

BOARD OF PAROLE HEARINGS
Executive Board Meeting
Minutes
Monday, October 14, 2013

Meeting called to order at 1:02 p.m.

Roll Call: Commissioners Anderson, Fritz, Garner, Guerrero, Labahn, Peck, Roberts, Singh, Turner, Montes, and Zarrinam were present. Commissioner Richardson was not present.

CONSENT CALENDAR

Comments and clarification regarding meeting minutes of September 16 and 17, 2013:
No comments.

Lifer Hearing Backlog Report: No comments.

Public comment on Consent Calendar: No comments.

Commissioner TURNER made a motion to approve the consent calendar. The motion was seconded by Commissioner ROBERTS. The motion carried unanimously.

REPORTS AND PRESENTATIONS

Report from Executive Officer, Jennifer Shaffer

SHAFFER reported that the board is conducting more hearings using three-member panels, so there may be more instances involving decisions in which the decision of the panel is not unanimous. With respect to dissenting votes, she announced that she issued a memorandum that gives guidance to presiding commissioners on how to record dissenting votes on the issues of suitability, term calculations, and denial length. It was suggested that presiding commissioners identify on the record the fact that there is a dissenting vote, identify the dissenting member of the panel, as well as the issue about which the member dissented.

SHAFFER also summarized a proposal to establish a new method of appointing attorneys to represent inmates at hearings, which was the subject of a recent statewide conference call with inmate counsel. Under the new method, many aspects of which are still under consideration, it is anticipated that panels of attorneys will be established to cover specific regions in the state. Counsel may sign up for more than one panel and their status will be classified as "active" or "inactive." The names of active and inactive panel members will be published on the website. There will be a process for removing attorneys who fail to meet the Board's expectations about accepting work, punctuality, etc. For example, it is suggested that if an attorney declines to accept an appointment on three occasions over a specified period of time, or is more than 15 minutes late on multiple occasions, he or she will be removed from the "active" list of attorneys for that panel. SHAFFER stated that removal from one panel would not automatically lead to removal from other panels. The process is modeled upon the system used by courts to appoint

attorneys for indigent defendants. The method of selecting attorneys is a matter of continuing discussion. SHAFFER encouraged input from all stakeholders. It is expected that the process will be finalized in November and to start panel enrollment in December.

SHAFFER announced the mandatory full-day training for inmate counsel will take place on Wednesday, October 16, 2013, in Sacramento, and Friday, October 18, 2013, in Diamond Bar.

SHAFFER indicated that there has been considerable feedback about a recently proposed policy governing audio/video conferencing at hearings. Specifically, some District Attorneys' Offices and victim advocacy groups have expressed concern. SHAFFER emphasized that although the policy requires victims and victim next-of-kin to submit requests 14 days in advance of a hearing, it is the Board's intention to work to ensure that victims are able to participate in hearings via audio or video conferencing, no matter when the request is received. This topic will remain under consideration.

On other matters, SHAFFER reported that reply briefs in the *Gilman v. Brown*, case are being filed and that it is expected the court will issue its decision in late October. The order of the three-judge panel in the *Coleman/Plata* case has been stayed pending negotiations between the parties. In addition, inmate "Petition to Advance" forms are being scanned into the Electronic Records Management System (ERMS), and the board's plan to electronically upload hearing recordings is progressing. This process will eventually eliminate the problem in the future of hearing tapes being lost.

SHAFFER reported the proposal to end the board's advisory committees. It has proven extremely difficult to incorporate committee work with commissioners' other responsibilities, given their diverse geographical locations on any given day. The timing of this proposal is good, as the board recently had two commissioners leave and gained two new commissioners so committee membership needed to be addressed. In addition, with the board's recent transition to using full-time deputy commissioners for parole suitability hearings, there was a need to incorporate deputy commissioners into the process. The work of the committees will continue through internal working groups, to which it is expected that deputy commissioners will make a significant contribution. SHAFFER announced it is likely that Board meetings will become longer in duration as a result of work previously considered by advisory committees will now be presented to the full board. It is expected that this proposal will be formally presented to the Board for adoption at next month's meeting.

