



Lifer Parole Packet

Compiled by Legal Services for
Prisoners with Children

Updated May 2017

Contains:

1. California Lifer Parole Process (Life Support Alliance)
2. Advice for Prisoners and their Supporters Regarding Board of Parole Hearings Psychological Evaluations (PHSS)
3. Overview of California's Parole Consideration Process (UnCommon Law)
4. How to Prepare for Parole Consideration (UnCommon Law)
5. List of Books for "Book Reports" (UnCommon Law)
6. Parole Hearing Day Breakdown (UnCommon Law)
7. UnCommon Law Guide to Lifer Support Letters
8. How Proposition 9 (Marsy's Law) Impacts Lifers (UnCommon Law)

Legal Services for Prisoners with Children (LSPC) is an advocacy and referral agency only. We do not provide direct services and cannot work on your case or represent you in court. We do provide information and legal materials. We compiled much of this information from two organizations—UnCommon Law and Life Support Alliance—their materials cover the same information, but both are helpful.

If you would like information about re-entry resources for developing your parole plans, please write to us and let us know the county where you plan to be released, and any specific types of resources you are looking for. We can also provide information about non-violent second striker parole and parole hearings under Proposition 57 (created by the Prison Law Office).

LSPC publishes several manuals including the *Incarcerated Parents Manual*, *Transportation to Court*, *Suing a Local Public Entity*, *Fighting for Our Rights: A Toolbox for Family Advocates of California Prisoners*, *What to Plan for When You Are Pregnant at the CIW*, *Child Custody & Visitation Rights for Incarcerated Parents*, *Child Custody & Visitation Rights for Recently Released Parents*, and *Using Prop 47 to Reduce Convictions and Restore Rights*.

We can also provide copies of materials prepared by the Prison Law Office in San Quentin, California. Those include information in the following areas: state and federal habeas corpus, parole, and lawsuits for money damages.

Finally, we provide copies of the *Jailhouse Lawyers Handbook*, published by the Center for Constitutional Rights and the National Lawyers Guild. That manual has information about filing a civil rights case.

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The California Lifer Parole Process

This Document is copied from Life Support Alliance's Website – April 2017

LifeSupportAlliance.org

Life Support Alliance, a non-profit organization, is a gathering of friends and family members of life term prisoners working together with other responsible citizens concerned about the cost, effectiveness, and policies of the California Department of Corrections and Rehabilitation system. LSA supports the return of parole suitable lifers to our communities and is prepared to assist in their reintegration. Their mission is to assist life term prisoners in becoming suitable for parole and gaining their release, assist their families in understanding the parole process and how they can assist their inmates in becoming suitable. To continue to educate legislators and the public about the characteristics of lifers. To encourage appointment of parole commissioners who will make decisions based on law and fact, not emotion and political ideology. To support forward-thinking legislation that will protect public safety, the rights of prisoners and promote fiscal responsibility.

The California Lifer parole process is complex, heavily discretionary and very often frustrating to both prisoners and their families. Families want to be supportive and helpful but often can't understand why their prisoner isn't coming home, despite exemplary institutional behavior, letters of support and years, even decades, in prison.

THE GOOD NEWS: the two-prong battle of being granted a date by the Board of Parole Hearings (BPH), and then successfully weathering a governor's review, has now largely been reduced to a **single hurdle** of being found suitable by the BPH, as Governor Brown has clearly expressed his intention to, by in large, not intervene in parole board decisions.

THE NOT SO GOOD NEWS: it often still seems to be a roll of the dice as to whether or not that date will be granted, and if not granted, the possible length of denials can be much harsher, because of Marsy's Law

To set the stage, it is important to note that while parole grant rates are not at the level we would like to see or believe the law mandates them to be, the numbers are improving. From a dismal low of only .03% in 1995 to about 16% the first quarter of 2011 the grant rates are rising. And, with Brown staying out of the mix and more and more of former Gov. Schwarzenegger's reversals being overturned by the courts, this is the time for lifers to be ready when that window of opportunity opens for them.

There are no sure fire answers to how to be found suitable, but there are some actions both lifers and their families can do to make the chances of receiving a date from the board more favorable.

The two most important points for any lifer and their family are these:

1. Don't give up hope. Parole is possible and in more and more cases, it is happening.
2. Be realistic about the time and work needed to successfully gain a date. You probably won't get a date on your first, second or maybe even third hearing, nor can you simply stay discipline free and just do your time. There is work involved, and it's up to the lifer to get it done.

We will not, in this summary, address all the things lifers must do within the institutional process to prepare themselves for parole, such as no write-ups, self-help classes, positive chronos and the like. What we will try to offer are suggestions lifers and family members can work on in conjunction with these institutional goals and in cooperation with each other.

Legal Standards in Parole Hearings

The only standard in the law to be granted parole is to show the prisoner is not a *current* danger to society. However, the path to that finding is left largely to the "discretion" of the parole board commissioners. By in large the commissioners look to a short list of items they feel show suitability or lack thereof:

1. The life crime. Although the board, by court decision, can no longer use the crime alone as a reason for denial, nearly all denial decisions mention the "heinous" or "cold" or "cruel" nature of the crime.
2. Lack of "remorse" or "insight" into how the prisoner came to commit the crime. This finding is often based on the psychological evaluation given to all lifers.
3. Lack of sufficient self-help or rehabilitative programming.
4. Insufficient or incomplete parole plans.

These items are used, often in varying combinations, as a reason to find prisoners are still an unreasonable danger to society and thus deny parole. The courts have held that a "modicum," or smallest, of provable deficiency in any of these areas is enough for the board to be allowed to find a prisoner unsuitable. So each area must be addressed and dealt with.

