

Overview of California's Parole Consideration Process

DOCUMENTATION HEARING

Lifers are provided with a Documentation Hearing within the first three years of their incarceration. In this hearing, a Deputy Commissioner from the Board of Parole Hearings (BPH) reviews the prisoner's file and makes recommendations regarding the kinds of activities the prisoner should pursue in order to demonstrate parole suitability whenever he or she becomes eligible.

PAROLE CONSIDERATION

Lifers have their Initial Parole Consideration Hearings scheduled thirteen months prior to their Minimum Eligible Parole Dates (MEPD). Legally, the presumption is that lifers will be granted parole at their initial hearings; however, this has happened only thirteen times in the past ten years or so.

Prisoners are entitled to attend their hearings in person, to have an attorney present, to ask questions, to receive all hearing documents at least ten days in advance, to have their cases individually considered, to receive an explanation of the reasons for denying parole and to receive a transcript of the hearing.

Parties attending parole hearings include the prisoner, his or her attorney, a Commissioner and Deputy Commissioner of the BPH, a representative from the District Attorney's office, two correctional officers, and the victims and/or their next of kin or representatives. Prisoners are not permitted to call witnesses or to have their family members attend, unless those family members happen to also be victims of the offense.

The main topics discussed at parole hearings are the following: the commitment offense and the circumstances surrounding it; any prior juvenile or adult criminal history; conduct (both good and bad) in prison; recent psychological evaluations prepared for the BPH; and the prisoner's plans for release upon parole. The area where prisoners' families and supporters have the most influence is in the parole plans. Through their letters to the BPH, supporters can demonstrate where prisoners are invited to live once released, where they are offered employment, where they may participate in any necessary transitional program (e.g., drug or alcohol treatment), and any other financial, emotional or spiritual support they may need. (See UnCommon Law's Free Guide to Lifer Support Letters, at www.theuncommonlaw.com, for more information on this.)

WHEN PAROLE IS DENIED

On average, the BPH's commissioners only grant parole in approximately 10% to 15% of the cases they hear, which is actually a much higher rate than it was just a year ago. Until Proposition 9 is overturned, prisoners denied parole at either an Initial Hearing or a Subsequent Hearing will have another hearing scheduled either three years, five years, seven years, ten years or fifteen years later. Like other aspects of the parole consideration process that have changed since Prop 9, the BPH is directed to consider the wishes of the victims and their representatives in determining when the next hearing should be.

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WHEN PAROLE IS GRANTED

Even though the Board grants a prisoner parole, it does not mean he or she will be released right away. This is because, in addition to deciding that the person is not currently dangerous, the Board decides how much time the person should actually have to serve based solely on the specific details of the crime. In some cases, the prisoner has already served that much time, so he or she will be released as soon as the decision becomes final. In other cases, the prisoner still has some months (or perhaps years) to serve prior to release. The actual release date is calculated during the days and weeks following the parole hearing.

After the parole hearing, the case will be reviewed by the BPH's Decision Review Unit for 120 days. If they affirm the date, then the case proceeds to the Governor's office for 30 days of review there. By the end of the 30 days, the Governor may either reverse the parole grant, modify the release date, or let the decision stand, after which the prisoner will be released on the date established by the BPH.

In cases other than murder, the Governor cannot directly reverse a parole grant. Instead, the most the Governor can do is request that the full Board conduct an *en banc* review and schedule a rescission hearing, at which the prisoner's grant may be taken away (rescinded). In these cases, the Governor's review must take place within 120 days following the parole hearing; no additional 30-day period applies.

If a parole grant is reversed by the Governor or rescinded by the Board, the prisoner is placed back into the regular rotation of parole consideration hearings unless and until he or she is granted parole again. Some prisoners are granted parole several times before they are finally released from prison.

WHEN COMMISSIONERS CANNOT AGREE

If a hearing results in a split decision between the Commissioner and Deputy Commissioner (there are only two people on a hearing panel), the case goes to the full Board of BPH commissioners at a monthly executive meeting. This is called an *en banc* review, and a majority vote is required for a prisoner to be granted parole. Members of the public may attend this hearing and speak to the Board.

WHEN COURTS GET INVOLVED

At any stage of the parole consideration process, a prisoner may ask a court to intervene and correct some unlawful conduct by the BPH. In cases against the Governor, courts might set aside his decision and allow the prisoner's release. In cases against the BPH's denial of parole, courts might order the BPH to conduct a new hearing and grant parole unless there is some new evidence demonstrating a prisoner's risk to public safety.

The lifer cases from recent years that have helped establish the legal limits on conduct by the BPH and the Governor are *In re Rosenkrantz* (2002) 29 Cal.4th 616, *In re Dannenberg* (2005) 34 Cal.4th 1061, *In re Lawrence* (2008) 44 Cal.4th 1181, *In re Shaputis* (2008) 44 Cal.4th 1241, *In re Scott* (2005) 133 Cal.App.4th 573; *In re Rico* (2009) 171 Cal.App.4th 659; *McQuillion v. Duncan* (9th Cir. 2002) 306 F.3d 895; *Sass v. Cal. Bd. of Prison Terms* (9th Cir. 2006) 461 F.3d 1123, and *Irons v. Carey* (9th Cir. 2007) 505 F.3d 846.

LIFE ON PAROLE

Most lifers who are released on parole must serve a minimum of five years or seven years on parole before they may be discharged from parole. However, these parolees face a maximum of a lifetime on parole if parole authorities find that there is good cause to believe they continue to require intense parole supervision. While on parole, they must abide by specific conditions supervised by a parole agent. A former life prisoner who is on parole faces the possibility of a new life sentence if he or she is returned to prison for even a minor violation of parole.

THE INFORMATION IN THIS OVERVIEW IS NOT INTENDED AS LEGAL ADVICE IN ANY INDIVIDUAL PRISONER'S CASE. THERE ARE MANY EXCEPTIONS AND VARIATIONS IN THE PAROLE CONSIDERATION PROCESS. READERS ARE ENCOURAGED TO CONSULT AN EXPERIENCED PAROLE ATTORNEY FOR SPECIFIC ADVICE.