Post-Conviction Justice Project

SUMMARY OF THE CALIFORNIA PAROLE PROCESS

Parole Attorney Version

Fall 2016

GENERAL OVERVIEW

California prisoners who are convicted of certain crimes such as murder and kidnapping are sentenced to indeterminate life terms with a possibility of parole. These prisoners are entitled to parole consideration hearings after having served a certain portion of their sentence. The initial decision as to whether a prisoner will be released on parole is made by an executive branch agency called the Board of Parole Hearings (BPH or Board). If the BPH decides that a prisoner should be paroled, the Governor has a right, pursuant to both statutes and the California Constitution, to review and modify or reverse the decision.

The Board of Parole Hearings was established in 2005, and combines the previously existing Board of Prison Terms, Youth Authority Board, and Narcotic Addiction Evaluation Authority into one agency. One of the BPH's responsibilities is to conduct hearings to determine whether prisoners with indeterminate sentences are suitable for parole. (See Cal. Penal Code §3040*, et seq*.) Pursuant to internal restructuring in 2005, there are now seventeen BPH commissioner positions and an executive director. The director and the commissioners are appointed by the Governor and must then be confirmed by the senate. Twelve of the commissioner positions conduct parole hearings for life prisoners. A short bio of each commissioner is available on the CDCR website (cdcr.ca.gov/Divisions_Boards/BOPH/ commissioners.html). Additionally, there are approximately sixty deputy commissioners who are state civil servants. Although deputy commissioners are predominantly responsible for holding hearings to determine whether parolees have violated their parole conditions, one deputy commissioner sits on each parole hearing panel. Prior to 2001, each hearing panel consisted of two commissioners and one deputy commissioner. Because of the large backlog of hearings in recent years, the legislature enacted legislation with a sunset clause that allows panels to be comprised of one commissioner and one deputy commissioner.

By statute, every indeterminately sentenced prisoner has a Minimum Eligible Parole Date (MEPD), which is approximately two-thirds of the numerical sentence (i.e., for prisoners with a 15 to life sentence, the MEPD is about 10 years). (Cal. Penal Code §3046). By statute, the Board may not grant parole to any prisoner with an indeterminate sentence prior to her MEPD. A prisoner's MEPD also controls when that prisoner will have her initial parole hearing. According to Penal Code §3041, an initial hearing shall occur one year prior to a prisoner's MEPD.

At a prisoner's initial parole hearing, a BPH panel "shall" set a parole date unless it determines that the gravity of the offense, or the timing and gravity of current or past convicted offenses, are such that "consideration of the public safety requires a more lengthy period of incarceration." (Cal. Penal Code §3041 (b)). The language of the statute creates a presumption that a prisoner will be released on parole at her initial parole hearing. The California Code of Regulations sets forth the factors that the Board may consider in carrying out the mandate of the statute. (Cal. Code Regs. tit. 15 §2402(c)-(d)

(2008).) These suitability and unsuitability factors are meant to guide the Board's determination and will be discussed in more detail below, but the core determination of "public safety" under the statute and regulations is an assessment of the inmate's current dangerousness. In re Lawrence, 44 Cal. 4th 1181 (2008). The Board is limited to identifying and weighing only the factors relevant to predicting whether the inmate will be able to live in society without committing additional antisocial acts. (Id.)

In reality, the Board does not grant many parole dates and almost never grants a date at the initial hearing. Most prisoners are not found suitable until they have had at least several hearings. In order to adequately represent your client at her parole hearing, you **MUST** carefully read the sections of the penal code pertaining to parole hearings, which are §§3041 to 3049, and the California Supreme Court's decision in Lawrence**.**

If a Board panel determines that the prisoner is suitable, it then calculates the amount of time the prisoner is required to serve pursuant to a matrix in Title 15, which suggests varying prison terms based on certain specified characteristics of the commitment offense.[1] (See 15 CCR §2403.) It is rare for a prisoner to be found suitable before they have served the amount of time suggested by the matrix. You must also read carefully the relevant portions of Title 15 (§§2000, 2025-2044, 2235-2256, 2268-2270, 2400-2411).

HEARING PREPARATION

Prior to the hearing date, you will need to do these things:

(1) Prepare your client for the hearing;
(2) Review your client's C-file;
(3) Prepare a written submission for the Panel;
(4) Prepare an exhaustive list of every piece of information to be included in the hearing record;
(5) Prepare a list of potential questions/topics to ask your client at the hearing; and
(6) Prepare a closing statement.

Your preparation will be slightly different depending on whether this is an initial hearing or a subsequent hearing. (See 15 CCR §2268-2270).

---

1 NOTE: The timing and practice of "term-setting" (*i.e.*, setting a base term pursuant to the matrix in Title 15) is the current subject of *In re Butler*, Case No. 139411 (1st Dist., Cal. Ct. App.). In that case, the California Court of Appeal ordered that BPH set the base term, pursuant to the Title 15 matrix and taking into account post-conviction credits, at the *initial* parole hearing, regardless of whether the prisoner is found suitable or not.

INFORMATION SOURCES

In order to sufficiently prepare your client and yourself for the hearing, you must be familiar with all of the information on your client's case, including: (1) the commitment offense and any other prior criminal conduct; (2) pre-commitment personal history; (3) activities while incarcerated; and (4) intended release plans. You will be able to obtain this information from a variety of sources, as explained below.

THE CLIENT

The most important source of information is your client. You will visit your client at the prison multiple times prior to the hearing and discuss with them all aspects of their case. The upcoming parole hearing is likely the most important thing in the client's life at the moment, so they probably have a reasonable grasp of the procedures and what information will be important at the hearing (particularly if they are preparing for a subsequent hearing). If you are having trouble finding certain documents, you may be able to obtain a copy from your client. Also, you can request electronic copies of transcripts from the BPH through the website.

In order to ensure that you have a comprehensive understanding of your client's case, verify their version of events against documents such as the appellate opinion (if one exists), the probation or police report, and the version(s) stated in the Board Report and/or in past hearing transcripts. Recognize that all parties involved, including your client, law enforcement, witnesses, (and possibly the victim in an attempted murder case) have a subjective view of the facts. You may find that discrepancies exist among the various accountings of the facts. If so, you need to discuss each discrepancy with your client and have a complete understanding of their version. At the parole hearing, you will be asked if you have any objections to a particular written version being entered into the record as the facts of the crime. You will need to know, and be able to articulate any "facts" with which your client does not agree. (Usually, any incorrect and harmful facts are in the probation report). If your client had a trial and an appeal, the Board is required to use the facts stated in the appellate opinion. In most cases, the appellate opinion has the least harmful version for your client. You may want to object to the use of another version that is less helpful to your client, if there is an appellate decision.

THE C-FILE

Every prisoner has a Central File (C-File). The C-File contains extensive documentation of the client's behavior and activities while incarcerated, as well as other documents such the probation report from their conviction, and possibly the appellate decision, and letters of support. You should pay careful attention to what are referred to as "chronos." These are written memos that prisoners receive in their file at various times. Some of the chronos are disciplinary in nature, some are neutral, and others are laudatory.

Viewing and Obtaining Documents from the C-File

Most prisoners' C-Files have recently been scanned into electronic format. When requesting a copy of your client's C-file you will need to contact the Litigation Coordinator for the prison in which your client is located. Attached as Addendum A is a telephone list for the Litigation Coordinators for each of the prisons within California. When speaking with the Litigation Coordinators at these prisons, ask for an email address so you can follow-up with a confirming email after making your request by telephone. When sending your follow-up email let them know a date by when you need the C-file and ask them to let you know what the costs for copying the C-file will be. Litigation Coordinators are not always timely in processing your request for C-files, so do not hold back in chasing down your copies, especially if you need them for an upcoming parole hearing.

Some institutions may require you to view the electronic version of the C-File on a computer at the institution. You may be able to print the pages you need, or give your client's counselor a list of the page references that you need copied, and the counselor will make the copies and send them to you.

Disciplinary and Laudatory Chronos

Disciplinary violations (115s) and chronos (128As) are extremely important to have copied and keep in the file, along with any appeals (602s) of the disciplinary action. The hearing panel will discuss disciplinary violations your client received since the last hearing and may also consider earlier disciplinary violations. The client should be aware of each disciplinary violation in their file and be prepared to discuss any part of it.

Essentially, there are two types of disciplinary action: (1) CDC-115 disciplinary action (serious rules violation or administrative violation) and CDC-128(A) counseling chronos (often referred to as "115s" and "128s"). A 115 violation is considered serious and carries great weight with the Board. There are two kinds of 115s, serious violations (i.e., fighting, escape paraphernalia) and administrative violations. If your client was issued a 115 for a serious rules violation that was subsequently reduced to an administrative violation, it important to note this fact and the reasons why it was reduced during the hearing. A 128(A) counseling chrono is more along the lines of a warning and is not considered to be disciplinary. Examples of 128s are being late for work, being out of bounds, failing to respond to a page. (*See* 15 CCR §§ 3310, *et seq*.; Dept. Operations Manual ("DOM") § 52080.3.)

Confirm that all the negative information in the file actually belongs to your client. It is not uncommon for chronos and disciplinary write-ups to be misfiled. If something is in the file that belongs to another prisoner, you should bring it to the attention of your client's counselor and ask that it be removed before the hearing. If it

does not get removed before the hearing, make sure to tell the Panel, on the record, that the document does not belong in your client's file, that you had asked for it to be removed, and that you expect them not to rely on it in making their parole decision.

Laudatory chronos are generally helpful to the client's case. Laudatory chronos include "form" chronos which clients may get for attending therapy and self-help groups. Although these are favorable, they are common enough that the hearing panel may not give them great weight. However, they are still important because they document the client's participation in these programs. More valuable are chronos for unusual things your client did, such as assisting a guard or other prisoner in an emergency, and/or those that indicate that the client is rehabilitated. These types of chronos should be highlighted in your parole submission and again at the hearing.

Crime Scene and Autopsy Photographs

Recently, DA's offices have been submitting crime scene and autopsy photos to CDCR to be included in the C-File. You do not need to view these, but it is important to determine whether they are included in the C-File so that we can make a timely objection to the Panel viewing them prior to the hearing.

THE PAROLE PACKET

BPH should send via their document management system, Watchdox, an email notification to USC, at least 65 days prior to the hearing a compilation of materials called the Parole Packet.

The packet should contain much of the same information from the C-File and is divided into several sections: 1) Cumulative Case Summary, 2) Board Reports, 3) Psychiatric Reports, 4) Prior Decisions, 5) Notices and Responses, 6) Legal Documents, and 7) Miscellaneous. The Panel members will rely heavily on this packet to prepare for the hearing. ***AS YOUR CLIENT'S ADVOCATE, YOU MUST READ AND BE FAMILIAR WITH THE CONTENTS OF EVERY PAGE IN THE PACKET***. You do not want to be surprised by a discussion in the hearing about information in the packet. You must also know what is NOT in the packet so that you can make an objection if the DA introduces facts or information that is outside the record. Any questions regarding the contents of the parole packets should be directed to the BPH Lifer Analyst for your client's particular institution. If you do not know who the BPH Lifer Analyst is for your client's institution, you should call the BPH contact number listed in Addendum B to inquire about who is the designated BPH Lifer Analyst for your client's institution.

PRIOR PAROLE HEARING TRANSCRIPTS

If the client has had prior parole hearings, transcripts of those hearings are available. The prisoner is entitled to a copy of the entire transcript and the decision rendered. Review all prior transcripts and consider any question asked at a prior hearing as a possible question in the upcoming hearing. Additionally, review the prior Board decisions so that you are prepared to address the previous reasons for denials and to address whether the client has complied with the Board's recommendations since the last hearing.