Every board attorney we spoke with felt the chances of attaining a date increased with good legal representation at the hearing. There are some very good state-appointed attorneys in the system, but it is the luck of the draw for any individual lifer on which attorney is appointed to represent them at a hearing. So, if you and your family can afford to hire an attorney, strongly consider it.

Whether or not you choose to hire an attorney, do every single thing you can find and think of to show the board your suitability.

The Life Crime Details

1. Many attorneys advise their clients not to discuss the life crime at the hearing, but to stipulate to the facts on the record. There is no requirement to discuss the crime with the board. Some attorneys also feel stipulating to the facts shows the ultimate taking of responsibility and may also take much of the heat out of the District Attorney's usual anti-parole rant. Be prepared to discuss all other aspects of parole at the hearing, but avail yourself of the right not to discuss the crime.
2. If you do make the decision to discuss the life crime at the hearing, practice doing so ahead of time, so it is not unfamiliar territory on hearing day, as with most things, practice always helps.
3. Be prepared to discuss any prior criminal history or record prior to the life crime. Juvenile incidents are fair game for the hearing board and little if anything is ever really expunged from the record.

Insight, Remorse, Responsibility

1. **Insight:** the board's latest buzz word, has two parts: **contributing factors** and **responsibility**. If substance abuse or anger issues figured in the life crime you must admit to the contributing factors but stress it was not drugs/alcohol/anger that caused the crime, but your decision to indulge in these behaviors. Whatever the contributing factors, the ultimate responsibility for the crime lies with the inmate and must be accepted.
2. **Expressions of remorse or amends must be genuine.** These need to be in your own words, not stock phrases and words memorized from self-help programs or books.
3. **Letters of remorse and amends** should be written to the victim(s) and/or families, whether they are ever received or not. Send all such communications to the victims' bureau at the CDCR. They will be forwarded if appropriate. Keep copies.
4. **Write out your statement for the board**, and don't be afraid to read it. You lose no points for reading rather than memorizing the statement and reading it will insure you cover all the issues you want to in the way that you want to.

Self-help

1. If you have not already started participating in any and all self-help programs available, start now. AA and NA programs are helpful not only for substance issues but can be used by all prisoners to show serious dedication to rehabilitation. Use the 12 steps to show how you deal with issues other than substance abuse. Document your progress through the steps; try to find a sponsor, even an inmate who has already been through the steps.
2. Go beyond GED; correspondence courses, if possible, Use self-study books on all subjects, books on how to write resumes, social skills, parenting, relationship building.
3. Do book reports on books you read, but not your standard high school book report. These should be meaningful reports showing how the steps or lessons in the books relate to your situation and how you will use and apply them in your life. Books on victims' experiences and recovery can be used to understand and exhibit empathy.
4. If causative factors were present in the life crime (addictions, anger) the board will consider whether those factors are still present and will want to see how you have learned to deal with them.
5. Repair fractured relationships. Part of making amends and insight is to reach out to family and friends who may have been hurt by your past behaviors and initiate repair of those relationships. Be sure to address how the crime impacted others in your family and the community at large.
6. Consider a private psychological evaluation.

Parole Plans

1. **Employment:** While a confirmed job is not a legal requirement to be found suitable and may in fact not be attainable for some lifers, show due diligence in seeking employment.
 - a. Prepare a resume.
 - b. Show research into likely jobs in your parole area.
 - c. Letters of intent from employers are very useful, even offers of employment in your family's business.
 - d. *The board is interested in seeing you have a plan for providing yourself with the funds needed for living.*
2. Have a relapse prevention plan.
 - a. Know where and when support groups meet in your parole area, who to contact for help with emergency finances, housing, and counseling.
 - b. A sponsor from AA/NA to carry over from prison into outside life is good.
3. Have short term and long term plans; to show the board you realize reintegration is a process, not just getting out of prison.
 - a. Short term plans can include obtaining identity cards, Social Security cards, and enrolling in school.
4. Don't marry to help your parole plans, but if that event is in your plans anyway a spouse can provide evidence of a stable relationship and support on the outside.
5. Be sure your parole plans are solid and realistic. The board can and does sometimes check on letters of support and offers of assistance.

Don't allow your plans to be discounted because they are vague or not verifiable.

The Extra Effort

1. Re-read your past transcripts, with an eye to how you are perceived by the board and others. Ask family members to review them also to help you with perspective.
2. Body language is important. Read up on this, observe others and take a close look at yourself.
3. Your attorney will be the best guide on how to handle and relate to victims and/or their relatives, if they appear at your hearing (known as VNOK hearing).
4. If you are denied, begin the process of appeal right away; also begin right away to plan for your next hearing.

TASKS FOR FAMILIES AND FRIENDS

Generally

You will be your prisoner's confidant, legal aide, research assistant, material supplier and financial backer. You must be supportive, persistent, and resourceful. The most important thing you can do is maintain contact with and support and love for your prisoner. Solid family backing and support as well as assistance in developing parole plans are the best help you can give.

1. Letters of support are vital and will be addressed in a separate section. It is crucial the letters be updated for each hearing and be original, signed documents.
2. Hiring an attorney and/or psychologist for a private evaluation should be considered, if at all possible.
3. You will be the prisoner's eyes and ears on the outside, helping with finding job offers, locations of self-help rehabilitative groups (AA/NA) and when they meet.
4. Help find and provide books on self-help, correspondence education courses, even books for book reports as addressed above.
5. Help with short and long term parole plans, education enrollment, finding and securing medical assistance and any benefits the prisoner may be entitled to on release, these can include VA benefits, SS payments and documentation.
6. Check with the California Controller's unclaimed funds website; a surprising number of inmates have monies owned them being held by the Controller's unclaimed funds division. While these funds can't be sent to someone in prison, they can be accessed once a prisoner is released and can often be several hundred dollars.
7. These funds are from unclaimed checks, wages, bank accounts, insurance settlements and the like the prisoner may have been owed but not collected prior to incarceration.
8. Read transcripts with an unbiased eye and communicate your feeling to your prisoner.
9. Prisoners would do well to exude sincerity and maturity, not cockiness and attitude.
10. Contact, contact, contact. Letters, phone calls, visits are the best way of demonstrating to the board and your prisoner that you will be there to support them.

