

BOARD OF PAROLE HEARINGS

2021

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REPORT OF SIGNIFICANT EVENTS



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# 2021

## SIGNIFICANT EVENTS

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### WORKLOAD AT A GLANCE

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#### Parole Hearings

- ◆ **8,722 scheduled parole hearings**
  - Up 14% from 7,684 in 2020
  - 256 or 3% were for persons housed at an institution for women
  - 8,466 or 97% were for persons housed at an institution for men
  - 4,999 or 57% were initial hearings, down from 58% in 2020
  - 3,723 or 43% were subsequent hearings, up from 42% in 2020
  - 4,160 or 48% were youth offender hearings, down from 53% in 2020
    - 2,755 or 66% were for indeterminately-sentenced youth offenders, up from 63% in 2020
    - 1,405 or 34% were for determinately-sentenced youth offenders, down from 37% in 2020
  - 1,983 or 23% were for persons eligible for an elderly parole hearing, unchanged from 2020
    - 1,879 or 95% were for indeterminately-sentenced persons eligible for an elderly parole hearing, up from 94% in 2020
    - 104 or 5% were for determinately-sentenced persons eligible for an elderly parole hearing, down from 6% in 2020
- ◆ **1,424 parole grants**
  - Up 15% from 1,234 in 2020
  - 34% of hearings held, down from 36% in 2020
  - 16% of scheduled parole hearings, unchanged from 2020<sup>1</sup>
  - 62 or 4% were for persons housed at an institution for women, unchanged from 2020
  - 1,362 or 96% were for persons housed at an institution for men, unchanged from 2020
  - 523 or 37% were grants issued at a person's initial hearing, down from 42% in 2020
  - 709 or 50% were to youth offenders, down from 52% in 2020
  - 360 or 25% were to persons eligible for an elderly parole hearing, down from 26% in 2020
- ◆ **2,764 parole denials**
  - 66% of hearings held, up from 64% in 2020
  - 32% of scheduled hearings, up from 29% in 2020

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<sup>1</sup> A significant number of hearings scheduled in 2021 were postponed due to COVID-19-related issues. As a result, the overall percentage of hearings held (scheduled hearings resulting in a grant or denial) decreased. Please see page 6 for additional information concerning grant and denial rates.

- 78 or 3% were for persons housed at an institution for women, down from 4% in 2020
- 2,686 or 97% were to persons housed at an institution for men, up from 96% in 2020
- 1,219 or 44% were to youth offenders, down from 49% in 2020
- 657 or 24% were to persons eligible for an elderly parole hearing, down from 26% in 2020
- ◆ **301 stipulations**
  - 3% of scheduled hearings, down from 5% in 2020
  - 20 or 7% were to persons housed at an institution for women, up from 3% in 2020
  - 281 or 93% were to persons housed at an institution for men, down from 97% in 2020
  - 142 or 47% were to youth offenders, down from 54% in 2020
  - 52 or 17% were to persons eligible for an elderly parole hearing, down from 18% in 2020
- ◆ **1,759 voluntary waivers**
  - 20% of scheduled hearings, up from 12% in 2020
  - 34 or 2% were from persons housed at an institution for women, down from 3% in 2020
  - 1,725 or 98% were from persons housed at an institution for men, up from 97% in 2020
  - 900 or 51% were from youth offenders, down from 60% in 2020
  - 336 or 19% were to persons eligible for an elderly parole hearing, unchanged from 2020
- ◆ **2,146 postponements**
  - 25% of scheduled hearings, down from 34% in 2020
  - 50 or 2% were to persons housed at an institution for women, unchanged from 2020
  - 2,096 or 98% were to persons housed at an institution for men, unchanged from 2020
  - 1,001 or 47% were for youth offenders, down from 53% in 2020
  - 499 or 23% were for persons eligible for an elderly parole hearing, up from 22% in 2020
- ◆ **328 continued or cancelled hearings**
  - 4% of scheduled hearings, unchanged from 2020
  - 12 or 4% were for persons housed at an institution for women, down from 5% in 2020
  - 316 or 96% were for persons housed at an institution for men, up from 95% in 2020
  - 189 or 58% were for youth offenders, down from 63% in 2020
  - 79 or 24% were for persons eligible for an elderly parole hearing, down from 29% in 2020

### **Parole Reconsideration Hearings**

- ◆ **135 parole reconsideration hearings scheduled**
  - Up from 126 in 2020
  - 39 or 29% were initial parole reconsideration hearings, up from 25% in 2020
  - 96 or 71% were subsequent annual parole reconsideration hearings, down from 75% in 2020

### **Administrative Reviews to Consider Advancing Parole Hearing Dates**

- ◆ 1,315 cases were screened for possible review, down 5% from 1,386 in 2020
- ◆ 1,015 cases or 77% received a review on the merits, down from 83% in 2020
  - 657 or 65% of cases reviewed on the merits were approved for an advanced hearing date, down from 79% in 2020
  - 358 or 35% of cases reviewed on the merits were denied for an advanced hearing date, up from 21% in 2020
- ◆ 39% of parole hearings scheduled as a result of an administrative review conducted in 2021 to advance a person's next hearing date resulted in a grant of parole, unchanged from 2020

### **Comprehensive Risk Assessments**

- ◆ 4,428 comprehensive risk assessments completed, up 3% from 4,280 in 2020

### **Consultations**

- ◆ 2,158 consultations conducted, down 18% from 2,620 in 2020

### **Correspondence**

- ◆ 51,440 pieces of correspondence were received and processed, down 13% from 59,245 in 2020
- ◆ 55,248 hearing notices were sent, up 3% from 53,787 in 2020
- ◆ 17,625 notices of determinately-sentenced nonviolent offender parole review were sent, down 26% from 23,692 in 2020
- ◆ 2,034 letters were sent from the Legal Division, up 3% from 1,967 in 2020

### **Determinately-Sentenced Nonviolent Offender Parole Reviews**

- ◆ 5,510 referrals to the Board for parole review, down 16% from 6,590 in 2020
- ◆ 5,486 reviews on the merits were conducted, down 39% from 8,834 in 2020
  - 553 nonviolent offenders or 10% were approved for release, down from 17% in 2020
  - 4,919 nonviolent offenders or 90% were denied release, up from 83% in 2020
- ◆ 1,369 reviews of decisions were conducted, down 24% from 1,805 conducted in 2020
  - 1,231 decisions or 90% were upheld after review, up from 87% in 2020
  - 138 decisions or 10% were modified after review, down from 13% in 2020

### **Executive Case Summaries**

- ◆ 1,446 executive case summaries were prepared, down 3% from 1,490 in 2020

### **Extradition Cases**

- ◆ No extradition cases were reviewed, down 100% from 183 in 2020

### **Inmate Petitions to Advance Their Next Parole Hearing Date**

- ◆ 746 preliminary reviews of inmate petitions to advance their next parole hearing date, down 16% from 893 in 2020
- ◆ 537 reviews on the merits of inmate petitions to advance their next parole hearing date, down 18% from 652 in 2020
  - 333 or 62% of petitions were approved for an advanced hearing date, down from 64% approved in 2020
  - 204 or 38% of petitions were denied for an advanced hearing date, up from 36% denied in 2020
- ◆ 32% of parole hearings scheduled as a result of an inmate filing a petition to advance their next hearing date in 2021 resulted in a grant of parole, unchanged from 2020

### **International Prisoner Transfer Program**

- ◆ 98 cases completed, up 36% from 72 in 2020
- ◆ No inmates were transferred to another country, unchanged from 2020

### **Investigations**

- ◆ 1,332 pre-parole investigations were completed, up 6% from 1,261 in 2020
- ◆ No intimate partner battering investigations were completed, down from 4 in 2020
- ◆ 89 Board-initiated investigations were completed, up 56% from 57 in 2020
- ◆ No Penal Code section 1170(e) investigations were completed, down from 9 in 2020<sup>2</sup>
- ◆ 54 expanded medical parole reviews were completed, down 57% from 127 in 2020
- ◆ 1,140 pardon investigations were completed
- ◆ 51 commutation investigations were completed

### **Medical Parole Hearings**

- ◆ 74 medical parole hearings scheduled
  - Down 44% from 132 hearings scheduled in 2020

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<sup>2</sup> Effective August 6, 2020, Penal Code section 1170(e) was amended to remove the Board's authority to refer incarcerated persons to the courts for recall of sentence or resentencing. The Secretary of the California Department of Corrections and Rehabilitation now has the sole authority to refer incarcerated persons to the courts for recall of sentence or resentencing on behalf of the Department. (Senate Bill 118, Chapter 29, Statutes of 2020).



