

SENATE BILL NO. 221—COMMITTEE ON JUDICIARY

MARCH 13, 2009

Referred to Committee on Judiciary

SUMMARY—Establishes a program of parole secured by a surety bond. (BDR 16-926)

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 prisoners; establishing a program of parole secured by a surety bond; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

This bill establishes a program of parole of a prisoner secured by a surety bond, in lieu of supervision by the Division of Parole and Probation of the Department of Public Safety, patterned after a similar program of probation secured by a surety bond. (NRS 176A.300-176A.370) **Section 9** of this bill: (1) authorizes the State Board of Parole Commissioners to grant parole to a prisoner who is otherwise eligible for parole on the condition that the prisoner participate in a program of parole secured by a surety bond, if the Board first determines that the prisoner has the financial ability to post such a surety bond; (2) requires the prisoner to execute such a surety bond; and (3) provides the requirements concerning such a surety bond.

Section 10 of this bill requires the Board to establish the conditions of the program, which may include, without limitation, requiring the parolee subject to the surety bond, who is known as "the principal": (1) to submit to alcohol and drug testing and treatment; (2) to attend counseling; (3) to observe restrictions on contact with certain persons; (4) to maintain employment; (5) to observe restrictions on his travel; (6) to pay restitution, fines and court costs; (7) to perform community service; and (8) to participate in educational programs. **Section 10** also sets forth the respective duties of the surety and the principal concerning the program.

Section 11 of this bill provides for a penalty of \$15,000 upon the failure of a surety to fulfill his duties and provides for the forfeiture of the bond and arrest of the principal for a violation of the conditions of the program. **Section 12** of this bill provides for exoneration of the surety and setting aside of the forfeiture of the surety bond upon certain conditions. **Sections 13 and 14** of this bill provide for the enforcement of the surety bond and for the discharge of the surety and release of the bond. **Section 15** of this bill provides for the arrest of the principal by a bail agent or bail enforcement agent. **Section 16** of this bill provides that any money



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27 collected under the program for penalties and forfeitures must be deposited in the
28 State General Fund.

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

1 **Section 1.** Chapter 213 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 to 16, inclusive, of this
3 act.

4 **Sec. 2.** *As used in sections 2 to 16, inclusive, of this act,*
5 *unless the context otherwise requires, the words and terms defined*
6 *in sections 3 to 8, inclusive, of this act have the meanings ascribed*
7 *to them in those sections.*

8 **Sec. 3.** *“Charge” means the amount of money the surety*
9 *charges to write the surety bond, which:*

10 1. *Must not be less than 10 percent of the aggregate penalty*
11 *amounts; and*

12 2. *Is fully earned when the bond is written.*

13 **Sec. 4.** *“Conditions” means such conditions as the Board*
14 *may impose as a prerequisite to participating in the program.*

15 **Sec. 5.** *“Principal” means a prisoner released on parole*
16 *under the program.*

17 **Sec. 6.** *“Program” means the program of parole secured by a*
18 *surety bond established pursuant to sections 2 to 16, inclusive, of*
19 *this act.*

20 **Sec. 7.** *“Surety” means any insurance company licensed*
21 *under the laws of this State to execute bonds filed in criminal*
22 *cases.*

23 **Sec. 8.** *“Surety bond” means a written undertaking, executed*
24 *by a surety, that a principal will, as a result of the bond,*
25 *participate in the program and that in the event that the principal*
26 *violates a condition of the program, the surety will pay the amount*
27 *of money specified for the bond.*

28 **Sec. 9. 1.** *Notwithstanding the provisions of any law, the*
29 *Board may release on parole a prisoner who is otherwise eligible*
30 *for parole pursuant to NRS 213.107 to 213.157, inclusive, and*
31 *sections 2 to 16, inclusive, of this act on the condition that the*
32 *prisoner participate in a program of parole secured by a surety*
33 *bond, in lieu of being supervised by the Division, if the Board first*
34 *determines that the prisoner has the financial ability to post such a*
35 *surety bond.*

36 2. *If the Board authorizes a prisoner to participate in the*
37 *program, the prisoner shall execute a bond for his participation.*
38 *The Board shall require one or more sureties for the bond.*



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1 3. The Board shall set the surety bond in an amount which,
2 in the judgment of the Board, will reasonably ensure the
3 participation of the prisoner in the program.

4 4. The surety bond must:

- 5 (a) Be issued in favor of and payable to the State of Nevada;
6 (b) Extend for a period of 1 year;
7 (c) Be renewable annually; and
8 (d) Ensure the full compliance of the prisoner in the program
9 with all the conditions set by the Board.

10 Sec. 10. 1. The Board shall set the conditions of the
11 program. The conditions must be appended to and made part of
12 the bond. The conditions may include, without limitation, any one
13 or more of the following:

14 (a) Submission to periodic tests to determine whether the
15 principal is using any controlled substance or alcohol.