Report from Chief Counsel, Howard Moseley

Proposed Revisions to Administrative Directive Regarding Deportation Orders

Kara HOUSTON, staff attorney, presented the proposed Administrative Directive 2013-05 regarding deportation orders.

MOSELEY explained that following the *In re Andrade* decision, an inmate may not be required to submit parole plans in California if deportation is near certainty. MOSELEY added that the directive lists countries that do not have an extradition treaty with the United States. If no such treaty exists, deportation to the country in question is extremely unlikely. In such cases, panels

should review the inmate's parole plans in California. The proposed Administrative Directive will come back before the Board for adoption at the November meeting.

Proposed Administrative Directive Regarding Inmate Presentation of Documents, Pursuant to California Code of Regulations, title 15, section 2249

MOSELEY stated that the proposed Administrative Directive 2013-06 gives guidance to panels on how to address an inmate's submission of voluminous documents at hearings. He confirmed that inmates have the right under California Code of Regulations, title 15, section 2249 to submit brief, pertinent written material. Commissioners may request the documents be summarized. MOSELEY emphasized that it is unnecessary to stop or postpone a hearing in order to review documentation. The proposed Administrative Directive will come back before the Board for adoption at the November meeting.

Discussion Regarding Tours of Transitional Housing Facilities, led by Commissioner Montes

Commissioner MONTES reported that most commissioners have visited at least one facility. She stated that a form has been drafted for commissioners to use when gathering information about a particular facility. The form records information such as funding, staffing levels, training and the nature of services available to parolees.

Commissioner LABAHN suggested that the form might include information about the facility's experience in dealing with former life prisoners. Commissioner ANDERSON suggested that the form include information about the extent of community support for the facility. SHAFFER stated that the form's purpose is to be a template for commissioners to use on visits to transitional housing facilities.

OPEN COMMENTS

BPH Commissioners – Agenda Items for Future Meetings: None

Public Comments

VANESSA NELSON-SLOANE, Life Support Alliance, expressed concern that some inmates are required to give an immediate answer when offered the opportunity to participate in newly formed long-term offender programs. She is concerned that some of the programs may conflict with an inmates' Prison Industry Authority jobs and she recommends that the programs be offered without coercion. She also recommended that the Board continue to have the public comment segment of its meeting at the end of the Board's meetings, and not be moved to the beginning of the Board's agenda as others have recently requested.

SUSAN GARIBAY, spoke on behalf of an inmate at Avenal State Prison who was denied parole on September 25, 2013. MOSELEY indicated that the matter was within the decision review period and that he would discuss the review process with Ms. GARIBAY informally.

Referral to consider an order for rescission hearing, pursuant to California Code of Regulations, Title 15, section 2450 et seq.

D. ACEVES, SALVADOR H-73423

Jacqueline LUNG, inmate's friend, requested that a rescission hearing not be ordered.

Referral by the Governor for review of parole decision by the full board, pursuant to Penal Code section 3041.1 and California Code of Regulations, Title 15, section 2044.

E. RUGGE, Jesse T-69730

Deborah SNOWDEN, inmate's mother, supported parole stating that her son has taken courses while in prison, has had no negative write-ups, and will counsel youth and continue his education.

Angela MOFFAT, inmate's fiancée, stated her support for the parole of the inmate.

Scott SNOWDEN, inmate's step-father, asked the Board to uphold the parole grant.

Chris WARME, inmate's cousin, supported parole stating that the inmate was a teenager at the time of the crime and has been a model prisoner.

Marsha BOUEY, inmate's aunt, supported parole stating that the inmate has remorse for his crime and accepts full responsibility.

Charles CARBONE, inmate's attorney, provided additional support letters and stated that the parole grant should stand.

