

**BOARD OF PAROLE HEARINGS**  
**Executive Board Meeting**  
**Minutes**  
**Monday, March 17, 2014**

**Meeting called to order at 1:07 p.m.**

**Roll Call:** Commissioners Anderson, Fritz, Garner, Labahn, Montes, Peck, Richardson, Roberts, Singh, Turner, and Zarrinnam were present. Commissioner Guerrero was not present.

**CONSENT CALENDAR**

**Proposed Amendment to the Board of Parole Hearings Meeting Minutes of January 22, 2014:** No comments.

**Comments and Clarification Regarding Board of Parole Hearings Meeting Minutes of February 18 and 19, 2014:** 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 and was seconded by Commissioner TURNER. The motion carried unanimously.

**REPORTS AND PRESENTATIONS**

**Report from Executive Officer, JENNIFER SHAFFER**

SHAFFER reported on the statewide stakeholder conference call that took place last week regarding the determination of inmates' youth offender status. The Legal Division will continue to determine youth offender status for inmates whose hearings are scheduled through September 30, 2014. Any issues concerning the status of these inmates should be addressed to the Legal Division. The Case Records Division at the California Department of Corrections and Rehabilitation will determine youth offender status of inmates whose hearings are scheduled on or after October 1, 2014. Any issues concerning the status of these inmates should be addressed through the institutional appeals process. SHAFFER stated that 34 youth offender hearings took place in January and February, 2014. There were 17 parole grants and 17 denials. Several other hearings resulted in waivers or postponements.

SHAFFER gave an update on the *Butler* settlement agreement. The companion case challenging inmate Butler's parole denial has been decided. As previously reported, this triggers the settlement agreement and beginning April 1, 2014, the board will start calculating the base term, and adjusted base term for inmates in all hearings resulting in a grant, denial, stipulation, or tie vote. Base terms and adjusted base terms do not take into account post-conviction credits, which the board awards only after finding an inmate suitable for parole. Therefore, inmates who are

denied parole, stipulate, or receive a tie vote will have their base terms and adjusted base terms established. However, if they are later found suitable for parole, their actual release dates will change, once post-conviction credits and pre-sentence credits are calculated and applied. Proposed procedures for establishing base terms and adjusted base terms will be outlined at tomorrow's public board meeting. Following consultation with stakeholders, SHAFFER intends to present the procedures for the board's consideration at the April 2014 Executive Board meeting. SHAFFER recommended that stakeholders educate inmates about the calculation process. LSTS will be upgraded to enable release dates to be calculated. The system is being tested and is anticipated to be ready for implementation by April 1, 2014.

Chief Counsel, Howard MOSELEY, clarified that pre-prison credits will not be included in the calculation until an inmate is granted parole. Following a grant, the Legal Division will apply pre-prison credits to the panel's calculation, resulting in a final parole release date.

SHAFFER referred to a hearing that occurred in 2011. The inmate had no criminal history before the commitment offense. He had incurred no CDC-115s or CDC-128A disciplinary offenses during his incarceration. He had earned his bachelor's degree and a doctorate. Nevertheless, he was denied parole for ten years. His attorney wrote to the board requesting a review of the decision and submitting that the denial length was inconsistent with that imposed in similar cases. A review of the case resulted in a modification of the denial length to three years. Since the decision was not adverse to the inmate, it was unnecessary to bring the issue before the full board. SHAFFER regretted, however, that the District Attorney's Office and the registered victims were not informed of the modification. SHAFFER asked MOSELEY to investigate whether there have been other instances where parties have not been informed of such modifications. SHAFFER directed MOSELEY to draft procedures to ensure that all parties are informed of such modifications.

### **Report from Chief Counsel, HOWARD MOSELEY**

#### *Frequently Asked Questions Regarding Penal Code Section 3051 (Senate Bill 260)*

MOSELEY introduced Staff Attorney, Heather McCRAY, who gave the presentation.

