precedent; and,

7) Any other relief deemed appropriate by this court.

STATEMENT OF THE LEGAL ISSUES PRESENTED

The legal issues presented in this Petition are:

1) Whether Respondents have a legal duty to follow the clear, unambiguous, and compulsory language of NRS 213.1214(1) to assess the Petitioner using an accepted standard of assessment capable of determining if the Petitioner is a high risk to reoffend in a sexual manner; and,

2) Whether Respondents have a legal duty to follow the clear, unambiguous, and compulsory language of NRS 213.1214(2)(b)(1) to establish a procedure to ensure the accuracy of the Petitioner's completed NRS 213.1214 assessment; and,

3) Whether Respondents have a legal duty to follow the clear, unambiguous, and compulsory language of NRS 213.1214(2)(b)(2) to establish a procedure to correct any error occurring in the Petitioner's completed NRS 213.1214 assessment; and,

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4) Whether Respondents have a legal duty to recind Nevada Department of Corrections Administrative Regulation 537.03 as it solely directs Department employees to assess the Petitioner for the NRS 213.1214 assessment in a manner in violation of the clear, unambiguous, and compulsory language of NRS 213.1214(1), (2)(b)(1) & (2)(b)(2); and,

5) Whether Respondents have a legal duty to follow the clear, unambiguous, and compulsory language of NRS 213.1214(1) to properly assess the Petitioner's risk to reoffend in a sexual manner by vacating his January 8, 2020, NRS 213.1214 assessment and conducting a new and proper NRS 213.1214 assessment of the Petitioner and providing its completed result to the Nevada Board of Parole Commissioners to be considered as the Petitioner's February 26, 2020, ORDER DENYING PAROLE was based on an improper NRS 213.1214 assessment; and,

6) Whether Respondents have a legal duty to execute the Nevada Department of Corrections Inmate Administrative Remedy Procedure, presently Administrative Regulation 740, as prescribed as that procedure is a state-created liberty interest pursuant to the clear, unambiguous, and compulsory language of Administrative Regulation 740's enabling statutes NRS 41.0322 and NRS 209.243.

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HOW THE REMAINDER OF THIS PETITION IS ORGANIZED

As this Petition was originally filed in the Nevada Supreme Court on March 15, 2021, case no. 82628, and was subsequently denied on May 14, 2021, for the sole reason of the Court choosing not to exercise its original jurisdiction, Petitioner is following the Supreme Court's recommendation and filing the instant Petition for Writ of Mandamus in the District Court.

Having originally filed in the Nev. S. Ct., the Petitioner's original appendices were formatted in compliance with NRAP 30. Due to the physical limitations of being incarcerated, the Petitioner lacks the ability to easily change the handwritten page numbers of the original appendices to comply with FJDCR 3.25(c). For this reason, a "MOTION IN LIMINE TO SUSPEND FJDCR 3.25(c) PURSUANT TO FJDCR 1.2(c) DUE TO EXIGENT CIRCUMSTANCES" is accompanying this Petition and should be granted by this Court in the interest of justice.

Since the Petitioner's "STATEMENT OF RELEVANT FACTS" and "MEMORANDUM OF POINTS AND AUTHORITIES" reference documents in the Petitioner's Nev. S. Ct. Petition for Writ of Mandamus Case No. 82628 Appendices 1 through 6, the Petitioner has organized the remainder of this Petition for Writ of Mandamus as follows:

1) Physically attached to this Petition are Exhibits 1 and 2. Exhibit 1 is the Denial Order from the Nev. S. Ct. for the Petitioner's Petition for Writ of Mandamus Case No. 82628. Exhibit 2 is a copy of the Petition for Writ of Mandamus filed in the Nev. S. Ct. for case no. 82628. The unattached Exhibits 2A through 2F are copies of the Petitioner's Appendices Volumes 1 through 6

filed in the Nev. S. Ct. for case no. 82628. A summarized index of Exhibits 2A through 2F is as follows:

Exhibit	Contents
2A	Case No. 82628, Petitioner's Appendix Volume 1
2B	Case No. 82628, Petitioner's Appendix Volume 2
2C	Case No. 82628, Petitioner's Appendix Volume 3
2D	Case No. 82628, Petitioner's Appendix Volume 4
2E	Case No. 82628, Petitioner's Appendix Volume 5
2F	Case No. 82628, Petitioner's Appendix Volume 6

2) For this Petition's "STATEMENT OF RELEVANT FACTS", Petitioner respectfully directs the court to Exhibit 2, Nevada Supreme Court Case No. 82628 Petition for Writ of Mandamus, pages numbered 4 through 6. Each time a reference is made to "Pet'r App.", please refer to this Petition's Exhibits 2A through 2F utilizing the exhibit numbers, volume numbers, and page numbers associated with the Petitioner's Appendices for Nevada Supreme Court Case No. 82628.

3) For this Petition's "MEMORANDUM OF POINTS AND AUTHORITIES", Petitioner respectfully directs the court to Exhibit 2, Nevada Supreme Court Case No. 82628 Petition for Writ of Mandamus, pages numbered 7 through 23 beginning with Point II on page 7. Each time a reference is made to "Pet'r App.", please refer to this Petition's Exhibits 2A through 2F utilizing the exhibit numbers, volume numbers, and page numbers associated with the Petitioner's Appendices for Nevada Supreme Court Case No. 82628.

4) For this Petition's "TABLE OF AUTHORITIES", Petitioner respectfully directs the court to Exhibit 2, Nevada Supreme Court Case No. 82628 Petition For Writ Of Mandamus, pages numbered iv through v.

In summary:

Section	Location	Pages
STATEMENT OF RELEVANT FACTS	Exhibit 2	4-6
MEMORANDUM OF POINTS AND AUTHORITIES	Exhibit 2	7-23
TABLE OF AUTHORITIES	Exhibit 2	iv-v

Petitioner humbly apologizes to the court for any inconvenience this Petition's organization may cause.

When the Petitioner was denied parole by the Respondents in February of 2020, he received a two year dump. This would place the Petitioner's next parole consideration in February of 2022. For the relief sought in this Petition to be meaningful, a ruling would be needed by the end of November, 2021. Due to the large amount of time it would take to reorganize and re-handnumber the documents presented in support of this Petition, in addition to re-handwriting the STATEMENT OF RELEVANT FACTS, MEMORANDUM OF POINTS AND AUTHORITIES, and TABLE OF AUTHORITIES, the Petitioner believes the preceding method of presentation would best serve the court and Respondents to allow for the greatest amount of time possible to hear this case before the end of November, 2021.

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DATED this 14th day of July, 2021.

Thank you for your time and consideration.

Respectfully submitted,

EVAN SCOTT GRANT, pro se
NNCC
P.O. Box 7000
Carson City, NV 89702

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, EVAN GRANT'S PETITION FOR WRIT OF MANDAMUS, DOES NOT contain the social security number of any person.

DATED this 14th day of July, 2021.

Evan Grant
EVAN SCOTT GRANT, pro se

EXHIBIT 1

NEVADA SUPREME COURT

Case No. 82628

Denial Order

IN THE SUPREME COURT OF THE STATE OF NEVADA

EVAN SCOTT GRANT,
Petitioner,
vs.
MARY K. BAKER, COMMISSIONER, NEVADA BOARD OF PAROLE COMMISSIONERS; SUSAN JACKSON, COMMISSIONER, NEVADA BOARD OF PAROLE COMMISSIONERS; TONY CORDA, COMMISSIONER, NEVADA BOARD OF PAROLE COMMISSIONERS; MICHAEL KEELER, COMMISSIONER, NEVADA BOARD OF PAROLE COMMISSIONERS; DARLA FOLEY, COMMISSIONER, NEVADA BOARD OF PAROLE COMMISSIONERS; AND THE STATE OF NEVADA BOARD OF PAROLE COMMISSIONERS,
Respondents.

No. 82627

FILED
MAY 14 2021
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

EVAN SCOTT GRANT,
Petitioner,
vs.
CHARLES DANIELS, DIRECTOR, NEVADA DEPARTMENT OF CORRECTIONS; HAROLD WICKHAM, DEPUTY DIRECTOR OF OPERATIONS, NEVADA DEPARTMENT OF CORRECTIONS; PERRY RUSSELL, WARDEN, NORTHERN NEVADA CORRECTIONAL CENTER; LISA WALSH, FORMER ASSOCIATE WARDEN OF PROGRAMS AND GRIEVANCE COORDINATOR, NORTHERN NEVADA CORRECTIONAL CENTER; NATHAN HUGHES, CORRECTIONAL CASEWORKER SPECIALIST III,

No. 82628

21-13934

NORTHER NEVADA CORRECTIONAL CENTER; TEJAY HARVEY, CORRECTIONAL CASEWORKER SPECIALIST, NORTHER NEVADA CORRECTIONAL CENTER; RONALD RAY HUDNALL, PSYCHOLOGIST III, WARM SPRINGS CORRECTIONAL CENTER; AND THE STATE OF NEVADA DEPARTMENT OF CORRECTIONS,
Respondents.

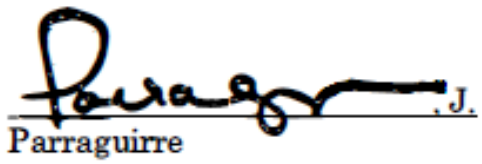
ORDER DENYING PETITIONS

These original petitions for a writ of a mandamus challenge the denial of parole based on a failure to follow NRS 213.1214 and to consider all of the mitigating circumstances, the risk-level assessment tool used by the Department of Corrections, and the Department's failure to provide procedures to challenge the risk-level assessment and update administrative regulations.[1] We have reviewed the documents submitted in these matters, and without deciding upon the merits of any claims raised therein, we decline to exercise our original jurisdiction. Petitioner should file a petition for a writ of mandamus challenging the actions of the respondents in the district court in the first instance. *See State v. Eighth Judicial Dist. Court (Armstrong),* 127 Nev. 927, 931, 267 P.3d 777, 779-80 (2011) (recognizing that the decision to entertain an extraordinary writ petition lies within our discretion); *Round Hill Gen. Improvement Dist. v. Newman,* 97 Nev. 601, 604, 637 P.2d 534, 536 (1981) (explaining that an appellate court is not suited to resolve factual disputes and therefore will not exercise its discretion to entertain a mandamus petition when there are

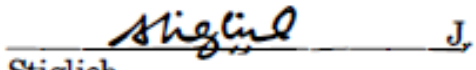
[1]We elect to consolidate these petitions for disposition. *See* NRAP 3(b)(2) (permitting court to consolidate matters upon its own motion).

factual questions). He can then appeal from any adverse decision. *See* NRS 2.090(2) (providing that an order granting or refusing to grant mandamus is appealable). Accordingly, we

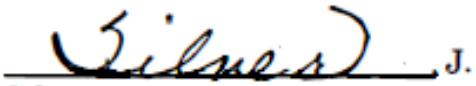
ORDER the petitions DENIED.



_____, J.
Parraguirre



_____, J.
Stiglich



_____, J.
Silver

cc: Evan Scott Grant
Attorney General/Carson City

EXHIBIT 2

NEVADA SUPREME COURT

Case No. 82628

Petition For Writ of Mandamus

Filed 3/15/2021

NO. 82628

IN THE SUPREME COURT OF THE STATE OF NEVADA

EVAN SCOTT GRANT,

Petitioner,

vs.

CHARLES DANIELS, Director, Nevada Department of Corrections,
HAROLD WICKHAM, Deputy Director of Operations, Nevada Department of Corrections,
PERRY RUSSEL, Warden, Northern Nevada Correctional Center,
LISA WALSH, Former Associate Warden of Programs and Grievance Coordinator, Northern Nevada Correctional Center,
NATHAN HUGHES, Correctional Caseworker Specialist III, Northern Nevada Correctional Center,
TEJAY HARVEY, Correctional Caseworker Specialist, Northern Nevada Correctional Center,
RODGER HUDNALL, Psychologist II, Warm Springs Correctional Center, and
THE NEVADA DEPARTMENT OF CORRECTIONS,

Respondents.

SUPREME COURT CASE NO.:

FILED

MAR 15 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY _____
DEPUTY CLERK

PETITION FOR WRIT OF MANDAMUS

EVAN SCOTT GRANT, pro se
NNCC
P.O. BOX 7000
Carson City, NV 89702

RECEIVED
MAR 11 2021
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

IN THE SUPREME COURT OF THE STATE OF NEVADA

EVAN SCOTT GRANT, Petitioner, vs. CHARLES DANIELS, Director, Nevada Department of Corrections, HAROLD WICKHAM, Deputy Director of Operations, Nevada Department of Corrections, PERRY RUSSEL, Warden, Northern Nevada Correctional Center, LISA WALSH, Former Associate Warden of Programs and Grievance Coordinator, Northern Nevada Correctional Center, NATHAN HUGHES, Correctional Caseworker Specialist III, Northern Nevada Correctional Center, TEJAY HARVEY, Correctional Caseworker Specialist, Northern Nevada Correctional Center, RODGER HUDNALL, Psychologist II, Warm Springs Correctional Center, and THE NEVADA DEPARTMENT OF CORRECTIONS, Respondents.	SUPREME COURT CASE NO.:

PETITION FOR WRIT OF MANDAMUS

EVAN SCOTT GRANT, pro se
NNCC
P.O. BOX 7000
Carson City, NV 89702

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NRS 213.1214(2)(b)(2) 2,3,5,10,11,21,22
NRS 213.1214(4) 12

Nevada Department of Corrections Administrative Regulations

AR 537 5,10
AR 537.03 2,3,5,10,11,12,21,22
AR 537.03(1) 10
AR 740 2,4,5,16,19,20,21,22
AR 740.03(3) 6
AR 740.08(5) 5,6

Constitutional Provisions

Nev. Const. Art. 6 S. 4 6

Legislation

Assembly Bill 45 (2015) 8,9
Senate Bill 104 (2013) 5,10,11

Legislative History

SB104: Hearing before the Assembly Committee on the Judiciary, 2013 Leg., 77th Sess., April 29, 2013 (Nev. 2013) 11

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ROUTING STATEMENT

This Petition for Writ of Mandamus is presumptively assigned to the Court of Appeals pursuant to NRAP 17(b)(9), however, pursuant to NRAP 17(d), Petitioner respectfully requests this Petition be retained by the Supreme Court pursuant to NRAP 17(a)(12). The principle matters presented in this Petition raise questions concerning the proper assessment of certain sex offenders to recidivate in a sexual manner for the purpose of consideration for parole release into the community, and are, therefore, of statewide public importance.

PETITION AND RELIEF SOUGHT

Petitioner EVAN SCOTT GRANT, pro se, incarcerated, respectfully submits this Petition for Writ of Mandamus to this Honorable Court pursuant to NRS 34.150-34.310, NRAP 21, and NRAP 32(5)(b) & (8).

Petitioner, who is an inmate at the Nevada Department of Corrections Northern Nevada Correctional Center, respectfully requests that a Writ of Mandamus issue directed to Respondents CHARLES DANIELS, Director, Nevada Department of Corrections, HAROLD WICKHAM, Deputy Director of Operations, Nevada Department of Corrections, PERRY RUSSEL, Warden, Northern Nevada Correctional Center, LISA WALSH, Former Associate Warden of Programs and Grievance Coordinator, Northern Nevada Correctional Center, NATHAN HUGHES, Correctional Caseworker Specialist III, Northern Nevada Correctional Center, TEJAY HARVEY, Correctional Caseworker Specialist, Northern Nevada Correctional Center, RODGER HUDNALL, Psychologist II, Warm Springs Correctional Center, and THE NEVADA DEPARTMENT OF CORRECTIONS to:

1) Cease use of the STATIC-99R actuarial assessment instrument for the NRS 213.1214 assessment as its use is in violation of NRS 213.1214(1); and,

2) Establish a procedure to ensure the accuracy of each completed NRS 213.1214 assessment as mandated by NRS 213.1214(2)(b)(1); and,

3) Establish a procedure to correct any error occurring in a completed NRS 213.1214 assessment as mandated by NRS 213.1214(2)(b)(2); and,

4) Recind Nevada Department of Corrections Administrative Regulation 537.03 as it solely inhibits Department employees from carrying out their mandatory duty under NRS 213.1214; and,

5) Within 90 days of the order, conduct a new and proper NRS 213.1214 assessment of the Petitioner and provide it to the Nevada Board of Parole Commissioners pursuant to NRS 213.1214(1) as the Petitioner's January 8, 2020, NRS 213.1214 assessment was conducted using only the STATIC-99R actuarial assessment instrument in violation of NRS 213.1214(1); and,

6) Execute the Nevada Department of Corrections Inmate Administrative Remedy Procedure, presently Administrative Regulation 740, as prescribed pursuant to the Respondents' duty under Administrative Regulation 740's enabling statutes NRS 41.0322 and NRS 209.243 and United States Supreme Court precedent.

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STATEMENT OF LEGAL ISSUES PRESENTED

As NRAP 30(b) requires appendix brevity and Pet'r App. Ex. 1 contains 1185 pages and pertains to 6 legal issues, to aid the Court, all 6 legal issues are presented in this Petition to prevent redundant appendices across multiple Petitions. The legal issues presented in this Petition are:

1) Whether Respondents have a legal duty to follow the clear, unambiguous, and compulsory language of NRS 213.1214(1) to assess the Petitioner using an accepted standard of assessment capable of determining if the Petitioner is a high risk to reoffend in a sexual manner; and,

2) Whether Respondents have a legal duty to follow the clear, unambiguous, and compulsory language of NRS 213.1214(2)(b)(1) to establish a procedure to ensure the accuracy of the Petitioner's completed NRS 213.1214 assessment; and,

3) Whether Respondents have a legal duty to follow the clear, unambiguous, and compulsory language of NRS 213.1214(2)(b)(2) to establish a procedure to correct any error occurring in the Petitioner's completed NRS 213.1214 assessment; and,

4) Whether Respondents have a legal duty to recind Nevada Department of Corrections Administrative Regulation 537.03 as it solely directs Department employees to assess the Petitioner for the NRS 213.1214 assessment in a manner in violation of the clear, unambiguous, and compulsory language of NRS 213.1214(1), (2)(b)(1) & (2)(b)(2); and,

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5) Whether Respondents have a legal duty to follow the clear, unambiguous, and compulsory language of NRS 213.1214(1) to properly assess the Petitioner's risk to reoffend in a sexual manner by vacating his January 8, 2020, NRS 213.1214 assessment and conducting a new and proper NRS 213.1214 assessment of the Petitioner and providing its completed result to the Nevada Board of Parole Commissioners to be considered as the Petitioner's February 26, 2020, ORDER DENYING PAROLE was based on an improper NRS 213.1214 assessment; and,

6) Whether Respondents have a legal duty to execute the Nevada Department of Corrections Inmate Administrative Remedy Procedure, presently Administrative Regulation 740, as prescribed as that procedure is a state-created liberty interest pursuant to the clear, unambiguous, and compulsory language of Administrative Regulation 740's enabling statutes NRS 41.0322 and NRS 209.243.

STATEMENT OF RELEVANT FACTS

Respondents' Failure To Comply With NRS 213.1214

NRS 213.1214(1) mandates that the Department of Corrections (hereinafter "DOC") NRS 213.1214 assessment standard be able to, at minimum, determine "[W]hether the prisoner is a high risk to reoffend in a sexual manner...." The DOC assessed the Petitioner utilizing the STATIC-99R actuarial assessment instrument. Pet'r App. Ex. 1-S, at vol. 2 p. 165. Per the STATIC-99R Coding Rules Revised-2016, the STATIC-99R does not identify high risk. Pet'r App. Ex. 1-M, at vol. 1 p. 246. Former Nevada Attorney General Adam Laxalt stated in a 2015 letter that if the STATIC-99R risk levels do not match the NRS 213.1214(1) language exactly, then the STATIC-99R cannot be used for the NRS

213.1214 assessment. (Pet'r App. Ex. 3).

Furthermore, NRS 213.1214(2)(b)(1) mandates the establishment of a procedure to "Ensure the accuracy of each completed assessment...." NRS 213.1214(2)(b)(2) mandates the establishment of a procedure to "Correct any error occurring in a completed assessment...." Per the DOC, Pet'r App. Ex. 1-Y, at vol. 2 p. 231, the only procedure governing the DOC's execution of NRS 213.1214 is DOC Administrative Regulation (hereinafter "AR") 537, specifically AR 537.03. AR 537.03, Pet'r App. Ex. 1-Z, at vol. 2 pp. 239-240, does not comply with any part of NRS 213.1214. AR 537 was last amended in 2010 and AR 537.03 relys solely upon NRS 213.1214 language which was removed with the approval of SB104 in 2013. Pet'r App. Ex. 1-H, at vol. 1 pp. 162-164. Additionally, the DOC acknowledges that the STATIC-99R is not mentioned in AR 537. Pet'r App. Ex. 1-U, at vol. 2 p. 172.

<u>Petitioner's Attempt To Notify Respondents Of Legal Issues</u>

On July 6, 2020, Petitioner filed a 1185 page Informal Grievance, Grievance No. 2006-31-04367 (Pet'r App. Ex. 1), with the DOC regarding the Respondents' violation of NRS 213.1214. This grievance contained a supplement comprised of 78 documents labeled Exhibits A through WWW and an explaination of their relevance in an effort to comply with AR 740.08(5) which states, "All documentation... available to the inmate must be submitted at this level with the grievance." AR 740, Pet'r App. Ex. 1-A, at vol. 1 p. 72.

On July 29, 2020, Respondent Walsh presumptively deemed the grievance improper and permanently prevented its consideration claiming that the Petitioner was challenging "state, federal and

local laws and regulations" and a "Parole Board Decision" (Pet'r App. Ex. 2). Per the "Remedy" section, the DOC's execution of NRS 213.1214 is challenged and a request is made to inform the Parole Board of NRS 213.1214 non-compliance. Pet'r App. Ex. 1, at vol. 1 p. 5. Both remedies are "[W]ithin the authority and control of the Department..." and, therefore, grievable. AR 740.03(3), Pet'r App. Ex. 1-A, at vol. 1 p. 66.

Furthermore, Walsh "REJECTED" the Grievance for using "More than two (2) continuation forms (DOC 3097)...," Pet'r App. Ex. 2, when only two (2) DOC 3097s were used. Pet'r App. Ex. 1, at vol. 1 p. 4-5. Additionally, Walsh's rejection claims "Pages 9 through 59 in the submitted Grievance function as inmate created continuation forms...." Pet'r App. Ex. 2. Remedy No. 1, Pet'r App. Ex. 1, at vol. 1 p. 5, requests the Grievance Respondent read a specific document located on pages 9 through 59. Walsh literally "REJECTED" the grievance because the Petitioner submitted "all documentation" "available" per AR 740.08(5) and requested a single document be read. The result was that the DOC deliberately refused a legitimate opportunity to address alleged issues of misconduct.

MEMORANDUM OF POINTS AND AUTHORITIES

I. THIS HONORABLE COURT HAS JURISDICTION TO GRANT A WRIT OF MANDAMUS IN THIS CASE

The Supreme Court has original jurisdiction under Nev. Const. Art. 6 s. 4, to issue Writs of Mandamus. State v. Second Judicial Dist. Court, 120 Nev. 254, 258, 89 P.3d 663, 665 (2004). NRS 34.160 provides:

> The writ may be issued by the Supreme Court... to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station[.]

To justify the issuance of a Writ of Mandamus to enforce the performance of an act by a public officer, the act must be one the performance of which the law requires as a duty resulting from the office, and there must be an actual omission on the part of the officer to perform it. State Ex. Rel. Lawton v. Public Service Comm. of Nevada, et al., 44 Nev. 102, 190 P. 284, 285 (1920). A Writ of Mandamus is available under NRS 34.160 and shall issue in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of the law. NRS 34.170; Stockmeier v. Psychological Review Panel, 122 Nev. 534, 538, 135 P.3d 807, 809 (2006). Notwithstanding that the Supreme Court may question a policy or the expediency of a statute, it is bound to compel a state officer to perform an act required by such statute under NRS 34.160. State Bar v. List, 97 Nev. 367, 368, 632 P.2d 341, 342 (1981).

II. RESPONDENTS HAVE A DUTY UNDER THE CLEAR, UNAMBIGUOUS, AND COMPULSORY LANGUAGE OF NRS 213.1214(1) TO ASSESS THE PETITIONER'S RISK TO REOFFEND IN A SEXUAL MANNER UTILIZING AN ASSESSMENT THAT CAN IDENTIFY HIGH RISK.

> The Department of Corrections shall assess each prisoner who has been convicted of a sexual offense to determine the prisoner's risk to reoffend in a sexual manner using a currently accepted standard of assessment. The completed assessment must include, without limitation, a determination of the prisoner's risk to reoffend in a sexual manner, including, without limitation, whether the prisoner is a high risk to reoffend in a sexual manner....

NRS 213.1214(1) (2019). In NRS 213.1214(1), the word "shall" immediately appears after "The Department of Corrections[.]" "Shall" is to be construed as mandatory when construing Legislative statutes, unless an exception is provided. Ewing v.

Fahey, 86 Nev. 604, 607 (1970). As no exceptions are provided, the actions specified in NRS 213.1214(1) are explicitly mandatory. Being explicitly mandatory, this state law "[C]reate[s] [] a protected liberty interest by placing substanitive limitations on official discretion." Olim v. Wakinekona, 461 U.S. 238, 249 (1983). Therefore, the Petitioner has a state-created right to be assessed in a manner that complies with NRS 213.1214(1).

On January 8, 2020, Respondent Hudnall conducted an NRS 213.1214 assessment of the Petitioner utilizing the STATIC-99R actuarial assessment instrument. Pet'r App. Ex. 1, at vol. 2 pp. 170 & 172. Prior to 2016, the STATIC-99R could identify high risk. Id. at vol. 1 p. 233. However, in 2016, the Publishers of the STATIC-99R revised the instrument's risk levels removing the high risk level. STATIC-99R Coding Rules Revised-2016, Pet'r App. Ex. 1-M, at vol. 1 p. 246. As the STATIC-99R could no longer identify high risk, its use for the NRS 213.1214 assessment on the Petitioner was in violation of NRS 213.1214(1).

This fact of unlawful NRS 213.1214 assessment is supported by two seperate Nevada authorities. First, on January 29, 2015, then Nevada Attorney General Adam Laxalt in a letter to the Nevada Assembly Committee on Judiciary explains how the passage of AB45 (2015) would permit the DOC to use its "preferred" instrument, the pre-2016 revision version of the STATIC-99R, for the NRS 213.1214 assessment. Pet'r App. Ex. 3, at vol. 5 p. 195. Per Laxalt, at the time, NRS 213.1214(1) required the assessment to return risk levels of low, moderate, or high. The pre-2016 version of the STATIC-99R returned risk levels of low, low-moderate, moderate-high, or high. Therefore, per Laxalt, the

pre-2016 STATIC-99R could not be used by the DOC for the NRS 213.1214 assessment as its levels did not satisfy the pre-AB45 (2015) mandated three risk level language of NRS 213.1214(1). Id. Second, on January 29, 2018, David M. Smith, Hearings Examiner II, authored a Nevada Board of Parole Commissioners' Memo detailing how the DOC was in violation of NRS 213.1214(1) by using the Revised-2016 version of the STATIC-99R. Pet'r App. Ex. 1-Q, at vol. 2 pp. 156-157.

Despite Laxalt and Smith's statements and the current language of NRS 213.1214(1), on July 29, 2020, Respondent Walsh fraudulently stated to the Petitioner in writing, "The STATIC 99 form is a requirement of the Nevada Parole Commissioners...." Pet'r App. Ex. 2, at vol. 5 p. 193.

As the Petitioner has a right to be assessed per NRS 213.1214(1) and the Respondents' use of the STATIC-99R on the Petitioner violated NRS 213.1214(1), the Respondents abrogated the Petitioner's right to proper assessment. Therefore, this Court has a duty to order Respondents to cease their use of the STATIC-99R for NRS 213.1214 assessment purposes.

III. RESPONDENTS HAVE A DUTY UNDER THE CLEAR, UNAMBIGUOUS, AND COMPULSORY LANGUAGE OF NRS 213.1214(2)(b)(1) TO ESTABLISH A PROCEDURE TO ENSURE THE ACCURACY OF THE PETITIONER'S COMPLETED NRS 213.1214 ASSESSMENT.

NRS 213.1214(2)(b)(1) provides: "2. The [DOC] Director shall:... (b) Establish a procedure to: (1) Ensure the accuracy of each completed assessment provided to the [Parole] Board...." Pursuant to Ewing and Olim, supra pp. 7-8, NRS 213.1214(2)(b)(1) is a state-created right to a procedure to ensure accurate NRS 213.1214 assessment.

In response to the Petitioner's April 5, 2020, inquiry regarding the DOC's NRS 213.1214 procedures, the DOC directed the Petitioner to AR 537. Pet'r App. Ex. 1-Y, at vol. 2 p. 231. The only subsection of AR 537 pertaining to NRS 213.1214 is AR 537.03 entitled "PSYCH PANEL." Pet'r App. Ex. 1-Z, at vol. 2 pp. 239-240. AR 537.03(1) begins: "The Board shall not release on parole those inmates required by NRS 213.1214 to be certified by a panel." Id. The "Panel" AR 537.03 refers to was disbanded by the Legislature with the passage of SB104 (2013). Pet'r App. Ex. 1-H, at vol. 1 p. 162. Furthermore, AR 537 was last amended in 2010, Pet'r App. Ex. 1-Z, at vol. 2 p. 233, three years prior to the creation of NRS 213.1214(2)(b)(1) with SB104 (2013).

As all of AR 537.03 is dependent upon the "Panel" language which no longer exists in NRS 213.1214 and Respondents have no other NRS 213.1214 procedure, Respondent Daniels has failed in his mandatory duty under NRS 213.1214(2)(b)(1) and must be ordered by this Court to establish the mandated procedure.

IV. RESPONDENTS HAVE A DUTY UNDER THE CLEAR, UNAMBIGUOUS, AND COMPULSORY LANGUAGE OF NRS 213.1214(2)(b)(2) TO ESTABLISH A PROCEDURE TO CORRECT ANY ERROR OCCURRING IN THE PETITIONER'S COMPLETED NRS 213.1214 ASSESSMENT.

NRS 213.1214(2)(b)(2) provides: "2. The [DOC] Director shall:... (b) Establish a procedure to:... (2) Correct any error occurring in a completed assessment provided to the [Parole] Board." Pursuant to Ewing and Olim, supra pp. 7-8, NRS 213.1214(2)(b)(2) is a state-created right to a procedure to correct assessment errors.

The only DOC NRS 213.1214 procedure pertaining to the NRS 213.1214 assessment is located in AR 537.03. Supra. AR 537.03

does not utilize the current NRS 213.1214 language as AR 537.03 was last amended three years prior to SB104 (2013) creating that language. Supra p. 10.

Concerning error correction, Connie S. Bisbee, an architect of SB104 (2013), spoke during the Meeting of the Assembly Committee on Judiciary, 77th Session, April 29, 2013. Pet'r App. Ex. 1-G, at vol. 1 pp. 119-125. She stated, "[I]f there is a problem, [the prisoner] can let the [DOC] know, 'I was scored this, but here is evidence that was incorrect.'" Id. at vol. 1 p. 121. Despite there not being a procedure, the Petitioner attempted to provide mitigating evidence to correct his assessment and was prohibited by Respondents Hughes and Harvey, Pet'r App. Ex. 1, at vol. 1 pp. 47-52, due to lack of procedural guidance.

As Respondent Daniels has failed in his mandatory duty under NRS 213.1214(2)(b)(2), he must be ordered by this Court to establish the mandated procedure.

V. RESPONDENTS HAVE A DUTY TO RECIND NEVADA DEPARTMENT OF CORRECTIONS ADMINISTRATIVE REGULATION 537.03 AS IT SOLELY DIRECTS DEPARTMENT OFFICIALS TO CONDUCT A METHOD OF NRS 213.1214 ASSESSMENT THAT IS NO LONGER PERMITTED UNDER THE CLEAR, UNAMBIGUOUS, COMPULSORY, AND AMENDED LANGUAGE OF NRS 213.1214.

Prior to SB104 (2013), NRS 213.1214 mandated that a "Panel" determine the recidivism risk of persons convicted of certain sexual offenses. Pet'r App. Ex. 1-H, at vol. 1 pp. 162-164. The result is that AR 537.03, last amended in 2010, begins: "The Board shall not release on parole those inmates required by NRS 213.1214 to be certified by a Panel." Pet'r App. Ex. 1-Z, at vol. 2 p. 239. SB104 (2013) amended NRS 213.1214 disbanding the "Panel" by removing all reference to it. Therefore, AR 537.03 relies

solely on NRS 213.1214 assessment language that no longer exists. This has resulted in AR 537.03's sole function of explaining "Panel" members' duties to be repugnant to NRS 213.1214's current language.

The Petitioner has a state-created right to proper execution of NRS 213.1214(1), (2)(b)(1) & (2)(b)(2). Supra Part II, III and IV. "[T]he State having created the right... the prisoner's interest has real substance and is sufficiently embraced within the Fourteenth Amendment...." Wolff v. McDonnell, 418 U.S. 539, 557 (1974). "[I]n instances where state regulations applicable to inmates of prison facilities conflict with such [Constitutional] rights, the regulations may be invalidated." Johnson v. Avery, 393 U.S. 483, 486 (1969).

As AR 537.03 solely directs Department officials to conduct a method of assessment that is no longer permitted under NRS 213.1214 and the Petitioner has a right to proper execution of NRS 213.1214(1), (2)(b)(1) & (2)(b)(2), then, pursuant to Johnson, AR 537.03 should be invalidated by this Court and an order issue to the Respondents to recind AR 537.03 to prevent future and continued abrogation of the Petitioner's rights.

VI. RESPONDENTS HAVE A DUTY UNDER THE CLEAR, UNAMBIGUOUS, AND COMPULSORY LANGUAGE OF NRS 213.1214(1) TO VACATE THE PETITIONER'S JANUARY 8, 2020, NRS 213.1214 ASSESSMENT AND CONDUCT A NEW AND PROPER ASSESSMENT OF THE PETITIONER.

On January 8, 2020, the Petitioner was assessed by Respondent Hudnall using only the STATIC-99R actuarial assessment instrument for NRS 213.1214 assessment purposes in violation of NRS 213.1214(1). Supra Part II. NRS 213.1214(4) provides: "The [Parole] 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." On the Petitioner's February 26, 2020, ORDER DENYING PAROLE, the Parole Board applied an Aggravating Factor as a result of the Petitioner's STATIC-99R result for the NRS 213.1214 assessment. Pet'r App. Ex. 1-II, at vol. 3 p. 91.

This Court held in Anselmo v. Bisbee, 396 P.3d 848, 853 (Nev. 2017) that:

> [E]ligible Nevada inmates have a statutory right to be considered for parole by the board. This Court cannot say that an inmate receives proper consideration when the Board's decision is based in part on an inapplicable aggravating factor.

As the Petitioner's NRS 213.1214 assessment was completed using ONLY the STATIC-99R and the STATIC-99R is prohibited by the explicitly mandatory predicates of NRS 213.1214(1), the Board's application of an Aggravating Factor as a result of the Petitioner's STATIC-99R result abrogated the Petitioner's statutory right to proper parole consideration. Therefore, this Court has a duty to order Respondents to, within 90 days of the order, vacate the Petitioner's January 8, 2020, NRS 213.1214 assessment, conduct a new NRS 213.1214 assessment that is in compliance with the explicitly mandatory predicates of NRS 213.1214(1), and provide the new, compliant, and completed NRS 213.1214 assessment result of the Petitioner to the Parole Board for proper consideration.

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VII. RESPONDENTS HAVE DENIED AND PRESUMPTIVELY DEEMED IMPROPER, THROUGH WRITTEN STATEMENTS CONTAINING ACTUAL FRAUD, MULTIPLE INMATE GRIEVANCES FILED BY THE PETITIONER, AND OTHERS, IN AN EFFORT TO DELIBERATELY PREVENT PROPER EXHAUSTION OF THE INMATE ADMINISTRATIVE REMEDY PROCESS.

BLACK'S LAW DICTIONARY (abr. 10th ed. 2015) defines Actual Fraud as "A concealment or false representation through intentional or reckless statement or conduct that injures another who relies on it in acting."

On August 20, 2019, Respondent Walsh presumptively deemed improper Petitioner's Grievance No. 2006-30-88189, Pet'r App. Ex. 4, at vol. 5 p. 211, where the Petitioner alleged Correction Officer Gaida had filed a retaliatory disciplinary action for "Disobedience" against the Petitioner for asking for a grievance form. Id. at vol. 5 pp. 212-243. The disciplinary action was later dismissed as the Petitioner's hesitation to follow an order to stand in "bio hazard water" was found to be "valid." Id. at vol. 5 p. 205. Walsh's ONLY justification to deny grievance evaluation was to FALSELY claim that the Petitioner used "More than two (2) continuation forms (DOC 3097)...," Id. at vol. 5 p. 211, when only two (2) were used, Id. at vol. 5 pp. 213-214.

On July 6, 2020, Petitioner filed Grievance No. 2006-31-04367 alleging the issues presented in Part II, III, IV, V and VI. Supra. Respondent Walsh presumptively deemed improper and permanently prevented evaluation of the grievance for the reasons specified in the STATEMENT OF RELEVANT FACTS. Supra pp. 5-6. EVERY reason stated was FALSE. Id.

On July 22, 2020, Petitioner filed grievance No. 2006-31-05407 requesting reinburstment of $454.05 in expenses related

to assembling the 1185 page Grievance No. 2006-31-04367. Pet'r App. Ex. 5, at vol. 5 p. 246 through vol. 6 p. 20. Respondent Harvey denied the grievance stating, in part, "'[A]ll documentation and factual allegations available must be submitted at this level with the grievance' would not include documentation that NDOC Representatives have access to." Id. at vol. 6 p. 21. However, on December 2, 2020, inmate Gregory Entsminger's Grievance No. 2006-31-10967 was presumptively deemed improper and denied evaluation for not attaching an "Unauthorized Property Form", Pet'r App. Ex. 6, at vol. 6 p. 38, Entsminger states was in the DOC employee operated Property Room's possession. Id. at vol. 6 pp. 31-32.

A. RESPONDENTS HAVE A DUTY TO NOT PRESUMPTIVELY DEEM IMPROPER GRIEVANCES CONTAINING ADMINISTRATIVE CLAIMS UNDER THE CLEAR, UNAMBIGUOUS, AND COMPULSORY LANGUAGE OF THE INMATE ADMINISTRATIVE REMEDY PROCEDURE'S ENABLING STATUTES NRS 41.0322 AND NRS 209.243.

> A person who is or was in custody of the [DOC] may not proceed with any action against the [DOC]...arising out of...loss of...property... or any other...tort pursuant to NRS 41.031 unless the person has exhausted the person's administrative remedies provided by NRS 209.243 and the regulations adopted pursuant thereto.

NRS 41.0322(1) (2018). NRS 209.243(1) provides: "A prisoner or former prisoner may file an administrative claim with the [DOC] ...." NRS 209.243(2) provides, "The Department shall evaluate each claim filed pursuant to subsection 1 and determine the amount due, if any." Pursuant to Ewing and Olim, supra pp. 7-8, NRS 209.243(2) creates, through explicitly mandatory language, a protected liberty interest in the evaluation of administrative claims, including property per NRS 41.0322(1), filed pursuant to the

regulations adopted pursuant to NRS 41.0322(1) and 209.243(3). That regulation is DOC AR 740 pursuant to 740's enabling statutes NRS 41.0322 and 209.243. Pet'r App. Ex. 1-A, at vol. 1 p. 63.

Petitioner's grievances No. 2006-31-04367 and 2006-30-88189 and Entsminger's grievance No. 2006-31-10967 all possessed either a DOC 3026 "Inmate Property Claim Form" or DOC 3095 "Administrative Claim Form." Pet'r App. at vol. 5 pp. 237 & 250, vol. 6 p.34. All three grievances were presumptively deemed improper and denied evaluation, supra pp. 14-15, abrogating both the Petitioner and Entsminger's right to have their administrative claims evaluated on the merits. This is especially significant as these grievances were denied evaluation through statements of actual fraud authored by a DOC Representative. Id.

Pursuant to AR 740's enabling statutes, presumptive denial of grievance evaluation abrogates Nevada Statutory Law and an order must issue to Respondents to follow their inmate administrative remedy procedure as prescribed.

1. THE DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES DICTATES THAT REMEDY PROCEDURES MUST BE FOLLOWED AS "PRESCRIBED" AND NOT BE "CIRCUMVENTED."

Concerning prison grievances, "[T]he term 'exhausted' ... points to the doctrine of exhaustion in administrative law." Woodford v. Ngo, 548 U.S. 81, 93 (2006). "[T]he long settled rule of judicial administration [is] that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted." Myers v. Bethlehem Shipbldg. Corp., 303 U.S. 41, 50-51 (1938). "Obviously, the rule requiring exhaustion...cannot be circumvented by asserting that the charge on which the complaint rests is

groundless and that the mere holding of the prescribed administrative [process] would result in irreparable damage." Id. at 51. However, "[A] prisoner who does not want to participate in the prison grievance process would have little difficulty in forcing the prison to dismiss his administrative case on procedural grounds." Woodford, 548 U.S. at 96.

