

**BOARD OF PAROLE HEARINGS**  
**Executive Board Meeting**  
**Tuesday, October 21, 2014**

**Meeting called to order at 10:05 a.m.**

**Roll Call:** Commissioners Anderson, Fritz, Garner, Labahn, Montes, Peck, Richardson, Roberts, Singh, Turner and Zarrinnam present.

**CONSENT CALENDAR**

Chief Counsel, HOWARD MOSELEY stated that items on the consent calendar are considered routine and non-controversial. The items are approved by one motion, unless a member of the Board requests that an item be considered separately from the consent calendar. MOSELEY referred to the case of DANIEL SCOTT [J-42897], which has been included on the consent calendar. The institution did not provide the required statutory notice of the hearing. MOSELEY stated that the motion is to vacate the panel's decision so that notice of the re-hearing can be given to all parties. MOSELEY invited the Board to consider the motion as part of a single vote on the consent calendar.

**Public Comment on the Consent Calendar**

ALLICIA LUCICH, victim's daughter, opposed granting parole to SCOTT.

VANESSA NELSON-SLOANE, Life Support Alliance, requested a correction to the minutes of the September 16, 2014 meeting. She stated that GAIL BROWN spoke in a personal capacity on behalf of CHARLES JENNINGS [C-01249] and not as a representative of Life Support Alliance.

MOSELEY invited the Board to accept the September, 2014 minutes, subject to NELSON-SLOANE's correction.

Commissioner ROBERTS moved to approve the consent calendar, including the amended September, 2014 minutes and the motion to vacate the panel's decision in the case of DANIEL SCOTT. Commissioner TURNER seconded the motion, which was carried unanimously.

**REPORTS AND PRESENTATIONS**

**Report from Executive Officer, Jennifer Shaffer**

No report.

### **Report from Chief Counsel, Howard Moseley**

MOSELEY stated that the Board's decisions at this meeting will not be posted on the website until approximately Noon tomorrow. This is the result of staff participation in a training event. It is anticipated that the results will be posted in the lobby today, but that it will take place after business hours.

MOSELEY introduced two proposed administrative directives and invited stakeholder feedback.

Administrative Directive 2014-04 confirms that victims' impact statements are not subject to the 10-day rule governing submission of documents before a hearing. The directive reviews the legal authority and concludes that the Legislature did not intend that victims' statements be subject to the rule. Victims have a right to be heard last and may not be questioned by the inmate or their attorney. The directive states that victims' statements shall not be excluded due to the 10-day rule.

Administrative Directive 2014-05 defines the written materials that make up the record at a parole suitability hearing. MOSELEY stated that an inmate's entire central file is part of the record, unless the panel determines that a document is unreliable or irrelevant. The hearing packet, whether in electronic form or hard copy, is also part of the record. MOSELEY reminded the Board that Administrative Directive 2013-06 addresses the issue of documents submitted by the inmate at the hearing. Subject to the 10-day rule, documents submitted by the District Attorney's Office are part of the written record. Victims' impact statements are part of the record, no matter when submitted.

### **Report from Chief Deputy of Program Operations, Sandra Maciel**

MACIEL reported that inmate attorney orientation sessions took place in Sacramento on October 6, 2014 and in Diamond Bar on October 13, 2014. The sessions were open to the public and over 50 people attended. The sessions included segments on hearing preparation, legal processes, legal updates, WatchDox, administrative processes, and Americans with Disabilities Act issues.

MACIEL stated that the Board is now responsible for sending notices to hearing participants, commencing with hearings scheduled in January, 2015. The transition has proceeded smoothly and, to date, 549 notices have been sent for hearings in the week of January 5, 2015, 596 notices for the week of January 12, 2014 and 203 notices for the week of January 19, 2014. Board staff completes a declaration of service for all notices sent.

MACIEL stated that commissioners will be trained on using digital recorders, the primary purpose of which is to record confidential portions of hearings. They can also be used as a backup to other recording equipment. The recorder does not have a media card but has enough memory to hold the recording of a day's hearings. Its USB port can be used for recharging.