PREPARING THE CLIENT

Preparing the client to testify well is the most important thing you can do to assist them in being found suitable for parole and lay the record for a successful habeas challenge to a denial or reversal. Nothing within your control is going to influence the Parole Board as significantly as how the client presents themselves and their case on the hearing date. Your client needs to be able to answer the Panel's questions appropriately and with the right attitude.

Preparing the client for questioning is a lengthy process. The best way to begin is to assemble a list of questions the Panel is likely to ask. The Panel always covers the same general areas during the parole hearing: commitment offense, behavior in prison, and release plans. Transcripts from prior hearings are an invaluable resource for predicting the questions that will be asked and identifying issues or inconsistencies of concern to the Board.

SUBJECT AREAS TO DISCUSS

Release Plans and Letters of Support

One of the first things you should review with your client is their release plans if they are paroled. They need to have recent and detailed letters confirming residence(s) and job offer(s). These letters need to include the contact information for the sender (i.e. address and telephone number). If they do not have these, you will need to work with them to obtain these letters, and it is likely you will need some lead time to do this. It is optimal for them to have at least one back-up offer of residence and an additional firm job offer.

It is also important that they have recent letters of support from family members and/or friends. Talk to them about who might be able to send them support letters. The Panel is usually not going to be particularly impressed by letters that merely offer vague, general support ("I think the inmate is a good person" letters, or "I think she should be released" letters). The Panel *will* pay attention to letters that make concrete offers of support: financial support and emotional support, as well as job offers and residences.

If possible, you should review support letters before they get forwarded to the prison. Letters which are extremely hostile or which make wild accusations (frame-up, political prisoner, etc.) should be considered carefully--they may do more harm than good. You can always call the author and ask them to write a more toned-down version.

Several organizations such as "Free Battered Women," "The Action Committee for Women in Prison," and "Convicted Women Against Abuse" will write letters of support for inmates, especially those inmates who are survivors of domestic abuse. In some cases, you might consider soliciting the support of members of the California Legislature. The Women's Legislative Caucus has been particularly supportive of BWS/IPB victims.

If you know that the victim's next of kin is sympathetic, or does not oppose parole, get a letter from him/her. However, always be cautious and mindful about contacting the victim/victim representative, as such contact has potential to be detrimental to your client. Also, if you know that the D.A., law enforcement officer, or sentencing judge on the case is in support of their parole, you may want to ask them for a letter of support. These carry great weight with the Panel.

If substance abuse has been an issue for your client, they should be prepared to present information to the Board about how they will continue to attend meetings if paroled. For example, if your client can tell the Panel that, upon release, they will go to the AA meeting at two o'clock three times per week at the church which is five miles from where they will be staying, the Panel will feel more confident about their ability to maintain their sobriety. The more specific details that you or your client can give about their intended lifestyle if released, the more the Panel will be reassured that they are serious about being a law-abiding citizen.

Commitment Offense

It is your responsibility to prepare your client to testify about their commitment offense. As discussed above, they should be ready to explain any inconsistencies with their prior version(s) of the crime or the various official versions of the crime. In addition, it is critical that they effectively discuss the causative factors of the commitment offense and their insight into those factors. It is also important that they be prepared to take full responsibility for the offense and express their sincere remorse for the crime.

To prepare your client most effectively, it is often useful to ask them to give you their narrative version of the commitment offense. Doing so may help you to identify areas of weakness or discrepancies between the official version and your client's version. When discussing aspects of the commitment offense, remember to consider your client's answers in the context of how the Board might respond to what your client is saying.

Note, however, that an inmate has a statutory right not to discuss the commitment offense during their parole hearing. Cal. Penal Code § 5011(b). In the past it was considered that an inmate that didn't discuss their crime had zero chance of being found suitable. However, with the change in law brought about by Lawrence, combined with the increased denial off-set periods of Marsy's Law, in some cases it may be advantageous for your client to exercise their right not to discuss the commitment offense. Such cases might include where your client has discussed the commitment offense in the past so well that the past record is sufficient, or where your client has great difficulty expressing themselves effectively due to nerves or for other reasons. It may also be advisable for your client to not discuss the crime where there are problems with their level of insight or discrepancies in their discussion of the crime.

Psychological Evaluations

You should also review all psychological evaluations the prison has done on the client, with predominant attention paid to the most recent one. (They should all be included in the parole packet.) Make sure that your client has carefully read their most recent psychiatric report and have them discuss with you any parts of it with which they do not agree. Anticipate that the Panel will ask your client questions about the psych report, including whether they agree with the conclusions in it. BPH policy as to psychological reports has changed recently, to the extent that your client's most recent psychiatric evaluation may be as much as three years old. If you find that your client's most recent evaluation is unsupportive but a couple of year's old, check to see if your client expects to have a new evaluation ahead of the hearing. Note that you would probably need to do this **at least 45 days** in advance of the hearing.

Chronos

The Panel is almost certain to ask your client about every disciplinary chrono in the C-File, even the 128(A)s. This is a veritable certainty if one was given since the last hearing. Prepare your client to answer potential questions about the behavior stated in the chrono that required disciplinary consequences. The client may want to contest the version of events in the chrono and present their own side of the story.[2] Generally, however, the Panel will believe the factual statement in the chrono and will *not* believe a prisoner who refuses to accept responsibility for the conduct. If the client is indeed guilty of the conduct outlined in the chrono, even if there are extenuating circumstances, it is usually best to advise them to admit to the offense, accept responsibility, and not try to explain why they failed to follow a rule.

---

2 Inmates have an avenue to appeal any disciplinary chronos via the "602" process. If your client is adamant in contesting the negative chrono, check to see if they filed a 602 petition against it. Sometimes, these appeals will not have been resolved by the time of a hearing, so it is important that you can show the Board that the inmate is taking proper actions to contest the chrono.

Board's Previous Recommendations

If past panels have recommended that your client attend Alcoholics Anonymous (AA) or Narcotics Anonymous (NA), or read and write book reports, and they have done so, this should be emphasized at the hearing.

MOOTING YOUR CLIENT

Assemble a list of possible questions from the documents outlined above. In preparing your questions, do not go easy on your client. If anything, you want your questions to be more challenging, and even more severe, than the ones that the Panel will ask. Make sure you throw in some "curve-balls" ("The Board report says that you pose a low degree of danger, do you agree?") and some nastily-phrased questions ("Didn't you kill your husband just to collect his insurance money?"). The Panel may ask confrontational questions to see how the client reacts to pressure and even hostility. You want the client to be prepared for this. Parole hearings can be extremely trying experiences, and the most important thing you can do is prepare your client to do their best.

Once you have composed a list of questions, go over all of the questions several times so that the client can answer correctly and confidently. You might consider leaving a copy of the questions with your client so that they can review them during their free time. It is important to emphasize that the client must tell the truth while giving testimony (they will be sworn to tell the truth), but you can make suggestions for how the client can most favorably present their answers. Remember that the client does not have to disclose information that is not asked, so remind them to keep their answers specific and avoid damaging information. The Board keeps transcripts of all hearings, and they will not look favorably on factual statements that vary from hearing to hearing. During the actual hearing the inmate will be under a lot of pressure, so it is important that they prepare the substance of their answers before the hearing date.

A few days prior to the hearing, it is advisable to conduct a mock hearing with the client, asking questions as if you were a Commissioner. Also, do a mock run-through of the portion of the hearing in which you (as your client's attorney) will have the opportunity to ask your client questions. Make sure you let your client know that there may be some new questions on the date of the hearing, based on what happens during the Panel questioning. You can go through your closing statement as well, but remember that you will likely be changing it right up to the last minute, depending on what transpires during the hearing.

Additionally, you must prepare your client to make the best appearance possible before the Parole Board. Advise your client to try their best to get a good night's sleep and wear nice and clean clothes. Remind them to make steady eye contact with the

Board members. They should be forthcoming and thoughtful in responding to the Panel's questions. Advise your client that they need not be afraid of showing an appropriate range of emotions, but should be careful not to appear emotionally unstable. In particular, it is crucial that they not seem hostile, disrespectful, or defensive. The Panel generally looks most favorably on clients who are respectful, penitent and truly appear to be remorseful.[3] It is extremely important that the client be polite and deferential to the Panel, even when contesting something the Panel says.

The client also has a right to make a closing statement at the hearing (this is in addition to your closing statement). If they wish you to do so, you should review their proposed statement with them. The statement should be reasonably brief and should not be angry or defensive in tone. A positive closing statement from the client, in which they accept responsibility and express remorse, may help their case. A good general theme for a client closing is the difference between the person they were at the time of the crime and the person they are today.

You should review all of the support or opposition letters with your client. They should be able to answer questions about who the people are, how they know them, and why they wrote the support or opposition letter. It looks very bad if the Panel gets a strong support letter but the inmate is forced to admit that they have no idea who is the author.

THE WRITTEN SUBMISSION

GENERALLY

Prior to the hearing, you will prepare a written submission to the Board. The parole submission is an advocacy document. You should include your client's personal background, an overview of the commitment offense, your client's behavior in the institution, and highlight the facts in support of their release.

The submission should be relatively short, approximately 10-12 pages. In addition to the advocacy portion, you will also include any relevant exhibits that are not included in the parole packet, such as support letters, housing and job offers, recent positive chronos and work reports, and recently earned certificates and degrees. You may find it most effective to include every relevant positive document that your client has received since the last hearing – this can be effective, as some commissioners have been observed to rely on the exhibits in a submission as much as in the parole packet or C-File. (You may also find that this approach helps you to organize all the materials you need to be aware of for the hearing.)

---

3 If your client maintains their innocence, it is possible for them to be remorseful about what happened to the victim even if they are not responsible for it. The Panel cannot require them to admit their guilt as a condition of parole. (Cal. Penal Code § 5011(b).)

Keep in mind that the Panel hears a plethora of cases and will not be inclined to review lengthy documents about each prisoner. The most effective approach to advocate for your client is to choose a limited number of important issues you would like to highlight and focus on them. Among the most important things to address are the inmate's psychological progress (as per the psychiatric evaluations), release plans (including residence, employment, and emotional support), and how the inmate has addressed the Panel's recommendations from the last hearing.

Most likely, your submission will take one of two basic forms. First, you may be advocating for a client who has not received a parole date, in which case you will want to address why the client no longer presents a danger to the community, generally referencing the suitability criteria set forth in Title 15. (15 CCR § 2402, *et seq*.) Second, you may be writing your submission on behalf of a client who was previously granted a parole date which was reversed by the Governor, in which case you will want to focus on why the Governor's decision was wrong and/or how the client has met the Governor's concerns.

DELIVERING THE SUBMISSION

The Board of Parole Hearings:

An electronic copy of your final submission with Exhibits should be emailed to the Board of Parole Hearings no later than **10 calendar days** before your client's hearing. The PDF version of your submission needs to be sent to bphliferanalyst@cdcr.ca.gov.

The Institution:

After you have sent your electronic copy to BPH you will then need to make arrangements for delivering the submission to the Lifer Desk at the institution where your client is located. You should deliver **3 copies** of your submission (two copies for the Commissioners and one copy for the DA) **no later than 3 p.m. a week before your client's hearing.**

DA Representative:

If possible, the day you send your electronic copy of the submission to BPH, you should also FAX a copy of the submission and exhibit list to the DA Representative who will be attending the hearing (only do this after confirming that someone is planning to attend).

