

Memorandum

Date : June 15, 2015

To : Commissioners
Deputy Commissioners

Subject: **BENCH GUIDE: CONSULTATIONS**

The purpose of this memorandum is to announce the release of the bench guide for consultations, the first in a series of bench guides the Board of Parole Hearings (board) will produce regarding the proceedings it conducts.

These bench guides are public documents. Their purpose is threefold: to train the commissioners and deputy commissioners who conduct these proceedings; to inform the parties who participate; and to educate the public regarding the board's proceedings.

These guides will be updated as needed to insure that the text of each reflects changes in the law and board procedure. The next bench guide will address parole consideration hearings. The board plans to release the next bench guide at the October 2015, executive meeting.



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Executive Officer
Board of Parole Hearings

Bench Guide

Consultations

[APRIL 2015]

BOARD OF PAROLE HEARINGS

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TABLE OF CONTENTS

I.	SCOPE OF BENCH GUIDE	2
II.	LEGAL AUTHORITY	2
III.	PRE-CONSULTATION PROCEDURES	3
	A. Americans with Disabilities Act (ADA).....	3
	B. Pre-Consultation Review	4
IV.	CONSULTATION PROCEDURES.....	4
	A. Participants.....	4
	B. Disability Information.....	5
	C. Review of Parole Suitability and Post Conviction Credit.....	5
V.	POST-CONSULTATION PROCEDURES.....	6
VI.	TABLE OF AUTHORITIES	7
	A. Statutes	7
	B. Interim Order	7
	C. Regulations	7
	D. Acts by Popular Name	7
VII.	FORMS.....	8
	A. BPH Form 1073-Notice and Request for Assistance at Parole Hearing.....	9
	B. BPH Form 1001-CON-Life Prisoner: Consultation	11

I. SCOPE OF BENCH GUIDE

This bench guide provides an overview of the procedures for conducting a Board of Parole Hearings (board) consultation. Any inmate serving a life term, as well as a qualified youth offender serving a determinate term, and any inmate qualified for an elderly parole hearing, receives a consultation. (Pen. Code, § 3041, subd. (a); see Pen. Code, § 3051, subd. (c); *Plata v. Brown*, February 10, 2014 Order Granting in Part and Denying in Part Defendant’s Request for Extension of December 31, 2013 Deadline, ¶ 4(e).) At a consultation, the hearing officer¹ reviews what the inmate has done since the inmate was received by the California Department of Corrections and Rehabilitation (CDCR). The hearing officer makes specific, individualized recommendations to the inmate regarding his or her conduct and programming. Consultations do not involve a grant or denial of parole or the hearing officer making any decisions that will affect the date of the inmate’s initial parole suitability hearing. (Pen. Code, § 3041, subd. (a).)

II. LEGAL AUTHORITY

For each inmate sentenced to a life term, as well as qualified youth offenders serving a determinate term, and any inmate qualified for an elderly parole hearing:

[T]he Board of Parole Hearings shall meet with each inmate during the sixth year prior to the inmate’s minimum eligible parole release date for the purposes of reviewing and documenting the inmate’s activities and conduct pertinent to both parole eligibility and to the granting or withholding of post conviction credit. During this consultation, the board shall provide the inmate information about the parole hearing process, legal factors relevant to his or her suitability or unsuitability for parole, and individualized recommendations for the inmate regarding his or her work assignments, rehabilitative programs, and institutional behavior. Within 30 days following the consultation, the board shall issue its positive and negative findings and recommendations to the inmate in writing.

(Pen. Code, § 3041, subd. (a); see Pen. Code, subd. § 3051, subd. (c) [“An individual subject to this section shall meet with the board pursuant to subdivision (a) of Section 3041.”]; *Plata v. Brown*, February 10, 2014 Order Granting in Part and Denying in Part Defendant’s Request for Extension of December 31, 2013 Deadline, ¶ 4(e) [providing a new parole process shall be implemented such that “inmates who are 60 years of age or older and have served a minimum of

¹ A hearing officer may be a commissioner or deputy commissioner.

twenty-five years of their sentence will be referred to the Board of Parole Hearings to determine suitability for parole”].)