### **Offenders with Mental Health Disorders (OMHD) Actions**

- ◆ 330 certification hearings were conducted, down 35% from 506 in 2020
- ◆ 504 placement and annual review hearings were conducted, down 10% from 558 in 2020
- ◆ 216 holds to detain offenders for OMHD screening were placed, up 26% from 172 in 2020

### **Parole Discharge Reviews**

- ◆ 18,531 cases were reviewed to determine whether a parolee should be discharged from parole, up 47% from 12,595 in 2020

### **Penal Code Section 1170(e) Cases**

- ◆ No Penal Code section 1170(e) cases were considered for referral to courts for recall of sentence or resentencing, down from 10 considered in 2020<sup>3</sup>

### **Sexually Violent Predator Screening (SVP)**

- ◆ 3,184 SVP screenings, up 36% from 2,346 in 2020
  - 2,346, or 74% of cases were referred for clinical screening, up from 72% in 2020
  - 838, or 26% of cases were closed as not meeting criteria for clinical screening, down from 28% in 2020
  - 2,252 clinical screenings completed by the Forensic Assessment Division, up 16% from 1,945 clinical screenings completed in 2020
  - 467, or 21% of offenders were referred after clinical screening to the Department of State Hospitals for a full evaluation, down from 25% in 2020
  - 1,785, or 79% were not referred after clinical screening to the Department of State Hospitals for a full evaluation, up from 75% in 2020

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<sup>3</sup> Id.

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## GRANT, DENIAL, AND RECIDIVISM RATES

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The Board's parole hearing grant and denial rates are calculated both as the percentage of **hearings held** that result in a grant or denial and as a percentage of **hearings scheduled**. A scheduled hearing can result in one of several outcomes: grant, denial, stipulation, voluntary waiver, postponement, cancellation, or continuance. A variety of factors unrelated to a person's suitability for parole affect the outcome of a scheduled hearing (such as the need to postpone a hearing when a person is ill). For this reason, the percentage of **hearings held** that result in a grant or denial more accurately reflects the Board's parole suitability decision-making.

### **Parole Hearing Outcomes as a Percentage of Hearings Held**

In 2021, the Board held **4,188** hearings resulting in the following outcomes:

<b>2021 Outcomes of Hearing Held</b>		
<b>Outcome</b>	<b>Number</b>	<b>Percentage</b>
Grant	1,424	34%
Denial	2,764	66%
<b>Total</b>	<b>4,188</b>	<b>100%</b>

### **Parole Grant Outcomes as a Percentage of Hearings Held**

Various grant rates for parole **hearings held** in 2021 are as follows:

- ◆ 34% of all hearings held resulted in a grant, down from 36% in 2020
- ◆ 44% of hearings held for persons housed at an institution for women resulted in a grant, up from 40% in 2020
- ◆ 34% of hearings held for persons housed at an institution for men resulted in a grant, down from 35% in 2020
- ◆ 37% of hearings held for youth offenders resulted in a grant, unchanged from 2020
  - 44% of hearings held for indeterminately-sentenced youth offenders resulted in a grant, up from 43% in 2020
  - 17% of hearings held for determinately-sentenced youth offenders resulted in a grant, down from 22% in 2020
- ◆ 35% of hearings held for persons eligible for an elderly parole hearing resulted in a grant, down from 36% in 2020
  - 36% of hearings held for indeterminately-sentenced persons eligible for an elderly parole hearing resulted in a grant, down from 37% in 2020
  - 17% of hearings held for determinately-sentenced persons eligible for an elderly parole hearing resulted in a grant, down from 18% in 2020
- ◆ 51% of hearings held as a result of a person filing a petition to advance their next hearing date in 2021 resulted in a grant, unchanged from 2020
- ◆ 60% of hearings held as a result of an administrative review conducted in 2021 resulted in a grant, unchanged from 2020

### **Parole Denial Outcomes as a Percentage of Hearings Held**

Various denial rates for parole **hearings held** in 2021 are as follows:

- ◆ 66% of hearings held resulted in a denial, up from 64% in 2020
- ◆ 56% of hearings held for persons housed at an institution for women resulted in a denial, down from 60% in 2020
- ◆ 66% of hearings held for persons housed at an institution for men resulted in a denial, up from 65% in 2020
- ◆ 63% of hearings held for youth offenders resulted in a denial, unchanged from 2020
  - 56% of hearings held for indeterminately-sentenced youth offenders resulted in a denial, down from 57%
  - 83% of hearings held for determinately-sentenced youth offenders resulted in a denial, up from 78% in 2020
- ◆ 65% of hearings held for persons eligible for an elderly parole hearing resulted in a denial, up from 64% in 2020
  - 64% of hearings held for indeterminately-sentenced persons eligible for an elderly parole hearing resulted in a denial, up from 63% in 2020
  - 83% of hearings held for determinately-sentenced persons eligible for an elderly parole hearing resulted in a denial, up from 82% in 2020
- ◆ 49% of hearings held as a result of a person filing a petition to advance their next hearing date in 2021 resulted in a denial, unchanged from 2020
- ◆ 40% of hearings held as a result of an administrative review conducted in 2021 resulted in a denial, unchanged from 2020

### **Grant Rates by Race and Ethnicity**

The Board provided the California Committee on Revision of the Penal Code with outcome data for the 3,400 **hearings held** in Fiscal Year 2019-20. The data included each incarcerated person's race and ethnicity as well as information concerning the person's recent disciplinary violations, if any. The study found the following:

Unlike the other parts of the criminal legal system, in the one-year sample of parole hearings discussed here . . . parole grant rates across racial groups showed little disparities: white people were granted parole at a rate of 36%, Black people at 34%, and Latinx people at 34% . . .

The differences in grant rates changed slightly when examining who was granted parole by the number of [relatively recent] disciplinary violations they had at the time of their hearing. White people with no disciplinary violations were granted parole 43% of the time, Black people 47%, and Latinx people 45%. With one recent disciplinary violation, white people were granted parole 16% of the time, Black people 20%, and Latinx people 14%."<sup>4</sup> [Endnotes excluded].

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<sup>4</sup> 2021 *Annual Report and Recommendations*, Committee on Revision of the Penal Code, p. 61 ([http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC\\_AR2021.pdf](http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC_AR2021.pdf)).

### Parole Hearing Outcomes as a Percentage of Scheduled Hearings

As mentioned above, a scheduled hearing can result in a grant, denial, stipulation, voluntary waiver, postponement, cancellation, or continuance. As shown below, a grant rate of 16 percent for scheduled hearings, therefore, **does not** mean the remaining 84 percent of cases resulted in a denial.

In 2021, the Board scheduled **8,722** hearings resulting in the following outcomes:

<b>2021 Scheduled Hearing Outcomes</b>		
<b>Outcome</b>	<b>Number</b>	<b>Percentage</b>
Grant	1,424	16%
Denial	2,764	32%
Stipulation	301	3%
Voluntary waiver	1,759	20%
Postponement	2,146	25%
Cancelled/Continued	328	4%
<b>Total</b>	<b>8,722</b>	<b>100%</b>

Using the **scheduled hearing** outcomes above, 1,424 people were granted parole and 2,764 people were denied parole by the Board after a hearing. Another 301 people were denied parole without a hearing when they entered into a stipulation with the Board stating that they were not suitable for parole. In the remaining 4,233 hearings scheduled, there was no decision rendered concerning the person's suitability for parole because the person voluntarily waived their hearing or the hearing was postponed, continued, or cancelled.