NEW INFORMATION ACQUIRED BEFORE THE HEARING

Occasionally, new information will need to be added to a submission after it has been delivered. If at all possible, you should create an addendum to the submission and have it delivered to the prison **AT LEAST one day** before the hearing. Addendums are limited to a maximum of 20 pages single-sided or 10 pages double-sided. Support letters are not included in the 20 page limit.

THE HEARING

WHAT TO BRING

You should arrive at the prison at least thirty (30) minutes before the scheduled time of the hearing. Considering hearings often run late, you may call and check on the timing of afternoon hearings. Regardless, do not be surprised if you have to wait for your hearing.

Remember to bring the following items:

1. Driver's License and Bar Card;
2. The parole packet;
3. Your submission;
4. Hearing transcripts from the last 2 or 3 hearings; and
5. Copies of any documents that may be referenced during the hearing.

WHO MAY ATTEND THE HEARING

To represent the interest of the people, a representative of the District Attorney's office, not necessarily an attorney, from the county of commitment must be noticed and may participate in the hearing. (Cal. Penal Code § 3041.7.) The prisoner must be notified if the prosecutor is to attend. (15 CCR §2030(b).) Pending the Board's permission, media representatives may attend, though they may not participate in the hearing. Additionally, the victim or the next of kin of a deceased victim must be noticed 90 days prior to the hearing and may attend and address the Panel or may designate a representative to attend and address the Panel. (Cal. Penal Code, § 3043.1.)

HEARING RIGHTS

Parole hearings are held pursuant to Penal Code Sections 3041*, et. seq.* Your client has various rights. (*See* 15 CCR §§ 2245-2256). For example, the inmate is entitled to be notified of the hearing date at least one month before the hearing. (Normally, we will receive the hearing calendar several months prior to the scheduled hearing.) Documents marked "confidential" in your client's C-File may not be reviewed

by them. The client has the right to be present at the hearing, ask and answer questions, and speak on their own behalf. Your client may present "brief, pertinent and clearly written" documents covering "any relevant matters" to the Panel and place copies in the C-File. (15 CCR ' 2249.) It is a prisoner's responsibility to point out any abrogation of their rights or failure of the Board to follow the rules.

Your client is entitled to a copy of the record of the hearing upon request. As a matter of practice, each prisoner is mailed a copy of their transcript once prepared. You will not receive a copy of the transcript unless you request it and pay for it. It may be easier to make your own copy from your client's copy. Your client is not entitled to have any representatives at the hearing other than their attorney. That is, no member of their family or other advocate may appear on their behalf.

Conversely, the victim, next of kin (NOK), or immediate family may appear or may designate representatives to appear and make a statement at the hearing. (Cal. Penal Code §§3043-3043.3; 15 CCR §2029.) Under the Victim's Bill of Rights, the victim has a right to be notified of the hearing and to be present. (Cal. Penal Code §3043, *et seq*.) In addition, the Board sends written notice to the original sentencing judge, the district attorney, the defense attorney, and the relevant local law enforcement agency about the impending hearing, and solicits comment as to the prisoner's suitability for parole. (Cal. Penal Code §3042.) Check to see whether there are letters in the file from any of those persons. If there are letters in support of your client's release, be sure to direct the Panel's attention to them. If they are in opposition, which is more likely, make sure to directly address the reasons given for their opposition during the hearing. The D.A.'s office often sends someone to personally appear at the hearing to argue against the inmate's suitability for parole. (*See* 15 CCR § 2030). Listen carefully to his/her argument and be sure to rebut his/her points during your closing.

During the hearing, the Panel should consider all of the documents in the parole packet and the statements of the various parties allowed to speak. They must discuss the facts of the crime with your client, but the client is entitled to refuse to discuss the facts and may not be compelled to incriminate themselves. (15 CCR § 2236.) If the prisoner refuses to discuss the crime, this cannot be held against them. (Id.)

Note: Prisoners at subsequent parole hearings are entitled to the same rights and treatment as at their initial hearing. (15 CCR § 2270 *et. seq.*)

THE FORMAT

The Panel will begin the hearing by having everyone around the table introduce themselves and spell their last names. The Commissioner will begin by reviewing your client's ADA rights and waiver with them and will explain the process of the hearing. The Commissioner will then ask whether they object to any of the Panel members. Unless the client knows one of them outside of the parole context (e.g., one of them was

the prosecutor in their case or one of the police involved in their arrest), you should not object to the Panel. Even though the Penal Code requires one of the Panel members to have been present at the inmate's prior parole hearing for purposes of consistency, this does not usually happen. (Cal. Penal Code §3041(a).) You may lodge this as an objection, but the Panel will proceed with the hearing nonetheless.

The Commissioner will also ask you whether all of your client's rights have been met up to this point. Generally the answer will be "Yes," but if you have any specific objections (e.g. the inclusion of an opposition letter which arrived too late for you to review), now is the time to put them on the record. Lastly, the Panel will ask whether the prisoner has any documents to submit, such as recently arrived support letters. You should confirm that the Panel has received our submission and request for it to be included as part of the record, as well as submit any other documents that were received too late to be included in the submission.

Once these preliminary matters are addressed, the Panel moves into the substance of the hearing. The questions are generally divided into three main parts: prior history and commitment offense, institutional adjustment, and release plans. The hearing will be tape-recorded, so it is important that any responses you or the client make are verbal. Nods, head shakes, shrugs, and gestures will not be part of the record. If your client responds to a question non-verbally during the hearing, you should remind them to answer aloud. Also, you and your client should try to remember not to talk across anyone else who is speaking as this can lead to transcription problems, although this is frequently unavoidable. Additionally, advise your client that complete answers will prove more favorable than terse answers because the transcript will later be reviewed by the full Board and then the Governor, who will have to make their decision based solely upon the written words as opposed to your client's demeanor at the parole hearing.

The commitment offense portion of the hearing usually consists of reading the facts into the record and allowing the prisoner to state their version of the crime into the record as well. The Board will always accept the findings of the court over the prisoner's version. The Parole Board will not retry the case, so there is no real advantage in trying to dispute the client's guilt. In subsequent parole hearings, the Panel will often ask to incorporate the facts from the prior hearing by reference so they do not have to read the facts into the record. If there are inaccurate facts relating to the crime, you should clarify at this time. It is not uncommon for the record to contain inaccurate facts that are relevant to the crime and conviction. If not corrected, panels will continue to rely on these facts in future hearings, most likely to your client's detriment.

Once the facts are in the record, the commissioner will ask your client questions about the commitment offense. Generally, the Panel is looking to see whether they are telling the truth about the offense and accept responsibility for their involvement in the crime. The Panel will also be trying to determine whether they understand the effects of the crime and feel remorse for the victims. In general, the Panel will look favorably upon

a prisoner who does not dispute the findings of the court and police investigation and is genuinely remorseful. This part of the hearing can get quite contentious if the prisoner denies the court's findings. However, do not let concern for appearing contentious keep you from raising legitimate issues if there is a genuine dispute over one or more facts.

During the second portion of the questioning, the deputy commissioner will review your client's progress in prison. S/he will generally go through the C-File noting programming, certificates, and favorable and unfavorable chronos and disciplinary infractions. The deputy commissioner will often ask about any unfavorable information, again hoping to ascertain whether the inmate is taking responsibility for their actions. Similarly, the deputy commissioner will go through the various activities in which the client has been involved while in prison, especially those activities for which they have received chronos since their last hearing. The deputy commissioner may also ask the prisoner to elaborate on favorable information, especially if it is unusual (e.g., a chrono for helping a guard during an emergency).

Finally, the Panel will address your client's release plans. The Panel will be primarily concerned about whether they have an appropriate residence and confirmed job offer. The Panel will also review letters of support to determine whether your client will have the necessary support, be it emotional or financial, from family and friends upon release. Ultimately, the Panel is looking for evidence that your client will be well-positioned to sustain a crime-free life as a productive member of society.

For this part of the hearing, the deputy commissioner will go through the C-file and our submission to summarize the contents of any support letters your client has received. The Panel may also ask questions about their plans, often very detailed ones. Just because the prisoner has a letter saying they can live with their sister does not mean the matter is closed. The Panel may ask how much room there is at the house, whether the prisoner will be paying rent (and if not, how the sister can afford to support them), and how long they will live there. Offers of employment may elicit similar questions. Panels have asked about job security, transportation between residence and job, documentation that an inmate is eligible for social security or disability benefits, and AA/NA meeting locations and schedules. It is best if your client has more than one job offer and residence.

After this, the Panel may want to ask additional questions. Your client should stay focused and answer questions as honestly as possible. If they do not know the answer to something, they should say so, and show a willingness to find the answer to satisfy the commissioner's concerns.

YOUR ROLE DURING THE HEARING

Overview

During the Panel's questioning, you will spend much of your time simply listening and taking notes. Pay attention and keep track of: (1) any issues that the Panel seems particularly concerned about and any they simply gloss over; (2) any questions that your client could have answered better/more clearly; (3) any issues that are partially raised but are not fully discussed in a way that would be beneficial to your client; (4) etc. Note which issues come up and how thoroughly they are covered. You should not say anything unless you feel there is a legitimate misunderstanding between the Panel and the prisoner (*e.g.*, they keep answering the wrong question and need clarification about what is being asked). If you feel that the Panel's questions are going overboard, the time to address that is in your direct examination or closing, not during their questioning.

Once the questioning is finished, the Panel will go to questions and closing statements. If a district attorney representative is in attendance, he will have the opportunity to ask "clarifying" questions directly to the Panel. (15 CCR § 2030(d).) They are neither allowed to render legal advice nor speak directly to your client. In practice, this results in a bizarre proxy system in which the DA will ask a question of the Panel ("I'd like to know, did she kill her husband for the insurance money?") and the Panel will turn to the prisoner and ask them to answer. After the DA's questions are finished, it will be your turn to conduct your direct examination. You are not bound by strict rules of evidence, but you should be careful about asking obviously leading questions if you can avoid it.

Once the questioning is completely over, it is time for closing statements. The DA, if present, will make the first closing statement. (15 CCR ' 2030(c)(2).) After the DA, you will get to make your closing. Again, it should be reasonably brief (approximately 5 minutes) and should highlight positive issues from your submission. You may also want to clarify any issues with which the Panel seems particularly concerned, putting things in the best possible light for your client.

As mentioned previously, the prisoner is entitled to ask questions and make a statement. (15 CCR § 2247) If the inmate decides to do so, they will make their statement after you are finished.

Once your client is finished, if a victim or member of the victim's family is present, they will get to make a statement for the record. (15 CCR § 2029(d).) The right to speak last is reserved to the victim or victim's next-of-kin under the Victim's Bill of Rights. Your client (and you) should pay attention during this statement, or it will look like the client does not care about the victims.

Once all of the closing statements are in, the hearing panel will recess to discuss the prisoner's eligibility off the record. During this time, everyone except the Panel members will have to leave the room, and the tape recorder will be off. When the Panel has made its decision, they will call everyone back in, go back on the record, and announce their decision. The prisoner may receive a recommended release date, or, more likely, a "denial" for three to fifteen years (meaning it will be that long before they get another parole hearing). The Panel will cite the reasons for their decision on the record, and the hearing will then conclude.

Your Direct Examination and Closing Statement, Explained

During the hearing, you will have the opportunity to "directly examine" your client. In preparing, choose a couple of issues that will allow the hearing Panel to see your client in the most favorable light, or which are important to clarify any factual inaccuracies in the record. Do not assume the Panel will be intimately familiar with your submission prior to the hearing. They may have simply glanced over it, or they may not have read it at all. Any information in the direct examination and the closing remarks should stand pretty much on its own (obviously, the Panel will be familiar with the commitment offense and the inmate's time in prison; however, any specific issues or outside supporting facts you dug up for your submission may be new to them).

