

SENATE BILL NO. 496—COMMITTEE ON GOVERNMENT AFFAIRS

(ON BEHALF OF THE GOVERNOR)

MARCH 26, 2007

Referred to Committee on Government Affairs

SUMMARY—Makes various changes to provisions governing the State Board of Pardons Commissioners and the State Board of Parole Commissioners. (BDR 19-1435)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets [omitted material] is material to be omitted.

AN ACT relating to the Open Meeting Law; exempting the State Board of Pardons Commissioners and the State Board of Parole Commissioners from the requirements of the Open Meeting Law in certain circumstances; allowing the State Board of Parole Commissioners to review certain reports and data relating to a prisoner without the prisoner's consent; prohibiting a cause of action for the disclosure of confidential information during a public meeting of the State Board of Parole Commissioners; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

- 1 **Sections 1, 4 and 6** of this bill exempt the State Board of Pardons
- 2 Commissioners and the State Board of Parole Commissioners from the
- 3 requirements of the Open Meeting Law when considering an application for
- 4 clemency or a prisoner for parole, respectively. (NRS 213.010, 213.130, 241.030)
- 5 **Sections 5 and 6** of this bill allow the State Board of Parole Commissioners to
- 6 review data and records, compiled by the Department of Corrections, relating to a
- 7 prisoner and without his consent, when determining whether to release him on
- 8 parole. (NRS 213.1099, 213.130)
- 9 **Section 6** of this bill prohibits any cause of action for the disclosure of
- 10 confidential information during a public meeting of the State Board of Parole
- 11 Commissioners to consider a prisoner for parole. (NRS 213.130)



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

1 **Section 1.** NRS 241.030 is hereby amended to read as follows:

2 241.030 1. Except as otherwise provided in this section and
3 NRS 241.031 and 241.033, a public body may hold a closed
4 meeting to:

5 (a) Consider the character, alleged misconduct, professional
6 competence, or physical or mental health of a person.

7 (b) Prepare, revise, administer or grade examinations that are
8 conducted by or on behalf of the public body.

9 (c) Consider an appeal by a person of the results of an
10 examination that was conducted by or on behalf of the public body,
11 except that any action on the appeal must be taken in an open
12 meeting and the identity of the appellant must remain confidential.

13 2. A person whose character, alleged misconduct, professional
14 competence, or physical or mental health will be considered by a
15 public body during a meeting may waive the closure of the meeting
16 and request that the meeting or relevant portion thereof be open to
17 the public. A request described in this subsection:

18 (a) May be made at any time before or during the meeting; and

19 (b) Must be honored by the public body unless the consideration
20 of the character, alleged misconduct, professional competence, or
21 physical or mental health of the requester involves the appearance
22 before the public body of another person who does not desire that
23 the meeting or relevant portion thereof be open to the public.

24 3. A public body may close a meeting pursuant to subsection 1
25 upon a motion which specifies:

26 (a) The nature of the business to be considered; and

27 (b) The statutory authority pursuant to which the public body is
28 authorized to close the meeting.

29 4. This chapter does not:

30 (a) Apply to judicial proceedings.

31 (b) *Apply to meetings held by the State Board of Pardons*
32 *Commissioners to consider an application for clemency.*

33 (c) *Apply to meetings held by the State Board of Parole*
34 *Commissioners to consider a prisoner for parole.*

35 (d) Prevent the removal of any person who willfully disrupts a
36 meeting to the extent that its orderly conduct is made impractical.

37 ~~(e)~~ (e) Prevent the exclusion of witnesses from a public or
38 private meeting during the examination of another witness.

39 ~~(d)~~ (f) Require that any meeting be closed to the public.

40 ~~(e)~~ (g) Permit a closed meeting for the discussion of the
41 appointment of any person to public office or as a member of a
42 public body.



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5. The exceptions provided by this section, and electronic communication, must not be used to circumvent the spirit or letter of this chapter to act, outside of an open and public meeting, upon a matter over which the public body has supervision, control, jurisdiction or advisory powers.

Sec. 2. 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 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 ~~4~~ 6 of NRS 213.130, requested to be notified of 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 ~~4~~ 6 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 484.379, 484.3795 or 484.37955;

(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



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1 State, its political subdivisions, agencies, boards, commissions,
2 departments, officers or employees.

