

BOARD OF PAROLE HEARINGS
Executive Board Meeting
Minutes
Tuesday, December 17, 2013

Meeting called to order at 9:12 a.m.

Roll Call: Commissioners Anderson, Fritz, Garner, Guerrero, Labahn, Peck, Richardson, Roberts, Singh, Turner, and Zarrinnam present. Commissioner Montes absent (attends at 10:56 a.m.)

CONSENT CALENDAR

Comments and Clarification Regarding Board of Parole Hearings meeting minutes of November 18 and 19, 2013: No comments.

Parole Suitability Hearings and Backlog Report: No comments.

Public comment on Consent Calendar: No comments.

Commissioner SINGH moved to approve the consent calendar. Commissioner ROBERTS seconded the motion. The motion carried unanimously.

REPORTS AND PRESENTATIONS

Report from Executive Officer, Jennifer Shaffer

SHAFFER gave an overview of the provisions of Senate Bill 260. She described the measures the Board has taken to implement those provisions. The Board has sought and received the input of various stakeholders during this process. The Board has created explanatory documents which are now available on the Board's website. Over 130 people took part in the Board's statewide stakeholder conference call. In January 2014, there are 21 youth offender hearings, the first two of which are scheduled for January 7, 2014. A list of the hearings appears on the Board's website. February's schedule of youth offender hearings will be published soon. The Board has also sought the views of stakeholders about the proposed changes to risk assessments and the appointment of inmate counsel.

SHAFFER reported that the Board has agreed to settle the litigation *In Re Butler*. A copy of the settlement was distributed, and is also available on the website. The Court of Appeal, First Appellate District, approved the settlement yesterday. The terms of the settlement agreement were confidential until they were approved by the court. Under the agreement, the Board will calculate an inmate's base term and adjusted base term at an inmate's initial parole consideration hearing. For inmates who have already received an initial hearing, the base term and adjusted base term will be calculated at the inmate's next subsequent hearing that results in a grant, denial, stipulation, or tie vote. The Board will no longer approve stipulations at headquarters and stipulations will not be accepted prior to the week the hearing is scheduled.

SHAFFER emphasized that calculating a base terms earlier in the process has no impact on the Board's determination of an inmate's suitability for parole. A finding of suitability will continue to depend on the panel being satisfied that an inmate no longer poses an unreasonable risk to public safety.

The settlement will not take effect until the court has rendered a decision in inmate Butler's companion, challenging his parole denial. The decision is not expected for a few months and the Board will seek the input of stakeholders before implementing changes to policies or regulations. The Board will host a statewide conference call soon to provide more information and answer questions.

Report from Chief Counsel, Howard Moseley

MOSELEY gave an overview of the process for determining whether an inmate qualifies as a youth offender. He referred to the previously distributed chart the Legal Division uses in the determination. The chart is available on the Board's website. MOSELEY stated that, even though an inmate might qualify initially as a youth offender, he or she could be disqualified by subsequent convictions received as an adult. The goal is for the Department of Corrections and Rehabilitation Case Records Division to determine whether an inmate is a youth offender. Inmates may use the established appeals procedure to challenge an adverse determination. Until that time, the Legal Division will continue to determine inmates' youth offender status. MOSELEY distributed a form that inmate counsel may use to dispute any such determination made by the Board's Legal Division.

Youth Offender Characteristics, presented by Heather McCray, Staff Attorney and Dr. Cliff Kusaj, Chief Psychologist

McCRAY summarized the fact patterns and holdings in the federal and California cases that led to the passing of Senate Bill 260 (SB260). SB260 sets maximum eligibility timeframes and requires the Board to give great weight to the particular characteristics of youth offenders. She provided an overview of the provisions of the bill and stated that consideration of youth is required when determining an inmate's suitability for parole and when setting the lengths of any denial. The Board must give great weight to youths' diminished culpability, the hallmark features of youth and youths' subsequent growth and maturity.