McCRAY provided a handout describing the Youth Offender Eligibility Reconsideration Form, the legal standard for the youth factors in risk assessments, and consideration of information in prior risk assessments. McCRAY stated that inmates challenging a youth offender eligibility determination should attach supporting documents to the Reconsideration Form. She emphasized that the board considers official court records as authoritative regarding issues such as an inmate's date of birth or the date of the controlling offense.

McCRAY stated that the clinician preparing the risk assessment in a youth offender case must take into consideration the diminished culpability of juveniles, the hallmark features of youth and the increased maturity of the inmate. McCRAY stressed that the statutory "great weight" standard applies to the board when considering an inmate's suitability for parole. The clinician is not required to give the factors any legally-prescribed weight.

McCRAY stated that panels may consider any information in prior risk assessments when weighing an inmate's suitability factors. However, when assessing an inmate's growth and maturity, the panel must only consider the final risk assessment of evaluations that address the SB 260 youth factors.

MOSELEY provided a handout of the schedule for the board's April 2014 training conference. He pointed out that the conference is shorter than usual because there are other training opportunities throughout the year to meet the requirement of 40 hours of training. Open sessions will take place from Tuesday, April 15, 2014, to Thursday, April 17, 2014. The monthly board meeting will be on Tuesday, April 15, 2014. The board's closed session will be on Monday, April 14, 2014.

### **Proposed Administrative Directive Regarding Audio and Video Conferencing Guidelines**

Staff Attorney, Mina CHOI, presented Proposed Administrative Directive 2014-01 and provided a handout. The board will consider the directive at the April 2014 meeting and stakeholders are invited to submit comments. CHOI stated that definitions in the directive are drawn from statutes and regulations. Penal Code section 3043.25 permits any registered victim, victim's next-of-kin, members of the victim's immediate family, designated representatives, and prosecutor to appear at a hearing via video or audio conferencing. Section 3041.1 of the Code allows a qualifying support person for any registered victim, victim's next-of-kin, or member of the victim's immediate family to attend the hearing. California Code of Regulations, title 15, section 2029.1 allows persons authorized by the Executive Officer to observe a hearing for educational or informational purposes.

CHOI stated that those wishing to participate in audio or video conferencing must notify the board via email. The email address is supplied in the handout. Participants waive their right to appear in person at the hearing by requesting appearance by audio or video conferencing.

CHOI stated that participants who wish to appear by audio or video conferencing should contact the board as soon as possible, to ensure that the equipment is made available for the hearing. Equipment limitations might mean that several participants must meet at a single location. If the equipment cannot handle all those who wish to use it, priority will be given to interpreters. Participants must be available at the scheduled start of the hearing or lose the opportunity to participate. The hearing will never start before the scheduled time, unless all participants agree. The hearing might start later than the scheduled time, though no later than 6:00p.m., except in extraordinary circumstances. No one will be allowed to record the hearing or permit unauthorized persons to listen to, or record, the hearing. The Executive Officer or a Commissioner may cancel or limit transmission for good cause. The connection may also be terminated if there is excessive noise or a bad connection. It is recommended that persons requesting an appearance by audio or video conferencing submit a written statement before the hearing, in case a transmission problem occurs.

Commissioner ZARRINNAM asked if a person may request anonymity or have their appearance hidden.

MOSELEY stated he anticipated that the usual identification procedures would apply to audio and video conferencing. He would consider the question of keeping a participant's identity anonymous. He believed that it might be possible for the victim of a sexual offense to use a pseudonym.

SHAFFER stated that a pseudonym, such as, "Jane Doe," would be used at the hearing if the victim's name was obscured in court documents associated with the offender's commitment offense. She also stated that the board has been using audio and video conferencing for some time.

Commissioner MONTES asked whether the directive would go into effect immediately.

MOSELEY stated that the directive was not final and the board was requesting feedback from stakeholders before considering the proposed directive at the next meeting.