Board regulations specify which legal factors are relevant to a grant or denial of parole and which criteria pertinent to post conviction credit are reviewed at the consultation. (Cal. Code Regs., tit. 15, §§ 2281, 2290, 2402, 2410.) Specifically, the circumstances tending to show suitability for parole include: no juvenile record, a stable social history, signs of remorse, a crime committed as the result of significant stress, suffering from intimate partner battery at the time of the crime, no prior criminal history, present age reducing the risk of recidivism, realistic parole plans or marketable skills, and participation in institutional activities that indicate an enhanced ability to function within the law. (Cal. Code Regs., tit. 15, §§ 2281, 2402.) The circumstances tending to show unsuitability for parole include: a particularly heinous, atrocious, or cruel commitment offense, a previous record of violence, an unstable social history, sadistic sexual offenses, a lengthy history of severe mental problems related to the offense, and serious misconduct in prison or jail. (Cal. Code Regs., tit. 15, §§ 2281, 2402.) Factors related to post conviction credit include: performance in work assignments, participation in self help and rehabilitative programs, and behavior in an institutional setting. (Cal. Code Regs., tit. 15, §§ 2290, 2410.)

III. PRE-CONSULTATION PROCEDURES

A. Americans with Disabilities Act (ADA)

The board must ensure that all inmates with disabilities are able to participate in a parole proceeding to the same extent as non-disabled inmates. (42 U.S.C. § 12131.) The board shall provide equal access to all parole proceedings, including consultations.

An inmate with a disability who appears at a consultation has a right to a reasonable accommodation. The board shall ensure that inmates are aware of this right and are informed how to request a reasonable accommodation. No inmate with a disability as defined in the ADA shall, by reason of such disability, be excluded from participation in, or be denied the benefits of, the services, programs, or activities of the board, or be subject to discrimination by the board. (42 U.S.C. §§ 12101, 12102, 12131; Cal. Code Regs., tit. 15, § 2251.5, subd. (a).)

Before a consultation the board will identify and inmates will self-identify disabilities and any need for reasonable assistance. (BPH Form 1073, Notice and Request for Assistance at Parole Proceeding, Part VII, Forms, *infra*.) For example, an inmate who is unable to effectively communicate with the hearing officer shall be provided with appropriate assistance during the consultation, such as a sign language interpreter. (*Id.*) Staff assistance is mandatory for inmates participating in the Developmentally Disabled Program (DDP), Enhanced Outpatient Program (EOP), or housed in a Mental Health Crisis Bed (MHCB), the Department of State Hospitals

(DSH), and inmates with a Test of Adult Basic Education (TABE) score of 4.0 or below. Staff assistance is presumptive for inmates participating in the Correctional Clinical Case Management System (CCCMS).

B. Pre-Consultation Review

Before the consultation the hearing officer shall:

1. Review the inmate's criminal history in the inmate's central file. Identify any missing documents from the central file that would be of assistance at a parole consideration hearing and check the appropriate boxes in the BPH Form 1001-CON Instructions section (BPH Form 1001-CON-Life-Prisoner, Part VII, Forms, *infra*).
2. Review the inmate's central file to identify the inmate's conduct and activities as contained in recent or relevant classification chronos (128Gs), disciplinary history, vocations, and education relevant to parole eligibility and post conviction credit;
3. Identify any potential need for investigation, such as cases of intimate partner battery, and make a notation under the consultation tab in the Board's Information Technology System (BITS) database to refer the matter to the board's executive officer for investigation (Pen. Code, § 4801, subd. (b)(1); Cal. Code Regs., tit. 15, § 2269.1, subd. (a)(2); BPH Form 1001-CON-Life-Prisoner, Part VII, Forms, *infra*); and
4. Identify any potential need for legal review of issues including youth offender eligibility, elderly parole, or confirmation of a life term start date and make a notation under the consultation tab in BITS (BPH Form 1001-CON-Life-Prisoner, Part VII, Forms, *infra*).

