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17.02 LIFER HEARINGS

The Office shall be represented at all hearings before the Board of Parole Hearings regarding life prisoners who were prosecuted by the Office. The Office has the responsibility to ensure that a defendant serving a life sentence is incarcerated as long as he or she poses an unreasonable risk of danger to society. All notices concerning hearings for life prisoners must promptly be forwarded to the Head Deputy of the Parole Division in the Bureau of Prosecution Support Operations. The Parole Division Head Deputy is responsible for assigning deputies to represent the Office at such hearings.

Board of Parole Hearings Commissioners determine whether a life prisoner is suitable for parole. The assigned deputy shall review the prisoner's Department of Corrections and Rehabilitation central file and the District Attorney's case file before attending the hearing. At the hearing, the deputy's role is to comment on the facts of the case and present an opinion about the appropriate disposition. The deputy shall be prepared to establish how the circumstances of the crime, the inmate's prior criminal record, the inmate's institutional adjustment, psychiatric evaluations, and parole plans (or lack thereof) indicate that the inmate currently poses an unreasonable risk of danger to society.

17.02.01 **DISTRICT ATTORNEY'S STATEMENT OF VIEW - PENAL CODE**
§ 1203.01

At the initial parole consideration hearing, which may not occur for many years after the commitment offense, an inmate provides his or her version of the commitment offense. Unless a District Attorney's Statement of View has been filed, the only version of the facts available to the members of the Board is the inmate's statement, augmented by a probation report. The trial deputy's Statement of View, written shortly after trial, provides a permanent credible record to counter an inmate's often distorted version of the crime(s). A District Attorney's Statement of View shall be filed in every case in which a defendant is sentenced to life with or without the possibility of parole, or death, including life sentences imposed in third strike cases in which the third strike is a serious or violent felony.

Prison officials use the Statement of View to assist in evaluating the danger posed by an inmate within the institution, and the Board of Parole Hearings uses it to determine the inmate's suitability for parole. If the information contained in the Statement of View and supplemental information is not in the prisoner's file 10 days before the parole hearing, the prosecutor cannot refer to it.

The Statement of View shall address the following questions:

Commitment Offense

- Was the offense carried out in a manner that exhibits a callous disregard for life or the suffering of another?
- Was it carried out in a dispassionate or calculated manner?
- Were multiple victims attacked, injured or killed in the same or separate incidents?
- Was the victim abused, defiled or mutilated during or after the offense?
- Did the defendant commit other criminal offenses after the commitment offense, before being arrested?

Prior Criminal History

- Does the defendant have a record of violence or assaultive behavior?
- Does the defendant have an escalating pattern of criminal conduct or violence?
- Has the defendant previously sexually assaulted another person?
- Is there a persistent pattern of tumultuous relationships or criminal behavior that commenced at an early age?
- Has the defendant failed to profit from society's previous attempts to correct his or her criminality, such as juvenile probation or camp, Division of Juvenile Justice (formerly known as the California Youth Authority or CYA) commitment, county jail, probation, parole, or a prior prison term?
- If the defendant is a gang member, was the commitment offense related to gang activity?
- Does the defendant have a history of drug or alcohol abuse and, if so, did the defendant claim to be under the influence of drugs or alcohol at the time of the commitment offense?

17.02.02 STATEMENT OF VIEW - ADDITIONAL DOCUMENTS

In addition to the documents listed above, the following documents should be attached to the Statement of View:

- Excerpts of testimony from the preliminary hearing or trial transcripts;
- The plea transcript containing the factual basis for the plea or the judge's comments on the nature of the commitment offense or the defendant's conduct before, during or after trial;
- The autopsy report describing defensive wounds or mutilation or other evidence relevant to the nature and circumstances of the crime;
- Crime scene and autopsy photographs;
- Arrest and crime reports, particularly if they contain the defendant's confession; and
- Psychiatric reports which describe a history of psychological problems resulting in criminal activity.

17.02.03 STATEMENT OF VIEW - DISTRIBUTION

A deputy shall submit the Statement of View (with attachments) to his or her Head Deputy for review and approval. Once approved, the deputy must distribute the original and two copies of the Statement of View (with attachments) as follows:

- The original shall be filed with the clerk of the sentencing court immediately after the probation and sentencing hearing and the clerk will then forward it to the state prison along with the commitment order;
- A copy shall be placed in the case file; and
- A copy shall be sent, through the Bureau Director, to:

Head Deputy
Parole Division
Bureau of Prosecution Support Operations
Room 16-105 Clara Shortridge Foltz Criminal Justice Center

The Parole Division enters the information from the Statement of View directly into an automated system containing information on all inmates currently serving life sentences for crimes committed in Los Angeles County ensuring that the most current information concerning each inmate's parole consideration status is readily available. This automated system allows immediate retrieval of information on life prisoners from one central repository when inquiries are received from interested persons, including next of kin, victims and witnesses, thus enhancing the quality of the Office's service to the public.

