

SENATE BILL NO. 187—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE ADVISORY COMMISSION
ON THE ADMINISTRATION OF JUSTICE)

FEBRUARY 22, 2011

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing parole. (BDR 16-640)

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

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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 parole; replacing the requirement for prisoners convicted of certain sexual offenses to be certified by a panel before being released on parole with a process to evaluate such prisoners before their parole is granted or continued; authorizing the State Board of Parole Commissioners to request an evaluation of certain sex offenders; revising provisions relating to immunity from liability based upon certain actions of a panel; providing that certain meetings of a panel are subject to the provisions of the Open Meeting Law; requiring the adoption of regulations; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

- 1 Existing law prohibits the State Board of Parole Commissioners from releasing
2 on parole a prisoner convicted of certain sexual offenses unless a panel certifies that
3 the prisoner does not represent a high risk to reoffend. (NRS 213.1214) The Nevada
4 Supreme Court has held that: (1) certification by a panel is necessary only when
5 parole will lead to a prisoner's release from prison; (2) the statutory immunity from
6 liability does not prohibit a cause of action regarding the process of conducting a
7 panel hearing or the validity of the statute; and (3) when the panel considers new
8 allegations, the panel must comply with the requirements of the Open Meeting
9 Law. (*Stockmeier v. Psychol. Rev. Panel*, 122 Nev. 385 (2006))
10 This bill: (1) removes the requirement that a prisoner convicted of certain
11 sexual offenses be certified by a panel and instead requires that before being
12 granted or continued on parole, such a prisoner be evaluated by a panel as to his or
13 her risk to reoffend in a sexual manner; (2) authorizes the State Board of Parole



14 Commissioners to require an evaluation of a sex offender if the evaluation may
15 assist the Board in certain decisions related to parole; (3) clarifies that a prisoner
16 does not have a right to be evaluated or reevaluated by a panel and that the actions
17 of a panel in evaluating, not evaluating or considering or relying on an evaluation
18 do not give rise to a cause of action; and (4) provides that certain meetings of a
19 panel are subject to the requirements of the Open Meeting Law.

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

1 **Section 1.** NRS 213.1214 is hereby amended to read as
2 follows:

3 213.1214 1. The Board shall not ~~release on~~ *grant parole to*
4 *or continue the* parole *of* a prisoner *who has served, is serving or*
5 *has yet to serve a sentence on his or her current term of*
6 *imprisonment for having been* convicted of an offense listed in
7 subsection ~~5~~ *8* unless a panel consisting of:

8 (a) The Administrator of the Division of Mental Health and
9 Developmental Services of the Department of Health and Human
10 Services or his or her designee;

11 (b) The Director of the Department of Corrections or his or her
12 designee; and

13 (c) A psychologist licensed to practice in this State or a
14 psychiatrist licensed to practice medicine in this State,

15 ~~certifies that~~ *evaluates* the prisoner ~~was under observation~~
16 ~~while confined in an institution of the Department of Corrections~~
17 ~~and does not represent a high risk to reoffend based upon~~ *, within*
18 *120 days before a hearing to consider granting or continuing his*
19 *or her parole, using* a currently accepted standard of assessment ~~to~~
20 *determine the prisoner's likelihood to reoffend in a sexual*
21 *manner. The panel shall provide a report of its evaluation to the*
22 *Board before the hearing.*

23 2. ~~A prisoner who has been certified pursuant to subsection 1~~
24 ~~and who returns for any reason to the custody of the Department of~~
25 ~~Corrections may not be paroled unless a panel recertifies the~~
26 ~~prisoner in the manner set forth in subsection 1.~~ *The Board may*
27 *require the panel to conduct an evaluation of a prisoner who is a*
28 *sex offender if an evaluation may assist the Board in determining*
29 *whether parole should be granted or continued. The panel shall*
30 *provide a report of its evaluation to the Board before the hearing*
31 *to consider granting or continuing the prisoner's parole.*

32 3. ~~The panel may revoke the certification of a prisoner~~
33 ~~certified pursuant to subsection 1 at any time.~~

34 ~~4.~~ This section does not create a right in any prisoner to be
35 ~~certified or to continue to be certified. No prisoner may bring a~~



