

Assembly Bill No. 390—Committee on Judiciary

CHAPTER.....

AN ACT relating to parole; requiring the department of prisons to determine the eligibility of a prisoner for parole, notify the state board of parole commissioners and provide data regarding the prisoner to the state board of parole commissioners; removing the requirement that a prisoner complete an application to be considered for parole; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 209.392 is hereby amended to read as follows:

209.392 1. Except as otherwise provided in NRS 209.3925 and 209.429, the director may, at the request of an offender who is eligible for residential confinement pursuant to the standards adopted by the director pursuant to subsection 3 and who has:

(a) Established a position of employment in the community;
(b) Enrolled in a program for education or rehabilitation; or
(c) Demonstrated an ability to pay for all or part of the costs of his confinement and to meet any existing obligation for restitution to any victim of his crime,
assign the offender to the custody of the division of parole and probation of the department of motor vehicles and public safety to serve a term of residential confinement, pursuant to NRS 213.380, for not longer than the remainder of his sentence.

2. Upon receiving a request to serve a term of residential confinement from an eligible offender, the director shall notify the division of parole and probation. If any victim of a crime committed by the offender has, pursuant to subsection 3 of NRS 213.130, requested to be notified of ~~an~~ **application** **the consideration of a prisoner** for parole and has provided a current address, the division of parole and probation shall notify the victim of the offender's request and advise the victim that he may submit documents regarding the request to the division of parole and probation. If a current address has not been provided as required by subsection 3 of NRS 213.130, the division of parole and probation must not be held responsible if such notification is not received by the victim. All personal information, including, but not limited to, a current or former address, which pertains to a victim and which is received by the division of parole and probation pursuant to this subsection is confidential.

3. The director, after consulting with the division of parole and probation, shall adopt, by regulation, standards providing which offenders are eligible for residential confinement. The standards adopted by the director must provide that an offender who:

(a) Is not eligible for parole or release from prison within a reasonable period;

(b) Has recently committed a serious infraction of the rules of an institution or facility of the department;

(c) Has not performed the duties assigned to him in a faithful and orderly manner;

(d) Has ever been convicted of:

(1) Any crime involving the use or threatened use of force or violence against the victim; or

(2) A sexual offense;

(e) Has more than one prior conviction for any felony in this state or any offense in another state that would be a felony if committed in this state, not including a violation of NRS 484.3792 or 484.3795;

(f) Has escaped or attempted to escape from any jail or correctional institution for adults; or

(g) Has not made an effort in good faith to participate in or to complete any educational or vocational program or any program of treatment, as ordered by the director,
is not eligible for assignment to the custody of the division of parole and probation to serve a term of residential confinement pursuant to this section.

4. If an offender assigned to the custody of the division of parole and probation pursuant to this section escapes or violates any of the terms or conditions of his residential confinement:

(a) The division of parole and probation may, pursuant to the procedure set forth in NRS 213.410, return the offender to the custody of the department.

(b) The offender forfeits all or part of the credits for good behavior earned by him before the escape or violation, as determined by the director. The director may provide for a forfeiture of credits pursuant to this paragraph only after proof of the offense and notice to the offender, and may restore credits forfeited for such reasons as he considers proper. The decision of the director regarding such a forfeiture is final.

5. The assignment of an offender to the custody of the division of parole and probation pursuant to this section shall be deemed:

(a) A continuation of his imprisonment and not a release on parole; and

(b) For the purposes of NRS 209.341, an assignment to a facility of the department,

except that the offender is not entitled to obtain any benefits or to participate in any programs provided to offenders in the custody of the department.

6. An offender does not have a right to be assigned to the custody of the division of parole and probation pursuant to this section, or to remain in that custody after such an assignment, and it is not intended that the provisions of this section or of NRS 213.371 to 213.410, inclusive, create any right or interest in liberty or property or establish a basis for any cause of action against the state, its political subdivisions, agencies, boards, commissions, departments, officers or employees.

Sec. 2. NRS 209.3925 is hereby amended to read as follows:

209.3925 1. Except as otherwise provided in subsection 6, the director may assign an offender to the custody of the division of parole and probation of the department of motor vehicles and public safety to serve a term of residential confinement pursuant to NRS 213.380, for not longer than the remainder of his sentence, if:

(a) The director has reason to believe that the offender is:

(1) Physically incapacitated to such a degree that he does not presently, and likely will not in the future, pose a threat to the safety of the public; or

(2) In ill health and expected to die within 12 months, and does not presently, and likely will not in the future, pose a threat to the safety of the public; and

(b) At least two physicians licensed pursuant to chapter 630 of NRS, one of whom is not employed by the department, verify, in writing, that the offender is:

(1) Physically incapacitated; or

(2) In ill health and expected to die within 12 months.