Yet, here, both the Petitioner and Entsminger, in the three grievances presumptively deemed improper, supra pp. 14-15, specifically state in each grievance their extensive efforts to comply with applicable administrative procedures. Therefore, as exhaustion is required under NRS 41.0322 and the Petitioner and Entsminger followed the grievance procedure as "prescribed," we are left the inescapable conclusion that the Respondents are attempting to deliberately "circumvent" their efforts to properly exhaust through fraudulent claims of procedural violations to deny them their right to access to "judicial relief."

This Court has a duty to stop the weaponization of improper grievance designation by issuing an order to Respondents to follow their inmate administrative remedy procedure as prescribed.

B. UNITED STATES SUPREME COURT PRECEDENT INDICATES THAT THE RESPONDENTS' INMATE GRIEVANCE PROCEDURE IS ITSELF A STATE-CREATED LIBERTY INTEREST.

"We granted certiorari to reexamine the circumstances under which State prison regulations afford inmates a liberty interest protected by the Due Process Clause." Sandin v. Conner, 515 U.S. 472, 474 (1995). "The time has come to return to the due process principles we believe were correctly established and applied in Wolff and Meachum." Id. at 483 (citing Wolff v.

McDonnell, 418 U.S. 539 (1974), and Meachum v. Fano, 427 U.S. 215 (1976)).

"[T]he Due Process Clause itself does not create a liberty interest in credit for good behavior, but that [a] statutory provision created a liberty interest in a 'shortened prison sentence' which resulted from goodtime credits...." Wolff, 418 U.S. at 557. "The Court distinguished Wolff by noting that there the protected liberty interest in goodtime credit had been created by State law; here no comparable Massachusetts law stripped officials of the discretion to transfer prisoners to alternate facilities...." Meachum, 427 U.S. at 228.

In Wolff, goodtime credit was taken from a prisoner due to the execution of prison disciplinary regulations. As the prison's disciplinary regulations affected the execution of a statutory right to a "shortened prison sentence," the sections of the regulations pertaining to goodtime credit were deemed, by the Court, a liberty interest requiring minimum appropriate due process unless the State's laws permit otherwise.

In Meachum, prisoners were transferred to a higher security facility without a disciplinary conviction. As the prison's regulations concerning transfers did not affect the execution of any Massachusetts State law, the transfer regulations were not deemed a liberty interest.

In comparing Wolff to Meachum, the U.S. Supreme Court laid the framework for a simple two prong test to determine if a prison regulation is itself a liberty interest protected by the Due Process Clause. First, did the action occur as a result of the execution of a State's prison regulation? Second, did the action

affect the execution of a liberty interest created under that state's statutory law? If yes to both prongs, then the specific parts of the prison regulation affecting the right are themselves a liberty interest requiring minimum appropriate due process, unless a State law explicitly permits otherwise.

NRS 41.0322(3) provides, "An action filed [against the DOC] by a person [in custody of the DOC] in accordance with this section before the exhaustion of the person's administrative remedies must be stayed by the court in which the action is filed until the administrative remedies are exhausted." Therefore, NRS 41.0322(3) explicitly mandates the stay of all actions against the DOC, i.e. the Respondents, by those in their custody pursuant to NRS 41.031 for loss or injury, a Nevada right pursuant to NRS 41.0322(1), <u>supra</u> p. 15, until administrative remedy exhaustion is achieved.

In applying the two prong prison regulation liberty interest test derived from <u>Sandin</u>, the presumptive denial of evaluation of the Petitioner and Entsminger's grievances, <u>supra</u> pp. 14-15, were a result of executing AR 740, a Nevada prison regulation, thus, satisfying the first prong. By preventing the Petitioner and Entsminger from initiating, and thereby exhausting, the Nevada prison inmate administrative remedy process, AR 740, the Respondents are inhibiting them from pursuing judicial relief for loss or injury by triggering an indefinite stay pursuant to NRS 41.0322(3). As both have a state-created right to action pursuant to NRS 41.031 and have been effectively barred from exercising it by the Respondents' execution of the prison regulation, the second prong is satisfied.

The result of the prison regulation liberty interest test derived from Sandin indicates that AR 740 is itself a state-created liberty interest requiring minimum appropriate due process protection. In this instance, minimum appropriate due process is the Respondents executing the inmate administrative remedy procedure, presently AR 740, in its entirety, as prescribed to facilitate proper exhaustion. Therefore, this Court has a duty to order Respondents to execute their inmate administrative remedy procedure as prescribed.

VIII. PETITIONER HAS NO PLAIN, SPEEDY, AND ADEQUATE REMEDY UNDER THE LAW.

Petitioner has no plain, speedy, adequate remedy under the law pursuant to NRS 34.170 to cure Respondents' failure to perform their duty. As the Petitioner filed the 1185 page grievance No. 2006-31-04367, Pet'r App. Ex. 1, which was fraudulently, presumptively and permanently denied evaluation, supra pp. 5-6, and filed and exhausted grievance No. 2006-31-05407, Pet'r App. Ex. 5, concerning, in part, Respondents' duty to execute the Nevada prison inmate administrative remedy procedure, AR 740, as prescribed which was denied by Respondents Harvey, Russel and Wickham, Id. at vol. 6 pp. 21, 25 & 29, the Petitioner has no further administrative remedy process available.

Because the Respondents have a statutory duty to properly assess the Petitioner to determine his risk to reoffend in a sexual manner, establish procedures to ensure the completed assessment is accurate and correct, execute the inmate administrative remedy procedure as prescribed, have failed to do so for the reasons stated in this Writ of Mandamus, and the Petitioner has no plain, speedy, and adequate remedy under the law

to cure Respondents' failure, this Court has jurisdiction over and may grant Petitioner's Writ of Mandamus ordering Respondents to perform their statutory duty.

IX. CONCLUSION.

This Honorable Court has jurisdiction to issue a Writ of Mandamus to compel the Respondents to perform their duty as delineated by the clear, unambiguous, and compulsory language of:

NRS 213.1214(1) to determine the Petitioner's risk to reoffend in a sexual manner using an assessment standard that can identify high risk; and,

NRS 213.1214(2)(b)(1) to establish a procedure to ensure the accuracy of the Petitioner's completed NRS 213.1214 assessment; and,

NRS 213.1214(2)(b)(2) to establish a procedure to correct any error in the Petitioner's completed NRS 213.1214 assessment; and,

NRS 213.1214 to invalidate DOC AR 537.03 as AR 537.03 solely inhibits DOC employees from properly executing NRS 213.1214; and,

NRS 41.0322 and 209.243 to execute the Nevada prison inmate administrative remedy procedure, presently AR 740, as prescribed to facilitate proper exhaustion.

Therefore, Petitioner respectfully requests that a Writ of Mandamus issue to compel Respondents to:

1) Cease use of the STATIC-99R actuarial assessment instrument for the NRS 213.1214 assessment as its use is in violation of NRS 213.1214(1); and,

///

2) Establish a procedure to ensure the accuracy of each completed NRS 213.1214 assessment as mandated by NRS 213.1214(2)(b)(1); and,

3) Establish a procedure to correct any error occurring in a completed NRS 213.1214 assessment as mandated by NRS 213.1214(2)(b)(2); and,

4) Recind Nevada Department of Corrections Administrative Regulation 537.03 as it solely inhibits Department employees from carrying out their mandatory duty under NRS 213.1214; and,

5) Within 90 days of the order, conduct a new and proper NRS 213.1214 assessment of the Petitioner and provide it to the Nevada Board of Parole Commissioners pursuant to NRS 213.1214(1) as the Petitioner's January 8, 2020, NRS 213.1214 assessment was conducted using only the STATIC-99R actuarial assessment instrument in violation of NRS 213.1214(1); and,

6) Execute the Nevada Department of Corrections Inmate Administrative Remedy Procedure, presently Administrative Regulation 740, as prescribed pursuant to the Respondents' duty under Administrative Regulation 740's enabling statutes NRS 41.0322 and NRS 209.243 and United States Supreme Court precedent.

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DATED this 10th day of March, 2021.

Thank you for your time and consideration.

Respectfully submitted,

EVAN SCOTT GRANT, pro se
NNCC
P.O. BOX 7000
Carson City, NV 89701

VERIFICATION

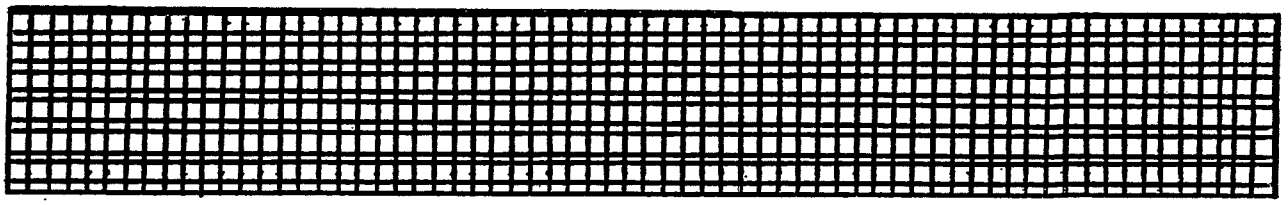
Under penalty of perjury, the undersigned declares that he is the Petitioner, pro se, named in the foregoing Petition for Writ of Mandamus; that he knows the contents of the Petition; that the facts alleged in this Petition are true of his own knowledge, except as to those matters stated on information and belief; and that, as to those matters stated on information and belief, he believes the Petition to be true.

DATED this 10th day of March, 2021.

EVAN SCOTT GRANT, pro se
NNCC
P.O. BOX 7000
Carson City, NV 89702

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this Petition for Writ of Mandamus complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the handwritting requirements of NRAP 32(8) as the Petitioner is pro se and incarcerated. This Petition has been prepared in a monospaced typeface using handwritting with a 10.125 character per inch grid, an example of which is illustrated below:



2. I further certify that this Petition complies with the type-volume limitations of NRAP 21(d) because, excluding the parts of the Petition exempted by NRAP 32(a)(7)(C), it is monospaced, has 10.5 or fewer characters per inch, and contains 647 lines of text.

3. Finally, I hereby certify that I have read this Petition for Writ of Mandamus, and to the best of my knowledge, information, and belief, it is not frivolus or interposed for any improper purpose. I further certify that this Petition complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertation in the Petition regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript

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or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying Petition is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 10th day of March, 2021.

EVAN SCOTT GRANT, pro se
NNCC
P.O. BOX 7000
Carson City, NV 89702

CERTIFICATE OF SERVICE

I hereby certify that I am the Petitioner, pro se, incarcerated, and that on the 10th day of March, 2021, I served a true and correct copy of the foregoing Petition for Writ of Mandamus, by leaving it with Nevada Department of Corrections Northern Nevada Correctional Center employee Sergeant Wood to be placed in the outgoing mail and be mailed via U.S. Postal Service FIRST CLASS, addressed to:

Attorney General Aaron Ford
State of Nevada
Office of the Attorney General
100 North Carson Street
Carson City, NV 89701

Evan Grant

EVAN SCOTT GRANT, pro se

Evan Grant, pro se
NNCC
P.O. Box 7000
Carson City, NV 89702

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FIRST JUDICIAL DISTRICT COURT OF NEVADA
CARSON CITY

EVAN SCOTT GRANT, Plaintiff, vs. THE STATE OF NEVADA BOARD OF PAROLE COMMISSIONERS, and CHRISTOPHER DERICCO, Chairman, Nevada Board of Parole Commissioners, Defendants.	CASE NO. 21OC 00158 1B DEPARTMENT II

EVAN GRANT'S COMPLAINT

Evan Grant
EVAN SCOTT GRANT

10/10/2021
DATE

I declare under penalty of perjury that the foregoing is true and correct.

Evan Grant
EVAN SCOTT GRANT

AFFIRMATION
PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the following document, EVAN GRANT'S COMPLAINT, DOES NOT contain the social security number of any person.

DATED this 10th day of October, 2021.

EVAN SCOTT GRANT, pro se

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This is an action filed by EVAN SCOTT GRANT, pro se, a state prisoner, for declaratory and supplemental (in the form of injunctive) relief under NRS Chapter 30, alleging multiple Nevada Board of Parole Commissioners' Nevada Administrative Codes are in violation of their enabling statutes and the constitutional limitations of NRS Chapter 233B under which every Nevada Administrative Code is adopted, filed, amended, and repealed.

JURISDICTION

1. The Court has jurisdiction over the plaintiff's claims of Nevada Administrative Code enabling statute violations and constitutional limits of NRS Chapter 233B violations under NRS 30.010 - 30.160.

2. The Court has further jurisdiction over the plaintiff's claims under NRS 233B.110.

PARTIES

3. The plaintiff, EVAN SCOTT GRANT, pro se, is incarcerated at the Northern Nevada Correctional Center and became subject to the Nevada Administrative Codes (hereinafter "NAC") described in this Complaint during his incarceration.

4. Defendant, THE NEVADA BOARD OF PAROLE COMMISSIONERS, adopts, files, amends, and repeals NACs pertaining to Nevada's parole consideration process under the Nevada Administrative Procedures Act, NRS Chapter 233B. It is sued in its official capacity.

5. Defendant, CHRISTOPHER DERICCO, is the chairman of the Nevada Board of Parole Commissioners and is responsible for the administration of its activities, services, and management under NRS 213.108(3). He is sued in his official capacity.

6. All defendants have acted, and continued to act, under the color of State law at all times relevant to this complaint.

RELEVANT FACTS

7. On February 20, 2020, plaintiff appeared before defendant The Nevada Board of Parole Commissioners (hereinafter "Board") and was considered for a grant of parole.

8. Defendant Board's consideration was governed by applicable NACs contained within NAC 213.495 through 213.565, inclusive.

9. Per the plaintiff's ORDER DENYING PAROLE dated February 22, 2020; plaintiff was denied a grant of parole by defendant Board.

10. Upon a review of NAC 213.495 through 213.565, inclusive, plaintiff identified 5 NACs that he believes are in violation of their enabling statutes and/or the constitutional limitations of NRS Chapter 233B.

11. Every NAC is adopted, filed, amended, and repealed under the authority granted to State agencies by NRS Chapter 233B.

12. Defendant Board is an agency of the State of Nevada.

13. On June 30, 2021, plaintiff submitted 5 NRS 233B.100 Petitions to defendant Board.

14. These Petitions requested amendments and repeals pertaining to NAC 213.512, 213.514, 213.516, 213.518, and 213.522 under NRS 233B.100.

15. On July 28, 2021, defendant Board, under the management of defendant Dericco, declined to change NAC 213.512, 213.514, 213.516, and 213.522.

16. Defendant Board referred NAC 213.518 to a workshop to

amend language in NAC 213.518(1).

FACTS SPECIFIC TO NAC 213.512[1]

17. NAC 213.512 is entitled "Determination of whether to grant parole: Assignment of severity level to crime."

18. NRS 193.130 and 193.330 state the severity levels of crimes as determined by Nevada's Legislature.

19. NRS 193.130 and 193.330 both contain an exception for levels assigned by specific statute.

20. Defendant Board states on its "PBFORM-PS (REV. 12/10/04)," "The Board has adopted crime severity levels A, B, C, D & E based on the statutory definitions set forth in NRS 193.130, 193.330 and as provided by specific criminal statute."

21. The Legislature has not repealed the A, B, C, D & E levels, or added additional levels, to the language of NRS 193.130 nor 193.330 since 12/10/04.

22. On April 17, 2008, defendant Board adopted the current language of NAC 213.512.

23. NAC 213.512(1) states:

> 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 clasifying offenders pursuant to NRS 209.341.

24. NAC 213.512(1) references NRS 209.341 as the Department of Corrections (hereinafter "DOC") crime severity level assignment authority.

FN1 For easier comprehension of the facts presented in this complaint, the 5 NACs challenged by the plaintiff's NRS 233B.100 petitions are presented in the following order: NAC 213.512, 213.522, 213.518, 213.516, and 213.514.

25. NRS 209.341's language does not contain the words "severity," "level" nor "crime."

26. NAC 213.512 utilizes NRS 213.10885, 213.110, and 213.140 as enabling statutes.

27. Of NAC 213.512's enabling statutes, crime severity is only mentioned in NRS 213.10885 which states:

> 2. In establishing the standards, the Board shall consider ... 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;
>
> ...

28. The DOC is not mentioned in the language of NRS 213.10885(2)-(2)(a) nor any other element of NRS 213.10885.

29. Nevada Constitution Article 4, Section 20 states:

> Section 20. Certain local and special laws prohibited. The legislature shall not pass local or special laws in any of the following enumerated cases — that is to say:
>
> ...
>
> For the punishment of crimes and misdemeanors;
>
> ...

30. Nevada Constitution Article 4, Section 21 states:

> Sec. 21. General laws to have uniform application. In all cases enumerated in the preceding section, and in all other cases where a general law can be made applicable, all laws shall be general and of uniform operation throughout the State.

31. Plaintiff was sentenced based on a Category B felony.

32. Plaintiff was considered for parole by defendant Board using the "highest" NAC 213.512 crime severity level.

33. Plaintiff was adjudicated by his sentencing court per the crime severity levels established by the Legislature which are uniformly applied to all convicted persons being punished for crimes in Nevada.

34. Plaintiff was considered for parole by defendant Board per the NAC 213.512(1) crime severity levels assigned by the DOC which are applied only to convicted persons being punished for crimes who are in DOC custody.

35. NAC 213.512 was adopted under NRS Chapter 233B.

36. NRS Chapter 233B was passed by the Legislature.

37. The Legislature cannot pass laws that violate the prohibitions of Nevada Constitution Article 4, Sections 20 and 21.

38. NRS Chapter 233B instructs state agencies in NRS 233B.040(1) that "... In every instance, the power to adopt regulations to carry out a particular function is limited by the terms of the grant of authority pursuant to which the function was assigned."

39. Plaintiff raised NRS 213.10885 and Nevada Constitution Article 4, Sections 20 and 21 violations in his NAC 213.512 NRS 233B.100 Petition.

40. In response to plaintiff's NAC 213.512 NRS 233B.100 Petition, defendant Board wrote: "NAC 213.512 — The Board adopted the motion to decline to change NAC 213.512 based on the plain language of NRS 213.10885."

FACTS SPECIFIC TO NAC 213.522

41. NAC 213.522 is entitled "Reassessment of severity level of crime."

///

42. NAC 213.522 states:

> 1. If the Board denies parole, the Board will not consider a request for the Board to reassess the severity level of the crime for which parole was denied unless:
>
> (a) The Department of Corrections determines that the severity level assigned to the crime pursuant to NAC 213.512 should have been lower and advises the Board, in writing, of its determination; and
>
> ...
>
> 2. If the Board receives a request from a prisoner for the Board to reassess the severity level of a crime and the Department of Corrections has advised the Board that the severity level assigned to the crime should have been lower, the Executive Secretary of the Board or an employee of the Board designated by the Board must apply the lower severity level ...
>
> ...

43. NAC 213.522 utilizes NAC 213.512 crime severity levels.

44. NAC 213.522 utilizes the same enabling statutes as NAC 213.512: NRS 213.10885, 213.110, and 213.140.

45. NAC 213.522 was adopted on April 17, 2008, in the same manner as NAC 213.512 under NRS Chapter 233B.

46. Paragraphs 17 through 40 pertaining to NAC 213.512 additionally pertain to NAC 213.522.

47. Plaintiff raised NRS 213.10885 and Nevada Constitution Article 4, Sections 20 and 21 violations in his NAC 213.522 NRS 233B.100 Petition.

48. In response to plaintiff's NAC 213.522 NRS 233B.100 Petition, defendant Board wrote: "NAC 213.522 — The Board adopted the motion to decline to change NAC 213.522 based on the plain language of NRS 213.10885."

///

FACTS SPECIFIC TO NAC 213.518

49. NAC 213.518 is entitled "Determination of whether to grant parole: Consideration of additional aggravating and mitigating factors."

50. NAC 213.518(1) states:

> 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.

51. NAC 213.518 utilizes NRS 213.10885, 213.110, and 213.140 as enabling statutes.

52. NRS 213.10885(2) states:

> In establishing the standards, the Board shall consider ... 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.

53. Only 5 of the 15 NAC 213.516 initial assessment outcomes authorize defendant Board to consider any of the NAC 213.518 factors enumerated in NAC 213.518(2) & (3).

54. NAC 213.518(1)'s language states consideration of additional aggravating and mitigating factors is discretionary.

55. NRS 213.10885(2) additionally states: "... The other factors the Board considers must include ... (b) The criminal history of the person; ...."

56. Defendant Board's discretionary consideration of NAC 213.518(2) factors include NAC 213.518(2)(o) which states: "Whether the prisoner has a history of possessing or using a weapon during the commission of a crime [.]"

57. NRS 213.10885(2) additionally states: "... The other

factors the Board considers must include ... (d) Any previous parole violations or failures; ...."

58. Defendant Board's discretionary consideration of NAC 213.518(3) factors include NAC 213.518(3)(f) which states: "Whether the prisoner previously completed probation or parole successfully [.]"

59. NRS 213.10885(1) states:

> The Board shall adopt by regulation specific standards for each type of convicted person to assist the Board in determining whether to grant or revoke parole.
>
> ...
>
> The standards must be based on objective criteria for determining the person's probability of success on parole.

60. BLACK'S LAW DICTIONARY (abr. 10th ed. 2015) defines objective as: "1. Of, relating to, or based on externally verifiable phenomena, as opposed to an individual's perceptions, feelings or intentions [ ]."

61. NAC 213.518 does not state, in any of its language, how NAC 213.518(2) & (3) factors are to be considered by defendant Board.

62. No parole consideration NAC, NAC 213.495 through 213.565, inclusive, states how NAC 213.518(2) & (3) factors are to be considered by defendant Board.

63. On plaintiff's February 22, 2020, ORDER DENYING PAROLE, 4 NAC 213.518(3) mitigating factors were indicated as considered.

64. In plaintiff's April 1, 2020, Parole Reconsideration Request submitted to defendant Board, plaintiff stated 2 additional NAC 213.518(3) mitigating factors were relevant, applicable, and unconsidered.

65. One relevant, applicable, and unconsidered mitigating factor was NAC 213.518(3)(h) which states: "Whether a stable release plan exists for the prisoner; ...."

66. The other relevant, applicable, and unconsidered mitigating factor was NAC 213.518(3)(k) which states:

> Whether the presentence investigation indicates that, prior to his or her arrest for the crime for which parole is being considered, the prisoner demonstrated immediate remorse for committing the crime by immediately and voluntarily turning himself or herself in to the proper authority, immediately and voluntarily seeking treatment to address the criminal behavior, immediately and voluntarily making restitution to the victims of the crime or taking any other voluntary action which demonstrates remorse.

67. In response to plaintiff's Reconsideration Request, defendant Board, through its former agent Darla Foley, wrote: "They were aware of your release plans, remorse, and other factors. The Board considers many aggravating and mitigating factors that, although considered during Board deliberations, may not be listed on the deny order."

68. Plaintiff was not present during Board deliberations.

69. The deny order is the only record of Board deliberations.

70. Reconsideration of unlisted factors was denied by defendant Board's former agent Darla Foley.

71. Plaintiff's NAC 213.518 NRS 233B.100 Petition requested defendant Board amend NAC 213.518 Factor consideration to be objective and mandatory for relevant factors pursuant to NRS 213.10885.

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72. Defendant Board, in written response to the plaintiff's NAC 213.518 NRS 233B.100 Petition, proposed amending NAC 213.518(1) to:

> 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.

73. The proposed NAC 213.518(1) amendment would be adopted under NRS Chapter 233B.

74. The current language of NAC 213.518(1) was adopted under NRS Chapter 233B.

75. Paragraph 38 additionally pertains to NAC 213.518.

76. Defendant Board's NAC 213.518(1) amendment states that, after the NAC 213.516 initial assessment, factors "contained" in NRS 213.10885 and NRS 213.1099 will be considered and additional aggravating and mitigating factors may be considered.

77. NRS 213.1099(2) states defendant Board "[S]hall consider: ... (d) The standards adopted pursuant to NRS 213.10885 ...."

78. NRS 213.10885(2) states: "[T]he Board shall consider ... all other factors which are relevant ...."

79. Defendant Board's proposed NAC 213.518(1) amendment retains the NAC 213.516 initial assessment language which does not authorize NAC 213.518 factor consideration with 10 of the 15 initial assessment outcomes.

80. Defendant Board's proposed NAC 213.518(1) amendment retains the discretionary additional aggravating and mitigating consideration language.

81. NRS 213.10885(1) states: "[The Board's] standards must be based on objective criteria ...."

82. Defendant Board's proposed NAC 213.518(1) amendment does not contain language stating how defendant Board will consider NAC 213.518 factors.

FACTS SPECIFIC TO NAC 213.516

83. NAC 213.516 is entitled "Determination of whether to grant parole: Initial assessment."

84. NAC 213.516 states:

> In determining whether to grant parole to a prisoner, the Board will apply the severity level of the crime for which parole is being considered as assigned pursuant to NAC 213.512 and the risk level assigned to the prisoner pursuant to NAC 213.514 to establish an initial assessment regarding whether to grant parole. The initial assessment will correspond to the following table:

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Severity Level	Risk Level		
	High	Moderate	Low
Highest	Deny parole	Consider factors set forth in NAC 213.518	Consider factors set forth in NAC 213.518
High	Deny parole	Consider factors set forth in NAC 213.518	Grant parole at first or second meeting to consider prisoner for parole
Moderate	Deny parole	Grant parole at first or second meeting to consider prisoner for parole	Grant parole at initial parole eligibility
Low Moderate	Consider factors set forth in NAC 213.518	Grant parole at first or second meeting to consider prisoner for parole	Grant parole at initial parole eligibility
Low	Consider factors set forth in NAC 213.518	Grant parole at initial parole eligibility	Grant parole at initial parole eligibility

85. The NAC 213.516 initial assessment table applies the crime severity assigned pursuant to NAC 213.512 to the Y-axis of the table and the risk level assigned pursuant to NAC 213.514 to the X-axis.

86. The 5 severity levels and 3 risk levels provide 15 initial assessment outcomes.

87. The 15 outcomes are divided into 4 types: "Deny parole," "Consider factors set forth in NAC 213.518," "Grant parole at first or second meeting to consider prisoner for parole," and "Grant parole at initial parole eligibility."

88. "Deny parole" appears 3 times in the NAC 213.516 initial assessment table.

89. "Consider factors set forth in NAC 213.518" appears 5 times in the NAC 213.516 initial assessment table.

90. "Grant parole at first or second meeting to consider prisoner for parole" appears 3 times in the NAC 213.516 initial assessment table.

91. "Grant parole at initial parole eligibility" appears 4 times in the NAC 213.516 initial assessment table.

92. Every NAC 213.516 initial assessment outcome is derived directly from the NAC 213.512 crime severity levels.

93. Paragraphs 17 through 40 pertaining to NAC 213.512 additionally pertain to NAC 213.516.

94. NAC 213.516 utilizes NRS 213.10885, 213.110, and 213.140 as enabling statutes.

95. Paragraph 52 stating NRS 213.10885(2)'s language additionally pertains to NAC 213.516.

96. Only 5 of the 15 NAC 213.516 initial assessment outcomes authorize consideration of NAC 213.518 factors.

97. 7 NAC 213.516 initial assessment outcomes grant parole without considering whether any of the 16 NAC 213.518(2) aggravating factors are relevant.

98. 3 NAC 213.516 initial assessment outcomes deny parole without considering whether any of the 13 NAC 213.518(3) mitigating factors are relevant.

99. NAC 213.516 was adopted under NRS Chapter 233B.

100. Paragraph 38 additionally pertains to NAC 213.516.

101. Plaintiff raised NRS 213.10885 and Nevada Constitution Article 4, Sections 20 and 21 violations in his NAC 213.516 NRS 233B.100 Petition.

102. In response to plaintiff's NAC 213.516 NRS 233B.100 Petition, defendant Board wrote: "NAC 213.516 — The Board adopted the motion to decline to change NAC 213.516 based on the change already agreed to in NAC 213.518."

103. Paragraphs 72 through 82 pertaining to defendant Board's change to NAC 213.518 additionally pertain to NAC 213.516.

104. Defendant Board's change to NAC 213.518 does not change the language of the 10 NAC 213.516 outcomes that do not authorize consideration of NAC 213.518 factors.

105. Defendant Board's change to NAC 213.518 does not change the language of NAC 213.516's application of the NAC 213.512 crime severity levels.

FACTS SPECIFIC TO NAC 213.514

106. NAC 213.514 is entitled "Determination of whether to grant parole: Assignment of risk level to prisoner."

107. NAC 213.514(4) states:

> The Board will apply the risk level assigned to a prisoner who is being considered for parole to establish an initial assessment regarding whether to grant parole in the manner set forth in NAC 213.516.

108. Plaintiff's NAC 213.516 NRS 233B.100 Petition requested the repeal of NAC 213.516.

109. Plaintiff's NAC 213.514 NRS 233B.100 Petition requested the repeal of NAC 213.514(4) as NAC 213.514(4) would be referencing the repealed NAC 213.516.

110. In response to plaintiff's NAC 213.514 NRS 233B.100 Petition, defendant Board wrote: "NAC 213.514 — The Board adopted the motion to decline to remove NAC 213.514(4) based on its decision to decline to remove NAC 213.516."

COMPLETION OF NRS 233B.110 REQUIREMENT TO INITIATE NRS CHAPTER 30 ACTION

111. Plaintiff has requested defendants to pass upon the validity of NAC 213.512, 213.514, 213.516, 213.518, and 213.522 by submitting an NRS 233B.100 Petition for each of these NACs to the defendants.

CLAIMS FOR RELIEF

112. NAC 213.512(1), whose language was retained by the defendants in response to plaintiff's NAC 213.512 NRS 233B.100 Petition, which mandates defendant Board assign a severity level to a crime as determined by the Department of Corrections, that is different than the crime severity levels established and mandated by the Legislature in NRS 193.130 and 193.330, violates NRS 193.130, 193.330, and, NAC 213.512's enabling statute, NRS 213.10885(2)-(2)(a), thus, invalidating NAC 213.512.

113. NAC 213.512(1), whose language was retained by the defendants in response to plaintiff's NAC 213.512 NRS 233B.100 Petition, assigns to prisoners a crime severity level specifically for parole consideration purposes, that is different than the crime severity levels established and mandated by the Legislature in NRS 193.130 and 193.330 which are of uniform application throughout the State, exceeds the constitutional authority of NRS Chapter 233B, as NAC 213.512 was adopted under NRS Chapter 233B and NRS Chapter 233B cannot violate Nevada Constitution Article 4, Section 20's prohibition of special laws for the punishment of crimes and misdemeanors, thus, invalidating NAC 213.512.

114. NAC 213.522(1)(a), (2) & (3), whose language was retained by the defendants in response to plaintiff's NAC 213.522 NRS 233B.100 Petition, mandates defendant Board to only reconsider

a prisoner's Department of Corrections assigned crime severity level, that is different than the crime severity levels established and mandated by the Legislature in NRS 193.130 and 193.330, if the Department of Corrections determines the crime severity level should have been lower, violates NRS 193.130 and 193.330, and, NAC 213.522's enabling statute, NRS 213.10885(2)-(2)(a), thus, invalidating NAC 213.522.

115. NAC 213.522(1)(a), (2) & (3), whose language was retained in response to plaintiff's NAC 213.522 NRS 233B.100 Petition by the defendants, mandates the Department of Corrections assign the severity level of a crime to a prisoner specifically for parole consideration purposes, that is different than the crime severity levels established and mandated by the Legislature in NRS 193.130 and 193.330 which are of uniform application throughout the state, exceeds the constitutional authority of NRS Chapter 233B, as NAC 213.522 was adopted under NRS Chapter 233B and NRS Chapter 233B cannot violate Nevada Constitution Article 4, Section 20's prohibition of special laws for the punishment of crimes and misdemeanors, thus, invalidating NAC 213.522.

116. NAC 213.518(1), and the NAC 213.518(1) amendment under consideration by the defendants in response to plaintiff's NAC 213.518 NRS 233B.100 Petition, authorizing defendant Board's consideration of NAC 213.518(2) & (3) factors only if the NAC 213.516 initial assessment allows for NAC 213.518 factor consideration, violates NAC 213.518's enabling statute NRS 213.10885(2)'s mandate that defendant Board shall consider all relevant factors, thus, invalidating NAC 213.518.

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117. NAC 213.518(1), and the NAC 213.518(1) amendment under consideration by the defendants in response to plaintiff's NAC 213.518 NRS 233B.100 Petition, provides defendant Board absolute discretion to consider NAC 213.518(2) & (3) factors, which violates NAC 213.518's enabling statute NRS 213.10885(2)'s mandate that defendant Board shall consider all relevant factors, thus, invalidating NAC 213.518.

118. NAC 213.518, with, or without, the NAC 213.518(1) amendment under consideration by the defendants in response to plaintiff's NAC 213.518 NRS 233B.100 Petition, does not contain language stating how NAC 213.518 factors are to be considered resulting in subjective NAC 213.518 factor consideration by defendant Board, which violates NAC 213.518's enabling statute NRS 213.10885(1)'s mandate that defendant Board's factors are to be based on objective criteria, thus, invalidating NAC 213.518.

119. NAC 213.516, whose language was retained by the defendants in response to plaintiff's NAC 213.516 NRS 233B.100 Petition, mandates defendant Board apply the crime severity level assigned pursuant to NAC 213.512, which is itself in violation of NRS 193.130, 193.330, and 213.10885(2)-(2)(a), violates NRS 193.130, 193.330, and NAC 213.516's enabling statute NRS 213.10885(2)-(2)(a), thus, invalidating NAC 213.516.

120. NAC 213.516, whose language was retained by the defendants in response to plaintiff's NAC 213.516 NRS 233B.100 Petition, mandates defendant Board apply the crime severity level assigned pursuant to NAC 213.512, which is specifically for parole consideration purposes and different than the crime severity levels mandated by the Legislature in NRS 193.130 and 193.330

which are of uniform application throughout the state, exceeds the constitutional authority of NRS Chapter 233B, as NAC 213.512 and 213.516 were adopted under NRS Chapter 233B and Chapter 233B cannot violate Nevada Constitution Article 4, Section 20's prohibition of special laws for the punishment of crimes and misdemeanors, thus, invalidating NAC 213.516.

121. NAC 213.516, whose language was retained by the defendants in response to plaintiff's NAC 213.516 NRS 233B.100 Petition, prohibits defendant Board's consideration of NAC 213.518 factors through the execution of 10 of the 15 NAC 213.516 initial assessment outcomes, which violates NAC 213.516's enabling statute NRS 213.10885(2)'s mandate that defendant Board shall consider all relevant factors, thus, invalidating NAC 213.516.

122. NAC 213.514(4), whose language was retained by the defendants in response to plaintiff's NAC 213.514 NRS 233B.100 Petition, references NAC 213.516, which is itself invalid, thus, invalidating NAC 213.514(4).

RELIEF REQUESTED

WHEREFORE, plaintiff requests that the Court grant the following relief:

A. Issue a declaratory judgment stating that:

1. The defendants, by adopting and retaining the language of NAC 213.512(1), violated NAC 213.512's enabling statute NRS 213.10885 through assigning crime severity levels not contained within NRS 193.130 and 193.330, thus, invalidating NAC 213.512.

2. The defendants, by adopting and retaining the language of NAC 213.512(1), which assigns crime severity

levels not contained in NRS 193.130 and 193.330, exceeded the constitutional authority of NRS Chapter 233B, as NAC 213.512 was adopted under NRS Chapter 233B and NRS Chapter 233B cannot violate Nevada Constitution Article 4, Section 20's prohibition of special laws for the punishment of crimes and misdemeanors, thus, invalidating NAC 213.512.

3. The defendants, by adopting and retaining the language of NAC 213.522(1)(a), (2) & (3), violated NAC 213.522's enabling statute NRS 213.10885 through applying crime severity levels not contained within NRS 193.130 and 193.330, thus, invalidating NAC 213.522.

4. The defendants, by adopting and retaining the language of NAC 213.522(1)(a), (2) & (3), which applies crime severity levels not contained in NRS 193.130 and 193.330, exceeded the constitutional authority of NRS Chapter 233B, as NAC 213.522 was adopted under NRS Chapter 233B and NRS Chapter 233B cannot violate Nevada Constitution Article 4, Section 20's prohibition of special laws for the punishment of crimes and misdemeanors, thus, invalidating NAC 213.522.

5. The defendants, by adopting and retaining the NAC 213.518(1) language which relies on the outcome of the NAC 213.516 initial assessment to determine when to consider NAC 213.518 factors, violated NAC 213.518's enabling statute NRS 213.10885, thus, invalidating NAC 213.518.

6. The defendants, by adopting and retaining the NAC 213.518(1) language which states additional aggravating and mitigating factor consideration is discretionary, violated

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NAC 213.518's enabling statute NRS 213.10885; thus, invalidating NAC 213.518.

7. The defendants, by adopting and retaining the NAC 213.518(1) language which does not specify how NAC 213.518 factors are to be considered, violated NAC 213.518's enabling statute NRS 213.10885; thus, invalidating NAC 213.518.

8. The defendants, by adopting and retaining the language of NAC 213.516, violated NAC 213.516's enabling statute NRS 213.10885 through applying crime severity levels not contained within NRS 193.130 and 193.330; thus, invalidating NAC 213.516.

9. The defendants, by adopting and retaining the language of NAC 213.516, which applies crime severity levels not contained in NRS 193.130 and 193.330, exceeded the constitutional authority of NRS Chapter 233B, as NAC 213.516 was adopted under NRS Chapter 233B and NRS Chapter 233B cannot violate Nevada Constitution Article 4, Section 20's prohibition of special laws for the punishment of crimes and misdemeanors, thus, invalidating NAC 213.516.

10. The defendants, by adopting and retaining the NAC 213.516 language which grants and denies parole without considering relevant NAC 213.518 factors, violated NAC 213.516's enabling statute NRS 213.10885; thus, invalidating NAC 213.516.

11. The defendants, by adopting and retaining the language of NAC 213.514(4), have adopted and retained language referencing NAC 213.516, an invalid NAC, thus, invalidating NAC 213.514(4).

B. Issue NRS 30.100 supplemental relief in the form of an injunction ordering the defendants and their agents to:

1. Immediately stay all parole considerations, deliberations, and meetings, UNTIL, NAC 213.512 is amended to bring it into compliance with its enabling statutes, the crime severity levels established by the Legislature, and the constitutional limitations of NRS Chapter 233B, OR, NAC 213.512 is repealed.

2. Immediately stay all parole reconsiderations, deliberations, and meetings occurring under NAC 213.522, UNTIL, NAC 213.522 is amended to bring it into compliance with its enabling statutes, the crime severity levels established by the Legislature, and the constitutional limitations of NRS Chapter 233B, OR, NAC 213.522 is repealed.

3. Immediately stay all parole considerations, deliberations, and meetings, UNTIL, NAC 213.518 is amended to bring it into compliance with its enabling statutes, OR, NAC 213.518 is repealed.

4. Immediately stay all parole considerations, deliberations, and meetings, UNTIL, NAC 213.516 is amended to bring it into compliance with its enabling statutes, the crime severity levels established by the Legislature, and the constitutional limitations of NRS Chapter 233B, OR, NAC 213.516 is repealed.

5. Pending the amendment or repeal of NAC 213.516, amend or repeal NAC 213.514(4), as necessary, to harmonize NAC 213.514(4) with NAC 213.516.

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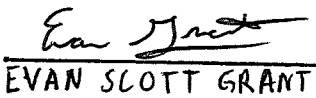
C. Issue additional NRS 30.100 supplemental relief in the form of placing the defendants into a receivership to ensure that every amendment, repeal, and/or adoption of Nevada Administrative Codes, made by the defendants as a result of this case, are in compliance with the legal authorities empowering and limiting those Nevada Administrative Codes.

D. Grant such other relief as deemed appropriate by this Court.

DATED this 10th day of October, 2021.

Thank you for your time and consideration.

Respectfully submitted,



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POINTS AND AUTHORITIES IN SUPPORT OF COMPLAINT

I. THE NEVADA SUPREME COURT HAS CLEARLY HELD THAT NEVADA'S INMATES HAVE A STATUTORY RIGHT TO PROPER PAROLE CONSIDERATION

In the case of Anselmo v. Bisbee, 396 P. 3d 848 (Nev. 2017), the Nevada Supreme Court held that:

> Generally, an inmate does not have a protectable due process or liberty interest in release on parole, unless that right is created by state statute.... Id. at 849. Nonetheless, eligible Nevada inmates do have a statutory right [pursuant to NRS 213.140(1)] to be considered for parole by the Board. When the Board misapplies its own internal guidelines in assessing whether to grant parole, this court cannot say that the inmate received the consideration to which they are statutorily entitled. Id.
>
> ...
>
> Pursuant to NRS 213.1099(2) and NRS 213.10885(1), the Board must promulgate detailed standards to determine whether the release of an inmate is appropriate. These standards are codified in the Nevada Administrative Code. Id. at 851.

