

BOARD OF PAROLE HEARINGS
Executive Board Meeting
Monday, July 20, 2015

Meeting called to order at 1:05 p.m.

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

Commissioner ANDERSON confirmed that a majority of currently appointed commissioners are present. ANDERSON asked if any member of the Board had any comments or clarifications regarding the May or June meeting minutes. None were voiced.

Commissioner ANDERSON stated that the backlog report is posted online and asked the Board members if anyone had any comments or clarifications on the backlog report. None were voiced. ANDERSON stated that there were no motions to consider this month for hearings with procedural errors.

Commissioner ANDERSON asked if any member of the public had any comments concerning the consent calendar. None were voiced.

CONSENT CALENDAR

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

REPORTS AND PRESENTATIONS

Report from Executive Officer, Jennifer Shaffer

SHAFFER stated that on July 6, 2015, she and Howard Moseley attended the California District Attorneys Association Conference. She stated that they attended both the parole and the victims' rights committee meetings.

SHAFFER provided a legislative update. Senate Bill 230 is pending before the Legislature. It would codify a portion of the order by the Three-Judge Panel in the *Coleman/Plata* class action litigation. Specifically, it will require inmates who receive a grant of parole to be immediately released once they meet their minimum eligible parole date (MEPD) or their youth parole eligibility date (YEPD), whichever is applicable. The bill would essentially eliminate the need for the Board to calculate terms for inmates. Pursuant to the Three-Judge Panel's order of February 10, 2014, the Board is already mandated to parole certain inmates who have been granted parole but who have a future release date. Senate Bill 230 would codify that practice.

SHAFFER stated that Senate Bill 261 is also pending before the Legislature. Under current law, specified inmates who committed their controlling offense under the age of 18 qualify as youth

offenders. Senate Bill 261 would extend youth offender eligibility to specified inmates who committed their controlling offense when they were under the age of 23. SHAFFER stated that as currently drafted, only indeterminately-sentenced inmates would be immediately eligible for a youth offender hearing. Determinately-sentenced inmates would not be entitled to a hearing until the year 2021, but they would receive a consultation within the first eighteen months.

SHAFFER stated that the monthly status report to the Three-Judge Panel was filed last week. She stated that since the implementation of Senate Bill 260, from January 1, 2014, through June 30, 2015, the Board held 717 youth offender hearings. Those hearings resulted in 204 grants, 440 denials, 71 stipulations to unsuitability, and 2 split votes that required referral to the full Board for further consideration. An additional 343 hearings were scheduled during this time period but were waived, postponed, continued, or cancelled. All available inmates who were immediately eligible for a hearing when Senate Bill 260 took effect on January 1, 2014, have had a hearing scheduled on or before July 1, 2015, as required by Senate Bill 260. SHAFFER stated that all youthful offenders who received a grant prior to January 1, 2014, and who have reached their MEPD or YPED (which is applicable), have been processed for release from their life term by the Board.

SHAFFER stated that with regard to the non-violent second striker population, from January 1, 2015, through June 30, 2015, 2,117 inmates were referred to the Board for review of parole. The Board approved 480 inmates for release and denied release to 472 inmates. SHAFFER stated that many cases are pending review because the 30 day period for written input from inmates, victims, and prosecutors has not yet lapsed. Others are pending review until the inmate is within 60 days of his or her 50-percent time-served date.

SHAFFER stated that with regard to Elderly Parole (inmates over 60 years of age and who have served at least 25 years) from February 11, 2014, through June 30, 2015, the Board held 767 hearings for eligible inmates, resulting in 255 grants, 485 denials, 55 stipulations to unsuitability, and 2 split votes that required referral to the full Board. She stated that an additional 328 hearings were scheduled during this time period but were waived, postponed, continued, or cancelled.

SHAFFER went on to announce that the Board has ten new deputy commissioners who are currently being trained. She stated the Board has also hired six additional FAD psychologists and that very soon they expect to be up to speed on risk assessments. SHAFFER stated that after January 1, 2016, there will be no more subsequent risk assessments, and comprehensive risk assessments will be completed every three years for inmates who have scheduled hearings.

Report from Chief Counsel, Howard Moseley

MOSELEY provided a regulations update, stating that due to criminal justice realignment, some regulations needed to be modified or removed. MOSELEY stated that the Board has received approval for regulations for parole reconsideration hearings, and that the Board is now in the process of updating Title 15 regulations for the Board's website. MOSELEY also stated that the Board will be passing the updated copies of Title 15 to the commissioners within the next month, and hopes to have copies by the next board hearing for deputy commissioners.