Be prepared to work through several drafts of both your direct examination questions and your closing. In the end, however, what you ask in direct exam and say in your closing will likely change at the last minute, depending on how the hearing went. You will need to tailor both presentations to issues that arose during the hearing which you want to highlight or clarify.

The direct examination serves two primary purposes: getting new information into the record, and clarifying matters for the Panel. You cannot use facts in your closing remarks or in your submission unless they are supported in the record, and this is your opportunity to get facts and sentiments into the record. If there is something you want to talk about, but there are no letters/chronos/prior testimony which support it, you may ask about it at this time. It is also an excellent place to clarify answers the client gave during the hearing, in case there is any confusion, or to help defray any concerns that the Panel seems to have. You may consider ending your direct exam with one or two open-ended, upbeat questions that will allow your client to talk freely for a little bit about something positive. This will be one of the client's only chances to shine without being under pressure from the Panel.

If you are fully confident in your client's ability to speak eloquently to the Panel, and to not say something damaging, you may consider asking your client some direct questions about their responsibility for the crime and their level of remorse. In some cases, the Panel may not ask your client directly how they feels about the crime, and it

can be extremely effective to have on record something as simple as your client testifying "Yes, I did the crime, I'm responsible and I'm sorry."

Your closing remarks should be brief, no more than 5 minutes long. The actual prepared remarks should probably be around three or four minutes, to allow you some time for last-minute additions to address issues that come up during the hearing. By the time you have the opportunity to make your closing remarks, the Panel is going to be anxious to get to the decision-making stage, so do not go into a lot of extraneous material or simply repeat what has already been said. Generally, use the theme espoused in your submission and highlight the best areas for your client.

However, remember that it is better to know your client's case thoroughly than to memorize a closing that may have to change unexpectedly during the hearing. Think how you'd explain your client's case and why they should be released to someone you know – the hearing is an informal setting with the commissioners across the table from you, and it will be far more effective if you can deliver your closing more in the way of a conversation than as a prepared speech from memory.

ESTABLISHING SUITABILITY

The BPH has broad discretion to determine who is suitable for parole. The Penal Code generally requires the Panel to set a release date, unless it determines that the gravity of the offense, or the timing and gravity of current or past convicted offenses, is such that "consideration of the public safety requires a more lengthy period of incarceration…" (Cal. Penal Code §3041(b).) In implementing this section, the Board has prescribed a multi-part test to determine parole suitability. The prisoner must first be found to pose no danger if released, or suitable for return to society. (15 CCR §3401, *et. seq.*) Even if this is satisfied, the prisoner must also have served a certain minimum sentence based on the gravity of their commitment offense. In most cases, our clients have not been found suitable for parole before they have served their adjusted base term, which is calculated using a matrix in Title 15, and other criteria stated in the code that concern specific circumstances surrounding the commitment offense and post conviction credit. (*See* Matrix at 15 CCR §§ 2403-2410.)

The Board considers several factors to determine suitability for return to society. In general, the Panel may consider aspects of the prisoner's social and criminal history, the nature of the offense, their attitude towards the offense, or "any other information which bears on the prisoner's suitability for release." (15 CCR § 2402(b).) Note that the Panel may consider past or subsequent criminal misconduct "which is reliably documented." (Id.) This essentially means that a *conviction* for the other crime is not required. An acquittal would likely preclude the Panel from considering the matter, but if the inmate has been accused or charged with a crime, but never went to trial for some reason (charges dropped, etc.), the Panel will probably hold this against them, pursuant to "evidence" such as police reports, statements from other prisoners, etc.

Section 2402 of Title 15 lists several factors to be considered by the Panel.

Factors unfavorable to release are:

(1) Especially heinous commitment offense – multiple victims, carried out in a dispassionate and calculated fashion, victim was abused, defiled or mutilated, callous disregard for human suffering, or the motive for the offense was inexplicable or trivially related to the crime;
(2) Previous record of violence – particularly if at an early age;
(3) Unstable social history (drug use, promiscuity—according to an internal memorandum, the Panel should not be using parental abuse/neglect as an unsuitability factor);
(4) Sadistic sexual offenses in the prisoner's history (as the perpetrator, not the victim);
(5) Psychological factors – prisoner has a lengthy history of severe mental problems related to the offense;
(6) Serious misconduct while in prison (115s, etc.) (15 CCR §2402(c).)

Factors favorable to release are:

(1) No juvenile record;
(2) Stable social history (may be demonstrated by stable relationships developed while in prison);
(3) Signs of remorse;
(4) Motivation for crime, (understandable motive, particularly as a result of long-term stressful situations, such as being battered);
(5) Lack of violent criminal history;
(6) Age;
(7) Realistic plans for the future, particularly if the prisoner has developed marketable skills;
(8) Good institutional behavior. (15 CCR §2402(d).)

If the Panel finds the prisoner unsuitable for parole based on the above factors of consideration, the Panel will deny them another parole consideration hearing for a period of between three and fifteen years. The default term of denial is 15 years under Marsy's Law, unless the Board finds "clear and convincing evidence" that a shorter term of 10, 7, 5 or 3 years is appropriate. Cal. Penal Code § 3041.5(b)(3). Note that in most of our client's cases you won't see a denial of longer than 3 years. If, however, the Panel finds your client suitable, it will then determine how long the client should serve for the offense, in the manner discussed below.

THE MATRIX

If the Panel finds your client suitable for return to society,4 it will compute an adjusted base term to be used in calculating a recommended release date. (15 CCR §2403(b).) This is done with the assistance of a matrix. Essentially, the matrices establish tri-part terms based on how the crime was committed, the injuries inflicted, and the relationship between the crime and the prisoner. The matrix has two axes: one for the relationship to the victim (more remote → longer term; in other words, you will get out sooner if you killed your spouse than if you killed a random passer-by), and one for the amount of harm inflicted (more harm inflicted → longer term; for instance, you will get out sooner if you were merely a nonparticipating accomplice to the murder than if you tortured the victim to death).

The Panel considers only the commitment offense when establishing what it believes to be the appropriate category on the matrix. (15 CCR §2403(a).) Each category in the matrix provides three possible outcomes for each combination of factors. Normally the middle outcome is applied, but the Panel may apply the lower or higher term if they find aggravating or mitigating circumstances were present during the commitment offense. (15 CCR §2403(a).) In addition, the Panel may depart from the matrix entirely if justified by the particular facts of the individual case. (Id.) For example, the Panel could depart from the base term due to the severe abuse of the client by the victim.

Title 15 lists twenty aggravating circumstances that can result in imposition of the highest base term applicable to murderers. (15 CCR §2404.) Ten factors are listed which should be considered mitigating, and can result in imposition of the lower of the three possible base terms. (15 CCR §2405.) The Panel will generally impose additional years if the prisoner is serving time for multiple offenses (even if the sentences are running concurrently), if the inmate has prior convictions or used a firearm, or for other reasons. (15 CCR §2406-08.)

If the final, adjusted term is equal to or less than the amount of time your client has already served (including pre-conviction credit), the Panel will only determine the appropriate adjusted base term, and the prisoner will be released at the end of the review process – after the internal BPH review and a 30 day period in which the governor has the opportunity to change the decision . If your client is found suitable but has not yet served the matrix term, the Panel will set a tentative date for the future.

Because the sentencing scheme changed in California, effective July 1, 1978, there are slightly different parole criteria and procedures for murders committed before that time. (*See* 15 CCR § 2400 *et. seq.*) The only notable difference between the two categories is the matrix, which sets forth significantly longer periods of imprisonment for

4 *See supra*, note 1.

murders committed after November 8, 1978 (which applies to most of our clients). (15 CCR § 2403(b).)

DECISION REVIEW

All decisions by parole hearing panels are subject to decision review by BPH staff– whether the Panel found the inmate suitable or unsuitable for parole.[5] Decisions are reviewed for technical and legal accuracy. Any parole date given at a hearing is considered a "proposed" date rather than a definite date. (15 CCR § 2041.) A decision becomes effective only after review by the decision review unit. The review is nominally constrained by certain guidelines, but they are so broad that the review is essentially *de novo*. (15 CCR § 2042) They may affirm the decision, modify it, or send it back for rehearing. (15 CCR § 2041) No adverse modifications may be made without a rehearing. (Id.)

For prisoners with a term to life sentence (such as 25 to life), the decision must become final within 120 days. (15 CCR § 2043.) During those 120 days, BPH staff normally confirms that the information in the file is accurate and that the release plans are viable. Once this is done, and the 120 days have passed, the BPH decision becomes final and the file goes to the governor for his review. Additionally, however, if any BPH commissioner so requests within 60 days after the hearing, the BPH must review the matter *en banc*. (15 CCR § 2044.) This en banc review must take place within the 120 day period. If a majority approves of release, the decision is immediately effective. If not, the matter is sent back for rehearing.[6]

A different administrative review process applies to prisoners who have a sentence of "life with the possibility of parole." If you are representing such a client, you must review Section 2041(h) of Title 15.

THE GOVERNOR'S FINAL SAY

After the process laid out above, the Governor has the right to review parole decisions for prisoners sentenced to an indeterminate life term for murder. (Cal. Const. Art. V §8(b); Cal. Penal Code §3041.2.) As stated above, the Governor has 30 days to review the decision. (Id.) (*See* In re Arafiles, 6 Cal. App. 4th 1467, 1474 (1992), which interpreted when this time limit begins to run.) Unlike the review panels, the Governor may reverse the BPH decision without sending the matter back for rehearing.

---

5 In practice, all suitability grants are reviewed, and a random sample of denials.
6 The regulations governing this process are currently being revised by the BPH. The new regulations should bring more clarity to the process, and more specificity about deadlines.

Your client has no right to be present, ask and answer questions, or speak on their own behalf at the Governor's review. However, if you choose to, you may write a letter to the Governor, on behalf of your client, urging parole.

The Governor is required to send a written statement to your client delineating the reasons for reversal or modification. (Cal. Penal Code § 3041.2(b).)

AFTER THE REVIEWS ARE DONE

Once the review processes are complete, the "recommended" date becomes an "effective" date. On that effective date, the prisoner is released on parole.[7] The prisoner is free to leave, but parole is subject to revocation. Parole revocation proceedings are governed by a different set of regulations, which are not discussed here. Parole may be rescinded at any time "for good cause." However, since the parolee's liberty is being restricted by the revocation, they are entitled to due process protection during the revocation proceedings. (*See* generally 15 CCR §2600, *et. Seq*.)

Good Luck!

7 Do not be too disappointed if this does not happen in your client's case – this process usually takes a very long time. In one of our recently released client's cases, she was released in 2011, three years after initially filing a habeas petition challenging a board denial from 2007!