Head Deputies are responsible for ensuring a Statement of View has been filed with the court.

To ensure that the Statement of Views package is received in a timely manner, a deputy may wish to forward a copy directly to the Department of Corrections and Rehabilitation for inclusion in the inmate's central file at the following address:

Department of Corrections and Rehabilitation
Legal Processing Unit
P.O. Box 942883
Sacramento, California 94283-0001

17.02.04 LETTER TO VICTIM OR NEXT OF KIN

When a court sentences a defendant to state prison for a life term, in addition to the Statement of View, deputies shall forward a letter to the victim or victim's next of kin advising them of the right to express their views concerning the defendant's parole eligibility. Deputies must prepare three copies of the letter. Deputies shall mail the original letter to the victim or the victim's next of kin and place one copy in the case file. Deputies shall send the third copy to the Head Deputy, Parole Division, Bureau of Prosecution Support Operations.

The Board of Parole Hearings has requested the Office's assistance in ensuring that victims and their next of kin are informed about their rights concerning parole consideration hearings. It is Office policy to inform each such victim or their kin of the provisions of Penal Code § 3043.

17.02.05 APPEAL OF A PREMATURE RELEASE DATE

A decision by the Board of Parole Hearings to parole a prisoner can be appealed, as can the setting of a premature release date. In cases in which the parole date has already been set, it is possible to file a petition with the Board of Parole Hearings to rescind the date and, if denied, to file a Writ of Administrative Mandamus in the Superior Court of the county where the parole hearing was held. Such petitions and writs may be sought only with prior Chief Deputy approval.

17.02.06 SERIOUS OFFENDER HEARINGS

For any defendant who committed a felony before July 1, 1977, the Board of Parole Hearings must determine the length of imprisonment pursuant to Penal Code § 1170.2. The Board must hold a hearing to make this determination. It is Office policy to appear at serious offender hearings and submit written comments to the Board of Parole Hearings before the hearing.

17.02.07 VICTIMS' RIGHTS IN THE PAROLE HEARING PROCESS

Victims have a Constitutional right to be informed of all parole procedures, to participate in the parole process, to provide information to the parole authority to be considered before the parole of the offender, and to be notified, upon request, of the parole or other release of the offender. (Cal. Const. Art. I, § 28(b)(15).)

Additionally, Penal Code § 3043 provides, in part:

“Upon request, notice of any hearing to review or consider the parole suitability or the setting of a parole date for any prisoner in a state prison shall be sent by the Board of Parole Hearings at least 90 days before the hearing to any victim of a crime committed by the

prisoner, or to the next of kin of the victim if the victim has died. The requesting party shall keep the Board apprised of his or her current mailing address.”

The victim, or next of kin, has the right to appear, personally or by counsel, at the hearing for the purpose of expressing his or her views concerning the crime and the person responsible. The victim notification requirement is only applicable to those prisoners sentenced to life terms under Penal Code § 1168.

17.02.08 LIFER HEARINGS - CRITERIA TO BE CONSIDERED

California Code of Regulations Title 15, Division 2, § 2030 defines the role of the prosecutor in a life prisoner parole consideration hearing as follows:

The role of the prosecutor is to comment on the facts of the case and present an opinion about the appropriate disposition. In making comments, supporting documentation in the file should be cited. The prosecutor may be permitted to ask clarifying questions of the hearing panel, but may not render legal advice.

The California Supreme Court has noted that consideration of public safety is the fundamental criterion in assessing suitability (*In re Dannenberg*, 34 Cal.4th 1061 (2005)). Mental health clinicians generally agree that the best predictor of future violence is past conduct. If there is some evidence in the prisoner’s record that the fact finder believes shows the prisoner poses a risk to public safety, then the inmate should be denied parole.

Victims have a constitutional right to have their safety and the safety of their family considered before any parole or other post-judgment release decision is made. (Cal. Const. Art. I, §28(b)(16).)

Circumstances Tending to Show Unsuitability

The following circumstances each tend to indicate unsuitability for release. (California Code of Regulations Title 15, Division 2, § 2281.) These circumstances are set forth as general guidelines; the importance attached to any circumstance or combination of circumstances in a particular case is left to the judgment of the panel. Circumstances tending to indicate unsuitability include:

1. Commitment Offense. The prisoner committed the offense in an especially heinous, atrocious or cruel manner. The factors to be considered include:
 - a. Multiple victims were attacked, injured or killed in the same or separate incidents.
 - b. The offense was carried out in a dispassionate and calculated manner, such as an execution-style murder.
 - c. The victim was abused, defiled or mutilated during or after the offense.
 - d. The offense was carried out in a manner which demonstrates an exceptionally callous disregard for human suffering.
 - e. The motive for the crime is inexplicable or very trivial in relation to the offense.