MOSELEY stated that the Board has been working on draft regulations for Senate Bill 260, which may require further amendments if Senate Bill 261 is enacted. MOSELEY stated that the Board is still working with various stake-holders' suggestions regarding the regulations, and the regulations will be updated after the final status of Senate Bill 261 is known.

MOSELEY stated that the petition to advance [PTA] and administrative review [AR] regulations are on hold until there is some finality on the *Gilman v. Brown* case. MOSELEY stated that *Gilman* is an ex-post facto legal challenge to the parole denial lengths mandated by Marsy's Law. MOSELEY stated that the State appealed the case after the trial court ruled in favor of the *Gilman* plaintiffs. The State argued that the PTA and AR processes are properly included within Marsy's Law as safety valves, which more than adequately mitigate the *Gilman* plaintiffs' ex-post facto concerns. MOSELEY stated that a ruling in *Gilman* is still pending in the 9th Circuit, and may thereafter be further appealed. MOSELEY stated that there is currently a stay in effect, and Marsy's Law will continue to be applied in full.

Report from Chief Deputy of Program Operations, Sandra Maciel

MACIEL provided a Senate Bill 260 status update. MACIEL stated that when Senate Bill 260 was enacted in January 2014, it modified the Penal Code to allow both indeterminately- and determinately-sentenced inmates to qualify as youth offenders. MACIEL stated that Senate Bill 260 provided for an 18-month timeline to complete all hearings, and stated that the Board was successful in that 1,001 hearings were scheduled during that time period. MACIEL publicly recognized all the staff that took part in meeting this goal which included scheduling managers, analysts, etc. MACIEL stated that the Board has issued over 22,000 hearing notices since it took over that function last fall.

Report from Chief Deputy of Field Operations, Rhonda Skipper-Dotta

SKIPPER-DOTTA acknowledged the Board's six new deputy commissioners present, and announced them by name as she welcomed them all to their first board meeting. SKIPPER-DOTTA thanked Sandra Maciel and personnel for their assistance in the hiring of the new deputy commissioners.

Commissioner ANDERSON asked if any member of the Board had a request for a future agenda item. None were voiced.

PUBLIC COMMENTS

VANESSA NELSON-SLOANE, Life Support Alliance, stated that summer is Life Support Alliance's time to catch up on reading and reviewing transcripts received from both the Board and inmates. NELSON-SLOANE stated that contrary to *Lawrence*, Life Support Alliance has noticed instances where the Board has referenced non-indicted charges with speculative reasoning in determining suitability. NELSON-SLOANE acknowledged that charges appearing on an inmate's criminal history are fair game, but that charges appearing without a court disposition should not be considered as past convictions. NELSON-SLOANE further stated that

charges or other violations for which an inmate did not suffer a conviction should not be used in a suitability determination. NELSON-SLOANE stated that allegations of street gang misconduct should only be pursued if that behavior is documented to exist. NELSON-SLOANE stated that probation officer reports are notoriously inaccurate, but nonetheless used by the Board, often as the official description of the crime. NELSON-SLOANE stated that she wanted to bring to the Board's attention instances of unproven allegations being the basis for a denial of parole or Governor's reversal. NELSON-SLOANE stated that if a panel denies parole, the denial should be supported by clear facts as opposed to allegations or speculation.

Meeting recessed at 1:35 p.m. until Tuesday, July 21, 2015, at 10:00 a.m.

ANDREA DE LA CRUZ, victim's mother, spoke in opposition of recommending the inmate for resentencing or recall of sentence.

ISABELLE DE LA CRUZ, victim, spoke in opposition of recommending the inmate for resentencing or recall of sentence.

B. CERVANTES, MIGUEL AA-5387

No speakers.

C. SMITH, ANDREW AN-8066

AARON WEST, Santa Clara County District Attorney's Office, appeared on behalf of Laura Watts of the Riverside District Attorney's Office in opposition to the sentence recall of this inmate after he has only served two years and a few months of his life sentence.

Referral by Chief Counsel pursuant to Penal Code section 3041(b) and California code of Regulations, title 15, section 2042, to assure complete, accurate, consistent, and uniform decisions and the furtherance of public safety.

D. HERNANDEZ, FRANCISCO V-22454

No speakers.

E. NGUYEN, MINH H-06893

No speakers.

F. WALTERS, MARTIN E-86183

TOM STARR, victim's brother-in-law, stated that he came to the meeting to speak on behalf of the murder victim. He spoke in opposition to the inmate's release.

ANDREA FRESHWATER, San Diego County District Attorney's Office, spoke in opposition to the inmate's release.

Referral to consider ordering a rescission hearing, pursuant to California Code of Regulations, title 15, section 2450 et seq.