IV. CONSULTATION PROCEDURES

A. Participants

A consultation may be conducted by a deputy commissioner or commissioner, or a panel of two commissioners or a commissioner and a deputy commissioner. An inmate has the right to be present at the consultation. (Pen. Code, § 3041, subd. (a).) The inmate does not, however, have the right to legal representation at a consultation. (See *id.*) Neither the District Attorney's Office nor the victims are entitled to participate in a consultation. (See *id.*; Pen. Code, § 3043, subd. (a)(1).)

B. Disability Information

The hearing officer shall review the Disability and Effective Communication System (DECS) and 1073 Form with the inmate to make certain that all obligations have been met. (BPH Form 1073, Part VII, Forms, *infra*.) If any reasonable accommodation is required, it shall be provided before the start of the consultation. The hearing officer shall address any issue pertaining to the inmate's ADA rights. The hearing officer shall make all reasonable efforts to accommodate disabilities. A consultation may be postponed for good cause if no reasonable accommodation is available. An inmate with a qualifying disability who believes that he or she was denied a reasonable accommodation may file a formal grievance with the board. (Cal. Code Regs., tit. 15, § 2251.5, subd. (b); BPH Form 1073, Part VII, Forms, *infra*.)

C. Review of Parole Suitability and Post Conviction Credit

At the consultation the hearing officer shall:

1. Provide the inmate with information about the parole hearing process, as summarized in Hearing Process/Legal Factors, BPH Form 1001-CON (BPH Form 1001-CON-Life-Prisoner, Part VII, Forms, *infra*);
2. Discuss and address legal factors relevant to the inmate's suitability or unsuitability for parole (Cal. Code Regs., tit. 15, §§ 2281, 2402; BPH Form 1001-CON-Life-Prisoner, Part VII, Forms, *infra*);
3. Discuss factors related to post conviction credit including:
 - a. Performance in work assignments. All life inmates are presumed to work and perform satisfactorily in work assignments. The hearing officer shall consider the nature and availability of work assignments at the institution, the inmate's custody status, and any other impediments to the inmate receiving a work assignment;
 - b. Participation in self help and rehabilitative programs. All life inmates are presumed to participate in programs for self development. The hearing officer shall consider the nature and availability of the programs at inmate's institution, the inmate's custody status, and any other impediments to the inmate's participation in this type of programming; and
 - c. Behavior in the institutional setting. All inmates are presumed to behave in a disciplinary-free manner in accordance with state law and departmental regulations.

(Cal. Code Regs., tit. 15, §§ 2290, 2410.)

V. POST-CONSULTATION PROCEDURES

A hearing officer shall enter the information obtained during the consultation into the consultation tab in BITS and generate the completed BPH form entitled “Life Prisoner: Consultation, form BPT 1001-CON.” (See BPH Form 1001-CON, Part VII, Forms, *infra*.) This form is found in the BITS database.

Normally the hearing officer enters the information while the inmate waits, and a copy of the Life Prisoner: Consultation form is then provided to the inmate, but in any event the inmate shall receive a copy within 30 days of the consultation. (Pen. Code, § 3041, subd. (a).) The form contains all information obtained during the consultation, including the hearing officer’s findings and recommendations concerning the inmate’s vocational training, work assignments, rehabilitation programs, education, institutional behavior, and parole plans. (Pen. Code, § 3041, subd. (a); Life Prisoner: Consultation, BPH Form 1001-CON, Part VII, Forms, *infra*.)