NRS 213.10885 and NRS 213.140 are enabling statutes of NAC 213.512, 213.514, 213.516, 213.518, and 213.522. As such, Nevada inmates being considered for parole by the defendants have a statutory right to not only the proper execution of the standards set forth in the indicated NACs, but in the standards' construction as well. To be properly constructed, these standards must be in compliance with every mandatory and explicitly mandatory element of their enabling statutes. Furthermore, as NACs are adopted under authority granted to state agencies by the Legislature pursuant to the Nevada Administrative Procedures Act, NRS Chapter 233B, every NAC is bound to the statutory and constitutional limitations of NRS Chapter 233B.

> To the extent authorized by the statutes applicable to it, each agency may adopt reasonable regulations to aid it in carrying out the functions assigned to it by law and shall adopt such regulations as are necessary to the proper execution of those functions. ...
>
> In every instance, the power to adopt regulations to carry out a particular function is limited by the terms of the grant of authority pursuant to which the function was assigned.

NRS 233B.040(1).

II. DEFENDANTS DECLINING TO CHANGE THE LANGUAGE OF NAC 213.512, SOLELY "[B]ASED ON THE PLAIN LANGUAGE OF NRS 213.10885[,]" IS ABSURD AS PLAINTIFF'S NAC 213.512 NRS 233B.100 PETITION RAISED MULTIPLE NRS AND NEVADA CONSTITUTIONAL VIOLATIONS

On July 14, 2021, Plaintiff submitted an NRS 233B.100 Petition requesting the repeal of NAC 213.512. (Exhibit 1). This petition cited and interpreted multiple Nevada Revised Statutes and discussed a link between the NACs, NRS Chapter 233B, and the prohibitions of Nevada Constitution Article 4, Section 20 and 21.

In response to Plaintiff's NAC 213.512 invalidity claims, Defendants state, "NAC 213.512 — The Board adopted the motion to decline to change NAC 213.512 based on the plain language of NRS 213.10885." (Exhibit 2). The plain-meaning rule is defined as: "1. The doctrine that if a legal text is unambiguous it should be applied by its terms without recourse to policy arguments, legislative history, or any other matter extraneous to the text unless doing so would lead to an absurdity." Plain-meaning rule, BLACK'S LAW DICTIONARY (abr. 10th ed. 2015). Without further analysis, as will be presented in the forthcoming sections, the

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idea that a single NRS on its face would adequately oppose claims of multiple NRS and Nevada Constitutional violations is an absurd concept, especially as the Nev. Const. supercedes every NRS.

A. DEFENDANTS HAVE A DUTY TO AMEND OR REPEAL NAC 213.512 AS IT EXCEEDS THE CONSTITUTIONAL LIMITATIONS OF NRS CHAPTER 233B PURSUANT TO THE PROHIBITIONS OF NEV. CONST. ART. 4, S. 20 AND S. 21

NAC 213.512 was adopted by the defendants under the provisions of the Nevada Administrative Procedures Act (NRS Chapter 233B). As NRS Chapter 233B is a collection of laws passed by the Legislature, it is bound by the prohibitions of Nev. Const. Art. 4, s. 20 and s. 21. Nev. Const. Art. 4, s. 20 provides:

> Section 20. Certain local and special laws prohibited. The legislature shall not pass local or special laws in any of the following enumerated cases — that is to say:
>
> ...
>
> For the punishment of crimes and misdemeanors;
>
> ...

Simply stated, as Nevada's Legislature is prohibited from passing local or special laws "For the punishment of crimes and misdemeanors ...," Id., it could not pass NRS Chapter 233B to empower state agencies to adopt NACs that act as special or local laws for the punishment of crimes and misdemeanors. NACs "[H]ave the force of law and must be enforced...." NRS 233B.040(1). If NRS Chapter 233B was to allow for local or special NACs that violate Nev. Const. Art. 4, s. 20, then NRS Chapter 233B would violate Nev. Const. Art. 4, s. 20, thus, causing every NAC of every state agency to be illegal and unconstitutional.

To understand how NAC 213.512 violates Nev. Const. Art. 4, s. 20, the terms "local law" and "special law" must first be

defined. The converse called a "general law" is discussed in Nev. Const. Art. 4, s. 21, which provides:

> Sec. 21. General laws to have uniform application. In all cases enumerated in the preceding section, and in all cases where a general law can be made applicable, all laws shall be general and of uniform operation throughout the state.

In comparing Nev. Const. Art. 4, s. 20, to s. 21, the Nev. Sup. Ct. observed that:

> The leading division (of statutes) to be into "public or general, private or special." Public or general statutes are ... those which relate or bind all within the jurisdiction of the law-making power, limited as that power may be in its territorial operations, or by constitutional restraints. Private or special statutes relate to certain individuals or particular classes of men.

The State of Nevada Ex. Rel. Clarke v. Irwin, 5 Nev. 111, 120 (1869). This concept was put into easy to understand words in 1975 by the, then, Nevada Attorney General, "A 'local law' is one operating over a particular locality instead of over the whole territory of the state. A 'special law' is one operating upon one or a portion of a class, instead of upon all of a class." 1975 Op. Atty. Gen. Nev. 53, Opinion No. 194, citing State Ex. Rel. Clarke v. Irwin, 5 Nev. 111 (1869).

A "class" is "A group of people, qualities or activities that have common characteristics or attributes[.]" BLACK'S LAW DICTIONARY (abr. 10th ed. 2015). Nevada Constitution Article 4, Section 20 groups those being punished for crimes and misdemeanors, thereby, creating a constitutionally identifiable class.

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How does this all apply to NAC 213.512? NAC 213.512(1) provides:

> 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.

The problem is that no NRS identifies crime severity levels on a scale of "highest," "high," "moderate," "low-moderate" or "low," nor authorizes the DOC to assign severity levels to Nevada's crimes. A reading of NRS 209.341, which NAC 213.512(1) uses as a reference statute for the DOC's assignment of crime severity level, shows that NRS 209.341 makes no mention of assigning a severity level to a crime. In fact, the words "severity," "level" nor "crime" appear a single time in NRS 209.341.

How then is the severity of a crime actually assigned in Nevada?

Only the Legislature has the power to determine what is or is not a crime and the appropriate penalty for those who violate a criminal statute. See Anderson v. Eighth Judicial Dist. Court, 448 P.3d 1120 (Nev. 2019).

> In determining whether an offense is petty or serious, this "court must examine objective indications of the seriousness with which society regards the offense," and "[t]he best indicator of society's views is the maximum penalty set by the Legislature." ... The word "penalty" encompasses both a term of imprisonment as well as other penalties proscribed by statute, but "[p]rimary emphasis ... must be placed on the maximum authorized period of incarceration."

Id. at 1123. (citation omitted). The Court goes on to say that in

the case of Anderson, "[T]he right affected [] convinces us that the [] penalty is so severe as to categorize the offense as serious." Id. at 1124. Anderson shows us that the totality of a person's rights affected by a criminal conviction as deemed by the Legislature, with emphasis placed on the maximum authorized perid of incarceration, determines the severity of an offense, i.e. a crime. This concept is further supported by English v. State, 116 Nev. 828, 9 P.3d 60 (2000) where the Court held that an enhancement from a misdemeanor to a Category C felony constituted an increase in offense severity.

Therefore, as the defendants are only considering those persons convicted of a felony, they must look to NRS 193.130 and NRS 193.330, which provide the categories of Nevada's felonies, to discover the severity of crimes as set by the Legislature. Interestingly, the defendants used this exact method in 2004. Per the PBFORM-PS (REV. 12/10/04), the defendants state in their own words:

> The Board has adopted crime severity levels A, B, C, D & E based on the statutory definitions set forth in NRS 193.130, 193.330 and as provided by specific criminal statute. The Board has expanded levels A and B to A1, A2, A3, A4, B1, B2, B3 & B4 to reflect the diverse minimum and maximum sentencing ranges provided for Level A and B felonies.

(Pl.'s App. Ex. 1A, at Vol. 1 p. 18)

As you can see, the defendants in 2004, after English was decided in 2000, clearly understood their statutory duty and were in compliance with Nevada law. However, in 2008, when the defendants adopted NAC 213.512, they deviated dramatically from their understood statutory duty. The NAC 213.512 severity levels

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of "highest," "high," "moderate," "low-moderate" and "low" do not exist in NRS 193.130, 193.330, 209.341 nor any other NRS.

In conclusion, Nev. Const. Art. 4, s. 20 prohibits the Legislature from passing special laws, i.e. statutes, that allow individuals to be treated differently from eachother for the punishment of the same crime or misdemeanor. NAC 213.512 was adopted under NRS Chapter 233B. As the Legislature was prohibited from allowing NRS Chapter 233B to permit different punishments for the same crime, the defendants could not use NRS Chapter 233B to adopt an NAC that punishes convicted persons differently for the same crime. Since the Legislature determined the severity of each category of felony in NRS 193.130 and NRS 193.330, as acknowledged by the defendants in PBFORM-PS (REV. 12/10/04), supra p. 28, the defendants are bound to follow the severities listed in these statutes. Further supporting this concept, the Nev. Sup. Ct. has held that increases in felony category constitute an increase in offense severity. See Anderson, 448 P.3d; English, 116 Nev.

NAC 213.512 utilizing the Department of Corrections to assign a severity level to crimes creates a situation where a person outside of the defendants' jurisdiction, i.e. a sentencing court, is considered by the crime severity assigned by the Legislature; while a person being considered by the defendants is considered based upon the crime severity assigned by the Department of Corrections. As the defendants determine how long a convicted person will actually be incarcerated, upto the maximum term imposed by the sentencing court, every person convicted of a felony will be punished by one crime severity when their sentencing court determines their maximum term and a different

crime severity, for the same crime, when the defendants determine how much of that maximum term is to be served incarcerated. An example would be the Plaintiff being sentenced to two 2 to 8 year consecutive aggregated sentences based on two category B convictions, but being considered for parole by the defendants on that aggregated sentence using the highest NAC 213.512 crime severity level. (Exhibit 3).

For these reasons, NAC 213.512 must be invalidated, and amended or repealed. If it is not, then every NAC of every state agency adopted under NRS Chapter 233B would be illegal as all NACs are fruit of the now unconstitutional NRS Chapter 233B. Defendants claim that "[T]he plain language of NRS 213.10885[]" permits NAC 213.512 to stand. Supra p. 24. NRS 213.10885 cannot override Nevada's constitution.

"In every instance, the power to adopt regulations to carry out a particular function is limited by the terms of the grant of authority pursuant to which the function was assigned." NRS 233B.040(1).

B. DEFENDANTS HAVE A DUTY UNDER THE CLEAR, UNAMBIGUOUS, AND COMPULSORY LANGUAGE OF NAC 213.512'S ENABLING STATUTE NRS 213.10885 TO CONSIDER THE SEVERITY LEVEL OF CRIMES AS ESTABLISHED BY THE LEGISLATURE IN NRS 193.130 AND 193.330 AND NOT CONSIDER THE SEVERITY LEVEL OF CRIMES AS ESTABLISHED BY THE DEPARTMENT OF CORRECTIONS

In Plaintiff's NAC 213.512 NRS 233B.100 Petition (Exhibit 1), Plaintiff argued that NAC 213.512(1)'s language violated its enabling statute NRS 213.10885. NAC 213.512(1) provides:

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> 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.

In the defendants' response to Plaintiff's NAC 213.512 NRS 233B.100 Petition, defendants state: "NAC 213.512 — The Board adopted the motion to decline to change NAC 213.512 based on the plain language of NRS 213.10885." (Exhibit 2). The applicable subsections of NRS 213.10885 to the NAC 213.512 validity discussion are NRS 213.10885(2)-(2)(a) which provide:

> 2. In establishing the standards, the Board shall consider ... 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;
>
> ...

In NRS 213.10885(2)-(2)(a), the Board's consideration of "The severity of the crime committed[]" is mandated by the Legislature through stating, "[T]he Board shall ...." "Shall" is to be construed as mandatory when construing Legislative statutes, unless an exception is provided. Ewing v. Fahey, 86 Nev. 604, 607, 472 P.2d 347, 349 (1970). While an exception is provided, it bears no weight on the issue presented here as NRS 213.10885(2)(a) "must" be included in the defendants' consideration.

"The maxim 'EXPRESSIO UNIUS EST EXCLUSIO ALTERIUS,' the expression of one thing is the exclusion of another, has been repeatedly confirmed in this state." Galloway v. Truesdell, 83

Nev. 13, 20, 422 P.2d 237, 242 (1967). "In the Legislature rests the entire power of the people ...." Id. at 23. The Legislature has the power to determine what is or is not a crime and the appropriate penalty for those who violate a criminal statute. See Anderson, 448 P.3d.

By only mandating consideration of "The severity of the crime committed[,]" the Legislature in NRS 213.10885 did not vest in the defendants the power to look beyond Nevada's statutes, let alone defer to another state agency, to determine the severity of a crime. "Every positive direction contains an implication against anything contrary to it which would frustrate or disappoint the purpose of that provision." Galloway, 83 Nev. at 26, quoting People v. Draper, 15 N.Y. 544 (emphasis added).

Furthermore, NAC 213.512(1) references NRS 209.341 as the statute controlling the Department of Corrections' assignment of crime severity level. However, a reading of NRS 209.341 shows that it makes no mention of assigning a severity level to a crime. In fact, the words "severity," "level" nor "crime" appear a single time in NRS 209.341.

Having established that NRS 213.10885(2)-(2)(a) unambiguously precludes the defendants from involving the Department of Corrections in assigning the severity level of Nevada's crimes, the defendants' claim of NRS 213.10885's plain language justifying NAC 213.512 is irresponsibly false. The defendants' statement displays a deep misunderstanding, or at worst, a complete disregard, for the basic principles of statutory construction and interpretation.

What then is NRS 213.10885(2)-(2)(a) referring to when

it mandates the defendants' consideration of "The severity of the crime committed[?]" The severity of crimes committed in Nevada are established by the Legislature in NRS 193.130 and 193.330. Supra pp. 28-29. As NRS 213.10885(2)(a) does not authorize the defendants to consider anything beyond "The severity of the crime committed[,]" the crime severity levels A, B, C, D & E in NRS 193.130 and 193.330 are the only crime severity levels authorized by the Legislature for parole consideration purposes. In 2004, the defendants recognized this fact. Supra p. 28.

For these reasons, NAC 213.512 violates its enabling statute NRS 213.10885. NAC 213.512 must be amended or repealed as it is illegal and therefore invalid.

"In every instance, the power to adopt regulations to carry out a particular function is limited by the terms of the grant of authority pursuant to which the function was assigned." NRS 233B.040(1).

III. DEFENDANTS DECLINING TO CHANGE THE LANGUAGE OF NAC 213.522, SOLELY "[B]ASED ON THE PLAIN LANGUAGE OF NRS 213.10885[,]" IS ABSURD AS PLAINTIFF'S NAC 213.522 NRS 233B.100 PETITION RAISED MULTIPLE NRS AND NEVADA CONSTITUTIONAL VIOLATIONS

On July 14, 2021, Plaintiff submitted an NRS 233B.100 Petition requesting the amendment of NAC 213.522. (Exhibit 4). This petition cited and interpreted multiple Nevada Revised Statutes and discussed a link between the NACs, NRS Chapter 233B, and the prohibitions of Nevada Constitution Article 4, Section 20 and 21.

In response to Plaintiff's NAC 213.522 invalidity claims, Defendants state, "NAC 213.522 — The Board adopted the

motion to decline to change NAC 213.522 based on the plain language of NRS 213.10885." (Exhibit 2). The plain-meaning rule is defined as: "1. The doctrine that if a legal text is unambiguous it should be applied by its terms without recourse to policy arguments, legislative history, or any other matter extraneous to the text unless doing so would lead to an absurdity." Plain-meaning rule, BLACK'S LAW DICTIONARY (abr. 10th ed. 2015). Without further analysis, as will be presented in the forthcoming sections, the idea that a single NRS on its face would adequately oppose claims of multiple NRS and Nevada Constitutional violations is an absurd concept, especially as the Nev. Const. supercedes every NRS.

A. DEFENDANTS HAVE A DUTY TO AMEND OR REPEAL NAC 213.522 AS IT EXCEEDS THE CONSTITUTIONAL LIMITATIONS OF NRS CHAPTER 233B PURSUANT TO THE PROHIBITIONS OF NEV. CONST. ART. 4, S. 20 AND S. 21

NAC 213.522 provides:

> 1. If the Board denies parole, the Board will not consider a request for the Board to reassess the severity level of the crime for which parole was denied unless:
>
> (a) The Department of Corrections determines that the severity level assigned to the crime pursuant to NAC 213.512 should have been lower and advises the Board, in writing, of its determination; and
>
> . . .
>
> 2. If the Board receives a request from a prisoner for the Board to reassess the severity level of a crime and the Department of Corrections has advised the Board that the severity level assigned to the crime should have been lower, the Executive Secretary of the Board or an employee of the Board designated by the Board must apply the lower severity level to establish a new initial assessment regarding whether to grant parole in the manner set forth in NAC 213.516.

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> 3. If the new initial assessment established pursuant to subsection 2 is more favorable to the prisoner than the initial assessment established before the reassessment of the severity level, the Board will, as soon as practicable, schedule a meeting to reconsider whether to grant parole to the prisoner.

NAC 213.522 solely relies on the Department of Corrections' assignment of crime severity level pursuant to NAC 213.512 to afford prisoners challenging their crime severity level assignment parole reconsideration. As previously discussed, Supra SECTION I.A, NAC 213.512 is in violation of the constitutional limitations of the Nevada Administrative Procedures Act, NRS Chapter 233B, from which NAC 213.512 and 213.522 were adopted. As defendants' use of Department of Corrections' assigned crime severity levels in NAC 213.512 was found to be in violation of NRS Chapter 233B's Nev. Const. Art. 4, s. 20 and s. 21 prohibitions, Supra SECTION I.A, the reliance on NAC 213.512 crime severity levels in NAC 213.522 causes NAC 213.522 to violate NRS Chapter 233B's constitutional limitations in the same manner.

For these reasons, NAC 213.522 must be invalidated, and amended or repealed, otherwise every NAC of every state agency adopted under NRS Chapter 233B would be illegal as they are fruit of the now unconstitutional NRS Chapter 233B. Defendants claim that "[T]he plain language of NRS 213.10885[]" permits NAC 213.522 to stand. (Exhibit 2). NRS 213.10885 cannot override Nevada's Constitution.

"In every instance, the power to adopt regulations to carry out a particular function is limited by the terms of the grant of authority pursuant to which the function was assigned." NRS 233B.040(1).

B. DEFENDANTS HAVE A DUTY UNDER THE CLEAR, UNAMBIGUOUS, AND COMPULSORY LANGUAGE OF NAC 213.522's ENABLING STATUTE NRS 213.10885 TO CONSIDER THE SEVERITY LEVEL OF CRIMES AS ESTABLISHED BY THE LEGISLATURE IN NRS 193.130 AND 193.330 AND NOT CONSIDER THE SEVERITY LEVEL OF CRIMES AS ESTABLISHED BY THE DEPARTMENT OF CORRECTIONS

In Plaintiff's NAC 213.522 NRS 233B.100 Petition (Exhibit 4), Plaintiff argued that NAC 213.522's language, supra pp. 34-35, violated its enabling statute NRS 213.10885. This violation is a result of NAC 213.522 utilizing NAC 213.512 Department of Corrections' assigned crime severity levels in determining if a convicted person seeking parole reconsideration for improper severity level assignment is eligible to be reconsidered.

Defendants claim NAC 213.522 is valid "[B]ased on the plain language of NRS 213.10885." (Exhibit 2). However, NAC 213.512 Department of Corrections' crime severity level assignment is in violation of NRS 213.10885. Supra SECTION I.B. NAC 213.522 utilizes NAC 213.512 Department of Corrections' crime severity levels and NRS 213.10885 as an enabling statute. Therefore, NAC 213.522 is in violation of NRS 213.10885 in the same manner as NAC 213.512.

Pursuant to NRS 213.10885(2)-(2)(a), defendants' consideration of NRS 193.130 and 193.330 Legislatively assigned crime severity levels is mandated. Supra p. 32-33. Defendants' use, assignment, and/or consideration of Department of Corrections' assigned crime severity levels is not authorized by the Legislature. Supra p. 33.

For these reasons, as NAC 213.522 utilizes Department of

Corrections' assigned crime severity levels pursuant to NAC 213.512, NAC 213.512 violates NRS 213.10885, and NAC 213.522 utilizes NRS 213.10885 as an enabling statute, NAC 213.522 is in violation of NRS 213.10885 and must be amended or repealed as it is illegal and therefore invalid.

"In every instance, the power to adopt regulations to carry out a particular function is limited by the terms of the grant of authority pursuant to which the function was assigned." NRS 233B.040(1).

IV. DEFENDANTS' PROPOSED AMENDMENT TO NAC 213.518, IN RESPONSE TO PLAINTIFF'S NAC 213.518 NRS 233B.100 PETITION, DOES NOT AFFECT THE ISSUES PRESENTED IN THE PLAINTIFF'S PETITION

The Plaintiff's NAC 213.518 NRS 233B.100 Petition raised three unique violations of NAC 213.518's enabling statute NRS 213.10885. (Exhibit 5). NAC 213.518(1) provides:

> 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.

The three violations of NRS 213.10885 presented in the Plaintiff's NAC 213.518 NRS 233B.100 Petition are:

1. NRS 213.10885(2) makes the defendants' consideration of "[A]ll other factors which are relevant ..." mandatory, yet, NAC 213.518(1)'s language makes defendants' consideration of additional aggravating and mitigating factors, enumerated in NAC 213.518(2) & (3), discretionary regardless of relevance.

2. NRS 213.10885(2) makes defendants' consideration of factors enumerated in NRS 213.10885(2)(a)-(f) explicitly mandatory,

yet, NAC 213.518(1) makes defendants' consideration of every NAC 213.518 factor, including those enumerated in NRS 213.10885(2)(a)-(f), dependant upon the outcome of the NAC 213.516 initial assessment which prohibits NAC 213.518 factor consideration with 10 of its 15 outcomes.

3. NRS 213.10885(1) explicitly mandates the defendants' standards, or NACs, be based on objective criteria, yet, NAC 213.518 does not state how NAC 213.518 factors are to be considered causing defendants' consideration of NAC 213.518 factors to occur on a subjective basis.

In response to Plaintiff's NAC 213.518 NRS 233B.100 Petition, defendants proposed amending NAC 213.518(1)'s language. The proposed NAC 213.518(1) amendment provides:

> After establishing an initial assessment regarding whether to grant parole pursuant to NAC 213.516, the <u>Board will consider the factors contained in NRS 213.10885 and NRS 213.1099 and</u> may consider additional aggravating and mitigating factors to determine whether to grant parole to a prisoner.

The proposed amendment wholly ignores the Plaintiff's first and third issue. While the amendment is relevant to the Plaintiff's second issue, as defendants' consideration of factors referenced by or contained within NAC 213.518 remains dependent upon the NAC 213.516 initial assessment outcome, the amendment changes nothing about when NAC 213.518 is to be executed.

The following three sections look at each issue individually illustrating how defendants' proposed amendment does not satisfy the requirements of NAC 213.518's enabling statute NRS 213.10885.

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A. DEFENDANTS' NAC 213.518(1) PROPOSED AMENDMENT DOES NOT CHANGE THE FACT THAT THE NAC 213.518 RELEVANT FACTOR CONSIDERATION MANDATED BY NRS 213.10885(2) REMAINS DISCRETIONARY

NRS 213.10885 is an enabling statute of NAC 213.518. NRS 213.10885(2) provides:

> In establishing the standards, the Board shall consider the information on decisions regarding parole that is compiled and maintained pursuant to NRS 213.10887 and 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.

In NRS 213.10885(2) Sentence One, the word "shall" immediately appears after "the Board." "Shall" is to be construed as mandatory when construing legislative statutes, unless an exception is provided. Ewing, 86 Nev. at 607.

An exception is provided in NRS 213.10885(2) Sentence One. "[W]hich are relevant..." substantively limits the defendants' discretion by specifying which of the "[A]ll other factors ..." shall be considered by the defendants. The Nevada Supreme Court gave meaning to this exception in Anselmo, 396 P.3d at 853, by stating, "This Court cannot say that the inmate

receives proper consideration when the Board's decision is based in part on an inapplicable [] factor." "Applicable" is defined as, "[H]aving direct relevance." Applicable, BLACK'S LAW DICTIONARY (abr. 10th ed. 2015). Thus, it is the defendants' consideration of inapplicable factors that is prohibited under the "[W]hich are relevant..." exception.

Therefore, NRS 213.10885(2) Sentence One explicitly mandates the consideration of all applicable factors. As consideration of all applicable factors is explicitly mandated, NRS 213.10885(2) Sentence One "[C]reate[s] a protected liberty interest by placing substantive limitations on official discretion." Olim v. Wakinekona, 461 U.S. 238, 249, 75 L.Ed.2d 813, 103 S.Ct. 1741 (1983). As "[E]ligible Nevada inmates do have a statutory right [pursuant to NRS 213.140(1)] to be considered for parole by the Board[,]" Anselmo, 396 P.3d at 849, any violation of NRS 213.10885(2) Sentence One would inadvertantly violate every inmate's state-created right to proper parole consideration recognized by the Nevada Supreme Court.

Defendants' consideration of relevant NAC 213.518 factors is explicitly mandated by NRS 213.10885(2) Sentence One. The adoption of the word "may" in NAC 213.518(1) affords impermissable discretion in the defendants' consideration of the 29 NAC 213.518(2) & (3) aggravating and mitigating factors. "May" is construed permissive when construing legislative statutes. Ewing, 86 Nev. at 607. BLACK'S LAW DICTIONARY (abr. 10th ed. 2015) defines permissive as: "Recommending or tolerating, but not compelling or prohibiting; giving power of choice[.]"

As NRS 213.10885(2) Sentence One explicitly mandates the

consideration of "[A]ll other factors which are relevant[,]" the defendants giving themselves the power of choice as to whether to consider factors set forth in NAC 213.518(2) & (3), in spite of relevance, is a blatant violation of NRS 213.10885(2) Sentence One. Defendants' NAC 213.518(1) proposed amendment does not change the discretionary element of NAC 213.518(2) & (3) factor consideration, therefore, Plaintiff's issue remains. See supra p. 38.

For these reasons, NAC 213.518 must be amended or repealed as it affords defendants impermissable discretion pertaining to statutorily mandated "relevant" factor consideration, thus, making NAC 213.518 illegal and invalid.

"In every instance, the power to adopt regulations to carry out a particular function is limited by the terms of the grant of authority pursuant to which the function was assigned." NRS 233B.040(1).

B. DEFENDANTS' NAC 213.518(1) PROPOSED AMENDMENT DOES NOT CHANGE THE FACT THAT NRS 213.10885(2)-(2)(f) MANDATED FACTOR CONSIDERATION IS PROHIBITED UNDER 10 OF THE 15 NAC 213.516 INITIAL ASSESSMENT OUTCOMES AND REMAINS CAPRICIOUSLY DISCRETIONARY WHEN PERMITTED

NRS 213.10885(2)(a)-(f), supra p. 39, specify "The other factors the Board must include, but are not limited to[.]" NRS 213.10885(2). "Must" is defined as "An absolute requirement." Must, WEBSTER'S NEW POCKET DICTIONARY (2007).

In the current NAC 213.518(1) language, supra p. 37, and the defendants' proposed language, supra p. 38, NAC 213.518 Factor consideration is only authorized after completing the NAC 213.516 initial assessment. Of the 15 outcomes of the NAC 213.516 initial

assessment, only 5 permit the Defendants to consider NAC 213.518 factors. The 10 NAC 213.516 initial assessment outcomes that prohibit NAC 213.518 factor consideration are discussed separately, infra SECTION V.A. However, NAC 213.518(1) specifically permitting execution of NAC 213.518 factor consideration to be dependent upon anything, including conditional direction from NAC 213.516, impermissably violates NRS 213.10885(2)-(2)(f).

The following are three, of the many, examples of how these violations have been occurring:

1. NRS 213.10885(2)(b) states that the defendants must consider "The criminal history of the person[.]" Yet, if NAC 213.516 does not permit the defendants to consider NAC 213.518 factors, then the defendants are prohibited from considering "Whether the prisoner has a history of possessing or using a weapon during the commission of a crime[.]" NAC 213.518(2)(o).

2. NRS 213.10885(2)(d) states that the defendants must consider "Any previous parole violations or failures[.]" Yet, if NAC 213.516 does not permit the defendants to consider NAC 213.518 factors, then the defendants are prohibited from considering "Whether the prisoner previously completed probation or parole successfully[.]" NAC 213.518(3)(f).

3. NRS 213.10885(2)(e) states that the defendants must consider "Any potential threat to society or the convicted person[.]" Yet, if NAC 213.516 does not permit the defendants to consider NAC 213.518 factors, then the defendants are prohibited from considering "Whether the prisoner has a history of failing to comply with orders from mental health professionals for the

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treatment of mental illness, including, without limitation, failing to comply with prescriptions for medication to treat mental illness[.]" NAC 213.518(2)(1).

Additionally, when the NAC 213.516 initial assessment specifically orders defendants to "Consider factors set forth in NAC 213.518", the defendants capriciously choose which relevant factors to consider. An example would be from the Plaintiff's 2020 parole consideration. When comparing the Plaintiff's February 22, 2020, ORDER DENYING PAROLE (Exhibit 3) to NAC 213.516, defendants were ordered to "Consider factors set forth in NAC 213.518[.]" On the Plaintiff's ORDER DENYING PAROLE, four NAC 213.518(3) mitigating factors were indicated as considered.

Upon a review of NAC 213.518(3), Plaintiff identified two additional factors which were relevant. On April 1, 2020, Plaintiff submitted an NAC 213.526 Parole Reconsideration Request. (Exhibit 6). He stated that the defendants did not consider every relevant NAC 213.518(3) factor. Pl.'s App. Ex. 6, at vol. 1, pp. 77-80. The unconsidered factors were: NAC 213.518(3)(h) which states, "Whether a stable release plan exists for the prisoner; ..."; And, NAC 213.518(3)(k) which states:

> Whether the presentence investigation indicates that, prior to his or her arrest for the crime for which parole is being considered, the prisoner demonstrated immediate remorse for committing the crime by immediately and voluntarily turning him or herself in to the proper authority, immediately and voluntarily seeking treatment to address the criminal behavior, immediately and voluntarily making restitution to the victims of the crime or taking any other voluntary action which demonstrates remorse.

In response to the Plaintiff's Parole Reconsideration Request, Defendants, through their former agent Darla Foley, wrote,

"They were aware of your release plans, remorse, and other factors. The Board considers many aggravating and mitigating factors that, although considered during Board deliberations, may not be listed on the deny order." (Exhibit 7).

Plaintiff was not present at the defendants' deliberations. The deny order is the only written record of defendants' deliberations. "Written records of proceedings will thus protect the inmate against collateral consequences based on a misunderstanding of the nature of the original proceeding." Wolff v. McDonnel, 418 U.S. 539, 565, 41 L.Ed.2d 935, 94 S.Ct. 2963 (1974).

As every Nevada inmate has a state-created right to proper parole consideration per Anselmo, 396 P.3d, supra p. 23, defendants' claim of off-the-record NAC 213.518 Factor consideration cannot be allowed to stand as compliant with NRS 213.10885(2)'s mandate pertaining to the defendants' consideration of all relevant factors. Ultimately, defendants denied the plaintiff reconsideration of the unlisted factors. (Exhibit 7).

For these reasons, NAC 213.518 must be amended or repealed as it affords defendants impermissable prohibition and capriciously discretionary consideration of mandated NRS 213.10885(2)-(2)(f) factors, thus, making NAC 213.518 illegal and invalid.

"In every instance, the power to adopt regulations to carry out a particular function is limited by the terms of the grant of authority pursuant to which the function was assigned." NRS 233B.040(1).

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C. DEFENDANTS' NAC 213.518(1) PROPOSED AMENDMENT DOES NOT CHANGE THE FACT THAT THE NRS 213.10885(1) OBJECTIVE CRITERIA MANDATE IS NOT SATISFIED BY NAC 213.518'S SILENCE AS TO HOW NAC 213.518 FACTORS ARE TO BE CONSIDERED

NRS 213.10885(1) provides:

> The Board shall adopt by regulation specific standards for each type of convicted person to assist the Board in determining whether to grant or revoke parole.
>
> ...
>
> The standards must be based on objective criteria for determining the person's probability of success on parole.

BLACK'S LAW DICTIONARY (abr. 10th ed. 2015) defines objective as: "Of, relating to, or based on externally verifiable phenomena, as opposed to an individual's perceptions, feelings, or intentions... 2. Without bias or prejudice, disinterested...."

NAC 213.518 is titled, in part, "Consideration of additional aggravating and mitigating factors," yet absent from its language is criteria that specifies how these aggravating and mitigating factors are to be considered. By not codifying anywhere within NAC 213.495 through 213.565, inclusive, how consideration of NAC 213.518 factors is to be executed, consideration of each factor will vary based upon the Parole Commissioners assigned to a given inmate's parole consideration. This will, and likely has, resulted in inconsistant and unpredictable consideration of any given factor. Therefore, language specifying how applicable aggravating and mitigating factors will be considered is necessary to satisfy the objectivity requirement of NRS 213.10885(1) and give meaning to NAC 213.518's title: "Consideration of additional aggravating and mitigating factors."

Ultimately, if the defendants decide to subjectively deviate from their objective standard for NAC 213.518 Factor consideration, they have the discretion to do so, provided the defendants comply with NAC 213.560 and NRS 213.10885(7)(a). However, as there is currently no objective standard to consider NAC 213.518 factors, NAC 213.560 and NRS 213.10885(7)(a) are moot as no subjective deviation is possible because the current consideration process is purely subjective.

For these reasons, NAC 213.518 must be amended or repealed as it permits the defendants to subjectively determine how NAC 213.518 factors are to be considered violating NRS 213.10885(1)'s objective criteria mandate, thus, making NAC 213.518 illegal and invalid.

"In every instance, the power to adopt regulations to carry out a particular function is limited by the terms of the grant of authority pursuant to which the function was assigned." NRS 233B.040(1).

V. DEFENDANTS' "[D]ECLINE TO CHANGE THE LANGUAGE OF NAC 213.516 BASED ON THE CHANGE ALREADY AGREED TO IN NAC 213.518[]" IS NON COMPOS MENTIS AS THE LANGUAGE OF NAC 213.518 DOES NOT AFFECT THE CONSTRUCTION NOR EXECUTION OF NAC 213.516

NAC 213.516 provides:

> In determining whether to grant parole to a prisoner, the Board will apply the severity level of the crime for which parole is being considered as assigned pursuant to NAC 213.512 and the risk level assigned to the prisoner pursuant to NAC 213.514 to establish an initial assessment regarding whether to grant parole. The initial assessment will correspond to the following table:

///

Severity Level	Risk Level		
	High	Moderate	Low
Highest	Deny parole	Consider factors set forth in NAC 213.518	Consider factors set forth in NAC 213.518
High	Deny parole	Consider factors set forth in NAC 213.518	Grant parole at first or second meeting to consider prisoner for parole
Moderate	Deny parole	Grant parole at first or second meeting to consider prisoner for parole	Grant parole at initial parole eligibility
Low Moderate	Consider factors set forth in NAC 213.518	Grant parole at first or second meeting to consider prisoner for parole	Grant parole at initial parole eligibility
Low	Consider factors set forth in NAC 213.518	Grant parole at initial parole eligibility	Grant parole at initial parole eligibility

Plaintiff's NAC 213.516 NRS 233B.100 Petition (Exhibit 8) raised two unique issues. First, 10 of the 15 NAC 213.516 initial assessment outcomes prohibit NAC 213.518 factor consideration which is mandated by NRS 213.10885(2)-(2)(F). Second, NAC 213.516 utilizes NAC 213.512 Department of Corrections' assigned crime severity levels which are illegal and unconstitutional pursuant to supra SECTION II, II.A & II.B.

Defendants' response was, "NAC 213.516 — The Board adopted the motion to decline to change NAC 213.516 based on the change already agreed to in NAC 213.518." (Exhibit 2). Defendants' proposed change to NAC 213.518, supra p. 38, does not have any affect on NAC 213.516's construction or execution nor does it

change the fact that 10 of the 15 NAC 213.516 initial assessment outcomes arbitrarily prohibit relevant NAC 213.518 factor consideration which is mandated by NRS 213.10885(2)-(2)(f).

A. NAC 213.516 IS IN VIOLATION OF ITS ENABLING STATUTE NRS 213.10885 BY ARBITRARILY PROHIBITING CONSIDERATION OF LEGISLATIVELY MANDATED PAROLE CONSIDERATION FACTORS

NRS 213.10885 is an enabling statute of NAC 213.516. NRS 213.10885(2)-(2)(f)'s language, supra p. 39, mandates the defendants consider "[A]ll other factors which are relevant ...," including those factors named in subsection (2)(a)-(f). Anselmo, 396 P.3d at 853, defined "relevant" as meaning "applicable." Supra pp. 39-40. Therefore, every factor than can be applied to an inmate pursuant to NRS 213.10885(2)-(2)(f), must be applied to the inmate. Furthermore, the language of NRS 213.10885(2)-(2)(f) creates a state-created liberty interest in the proper consideration of NRS 213.10885(2)-(2)(f) factors by the defendants. Supra p. 40.

The NAC 213.516 initial assessment table, supra p. 47, authorizes the defendants to take four possible actions: "Deny parole," "Consider factors set forth in NAC 213.518," "Grant parole at first or second meeting to consider prisoner for parole," and "Grant parole at initial parole eligibility." Only one (1) authorizes the defendants to consider NAC 213.518 factors.

Therefore, of the 15 outcomes of the initial assessment, ONLY 5 AUTHORIZE THE DEFENDANTS TO CONSIDER THE 29 FACTORS OF NAC 213.518(2) & (3). Three outcomes "Deny parole" without determining if any of the 13 NAC 213.518(3) mitigating factors are relevant and must therefore be considered pursuant to NRS 213.10885(2).

Four outcomes "Grant parole at initial parole eligibility" without determining if any of the 16 aggravating factors are relevant and must be considered. And, three outcomes authorize the defendants to defer a grant of parole from the first to second meeting without any determination of relevance or consideration of the 29 NAC 213.518(2) & (3) factors. This makes the grant or denial at the first meeting subjective, capricious, and a clear violation of NRS 213.10885(1) which states that "The [Board's] standards must be based on objective criteria ...."

Additionally, permitting execution of NAC 213.518 factor consideration to be dependent upon conditional direction from NAC 213.516 impermissably violates NRS 213.10885(2)(a)-(f). Three, of many, examples detailing how these violations have been occurring can be found supra pp. 42-43. Furthermore, as the defendants' NAC 213.518(1) proposed amendment, supra p. 38, would make NRS 213.10885(2)(a)-(F) factor consideration mandatory for the defendants, NAC 213.516 prohibiting the execution of NAC 213.518 carries a more profound effect. If adopted, defendants will be literally saying that they will consider factors mandated by the Legislature, only when, an assessment they created permits them to.

For these reasons, NAC 213.516 must be amended or repealed as 10 of the 15 NAC 213.516 initial assessment outcomes prohibit the defendants from executing its statutory duty pursuant to NRS 213.10885(1) & (2)-(2)(F).

"In every instance, the power to adopt regulations to carry out a particular function is limited by the terms of the grant of authority pursuant to which the function was assigned." NRS 233B.040(1).

B. NAC 213.516'S INCORPORATION OF NAC 213.512'S ILLEGAL AND UNCONSTITUTIONAL CRIME SEVERITY LEVELS CAUSES NAC 213.516 TO BE ILLEGAL AND UNCONSTITUTIONAL

The NAC 213.516 initial assessment table incorporates the Department of Corrections' assigned NAC 213.512 crime severity levels on its Y-axis. Supra p. 47. Upon an in-depth analysis of NAC 213.512, it has been determined that the NAC 213.512 crime severity levels, which were adopted under NRS Chapter 233B, violate the Nev. Const. Art. 4, s. 20, prohibition of special laws for the punishment of crimes and misdemeanors applicable to NRS Chapter 233B. Supra SECTION II.A. Furthermore, NAC 213.512 crime severity levels are not the crime severity levels passed by Nevada's Legislature. Supra p. 27. Only Legislatively passed crime severity levels are legal for parole consideration purposes in Nevada. Supra pp. 27-28.

For these reasons, NAC 213.516 must be amended or repealed as NAC 213.516 incorporates illegal and unconstitutional NAC 213.512 crime severity levels, thus, making NAC 213.516 illegal, unconstitutional, and invalid.

