

SENATE BILL NO. 104—COMMITTEE ON JUDICIARY

FEBRUARY 11, 2013

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing parole. (BDR 16-241)

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 parole; repealing the requirement for prisoners convicted of certain sexual offenses to be evaluated by a panel before their parole is granted or continued; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law: (1) prohibits the State Board of Parole Commissioners from granting or continuing the parole of a prisoner convicted of certain sexual offenses unless a panel first evaluates the prisoner to determine the prisoner's likelihood to reoffend in a sexual manner; and (2) authorizes the Board to require an evaluation of such a prisoner if the evaluation may assist the Board in determining whether parole should be granted or continued. (NRS 213.1214) This bill repeals the requirement for such evaluations.

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

Section 1. NRS 213.1099 is hereby amended to read as follows:

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

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

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



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

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

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

(e) Any documents or testimony submitted by a victim notified pursuant to NRS 213.131.

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

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

(a) Recent misconduct in the institution, and 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.097 until the Central Repository for Nevada Records of Criminal History has been provided an opportunity to give the notice required pursuant to NRS 179D.475.

Sec. 2. NRS 213.1214 is hereby repealed.

Sec. 3. This act becomes effective on July 1, 2013.



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TEXT OF REPEALED SECTION

213.1214 Evaluation of prisoners by panel before grant or continuation of parole; panel to adopt standards of assessment; immunity; regulations; duties of panel; conduct of meetings of panel.

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

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

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

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

↪ evaluates the prisoner, within 120 days before a hearing to consider granting or continuing his or her parole, using a currently accepted standard of assessment to determine the prisoner's likelihood to reoffend in a sexual manner. The panel shall provide a report of its evaluation to the Board before the hearing.

2. The Board may require the panel to conduct an evaluation of a prisoner who is a sex offender if an evaluation may assist the Board in determining whether parole should be granted or continued. The panel shall provide a report of its evaluation to the Board before the hearing to consider granting or continuing the prisoner's parole.

3. This section does not create a right in any prisoner to be evaluated or reevaluated more frequently than the prisoner's regularly scheduled parole hearings or under a current or previous standard of assessment and does not restrict the panel from conducting additional evaluations of a prisoner if such evaluations may assist the Board in determining whether parole should be granted or continued. No cause of action may be brought against the State, its political subdivisions, or the agencies, boards, commissions, departments, officers or employees of the State or its political subdivisions for evaluating, not evaluating or considering or relying on an evaluation of a prisoner, if such decisions or actions



are made or conducted in compliance with the procedures set forth in this section.

4. The panel shall adopt regulations pertaining to the evaluation of prisoners subject to the provisions of this section to determine a prisoner's risk to reoffend in a sexual manner. The regulations must be adopted in accordance with the provisions of chapter 233B of NRS and must be codified in the Nevada Administrative Code.

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

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

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

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

6. The panel shall:

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

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

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

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

(a) Sexual assault pursuant to NRS 200.366.

(b) Statutory sexual seduction pursuant to NRS 200.368.

(c) Battery with intent to commit sexual assault pursuant to NRS 200.400.

(d) Abuse or neglect of a child pursuant to NRS 200.508, if the abuse involved sexual abuse or sexual exploitation and is punished as a felony.

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

(f) Incest pursuant to NRS 201.180.

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

(h) Open or gross lewdness pursuant to NRS 201.210.



- (i) Indecent or obscene exposure pursuant to NRS 201.220.
- (j) Lewdness with a child pursuant to NRS 201.230.
- (k) Sexual penetration of a dead human body pursuant to NRS 201.450.
- (l) Luring a child or a person with mental illness pursuant to NRS 201.560, if punished as a felony.
- (m) An attempt to commit an offense listed in paragraphs (a) to (l), inclusive.
- (n) An offense that is determined to be sexually motivated pursuant to NRS 175.547.
- (o) Coercion or attempted coercion that is determined to be sexually motivated pursuant to NRS 207.193.

9. The Board may adopt by regulation the manner in which the Board will consider an evaluation prepared pursuant to this section in conjunction with the standards adopted by the Board pursuant to NRS 213.10885.

10. Meetings of a panel pursuant to this section must be conducted in accordance with the provisions of chapter 241 of NRS.

11. As used in this section:

(a) "Current term of imprisonment" means one or more sentences being served concurrently or consecutively with the sentence first imposed.

(b) "Reoffend in a sexual manner" means to commit any offense listed in subsection 8.

(c) "Sex offender" means a person who, after July 1, 1956, is or has been:

- (1) Convicted of a sexual offense; or
- (2) Adjudicated delinquent or found guilty by a court having jurisdiction over juveniles of a sexual offense listed in subparagraph 19 of paragraph (d).

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

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

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

(2) Sexual assault pursuant to NRS 200.366.

(3) Statutory sexual seduction pursuant to NRS 200.368.

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

(5) An offense involving the administration of a drug to another person with the intent to enable or assist the commission of



a felony pursuant to NRS 200.405, if the felony is an offense listed in this paragraph.

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

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

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

(9) Incest pursuant to NRS 201.180.

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

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

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

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

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

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

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

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

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

(I) A tribal court.

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

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

(I) A tribal court.

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

(III) A court having jurisdiction over juveniles.

➔ The term does not include an offense involving consensual sexual conduct if the victim was an adult, unless the adult was under the



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custodial authority of the offender at the time of the offense, or if the victim was at least 13 years of age and the offender was not more than 4 years older than the victim at the time of the commission of the offense.

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