What Families Offer In Support:

1. Financial support, specific if possible as to amount and time duration
2. Help in obtaining Driver's Licenses, Social Security cards, cars, living arrangements.
3. Help in securing a job and transportation.
4. If the prisoner is eligible to be included on your health insurance policy or if an older prisoner/spouse can receive Social Security spousal benefits from your account.
5. Participation with the paroled prisoner in support groups or counseling sessions.

Support Letters

Letters of support from friends and family are a vitally important part of a prisoner's parole packet. However, these need to be carefully crafted, meet certain requirements and be sent to specific locations. This is not the time to plead to let Jimmy or Janey come home and promise they will never be in trouble again. As one parole commissioner said, this is the same family the prisoner had when he/she got in trouble, so just saying they want the prisoner home doesn't mean much in terms of rehabilitation and non-recidivism.

Try to keep letters to one page and specific as to what support you can offer and for how long you are prepared to offer that support, bullet point for clarity. Your letter should address your relationship with the prisoner, how he/she has grown as a person, what impact he/she has had on your life.

- Letters should be sent approximately 6 months prior to the parole hearing.
- They must be updated for each parole hearing, must be original documents and signed. If not signed, they will not be considered valid.
- Send all letters, as well as confirmation of other support, such as job offers, to the lifer desk at the prison housing the lifer, with copies to the prisoner, to the attorney and to the prisoner's counselor at the prison.
- Form letters, petitions or letters from those who don't really know the prisoner are of no use.
- The board will often call the letter writers to be sure they did, indeed, write the letter and know something about the inmate.
- Bogus letters are worse than no letters.

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ADVICE FOR PRISONERS AND THEIR SUPPORTERS
REGARDING BOARD OF PAROLE HEARINGS
PSYCHOLOGICAL EVALUATIONS

Including Special Advice For
Ashker Class Members

Prisoner Hunger Strike Solidarity Coalition

October 2016

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We are an all-volunteer advocacy group. We are not attorneys and do not offer legal advice or represent clients. This material offers practical suggestions to consider as you work with your parole attorney. Your attorney is the best source of legal advice for your parole. We are not mental health professionals either, and relied on other sources for the mental health information in this paper.

To the best of our knowledge, the information in this document is current as of this date. However, laws and procedures (and mental health standards) change frequently. It is your responsibility, together with your attorney, to check relevant laws, regulations and guidelines when using this material.

We would appreciate hearing from you regarding your experience with the Board of Prison Terms and FAD psychologists in using this advice and material, whether negative or positive. Our address for correspondence related to this document is PHSS Parole Committee, P.O. Box 5586, Lancaster, CA 93539. We can also be reached by email at birdsong15@twc.com.

We are a committee of volunteers with limited time and resources, but will do our best to respond to correspondence. If you are able, a self-addressed stamped envelope will help us defray expenses.

Psychological Evaluations for the Board of Parole Hearings: Support for Parole Applicants and their Supporters

This paper is provided to help California prisoners applying for parole understand the psychological evaluations conducted for the Board of Parole Hearings, and to provide advice to them and their supporters on how to counter the psychological evaluation with letters and other materials submitted to the Board.

It also includes special advice concerning some issues that arise for prisoners who were held for long periods of time in SHU for gang affiliation.

What is the FAD?

The California Board of Parole Hearings (BPH) has established the Forensic Assessment Division (FAD), a staff of psychologists who conduct psychological evaluations of prisoners for Board hearings.

What does the FAD evaluator do?

Before a prisoner goes to the Board, a psychologist for the FAD conducts an interview with the prisoner and prepares a Comprehensive Risk Assessment, or CRA, for the Board. The psychologist reviews the prisoner's criminal record, including past crimes, as well as the prisoner's record in prison, looking for the following types of information:

- Evidence of remorse for the life crime or crimes
- Positive programming like school, rehab programs, job training and job performance in prison
- Positive paperwork, like laudatory chronos, clean time and parole recommendations from staff
- Negative activities, like disciplinary infractions, gang validation or time spent in SHU
- Substance abuse and recovery efforts
- What kind of support the individual has in the community, and
- Plans for post-release housing, job, and family life.

How does the Board use the CRA?

The Board relies heavily on the FAD's report in deciding suitability for parole. The prisoner can have an outside psychologist or psychiatrist write an alternative review, but generally the Board gives more weight to the FAD review. The key focus in the FAD assessment is risk of future crime and violence. The Board generally will not parole someone with medium to high risk, so the parole applicant and his supporters need to focus their efforts and arguments on why the individual is, in fact, a low risk of future substance abuse, crime and violence.

How does the FAD measure risk?

The FAD psychologist uses two formal risk assessment tools – the Historical Clinical Risk Management 20, Version 3 (called the “HCR-20V3” in the FAD's report) and the Hare Psychopathy Checklist (the “PCL-R”). The psychologist also makes a diagnosis as to whether the prisoner has a mental disorder, such as Antisocial Personality Disorder or a substance use disorder, under the standards of the Diagnostic and Statistical Manual of Mental Disorders (the “DSM-5). The DSM-5 is the manual that mental health professionals refer to when diagnosing mental disorders in the United States.