Ron ZONEN, Santa Barbara County District Attorney's Office, prosecuted the case, detailed the life crime, and opposed parole.

Susan MARKOWITZ, victim's mother, described the impact of the crime, the family's grief, and opposed parole.

Jeff MARKOWITZ, victim's father, also opposed parole.

F. PRINCIC, Karl K-28046

Ronald SHERMAN, inmate's friend, recommended that the parole grant stand.

DISCUSSION ITEMS

Comments and Clarification Regarding Correctional Rehabilitation Programs Advisory Committee Meeting Minutes of April 15, 2013 and July 15, 2013

Commissioner ANDERSON invited Commissioners MONTES, PECK, LABAHN and SINGH, members of the Correctional Rehabilitation Programs Advisory Committee, to consider adopting the minutes of the committee’s meetings on April 15, 2013 and July 15, 2013.

Commissioner PECK moved to adopt the April minutes and was seconded by Commissioner SINGH. Commissioner LABAHN moved to adopt the July minutes and was seconded by Commissioner PECK. Both motions were carried unanimously.

OPEN COMMENTS

BPH Commissioners - Agenda Items for Future Meetings: None

Public Comments

Vanessa NELSON-SLOANE, Life Support Alliance, expressed appreciation for the Board’s openness and enhanced communication, but she is disappointed about the Board replacing its advisory committees with internal workgroups, as it may reduce the board’s overall transparency.

Meeting recessed at 11:12 a.m. until Tuesday, October 15, 2013, at 1:30 p.m.

**BOARD OF PAROLE HEARINGS
Executive Board Meeting
Minutes
Tuesday, October 15, 2013**

Meeting reconvened and called to order at 1:33 p.m.

Roll Call: Commissioners Anderson, Fritz, Garner, Guerrero, Labahn, Peck, Roberts, Singh, Turner, Montes, and Zarrinnam were present. Commissioner Richardson was not present.

PRESENTATIONS

Office of Victim Survivor Rights and Services Program Update

Katie JAMES, Staff Services Manager, Office of Victim Survivor Rights and Services, gave an overview of the services that the Office provides to victims and survivors. She described the

office's role in providing information, collecting restitution, providing funds for attendance at parole suitability hearings, and support at the hearings.

Jennifer SHAFFER, Executive Officer, expressed appreciation for the collaborative relationship the board has with the Office of Victim and Survivor Rights and Services and thanked JAMES for her presentation.

Parole Outpatient Clinics

Robert STORMS, Chief Clinical Program Administrator, Division of Adult Parole Operations, outlined the operation of the program and the services available to parolees.

SHAFFER thanked STORMS for his presentation and requested that he provide the board with a contact list for Transitional Case Management Program staff. STORMS agreed to provide the list.

Rescission Hearing Procedures Update

Howard MOSELEY, Chief Counsel, clarified the reasons for scheduling rescission hearings and distributed flow charts illustrating the steps involved in the process.

SHAFFER thanked MOSELEY for his presentation.

PUBLIC COMMENTS

Vanessa NELSON-SLOANE, Life Support Alliance, stated that a substantial amount of an inmate's prison earnings are deducted to pay restitution. She would like to give her clientele a list of Transitional Case Management Program staff. In response to a Commissioner's comment regarding his experience with MediCal fraud and the impending increase in the number of parolees who will be covered by MediCal beginning in 2014, she stated that she does not believe that MediCal fraud will be a significant issue for life-term parolees, nor should it be considered as it does not relate to public safety.

Jill KLINGE, Alameda County District Attorney's Office, recommended that rescission hearings should not be conducted by panel members whose grant of parole is the subject of the hearing. She also stated an interest in knowing more about the option for postponing release and thinks a rescission hearing due to a pending prosecution would be a rare occurrence and would present a number of questions.

Meeting recessed at 4:04 p.m. until Wednesday, October 16, 2013, at 9:00 a.m.