### **Report from Chief Deputy of Program Operations, SANDRA MACIEL**

MACIEL gave an update on the process for privately retained and state appointed attorneys. She provided a handout. A process has been established for appointing attorneys to represent mentally disordered offenders. The process mirrors that for lifer inmates. Atascadero and Patten State Hospitals will each have a state appointed attorney panel. Atascadero's panel will have five members. Three will be appointed by experience and two will be selected randomly. Patten will have two attorneys. Current lifer attorneys may apply for both panels, but MACIEL stated that an attorney may be a member of a maximum of three panels. Attorneys appointed to the new panels will receive training. It is intended that the procedures will be finalized at the April 2014 meeting and that the attorney appointment lottery will be conducted on June 1, 2014. It is anticipated that the panel will start operating by the end of June 2014.

MOSELEY asked whether there were any updates about the lifer panels.

MACIEL stated that the lists are updated each Friday and posted on the website. Some attorneys have asked to be removed from panels.

### **OPEN COMMENTS**

**BPH Commissioners: Agenda Items for Future Meetings: None.**

#### **Public Comment:**

VANESSA NELSON-SLOANE, Life Support Alliance, expressed concern about the scanning process for the Electronic Records Management System (ERMS). Life Support Alliance has received complaints about failures to scan documents into the electronic central files. She stated that scanning staff should not decide whether or not to include a particular document in the file. She questioned whether an effective supervisory and monitoring system is in place. She gave an example of a major error happening at an institution where staff failed to scan both sides of documents. The documents were then shredded, making retrieval impossible. She surmised that

similar incidents have occurred at other institutions. She requested that panel members take seriously assertions made by inmates that documents are missing from their central file.

JILL KLINGE, Alameda County District Attorney's Office, stated that she was also aware of problems arising from the electronic scanning of central files. She requested clarification about whether or not central files are destroyed after scanning. She expressed concern about the requirement that, when asking to appear via audio or video conferencing, hearing participants waive their right to be present. She suggested that it would be reasonable to allow participants to change their minds. KLINGE questioned whether the submission of a written statement would be subject to the ten-day rule. She stated that it would also be reasonable to allow participants to sit out of view when participating via video conferencing.

**Meeting recessed at 1:45 p.m. until Tuesday, March 18, 2014, at 10:00 a.m.**

**BOARD OF PAROLE HEARINGS**  
**Executive Board Meeting**  
**Minutes**  
**Tuesday, March 18, 2014**

**Meeting reconvened on Tuesday, March 18, 2014, at 10:05 a.m.**

**Roll Call:** Commissioners Anderson, Fritz, Garner, Labahn, Montes, Peck, Richardson, Roberts, Singh, Turner, and Zarrinam were present. Commissioner Guerrero was not present.

**EN BANC REFERRALS**

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

**A. GILLIS, THORNTON AD-9075**

CYNTHIA HAUETER and ELENA MARTINEZ, Justice Now legal advocates; GLORIA GILLIS, inmate's wife; and STEVEN DUNKLE, inmate's attorney, all supported recommending the recall of the inmate's sentence.

**B. SIDLEY, FREDERICK E-09073**

GENEINE SIDLEY, inmate's wife, and WILLIAM AMES, inmate's stepson, supported recommending the recall of the inmate's sentence.

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

**C. CALDERON, MARTIN K-92411**

No speakers.

**D. MYERS, BYRON E-26677**

No speakers.

**Referral to consider a rescission hearing pursuant to California Code of Regulations, title 15, section 2450 et seq.**

**E. MEJIA, ROBERT K-02824**

No speakers.

**Referral by the Governor pursuant to Penal Code section 3041.1 and California Code of Regulations, title 15, section 2044 to review a parole decision.**

**F. CAMPOS, JOEL V-92815**

SAMANTHA ARNERICH, Tulare County District Attorney's Office, submitted that the board should order a rescission hearing.

**G. MCNEESE, BRENNAN D-89368**

MAYA EMIG, inmate's attorney, submitted that there are no grounds for ordering a rescission hearing.