The HCR-20V3 and the PCL-R both revolve around the concept of Antisocial Personality Disorder. They measure other things and use different ways of measuring risk, but Antisocial Personality Disorder is a central building block in each of them. The Board's Chief Psychologist has admitted these tools aren't well suited to lifers and long-term prisoners. He stated publicly that a "Medium" risk score for a lifer is more like a "Low" risk score for other prisoners. It may be useful to point this out to the Board in submitted materials.¹

What are some concerns with these risk measurement tools and concepts?

Antisocial Personality Disorder

The diagnosis of Antisocial Personality Disorder, or "ASPD," is important because the FAD psychologist and the Board weigh it as a big risk factor for future criminality. It also plays into both the PCL-R and the HCR-20V3 scores, which magnifies its effect on the overall risk score. Besides the negative effect on parole consideration, diagnosis of ASPD carries a serious stigma for an individual in the community.

The DSM-5 definition of ASPD centers on behavior that shows "a pervasive pattern of disregard for and violation of the rights of others." The diagnosis requires three or more of the following behaviors or traits:

- (1) Failure to conform to or respect laws or social norms, as indicated by repeatedly performing acts that are grounds for arrest.
- (2) Deceitfulness, as indicated by repeated lying, use of aliases, or conning others for personal profit or pleasure (e.g., to obtain money, sex or power).
- (3) Impulsivity or failure to plan ahead, as indicated by decisions made on the spur of the moment without forethought or consideration of the consequences, sudden changes of jobs, residence or relationships.
- (4) Irritability and aggressiveness, as indicated by repeated physical fights or assaults. It doesn't include aggressive acts to defend oneself or others.
- (5) Reckless disregard for the safety of self or others. It may be seen in recurrent speeding, DUIs or accidents; risky sexual behavior or substance abuse, disregard or neglect of children, and so forth.
- (6) Consistent irresponsibility, as indicated by repeated failure to maintain good work behavior or honor financial obligations. It can be seen in long periods of unemployment, frequent quitting of jobs, absences from work, or defaulting on debts, child support and other support obligations.
- (7) Lack of remorse, as indicated by being indifferent to or rationalizing having hurt, mistreated or stolen from another. The person may offer a superficial rationalization for such behavior, somehow minimize the harm that was done, or blame the victims. Failure to make amends for the harm may be an indicator.

In addition to having three or more of the above traits, a person must be over the age of 18 to be diagnosed with ASPD, and the behavior must continue into adulthood. One important requirement for a diagnosis of ASPD is that there must be evidence of "conduct disorder" in the person starting before the age of 15 years. Conduct disorder is a separate DSM-5 diagnosis that involves a "repetitive and persistent pattern" of behavior that violates social norms and rules and/or the basic rights of others. This pattern may take the form of aggression to people or animals, destruction of property, deceitfulness or theft, or serious rule violations. In preparing a risk assessment, the FAD psychologist will generally look at a prisoner's early personal history for

¹ Any issues we suggest raising or arguing to the Board should be raised in written materials submitted to the Board or through the prisoner's attorney. Opportunities for the prisoner to raise issues in the hearing are limited, and panels don't encourage or welcome it.

symptoms of this disorder. If there is nothing in a prisoner's early history to support a diagnosis of conduct disorder, there should be no diagnosis of ASPD.

The fact that a person has broken the law or is incarcerated doesn't necessarily mean that person has ASPD. The DSM-5 warns that ASPD must be distinguished from ordinary criminal behavior for personal gain, if that criminal behavior is not accompanied by the other personality traits in the definition of ASPD. The DSM-5 supports this point by providing a special code (called a "V Code") for "Adult Antisocial Behavior," where an individual exhibits certain types of antisocial behavior without the other ASPD personality traits. This is not considered a mental disorder like ASPD, but is more often a reflection of the person's history or socioeconomic status. As an example of Adult Antisocial Behavior, the DSM-5 cites the "behavior of some professional thieves, racketeers or dealers in illegal substances." This doesn't mean the behavior is not relevant to the FAD or to the Board, but it's not a mental disorder that carries the lasting stigma of ASPD.

Although criminal and rule-breaking behavior is only one aspect of ASPD, many psychologists (particularly FAD psychologists) focus on it. This is a significant problem for prisoners, and has been criticized by psychologists who believe it leads to over-diagnosis in the prison setting. The stereotype that all or most prisoners have ASPD is not supported by the research. According to some sources, when all prisoners are studied to determine the prevalence of ASPD, only 15% to 30% actually meet the criteria for it.

When psychiatrists do focus on personality traits other than criminal behavior, another problem arises. These subjective traits are often affected by the biases, background and attitude of the psychologist. A diagnosis of ASPD is frequently connected with low socioeconomic status and urban settings, and the DSM-5 expresses concern that it may be misapplied where behavior that seems like antisocial behavior is just "part of a protective survival strategy." For this reason, the DSM-5 advises psychologists to consider the social and economic context in which behavior occurs, and provides tools to help psychologists address these cultural and situational factors, including a model outline and model interview questions. It also provides V Codes to include in the psychological assessment that flag the presence of these social and cultural influences. These may include trauma, abuse or neglect in childhood; disruptive family life and relationships; poverty, homelessness and related factors; military deployment; educational problems; and notably, "imprisonment or other incarceration." There's little evidence that FAD psychiatrists use these tools and V Codes, or consider social context at all, so it's important for the prisoner and his family to address these points if they are relevant. Written materials can address family and community environment, limited educational and career opportunities, cultural expectations and other factors that may have affected the prisoner's behavior, habits and beliefs.

