

YOUTH OFFENDER PAROLE

**A Guide for People in Prison and
Their Families and Friends**

*Know your rights:
California's
Youth Offender
Parole
SB 260 and SB
261*

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UNDERSTANDING THE PURPOSE AND LIMITATIONS OF THIS GUIDE

Human Rights Watch and the Fair Sentencing for Youth Coalition are groups that worked with others to pass Senate Bills (SB) 260 and 261, the Youth Offender Parole law. We are among many organizations helping to make California's criminal laws more just. We worked with others to write this handout because we know that prisoners and their families often have difficulty obtaining legal information.

Thank you.

We are grateful to the many people who donated their time, wisdom, and knowledge in writing this guide, including experts at the Post-Conviction Justice Project of USC Gould School of Law; Prison Law Office; Juvenile Innocence and Fair Sentencing Clinic of Loyola Law School; Uncommon Law; Youth Law Center; and numerous individuals. Most of all, we are grateful for the input of family members of murder victims, and people who have paroled who shared their personal stories in order to support this effort.

This guide does not provide legal advice.

What is provided here is general information; it is not legal advice. We do not provide legal advice, representation, or referrals, nor can we answer questions about individual cases. If you have an attorney, you should disregard the information in this guide and talk to your attorney about the law and your case.

We did our best to provide useful and accurate information about this new law. However, please remember that laws change. We do not have the resources to make changes to these materials every time the law changes, nor can we afford to contact prisoners or respond to questions. If you use this guide, you should make sure that the law has not changed since this guide was written.

In addition, different people can have differing opinions as to the meaning of a law. If you have questions about this law and how it may affect your case, ask an attorney who has expertise in parole law. If you want legal advice about your case, hire a lawyer to address your specific issues. If you use this handout for any purpose, it is your responsibility to make sure that the law applies to your situation.

Remember that laws change, and before relying on anything in this guide you should make sure you have the most up-to-date information.

This guide was last updated in May 2016, before regulations were done.

At this time, the Board of Parole Hearings (Board) is still figuring out how to make the new laws work. As time goes on, the Board will put out regulations that make the process more clear. At the time this handout was written, the regulations were not finished. The date and version of these materials is on the lower right of each page. If we update the materials, newer versions will be posted on our website (www.fairsentencingforyouth.org) and the date and version number will change. If you are in prison, you can request updates by writing to: **Prison Law Office, General Delivery, San Quentin, CA 94964.**

How to find and read the law.

In this handout, you will sometimes see “PC” and a number. PC refers to the California Penal Code. The Penal Code has all the state’s laws about crime and punishment. The number is the section of the code where information is found. So, for example, when you see “PC 3051,” that means California Penal Code section 3051. That is where you can read the actual law about the topic being discussed. We encourage you to read the law for yourself. This law is found in California Penal Code (PC) sections 3041, 3046, 3051, and 4801. If you are in prison, please check your prison law library for a copy of the law. People outside of prison can find it at www.fairsentencingforyouth.org.

PART 1: A SUMMARY OF WHAT THE LAW IS SUPPOSED TO DO

WHAT is Youth Offender Parole?

Youth Offender Parole creates a special parole process for people who were under the age of 23 at the time of their crimes, and sentenced to life sentences or long determinate sentences.

If you were under the age of 23 at the time of your crime, you will have a “Youth Offender Parole Hearing”. The purpose of the Youth Offender Parole Hearing is to decide if you are suitable for parole and to “provide for a *meaningful* opportunity to obtain release.” PC 3051(a)(1) & (e). This means the law gives you a real chance of getting out of prison on parole. Many people will also get an earlier chance to earn parole and get out of prison.

What are SB 260 and SB 261?

SB 260 and SB 261 are other names for Youth Offender Parole. These are the bill numbers for the laws.

SB 260 was the first law; in 2014, it made people who were under age 18 at the time of their crime eligible for Youth Offender Parole. SB 261 was the second law; in 2016, it expanded Youth Offender Parole to include people who were under age 23 at the time of their crime.

Regulations

Youth Offender Parole is a new law, but the Title 15 regulations to describe the details of how the law should work have not yet been written or made final yet. The relationship between a law and regulations is like a recipe: the law is the ingredients and regulations are the instructions about what to do with the ingredients. The Youth Offender Parole law provides very good ingredients, but the details of what to do with them is still being worked out. The Board of Parole Hearings (Board) is using temporary rules in Youth Offender Parole Hearings until the final regulations are done. The Board is working on revising the regulations to reflect the changes in the law. The public will have a chance to comment and help shape these regulations.

WHO is eligible for a Youth Offender Parole Hearing?

If you can check each of these boxes as true for you, you are eligible. PC 3051(h)

- I was under 23 at the time my crime occurred.
 - It doesn't matter when you were arrested, convicted, or came to prison.
 - What matters is whether you were under 23 when the crime happened.
 - You must have been **UNDER** the age of 23 – if you were 23 when the crime occurred, you are not eligible.

- I do NOT have an LWOP (life without parole) sentence. (PC 190.5).
 - If you had LWOP, but were resentenced under another law, you are eligible.
 - If you were under 18 at the time of the crime and received LWOP, you may be able to petition for resentencing under SB9/1170(d)(2) and/or file a habeas petition under *Miller v. Alabama*.

- I do NOT have a “One Strike” life sentence for certain sex offenses (PC 667.61).

- I do NOT have a “second-strike” sentence or a “third-strike” sentence based on a prior serious or violent felony. (PC 667(b-i) or 1170.12).
 - You are disqualified **ONLY IF** you were specifically sentenced under PC 667 (b-i) or PC 1170.12. If you have prior felonies that were eligible for strikes, but you were not sentenced under 667(b-i) or 1170.12, you are still eligible.
 - If you had a sentence under PC 667 (b-i) or PC 1170.12, but then you were resentenced to something different, you are eligible.
 - You should talk to an attorney if you are disqualified for this reason.

- AFTER I turned 23, I was NOT **convicted** of a crime for which I got a life sentence (“L”).
 - A 115 or other CDCR write-up is not a conviction. You are disqualified for this reason only if you went to court and were convicted and sentenced to a life sentence.

- AFTER I turned 23, I was NOT **convicted** of a crime that has "malice aforethought" as a necessary element. This includes, but is not limited to, the following crimes:
 - Murder in the first degree or second degree (PC 187)
 - Attempted murder (PC 664/187), conspiracy to commit murder (PC 182/187), solicitation to commit murder (PC 653f(b))
 - Assault with a deadly weapon or assault that is likely to produce great bodily injury committed while you are serving a life sentence (PC 4500)
 - A 115 or other CDCR write-up is not a conviction. You are disqualified for this reason only if you went to court and were convicted for one of these crimes.

IMPORTANT: If you were under the age of 23 at the time of the crime, but have a sentence or new crime that disqualifies you, the Youth Offender Parole law will not change the date of your parole hearing. PC 3051(h). However, when you do have a parole hearing, the Board must give “great weight” to your youthfulness at the time of the crime. PC 4801. You should talk to your attorney about this before your hearing.

Do I have to ask or file a petition to have a Youth Offender Parole Hearing?

No. Your hearing will be scheduled in the same manner as all other parole hearings.

I think I am eligible, but I have been told that I am not eligible. What should I do?

You can file a 602. You can also fill out the Board of Parole Hearings' "Form to Contest Disqualification by BPH as a 'Youth Offender.'" You, or an attorney, can fill out that form and send it to the Board of Parole Hearings at their address:

Board of Parole Hearings
Post Office Box 4036
Sacramento, CA 95812-4036

HOW do Youth Offender Parole Hearings (YOPHs) work?

How will a YOPH be different from a regular parole hearing?

The Commissioners of the Board of Parole Hearings (Board) must now consider someone who was young (under the age of 23) differently from someone who was 23 or older at the time of the crime. The fact that you were young at the time of the crime should count as one reason in favor of granting you parole. While you still have to work hard to show that you would not pose a danger to the community if released, the YOPH process should increase your chance of being paroled. PC 3051(d).

On the one hand, many things about a YOPH are the same as a regular parole hearing. For example, you will still have to be found suitable for parole in order to be released, and right now the suitability and unsuitability factors remain the same, although that may change when regulations are enacted. You will have the right to an attorney and all other rights you would have at a regular parole hearing.

But, YOPHs should also be very different because the Board must give "**great weight**" to:

- The fact that youth are less responsible than adults for their actions (*the "diminished culpability" of youth*);
- The hallmark features of youth (*For example, that youth are, as compared to adults, not as good at understanding the risks and consequences of their actions; resisting impulses and peer pressure; or less in control of their life circumstances, etc.*); and
- Any subsequent growth and increased maturity of the prisoner. PC 4801(c).

If you have already had a parole hearing before the Youth Offender Parole law went in to effect, your next parole hearing will be a YOPH. If you were denied at an earlier hearing, see common questions on pages 11, 19, and 20.

There is more information about what happens at a Youth Offender Parole Hearing starting on page 12.

What is a Consultation?

Rather than a Documentation Hearing ("Doc hearing"), which used to take place during the third year of incarceration, a new type of meeting called a "Consultation" will take place six years before your initial parole hearing. You do not need to request the consultation; the Board will schedule it

automatically. The consultation should be one-on-one with a commissioner or deputy commissioner from the Board and you have a right to be present. The meeting is intended to help you know what you need to do in order to be ready for parole. The Commissioner will make recommendations about steps you should take, as well as identifying positive steps that you are already taking. The Commissioner should also explain the parole process and answer your questions about the parole process. The Commissioner will give you written recommendations on how to become ready for parole. You are not entitled to have an attorney present at the consultation hearing.

If I am eligible for Youth Offender Parole, will I automatically be granted parole?

No. The law still requires that you have a parole hearing, and the Board must find you suitable for parole. This is no easy task, but with hard work, you can do it. See Part 2 of this guide for more information on how to prepare for your parole hearing.

WHEN am I eligible for release through the Youth Offender Parole process?

Under the Youth Offender Parole process, you will be eligible for release no later than your 15th, 20th, or 25th year of incarceration – even if you have a sentence that is longer. Depending on your controlling offense, your first parole hearing will be no later than in the 15th, 20th, or 25th year of your incarceration, and if you are suitable for parole you will be released. The number of years you have been incarcerated includes any time you spent in custody (city or county jail, local juvenile facility, mental health facility, DJJ/CYA, CDCR prison). PC 3051(a)(2)(A).

When will my first hearing be?

If you only have determinate (flat) sentences and no “L” (life sentence), you are eligible for your first hearing no later than during your 15th year of incarceration.

A determinate sentence is one without any “life” terms. It is a set number of years. PC 3051(b)(1).