"In every instance, the power to adopt regulations to carry out a particular function is limited by the terms of the grant of authority pursuant to which the function was assigned." NRS 233B.040(1).

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VI. PENDING THE AMENDMENT OR REPEAL OF NAC 213.516, NAC 213.514(4) MAY NEED TO BE AMENDED OR REPEALED TO HARMONIZE NAC 213.514(4) WITH NAC 213.516

In the Plaintiff's NAC 213.514 NRS 233B.100 Petition, (Exhibit 9), Plaintiff argued that if NAC 213.516 is repealed, NAC 213.514(4) would be without meaning. NAC 213.514(4) provides:

> The Board will apply the risk level assigned to a prisoner who is being considered for parole to establish an initial assessment regarding whether to grant parole in the manner set forth in NAC 213.516.

If NAC 213.516 is repealed, or the NAC 213.514 risk levels are amended out of NAC 213.516, then NAC 213.514(4) will be directing the defendants to apply the NAC 213.514 risk levels in a manner that does not exist. In response to the Plaintiff's NAC 213.514 NRS 233B.100 Petition, defendants stated, "NAC 213.514 — The Board adopted the motion to decline to remove NAC 213.514(4) based on its decision to decline to remove NAC 213.516.

For these reasons, if NAC 213.516 is amended or repealed, NAC 213.514(4) may need to be amended or repealed to harmonize it with NAC 213.516.

VII. THE COURT HAS JURISDICTION TO RULE ON THIS CASE AND PROVIDE SUPPLEMENTAL RELIEF

> The validity or applicability of any regulation may be determined in a proceeding for a declaratory judgment in the district court in and for Carson City ... when it is alleged that the regulation, or its proposed application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff. A declaratory judgment may be rendered after the plaintiff has first requested the agency to pass upon the validity of the regulation. The court shall declare the regulation invalid if it finds that it violates constitutional or statutory provisions or exceeds the statutory authority of the agency.

NRS 233B.100(1). "Actions for declaratory judgment provided for in subsections 1 and 2 shall be in accordance with the Uniform Declaratory Judgments Act (chapter 30 of NRS), and the Nevada Rules of Civil Procedure." NRS 233B.100(3). "Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed." NRS 30.030. "No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for." Id. "Further relief based on a declaratory judgment or decree may be granted whenever necessary and proper." NRS 30.100.

"[I]njunctive relief may properly be coupled with a prayer for a declaratory judgment." Woods v. Bromley, 69 Nev. 96, 106-107, 241 P.2d 1103 (1952). "[I]t is not necessary that [] a prayer for injunctive relief be included in the initial complaint, since NRS 30.100 specifically allows supplemental relief based upon declaratory judgment." Southern Nevada Homebuilders Ass'n v. City of N. Las Vegas, 112 Nev. 297, 303, 913 P.3d 1276, 1280 (1996). An injunction may be granted:

> When it shall appear by the complaint that the plaintiff is entitled to the relief demanded, and such relief or any part thereof consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually.

NRS 33.010(1).

VIII. CONCLUSION

For the reasons stated in the instant Points And Authorities In Support Of Complaint, this court has a duty to declare NAC 213.512, 213.514, 213.516, 213.518, and 213.522 invalid. Additionally, this court has a duty to grant NRS 30.100

supplemental relief in the form of an injunction ordering defendants to: Stay all parole considerations until NAC 213.512, 213.516, and 213.518 are amended into compliance with their enabling statutes and/or Nevada's Constitutional limits pertaining to NRS Chapter 233B, or repealed; stay all parole reconsiderations under NAC 213.522 until NAC 213.522 is amended into compliance with its enabling statutes and Nevada's Constitutional limits pertaining to NRS Chapter 233B, or repealed; And, upon the amendment or repeal of NAC 213.516, amend or repeal NAC 213.514(4) to harmonize NAC 213.514(4) with NAC 213.516.

Lastly, this court has a duty to grant additional NRS 30.100 supplemental relief in the form of a receivership to ensure proper performance by the defendants. A receivership is appropriate in this case as the defendants have undeniably demonstrated a total disregard to their statutory and constitutional duty desecrating the legal principles upon which Nevada and the United States of America were founded.

Judging law breakers through a process, which itself, breaks laws, does not bring justice to Nevada's victims, it only creates more.

DATED this 10th day of October, 2021.

Thank you for your time and consideration.

Respectfully submitted,

EVAN SCOTT GRANT, pro se
NNCC
P.O. Box 7000
Carson City, NV 89702

Evan Grant - 1159544
NNCC
P.O. Box 7000
Carson City, NV 89702

RECEIVED 9/19/21

August 12, 2021

RE: Response to Your July 26, 2021, Letter to ME Concerning Sentencing Commission Public Comment

Victoria Gonzalez:

Thank you for your prompt and detailed response in your July 26, 2021, letter to me. Of the letters written to me by state officials, yours was the longest and most detailed. I appreciate that more than you could understand.

Included in this mailing is a 5 page letter with 7 exhibits to be submitted as public comment at the September 3rd Sentencing Commission meeting. I have no reservations concerning anonymity, therefore, please feel free to include my name with this submission.

If there is any further information or assistance you feel I could provide to your office on these matters, or others, do not hesitate to contact me. To clarify a statement from your letter, I am not seeking legal representation, advice, or assistance. I am offerring my research and legal conclusions drawn from that research to aid you and your office however I can.

Thank you for your time, consideration, and most importantly to me, for listening,

Evan Grant

Evan Grant

Evan Grant - 1159544
NNCC
P.O. Box 7000
Carson City, NV 89702

August 12, 2021

RE: Issues Regarding the Execution of Minimum Sentencing Laws by State Officials

Nevada Sentencing Commission:

Under current Nevada law, the Nevada Board of Parole Commissioners' (Parole Board) consideration of an offender for release is itself the execution of the intent behind the minimum element of Nevada's minimum/maximum sentencing structure. In other words, the Parole Board considers, then determines, whether an offender is fit for release, during the period between the minimum and maximum term of incarceration, contained in all parole eligible sentence structures in Nevada. For the past 17 months, I have been researching and litigating Nevada's parole consideration framework whose requirements are contained in Nevada's Constitution, Nevada Revised Statutes (NRS), Nevada Administrative Codes (NAC), and the Parole Board's internal guidelines and procedures.

At the present time, I have five NRS 233B.100 Petitions under review. (Exhibit 1, 2, 3, 4, and 5). Each challanges a Parole Board Nevada Administrative Code that inhibits proper consideration of offenders for release. A consideration which is inherent in every parole eligible sentence structure.

Under these NACs, the Parole Board defers to the Nevada Department of Corrections (NDOC) to establish the severity of all felony crimes. The Parole Board then follows the NDOC's guidance

while illegally disregarding the severity structure detailed by the Legislature in NRS 193.130 and 193.330. The result is the Parole Board denying parole eligible inmates release, not due to the Legislature's opinion regarding the nature of an offender's crime, but the subjective bias of NDOC officials and how they feel about a type of crime.

Furthermore, the NACs under review permit the Parole Board broad discretion to omit mitigating information from consideration that may provide evidence of an offender's honorable civil history, rehabilitation, and post-release intentions. In determining which offenders to grant release, NRS 213.10885(2) directs the Parole Board to identify offenders who "[W]ill live and remain at liberty without violating the law if parole is granted or continued." By omitting relevant mitigating information, all offenders, especially those who pose a low risk to society, are not receiving the parole consideration mandated by the Legislature within their individual sentence structures. If the goal of early release is to promote law abiding social re-integration, stripping away the positive attributes of an offender, both inherent and earned, does nothing, but perpetuate disdain for authority and foster recidivism.

How can ANY person be considered safe by society, when the unethical behavior of that person, no matter if there is alot, or a little, is weighed against nothing?

Currently, the only form of oversight to ensure the Parole Board's proper execution of Nevada's laws governing parole consideration, which, again, is Nevada's execution of an offender's minimum term of incarceration, relies on the Parole Board to

self-report certain actions. Under the present system, the Parole Board is viewed as legally compliant and ethical, not because it is, but because it says it is.

To briefly demonstrate the Parole Board's adversion to objectively carrying out its duties, a requirement of NRS 213.10885(1), on April 29, 2013, the, then, Parole Board Chairman, Connie S. Bisbee, stated at a Nevada Assembly Committee on Judiciary hearing concerning the revision of parole consideration statutes:

> What you really needed to do to determine whether or not someone was a high risk to reoffend [] was to use the most current risk assessments that are available, to have the person who is conducting that risk assessment be trained to conduct it, and that you report those results to your parole board.

(Exhibit 6, at 13). However, on a Parole Board memo dated January 29, 2018, on which Connie Bisbee is named, the memo states:

> Agenda Item VII pertains to the manner in which the Board will apply the result of a [] assessment prepared in accordance with NRS 213.1214. ... [T]he practice has been to deviate upward to the next risk level in an effort to not understate the risk to reoffend[.]

(Exhibit 7). Here, the Parole Board openly discusses a practice, still in effect, to arbitrarily increase the recidivism risk level of certain offenders, having been provided a completed risk assessment, by a trained person, pursuant to NRS 213.1214.

In addition to the NRS 233B.100 Petitions under review, this biased deviation practice is currently being reviewed by the First Judicial District Court In And For Carson City pursuant to two Extraordinary Writs of Mandamus that I am personally litigating, Case No. 21 OC 00112 1B and 21 OC 00124 1B. Copies of these Writs

can be made available upon request.

Ultimately, the diligent efforts of Nevada's Department of Sentencing Policy, Sentencing Commission, Legislature, and Governor are futile if those empowered to carry out Nevada's sentencing laws act independently, subjectively, and with impunity. If the Parole Board is permitted to continue ignoring Nevada's sentencing laws, enacted by the Legislature, signed by the Governor, and conferred on a convicted person by a judge, then the countless hours spent shaping Nevada's criminal justice landscape will be meaningless.

What is the purpose of a minimum/maximum sentencing structure, when the minimum term, as defined by Nevada's sentencing laws, is being arbitrarily abrogated due to the personal bias and unauthorized use of discretion in the Parole Board's official execution of its mandated duties?

To prevent the continued betrayal of Nevada's sentencing laws by the Parole Board, I propose two solutions;

First, a recommendation to the Legislature, to go beyond the self-reporting Parole Board oversight statutes of NRS 213.10885(7) and 213.10887, by enacting legislation that mandates an unaffiliated State agency to audit all aspects of the Parole Board on a regular schedule;

Or, a recommendation to the Legislature, to remove the subjective, non-compliant nature of the Parole Board by abolishing it, and replacing it, with an objective system of its own design, that permits release at parole eligibility, unless, certain criteria is met to warrent continued confinement, a concept that

already exists with the "Mandatory release of certain prisoners" under NRS 213.1215.

Thank you for your time and consideration,

Evan Grant

Evan Grant

EXHIBIT 1

Evan Grant's

NRS 233B.100

Petition For

NAC 213.512

NEVADA BOARD OF PAROLE COMMISSIONERS

NRS 233B.100 PETITION

Petitioner Name: EVAN SCOTT GRANT

Address: 1721 E. Snyder Ave.

Apt /Suite No: —

City: Carson City State: Nevada

Zip Code: 89701

Title of Regulation: Determination of whether to grant parole: Assignment of severity level to crime.

NRS # / NAC #: NAC 213.512

Date Submitted: 7 / 14 / 2021

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Reason for petitioning for the adoption, filing, amendment or repeal of the regulation, per NRS 233B.100:

For the following reasons, Petitioner respectfully requests that NAC 213.512 be REPEALED per NRS 233B.100:

NAC 213.512 must be REPEALED, in its entirety, as it is in violation of Nevada Constitution Article 4, Section 20, and Nevada Supreme Court precedent. Nev. Const. Art. 4, s. 20 provides:

> Section 20. Certain local and special laws prohibited. The legislature shall not pass local or special laws in any of the following enumerated cases — that is to say:
>
> ...
>
> For the punishment of crimes and misdemeanors;
>
> ...

NAC 213.512 was adopted by the Board through NRS 233B. As chapter 233B was passed by the Nevada Legislature, ch. 233B could not provide for the creation of Nevada Administrative Codes that violate Nev. Const. Art 4, s. 20, as doing so would cause ch. 233B to violate that Constitutional provision. Simply stated, as Nevada's Legislature was prohibited from creating local or special laws for the punishment of crimes and misdemeanors, it could not create a law that permitted State agencies to create local or special laws for the punishment of crimes and misdemeanors. NACs "[H]ave the force of law and must be enforced...." NRS 233B.040(1).

To understand how NAC 213.512 violates Nev. Const. Art. 4, s. 20, the term "local or special law" must first be defined. We begin by looking at the converse known as a "general law" which is discussed in Nev. Const. Art. 4, s. 21:

> Sec. 21. General laws to have uniform application. In all cases enumerated in the preceding section, and in all other cases where a general law can be made applicable, all laws shall be general and of uniform operation throughout the State.

When comparing Nev. Const. Art. 4, s. 20, to s. 21, the Nevada Supreme Court observed that:

> The leading division (of statutes) to be into "public or general, private or special." Public or general statutes are ... those which relate to or bind all within the jurisdiction of the law-making power, limited as that power may be in its territorial operations, or by constitutional restraints. Private or special statutes relate to certain individuals or particular classes of men.

The State of Nevada Ex. Rel. Clarke v. Irwin, 5 Nev. 111, 120 (1869). (citation omitted). This concept was put into easy to understand words in 1975 by the, then, Nevada Attorney General, "A 'local law' is one operating over a particular locality instead of over the whole territory of the State. A 'special law' is one operating upon one or a portion of a class, instead of upon all of a class." 1975 Op. Atty. Gen. Nev. 53, Opinion No. 194, citing State Ex. Rel. Clarke v. Irwin, 5 Nev. 111 (1869).

A "class" is a "group of people, things, qualities or activities that have common characteristics or attributes[.]" Class, BLACK'S LAW DICTIONARY (abr. 10th ed. 2015). Nevada's Constitution in Article 4 Section 20 groups those being punished for crimes and misdemeanors, thereby, creating an identifiable class.

How does this all apply to NAC 213.512 when NAC 213.512 was not created by the legislature? NAC 213.512(1) provides:

> 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.

In NAC 213.512, the Board confers authority to the Department of Corrections to assign the severity level of a crime for parole consideration purposes. The problem is that the Legislature did not authorize the Board to look beyond its statutes when considering offense, or crime, severity in any of NAC 213.512's enabling statutes, NRS 213.10885, 213.110 and 213.140.

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> To the extent authorized by the statutes applicable to it, each agency may adopt reasonable regulations to aid it in carrying out the functions assigned to it by law and shall adopt such regulations as are necessary to the proper execution of those functions.

NRS 233B.040(1) (2020). The sole enabling statute of NAC 213.512 that discusses crime severity is NRS 213.10885, specifically NRS 213.10885(2)-(2)(a) which provides:

> 2. In establishing the standards, the Board shall consider ... 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;
>
> ...

In NRS 213.10885(2)-(2)(a), the Board's consideration of "The severity of the crime committed" is mandated by the Legislature through stating, "[T]he Board shall...." "Shall" is to be construed as mandatory when construing Legislative statutes, unless an exception is provided. Ewing v. Fahey, 86 Nev. 604, 607, 472 P.2d 347, 349 (1970). While an exception is provided, it bears no weight on the issue presented here as subsection (2)(a) "must" be included in consideration.

"The maxim 'EXPRESSIO UNIUS EST EXCLUSIO ALTERIUS,' the expression of one thing is the exclusion of another, has been repeatedly confirmed in this state." Galloway v. Truesdell, 83 Nev. 13, 20, 422 P.2d 237, 242 (1967). "In the Legislature rests the entire power of the people...." Id. at 23. The Legislature has the power to determine what is or is not a crime and the appropriate penalty for those who violate a criminal statute. See Anderson v. Eighth Judicial Dist. Court, 448 P.3d 1120 (Nev. 2019).

By mandating only consideration of "The severity of the crime committed," the Legislature did not vest in the Board the power to look beyond Nevada's statutes, let alone defer to another state agency, to determine the severity of an offense. "Every positive direction contains an implication against anything contrary to it

which would frustrate or disappoint the purpose of that provision." Galloway, 83 Nev. at 26, quoting People v. Draper, 15 N.Y. 544 (emphasis added).

Furthermore, NAC 213.512(1) references NRS 209.341 as the statute controlling the Department of Corrections' assignment of severity level. However, a reading of NRS 209.341 shows that it makes no mention of assigning a severity level to a crime. In fact, the words "severity," "level" nor "crime" appear a single time in NRS 209.341.

How then is the severity of a crime actually assigned in Nevada?

> In determining whether an offense is petty or serious, this "court must examine objective indications of the seriousness with which society regards the offense," and "[t]he best indicator of society's views is the maximum penalty set by the Legislature." ... The word "penalty" encompasses both a term of imprisonment as well as other penalties proscribed by statute, but "[p]rimary emphasis ... must be placed on the maximum authorized period of incarceration."

Anderson, 448 P.3d at 1123. (citation omitted). The Court goes on to say that in the case of Anderson, "[T]he right affected [] convinces us that the [] penalty is so severe as to categorize the offense as serious." Id. at 1124. Anderson shows us that the totality of a person's rights affected by a criminal conviction as deemed by the Legislature, with emphasis placed on the maximum authorized period of incarceration, determines the severity of an offense, i.e. a crime. This concept is further supported by English v. State, 116 Nev. 828, 9 P.3d 60 (2000) where the Court held that an enhancement from a misdemeanor to a Category C felony constituted an increase in offense severity.

Therefore, as the Board is only considering those persons convicted of a felony, it must look to NRS 193.130 and NRS 193.330, which provide the categories of Nevada's felonies, to discover the severity of crimes as set by the Legislature. Interestingly, the Board used this exact method in 2004. Per the PBFORM-PS (REV. 12/10/04), the Board states in its own words:

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> The Board has adopted crime severity levels A, B, C, D & E based on the statutory definitions set forth in NRS 193.130, 193.330 and as provided by specific criminal statute. The Board has expanded levels A and B to A1, A2, A3, A4, B1, B2, B3 & B4 to reflect the diverse minimum and maximum sentencing ranges provided for Level A and B felonies.

(Exhibit 1).

As you can see, the Board in 2004, after English was decided in 2000, clearly understood its statutory duty and was in compliance with Nevada law. However, in 2008, when the Board adopted NAC 213.512 by R018-08, it deviated dramatically from its understood statutory duty. The NAC 213.512 severity levels of "highest," "high," "moderate," "low moderate" and "low" do not exist in NRS 193.130, 193.330 nor 209.341. Furthermore, NAC 213.512 was adopted pursuant to NRS Chapter 233B which cannot permit the Board to defer to the Department of Corrections to circumvent Legislatively assigned severity levels for crimes in Nevada as doing so would cause NRS Chapter 233B to become a special law pertaining to the punishment of crimes and misdemeanors, a prohibited act under Nev. Const. Art. 4 s. 20.

For these reasons, NAC 213.512 is an illegal and unconstitutional NAC and must be REPEALED immediately pursuant to NRS Chapter 233B regulation-making procedures.

Proposed language of the regulation to be adopted, filed or amended or the existing language of the regulation to be repealed, as applicable:

~~NAC 213.512 Determination of whether to grant parole: Assignment of severity level to crime. (NRS 213.10885, 213.110, 213.140)~~

~~1. 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.~~

~~2. 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 statutory authority for the adoption, filing, amendment or repeal of the regulation:

"Any interested person may petition an agency requesting the adoption, filing, amendment, or repeal of any regulation...." NRS 233B.100(1) (2020). "Upon submission of such a petition, the agency shall within 30 days either deny the petition in writing, stating its reasons, or initiate regulation-making proceedings." Id. "To the extent authorized by the statutes applicable to it by law, each agency shall adopt reasonable regulations to aid it in carrying out the functions assigned to it by law and shall adopt such regulations as are necessary to the proper execution of those functions." NRS 233B.040(1) (2020). An agency may provide notice of intent to adopt, amend or repeal a permanent or temporary regulation. NRS 233B.060 (2020). An agency may propose a permanent or temporary regulation. NRS 233B.0607 (2020). An agency may propose an emergency regulation. NRS 233B.0613 (2020).

Any relevant data, views and arguments that support the petition for the adoption, filing, amendment or repeal of the regulation:

This NRS 233B.100 petition stems from the urgent need to REPEAL NAC 213.512 as it is illegal and unconstitutional pursuant to the limits of NRS Chapter 233B and NRS 213.10885. Furthermore, NAC 213.512 frustrates Nevada Supreme Court precedent that the Board, in its own words, agreed with. Supra pp. 4-5.

Nev. Const. Art. 4 s. 20 prohibits the Legislature from creating Special Laws, i.e. statutes, that allow individuals to be treated differently from

eachother for the punishment of crimes and misdemeanors. NAC 213.512 was adopted under NRS Chapter 233B. As the Legislature was prohibited from allowing NRS Chapter 233B to permit different punishments for the same crime, the Board could not use NRS Chapter 233B to adopt an NAC that punishes convicted persons differently for the same crime. Since the Legislature determined the severity of each category of Felony in NRS 193.130 and NRS 193.330, as acknowledged by the Board in PBFORM-PS (REV. 12/10/04) (Exhibit 1), the Board is bound to follow the severities listed in these statutes. Further supporting this concept, the Nevada Supreme Court has held that increases in felony category constitute an increase in offense severity. See Anderson, 448 P.3d; English, 116 Nev.

NAC 213.512 utilizing the Department of Corrections to assign a severity level to crimes creates a situation where a person outside of the Board's jurisdiction, i.e. in a sentencing court, is considered by the crime severity assigned by the Legislature, while a person being considered by the Board is considered based upon the crime severity assigned by the Department of Corrections. As the Board determines how long a convicted person will actually be incarcerated, upto the maximum term imposed by that person's sentencing court, every person convicted of a felony will be punished by one crime severity when their sentencing court determines their maximum term and a different crime severity, for the same crime, when the Board determines how much of that maximum term is to be served incarcerated.

In conclusion, it is for the reasons stated in this NRS 233B.100 petition that NAC 213.512 must be REPEALED pursuant to NRS 233B regulation-making proceedings. If the Board fails to reasonably act on this petition, Petitioner intends to pursue legal action pursuant to NRS 233B.110 via the Uniform Declaratory Judgments Act, NRS Chapter 30.

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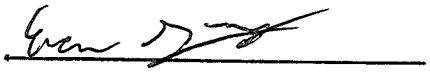
DATED this 14th day of July, 2021.

Thank you for your time and consideration.

Respectfully Submitted,



EVAN SCOTT GRANT

VERIFICATION

Under penalty of perjury, the undersigned declares that he is the Petitioner named in the foregoing NRS 233B.100 Petition; that he knows the contents of the Petition; that the facts alleged in this Petition are true of his own knowledge, except as to those matters stated on information and belief; and that, as to those matters stated on information and belief, he believes the Petition to be true.

DATED this 14th day of July, 2021.

EVAN SCOTT GRANT
1721 E. Snyder Ave.
Carson City, NV 89701

CERTIFICATE OF SERVICE

I hereby certify that I am the Petitioner, that I am incarcerated, and that on the 14th day of July, 2021, I served a true and correct copy of the foregoing NRS 233B.100 Petition, by leaving it with Nevada Department of Corrections Northern Nevada Correctional Center Employee Sgt. Wood to be placed in the outgoing mail and be mailed via U.S. Postal Service CERTIFIED MAIL, Tracking No. 9590 9402 4743 8344 3306 27; Article No. 7019 0140 0000 9267 5418, addressed to:

Nevada Board of Parole Commissioners
1677 Old Hot Springs Road, Suite A
Carson City, NV 89706

EVAN SCOTT GRANT

EXHIBIT 1

PBFORM-PS

(REV. 12/10/04)

PAROLE STANDARDS

Offenders will appear before or be considered in absentia by a panel of the Parole Board for parole consideration when they have served the minimum time required to attain parole eligibility as provided by Nevada law. If the offender is serving concurrent sentences for multiple offenses, the most severe offense will determine the crime severity level.

Pursuant to NRS 213.10885, the Board has adopted by regulation standards for release on or revocation of parole. The regulations are set forth in Chapter 213 of the Nevada Administrative Code (NAC) at sections 213.510 through 213.560. The Guideline Recommended Months (GRM) to serve calculated under the Board's parole standards is a suggested range of months to be served and is based on a combination of offense and offender characteristics.

Pursuant to NRS 213.10705, the release or continuation on parole is an act of grace of the State. In addition, pursuant to NRS 213.10705 and NAC 213.560, the Parole Board is not required to grant or deny parole based on the guideline-recommended time to serve, and the establishment of parole standards does not create any right or interest in liberty or property, does not give rise to any reasonable expectation of parole, and does not establish any basis for a cause of action against the State, its political subdivisions, agencies, boards, commissions, departments, officers or employees. See Greenholtz v. Inmates of Nebraska Penal & Cor., 442 U.S. 1, 99 S.CT2100, 60 L.Ed2d 668 (1979).

These parole standards are designed to aid the Board in making consistent decisions. The Board will also consider any recommendations from the Court, law enforcement agencies, prosecutors, prison personnel, and victims as provided in NRS 213.130. Further, the Board will take into account the considerations set forth in NRS 213.1099. In exercising its unlimited discretion to deviate from the time periods recommended under its guidelines, the Board will consider the factors set forth in NAC 213.560, and any other mitigating or aggravating factors which the Board deems relevant. The Board is not required to provide an offender with any reasons concerning a decision to deny parole, Weakland v. Board of Parole Comm'rs, 100 Nev. 218, 678 P.2d 1158 (1984), but may elect to do so in those cases where its decision deviates from the guideline-recommended time to serve.

The Board's current standards were adopted effective August 11, 1998. All offenders being considered for parole release, except those being considered pursuant to the provisions of NRS 213.1215, will be evaluated under the Board's current guidelines, regardless of offense date, date of conviction, or any standards previously utilized in considering the offender for parole release. These standards serve as guidelines only, the Board is not required to adhere to the guidelines, and they are not laws for purposes of ex post facto analysis. Offenders do not have a right to be considered for parole under any previously existing set of parole standards. Smith v. U.S. Parole Com'n, 875 F.2d 1361 (9th Cir. 1989); Vermouth v. Corrothers, 827 F.2d 599 (9th Cir. 1987); Wallace v. Christensen, 802 F.2d 1539 (9th Cir. 1986).

The Board has adopted crime severity levels A, B, C, D & E based on the statutory definitions set forth in NRS 193.130, 193.330 and as provided by specific criminal statute. The Board has expanded levels A and B to A1, A2, A3, A4, B1, B2, B3 & B4 to reflect the diverse minimum and maximum sentencing ranges provided for by statute for level A and B felonies.

The Board will review an offender's disciplinary and programming scores at the time of each hearing. Any change from a previous score will be noted and may result in a change to the offender's net parole success likelihood score and guideline-recommended time to serve.

SCORE	0-10	11-20	21-30	31-40	41-UP	LEVEL	SENTENCE STRUCTURE BY STATUTE
A1	240-276	276-312	312-348	348-384	384-420	"A" CRIME	20 YEAR OR MORE MINIMUM
A2	180-216	216-252	252-288	288-324	324-360	"A" CRIME	15 YEAR MINIMUM
A3	120-150	150-180	180-210	210-240	240-270	"A" CRIME	10 YEAR MINIMUM
A4	60-84	84-108	108-132	132-156	156-180	"A" CRIME	5 YEAR MINIMUM
B1	24-48	48-72	72-108	108-144	EXPIRE	"B" CRIME	20 YEAR MAXIMUM
B2	18-30	30-48	48-66	66-84	EXPIRE	"B" CRIME	15 YEAR MAXIMUM
B3	12-24	24-36	36-48	48-60	EXPIRE	"B" CRIME:	10 YEAR MAXIMUM
B4	12-18	18-24	24-30	30-36	EXPIRE	"B" CRIME:	6 YEAR MAXIMUM
C	12-16	16-20	20-24	24-28	EXPIRE	"C" CRIME	5 YEAR MAXIMUM
D/E	12-15	15-18	18-21	21-24	EXPIRE	"D/E" CRIME:	4 YEAR MAXIMUM

CONVICTIONS/ENHANCEMENTS: All adult including instant offense and consecutive sentences.
INCARCERATIONS: All adult including instant offense and previous CS terms.
WEAPONS: Instant offense only, actual, highest level, even if plead out.
VICTIMS: Instant offense only, actual, highest level, even if plead out.
EMPLOYMENT: Any full time job, school, SIIS or SSI for 6 months during year prior to instant offense.
DISCIPLINARY: Based on previous three years. 10 points maximum. Credit limit is 3. +2 points for each major violation. +1 points for each minor/general violation. -1 for none at 1st hearing or none during the previous year. -2 for none in the last two years. -3 for none in the last three years.

DRUGS/ALCOHOL: All convictions, including instant offense.
COURT ACTION: % of maximum sentence ordered.
PROGRAMMING: [10 is maximum] Inmate must provide case worker with original for verification and copies of each certificate and diploma to the Board. Programming counts only on current sentence (programming on prior sentences will not be counted on the guideline).
-3 points for either GED, high school diploma, or 12 college credits.
-2 points for long term substance abuse program, behavior modification, or literacy program. -1 for short term counseling, street readiness, job workshop, parenting, weekly AA/NA's, full time job (½ day or more), or other program deemed appropriate by the Board.

STATISTICAL RISK ASSESSMENT: The risk assessment is based on a study of factors applied to inmates who were released on parole or discharged their prison sentence in 1999 and returned with a new felony conviction within 3 years. The risk assessment does not provide the risk of failure or probability of success on parole. It does not take into consideration other factors the Board considers when evaluating inmates for release on parole. The risk assessment is one component used to assist the Board in making decisions. The risk assessment is not compiled by the Board but is based on data existing in the Nevada Criminal Information System which is maintained by the Nevada Department of Corrections (NDOC). The Board will not entertain claims of errors in the risk assessment. Any errors must be corrected by the NDOC. The Board will only consider a request for re-hearing based on an error in the computation of the risk assessment if the correction made by the NDOC results in a change to a lower risk category and the request is made in writing by a representative of the NDOC and routed to the Board through the Chief of the Offender Management Division. The factors used on the risk assessment are as follows:

STATIC FACTORS

Age at First Arrest (juvenile or adult): 25 years or older = 0 points, 20-24 years = 1 point, 19 years or younger = 2 points.
Prior Probation/Parole Revocations: No parole or probation revocations = 0 points, One or more = 2 points.
Employment History (prior to incarceration): Satisfactory full-time employment for 1-2 years = 0 points, Employed less than full time or full time employment for less than one year = 1 point, Unsatisfactory employment / unemployed / unemployable = 2 points.
Current or prior convictions: Property crime, forgery, robbery = 2 points, all others = 0 points.
History of drug alcohol abuse: None = 0 points, some use, not severe disruption of functioning = 1 points, frequent abuse, serious disruption of functioning = 2points.
Gender: Male = 1 point, female = 0 points.

DYNAMIC FACTORS

Current Age: 41 and above = -1 point, 31-40 = 0 points, 21-30 = 1 point, under 21 = 2 points.
Gang Membership: No = 0 points, Yes = 2 points.
Completed DOC certified education/vocational/treatment program: Yes or has existing GED/high school/college degree = -1 point, No = 0 points.
Disciplinary Conduct - Past year: No violations or single minor violation = -1 points, Multiple minor violations = 0 points, Major violation = 1, multiple major violations = 2 points
Current custody level: Minimum = -1 point, Medium = 0 points, Maximum or Administrative Segregation = 2 points.
TOTAL POINTS SCORE: 0-4=Low Risk, 5-10=Moderate Risk, 11-15=High Risk, 16+ points total or 8points on dynamic factors=Highest Risk.

PBFORM-PS (REV. 12/10/04)

EXHIBIT 2

Evan Grant's

NRS 233B.100

Petition For

NAC 213.514

NEVADA BOARD OF PAROLE COMMISSIONERS

NRS 233B.100 PETITION

Petitioner Name: EVAN SCOTT GRANT

Address: 1721 E. Snyder Ave.

Apt /Suite No: —

City: Carson City State: Nevada

Zip Code: 89701

Title of Regulation: Determination of whether to grant parole: Assignment of risk level to prisoner.

NRS # / NAC #: NAC 213.514

Date Submitted: July 14, 2021

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Reason for petitioning for the adoption, filing, amendment or repeal of the regulation, per NRS 233B.100:

For the following reasons, Petitioner respectfully requests that NAC 213.514 be AMENDED per NRS 233B.100:

This NRS 233B.100 petition is being submitted to conform NAC 213.514 with the changes requested by the Petitioner in the accompanying NRS 233B.100 petition pertaining to NAC 213.516. In the Petitioner's NAC 213.516, NRS 233B.100 petition, Petitioner requests the REPEAL of NAC 213.516, in its entirety, due to multiple violations of Nevada's statutes and Constitution in NAC 213.516's language and operation.

NAC 213.514(4) provides:

> 4. The Board will apply the risk level assigned to a prisoner who is being considered for parole to establish an initial assessment regarding whether to grant parole in the manner set forth in NAC 213.516.

Provided the Board fulfills the Petitioner's request to REPEAL NAC 213.516, NAC 213.514(4) will be directing the Board to apply a prisoner's NAC 213.514 risk level in a manner that no longer exists. For this reason, Petitioner requests NAC 213.514 be AMENDED to remove NAC 213.514(4).

Doing so will shift the NAC 213.514 risk level consideration process from NAC 213.516 to NAC 213.518. NAC 213.518(2)(p) provides for the consideration of "Any other factor which indicates an increased risk that release of the prisoner on parole would be dangerous to society or the prisoner." And, NAC 213.518(3)(m) provides for consideration of "Any other factor which indicates that the release of the prisoner on parole would benefit, or would not be dangerous to, society or the prisoner." Therefore, a mechanism is already in place to consider the NAC 213.514 risk levels of high and low, if NAC 213.516 were to be REPEALED. If moderate risk were to be assigned, the Board could simply not apply either NAC 213.514(2)(p) or (3)(m) to reflect a "middle of the road" risk level.

For these reasons, if NAC 213.516 were to be REPEALED as requested by the

Petitioner, NAC 213.514(4) would need to be removed to conform NAC 213.514 to the absence of NAC 213.516. As previously indicated, this would not affect the Board's ability to consider NAC 213.514 risk levels. The absence of NAC 213.516 would trigger NAC 213.518(2)(p) & (3)(m) for the Board's consideration of NAC 213.514 risk levels. Therefore, if NAC 213.516 were to be REPEALED, NAC 213.514 must be AMENDED to remove NAC 213.514(4).

<u>Proposed language of the regulation to be adopted, filed or amended or the existing language of the regulation to be repealed, as applicable:</u>

NAC 213.514 Determination of whether to grant parole: Assignment of risk level to prisoner. (NRS 213.10885, 213.110, 213.140)

...

~~4. The Board will apply the risk level assigned to a prisoner who is being considered for parole to establish an initial assessment regarding whether to grant parole in the manner set forth in NAC 213.516.~~

~~5.~~ [4.] As used in this section, "sexual offense" has the meaning ascribed to it in NRS 213.1214.

<u>The statutory authority for the adoption, filing, amendment or repeal of the regulation:</u>

"Any interested person may petition an agency requesting the adoption, filing, amendment, or repeal of any regulation...." NRS 233B.100(1) (2020). "Upon submission of such a petition, the agency shall within 30 days either deny the petitition in writing, stating its reasons, or initiate regulation-making proceedings." <u>Id.</u> "To the extent authorized by the statutes applicable to it by law, each agency shall adopt reasonable regulations to aid it in carrying out the functions assigned to it by law and shall adopt such regulations as are necessary to the proper execution of those functions," NRS 233B.040(1) (2020). An agency may

provide notice of intent to adopt, amend or repeal a permanent or temporary regulation. NRS 233B.060 (2020). An agency may propose a permanent or temporary regulation. NRS 233B.0607 (2020). An agency may propose an emergency regulation. NRS 233B.0613 (2020).

Any relevant data, views and arguments that support the petition for the adoption, filing, amendment or repeal of the regulation:

Petitioner feels this NRS 233B.100 petition is simple and easy to understand. Therefore, no further data, views or arguments will be presented.

DATED this 14th day of July, 2021.

Thank you for your time and consideration.

Respectfully submitted,

EVAN SCOTT GRANT

VERIFICATION

Under penalty of perjury, the undersigned declares that he is the Petitioner named in the foregoing NRS 233B.100 Petition; that he knows the contents of the Petition; that the facts alleged in this Petition are true of his own knowledge, except as to those matters stated on information and belief; and that, as to those matters stated on information and belief, he believes the Petition to be true.

DATED this 14th day of July, 2021.

EVAN SCOTT GRANT
1721 E. Snyder Ave.
Carson City, NV 89701

CERTIFICATE OF SERVICE

I hereby certify that I am the Petitioner, that I am incarcerated, and that on the 14th day of July, 2021, I served a true and correct copy of the foregoing NRS 233B.100 Petition, by leaving it with Nevada Department of Corrections Northern Nevada Correctional Center Employee Sgt Wood to be placed in the outgoing mail and be mailed via U.S. Postal Service CERTIFIED MAIL, Tracking No. 9590 9402 4743 8344 3306 27, Article No. 7019 0140 0000 9267 5418, addressed to:

Nevada Board of Parole Commissioners
1677 Old Hot Springs Road, Suite A
Carson City, NV 89706

EVAN SCOTT GRANT

EXHIBIT

3

Evan Grant's

NRS 233B.100

Petition For

NAC 213.516

NEVADA BOARD OF PAROLE COMMISSIONERS

NRS 233B.100 PETITION

Petitioner Name: EVAN SCOTT GRANT

Address: 1721 E. Snyder Ave.

Apt / Suite No: —

City: Carson City State: Nevada

Zip Code: 89701

Title of Regulation: Determination of whether to grant parole: Initial assessment.

NRS # / NAC #: NAC 213.516

Date Submitted: July 14, 2021.

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CERTIFICATE OF SERVICE 15

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Reason for petitioning for the adoption, filing, amendment or repeal of the regulation, per NRS 233B.100:

For the following reasons, Petitioner respectfully requests that NAC 213.516 be REPEALED, in its entirety, per NRS 233B.100:

NAC 213.516 must be REPEALED, in its entirety, as the entire regulation violates NRS 213.10885, and Nevada Constitution Article 4 Section 20 and Nevada Supreme Court precedent. Each of the two violations is unique and independently damning to the entire regulation resulting in NAC 213.516's immediate REPEAL to be of paramount importance. The following is an analysis of these violations:

First;

NRS 213.10885 is an enabling statute of NAC 213.516. NRS 213.10885(2) provides:

> In establishing the standards, the Board shall consider the information on decisions regarding parole that is compiled and maintained pursuant to NRS 213.10887 and 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.

In NRS 213.10885(2) sentence One, the word "shall" immediately appears after "the Board." "Shall" is to be construed as mandatory when construing legislative statutes, unless an exception is provided. Ewing v. Fahey, 86 Nev. 604, 607, 472 P.2d 347, 349 (1970).

As an exception is provided in NRS 213.10885(2) sentence One, the Board is bound to comply with it. "[W]hich are relevant..." substantively limits the Board's discretion by specifying which of the "[A]ll other factors..." shall be considered by the Board. The Nevada Supreme Court gave meaning to this exception in

Anselmo v. Bisbee, 396 P.3d 848, 853 (Nev. 2017), by stating, "This Court cannot say that the inmate receives proper consideration when the Board's decision is based inpart on an inapplicable [] factor." "Applicable" is defined as, "[H]aving direct relevance." Applicable, BLACK'S LAW DICTIONARY (abr. 10th ed. 2015). Thus, it is the Board's consideration of inapplicable factors that is prohibited under the "[W]hich are relevant..." exception.

Therefore, NRS 213.10885(2) Sentence One explicitly mandates the consideration of all applicable factors. As consideration of all applicable factors is explicitly mandated, NRS 213.10885(2) Sentence One "[C]reate[s] a protected liberty interest by placing substantive limitations on official discretion." Olim v. Wakinekona, 461 U.S. 238, 249, 75 L.Ed.2d 813, 103 S.Ct. 1741 (1983). As "[E]ligible Nevada inmates do have a statutory right [pursuant to NRS 213.140(1)] to be considered for parole by the Board[,]" Anselmo, 396 P.3d at 849, any abrogation of NRS 213.10885(2) Sentence One would inadvertantly abrogate every inmate's state-created right to proper parole consideration recognized by the Nevada Supreme Court.