One of the biggest problems with the ASPD diagnosis, particularly for long-term prisoners, is the idea that this personality type is fixed for life and not amenable to change. In diagnosing ASPD, the FAD psychologists tend to focus on an individual's early life to meet the definition and then overlook change that may occur in later years. This ignores the fact that a diagnosis of ASPD under the DSM-5 requires an "enduring pattern" of antisocial traits that are "persistent" and "stable over time." It's hard to understand how these requirements can be met if the individual has not exhibited those traits for a very long period of time. Any evaluation for ASPD should consider whether these factors are present at the time of the evaluation. The idea that ASPD is a lifelong disorder is being challenged by many studies and research in criminology and psychology. The truth is that people who once evidenced antisocial traits change with age, time and positive influences.

Age is a very important consideration, and the DSM-5 recognizes it as a factor in the diagnosis. It describes ASPD as having a “chronic course,” but states that it tends to become less evident or go into remission when individuals grow older, particularly after the age of forty. While this is especially true for criminal behavior, it applies to the full spectrum of antisocial behaviors as well as substance abuse. Age has long been recognized as one of the most important factors in rehabilitation and behavioral change. Although there is some recent debate in criminology about the impact of age, it is countered by a great deal of research in forensic psychology showing that age is consistently the most meaningful factor in judging criminal or violence potential. FAD psychologists should be applying these considerations before diagnosing a prisoner with ASPD. When they don’t, it’s up to the prisoner and his supporters to clearly show changes in behavior and attitude that occur with age and time.

There are many things that *do not* indicate ASPD. Conduct that occurs only in connection with bipolar or schizophrenic episodes is not ASPD. Conduct that occurs *only* in connection with substance use does not meet the ASPD definition. In addition, the traits listed in the definition indicate ASPD *only* when they are “inflexible, maladaptive and persistent and cause significant functional impairment or subjective distress.” Traits are not maladaptive unless they lead to distress, dissatisfaction and failure, and to the most significant defining feature of personality disorders – interpersonal difficulties. How a person relates to others is a key factor of the ASPD diagnosis. A person with ASPD is rarely able to enjoy sustained, meaningful and rewarding relationships with others. This is where a prisoner’s family and friends can provide particularly helpful information.

While authorities generally say ASPD is hard to treat, studies have concluded that a form of therapy called Cognitive Behavioral Therapy is the most effective with ASPD. If the prisoner has been through CDCR’s Step Down Program, “Thinking for Change” or other programs identified in §3040.1 of Title 15, it should be raised as a positive point, because these programs are based on the model of Cognitive Behavioral Therapy.

The PCL-R:

The PCL-R predictive tool looks at a set of 20 character traits to assess antisocial or psychopathic tendencies, which are viewed as risk factors for future offending and violence. About half of the checklist traits (Factor 1 traits) focus on psychological states that are supposed to indicate “psychopathic” tendencies. These include things like “superficial charm,” “grandiose sense of self-worth,” callousness or lack of empathy, “shallow affect” and pathological lying. The rest of the checklist traits (Factor 2 traits) focus more on behavior that is closely associated with Antisocial Personality Disorder under the DSM-5. These refer more to an antisocial lifestyle with frequent criminal behavior and early delinquency, with items like “parasitic lifestyle,” poor behavioral controls, promiscuous behavior, lack of realistic goals, impulsivity, irresponsibility and poor relationships.

Although the PCL-R is one of the most widely used predictive tools, there are many problems with it. Many recent research studies have raised serious issues with the Factor 1 traits especially. They are viewed as too subjective, leading to big differences in how different psychologists score them. The background and biases of the psychologist can easily affect the results. And the Factor 1 traits are not good predictors, either – recent studies show they are *no better than chance* at predicting violent criminal behavior. As for the Factor 2 traits, many authorities don’t see any real difference between them and factors for antisocial personality disorder under the DSM-5. Overall, the PCL-R performs much worse than other commonly used predictive tools.

The developers of the HCR-20V3 – the other tool used by the FAD – have stated there’s no need to use the PCL-R test in addition to the HCR-20V3, because they both measure the same thing and the PCL-R gets the same or less reliable results. Like many predictive tools, the PCL-R is subject to racial and cultural bias – these tools become less reliable the more the subject differs from the population that was used to develop the tool. Many of these tools were developed using white male populations. Finally, because the PCL-R relies on many of the same factors as Antisocial Personality Disorder, it carries the same problems for long-term and life prisoners – that is, a failure to recognize personality and behavioral change over time.

HCR-20V3:

Like the PCL-R, the HCR-20V3 measures 20 factors to determine the risk of violence in the future. The factors are divided into three areas: Historical (10 factors), Clinical (5 factors) and Risk Management (5 factors). In a CRA, references to “H” numbers, “C” numbers and “R” numbers refer to these three different areas. These different areas look at issues in the past, issues in the present, and potential issues in the future.

1. Historical: The HCR-20V3 is weighted heavily on the side of historical factors, which include things like past violence and behavioral problems, problems with relationships, employment, substance abuse, negative childhood experiences, violent attitudes and problems with compliance. Past violence and other behavioral problems are separated by age – under 12, between 12 and 17, and over 18 – but none of the factors account for changes that occur between a person’s twenties and his forties, fifties, sixties or beyond. This part of the test can’t reflect the kind of major changes in behavior, attitude and accomplishment that occur in many prisoners during their time in prison.