- **Example:** Roberto has a total sentence of 53 years based on three sentences: one for 20 years, one for 15, and one for 18. Because he does not have a life sentence, his first Youth Offender Parole Hearing will be no later than during his 15th year of incarceration.

If you have at least one **life** sentence, you are eligible for your first hearing no later than your 20th or 25th year of incarceration – it will depend on your **“controlling offense.”**

What is my “controlling offense”?

Your controlling offense is the **longest single term**. It is the sentence for a single count or enhancement for which you received the longest term of imprisonment. PC 3051(a)(2)(B). Think about your sentence and the different terms that make up the whole sentence. For example, if you have a 30-to-life sentence, it is really several terms that add up to 30-to-life. It could be two 15-to-life sentences, or five years with a 25-to-life enhancement, or some other combination.

- **Example:** Luis has 25-to-life. He has a 15-to-life sentence and a 10 year determinate sentence. The 15-to-life is the controlling offense because it is the longest of his sentences.
- **Example:** James has 40-to-life. He has a 15-to-life sentence plus a 25-to-life gun enhancement. His controlling offense is the 25-to-life enhancement because it is the longest of his sentences or enhancements.

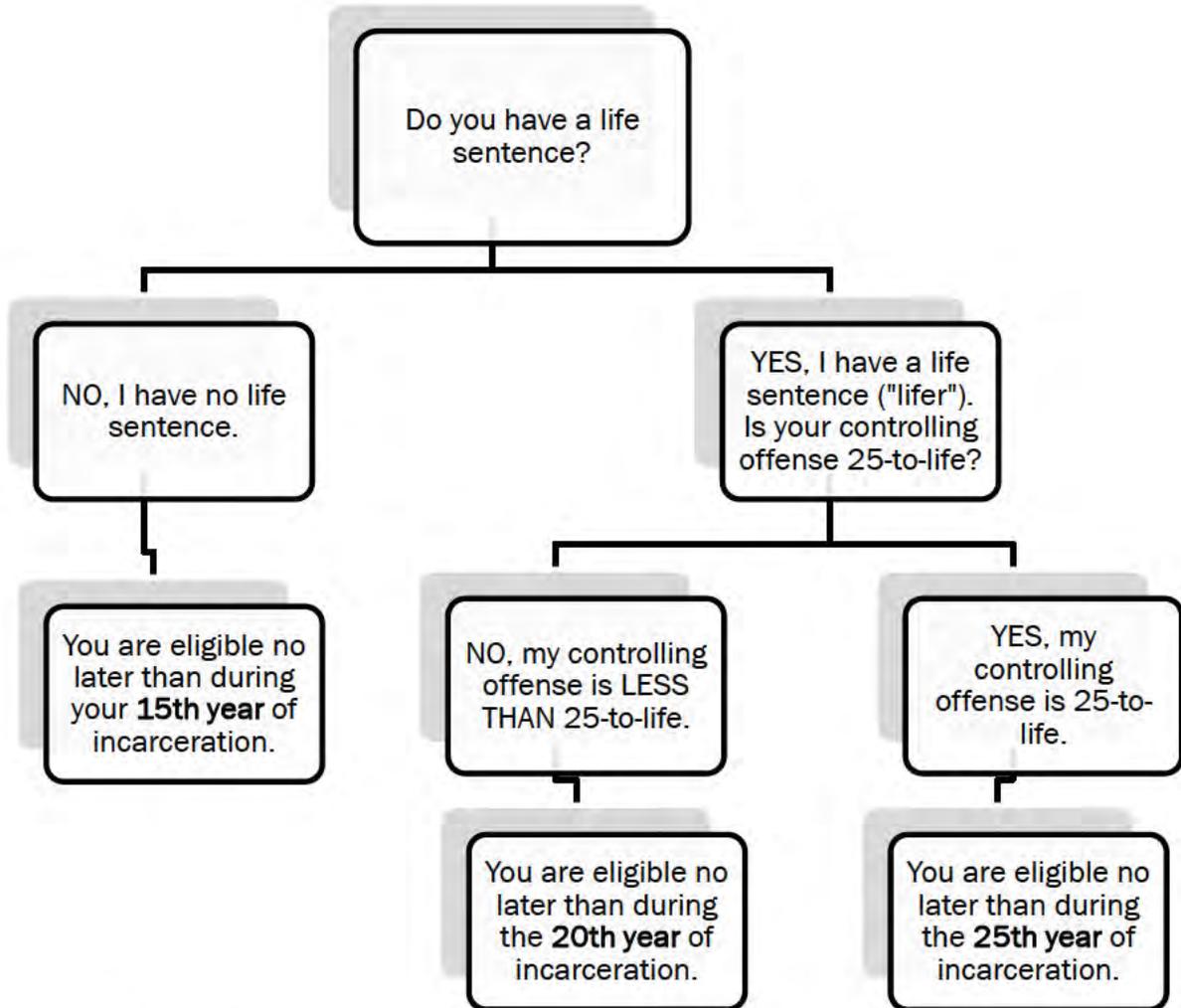
- **Example:** Barbara has 27-to-life. She has a 7-to-life sentence, plus a 10-year sentence, plus another 10-year sentence. The 7-to-life sentence is the controlling offense because it is the longest of her sentences. (This is a tricky one! A life sentence is always considered longer than a non-life sentence.)

If your controlling offense is a life sentence that is less than 25-years-to-life, you are eligible for your first hearing no later than during your 20th year of incarceration. PC 3051(b)(2).

- **Example:** Melissa has a 15-to-life sentence plus a 10-year sentence, and a 10-year gun enhancement, for a total sentence of 35-years-to-life. Because her controlling offense is a life sentence under 25-to-life, her first Youth Offender Parole Hearing will be no later than during her 20th year of incarceration.

If your controlling offense is a life sentence that is 25-years-to-life, you are eligible for your hearing no later than during your 25th year of incarceration. PC 3051(b)(3).

- **Example:** Nathan has a sentence of 25-years-to-life. His first Youth Offender Parole Hearing will be no later than during his 25th year of incarceration. But if his Minimum Eligible Parole Date (MEPD) is earlier than his 25th year of incarceration, he will have his first hearing one year before his MEPD, and he will be eligible for release once he reaches his MEPD.
- **Example:** Deon has a total sentence of 65-years-to-life. He was sentenced to a 15-to-life sentence plus a 25-to-life gun enhancement and a 25-to-life gang enhancement. Because his controlling offense is 25-to-life, his first Youth Offender Parole Hearing will be no later than during his 25th year of incarceration.



Common questions about when you will have a Youth Offender Parole Hearing

I am a lifer and supposed to have my first parole hearing before 20 or 25 years. Do I have to wait?

No. If you are a lifer and are eligible under another law for a parole hearing before 20 or 25 years of incarceration, you do not have to wait. Youth Offender Parole laws set maximum times before a first hearing is held. If you have a right to an earlier hearing, you will have a YOPH at that time. PC 3051(b). At your hearing, the Board must give great weight to the “diminished culpability of youth”, “the hallmark features of youth”, and your subsequent growth and maturity. PC 4801.

- **Example:** Juan has a sentence of 15-years-to-life, and under existing law has a right to a hearing in his 14th year. He will not have to wait until his 20th year of incarceration for his hearing, and the earlier hearing will be a Youth Offender Parole Hearing. PC 3051(b).
- **Example:** Charlene has a 25-years-to-life sentence plus another 10-year sentence to be served concurrently (at the same time.) Under other law, she has a Minimum Eligible Parole Date (MEPD) of 18 years. Her first hearing will be at 18 years – she does not have to wait until her 25th year – and the earlier hearing will be a Youth Offender Parole Hearing. PC 3051(b).

When will my hearing actually be?

Assuming that there are no other laws that make you eligible for release or an earlier parole hearing, your Youth Parole Eligibility Date (YPED) will be during your 15th, 20th, or 25th year of incarceration (which means after you have served 14, 19, or 24 years). All the time that you have been in custody on your case – including prison, jail, a juvenile facility, mental health facility, and at DJJ or CYA – counts toward your years of incarceration. The first parole hearing is generally scheduled several months prior to your YPED.

SB 261 expanded Youth Offender Parole in 2016. When does the Board have to complete hearings for those who were age 18 through 22 at the time of their crimes and already eligible for a first hearing?

SB 261 took effect January 1, 2016. There are over 12,000 people eligible for SB 261 and we do not know the order in which the Board will schedule hearings. The Board must complete hearings for people with a life sentence (“lifers”) by January 1, 2018 and for people with a determinate sentence (“no L”) by December 31, 2021. PC 3051.1.

What should I do if I received a notice that I am an eligible Youth Offender, but my parole hearing date is set much later than it is supposed to be? Or what if the hearing date is not scheduled and I am within a year of the date when I am eligible for a hearing?

You can file a 602. After you have received a response to your 602, if the issue is not resolved, you can write a letter to the Board of Parole Hearings at:

Board of Parole Hearings
Post Office Box 4036
Sacramento, CA 95812-4036

Can I reschedule my parole hearing?

If you decide not to proceed with your hearing on the scheduled date, you have three options which are explained below. You should discuss any decision to reschedule your parole hearing with an attorney. You must submit a Board of Parole Hearings Form 1001(a) to reschedule your hearing. BPH Form 1001(a) gives you three ways to reschedule a hearing (it also gives you the choice to have a hearing but not attend). Title 15, section 2253.

1. **Waiver.** You can choose to waive your hearing for 1, 2, 3, 4, or 5 years. This means that you give up the right to have a hearing and you choose how long (up to 5 years) until your next hearing. The Board must receive the signed Form 1001(a) at least 45 days before your scheduled hearing date. If the Board receives the Form 1001(a) less than 45 days before your scheduled hearing, they will likely deny your request to waive the hearing and proceed with the hearing unless you can show “good cause” why you did not send it sooner.
2. **Stipulation.** You can stipulate that you are NOT suitable for parole and request that the Board schedule your next parole hearing in 3, 5, 7, 10 or 15 years. A stipulation is an admission that you are unsuitable for parole and you must tell the Board why you are unsuitable. Your admission that you are unsuitable and your explanation of why you are unsuitable become part of the record for the next hearing. You may stipulate to unsuitability any time – even on the day of your parole hearing.
3. **Postponement.** You can request a postponement of your hearing to a later date. You can make this request at anytime, but the sooner you make the request, the better. The shortest period for a postponement is to the “next available” date, which is usually 3-6 months. The Board grants postponements for extraordinary circumstances; if you can think you need one, you should request it but there’s no guarantee it will be granted.

I was denied parole before the Youth Offender Parole laws went into effect. When will my hearing be?