NAC 213.516 contains a table with the X-axis deriving its three values from the three risk levels (High, Moderate, Low) assignable pursuant to NAC 213.514 and the Y-axis with the five severity levels (Highest, High, Moderate, Low Moderate, Low) assignable pursuant to NAC 213.512. Pursuant to NAC 213.516, the Board utilizes the risk and severity levels assigned to the prisoner being considered for parole to make the initial assessment of whether to grant or deny parole. The table is illustrated below and is hereinafter referred to as ".516 Table":

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Severity Level	Risk Level		
	High	Moderate	Low
Highest	Deny parole	Consider factors set forth in NAC 213.518	Consider factors set forth in NAC 213.518
High	Deny Parole	Consider factors set forth in NAC 213.518	Grant parole at first or second meeting to consider prisoner for parole
Moderate	Deny parole	Grant parole at first or second meeting to consider prisoner for parole	Grant parole at initial parole eligibility
Low Moderate	Consider factors set forth in NAC 213.518	Grant parole at first or second meeting to consider prisoner for parole	Grant parole at initial parole eligibility
Low	Consider factors set forth in NAC 213.518	Grant parole at initial parole eligibility	Grant parole at initial parole eligibility

As you can clearly see, the .516 Table permits four possible actions: "Deny parole"; "Consider factors set forth in NAC 213.518"; "Grant parole at first or second meeting to consider prisoner for parole"; "Grant parole at initial parole eligibility". Only one (1) authorizes the Board to consider NAC 213.518 factors.

Therefore, of the 15 outcomes of the "initial assessment," ONLY 5 ALLOW THE BOARD TO CONSIDER THE 29 FACTORS OF NAC 213.518. Three outcomes "Deny parole" without determining if any of the 13 NAC 213.518 mitigating factors are relevant and must therefore be considered pursuant to NRS 213.10885(2). Four outcomes "Grant parole at initial parole eligibility" without determining if any of the 16 aggravating factors are relevant and must be considered. And, three outcomes allow the Board to defer a grant of parole from the first to second meeting without any determination of relevance or consideration of the 29 NAC 213.518 factors. This

makes the grant or denial at the first meeting subjective, capricious and a clear violation of NRS 213.10885(1) which states that "The [Board's] standards must be based on objective criteria...."

Furthermore, permitting execution of NAC 213.518 factor consideration to be dependent upon conditional direction from NAC 213.516 impermissably violates NRS 213.10885(2)(a)-(f). The following are three examples, of many, detailing how these violations have been occurring:

1. NRS 213.10885(2)(b) states that the Board must consider "The criminal history of the person[.]" Yet, if NAC 213.516 does not permit the Board to consider NAC 213.518 factors, then the Board is prohibited from considering "Whether the prisoner has a history of possessing or using a weapon during the commission of a crime[.]" NAC 213.518(2)(o).

2. NRS 213.10885(2)(d) states that the Board must consider "Any previous parole violations or failures[.]" Yet, if NAC 213.516 does not permit the Board to consider NAC 213.518 factors, then the Board is prohibited from considering "Whether the prisoner previously completed probation or parole successfully[.]" NAC 213.518(3)(f).

3. NRS 213.10885(2)(e) states that the Board must consider "Any potential threat to society or the convicted person[.]" Yet, if NAC 213.516 does not permit the Board to consider NAC 213.518 factors, then the Board is prohibited from considering "Whether the prisoner has a history of failing to comply with orders from mental health professionals for the treatment of mental illness, including, without limitation, failing to comply with prescriptions for medication to treat mental illness[.]" NAC 213.518(2)(l).

Ultimately, 10 of the 15 NAC 213.516 outcomes prevent the Board from exercising its statutory duty pursuant to NRS 213.10885(1), (2) & (2)(a)-(f). It is for this reason that NAC 213.516 must be **REPEALED**, in its entirety, pursuant to NRS Chapter 233B regulation-making proceedings.

Second;

NAC 213.516 must be REPEALED, in its entirety, as it is in violation of Nevada Constitution Article 4 Section 20 and Nevada Supreme Court precedent. Nev. Const. Art. 4 s. 20 provides:

> Section 20. Certain local and special laws prohibited. The legislature shall not pass local or special laws in any of the following enumerated cases — that is to say:
>
> ...
>
> For the punishment of crimes and misdemeanors;
>
> ...

NAC 213.516 was adopted by the Board through NRS 233B. As chapter 233B was passed by the Nevada Legislature, Ch. 233B could not provide for the creation of Nevada Administrative Codes that violate Nev. Const. Art. 4 s. 20, as doing so would cause ch. 233B to violate that Constitutional provision. Simply stated, as Nevada's Legislature was prohibited from creating local or special laws for the punishment of crimes and misdemeanors, it could not create a law that permitted State agencies to create local or special laws for the punishment of crimes and misdemeanors. NACs "[H]ave the force of law and must be enforced..." NRS 233B.040(1).

To understand how NAC 213.516 violates Nev. Const. Art. 4 s. 20, the term "local or special law" must first be defined. We begin by looking at the converse known as a "general law" which is discussed in Nev. Const. Art. 4 s. 21:

> Sec. 21. General laws to have uniform application. In all cases enumerated in the preceding section, and in all other cases where a general law can be made applicable, all laws shall be general and of uniform operation throughout the state.

When comparing Nev. Const. Art. 4 s. 20 to s. 21, the Nevada Supreme Court observed that:

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> The leading division (of statutes) to be into "public or general, private or special." Public or general statutes are . . . those which relate to or bind all within the jurisdiction of the law-making power, limited as that power may be in its territorial operations, or by constitutional restraints. Private or special statutes relate to certain individuals or particular classes of men.

The State of Nevada Ex. Rel. Clarke v. Irwin, 5 Nev. 111, 120 (1869). (citation omitted). This concept was put into easy to understand words in 1975 by the, then, Nevada Attorney General, "A 'local law' is one operating over a particular locality instead of over the whole territory of the State. A 'special law' is one operating upon one or a portion of a class, instead of upon all of a class." 1975 Op. Atty. Gen. Nev. 53, Opinion No. 194, citing State Ex. Rel. Clarke v. Irwin, 5 Nev. 111 (1869).

A "class" is a "group of people, things, qualities or activities that have common characteristics or attributes[.]" Class, BLACK'S LAW DICTIONARY (abr. 10th ed. 2015). Nevada's Constitution in Article 4 Section 20 groups those being punished for crimes and misdemeanors, thereby, creating an identifiable class.

How does all this apply to NAC 213.516 when NAC 213.516 was not created by the Legislature?

The NAC 213.516 language, including the .516 Table, utilizes NAC 213.512 severity levels. NAC 213.512(1) provides:

> 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.

In NAC 213.512, the Board confers authority to the Department of Corrections to assign the severity level of a crime for parole consideration purposes. The problem is that the Legislature did not authorize the Board to look beyond its statutes when considering offense, or crime, severity in any of NAC 213.512's enabling statutes, NRS 213.10885, 213.110 and 213.140.

> To the extent authorized by statutes applicable to it, each agency may adopt reasonable regulations to aid it in carrying out the functions assigned to it by law and shall adopt such regulations as are necessary to the proper execution of those functions.

NRS 233B.040(1) (2020). The sole enabling statute of NAC 213.512 that discusses crime severity is NRS 213.10885, specifically NRS 213.10885(2)-(2)(a) which provides:

> 2. In establishing the standards, the Board shall consider... 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;
>
> ...

In NRS 213.10885(2)-(2)(a), the Board's consideration of the "severity of the crime committed" is mandated by the Legislature through stating, "[T]he Board shall...." "Shall" is to be construed as mandatory when construing Legislative statutes, unless an exception is provided. Ewing, 86 Nev. at 607. While an exception is provided, it bears no weight on the issue presented here.

"The maxim 'EXPRESSIO UNIS EST EXCLUSIO ALTERIUS,' the expression of one thing is the exclusion of another, has been repeatedly confirmed in this State." Galloway v. Truesdell, 83 Nev. 13, 20, 422 P.2d 237, 242 (1967). "In the Legislature rests the entire power of the people...." Id. at 23. The Legislature has the power to determine what is or is not a crime and the appropriate penalty for those who violate a criminal statute. See Anderson v. Eighth Judicial Dist. Court, 448 P.3d 1120 (Nev. 2019).

By mandating only consideration of the "severity of the crime committed," the Legislature did not vest in the Board the power to look beyond Nevada's statutes, let alone defer to another state agency to determine the severity of an offense. "Every positive direction contains an implication against anything

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contrary to it which would frustrate or disappoint the purpose of that provision." Galloway, 83 Nev. at 26, quoting People v. Draper, 15 N.Y. 544 (emphasis added).

Furthermore, NAC 213.512(1) references NRS 209.341 as the statute controlling the Department of Corrections' assignment of severity level. However, a reading of NRS 209.341 shows that it makes no mention of assigning a severity level to a crime. In fact, the words "severity," "level" nor "crime" appear a single time in NRS 209.341.

How then is the severity of a crime actually assigned in Nevada?

> In determining whether an offense is petty or serious, this "court must examine objective indications of the seriousness with which society regards the offense," and "[t]he best indicator of society's views is the maximum penalty set by the Legislature." ... The word "penalty" encompasses both a term of imprisonment as well as other penalties proscribed by statute, but "[p]rimary emphasis ... must be placed on the maximum authorized period of incarceration."

Anderson, 448 P.3d at 1123. (citation omitted). The Court goes on to say that in the case of Anderson; "[T]he right affected [] convinces us that the [] penalty is so severe as to categorize the offense as serious." Id. at 1124. Anderson shows us that the totality of a person's rights affected by a criminal conviction as deemed by the Legislature, with emphasis placed on the maximum authorized period of incarceration, determines the severity of an offense, i.e. a crime. This concept is further supported by English v. State, 116 Nev. 828, 9 P.3d 60 (2000) where the Court held that an enhancement from a misdemeanor to a Category C felony constituted an increase in offense severity.

Therefore, as the Board is only considering those persons convicted of a felony, it must look to NRS 193.130 and NRS 193.330, which provide the categories of Nevada's felonies, to discover the severity of crimes as set by the Legislature. Interestingly, the Board used this exact method in 2004. Per the PBFORM-PS (REV. 12/10/04), the Board states in its own words:

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> The Board has adopted crime severity levels A, B, C, D & E based on the statutory definitions set forth in NRS 193.130, 193.330 and as provided by specific criminal statute. The Board has expanded levels A and B to A1, A2, A3, A4, B1, B2, B3 & B4 to reflect the diverse minimum and maximum sentencing ranges provided for Level A and B felonies.

(Exhibit 1).

As you can see, the Board in 2004, after English was decided in 2000, clearly understood its statutory duty and was in compliance with Nevada law. However, in 2008, when the Board adopted NAC 213.512 by R018-08, it deviated dramatically from its understood statutory duty. The NAC 213.512 severity levels of "highest," "high," "moderate," "low moderate" and "low" do not exist in NRS 193.130, 193.330 nor 209.341. Furthermore, NAC 213.512 was adopted pursuant to NRS Chapter 233B which cannot permit the Board to defer to the Department of Corrections to circumvent Legislatively assigned severity levels for crimes in Nevada as doing so would cause NRS Chapter 233B to become a special law pertaining to the punishment of crimes and misdemeanors, a prohibited act under Nev. Const. Art. 4 s. 20.

Therefore, as the NAC 213.516 language and the .516 Table are utilizing the Nevada Department of Corrections to circumvent legislatively assigned severity levels; NAC 213.516 is illegal, unconstitutional and must be REPEALED immediately pursuant to NRS Chapter 233B regulation-making procedures.

Conclusion;

For two entirely different reasons, the construction of NAC 213.516 violates Nevada law. One unlawfully denies Nevada prisoners their state-created right to consideration of "[A]ll other factors which are relevant...." NRS 213.10885(2). This denial injures both the convicted person, if parole is denied without complete and relevant NAC 213.518(3) mitigating factor consideration, and the Public, if parole is granted without complete and relevant NAC 213.518(2) aggravating factor consideration. The other permits the Department of

Corrections to illegally and unconstitutionally assign a severity level to a crime to circumvent legislative authority which is subsequently used by the Board to grant or deny parole via the .516 Table.

For both reasons, NAC 213.516 must be immediately REPEALED, in its entirety, pursuant to NRS Chapter 233B regulation-making procedures.

<u>Proposed language of the regulation to be adopted, filed or amended or the existing language to be repealed, as applicable:</u>

~~NAC 213.516 Determination of whether to grant parole: Initial assessment. (NRS 213.10885, 213.110, 213.140) In determining whether to grant parole to a prisoner, the Board will apply the severity level of the crime for which parole is being considered as assigned pursuant to NAC 213.512 and the risk level assigned to the prisoner pursuant to NAC 213.514 to establish an initial assessment regarding whether to grant parole. The initial assessment will correspond to the following table:~~

~~Severity Level~~	~~Risk Level~~		
	~~High~~	~~Moderate~~	~~Low~~
~~Highest~~	~~Deny parole~~	~~Consider factors set forth in NAC 213.518~~	~~Consider factors set forth in NAC 213.518~~
~~High~~	~~Deny parole~~	~~Consider factors set forth in NAC 213.518~~	~~Grant parole at first or second meeting to consider prisoner for parole~~
~~Moderate~~	~~Deny parole~~	~~Grant parole at first or second meeting to consider prisoner for parole~~	~~Grant parole at initial parole eligibility~~
~~Low Moderate~~	~~Consider factors set forth in NAC 213.518~~	~~Grant parole at first or second meeting to consider prisoner for parole~~	~~Grant parole at initial parole eligibility~~

~~Low~~	~~Consider factors set forth in NAC 213.518~~	~~Grant parole at initial parole eligibility~~	~~Grant parole at initial parole eligibility~~

The statutory authority for the adoption, filing, amendment or repeal of the regulation:

"Any interested person may petition an agency requesting the adoption, filing, amendment or repeal of any regulation...." NRS 233B.100(1) (2020). "Upon submission of such a petition, the agency shall within 30 days either deny the petitition in writing, stating its reasons, or initiate regulation-making proceedings." Id. "To the extent authorized by the statutes applicable to it by law, each agency shall adopt reasonable regulations to aid it in carrying out the functions assigned to it by law and shall adopt such regulations as are necessary to the proper execution of those functions." NRS 233B.040(1) (2020). An agency may provide notice of intent to adopt, amend or repeal a permanent or temporary regulation. NRS 233B.060 (2020). An agency may propose a permanent or temporary regulation. NRS 233B.0607 (2020). An agency may propose an emergency regulation. NRS 233B.0613 (2020).

Any relevant data, views and arguments that support the petition for the adoption, filing, amendment or repeal of the regulation:

The immediate REPEAL of NAC 213.516, in its entirety, empowers the Board to consider "[A]ll other factors which are relevant..." as is explicitly mandated by NRS 213.10885(2) Sentence One. The Legislature intended for this type of consideration to occur as it is in the best interests of both Nevada's public and prisoners.

The consideration of every applicable NAC 213.518(2) aggravating factor is vital to protecting the public. Failing to do so could cause the Board to release

dangerous prisoners into the community who, due to the reduced visibility of aggravating factors caused by the limitations of NAC 213.516, should remain incarcerated.

At the same time, consideration of every applicable NAC 213.518(3) mitigating factor is vital to protect the prisoner. Failing to do so could cause the Board to deny parole to prisoners who, due to the reduced visibility of mitigating factors caused by the limitations of NAC 213.516, have earned a grant of parole.

> In an effort to ensure public safety, the Board of Parole Commissioners (Board) renders fair and just decisions on parole matters based on the law, the impact on victims and the community, and the goal of successfully reintegrating offenders back into society.
>
> ...
>
> The Board strongly believes in the parole process and is committed to ethical, unbiased and professional performance of its duties, and will continue to strive for excellence and consistant fairness.... The Board recognizes its responsibility, not only to the citizens of Nevada and the victims of crime, but also to the offenders who appear before it. With this in mind, the Board will render objective, just and informed decisions that are free of improper external influences, while being mindful of the needs of the offender and the community.

NEVADA BOARD OF PAROLE COMMISSIONERS, OPERATION OF THE BOARD 4 (effective February 24, 2011).

In keeping with the spirit of the Board's own philosophy, NAC 213.516 must be REPEALED, in its entirety, as its illegal and unconstitutional nature, Supra pp. 1-10, endanger both Nevada's citizens and prisoners. The community has a right to be protected. Convicted persons have a right to proper, objective and informed parole consideration.

For these reasons, NAC 213.516 must be REPEALED, in its entirety, pursuant to

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NRS Chapter 233B regulation-making proceedings. If the Board fails to reasonably act on this petition, Petitioner intends to pursue legal action pursuant to NRS 233B.110 via the Uniform Declaratory Judgments Act, NRS Chapter 30.

DATED this 14th day of July, 2021.

Thank you for your time and consideration.

Respectfully submitted,

EVAN SCOTT GRANT

VERIFICATION

Under penalty of perjury, the undersigned declares that he is the Petitioner named in the foregoing NRS 233B.100 Petition; that he knows the contents of the Petition; that the facts alleged in this petition are true of his own knowledge, except as to those matters stated on information and belief; and that, as to those matters stated on information and belief, he believes the Petition to be true.

DATED this 14th day of July, 2021.

EVAN SCOTT GRANT
1721 E. Snyder Ave.
Carson City, NV 89701

CERTIFICATE OF SERVICE

I hereby certify that I am the Petitioner, that I am incarcerated, and that on the 14th day of July, 2021, I served a true and correct copy of the foregoing NRS 233B.100 Petition, by leaving it with Nevada Department of Corrections Northern Nevada Correctional Center Employee Sgt. Wood to be placed in the outgoing mail and be mailed via U.S. Postal Service CERTIFIED MAIL, Tracking No. 9590 9402 4743 8344 3306 27, Article No. 7019 0140 0000 9267 5418, addressed to:

Nevada Board of Parole Commissioners
1677 Old Hot Springs Road, Suite A
Carson City, NV 89706

Evan Grant

EVAN SCOTT GRANT

EXHIBIT 1

PBFORM-PS

(REV. 12/10/04)

PAROLE STANDARDS

Offenders will appear before or be considered in absentia by a panel of the Parole Board for parole consideration when they have served the minimum time required to attain parole eligibility as provided by Nevada law. If the offender is serving concurrent sentences for multiple offenses, the most severe offense will determine the crime severity level.

Pursuant to NRS 213.10885, the Board has adopted by regulation standards for release on or revocation of parole. The regulations are set forth in Chapter 213 of the Nevada Administrative Code (NAC) at sections 213.510 through 213.560. The Guideline Recommended Months (GRM) to serve calculated under the Board's parole standards is a suggested range of months to be served and is based on a combination of offense and offender characteristics.

Pursuant to NRS 213.10705, the release or continuation on parole is an act of grace of the State. In addition, pursuant to NRS 213.10705 and NAC 213.560, the Parole Board is not required to grant or deny parole based on the guideline-recommended time to serve, and the establishment of parole standards does not create any right or interest in liberty or property, does not give rise to any reasonable expectation of parole, and does not establish any basis for a cause of action against the State, its political subdivisions, agencies, boards, commissions, departments, officers or employees. See Greenholtz v. Inmates of Nebraska Penal & Cor., 442 U.S. 1, 99 S.CT 2100, 60 L.Ed2d 668 (1979).

These parole standards are designed to aid the Board in making consistent decisions. The Board will also consider any recommendations from the Court, law enforcement agencies, prosecutors, prison personnel, and victims as provided in NRS 213.130. Further, the Board will take into account the considerations set forth in NRS 213.1099. In exercising its unlimited discretion to deviate from the time periods recommended under its guidelines, the Board will consider the factors set forth in NAC 213.560, and any other mitigating or aggravating factors which the Board deems relevant. The Board is not required to provide an offender with any reasons concerning a decision to deny parole, Weakland v. Board of Parole Comm'rs, 100 Nev. 218, 678 P.2d 1158 (1984), but may elect to do so in those cases where its decision deviates from the guideline-recommended time to serve.

The Board's current standards were adopted effective August 11, 1998. All offenders being considered for parole release, except those being considered pursuant to the provisions of NRS 213.1215, will be evaluated under the Board's current guidelines, regardless of offense date, date of conviction, or any standards previously utilized in considering the offender for parole release. These standards serve as guidelines only, the Board is not required to adhere to the guidelines, and they are not laws for purposes of ex post facto analysis. Offenders do not have a right to be considered for parole under any previously existing set of parole standards. Smith v. U.S. Parole Com'n, 875 F.2d 1361 (9th Cir. 1989); Vermouth v. Corrothers, 827 F.2d 599 (9th Cir. 1987); Wallace v. Christensen, 802 F.2d 1539 (9th Cir. 1986).

The Board has adopted crime severity levels A, B, C, D & E based on the statutory definitions set forth in NRS 193.130, 193.330 and as provided by specific criminal statute. The Board has expanded levels A and B to A1, A2, A3, A4, B1, B2, B3 & B4 to reflect the diverse minimum and maximum sentencing ranges provided for by statute for level A and B felonies.

The Board will review an offender's disciplinary and programming scores at the time of each hearing. Any cha : from a previous score will be noted and esult in a change to the offender's net parole success likelihood score and guideline-recommended time to serve.

SCORE	0-10	11-20	21-30	31-40	41-UP	LEVEL	ENTENCE STRUCTURE BY STATUTE
A1	240-276	276-312	312-348	348-384	384-420	"A" CRIME	20 YEAR OR MORE MINIMUM
A2	180-216	216-252	252-288	288-324	324-360	"A" CRIME	15 YEAR MINIMUM
A3	120-150	150-180	180-210	210-240	240-270	"A" CRIME	10 YEAR MINIMUM
A4	60-84	84-108	108-132	132-156	156-180	"A" CRIME	5 YEAR MINIMUM
B1	24-48	48-72	72-108	108-144	EXPIRE	"B" CRIME	20 YEAR MAXIMUM
B2	18-30	30-48	48-66	66-84	EXPIRE	"B" CRIME	15 YEAR MAXIMUM
B3	12-24	24-36	36-48	48-60	EXPIRE	"B" CRIME:	10 YEAR MAXIMUM
B4	12-18	18-24	24-30	30-36	EXPIRE	"B" CRIME:	6 YEAR MAXIMUM
C	12-16	16-20	20-24	24-28	EXPIRE	"C" CRIME	5 YEAR MAXIMUM
D/E	12-15	15-18	18-21	21-24	EXPIRE	"D/E" CRIME:	4 YEAR MAXIMUM

CONVICTIONS/ENHANCEMENTS: All adult including instant offense and consecutive sentences.
INCARCERATIONS: All adult including instant offense and previous CS terms.
WEAPONS: Instant offense only, actual, highest level, even if plead out.
VICTIMS: Instant offense only, actual, highest level, even if plead out.
EMPLOYMENT: Any full time job, school, SIIS or SSI for 6 months during year prior to instant offense.
DISCIPLINARY: Based on previous three years. 10 points maximum. Credit limit is 3. +2 points for each major violation. +1 points for each minor/general violation. -1 for none at 1st hearing or none during the previous year. -2 for none in the last two years. -3 for none in the last three years.

DRUGS/ALCOHOL: All convictions, including instant offense.
COURT ACTION: % of maximum sentence ordered.
PROGRAMMING: [10 is maximum] Inmate must provide case worker with original for verification and copies of each certificate and diploma to the Board. Programming counts only on current sentence (programming on prior sentences will not be counted on the guideline).
-3 points for either GED, high school diploma, or 12 college credits.
-2 points for long term substance abuse program, behavior modification, or literacy program. -1 for short term counseling, street readiness, job workshop, parenting, weekly AA/NA's, full time job (½ day or more), or other program deemed appropriate by the Board.

STATISTICAL RISK ASSESSMENT: The risk assessment is based on a study of factors applied to inmates who were released on parole or discharged their prison sentence in 1999 and returned with a new felony conviction within 3 years. The risk assessment does not provide the risk of failure or probability of success on parole. It does not take into consideration other factors the Board considers when evaluating inmates for release on parole. The risk assessment is one component used to assist the Board in making decisions. The risk assessment is not compiled by the Board but is based on data existing in the Nevada Criminal Information System which is maintained by the Nevada Department of Corrections (NDOC). The Board will not entertain claims of errors in the risk assessment. Any errors must be corrected by the NDOC. The Board will only consider a request for re-hearing based on an error in the computation of the risk assessment if the correction made by the NDOC results in a change to a lower risk category and the request is made in writing by a representative of the NDOC and routed to the Board through the Chief of the Offender Management Division. The factors used on the risk assessment are as follows:

STATIC FACTORS

Age at First Arrest (juvenile or adult): 25 years or older = 0 points, 20-24 years = 1 point, 19 years or younger = 2 points.
Prior Probation/Parole Revocations: No parole or probation revocations = 0 points, One or more =2 points.
Employment History (prior to incarceration): Satisfactory full-time employment for 1-2 years = 0 points, Employed less than full time or full time employment for less than one year = 1 point, Unsatisfactory employment / unemployed / unemployable = 2 points.
Current or prior convictions: Property crime, forgery, robbery = 2 points, all others = 0 points.
History of drug alcohol abuse: None = 0 points, some use, not severe disruption of functioning = 1 points, frequent abuse, serious disruption of functioning = 2points.
Gender: Male = 1 point, female = 0 points.

DYNAMIC FACTORS

Current Age: 41 and above = -1 point, 31-40 = 0 points, 21-30 = 1 point, under 21 = 2 points.
Gang Membership: No = 0 points, Yes = 2 points.
Completed DOC certified education/vocational/treatment program: Yes or has existing GED/high school/college degree = -1 point, No = 0 points.
Disciplinary Conduct - Past year: No violations or single minor violation = -1 points, Multiple minor violations = 0 points, Major violation = 1, multiple major violations = 2 points
Current custody level: Minimum = -1 point, Medium = 0 points, Maximum or Administrative Segregation = 2 points.
TOTAL POINTS SCORE: 0-4=Low Risk, 5-10=Moderate Risk, 11-15=High Risk, 16+ points total or 8points on dynamic factors=Highest Risk.

PBFORM-PS (REV. 12/10/04)

EXHIBIT

4

Evan Grant's

NRS 233B.100

Petition For

NAC 213.518

NEVADA BOARD OF PAROLE COMMISSIONERS

NRS 233B.100 PETITION

Petitioner Name: EVAN SCOTT GRANT

Address: 1721 E. Snyder Ave.

Apt /Suite No: —

City: Carson City State: Nevada

Zip Code: 89701

Title of Regulation: Determination of whether to grant parole: Consideration of additional aggravating and mitigating factors.

NRS # / NAC #: NAC 213.518

Date Submitted: July 14, 2021

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Reason for petitioning for the adoption, filing, amendment or repeal of the regulation, per NRS 233B.100:

For the following reasons, Petitioner respectfully requests that NAC 213.518 be AMENDED per NRS 233B.100:

This NRS 233B.100 petition stems from the urgent need to bring NAC 213.518's conditional execution and capricious subjectivity into compliance with certain mandatory predicates of NAC 213.518's enabling statute NRS 213.10885. In the case of Anselmo v. Bisbee, 396 P.3d 848 (Nev. 2017), the Nevada Supreme Court held that:

> Generally, an inmate does not have a protectable due process or liberty interest in release on parole, unless that right is created by state statute.... Id. at 849. Nonetheless, eligible Nevada inmates do have a statutory right [pursuant to NRS 213.140(1)] to be considered for parole by the Board. When the Board misapplies its own internal guidelines in assessing whether to grant parole, this court cannot say that the inmate received the consideration to which they are statutorily entitled. Id.
>
> ...
>
> Pursuant to NRS 213.1099(2) and NRS 213.10885(1), the Board must promulgate detailed standards to determine whether the release of an inmate is appropriate. These standards are codified in the Nevada Administrative Code. Id. at 851.

In addition to NRS 213.10885, NRS 213.140 is an enabling statute of NAC 213.518. Therefore, Nevada inmates being considered for parole by the Board through the execution of NAC 213.518, have a statutory right to proper application of the standards set forth in NAC 213.518. To be properly applied, those standards must be in compliance with the explicitly mandatory language of NRS 213.10885 as NRS 213.10885 is an enabling statute of NAC 213.518. Presently, NAC 213.518 is not in compliance with certain explicitly mandatory predicates of NRS 213.10885. The following is an analysis of how NAC 213.518 violates NRS 213.10885 in three unique ways:

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First;

NRS 213.10885(2) provides:

> In establishing the standards, the Board shall consider the information on decisions regarding parole that is compiled and maintained pursuant to NRS 213.10887 and 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.

In NRS 213.10885(2) Sentence One, the word "shall" immediately appears after "the Board." "Shall" is to be construed as mandatory when construing legislative statutes, unless an exception is provided. Ewing v. Fahey, 86 Nev. 604, 607, 472 P.2d 347, 349 (1970).

An exception is provided in NRS 213.10885(2) Sentence One. "[W]hich are relevant..." substantively limits the Board's discretion by specifying which of the "[A]ll other factors..." shall be considered by the Board. The Nevada Supreme Court gave meaning to this exception in Anselmo, 396 P.3d at 853, by stating, "This Court cannot say that the inmate receives proper consideration when the Board's decision is based inpart on an inapplicable [] factor." "Applicable" is defined as, "[H]aving direct relevance," Applicable, BLACK'S LAW DICTIONARY (abr. 10th ed. 2015). Thus, it is the Board's consideration of inapplicable factors that is prohibited under the "[W]hich are relevant..." exception.

Therefore, NRS 213.10885(2) Sentence One explicitly mandates the consideration of all applicable factors. As consideration of all applicable factors is explicitly mandated, NRS 213.10885(2) Sentence One "[C]reate[s] a protected liberty interest by placing substantive limitations on official discretion." Olim v. Wakinekona, 461 U.S. 238, 249, 75 L.Ed.2d 813, 103 S.Ct. 1741 (1983). As

"[E]ligible Nevada inmates do have a statutory right [pursuant to NRS 213.140(1)] to be considered for parole by the Board[,]" Anselmo, 396 P.3d at 849, any abrogation of NRS 213.10885(2) Sentence One would inadvertantly abrogate every inmate's state-created right to proper parole consideration recognized by the Nevada Supreme Court.

Consideration of relevant NAC 213.518 factors is explicitly mandated by NRS 213.10885(2) Sentence One. The adoption of the word "may" in NAC 213.518(1) affords impermissable discretion in the Board's consideration of the 29 NAC 213.518 factors. "May" is construed as permissive when construing legislative statutes. Ewing, 86 Nev. at 607. BLACK'S LAW DICTIONARY (abr. 10th ed. 2015) defines permissive as: "Recommending or tolerating, but not compelling or prohibiting; giving power of choice[.]"

As NRS 213.10885(2) Sentence One explicitly mandates the consideration of "[A]ll other factors which are relevant[,]" the Board giving itself the power of choice as to whether to consider factors set forth in NAC 213.518, in spite of relevance, is a **blatant** abrogation of NRS 213.10885(2) Sentence One. Therefore, the Board has a duty to initiate NRS Chapter 233B Regulation-making proceedings to AMEND NAC 213.518, remove the permissive words "may consider" from NAC 213.518(1), and replace the "may consider" in NAC 213.518(1) with the mandatory words "shall consider relevant". Doing so will require the Board to evaluate NAC 213.518(2) & (3) factors for relevance and subsequent consideration in keeping with NRS 213.10885(2) Sentence One's explicitly mandatory predicates.

Second;

NRS 213.10885(2)(a)-(f) specify "The other factors the Board must include, but are not limited to...." NRS 213.10885(2). "Must" is defined as "An absolute requirement." Must, WEBSTER'S NEW POCKET DICTIONARY (2007).

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NAC 213.518(1) provides:

> 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.

Of the 15 outcomes of the NAC 213.516 initial assessment, only 5 permit the Board to consider NAC 213.518 factors. Permitting execution of NAC 213.518 factor consideration to be dependent upon conditional direction from NAC 213.516 impermissably violates NRS 213.10885(2)-(2)(f). The following are three, of many, examples of how these violations have been occurring:

1. NRS 213.10885(2)(b) states that the Board must consider "The criminal history of the person[.]" Yet, if NAC 213.516 does not permit the Board to consider NAC 213.518 factors, then the Board is prohibited from considering "Whether the prisoner has a history of possessing or using a weapon during the commission of a crime[.]" NAC 213.518(2)(o).

2. NRS 213.10885(2)(d) states that the Board must consider "Any previous parole violations or failures[.]" Yet, if NAC 213.516 does not permit the Board to consider NAC 213.518 factors, then the Board is prohibited from considering "whether the prisoner previously completed probation or parole successfully[.]" NAC 213.518(3)(f).

3. NRS 213.10885(2)(e) states that the Board must consider "Any potential threat to society or the convicted person[.]" Yet, if NAC 213.516 does not permit the Board to consider NAC 213.518 factors, then the Board is prohibited from considering "Whether the prisoner has a history of failing to comply with orders from mental health professionals for the treatment of mental illness, including, without limitation, failing to comply with prescriptions for medication to treat mental illness[.]" NAC 213.518(2)(l).

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It is due to this impermissable abrogation of NRS 213.10885(2)-(2)(f) that NAC 213.518(1) must be AMENDED. The NAC 213.518(1) language, "After establishing an ititial assessment regarding whether to grant parole pursuant to NAC 213.516,..." must be removed to permit the Board unimpeaded consideration of relevant NAC 213.518 factors as explicitly mandated by NRS 213.10885(2)-(2)(f).

Third;

NRS 213.10885(1) provides:

> The Board shall adopt by regulation specific standards for each type of convicted person to assist the Board in determining whether to grant or revoke parole.
>
> ...
>
> The standards must be based on objective criteria for determining the person's probability of success on parole.

BLACK'S LAW DICTIONARY (abr. 10th ed. 2015) defines objective as: "Of, relating to, or based on externally verifiable phenomena, as opposed to an individual's perceptions, feelings, or intentions... 2. Without bias or prejudice, disinterested...."

Presently, NAC 213.518 is titled, in part, "Consideration of additional aggravating and mitigating factors," yet absent from its language is criteria that specifies how these aggravating and mitigating factors are to be considered. By not codifying anywhere within NAC 213.495 through 213.565, inclusive, how consideration of NAC 213.518 factors is to be executed, consideration of each factor will vary based upon the Parole Commissioners assigned to a given inmate's parole consideration. This will, and likely has, resulted in inconsistant and unpredictable consideration of any given factor. Therefore, a subsection specifying how applicable aggravating and mitigating factors will be considered is necessary to satisfy the objectivity requirement of NRS 213.10885(1) and give meaning to NAC 213.518's title: "Consideration of additional aggravating and mitigating factors."

"[T]he title of a statute and the heading of a section are tools available for the resolution of a doubt about the meaning of a statute." Porter v. Nussel, 534 U.S. 516, 528, 152 L.Ed.2d 12, 122 S.Ct. 983 (2002). While an NAC is not an NRS, the same concept applies. NAC 213.518's title indicates that the regulation pertains to the "Consideration of additional aggravating and mitigating Factors" and, furthermore, utilizes NRS 213.10885 as an enabling statute, thus, objective consideration of additional aggravating and mitigating factors is the intent of NAC 213.518. Further supporting this derived intent, the Nevada Legislature stated, "It is the policy of this state that every regulation of an agency be ... expressed in clear and concise language." NRS 233B.062(1) (2020).

Regardless of the intent derived from NAC 213.518 itself, NRS 213.10885(1) mandates that the Board adopt standards based on "objective criteria" and NRS 213.10885(2) mandates that the Board "consider" "[A]ll other factors which are relevant...." Therefore, as NAC 213.518, and all other Nevada Board of Parole Commissioners related NACs, fail to specify how NAC 213.518 aggravating and mitigating factors are to be considered, the Board has a duty to initiate NRS chapter 233B regulation-making proceedings to **AMEND** NAC 213.518 to add a new subsection detailing how those additional aggravating and mitigating factors are to be considered.

While the Petitioner can suggest a consideration method, as no objective consideration method presently exists and the process of consideration is for the Board to determine through its expertise, provided it is in compliance with all applicable Nevada and Federal law, the Petitioner yields the construction of the standard to the Board. Regardless of the language, an objective standard for NAC 213.518 aggravating and mitigating factor consideration must be adopted.

Ultimately, if the Board decides to subjectively deviate from its new objective standard for NAC 213.518 factor consideration, it has the discretion to do so, provided the Board complies with NAC 213.560 and NRS

213.10885(7)(a). However, as there is currently no objective standard to consider NAC 213.518 factors, NAC 213.560 and NRS 213.10885(7)(a) are moot as no subjective deviation is possible because the current process is purely subjective.

For these reasons, the Board must initiate NRS Chapter 233B regulation-making proceedings to adopt a new subsection of NAC 213.518 specifying how NAC 213.518 factors are to be considered.

Conclusion;

For the reasons stated in this NRS 233B.100 petition, NAC 213.518 must be AMENDED pursuant to NRS Chapter 233B regulation-making proceedings. NAC 213.518(1) must be AMENDED to remove the permissive words "may consider" and replace them with the mandatory words "shall consider relevant". Furthermore, NAC 213.518(1) must be AMENDED to remove the conditionally dependent execution of NAC 213.518 factor consideration by removing the language: "After establishing an initial assessment regarding whether to grant parole pursuant to NAC 213.516". And, NAC 213.518 must be AMENDED to add an additional subsection detailing how NAC 213.518 aggravating and mitigating factors are to be considered.

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Proposed language of the regulation to be adopted, filed or amended or the existing language of the regulation to be repealed, as applicable:

NAC 213.518 Determination of whether to grant parole: Consideration of additional aggravating and mitigating factors. (NRS 213.10885, 213.110, 213.140)

1. ~~After establishing an initial assessment regarding whether to grant parole pursuant to NAC 213.516, the~~ [The] Board ~~may consider~~ [shall consider relevant] additional aggravating and mitigating factors to determine whether to grant parole to a prisoner.

2. The aggravating factors which the Board may consider in determining whether to grant parole to a prisoner include, without limitation:

...

3. The mitigating factors which the Board may consider to determine whether to grant parole to a prisoner include, without limitation:

...

[4. The Board shall consider every applicable aggravating and mitigating factor in the following manner:]

(Remaining language for Subsection 4 to be determined by the Board to support its duty to provide objective and proper factor consideration pursuant to NAC 213.518's enabling statutes.)

The statutory authority for the adoption, filing, admendment or repeal of the regulation:

"Any interested person may petition an agency requesting the adoption, filing, amendment, or repeal of any regulation...." NRS 233B.100(1) (2020). "Upon submission of such a petition, the agency shall within 30 days either deny the petition in writing, stated its reasons, or initiate regulation-making proceedings." Id. "To the extent authorized by the statutes applicable to it by law, each agency shall adopt reasonable regulations to aid it in carrying out the

functions assigned to it by law and shall adopt such regulations as are necessary to the proper execution of those functions." NRS 233B.040(1) (2020). An agency may provide notice of intent to adopt, amend or repeal a permanent or temporary regulation. NRS 233B.060 (2020). An agency may propose a permanent or temporary regulation. NRS 233B.0607 (2020). An agency may propose an emergency regulation. NRS 233B.0613 (2020).

Any relevant data, views and arguments that support the petition for the adoption, filing, amendment or repeal of the regulation:

For the following reasons, Petitioner respectfully requests that NAC 213.518 be AMENDED per NRS 233B.100:

1. NAC 213.518(1) must be AMENDED as it utilizes the permissive word "may" making its execution discretionary in violation of NAC 213.518's enabling statute NRS 213.10885. NRS 213.10885(2) explicitly mandates the consideration of "[A]ll other factors which are relevant..." established by the Board in its adopted standards. Supra pp. 2-3. Therefore, the word "may" in NAC 213.518(1) impermissably allows for applicable NAC 213.518 aggravating and mitigating factors to not be considered. To correct this, the words "may consider" must be **AMENDED** to the words "shall consider relevant" to bring NAC 213.518(1) closer into compliance with NRS 213.10885(2) as "shall" is construed by the courts to be mandatory.

2. NAC 213.518(1) must further be AMENDED as its execution is conditionally dependent upon NAC 213.516. Only when NAC 213.516 specifies "Consider **factors set** forth in NAC 213.518" is the Board permitted to consider NAC 213.518 factors. This again violates NRS 213.10885(2)'s explictly mandatory language concerning the Board's consideration of "[A]ll other factors which are relevant...." Supra pp. 3-5. To correct this, the language "After establishing an initial assessment regarding whether to grant parole pursuant to NAC 213.516" must be removed from NAC 213.518(1).

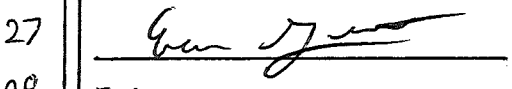
3. NAC 213.518 must be AMENDED to include an additional subsection, NAC 213.518(4), to bring it into compliance with NAC 213.518's enabling statute NRS 213.10885. NRS 213.10885(1) states that "The [Board's] standards must be based on objective criteria for determining the person's probability of success on parole." Nowhere in NAC 213.495 through 213.565, inclusive, does the Board state <u>how</u> applicable NAC 213.518 factors are to be considered. This results in NAC 213.518 factor consideration that is based on Parole Commissioners' perceptions or feelings instead of an objective, disinterested process. This will, and likely has, resulted in inconsistant and unpredictable consideration of any given factor. While the Petitioner can suggest a consideration method, as no objective consideration method presently exists and the process of consideration is for the Board to determine through its expertise; provided it is in compliance with Nevada and Federal law; the Petitioner yields the construction of the standard for NAC 213.518 factor consideration to the Board. Regardless of the language, an objective standard for NAC 213.518 aggravating and mitigating factor consideration must be adopted to bring NAC 213.518 into compliance with NRS 213.10885(1).