### Recidivism Rates for Life-Term Inmates Released after a Grant of Parole

A total of 2,739 life-term inmates were released from state prison after being granted parole by the Board between fiscal year 2011-12 and fiscal year 2015-16. Just over three percent (3.1% or 86 people) were convicted of a new misdemeanor or felony crime within three years of their release and less than one percent (0.5% or 14 people) were convicted of new felony crimes against persons.

<b>Fiscal Year of Release</b>	<b>No. Released</b>	<b>No. with new felony or misdemeanor conviction within 3 years of release</b>	<b>% with new felony or misdemeanor conviction within 3 years of release</b>	<b>No. with new felony conviction for crime against person within 3 years of release</b>	<b>% with new felony conviction for crime against person within 3 years of release</b>
<b>FY 2015-16</b>	720	23	3.2%	5	0.7%
<b>FY 2014-15</b>	682	16	2.3%	3	0.4%
<b>FY 2013-14</b>	510	16	3.1%	3	0.6%
<b>FY 2012-13</b>	478	20	4.2%	2	0.4%
<b>FY 2011-12</b>	349	11	3.2%	1	0.3%
<b>Total</b>	<b>2,739</b>	<b>86</b>	<b>3.1%</b>	<b>14</b>	<b>0.5%</b>

### **Recidivism Reports 2016 through 2021**

The 2021 *Recidivism Report for Offenders Released from the California Department of Corrections and Rehabilitation in Fiscal Year 2015-16* found that of the 720 life-term inmates released in fiscal year 2015-16 as a result of a grant of parole by the Board, 23 offenders or 3.2% were convicted of a new crime during a three-year follow-up period. Less than one percent (0.7%) or five offenders were convicted of felony crimes against persons.

The 2020 *Recidivism Report for Offenders Released from the California Department of Corrections and Rehabilitation in Fiscal Year 2014-15* found that of the 682 life-term inmates released in fiscal year 2014-15 as a result of a grant of parole by the Board, 16 offenders or 2.3% were convicted of a new crime during a three-year follow-up period. Less than one percent (0.4%) or three offenders were convicted of felony crimes against persons.

The Department's 2018 *Recidivism Report* found that of the 510 life-term inmates released in fiscal year 2013-14 as a result of a grant of parole by the Board, 16 offenders or 3.1% were convicted of a new crime during a three-year follow-up period. Less than one percent (0.6%) or three offenders were convicted of felony crimes against persons.

The Department's 2017 *Outcome Evaluation Report* found that of the 478 life-term inmates released in fiscal year 2012-13, 20 offenders or 4.2 % were convicted of a new crime during a three-year follow-up period. Less than one percent (0.4%) or two offenders were convicted of felony crimes against persons.

The Department's 2016 *Outcome Evaluation Report* found that of the 349 life-term inmates released by the Board in fiscal year 2011-12, 11 offenders or 3.2 percent were convicted of a new crime during a three-year follow-up period. Less than one percent (0.3%) or one offender was convicted of felony crimes against persons.

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## POLICY AND PROCEDURE DEVELOPMENTS

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### **Comprehensive Risk Assessments**

Each year the Board's Chief Psychologist presents an analysis of comprehensive risk assessments (CRA) administered by the Board's Forensic Assessment Division (FAD) to the Board at an executive board meeting open to the public.

A CRA is a structured professional judgment model of risk assessment that assesses a person's potential risk for future violence as low, moderate, or high. In 2020, the FAD relied on the Historical Clinical Risk Management-20 (HCR-20) Version 3, the Hare Psychopathy Checklist-Revised (PCL-R), and the STATIC-99-Revised (when applicable) for its CRAs.<sup>5</sup>

Based on 4,089 CRAs administered in 2020:

- 22% of examinees were rated low risk, 70% of whom were granted parole
- 45% were rated moderate risk, 21% of whom were granted parole
- 33% were rated high risk, less than 1% of whom were granted parole

### **COVID-19 Global Pandemic**

In response to the COVID-19 global pandemic, about 95 percent of the Board's employees began working from home in 2020. This continued throughout 2021.

On March 24, 2020, Governor Newsom signed Executive Order N-36-20, which among other things, directed the Board to develop and implement a process for conducting parole hearings by videoconference accessible to all participants. One week later, on April 1, 2020, the Board conducted its first parole hearing by videoconference via the internet. Within a few weeks, all hearings statewide were conducted by videoconference. The Executive Order also permitted people to postpone or waive their hearings at any time without the need to demonstrate good cause for requesting a postponement or waiver.

Because of the Executive Order and a variety of other reasons related to the pandemic, the percentage of scheduled hearings postponed increased significantly in 2020, from 20 percent in 2019 to 34 percent in 2020.

Prior to Executive Order N-36-20, Penal Code section 3041.6 required the Board to conduct all hearings in person at the prison where the incarcerated person is housed. On July 16, 2021, Governor Newsom signed into law Assembly Bill (AB) 145 (Chapter 80, Statutes of 2021), amending Penal Code section 3041.6 and authorizing the Board to conduct hearings by videoconference indefinitely.

With the passage of AB 145, the provisions of Executive Order N-35-20 requiring the Board to conduct parole hearings by videoconference were no longer necessary. In August 2021, the Board voted to approve emergency regulations governing the

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<sup>5</sup> The FAD discontinued its administration of the PCL-R in the fall of 2021.

scheduling and conducting of hearings by videoconference. The regulations took effect on September 27, 2021, and on October 4, 2021, Governor Newsom issued Executive Order N-17-21, rescinding relevant provisions of Executive Order N-35-20 concerning the Board's hearing processes. With fewer pandemic-related postponements in 2021, the overall percentage of hearings postponed decreased from 34 percent in 2020 to 25 percent in 2021.

Despite the on-going global pandemic and the majority of the Board's staff working remotely throughout 2021, the Board addressed a significant increase in workload in 2021, most notably:

- ◆ a 14% increase in scheduled parole hearings (8,722 hearings);
- ◆ a 47% increase in cases reviewed to determine whether a person should be discharged from parole (18,531 reviews);
- ◆ a 56% increase in Board-initiated investigations completed (89 investigations);
- ◆ a 6% increase in pre-parole investigations (1,332 investigations);
- ◆ a 36% increase in preliminary screenings under the Sexually Violent Predator Act (3,184 preliminary screenings); and,
- ◆ a 16% increase in clinical screenings under the Sexually Violent Predator Act (2,252 clinical screenings).

### **Elderly Parole Hearings**

On February 10, 2014, the Three-Judge Panel in the *Plata/Coleman* class action lawsuit ordered the California Department of Corrections and Rehabilitation (CDCR) to finalize and implement a new parole process whereby "elderly" persons are referred to the Board to determine suitability for parole. Persons who are eligible for parole consideration under this program are age 60 or older and have served at least 25 years of continuous incarceration. Both indeterminately- and determinately-sentenced people are eligible. People sentenced to life without the possibility of parole or condemned are not eligible for this program.

Comprehensive risk assessments for persons who are eligible for an elderly parole hearing specifically address how the person's advanced age, long-term confinement, and diminished physical condition, if any, may impact their potential risk for future violence.

In 2020, AB 3234 (Chapter 334, Statutes of 2020) was signed into law, statutorily expanding elderly parole to persons who are age 50 and who have served at least 20 years of continuous incarceration. Persons sentenced to life without the possibility of parole or condemned are not eligible for this program. In addition, persons sentenced under the Three Strikes Law and persons convicted of first-degree murder of a peace officer are also excluded from this program. The Board has until December 31, 2022, to schedule hearings for all persons immediately eligible for a hearing under AB 3234.