You will not automatically get an earlier hearing. Your next parole hearing will be a Youth Offender Parole Hearing. You can file a Petition to Advance once every three years using a Board of Parole Hearings Form 1001(a) to ask the Board to move up the date of your next hearing. It would be good to consult with an attorney who knows parole law, procedure and the details of your situation to decide whether it would be a good idea to file a Petition to Advance.

Do I have to serve the time on the controlling offense to be eligible for parole?

No. The number of years of incarceration is what is counted, and it does not matter which sentence or enhancement is being served first.

I have consecutive sentences (sentences that normally have to be served one after the other). Do I have to serve all of them before I get my Youth Offender Parole Hearing?

No. If you have more than one sentence, you will have a Youth Offender Parole Hearing at the time set in the Youth Offender Parole law and, if granted parole, be eligible for release. You do not have to serve other consecutive sentences or enhancements related to your controlling offense. PC 3046(c).

- **Example:** *Chris has a 40-years-to-life sentence. He was sentenced to one 25-to-life sentence and another (consecutive) 15-to-life sentence. Under the old law, his release date would be at a minimum of 40 years of incarceration. Under the Youth Offender Parole law, the controlling offense determines when he will be eligible for parole. In this case, his controlling offense is the 25-to-life sentence, and if found suitable for parole, he would be eligible for release in his 25th year of incarceration. PC 3046(c).*
- **Example:** *Jorge has a 12-year determinate sentence, a consecutive 10-year determinate sentence, a consecutive 5-year determinate sentence, and a consecutive 25-to-life sentence. Under the old law, he would have to finish serving all of his determinate sentences before the life sentence begins. Under the Youth Offender Parole law, it does not matter that the sentences are consecutive. He is eligible for his first parole hearing no later than during the 25th year of incarceration.*

PART 2: A GUIDE TO PREPARING FOR YOUTH OFFENDER PAROLE HEARINGS

Understanding the Parole Process

Before you can prepare for a parole hearing, you need to understand how the process works. The next few pages will give you some basic information, but the laws and regulations about parole are complicated, so not everything can be explained here. This is just a start. Also, please understand that this is not legal advice; it is information. There are many resources available to provide information about parole. For example, the Prison Law Office California State Prisoners Handbook, available in the prison law library, devotes Chapter Five to the parole process. You can also write to the Prison Law Office to request a copy of Chapter Five.

How does the Board decide whether or not to grant parole?

The law requires the Board to grant parole unless it finds “some evidence” that you would pose a danger to the community if released. The most common reasons that commissioners use to deny parole are:

- Recent and/or violent disciplinary violations (115s and sometimes 128As);
- Recent gang involvement;
- Recent substance abuse;
- Lack of credibility or lack of truthfulness;
- Lack of remorse for your actions;
- Lack of insight (failing to understand why the crime happened and its effect on others)
- Lack of realistic parole plans and proof (documentation) for those plans; and
- Information contained in confidential file.

What is the Board looking for?

The easy answer is that the Board wants to make sure that it does not release someone who will commit another crime. This core determination is an assessment of your current dangerousness. In re Lawrence, 44 Cal. 4th 1181 (2008). But you cannot simply tell the Board that you do not want to come back to prison or that you will not commit another crime. Your words are not enough. You must show the Board that you will not commit crimes in the future. You can do that, in part, by:

- Explaining why you committed the crime (you cannot do this if you deny the crime, minimize your role in the crime, or blame others); and
- Showing, by your actions, how you have matured and developed into a different person today compared to when you committed the crime.

If you do not show with your actions that you are now a different person and demonstrate that you understand what led up to your involvement in the crime, the Board will not believe that you can prevent it from happening again.

What are the three key questions the Board wants answers to?

The Board is essentially looking for truthful answers to the following big questions:

1. Do you take full responsibility for your crime?

- Do you fully admit to your offense without excuses?
- Can you be truthful about all of your intentions and choices before, during and after the crime?
- Have you thought deeply about how your choices impacted others?
- Do you understand the effect your crime had on others (the victim, the victim's family and friends, the community, your family, and others)?

If the Board determines your testimony at the hearing is not credible, you will probably be denied parole.

2. Have you explored and do you understand why you committed the crime(s) (“causative factors”)?

- Have you thought deeply about the things that led you to commit the crime?
- What kind of person were you at the time of the crime? What kind of lifestyle were you living?
- Can you describe the choices you made, the perspectives you had, the situations you put yourself in that made it possible for you to commit the crime?
- Have you faced the challenges and traumas in your life that may have influenced your choices or character?

The Board is looking for explanations, but not excuses for any negatives: the crime(s), your prior lies about the crime, your prior lifestyle, or your negative behavior in prison.

3. What have you done to address the things in your life that led to you committing the crime?

- Have you sincerely faced the issues in your life that led to criminal behavior?
- How are you different today? How does the way you live your life now show that you have addressed and overcome the causative factors of the crime?
- Does your disciplinary history (115s and 128As) reflect who you are today?
- How do you make choices today? What values guide your choices?
- What are some specific lessons or skills that you have learned from programs that you've done in prison?
- How have you grown and matured? Part of maturity is understanding both our strengths and weaknesses – what are your biggest strengths and weaknesses of character?

You need to have real answers to these questions for the Board. You cannot fake it at a parole hearing. Answering these questions is hard work and can lead you to spend time thinking about very sensitive or difficult issues in your life that you may have ignored up to now because it is uncomfortable, painful, or hard. These questions require you to reach down to the very core of what shaped your choices and how you lived your life at the time of the crime. Addressing these issues will increase your ability to show the Board how much you have learned, matured, and changed while incarcerated. These

questions are often very difficult to answer and answering them requires a long process of self-reflection. To help with this process of reflection, you can start by thinking about the “Starter Questions” on page 18 of this guide.

One of the best ways to get started is to discuss the questions with another person. Choose someone you trust and who will give you honest feedback and support as you work through things, but beware of revealing incriminating information that someone could use against you later. If you do not have a “safe” person or place to discuss these topics, you can also write about them. Once you start working with an attorney, it will be important to discuss these issues with him or her.

What will happen at my Youth Offender Parole Hearing?

This section provides an overview of basics of the process so you know what to expect as you prepare for the hearing. It is just a starting point.

Will I have an attorney?

Yes. You can hire your own attorney or, if you cannot afford a private attorney, the Board will appoint one to your case. It is the Board’s expectation that an appointed attorney will meet with you no later than 45 days prior to your hearing.

Who will be at my parole hearing?

- **Commissioners:** One Commissioner (sometimes two) and one Deputy Commissioner from the Board of Parole Hearings will run the hearing – they will review all of the paperwork in your case, ask most of the questions, and make a decision to grant or deny you parole.
- **District Attorney:** A district attorney from the county of commitment may attend the hearing (in person, by video, or by phone). He or she will have an opportunity to ask questions and make a closing statement. He or she may say things that are untrue.
- **Your Attorney:** Your attorney will have a chance to ask you questions to clarify any issues that might be unclear for the Commissioners. Your attorney can also make objections and a closing statement.
- **You:** You will answer questions throughout the hearing. After your attorney has given a closing statement, you have the right to make a brief (about 5 minutes) closing statement if you wish.
- **Victims:** The victim(s) and/or the victim(s)’s family may be present (in person, by video, by phone). They are allowed to make a statement at the end of the hearing. If they are not present, a victim’s representative may read letters from victims or victim’s family.
- **There will also be a Correctional Officer in the room and there may also be a few neutral observers in the room.** None of these people speak at the hearing.

Do the same commissioners who conduct parole hearings conduct YOPHs?

Yes. The same commissioners will hear these cases, but they are trained on how to conduct the Youth Offender Parole Hearings and apply the “great weight” factors described above. In addition, the Board is required to draft regulations that will guide the commissioners in these hearings. At the time this guide was written, the regulations were not completed.

Is there a role for my family and friends?

Yes, there is a special role at the hearing for friends and family members. The Youth Offender Parole laws state that family members, friends, school personnel, faith leaders, and representatives from

community-based organizations who have knowledge about the young person prior to the crime, or who can attest to his or her growth and maturity since the time of the crime, can submit letters to the Board. This is allowed in regular parole hearings also, but the fact that the Youth Offender law specifically include this should make the commissioners pay extra attention to that support for Youth Offenders. The law does not, however, allow friends and family to come to the hearing. PC 3051(f)(2).

What information will the Board have about me?

The Board will read and consider everything in your C-file. This may include, but is not limited to:

- Case paperwork (police reports, trial transcripts, probation report, autopsy, appellate decision)
- All 115s, 128As, and 602s
- Psychological Evaluations (see below)
- Transcripts of prior Parole Hearings
- Certificates and Vocations
- Positive and Negative Chronos for Programs or from Staff
- Victim Statements
- Confidential Information (You and your attorney cannot review the confidential information, but you are entitled to receive a CDCR form 810 listing any documents contained in the confidential file. You should also receive a CDCR form 1030 summarizing any confidential information that the Board relies on in its decision at least 10 days prior to the hearing.)

You are entitled to review your entire C-file, except the confidential portions, once a year in an *Olsen* review.

The Board will also read and consider any documents you and your attorney submit to the Commissioners. These may include:

- Documentation of parole plans
- Letters of support from people in the community who know you
- Insight Statement (not required, but might help). This is something you write that includes deep and thoughtful discussion of your insight. Working through the Starter Questions listed on page 18 can help with this.
- Remorse Statement (not required, but might help). This is something you write that includes a description of your understanding of the harm you have caused and your feelings about that harm.
- Relapse Prevention Plan
- Book reports on self-help or other books

Psychological Evaluations (Comprehensive Risk Assessments)

For everyone appearing for parole consideration, the Board uses psychological evaluations, called “Comprehensive Risk Assessments,” to predict whether you present a **low**, **moderate** or **high** risk of future violence. The reports also contain other information about whether you accept responsibility for your actions, whether you understand why your crime happened and whether you have participated in the right kind and number of programs to address the factors that contributed to the crime. When these risk assessments are prepared for youth offender hearings, they must also take into consideration the diminished culpability of youth as compared to that of adults, the hallmark features of youth, and any subsequent growth and increased maturity of the individual. PC

3051(f)(1). The Board's psychologists address this requirement by adding a section in their reports that directly discusses those factors. It is not yet clear whether this is enough to meet the requirements of the law.

Your evaluation will include a meeting with a Board psychologist, which will usually take place at least a couple of months before the scheduled parole hearing. This meeting is very important and you should approach it as you would approach your Board hearing. The psychologist will be evaluating and considering the same factors that the Board considers, and the Board will rely on the conclusions of the psychologist. You will receive a written copy of the psychologist's report before your hearing. Plan to discuss the report with your attorney, and be sure to identify for the attorney anything in the report you think is inaccurate.