If the hearing officer refers a matter for investigation, the board’s investigations division shall complete the investigation and forward it to the executive officer for approval and dissemination to all the parties at least one year before the inmate’s initial parole suitability hearing. (Cal. Code Regs., tit. 15, § 2269.1, subd. (a)(2); Pen. Code, § 4801, subd. (b)(1).) If a matter is referred to the legal division for review, the chief counsel will complete the review within one year.

VI. TABLE OF AUTHORITIES

A. Statutes

42 U.S.C. § 12101

42 U.S.C. § 12102

42 U.S.C. § 12131

Pen. Code, § 3041, subd. (a)

Pen. Code, § 3043, subd. (a)(1)

Pen. Code, § 3051, subd. (c)

Pen. Code, § 4801, subd. (b)(1)

B. Interim Order

Plata v. Brown (N.D. Cal, Feb. 10, 2014, 01-cv-01351) Docket No. 2766, Order Granting in Part and Denying in Part Defendant’s Request for Extension of December 31, 2013 Deadline

C. Regulations

Cal. Code Regs., tit. 15, § 2269.1, subd. (a)(2)

Cal. Code Regs., tit. 15, § 2281

Cal. Code Regs., tit. 15, § 2290

Cal. Code Regs., tit. 15, §§ 2251.5, subd. (a)

Cal. Code Regs., tit. 15, § 2269.1

Cal. Code Regs., tit. 15, § 2402

Cal. Code Regs., tit. 15, § 2410

D. Acts by Popular Name

Americans With Disabilities Act—42 U.S.C. § 12101

VII. FORMS

- A. BPH Form 1073-Notice and Request for Assistance at Parole Hearing**
- B. BPH Form 1001-CON-Life Prisoner: Consultation**

NOTICE AND REQUEST FOR ASSISTANCE AT PAROLE PROCEEDING

BPH 1073

I. PRE-INTERVIEW FILE/DECS REVIEW (STAFF ONLY)

I acknowledge that I have reviewed all relevant and reasonably available central file and/or field file information and the Disability and Effective Communication System (DECS) prior to first contact with the inmate/parolee involved in this parole proceeding.

Print Name: _____ Sign Name: _____ Date: _____

Identified Disabilities

Mental Health Concerns (Circle One) CCCMS EOP MHCB DMH 128C dated: _____ DECS

Developmental Disability (Circle One) DD1 D1A DD2 DD3 128C-2 dated: _____ DECS

Physical Disability (Circle all that apply) (verified on CDCR Form 1845) Dated _____ DECS

Mobility: (DPW / DPO / DPM / DNM) Vision: (DPV / DNV) Hearing: (DPH / DNH) Speech: (DPS / DNS)

Other Disability (that limits access): _____ document _____ dated: _____ DECS

Learning Disability documented on _____ dated: _____ DECS

NO DISABILITIES IDENTIFIED FROM THE FILE/DECS REVIEW.

Other Potential Assistance Needs:

Reading Level _____ Total GPL _____ (If not available, note "N/A")

Non-English Speaking (List language(s) inmate/parolee speaks): _____

II. INMATE/PAROLEE RIGHTS & SELF IDENTIFICATION

You have the right to receive help for your hearing. If you need help talking, reading, hearing, seeing, understanding or getting to your hearing, you have a right to that help.

Check all that apply:

I need help reading my documents.

I need help understanding the procedures and forms.

I need a sign language interpreter.

I need a wheelchair and I do have one. I do not have one.

I do not speak English and need an interpreter in _____ (language).

Other _____

I do not need any help for my parole hearing.