1 *evaluated or reevaluated more frequently than the prisoner's*
2 *regularly scheduled parole hearings or under a current or*
3 *previous standard of assessment and does not restrict the panel*
4 *from conducting additional evaluations of a prisoner if such*
5 *evaluations may assist the Board in determining whether parole*
6 *should be granted or continued. No cause of action may be*
7 *brought against the State, its political subdivisions, or the agencies,*
8 *boards, commissions, departments, officers or employees of the*
9 *State or its political subdivisions for ~~[not-certifying]~~ evaluating, not*
10 *evaluating or considering or relying on an evaluation of a prisoner*
11 *~~[pursuant to]~~, if such decisions or actions are made or conducted*
12 *in compliance with the procedures set forth in this section . ~~for for~~*
13 *~~refusing to place a prisoner before a panel for certification pursuant~~*
14 *~~to this section.~~*

15 ~~—5.]~~ 4. *The panel shall adopt regulations pertaining to the*
16 *evaluation of prisoners subject to the provisions of this section to*
17 *determine a prisoner's risk to reoffend in a sexual manner. The*
18 *regulations must be adopted in accordance with the provisions of*
19 *chapter 233B of NRS and must be codified in the Nevada*
20 *Administrative Code.*

21 5. *The regulations adopted pursuant to subsection 4 must*
22 *require that:*

23 (a) *The evaluation be based on currently accepted standards of*
24 *assessment designed to determine the risk of an offender to*
25 *reoffend in a sexual manner;*

26 (b) *The report of the evaluation contain a statement rating the*
27 *prisoner as a low, moderate or high risk to reoffend in a sexual*
28 *manner; and*

29 (c) *If the report of the evaluation varies from the standard of*
30 *assessment, the panel include a written statement of any*
31 *mitigating or aggravating factors which justified such deviation.*

32 6. *The panel shall:*

33 (a) *Review the standards of assessment and procedures*
34 *adopted by regulation at least once every 3 years; and*

35 (b) *Make a finding regarding the validity of the use of any*
36 *standard of assessment.*

37 7. *If the panel finds that a standard of assessment is*
38 *ineffective, or another standard of assessment is more effective, in*
39 *predicting whether a prisoner may reoffend in a sexual manner,*
40 *the panel may discontinue the use of the current standard of*
41 *assessment and adopt a new standard of assessment that is*
42 *determined to be more effective.*

43 8. *The provisions of this section apply to a prisoner convicted*
44 *of any of the following offenses:*

45 (a) *Sexual assault pursuant to NRS 200.366.*



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- 1 (b) Statutory sexual seduction pursuant to NRS 200.368.
- 2 (c) Battery with intent to commit sexual assault pursuant to
- 3 NRS 200.400.
- 4 (d) Abuse or neglect of a child pursuant to NRS 200.508 ~~H~~, *if*
- 5 *the abuse involved sexual abuse or sexual exploitation and is*
- 6 *punished as a felony.*
- 7 (e) An offense involving pornography and a minor pursuant to
- 8 NRS 200.710 to 200.730, inclusive.
- 9 (f) Incest pursuant to NRS 201.180.
- 10 (g) Solicitation of a minor to engage in acts constituting the
- 11 infamous crime against nature pursuant to NRS 201.195.
- 12 (h) Open or gross lewdness pursuant to NRS 201.210.
- 13 (i) Indecent or obscene exposure pursuant to NRS 201.220.
- 14 (j) Lewdness with a child pursuant to NRS 201.230.
- 15 (k) Sexual penetration of a dead human body pursuant to
- 16 NRS 201.450.
- 17 (l) Luring a child or a person with mental illness pursuant to
- 18 NRS 201.560, if punished as a felony.
- 19 (m) An attempt to commit an offense listed in paragraphs (a) to
- 20 (l), inclusive.
- 21 (n) An offense that is determined to be sexually motivated
- 22 pursuant to NRS 175.547.
- 23 (o) Coercion or attempted coercion that is determined to be
- 24 sexually motivated pursuant to NRS 207.193.
- 25 *9. The Board may adopt by regulation the manner in which*
- 26 *the Board will consider an evaluation prepared pursuant to this*
- 27 *section in conjunction with the standards adopted by the Board*
- 28 *pursuant to NRS 213.10885.*
- 29 *10. Meetings of a panel pursuant to this section must be*
- 30 *conducted in accordance with the provisions of chapter 241 of*
- 31 *NRS.*
- 32 *11. As used in this section:*
- 33 *(a) "Current term of imprisonment" means one or more*
- 34 *sentences being served concurrently or consecutively with the*
- 35 *sentence first imposed.*
- 36 *(b) "Reoffend in a sexual manner" means to commit any*
- 37 *offense listed in subsection 8.*
- 38 *(c) "Sex offender" means a person who, after July 1, 1956, is*
- 39 *or has been:*
- 40 *(1) Convicted of a sexual offense; or*
- 41 *(2) Adjudicated delinquent or found guilty by a court*
- 42 *having jurisdiction over juveniles of a sexual offense listed in*
- 43 *subparagraph 19 of paragraph (d).*