If you have done positive things like reading books, doing correspondence classes, making plans for parole, creating a relapse prevention plan, or getting support letters from your family, try to get documentation of this before your psychological evaluation. You can ask your counselor to put copies of this kind of documentation in your C-file before the evaluation. However, you should also make sure to bring your own copies of this documentation with you when you go to the evaluation. Then, the psychologist who is evaluating you can see all the good things you are doing before he or she writes the evaluation.

What will the Board ask me at my parole hearing?

There are four main areas the Board will ask you questions about at the hearing:

1. Commitment Offense

The Board will ask many questions about your commitment offense. Often, the Board will read facts into the record (from the appellate decision or the probation report), and then ask if you agree with those facts. If you do not agree, the Board will allow you to state your own version. It is important to remember the Board will not decide all over again whether you were guilty of your crime. However, it may be important to correct any inaccurate facts about the crime. What facts, if any, you should correct is something that you should decide with your attorney's help. The most important thing is that the Board expects you to be truthful about the crime and your role in it. And the Board will be listening to how you describe the crime and whether you appear to be making excuses for your behavior or downplaying the effect of your crime. The Board wants to see if you have insight into your commitment offense and remorse for the impact of your actions.

2. Social History

The Board will also discuss your life before your crime. This is often called "social history." The Board can ask questions about anything in your life prior to the commitment offense. They are likely to ask about your family life and upbringing, your neighborhood, your school, your friends and relationships. The Board wants to know about positive activities (like sports, jobs, school, hobbies) and things that may have hurt you in some way (like learning difficulties, physical or sexual abuse, neglect, exposure to violence in your home or neighborhood, gang involvement, drug and alcohol use, criminal history). The Board wants to understand the person you were

and the things that may have led to your crime (causative factors). There is more information on page 18 about causative factors.

3. Post-Commitment Factors

The Board will also discuss what you have done since you were incarcerated. This is an important part of the hearing and allows you to show how you have changed. This is your chance to demonstrate your growth and maturity and positive change. The Board will discuss your (1) disciplinary history; (2) education, jobs, programming; (3) any positive chronos; and (4) your psychological evaluations. If you have a history of gang involvement in prison, the Board will most likely ask about that as well. The Board wants to see evidence that you are on a different path than you were at the time of the crime. There is more information on page 19 about post-commitment factors.

4. Parole Plans

Finally, you must have realistic parole plans and provide documentation of those plans. Documentation is proof, and usually it is in the form of letters from the people offering you support when you get out. It is important to have very specific parole plans. In addition, you should have at least one back-up option in case your first choice does not work. Usually the Board wants you to have:

- a job offer or employment skills;
- a place to live (a transitional home is preferred);
- emotional and/or financial support from family or friends; and
- a relapse prevention plan if you have a history of drug or alcohol use.

The Board wants to know that if you are released you will have the plans and support necessary to succeed.

Will the hearing be recorded?

Yes, by law, the hearing must be recorded and there will be a transcript of everything that is said. You will be provided a copy of the transcript approximately 30 days after the hearing. If you do not receive your transcript, you can write to the Board of Parole Hearings to request one. The transcript will become part of your record and the Commissioners will consider all your statements at any future parole hearings. If you are denied, it is a good idea to read and review your transcripts so that you can better understand the Board's reasons for denying parole and address them at the next hearing.

What can I do to prepare for my parole hearing?

There are many things you can do to prepare for your parole hearing. Take every class or program you can. Read books and write book reports on each one. Join available groups at your prison that help you with personal growth or give you opportunities to help others. Stay or get in contact with healthy friends and family on the outside. Limit your contact with negative people on the inside. Think about who you are and who you want to be. Make sure you keep track of all of your positive work and behavior so you can talk about it at your hearing.

When should I start preparing for my hearing?

“NOW!” The Board considers your entire time in prison in deciding whether to grant parole or not. Focus on the present and use the time in a way that will help you get ready to go home. It is never too early to start preparing, but it is also never too late. Even if you were not on the right track before, you can turn things around and show the Board you are ready to go home.

How can I start preparing for my parole hearing?

Here are some starter questions to help you begin thinking deeply about some of the issues the Board will want you to address. Take your time on these. Write or talk about them with a trusted person, then take time to reflect and go deeper into the issues. Start over with what you have written and go more in-depth.

Starter Questions

Commitment Offense

Ask yourself: What was going through my mind as I made the choices that led to my committing the crime? Why did I not stop the crime from happening? How would I handle the same situation differently today?

Read the interview with a murder victim family member in this guide. Ask yourself: How were my victim(s) hurt? What did they feel? How were their family members and friends affected at the time of the crime? How was the community affected? And, now, years later, what is the impact of what I did?

Social History

Ask yourself: How were my relationships with my family members? Who were my role models? What did they teach me (good and bad)? Prior to my crime did I experience violence, abuse (physical, sexual, verbal, emotional), neglect, poverty, mental illness, drug use, gangs, or criminal activity in my family? How did that affect me (anger, denial, loneliness, low self-esteem)? What decisions did I make about who I wanted to be (or not be) when I got older? How did my experiences in my family and community impact my decisions? What is different now? How did I get from there to here?

If you used drugs or alcohol, ask yourself: Can I remember the first time? What was the situation? Did my drug or alcohol use begin (or increase) because I was experiencing some other difficulty that I did not know how to deal with? What is different now? How did I get from there to here?

If you associated with gangs or participated in any gang-like behavior, ask yourself: When did I start to get involved? What was I running from? What did I think gangs would give me that was missing in my life? What was my experience with gangs? What did I believe about gangs? How was my gang involvement related to things going on in my family, community, or school? What is different now? How did I get from there to here?

If you sold drugs or committed other crimes, ask yourself: When did I start doing this, and why? How did it make me feel? How was my criminal behavior related to things going on in my family, community, or school? What is different now?

Post-commitment

If you have had a negative disciplinary record in prison, ask yourself: What was going on in my life that I chose to do things that would get me in trouble in prison? What is different now? What types of programs have I participated in while in prison to better myself? What were one or two programs that really focused on addressing my specific needs? What specific tools have I gained from these programs? Have I gotten any disciplinary write-ups in prison (115s or 128As)? What led me to violate the rules of the prison? Do I take responsibility for those violations? How will I avoid violating rules if I am released?

I was granted parole. When will I be released? Does the Governor get a say?

When will I be released?

The Board has up to 120 days to review and finalize the panel's decision to grant parole. You will be notified if the Board makes any changes to the decision that adversely affect you. If the Board does not change its mind after 120 days, then the decision goes to the Governor's office for review.

What is the Governor's role?

The state constitution allows the Governor to affirm, modify, or reverse the Board's decision to grant parole in the following cases. Cal. Constitution Art. 5, Sec. 8(b).

If you have a life sentence for murder, the Governor can reverse the Board's decision to grant or deny parole. The Governor has up to 30 days to review the Board's decision. In non-murder cases, the Governor cannot reverse the Board's decision, but he can require the full Board to re-consider the decision and potentially change the decision.

If the Governor decides to take no action in your case, you will be released.

Do I have to serve my "Thompson" term?

Probably. If you have received new prison terms, called "Thompson terms", for crimes committed after turning age 23, including in prison, the Board's position is that you have to serve them after you are granted parole. Some attorneys are looking to challenge this, but as of now, prisoners are being required to serve their "Thompson terms". No court has made a ruling on this as of the date on the bottom of this page.

What if I have an immigration hold?

The Youth Offender Parole laws will not change any immigration consequences.

I was denied parole. Now what?

When will my next hearing be held?

Your next hearing will be scheduled according to "Marsy's Law," which was enacted in 2008. At the end of the hearing, the Commissioners will decide whether your next parole hearing will be in 3, 5, 7, 10, or 15 years. In making that determination, the Youth Offender Parole laws require the Commissioners to consider that you were under the age of 23 at the time of the crime, the diminished

culpability of youth as compared to that of adults, the hallmark features of youth, and any subsequent growth and increased maturity of the individual. PC 3051(g).

You may have heard about the “*Gilman*” case. In February 2014, a federal court held that “Marsy’s Law” violates a life prisoner’s constitutional rights if he or she committed an offense before November 4, 2008 because the law increases the length of time a lifer must wait before his/her next hearing. The court ordered that, for this group of prisoners, the BPH must set their next hearing one year later unless there is good cause to postpone the hearing for three years or (for murder cases) five years. However, the state has appealed the order and the order has been stayed; this means the order will have no effect unless and until it is affirmed on appeal.

Remember that laws change, and before relying on anything in this guide you should make sure you have the most up-to-date information.

I was denied parole, but I have a determinate sentence and my EPRD is before my next parole hearing.

You will be released at the Earliest Possible Release Date (EPRD) established on the determinate term. You do not have to wait until your next parole hearing.

- **Example:** *Justin has a sentence of 18 years. He had his Youth Offender Parole Hearing at 15 years but was denied parole. His next hearing was set for five years later. Because his EPRD is before the next hearing date, he will be released at his EPRD and will not need the hearing.*

Is there any way to move up the date of my hearing so that it comes sooner?

It is possible to file a Petition to Advance with the Board in order to move up the date of your next hearing. You can only do this once every three years, so you should consult with an attorney who knows parole law and procedure and your situation to decide whether it would be a good idea to file a Petition to Advance. It is helpful in some cases, but not in all cases; if you are not ready to go before the Board, then you might receive a denial with a long setback period.

Spend the time before your next hearing to do everything that the Board recommended that you do (and more!).

I want to challenge my parole denial. How do I do that?

In the first 120 days after the decision, you can send a letter to the Board’s Decision Review Board.

After 150 days, you can file a petition for a writ of habeas corpus asking a judge to review the Board’s denial (or the Governor’s reversal) of parole. If you would like more information on how to do this, write to the **Prison Law Office, General Delivery, San Quentin, CA 94964.**

PART 3: A FATHER'S POINT OF VIEW

Soccer season had ended, and seven-year-old Elijah was looking forward to getting his team trophy. His mother packed him and his 10-month-old brother, Adam, in the back seat of the family car and drove to the sports office at a local park. They picked up the trophy and signed Eli up for basketball season. Next stop that afternoon was a school fundraiser at a pizza parlor. It should have been a perfect day for a seven-year-old.

But as his mother buckled her sons back into their seats, three members of a local gang stormed into the park, intent on revenge for a shooting earlier in the day. They opened fire on a man; He ran and their bullets pierced the family's car. The boys' mother desperately tried to move the vehicle. When the shooting was over, she turned to look at her children: Still strapped into their seats, Eli was slumped over, motionless; his tee-shirt soaked with blood. The baby, Adam, was crying hysterically and had blood on his face. Eli had been struck three times and died instantly. Adam, hit in the face, had his left eye damaged by metal fragments, but he lived.