MACIEL stated that commissioners will receive additional WatchDox training. The Board will be compiling the electronic hearing packets for hearings commencing January 5, 2015. Commissioners, deputy commissioners, district attorneys and inmate counsel will receive the packets electronically.

SHAFFER thanked MACIEL and her staff for their work in setting up the electronic packet system.

### **Electronic Packets for BPH Hearings, presented by Executive Officer, Jennifer Shaffer**

SHAFFER stated that the packets for hearings scheduled from January, 2015 onwards will be distributed electronically. Commissioners, deputy commissioners, district attorneys, and inmate counsel will be able to access the packets beginning October 31, 2014. The aim of the system is to improve efficiency and allowed the State to reduce the pre-hearing processes from 10 months to just over five months. The hearing packets contain core documents and do not replace the inmate's central file.

The packets will include all CDC-115 rules violation reports, CDC-128A counseling chronos, work supervisor reports and a list of confidential documents. The confidential section of the central file will not be included and panels should review that information through the ERMS system. A list of rules violations will only be included if there is one in the central file. The packets will not contain risk assessments before 2009. Risk assessments completed after January 1, 2009 will be included.

The WatchDox system will be used to distribute the packets. When a packet has been uploaded to the WatchDox, an e-mail alert will be sent to authorized hearing participants. The packets are confidential and the system has a security feature that makes the packets unreadable if forwarded to unauthorized computers.

SHAFFER stated that the Board has obtained state-wide clearance for district attorneys and inmate counsel to bring their laptops into the institutions for purposes of Board hearings. The institutions do not have Wi-Fi and it will not be possible to connect laptops to CDCR's data systems. It is, therefore, essential that inmate attorneys and prosecutors download the packets to their laptops in order to view them at the hearing. SHAFFER confirmed that clearance is limited to hearings. Inmate counsel, for example, will not be permitted to bring laptops to interviews with their clients.

## **EN BANC REFERRALS**

**Referral pursuant to Penal Code section 1170(e) to determine eligibility for recommendation to sentencing court for recall of sentence.**

**A. ASHLEY, SERAL D-48872**

LYNDA ST. GERMAIN, inmate's sister-in-law, SISSY ST. GERMAIN, inmate's sister, MICHAEL ST. GERMAIN, inmate's brother, and PAULINE ST. GERMAIN, inmate's sister, supported a recommendation for recall of sentence.

ALAN VAN STRALEN, Sacramento County District Attorney's Office, opposed a recommendation for recall of sentence.

**Referral by the Chief Counsel pursuant to California Code of Regulations, title 15, section 2042, to assure complete, accurate, consistent and uniform decisions and the furtherance of public safety.**

**B. HARPER, DONALD E-26928**

MELODY SCHALLON, San Francisco County District Attorney's Office, submitted that the panel's decision should be affirmed.

**C. IVORY, DARRYL C-42249**

No speakers.

**D. KOUSED, DEBORAH W-70782**

No speakers.

**E. MACIAS, JESUS J-11795**

LAURA WATTS, Riverside County District Attorney's Office, submitted that a re-hearing should be ordered.

**F. MALDONADO, SABINO H-85258**

No speakers.

**G. OATES, GERALD C-43300**

No speakers.

**H. SMITH, VICTOR**

**C-91075**

TOM WENKE, Los Angeles County District Attorney's Office, submitted that a re-hearing should be ordered.

**Referral by the Governor pursuant to Penal Code section 3041.1 and California Code of Regulations, title 15, section 2044 to request review of a parole decision by the full Board.**

**I. FLEENOR, RUSSELL**

**D-53410**

CHRISTINE FLEENOR, inmate's wife, RON FLEENOR, inmate's brother, MARION SCHLUETER, inmate's friend, and KACEY PEYER, representative of inmate's prospective employer, supported his grant of parole.

**J. MORENO, JOHN**

**T-84131**

No speakers.