G. MOORE, MICHAEL C-42319

No speakers.

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.

H. BROWN, DAMEION

H-66190

AARON WEST, Santa Clara County District Attorney's Office, spoke in opposition to the release of this inmate.

MICHAEL BECKMAN, inmate's attorney, spoke in support of the inmate's release.

DAMEION BROWN II, inmate's son and victim, asked that the Board release his father.

I. DAVEY, WILLIAM

K-20000

WILLIAM DAVEY, inmate's father, spoke in support of the inmate's release.

BONNIE STEPHENS, inmate's mother, spoke in support of the inmate's release

BRYAN DAVEY, inmate's brother, asked that the inmate's grant of parole be reaffirmed.

JAMES THANG, inmate's AA sponsor, asked for the inmate's release.

ROY ALLSHOUSE, chaplain at CSP-Solano, spoke in support of the inmate's release.

MARC NORTON, inmate's attorney, stated that he doesn't believe the Governor's concerns are upheld by the facts, and that during the years since the inmate's last evaluation the inmate has made many advance. He asked the Board to affirm the inmate's grant of parole.

PUBLIC COMMENTS

CHRISTINE WARD, I-Can and Crime Victims Action Alliance, thanked the Board for their work and stated she appreciates the extra care that the commissioners take with the victims at hearings. WARD stated that all victims are supported no matter which side they take and again thanked the Board for the efforts taken to give respect to the victims.

VANESSA NELSON-SLOANE, Life Support Alliance, stated that she wanted to give an update regarding ongoing issues with positive results of random urinalysis tests, noting positive results can be found when a sample is kept unrefrigerated. NELSON-SLOANE stated that positive results are also found due to inmates taking prescribed medications, an issue which inmates cannot easily address. NELSON-SLOANE stated that Life Support Alliance has more confidence in the Board than the staff at the institutions, and that the inmates at R.J. Donovan Correctional Facility still receive rules violation reports for prescribed medications. NELSON-SLOANE stated that Life Support Alliance is communicating with CDCR regarding specimen collection policies. NELSON-SLOANE stated that Life Support Alliance noticed and appreciates

that FAD clinicians are steering away from asking questions that aren't relevant to the matter. NELSON-SLOANE stated that on September 19, 2015, at North Laguna Creek Park, there is going to be a lifer picnic and she invited everyone to attend.

Meeting adjourned at 11:30 a.m.

BOARD OF PAROLE HEARINGS
Executive Board Meeting
Monday, August 17, 2015

Meeting Called to Order at 1:00 p.m.

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

Commissioner ANDERSON confirmed that a majority of the currently-appointed commissioners is present.

CONSENT CALENDAR

Commissioner ANDERSON stated that the minutes of the July 18 and 19, 2015 executive board meeting will be considered at the September, 2015 meeting.

Commissioner TURNER moved to approve the consent calendar, with the exception of the July, 2015 minutes, but including the August, 2015 backlog report and the motion to vacate the July 28, 2015, hearing of Ellis, Nicholas K-16024. Commissioner MONTES seconded the motion, which carried unanimously.

REPORTS AND PRESENTATIONS

Report from Executive Officer, Jennifer Shaffer

SHAFFER gave an update on the board's outreach efforts. She and Chief Deputy of Program Operations, Sandra MACIEL presented information concerning elderly parole, youth offenders, expanded medical parole, and changes in the law governing the Board to correctional staff at 24 of California's 35 institutions. The presentations inc The presentations have been well received and there has been positive feedback. While at the institutions, they have visited the board's hearing rooms, to view the condition of the rooms and equipment.

In 2012, Assembly Bill 2490 was enacted, requiring CDCR to develop guidance policies to assist veteran lifer inmates in pursuing claims for federal benefits. The department has entered into a memorandum of agreement with the Department of Veteran Affairs to facilitate the bill's objectives. The board is working with CDCR to identify eligible inmates and it is hoped to secure pro bono legal representation for them.

Report from Chief Counsel, Howard Moseley

MOSELEY gave an update on issues regarding the Americans with Disabilities Act. He recommended that hearing panels not use leading questions at hearings involving mentally disabled inmates. Open-ended questions are preferable. Asking an inmate to repeat their understanding of a question gives the panel a measure of the inmate's level of comprehension. Panels should avoid using complex language or jargon. MOSELEY stated that there will be training soon on issues concerning developmentally disabled and mentally disabled inmates.

MOSELEY invited comments and suggestions about the October, 2015 training week. The first four days will be open sessions, with a closed session on Friday morning.

SHAFFER stated that a review of past minutes had identified a topic raised by Commissioner MONTES concerning co-occurring mental health and substance abuse issues. The board is looking for a speaker to provide training on the matter.

