

BOARD OF PAROLE HEARINGS
Executive Board Meeting
August 15 & 16, 2016

August 15, 2016

Meeting Called to Order at 1:07 p.m.

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

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

CONSENT CALENDAR

Commissioner ROBERTS moved to approve the consent calendar. Commissioner TURNER seconded the motion, which carried unanimously.

REPORTS AND PRESENTATIONS

Report from Executive Officer, Jennifer Shaffer

SHAFFER stated the Three-Judge Panel report will be filed with the court tomorrow. She will present a summary of the report at the September, 2016 meeting.

SHAFFER stated that Commissioner CHAPPELL is attending the National Judicial College. She congratulated him on having his appointment as commissioner confirmed by the California State Senate. SHAFFER stated that Commissioner RICHARDSON is retiring and thanked her for her service to the Board.

SHAFFER stated that the latest Board Information Technology System roll-out took place successfully over the weekend. Many of the changes resulted from feedback received during the Board's 2015 outreach program that she and Chief of Program Operations, SANDRA MACIEL conducted. She thanked Board staff for ensuring the roll-out's success.

Report from Chief Counsel, Jennifer Neill

NEILL stated that the court denied the state's motion to modify the *Butler* settlement agreement. The Board is considering filing a petition for review with the California Supreme Court. In the meantime, the Board will continue to perform term calculations at its parole consideration hearings.

Report from Chief Deputy of Program Operations, Sandra Maciel

MACIEL stated that inmate panel attorney orientation will be held in Sacramento on September 12, 2015 and in Diamond Bar on September 26, 2016. No make-up sessions are planned and she recommended that interested attorneys should attend one of the scheduled sessions.

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

Staff Services Manager, YOLANDA DE LA TORRE stated that mentally disordered offender evaluator orientations are scheduled for September 13, 2016 in Sacramento, for September 20, 2016 at Atascadero State Hospital and for September 27, 2016 in Diamond Bar.

Report from Chief Psychologist, Forensic Assessment Division, Dr. Cliff Kusaj

KUSAJ stated that, in August, 2016, Forensic Assessment Division psychologists were assigned 303 comprehensive risk assessments for completion in September. The assessments are for hearings scheduled after November 15, 2016. All assessments will be completed at least 30 days before the hearing, 80% of assessments will be completed at least 60 days before the hearing, and 25% at least 90 days before the hearing. There are no unassigned assessments on the November, 2016 calendar and only 78 remain unassigned on the December, 2016 calendar.

Report from Chief Administrator, Offender Investigations and Screening Division, Elizabeth Allen

Parole Agent III, STEVE HAY stated that a presentation on the international prisoner transfer program was given last week at Centinella State Prison, Calipatria State Prison and R.J. Donovan Correctional Facility. He also announced the retirement of Parole Agent Anthony Tessaro and thanked him for his dedicated service.

SHAFFER stated that the Board sent a statewide e-mail blast to all classification and parole representatives about the program. It is hoped that more transfer applications will result from an increased level of awareness about the program.

DISCUSSION ITEMS

Regulations Regarding the Forensic Assessment Division, presented by Senior Staff Attorney, Heather McCray,

NEILL stated that the regulations were drafted in response to the court's order of May 27, 2016 in *Johnson v. Shaffer*. To comply with the court's timetable, they have been placed on today's agenda for a vote. The Board's options are to approve the regulations, approve them with amendments, disapprove the regulations or table them until the September, 2016 meeting for further consideration. If the Board tables the regulations, it might be necessary to ask the court for an extension of time. A part of the settlement was due to be completed by July 1, 2016, but it was not possible to comply with the order, since final approval of the settlement by the court was delayed until May 27, 2016.

McCRAY gave a PowerPoint presentation on the regulations.

NEIL summarized written public comments about the regulations that were received from the Prison Law Office, Life Support Alliance, the Law Office of Laura R. Sheppard, the Alliance for Change, Jared Eisenstat, attorney, and Peter Richman, Ph. D.

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Public Comment on Forensic Assessment Division Regulations

KEITH WATTLEY, Uncommon Law, stated that he is class counsel in *Johnson v. Shaffer*. He opposed approval of the regulations, as currently drafted. He recommended tabling discussion on the regulations until the September, 2016 meeting. He further recommended requesting the Office of the Inspector General review the regulations. He stated that the regulations do not contain a meaningful appeals process. They fail to require an audio recording of psychologist interviews with inmates. He pointed out that, in deposition, Dr. KUSAJ stated there is no clinical reason against recording interviews. There is no mechanism for challenging clinicians' misstatements in the risk assessment. WATTLEY stated that he is confident that the court would allow further time to re-draft the regulations. He predicted that the Office of Administrative Law would disapprove the regulations.

VANESSA NELSON-SLOANE, Life Support Alliance, reiterated the organization's opposition to the regulations, as set out in its letter of August 12, 2016. She stated that transcribing interviews would seldom be necessary. She observed that some clinicians negate the youth offender factors in their reports. The regulations do not address this issue. She requested that the Board table the regulations for further discussion at the September, 2016 meeting

JILL KLINGE, Alameda County District Attorney's Office, regretted the limited time available to consult with all district attorneys' offices concerning the regulations. She expressed the view that there is no due process right to a recording of the clinician's interview. Recording the interview would have an inhibiting and detrimental effect on the interview process. KLINGE stated that inmates who are housed out of California are placed at a considerable disadvantage, because the state does not administer risk assessments for them and assessments from other states are not uniform and they are very different than the Board's risk assessments.