**PUBLIC COMMENT**

VANESSA NELSON SLOANE, Life Support Alliance, regretted that the presentation on drug and contraband interdiction was scheduled for a closed session. She stated that there are deficiencies in the procedures used at institutions for detecting drugs.

**Meeting recessed at 11:18 a.m., to reconvene at 2:00 p.m. on October 21, 2014.**

**BOARD OF PAROLE HEARINGS**  
**Executive Board Meeting**  
**Tuesday, October 21, 2014**

**Meeting reconvened at 2:02 p.m.**

**Roll call:** Commissioners Anderson, Fritz, Garner, Labahn, Montes, Peck, Richardson, Roberts, Singh, Turner and Zarrinnam present.

**PRESENTATIONS**

**Overview of BPH Attorney Orientation by Chief Counsel, Howard Moseley**

MOSELEY summarized the inmate attorney orientations that were held on October 6, 2014 in Sacramento and on October 13, 2014 in Diamond Bar. The next orientations will probably take place in September, 2015 in Northern and Southern California. The October, 2014 orientations included sessions on hearing preparation, petitions to advance hearing, and administrative review. There was also a legal update, including a review of the three-judge panel order. The afternoon was dedicated to Americans with Disabilities Act (ADA) issues.

MOSELEY stated that one objective of the Board's panel attorney appointment process is to ensure that active panel attorneys receive at least one week of hearings per month. Attorneys submitting new applications for a panel will be placed at the bottom of the panel's inactive list. The requirements for panel attorney appointment are that the applicant must be an active member of the California State Bar, must have a clear tuberculosis test, must have current malpractice insurance, must be able to obtain gate clearances for the institutions, must have signed the Board's panel attorney agreement form and must have observed at least six hearings. Attorneys on the inactive list must give annual notice that they wish to remain on the list.

MOSELEY stated that the orientation sessions also addressed the process for removing active attorneys from panels. It was explained that attorneys may be removed for a variety of reasons, including passing on three cases in a year. Removal from one panel does not affect an attorney's status on another panel.

Following the federal court order in *Armstrong*, all attorneys must be trained on ADA issues. They must review the DECS system before meeting with their client. The Board provides annual DECS training. The Board takes seriously any failure to access DECS or to address ADA issues. Attorneys must review their client's central file and meet with the client at least 45 days before the hearing. The Board expects attorneys to be dressed appropriately and to address panels respectfully.

If an attorney is referred to the State Bar and an investigation ordered, he or she will be suspended from panel membership until the investigation is completed. The attorney will be removed from all panels if the State Bar imposes sanctions. An attorney who is charged with a felony will be suspended and removed, if convicted. An attorney who fails to qualify for gate clearance will be suspended for three months, to allow time to resolve the issue. If they fail to qualify after three months, they will be removed from all panels. MOSELEY emphasized that the Board does not control access to the institutions. Attorneys may request to be suspended from a panel. The request must be sent to Executive Officer SHAFFER.

In addition, the orientations covered invoicing issues and some attorneys expressed concern at the rate of payment for their services. MOSELEY noted the concern but stated that the system must stay within its budget. He stated that attorneys should contact the Board as soon as possible if they are unable to attend a hearing because of illness. Repeated tardiness or failure to attend hearings will not be tolerated. This causes severe disruption to a panel's schedule and inconvenience to hearing participants. Repeated failure will result in warning letters and possible removal from a panel. The orientations stressed the importance of inmate attorneys establishing effective communication with their client. They also considered the circumstances justifying a hearing's postponement. MOSELEY stated that, for example, an inmate's stay in hospital for a temporary condition might justify a postponement. However, a permanent condition would not justify a postponement.

**Crime Victims Action Alliance and I-CAN Crime Victims Assistance Network,  
Executive Director, Christine Ward**

WARD gave a Power Point presentation on the history of victims' rights and the services that Crime Victims Action Alliance and I-CAN Crime Victims Assistance Network provide for victims and their families. She also provided information about the impact of crime and the criminal justice system on victims and their families.