1 ↪ The term includes, but is not limited to, a sexually violent
2 predator or a nonresident sex offender who is a student or worker
3 within this State.

4 (d) "Sexual offense" means any of the following offenses:

5 (1) Murder of the first degree committed in the perpetration
6 or attempted perpetration of sexual assault or of sexual abuse or
7 sexual molestation of a child less than 14 years of age pursuant to
8 paragraph (b) of subsection 1 of NRS 200.030.

9 (2) Sexual assault pursuant to NRS 200.366.

10 (3) Statutory sexual seduction pursuant to NRS 200.368.

11 (4) Battery with intent to commit sexual assault pursuant to
12 NRS 200.400.

13 (5) An offense involving the administration of a drug to
14 another person with the intent to enable or assist the commission
15 of a felony pursuant to NRS 200.405, if the felony is an offense
16 listed in this paragraph.

17 (6) An offense involving the administration of a controlled
18 substance to another person with the intent to enable or assist the
19 commission of a crime of violence pursuant to NRS 200.408, if the
20 crime of violence is an offense listed in this paragraph.

21 (7) Abuse of a child pursuant to NRS 200.508, if the abuse
22 involved sexual abuse or sexual exploitation.

23 (8) An offense involving pornography and a minor
24 pursuant to NRS 200.710 to 200.730, inclusive.

25 (9) Incest pursuant to NRS 201.180.

26 (10) Solicitation of a minor to engage in acts constituting
27 the infamous crime against nature pursuant to NRS 201.195.

28 (11) Open or gross lewdness pursuant to NRS 201.210.

29 (12) Indecent or obscene exposure pursuant to
30 NRS 201.220.

31 (13) Lewdness with a child pursuant to NRS 201.230.

32 (14) Sexual penetration of a dead human body pursuant to
33 NRS 201.450.

34 (15) Luring a child or a person with mental illness
35 pursuant to NRS 201.560, if punished as a felony.

36 (16) An attempt or conspiracy to commit an offense listed
37 in subparagraphs 1 to 15, inclusive.

38 (17) An offense that is determined to be sexually motivated
39 pursuant to NRS 175.547 or 207.193.

40 (18) An offense committed in another jurisdiction that, if
41 committed in this State, would be an offense listed in this
42 paragraph. This subparagraph includes, but is not limited to, an
43 offense prosecuted in:

44 (I) A tribal court.



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1 (II) A court of the United States or the Armed Forces of
2 the United States.

3 (19) An offense of a sexual nature committed in another
4 jurisdiction, whether or not the offense would be an offense listed
5 in this paragraph, if the person who committed the offense resides
6 or has resided or is or has been a student or worker in any
7 jurisdiction in which the person is or has been required by the
8 laws of that jurisdiction to register as a sex offender because of the
9 offense. This subparagraph includes, but is not limited to, an
10 offense prosecuted in:

11 (I) A tribal court.

12 (II) A court of the United States or the Armed Forces of
13 the United States.

14 (III) A court having jurisdiction over juveniles.

15 ↪ The term does not include an offense involving consensual
16 sexual conduct if the victim was an adult, unless the adult was
17 under the custodial authority of the offender at the time of the
18 offense, or if the victim was at least 13 years of age and the
19 offender was not more than 4 years older than the victim at
20 the time of the commission of the offense.

21 **Sec. 2.** The amendatory provisions of this act apply to any
22 person who is subject to the provisions of NRS 213.1214 on or after
23 October 1, 2011, whether or not the person was convicted before, on
24 or after October 1, 2011.