ADDENDUM A

CDCR Litigation Coordinators and Fax Numbers

Avenal State Prison (ASP) - (559) 386-6074 fax (559) 386-2337
Calipatria State Prison (CAL) - (760) 348-7000 ext 5164 fax (760)348-6064
California City Correctional Facility (CAC) - (760) 246-7600 ext 7521 fax (760) 246-7051
California Correctional Center (CCC) - (530) 257-2181 ext 4623 fax (530)252-3028
California Correctional Institution (CCI) - (661) 822-4402 ext 3047 fax (661)823-5023
Central California Women's Facility (CCWF) - (559) 665-6025 fax (559)665-6020
California State Prison, Centinela (CEN) - (760) 337-7647 fax (760)337-7650
California Institution for Men (CIM) - (909) 606-7063 fax (909)606-7093
California Institution for Women (CIW) - (909) 606-4932 fax (909)606-4960
California Health Care Facility (CHCF) - (209) 467-2568 fax (909)467-2676
California Men's Colony (CMC) - (805) 547-7947 fax (805)547-7791
California Medical Facility (CMF) - (707) 449-6510 fax (707)469-6006
California State Prison, Corcoran (CSP-COR) - (559) 992-6174 fax (559)992-7372
California Rehabilitation Center (CRC) - (951) 273-2918 fax (951)273-2359
Correctional Training Facility (CTF) - (831) 678-5826 fax (831)678-5866
Chuckawalla Valley State Prison (CVSP) - (760) 922-5300 ext 5267 fax (760)922-6855
Deuel Vocational Institution (DVI) – (209) 835-4141 ext 6228 fax (209)830-3922
Folsom State Prison (FSP) - (916) 351-3038 fax (916)351-3086
High Desert State Prison (HDSP) - (530) 251-5072 fax (530)251-5031
Ironwood State Prison (ISP) - (760) 921-3000 ext 551 8 fax (760)921-4307
Kern Valley State Prison (KVSP) - (661) 721-6306 fax (661)720-4949
CA. State Prison, Los Angeles (LAC) -(661) 729-2000 ext 5562 fax (661)729-6994
Mule Creek State Prison (MCSP) - (209) 274-5247 fax (209)274-5018
North Kern State Prison (NKSP) - (661) 721-3188 fax (661)721-6205
Pelican Bay State Prison (PBSP) - (707) 465-9075 fax (707)465-9099
Pleasant Valley State Prison (PVSP) - (559) 935-4985 fax (559)935-4928
Richard J. Donovan Correctional Facility (RJD) - (619) 661-7862 fax (619) 671-7566
California State Prison, Sacramento (SAC) - (916) 294-3011 fax (916) 294-3072
Substance Abuse Treatment Facility (SATF) – (559) 992-7206 fax (559)992-7191
Sierra Conservation Center (SCC) - (209) 984-5291 ext 5365 fax (209) 984-8508
California State Prison, Solano (SOL) - (707) 454-3263 fax (707) 454-3429
San Quentin State Prison (SQ) - (415) 455-5007 fax (415) 454-6288
Salinas Valley State Prison (SVSP) - (831) 678-5573 fax (831) 678-5544
Valley State Prison for Women (VSPW) - (559) 665-6100 ext 5582 fax (559) 665-8919
Wasco State Prison-Reception Center (WSP) - (661) 758-7029 fax (661) 758-7093

Proposition 47

Ombudsman Contact Information

- Ombudsman Home
- Ombudsman Contact Information

Juvenile Justice Related

- DJJ Contact Information
- DJJ Homepage
- SB 518 DJJ Ombudsman Report 2010

FAQs for Adult Inmates

- General Information
- Entering a California State Prison -What to Expect
- General Information Upon Arrival To Endorsed Institution
- Transfer Information
- Visiting Information
- Parole Information
- Health Care Information
- Legal Assistance Information

Contact Information for Adult Inmates

- CDCR Institutions
- CDCR Visiting Sergeant or Lieutenant
- Institution Medical Release of Information
- Community Partnership Contacts
- Litigation Coordinators And Fax Numbers

ADDENDUM B

BPH Contact Information:
1515 K Street
Suite 600
Sacramento, CA 95814
916.445.4072

CALIFORNIA PAROLE CASE LAW

HALLMARK CASES

CASE NAME	COURT	HOLDINGS & KEY PAROLE CONSIDERATIONS
In re Rosenkrantz, 29 Cal. 4th 616 (2002)	CA Supreme Court	• Each parole applicant is entitled to ***individualized consideration*** and cannot be arbitrary or capricious (677) • The judicial branch "is authorized to review the factual basis of a decision of the Board denying parole . . . to ensure that the decision comports with the requirements of due process of law, but in conducting such a review, the court may inquire only whether ***some evidence*** in the record before the Board supports the decision to deny parole, based on the factors specified by statute and regulation" (658) o BUT judicial review of the Board's decision to deny parole is "extremely deferential" (665) • A Governor's decision granting or denying parole is subject to a limited judicial review to determine only whether the decision is supported by "some evidence" (625) o But his review is independent and de novo (660)
In re Lawrence, 44 Cal. 4th 1181 (2008)	CA Supreme Court	• Fundamental consideration in parole decisions is "public safety." The Board *must* grant parole *unless* it determines that public safety requires a lengthier period. o In reviewing the Board or Governor's denial of parole, **the Court must find the requisite "some evidence" than inmate poses a "current danger" to society** (1191) • A finding of suitability requires more than just a "rote recitation of the relevant factors." The Board must establish a "rational nexus between those factors and . . . the determination of current dangerousness." • The egregious nature of a commitment offense alone is not enough for determining current dangerousness. (1191) o After a long period of time from the date of the commitment offense, predictive value of the offense loses value in determining current dangerousness (1218) o The underlying circumstances of the commitment offense alone "rarely will provide a basis for denying parole when there is strong evidence of rehabilitation and no other evidence of current dangerousness"
In re Shaputis, 44 Cal. 4th 1241 (2008)	CA Supreme Court	• The Board may deny parole based on the circumstances of the commitment offense when these facts continue to support the conclusion that the inmate is currently dangerous when considered in light of the full record

		• This decision establishes that a lack of insight in combination with circumstances of the commitment offense and past abuse can show current dangerousness (1255) • "Expressions of insight and remorse will vary from prisoner to prisoner and…there is no particular formula that an inmate needs to prove in order to demonstrate insight (1260) • The "some evidence" standard can be satisfied by evidence of lack of insight or failure to accept responsibility, so long as evidence is taken into context
In re Shaputis II, 53 Cal. 4th 192 (2011)	CA Supreme Court	• After *Shaputis I* held that petitioner's failure to gain insight into his antisocial behavior was a factor supporting denial of parole, a great many parole denials have focused on the inmate's lack of insight (217) = trend towards denial based on insight now, rather than saying the commitment offense was particularly egregious • Defines insight → inmates past and present attitude towards the crime, when the inmate understands the nature and magnetite of the offense (218) • Absence of insight is a significant factor in determining whether there is a rational nexus (218) • Requires not just insight into the commitment offense, but also his/her antisocial behavior (219) • Most recent evidence of insight will bear most closely on parole determination (220) • Lack of insight supports a denial only if it is rationally indicative of the inmate's current dangerousness (219)

CASES BY SPECIFIC ISSUE:

ISSUE	**RELEVANT CASE LAW**
Proper Scope of a court that concludes the Board/Governor has abused its discretion & General Standards	*Board of Parole Hearings v. Superior Court*, 170 Cal. App. 4th 104 (2008) • In ordering BPH to conduct a new hearing, the superior court exceeded its jurisdiction by ordering the Board to "explain what instances of [petitioner's] offense would not qualify for invocation of the unsuitability criteria used to deny him parole," since the findings that the court directed to make were irrelevant of a finding of future dangerousness (11) *In re Ryner*, 196 Cal. App. 4th 533 (2011) • Parole release is the rule and not the exception (543) • Board may not base its fidnigns on speculation, hunches *In re Young*, 204 Cal. App. 4th 288 (2012) • Must give due consideration to all relevant statutory factors, not just some of the factors (305) • The Board cannot rely on guess work and speculation as their reasons for denial (308) *In re Shigemura*, 2010 Cal. App. 4th 440 (2012) • Judicial review of the Board's decision is exceedingly deferential, but courts must go beyond simply deciding whether a single unsuitability factor exists (452)

	• Courts may not substitute their own judgment for the Board – here, the court erred when it determined that the Board's finding that petitioner lacked insight is against "the weight of the evidence" o Court's must only decide whether there is "some evidence," and NOT determine the weight (455) *In re Stevenson*, 213 Cal. App. 4th 841 (2013) • The manner in which the Board/Governor balances the parole suitability factors is solely in the discretion of the Board/Governor, and they may weigh them differently from each other (475) • Neither the Board nor Governor must describe in its decision the exact weight given, "as long as the decision reflects due consideration of the specified factors as applied to the individual prisoner in accordance with applicable legal standards, the court's review is limited to ascertaining whether there is some evidence in the record that supports the decision" (476) • The court is not empowered to reweigh evidence; rather the court reviews the entire record to determine whether a modicum of evidence supports the parole suitability decision (479-80) **Remedies when granting a habeas:** *In re Prather*, 50 Cal. 4th 238 (2010) • Upon granting a habeas petition, a court must remand a case back to the Board rather than immediate release, and the Board is required to hold a new hearing "in accordance with due process" under its own discretion. (258) • Granting a habeas with order for immediate release for *lifer-inmates* "improperly intrudes upon the Governor's independent constitutional authority to review the Board's parole decision." (257) • Conversely, remedy for judicial review of a Governor's reversal is immediate release because a remand to the Governor would "amount to an idle act." (507) o *See also In re Masoner*, 179 Cal. App. 4th 1531 (2009): where the superior court finds no evidence supporting a Governor's reversal, the superior court has the authority to reinstate the Board's decision without remanding the matter to the Governor bc the Governor already had full opportunity to exercise his constitutional and statutory right of review (1534–37) o See also In re McDonald, 189 Cal App 4th 1008 (2010): o *for an argument using this case as reason for a *determinately sentenced inmate* to be granted immediate release upon granting a habeas, *see* DeLeon Habeas • The Board "must consider the statutory factors concerning parole suitability set forth in section 3041 as well as the Board regulations." (251) *In re Copley*, 196 Cal. App. 4th 440 (2011) • Warden appealed a grant of a habeas by a trial court, which found the Governor's reversal was not supported by "some evidence" – court vacated and reinstated the parole grant o BUT while the habeas was pending, the Board held another hearing and found Copley unsuitable o Thus, the warden challenged ONLY the remedy, claiming a violation of separation of powers

	• **HELD**: Proper remedy for Governor's error in reversing parole grant is to reinstate the finding of suitability (269) AND reinstating the suitability finding did not violate separation of powers doctrine (272-73) o Warden relied on Rosenkrantz, but that decision did not reach the question of the appropriate remedy upon finding that the Governor's decision is unsupported by some evidence o *Prather came out after briefing was completed in this case, so court was able to rely on that o here, warden did not explain what purpose a remand to the Governor would serve (434) ▪ did not identify any new evidence (*see In re Ross* below on that issue) ▪ remand would simply allow the Governor another review of the same materials already reviewed by him *In re Miranda*, 191 Cal. App. 4th 757 (2011) • remedy for violation of due process at a parole hearing is a new hearing (760) • Miranda was found suitable in 2003 → governor reversed → superior court overturned reversal → Miranda was released → the Governor appealed → Appellate court upheld reversal → Miranda was sent back to prison → found unsuitable in 2007 and filed habeas resulting in this case o But while it was pending, Miranda was found suitable in 2009 o Miranda argued that time be credited to his parole (761-62) • HELD: habeas petition is moot because the only remedy is a new hearing o Release and parole are not within the appellate court's power, their only concern is due process and only remedy is a new hearing (763) o "A determination that the Board violated an inmate's due process rights in finding there was some evidence of the inmate's continued dangerousness is not a 'get-out-of-jail-free' card" – instead must remand to Board and then review by Governor (762) **Misc. Standing Issues:** *In re William Ilasa*, 3 Cal. App. 5th 489 (2016) • HELD: decision of the Board that denies an inmate parole following a review procedure enacted purusuant to a federal court order is subject to state court judicial review • Fed court order at issues was by a 3 judge panel in a prison class action litigation after Court found CA state prisoner's constitutional rights had been violated as a result of overcrowding o NVSS procedures were created pursuant to an order after SCOTUS affirmed this ruling o Not all parole actions of the executive branch are immune from review (499) o NVSS Procedures created reasonable expectations and therefore a protected liberty interest for inmates like Ilasa (505)
Governor Reversal Issues	*In re Hare*, 189 Cal. App. 4th 1278 (2010) • The Governor's review of a parole release decision of the Board of Parole Hearings is limited to the same considerations that inform the Board's decision (1289)

