

BOARD OF PAROLE HEARINGS
Executive Board Meeting
October 17 to 20, 2016

Meeting Called to Order at 1:04 p.m.

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

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

CONSENT CALENDAR

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

REPORTS AND PRESENTATIONS

Report from Executive Officer, Jennifer Shaffer

SHAFFER stated that a summary of the current Three-Judge Panel report would be presented at the next open session. The report is posted on the California Department of Corrections and Rehabilitation website.

SHAFFER stated that the Board held a stakeholder conference call was held on October 4, 2016, in which 74 people participated. During the call concern was expressed regarding the lack of increase in the fees paid to inmate panel attorneys. SHAFFER stated that the Board will review the matter and report back to its stakeholders.

Report from Chief Counsel, Jennifer Neill

NEILL stated that the Board will file its *Butler* reply brief this week in the California Supreme Court.

Senior Staff Attorney, HEATHER McCRAY gave a presentation on the proposed youth offender regulations. The Board will not vote on the regulations at this meeting.

Report from Chief Deputy of Program Operations, Sandra Maciel

MACIEL stated that 33 people took part in the Sacramento panel attorney orientation training on September 11, 2016 and 40 in the Diamond Bar session on September 25, 2016.

On September 19, 2016, the Board issued notices for hearings scheduled for the last week of the year. The Board has issued a total of 28,435 notices for 2016 hearings and an additional 731 for hearings scheduled through January 19, 2017.

MACIEL also reported that a pilot project is ready to start in which Board staff will prepare and distribute an inmate's entire central file (with the exception of the confidential section) to the inmate's attorney and the district attorney's office. They will receive the file through Watchdox, no later than 79 days before the hearing.

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The project will start at California State Prison, Solano for hearings scheduled the week of January 23, 2017. Other institutions will be added to the project until a full rollout is complete. The uploaded documents are encrypted to protect confidentiality. They are unreadable if the user attempts to forward them. The documents also contain a watermark, with the recipient's e-mail address on each page. In addition, the Board can run reports showing each time a file is accessed and by whom the file was accessed and the Board can suspend or revoke Watchdox access, if necessary.

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

SKIPPER-DOTA stated that the mentally-disordered offender evaluator orientations have been completed and there are now 48 evaluators on the rotation rate. During the orientations, participants raised issues concerning the Board's payment rate for evaluators.

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

KUSAJ stated that in October 2016, the division's psychologists were assigned 299 comprehensive risk assessments to be completed in November 2016. Most of the assessments are for hearings scheduled after January 15, 2017. It is anticipated that all assessments will be completed and distributed at least 30 days before the hearing. KUSAJ stated that more than 85% of assessments will be completed at least 60 days before the hearing and 35 % will be completed more than 90 days before the hearing. There are no unassigned assessments on the January 2017 calendar and only 50 are unassigned on the February 2017 calendar. This is a reduction of 14 unassigned assessments from September 2016.

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

ALLEN stated that Parole Agents TED RICH and ALDO JIMMINEZ are retiring from the Board. She thanked them for their service to the Board.

SHAFFER and ANDERSON also thanked them for their service.

PRESENTATIONS

Update on Division of Rehabilitative Programs, presented by Jay Virbel, Director, CDCR Division of Rehabilitative Programs

VIRBEL, CYNTHIA FLORES-DE LEON, Deputy Director, and KEVIN POOLE, Parole Agent III, gave an update on the division's rehabilitative programs.

Youth OffenderS, presented by Elizabeth Calvin, Senior Advocate, Children's Rights Division, Human Rights Watch and Heidi Rummel, Clinical Professor of Law and Director, Post-Conviction Justice Project, University of Southern Gould California School of Law

CALVIN and RUMMEL gave a PowerPoint presentation concerning youth offenders.

Meeting recessed from 2:05 to 2:10 p.m.

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OPEN COMMENTS

KONY KIM, UnCommon Law, expressed concern about the proposed youth offender regulations, California Code of Regulations, Title 15, sections 2440 *et seq.* She recommended revision of the exclusions set out in section 2440, subdivision (c). KIM stated that section 2442 does not address the situation where CDCR fails to issue a determination. KIM stated that comprehensive risk assessments should also follow the requirement in section 2446 to give great weight to the youth offender factors.

LYNN WU, Prison Law Office, questioned whether the proposed youth offender regulations emphasize sufficiently the requirement in Penal Code section 4001 to give great weight to the youth offender factors when determining an inmate's suitability for parole. She stated that section 2446, subdivision (d) is duplicative and gives undue weight to unsuitability factors. She recommended that the subdivision be deleted. WU stated that inmates are often unable to program because of the lack of appropriate programs. She stated that this should be recognized in comprehensive risk assessments and by hearing panels. WU stated that programs should provide greater assistance in re-entry planning.

KEITH WATTLEY, UnCommon Law, stated that youth offender hearings create a new legal environment, to which the Board must adapt. The youth offender factors must be given great weight. WATTLEY stated that inmates are often denied parole because of incurring a single disciplinary offense, regardless of its seriousness.

VANESSA NELSON-SLOANE, Life Support Alliance, stated that in applying the great weight standard, panels should recognize that youth offenders sometimes take time to mature. Misconduct committed early in their incarceration should not detract from subsequent good behavior. NELSON-SLOANE stated that the Long Term Offender Program (LTOP) has improved, but still contains many deficiencies. She regretted that statistics are still unavailable about the parole grant rate of its graduates. She stated that the monetary literacy component of the program is inadequate and that other elements are also unhelpful.