16 (b) Participation in a program for the treatment of abuse of a
17 controlled substance or alcohol or a program for the treatment of
18 any other impairment.

19 (c) Participation in a program of professional counseling,
20 including, without limitation, counseling for the family of the
21 principal.

22 (d) Restrictions on or a prohibition of contact or
23 communication with witnesses or victims of the crime committed
24 by the principal.

25 (e) A requirement to obtain and keep employment.

26 (f) Restrictions on travel by the principal outside the
27 jurisdiction of the Board.

28 (g) Payment of restitution.

29 (h) Payment of fines and court costs.

30 (i) Supervised community service.

31 (j) Participation in educational courses.

32 2. A surety shall:

33 (a) Provide the facilities or equipment necessary to:

34 (1) Perform tests to determine whether the principal is
35 using any controlled substance or alcohol, if the Board requires
36 such tests as a condition of the program; and

37 (2) Enable the principal to report regularly to the surety.

38 (b) Notify the Board within 24 hours after the surety has
39 knowledge of a violation of or a failure to fulfill a condition by the
40 principal.

41 3. A principal shall:

42 (a) Report regularly to the surety; and

43 (b) Pay the surety's charge for the execution of the bond.

44 Sec. 11. 1. If a surety fails to:



(a) Provide the facilities or equipment required by paragraph (a) of subsection 2 of section 10 of this act; or

(b) Notify the Board pursuant to paragraph (b) of subsection 2 of section 10 of this act of a violation of or a failure to fulfill a condition of the program by a principal,

↳ the surety shall pay a penalty of \$15,000 to the Board in addition to any other penalty imposed by law.

2. If the principal violates or fails to fulfill a condition of the surety bond, the Board shall:

(a) Declare a forfeiture of the surety bond;

(b) Direct that the surety be given notice by certified mail that the principal has violated or failed to fulfill a condition of the program and shall execute an affidavit of such mailing to be kept as an official public record;

(c) Revoke the participation of the principal in the program; and

(d) Issue a warrant for violating or failing to fulfill a condition of the program and cause the principal to be arrested.

Sec. 12. The Board may exonerate the surety or set aside a forfeiture of the surety bond upon such terms as may be just if:

1. The principal appears before the Board and the Board, upon hearing the matter, determines that the violation or failure of the principal to fulfill the condition of the program was:

(a) Caused by circumstances beyond his control and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect; and

(b) Not in any way caused or aided by the surety; or

2. The surety submits an application for exoneration or an application to set the forfeiture aside on the ground that the principal is unable to appear because:

(a) He is dead;

(b) He is ill;

(c) He is insane; or

(d) He is being detained by civil or military authorities,

↳ and the Board, upon hearing the matter, determines that the requirements of paragraphs (a) and (b) of subsection 1 have been met and that the surety did not in any way cause or aid the absence of the principal from the hearing.

Sec. 13. 1. If the surety is not exonerated and the forfeiture of the surety bond is not set aside:

(a) The Board shall enter a judgment of default and execution may issue thereon; and

(b) The surety shall pay a penalty to the Board in an amount equal to one-half of the annual fee for the bond that the surety charged the principal.



2. By entering into a bond the surety submits to the jurisdiction of the Board and irrevocably appoints the Board as its agent upon whom any papers affecting its liability may be served. The liability may be enforced on motion and such notice of the motion as the Board prescribes.

3. After entry of a judgment of default, the Board shall not remit it in whole or in part unless the conditions applying to exonerating the surety and setting aside the forfeiture of the surety bond set forth in section 12 of this act are met.

Sec. 14. When the conditions of a surety bond securing participation in the program have been satisfied or a forfeiture of a bond has been set aside or remitted, the Board shall discharge the surety and release the bond.

Sec. 15. For the purpose of surrendering a principal, a surety, at any time before it is finally discharged, and at any place within the State, may, by a written authority endorsed on a certified copy of the undertaking, cause the principal to be arrested by a bail agent or bail enforcement agent who is licensed pursuant to chapter 697 of NRS.

Sec. 16. Money collected pursuant to sections 2 to 16, inclusive, of this act must be paid to the State Treasurer for deposit in the State General Fund.

Sec. 17. NRS 213.107 is hereby amended to read as follows:

213.107 As used in NRS 213.107 to 213.157, inclusive, *and sections 2 to 16, inclusive, of this act*, unless the context otherwise requires:

1. "Board" means the State Board of Parole Commissioners.

2. "Chief" means the Chief Parole and Probation Officer.

3. "Division" means the Division of Parole and Probation of the Department of Public Safety.

4. "Residential confinement" means the confinement of a person convicted of a crime to his place of residence under the terms and conditions established by the Board.