2. Previous Record of Violence. The prisoner on previous occasions inflicted or attempted to inflict serious injury on a victim, particularly if the prisoner demonstrated serious assaultive behavior at an early age.
3. Unstable Social History. The prisoner has a history of unstable or tumultuous relationships with others.
4. Sadistic Sexual Offenses. The prisoner has previously sexually assaulted another in a manner calculated to inflict unusual pain or fear upon the victim.
5. Psychological Factors. The prisoner has a lengthy history of severe mental problems related to the offense.
6. Institutional Behavior. The prisoner has engaged in serious misconduct in prison or jail.

Circumstances Tending to Show Suitability

The following circumstances each tend to show that the prisoner is suitable for release. (California Code of Regulations Title 15, Division 2, § 2281.) These circumstances are set forth as general guidelines; the importance attached to any circumstance or combination of circumstances in a particular case is left to the judgment of the panel. Circumstances tending to indicate suitability include:

1. No Juvenile Record. The prisoner does not have a record of assaulting others or committing crimes with a potential of personal harm to victims as a juvenile.
2. Stable Social History. The prisoner has experienced reasonably stable relationships with others.
3. Signs of Remorse. The prisoner performed acts which tend to indicate the presence of remorse, such as attempting to repair the damage, seeking help for or relieving suffering of the victim, or indicating that he understands the nature and magnitude of the offense.
4. Motivation for Crime. The prisoner committed his crime as the result of significant stress in his life, especially if the stress has built over a long period of time.
5. Battered Woman Syndrome. At the time of the commission of the crime, the prisoner suffered from Battered Woman Syndrome, as defined in California Code of Regulations Title 15, Division 2, § 2000(b), and it appears the criminal behavior was the result of that victimization.
6. Lack of Criminal History. The prisoner lacks any significant history of violent crime.
7. Age. The prisoner's present age reduces the probability of recidivism.
8. Understanding and Plans for Future. The prisoner has made realistic plans for release or has developed marketable skills that can be put to use upon release.
9. Institutional Behavior. Institutional activities indicate an enhanced ability to function within the law upon release.

Each prisoner must be given an individualized assessment for parole based upon the factors present. A deputy shall oppose release, however, whenever there is evidence present that suggests a continuing risk to the public based upon the timing and gravity of the commitment offense(s) and/or prior criminality, a record of institutional misconduct, an unfavorable mental health evaluation or risk assessment, a lack of insight into the prisoner's criminality, a lack of remorse or an inadequate plan for parole release including housing plan, on-going self-help and employment planning.

Deputies shall evaluate each case in advance of the hearing date. In the event a deputy feels that an individual inmate may be ready for parole release without objection by the Office, the deputy shall first consult with the Head Deputy of the Parole Division. Where appropriate, the Head Deputy of the Parole Division shall consult with the Director of the Bureau of Prosecution Support Operations.

17.02.09 LIFETIME PAROLEES

A significant number of prisoners convicted of first or second degree murder are now being granted parole. Murderers sentenced under Penal Code § 1168 are on lifetime parole. (PC § 3000.1.) Subsequent criminal conduct may result in an indeterminate return to custody if after a hearing the Board of Parole Hearings determines the inmate poses a danger to public safety that warrants incarceration beyond one year.

The Office is entitled to express its views at these hearings which are handled by the Parole Division. It is essential that they receive timely notice of the alleged criminal acts by murder parolees so documentation can be gathered to assess the appropriate course of action at the parole violation proceedings.

Filing deputies who are presented with cases involving such defendants should notify the Parole Division as soon as possible. Notification to the Parole Division shall be made whether or not criminal charges are filed. Copies of the filed complaint or rejection shall be forwarded to the Parole Division as well. The Parole Division will review the reports and the defendant's conduct on parole and develop a recommendation regarding the position to be taken at the parole revocation hearing.

17.03 DNA EXPUNGEMENT PETITIONS

Penal Code § 295 et seq. require persons arrested for certain specified offenses, and all felony arrestees, to provide DNA samples at the time of arrest. (PC § 296.) Some arrestees may be eligible for expungement of their DNA samples. The circumstances for expungement eligibility include the lack of a criminal filing, the dismissal of a case, an acquittal, or a finding of factual innocence. (PC § 299 (b)(1)-(4).)

Deputies handling expungement petitions shall not oppose expungement solely on the basis the petitioner has a prior felony conviction. However, deputies shall object to expungement in cases where the petitioner has a current nexus with the criminal justice system (e.g., on parole, PRCS, felony probation, mandatory supervision, PC § 290 registrant, etc.).

Deputies from the Charge Evaluation Division shall evaluate and process all expungement petitions filed in Los Angeles County. Any deputy receiving an expungement petition shall promptly forward the petition to the Head Deputy of the Charge Evaluation Division.