With the passage of AB 3234, there are now two groups of persons eligible for an elderly parole hearing: (1) persons who are sentenced under the Three Strikes Law or who were convicted of first-degree murder of a peace officer are eligible for a parole hearing after reaching age 60 and after having served 25 years of continuous incarceration, and (2) persons not sentenced under the Three Strikes Law nor convicted of first-degree murder of a peace officer are eligible once they are age 50 or older and have served 20 years of continuous incarceration.

In 2021, the Board scheduled 1,983 hearings for persons eligible for elderly parole, resulting in 360 grants, 657 denials, and 52 stipulations to unsuitability. The remaining 914 scheduled hearings were waived, postponed, continued, or cancelled.

### **Expanded Medical Parole Hearings**

In 2014, the Three-Judge Panel in the *Plata/Coleman* class action lawsuit ordered CDCR, in consultation with the Federal Receiver's Office, to finalize and implement an expanded parole process for persons who are medically incapacitated. In response, the state implemented a program whereby CDCR medical personnel identify eligible persons and refer them to the Board for a medical parole hearing. Persons are eligible for referral to the Board under the Medical Parole Program if they (1) suffer from a significant and permanent condition, disease, or syndrome, resulting in them being physically or cognitively debilitated or incapacitated or (2) qualify for placement in a licensed health care facility, as determined by the Resource Utilization Guide IV Assessment Tool. The Board conducts a medical parole hearing to determine if the person will pose an unreasonable risk to public safety if placed in a licensed health care facility in the community. The process for expanded medical parole was implemented in July 2014.

In 2021 the United States Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS) adopted a new approach to the enforcement of federal licensing requirements. The licensing enforcement prevents the Board and the Division of Adult Parole Operations (DAPO) from imposing any conditions on those placed in a skilled nursing facility that receives Medicare or Medicaid funds.

Previously, the Board placed conditions on persons housed in skilled nursing facilities under the Medical Parole Program to ensure placement of the person in a community facility would not pose a threat to public safety. CMS has taken the position that no conditions can be placed on persons in community facilities, including the condition that the patient not leave the facility unless there is an emergency or they have permission from their parole agent. The new CMS enforcement measures prevent the Board and DAPO from imposing relevant and necessary conditions for an expanded medical parole placement. As a result, the number of persons referred to the Board for a medical parole hearing decreased in 2021.



In 2021, the Board scheduled 74 hearings for expanded medical parole, resulting in 42 approvals, 10 denials, and 22 hearings postponed or cancelled.

### **Expansion of Board**

In response to a projected increase in the number of parole hearings to be scheduled, the Board expanded from 17 commissioners to 21 commissioners in 2021, pursuant to AB 145 (Chapter 80, Statutes of 2021).

### **Panel Attorney Program**

The Board implemented a new process for recruiting and reimbursing attorneys to represent inmates through the parole hearing process in 2019. Newly recruited attorneys were appointed to represent inmates beginning in January 2020 and the overall attorney fee schedule was increased from \$400 to \$750 per a case, with most panel attorneys being assigned up to 13 clients for one week of hearings each month. The new program also increased expectations for attorney-client interactions in preparation for a hearing. For example, it required panel attorneys to meet with their clients (by phone or videoconference) for one hour at least two times before the person's parole hearing and attend on-line training sessions.

The Budget Act of 2021 (Senate Bill (SB) 129, Chapter 69, Statutes of 2021) included funding for a one-year pilot program requiring panel attorneys to provide an additional hour of counsel to their clients before they are interviewed by one of the Board's forensic psychologists for their comprehensive risk assessment. This resulted in a temporary increase in the overall attorney fee schedule from \$750 per a case to \$900 per a case, for attorney appointments beginning July 1, 2021. In addition, the Budget Act requires the Board to submit an analysis of the impact of the additional hour of counsel to the Legislature by January 10, 2023.

In 2020, the Board partnered with a nonprofit entity, Parole Justice Works, to provide training and resources to panel attorneys and to assist the Board in monitoring the quality of attorney representation. During the first year of the partnership, Parole Justice Works provided training by videoconference for new panel attorneys, launched an attorney resource bank and Listserv, established an attorney-mentoring program, and conducted several roundtable virtual meetings for panel attorneys.

In 2021, Parole Justice Works' legal training for panel attorneys was approved by the State Bar for Minimum Continuing Legal Education Credit. In addition, it continued to develop its website content, established a system for monitoring panel attorney representation, conducted virtual training, completed primary filming of training videos for panel attorneys and educational videos for the incarcerated population, and it began observing panel attorneys during parole hearings.

### **Parole Consideration for Determinately-Sentenced Nonviolent Offenders**

In November 2016, California voters approved the Public Safety and Rehabilitation Act of 2016, also known as Proposition 57. Among other things, Proposition 57 created a parole consideration process for persons convicted of a nonviolent felony offense and sentenced to state prison. The proposition requires the Secretary of CDCR to adopt regulations in furtherance of the proposition's provisions. In 2018, the Board worked with CDCR to promulgate emergency regulations to implement a parole consideration process for determinately-sentenced nonviolent offenders. Persons required to register as a sex offender under Penal Code section 290 et seq. were not eligible for the process, as specified in the ballot measure materials for Proposition 57. The emergency regulations went into effect on April 14, 2018, and CDCR began referring incarcerated people who passed behavior-based public safety screening criteria to the Board for parole consideration on July 1, 2018.

In 2020, the First Appellate Court's decision in the case of *In re McGhee* became final. The decision invalidated CDCR's use of behavior-based public safety screening criteria to exclude people from parole consideration under Proposition 57. The Board worked with CDCR to amend its regulations and stopped applying the behavior-based public safety screening criteria in July 2020. In addition, people who previously did not pass the behavior-based public safety screening criteria were referred to the Board for parole consideration.

In December 2020, the California Supreme Court's decision in the case of *In re Gadlin* held persons required to register as a sex offender under Penal Code section 290 et seq. based on a prior conviction cannot be categorically excluded from parole consideration under Proposition 57. The Court also held the Department's regulations cannot exclude people for a current sexual offense unless it is defined by the regulations as a violent felony.

In 2021, CDCR promulgated emergency regulations to implement the *Gadlin* decision by removing the exclusion of persons required to register as a sex offender under Penal Code section 290 et seq. from the nonviolent offender parole review process.

The number of persons approved for release under the nonviolent offender parole review program has steadily declined, as more persons with recent negative behavior and persons convicted of sex crimes (who were previously ineligible for parole consideration under the program) are now referred to the Board. At the same time, persons most likely to be approved for release under the program are no longer referred to the Board. This is because nonviolent offenders who participate in rehabilitative programs and who do not engage in negative behavior are now eligible for increased credit earning. As a result, many are no longer referred to the Board because they are instead released based on increased credits applied toward their sentence. Lastly, many people convicted of nonviolent, non-sex crimes who were within 180 days of their release date in

2020 and early 2021 had their release dates accelerated as part of CDCR's efforts to reduce the prison population in an effort to mitigate the impact and spread of COVID-19 in prisons.

### **Parole Consideration for Indeterminately-Sentenced Nonviolent Offenders**

On September 7, 2019, the Second Appellate District Court of Appeal issued its decision in the case of *In re Edwards*. The court found that the state impermissibly excluded indeterminately-sentenced nonviolent offenders from parole consideration under Proposition 57, and explained how to calculate the "full term for the primary offense" for this population. In response, the Board worked with CDCR to promulgate regulations to comply with the court's order and implement processes for screening indeterminately-sentenced nonviolent offenders for eligibility, calculating the dates upon which they are eligible for a hearing, referring them to the Board, and scheduling them for parole hearings. The regulations required the Board, by December 31, 2021, to schedule hearings for persons who were immediately eligible for a hearing when the regulations took effect. In 2021, the Board successfully scheduled these persons for a hearing, as required.