**BOARD OF PAROLE HEARINGS
Executive Board Meeting**

Minutes
Wednesday, October 16, 2013

Meeting reconvened from Tuesday, October 15, 2013, and called to order at 9:06 a.m.

Roll Call: Commissioners Anderson, Fritz, Garner, Guerrero, Labahn, Peck, Roberts, Singh, Turner, Montes, and Zarrinnam were present. Commissioner Richardson was not present.

PRESENTATION

Americans with Disabilities Act (ADA) Issues

Katie RILEY, Senior Staff Attorney, Heather MCCRAY, Staff Attorney, and Vince CULLEN, Correctional Administrator gave an overview of ADA issues and distributed a handout. The presentation focused on ADA definitions, the importance of effective communication and the role of the attorney in the hearing process.

PUBLIC COMMENTS

Vanessa NELSON-SLOANE, Life Support Alliance, drew the Board's attention to the differences in American Sign Language certifications, and specifically her concern that sign language interpreters are not certified for legal proceedings. She also questioned which prisons have available large print materials and emphasized the importance of setting aside a quiet place in the institution for attorneys to interview their clients.

Rana ANABTAWI, Prison Law Office, emphasized the importance of inmate attorneys exploring the circumstances of any rules violations reports. She expressed concern about the impact of inmates' medical conditions upon their ability to participate in self-help programming.

Meeting recessed at 11:55 a.m., until Wednesday, October 16, 2013, at 1:30 p.m.

BOARD OF PAROLE HEARINGS
Executive Board Meeting
Minutes
Wednesday, October 16, 2013

Meeting reconvened and called to order at 1:32 p.m.

Roll Call: Commissioners Anderson, Fritz, Garner, Guerrero, Labahn, Peck, Roberts, Singh, Turner, Montes, and Zarrinnam were present. Commissioner Richardson was not present.

PRESENTATIONS

Senate Bill 260 (SB260)

Heather MCCRAY, Staff Attorney, described the changes to the parole hearing process enacted by the bill. She provided a handout, reviewed relevant case law, and explained initial consultations and parole suitability hearings for youth offenders. She stated that the bill requires the Board to give great weight to the hallmark features of youth when determining suitability and denial lengths.

Jennifer SHAFFER, Executive Officer, stated that documentation hearings for the remainder of 2013 have been cancelled. Working groups will be set up to implement the changes resulting from the bill. The Board has 18 months from January 2014 to conduct parole hearings for youth offenders and is working to prioritize the hearings. There will be changes to LSTS and the Forensic Assessment Division will incorporate the bill's provisions in its risk assessments.

Howard MOSELEY, Chief Counsel, emphasized that the bill's changes do not come into effect until January 1, 2014, and that hearings scheduled up to that date will be conducted under the present law. Inmates qualifying under the bill will not be scheduled after January 1, 2014, for a youth offender parole suitability hearing in addition to their regularly-scheduled hearing.

MOSELEY encouraged stakeholders to notify the Legal Division early of any challenge to the characterization of an inmate's case. The denial lengths under Marsy's law will continue to apply.

Use of Confidential Information at Parole Suitability Hearings

Tiffany SHULTZ, Senior Staff Attorney, and Kara HOUSTON, Staff Attorney, summarized the provisions of California Code of Regulations, title 15, sections 2235, 2247 and 3321. SHULTZ stated that the Board is not the keeper of an inmate's central file and therefore does not have the power to designate information as confidential. HOUSTON discussed relevant case law and stated that there is no authority for the proposition that the Board has the right to disclose confidential information to any party.

MOSELEY stated that inmates having a grievance about confidential information should address their concerns to the California Department of Corrections and Rehabilitation.

LSTS Enhancements Update

Christine BUFFLEBEN, Parole Agent II, outlined recent enhancements to Board's Lifer Scheduling and Tracking System (LSTS).

PUBLIC COMMENTS

Vanessa NELSON-SLOANE, Life Support Alliance, expressed concern about the ability to remedy inaccuracies in confidential information maintained in inmates' central files.

