

BOARD OF PAROLE HEARINGS
Executive Board Meeting
August 20 & 21, 2018

August 20, 2018

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

Roll Call: Commissioners Anderson, Cassady, Chappell, Grounds, Labahn, Minor, Roberts, Ruff, Schneider, Taira, and Turner present. Commissioners Barton, Castro, Dobbs, and Long absent.

Commissioner ANDERSON stated that the majority of currently-appointed commissioners are present.

CONSENT CALENDAR

Commissioner TURNER moved to approve the consent calendar. Commissioner CHAPPELL seconded the motion, which carried unanimously, with Commissioner MINOR abstaining.

DISCUSSION ITEMS

Use of Deputy Commissioners to Make Decisions Determining Whether to Advance a Parole Hearing Date, presented by Executive Officer, Jennifer Shaffer

SHAFFER stated that in *Rackauckas, et al. v. State of California*, the Orange County Superior Court determined in issuing a preliminary injunction that there was no evidence that the commissioners had formally assigned to deputy commissioners the duty to advance parole hearing dates under Penal Code section 3041.5. Board staff reviewed the relevant legal provisions and SHAFFER recommended that the Board officially vote to assign to deputy commissioners the duty of making decisions concerning the advancement of parole hearing dates and to ratify all previous decisions made by a deputy commissioner.

NEILL added that the authority to make decisions concerning the advancement of parole hearing dates is statutory and the procedure adopted by the Board did not contravene the Administrative Procedures Act.

Public Comments on the Discussion Item

HARRIET SALARNO, Crime Victims United, welcomed the court's decision in *Rackauckas*. She stated that the Board's administrative review procedure is unlawful and should cease. She expressed strong disapproval of submissions made on the Board's behalf during the litigation. SALARNO stated that the Board argued that registered victims do not suffer prejudice by a hearing date being advanced, since they have the option of not attending. SALARNO stated that the argument is deeply offensive and ignores the rights of victims.

NEILL apologized for any offense caused to victims. The commissioners were not aware of the submissions made to the court, which do not represent the Board's practice and policy towards the rights of victims.

TODD REIBE, co-chair, California District Attorneys' Association, stated that the Board considered the administrative review procedure at the July, 2013 meeting. However, the Board

BOARD OF PAROLE HEARINGS
Executive Board Meeting
August 20 & 21, 2018

failed to delegate properly its authority under Penal Code section 3041.5 subdivisions (b)(4) and (d)(1) to deputy commissioners. The administrative review procedure was developed unlawfully by administrative staff. He submitted that, under the Administrative Procedures Act, regulations must be submitted to the Office of Administrative Law. REIBE stated that OAL is investigating the matter and he recommended that the discussion item be deferred to the September 2018 meeting.

JILL KLINGE, Alameda County District Attorney's Office, supported REIBE's statement.

DONNA LEBOWITZ read a letter from CHRISTINE WARD, I-Can and Crime Victims Action Alliance. WARD expressed concern that the Board's submissions in *Rackauckas* appear to discourage victims from attending its hearings.

LINDA GROBERG, Ventura County District Attorney's Office, recommended deferring the discussion item to the September 2018 meeting.

DONNA LEBOWITZ, Los Angeles County District Attorney's Office, recommended deferring the discussion item to the September 2018 meeting.

VANESSA NELSON-SLOANE, Life Support Alliance, recommended that the Board approve the discussion item.

Commissioner CASSADY moved to assign deputy commissioners the duty to make decisions to advance hearing dates under Penal Code section 3041.5 subdivisions (b)(4) and (d)(1) and ratify all previous decisions made by a deputy commissioner to advance a hearing date under Penal Code section 3041.5 subdivisions (b)(4) and (d)(1). Commissioner TURNER seconded the motion, which carried unanimously, with Commissioner LABAHN abstaining.

SHAFFER stated that the Board will draft regulations soon regarding the administrative review and petition to advance procedures and will be seeking input from stakeholders throughout the process.

REPORTS AND PRESENTATIONS

Report from Executive Officer, Jennifer Shaffer

SHAFFER gave an update on the nonviolent parole review process under Proposition 57. The Board was required to conduct approximately 1,800 reviews when the provisions went into effect in July 2017. Inmates who were denied release are being reviewed again now.

Report from Chief Deputy of Program Operations, Sandra Maciel

MACIEL stated that the live, telephonic and sign language interpreters contract are now in force. The inmate panel attorney orientations will be held in Sacramento on September 10, 2018 and in Diamond Bar on September 18, 2018.

BOARD OF PAROLE HEARINGS
Executive Board Meeting
August 20 & 21, 2018

Report from Chief of Field Operations, Rhonda Skipper-Dota

SKIPPER-DOTA stated that, since July 1, 2017, there have been 5,608 non-violent reviews and 1,285 non-violent, second strike reviews. It takes approximately 2.8 days to conduct a review. The non-violent review regulations became permanent on May 1, 2018. There is now a two-stage process, involving first a jurisdictional review. Qualifying inmates then receive a review on the merits. The deputy commissioners are reviewing approximately 400 cases per week.