As mentioned above, in December 2020, the California Supreme Court's decision in the case of *In re Gadlin* held persons required to register as a sex offender under Penal Code section 290 et seq. based on a prior conviction cannot be categorically excluded from parole consideration under Proposition 57. The Court also held the Department's regulations cannot exclude people for a current sex offense unless it is defined by the regulations as a violent felony. The *Gadlin* decision applies to indeterminately-sentenced nonviolent offenders who were previously excluded from parole consideration under Proposition 57 due to their registration requirement.

In 2021, the Board scheduled 1,774 parole hearings for indeterminately-sentenced nonviolent offenders, resulting in 264 grants, 610 denials, and 64 stipulations to unsuitability. The remaining 836 scheduled hearings were waived, postponed, continued, or cancelled.

### **Parole Terms and Reviews for Discharge from Parole**

On August 6, 2020, Governor Newsom signed SB 118, which shortened parole periods for most persons released from state prison on or after July 1, 2020. The bill also standardized the timing for reviewing persons for possible discharge from parole. The parole term for most determinately-sentenced persons is now two years and for indeterminately-sentenced persons, it is three years. One exception is that parole terms for persons required to register under Penal Code section 290 et seq. remain unchanged. In addition, persons subject to the new parole terms must be reviewed for possible discharge from parole no later than 12 months after release from confinement, and annually thereafter. The Board is responsible for reviewing all indeterminately-sentenced persons and certain determinately-sentenced persons for discharge from parole.

In 2021, the Board conducted 18,531 parole discharge reviews, a 47 percent increase over the 12,595 reviews conducted in 2020.

### **Prosecutor Participation in Parole Hearings**

Of the 4,188 parole hearings held in 2021, a prosecutor attended 2,318 (or 55 percent). Of those 2,318 hearings, 719 or 31 percent resulted in a grant. This is slightly less than the overall grant rate for hearings held in 2021, which was 34 percent.

### **Streamlined Notification Process**

The Board implemented a new process for auto-generating and sending via email all required parole hearing and nonviolent offender parole review notices, when appropriate (some victims and victim's family members continue to request and receive notice via U.S. mail). In addition, the Board stopped sending notice of parole hearings to sentencing judges in response to AB 145 (Chapter 80, Statutes of 2021). Specifically, AB 145 amended Penal Code section 3042, to remove the requirement that the Board send notice of parole hearings to "the judge of the superior court before whom the inmate was tried and convicted."

### **Structured Decision-Making Framework (SDMF)**

The number of parole hearings scheduled annually increased 67 percent in four years, from 5,226 hearings scheduled in 2018 to 8,722 hearings scheduled in 2021. The increase is due primarily to changes in statutes and via case law expanding parole eligibility.

In order to meet a projected increase in parole hearings, the Board was expanded from 15 to 17 commissioners in 2019 and again from 17 to 21 commissioners in 2021. In addition, the Board adopted a structured decision-making framework (SDMF) in 2019 to streamline the hearing process and make parole hearings more efficient by focusing hearing panels on evidence-based risk factors.

The SDMF is a structured professional judgment model; it is a systematic compilation of key factors reflecting best practice in risk assessment and parole release decision-making. It combines both research-supported factors and relevant legal considerations, providing a template for hearing panel members to follow that is consistent with the law governing parole decisions in California. The resulting analysis forms the basis for parole hearing decisions. The SDMF is intended to produce parole decisions that are structured, consistent, transparent, and focused on a person's current risk. As of 2021, the SDMF is used in 10 states within the U.S. and the National Parole Board of Canada, which developed the tool.

Since the Board implemented the SDMF, the average length of a parole hearing decreased by 20 percent, from more than three hours in 2018 to two and half hours in 2021. During the same time period, the overall number of grants increased from 1,136 grants to 1,424 grants. As a percentage of hearings held, grant rates have remained consistent, ranging from 34 to 36 percent. This is particularly

significant, as the number of scheduled hearings that are initial hearings increased 137 percent during the same time period, from 2,104 hearings in 2018 to 4,999 hearings in 2021.

In 2021, California was selected to participate in a project sponsored by the National Institute of Corrections and the Association of Paroling Authorities International to form a "community of practice" with other parole boards that use the SDMF. The collaboration will focus on ways for parole boards to increase their capacity to sustain use of the SDMF with fidelity. The project will include several workshops with other paroling authorities throughout 2022.

### **Youth Offender Parole Hearings**

The Board began conducting youth offender parole hearings in 2014, as required by SB 260 (Chapter 312, Statutes of 2013). Under SB 260, youth offenders were defined as persons who were tried as adults but who were under the age of 18 when they committed their controlling offense. Youth offenders are eligible for a parole hearing once they have served 15, 20, or 25 years, depending on the length of the original sentence imposed by the court. Certain exclusions apply. In 2021, the Board scheduled 639 youth offender hearings for persons who were under the age of 18 when they committed their controlling offense, resulting in 129 grants, 178 denials, and 20 stipulations to unsuitability. The remaining 312 scheduled hearings were waived, postponed, continued, or cancelled.

In 2015, the Legislature expanded the definition of a youth offender to include persons who committed their controlling offense when they were under the age of 23, pursuant to SB 261 and SB 519 (Chapters 471 and 472, Statutes of 2015), which took effect on January 1, 2016, exclusions apply. Youth offenders under these bills must also serve a minimum of 15, 20, or 25 years before they are eligible for a parole hearing. In 2021, the Board scheduled 2,280 youth offender hearings for persons who were between the ages of 18 and 23 when they committed their controlling offense, resulting in 372 grants, 660 denials, and 92 stipulations to unsuitability. The remaining 1,156 scheduled hearings were waived, postponed, continued, or cancelled.

In 2017, the Legislature again expanded the definition of a youth offender to include persons who committed their controlling offense when they were under the age of 26, pursuant to AB 1308 (Chapter 675, Statutes of 2017), exclusions apply. Youth offenders under this measure must serve a minimum of 15, 20, or 25 years before they are eligible for a parole hearing, depending on the sentence imposed by the court. In 2021, the Board scheduled 1,211 youth offender hearings for persons who were age 23 to age 25 when they committed their controlling offense, resulting in 203 grants, 373 denials, and 30 stipulations to unsuitability. The remaining 605 scheduled hearings were waived, postponed, continued, or cancelled.

In 2017, the Legislature also passed SB 394 (Chapter 394, Statutes of 2017), requiring the Board to provide a youth offender parole hearing to persons sentenced to life without the possibility of parole for crimes they committed when they were under the age of 18, exclusions apply. In 2021, the Board scheduled 30 youth offender hearings for persons who were eligible for a youth offender hearing under SB 394, resulting in 5 grants, 8 denials, and no stipulations to unsuitability. The remaining 17 scheduled hearings were waived, postponed, continued, or cancelled.

Overall, in 2021 the Board scheduled a total of 4,160 youth offender hearings; 2,755 were for indeterminately-sentenced youth offenders and 1,405 were for determinately-sentenced youth offenders. The 4,160 scheduled hearings resulted in 709 grants, 1,219 denials, and 142 stipulations to unsuitability. The remaining 2,090 scheduled hearings were waived, postponed, continued, or cancelled. In 2021, 48 percent of scheduled parole hearings were youth offender parole hearings.

### **Victim and Survivor Participation in Parole Hearings**

In 2021, 30 percent of scheduled parole hearings had at least one victim or victim's family member who requested to be notified of the hearing. However, only 11 percent of hearings held had a victim or victim's family member in attendance (467 of 4,188 hearings). For those 467 hearings, a total of 917 victims or victim's family members attended. The outcome of hearings held with a victim or victim's family member present in 2021 was consistent with the outcome of hearings held in general; 33 percent of hearings held with a victim or victim's family member present resulted in a grant of parole whereas 34 percent of all hearings held resulted in a grant. This is consistent with the California Supreme Court's decision in *In re Vicks*, which requires the Board to ensure victims are treated with dignity; that they are acknowledged and respected. However, in so doing, the Board is not authorized "to base its decisions on victims' opinions or public outcry." (*In re Vicks* (2013) 56 Cal.4th 274, 310).