**PUBLIC COMMENT**

VANESSA NELSON-SLOANE, Life Support Alliance, welcomed the opportunity to attend the inmate attorney orientations. She suggested that victims' rights groups would find participating in restorative justice sessions with lifer inmates a valuable experience. NELSON-SLOANE cautioned against stereotyping inmates negatively. She stated that inmates work hard to make amends before and after their release from prison.

CYNTHIA FUENTES, sister of deceased inmate ROBERT FUENTES, stated that she and members of her family had attended the meeting on September 16, 2014. They had requested the Board to refer her brother's sentence to the court, with a recommendation for recall. The family were dismayed that the Board declined to do so. She informed the Board that he had died on September 19, 2014. The family maintains that FUENTES had not posed a threat to public safety. She stated that the prison health care system had failed to diagnose her brother's illness at an early, treatable stage.

**BOARD OF PAROLE HEARINGS**  
**Executive Board Meeting**  
**Wednesday, October 22, 2014**

**Meeting called to order at 9:00 a.m.**

**Roll call:** Commissioners Anderson, Fritz, Garner, Labahn, Montes, Peck, Richardson, Roberts, Singh, Turner and Zarrinam present.

**PRESENTATIONS**

**Long Term Offender Pilot Program, Chief of In Prison Programs, Division of Rehabilitative Programs, Kelly Medina**

MEDINA introduced MICHAEL MOTT, who gave a Power Point presentation on the operation and objectives of the Long Term Offender Pilot Program. When questioned, MOTT stated that the project does not prepare inmates for hearings, there is a ratio of 12 inmates to each instructor, and that the program began in February 2014 and is scheduled to continue until February 2016. A regulatory package would then be necessary to continue the program.

**California Parole Supervision and Reintegration Model and Long Term Offender Community Programming, Chief Deputy of Division of Adult Parole Operations (DAPO), Maritza Rodriguez**

RODRIGUEZ gave a Power Point presentation dealing with DAPO's response to the programming needs of parolees. RODRIGUEZ stated that staff has received training on gender responsivity. DAPO recognizes the importance of ensuring women's financial stability following their release from prison. DAPO has adjusted its programming to address the challenges faced by former lifer inmates.

**Lifer Peer Reentry Navigation Network, Elizabeth Kita, Ph.D., LCSW**

KITA stated that, following consultation with stakeholders, a pilot program has been established to address the specific needs of lifer parolees. She gave a Power Point presentation on the operation of the Lifer Peer Reentry Navigation Network, based on an effective Canadian program. In San Francisco, a program named Life After Lifers has been started. There has been extensive collaboration between former life prisoners and parole agents.

**Meeting recessed at 10:25 a.m. and reconvened at 10:45 a.m.**

**Overview of Government Assistance Programs for the Elderly and Disabled,  
Chief Clinical Program Administrator, Division of Adult Parole Operations, Robert  
Storms**

STORMS summarized the health care benefits available to life prisoners who are released on parole. He described the subsidized health insurance program, Covered California. STORM stated that DAPO does not provide in-patient care or medical services. If parolees are ordered to attend the parole outpatient clinic, as a condition of parole, they will be evaluated and, if necessary, referred to other agencies. STORMS summarized the benefits available to veterans and stated that a copy of the Incarcerated Veteran' Guide should be in each institution's library. He also summarized the benefits available through social security and explained that DAPO staff will assist parolees in applying for benefits. In response to questions, STORMS recognized that access to a parole unit might be difficult for some parolees in rural areas who are ordered to visit a Parole Outpatient Clinic. He also stated that DAPO provides parolees with prescribed psychotropic medications and that they are released with a 30-day supply of all other medications, so they have access to their medications while applications for Medi-Cal coverage may be pending. He also indicated that DAPO also has Tele-Med to obtain any required medications.