2. Clinical: This part of the HCR-20V3 is supposed to measure the prisoner’s present state of mind and dynamic factors that can change over time. However, it doesn’t measure changes in the historical behavior identified above, and can’t outweigh those historical factors. So it doesn’t really work well for lifers and long-term prisoners. One very important aspect of this section concerns “Problems with Insight.” Insight is very important to the Board, and the HCR-20V3 focuses on specific insights: insight into mental disorder, insight into violent tendencies and risk factors that may trigger violence; and insight into the need for treatment. Unfortunately, many prisoners are improperly diagnosed with ASPD, and the FAD may expect them to show insight into that and into the need for treatment for it. The insight into past violent acts and the risk factors that might trigger such acts is extremely important and should be a focus for the prisoner.

The Clinical section also looks at violent attitudes and thoughts, instability, and problems with compliance or responsiveness to treatment or correction. It looks for “current symptoms” of major mental illness; but unfortunately the FAD psychologists do not seem to assess whether the prisoner shows *current* signs of Antisocial Personality Disorder, the FAD’s most common diagnosis. It’s still rooted mostly in past behavior.

3. Risk Management: The Risk Management section of the HCR-20V3 looks into the future and tries to predict, based on Historical and Clinical factors, what the risk is of re-offending or getting involved in crimes or violence after release. The primary focus of this section is on the prisoner’s plans and whether those plans will work to manage the risk of re-offending. The specific areas addressed in this section are plans for (1) professional services, (2) living situation, (3) personal support, (4) potential problems with compliance, and (5) potential problems with stress and coping.

Substance Use Disorders

These are other mental disorders that often appear in the CRA prepared for Board hearings. In the DSM-5, they are diagnosed according to the specific substance used (such as “Alcohol Use Disorder” or Opioid Use Disorder”). Psychological studies show that substance use disorders frequently appear together with Antisocial Personality Disorder. This only states what a lot of people know – that drug and alcohol misuse is often strongly associated with criminal or antisocial behavior.

Each type of use disorder has a list of criteria that measure dependence and impairment, and the psychologist is supposed to rate these over a 12-month period to determine (1) if the person can be diagnosed with the disorder at all, and (2) if so, how “severe” the disorder is. For example, if a person does not meet at least two of the criteria for Alcohol Use Disorder, the diagnosis doesn’t apply. If it does apply, then the psychologist needs to rate the severity. If someone meets 2 to 3 criteria over the 12-month period, it’s rated a mild disorder; 4 to 5 criteria indicate a moderate disorder, and 6 or more indicate a severe disorder.

In addition, the DSM-5 provides “specifiers” that can indicate whether the use disorder is in remission. If someone has not met the criteria for the use disorder for 3 to 12 months, the psychologist can specify that it’s in “early remission,” and if the criteria are not met for over 12 months, the psychologist can specify that it’s in “sustained remission.” A person can be considered in remission even if he still has cravings for the substance.

The measures of severity and remission could provide very important information to the Board, but we have not seen any evidence that the FAD psychologists use either one of them in their risk assessments. Instead, they tend to treat the use disorders as diagnoses that never change over time. This is unfair to those who have overcome the problem, either through treatment programs or on their own. The prisoner should specifically ask the psychologist to address these categories.

Some FAD psychologists mention another specifier, “in a controlled environment.” This can be negative, implying that the prisoner might not do so well outside a controlled environment. Some FAD psychologists, however, have stated that this specifier doesn’t apply because drugs are readily available in the prison environment. This is a point the parole applicant should make in the interview with the psychologist and in materials submitted to the parole panel.

What can the parole applicant and his supporters do to counter a high risk score?

If the FAD’s risk assessment concludes there is antisocial personality or a high risk for future violent crime, then the prisoner and his supporters must debunk the notion that the individual has an antisocial personality or any of the other traits and behavior indicated by the FAD’s risk assessment.

The way to push back against an unfair risk assessment is through letters from family, friends, clergy, past teachers and other supporters in the community, memos or materials submitted by the applicant personally, and if possible, outside psychological assessments. In materials from supporters and the prisoner, it is usually better not to mention antisocial personality disorder, the FAD’s formal predictive tools, or any other technical psychological terms. Rather, supporters should simply talk about the traits in the individual prisoner that are clearly the opposite of those described in these psychological definitions and concepts.

For example, to show that a prisoner is sensitive, empathic, concerned about the plight of others, supporters should talk about what they know about and have seen the prisoner do, like help younger individuals in the family or community stay away from drugs, crime and prison. Supporters might tell about what they have seen the individual do to be a great father or mother. They should remember to stick with their own experience, and the behavior and actions they have seen or know about showing the prisoner does not have the characteristics of a person with ASPD, and is not a high risk for re-offending. Here are some things to focus on in materials submitted to the Board, including the prisoner's documents and letters from outside supporters:

Personality Traits: Materials and letters should provide evidence and examples of:

- Actions and attitudes that show concern for others over one's own personal interests
- Remorse for past crimes and harmful actions
- Healthy, stable relationships without exploitation, coercion or intimidation
- Honesty, sincerity, responsibility
- Caring and empathy
- The ability to deal with anger and control impulsive behavior
- The ability to think ahead and consider the consequences of actions
- The ability to comply with rules and expectations
- Responsiveness to treatment or correction.

Materials could also describe behavior before the age of 15 demonstrating respect for rules and the rights of others, to counter the idea of "conduct disorder." Look at the criteria for ASPD (page 2 above) carefully and think about how to demonstrate that these characteristics don't fit the prisoner. During the interview with the FAD psychologist, the prisoner should try to be sincere and honest in answering questions, not try to charm or play the psych, and show that he can keep his cool even when the psych is saying or asking things that bother or embarrass him. He should mention any kind of cognitive behavioral therapy he has had, such as the Step Down program, "Thinking for Change" program or others. He should talk about how his thinking has changed.