James was at work when his wife and sons were attacked. Nearly 16 years have passed. "There's not a day that goes by that we don't hurt," James says. "It was nothing short of devastating for our family and friends."

Why did you agree to be interviewed and share you family's story with people in prison?¹

James: I hope that by telling this painful story it will give people in prison a deeper understanding of what victims and their families have gone through. My message to people in prison is this: Developing compassion will lead to healing for yourself and others.

You worked to pass laws that give second chances to people who were young when they committed their crimes. You repeatedly took time off from work and away from family to go to Sacramento and urge lawmakers to pass these laws. Why did you work so hard to change laws that help people like those who killed your son?

James: I worked on these bills because I believe each person has a purpose in life. Your crime, what you did then, does not fully define who you are now. I am a person of faith, and I believe we were created to promote life and love in one another. I helped pass these laws because I understand the importance of every human being, even people who have committed serious crimes. We must help pull each other up. I help one person, then that person can help someone else. It is how we create peace and vitality in the world.

¹ Pseudonyms are used throughout this piece to protect the privacy of the family. This interview was conducted in April 2014 by Elizabeth Calvin of Human Rights Watch.

What did you feel when you first found out about your family being attacked?

James: I got a call. “There’s been a shooting involving your family and you need to go to the park.” I was in shock. I am almost always composed, able to handle any kind of difficulty, but this was so unbelievable. On the drive to the park I was feeling fear of the unknown, rage, confusion...I couldn’t fully comprehend what had happened. I was in a state of disbelief. I arrived at the park and saw our car with officers around it. I didn’t see my family. The commanding officer came up to me and said, “They have gone to the hospital. Your wife and son are going to be ok.” I said, “I have two sons.” The officer hesitated, and dropped his head. “How old was your oldest son?” I said, “He is seven.” The officer struggled with his own emotions. “I’m sorry. He didn’t make it.” I felt my world crash into a pile of pieces. I was left in this pile, trying to navigate emotionally, mentally, spiritually. It was overwhelming. I immediately needed to be with my wife and other son. I realized I didn’t really know what it meant when the officer said they were going to “be ok.”

Tell us something about who Elijah was.

James: 50 pounds, 50 inches, seven years old. Full of hope and aspirations. Full of spunk. He could entertain a toddler or have an intelligent conversation with a senior citizen, freely expressing his point of view on many subjects. He was a straight “A” student, reading books before entering kindergarten, winning numerous awards, including “Student of the Month” and twice placing 3rd in the annual science fair. He was the 1st grade representative for our regional Spelling Bee. He played soccer, basketball, and baseball, earning a “Good Sportsmanship” medal in soccer. He also played the piano for four years. He was most proud of becoming a big brother, or maybe, he was most proud of his baby brother! My wife and I feel Elijah’s life is an example for us: To love God and be exhilarated about the life we’ve been given, to honor and love one another, to seek to give our best each day and express God’s gifts in us.

Your son Adam survived. How was he affected?

James: He had many surgeries and other painful treatments for years. He has learned to adapt to the deficits in that eye. And, he was impacted in ways that we will never really know. At the time he was a 10-month-old, joy-filled baby. Before this happened we always called him “Happy Baby.” He’s grown up into a very composed and serious young man, and I often look at him and wonder if he would have been different had this tragedy not happened. He’s got a sense of humor, but overall, he’s a serious person. He’s very aware of hard things going on in the world, perhaps in a way that isn’t typical for someone his age. He’s in a different place than his peers. Part of this is what we have modeled for him, and what we believe as spiritual people. He has embraced a spiritual path on his own as he has come to see the power of God in his own life.

At first, as a young child, other kids would notice his eye, and ask questions, and he would share what happened. When he was a little older, kids began teasing him. He was made fun of, and at one point kids started calling him “Shot-eye.” It was very hard for him. I was appalled. I felt so badly for him. Again, I felt violated, with my child being further traumatized. After that, he became a more private person; for a long time he would have close friends but not share what happened to him and his brother. When he was around 12 or 13 years old, I saw that he started sharing with people who were sensitive and willing to talk about difficult things, but choose not to share with others.

Recently in high school he had to write an essay about someone being resilient and surviving despite a difficult thing. He let my wife and I read it. He had written something like, “In my own life I have examples of people who are resilient, even heroic, and they are my mother and father,” and he told our story. I am proud of who he has become, but I so wish he had not gone through this.

Almost 16 years have passed. You mentioned not a day goes by without hurt since this happened. Would you share what you mean?

James: In the early years after Elijah was taken from us, I felt such a sense of deep violation. Everything was colored by red, I saw red—blood—everywhere. Our lives had been shattered, and although shattered we still had to function. But life was changed. We had to figure out—reinvent— how to live. When something like this type of violent crime happens, it changes you. You are one way one moment, and then in an instant, the moment of that violation, you are changed. You look the same, but everything about you is different. You have to look around and put everything into a different perspective given what has happened to you.

I struggled with finding pleasure in things. Even now, I’m not sure the word “happiness” is in my vocabulary. I had to look deep into myself and ask really hard questions about what I believe about life and God after something this terrible happens. I realized my faith was intact, but my humanity was shaken down to the foundation. My reaction to everything was different. If the simplest thing was not right, it would cause feelings to rise up in me about my son. Natural, every-day kind of stuff, like, someone cut in line ahead of me at a store, and it seemed like a racial thing. I would feel violated, I’d feel enraged...I’d think to myself, “You don’t know what happened to me and you’re disrespecting me here, treating me less than yourself.” Having my son murdered created such a deep wound, it made me reactive in a way I wasn’t before. It’s like the terrible wound created by my son’s murder caused a vulnerability I carry with me all the time.

Even though this happened 16 years ago, it could have been 16 minutes ago. The pain isn’t 16 years ago. It is now. The pain might be different at different times, but I think one of the things that people who have not gone through this don’t understand is that you don’t just “get over it.” I have moved past a lot of the anger; God has healed me. But the pain is still there.

What do you think victims or surviving family members want to hear from a prisoner at a parole hearing?

James: I think the most important thing to remember is that victims and survivors don’t all feel the same way. Each person responds differently to tragedy. There will be some victims/survivors who might say things like, “I just want to know why you did what you did.” Or, “I want to know what you have done to turn your life around and make sure you never do this kind of thing again.” Other victim/survivors might want to have a conversation with you, back and forth, to get a sense of who you are at the hearing. Others still may want to hear and believe that you truly, deeply feel sorry for what you did, and that you have thought a lot about all of the ways your actions have harmed their lives.

On the other hand, some victims/survivors may not want to know anything about you, what you think, or what you have done to rehabilitate yourself. They may want the opportunity to tell you and the

commissioner about how they have been injured by your acts, and why you should not be paroled. And, while some people's perspective might change over time and someday agree you should be released, others will never change their feeling that you should be locked up. Remember, too, that some victims/survivors may be angered about opportunities you have had in prison, for example, to further your education or watch your children grow up, that they have been denied.

Each person is on their own path, trying to figure out how they can heal from the crime and its effects.

What questions would you suggest a prisoner ask him or herself to get a deeper understanding of the effect of their crimes?

James: Life is full of challenges and injustices and difficulties. I believe that often times when people offend it is because of something that has happened to them. One thing I'd ask you to think deeply about is this: Do you know why you committed your crime? I'd also suggest you ask yourself: Do you honestly know how your crimes have hurt others? It may be difficult for you to face the pain you have caused. Are you doing the hard work needed to really understand the effect of your actions? Do you know how your family was impacted? And how your community was impacted as well? Have you thought deeply about how your victims were affected? Perhaps you have read my story and thought to yourself, "Well, at least I didn't kill a child." Even if that is true, or even if you were not the shooter in your crime, or even if your crime was not murder, your victims were harmed. It may be uncomfortable or even painful for you to think about the fact that you have hurt others. Are you making yourself face the reality of your actions?

What is your hope for people in prison?

James: My hope is this: That you will see your own self-worth, and that you understand that, no matter what you have done, you are a person of value. I believe you can choose to live your life in such a way that it reflects the worthy person you really are. If you have committed a terrible crime, even if someone died because of your action or inaction: I urge you, do not let that person's death be in vain. Do your best to live your life in a way that honors the lives you have taken or damaged.

PART 4: ADVICE FROM PEOPLE WHO HAVE SUCCESSFULLY PAROLED

How to Choose the Right Path in Prison: Eight Different Perspectives²

There is more than one path to changing your life and finding success. We asked people who paroled from California prisons what advice they have for you. What they have in common is that each committed a crime at a young age and spent a long time in California prisons. They are now living full, successful lives on the outside. These individuals offer up their insights to you. Here is who they are:

- *J.A. was convicted of two murders. He had just turned 18 at the time of his crimes. He spent nearly 23 years in California prisons. J.A. is currently an intern for a nonprofit, and this fall he will start as a student at a Cal State University where he will study math and physics.*
- *S.B. was convicted of murder for a crime committed at age 16. S.B. served nearly 20 years in prison and was paroled in 2013. Currently in a transitional living home, S.B. hopes to work on human rights issues.*
- *N.C. was convicted of murder for a crime she committed at age 20. She was in prison for 18 years. When she paroled at age 40, her son was already an adult. She is employed at “Get on the Bus,” working hard on behalf of those she left behind in prison by helping as many people as she can.*
- *T.D. was convicted of two murders. He was 22 years old when he committed his crimes and he spent almost 22 years in prison. He was paroled in July 2010 and since then has earned a B.S. and a J.D. degree, discharged from life parole, and is now a licensed California attorney practicing parole law and committed to protecting and advancing the rights of prisoners and parolees*
- *L.G. was 22 when convicted of assault with a deadly weapon and burglary. He had parole violations which resulted in further incarceration. He now works full-time as a program analyst in a public mental health agency. He started community college in prison, and since being paroled he earned undergraduate and master’s degrees. He is working towards his goal of a doctorate.*
- *T.N. was convicted of murder for a crime that occurred when he was 16 years old. He spent 18 years in California state prisons. He now works full time but volunteers extensively. T.N. was recently recognized by a community group with its “Most Inspirational Volunteer” award, and by another group with its “Unsung Hero” award. He is engaged to be married and is helping to raise his fiancé’s child. T.N. hopes to go to school to become a social worker.*
- *V.R. was convicted of murder and sentenced to 25-to-life plus 12 years. After a rocky start in prison, she turned things around and was paroled after 29 years. She is currently living in a transition house, loves riding her bike on the beach, and cherishes every day. She appreciates*

² Elizabeth Calvin of Human Rights Watch interviewed these individuals in April 2014.

the simple act of walking freely among people who know nothing about her past. She hopes to own a kennel and dog training business.