**PUBLIC COMMENTS**

VANESSA NELSON-SLOANE, Life Support Alliance, stated that parole agents refer lifer parolees to the Parole Outpatient Clinic, to anger management courses, and for medication. Transitional housing facilities also help with those issues. She believes that the Long-Term Offenders Program for parolees is working well, but that the program is not working for inmates in the institutions. It functions at a basic level and fails to address the needs of inmates who are close to securing parole. The course, Date to the Gate, is a useful addition to the program. NELSON-SLOANE expressed concern about pressure being placed on inmates to attend the program.

**Meeting recessed at 11:30 a.m., to reconvene at 1:30 p.m., October 22, 2014.**

**BOARD OF PAROLE HEARINGS**  
**Executive Board Meeting**  
**Wednesday, October 22, 2014**

**Meeting called to order at 1:33 p.m.**

**Roll call:** Commissioners Anderson, Fritz, Garner, Labahn, Montes, Peck, Richardson, Roberts, Singh, Turner and Zarrinnam present.

**Aging in a Forensic Setting, by Dominique Kinney, Ph.D., Senior Psychologist Specialist – Neuropsychologist for the Department of State Hospitals and Co-Director for the PSH Post-Doctoral Fellowship in Neuropsychology**

KINNEY gave a Power Point presentation and provided a handout on the issues arising from the increasing proportion of older inmates in the prison population. She defined older inmate as being over 55 years of age. Incarceration has the effect of accelerating the aging process by approximately 10 years. KINNEY identified the factors contributing to the special needs of older inmates. She outlined the normal aging process and compared it with that seen in older inmates. KINNEY dispelled certain myths about the aging process. She recommended a structured approach to helping older inmates face the challenges of incarceration and release into the community. She also recommended better health care, increased staff training, inmate baseline testing, improved medical release policies and enhanced palliative care programs. KINNEY stated that it is a myth that intelligence declines with age. It remains stable until about 70 years of age. Fluid intelligence, requiring quick responses does decline, but crystallized intelligence improves with age. Another myth is that most people will experience dementia in old age. KINNEY explained the processes leading to dementia. She stated that inmates with the condition face victimization and the increased possibility of disciplinary actions. KINNEY stressed the importance of awareness and understanding. Older inmates tend to need more support and assistance. If they become frustrated, older inmates usually need a longer time to regain their emotional balance.

**Overview of Intimate Partner Battering (IPB), by Parole Agent III, Tammy Jones and Chief Counsel, Howard Moseley**

JONES gave a Power Point presentation defining intimate partner battering, describing the characteristics of battering and highlighting its effects on victims. MOSELEY gave a legal overview of intimate partner battering. He played a video case study which dealt with an inmate's challenge of her original life sentence, based on the retrospective application of IPB laws.

ZARRINNAM referred to a hearing in which an inmate claimed to be an IPB victim but declined to request a postponement to obtain an investigation into the issue. MOSELEY stated that a panel should determine whether an investigation is necessary in every case when the issue is raised, regardless of the inmate's wishes. MOSELEY advised that a panel should establish whether IPB caused the crime or has a significant nexus with it. The length of abuse and the inmate's inability to escape are likely to be relevant factors. A panel must give great weight to a finding that IPB did occur. MOSELEY stated that an investigation presents the panel with the material facts. It is for the panel to make an IPB finding.

### **PUBLIC COMMENT**

VANESSA NELSON-SLOANE, Life Support Alliance, suggested that it is more difficult for men to demonstrate that they were the victims of intimate partner battering. She also questioned whether correctional staff is trained adequately to deal with older inmates.

**Meeting recessed at 4:47 p.m., to reconvene at 9:00 a.m. on Thursday, October 23, 2014.**

**BOARD OF PAROLE HEARINGS**  
**Executive Board Meeting**  
**Thursday, October 23, 2014**

**Meeting reconvened at 9:02 a.m.**

**Roll call:** Commissioners Anderson, Fritz, Garner, Labahn, Montes, Peck, Richardson, Roberts, Singh, Turner and Zarrinnam present.