McCRAY stated that courts have focused on six issues influencing the assessment of youths' diminished culpability: (1) developments in brain science; (2) the transience of youth characteristics; (3) the vulnerability of youths; (4) their limited control over their environment; (5) the limited effect of deterrence on youths; and (6) their disadvantage in criminal proceedings.

McCRAY summarized the courts' definitions of youth offender characteristics. The courts' decisions recognize that there are fundamental differences between adult and youth brains. Youths' brains are less capable of behavioral control and planning. Youths are more capable of change than adults and there is a greater probability that their deficiencies can be reformed. Youth offenders are more susceptible to peer pressures and external influences. These factors

increase their vulnerability. Youths have limited control over their circumstances. They are usually unable to remove themselves from abusive situations, such as parental drug or physical abuse. Youth offenders generally lack maturity and have an underdeveloped sense of responsibility. Youth offenders suffer disadvantages in criminal proceedings. They often distrust adults, impairing the ability of counsel to provide effective representation.

McCRA Y explained that the court decisions determined the hallmark features of youth are immaturity, impetuosity, and a failure to appreciate risks and consequences. The courts stated that these can lead to recklessness, impulsivity, and heedless risk-taking. McCRA Y stated that the Board's risk assessments and the input of inmates' family members are resources that will assist panels in evaluating youth offender characteristics.

DR. KUSA J provided a clinical perspective on youth offenders. He confirmed that research shows that adult and juvenile brains are different. Youths are more capable of change and only a relatively small proportion of adolescents who engage in illegal activity develop entrenched patterns of delinquent behaviors. Youths' lack of maturity and underdeveloped sense of responsibility often results in impetuous actions and ill-considered decisions. They are less likely to take possible punishments into account when making decisions and are more vulnerable in criminal proceedings. DR. KUSA J confirmed that Forensic Assessment Division evaluators have received training on youth offender characteristics and the hallmark features of youth. Evaluators will report on the impact of such factors on the inmate's attitudes and behaviors at the time of the life crime. Evaluators will also report on the inmate's subsequent growth and maturity.

Conducting Penal Code section 3041 Consultations, presented by Tiffany Shultz, Senior Staff Attorney

SHULTZ explained that SB 260 replaced the board's documentation hearings with consultations. The provisions will take effect January 1, 2014. SHULTZ provided a handout describing the changes enacted by SB260 with respect to consultations. Consultations will take place between five and six years before an inmate's minimum eligible parole release date. The panel will review the inmate's activities, provide information about the parole hearing process, and make recommendations to the inmate. The inmate will receive a written record of the panel's findings and recommendations within 30 days of the consultation.

SHULTZ explained the components of the Lifer Scheduling and Tracking System (LSTS) screens that record the panel's findings and recommendations. She provided a handout and indicated that the panel may request an investigation, in particular into issues of intimate partner battering. LSTS also allows the panel to request the Legal Division to determine issues such as an inmate's youth offender status. LSTS enables the panel to make comments, record postponements and show whether an interpreter was used. The record will be generated on the day of the consultation and the inmate will receive a copy.

MOSELEY stated that the panel must make findings and recommendations and must provide information to the inmate on the parole release process. After the consultation, the inmate will usually wait for the panel to complete its entries into LSTS, the results of which will then be

printed out and handed to the inmate. If the inmate must return to his or her cell before this has been done, the panel should ensure that the inmate receives a copy of the record.

SHAFFER said that in light of the *In re Butler* decision, the panel should include an explanation of how base terms and adjusted base terms are calculated. She anticipated that consultations will take longer than documentation hearings and stated that the Board's scheduling practices will be adjusted accordingly.