HEIDI RUMMELL, University of Southern California School of Law, stated that parole hearings have a constitutional dimension and inmates must be given a meaningful opportunity for release. RUMMEL stated that section 2444 of the youth regulations is very vague and needs greater definition. The section omits factors identified by the Supreme Court, namely peer pressure and negative influences. The regulations also do not refer to the baseline identified in the *Franklin* decision. She has submitted a revised definition of "youth offender" for the Board's consideration. RUMMEL stated that section 2446, subdivision (d) is a misstatement of the law. It highlights unsuitability factors and fails to emphasize the great weight that must be given to the youth offender factors.

ELIZABETH CALVIN, Human Rights Watch, commented that other states are taking note of the way that California authorities are fulfilling the constitutional mandate articulated in the *Franklin* decision. There must be a meaningful opportunity to parole and youth offender hearings are a different process from other Board proceedings. Human Rights Watch has conducted workshops for the youth offender prison populations and the feedback has been very positive.

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ELLEN YATES stated that section 2445 of the youth offender regulations is too vague. Psychologists preparing a comprehensive risk assessment should also be required to give great weight to the youth offender factors. YATES stated that it is unethical for psychologists to evaluate an inmate's risk of violence without having interviewed the inmate.

SHAFFER encouraged stakeholders to submit written comments on the youth regulations before the Board's November executive meeting.

Meeting recessed at 3:31 p.m.

October 18, 2016

Meeting called to order at 10:03 a.m.

Roll Call: Commissioners Anderson, Chappell, Garner, Grounds, Labahn, Minor, Montes, Peck, Roberts, Turner and Zarrinnam present. Commissioner Fritz 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. NAPOLI, ANTHONY C-67486

No speakers.

B. TALAMANTEZ, ROBERT D-74324

No speakers.

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.

C. BRIGIDA, STEVEN D-92269

LYNN GILBERT, inmate's mother, supported his grant of parole.

CELIA POLITEO recommended ordering a rescission hearing.

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D. JAMES, PATRICK

T-48409

CLIFFORD BROWN, victim's husband, and YOLANDA BROWN, victim, opposed his release on parole.

OPEN COMMENTS

ELLEN YATES stated that the Forensic Assessment Division's psychologists should be required to give great weight to the youth offender factors. She stated that psychologists should only give a limited assessment of risk if they are unable to interview an inmate. She suggested that the psychologists' training should be open to the public.

VANESSA NELSON-SLOANE, Life Support Alliance, stated that the programs of the Division of Rehabilitative Programs are sometimes unavailable or of limited usefulness to lifer inmates. Over the last three years there have been approximately 3,500 graduates of the LTOP, but no statistics regarding their parole grant rate. She questioned the usefulness of the program and stated that lifers are a distinct group with particular needs. The CAL ID unit does not meet their needs. Programs are not available at all institutions and inmates must request a transfer to participate in appropriate programs. It is concerning that psychologists are informing inmates that they must secure an outside Alcoholics Anonymous sponsor in order to be given a low risk evaluation. NELSON-SLOANE paid tribute to a former life inmate who was killed this week in a road traffic accident in San Diego.

Meeting recessed at 10:37 a.m.

October 19, 2016

Meeting called to order at 9:08 a.m.

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

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

PRESENTATIONS

The Neurobiology of Violent Behavior, presented by Candice Skrapec, Department of Criminology, California State University, Fresno
SKRAPEC gave a Power Point presentation.

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Outcome Evaluation Report and the PEW Results First Initiative, presented by Kevin Grassel, CDCR Office of Research

GRASSEL gave a PowerPoint presentation.

OPEN COMMENTS

VANESSA NELSON-SLOANE, Life Support Alliance, noted that the Office of Research statistics show that most recidivism occurs in the first year of release on parole. Information from the Division of Adult Operations and from lifer parolees suggests that recidivism occurs within the first two years in the case of lifers.

Meeting recessed at 12:20 p.m.

Meeting reconvened at 1:35 p.m.

Eye Witness Identification, presented by Peter English, Ph. D., Associate Professor, Department of Criminology, California State University, Fresno

ENGLISH gave a PowerPoint and video presentation.

PUBLIC COMMENTS

VANESSA NELSON-SLOANE, Life Support Alliance, stated that inmates often experience stress at the time of the life crime. This can impact their recollection of the details surrounding the crime. She stated that many transcripts show the panel asking details of the life crime that differ from the version in the probation officer's report, which is often an unreliable source.

ELLEN YATES also stated that inmates often experience stress at the time of the life crime. She stated that questioning inmates about their siblings' criminality is irrelevant.

Meeting recessed at 3:06 p.m.

October 20, 2016

Meeting reconvened at 9:03 a.m.

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

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

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PRESENTATIONS

Suicide Awareness, presented by Rosanna Rodriguez, Statewide Peer Support Program Manager, CDCR Office of Employee Health and Wellness

RODRIGUEZ gave a presentation on methods of preventing employee suicide.

Meeting recessed at 9:50 a.m.

Meeting reconvened at 10:00 a.m.

Intimate Partner Battering, presented by Jim Logsdon, Staff Attorney and Tammy Jones, Parole Agent III and Senior Investigator

LOGSDON and JONES gave a PowerPoint presentation and played a video.

OPEN COMMENTS

VANESSA NELSON-SLOANE, Life Support Alliance, questioned how many intimate partner battering cases are remedied through the courts. She stated that inmates experience stresses that can lead to suicide. Life Support Alliance is developing a suicide prevention program.

ELLEN YATES amended comments that she made yesterday regarding questioning inmates about their siblings' criminality. She stated that it might be appropriate in some circumstances. She stated that comprehensive risk assessments do not give great weight to the youth offender factors.

Meeting adjourned at 11:24 a.m.

Board of Parole Hearings

Scheduled and Backlog Hearings Report

Penal Code section 3041(d)

November, 2016