Insight: Insight into violent tendencies and the risk factors that trigger them is one of the most important areas to focus on in preparing for a parole hearing. The prisoner should do everything possible to show understanding of past criminal or violent actions, the causes of that behavior, how to avoid those causes, and why they are no longer an issue. Any therapeutic programming, such as anger management or cognitive therapy programs, should be pointed out. If substance abuse was a problem in the past, it is especially important to show the Board what recovery programs the prisoner has done and how he or she plans to support sobriety in the community. He should ask the psychologist to provide a severity rating and address the "in remission" specifier, pointing out the absence of drug-related write-ups even though drugs are readily available in prison. The prisoner should think about possible triggers for drug use and how he has and will address them. The Board generally will want the prisoner to include specifically how he will remain sober once released from prison, such as attending Alcoholics Anonymous or NA to address this risk.

The FAD psychologist will also look for insight into a "mental disorder" and the need for treatment. In most cases, this will mean ASPD and possibly a substance use disorder. Even if the prisoner doesn't really meet the criteria for ASPD now, it may be useful to acknowledge problems in the past, and then repeatedly emphasize the changes in behavior and attitude over time, and the difference in who the prisoner is now and who he was when he came into prison.

Behavior: Since all of the FAD's tools and approaches over-emphasize past history, it's up to the prisoner and his supporters to fill in the blanks for the Board. Without trying to comment on criticisms or debates about these tools, they should make sure the materials submitted to the Board emphasize the things that have changed since the prisoner came to prison, how he accomplished that change, and how long it's been since the negative acts that led to a prison term. He should list accomplishments and activities that demonstrate his stability and his compliance with rules and expectations. It is also important to address the impact of age, and the steps the prisoner has taken to reinforce the natural tendency for substance abuse, crime and violence to subside with age. It is also important for supporters to show how the individual has changed over time to become much more "pro-social," responsible, loving, empathic, motivated to succeed, etc., and to explain why they are convinced the individual is not a risk for future substance abuse, crime or violence.

Plans. The parole applicant should do as much thinking and planning for release as he can *before* he meets with the psychologist, and make sure the psychologist understands and knows the plans he has in place. These are the same kinds of things he should have ready to present to the parole panel in his hearing. Be sure to address the following:

- 1) Professional services: substance abuse counseling or prevention services, medical or pharmaceutical services for conditions like ADHD or bipolar disorder, plans for ongoing medical care for chronic health conditions, etc.
- 2) The living situation: where the prisoner will live, how long he can live there, how he will support himself, a realistic budget, etc.
- 3) Personal support: The prisoner's support network; letters from family and others with details about how they can support him.
- 4) Potential problems with compliance: how will the prisoner ensure compliance with parole requirements, treatment, job expectations, medications and so forth?
- 5) Potential problems with stress and coping: how will the prisoner cope with stress and difficult situations? Does he have a spiritual practice or other means of stress-reduction, anger management techniques, support groups, family and friends?

How to address some special issues for *Ashker* class members

For prisoners who spent a long time in SHU under the CDCR's gang lock-up and debriefing policies, there are three special issues that may come up in psychological interviews and Board hearings:

1. Time in SHU
2. Refusal to Debrief
3. Participation in Hunger Strikes

1. Time in SHU. An individual in SHU, besides losing "good time," is largely unable to participate in pro-social programs. In addition, SHU time traditionally meant that a prisoner engaged in bad behavior to get there. All these are negative factors to the Parole Board and to its psychologists.

To counter this, the prisoner should make clear he was not in SHU for disciplinary reasons, and that it was legally wrong for CDCR to keep prisoners in SHU for so long. By signing the settlement agreement in *Ashker*

v. Brown, the CDCR basically conceded that it was improper to keep prisoners in SHU solely based on alleged gang-affiliation or membership. It is also implicit in the settlement that Due Process was violated, and the six-year reviews were not fair. If an individual was in SHU for a long time and not able to take part in constructive programs because of CDCR's discredited policies, it is unfair for the Board to hold it against the prisoner.

The way to approach this is to show, in an alternative psych report and in letters from family friends and professionals who advocate for the individual's parole, that the prisoner did the very best he could at improving himself while consigned to the extremely harsh conditions of isolation and idleness. For example, he kept up meaningful correspondence with family and friends; read everything he could and improved his mind; learned skills by reading books from the library; took correspondence courses; did pro se legal work and had to learn law in the process; had a job as tier tender and so forth. He remained free of 115s in spite of the pressure of the environment and in spite of the fact he received no benefit for it. In other words, given the extreme restriction and control imposed in SHU, it is admirable how many pro-social things the prisoner did and how hard he worked to prepare himself for a law-abiding and constructive life after release.

2. Refusal to Debrief. This is a subject that is often raised as a negative in both parole hearings and psychological evaluations. It may be addressed very directly in the FAD interview, but is usually mentioned more subtly in the CRA, for example by reference to "failure to acknowledge gang status," or failure to "rid yourself of gang ties." This failure is seen as a risk for future violent behavior, and an indication of "a criminal mindset." In other words, a prisoner who doesn't snitch is still a criminal and gang member.