3 **Sec. 3.** NRS 209.3925 is hereby amended to read as follows:

4 209.3925 1. Except as otherwise provided in subsection 6,
5 the Director may assign an offender to the custody of the Division
6 of Parole and Probation of the Department of Public Safety to serve
7 a term of residential confinement pursuant to NRS 213.380 or other
8 appropriate supervision as determined by the Division of Parole and
9 Probation, for not longer than the remainder of his sentence, if:

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

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

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

17 (b) At least two physicians licensed pursuant to chapter 630 or
18 633 of NRS, one of whom is not employed by the Department,
19 verify, in writing, that the offender is:

20 (1) Physically incapacitated or in ill health; or

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

22 2. If the Director intends to assign an offender to the custody of
23 the Division of Parole and Probation pursuant to this section, at least
24 45 days before the date the offender is expected to be released from
25 the custody of the Department, the Director shall notify:

26 (a) If the offender will reside within this State after he is
27 released from the custody of the Department, the board of county
28 commissioners of the county in which the offender will reside; and

29 (b) The Division of Parole and Probation.

30 3. If any victim of a crime committed by the offender has,
31 pursuant to subsection ~~4~~ 6 of NRS 213.130, requested to be
32 notified of the consideration of a prisoner for parole and has
33 provided a current address, the Division of Parole and Probation
34 shall notify the victim that:

35 (a) The Director intends to assign the offender to the custody of
36 the Division of Parole and Probation pursuant to this section; and

37 (b) The victim may submit documents to the Division of Parole
38 and Probation regarding such an assignment.

39 ➤ If a current address has not been provided by a victim as required
40 by subsection ~~4~~ 6 of NRS 213.130, the Division of Parole and
41 Probation must not be held responsible if notification is not received
42 by the victim. All personal information, including, but not limited
43 to, a current or former address, which pertains to a victim and which
44 is received by the Division of Parole and Probation pursuant to this
45 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 or other appropriate supervision as determined by the Division of Parole and Probation:

(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. 4. NRS 213.010 is hereby amended to read as follows:

213.010 1. The State Board of Pardons Commissioners consists of the Governor, the justices of the Supreme Court and the Attorney General.

2. Meetings of the Board for the purpose of considering applications for clemency may be held semiannually or ~~less often,~~ *more often*, on such dates as may be fixed by the Board.

3. *Pursuant to NRS 241.030, meetings held by the Board to consider an application for clemency are not subject to the*



1 *provisions of chapter 241 of NRS, however, such meetings must be*
2 *open to the public.*

3 4. The Board shall give written notice at least 15 days before a
4 meeting to each victim of the crimes committed by each person
5 whose application for clemency will be considered at the meeting, if
6 the victim so requests in writing and provides his current address. If
7 a current address is not provided, the Board may not be held
8 responsible if the notice is not received by the victim. The victim
9 may submit a written response to the Board at any time before the
10 meeting. All personal information, including, but not limited to, a
11 current or former address, which pertains to a victim and which is
12 received by the Board pursuant to this subsection is confidential.

13 **Sec. 5.** NRS 213.1099 is hereby amended to read as follows:

14 213.1099 1. Except as otherwise provided in this section and
15 NRS 213.1214 and 213.1215, the Board may release on parole a
16 prisoner who is otherwise eligible for parole pursuant to NRS
17 213.107 to 213.157, inclusive.

18 2. In determining whether to release a prisoner on parole, the
19 Board shall consider:

20 (a) Whether there is a reasonable probability that the prisoner
21 will live and remain at liberty without violating the laws;

22 (b) Whether the release is incompatible with the welfare of
23 society;

24 (c) The seriousness of the offense and the history of criminal
25 conduct of the prisoner;

26 (d) The standards adopted pursuant to NRS 213.10885 and the
27 recommendation, if any, of the Chief; ~~and~~

28 (e) *Any data or records compiled by the Department of*
29 *Corrections pursuant to NRS 213.130; and*

30 (f) Any documents or testimony submitted by a victim notified
31 pursuant to NRS 213.130.

32 3. When a person is convicted of a felony and is punished by a
33 sentence of imprisonment, he remains subject to the jurisdiction of
34 the Board from the time he is released on parole under the
35 provisions of this chapter until the expiration of the maximum term
36 of imprisonment imposed by the court less any credits earned to
37 reduce his sentence pursuant to chapter 209 of NRS.