Report from Chief Deputy of Program Operations, Sandra Maciel

MACIEL gave an update on the Board's new inmate attorney appointment process. The final procedures and application forms have been posted on the website and sent to current inmate attorneys by e-mail. Attorneys, including those currently representing inmates as Board-appointed attorneys, must submit the required documents by December 31, 2013. There will be a public meeting to select attorneys under the new process on Friday, January 17, 2014, at 3:00 p.m. All inmate counsel must attend a Board orientation before they are eligible to represent inmates as Board-appointed counsel. There are two make-up orientation sessions. One will take place in Sacramento on January 6, 2014, and the other will be on January 13, 2014, in Diamond Bar. Information is available on the Board's website.

SHAFFER confirmed that the most senior attorneys [attorneys who have represented inmates at the most number of hearings during a specified number of years] qualifying for a list will be selected. The other attorneys on the list will be appointed randomly from the remaining qualifying attorneys.

New Lifer Scheduling & Tracking System Functionality presented by Chief Counsel Howard Moseley and Christine Buffleben

MOSELEY described the enhancements to the LSTS rescission hearing screens. The reasons for ordering a rescission hearing will now be clearly identified in the system. In addition, LSTS will record the parties appearing at the hearing, the witnesses giving evidence, and will indicate whether subpoenas were issued. And there is a section for panel comments.

BUFFLEBEN described the changes to LSTS that will be put into production on Monday, December 23, 2013. The screen used for Penal Code section 3000.1 hearings will now have a drop-down option for Deputy Attorney General in addition to District Attorney.

The View Status section of LSTS will include a flag for an inmate's youth offender status. Fields have been added for the Board's life-term release date, and the system will record the date the Board issues parole release memoranda. In addition, state hospitals will be added to the available options for the location field and in the Miscellaneous Decision section, only the chairperson's name will appear.

SHAFFER clarified that although only the chairperson's name will appear, the information entered will represent the decision of the whole panel.

Meeting recessed at 10:30 a.m., and resumed at 10:35 a.m.

Discussion Regarding Tours of Transitional Housing Facilities

Commissioner GARNER stated that he had visited Victory Outreach Church facility and spoke with its manager.

Commissioner LABAHN visited Crossroads in Claremont, a women’s facility.

EN BANC REFERRALS

Referral by the Chief Counsel pursuant to California Code of Regulations, Title 15, section 2042.

A. CARLOS, GARCIA K-89409

No speakers.

B. FISCHER, FREDERICK B-55652

No speakers.

C. MCNUTT, ELAINE W-34278

JILL KLINGE, Alameda County District Attorney’s Office. She expressed concern that the Board’s public notice for cases referred by the chief counsel do not provide sufficient information concerning the reason for the referral and, therefore, District Attorneys’ Offices are not able to effectively address the case at Board meetings.

Referral by the Governor pursuant to Penal Code section 3041.1 and California Code of Regulations, Title 15, section 2044.

D. LYNCH, JOHN T61378

No speakers.

E. TRAN, VIET H-93494

No speakers.

F. TUCKER, TERRANCE K-52595

No speakers.

DISCUSSION ITEMS

Administrative Directive 2013-06 Regarding Inmate Presentation of Documents, presented by Susan Booth, Staff Attorney

BOOTH stated that the directive was amended in response to comments made by various stakeholders. The meaning of “brief documents” was clarified. A limit of 20 single-sided pages has been included in the directive. The documents should be legible or in an average-sized font.

Board Questions and Comments: None

Public Comment: None

Commissioner TURNER moved to adopt the directive and was seconded by Commissioner LABAHN. The motion carried unanimously.

Administrative Directive 2013-07 Regarding Assessing Youth Offenders, Presented by Chief Counsel, Howard Moseley

MOSELEY stated that a presentation on the directive was given at the November 2013, meeting. No comments or suggested amendments were received.

Board Questions and Comments: None

Public Comments: None

Commissioner ROBERTS moved to adopt the directive and was seconded by Commissioner TURNER. The motion carried unanimously.