If the Board fails to reasonably act on this Petition, Petitioner intends to pursue legal action pursuant to NRS 233B.110 via the Uniform Declaratory Judgments Act, NRS Chapter 30.

DATED this 14th day of July, 2021.

Thank you for your time and consideration.

Respectfully submitted,



EVAN SCOTT GRANT

VERIFICATION

Under penalty of perjury, the undersigned declares that he is the Petitioner named in the foregoing NRS 233B.100 Petition; that he knows the contents of the Petition; that the facts alleged in this Petition are true of his own knowledge, except as to those matters stated on information and belief; and that, as to those matters stated on information and belief, he believes the Petition to be true.

DATED this 19th day of July, 2021.

EVAN SCOTT GRANT
1721 E. Snyder Ave.
Carson City, NV 89701

CERTIFICATE OF SERVICE

I hereby certify that I am the Petitioner, that I am incarcerated, and that on the 19th day of July, 2021, I served a true and correct copy of the foregoing NRS 233B.100 Petition, by leaving it with Nevada Department of Corrections Northern Nevada Correctional Center Employee Sgt. Wood to be placed in the outgoing mail and be mailed via U.S. Postal Service CERTIFIED MAIL, Tracking No. 9590 9402 4743 8344 3306 27, Article No. 7019 0140 0000 9267 5418, addressed to:

Nevada Board of Parole Commissioners
1677 Old Hot Springs Road, Suite A
Carson City, NV 89706

EVAN SCOTT GRANT

EXHIBIT 5

Evan Grant's

NRS 233B.100

Petition For

NAC 213.522

NEVADA BOARD OF PAROLE COMMISSIONERS

NRS 233B.100 PETITION

Petitioner Name: EVAN SCOTT GRANT

Address: 1721 E. Snyder Ave.

Apt /Suite No: —

City: Carson City State: Nevada

Zip Code: 89701

Title of Regulation: Reassessment of severity level of crime.

NRS # / NAC #: NAC 213.522

Date Submitted: July 14, 2021

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Reason for petitioning for the adoption, filing, amendment or repeal of the regulation, per NRS 233B.100:

For the following reasons, Petitioner respectfully requests that NAC 213.522 be AMENDED per NRS 233B.100:

NAC 213.522(1)(a) and (2) must be removed as they are a violation of Nev. Const. Art. 4 s. 20 and Nevada Supreme Court precedent. Additionally, NAC 213.522(3) must be removed as it is dependent upon NAC 213.522(2). Nev. Const. Art. 4 s. 20 provides:

> Section 20. Certain local and special laws prohibited. The Legislature shall not pass local or special laws in any of the following enumerated cases — that is to say:
>
> ...
>
> For the punishment of crimes and misdemeanors;

NAC 213.522 was adopted by the Board through NRS 233B. As chapter 233B was passed by the Nevada Legislature, ch. 233B could not provide for the creation of Nevada Administrative Codes that violate Nev. Const. Art. 4 s. 20, as doing so would cause ch. 233B to violate that Constitutional provision. Simply stated, as Nevada's Legislature was prohibited from creating local or special laws for the punishment of crimes and misdemeanors, it could not create a law that permitted State agencies to create local or special laws for the punishment of crimes and misdemeanors. NACs "[H]ave the force of law and must be enforced...." NRS 233B.040(1).

To understand how NAC 213.522 violates Nev. Const. Art. 4 s. 20, the term "local or special law" must first be defined. We begin by looking at the converse known as a "general law" which is discussed in Nev. Const. Art. 4 s. 21:

> Sec. 21. General laws to have uniform application. In all cases enumerated in the preceding section, and in all other cases where a general law can be made applicable, all laws shall be general and of uniform operation throughout the State.

When comparing Nev. Const. Art. 4 s. 20, to s. 21, the Nevada Supreme Court observed that:

> The leading division (of statutes) to be into "public or general, private or special." Public or general statutes are ... those which relate to or bind all within the jurisdiction of the law making power, limited as that power may be in its territorial operations, or by constitutional restraints. Private or special statutes relate to certain individuals or particular classes of men.

The State of Nevada Ex. Rel. Clarke v. Irwin, 5 Nev. 111, 120 (1869). (citation omitted). This concept was put into easy to understand words in 1975 by the, then, Nevada Attorney General, "A 'local law' is one operating over a particular locality instead of over the whole territory of the State. A 'special law' is one operating upon one or a portion of a class, instead of upon all of a class." 1975 Op. Atty. Gen. Nev. 53, Opinion No. 194, citing State Ex. Rel. Clarke v. Irwin, 5 Nev. 111 (1869).

A "class" is a "group of people, things, qualities or activities that have common characteristics or attributes[.]" Class, BLACK'S LAW DICTIONARY (abr. 10th ed. 2015). Nevada's Constitution in Article 4 Section 20 groups those being punished for crimes and misdemeanors, thereby, creating an identifiable class.

How does this all apply to NAC 213.522 when NAC 213.522 was not created by the Legislature? NAC 213.522 provides:

> 1. If the Board denies parole, the Board will not consider a request for the Board to reassess the severity level of the crime for which parole was denied unless:
>
> (a) The Department of Corrections determines that the severity assigned to the crime pursuant to NAC 213.512 should have been lower and advises the Board, in writing, of its determination....
>
> ...
>
> 2. If the Board receives a request from a prisoner for the Board to reassess the severity level of a crime and the Department of Corrections has advised the Board that the severity level assigned to the crime should have been lower, the Execvative Secretary of the Board or an employee of the Board designated by the Board must apply the lower severity level....
>
> ...

In NAC 213.522, the Board confers authority to the Department of Corrections to assign the severity level of a crime for parole consideration purposes. The problem is that the Legislature did not authorize the Board to look beyond its statutes when considering offense, or crime, severity in any of NAC 213.522's enabling statutes, NRS 213.10885, 213.110 and 213.140.

> To the extent authorized by the statutes applicable to it, each agency may adopt reasonable regulations to aid it in carrying out the functions assigned to it by law and shall adopt such regulations as are necessary to the proper execution of those functions.

NRS 233B.040(1) (2020). The sole enabling statute of NAC 213.522 that discusses crime severity is NRS 213.10885, specifically NRS 213.10885(2)-(2)(a) which provides:

> 2. In establishing the standards, the Board shall consider ... 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;
>
> ...

In NRS 213.10885(2)-(2)(a), the Board's consideration of "The severity of the crime committed" is mandated by the Legislature through stating, "[T]he Board shall...." "Shall" is to be construde as mandatory when construing Legislative statutes, unless an exception is provided. Ewing v. Fahey, 86 Nev. 604, 607, 472 P.2d 347, 349 (1970). While an exception is provided, it bears no weight on the issue presented here as subsection (2)(a) "must" be included in consideration.

"The maxim 'EXPRESSIO UNIUS EST EXCLUSIO ALTERIUS,' the expression of one thing is the exclusion of another, has been repeatedly confirmed in this state." Galloway v. Truesdell, 83 Nev. 13, 20, 422 P.2d 237, 242 (1967). "In the Legislature rests the entire power of the people...." Id. at 23. The Legislature has the power to determine what is or is not a crime and the appropriate penalty for those who violate a criminal statute. See Anderson v. Eighth Judicial Dist.

Court, 448 P.3d 1120 (Nev. 2019).

By mandating only consideration of "The severity of the crime committed," the Legislature did not vest in the Board the power to look beyond Nevada's Statutes, let alone defer to another State agency to determine the severity of a crime. "Every positive direction contains an implication against anything contrary to it which would frustrate or disappoint the purpose of that provision." Galloway, 83 Nev. at 26, quoting People v. Draper, 15 N.Y. 544 (emphasis added).

Furthermore, NAC 213.522(1)(a) states that the crime severity level is assigned by the Department of Corrections "[P]ursuant to NAC 213.512...." NAC 213.512(1) references NRS 209.341 as the statute controlling the Department of Corrections' assignment of severity level. However, a reading of NRS 209.341 shows that it makes no mention of assigning a severity level to a crime. In fact, the words "severity," "level" nor "crime" appear a single time in NRS 209.341.

How then is the severity of a crime actually assigned in Nevada?

> In determining whether an offense is petty or serious, this "court must examine objective indications of the seriousness with which society regards the offense," and "[t]he best indicator of society's views is the maximum penalty set by the Legislature." ... The word "penalty" encompasses both a term of imprisonment as well as other penalties proscribed by statute, but "[p]rimary emphasis ... must be placed on the maximum authorized period of incarceration."

Anderson, 448 P.3d at 1123. (citation omitted). The Court goes on to say that in the case of Anderson, "[T]he right affected [] convinces us that the [] penalty is so severe as to categorize the offense as serious." Id. at 1124. Anderson shows us that the totality of a person's rights affected by a criminal conviction as deemed by the Legislature, with emphasis placed on the maximum authorized period of incarceration, determines the severity of an offense, i.e. a crime. This concept is further supported by English v. State, 116 Nev. 828, 9 P.3d 60 (2000) where the Court held that an enhancement from a misdemeanor to a Category C felony constituted an increase in offense severity.

Therefore, as the Board is only considering those persons convicted of a felony, it must look to NRS 193.130 and NRS 193.330, which provide the categories of Nevada's felonies, to discover the severity of crimes as set by the Legislature. Interestingly, the Board used this exact method in 2004. Per the PBFORM-PS (REV. 12/10/04), the Board states in its own words:

> The Board has adopted crime severity levels A, B, C, D & E based on the statutory definitions set forth in NRS 193.130, 193.330 and as provided by specific criminal statute. The Board has expanded levels A and B to A1, A2, A3, A4, B1, B2, B3 & B4 to reflect the diverse minimum and maximum sentencing ranges provided for Level A and B felonies.

(Exhibit 1).

As you can see, the Board in 2004, after English was decided in 2000, clearly understood its statutory duty and was in compliance with Nevada law. However, in 2008, when the Board adopted NAC 213.522 by R018-18, it deviated dramatically from its understood statutory duty. The NAC 213.512 severity levels of "highest," "high," "moderate," "low moderate" and "low," refered to in NAC 213.522(1)(a), do not exist in NRS 193.130, 193.330 nor 209.341. Furthermore, NAC 213.522 was adopted pursuant to NRS Chapter 233B which cannot permit the Board to defer to the Department of Corrections to circumvent Legislatively assigned severity levels for crimes in Nevada as doing so would cause NRS Chapter 233B to become a special law pertaining to the punishment of crimes and misdemeanors, a prohibited act under Nev. Const. Art. 4 s. 20.

For these reasons, NAC 213.522 is an illegal and unconstitutional NAC and must be AMENDED immediately pursuant to NRS Chapter 233B regulation-making procedures to remove NAC 213.522(1)(a) and (2). Additionally, NAC 213.522(3) must be removed as it is dependent upon NAC 213.522(2).

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Proposed language of the regulation to be adopted, filed or amended or the existing language of the regulation to be repealed, as applicable:

NAC 213.522 Reassessment of severity level of crime. (NRS 213.10885, 213.110, 213.140)

1. If the Board denies parole, the Board will not consider a request for the Board to reassess the severity level of the crime for which parole was denied unless:

~~(a) The Department of Corrections determines that the severity level assigned to the crime pursuant to NAC 213.512 should have been lower and advises the Board, in writing, of its determination; and~~

~~(b)~~ [(a)] The prisoner mails a request to the State Board of Parole Commissioners, 1677 Old Hot Springs Road, Suite A, Carson City, Nevada, 89706, not later than 45 days after the meeting at which the Board considered whether to grant parole.

~~2. If the Board receives a request from a prisoner for the Board to reassess the severity level of a crime and the Department of Corrections has advised the Board that the severity level assigned to the crime should have been lower, the Executive Secretary of the Board or an employee of the Board designated by the Board must apply the lower severity level to establish a new initial assessment regarding whether to grant parole in the manner set forth in NAC 213.516.~~

~~3. If the new initial assessment established pursuant to subsection 2 is more favorable to the prisoner than the initial assessment established before the reassessment of the severity level, the Board will, as soon as practicable, schedule a meeting to reconsider whether to grant parole to the prisoner.~~

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The statutory authority for the adoption, filing, amendment or repeal of the regulation:

"Any interested person may petition an agency requesting the adoption, filing, amendment or repeal of any regulation...." NRS 233B.100(1) (2020). "Upon submission of such a petition, the agency shall within 30 days either deny the petition in writing, stating its reasons, or initiate regulation-making proceedings." Id. "To the extent authorized by the statutes applicable to it by law, each agency shall adopt reasonable regulations to aid it in carrying out the functions assigned to it by law and shall adopt such regulations as are necessary to the proper execution of those functions." NRS 233B.040(1) (2020). An agency may provide notice of intent to adopt, amend or repeal a permanent or temporary regulation. NRS 233B.060 (2020). An agency may propose a permanent or temporary regulation. NRS 233B.0607 (2020). An agency may propose an emergency regulation. NRS 233B.0613 (2020).

Any relevant data, views and arguments that support the petition for the adoption, filing, amendment or repeal of the regulation:

This NRS 233B.100 petition stems from the urgent need to AMEND NAC 213.522 by removing NAC 213.522(1)(a) and (2) as they are illegal and unconstitutional pursuant to the limits of NRS Chapter 233B and NRS 213.10885. Additionally, NAC 213.522(3) must be removed as it is dependent upon NAC 213.522(2). Furthermore, NAC 213.522 frustrates Nevada Supreme Court precedent that the Board, in its own words, agreed with. Supra p. 5.

Nev. Const. Art. 4 s. 20 prohibits the Legislature from creating special laws, i.e. statutes, that allow individuals to be treated differently from eachother for the punishment of crimes and misdemeanors. NAC 213.522 was adopted under NRS Chapter 233B. As the Legislature was prohibited from allowing NRS Chapter 233B to permit different punishments for the same crime, the Board could not use

NRS Chapter 233B to adopt an NAC that punishes convicted persons differently for the same crime. Since the Legislature determined the severity of each category of felony in NRS 193.130 and NRS 193.330, as acknowledged by the Board in PBFORM-PS (REV. 12/10/04) (Exhibit 1), the Board is bound to follow the severities listed in these statutes. Further supporting this concept, the Nevada Supreme Court has held that increases in felony category constitute an increase in offense severity. See Anderson, 448 P.3d; English, 116 Nev.

NAC 213.522 utilizing the Department of Corrections to assign a severity level to crimes creates a situation where a person outside of the Board's jurisdiction, i.e. in a sentencing court, is considered by the crime severity assigned by the Legislature, while a person being considered by the Board is considered based upon the crime severity assigned by the Department of Corrections. As the Board determines how long a convicted person will actually be incarcerated, upto the maximum term imposed by that person's sentencing court, every person convicted of a felony will be punished by one crime severity when their sentencing court determines their maximum term and a different crime severity, for the same crime, when the Board determines how much of that maximum term is to be served incarcerated.

By removing NAC 213.522(1)(a), (2) & (3), the intent of NAC 213.522 will be preserved while correcting the statutory and Constitutional violations. Prisoners assessed by the Board, who feel their severity level was misassigned, will retain the ability to request severity level reassessment.

In conclusion, it is for the reasons stated in this NRS 233B.100 petition that NAC 213.522 must be AMENDED pursuant to NRS 233B regulation-making proceedings. NAC 213.522(1)(a) & (2) must be removed as they are in violation of Nev. Const. Art. 4 s. 20 and Nevada Supreme Court precedent. Additionally, NAC 213.522(3) must be removed as it is dependent upon NAC 213.522(2). If the Board

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fails to reasonably act on this petition, Petitioner intends to pursue legal action pursuant to NRS 233B.110 via the Uniform Declaratory Judgments Act, NRS Chapter 30.

DATED this 14th day of July, 2021.

Thank you for your time and consideration.

Respectfully submitted,

EVAN SCOTT GRANT

VERIFICATION

Under penalty of perjury, the undersigned declares that he is the Petitioner named in the foregoing NRS 233B.100 Petition; that he knows the contents of the Petition; that the facts alleged in this Petition are true of his own knowledge, except as to those matters stated on information and belief; and that, as to those matters stated on information and belief, he believes the Petition to be true.

DATED this 14th day of July, 2021.

EVAN SCOTT GRANT
1721 E. Snyder Ave.
Carson City, NV 89701

CERTIFICATE OF SERVICE

I hereby certify that I am the Petitioner, that I am incarcerated, and that on the 14th day of July, 2021, I served a true and correct copy of the foregoing NRS 233B.100 Petition, by leaving it with Nevada Department of Corrections Northern Nevada Correctional Center Employee Sgt. Wood to be placed in the outgoing mail and be mailed via U.S. Postal Service CERTIFIED MAIL, Tracking No. 9590 9402 4743 8344 3306 27, Article No. 7019 0140 0000 9267 5418, addressed to:

Nevada Board of Parole Commissioners
1677 Old Hot Springs Road, Suite A
Carson City, NV 89706

EVAN SCOTT GRANT

EXHIBIT

1

PBFORM-PS

(REV. 12/10/04)

PAROLE STANDARDS

Offenders will appear before or be considered in absentia by a panel of the Parole Board for parole consideration when they have served the minimum time required to attain parole eligibility as provided by Nevada law. If the offender is serving concurrent sentences for multiple offenses, the most severe offense will determine the crime severity level.

Pursuant to NRS 213.10885, the Board has adopted by regulation standards for release on or revocation of parole. The regulations are set forth in Chapter 213 of the Nevada Administrative Code (NAC) at sections 213.510 through 213.560. The Guideline Recommended Months (GRM) to serve calculated under the Board's parole standards is a suggested range of months to be served and is based on a combination of offense and offender characteristics.

Pursuant to NRS 213.10705, the release or continuation on parole is an act of grace of the State. In addition, pursuant to NRS 213.10705 and NAC 213.560, the Parole Board is not required to grant or deny parole based on the guideline-recommended time to serve, and the establishment of parole standards does not create any right or interest in liberty or property, does not give rise to any reasonable expectation of parole, and does not establish any basis for a cause of action against the State, its political subdivisions, agencies, boards, commissions, departments, officers or employees. See Greenholtz v. Inmates of Nebraska Penal & Cor., 442 U.S. 1, 99 S.CT 2100, 60 L.Ed2d 668 (1979).

These parole standards are designed to aid the Board in making consistent decisions. The Board will also consider any recommendations from the Court, law enforcement agencies, prosecutors, prison personnel, and victims as provided in NRS 213.130. Further, the Board will take into account the considerations set forth in NRS 213.1099. In exercising its unlimited discretion to deviate from the time periods recommended under its guidelines, the Board will consider the factors set forth in NAC 213.560, and any other mitigating or aggravating factors which the Board deems relevant. The Board is not required to provide an offender with any reasons concerning a decision to deny parole, Weakland v. Board of Parole Comm'rs, 100 Nev. 218, 678 P.2d 1158 (1984), but may elect to do so in those cases where its decision deviates from the guideline-recommended time to serve.

The Board's current standards were adopted effective August 11, 1998. All offenders being considered for parole release, except those being considered pursuant to the provisions of NRS 213.1215, will be evaluated under the Board's current guidelines, regardless of offense date, date of conviction, or any standards previously utilized in considering the offender for parole release. These standards serve as guidelines only, the Board is not required to adhere to the guidelines, and they are not laws for purposes of ex post facto analysis. Offenders do not have a right to be considered for parole under any previously existing set of parole standards. Smith v. U.S. Parole Com'n, 875 F.2d 1361 (9th Cir. 1989); Vermouth v. Corrothers, 827 F.2d 599 (9th Cir. 1987); Wallace v. Christensen, 802 F.2d 1539 (9th Cir. 1986).

The Board has adopted crime severity levels A, B, C, D & E based on the statutory definitions set forth in NRS 193.130, 193.330 and as provided by specific criminal statute. The Board has expanded levels A and B to A1, A2, A3, A4, B1, B2, B3 & B4 to reflect the diverse minimum and maximum sentencing ranges provided for by statute for level A and B felonies.

The Board will review an offender's disciplinary and programming scores at the time of each hearing. Any change from a previous score will be noted and may result in a change to the offender's net parole success likelihood score and guideline-recommended time to serve.

SCORE	0-10	11-20	21-30	31-40	41-UP	LEVEL	SENTENCE STRUCTURE BY STATUTE
A1	240-276	276-312	312-348	348-384	384-420	"A" CRIME	20 YEAR OR MORE MINIMUM
A2	180-216	216-252	252-288	288-324	324-360	"A" CRIME	15 YEAR MINIMUM
A3	120-150	150-180	180-210	210-240	240-270	"A" CRIME	10 YEAR MINIMUM
A4	60-84	84-108	108-132	132-156	156-180	"A" CRIME	5 YEAR MINIMUM
B1	24-48	48-72	72-108	108-144	EXPIRE	"B" CRIME	20 YEAR MAXIMUM
B2	18-30	30-48	48-66	66-84	EXPIRE	"B" CRIME	15 YEAR MAXIMUM
B3	12-24	24-36	36-48	48-60	EXPIRE	"B" CRIME:	10 YEAR MAXIMUM
B4	12-18	18-24	24-30	30-36	EXPIRE	"B" CRIME:	6 YEAR MAXIMUM
C	12-16	16-20	20-24	24-28	EXPIRE	"C" CRIME	5 YEAR MAXIMUM
D/E	12-15	15-18	18-21	21-24	EXPIRE	"D/E" CRIME:	4 YEAR MAXIMUM

CONVICTIONS/ENHANCEMENTS: All adult including instant offense and consecutive sentences.
INCARCERATIONS: All adult including instant offense and previous CS terms.
WEAPONS: Instant offense only, actual, highest level, even if plead out.
VICTIMS: Instant offense only, actual, highest level, even if plead out.
EMPLOYMENT: Any full time job, school, SIIS or SSI for 6 months during year prior to instant offense.
DISCIPLINARY: Based on previous three years. 10 points maximum. Credit limit is 3. +2 points for each major violation. +1 points for each minor/general violation. -1 for none at 1st hearing or none during the previous year. -2 for none in the last two years. -3 for none in the last three years.

DRUGS/ALCOHOL: All convictions, including instant offense.
COURT ACTION: % of maximum sentence ordered.
PROGRAMMING: [10 is maximum] Inmate must provide case worker with original for verification and copies of each certificate and diploma to the Board. Programming counts only on current sentence (programming on prior sentences will not be counted on the guideline).
-3 points for either GED, high school diploma, or 12 college credits.
-2 points for long term substance abuse program, behavior modification, or literacy program. -1 for short term counseling, street readiness, job workshop, parenting, weekly AA/NA's, full time job (½ day or more), or other program deemed appropriate by the Board.

STATISTICAL RISK ASSESSMENT: The risk assessment is based on a study of factors applied to inmates who were released on parole or discharged their prison sentence in 1999 and returned with a new felony conviction within 3 years. The risk assessment does not provide the risk of failure or probability of success on parole. It does not take into consideration other factors the Board considers when evaluating inmates for release on parole. The risk assessment is one component used to assist the Board in making decisions. The risk assessment is not compiled by the Board but is based on data existing in the Nevada Criminal Information System which is maintained by the Nevada Department of Corrections (NDOC). The Board will not entertain claims of errors in the risk assessment. Any errors must be corrected by the NDOC. The Board will only consider a request for re-hearing based on an error in the computation of the risk assessment if the correction made by the NDOC results in a change to a lower risk category and the request is made in writing by a representative of the NDOC and routed to the Board through the Chief of the Offender Management Division. The factors used on the risk assessment are as follows:

STATIC FACTORS

Age at First Arrest (juvenile or adult): 25 years or older = 0 points, 20-24 years = 1 point, 19 years or younger = 2 points.
Prior Probation/Parole Revocations: No parole or probation revocations = 0 points, One or more =2 points.
Employment History (prior to incarceration): Satisfactory full-time employment for 1-2 years = 0 points, Employed less than full time or full time employment for less than one year = 1 point, Unsatisfactory employment / unemployed / unemployable = 2 points.
Current or prior convictions: Property crime, forgery, robbery = 2 points, all others = 0 points.
History of drug alcohol abuse: None = 0 points, some use, not severe disruption of functioning = 1 points, frequent abuse, serious disruption of functioning = 2points.
Gender: Male = 1 point, female = 0 points.

DYNAMIC FACTORS

Current Age: 41 and above = -1 point, 31-40 = 0 points, 21-30 = 1 point, under 21 = 2 points.
Gang Membership: No = 0 points, Yes = 2 points.
Completed DOC certified education/vocational/treatment program: Yes or has existing GED/high school/college degree = -1 point, No = 0 points.
Disciplinary Conduct - Past year: No violations or single minor violation = -1 points, Multiple minor violations = 0 points, Major violation = 1, multiple major violations = 2 points
Current custody level: Minimum = -1 point, Medium = 0 points, Maximum or Administrative Segregation = 2 points.
TOTAL POINTS SCORE: 0-4=Low Risk, 5-10=Moderate Risk, 11-15=High Risk, 16+ points total or 8points on dynamic factors=Highest Risk.

PBFORM-PS (REV. 12/10/04)

EXHIBIT 6

April 29, 2013

Nevada Assembly

Committee On

Judiciary Minutes

MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Seventh Session
April 29, 2013

The Committee on Judiciary was called to order by Chairman Jason Frierson at 8:05 a.m. on Monday, April 29, 2013, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at nelis.leg.state.nv.us/77th2013. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Jason Frierson, Chairman
Assemblyman James Ohrenschall, Vice Chairman
Assemblyman Richard Carrillo
Assemblywoman Lesley E. Cohen
Assemblywoman Olivia Diaz
Assemblywoman Marilyn Dondero Loop
Assemblyman Wesley Duncan
Assemblywoman Michele Fiore
Assemblyman Ira Hansen
Assemblyman Andrew Martin
Assemblywoman Ellen B. Spiegel
Assemblyman Tyrone Thompson
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator James A. Settelmeyer, Senatorial District No. 17
Senator Tick Segerblom, Clark County Senatorial District No. 3

Senator Greg Brower, Washoe County Senatorial District No 15
Senator Debbie Smith, Washoe County Senatorial District No. 13

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Linda Whimple, Committee Secretary
Colter Thomas, Committee Assistant

OTHERS PRESENT:

Michael Beam, Chief Probation Officer, Department of Alternative Sentencing, Douglas County
Rory Planeta, Chief, Carson City Department of Alternative Sentencing
Joe Ingraham, Chief, Washoe County Department of Alternative Sentencing
Connie S. Bisbee, Chairman, State Board of Parole Commissioners, Department of Public Safety
Mercedes Maharis, Private Citizen, Las Vegas, Nevada
Pat Hines, Private Citizen, Carson City, Nevada
James "Greg" Cox, Director, Department of Corrections
John T. Jones, Jr., representing Nevada District Attorneys Association
Jennifer DiMarzio-Gaynor, representing XL Steel
Brian Connett, Deputy Director, Prison Industries, Department of Corrections
Bonnie Polley, representing Hope for Prisoners
Dennis Benedict, Private Citizen, Las Vegas, Nevada
Donald Moberger, Private Citizen, Las Vegas, Nevada
Jim Henry, Private Citizen, Las Vegas, Nevada
Danny Thompson, representing the Nevada American Federation of Labor and Congress of Industrial Organizations
David Stevens, President, XL Steel

Chairman Frierson:
[Roll was called. Protocol was explained.] Good morning, folks, and happy Monday. We have four items on the agenda today, and we are going to make it through them. We have two senators here, so I want to get to those bills, since I know that Senate Judiciary starts at nine o'clock. We are going to go in order, and I will open the hearing on Senate Bill 101 (1st Reprint) and invite Senator Settelmeyer up to introduce the bill.

Senate Bill 101 (1st Reprint): Revises provisions relating to departments of alternative sentencing. (BDR 16-464)

Senator James A. Settelmeyer, Senatorial District No. 17:
I have included a walk-through for you (Exhibit C) in the Nevada Electronic Legislative Information System (NELIS). It goes through every section of change that we are seeking to do to *Nevada Revised Statutes* (NRS) Chapter 211A and the explicit reason why we are changing that particular section of NRS.

The gist of the bill today is to allow for pretrial sentencing to be done by the Department of Alternative Sentencing. When this concept was discussed in the past, some indicated that the State should be doing it. As you know, the State does not have the monetary means to do this, so the counties are currently doing it. This bill is codifying the practice that they are doing at this point in time. The bill is enabling legislation with the word "may", so no fiscal impact should occur from the bill. It will be up to the counties' discretion to do this. The reality is that there are often conditions of bail that the court will stipulate, such as a temporary restraining order, temporary protection order, cannot purchase a firearm, or the use of controlled substances. These departments can and do provide a viable societal need.

With that, if it pleases the Chairman, I will have Michael Beam and others come up and they can talk about the bill in more detail. Hopefully you have the point, and if there are any problems with the bill. Currently in some counties, it is being handled this way. As I said earlier, this bill seeks to codify those practices. With the Chairman's indulgence, I can either run through the walk-through so I can explain every change in NRS, or we can just go to the testimony.

Chairman Frierson:
Senator, I think it would be helpful to the Committee if you could briefly walk through the bill.

Senator Settelmeyer:
Section 1 is the definition that is being added into NRS, which is the definition of supervised releasee. Section 1.7 is the addition of gross misdemeanors or felonies to the ability for them to look over. Section 3 is the supervision according to the court's instructions. All of the other sections are adding the wording "supervised releasee" to the appropriate places within the statute. Section 7 has discussion of violation of the conditions of alternative sentencing: Item (a) modification of conditions, (b) revocation of that release, and (c) consideration of the sentencing. The only other real change is section 9, which is the effective date.

With that, I will gladly entertain any questions, or I can go to testimony at the Chairman's discretion.

Chairman Frierson:
I think at this time Mr. Beam can go ahead and offer his introductory remarks, and that may answer some questions before we even get there.

Michael Beam, Chief Probation Officer, Department of Alternative Sentencing, Douglas County:
I am here to support this bill. In essence, this bill corrects what we currently do for district courts, justice courts, and specialty courts, being driving under the influence diversion and also drug court. We have been doing this for at least the last decade. Chief Planeta has been doing this for over a decade, and also Chief Ingraham in Washoe County has been providing the same services for Washoe County. It was a long process, it was very helpful for Senator Settelmeyer to assist us with this, and we ask for your support to correct what we are currently doing. Again, I support this bill, and I thank you for your time.

Chairman Frierson:
Are there any questions of the Committee? [There were none.] I have a few questions. I vaguely remember addressing departments of alternative sentencing legislatively back in 2009, and I think that we deferred the supervision and the running of these departments to the cities, and from what I recall, quite frankly, I was surprised. The counties at that time had no interest in running a department of alternative sentencing. I can see Senator Settelmeyer nodding. If you could give some background on that, because I remember it, but I do not think the other members of the Committee were here.

Senator Settelmeyer:
I think what it comes down to is exactly the example of the state of Nevada. It is done differently in each jurisdiction. Some areas do have the counties currently doing it, some areas actually have the sheriff's departments and so forth doing it, and other counties have cities doing it. It varies, depending on your location in the state of Nevada. Again, all this bill seeks to do is codify an existing practice. In my district, because I have smaller counties, it was always felt, "Well, rather than creating a whole new department, we will go ahead and have the people who are in charge of supervising people on probation." It just seemed logical for our counties. So we need to bring that forward.

The bill you are talking about, Senate Bill No. 84 of the 75th Session, came forward in 2009. It was to allow the city itself—I think it was the City of

Henderson—to do it themselves as a city. Again, in my communities, it evolved through the process where the judge came forward and said, "You know what; I really do not want to put those people in jail and keep them here until the trial; why do we not look at the idea of an alternative pretrial sentencing thing and while we already have a division that does that, and since I have no problem as a judge making them do more, I will just let them do it." That is how it evolved in my communities, and that is exactly as you indicated. Different communities came about this in different ways.

Chairman Frierson:
In layman's terms, it looks like the bill proposes to expand statutorily the kind of charges for which folks are able to access diversion programs, so we give discretion to the local authorities to provide diversion for all offenses, not just the misdemeanors.

Senator Settelmeyer:
In section 1.7, yes, we are adding gross misdemeanors and felonies to that discussion of crimes which would be able for them to supervise as an alternative sentencing for pretrial.

Chairman Frierson:
Are there any questions of the Committee? [There were none.] I believe the alternative sentencing is extremely important and a key to decreasing recidivism and protecting the public, and the fact that a few years ago the counties deferred it to the cities was a little bit frustrating to me. I am all for giving whoever is running the department the flexibility to do what they need to do. I wish that everyone did it.

Senator Settelmeyer:
I appreciate that, Chairman Frierson. The reality is that none of my counties have cities.

Chairman Frierson:
Are there any questions of the Committee? [There were none.] Seeing none, I will invite any other comments in support of the bill.

Rory Planeta, Chief, Carson City Department of Alternative Sentencing:
Carson City is a city and county, so we covered both at once with that legislation four years ago. I was here for it, and I testified for it. Part of the reason for it was that not all counties have to do a department of alternative sentencing. Some have pretrial sentences already in place, so smaller cities such as Henderson were left out. They did not have a pretrial, so they opted for a department and came and requested it at that time. The original bill got a

lot of alternative sentencing; it was a county-only type bill, so we were able to fix that with your help four years ago.

Currently for this bill, it is something I have worked on for a few years now. Pretrial and presentence are allowed by statute in NRS 178.484. Judges can put certain conditions on people to release them or reduce their bail, but we also want the citizens protected from certain kinds of people, and certain things need to be taken care of, such as no alcohol, drugs, firearms, or things like that. So we are asking that the department of alternative sentencing be allowed to do that with this bill. Currently, my department also handles all the court securities, so we are pretty diverse anyway. As Senator Settelmeyer said, we are often asked to do things by judges, so we have taken on those tasks as well. This bill is very important to make sure that the community is safe and our jails have fewer people in them. It also gives some of these people an actual start towards their probation. If we can get them on the right track, get them into counseling, and help them along their way prior to being sentenced in a district court, then we have already taken a step towards rehabilitation.

Chairman Frierson:
I am trying to remember the details of the legislation four years ago. I believe that—at least the original proposal was—if a city had a department of alternative sentencing, then the county had to defer to the city's existing program. Am I remembering that correctly?

Rory Planeta:
Actually, some of the cities did not have a pretrial, presentence, or any supervision for people in municipal courts—the counties are basically justice courts—so with that issue, they decided that they would like to start an alternative sentencing for the municipal-type courts.

Chairman Frierson:
I am looking at section 4, subsection 5. Is a key provision of this bill the ability to collect and disperse any money in accordance with the orders? Is that a key provision of it, the ability of a department of alternative sentencing to be able to collect fees to run these programs? I just want to make sure that there is also a mechanism in place to acknowledge indigency and some folks' inability to pay and still be able to participate.

Rory Planeta:
Yes. We do collect fees on probationers only. We do not actually collect them on pretrial at this point in time, and that is currently allowed by statute. The minimum fee is $20; most charge $40 or $50. I would like to say that we were able to run our department, but those fees are pretty minimal and when

you consider we currently have about 2,200 people on our caseload in Carson City, about 350 are actually fees payors. Those can be waived. If a person is indigent, we let them do community service in lieu of fees, so it pays back the community as well without actually getting into their pocketbooks.

Chairman Frierson:
You said $20, and some charge $40. Is that a one-time fee, weekly fee, or monthly fee?

Rory Planeta:
Ours is a monthly fee. We have different levels of supervision. Pretrial all the way up to informal probation do not pay any fees. Only for people on formal probation where we are actually going out and checking their houses and doing a lot of drug testing and things like that do we charge fees. It is monthly. We charge $50 a month in Carson City.

Chairman Frierson:
I guess I was thinking more of the pretrial as far as diversion or alternative sentencing goes. I am trying to figure out between actual probation and this. What is the difference?

Rory Planeta:
We do not charge on pretrial. Pretrial is someone who is arrested and the judge wants to release them with certain conditions, but they are not convicted of anything. That is why we do not charge them fees. We just maintain the conditions that the judge has requested us to do, such as drug testing, or making sure that they do not have any weapons, or if they commit another crime we take that into consideration. They could be rearrested. Often it is a modification of their conditions since they are not convicted of anything. That is why we describe them as supervised releasees, not probationers per se. Probationers have been convicted of a crime.

Chairman Frierson:
Right. So for the probationers, if they are on probation and being supervised by a probation officer, what is the department of alternative sentencing doing? Is that substituting for formal probation or are they working in conjunction—I mean, if they are on probation, then what is the department of alternative sentencing's involvement?

Rory Planeta:
We are the probation office for misdemeanors. Until they get convicted of a felony or gross misdemeanor, then they would go to the State, but any misdemeanor crimes—we are the formal probation officers for those people.

This would include people who are not convicted yet, and that is the purpose of it.

Chairman Frierson:
I see. So for the gross misdemeanors and felonies, that would only involve the folks who have not yet been convicted. Once they are convicted, those individuals, if they were convicted of a gross misdemeanor or felony, would then be supervised by their probation officer.

Rory Planeta:
That is correct. They would then be transferred to the supervision of the State.

Chairman Frierson:
Thank you.

Assemblyman Ohrenschall:
Say someone is charged with stealing a very expensive electric guitar, and it is a felony because of the value of the electric guitar, and the guitar is gone. They take a deal and perhaps plead to a misdemeanor with certain requirements, including paying back the guitar store for the value of that guitar. While they are on supervision from your office—they are the supervised releasee—do you drug test them and if they tested dirty for marijuana, could that land them back into custody, even though the original charge had nothing to do with drugs? It was a theft charge. Would you talk about that?

Rory Planeta:
Basically, we enforce whatever conditions the judge puts on them, so for a simple theft charge—if they did not have any drugs or history of that, probably they are not going to have a condition of no drugs, so we would not test them. If the judge said that he finds that they have a drug issue, maybe the reason for stealing the guitar was to purchase drugs, then he might put in a no drugs or alcohol clause, and then we would enforce that and we would test those people for it, and we would also make sure that they paid their restitution.

Assemblyman Ohrenschall:
If that supervised releasee, who is trying to pay back the value of the guitar, tested dirty, could that land him back into custody?

Rory Planeta:
Yes, it could. We would most likely take him into custody, he would go see the judge again, and the judge could modify the conditions. Often, if it is a first-time offense or first-time violation, they do not tend to extend their time too much. They will probably extend their conditions, but probably not give

them a lot of jail time for that kind of thing. The purpose of probation, obviously, is to make sure that they are working, back in their families, and being productive, so we do not really want to take them out of that on a minor violation. If it is a major violation, they may put him in custody for the entire time, or if it is multiple violations, maybe they should have gone to jail for a stretch in the beginning. They would still owe that restitution, but it is totally up to the judge's discretion.

Assemblyman Ohrenschall:
Do most of your supervised releasees on this misdemeanor-type of probation succeed, or do you find most of them winding back up into custody with new charges because they have somehow messed up?

Rory Planeta:
Our recidivism rate is very low. It is about 5 percent or less, so we do really well with those people by giving them probation. Actually, we have to stay on them a little bit—that is why we have formal probationers report to us every month. We want to see them. We run their criminal histories again sometime during probation. We have gone to their houses to make sure they are complying and that their family is involved with their probation. An important factor is making sure the family is involved in this process to get these people to be good members of society.

Chairman Frierson:
Is the department of alternative sentencing's purpose a preprobation-type situation where it is providing additional ways for someone to screw up, or is it an opportunity to provide some structure to help that individual show their readiness for probation, or is it a combination of both?

Rory Planeta:
Our main focus is rehabilitation. That is our main purpose. The other part is if we are not able to help with every rehabilitation, then we have to put them back into jail.

Chairman Frierson:
Are there any questions from the Committee? [There were none.] Thank you, Mr. Planeta. That was a concern of mine, even four years ago as well, and I am happy to hear that that is the purpose of it. At the end of the day, I think we are trying to save money and protect the public.

Rory Planeta:
That is our main purpose. Protecting the public is our main thing, and rehabilitation. If we cannot do those things, then maybe they do need to be in jail.

Joe Ingraham, Chief, Washoe County Department of Alternative Sentencing:
I would like to address my support for this bill. I can bring a little clarity to the prior bill which allowed the cities to conduct alternative sentencing also. I am in a county which was a big supporter of allowing the city to create its own alternative sentencing department. We are a rather small department in Washoe County. The City of Reno has had the opportunity to assist in getting more boots in the field for the probationers out there. In Washoe County, we have a court services department and this is going to allow additional tools to ensure that these folks comply with their conditions of release.

I wanted to touch on one of the things that Chief Planeta was talking about. Probation means to prove oneself. The court has given these folks the opportunity to be out in the community and to try to rehabilitate themselves. The only other option prior to probation is jail time, so we are trying to get these folks back in compliance, and we are rather successful at that.