- *D.S. was 16 at the time of his crime. He is currently building a family with his fiancé and young daughter, and hoping to become involved with the conservation corp.*

What do you think is the most important thing people can do to become suitable for parole?

J.A.: To be found suitable for parole you must show the board of Parole Hearings that you are ready to be an outstanding citizen that is 100% committed to giving back. Not 90% or 95% committed, but 100% committed!

S.B.: Re-define your character, and have who you are on the inside reflect who you are on the outside.

N.C.: Be able to talk about and present what you have learned in the groups you have attended.

T.D.: Live like a square. Do your work/educational/vocational assignment and go back to your cell. Involve yourself in as many self-help groups and programs as possible. Sign up and complete whatever they offer. *Overdo* what the Board requires you to do.

L.G.: Accept your circumstances. Recognize that no matter what got you in prison, it's up to you to take responsibility for how you live going forward, including while in prison. Educate yourself.

T.N.: Aim for a progressive path of rehabilitation records. The Board will want to see a consistent path of rehabilitation, not just here and there. Even if you were a troublemaker when you first entered prison or you have had recent 115s, a positive record going forward will show the Board that you are moving forward, changing, and improving yourself.

V.R.: Education.

D.S.: Think less and feel more, just sounding educated is not enough.

How did you develop insight into your crime?

J.A.: I put myself in my victims' shoes. I thought about how they felt. I thought about their families and how family, friends, and neighborhoods were affected by what I did. I made myself think: What does their family feel now, even years later? How would my family feel if it happened to me, or someone we love?

S.B.: I removed myself from the personal feelings I had about my victim, and I got to the core of recognizing that he was a human being, a person, somebody's son.

N.C.: Being a mom and understanding that my son has issues as a result of things that happened in his life helped me understand things about my victim and what happened in his life. I also tried to listen compassionately to as many people as possible. Hearing their stories gave me compassion and understanding about how things can spiral out of control. Finally, seeing how grief and sadness can overwhelm someone, and thinking deeply about how I created this grief in another family gave me insight into the effect of my crime.

T.D.: I read my transcripts over and over again. I started out thinking my crime (DUI 2nd degree murder) was not “as bad” as other crimes. I thought to myself: I did not rob or deliberately shoot someone. But no matter how my victims died, car or gun, dead is dead. Reading my transcripts caused me to view my actions from an outside perspective and I realized that I was just as dangerous, if not more dangerous, than a madman running around in a crowded mall shooting off a gun. Once I realized how bad my actions were, I stopped trying to minimize them. I was the worst of the worst. Why not admit it? I’m already tried and convicted. That was my key to gaining insight. Putting myself in another’s shoes and looking at myself.

L.G.: I started by accepting my actions. I chose to not become bitter towards the justice system. And crucially: I developed self-awareness that I had a problem with alcohol.

T.N.: I asked myself: How did I become the person that landed me in prison? Am I really dealing with the problems that caused me to get in trouble in the first place? I looked back at the time of my crime (and earlier!) and listed the harms, damage, and pain I caused, and then I carefully listed out all the ways I could have avoided those things then and how I could avoid similar things now.

V.R.: Three things that helped me develop insight to my crime were: 1. One-on-one counseling; 2. Self-help and self-discovery groups; and 3. Victim-awareness groups.

D.S.: I wrote out my whole life story as I remembered it. It was one of the hardest things I’ve ever done. Some parts of my life were very painful to write about, and that pain brought old feelings back. Some of these feelings were the feelings that created my negative thinking and led to my crime. By making myself look at this, I figured out that I was a tired victim who became a victimizer. That understanding gave me insight and the strength to never commit a crime again.

If you could only give one small piece of advice to people on the inside, what would that be?

J.A.: Be real, and truly abandon all gang activity. Stop all drug or alcohol use and stop all criminal activity! Live as a good citizen now in prison! Don't wait! Better yourself and reject the prison criminal culture.

S.B.: Learn how to be genuinely honest. Don't down play your responsibility. When it comes to 115s, 128s: Just be honest about how you felt at that moment, faced with a difficult situation. Be honest about what led to the incident; don't water down the truth.

N.C.: View your prison stay as a type of “school” and learn as much as you can on how to professionally, kindly, and confidently deal with people from ALL walks of life. Pretend every interaction in prison is one with your boss or co-workers. That will help you when you are in the work force out here.

T.D.: You are the most important person in your universe. Your friends and homies will eventually go home without you. You need to live for yourself and do what is best for yourself. Don't allow others to get you caught up in drama. The stakes are too high: With the Youth Offender Parole law you have a better chance of going home.

L.G.: Be yourself. Understand the dynamics of prison but never let that change who you are.

T.N.: Focus on going home and remind yourself you need to sacrifice now in order to go home. Sacrifice means letting go of the temporary temptations in prison. Tell yourself: Prison is temporary and won't last forever. I am going to focus on what's important: making myself eligible for parole.

V.R.: Accept total responsibility for your actions and your inactions.

D.S.: Practice doing good. We all practiced doing wrong until we ended up in prison. So, try practicing doing good and see where you end up.

Where did you draw strength from when faced with difficult situations in prison?

J.A. I drew strength by remembering my most shameful moments. I would think back to the night that put me in prison. That night, I went along with the crowd around me. Everyone wanted revenge and chose the way of aggression and violence. I did not think for myself; I did not stand up for doing the right thing. I caved into peer pressure and my own thoughts of revenge. Years later in prison I was faced with similar situations. I decided to not give in to my feelings or to the pressure from people around me. I made a vow to myself to never hurt another person. I drew strength from the thought that this time around I would not hurt anyone, no matter what the situation, and no matter what the pressure. I would make the right decision when given the chance, and I was given the chance many times.

S.B.: My strength developed over time. I had 20 115s when I went to Board. I entered prison defiant and angry. I couldn't understand the consequences of my actions. I was impulsive; my emotions led me, not logic. But you can change. Each time you make a good decision and walk away, it develops a pattern in your brain. Just start small. To change my patterns, I did this small thing: I would buy a chocolate bar (I love chocolate...) I'd put it in my drawer, and make a decision to be disciplined and not eat it. I'd look at it but not let myself eat it...for months. That little step was one step toward being in control of my life. I also found a sense of perseverance to overcome obstacles by relying on my experience running track in high school. With sports, you have the competition, fear, apprehension, but you find some strength within yourself to push a little further to try to win. You might fail, but you start again.

N.C.: I practiced self-talk, telling myself, "don't get in the mud with the pigs." And I practiced "healthy detachment" and would picture my son standing beside me and think how I would react if he were there.

T.D.: I drew (and still draw) strength from God. Behind those walls we have no one we can really trust or to turn to but God. I talked to God all the time in my heart and my head. God gave me the strength to go on. After six parole denials and untold habeas denials, God came through for me and opened the door with a release date.

L.G.: I played by the rules. I did not lose my sense of identity of who I was as a person. A wise old convict once told me, "Be yourself and that will keep you from getting caught up."

T.N.: I focused my mind continually on GOING HOME. That made it clear to me that everything happening in prison is temporary, including having to "man up" or save face. Try to be straight up and let everyone know you ain't into it anymore, and you're doing your best to go home.

V.R.: I became involved in something more important than myself (for me it was the dog program) and any time I faced conflict I had to decide if it was worth losing involvement with that program.

D.S.: I remembered Jesus was tempted and how he handled himself. Pride is every man's downfall.

Everyone needs to choose a first step. What was your first step?

J.A.: I thought a lot about when and why I started using drugs and alcohol, and when and why I joined a gang. Then I thought about when and why I stopped doing these things. And, last, but most importantly, I thought about what would keep me from turning to drugs, alcohol, and gang participation in the future.

S.B.: I began believing that I was worthy of changing. I don't know when it happened, but at some point I knew that I was a valid individual even though I didn't get that validation from family or peers. At random points I would get some validation—even a little thing, like a corrections officer saying something small or my having some success in school. I realized I didn't have to live up to the person the court said I was. I could be someone different.

T.D.: My first step was to enroll in an NA meeting. Second step was to sign up for a vocational trade. The Board requires both. PIA and paid jobs could wait. Get the requirements out the way first.

L.G.: I started by accepting my reality. Then, I took advantage of anything I could to improve my life. I earned my H.S. diploma while in jail. Since being paroled I graduated from college, earned a Master's degree, and am working on my doctorate. That could be you, too. If you are a high school drop-out, get your GED or diploma. Look at what's in front of you and grab any opportunity to learn to be a better person.

T.N.: I started by promising myself that I would do everything possible to stay away from trouble. Then, I figured out what I needed to do for my own rehabilitation. What are your main problems? (Drugs, alcohol, anger...?) Take a step, even a small one, to deal with those problems. Then keep dealing with them, whether with AA/NA programs or whatever. And, don't ever stop. Take any self-help programs and therapy you can!

V.R.: My first step was to stop getting 115s and 128s. My second step was to begin attending self-help groups.

D.S.: My first step was accepting life as it was. I decided that there was no need to resist life, I just needed to just do my best with the way things are. Next, I worked on my thought process. I believe you have to change your mind and your way of thinking to really change your actions.

Any last words of advice to those on the inside?

J.A.: Even though you are in prison, find ways to give back to your community. You can do this by programming positively, by improving yourself, and by living a good, clean life. Help others around you. Never give in to negative people. Don't give into despair. Your life has value right now.

S.B.: Don't let others define who you are. You have the power of choice. You can choose how to respond and who to be, even in the place you are right now. You do not have to die in prison.

N.C.: It is possible! Work on yourself, and aim to parole being your best self, physically, spiritually, and emotionally. Come to terms with what you do when the going gets tough: Is it productive? Finally, if you are using drugs then go back to the drawing board and figure something else out because that will be what defines you.

T.D.: The Board and the Governor are powerful, but they do not control destiny. No matter how many times you have been denied parole or if this is your first time going to the Board, you have to keep your eyes on the road ahead. A personal example: Who would have thought that an ex-lifer who was denied parole six times would become an attorney helping lifers? The future is wide open for you. Stay focused on it.

L.G.: Do not ever give up on yourself. Learn to forgive yourself. Hold on to hope.

T.N.: I used to think I will grow up, grow old, and die in prison. I thought none of my rehabs matter and the Board will just shut me down. Finally, I became tired of the excuses I was making to myself. I challenged myself to beat the odds. It happened! You can do it, too. You now have a law in your favor that will help. Pick yourself up and do everything you can to make sure you walk out that gate.