Proposed Revisions to Risk Assessment Tools, presented by Dr. Cliff Kusaj, Chief Psychologist

KUSAJ referred to the presentation he made on this subject at a previous meeting. KUSAJ stated that there has been considerable consultation with stakeholders over the proposed changes to the risk assessment tools. In addition, he has received input from the Board’s senior psychologists and from numerous subject-matter experts. KUSAJ stated that he is not proposing to eliminate the subsequent risk assessments at this time. In addition, KUSAJ confirmed that he also is not recommending that new risk assessment tools be used at this time, nor is he recommending any changes regarding the length of time between assessments at this time.

The first proposed change presented to the Board today is to discontinue using the Level of Service/Case Management Inventory (LS/CMI). The tool duplicates information derived from other risk assessment tools the Board uses and there is a danger that it overestimates some risks and underestimates others.

Secondly, KUSAJ proposed a change in the way that the assessment of psychopathy is presented. It is recommended that the Psychopathy Checklist-Revised (PCL-R) still be administered to all

inmates but that it not be reported as a separate instrument any longer. KUSAJ emphasized that the PCL-R is not a measure of the risk of violent re-offending. It is recommended that Psychopathy be discussed as part of the History/Clinical/Risk Management-20 (HCR-20).

KUSAJ also recommended that risk assessments no longer use percentage rankings and confidence intervals. The percentages are often difficult to understand and can be misinterpreted by lay persons.

KUSAJ also proposed that the current five-category risk assessment system be modified to a three-category system. An inmate's overall risk of violence would be assessed as low, moderate or high [rather than low, low-moderate, moderate, moderate-high, or high]. KUSAJ submitted that the change would reduce the risk of confusion and is more consistent with current research.

KUSAJ recommended changes to the risk assessment format too. He suggested that headings should be combined to reduce redundancy and that information that has no bearing on an inmate's risk assessment should be eliminated. For example, medical information that has no relevance to an inmate's level of risk should be excluded.

KUSAJ stated that he recommends implementing the proposed changes beginning January 1, 2014, although panels would probably not see the revised reports at hearings until May or June, 2014.

Board Comments and Questions:

In response to questions from Commissioner PECK, KUSAJ stated that psychopathy in the proposed new risk assessment format would be discussed under the topic of personality disorders. Psychopathy is a material factor in only about 10% of the lifer population. If psychopathy is relevant in an inmate's case, the risk assessment will discuss the issue clearly and in depth.

Commissioner FRITZ expressed concern that discontinuing the use of the PCL-R might lead to the issue of psychopathy being obscured. She was also concerned that removing percentages from the risk assessment would prove unhelpful. KUSAJ stated that percentages might be retained if the Board considers their use to be constructive. However, he repeated his view that using percentages is prone to misinterpretation and is potentially misleading.

Commissioner ZARRINNAM supported the proposed changes but requested clarification about the headings that might be consolidated or eliminated. KUSAJ gave an example of how this might be achieved. Substance abuse is addressed in several parts of the risk assessment. The issue could be presented more concisely and efficiently under a single heading.

Commissioner LABAHN supported discontinuing the LS/CMI. He requested confirmation that, where psychopathy is relevant, the clinician will indicate clearly that it is a material consideration. KUSAJ confirmed that the assessment will state the fact clearly.

Commissioner FRITZ expressed reservations about accepting the proposed changes without considering a written example of the new format. She did not believe that it was necessary for the assessments to contain percentages, as long as the report is expressed in clear and understandable terms. In response to her questions, KUSAJ stated that each inmate's assessment would contain a discussion of the PCL-R and an explanation of the author's conclusions.

Commissioner ROBERTS asked whether KUSAJ was requesting approval of the proposed changes today. He stated that he would prefer to consider a written example of the new format before voting on the changes. Commissioner PECK concurred.

SHAFFER suggested that the reservations expressed about the proposals might be accommodated by separate votes on their various components. She interpreted the consensus of the meeting as being in favor of discontinuing the LS/CMI and changing to a three-category overall risk assessment. The other proposed changes might be tabled until the January, 2014 meeting. In the meantime, a sample of the new format might be drafted for the commissioners' consideration, following continued group discussions. SHAFFER stated that the risk assessments are also used by the Board's Legal Division and the Governor's office during the decision review process so there was a need to have parties other than Board members consider and provide feedback on the proposed format changes as well.