Chairman Frierson:
Are there any questions of the Committee? [There were none.] Is there anyone else who wishes to offer testimony in support of S.B. 101 (R1) either here or in Las Vegas? [There was no one.] Is there anyone wishing to offer testimony in opposition to S.B. 101 (R1) either here or in Las Vegas? [There was no one.] Is there anyone wishing to offer testimony in a neutral position? [There was no one.]

Senator, if you have any closing remarks for any clarification that you wanted to provide, you are welcome to do so.

Senator Settelmeyer:
This bill seeks to codify existing practice. These individuals to my right have no discretion. They are only following the judge's orders. The judges tell them what to do and they follow it. This allows individuals to not be in jail the entire time waiting for their trial. It gives them the ability to get out, maintain their lives, continue to be with their family, and hopefully if they did do something wrong, realize the error of their ways and get that corrected.

Your other concern on section 4, subsection 5, the concept of the collecting of the fees. It is already done. We are just saying that they shall collect them as well. Again, only as directed by the court. That is what I keep coming back to.

These people do not have any discretion on their own in all reality. They are told what to do, and they do what they are told by the judge. Thank you kindly for hearing this bill today.

Chairman Frierson:
Thank you, Senator Settelmeyer. I will close the hearing on S.B. 101 (R1). I will open the hearing on Senate Bill 104 (1st Reprint), and invite Senator Segerblom and Ms. Bisbee up to introduce the bill.

Senate Bill 104 (1st Reprint): Revises provisions governing parole. (BDR 16-241)

Senator Tick Segerblom, Clark County Senatorial District No. 3:
Senate Bill 104 (1st Reprint) deals with what are called the psych panels. Under current law, before the parole board is allowed to consider releasing them, sex offenders have to be screened by a three-member panel which is composed in the statute. There have been some problems with the three-member panel. I do not think it is intentional, but they are not trained in evaluating the risk of a sexual offender repeating, so their decision is somewhat arbitrary, or at least appears to be arbitrary. This concept was brought to me by one of my constituents, Mercedes Maharis, who will testify in a moment. When I brought it to Ms. Bisbee, she, to her credit, acknowledged the issue and said that she would like to work with me. I come before you with an agency that actually supports change. With that, I would like to turn it over to Ms. Bisbee, and since I have my own committee, I would like to be excused before the real hard questions start coming.

Chairman Frierson:
Thank you, Senator. I believe Ms. Maharis has contacted me as well over the interim, so I am glad to see this issue being brought. I think the members of the Committee have received a couple of emails recently regarding psych panels as well.

Senator Segerblom:
We are not showing it today, but because the psych panels are public record, she took portions of it and put it into a ten-minute DVD, which is, to say the least, kind of horrifying from my perspective. I am sure there is a lot of good stuff that happens, but some of the questions were pretty asinine. We are not going to make you go through that, but anyone who wants to see it, it is very instructive.

Chairman Frierson:
If any member of the Committee would like to see it, let me know. We can certainly coordinate with the Senate to make it available to you.

Connie S. Bisbee, Chairman, State Board of Parole Commissioners, Department of Public Safety:
Senator Segerblom and I discussed this months ago where he was concerned about the whole concept of the psych panel, and for those who have been around for a while, it has been a concern for many years. For the sake of new members, I want to briefly tell you a little bit about the history of the psych panel. The psych panel was developed because many years ago we did not have a professional parole board. That is not the situation today. We have an extremely highly educated parole board and I do not think there is a member with any less than 20 years' experience in their particular discipline that sits on the board. It has been so for about the last ten years.

The original problem of having a nonprofessional board making decisions as to whether or not sex offenders were a risk to return to the community was originally what brought the concept of a psych panel around. Even if you look at the existing statute today, you will note that the members of the psych panel are the Director of Health and Human Services, which is Mike Willden in this case. They are the Director of Corrections, which is Greg Cox in this case, and a single psychologist or psychiatrist licensed to practice in the state of Nevada. Somewhere along the line, people started getting very confused because the Department of Corrections realized a long time ago that the people they had as their designees, which were typically caseworkers or associate wardens, did not necessarily have any training to make that determination any more than an unprofessional parole board. When I say unprofessional, I do not mean they acted unprofessionally. They just did not have particular statutory requirements in order to serve. You had caseworkers and associate wardens determining whether or not sex offenders were a risk to reoffend sexually, which made no more sense than having a parole board who was not trained determining whether or not someone was a risk to reoffend sexually. So the Department of Corrections determined that their designees would be two additional psychologists. Not only have we had the one mandatory psychologist or psychiatrist who has always been the designee of the Health and Human Services director, but we have had two additional psychologists over the years serving on these panels.

For the whole history of it, there has been an argument about, "Well, one of those psychologists is not licensed." They are not even required to be a psychologist. So we have had a Department of Corrections that recognized a problem and made the people on the psych panel even more qualified than the

statute requires. That is the quick background on it. Just bear in mind that there has been a lot of testimony over the years about one of the particular psychologists not being licensed. He was never required to be.

In September 2011, I was invited to go to Washington, D.C., to attend a conference of the National Institution of Corrections. I was invited there to present a problem that we saw dealing with the board relative to Nevada and whether or not they felt the problem was worthy of giving us a technical assistance grant. At that conference, I presented issues regarding sex offenders, and it covered a wide variety of things—psych panels, tier reconsiderations, and lifetime supervision. As a result of that presentation, they did indeed give the parole board a technical assistance grant. Dr. Mary Perrien was awarded that grant and spent considerable time in the state of Nevada looking at our sex offender issues. Last week I sent you a copy of her final report, "Risk Assessment for Sex Offenders Paroling From Nevada Corrections," and hopefully you have it (Exhibit D). It is very interesting if you have been able to take the time to read it. The bottom line is that she determined something that we all pretty much figured out a long time ago, it was not necessary to have a psych panel review. What you really needed to do to determine whether or not someone was at a high risk to reoffend sexually was to use the most current risk assessments that are available, to have the person who is conducting that risk assessment be trained to conduct it, and that you report those results to your parole board. Those are the recommendations she made.

Then it just happened that Senator Segerblom was unhappy with the statute as it existed and allowed the board to use Dr. Perrien's report to come up with language that actually meets the needs of what the board needs to see in order to determine whether or not they feel it safe to parole someone who is a sex offender. So if you look at S.B. 104 (R1), you will see the changes that have been made. The original S.B. 104 just struck the entire section altogether and left it with nothing, and that is where Senator Segerblom allowed us to come in and write the language that would meet the needs of the board, to be able to be reviewed and make sure that the people conducting it are qualified to do so. Look at section 1.5, page 2, lines 41 through 45, and on page 3, lines 1 through 18 have been struck. Those are all the things it is talking about with the actual configuration of a psych panel, and what it is replaced with is that the Department of Corrections ensures that each of these offenders is assessed using a currently accepted standard of assessment. Now what is being used right now is called the Static-99. Those of you who have anything to do with the mental health profession realize there is a Static 2002 out there. Dr. Perrien recommends continuing to use the Static-99 until there are some longevity studies on the 2002. The Static-99 has been used a lot longer and she is more comfortable with the validity. That is why we have not put Static-99 or the

Minnesota Sex Offender Screening Tool (MnSOST) or any other particular sex offender risk assessment specifically in there because that allows us to be fluid and go with what is currently the best. They happen to have one at the Department of Corrections. Dr. Darcy Edwards, who is a best-practices expert, is currently looking at all of these things and ensuring that people are trained as is required by this new statute and will be providing oversight.

Just as an aside, I have been contacted by Dr. Robert Schofield who has—I do not know if he has officially chaired the psych panel, but he certainly has administratively done an awful lot of work for the psych board over these past years, and they are already working on the hopes that this bill is passed. They are already working on how they will get that training done, who will be doing the actual assessments, and how they will get them to the board. It would become part of the regular board report—it would not be anything big and mystical or fancy or anything else—in addition to producing the board reports for us. That is what exists now in lines 18 through 35. It allows for corrections to be made. One of the things the board uses is a risk assessment that is for those other than sex offenders, and you can appeal it. If there is something wrong on that risk assessment—we go over it four times with the inmate, by the way, so if there is an appeal it is something very rare. But if there is a problem, they can let the Department of Corrections know, "I was scored this, but here is the evidence that that was incorrect." It is a very easy fix that way. You are only dealing with one person. You are dealing with a person who is assessing it, they are qualified to assess it, the training is intensive but not difficult, and they are already set for their mental health professionals to do these Static-99s or whatever is going to be considered the most current.

If you go to page 5, line 16, the board will continue to consider the assessment as part of the decision as to whether to grant or revoke the parole of a person. Here is a huge thing. For as long as I can remember, we have been using three psychologists or psychiatrists that the state is paying to work every day. Unfortunately, because of the way the psych panel is set up and that the study shows is really an unnecessary step, we have locked up three solid weeks of three psychologists or psychiatrists to just do these psych panels where those psychologists or psychiatrists at Lake's Crossing could be working with those folks, and the psychologists at the Department of Corrections (NDOC) could actually be doing patient care versus psych panels. I will never bring anything to you or sit at this table unless I have looked at it in the big picture, unless I have looked at it in terms of "is this good for the state of Nevada? Is this good for the clientele? Is this good for public safety?" I can tell you that this meets all of those criteria, and it takes away a big headache from a lot of years.

I appreciate Senator Segerblom allowing us to participate, and I am more than happy to answer any questions that you may have.

Assemblyman Carrillo:
On page 3, lines 28 through 30, are they going to require them to meet certain criteria to be considered "properly trained"?

Connie Bisbee:
You do not have to have a particular degree to be properly trained. The trainer has to be qualified to be a trainer, and then you just have to make sure that you train this person properly, that you continue to supervise them to make sure that the information is correct. I will use the example of the other than sex offender risk assessment that the board uses. The first person who does that risk assessment is the intake caseworker when they enter the Department of Corrections. The second person who reviews it is the caseworker that is assigned to the inmate. The third person who looks at it is the hearing representative who is assigned to the board, and the fourth is the parole board, and they also go over every single part of that with the inmate. There are many opportunities to make sure that the information is correct. It does not require a particular degree or experience to be trained to do that. As it stands now, the mental health professionals in the Department of Corrections have been doing that Static-99. The director of the Department of Corrections will ensure that they are properly trained and that they follow the guidelines. The manual is very specific as to how you will do this. You could train caseworkers, you could train the mental health technicians, the mental health professionals, and the psychologists to do it, but it does not require a particular person to be doing it as long as they are trained.

Assemblyman Carrillo:
Will there be any reassessments for any individuals who have already gone through some type of psych panel prior to passage? Let us say that this bill passes. Would this be something that you have to reassess anyone who has already had an evaluation to see if there may be a different outcome from the assessment?

Connie Bisbee:
No, there is no retroactivity where you have to go back and redo all of them. They already have an MnSOST. Static-99 is already done. The mental health professional has already completed that before the information goes to the psych panel. The psych panel would make an independent decision as to whether or not they felt they were a low, moderate, or high risk, aside from the actual risk assessment. So it cuts that piece out. In fact, the original psychologist who was reviewing our things—we had to switch because of some

personal reasons; one had to drop out of the grant—came to me and said, "They are essentially doing a parole board hearing, and I do not know why that is happening." So what was happening was the psych panel was acting in the way they felt that the statute told them to act, and it is an unnecessary step. No one will be reassessed—come July 1, 2013, if this is passed—who currently has an assessment. When they come to the board, it is with a fresh assessment that has been done sometime in the last 120 days. If we are going to see someone in July, they will have gone through the psych panel. If we are going to see someone in August, we will just be getting the actual report of the assessment at that point. It will not change anything and it will not make people have to go through an assessment again, but each and every time they come to the board, a new assessment is done.

Assemblyman Carrillo:
What is the acronym MnSOST?

Connie Bisbee:
It is the Minnesota Sex Offender Screening Tool. It does not have as high of validity as the Static-99, so I think we will see that we are not doing MnSOST anymore.

Assemblyman Thompson:
I have a question on section 1.5, page 5. I would like to talk about that a little further where it says, "The Board shall consider an assessment prepared pursuant to this section before determining . . . ." Currently does everyone that is being considered for release or parole who is a sex offender get an assessment, or is it discretionary to the panel?

Connie Bisbee:
Everyone is assessed.

Assemblyman Thompson:
Okay. So the way in which I read this is that it is now discretionary?

Connie Bisbee:
It is just putting in statute that we will consider it. We always consider it. That is the practice. Frankly, if you do not consider it, and you get a risk assessment that says someone is a high risk to reoffend sexually, you are a fool. So it puts it in the *Nevada Revised Statutes* (NRS) that the board acknowledges that they will consider the results of those risk assessments.

Assemblyman Thompson:
Would you explain to me what are all of the factors? I know there are a lot of factors that are considered for a panel, but how much is an assessment weighted, character letters, their behavior while they were incarcerated, and so forth?

Connie Bisbee:
We look at all of it. We look at every single piece of it. We get letters of support, we get letters saying, "Please do not do this," we have the criminal history that we can consider, we have the facts of the incident offense, and we have the risk assessment whether they be a sex offender or not a sex offender. They are all weighed. Now sometimes there are crimes that are just so horrific that you have to wonder whether that person is at any point safe for the community. Sometimes the victim impact is so horrific. Sometimes you have something that by the nature of the title of the crime, you think, "This is not going to be a good person to put out," but then you look at the actual facts of the crime and you look at the fact that there has never been any history before that, they have done everything they possibly could while they were incarcerated, and they have a safe plan for the community. We do, believe it or not, have victims that come in and say, "I think it is in our best interest that this person be released." So all of the factors are considered. Sometimes some of them weigh more than others.

Assemblywoman Spiegel:
Using the method that you have been using currently, what has the accuracy rate been and the assessments relative to the performance that has been experienced? Also, do you have some data for the Static-99 and how effective that has been in places where it is used?

Connie Bisbee:
I know that at this point, the Static-99 is considered to be the most valid of the sex offender risk assessments, but in reality, you could find a group that totally disagrees with it. In general, in the mental health community and in the sex offender treatment community, the Static-99 is considered to be the most valid. One of the things in the report that Dr. Perrien talked about is, in reality, sometimes just flipping a coin. The huge value of the Static-99 personally in over ten years of experience and getting the results of it, is when someone shows up as a high-risk to reoffend. Personally, that is where the lights go off and I say, "I am really concerned that we would put this person out." You have a lot more to consider when they show as a moderate risk or a low risk to reoffend. You are going to find studies on both ends of the spectrum when it comes to the Static-99, but in general, it is considered the most valid assessment at this time.

Chairman Frierson:
Are there any questions of the Committee? [There were none.] I have a question, and it is really more of a clarification. On page 3, line 21, you referenced "a currently accepted standard of assessment." Your example was the Static-99. I want to make sure that it is clear, because it does not say, "accepted by whom," and I think that I get it is a currently accepted standard of assessment in that field or nationally accepted. It does not bother me that it is not; I just want to make sure that it is clear for the record that we are talking about a nationally accepted—I do not know if there is an organization that acknowledges the Static-99 as the most studied and confirmed method of assessment.

Connie Bisbee:
You are absolutely correct. That means the currently accepted standard assessment in assessment communities. It does not have anything to do with whatever the Department of Corrections wants to use. It has to be the accepted standard of assessment nationally or internationally, and I think that it is made very clear in the report from Dr. Perrien also. I understand your concern from the reading and the way you are asking the question, but it is typical language.

Chairman Frierson:
Are there any other questions of the Committee? [There were none.] Thank you, Ms. Bisbee.

I would like to acknowledge Ms. Maharis in Las Vegas, since the sponsor of the bill had referenced Mercedes Maharis.

Mercedes Maharis, Private Citizen, Las Vegas, Nevada:
Please vote yes on S.B. 104 (R1). It may not be perfect, but we need it now. I am asking you to vote yes for three basic reasons: (1) the extensive research that I am sure Senator Segerblom has provided you from Dr. Nancy Steele and the National Institute of Corrections, United States Department of Justice report (Exhibit D). These reports basically reveal that, unfortunately, the Nevada Psychological Review Panel was founded upon and operates on a faulty paradigm of risk assessment. (2) The elimination of the panel will streamline and add dignity and fairness to the parole process as the parole board members come to honor the new and hopefully error-free, more objective, risk assessment data, and (3) the elimination of the panel will initiate a new era of much-needed and improved mental health care policy and practice. It will save needless effort, as pointed out, and it will also save a tremendous amount of money at the same time.

In closing, if you are indecisive, please watch the DVD. Thank you for your sacrifice to public service, and for helping to make our beautiful state a better place to live. Please vote yes on S.B. 104 (R1).

Chairman Frierson:
Thank you for your commitment. You have been committed to this issue for a long time, and I remember conversations with you even last session. I appreciate your persistence and your commitment, especially to this issue. Are there any questions of Ms. Maharis? [There were none.] I will invite anyone here who wishes to offer testimony in support of S.B. 104 (R1) to come forward.

Pat Hines, Private Citizen, Carson City, Nevada:
I am a Nevada citizen, a taxpayer, and I have been a devoted advocate for change in the psych panel since 1985 after I learned in 1984 what my son was going through as being called a sex offender. I have agonized over what to say to this, because there is so much to say. I am so thankful to Senator Segerblom, Mercedes Maharis, and anyone else who has taken the time to research this like they have and come up with a change in the psych panel. It took me nine years to get the psych panel to allow family members to come to their so-called psych panel hearings. They were done in a manner that no one could say they were objective. It was all very subjectively done, and if you were there and you listened, you thought it was an interrogation. I could say a lot. I am so thankful that there are some changes being made, and only time will tell how well it is going to do.

I am concerned about the duties given to Director Cox on this. There is a whole section in the bill that speaks to the director's duties. He is a busy man. He has not been involved in this very much, and so I wonder if we should put too much of a burden about this on him. I have probably studied 11 different risk assessments. I have asked that the risk assessments for the last five years be utilized in ours instead of all the subjective material being used by the psych panel. As I say, time will tell, and I appreciate all you do. I am in support of the bill, although I have changed my mind on it, I would like to say I am in support of the bill, but not completely as it is written. I got a paper in late about amendments that I would like to see done, but I was not sure if they got in or not. I brought some and put them on the table, and if you are interested, I would appreciate your using them. I will be glad to answer any questions. I have been an advocate for this since 1985, and I am just delighted with what is going to take place. I just hope it goes as well as I want it to go.

Chairman Frierson:
So that I am consistent, support means that you support the bill as it is, meaning you are okay as it is.

Pat Hines:
Yes. I am supporting the bill as it is written.

Chairman Frierson:
Thank you, Ms. Hines. Are there any questions? [There were none.] Is there anyone in Las Vegas wishing to offer support for S.B. 104 (R1)?

James "Greg" Cox, Director, Department of Corrections:
I want to be on record supporting this bill and the work that Chairman Bisbee has done along with bringing in a group of people to take a look at our risk assessment and also Dr. Perrien for the work that she has done.

Chairman Frierson:
Thank you, Mr. Cox.

Assemblyman Duncan:
Up to this point, were we utilizing the MnSOST and the Static-99 to do risk assessments? I have heard conflicting testimony here that it was more subjective. I would like your perspective on what sort of risk assessments were being done up to this point.

Greg Cox:
Yes, sir. We were utilizing the Static-99 instrument. Two psychologists from NDOC were on the panel along with a psychologist from the Department of Health and Human Services.

Chairman Frierson:
I will say that in my experience—and Mr. Ohrenschall is not here right now, but I think he probably shares the same experience—there are times where things that have very little to do with an offender's risk to reoffend become considered because they might represent a low risk, but they have a really bad attitude, or they are really angry. I think this is an effort to focus on what level these individuals represent a risk to reoffend. I had a client who engaged in conduct with someone underage two days after his eighteenth birthday. Of course, he did not have that great of an attitude, and I think that what we need to be doing is focusing on whether or not these individuals represent a risk to reoffend and not some of the other things that I think end up coming into play. I certainly appreciate trying to take out a lot of the technical aspects of it that did not really provide the results that I think we were going for.

Are there any questions for Director Cox? [There were none.] Is there anyone else wishing to offer testimony in support of S.B. 104 (R1) either here or in Las Vegas? [There was no one.] Is there anyone wishing to offer testimony in opposition to S.B. 104 (R1) either here or in Las Vegas? [There was no one.] Is there anyone wishing to offer testimony in a neutral position either here or in Las Vegas? [There was no one.]

Ms. Bisbee, there has been nothing to contradict anything to what has been said. Ms. Hines, I want you to know that we did get a copy, and we will make sure that what you have provided to us gets circulated through the Committee. I will now close the hearing on S.B. 104 (R1) and open the hearing on Senate Bill 347. Welcome, Senator Brower.

Senate Bill 347: Requires the Advisory Commission on the Administration of Justice to consider certain matters relating to parole. (BDR S-1050)

Senator Greg Brower, Washoe County Senatorial District No 15:
As you can tell, Senate Bill 347 is a very simple bill, and its genesis is the realization on the part of the Senate Judiciary Committee, and I am sure this Committee, that parole is a very complicated issue. There are many different ways that the states and the federal government deal with parole. It was my suggestion to the Senate Judiciary Committee that rather than dive into trying to tweak or reform our system of parole in a significant way, it might make more sense to study the issue in the next interim in a comprehensive way, and then, should any ideas for reforming our system come out of that, the next session would be the proper time for introducing actual legislation. So the Senate Judiciary Committee agreed, and that brings me to you here today.

As I am sure many members of the Committee know, there are a variety of different ways in which the various states and the federal government deal with parole. At least 16 states have eliminated parole altogether. Maine was the first in 1975. The federal system eliminated parole in the 1980s, and there are as many different ways of dealing with parole or the absence of parole as there are states. Essentially, what the states that have eliminated parole have done is they have gone to a determinate system of sentencing, much like the federal government, where, upon conviction, it is the judge who decides how much time or no time the convict will serve, ranging from probation, which of course means no time in prison, to a definitive definite term of incarceration, removing the indeterminate or range of time that characterizes our system today.

The problem, frankly, is that with our current system where sentences are a range, no one really knows how much time the convict is going to serve, including the convict himself. The victims do not know and the prosecutors do

not know. It can make it difficult, as the Chairman knows, to negotiate plea deals, and there really is no truth in sentencing in that sort of system. That is not to say that we should necessarily abrogate or eliminate our system of parole, but it is my thought and my suggestion that the situation is such that we probably should take a comprehensive look at our system of parole, evaluate the way other states do parole or do not do parole any longer, and take a look at the federal system. I think that the Advisory Commission on the Administration of Justice (ACAJ) in the next interim would be the perfect place to conduct such a study. Simply put, that is what this bill proposes. The Chairman and I both serve on the ACAJ. Our portfolio in the commission is very broad, and a lot of different issues compete for our attention. I would respectfully submit to the Committee that this is one that deserves some study and that is what this bill proposes. I would be happy to answer any questions.

Chairman Frierson:
Are there any questions for Senator Brower? [There were none.] There are several matters that are already proposed to be referred to the Advisory Commission, but one of them dealt specifically with sentencing. There have also been discussions about this whole notion of either moving Parole and Probation in its entirety out from under its current scheme and putting it under either the courts or in a different direction. There are also discussions about splitting Parole from Probation. Was it your intention with this bill—because it does not expressly mention it—for it to direct the Advisory Commission to look at that issue as well?

Senator Brower:
It was not, although I am aware that those issues are out there and I think are also worthy of study. When you look at S.B. 347 and in the rush to draft this bill at the very end of the process, it is not entirely clear as drafted that a review of states that have eliminated parole should also be part of the study. That could be fairly captured by the current subsection 3, but I just offer that to the Committee to clarify on the record that it would be my intent for the ACAJ to look at every aspect of the system in every alternative, ranging from modifying our system to eliminating our system of parole in accordance with what other states have done. These issues you raise are not contemplated by this bill itself.

Assemblywoman Diaz:
My question is the first point under section 1, "A survey of the parole systems of this State and other states and territories of the United States." I think it is very broad. I think there is probably a purpose that we want the Advisory Commission on the Administration of Justice to come back with certain recommendations. Do we really want to leave it as broad for them to analyze

50 states, or do we want those states with the most efficient parole systems, the ones that have proven that they run the most efficient and cost-effective parole systems? If I were on this Commission and I were reading this, it just does not really give me very much direction as to what we are looking for. If we look at 50 states and then we change our system in Nevada to one that is being carried out right now in Arkansas, what is the reasoning behind what they are going to be looking at? I want to hear thoughts and guidance in this area for this Commission.

Senator Brower:
I think the idea would be that within the discretion of the ACAJ's members and certainly the chair of the ACAJ that the scope could be defined and narrowed as the Commission sees fit. The Legislative Counsel Bureau (LCB) has already done quite a bit of work. This is just one memo that LCB has provided for me which includes a very brief survey of each of the 50 states' systems. I would not expect that the ACAJ would want to spend hearing time delving into the details of each of the 50 states' systems. I think what would probably be more likely—the goal of the ACAJ is to segregate the states into those states that have eliminated parole altogether, those states which have some kind of modified system albeit different than ours, and then states which have a system similar to ours and compare and contrast the three general categories and decide whether or not our system could be improved. I think the idea behind LCB's drafting of the bill is just to make it as broad as possible to then give the ACAJ the opportunity to narrow as it sees fit.

Assemblyman Wheeler:
Would the ACAJ not have this discretion anyway? Is that not exactly what they do is study?

Senator Brower:
It could, but of course it would not have to take up this issue unless the Legislature instructed it to do so. Even if everyone in this room today believed that this was an appropriate topic for the next ACAJ, the ACAJ is made up of people—some of whom are in this room and many others who are not. The point of the bill would be to express a legislative intent for the ACAJ to include this on its agenda in the next interim.

Assemblywoman Spiegel:
Is there a reason why you did not include a request for recommendations or any action steps that would come about as a result of the review?

Senator Brower:
No, there is no reason. This was literally drafted in the waning hours of the last night for drafting. In the Senate Judiciary Committee, I think this bill had the shortest hearing—at least in my experience—in the history of the Senate Judiciary Committee. We were running out of time on the last day. We literally heard it and passed it out in 30 seconds, so I would offer to this Committee the opportunity to change or amend it in any way that you see fit.

Assemblyman Frierson:
Are there any other questions of the Committee? [There were none.] I will now invite those here to provide testimony in support of S.B. 347 to come forward, either here or in Las Vegas.

John T. Jones, Jr., representing Nevada District Attorneys Association:
I appreciate Senator Brower bringing S.B. 347 forward, and I am here today to provide support for that bill.

Chairman Frierson:
Are there any questions of Mr. Jones? [There were none.]

Mercedes Maharis, Private Citizen, Las Vegas, Nevada:
I support Senator Brower's bill.

Chairman Frierson:
Are there any questions? [There were none.] I will invite those wishing to offer testimony in opposition to S.B. 347 either here or in Las Vegas. [There was no one.] Is there anyone wishing to offer testimony in a neutral position, either here or in Las Vegas? [There was no one.] Senator Brower, do you have any closing comments? It does appear to be fairly straightforward.

Senator Brower:
I would simply again thank the Chairman and the Committee for hearing the bill this morning. I think that the topic is worthy of study. I would suggest there have been some egregious cases recently where the parole system does not seem to work. I think in other respects it works well, but I think it is worthy of a more careful study by the ACAJ to decide just what the system should look like going forward for our state. Thank you for the time today.

Chairman Frierson:
Thank you. I will close the hearing on S.B. 347. I see Senator Smith, so we can move on and open the hearing on Senate Bill 478 (1st Reprint).

Senate Bill 478 (1st Reprint): Revises provisions relating to the employment of offenders. (BDR 16-1202)

Senator Debbie Smith, Washoe County Senatorial District No. 13:
I am here this morning to present to you Senate Bill 478 (1st Reprint). This bill is about prison industries, sometimes called prison labor, and it aims to fix three significant issues that we have learned about over the course of the last interim and during our budget hearings this session. We think these are things that are wrong with the current system and need to be fixed.

I got involved in this issue because of those interim and budget hearings and a number of news stories that went along with them. I want to get right to the point that currently our prison industries—that is, prisoners working full-time jobs and getting paid for it—are costing the state more money than they are bringing in, and they are taking jobs away from Nevadans who are not in prison, and we are letting contractors currently get away without paying us. Before I get into the details, I want to say that I do not necessarily think these problems are the fault of any people or any persons in particular. I am not trying to say that anyone at the Department of Corrections or anyone else is doing anything that is disingenuous or unscrupulous. I am just saying that our current system is not working. It is costing the state and it is costing our private sector jobs. What is really happening is a problem with the law, and that is what I am trying to change.

The three major issues that this bill addresses are these: It sets up safeguards to ensure that prison labor is not taking jobs away from nonincarcerated citizens. I think you will probably hear more about that from other testimony. It sets up clear guidelines as to what must be done if the state-sponsored prison industries is losing money, and it sets up mechanisms for the state to ensure that we will get paid by outside companies who use our prisons' labor and our prisons' industries facilities. As you know, we have a prison industries subcommittee, the Committee on Industrial Programs, within our Interim Finance Committee, and they have identified significant problems. Your colleague, Assemblyman Ohrenschall, has been chairing that Subcommittee.

First, I want to talk about the three changes in detail. I will start with the jobs aspect. It is pretty clear and falls squarely into the common sense category that our prison industries are not supposed to be competing with private industry and taking jobs away from our law-abiding citizens. Unfortunately, at times this has been the case. To help mitigate the possibility of this happening, subsection 7 of section 1, beginning on page 4, lays out a number of basic steps that an outside contractor must take before they can enter into a contract

to employ prisoners. The contract must provide a detailed written analysis that must include the number of other private companies in the state that offer the same types of products and services that are proposed, the number of Nevadans currently employed by these private companies, the number of prisoners who would be employed, the skills the prisoners would gain from the contract, proof that the contractor has provided notice in an appropriate trade journal or publication to companies that may be impacted by their intent to use prison labor, and written assurances that the contractor has met with local companies and labor organizations that may be impacted.

I want to note for the record that for the most part, these are not additional requirements. They are things that a company would typically do anyway, see who else is out there providing the same service, plan how many people they would expect to hire and what skills they would need to have, and what they would need to learn, and then meet with local organizations. This is not an undue burden on legitimate businesses and it gives us more pertinent information when we are looking to approve or deny these contracts.

Lastly, the bill requires that the director of the Department of Corrections needs to send a report every five years, starting January 1, 2014, to the Legislative Counsel Bureau (LCB) and our Committee on Industrial Programs, analyzing existing contracts and their potential impact on the private industry.

Next, I would like to talk about the new provisions in the bill regarding the state and our prisoners getting paid for their efforts, for our efforts. If a private contractor uses our prison labor or facilities, there is not much currently in the law to make sure we get paid. In other industries, with contracts of this size, some sort of bond or guarantee is typically signed at the outset. This has become a problem. We found one high-profile instance recently where a company was over $400,000 in debt to the state—and I am sure you have seen this in the news; there has been quite a bit of information out there about this—including being almost $80,000 behind on salary payments to workers at the end of 2012. I find that completely unacceptable. I am purposely not saying the name of the company because this is not an attempt to attack a company or any individual. It is about evaluating what we do and then trying to make it right. I do not want us to be faced with this problem ever again.

To that end, subsection 7(a) of section 1, beginning on page 4, line 10, requires that the state get a personal guarantee, a surety bond in an amount fixed by the director for each contract but not less than one-half of the amount of the contract, or a security agreement to secure any debt, obligation, or other liability of the private employer under the contract, so we will not put ourselves in this situation again where we have a large debt that we have not been able to

collect. This is to secure any debt or obligation the contractor may owe the state, including wages, lease payments, or other compensation. That this is not less than 50 percent of the contract value for the surety bond is the one change that was made in the Senate. This was an amendment which was worked out with some of the contractors who worked with prison labor to address their concerns that the original surety bond amount was too high.

Finally, this bill says that the state should not subsidize prison industries that lose money, and if an industry in our prison system is not profitable, we should fix it or get rid of it.

Subsection 5 of section 1 requires that if a state-sponsored program incurs a net loss for two consecutive years, the director has to explain to the Committee on Industrial Programs why we have a loss for two years running and provide a plan to fix it. If the program loses money in the third year, the director must take appropriate steps to fix it.

Starting on page 5, line 29, the bill requires the Committee on Industrial Programs to recommend a change or termination of a program that still has a net loss after that third year. The director must either accept that recommendation or submit a written report as to why he did not.

In conclusion, I would like to simply reiterate the three reasons I am bringing the bill forward. I want to make sure that we protect jobs for our law-abiding citizens, I want to make sure that the state gets paid the money it is owed by private companies who use our prison labor or facilities, and we should make sure that businesses we run do not perpetuate or operate at a net loss of money, which we then have to backfill from other state dollars. Thank you for your time and consideration, and I am happy to answer any questions.

Chairman Frierson:
Are there any questions for Senator Smith? [There were none.] My question is more along the lines of the sections dealing with whether or not there is a net loss, I believe on page 3, subsection 5, and then the call to action on page 5. My question there is whether or not we can accurately assess the value that some of these programs provide in giving the inmates some skills that we might not be able to put to a real clear dollars and cents figure, but are still valuable. The value to the community may be there, but we cannot exactly calculate it because it might affect recidivism or that person's reentry into the community. I would hate to see us reduce it only to whether or not it makes money, if it does have some intangible value, that is just a cost of ensuring safety to the community.

Senator Smith:
I absolutely agree with your concern about the training aspect of this, and what the tangible value is, which is one of the reasons I think the director has the ability in this program to explain why he thinks the contract should be terminated or not. I agree also with the fact that they have three years to do better or for the director to make a response one way or the other. The training that our offenders receive is critically important, but I think there has to be a balance. Most of all, there just has to be some accountability and making sure that we are not incurring debt that is owed to our prisoners that the companies are not paying. There just has to be some responsibility taken by the private companies who engage in these contracts.

I think this system will lay out a plan to get them on that track. I am assuming there should also be some constant evaluation of whether the industry that they are working in is the most appropriate industry? Is it the best training that is being provided? I would think, with the director's assessment, that would be part of the consideration. Perhaps it is the wrong training that they are providing. Perhaps the industry that they are working in is not the best industry if they cannot make money using prison labor.

Chairman Frierson:
Thank you, Senator. This Committee toured the prison and toured the facilities and saw the furniture, mattresses, and the auto shop and had some conversations with those responsible for running that program about the training they are providing and the certification the inmates are getting. I do not know if we received answers regarding how many of those actually translated into jobs once they left. I think that would be something valuable for the Committee to assess whether or not they are actually putting it into use.

Senator Smith:
As I was looking at this, I thought of the similarities between this and our career and technical programs in our high schools as an example. Over time, we have had to change those to meet the needs of our current economy, and I am assuming that that is something that needs to be done in this constant reviewing of the programs. Are they the best programs? Are they the programs that will get our offenders jobs when they are released? I do believe that this will allow that to happen and it will always allow the director to come back and make a case for retention.

Assemblyman Carrillo:
Is there going to be anything in place, like a check and balance? If there is anything that is being audited after a fiscal year—to make sure that they do not have what they did have with that one that owed over $400,000? If there are

monies that are set up—and I do not know how long that took to get to that amount, unless there is just one period of time that the monies were all set and boom, you owe the state this amount of money. Is there any check and balance that will be put in place so we do not have a situation where people come and say, "Hey, even though we put all the surety bonds and everything else in place, what is the check and balance for this stuff?"

Senator Smith:
I think this will do that, and to some degree it has been happening. We do have the ability to audit, which we have done. We do have the subcommittee of the Interim Finance Committee, and the Committee on Industrial Programs. I think where we have sort of missed the boat is we have not put in the front end of what happens and the back end of what happens. We have had this sort of middle ground of what we take a look at, but I do not think we have built in the protections on either end. I think we should be looking at, if we have a contractor using labor who is out there, we should have the ability to lien a project. I do not think we have taken advantage of any of those situations, so what this is going to do is build those front-end and back-end provisions to protect the state and protect our offenders who are in the program.

Assemblyman Wheeler:
On section 1, subsection 7(c), page 4, lines 31 and 32, you are asking for proof of publication to be put in a trade publication. It seems to me that you are looking for someone to put their business plan out in public before they actually implement it. I know as a private company and as someone who formerly ran a private company, I certainly would not want my business plan out for my competitors to look at and give myself a disadvantage. I was hoping you would explain that to me.

My other question is, do we not have a civil court system to take care of this when people owe the state money?

Senator Smith:
The answer to the first question may be a bit philosophical, but I happen to believe that when you are talking about government and tax dollars and the ability for others to either use the tax-sponsored system, or actually get tax dollars, I think there is a higher level of accountability and openness that needs to be used. I think the intent to provide products and services to the state prison system—I do not know that we are asking for a business plan. I think we are asking for an intent to use the services and I suppose that could be further fleshed out. I really believe that when a private business is going to use our offenders and theoretically use tax dollars to do so, there is a higher level of openness that needs to be required.

On the civil side, there is always the ability for us to go to court and try to collect money that is owed. I am trying to prevent us from having to do that so that we have built-in protections. I am not saying that that will never happen in this. We still may end up having to go to court to collect money that a business owes prisoners or the state, but my preference is that we do not have to go to court and that we do not have to spend our precious tax dollars on litigation when we can set up a system of accountability and openness that will avoid some of that. It is probably not a perfect system, but an effort to do better.

Assemblywoman Cohen:
Are there certain industries that we have seen that are profitable, like the mattresses are profitable, or the air brushing is not profitable? Is there any kind of feeling for that?

Senator Smith:
I cannot tell you that today. I cannot give you that accounting today. I can certainly ask for it, but I do not have the answer for it to you today. I had mostly focused on not who is profitable or not, but who can pay their bills and who cannot.

Chairman Frierson:
Are there any other questions of the Committee? [There were none.] Thank you, Senator Smith. I am assuming you have to go back to the Senate Finance Committee. Once you get wind of any other concerns that were raised or responses you may have, let us know.

Senator Smith:
Absolutely. Thank you.

Chairman Frierson:
I will invite anyone who would like to offer testimony in support of S.B. 478 (R1) to come forward both here and in Las Vegas.

Jennifer DiMarzio-Gaynor, representing XL Steel:
We are in support of S.B. 478 (R1). As Senator Richard Bryan, my colleague, has testified in earlier hearings on this bill, our client has lost out on some business to prison industries in the past. We are not opposed to the prison industries program and have no intent to eliminate this program. We are simply looking for more transparency, and we feel that this bill helps to achieve that. We want prison industries to reach out to private industry if the goods or services it will produce move into the realm of private industry. We support this bill as it is currently written, and we have a few additional recommendations to enhance the transparency of it.

Federal law already has certain requirements for prison industries that create goods and services that move into interstate commerce and we suggest the same guidelines for goods and services that move into intrastate commerce as well. These recommendations include written assurances that prison industry operations will not result in the displacement of employed workers or be applied in skills, crafts, or trading in which there is a surplus of available and gainful labor in the locality or significantly impair existing contracts in the locality.

There also needs to be comparable wages. Inmate workers must be paid at a rate which is not less than that paid for work of a similar nature in the private sector employers in the locality in which the work is performed. There needs to be consultation with local private industry, and that would be written proof of consultation with representatives of local businesses that may be economically impacted by the prison industry program prior to initiation of any prison industry program. Finally, there needs to be consultation with labor organizations, and that would be written proof of consultation with local labor organizations prior to initiation of any prison industry program.

Following these recommendations, which we already see on the federal level, will create a process that will allow private sector groups, businesses, and employees a chance to be heard and register any concerns before a prison industries contract is awarded. I would like to reiterate again that we fully support the bill as it is written, and Senator Bryan and I would be happy to work with Senator Smith if she has interest in adding any of these recommendations as a friendly amendment. Thank you for your time.

Chairman Frierson:
Are there any questions of Ms. DiMarzio-Gaynor? [There were none.] I have a few questions. The issue of paying wages to inmates similar to that of the private industry—I think it is fairly obvious that that would decimate prison industries. If that is part of the support, that would be tantamount to me just getting rid of it altogether. I am trying to contemplate some type of cost-benefit analysis. The way that that works, because that is the motivation, it seems to me, you get to save some money on behalf of the state, but you are also training people for jobs that they might be able to get when they get out. I think that is the trade-off, so that motive would be gone if we had to pay the same. I guess this is not really a question, but making a point.

My question is, has there been a contemplation that if we are going to make some of these changes, that there be an agreement with these private companies to hire some of these inmates that are trained on these jobs so there is some benefit? The whole point of the inmates getting this training is so that they do not return to prison and they are productive members of society.

If they get out and they cannot get jobs anyway, we simply shift it into private and we are going to incur the $30,000 to $50,000 incarceration cost per inmate. I do not know if that has been discussed or contemplated. I think it might be a worthy part of this discussion.