Report from Chief Deputy of Program Operations, Sandra Maciel

MACIEL stated that attorney orientations will take place on September 14, 2015, in Northern California and on September 28, 2015 in Southern California. The training will be open to the public. Information will be on the website by August 28, 2015. MACIEL advised persons interested in attending the training to make copies of the program from the website, since no copies will be available at the events.

Mentally disordered offender training will take place in Sacramento on September 15, 2015, on September 18, 2015, at Atascadero State Hospital and on September 29, 2015, at Patton State Hospital. Invitations have been sent to all qualified evaluators, but the sessions are also open to the public. No copies of the training materials will be available and MACIEL recommended uploading them to a laptop or printing out copies.

CHRISTINE BUFFLEBEN, Board Information Technology System (BITS) project manager, described the changes to the system that were implemented on Saturday, July 15, 2015. The BITS now contains a centralized document storage system, allowing commissioners to locate and display documents more easily. The storage system will be activated in stages and only .PDF documents will be uploaded and accessible. The system will contain all hearing notices, release memoranda, miscellaneous decisions, petitions to advance hearings (PTA), administrative review decisions (AR), non-violent second striker (NVSS) documents and risk assessments. Correspondence and other documents will be included in the future.

When a document is signed and saved, it will be sent immediately to the intended recipient. Only commissioners may be designated as a panel chair in BITS. The format of the BPH Form 1001 screen has been changed. It will contain the same information, but will be divided into subsections. The former Penal Code section 3000.1 hearings have been renamed reconsideration hearings. The sexually violent predator 45-day hold process has been added into BITS and there have been changes to the mentally disordered offender screen. A suspension has been added for inmates who are not available for hearing, for example if they have escaped or are out to court. Scheduling enhancements have also been made. The PTA, AR and NVSS comment area has been expanded to 4,000 characters and an MDO proceeding report has been added. The next rollout is scheduled for October 3, 2015.

Commissioner PECK stated that he experiences formatting distortions when trying to download comprehensive risk assessments to his Apple device.

BUFFLEBEN stated that Apple devices do cause such distortions and, unfortunately, there is currently no solution to the problem.

Report from Chief Deputy of Field Operations, Rhonda Skipper-Dotta

SKIPPER-DOTA stated that the deputy commissioners who were recently hired by the board have completed their training and have assumed their duties. They received four weeks of intensive training and are now conducting hearings. The board has received positive feedback about them. They are receiving further training today and will receive more in October.

PUBLIC COMMENTS

VANESSA NELSON-SLOANE, Life Support Alliance, stated that she had attended a meeting with the Division of Adult Parole Operations and had been informed that there are 46,000 people on parole. The average age is 38 years old. Lifer paroles amount to 7% of the total and, at 1%, have the lowest recidivism rate. Parole agents report that lifer parolees are the most cooperative.

Meeting recessed at 1:26 p.m.

BOARD OF PAROLE HEARINGS
Executive Board Meeting
Tuesday, August 18, 2015

Meeting called to order at 10:02 a.m.

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

EN BANC REFERRALS

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

A. DACHINO, JULES T-63376

No speakers.

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. GUIUAN, NATALIE W-61645

No speakers.

C. NELSON, GARETT K-91771

No speakers.

D. VANPOOL, STAR W-98619

No speakers.

E. YU, TOM C-15878

No speakers.

Referral to consider ordering a rescission hearing, pursuant to California Code of Regulations, title 15, section 2045, et seq.

F. WICKS, WAYNE

D-22916

No speakers.

Referral, pursuant to Penal Code section 3041 to either grant or deny parole when there is a tie vote.

G. HUERTA, MANUEL

H-48579

No comments permitted.

PUBLIC COMMENT

KEITH WATTLEY, attorney, referred to California Code of Regulations, title 15, section 2044. He recommended that commissioners consider using the power to refer cases directly to the full board, rather than wait for the chief counsel to use his decision-review powers.

VANESSA NELSON-SLOANE, Life Support Alliance, welcomed the board's continuing outreach efforts and stated that she has received positive feedback from inmates about the presentations. She expressed concern about the quality of service that inmates receive from their correctional counselors. NELSON-SLOANE stated that some counselors refuse to provide information or assistance on procedures, such as the petition to advance hearings process. She asked hearing panels to take note of complaints that inmates make about the service provided by counselors.

Commissioner ANDERSON expressed his appreciation of the board's outreach program.

Meeting adjourned at 10:09 a.m.

Board of Parole Hearings
Scheduled and Backlog Hearings Report
Penal Code section 3041(d)
September, 2015

