



BOARD OF PAROLE HEARINGS



ADMINISTRATIVE DIRECTIVE NO: 2015-01A

SUBJECT: REQUIRED DOCUMENTS FOR A PAROLE CONSIDERATION HEARING

INTRODUCTION

The purpose of this Administrative Directive is to identify which documents are required by the Board of Parole Hearings (Board) to proceed with a parole consideration hearing.

LEGAL AUTHORITY

As described below, due process requires that an inmate have an opportunity to review his or her central file prior to a parole consideration hearing; that the panel consider all relevant and reliable information at the hearing; and that the presiding hearing officer postpone a hearing if a "required document" is unavailable.

Penal Code section 3041.5, subdivision (a)(1), provides that, "At least 10 days prior to any hearing by the Board of Parole Hearings, the prisoner shall be permitted to review his or her file which will be examined by the board and shall have the opportunity to enter a written response to any material contained in the file."

California Code of Regulations, title 15, section 2281, subdivision (b), provides that, "All relevant, reliable information available to the panel shall be considered in determining suitability for parole. Such information shall include the circumstances of the prisoner's: social history, past and present mental state; past criminal history, including involvement in other criminal misconduct which is reliably documented; the base and other commitment offenses, including behavior before, during and after the crime; past and present attitude toward the crime; any conditions of treatment or control, including the use of special conditions under which the prisoner may safely be released to the community; and any other information which bears on the prisoner's suitability for release."

California Code of Regulations, title 15, section 2253, subdivision (d)(1), provides that, "The hearing panel chair or board executive officer may postpone a life parole

consideration hearing, upon its own motion or at the request of a prisoner, due to the unavailability of a hearing panel; the absence or untimeliness of required department (CDCR) and/or board notices, documents, reports or required prisoner accommodations;”

Furthermore, required documents include, but are not limited to, prior memorialized victim impact statements, current comprehensive risk assessments, and current subsequent risk assessments.

Penal Code section 3041.5, subdivision (c), requires that, “When conducting a hearing, the board shall admit the prior recorded or memorialized testimony or statement of a victim or witness, upon request of the victim or if the victim or witness has died or become unavailable.”

California Code of Regulations, title 15, section 2240, subdivision (b), provides that, “A Comprehensive Risk Assessment will be completed every five years. It will consist of both static and dynamic factors which may assist a hearing panel or the board in determining whether the inmate is suitable for parole.”¹

California Code of Regulations, title 15, section 2240, subdivision (c), provides that, “In the five-year period after a Comprehensive Risk Assessment has been completed, life inmates who are due for a regularly scheduled parole consideration hearing will have a Subsequent Risk Assessment completed by a licensed psychologist employed by the Board of Parole Hearings for use at the hearing.”

Finally, the presiding hearing officer may postpone a hearing upon determining that there is insufficient information available in the record; but, when in so doing, must afford the victims the opportunity to memorialize a statement for use at a future hearing.

California Code of Regulations, title 15, section 2238, provides that, “If, during the hearing, the hearing panel determines there is insufficient information available to determine any relevant or necessary fact, the hearing panel may continue the hearing up to 90 days. Appropriate staff shall be instructed to obtain the specific information which is needed as soon as possible. The prisoner is entitled to review this information under the procedures in [section] 2247 at least 10 days before the rescheduled hearing.”

¹ Pursuant to California Code of Regulations, title 15, section 2240, subdivision (g), “Life inmates who reside in a state other than California, including those under the Interstate Compact Agreement, may not receive a Comprehensive Risk Assessment, Subsequent Risk Assessment or other psychological evaluation for the purpose of evaluating parole suitability due to restraints imposed by other state’s licensing requirements, rules of professional responsibility for psychologists and variations in confidentiality laws among the states.”

California Code of Regulations, title 15, section 2253, subdivisions (b)(4), (c)(2), (d)(4), and (e)(3), provides that if a voluntary waiver, stipulation to unsuitability, postponement, or continuance is granted during the week of a scheduled life parole consideration hearing, the board shall give the district attorney and the victim, victim's next of kin, members of the victim's immediate family and two victim's representatives the opportunity to give a statement on the record. If statements are taken, a transcript shall be made and shall be considered by the next hearing panel. Exercising this option will not preclude the speaker from making a statement at subsequent parole consideration hearings.

DISCUSSION

1. Examples of documents required for a parole consideration hearing to proceed.

If the following documents are unavailable at the time of a parole consideration hearing, the presiding hearing officer shall postpone the hearing.

- a. Sentencing information: An Abstract of Judgment, Sentencing Transcript, Probation Officer's Report, or a Minute Order must be available to the panel. California Code of Regulations, title 15, section 2281, subdivision (b).
- b. Board investigative reports: If an investigation was ordered, the investigative report must be available to the panel. If the investigation was not completed or the report was not prepared in time for the hearing, the hearing shall be postponed. California Code of Regulations, title 15, section 2281, subdivision (b).

2. Examples of documents required for a parole consideration hearing to proceed, unless waived by the inmate.

If the following documents are unavailable for review by the inmate before a parole consideration hearing, the presiding hearing officer shall postpone the hearing unless the inmate waives his or her right to review the document.²

- a. Board Risk Assessments: If a risk assessment is required the assessment must be completed and the report available to the inmate before the

² In the event an inmate requires an attorney as an accommodation pursuant to the Americans with Disabilities Act, then the inmate's attorney must authorize the waiver.

hearing is held. If an inmate offers to waive his or her right to review a risk assessment and the presiding hearing officer accepts the waiver, the hearing can proceed. California Code of Regulations, title 15, section 2240, subdivisions (b) or (c).

- b. Board investigative reports: If an investigation was ordered, the investigative report must be available for review by the inmate, except those portions deemed confidential. If the investigative report was not prepared in time for the inmate to review the report prior to the hearing, the presiding hearing officer must postpone the hearing unless the inmate offers to waive his or her right to review the report and the presiding hearing officer accepts the waiver. California Code of Regulations, title 15, section 2281, subdivision (b).

3. Examples of documents required for a parole consideration hearing to proceed, unless waived by the victim.

If the following documents are unavailable at the time of a parole consideration hearing, the presiding hearing officer shall postpone the hearing.

- a. Victim's statement from a hearing that resulted in a voluntary waiver, stipulation of unsuitability, postponement, or continuance: If the district attorney, victim, victim's next of kin, or victim representative made a statement on the record at the prior hearing, then the transcript of the victim's statement must be available to the panel for consideration. This requirement may be waived by the person who made the statement. Penal Code section 3041.5(c) and California Code of Regulations, title 15, section 2253, subdivision (d)(4).

This Administrative Directive shall take effect immediately. If you have any questions concerning the contents of this Administrative Directive please contact the BPH Legal Division at (916) 324-7604.

APPROVED BY:



JENNIFER P. SHAFFER
Executive Officer, BPH

DATE:

7/21/2015