2. If the director intends to assign an offender to the custody of the division of parole and probation pursuant to this section, at least 45 days before the date the offender is expected to be released from the custody of the department, the director shall notify:

(a) If the offender will reside within this state after he is released from the custody of the department, the board of county commissioners of the county in which the offender will reside; and

(b) The division of parole and probation.

3. If any victim of a crime committed by the offender has, pursuant to subsection 3 of NRS 213.130, requested to be notified of ~~{an application}~~ *the consideration of a prisoner* for parole and has provided a current address, the division of parole and probation shall notify the victim that:

(a) The director intends to assign the offender to the custody of the division of parole and probation pursuant to this section; and

(b) The victim may submit documents to the division of parole and probation regarding such an assignment.

If a current address has not been provided by a victim as required by subsection 3 of NRS 213.130, the division of parole and probation must not be held responsible if notification is not received by the victim. All personal information, including, but not limited to, a current or former address, which pertains to a victim and which is received by the division of parole and probation pursuant to this subsection is confidential.

4. If an offender assigned to the custody of the division of parole and probation pursuant to this section escapes or violates any of the terms or conditions of his residential confinement:

(a) The division of parole and probation may, pursuant to the procedure set forth in NRS 213.410, return the offender to the custody of the department.

(b) The offender forfeits all or part of the credits for good behavior earned by him before the escape or violation, as determined by the director.

The director may provide for a forfeiture of credits pursuant to this paragraph only after proof of the offense and notice to the offender, and may restore credits forfeited for such reasons as he considers proper. The decision of the director regarding such a forfeiture is final.

5. The assignment of an offender to the custody of the division of parole and probation pursuant to this section shall be deemed:

(a) A continuation of his imprisonment and not a release on parole; and

(b) For the purposes of NRS 209.341, an assignment to a facility of the department,

except that the offender is not entitled to obtain any benefits or to participate in any programs provided to offenders in the custody of the department.

6. The director may not assign an offender to the custody of the division of parole and probation pursuant to this section if the offender is sentenced to death or imprisonment for life without the possibility of parole.

7. An offender does not have a right to be assigned to the custody of the division of parole and probation pursuant to this section, or to remain in that custody after such an assignment, and it is not intended that the provisions of this section or of NRS 213.371 to 213.410, inclusive, create any right or interest in liberty or property or establish a basis for any cause of action against the state, its political subdivisions, agencies, boards, commissions, departments, officers or employees.

Sec. 3. NRS 213.1087 is hereby amended to read as follows:

213.1087 1. The term of office of each member of the board is 4 years.

2. Appointments to the board must be made by the governor within 60 days from the time any vacancy occurs.

3. Members of the board are in the unclassified service of the state. They shall devote their entire time and attention to the business of the board and shall not pursue any other business or occupation or hold any other office of profit which detracts from the full and timely performance of their duties.

4. Any member of the board may administer an oath or affirmation to any person offering to testify ~~{upon the hearing of an application}~~ **at a meeting to consider a prisoner** for parole or in a parole revocation hearing, and any district judge, county clerk or notary public may take and certify an affidavit or deposition to be used ~~{upon such an application, either for or against it,}~~ **at a meeting to consider a prisoner for parole** or in a parole revocation hearing.

Sec. 4. NRS 213.130 is hereby amended to read as follows:

213.130 1. ~~[A prisoner sentenced to imprisonment in the state prison may apply to the board for parole. The application must be made on a form prescribed by the board and must contain:~~

~~—(a) The county in which the prisoner will reside, if the prisoner will be paroled in Nevada; and~~

~~—(b) Other data that will assist the board in determining whether parole should be granted.~~

~~The secretary of the board shall furnish any prisoner an application form upon request.]~~ ***The department of prisons shall:***

(a) Determine when a prisoner sentenced to imprisonment in the state prison is eligible to be considered for parole;

(b) Notify the state board of parole commissioners of the eligibility of the prisoner to be considered for parole; and

(c) Before a meeting to consider the prisoner for parole, compile and provide to the board data that will assist the board in determining whether parole should be granted.

2. Meetings ~~[for the purpose of considering applications]~~ ***to consider prisoners*** for parole may be held semiannually or more often, on such dates as may be fixed by the board. All meetings must be open to the public.