Dr. ELLA YATES stated that transparency is essential in preparing risk assessments. She did not believe that recording the interview would have a detrimental effect, based on her experience recording clinical interviews in child custody cases.

SHAFFER stated that, if interviews were recorded, it would be likely be necessary to transcribe all of them. Last year, 2,702 risk assessments were completed. The average interview took about two hours. It is estimated that transcription costs alone would amount to \$1.3 million. In addition, there would be additional staffing and equipment costs. It is likely that the length of hearings would increase as details of clinical interviews were discussed and debated. SHAFFER emphasized that there is no due process right to have a clinical interview recorded and the Board's legal counsel agrees with that view. SHAFFER stated that the chief psychologist or a senior psychologist reviews all risk assessments. She clarified that although Dr. KUSAJ in his deposition stated that he is not opposed to recording interviews from a clinical perspective, he also referenced the fact that there was a time when many inmates refused to participate in interviews and that recording interviews may have a similar result, which he did not think was in their best interest. He also stated that recording interviews would cause some inmates to feel uncomfortable and not participate as fully. In addition, SHAFFER stated that the Board is unaware of any other context in which a clinical interview for purposes of a judicial or quasi-judicial report is recorded. She also stated that panels are well equipped to resolve allegations of

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non-factual errors at the hearings. SHAFFER recommended that the Board vote to approve the regulations as drafted.

Meeting recessed at 2:32 p.m.

NEILL admonished the commissioners not to discuss the proposed regulations during the recess.

Meeting reconvened at 2:43 p.m.

Commissioner GARNER moved to approve the regulations as drafted. Commissioner TURNER seconded the motion.

Commissioners GARNER, PECK, RICHARDSON and TURNER voted to approve the motion. Commissioner ROBERTS voted to disapprove the motion. Commissioners ANDERSON, FRITZ, MONTES and ZARRINNAM abstained.

Commissioner ANDERSON stated that the motion did not carry.

Commissioner PECK moved to table discussion of the regulations until the September, 2016 meeting. Commissioner ROBERTS seconded the motion, which carried unanimously.

PUBLIC COMMENT

VANESSA NELSON-SLOANE, Life Support Alliance, expressed concern about misdiagnoses in comprehensive risk assessments. She questioned whether the brief clinician interviews enable a correct diagnosis to be made.

KEITH WATTLEY, Uncommon Law, welcomed the Board's decision to table discussion of the Forensic Assessment Division regulations. He stated that the plaintiffs in *Johnson v. Shaffer* are not insisting that the Board transcribe all interviews. It would only be necessary where there is a dispute about statements made by an inmate during the interview. There is no satisfactory method, at present, of resolving disputes. Even if a panel grants parole, the Governor might rely on errors in the risk assessment to reverse the grant. WATTLEY maintained that Dr. KUSAJ has stated that recording interviews would help defend the integrity of risk assessments. WATTLEY stated that the Office of the Inspector General previously found deficiencies in the Board's processes.

Meeting recessed at 3:03 p.m.

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Meeting called to order at 10:01 a.m.

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

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

EN BANC REFERRALS

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

A. BREWER, RONALD P-71205

DONNA LEBOWITZ, Los Angeles County District Attorney's Office, commented about the inability of her office to adequately prepare for these cases because they are not provided documentation concerning the inmate's medical condition and opposed a recommendation for recall of sentence.

B. LEVERS, THOMAS P-19122

No speakers.

Referral by the 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.

C. SIERRAS, JOSE C-83570

No speakers.

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

D. CLAYTON, LANIER K-46097

No speakers.

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

E. SAENZ, MARIO E-37155

DONNA LEBOWITZ, Los Angeles County District Attorney's Office, recommended ordering a rescission hearing.

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

F. MENDOZA, RAMON P-79750

No public comment permitted.

G. NAVA, ABDON D-15626

No public comment permitted.

PUBLIC COMMENT

VANESSA NELSON-SLOANE, Life Support Alliance, welcomed the Board's increased transparency and stated that opening its training events to the public has been very helpful. She stated that opening the Forensic Assessment Division's training of its clinicians to the public would help inmates understand better the assessment process. NELSON-SLOANE thanked Commissioner RICHARDSON for her service.

MICHAEL BEAVER read a letter from TERESA NAVA requesting that inmates' relatives be permitted to attend and speak at hearings.

MARC NORTON, attorney, stated that there have been occasions when panels have relied on documents submitted at the hearing by the district attorney's office. The documents were not in the Watchdog 65-day packet or the 10-day packet. NORTON stated that a panel had accepted and relied on such documents because they might already have been placed in the inmate's central file. NORTON stated that the average central file contains about 2,500 pages and many are poorly organized. NORTON recommended that the Board provide at its own expense hard copies of inmates' central files.

MANUEL NAVA requested that inmates' relatives be permitted to attend and speak at hearings.

Meeting adjourned at 10:23 a.m.

Board of Parole Hearings

Scheduled and Backlog Hearings Report

Penal Code section 3041(d)

September, 2016