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## LEGAL DEVELOPMENTS

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### ***Armstrong* Class Action Litigation (“*Armstrong II*”)**

The subject of the *Armstrong* litigation is the Board's compliance with the Americans with Disabilities Act (ADA) throughout its hearing processes. In 2021, the Board's legal staff provided mandatory ADA training for the Board's hearing officers and also provided additional trainings for attorneys representing people at their parole hearings, through Parole Justice Works. The Board continues to work toward full compliance with the *Armstrong* Remedial Plan II.

### **California Supreme Court Case Pending**

#### ***People v. Williams* – California Supreme Court, No. S262229**

The question presented: Does Penal Code section 3051, subdivision (h), violate the equal protection clause of the Fourteenth Amendment by excluding young adults convicted and sentenced for serious sex crimes under the One Strike law (Pen. Code, § 667.61) from youth offender parole consideration, while young adults convicted of first-degree murder are entitled to such consideration?<sup>6</sup>

### **Significant Cases Resolved in 2021**

#### ***In re Bettencourt***

The court held that the superior court improperly applied an Eighth Amendment standard to a parole due process claim. The court's error was compounded further by employing sentencing principles for juveniles to review a parole denial for an offender who committed his crimes as an adult.

#### ***In re Hoze***

The court held that people sentenced for offenses committed while imprisoned [known as “*Thompson terms*” and “*Tate terms*”] are not required to serve those sentences after a grant of parole under the Elderly Parole Program. The Court concluded that the Legislature intended to authorize the Board to supersede these consecutive terms pursuant to Penal Code section 1170.1(c) upon a grant of parole under the Elderly Parole Program.

#### ***In re Kavanaugh***

Proposition 57 amended the California Constitution by adding section 32 to article I to provide parole consideration for nonviolent offenders. (Cal. Const., art. I, § 32.) The court held that the amendment guarantees parole consideration to nonviolent offenders, but does not impose or incorporate any express procedural requirements. The court further held that CDCR's nonviolent parole regulations satisfy due process, and the robust process provided to determinately-sentenced nonviolent offenders satisfies constitutional standards.

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<sup>6</sup> This case is proceeding as a criminal appeal and the Board is not a party to the litigation.

### ***In re Mohammad***

The Court affirmed the constitutionality of the Board's nonviolent parole regulations under Proposition 57, which exclude offenders with both nonviolent and violent convictions from parole consideration. The Court held that the regulations are reasonably necessary to effectuate the purpose of Proposition 57.

### **United States Court of Appeals Cases**

#### ***Jones v. Allison – United States Court of Appeals, Ninth Circuit***

The Court explained that under the doctrine of legislative immunity, members of Congress and state legislators are entitled to absolute immunity from civil damages for their performance of lawmaking functions. Moreover, officials “outside the legislative branch are entitled to legislative immunity when they perform legislative functions.” The Court held that because officials of CDCR were performing a legislative function when they adopted the nonviolent parole regulations as directed by article I, section 32 of the California Constitution, they are entitled to legislative immunity from Plaintiffs' claims for damages.

### **Writs of Habeas Corpus**

In 2021, the state was required to file a response to 70 habeas petitions filed in state and federal court (down 28% from 97 in 2020). In 2021, the Board held nine court-ordered parole suitability hearings as a result of habeas petitions filed by incarcerated people that were granted by the court, down from 25 in 2020.

### **Regulations**

The Board promulgated emergency regulations governing the scheduling and conducting of hearings by videoconference, as authorized by AB 145 (Chapter 80 of Statutes of 2021). The regulations took effect on September 27, 2021, and they require the Board to conduct parole hearings by videoconference unless the Board determines an in-person hearing is necessary for the hearing panel to establish effective communication with the incarcerated person. The regulations also specify timeframes for persons to notify the Board if they plan to participate in the hearing.

In early 2021, the Board promulgated emergency regulations temporarily permitting some parole hearings scheduled between April 1, 2021, and June 30, 2022, to be conducted without a comprehensive risk assessment. The regulations were necessary to address a backlog of comprehensive risk assessments that occurred when more people became eligible for a parole hearing as a result of various court decisions and legislation. The emergency regulations took effect on February 5, 2021, and specify that persons housed at a Security Level IV prison who had two or more recent serious rules violations will not receive a comprehensive risk assessment if they are scheduled for a hearing on or before June 30, 2022.



Emergency regulations were also promulgated to implement AB 965 (Chapter 577, Statutes of 2019), which authorized the Secretary of CDCR to adopt regulations allowing youth offenders to advance their initial youth offender parole hearing date through credit earning. The regulations specify that beginning January 2022, educational milestone credits earned by a youth offender since August 2017 will be applied toward the person's youth parole eligible date.

The Board approved regulations implementing AB 3234 (Chapter 334, Statutes of 2020) as well, which extended eligibility for parole consideration under the elderly parole hearing process to certain persons who are age 50 and who have served at least 20 years of continuous incarceration.

Lastly, the Board also approved updating its regulations to reflect increased parole denial lengths enacted by Marsy's Law in 2008. While the Board implemented Marsy's Law shortly after it was enacted, the Board's regulations had not yet been amended to reflect those changes.

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## TRAINING AND OUTREACH

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### **Commissioner and Deputy Commissioner Training**

The Transcript Analysis Program provides commissioners with periodic legal feedback regarding their parole hearing decisions. Twenty-three consultations occurred between the Board's legal division and commissioners under the Transcript Analysis Program in 2021, which is the same number that occurred in 2020.

Commissioners and deputy commissioners receive training throughout the year during monthly board meetings, the majority of which are open to the public. In addition to routine training required for all CDCR employees, the following training was provided to commissioners and deputy commissioners in 2021:

- ◆ *In re Gadlin*, review granted March 11, 2019 S254599, by Jennifer Shaffer, Executive Officer, and Jessica Blonien, Chief Counsel, Board of Parole Hearings (BPH)
- ◆ *Comprehensive Risk Assessments in Parole Consideration*, by Jennifer Shaffer, Executive Officer, and Jessica Blonien, Chief Counsel, BPH
- ◆ *Informational Update from the Office of Victim Survivor Rights and Services (OVSRS)*, by Mike Young, Victim Services Manager, and Katie James, Assistant Chief, OVSRS
- ◆ *Overview of Integrated Substance Use Disorder Treatment (ISUDT) Program*, by Janene DelMundo, ISUDT Project Director, Lisa Heintz, ISUDT Project Executive, Dr. Renee Kanan, Deputy Director of Quality Management, California Correctional Health Care Services, and Kevin Hoffman, Deputy Director, Program Operations, Division of Rehabilitative Programs
- ◆ *Anti-Recidivism Coalition (ARC) Programs During Covid-19 Pandemic*, by Sam Lewis, Executive Officer, ARC
- ◆ *Update on Credit Earning Changes at CDCR*, by Heidi Dixon, Chief of Case Records Services, CDCR
- ◆ *Programming and Services for Incarcerated Individuals with Domestic Violence History*, by Grace Romero, CEO, Time of Change
- ◆ *The Concept of Insight and the Role of Insight in the Parole Decision Making Process*, by Dr. Cliff Kusaj, Chief Psychologist, BPH
- ◆ *Remorse in Parole Hearings: An Elusive Concept with Concrete Consequences*, by author Nicole Bronniman
- ◆ *Compassion Fatigue and Recovery*, by Bethany Jones, Television Producer
- ◆ *Panel Attorney Program Update*, by Heidi Rummell, President and Founder, and Anna Feingold, Interim Executive Director, Parole Justice Works
- ◆ *Observations and Insights from a Behavioral Health Reintegration Program (BHRP)*, by Dr. Elizabeth Kita, BHRP
- ◆ *Information Regarding Resources Available from Crime Victims Assistance Network (I-CAN)*, by Kaitlyn Wood, Community Engagement Manager, Ericka Mendoza, Parole Hearing Support Coordinator, Natalie Vargas,