X _____ Inmate/parolee signature

_____ CDCR #

X _____ Date Signed

III. INITIAL SERVICE OF RIGHTS (STAFF ONLY)

I have requested an accommodation from county jail staff on behalf of the parolee. Accommodation: _____

County Jail Name: _____ Date jail staff was notified: _____

I have informed inmate/parolee of his/her rights and charges, if any, and have determined that he/she:

Appears to understand: without assistance / after assistance

Appears to have difficulty understanding

Effective Communication Method Used: Foreign Language Interpreter - Telephonic Foreign Language Interpreter - Contractor (In-Person)

Foreign Language Interpreter - Certified DAPO Staff Sign Language Interpreter Read/Spoke Slowly Assistive Visual Device

Assistive Hearing Device Additional Comments: _____

Staff Name and Title (please print)

Staff Signature

Date

IV. BPH REVIEW FOR INTERNAL USE ONLY (Non-Lifer Cases)

I have requested an accommodation from county jail staff on behalf of the parolee. Accommodation: _____

County Jail Name: _____ Date jail staff was notified: _____

Accommodation(s)/Assistance to be provided at hearing(s): _____

Staff Name and Title (please print)

Staff Signature

Date

LIFE PRISONER: CONSULTATION		
Date Received CDCR	Initial Hearing Scheduled	Date of Consultation
DECISION / ORDER		
<input type="checkbox"/> Consultation Conducted <input type="checkbox"/> Inmate Present <input type="checkbox"/> Inmate Not Present <input type="checkbox"/> Consultation Postponed Reason:		
Findings / Recommendations		
Vocational Training		
Findings:		
Recommendations:		
Work Assignments		
Findings:		
Recommendations:		
Rehabilitation Programs		
Findings:		
Recommendations:		
Education		
Findings:		
Recommendations:		
Institutional Behavior		
Findings:		
Recommendations:		
Parole Plan		
Findings:		
Recommendations:		
Other		
Findings:		
Recommendations:		
INSTRUCTIONS (For CDCR Use Only)		
Case Records-Documents Still Required		
<input type="checkbox"/> Police Report	<input type="checkbox"/> Probation Report	<input type="checkbox"/> Abstract of Judgment/Minute Order
<input type="checkbox"/> Appellate Decision	<input type="checkbox"/> Current Rap Sheet	<input type="checkbox"/> Sentencing Transcript
<input type="checkbox"/> Other		
BPH Instructions		
<input type="checkbox"/> Investigations	<input type="checkbox"/> IPB	<input type="checkbox"/> Other
<input type="checkbox"/> Legal	<input type="checkbox"/> YOPH	<input type="checkbox"/> Other
PANEL		
		Date
		Date

SAMPLE

NAME

CDC

INSTITUTION

BPH 1001-CON

ACTION DATE

SCHEDULED DATE

HEARING PROCESS/LEGAL FACTORS

The Board of Parole Hearings conducts parole suitability hearings to determine whether inmates are suitable for parole-meaning they do not pose a current, unreasonable risk of danger to the public.

Hearings are conducted by a Commissioner and a Deputy Commissioner. Inmates are entitled to legal counsel at their hearings. The District Attorney from the prosecuting county and victims of the crime may attend the hearing.

The panel considers all relevant and reliable information to determine if the inmate is suitable for release. California Code

of Regulations, title 15, sections 2281 and 2402 provide factors the panel may consider in determining suitability.

Factors

tending to show suitability:

- No juvenile record;
- Stable social history;
- Signs of remorse;
- Crime committed as the result of significant stress in the inmate's life;
- At the time of the crime the inmate suffered from Intimate Partner Battery;
- No prior criminal history;
- The prisoner's present age reduces the probability of recidivism;
- The prisoner has made realistic plans for release or marketable skills that can be used upon release; and
- Institutional activities indicate an enhanced ability to function within the law.