**PRESENTATIONS**

**Lifer Scheduling and Tracking System (LSTS) Updates, Executive Officer, Jennifer Shaffer and LSTS User Project Manager, Christine Buffleben**

SHAFFER thanked BUFFLEBEN for her contribution to maintaining and updating LSTS. She stated that, previously, LSTS had limited access to CDCR databases. The systems have since been linked, so that changes in the CDCR records are now reflected automatically in LSTS. LSTS has been expanded to include determinately-sentenced inmates. Medical parole cases and cases involving mentally-disordered offenders used to be tracked outside LSTS. They can now be tracked in LSTS.

BUFFLEBEN stated that the entire CDCR population is in LSTS, including condemned inmates and inmates sentenced to life without the possibility of parole. The system calculates the deadline (called the “no later than” (NLT) dates) for hearings. It reviews daily each inmate’s hearing date and sends an alert to scheduling staff, if an inmate’s eligibility date for a hearing changes.

SHAFFER and BUFFLEBEN provided an overview of the various changes to the LSTS system. Topics covered included how the system calculates the timing of an inmate’s initial suitability hearing and consultation, based on his or her eligibility as a lifer, youth offender, or an inmate who is eligible for elderly parole. The system will compare the various applicable eligibility dates and the nearest date controls. The system will also look at a determinately-sentenced inmate’s scheduled release date and if it is within 12 months of the date a hearing would be scheduled, no hearing will be scheduled. They also explained that LSTS now provides crime partner information. If an inmate’s petition to advance his or her hearing is approved, the inmate’s next hearing will be scheduled 150 days after the petition is approved. BUFFLEBEN stated that it is now possible for a LSTS user to view an inmate’s current location and his or her most recent move and there are enhanced offender flags and an inmate’s release date will appear after the grant has been finalized.

SHAFFER stated that pre-hearing procedures have been streamlined. The Board now performs an audit 165 days before a hearing, to identify issues and requirements that may need to be addressed prior to the hearing. The system now electronically informs correctional counselors of any issues that must be addressed before the hearing. Risk assessments are assigned 135 days before the hearing. The decision review period remains at 120 days. ADA issues will be reviewed between 35-40 days and interpreters hired at 30 days.

BUFFLEBEN stated that the inmate's notice of rights is sent at 150 days before the hearing. The Board packets are distributed at 65 days. New workload summary reports have been created. The process for requesting and obtaining gate clearances has been upgraded. The system will also calculate the elder parole date and a flag appears when the date has been reached.

BUFFLEBEN stated that functionality for processing pre-hearing stipulations is now disabled.

**Meeting recessed at 9:48 a.m. and reconvened at 10:05 a.m.**

**Victims' Rights in Parole and Post-Conviction – What are they & Why do they Matter?  
Megan Garvin, Executive Director of National Crime Victim Law Institute and Clinical  
Professor of Law at Lewis and Clark Law School**

GARVIN gave a Power Point presentation and provided a handout. She set out the objectives of the National Crime Victim Law Institute and summarized the development of victims' rights. She described the experiences of victims in the criminal justice system and stated that respecting victims' rights is essential to the system's operation. GARVIN emphasized the importance of a victim's right to be heard, to be informed of actions in their case, and to receive restitution. The victim's rights to privacy and security must also be respected.

GARVIN stated that sufficient notice of proceedings is essential. Communication between agencies is important and victims should be given a clear explanation of parole procedures and outcomes. She stated that victims must be given an opportunity to express their views and their right to privacy must be respected.

GARVIN stated that training in drafting victims' impact statement is important. Victims should be trained in providing panels with information that is relevant to the parole decision.

### **PUBLIC COMMENTS**

VANESSA NELSON-SLOANE, Life Support Alliance, supported training in drafting victims' impact statements. She suggested that the statements should address the issue of the inmate's current dangerousness. NELSON-SLOANE stated Life Support Alliance has assisted two

inmates who have recently been exonerated. She stated that excessive restitution fines and restitution orders can be counter-productive. She stated that training in restorative justice would be beneficial.

**Meeting adjourned at 11:43 a.m.**

Board of Parole Hearings  
Scheduled and Backlog Hearings Report  
Penal Code section 3041(d)  
November, 2014