Meeting recessed at 3:32 p.m. until Thursday, October 17, 2013, at 9:00 a.m.

**BOARD OF PAROLE HEARINGS
Executive Board Meeting
Minutes
Thursday, October 17, 2013**

Meeting reconvened and called to order at 9:03 a.m.

Roll Call: Commissioners Anderson, Fritz, Garner, Guerrero, Labahn, Peck, Roberts, Singh, Turner, Montes, and Zarrinnam were present. Commissioner Richardson was not present.

PRESENTATIONS

Proposed Modification to Comprehensive Risk Assessments

Dr. Cliff KUSAJ, Chief Psychologist, Forensic Assessment Division, recommended changes in the methodology and format of risk assessments. He proposed that the primary measure of risk should be the Historical/Clinical/Risk Management (HCR-20 III). The Psychopathy Checklist-Revised (PCL-R) should no longer be scored as a stand-alone measure. Its content is reflected in some of the factors contained in the HCR-20 III. KUSAJ recommended that administration of the Level of Service/Case Management Inventory (LS/CMI) should be discontinued. It is less predictive than other measures of the risk of future violence and is less suitable for assessing the lifer population.

KUSAJ recommended changes to the communication of risk assessments. He stated that there is a danger of misunderstanding the present method of using percentage ranges, with levels of confidence intervals. He recommended that the method be discontinued. He also recommended that the five-category system of risk assessment be discontinued, in favor of a three-category system. There is little research on five-category systems and there is a danger of the distinctions between the five categories becoming ill-defined. KUSAJ stated that Low, Moderate, and High risk categories would carry greater predictive validity and would make communication of risk assessment easier. The Static-99R assessment of risk of sexual violence would still be used.

KUSAJ stated that the goal is to improve the readability of risk assessments. There should be a greater emphasis on risk analysis, rather than setting out historical detail and personal information.

KUSAJ also recommended that Comprehensive Risk Assessments should take place at three-year intervals. Subsequent Risk Assessments should be eliminated.

SHAFFER commented that the Board would be convening a series of stakeholder meetings to discuss further Dr. Kusaj's recommendations and that the issues addressed would be presented again to the board at a future board meeting.

Overview of Term Calculations

Katie RILEY, Senior Staff Attorney, reviewed the regulations on calculating an inmate's release date, upon being granted parole. She dealt with the relevance of the life term start date, selecting a base term and adding enhancements. She described the method of awarding post-conviction credit. Susan BOOTH, Staff Attorney, dealt with issues relating to awarding credit at progress hearings.

Long-Term Offenders Re-Entry Project

Maritza RODRIGUEZ, Chief Deputy Parole Administrator, Division of Adult Parole Operations, provided an overview of the Long-Term Offenders Re-Entry Project, which has been established to address the substantial increase in the number of former life-term inmates who have been released on parole. She stated that there are now approximately 1600 such parolees. RODRIGUEZ provided a handout outlining the goals and services of the project.

Confidentiality of Medical Information

Howard MOSELEY, Chief Counsel, gave an overview of an inmate's right to obtain their health information and the limitations upon the right. He explained the scope of the Board's authority to obtain inmates' health care information and explained the restrictions on the use of the information. MOSELEY also explained the means by which a District Attorney's Office or inmate's counsel may request health care information.

PUBLIC COMMENT

Vanessa NELSON-SLOANE, Life Support Alliance, welcomed the Long-Term Offenders Re-entry Project. She questioned whether the Board lacks the authority to order disclosure of confidential information.

Jill KLINGE, Alameda County District Attorney's Office, expressed concern about the limited information available to District Attorneys' Offices in Penal Code section 1170(e) referrals.

Meeting adjourned at 11:25 a.m.

Board of Parole Hearings
Scheduled and Backlog Hearings Report
Penal Code section 3041(d)
November, 2013