Factors tending to show unsuitability:

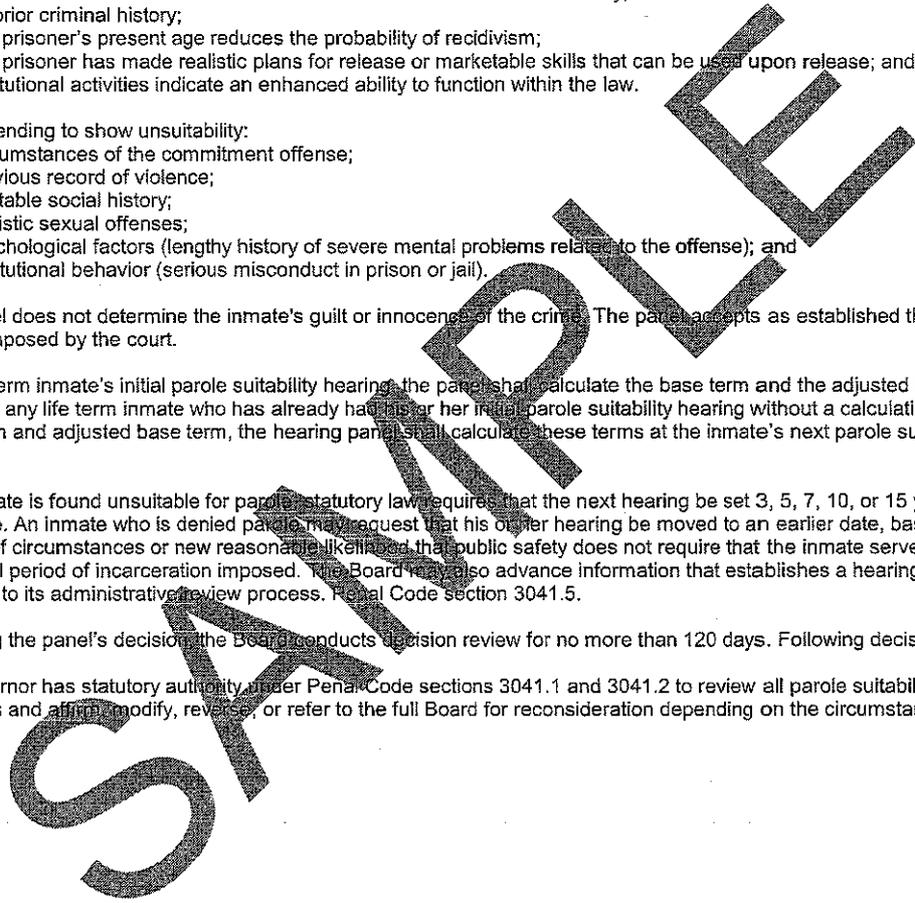
- Circumstances of the commitment offense;
- Previous record of violence;
- Unstable social history;
- Sadistic sexual offenses;
- Psychological factors (lengthy history of severe mental problems related to the offense); and
- Institutional behavior (serious misconduct in prison or jail).

The panel does not determine the inmate's guilt or innocence of the crime. The panel accepts as established the guilty verdict imposed by the court.

At a life term inmate's initial parole suitability hearing, the panel shall calculate the base term and the adjusted base term. For any life term inmate who has already had his or her initial parole suitability hearing without a calculation of the base term and adjusted base term, the hearing panel shall calculate these terms at the inmate's next parole suitability hearing.

If an inmate is found unsuitable for parole, statutory law requires that the next hearing be set 3, 5, 7, 10, or 15 years in the future. An inmate who is denied parole may request that his or her hearing be moved to an earlier date, based on a change of circumstances or new reasonable likelihood that public safety does not require that the inmate serve the additional period of incarceration imposed. The Board may also advance information that establishes a hearing pursuant to its administrative review process. Penal Code section 3041.5.

Following the panel's decision, the Board conducts decision review for no more than 120 days. Following decision review, the Governor has statutory authority under Penal Code sections 3041.1 and 3041.2 to review all parole suitability decisions and affirm, modify, reverse, or refer to the full Board for reconsideration depending on the circumstances.



NAME

CDC

INSTITUTION

BPH 1001-CON

ACTION DATE

SCHEDULED DATE