Jennifer DiMarzio-Gaynor:
I am not aware if that has been contemplated. It sounds like a good recommendation, and I know the intent with the comparable wages is not to decimate the prison industries program. It is just to make it so that private industry contracts can compete fairly with the prison industries program. Perhaps some of the other considerations that we are looking at is that the prison industry program would not compete in an area where there are private industries in the locality. The wages issue may not come up. I think that it is something that could be considered.

Assemblyman Wheeler:
When you figure comparable wages, do you also figure room and board? It costs.

Jennifer DiMarzio-Gaynor:
I agree; there is a cost. I am not sure how that would be calculated.

Assemblyman Hansen:
The entire purpose of the program is not to produce goods and services for profit in the economy; it is to basically allow inmates to develop some skill. To what extent is there, in fact, competition in the prison industry for outside firms? Apparently your firm has had that experience. I am wondering, is that an unusual thing? Are we in effect providing for private companies some exceptionally low-cost labor that are then being used to undercut companies like yourself trying to employ local people at comparable wages? What is the extent of the problem and what is the purpose of the prison industries program?

Jennifer DiMarzio-Gaynor:
Let me see how I can best answer your question.

Assemblyman Hansen:
How much competition is there created by the prison industry? How many outside firms are being impacted in not being able to hire people because they are basically being undercut by people using prison labor?

Jennifer DiMarzio-Gaynor:
On a national scale, I cannot speak to that. I know that in this state, my client's industry was steel fabrication, and there was direct competition with

their company, and they did lose out on some projects because the prison industry obviously could significantly underbid their costs. I do not know what the extent of the problem is, but I think we are looking at avoiding direct competition in areas where Nevada does have trained workers and does have industry that is losing out on this kind of work that they would otherwise be doing if they were not being so severely undercut.

Assemblyman Hansen:
If I can get the details, that would be wonderful. Obviously, you want to minimize using basically slave labor to undercut people in the private sector.

Jennifer DiMarzio-Gaynor:
I will work with Senator Bryan, who has been working with the Majority on this bill on getting the information to you in the Committee.

Assemblywoman Spiegel:
Do you know if your client has hired or hires people who have been incarcerated and trained in prison industries and then released into the private sector?

Jennifer DiMarzio-Gaynor:
I am not aware if they had or not. I do not know if the prison industries program has been around long enough that prisoners who have been trained have come out into the workforce, but that is something I can follow up on for you.

Chairman Frierson:
Are there any other questions of the Committee? [There were none.] Is there anyone else wishing to offer testimony in support of S.B. 478 (R1) either here or in Las Vegas? [There was no one.] Is there anyone in Carson City wishing to offer testimony in opposition to S.B. 478 (R1)? [There was no one.] Is there anyone wishing to offer testimony in opposition in Las Vegas?

Brian Connett, Deputy Director, Prison Industries, Department of Corrections:
Prison industries is a self-supporting program that does not take any general funds whatsoever. It does not impact the General Fund in a negative manner. In fact, we support, through room and board from the inmate wages, about $400,000 each year back to the Department, which then reduces the Department's need from the General Fund. Also, through inmate wage deductions, they take and support the Victims of Crime Fund about $80,000 per year. It is a self-funded program. We are extremely concerned that the unintended consequences of this bill will impact inmates, both at Casa Grande Transitional Housing and in the Northern Nevada Correctional Center, whereby those inmates go out into the community and contract with private sector

companies for employment. I do not see any employer where these inmates go to work desiring to comply with these changes that are being reflected.

Prison industries inmate workers are able to save money, they send money home by working, and they have a much lower recidivism rate than inmates not working in prison industries. That is true across the country. They actually reduce the cost to the state. Nevada releases approximately 6,000 inmates per year, and that from a total inmate population of roughly about 12,500. About 96 percent of all of our inmates one day will be released, so we prefer these inmates to be released with a work skill, be employable, and not revert to crime, thereby creating new victims and overtaxing an already overstrained criminal justice system.

If prison industries goes away, which we see in the legislation that is before you, it is very, very shortsighted in that long-term it will have a devastating impact. If prison industries is not available, inmates will not receive work credits, thereby staying in our prisons longer, and thereby costing the State much more. Prison industries will probably end up laying off staff. We have a little over 20 staff members that would be severely and negatively impacted along with their families in the communities.

Prison industries is a time-tested model that is used by every single state in the country and the federal government. Prison industry work programs are also used as a management tool by the institutions and the Department of Corrections in every single state to help maintain control of the inmate population. Inmates assigned to the prison industry work programs certainly tend to be less likely to be involved in negative activities, and the reason for that is that we control inmate applicants to the prison industry program by saying that they have to be discipline-free for a certain amount of time before they can even apply to come to work in prison industries.

Prison industries are 13 very small, very diverse companies or little industries that we have. There are currently three levels of oversight on prison industries. We have the Interim Finance Committee and the Committee on Industrial Programs, which meet quarterly, and we basically accomplish in those quarterly meetings most everything that this new language for this bill that has been proposed, all of that is done in those quarterly meetings. We also have the Board of Prison Commissioners, which has oversight, and the Board of Examiners for any resulting contract. Also, this last legislative session, this Legislature was able to take about $948,000 out of prison industries capital improvements fund to help balance the budget. There was mention earlier of a state audit. There were ways that needed to be found to expand prison industries because of its benefits. We certainly are working as many inmates as

we can. It is in the *Nevada Revised Statutes* (NRS) for the director to work the maximum number of inmates. If there are any questions, I will certainly be glad to answer them or defer to the director.

Assemblyman Thompson:
What is your employment success rate? When they are released from Casa Grande or the facility in the north, would you give me a snapshot of the last fiscal year? Also, what were the retention rates?

Brian Connett:
We have our operations manager for the Casa Grande facility here, and I am sure he would be glad to answer that question. In regard to the success rate for prison industries, the normal recidivism rate, which is what we go by for our Nevada Department of Corrections, is about 26.9 percent. Prison industries recidivism rate for our ranch, for example, is about 15 percent. Each one of those inmates that we can keep from coming back into the system, means creating a new victim, and keeping that cost out of our General Fund. I certainly would be more than happy to show you that in our neighbor to the west, California, close to 70 percent of their inmate population is due to recommits and recidivism. It has a large impact, and through prison industries we are attempting to do that.

Chairman Frierson:
You indicated there is a 15 percent recidivism rate for those who are part of prison industries?

Brian Connett:
Yes, sir. We did a study and the rate for inmates working through prison industries at our ranch operation was 15.3 percent.

Chairman Frierson:
How does that compare?

Brian Connett:
To our state of Nevada, it is 26.9 percent. The national recidivism rate is somewhere between 50 and 60 percent, depending upon the standards used.

Chairman Frierson:
Did you say you can provide to us the number of individuals who obtained training in prison industries and then went on to work in employment in those areas that they obtained training?

Brian Connett:
We have the corrections manager for the Casa Grande facility and certainly he would be more than happy to address that issue.

Chairman Frierson:
You had mentioned at the outset that this is self-funded. Would you elaborate on where the money comes from that funds current prison industries and then the savings it has provided and where the revenue, if any, from that money goes? It just seems to me there is a notion that we are losing money, so if you are saying that it is self-funded and actually provides money back to the Department of Corrections, would you elaborate on it so we have that information?

Brian Connett:
Prison industries has 13 industries whereby we manufacture goods. We have the ranch operation where we provide services to the community, and through that we have inmate wages that we charge. We also have to charge for security staff. There are a lot of extra costs for a private company to be able to come in and do work inside the prison. Those fees that we charge are put in as revenue. We have costs that are associated—such as inmate wages, security staff, prison industries staff—and through those revenues and following the formula that is laid out in NRS Chapter 209, it shows that we do make a profit—a very, very small one because it has been a very difficult past four years. Through inmate wage deduction, when an inmate has an hourly wage or a wage based on productivity, there are certain deductions taken from that inmate's wages for room and board that go back to contribute to the Victims of Crime Fund.

Assemblyman Hansen:
As a contractor, if I am bidding a project, there is never going to be a time where I would be bidding against the prison work crew, is there? How does it work? Let us say I am a plumbing contractor, can I come to you and say, "Do you guys have five good plumbers that I can pick up? I want to bid this job outside the prison system. You supply the labor and the security," and then I bid against other contractors? Where does the competition factor come into play here?

Brian Connett:
There are two different kinds of programs that we operate. One is that we operate internally ourselves with our own staff and inmates where we produce products and services. A private company could come to us and ask us to produce a product or provide a service. There is that kind of operation. The second model is where we would have a private company that would

operate inside the facility. All of our prison industries currently operate inside the facility, so they do not go outside our fences at this time. So a company would come to Silver State Industries and say, "I would like to set up an operation inside your prison." We release the facility to them, and then we charge them for the inmate labor, security staff, workers' compensation on the inmates, and a management fee on top of that as well as a lease. So they would then take that and use the inmate labor and then primarily build that into whatever cost structure they have and then go out and get work. To specifically answer your question, I do not know that I am aware that someone would come to me and say, "I need five plumbers," and we would send five plumbers outside the fence to work on it. That would not happen.

Assemblyman Wheeler:
How do you set your pricing for the prison industries, or how does the company that contracts with the Silver State Industries set their pricing? Is there any control of their pricing to the outside world so that they are competitive with local businesses?

Brian Connett:
What we set up with a private company is our cost structure. What they do with that cost structure and whatever and however they price that to the outside world is certainly up to them and their needs as a company.

Assemblyman Martin:
One of the earlier points made by Senator Smith was getting paid for all of these efforts. You mentioned the audits, and I am wondering when the last comprehensive letter had actually been completed, and whether or not it revealed a collections problem, whether or not the entity making the audit had actually made recommendations for debt collections, and whether or not those have actually been followed. If you would comment on all that, I would appreciate it.

Brian Connett:
Yes, an audit was done last calendar year. The audit did pick up on collections, so we showed them the collections processes and procedures that we have in place, and that was brought out in one of the things in the audit. We have agreed with all of the audit findings.

Assemblyman Martin:
What efforts are you actually making to collect? Are you hiring a debt collection agency or are you making phone calls yourself? In relation to the debt collection issue, most audit reports would indicate an analytical review that

the problem would either be increasing or decreasing. I wonder where we are with that.

James "Greg" Cox, Director, Department of Corrections:
I can answer those questions. In regard to debt collection, we worked with the Attorney General's Office in drafting a forbearance agreement. Again, per Senator Smith, not to discuss the company in general, but they are current in paying. They have paid all of their inmate wages. They have not been working in our system since December 21, 2012. They shut down their operation at High Desert State Prison. Through the forbearance agreement, it specifically outlines the payments. I can tell the Committee as of today, they have paid all of their inmate wages and are currently paying down the money that they owe the State.

In regard to the bill itself, as the Director, I certainly appreciate comments from members of the Committee. Businesses and people who are currently working in our system in prison industries have several issues. I have discussed the surety bond with some of the businesses who are currently working in our system. We certainly would like to work with the bill and have some friendly amendments if possible concerning the amount of the surety bond being 50 percent. We are being told repeatedly that if it is at that level they probably would not have come to our department and established a business there. As relates to the business plan—as Assemblyman Wheeler referred to—that is exactly what our business people are telling us. Their business ideas, plans, their entrepreneurial ideas and aspects of the businesses, they certainly would not want to share them with their competitors. Anything concerning wages, as was referred to by the Chairman, I would certainly agree that any reflection of wages that would be paid in the community would actually kill the program long-term.

I have looked at the bill and I would agree with a number of aspects of it. In fact, I am the person who brought forth the issues associated with prison industries and the process. At a State Board of Prison Commissioners meeting, I told them that I think in the past the Department clearly did not follow the statute in regard to bringing new industry and programs in. I am the person who identified that. There are a substantial number of NRS statutes in regard to prison industries in our state currently. I have said repeatedly that I do not want to start businesses or jobs in our operation that affect the employment of our citizens in our communities. That is not what we are talking about. I certainly agree with Senator Smith in regard to that aspect. I am very concerned, however, about three issues. The surety bond being as high as it is, I have been told by our businesses they would not have come in. Sharing the business plan is not something these businesses or companies would do. Certainly

anything talking about the wages again would put prison industry out of business. I would hope the Committee would consider those issues and step forward in regard to this bill. We would certainly want to work with a friendly amendment to these issues associated with the bill, and hope we would be allowed to do so.

Chairman Frierson:
Are there any questions of the Committee? [There were none.]

Bonnie Polley, representing Hope for Prisoners:
I am here today to represent Hope for Prisoners. What Deputy Director Connett and Director Cox have already covered is so very important, and it was part of my testimony; however, I will not say that again. But I do want for a minute to speak about reentry and the importance of prison industries inside, making reentry happen. As Deputy Director Connett shared with you, Nevada releases close to 6,000 inmates per year, and 96 percent of Nevada inmates will one day be released. Approximately 75 percent of these released inmates return to southern Nevada, and we want these inmates to return with a skill that will assist them in gaining employment. Employment is one of the biggest barriers to an offender's successful reentry into the community.

For the 30-plus years that I have been involved in prison work in Nevada, reentry has not been a priority. The attitude has always been, "Lock them up and throw the key away." The inmate is left on the yard with little or nothing to do except kick rocks, and when they get tired of kicking rocks, they begin to throw them at each other. This raises the danger to officers, thereby increasing the need for more security staff. The good news is we now have an administration that has vision and goals. They get it. Their focus is to get incarcerated men and women ready to reenter society from the first day that they enter prison. The goals of this administration are for the inmates to receive vocational training and therefore be employable upon release. They want their reentry to be successful. The prison industry program provides real-world usable skills that are transferable to community employment and provides an advantage when seeking work once released from the Nevada Department of Corrections. These inmates are provided with training and skill sets that are useful and beneficial, both while they are in prison and then once they are released. In addition to teaching skills to the inmates, they are also learning inventory, quality control, and how to show up for work each day.

Mario Taylor was one of these inmates. Mario was 16 years old when he was sent to prison for murder. He served 16 years and, while he was incarcerated, he became a licensed welder through the prison industry work program. Upon his release, he was able to gain full-time employment as a welder thanks

to the skills that he obtained while in prison. He has been employed full time since his release and is self-supporting with an apartment, a vehicle, and has advanced in his work. He was recently able to leave his job for a better paying job using the same skills that he learned through prison industries. May I refer you to an article in the November 18, 2012 issue of the *Las Vegas Review Journal* so that you can read Mario's story?

The prison industry work program is also a management tool to help maintain control of the inmate population, because the inmates who are involved in the prison industry programs are less likely to be involved in negative activities within the facility. I urge you, please do not tie the hands of Director Cox and his staff, or we will see an increase in recidivism as a result of inmates not being able to acquire the necessary skills to gain employment once released. Hence, they will return to criminal activity. They will impact more victims and strain an already overworked law enforcement system. Thank you very much.

Chairman Frierson:
As a point of personal privilege, both as a prosecutor and a public defender, thank you for everything that you have done over the years to humanize the experience that so many inmates have. I think that Clark County is blessed to have you as part of the detention center.

Are there any questions for Ms. Polley? [There were none.]

Dennis Benedict, Private Citizen, Las Vegas, Nevada:
I am against S.B. 478 (R1), although some of it I kind of like and would agree with some of it, but overall I am against S.B. 478 (R1). I am retired from teaching approximately seven years. My background is secondary business education. I was a teacher for 31 years, and of those 31 years, I taught in Colorado, Arizona, and Nevada. Of those 31 years, I spent 20 years in vocational education. I worked with students, for one reason or another, who were disadvantaged whether it be at a regular high school setting, students on court probation, or at a prison for teenage students. I cannot tell you how many stayed in school, graduated, used their training to get jobs, or stayed in their vocation for their adult life. What I can tell you is that I have heard from some of these students over the years, and because of their training that they received, they are extremely thankful for being involved in vocational education, learning a skill, and graduating from high school. I know some of what is being offered in the way of vocational training at the Auto Restoration Program at the prison. I do know that this program rehabilitates, changes attitudes, develops pride, discipline, and offers hope to those who had never had the opportunity to work in a positive way. Working with one's hands and mind is a tremendous positive therapy.

My wife and I currently have a 1935 Chevy pickup out at the prison, and approximately seven years ago, when we were getting this project underway, I consulted all over the western United States. I found one person in Las Vegas, I found another in Kearney, Nebraska, I found another one in Texas, and two in California who were willing to take on what my wife and I had envisioned for this truck. Wanting this project done, I wanted it to be done locally, and after consulting with the person here in Las Vegas, he could not do what I wanted. There are no catalogs to buy these sheet metal parts for this truck. They have to be found from the junkyard, which are few and far between for a 1935 Chevy, or they have to be made from scratch, or they have to be modified. The instructor at the prison, with the expertise that he had already accumulated, has done a most commendable job to date. He has been able to teach these techniques to the prisoners. All you have to do is follow a picture history of this pickup with explanation and realize what the prison industries offers is truly unique.

Yes, there is auto restoration in a private industry, but—and I will leave it at that. Thank you for this opportunity to state my opinion on a very valuable resource for the rehabilitation of incarcerated people.

Chairman Frierson:
Are there any questions of the Committee? [There were none.] My question is—and I would ask that the folks who are here to testify in opposition would address this as we go through it—whether or not your opposition is based on the entire bill or the net loss provision. So whether or not your opposition is based on that, the first portion dealing with the surety bonds, or everything.

Dennis Benedict:
Generally speaking, I would be opposed to the bill, but if there were specifics of it, then I would have to come back and address that. I do not know the entirety of the bill at this point. For its entirety, I would be against it, but I am for some of it. Thank you.

Donald Moberger, Private Citizen, Las Vegas, Nevada:
I am founder and president of Southwest Prison Ministries located in Boulder City, Nevada. I have been involved in corrections for 45 years, 35 years in Massachusetts and the New England states, and as of June it will be 10 years out here. I work in the Clark County Detention Center as one of the chaplains under Bonnie Polley, and I develop volunteers for work around the state. In developing chaplains, we brought five chaplains out to both the State and county prisons and a little over 100 volunteers, men and women working in the prisons and then working with reentry and aftercare.

I strongly oppose this bill being passed. This should not be done. Do you want to be the only state in the United States that does not have a prison industries program? I cannot imagine that. This should be enhanced. So much more could be done. The things to do with the finances obviously need to be dealt with, and the Director and others are dealing with it. They are great people to work with. Incidentally, you should think of things, like reentry and all of these things that we are strongly working with, think of the people who are in this room this morning. Just look at the three directors from the Department of Corrections and then three of us chaplains. That alone is over 100 years of prison ministry working in the prisons. I am just humbly saying to you that we know what we are doing, and we know what is going to bring success to men and women staying out of the prison system.

At any of the good, solid programs that we have worked with over the years—halfway houses and so forth—back East and here, recidivism rates are generally below 10 percent. I can give you many examples of that from back East. The point is that the prison industry system just adds to it. Back East and around the country, recidivism rates usually run 50 to 70 percent—I think as Director Connett mentioned. Look at your own recidivism rate out here. Fifteen percent? That is amazing. We are dealing with people. I do not think there are too many more beds in the State system available. What if you have to build another prison? Talk about the money it would cost to build another prison here in Nevada? What a shame that would be. The work that is going on with prison industries—much more could be done. Back East we did a lot with people going to work with these programs where they are actually going out in the day and back in again. Possibly those things could be done out here, as they are through Casa Grande. I just really encourage you, do not pass this bill, please. Do not destroy your system. You have a good one, you have good people running your system here in the state of Nevada, and much, much more could be done. We are here to help, and we are here to be a part of it. Please defeat this bill.

Chairman Frierson:
Are there any questions of the Committee? [There were none.]

Jim Henry, Private Citizen, Las Vegas, Nevada:
I am a lay prison minister at the Clark County Detention Center. I work under Bonnie Polley, and I am a volunteer for Hope for Prisoners. I concur with the witnesses that have presented testimony against this and with Director Cox. Not only is complying with S.B. 478 (R1) an undue burden, but it will kill prison industries in the state of Nevada. I think when we are looking at a program like this, we have to look at the big picture. Just like the casinos might not use the sharpest pencils when they are pricing some of their amenities because they are

looking at the big picture, it is incumbent upon us that take so much pride in the reentry program. It is important for us to look at the big picture as well. Nevada is becoming a model state for reentry, and let us not do anything to go backwards in that regard. Thank you very much.

Chairman Frierson:
Quite frankly, it is a little challenging on our part because we are trying to look at the big picture as well, but folks are not giving us details on their opposition. I see some folks up here who can probably provide some insight on the surety issue, which I do not think has been quite fleshed out. If it is simply a concern about anything that would jeopardize prison industries, we certainly hear those concerns. We just need to be able to get into the weeds of some of those issues.

Danny Thompson, representing the Nevada American Federation of Labor and Congress of Industrial Organizations:
If I may ask your indulgence, I was in another meeting and was not able to be here for the proponents. I am actually a proponent of this bill. I can tell you the whole story if you would like to get it on the record.

Chairman Frierson:
Thank you. I will indulge you. I kind of had a feeling that that was the case. I want to make sure that there is no one else that has not had an opportunity to testify in opposition.

Danny Thompson:
Let me say that we support some parts of the prison industries program and have over the years. We have programs in our apprenticeship programs where we will help people. In fact, the ironworkers specifically had a program that tried to deal with and help offenders once they were out of prison. We do not discriminate against people as far as membership because they had served in prison and we care about this issue; however, this issue came to a head for us when a particular steel company bid on and got work.

Initially, there was a lawsuit that was filed by former Senator Richard Bryan's firm on behalf of another steel company that he represented that lost the bid to this prison industry company. In fact, the work that they did—the pile columns over the Fifth Street bridge on Interstate-15—was a prevailing wage job. These people were paid minimum wage or less. They are also doing work at the Wet'n'Wild Park in Las Vegas at a time when I had 300 ironworkers out of work who were taxpayers who did not break the law. We had talked with Senator Bryan about coming to the Legislature; in fact, we went to the Senate money committees with this issue and brought it forward. The fact is, this

company while competing and building things and bid on—it is unclear whether they got parts of the Ferris wheel on the Strip—but they were doing steel work on the Wet'n'Wild Park. We went to the committee with Senator Bryan and presented our case during the budget for the prison and prison industries. We then went to the Prison Board and lodged our objections. Our contractors cannot compete against slave labor or minimum-wage labor on a prevailing-wage job. It turned out that this contractor that runs this steel company owes the State money. Now in a normal course of business, if you are a contractor who owes someone money, the job gets liened. I do not know how that would look if the State liened their own job, because it is your job. I do not think that plays very well in the press. So this bill was introduced by the Senate money committee as a way to prevent this from happening again. At the Prison Board, we had all assurances from the Governor that this kind of practice is not good and that they would be looking at this as they went forward.

We understand the need to have prisoners work. Idle hands are the devil's workshop, and certainly in prison this is probably even more true. But at the same time, I cannot have taxpaying members sitting on their bench losing their job to someone making minimum wage on a prevailing-wage job that my contractor cannot even bid that job for that kind of money. It is impossible. So this system needs to have some changes made with some assurances that this kind of thing will not happen or continue to happen. The surety bond provision was put in by the money committee in an effort to ensure that they get their money back. It is the State's money. For us, while we support prison industries, it has to be the kind of industry that is not a direct competition with someone who cannot compete. I will tell you, in the case of Senator Bryan's client, he lost a job and could not compete against people who were making minimum wage or less.

Further, our apprenticeship programs are trained to the highest level possible. If you are a welder, certainly on a bridge over a freeway, these certifications have a chain of custody where if something happens, I guarantee you if there is a lawsuit, they are going to want to see those certifications and see who welded on those things and see if they were qualified. I asked for those certifications at the original hearing. To date, I have not received any of those. This bill is really an attempt to get this thing under control and not with just a promise from the prison administrators that they will not do this anymore, and a mechanism to ensure that the State does not lose their money in these kinds of operations.

Chairman Frierson:
I am assuming that the bulk of your support—at least for this notion—is based on the surety provisions. The concern that has been expressed—at least some members of the Committee deal with—the issue surrounding how to deal with a net loss and the fact that you cannot really quantify the value of over a 10 percent change in recidivism rates and the savings to the state of not having that number of inmates return to prison. Is your position based exclusively on the surety bond provisions, or are you also supportive of the net loss provisions?

Danny Thompson:
We are supportive of the entire bill. I think that most of these suggestions were from a letter that was given to the Board of State Prison Commissioners by Senator Bryan, who I think, ironically enough, set up prison industries in the state when he was the Governor. So we support the concept, intent, and content of the bill.

Assemblyman Carrillo:
You were telling the Committee that that job was a prevailing wage job and the prisoners were getting a minimum wage scale. What happened to all the rest of the money? Does that go back to the contractor and not to the actual prisoner where they were getting the minimum wage?

Danny Thompson:
That is a good question, because I do not think it has ever been answered. We have programs for victims' restitution which I think needs to be done; however, I cannot answer that question. I do not know.

Assemblyman Thompson:
You gave the scenario about the steel industry. From the presentation, it sounded like there are 13 industries that are represented with the program. Are there any industries that you think could remain in the program, or do you think in its totality it would need to be eliminated? It is, of course, important for inmates to get skills, but of those 13 industries, do you think any could remain?

Danny Thompson:
We are not against prison industries, and we think prison industries is a good thing. With no mechanism to determine whether or not it competes unfairly with taxpaying citizens, that is what this bill is about. There are plenty of things. The car restoration example is one that you cannot find people who do that work on a routine basis that make a living at it. I know there have been different kinds of things done there, but when there are no checks and balances and you have the situation where the steel company is literally putting

taxpaying citizens out of work, it is hard to draw a line on some of these things, but there is a direct line on this example. We do support prison industries, and I think there are plenty of things that could be done, but within these parameters.

Assemblywoman Spiegel:
If prison industries is being used on a job and they are not being paid at the prevailing wage level, do those wages then go into a recalculation of future prevailing wage and bring it down?

Danny Thompson:
The way prevailing wage is calculated is any work that is done by a contractor, their hours are compiled by the Labor Commissioner by county each year. The wage having the most hours prevails—so theoretically, yes, that could happen.

Assemblywoman Spiegel:
The other question I have goes back to earlier—I am not sure you were in the room at the time, but there was a discussion about training that goes on for prisoners who then go on to work in prison industries. Some of the questions that came up were talking about the viability of these folks to then, once they are released, be productive members of society. Have there ever been any discussions about labor coming in and running some of those training programs so that those folks would then be able to perhaps enter into an apprenticeship program having some baseline skills?

Danny Thompson:
We train our apprentices to the highest level to the standard of the industry. We do not discriminate against someone. In a building trades-type of union, you join the union and the fact that you are a felon does not equate to whether or not you go to work. You go to work when your name comes up on the list and you are sent and the contractor—who is then signatory to us—takes the person. There is no discrimination against someone who has been convicted of a crime. We have not been asked to do training programs like that; however, if someone can prove to us that they can meet the standard and pass the test, then that counts for their status.

Assemblyman Ohrenschall:
I think we all recognize that there is a need for training. We do not just warehouse folks who are doing a long stretch of time, be it a year, two years, or three years. Have any of the ex-offenders who worked in prison industries been able to take those skills and find a home and an apprenticeship in one of

the locals that are part of the Nevada American Federation of Labor and Congress of Industrial Organizations?

Secondly, what do you think the balance is between training programs, through a prison industry program and having it work so that it does not unfairly hurt the private sector, so we do not have a situation like we had with the steel company. I was wondering if you could give me your picture on that and wondered if anyone had successfully used the skills that you know of and gotten into one of the trades.

Danny Thompson:
I cannot quantify a number, but I have personal knowledge of people who went to prison, came out of prison, turned their life around, went through a program, and whether or not they used skills acquired in prison, I do not know, but I know of people who have had a problem—in fact, we started a works program called Build Nevada during the boom of everything where we collaborated with the school district in Senator Horsford's district to do this program to give people a leg up. We put the notices out and the children did not apply. Their parents applied. We found that people had issues. They were being discriminated against because they were ex-felons, so we ran them through this program that did give them a leg up. I have personal knowledge of people who went through that program and then got into the apprenticeship program and succeeded.

The whole idea that someone has committed a crime and went to prison, they did not just go to prison—there is a reason. There is a reason they are there. If you look at the state of Nevada, at the time that this steel company was doing its work, we had the highest unemployment in the nation. Clearly, a system without any checks and balances was broken and what happened, happened. I think this bill sets out parameters where if you meet these parameters, then you can have the program. That was the whole intent. Basically, most of this came from the suggestion of Senator Bryan and was presented to the Prison Board.

Chairman Frierson:
Are there any questions of the Committee? [There were none.] I hear everything that you are saying, and the concerns, especially given the high profile case and the state's inability to collect. I also have a concern about—there is such a tremendous reduction of recidivism that we not discount the savings to taxpayers of the decrease in incarceration based on the folks that participate, and that is why I asked you about the surety issue versus the net loss issue. I think there are some intangible values that we cannot really quantify that might be disregarded if we simply look at net loss of programs like

the vehicle program or the furniture program or things of that nature. I do not know the answer, but we certainly do not want to deprive workers of jobs. Obviously that is something that has implications on the economy long-term, but just trying to find a way to make sure that folks have some skill when they get out of prison and that we are not paying for them to go back is also a concern.

Danny Thompson:
I will tell you a story. When this building was being built out the State Office Building used to be a bank. The building next to it, which is now a parking lot, was an apartment building and apartments that were built probably in the 1960s sometime. When I was here as a legislator, I passed a bill that said, "If you want to do asbestos abatement, you have to be certified." I set out the criteria for certification of asbestos removal. Workers were already protected by the Occupational Safety and Health Administration, but the general public was not protected in a case where I went through the airport and they were moving this stuff. So this bill passed. So we have people who are asbestos-certified removal workers. I left the building one day to go across the street to get my car where the apartment building was being torn down by the State. Inside the building were prisoners who were being paid minimum wage—or whatever they were being paid. Now that clearly is a public works.

When I went to then Director Crawford and complained, she told me basically what you said. So as a solution to that, I bought all the furniture for my office from the prison industry furniture factory. This problem has been going on for some time. Those workers then left that apartment building because I bought the furniture, and they moved them to Winnemucca to do something else there on a State project. It is a problem. It does need to be addressed. I do not think this is overly broad; however, we will go back and talk with the parties about the surety portion of this. I agree with you. Clearly, there is a savings when you have people who are abiding by the rules and not becoming management problems behind bars.

Chairman Frierson:
Are there any other questions of the Committee? [There were none.] Just so that the Committee is clear, and I want to make sure my secretary is clear as well, Mr. Thompson asked and I obliged with indulging him to provide testimony in support, because I knew he had somewhere else to be. So that it is clear, we can file that in a supportive category.

David Stevens, President, XL Steel:
I came up here anticipating the neutral position opportunity to speak.

Chairman Frierson:
Okay. Before we go there, is there anyone else wishing to offer testimony in opposition, either in Carson City or Las Vegas? [There was no one.] We will now invite those wishing to offer testimony in a neutral position.

David Stevens:
We had Jennifer DiMarzio-Gaynor speak on behalf of the company, but I wanted to make a couple of comments based on what I have been listening to. The recidivism statistics that are referred to again and again during this session were specifically stated by Deputy Director Connett regarding the wild horse program at the Stewart Conservation Camp, if I understood correctly, and I do not think that they represent the actual recidivism benefits associated with other parts of the program, including the steel business. I would welcome any further clarification of that. I wanted to make sure that that was clear, because it was a specific program of wild horse training where those statistics were thrown out, but I do not think that they apply to the entire program.

In general, I am very supportive of prison industries and see a need for it as a citizen of Nevada. The problem that occurred within the steel business—and it is not just XL Steel that is opposed to it, but there are six other steel companies who have provided letters and petitions to the Governor that have also been affected. Of course, the companies that went out of business during the recession that could not compete with the subsidization that occurred from the State government to a particular steel company, those people are not even available to speak in opposition or it would be pointless for them to do so, but that is what happened.

The problem is that you mix the government with private business and you give a particular advantage in the form of what I categorize as a subsidy to a particular company that competes in the local market. It is impossible to compete when the undercutting is going on at 25 to 30 percent below what the other companies have to bid while they pay law-abiding citizens to do the work. The four points that Jennifer DiMarzio-Gaynor brought forward which Senator Bryan has been advocating, those may sound strict right now to you, but actually, they are in the federal law. That is the law of the land now for 20 or 30 years under what is known as the prison industry (PI) program. The PI program requires those four concepts of nondisplacement, comparable wages to be paid, notification to labor unions prior to the beginning of a prison industry program, and notification to private industries that will be competed against. This law came about 30 years ago when competition from one state's prison industry caused the dumping of cheap products on other states, thus affecting their industry in the other states adversely. The law was designed and has been in effect all this time, and it is specifically to prevent interstate dumping of

prison goods. The federal government limited their legislation only to interstate commerce, as they typically would. We are advocating simply adopting those same standards that are currently in place in Nevada under several of the prison industry programs that do interstate business. Those must comply with the prison industry program rules, and we have been advocating to adopt those same principles to protect Nevada's citizens and Nevada businesses as much as the federal government requires people in other states be protected from this very same activity.

Although the people who are advocating or opposing this bill—which I am not necessarily supporting in its entirety—those people are rushing to the statement that prison industries will be destroyed, that it will be devastated and ended. Actually, there currently exists in Nevada prison industry programs under the federal program that comply with exactly those same rules. Now whether or not the surety bond should be at the level it is at or exist at all, that does seem to be a reaction to a particular case that got out of control where one company racked up hundreds of thousands of dollars in debt to the state, which I view as a subsidy from my state while I pay taxes here, a subsidy to a competitor. It was not just 90 days overdue. It was four years. Rents have been paid at about a third of the rate of what similar facilities would cost and rent on the outside. These are clear subsidies.

So the question is, "Should the State subsidize a particular company while it competes with other companies that are in the private sector employing law-abiding citizens?" We are all for training and rehabilitation. We can all agree that that needs to be done. But there are ways to do it without having an adverse effect on people in the private sector. Every job that is given to a prisoner in a steel fabrication business is one job that will not be in the private sector for a law-abiding citizen in Nevada because that job will be done by the prisoner instead of someone in the private sector, so it is a direct trade-off. XL Steel lost about 20 jobs in the recent projects that Senator Bryan pointed out. It is a significant effect, because for those 20 families that do not have those jobs and are either on unemployment or maybe their unemployment has run out, if you asked each one of them, "Would you give up your job so that a prisoner could have it so he could benefit from training," I would guarantee you those people would say, "No, do not give my job to a prisoner." I am available for any questions.

Chairman Frierson:

You mentioned recidivism. Are you aware of the recidivism rates for the other programs?

David Stevens:
I do not have the statistics, but what I really wanted to point out—because, Chairman, you have mentioned a couple of times during this discussion, and if Deputy Director Connett could clarify this—the recidivism rate that he specifically talked about, the 15.3 percent was solely on the wild horse training program.

Chairman Frierson:
So you do not know. It could be the same. I guess that is my point.

David Stevens:
It could be less; it could be more, but I am guessing it is more. I am guessing that what was brought forward was the most favorable statistic that could be found out of the 13 programs. Let us hear what the gross recidivism rates are for prison industries.

Chairman Frierson:
I appreciate that, but I need you to understand. We get to ask the questions, so we will certainly do that. It sounds to me like you are primarily responding to the testimony of those who testified in opposition; however, a great deal of the questions from the Committee dealt with that net loss provision, which I do not think you really provided a position on and I do not know that that is part of the prison industries configuration or the considerations federally. Are you aware of whether or not a requirement that they consider net losses is something that is looked at federally, or is that separate from the other considerations federally?

David Stevens:
You are correct; I do not believe it is part of the prison industries program. I am neutral on that issue, as I am neutral on the bond and security agreement. I think that that particularly addresses a single case which occurred that should not have occurred, but I am not sure if that should be applied to all.

My advocacy is for transparency. Simply that businesses that can be competed against should be notified. Again, the opposition has gone to the extreme with this idea that a business plan will be laid out for the study of the competitors. That is not what is being said. All they are saying is that they have to be notified, that there will be such an industry proposed, so they have a chance to express their opinions about it.

Chairman Frierson:
Are there any other questions of the Committee? [There were none.] Is there anyone else who wishes to offer testimony in a neutral position to S.B. 478 (R1)? [There was no one.]

If there is someone available who could provide information regarding recidivism, I will just say that I think it will be helpful to the Committee to get information regarding the recidivism difference with all of the programs within prison industries. We have the state and national recidivism rates, and it would be helpful to get some clarification on the change between that and all of the other programs as well.

With that said, I will close the hearing on S.B. 478 (R1) and briefly open it up for any public comment. [There was no one.] Seeing none, I will now adjourn today's meeting on Assembly Judiciary [at 10:57 a.m.].

RESPECTFULLY SUBMITTED:

_____
Linda Whimple
Committee Secretary

APPROVED BY:

_____
Assemblyman Jason Frierson, Chairman

DATE: _____

EXHIBIT 7

January 29, 2018

Nevada Board Of Parole Commissioners' Memo

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NEVADA BOARD OF PAROLE COMMISSIONERS

To: Board of Parole Commissioners

From: David M. Smith, Hearings Examiner II

Subject: Application of NRS 213.1214 Assessment Results to the Nevada Parole Guideline

RE: January 29, 2018 Agenda Item VIII

Agenda Item VIII pertains to the manner in which the Board will apply the result of a sexual assessment prepared in accordance with NRS 213.1214. The Board will override the result of the Nevada Parole Risk Assessment (NPRA) when an assessment returns a higher result on a sexual assessment prepared pursuant to NRS 213.1214. This policy is codified in NAC 213.514 as follows:

*NAC 213.514 **Determination of whether to grant parole: Assignment of risk level to prisoner.** (NRS 213.10885, 213.110, 213.140)*

1. The Board will assign to each prisoner who is being considered for parole a risk level of "high," "moderate" or "low" according to the level of risk that the prisoner will commit a felony if released on parole.

2. To establish the risk level, the Board will conduct an objective risk assessment using a combination of risk factors that predict recidivism.

3. If a prisoner has ever been convicted of a sexual offense and has been evaluated using a currently accepted standard of assessment to determine the risk that the prisoner will commit another sexual offense if released on parole, the Board will assign a risk level to the prisoner which is the higher of the risk level assigned pursuant to this section and the risk level determined by such an evaluation.

4. The Board will apply the risk level assigned to a prisoner who is being considered for parole to establish an initial assessment regarding whether to grant parole in the manner set forth in NAC 213.516.

5. As used in this section, "sexual offense" has the meaning ascribed to it in NRS 213.1214.

NRS 213.1214 and NRS 213.1215 specifically refer to a result of "high risk to reoffend in a sexual manner" as follows:

*NRS 213.1214 **Evaluation of certain prisoners by Department of Corrections before parole hearing; Director of Department to establish procedure for assessment of prisoners; immunity; regulations.***

*1. The Department of Corrections shall assess each prisoner who has been convicted of a sexual offense to determine the prisoner's risk to reoffend in a sexual manner using a currently accepted standard of assessment. The completed assessment must include, without limitation, a determination of the prisoner's level of risk to reoffend in a sexual manner, including, without limitation, **whether the prisoner is a high risk to reoffend in a sexual manner for the purposes of subsection 3 of NRS 213.1215.** The Director shall ensure a completed assessment is provided to the Board before, but not sooner than 120 days before, a scheduled parole hearing.*

*NRS 213.1215 **Mandatory release of certain prisoners.***

*3. If a prisoner who meets the criteria set forth in subsection 2 is **determined to be a high risk to reoffend in a sexual manner pursuant to** NRS 213.1214, the Board is not required to release the prisoner on parole pursuant to this section. If the prisoner is not granted parole, a rehearing date must be scheduled pursuant to NRS 213.142.*

The Board uses a three tiered risk assessment which does not adequately take into consideration the multiple levels of assessment that can be produced in the assessments prepared pursuant to NRS 213.1214. In the past, the practice has been as follows:

Static-99R risk level	Corresponding Parole Board Risk Level/overrides
I – Very Low Risk	Low Risk
II – Below Average Risk	Moderate
III – Average Risk	Moderate Risk
IVa – Above Average Risk	High Risk
IVb – Well Above Average Risk	High Risk

Since "Below Average Risk" does not equal "Low Risk," and "Above Average Risk" does not equal "Moderate Risk" the practice has been to deviate upward to the next risk level in an effort to not understate the risk to reoffend in a sexual manner.

In an effort to recognize the various degrees of risk produced from the Static-99R, the following change is offered for the Board's discussion:

Static-99R risk level	Corresponding Parole Board Risk Level/overrides
I – Very Low Risk	Low Risk - Include Mitigating Factor of low risk or below average risk to reoffend
II – Below Average Risk	Moderate – Include Mitigating Factor of low risk or below average risk to reoffend
III – Average Risk	Moderate Risk
IVa – Above Average Risk	Moderate Risk – Include Aggravating Factor of risk is above average or well above agerage risk to reoffend sexually
IVb – Well Above Average Risk	High Risk - Include Aggravating Factor of risk is above average or well above agerage risk to reoffend sexually