V.R.: At 23 I faced the death penalty. I received 25-to-life plus 12 years, and I really did not give a damn. Continuing to be active in my addiction resulted in my getting about 10 115s and 30 128s. Then I just got tired of it all. I had a lot of inner demons to conquer, and I tackled them one by one. I was found suitable and released after serving 29 years. You can be found suitable for parole, too, even if you have racked up a lot of 115s. Make the decision to turn things around today.

D.S.: Change requires action. You can't think your way into a new way of living, but you can live your way into a new way of thinking. Just start with every single small act and do the right thing. When you sit, sit. When you stand, stand. Whatever you do, don't wobble.

Memorandum

Date : June 16, 2014

Subject: **ELDERLY PAROLE PROGRAM**

The purpose of this memorandum is to provide an overview of the new Elderly Parole Program. On February 10, 2014, the Three Judge Panel in the *Plata/Coleman* class action lawsuit ordered CDCR to finalize and implement a new parole process whereby elderly inmates will be referred to the Board of Parole Hearings (board) to determine suitability for parole. The procedures for the new Elderly Parole Program will affect parole suitability hearings scheduled on or after October 1, 2014.

Eligibility

Inmates who are 60 years or older and who have been incarcerated for 25 years or more are eligible for the Elderly Parole Program. Eligible inmates may be serving an indeterminate or a determinate sentence.

Scheduling of Hearings

Eligible inmates who are not currently in the board's hearing cycle (i.e., those who are serving a determinate term or serving an indeterminate term and have not yet had their initial parole suitability hearing), will be referred by CDCR to the board and scheduled for an initial suitability hearing.

Eligible inmates who are currently in the board's hearing cycle (i.e., those who have already had their initial suitability hearing or will have it before October 1, 2014) will be considered for a new hearing consistent with the California Supreme Court's decision in *In re Vicks*, meaning the board will initially focus its resources on those inmates who are most likely to be found suitable for parole. This will be accomplished through administrative review of the inmate's record by the board for possible advancement of the inmate's next hearing date, if the board finds a reasonable likelihood that consideration of the public and victim's safety does not require the additional period of incarceration of the inmate. Eligible inmates may also continue to petition to advance their next hearing pursuant to the provisions of Penal Code section 3041.5(d).

During the administrative review and the petition to advance processes, the board will give special consideration to eligible inmates' advanced age, long-term confinement, and diminished physical condition, if any. The board will also consider all other relevant information when determining whether or not there is a reasonable likelihood that consideration of the public and victim's safety does not require the additional period of incarceration of the inmate, including institutional behavior and input from victims and victims' next-of-kin. If an eligible inmate is denied parole, the denial length will be set pursuant to Penal Code section 3041.5(b)(4) ("Marsy's Law") for 3, 5, 7, 10, or 15 years.

Risk Assessments

Inmates who are 60 years of age or older and who have served a minimum of 25 years and who are scheduled for a hearing on or after October 1, 2014, will receive a new or revised risk assessment, which will specifically address how the inmate's advanced age, long-term confinement, and diminished physical condition, if any, may impact the inmate's potential risk for future violence.

Panels and Procedure

Hearings will be conducted by two or three person panels; at least one panel member will be a Commissioner. All other parole suitability hearing procedures not impacted by the provisions outlined herein will be applied to elderly parole hearings.

Decision Review

Parole suitability hearing decisions for elderly parole inmates will be reviewed in the same manner as all other parole suitability hearing decisions.

Term Calculations

Inmates who are found suitable for elderly parole and who are serving an indeterminate term will be released to parole when their grant becomes final (after all applicable reviews). Inmates who are found suitable for elderly parole and who are serving a determinate term will be released to parole when their grant becomes final.

Memorandum

Date : June 16, 2014

Subject: **EXPANDED MEDICAL PAROLE**

The purpose of this memorandum is to provide an overview of the new Expanded Medical Parole process. On February 10, 2014, the Three Judge Panel in the *Plata/Coleman* class action lawsuit ordered CDCR in consultation with the Receiver's office to "finalize and implement an expanded parole process for medically incapacitated inmates." The procedures for the new Expanded Medical Parole process will apply to medical parole hearings conducted on or after July 1, 2014. Significant features of the program are as follows:

Eligibility for Expanded Medical Parole

- The inmate suffers from a significant and permanent condition, disease, or syndrome, resulting in the inmate being physically or cognitively debilitated or incapacitated.
- The inmate qualifies for placement in a licensed health care facility, as determined by the Resource Utilization Guide IV (RUG IV) Assessment Tool.¹
- The inmate will not pose an unreasonable risk to public safety if placed in a licensed health care facility.
- The inmate is not condemned or serving a sentence of life without the possibility of parole.

Pre-Hearing Procedures

- Medical personnel, the inmate, or the inmate's family or attorney may request that the inmate's CDCR primary care physician consider the inmate for expanded medical parole.
- The inmate's CDCR primary care physician will complete the Medical Parole Form (CDCR Form 7478) along with a RUG IV assessment.
- The forms will be reviewed by the chief medical executive at the facility where the inmate is housed. If approved by the chief medical executive, the forms will be submitted to the classification and parole representative at the institution where the inmate is housed for review. If approved by the classification and parole representative, the forms will be forwarded to the Division of Adult Institutions headquarters, which will prepare a packet for referral to the Board of Parole Hearings.

Hearing Procedures

- Hearings will be conducted by two or three person panels using the same structure as parole suitability hearings.
- A panel's approval of an inmate's placement in a licensed health care facility will be conditioned upon CDCR identifying a licensed health care facility that meets specified requirements identified by the panel. The panel will specify those facility requirements deemed necessary for the inmate's placement to not pose an unreasonable risk to public safety. Facility requirements will address issues such as applicable statutory residency

¹ The RUG IV is a tool used to evaluate eligibility for Medicare and Medicaid reimbursement for placement in a skilled nursing facility.

restrictions, facility security, limitations on visitation and contact with persons under the age of 18, and any other special care provisions rationally related to the inmate's prior misconduct.

- In addition to the above, the panel may condition the inmate's placement on the inmate's compliance with a variety of other requirements and restrictions, such as periodic medical evaluations, compliance with the skilled nursing facility's rules, alcohol and drug restrictions, electronic monitoring, and restrictions on communication with specified persons.
- All other existing Board of Parole Hearings' medical parole hearing procedures not impacted by the provisions outlined herein will be applied to expanded medical parole hearings, including appointment of counsel, and all applicable hearing notifications, including notice to law enforcement, prosecutors, and 90-day notice to registered victims and victims' next-of-kin.

Post-Hearing Procedures

- The board's proposed decision to approve placement of an inmate in a licensed health care facility will be valid for 120 days, during which time CDCR will work to identify a licensed health care facility that meets the requirements specified by the board and secure a bed for the inmate. If an available and appropriate facility is identified that meets the specified requirements, the inmate will be processed for transfer. If no such facility can be identified within 120 days, the board's proposed decision will be invalid and the inmate will remain in a CDCR institution.
- All existing statutory notification requirements governing release of inmates will apply to medical parole placements, including notification to law enforcement, prosecutors, victims, and victim's next-of-kin.

Return from Placement in a Licensed Health Care Facility

- CDCR will monitor the inmate's medical condition and behavior while he or she is placed in a licensed health care facility. Significant improvements in the inmate's medical condition will be reported to the board. The board will determine if the inmate no longer qualifies for medical parole. In addition, material violations of law, facility requirements, or inmate restrictions shall be reported to the board. The board will determine if additional facility requirements and restrictions are warranted.

Miscellaneous

- Inmates qualifying for medical parole as defined in Penal Code section 3550 et seq., or expanded medical parole, or both will be processed under expanded medical parole effective July 1, 2014.

April 28, 2009

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Re: Rescission Hearing for Myko Jukarial (H-99999, PVSP)

Dear Mr. Hoshino:

This letter sets forth our expectations of the nature and scope of Mr. Jukarial’s rescission hearing, scheduled to take place on April 29, 2009, at 8:30 a.m. As the Board knows, a rescission hearing is very different from a parole consideration hearing, especially in cases where, as here, the only relevant question is set forth in § 2451 (c) – whether the granting panel committed some fundamental error that resulted in the improvident granting of parole. The rescission panel does not make its own, independent, assessment of whether the prisoner should be granted parole. Instead, the rescission panel must defer to the granting panel unless they can point to a clear error.

Specifically, Mr. Jukarial’s parole date may only be rescinded if the rescission panel can (a) point to actual evidence showing that the granting panel committed an error by failing to consider some significant aspect of the case and (b) explain how that error, plus Mr. Jukarial’s conduct in prison since the parole grant, shows that he is currently dangerous. These rules are established by the federal and state cases of *McQuillion v. Duncan* (9th Cir. 2002) 306 F.3d 895; *In re Powell* (1988) 45 Cal.3d 639; *In re Caswell* (2001) 92 Cal.App.4th 1017), as well as the controlling regulations (§§ CCR 2451 and 2451).

THE FACTORS BEING CONSIDERED HERE

The Miscellaneous Decision dated January 26, 2009, lists the factors to be considered by the rescission panel this week. Those factors appear to be based on Governor Schwarzenegger’s December 18, 2008, statement referring the case for an *en banc* review. For each of those factors, the rescission panel must determine (a) whether the granting panel committed an error by failing to consider it (FACTFINDING PHASE) and (b) whether the failure to consider any factor, coupled with Mr. Jukarial’s conduct in prison, shows that he is

currently dangerous (DISPOSITION PHASE). The factors being considered here are the following:

1. The gravity of the life crime.
2. The prisoner minimizes his responsibility for the life crime.
3. His recent Life Prisoner Evaluations assess his potential for future violence in the moderate range.¹

FACTFINDING PHASE

The rescission panel must begin by reviewing the material that was before the granting panel and what the granting panel said about its review of that material as it relates to each one of the factors listed above. Upon reviewing the granting panel's transcript, the rescission panel will see that the chairperson, Commissioner Lame, reviewed this case in great detail. He thoroughly discussed this offense with Mr. Jukarial, including Mr. Jukarial's position that he was not at the scene when the victim was attacked. He also considered the fact that Mr. Jukarial has long accepted responsibility for not doing more to thwart his father's efforts to have the victim attacked. His insight into why he participated and his expressions of remorse are genuine, sincere and longstanding. Indeed, the panel ultimately concluded – after reviewing all the hearing transcripts, psychological evaluations, counselor's reports and the rest of his central file – that Mr. Jukarial does not present an unreasonable risk to public safety at this time.

Each of the three factors listed above is addressed below.