	• Any conflict in evidence regarding timeliness of Governor's decision is required to be resolved in the warden's favor (1292) o Must be within 30 days after the 120 day period the Board has to review the decision, here there was dispute over when that final date was *In re Rozzo*, 172 Cal. App. 4th 40 (2009) • The governor satisfies due process duties if his analysis reflects some individualized consideration beyond just the offense, because (1) officials are presumed to adequately perform duties, and (2) a heavy burden is on an inmate to prove an official did not adequately perform his duty (64) • A 72% parole denial rate does not indicate that a governor has adopted an anti-parole policy that would violate an inmate's due process rates (65) **Issue of "New Evidence" Before the Governor** *In re Ross*, 185 Cal. App. 4th 636 (2010) • When reversing a parole decision, the Governor is NOT restricted to using only the evidence that was before the Board in assessing current dangerousness • New evidence here was a 2008 psych eval the Governor considered in 2009, to reverse a Board's 2006 decision (643) o Ross had previously been granted a habeas remanding the case back in *In re Ross*, 170 Cal. App. 4th 1490 (2009) with instructions to the Governor simply to "conduct further proceedings consistent with the standard articulated in *Lawrence*," and did not restrict him to evidence that was before the Board in 2006 (645) o "Thus, prior decisions of this court granting petitions for writs of habeas corpus . . . have remanded the matters to the Board for new hearings, with directions to 'find [the prisoner] suitable for parole, unless *new* evidence of his conduct and/or chance in mental state *subsequent to [the hearing when parole was denied]* is introduced and is sufficient to finding that he currently poses an unreasonable risk of danger" (645-46, citing *In re Palermo* (2009)) *In re Butler*, 2014 WL6809262 (Dec. 4 2014) • Governor cannot rely on new evidence; the decision must be based on the same factors as the Board (7) • Here, Governor did not rely on new information, decision to reverse was not improper, because even though the Governor discussed such evidence in his reversal that would be considered new, he used the phrase "if true" to qualify that the statements that the new evidence was "troubling" and "raises serious questions" (7) • Governor differentiated between evidence, upon which he based his findings, and new information, as to which he made no findings, leaving those matters for the Board at a future parole hearing o Therefore, he did not rely on new declarations – he merely highlighted them as areas of concern that the Board had to resolve later, where Butler would have a chance to respond (7)

	• Governor's failure to discuss and analyze all of the required factors for a parole determination did not invalidate his reversal of the grant, where his written decision recounted all the required factors (11)
Insight	*In re Ryner*, 196 Cal. App. 4th 533 (2011) • Sufficient insight does not mean perfect insight; insight is inherently vague but "we have to question whether anyone can fully comprehend myriad of consequences, feelings, and current and historical forces that motivate conduct" (548) *In re Hunter*, 205 Cal. App. 4th 1529 (2012) • Lack of insight is only indicative of current dangerousness if it shows a material deficiency in an inmate's understanding and acceptance of responsibility for the crime (8) *In re Smith*, 171 Cal. App. 4th 1631 (2009) – example of how Shaputis was used in reasoning • Governor here relied on grounds similar to those in Shaputis II for reversal: (1) aggravated circumstances of the crime (murder of 2 y/o daughter) and (2) Smith's lack of insight into her conduct and refusal to accept responsibility • Court affirmed the reversal finding that Smith's lack of a violent background is not a valid distinction between the instant case and Shaputis I (1638) *In re Palermo*, 171 Cal. App. 4th 1096 (2009) • Denial of intention to kill is not "some evidence" to support a finding of no insight (1118) *In re Rodriguez*, 193 Cal. App. 4th 85 (2011) • Having accepted full responsibility for his crime, a lack of understanding of a particular fact of the offense is not indicative of current dangerousness (95) o Here, Governor took an "isolated piece of evidence from the record" and "failed to articulate why this fact demonstrates Rodriguez poses an unreasonable risk of danger" (100) • BUT alternatively, this lack of understanding to a particular fact can be construed as lack of understanding as to the causative factors behind his criminal actions, but only where it shows a material deficiency in understanding and acceptance of responsibility for the crime (99) **Other cases where the Board/Governor found lack of insight, but Court did not and granted habeas:** • *In re Singler*, 169 Cal. App. 4th 1227 (2008) (man convicted of 2nd degree murder of his wife, found unsuitable for lack of insight because he couldn't explain how he went from only intending to scare his wife to killing her, but court found his self-help therapy and anger management classes have been successful, which was also supported by his psych evals)

Prior Minimization & Denials or Only Recently Accepted Responsibility	*In re Roderick*, 154 Cal. App. 4th 242 (2007) • Reversed a denial of parole where, despite "his inability to articulate a more insightful explanation," the inmate expressed genuine remorse for the crime and acknowledged after several years of claiming self-defense that it was intentional *In re Elkins*, 114 Cal. App. 4th 475 (2006) • "There is **no minimum time requirement**. Rather, acceptance of responsibility works in favor of release '[no] matter how longstanding or recent it is,' so long as the inmate 'genuinely accepts responsibility.'" (495) *In re Lee*, 143 Cal. App. 4th 1400 (2006) • The recent nature of acceptance of responsibility for the crime is irrelevant as long as acceptance is sincere o "To deny parole, the reason must be related to a defendant's continued unreasonable risk to public safety. So long as Lee genuinely accepts responsibility, **it does not matter how longstanding or recent it is**." (1414) o *decision is careful to note that "belated claims of remorse may legitimately cause doubt about the convert's sincerity," and the Governor only challenged the timing here, not the genuineness, so this case applies narrowly to timing. *In re Nguyen*, 195 Cal. App. 4th 1020 (2011) • Past denial of involvement in crime was not "some evidence" of current dangerousness when the petitioner ha since admitted fault, expressed remorse, and demonstrated insight into causative factors" (1034) In re Tapia, 207 Cal. App. 4th 1102 (2012) • An inmate's decision to keep a coconspirator's identity secret for 17 years, thereby allowing him to remain free and a risk to the community, indicates an ongoing lack of commitment to the community, and creating this ongoing threat to society can constitute "some evidence" of unsuitability (1110-12) o *even if identity was finally revealed at most recent suitability hearing o *distinguishes from In re Elkins – in that they don't even have to decide if that decision can apply to acceptance of full responsibility the day of, or during a break in the hearing, because this case was not about late acceptance but late in providing the identity of his coconspirator (1112) downplaying or minimizing the offense, by admitting to the crime but denying premeditation and preparation evidence in the record, is probative of current dangerousness (1113)
Plausibility/Credibility of Parole Applicant	**If the Board claims they do not believe the parole client's explanation or think it lacks insight, but cannot cite to evidence showing otherwise, it generally will NOT be considered "some evidence" of current dangerousness:** *In re Denham*, 211 Cal. App. 4th 702 (2012) • The Board believed that Denham's claim he played a "peripheral role" in the crime shows he is minimizing his involvement and failing to take responsibility for the crime (715) • BUT Board cited no evidence establishing that his involvement was anything other than what he described, and the record tends to corroborate what he said (716)

	• The Board's speculation as to what Denham should have known about his co-participants' intentions "prevented any meaningful evaluation of the evidence and led instead to the unsupported and therefore arbitrary conclusion [Denham] rejected responsibility for his actions" (716) *In re Moses*, 182 Cal. App. 4th 1279 (2010) • "any discrepancies between Moses's account of the shooting are insignificant in light of his undisputed acceptance of responsibility for the crime his repeated expressions of remorse, and his post-conviction history" (1286) • Governor reversed because he could not accept Moses's "purportedly continuing claim" he acted in self-defense o There was no evidence in this case that Moses maintained this, and actually contradicted this (1307) ▪ *this is specific to the facts of the case, there simply was no indication he maintained the self-defense claim **When a parole applicant provides a different version of the commitment offense, its generally NOT evidence of current dangerousness if it is outweighed by other factors, and not a physically impossible version:** *In re Palermo*, 171 Cal. App. 4th 1096 (2009) • The Board cannot deny parole because an inmate's version of the offense is inconsistent so long as the inmate's version is not (1) physically impossible, and (2) does not strain credulity such that the inmate's version is delusional, dishonest, or irrational. (1112) • Here, the Board found a lack of insight because the petitioner continued to assert that the killing in his offense was the "unintentional result of an accidental shooting" (1110) o BUT he expressed remorse, accepted "full responsibility", acknowledged he deserved to be incarcerated, participated in programming, and received positive psych evals. So even though his version differed, in light of that and the fact that ad his version was "not physically impossible and did not strain credulity such that his explanation was delusional, dishonest, or irrational," the court found no lack of insight or evidence of current danger (1112) *In re Twinn*, 190 Cal. App. 4th 447 (2010) • Governor reversed on basis that petitioner lacked insight given some inconsistent statements with versions of the crime, but "an inmate need not agree or adopt the official version of a crime in order to demonstrate insight and remorse" (citing to In re Palermo) (466) • It's is OK if the petitioner's version of the crime is "not physically impossible and did not strain credulity such that his explanation was delusional, dishonest, or irrational" (467) *In re Gomez*, 190 Cal. App. 4th 1291 (2010) • Change of story is acceptable when "the record amply demonstrates petitioner's changed version of the events was consistent with his newly developed insight, gained through the prison's varied programs." (1308) • Governor's reliance on petitioner's lack of insight after his "full acknowledgement of his crime has transformed into an immutable factor. The effect of this position is to transmute petitioner's sentence into life without the possibility of parole." (1208) *In re Jackson*, 193 Cal. App. 4th 1376 (2011)

	• Given that the inmate's denial of committing the offense is not necessarily inconsistent with the evidence, he/she accepted responsibility for the death of the victim, had a good disciplinary record, programmed to the extent possible, and received positive psych evals → continued denial of committing the offense does NOT support a finding of current dangerousness (1391) *In re Hunter*, 205 Cal. App. 4th 1529 (2012) • If different version of the offense is not inconsistent with evidence in the record, it does not support a denial (6) • Numerous statements of remorse and acceptance of responsibility can outweigh forgetting to name a particular victim (8) *In re Pugh*, 205 Cal. App. 4th 260 (2012) • Again, reemphasizes that if the petitioner's version of the crime is not "inherently incredible" and not inconsistent with evidence, it is NOT evidence of current dangerousness (272) • Here, not implausible – jury believed his story convicting him of 2nd degree murder rather than 1st, and he's been consistent in retelling of the events, nothing in his story is "so far-fetched as to be unbelievable" (273) o Contrasts to *Shaputis*, in which petitioner there had a version of the crime that changed over the years deemed implausible (272) *In re Sanchez*, 209 Cal. App. 4th 962 (2012) • HELD: Petitioner's refusal to hew to the "official record" of his crime of attempted murder did not establish that he rejected responsibility for his actions o Here, decision did not turn on plausibility of Sanchez's account or more fundamentally whether he is currently dangerous, but it instead relied on the Board's "mistaken enshrinement of the official version of the offense" (974) *In re Busch*, 246 Cal. App. 4th 953 (2016) • An inmate's differing version of events can support a finding of unsuitability if it shows he/she lacked insight • Even like here, has an exemplary prison record, may still be unsuitable if '"the implausibility of the inmate's account indicates the inmate does not appreciate the magnitude of the commitment offense or its contributing causes" (plus psychological evidence his character hasn't appreciably changed) (970) In this case, he simply did not deny guilt but provided an implausible version of events
Inability to Remember Circumstances of Commitment Offense	In re Young, 204 Cal. App. 4th 288 (2012) • Failure to recall exact details of the commitment offense does not indicate current dangerousness if the inmate takes responsibility for the crime and its' causes (308–09) • Rejected the Board's reliance on Young's inability to recall commission of his offense due to the absence of evidence it was "extraordinarily unusual" for a person to have no recollection of such a crim, or that the petitioner "could recall more about what happened by 'thinking;' and 'praying' more about it . . . The Board simply speculated about what people should and could recall when they commit extraordinarily violent acts" (308)