5. "Sex offender" means any person who has been or is convicted of a sexual offense.

6. "Sexual offense" means:

(a) A violation of NRS 200.366, subsection 4 of NRS 200.400, NRS 200.710, 200.720, subsection 2 of NRS 200.730, NRS 201.180, paragraph (a) or subparagraph (2) of paragraph (b) of subsection 1 of NRS 201.195, NRS 201.230 or 201.450, or paragraph (a) or (b) of subsection 4 or paragraph (a) or (b) of subsection 5 of NRS 201.560;

(b) An attempt to commit any offense listed in paragraph (a); or

(c) An act of murder in the first or second degree, kidnapping in the first or second degree, false imprisonment, burglary or invasion



1 of the home if the act is determined to be sexually motivated at a
2 hearing conducted pursuant to NRS 175.547.

3 7. "Standards" means the objective standards for granting or
4 revoking parole or probation which are adopted by the Board or the
5 Chief.

6 **Sec. 18.** NRS 213.1078 is hereby amended to read as follows:

7 213.1078 1. Except as otherwise provided in subsection 2,
8 the Division shall set a level of supervision for each probationer. At
9 least once every 6 months, or more often if necessary, the Division
10 shall review the probationer's level of supervision to determine
11 whether a change in the level of supervision is necessary. The
12 Division shall specify in each review the reasons for maintaining or
13 changing the level of supervision. If the Division changes the level
14 of supervision, the Division shall notify the probationer of the
15 change.

16 2. The provisions of subsection 1 are not applicable if:

17 (a) The level of supervision for the probationer is set by the
18 court or by law; or

19 (b) The probationer is ordered to participate in a program of
20 probation secured by a security bond pursuant to NRS 176A.300 to
21 176A.370, inclusive.

22 3. Except as otherwise provided in subsection 4, at least once
23 every 6 months, or more often if necessary, the Division shall
24 review a parolee's level of supervision to determine whether a
25 change in the level of supervision is necessary. The Division shall
26 specify in each review the reasons for maintaining or changing the
27 level of supervision. If the Division changes the level of
28 supervision, the Division shall notify the parolee of the change.

29 4. The provisions of subsection 3 are not applicable if ~~the~~ :

30 (a) *The* level of supervision for the parolee is set by the Board
31 or by law ~~H~~ ; or

32 (b) *The parolee is ordered to participate in a program of parole*
33 *secured by a surety bond established pursuant to sections 2 to 16,*
34 *inclusive, of this act.*

35 **Sec. 19.** NRS 213.10885 is hereby amended to read as
36 follows:

37 213.10885 1. The Board shall adopt by regulation specific
38 standards for each type of convicted person to assist the Board in
39 determining whether to grant or revoke parole. The regulations must
40 include standards for determining whether to grant or revoke the
41 parole of a convicted person:

42 (a) Who committed a capital offense.

43 (b) Who was sentenced to serve a term of imprisonment for life.

44 (c) Who was convicted of a sexual offense involving the use or
45 threat of use of force or violence.



(d) Who was convicted as a habitual criminal.

(e) Who is a repeat offender.

(f) Who was convicted of any other type of offense.

➔ The standards must be based upon objective criteria for determining the person's probability of success on parole.

2. 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 himself; and

(f) The length of his incarceration.

3. In determining whether to grant parole to a convicted person, the Board shall not consider whether ~~the~~:

(a) The person has the financial ability to participate in a program of parole secured by a surety bond established pursuant to sections 2 to 16, inclusive, of this act; or

(b) The person has appealed the judgment of imprisonment for which the person is being considered for parole.

4. The standards adopted by the Board must provide for a greater punishment for a convicted person who has a history of repetitive criminal conduct or who commits a serious crime, with a violent crime considered the most serious, than for a convicted person who does not have a history of repetitive crimes and did not commit a serious crime.

5. The Board shall make available to the public a sample of the form the Board uses in determining the probability that a convicted person will live and remain at liberty without violating the law if parole is granted or continued.

6. On or before January 1 of each even-numbered year, the Board shall review comprehensively the standards adopted by the Board. The review must include a determination of whether the standards are effective in predicting the probability that a convicted person will live and remain at liberty without violating the law if parole is granted or continued. If a standard is found to be ineffective, the Board shall not use that standard in its decisions regarding parole and shall adopt revised standards as soon as practicable after the review.



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1 7. The Board shall report to each regular session of the
2 Legislature:

3 (a) The number and percentage of the Board's decisions that
4 conflicted with the standards;

5 (b) The results and conclusions from the Board's review
6 pursuant to subsection 6; and

7 (c) Any changes in the Board's standards, policies, procedures,
8 programs or forms that have been or will be made as a result of the
9 review.