38 4. Except as otherwise provided in NRS 213.1215, the Board
39 may not release on parole a prisoner whose sentence to death or to
40 life without possibility of parole has been commuted to a lesser
41 penalty unless it finds that the prisoner has served at least 20
42 consecutive years in the state prison, is not under an order to be
43 detained to answer for a crime or violation of parole or probation in
44 another jurisdiction, and that he does not have a history of:



(a) Recent misconduct in the institution, and that he has been recommended for parole by the Director of the Department of Corrections;

(b) Repetitive criminal conduct;

(c) Criminal conduct related to the use of alcohol or drugs;

(d) Repetitive sexual deviance, violence or aggression; or

(e) Failure in parole, probation, work release or similar programs.

5. In determining whether to release a prisoner on parole pursuant to this section, the Board shall not consider whether the prisoner will soon be eligible for release pursuant to NRS 213.1215.

6. The Board shall not release on parole an offender convicted of an offense listed in NRS 179D.410 until the law enforcement agency in whose jurisdiction the offender will be released on parole has been provided an opportunity to give the notice required by the Attorney General pursuant to NRS 179D.600 to 179D.800, inclusive.

Sec. 6. NRS 213.130 is hereby amended to read as follows:

213.130 1. The Department of Corrections 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 *and records* that will assist the Board in determining whether parole should be granted. *The consent of the prisoner is not necessary for the Board to review any data or records compiled by the Department, including, without limitation, relevant medical and mental health records.*

2. If a prisoner is being considered for parole from a sentence imposed for conviction of a crime which involved the use of force or violence against a victim and which resulted in bodily harm to a victim and if original or duplicate photographs that depict the injuries of the victim or the scene of the crime were admitted at the trial of the prisoner or were part of the report of the presentence investigation and are reasonably available, a representative sample of such photographs must be included with the information submitted to the Board at the meeting. A prisoner may not bring a cause of action against ~~the~~ *this* State, ~~of Nevada,~~ its political subdivisions, agencies, boards, commissions, departments, officers or employees for any action that is taken pursuant to this subsection or for failing to take any action pursuant to this subsection, including, without limitation, failing to include photographs or including only certain photographs. As used in this subsection,



1 “photograph” includes any video, digital or other photographic
2 image.

3 3. Meetings to consider prisoners for parole may be held
4 semiannually or more often, on such dates as may be fixed by the
5 Board. ~~[AHH]~~

6 4. *Pursuant to NRS 241.030, the Board is not required to*
7 *comply with the provisions of chapter 241 of NRS, however,*
8 *meetings of the Board for the purpose of considering prisoners for*
9 *parole* must be open to the public.

10 5. *A person may not bring any cause of action against this*
11 *State, its political subdivisions, agencies, boards, commissions,*
12 *departments, officers or employees for the disclosure of*
13 *confidential information during a public meeting held pursuant to*
14 *subsection 4.*

15 ~~[4-]~~ 6. Not later than 5 days after the date on which the Board
16 fixes the date of the meeting to consider a prisoner for parole, the
17 Board shall notify the victim of the prisoner who is being considered
18 for parole of the date of the meeting and of his rights pursuant to
19 this subsection, if the victim has requested notification in writing
20 and has provided his current address or if the victim’s current
21 address is otherwise known by the Board. The victim of a prisoner
22 being considered for parole may submit documents to the Board and
23 may testify at the meeting held to consider the prisoner for parole. A
24 prisoner must not be considered for parole until the Board has
25 notified any victim of his rights pursuant to this subsection and he is
26 given the opportunity to exercise those rights. If a current address is
27 not provided to or otherwise known by the Board, the Board must
28 not be held responsible if such notification is not received by the
29 victim.

30 ~~[5-]~~ 7. The Board may deliberate in private after a public
31 meeting held to consider a prisoner for parole.

32 ~~[6-]~~ 8. The Board of State Prison Commissioners shall provide
33 suitable and convenient rooms or space for use of the Board.

34 ~~[7-]~~ 9. If a victim is notified of a meeting to consider a prisoner
35 for parole pursuant to subsection 4, the Board shall, upon making a
36 final decision concerning the parole of the prisoner, notify the
37 victim of its final decision.

38 ~~[8-]~~ 10. All personal information, including, but not limited to,
39 a current or former address, which pertains to a victim ~~[and]~~ *or any*
40 *document or testimony provided pursuant to subsection 6* which is
41 received by the Board pursuant to this section is confidential.

42 ~~[9-]~~ 11. For the purposes of this section, “victim” has the
43 meaning ascribed to it in NRS 213.005.



1 **Sec. 7.** This act becomes effective upon passage and approval.

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