	• An inmate's lack of insight into the causes of his criminal conduct cannot rationally be inferred from his inability to remember the conduct where, as in this case, he acknowledges his factual, legal, and moral responsibility for the criminal act, and has expressed genuine remorse *In re Stoneroad*, 215 Cal. App. 4th 596 (2013) • Prisoner's inability to remember commitment offense does not support parole denial where inmate has addressed causative factors of his crime and has accepted full responsibility *In re Juarez*, 182 Cal. App. 4th 1316 (2010) • "given [petitioner] has taken responsibility for the commitment offense and the substance abuse that caused it, his lack of memory is not probative of current dangerousness." • Distinguishes between memory gaps about the "details" of the crime, to that of memory gaps where the inmate denies criminal misconduct. The latter credibility has bearing on current dangerousness, not the former. Here, Juarez was denied parole partly bc the Board questioned his credibility bc he "blacked out" while driving at the time of his offense (killed another drive while fleeing from police and under the influence) (1320)
Significant Criminal History of Parole Applicant	*In re Moses*, 182 Cal. App. 4th 1279 (2010) • Governor referred to Moses's history of criminal violence as "significant" (he had several as a juvenile and didn't commit his offense until age 30) o Court found it is within the Governor's discretion to consider past acts of violence, but that it is "significant" cannot be maintained based upon "one juvenile incident and one adult crime in the 15 years prior to the murder" (1311) o *given that the petitioner here even had one adult crime and the court found this to not be significant, it could provide a good contrast against youth offenders with criminal histories held against them
Psychological Evaluations	*In re Lawrence*, 44 Cal. 4th 1181 (2008) • early negative psychological evaluations carry no weight in light of many years of positive psychological evaluations carry no weight in light of many years of positive psychological evaluations (1225) *In re Aguilar*, 168 Cal. App. 4th 1479 (2008) • Governor in his reversal relied on a 2001 psych eval, but ignored at least two subsequent positive psych evals that superseded the 2001 eval (1490) • The court found the previous negative evaluation does not constitute evidence that he is a current danger because it was superseded (Id) *In re Nguyen*, 195 Cal. App. 4th 1020 (2011) • Psych evaluator's failure to further explore a topic bearing on insight was not "some evidence" of current dangerousness o Governor found fault with an evaluator in failing to explore why petitioner reacted to feelings of "rejection with such obsessive behavior and violence"

	○ But the "perceived failure of the evaluator cannot be laid at the defendant's feet. He has no control over what questions are asked" (1036)
Disciplinaries	*Nettles v. Grounds*, 830 F.3d 922 (9th Cir. 2016) • A rules violation is "merely one of the factors shedding light on whether a prisoner constitutes a current threat to public safety." (935) ○ "the presence of a disciplinary infraction does not compel the denial of parole." (Id) *In re Montgomery*, 208 Cal. App. 4th 149 (2012) • Board concluded Montgomery's possession of tobacco resulting in a 115 was some evidence of unsuitability • **HELD**: in the context of a life crime in which addiction was a major causative factor, there is a rational nexus between a 115 for tobacco and current dangerousness (163) ○ It is some evidence that Montgomery "has not adequately addressed the triggers for his tobacco addiction, may not possess the tools to prevent a relapse, and is willing to violate rules to satisfy his addiction – an addiction that is illegal to nurture in prison." **Less Serious Rules Violations (128s)** *In re Lawrence*, 44 Cal. 4th 1181 (2008) • There, the petitioner had no 115s, and only a few 128as, but the last had been received a decade earlier, thus the court found in light of that and a positive psych eval that a 128 counseling chrono is not evidence of current dangerousness (1197) *In re Reed*, 171 Cal. App. 4th 1071 (2009) • Repeat 128-As after being instructed to remain discipline-free, does constitute "some evidence" of current dangerousness – indicates a prisoner would not be able to comply with the reasonable conditions of parole (1084) • In this case, was a counseling chrono for leaving work without permission *In re Smith*, 109 Cal. App. 4th 489 (2003) • "In prison argot, 'counseling chronos' document 'minor misconduct,' not discipline, and the evidence is undisuted that Smith has been 'disciplinary-free' for the entire period of his incarceration" (505) (citing Cal. Code Regs., tit. 15 §§ 3000, 3312(a)(2), 3312(a)(3)
Implication of Marsy's Law	*In re Vicks*, 56 Cal. 4th 274 (2013) • Marsy's law does not prohibit a life prisoner's request for an advanced parole hearing within three years after denial of parole at a regular hearing if circumstances have changed. (284) • Increased interval between parole hearings, requirement for BPH to consider victim's views, and elimination of obligation to review prisoner's file within 3 years of parole denial do NOT violate ex post facto principles on its face (292, 309–311) • Marsy's law also did not violate ex post facto principles as applied (312)

Meaningful Opportunity for Release	*People v. Franklin*, 63 Cal. 4th 261 (2016) • Franklin, who was sentenced to 50-life for a crime committed as a juvenile, was entitled to a parole hearing in his 25th year, because waiting until 66 (pursuant to sentence) would not render a meaningful opportunity for release • Section 3051 reflects the Legislature's judgment that 25 years is the maximum amount of time that a juvenile offender may sere before becoming eligible for parole. (278) • The focus of the statutory scheme is the psychological growth and "increased maturity" of the youthful offender, now an adult, as manifested by his or her behavior and efforts to rehabilitate himself or herself during his incarceration, as against his or her presumed immaturity at the time of the offense (288) o Basically is saying there is a baseline for analysis of growth and maturity, so a court should look at where the inmate is now compared to where they started – they do not have to be the perfect parole applicant – they just have to exhibit growth from the baseline
Parole Applicants Claiming Innocence	**Admission of Guilt is NOT Required:** *In re McDonald*, 189 Cal. App. 4th 1008 (2010) • Claiming innocence does not equate a lack of insight • Governor reversed partly because of the petitioner's insistence that he is innocent, but the Court found that given the evidence is lacking, the Governor cannot rely on the fact that the petitioner insists on his innocence (1023) o Cites Penal Code §5011 and Cal. Code Regs. tit. 15 §2236, which expressly prohibit requiring an admission of guilt as a condition for release on parole (id) *In re Swanigan*, 240 Cal. App. 4th (2015) - Continuously denying guilt at parole hearings does not indicate a lack of insight • Until his 11th parole hearing, Swanigan consistently maintained he did not shoot the victim who he had gotten into an argument with over damage to victim's car culminating with Swanigan shooting and killing him (4–5) • Admission of guilt is not required (14) (citing §5011(b)) • Reemphasizes *In re McDonald* that the Board "cannot rely on the fact that the inmate insists on his innocence" (14) o Found no evidence supporting denial – no juvenile record, no history of drug use, never belonged to a gang, and had an exemplary disciplinary record (15) • Lack of insight – even denying guilt – needs to connect to fact that maeks him currently dangerous, and here it does not (16) o Quotes *Shaputis*: "it is not the failure to admit guilt that reflects a lack of insight, but the fact that the denial is factually unsupported or otherwise lacking in credibility" (17) o The argument that Swanigan's denials were implausible was based on immutable facts of the crime itself and the fact of his conviction, not a pattern of behavior or denial of physical evidence that connected him to the crime (17) *In re Jackson*, 193 Cal. App. 4th 1376 (2011) • Admission of guilt is not required to be found suitable (1388)

	• The Board cannot conclude that the petitioner lacked insight, failed to take responsibility, and lacked remorse merely because he/she failed to admit guilt for the commitment offense, doing so would violate Cal Pen Code §5011 and CCR tit. 15 §2236 (1391)
Rational Nexus	*In re Moses*, 182 Cal. App. 4th 1279 (2010) • Found the Governor failed to articulate a rational nexus by referring to immutable factors only (there relied on commitment offense) (1304) *In re Ross*, 170 Cal. App. 4th 1490 (2009) • Governor reversed a grant, but there was no explicit statement by him of a rational nexus between the crime and current dangerousness (1497) o Recounted facts of crime and disciplinary history, but did not explicitly link back to current dangerousness o There were some negative findings on petitioner's mental state, but Governor did not cite these, so the Court cannot infer this was his basis for denial. Relying only on disciplinary history and the facts of the crime did not adequately tie them back to current dangerousness, so the court granted the habeas (1513)
Alcohol & Drug Use	*In re Smith*, 109 Cal. App. 4th 489 (2003) • Prior addiction to drugs does not provide evidence of unsuitability absent evidence of *current* addiction o "While there is evidence that he used drugs and alcohol at the time of the murder, a prisoner's prior addiction is not an appropriate consideration in determining parole suitability." (505) *In re Morganti*, 204 Cal. App. 4th 904 (2012) • The risk a former drug or alcohol abuser will relapse cannot of itself warrant the denial of parole (921) • Risk an inmate may relapse can only justify denial when it is greater than that of a former user is normally exposed (921) *In re Stoneroad*, 215 Cal. App. 4th 596 (2013) • Cites In re Morganti's first bullet above and further discusses it • Here, Stoneroad's acknowledgement of the value of AA and intention to continue with it after release cannot be considered evidence that his progress in addressing his alcoholism is "limited" *In re Loresch*, 183 Cal. App. 4th 150 (2010) • Governor here reversed a grant largely bc of the petitioner's history of substance abuse, but the Court found that significant history of substance abuse did not provide "some evidence" of current dangerousness o Forensic psychologist concluded no evidence used substances since the commitment offense and petitioner took advantage of substance abuse programs (161) *In re Davidson*, 207 Cal App 4th 1215 (2012) • A denial can be supported if the petitioner has a history of alcohol/substance abuse, has relapsed before, and whose parole plan does not include a substance abuse relapse plan (1223) o *shows importance of a specific substance abuse relapse plan if commitment offense or causative factors involved drugs/alcohol (in this particular case was drunk driving)