- Community Outreach Advocate, and Christine Ward, Executive Director, I-CAN
- ◆ *Structured Decision Making Framework*, by Dr. Ralph Serin, Professor, Carleton University, and Director, Criminal Justice Decision Making Laboratory
  - ◆ *Using the Structured Decision Making Framework in Cases With Recent Misbehavior*, by Jennifer Shaffer, Executive Officer, and Jessica Blonien, Chief Counsel, BPH
  - ◆ *Litigation Update*, by Phillip Lindsay, Senior Assistant Attorney General
  - ◆ *Legal Issues Associated with Virtual Parole Hearings*, by Jennifer Shaffer, Executive Officer, and Jessica Blonien, Chief Counsel, BPH
  - ◆ *In re Canady (C089363)*, by Jennifer Shaffer, Executive Officer, and Jessica Blonien, Chief Counsel, BPH
  - ◆ *Ex Parte Communications at Parole Hearings*, by Jennifer Shaffer, Executive Officer, and Jessica Blonien, Chief Counsel, BPH
  - ◆ *Making Recommendations under Penal Code section 3041.5, subdivision (b)(2)*, by Jennifer Shaffer, Executive Officer, and Jessica Blonien, Chief Counsel, BPH
  - ◆ *Updates to Comprehensive Risk Assessments*, by Dr. Cliff Kusaj, Chief Psychologist, BPH
  - ◆ *In re Kavanaugh (D076500), In re Flores (C089974), In re Ernst (F08316)*, by Jennifer Shaffer, Executive Officer, and Jessica Blonien, Chief Counsel, BPH
  - ◆ *Board of Parole Hearings' Regulations – A Review of Recent Changes and Preview of Anticipated Proposals*, by Jennifer Shaffer, Executive Officer, and Jessica Blonien, Chief Counsel, BPH
  - ◆ *Analysis of Comprehensive Risk Assessments Administered in 2020*, by Dr. Cliff Kusaj, Chief Psychologist, BPH
  - ◆ *Update on Institutional Programs from the Division of Rehabilitative Programs*, by Brantley Choate, Director, Division of Rehabilitative Programs
  - ◆ *Understanding the Enhanced Outpatient Program: Insight Into the Programming and Services Available to EOP Patients*, by Eric Hernandez, LCSW, Mental Health Training Unit, and Dr. Alana Battle, Psy.D, Senior Psychologist, Specialist, Division of Healthcare Services, CDCR
  - ◆ *Programming Opportunities from the Guiding Rage Into Power (GRIP) Training Institute (Insight-Out)*, by Jacques Verduin, Founding Director and Minister of Transformation, GRIP
  - ◆ *Waivers, Stipulations, Postponements and Continuances After Executive Order N-36-20*, by Jessica Blonien, Chief Counsel, BPH
  - ◆ *Executive Report on Proposition 57 Nonviolent Parole Review Process and Discretionary Parole in California*, by Jennifer Shaffer, Executive Officer, BPH
  - ◆ *Explaining the Work of Committee on Revision of the Penal Code*, by Michael Romano, Chairperson, and Thomas Nosewicz, Legal Director, Committee on Revision of the Penal Code
  - ◆ *Robina Institute of Criminal Law and Criminal Justice's Findings on Discretionary Parole in California*, by Kevin Reitz, James Annenberg La Vea Professor of Law, Robina Institute

- ◆ *Parole Justice Works Update*, by Heidi Rummel, President and Founder, and Anna Feingold, Executive Director, Parole Justice Works
- ◆ *Understanding Trauma and Its Impact in Our Lives*, presented by Regi Huerter, M.A., Policy Research Associates
- ◆ *Overview of Programming Services Provided by Hustle 2.0*, by Charles Hoke, CEO and Co-Founder, and Cat Hoke, Managing Editor and Co-Founder, Hustle 2.0
- ◆ *Information on Programming and Services from Life Support Alliance*, by Vanessa Nelson-Sloane, Director and Co-Founder, Life Support Alliance
- ◆ *Information on the Expansion of the Office of Victim and Survivor Rights and Services (OVSRS)*, presented by Katie James, Chief, and Mike Young, Assistant Chief, OVSRS
- ◆ *Information from Senior Psychologists Regarding Comprehensive Risk Assessments*, by Dr. Cliff Kusaj, Chief Psychologist, BPH
- ◆ *Litigation Update and Special Conditions of Parole*, by Phillip Lindsay, Senior Assistant Attorney General
- ◆ *Judicial Decorum Training*, by the Judicial Council of California

Commissioners and deputy commissioners also received the following training presented by the Association of Paroling Authorities International via videoconference:

- ◆ *Working Collaboratively through COVID with our Criminal Justice Partners* by Bryan Collier, Executive Director, Texas Department of Criminal Justice
- ◆ *Interstate Compact for the Parole Board Member*, by Ashley Lippert, Executive Director, Interstate Commission for Adult Offender Supervision
- ◆ *From Zero to Evidence-Based Practices in Under 4 Years*, by Jennifer Kisela, Deputy Program Director, Council of State Governments Justice Center; Julie Micek, Director, Parole for the State of Nebraska; Dr. Jennifer Miller, Assistant Director of Supervision for Data, IT, and Research, Nebraska Board of Parole and Division of Parole Supervision
- ◆ *Sentencing: Punishment or Rehabilitation*, by Dallas County District Attorney John Creuzo
- ◆ *Connecting Universities, Law Schools, Reentry Non-Profits, and Paroling Authorities to Energize Success on Parole: An Example from Louisiana*, Francis Abbott, Executive Director, Louisiana Board of Pardons & Committee on Parole; Robert Lancaster, Robert Lancaster, Assistant Dean of Experiential Education, LSU Law Center and Director, Parole & Reentry Clinic; Andrew Hundley, Executive Director, Louisiana Parole Project
- ◆ *International Lessons Learned from the Pandemic*, Canada, England, Scotland, United States by Sylvie Blanchet, Executive Vice-Chairperson, Parole Board of Canada; Martin Jones, Chief Executive, Parole Board for England and Wales; Jennifer Shaffer, Executive Officer, BPH; Ian Bryce, Legal Vice-Chair, Parole Board for Scotland
- ◆ *Panel Discussion on Structured Decision-Making*, by Sylvie Blanchet Executive Vice-Chairperson, Parole Board of Canada; Jennifer Shaffer, Executive Officer, BPH; Dr. Ralph Serin, Professor, Carleton University, and

Director, Criminal Justice Decision Making Laboratory; Richard Sparaco, Executive Director, Connecticut Board of Pardons and Paroles

- ◆ *The Pitfalls of Empathy: Why The Absence of Empathy is in the Best Interest of Parole Board Decision-Making*, by Dr. Brandon Mathews, Member, Colorado Board of Parole
- ◆ *Supervision Around the World*, by Julie Truschel, President, Community Supervision Solutions
- ◆ *Kicking Water Up a Hill: Effecting Real World Change in Complex Systems*, by Dr. Alexandra Walker, Director of Community Relations and Strategy, Alliance for Criminal Justice Innovation

### **Clinical Psychologist and Senior Psychologist Training**

The Board's forensic clinical psychologists receive training during routine staff meetings throughout the year and review a variety of published research through Psych Net, a scholarly research database of the American Psychological Association, which is accessible to all members of the Forensic Assessment Division. Additional training received by the Board's forensic clinical psychologists in 2021 includes the following:

- ◆ *Transgender Persons, Cultural Competence, and Psychological Assessment* by Adrien Lawyer, Co-Founder and Co-Director, Transgender Resource Center of New Mexico
- ◆ *Basic Legal Topics for Forensic Psychologists* by Dr. Craig Lareau, J.D., ABPP, BPH
- ◆ *Remorseless and Callousness in Justice Involved Youth* by Dr. Jamie Flexon, Department of Criminology and Criminal Justice, Florida International University
- ◆ *HCR-20-V3: Risk Presence, Relevance, and Conceptualization* by Dr. Lisa Hazelwood, ABPP, BPH
- ◆ *STATIC-99R Training for SARATSO Certification* by Dr. Lisa Kalich, ABPP and Dr. Wendy Weiss, SARATSO-Certified Trainers, BPH

### **Outreach**

Board staff met throughout the year (by videoconference) with inmate counsel, inmate advocacy groups, district attorney representatives, crime victim advocates, educators, and legislative staff to discuss a variety of topics concerning the Board. For example, Board staff:

- ◆ participated in quarterly meetings with the Department of State Hospitals and CDCR to improve and streamline the state's processes for identifying persons who meet the criteria for additional treatment with the Department of State Hospitals as persons with a mental health disorder or as sexually violent predators
- ◆ provided information concerning the Board to 13 newly-appointed wardens

- ◆ discussed the Board's parole hearing process with graduate students from multiple universities in response to potential parole-related research projects
- ◆ received feedback concerning the parole hearing process via several discussions with victims and victim's family members who participated in parole hearings
- ◆ discussed the parole hearing process with numerous advocacy groups representing incarcerated persons and their families
- ◆ participated in an interview about the Board with the *New York Times Magazine*
- ◆ provided information about the Board's parole processes to a variety of Legislators, members of their staff, and representatives from the Legislative Analyst's Office
- ◆ submitted a report entitled, *Proposition 57 Nonviolent Parole Review Process* and participated in a panel discussion before the Committee on Revision of the Penal Code
- ◆ participated in monthly meetings with representatives from Parole Justice Works to discuss the Board's panel attorney program
- ◆ participated in round table discussions with the Board's panel attorneys hosted by Parole Justice Works
- ◆ provided information concerning "*Conceptualizing Insight and Self-Awareness in Risk Assessment*" to prosecutors at the California District Attorneys' Association's summer training conference
- ◆ discussed the parole hearing process and issues impacting victims and survivors with representatives from Prosecutors Alliance, California
- ◆ presented an overview of violent risk assessment in a parole release context to the RJ Donovan Pre-doctoral Internship Program
- ◆ received feedback and provided updates concerning the Board's parole hearing process through a series of informal discussions with formerly incarcerated persons granted parole by the Board
- ◆ discussed the medical parole process with a variety of stakeholders representing state and federal agencies responsible for oversight of community-based skilled nursing facilities
- ◆ provided information about the parole hearing process to advocacy groups representing victims and survivors
- ◆ presented an overview of the Board's Forensic Assessment Division and comprehensive risk assessments to Parole Justice Works
- ◆ provided an overview of the parole hearing process and the state's clemency process to the California Agricultural Leadership Foundation's Criminal Justice Seminar
- ◆ provided updates concerning the parole hearing process and the Board to the California District Attorneys Association's Victims' Rights Committee
- ◆ participated in a panel discussion concerning prison release discretion and prison population size, hosted by the Robina Institute
- ◆ provided information about discretionary parole to students at Berkeley High School

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## ADMINISTRATION

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### **Board Information and Tracking System (BITS) Improvements**

Each year the Board makes several significant modifications to its main computer system, BITS, allowing the Board to implement changes in the law and further streamline its processes. Below is a summary of modifications made to BITS in 2021.

- ◆ Introduced new rules-based engine to calculate dates for scheduling parole hearings and consultations
- ◆ Installed new software to monitor nightly uploads of data and auto-generate an alert if problems arise
- ◆ Added new functionality to enhance and streamline the Board's processes for clemency review
- ◆ Implemented the Board's emergency regulations that went into effect on February 5, 2021, temporarily permitting some parole hearings scheduled between April 1, 2021, and June 30, 2022, to be conducted without a comprehensive risk assessment; the new functionality flags hearings for which a comprehensive risk assessment will not be produced, auto-generates notices to affected parties, and establishes a process for receiving and responding to related correspondence from inmates and their counsel
- ◆ Modified the Board's hearing decision form (BPH Form 1001) to include a new section entitled, "What Happens After My Parole Hearing," which explains the Board's processes for reviewing parole decisions, review of a decision by the full Board ("en banc"), the Governor's review of parole decisions, rescission hearings, and the release process for persons granted parole
- ◆ Implemented the *In re Gadlin* decision, which states that nonviolent offenders required to register as a sex offender are eligible for parole consideration under Proposition 57; previously ineligible persons were added to work queues for Case Records staff to determine eligibility and calculate nonviolent parole eligible dates (NPEDs), notice of eligibility and NPEDs are now served on inmates via auto-generated "chronos," and eligible people are referred to the Board for parole consideration
- ◆ Implemented an improved process for identifying and tracking release dates for persons granted parole who must serve additional time before they are released
- ◆ Implemented a new process for batching and auto-sending all required hearing and nonviolent offender parole review notices via email, when appropriate (some victims and victim's family members continue to receive notices via U.S. mail, as requested)
- ◆ Deployed new functionality to auto-generate case numbers for clemency applications based on the year the application was processed
- ◆ Implemented changes to the elderly parole program under AB 3234 (Chapter 334, Statutes of 2020), which expanded eligibility to persons who

- are age 50 and who have served at least 20 years (exceptions apply); identified potentially eligible persons, created new eligibility review process for Case Records staff, new functionality to calculate elderly parole eligible dates (EPEDs), generate notice of eligibility and EPEDs to inmates via auto-generated "chronos," schedule hearings, and differentiate between persons eligible for elderly parole hearings under AB 3234 (Chapter 334, Statutes of 2020), and those who continue to be eligible for parole hearings under the 2014 court order in the *Plata/Coleman* class action litigation (persons who are age 60 and who have served at least 25 years, exceptions apply)
- ◆ Automated the Legal Division's workflow process for reviewing grants of parole and streamlined the process for the Governor's Office to review parole decisions
  - ◆ Implemented AB 145 (Chapter 80, Statutes of 2021), which eliminated the requirement for the Board to notify sentencing judges of parole hearings
  - ◆ Implemented the Board's emergency regulations governing the scheduling of hearings by videoconference and in person, as authorized by AB 145 (Chapter 80, Statutes of 2021); hearings scheduled to occur in person are flagged in BITS; hearing notices were modified to specify whether the hearing will occur in person or by videoconference; and functionality was added to allow hearings to switch between being scheduled to occur in person and via videoconference, as necessary
  - ◆ Implemented AB 46 (Chapter 9, Statutes of 2019), which changed all statutory references to the term "mentally disordered offender" to a person "with a mental health disorder"; all workflow screens and forms in BITS were updated to reflect the new terminology; also made some workflow changes to the screening process in BITS for offenders with a mental health disorder
  - ◆ Deployed functionality to send automatic alerts to Case Records staff when inconsistent local court case numbers are entered into CDCR's main computer system, the Strategic Offender Management System

### **Commissioner Appointments**

Governor Gavin Newsom appointed the following five commissioners to the Board: Commissioners Garcia, Garland, Nwajei, O'Meara, and Purcell. In addition, Governor Newsom reappointed the following six commissioners to the Board in 2021: Commissioners Dobbs, Long, Minor, Sharrieff, Taira, and Zarrinnam. Also in 2021, the State Senate confirmed the prior appointments of Commissioners Barton, Chappell, De La Torre, Schneider, and Sullivan.

### **Document Production**

The Board produced an unprecedented volume of data and reports for litigation, Public Records Act requests, CDCR's Office of Research, CDCR's Office of Legislative Affairs, the Governor's Office, the Department of Finance, and the Legislature.