SHAFFER commended the deputy commissioners on their work regarding non-violent reviews.

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

KUSAJ stated that, in August, the FAD's clinicians were assigned 271 comprehensive risk assessments, to be completed in September. The assessments are for hearings scheduled after November 15, 2018. There are no unassigned assessments through the remainder of this year. All of the assessments for hearings scheduled after December 15, 2018 will be completed and distributed at least 60 days before the hearing and 90% will be distributed at least 90 days before the hearing.

SHAFFER suggested that it is no longer necessary for KUSAJ to report on the timeliness of risk assessment completion.

Commissioner ANDERSON stated that the commissioners would consider the suggestion.

Report from Chief Administrator, Offender Investigations and Screening Division (OISD), Brian Kelley

KELLEY described recent staff changes at OISD.

The Experiences of Transgender, Gender Variant, and Intersex People in California's Legal System – presented by Jennifer Orthwein, Colby Lenz, Krys Shelley and Dorsey Bass
ORTHWEIN, LENZ, SHELLEY and BASS gave a Powerpoint presentation.

OPEN COMMENTS

VANESSA NELSON-SLOANE, Life Support Alliance, expressed concern about an issue regarding inmates who are paroled to transitional housing outside their county of last legal residence (COLLR). After completing the transitional housing, they are being required to return to the COLLR and then apply to reside in their county of parole. She stated that this is generally counter-productive and she suggested that panels address the issue when imposing conditions of parole.

Meeting recessed at 3:57 p.m.

BOARD OF PAROLE HEARINGS

Executive Board Meeting

August 20 & 21, 2018

August 21, 2018

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

Roll Call: Commissioners Anderson, Cassady, Chappell, Grounds, Labahn, Minor, Roberts, Ruff, Schneider, Taira and Turner present. Commissioners Barton, Castro, Dobbs and Long absent

Commissioner ANDERSON stated that the majority of currently-appointed commissioners are present.

EN BANC REFERRALS

Referral by the Governor pursuant to Penal Code section 4802 to review a commutation application.

A. ARMSTRONG, DERYL **C-10321**

DONNA LEBOWITZ, Los Angeles County District Attorney's Office opposed the commutation application.

B. ERWIN, WILLIE **T-64857**

BLAKE GUNDERSON, Fresno County District Attorney's Office, opposed the commutation application.

C. FORD, HOWARD **C-24543**

DONNA LEBOWITZ, Los Angeles County District Attorney's Office opposed the commutation application.

D. MANNING, JOHN **J-51502**

ROBERT McINTYRE, inmate's father and KENNETH TURKINS, inmate's brother, supported the commutation application.

E. NGUYEN, TIN **P-24706**

TONY NGUYEN, inmate's brother, CHERI LE, THUY NGUYEN inmate's sisters and CUE LE, inmate's mother supported the commutation application.

BOARD OF PAROLE HEARINGS
Executive Board Meeting
August 20 & 21, 2018

AARON WEST, Santa Clara District Attorney's Office, opposed the application. CHRISTINE WARD read an opposition letter from the victim's daughters.

F. ROBERTS, CURTIS **E-25212**

GEORGE FISHER and GARY TIMMONS supported the commutation application.

G. WESTLY, TRAVIS **AA-3442**

Referral withdrawn.

H. WHITE, JAMES **C-27182**

MENACHEM KESSLA, RORY FOLSOM, RICHARD CHIAMULON, RAUL ZARATE, GREGORY NOTTAGE, RYAN LO, STEVE DUBY, ALEXANDRA WALL, WILLIAM SORENSON, NORM LA FOUNTAINE, DANIELLE WALKER, inmate's friends, SHAD MESHAD, president, National Veterans Association, JOHN MINDIOLA, Vietnam Veterans of America and PETE CONATE supported the commutation application.

Referral by the Governor pursuant to Penal Code section 4802 to review a pardon application.

I. PADILLA, JOSE **K-43286**

JOSE PADILLA supported the pardon application.

J. THOMPSON, LARRY **N/A**

No speakers.

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

K. DESYLVIA, ROBERT **AA-5271**

No speakers.

BOARD OF PAROLE HEARINGS
Executive Board Meeting
August 20 & 21, 2018

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.

L. MALDONADO, RUBEN

E-53063

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

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.

M. WILLIS, PAUL

A-62940

No speakers.

OPEN COMMENTS

LINDA GROBERG, Ventura County District Attorney's Office, expressed concern at the difficulties experienced by her office in obtaining information about the inmate's post-release plans in Penal Code section 1170(e) referrals.

VANESSA NELSON-SLOANE, Life Support Alliance, suggested subjects for FAD training, including the "sun downing" effect on elderly inmates at hearing, transgender issues and post-traumatic stress disorder. She requested information on the complaints procedure for ineffective inmates' counsel.

Meeting adjourned at 11:16 a.m.



Board of Parole Hearings Scheduled and Backlog Hearings Report Penal Code Section 3041(d) September, 2018