1. Gravity of the Life Crime

Early in the hearing, as Commissioner Lame begins discussing the offense, he and Mr. Jukarial agree that this was “a very heinous crime.” (Transcript (“Tx”) at page 8.) Commissioner Lame also discussed the offense with Mr. Jukarial in detail. In describing Mr. Jukarial's crime partner's actions, Commissioner Lame comments, “He throws the caustic substance in her eyes. It blinds her, disfigures her.” (Tx. at 24.) The panel also considered the comments from Deputy DA Killjoy who noted how “heinous” the crime was and expressed his opinion that “the crime is far worse than murder, because in a murder, it's over and done with and the victim is dead. Here the victim for the last 19 years has suffered and the extent of her suffering is set forth as shown in the photographs and is set forth in the letter received from the Glendale Police Department.” (Tx 73.) Indeed, Mr. Jukarial's central file (which the panel obviously reviewed in detail) contains the graphic photographs of the victim's injuries. Commissioner Lame apparently picked up on the Deputy DA's comments and, when announcing the parole grant, called the crime “heinous, atrocious,

¹ Because this last item makes a false statement that is apparently intended to prejudice the rescission panel against Mr. Jukarial, we request a copy of the Executive Case Summary that was prepared by the Board and submitted to the Governor's office along with the rest of Mr. Jukarial's file. We have also already requested the attendance at this hearing by Mr. Jukarial's former correctional counselor, CCI Fellows.

inexplicable... worse than the death sentence.” (Tx 93.) He went on in further detail about the gravity of the offense: “[E]ven though you were not the person who actually threw the caustic substance in the victim’s eyes, in her face that blinded her for the rest of her life, that scarred her for the rest of her life, you were part of a conspiracy to have it done. You solicited people. You had an opportunity, as you stated, two months before the incident occurred, to warn somebody.” (Tx 91.) He also mentioned that the victim has had fifteen surgeries to treat her injuries. (Tx 93.)

Nevertheless, after thoroughly discussing the gravity of this offense,² the panel determined that “..the positive adjustment and work that you have done outweighs the negative aspects of this crime.” (Tx 94.)

2. Responsibility for the Life Crime

Mr. Jukarial admits that his father convinced him to ask his friends to throw acid on the victim in exchange for money and possibly jewelry, and he admits to “going along” with his father’s request. (Tx at 19.) Commissioner Lane mentions several times during the hearing that he has read the Probation Officer’s Report, and he confirms with Mr. Jukarial his statement that he did not throw the acid (Tx at 23), though Mr. Lane mentioned many times during the hearing that he was troubled by Mr. Jukarial maintaining that he was not present during the attack while the attacker says Mr. Jukarial was present.

Furthermore, when I (as Mr. Jukarial’s attorney) reminded Commissioner Lane that prior hearing panels had raised concerns about the fact that Mr. Jukarial has always maintained that he was not present when the acid was thrown, Commissioner Lane responded, “I read that and I read the fact of your statement about you weren’t there. You have the person who committed the crime who said you were there and I wanted to see at this hearing if you were going to say if you were there or if you weren’t there. Do you see what I’m saying? Your statement was that you weren’t there. Right?” (Tx 32-33.) Commissioner Lane then notes his expectation that the Deputy District Attorney will address this issue further, but Mr. Lane also acknowledged, “I read previous transcripts where it was brought up.” (Tx 33.) Later in the hearing, Commissioner Lane comes back to the discussion of where Mr. Jukarial was when his father and Mr. Marta were at the scene of the attack. (Tx 58-59.)

The record clearly shows that Mr. Lane was aware that Mr. Jukarial has always denied being at the scene at the time of the attack – at the same time that he accepts full responsibility for participating and allowing this to happen. Commissioner Lane discussed this issue again after informing Mr. Jukarial that he had read the Probation Officer’s Report twice. Mr. Lane questioned Mr. Jukarial at length about how his claim that he was not present directly conflicts with the attacker’s version of events. (Tx 66-67.) Similarly,

² In fact, the panel assessed the “aggravated” term under its term-setting matrix because of the aggravated nature of this mayhem offense. (See Tx 98-99.)

Deputy Commissioner Getchel discussed at length Mr. Jukarial's position about how he learned that the attack had taken place. (Tx 68-70, 71-72.)

Deputy Commissioner Getchel refers to the recent psychological evaluation and its discussion of Mr. Jukarial's acceptance of responsibility and his recognition of the severity of the offense: "As noted in earlier evaluations, you acknowledge the crime as described in official versions of the offense and accept responsibility for your role in it... He recognizes the horrific nature of the crime and the suffering of the victim." (Tx 41-42.) The panel had before it numerous psychological evaluations finding, for example, that "Mr. Jukarial continues to 'verbalize remorse for his actions with expressions that appear sincere and genuine and also experiences sadness for the victim.' It says 'he recognizes that what transpired was a horrible crime and that the victim will suffer for the rest of her life.'" (Tx 82.)

Deputy DA Killjoy confirmed with Mr. Jukarial during the hearing that Mr. Jukarial believed he was responsible for the crime at the time it took place. (Tx 63.) Mr. Jukarial even admitted under questioning from the DA that he knew his father "wanted to burn her with acid. I knew what his plan was, but I never seen the acid." (Tx 60.) Furthermore, when asked by the DA whether he thought he might be responsible for this crime, Mr. Jukarial said that, "Yes, I believed I was responsible." (Tx 63.)

Mr. Jukarial himself testified at the hearing and, once again, accepted full responsibility for the crime numerous times: "This is a horrible crime. It should have never even happened and it wouldn't have happened if I came forth to anybody. I kept quiet. I didn't tell the authorities, the police, family members, nobody about what my father wanted done." "I take full responsibility for this crime." "I lied to the police." (Tx 88-90.) He discussed his responsibility at length:

Well, like I say, if it wasn't for me, this crime would have never happened. You know, ultimately, I take full responsibility for it. I understand I was wrong and if I-- if I -- if I can go back and change the past, that's the first thing I would do. That was -- That's probably the only thing in my past that I would change is come forward and let somebody know; her, her mother, the authorities, anybody what my father wanted done." (Tx 90.)

In short, after considering Mr. Jukarial's statements regarding his father's desire to harm the victim, his reluctance to assist his father, his ultimate decision to tell his friends about his father's offer for money to help him, and his repeated statements that he should have intervened to stop his father and prevent this from happening, Commissioner Lame, Deputy Commissioner Getchel and the recent psychological evaluation all confirmed Mr. Jukarial's acceptance of full responsibility for the crime. (Tx 95.)

3. Recent Life Prisoner Evaluation Report

The presence of this factor is somewhat baffling. The most recent LPER, written by CCI Jacobs in June 2008, does not even give a risk assessment for future violence. That report simply states, under the "ASSESSMENT" section, "Documents from the previous hearing dated 8-16-07 have been considered and the information remains valid." In fact, Deputy Commissioner Getchel first acknowledged that correctional counselors are not trained to project a prisoner's level of risk to public safety, and then he read from the previous report, written by Counselor Fellows in June 2007, which cited the lack of any "foreseeable problems with your parole plans." (Tx at 39.) The closest thing to an assessment in that report was the counselor's acknowledgment that Mr. Jukarial had "followed the BPH recommendations by remaining disciplinary free, and participating in numerous self-help activities and groups, i.e. Lifer Support Group, AA, and NA. He has also participated in psychological therapy groups." (June 4, 2007, LPER, at 3.) The report specifically referred to the memorandum written by the Deputy Director in August 2004 that prohibits counselors from attempting to assess prisoners' risk. (*Id.* at 4.)

The prior report, dated February 7, 2006, written by CCI J. Spells similarly states that Mr. Jukarial continued to participate in numerous programs, and it similarly refers to the memorandum prohibiting counselors from making risk assessments.

The last actual "assessment" by a correctional counselor on an LPER appears in the report dated December 4, 2003, written by CCI W. Fellows. He observes, "There appear to be no foreseeable problems with Jukarial's parole plans," and he notes that Mr. Jukarial's "outlook on parole and employment is realistic and if he continues the attitude and work ethic he has shown while in prison, he will succeed in society." (See report at 5.) Counselor Fellows goes on to specifically provide an assessment of Mr. Jukarial's risk to public safety:

Inmate Jukarial's performance and behavior while incarcerated has been exceptional. He participates in all available self-help programs. He has continued his education through college correspondence courses and vocational training. Considering the commitment offense, lack of any prior criminal record, prison adjustment, a thorough review of the Central File, and an interview with Inmate Jukarial, this writer believes the prisoner would pose a low threat to society if released from prison. (*Id.*)

The prior report written on February 19, 2003, observed that Mr. Jukarial's performance and behavior in prisoner "has been outstanding." (LPER by CCI S. Gonzalez, at 5.) That report suggests that Mr. Jukarial would only present a moderate to minimal threat to society if released back then.

In short, one has to reach back five and a half years to find *any* assessment by a correctional counselor, and that assessment found Mr. Jukarial to pose only a low threat to society. The word "moderate" does not show up until you reach back more than six years,

and even then the prediction was “moderate to minimal.” That this could possibly be viewed as a “recent” assessment indicating a moderate risk is simply absurd.

DISPOSITION PHASE

During this phase of the hearing, the rescission panel must consider whether anything about Mr. Jukarial’s case has changed in a way that indicates that he currently presents a threat to public safety. Over the past year, Mr. Jukarial has maintained his discipline-free prison record and continued to participate in available self-help and therapy programs. In fact, as demonstrated in the documents attached hereto, Mr. Jukarial has continued his active participation in the Victim’s Awareness Course, AA and NA programs along with the separate Substance Abuse Program, the C-Yard cognitive process group and the Self-Evaluation Therapy Group. (Chronos attached.)

This activity demonstrates that Mr. Jukarial has remained active and committed to these positive programs, as he has been throughout his incarceration. Clearly, nothing about his conduct indicates that he is more of a risk to public safety when the panel granted him parole last year.

CONCLUSION

The panel set Mr. Jukarial’s total term to serve in prison at 80 months, the equivalent of six years and eight months. He’s already served nearly 17 years in exemplary fashion awaiting his opportunity to rejoin his remaining family and society. No matter what term the Board could set on this seven to life sentence, Mr. Jukarial has long since served it. He has done all he can to understand and explain how this crime occurred and to demonstrate his ability to be a productive citizen.

It is very clear that the granting panel considered all the relevant information in granting Mr. Jukarial parole. The fact that the Governor – or anyone else – may disagree with the panel’s decision is irrelevant because they considered all the pertinent information and reached their decision. The rescission panel must affirm his date.

Sincerely,

Keith Wattley