3. Not later than 5 days after the date on which the board fixes the date of the meeting to consider ~~[the application of]~~ a prisoner for parole, the board shall notify the victim of the prisoner ~~[whose application]~~ ***who*** is being considered ***for parole*** of the date of the meeting and of his rights pursuant to this subsection, if the victim has requested notification in writing and has provided his current address or if the victim's current address is otherwise known by the board. The victim of ~~[any person applying]~~ ***a prisoner being considered*** for parole may submit documents to the board and may testify at the meeting held to consider the ~~[application. An application]~~ ***prisoner*** for parole. ***A prisoner*** must not be considered ***for parole*** until the board has notified any victim of his rights pursuant to this subsection and he is given the opportunity to exercise those rights. If a current address is not provided to or otherwise known by the board, the board must not be held responsible if such notification is not received by the victim.

4. The board may deliberate in private after a public meeting held to consider ~~[an application]~~ ***a prisoner*** for parole.

5. The board of state prison commissioners shall provide suitable and convenient rooms or space for use of the board.

6. If a victim is notified of a meeting to consider ~~[an application]~~ ***a prisoner*** for parole pursuant to subsection 3, the board shall, upon making a final decision concerning the ~~[application,]~~ ***parole of the prisoner,*** notify the victim of its final decision.

7. All personal information, including, but not limited to, a current or former address, which pertains to a victim and which is received by the board pursuant to this section is confidential.

8. For the purposes of this section, “victim” has the meaning ascribed to it in NRS 213.005.

Sec. 5. NRS 213.133 is hereby amended to read as follows:

213.133 1. Except as otherwise provided in subsections 6 and 7, the board may delegate its authority to hear, consider and act upon ~~applications for~~ **the** parole **of a prisoner** and on any issue before the board to a panel consisting of:

(a) Two or more members of the board, two of whom constitute a quorum; or

(b) One member of the board who is assisted by a case hearing representative.

2. No action taken by any panel created pursuant to paragraph (a) of subsection 1 is valid unless concurred in by a majority vote of those sitting on the panel.

3. The decision of a panel is subject to final approval by the affirmative action of a majority of the members appointed to the board. Such action may be taken at a meeting of the board, or without a meeting by the delivery of written approval to the secretary of the board.

4. The degree of complexity of issues presented must be taken into account before the board makes any delegation of its authority and before it determines the extent of a delegation.

5. The board shall adopt regulations which establish the basic types of delegable cases and the size of the panel required for each type of case.

6. A hearing ~~on an application for~~ **concerning the** parole **of a prisoner** or any decision on an issue involving a person:

(a) Who committed a capital offense;

(b) Who is serving a sentence of imprisonment for life;

(c) Who has been convicted of a sexual offense involving the use or threat of use of force or violence;

(d) Who is a habitual criminal; or

(e) Whose sentence has been commuted by the state board of pardons commissioners,

must be conducted by at least three members of the board, and action may be taken only with the concurrence of at least four members.

7. If a recommendation made by a panel deviates from the standards adopted by the board pursuant to NRS 213.10885 or the recommendation of the division, the chairman must concur in the recommendation.

Sec. 6. NRS 213.140 is hereby amended to read as follows:

213.140 1. ~~Whenever any~~ **When a** prisoner becomes eligible for parole pursuant to this chapter or the regulations adopted pursuant to this chapter, the board shall consider and may authorize his release on parole as provided in ~~[NRS 213.110 and elsewhere in] this chapter . [, irrespective of whether he has applied to the board for parole. If the prisoner has not made such an application before any regular meeting of the board, the secretary of the board shall prepare the application and present it to the board.]~~ The

board may authorize the release of a prisoner on parole whether or not parole is accepted by the prisoner.

2. If the release of a prisoner on parole is authorized by the board, the division shall:

(a) Review and, if appropriate, approve each prisoner's proposed plan for placement upon release; or

(b) If his plan is not approved by the division, assist the prisoner to develop a plan for his placement upon release, before he is released on parole. The prisoner's proposed plan must identify the county in which the prisoner will reside if the prisoner will be paroled in Nevada.

3. The board may adopt any regulations necessary or convenient to carry out this section.

Sec. 7. NRS 213.142 is hereby amended to read as follows:

213.142 1. Upon denying ~~{an application for parole,}~~ *the parole of a prisoner*, the board shall schedule a rehearing. The date on which the rehearing is to be held is within the discretion of the board, but, except as otherwise provided in subsection 2, the elapsed time between hearings must not exceed 3 years.

2. If the prisoner ~~{applying}~~ *who is being considered* for parole has more than 10 years remaining on the term of his sentence, not including any credits which may be allowed against his sentence, when the board denies his ~~{application,}~~ *parole*, the elapsed time between hearings must not exceed 5 years.

Sec. 8. This act becomes effective upon passage and approval.

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