KUSAJ agreed with this approach.

Public Comments:

AARON WEST, Santa Clara County District Attorney's Office, opposed the proposed changes to the risk assessments. She has consulted the District Attorneys' Offices of Alameda, Los Angeles, Fresno and San Francisco counties and they are also opposed to the changes. WEST opposed removing the PCL-R as a separate heading. It is a widely-used and respected instrument. She recommended that there be training in the interpretation of percentages, rather than their discontinuance. She opposed the reduction of the historical and medical information contained in the assessments. She supported the suggestion that a sample of the new assessment be made available before any changes are made.

VANESSA NELSON-SLOANE, Life Support Alliance, expressed concern about the proposed changes and stated that inmates must also be able to understand the assessments. She supported the proposed three-category overall risk assessment.

KEITH WATTLEY, Uncommon Law, expressed concern about the proposed changes and supported the recommendation regarding the sample risk assessment.

ALEXIS DE LA GARZA, Los Angeles County District Attorney's Office, opposed the reduction in the number of headings in risk assessments.

JILL KLINGE, Alameda County District Attorney's Office, expressed concern that the changes are subject to a January 1, 2014 deadline. She stated that the assessments would benefit from greater consideration and consultation.

Commissioner LABAHN moved to discontinue using LS/CMI and to adopt the three-category overall risk assessment. Commissioner ROBERTS proposed that there be separate votes on the two issues. He recommended that the other proposed changes be tabled until the January, 2014 meeting and that a sample risk assessment be prepared in the new format.

Commissioner LABAHN accepted the amendment to his motion and moved that the LS/CMI be discontinued beginning January 1, 2014. Commissioner ZARRINNAM seconded the motion. Commissioners ANDERSON, FRITZ, GARNER, GUERRERO, RICHARDSON, SINGH and TURNER supported the motion. Commissioners MONTES and ROBERTS opposed the motion. Commissioner PECK abstained. The motion was carried.

Commissioner LABAHN moved that a three-category overall risk assessment (Low, Moderate and High) be adopted beginning January 1, 2014. Commissioner ROBERTS seconded the motion. Commissioners ANDERSON, FRITZ, GARNER, GUERRERO, MONTES, RICHARDSON, SINGH, TURNER and ZARRINNAM supported the motion. Commissioner PECK abstained. The motion was carried.

BPH Commissioners – Agenda Items for Future Meetings

Commissioner ZARRINNAM requested clarification about whether the sample risk assessment would be considered at the next meeting. SHAFFER confirmed that a sample risk assessment would be distributed to the commissioners prior to the next meeting.

Commissioner ANDERSON asked if the Dissolution of the Advisory Committees would be discussed at the next meeting. SHAFFER confirmed that it would.

Public Comments:

HARRIET SALARNO, Crime Victims United, expressed concern that the objectivity of the Board is being compromised by commissioners visiting rehabilitation facilities. She stated that District Attorneys' Offices should be provided with an inmate's medical history for medical parole hearings.

VANESSA NELSON-SLOANE, Life Support Alliance, urged commissioners to give great weight to the hallmark features of youth in determining parole suitability. She submitted that greater weight should be given to recent positive activity, rather than negative institutional behavior committed at the beginning of an inmate's incarceration.

GAIL PATRICE BROWNE, Life Support Alliance, supported the commissioners visiting rehabilitation facilities.

MERVIN BROOKINS, a former life prisoner, also supported the commissioners visiting rehabilitation facilities, and expressed his gratitude for being paroled.

MS. ROMERO, a life prisoner's mother, stated that inmates' families should be allowed to attend parole suitability hearings.

Meeting adjourned at 11:55 a.m.

**Board of Parole Hearings
Scheduled and Backlog Hearings Report
Penal Code section 3041(d)
January, 2014**