AUDREY CAYSON and MAJOR COLEMAN, inmate's cousins; VANESSA NELSON-SLOANE, inmate's friend; TONI CLINKSCALES, inmate's fiancé; PARIS CLINKSCALE, NATHANIEL PERKINS, CATHY PERKINS, and DARRELL SMITH, inmate's friends; KIM McNEESE, inmate's sister; ROMELL McNEESE-HOKE, inmate's nephew; and BRENDA McNEESE, inmate's sister, all supported the grant of parole.

**H. SOLIS, JESSE H-59423**

ART EKVALL, victim, and PHYLLIS SHESH, San Diego County District Attorney's Office, requested that the board order a rescission hearing.

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

**I. MENESES, MIGUEL H-89906**

No speakers.

### **DISCUSSION ITEMS**

*Amendments to 2013-03 Administrative Directives Regarding the Removal of Pre-Hearing Stipulations, presented by Jennifer Shaffer, Executive Officer*

SHAFFER stated that Administrative Directives 2013-03 A, B and C need amendment by vote of the board, as a result of the *Butler* settlement agreement. Copies of the proposed amendments were attached to the agenda. The directives govern how the board processes pre-hearing stipulations, waivers and postponements. The board no longer accepts pre-hearing stipulations, and the directives have been amended to reflect this change. The hearing panel will consider any representations from registered victims about a stipulation request. The board received input from stakeholders, including District Attorneys' Offices and victims' groups. SHAFFER stated that there were approximately 90 pre-hearing stipulations in 2013. She recommended that the board approve the proposed amendments.

**Questions and Comments from the Board:** None.

**Public Comments:** None.

SHAFFER summarized the effect of the *Butler* agreement on the calculation of inmates' release dates.

Commissioner TURNER moved to approve the proposed amendments to the directives. Commissioner ROBERTS seconded the motion. The motion carried unanimously.

### **OPEN COMMENTS**

**BPH Commissioners: Agenda Items for Future Meetings:** None.

**Public Comment:**

VANESSA NELSON-SLOANE, Life Support Alliance, expressed concern about the inadequate assistance provided to inmates by some correctional counselors. She stated that there have been instances where counselors have been unaware of the procedures involved in submitting a petition to advance hearing. Some counselors have refused to assist inmates with the process. Counselors have also been unhelpful with contacting transitional housing facilities. NELSON-SLOANE questioned whether risk assessments explore in sufficient depth the youth offender characteristics set out in Senate Bill 260. She recommended that an inmate's development be assessed by comparing the present situation with that seen in previous reports. NELSON-SLOANE recommended that panels exercise caution when questioning inmates about disciplinary offenses involving cell phones. She recognized the legitimacy of questioning on such issues, but considered it inappropriate for panels to require the inmate to disclose the sources of cell phones. Identifying a source places the inmate at risk of suffering severe harm.

LAURA ROMERO asked how panels weigh the relative importance of an inmate having an offer of employment, as opposed to possessing employment skills but without an offer of employment. She expressed that employment skills are more important in current economic conditions.

MOSELEY stated that the board cannot answer questions at the meeting, but that he would discuss with Ms. Romero the issues she raised after the meeting.

BILL BEAN, Sr., Crime Victims United of California, described the effect of a murder on the victim's family. He stated that there is a disparity between the treatment of inmates and victims' families. BEAN stated that victims groups have organized a march at the Capitol on April 8, 2014.

CHRISTINE WARD, Executive Director of Crime Victims Action Alliance, requested that public comment take place at the beginning of the board's meeting, rather than at the end. WARD expressed concern that requesting an appearance at a hearing by audio or video conferencing would mean waiving the right to appear in person. She recommended removing the provision from the draft administrative directive. She suggested that a reasonable approach would be to impose a time limit on withdrawing the request to appear by audio or video conferencing. WARD stated that victims should always be permitted to appear in person. She welcomed the revision to the directive's provision regarding submitting victims' statements prior to the hearing. WARD referred to a case in which the victim was caused great distress by not being notified that the date of the hearing had been moved up significantly. Victims need to be informed when an inmate's denial length has been modified without first being presented to the full board.

**Meeting adjourned at 11:40 a.m.**

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