Gang Validation (*note not necessarily dealing with parole habeas petitions, but may be helpful if a client is denied because of gang affiliation that wants to contest)	*In re Martinez*, 242 Cal. App. 4th 299 (2015) – contesting a determination that he was a validated gang member • To validate an inmate as a gang associate prison officials have to produce at least "three independent source items of documentation indicative of association with validated gang members or associates" o At least one source item had to be a "direct link to a current or former validated member or associate of the gang," which could be a person "validated by the department within 6 months of the established or estimated date of activity identified in the evidence considered." (208) • Evidence shows Martinez participated in a prison riot with almost 200 Southern Hispanics and Surenos that was ordered by a Mexican Mafia affiliate – but does not establish that Martinez participated *knowing* the disturbance was ordered by the affiliate (302) o Doesn't show that did so to comply with an order from that specific person • Declined the warden's attempt to expand the CDCR's definition of "direct link" to require nothing more than some evidence of a "straight-forward connection," no matter how attenuated, with a gang member or associate (303 *In re Fernandez*, 212 Cal. App. 4th 1199 (2013) • Example of a case where gang validation was contested, and despite the court finding that the debriefing report failed to meet requirement to reference "specific gang related acts or conduct," the validation procedure comported with due process (not dealing with parole decision, but may be useful if a client has a gang validation issue) *In re Cabrera*, 216 Cal. App. 4th 1522 (2011) • Findings underlying gang validation must be supported by "some evidence," o Here, possession of photocopies of signed drawings was insufficient to establish association with the artists (tried to claim that bc artists were validated members Cabrera was) o No rational nexus between an inmate's possession of a drawing bearing the partial name of the artist and ultimate determination he had a loose relationship with the artist (1539) • *Compare to* *In re Furnace*, 185 Cal. App. 4th 649 (2010), where of 3 independent "source items" 1 was a "direct link to a current or former validated member or associate of the gang" and thus found to be validating (66)
Mental Illness	*In re Mims*, 203 Cal. App. 4th 478 (2012) • If an inmate refuses to talk about the commitment offense or testify at all in a hearing, the Board does not have to consider any change to his/her psychological or mental attitude towards the crime. (489) • If an inmate does not participate in counseling or treatment during incarceration that addresses documented or possible mental illnesses, this can imply they have not addressed causative factors (489) • Participation in self-help and educational programs are not substitutes for mental health treatments for inmates with psychological disorders (489) •
Denials Based on Parole Plans	*In re Cerny*, 178 Cal. App. 4th 1303 (2009) • Indefinite parole plans alone is sufficient basis of Board's denial

	○ Was particularly probative here because at Cerny's past hearing prior to the one he contested here, lack of suitable parole plans was the sole reason he was denied (1314) ▪ Board was further concerned that Cerny could relapse into drug/alcohol use without verifiable plans (was not accepted to a transition home yet) (1315) ○ The sufficiency of future plans is listed in the Board's regulations as a factor (Cal. Code Regs., tit. 15 §1402(d)(8);(1314) ○ Prisoner's lack of sufficient plans for residency or employment upon his release was probative of current dangerousness • Court of Appeals cannot engage in balancing and thereby second-guessing the Board. Rather, required to look only for evidence of dangerousness that could support the Board's decisions looked at parole plans and found them to be insufficient (1306) *In re Loresch*, 183 Cal. App. 4th 150 (2010) • Petitioner was denied partly because of a "lack of confirmed job offer" but the court found that is not evidence of current dangerousness given the high unemployment rate and difficulty his incarceration makes it on finding a job (162) ○ He still has marketable skills through his vocational training, and a construction company said it would consider giving him a job
Credit Against Parole Term	*In re Lira*, 58 Cal. 4th 573 (2014) • Parolee was not entitled to credit against his parole term for his time in prison between Governor's erroneous reversal of earlier grant of parole and prisoner's eventual release pursuant to a later grant of parole • A Governor's reversal does not retroactively render unlawful the incarceration during the pendency of the processes
Elderly Inmates & the Physically Disabled	*Martinez v. Board of Parole Hearings*, 183 Cal. App. 4th 578 (2010) – compassionate release standard • Prisoner who suffered from complete quadriplegia brought action requesting he be granted compassionate release pursuant to Penal Code §1170(e)(581) ○ This section provides that BPH "may recommend" to the sentencing court that a defendant's sentence be recalled and released if he/she has become terminally ill with an incurable condition that would produce death in 6 months, or has become permanently medically incapacitated unable to perform activities of basic living and requiring 240 hour total care, and condition is such that would not pose a threat to public safety (id) • Court of Appeals here reversed the lower courts order directing BPH to order compassionate release (582) ○ The word "may" in the statute "must be interpreted in a way that effectuates the privion's primary purpose of saving the state money by authorizing release," and BPH "must so recommend" if the prisoner meets the statutory criteria ○ HOWEVER, based off the facts of this particular case, did find "some evidence" that petitioner would pose a threat t0 public safety because although quadriplegic, he "continues to demonstrate inappropriate,

	disrespectful and verbally threatening behavior," and "while his physical threat is obviously restricted, his defiant demeanor could be perceived as threatening" (584) *In re Aguilar*, 168 Cal. App. 4th 1479 (2008) • The fact that Aguilar was physically disabled, visually impaired, elderly man with no current or past serious mental illness was probative in determining he is not a current danger (1488)
"Heinous, atrocious, cruel" and Gravity of Commitment Offense	*Lawrence and Shaputis* make clear that "the relevant inquiry for a reviewing court is not merely whether an inmates' crime was especially callous, or shockingly vicious or lethal, but whether the identified facts are probative to the central issue of current dangerous when considered in light of the full record" (Shaputis at 1255; Lawrence at 1221) • In Lawrence, she was convicted for murdering her lover's wife, but the Court noted "few murders do not involve attendant facts that support such a conclusion" that it was "especially heinous, atrocious, or cruel" (1224-25) • Where all post-conviction evidence in the record supports the determination that the inmate has been rehabilitated and no longer poses a danger to public safety, and the Governor (or Board) has neither disputed this evidence nor related the commitment offense to current circumstances to suggest the inmate will continue to pose a danger if released, "mere recitation of the circumstances of the commitment offense, absent articulation of a rational nexus between those facts and current dangerousness, fails to provide the required 'modicum of evidence' of unsuitability" for parole. *In re Burdan*, 169 Cal. App. 4th 18 (2008) (quoting *Lawrence*) *In re Moses*, 182 Cal. App. 4th 1279 (2010) • Governor could not rely on the gravity of the offense alone to support his determination of current dangerousness, and the record did not support his characterization of the offense (1301–303) • Relying on immutable characteristics of the crime is not a rational nexus between the commitment offense and current dangerousness • Gravity of the crime is not "some evidence" of current dangerousness (1305) o Unless something in the record also establishes that something in the inmate's pre or post-incarceration history, their current demeanor and mental state, indicates that the inmate's dangerousness deriving from the offense remains probative that he/she is a continuing threat to public safety • Governor here ignored the "nature of the jury's verdict," convicting him of second degree murder – defined without having willfulness, premeditation, and deliberation that first degree requires (1302) *In re Juarez*, 182 Cal. App. 4th 1316 (2010) • Governor reversed on basis that Juarez carried out his offense in "an especially heinous, cruel and callous manner" (1342) o While there was evidence that he was driving under the influence of PCP and other substances, speeding away from police, and then killing an innocent man, the court only finds that reckless but not especially heinous, cruel, or callous (1342) **Governor reversals based on offense of 2nd degree murder** *In re Vasquez*, 170 Cal. App. 4th 370 (2009)

	• Prisoner's commitment offense of 2nd degree murder does not reflect an exceptionally callous disregard for human suffering
	  o Disregard for human suffering is not sufficient for parole denial in 1st or 2nd degree murder because it's part of malice aforethought, and doesn't show that the crime was "especially heinous, atrocious, or cruel." (383)
	  o Any evidence of premeditation does not constitute evidence that petitioner would unreasonably endanger society (384)
	• "[W]hether the crime was committed as the result of significant stress in the inmate's life is a mitigating factor…[I]t is ian important factor because the extenuating circumstances that led to the shooting are unlikely to recur." (385)
	In re Gomez, 190 Cal. App. 4th 1291 (2010)
	• Governor described petitioner's crime as "heinous and atrocious. But such a characterization can be made about all second degree murders." (1307)
	• Second degree murder is defined as the "unlawful killing of a human being with malice aforethought," inquiry should be whether *among* second degree murders, this one could be considered *particularly* heinous and atrocious (id)
	Other examples of cases where the commitment offense WAS largely relied on as "some evidence" of current dangerousness and how courts ruled:
	In re Criscione, 173 Cal. App. 4th 60 (2009)
	• Board's focus on callousness of the crime was main reasoning of denial, but the denial that prompted this case was given prior to Lawrence*
	In re Dannenberg, 173 Cal. App. 4th 237 (2009)
	• Governor's decision rested on fact that offense was "especially heinous," but Court found there was no evidence of current dangerousness given his stable social history, positive psych reports, spotless prison record, solid parole plans, and time spend programming (253-54)
	In re Rozzo, 172 Cal. App. 4th 40 (2009)
	• To be the basis for denial, the offense must have been (1) "particularly egregious," meaning it constituted "more than minimally necessary to convict" the person of the offense and (2) those egregious facts must be probative of current dangerousness (52-53)

Board's Use of Confidential Memoranda	*In re Prewitt*, 8 Cal. 3d 470 (1972)
	• The due process clauses of the Fifth and Fourteenth Amendments include a limited right to confrontation that applies in the parole context (473-74)
	  o *See also Valdivia v. Schwarzenegger*, 599 F.3d 984 (9th Cir. 2010): confrontation right in parole context is not grounded in the Sixth Amendment, but rather Fifth and Fourteenth
	  o Limited in parole context bc does not entail a right to *live* cross-examination or disclosure of the identity of an informant that would jeopardize safety (474)

	• Petitioner must be provided copies of any statements in Parole Authority's file before the hearing in order to afford a fair opportunity to respond (478) o Does not need to disclose identity of informer if it would subject the informant to an "undue risk of harm" • CA S Ct has recognized that while the State has an interest in protecting the safety of confidential informants, for inmates, the State's "policy of nondisclosure increases the potential for unfairness" because "unless the prisoner learns what information is in the Authority's possession he cannot intelligently decide what subjects to discuss at his predisposition interview." (475-76) • Court concluded, "a refusal to apprise [a petitioner] of the source and nature of the information would effectively deny all reasonable opportunity to respond." (476) • Court recognized that the "stakes are simply too high…and the possibility for honest error or irritable misjudgment to great to allow the submission of such potentially damaging remarks without at least an opportunity to challenge them" (Id) • *__NOTE__: Prewitt considered proceedings necessary in parole *rescission*, but it has been extended to parole release proceedings in In re Olson and Ochoa v. Superior Court. *In re Olson*, 37 Cal. App. 3d 783 (1974) • Considered whether confidential info in a C-File should be disclosed to an inmate for purposes of challenging the inmate's parole denial (748-85) • Held that the rationale in Prewitt – that an inmate has a due process right to see the documents in the Parole Authority's possession – while not binding in the context of parole hearings, was entitled to "great weight" (788-789) *Ochoa v. Superior Court*, 199 Cal. App. 4th 1274 (2011) • Similarly reaffirmed the general policy of disclosure announced in Prewitt • Here, considered an application by an inmate who had been denied parole by the Governor based upon confidential information, petitioner sought to review the confidential info to be able to challenge the reversal (1278-79) • Court recognized that "[t]here is a valid state interest [known as the official information privilege] in keeping certain prison inmate records confidential to (1) protect individuals, including informants inside and outside of prison, (2) ensure institutional security, and (3) encourage candor and complete disclosure of information concerning inmates from both public officials and private citizens." (1280) • The Court ordered the Warden here to provide to the Court, in an in camera hearing, the confidential info upon which Governor had relied (1283) *In re Powell*, 45 Cal. 3d 894 (1988) • Board cannot base a decision to rescind parole upon an allegation unless at some point in time there has been an opportunity for the parolee to confront the witnesses who made the allegation (905) • *NOTE: this also was a parole rescission, but the same reasoning applies to the right of confrontation in parole suitability hearings (*See In re Rosenkrantz*, 29 Cal. 4th 616 (2002) analogizing parole suitability decisions to rescission and applying the same standard)