Psych reports and letters have to take on this aspect of the FAD's risk assessment. One way to address it is to point out that debriefing doesn't have any rational relation to suitability for parole, under the Board's own criteria, or to future violence risk under the FAD's criteria. For example, debriefing is not necessarily connected with any record of positive change prior to debriefing – under CDCR policies, inmates with terrible behavioral records could get out of SHU by debriefing. Debriefing is not necessarily tied to improvements in behavior after debriefing – records of behavior often remain problematic after debriefing, and SNY yards became management problems due to continuing bad behavior. Debriefing does not ensure an inmate will not engage in gang activity, since the greatest growth in new gangs is on the SNY yards. When it comes to insight, an important issue for the Board, debriefing may be inversely related to it. In some cases, debriefing is a way for a prisoner to avoid accepting responsibility and understanding past wrongs; it encourages rationalization of personal actions, and blaming others for one's own behavior. It may demonstrate a willingness to put others, including family, in danger in order to get better privileges and conditions. Because of the Department's flawed debriefing process, inmates are often incented to lie in order to successfully debrief.

On the other hand, unwillingness to debrief does not correlate with negative behavior or attitude. Many long-term SHU prisoners remained discipline-free in spite of the fact there was no incentive or reward for it, and no hope of getting out of SHU based on it. Prisoners released from SHU under the Step Down Program or *Ashker* settlement have generally had a positive impact on mainline yards, with fewer disturbances and incidents; most have committed to the Agreement to End Hostilities promoted by hunger strike leaders. These are not antisocial traits, but rather show commitment to personal change and mature attitudes. These qualities should be encouraged and valued, and indicate likelihood of success in the community.

3. Participation in Hunger Strikes. Since the hunger strikes and the settlement of *Ashker v. Brown*, many of the hunger strikers are appearing at parole hearings and finding their hunger strike participation used as a negative

factor. For example, it may be viewed as “demonstrating an ongoing willingness to disregard institution rules and engage in antisocial behavior as a means of advancing his causes or wishes...” or as evidence of gang activity and loyalty. Participation is often tied to a rule violation report, which is considered additional evidence of antisocial activity.

In such cases, it is critical that the prisoner’s participation be re-told as a peaceful and productive act that was ultimately sanctioned (the CDCR basically agreed to the prisoners’ reasonable demands by settling the *Ashker* litigation). Rather than being a rule-breaking, self-serving effort, it was a pro-social action that brought peace to the prisons and helped a lot of other prisoners. A psychologist writing an alternative report, or family and friends writing letters to support parole can respectfully disagree with the psychologist’s characterization of the hunger strike as a sign of antisocial personality and evidence of risk. Here are some points that can be made:

- 1) It was a last resort after exhausting other steps: The participants in the strikes had tried and exhausted all other means of expressing grievances, including the official grievance procedure and even appeals to elected representatives to do something about the harsh conditions of confinement in SHU.
- 2) It was peaceful: The participants agreed beforehand that the hunger strikes would remain peaceful and as little disruptive to prison routine as possible. In fact, the demands of the strikers were very reasonable – the CDCR agreed to many of them when the strikes ended and others when it settled the *Ashker v. Brown* class action lawsuit, and as a result the conditions are much improved.
- 3) It was pro-social behavior: The prisoners regretted that they had to resort to a hunger strike to have their needs addressed, but their participation absolutely did not reflect “an ongoing willingness to disregard institution rules and engage in antisocial behavior...” Rather, the hunger strike required quite a bit of planning and cooperation among participants.
- 4) It resulted in positive change: The hunger strikes and the *Ashker v. Brown* litigation actually improved conditions for very many prisoners in the CDCR. Thus, rather than interfering with institutional order, the net effect is less violence in the prisons and more order.

The same kind of positive points can be made about prisoners who participated in writing and signing an “Agreement to End Hostilities” on August 12, 2012. This is an agreement between prisoners of all races to halt violence within the CDCR. Many others have demonstrated their support of and compliance with this agreement, which has helped maintain a certain level of peace in the prisons. Thus, contrary to the way some FAD psychologists view it, participation in the hunger strikes and compliance with the Agreement to End Hostilities should be counted as “pro-social” and not “antisocial” acts.

If there was a CDCR 115 issued for participation, the prisoner should determine whether his circumstances are similar to those in *In re Gomez*, No. A142470, where a state appeals court ruled the prisoner’s participation in the hunger strike did not constitute a rule violation.

Summary

In summary, friends and family of a prisoner going to the Board need to offer reality-based support for the notion that the prisoner has done as much as he could, under the circumstances of his imprisonment, to reform himself. Based on facts that the Board would not otherwise know or be in a position to consider, supporters need to show that, contrary to the culturally insensitive and factually mistaken assumptions of the FAD’s risk assessment, the prisoner is not at all likely to return to illicit substances, to crime, and to violence.



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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.

Overview of California's Parole Consideration Process

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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.



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How to Prepare for Parole Consideration

SCHEDULING

A Lifer's Minimum Eligible Parole Date (MEPD) is the earliest date you may become eligible for release on parole. In general, you become eligible for parole once you have served the minimum term ordered by the court; however, that minimum term is reduced by any goodtime/worktime credits you earn. The amount of credit (or time off the minimum term) you earn is based on the type of crime and the date it was committed. Some Lifers can reduce their minimum terms by up to 1/3, while most others can only reduce their minimum terms by 15% or so.

The first parole consideration hearing will be scheduled to take place roughly thirteen months prior to the MEPD; however, the MEPD may change if you lose credits because of a rule violation report. If parole is denied at that first hearing, a recent law now lets the Board of Parole Hearings put off the next hearing for up to fifteen years at a time! The minimum period between hearings is now three years, but the Board can choose between three, five, seven, ten or fifteen years for scheduling the follow-up hearing. This memo is intended to help you and your supporters understand what is necessary to prepare for the first hearing and, if parole is denied, to minimize the delay before the next hearing.

PAROLE CONSIDERATION

The Board will always consider your disciplinary record in prison, the programs you have participated in and your plans for where you will live and work if released on parole. It is important to address all those issues in order to have a chance for parole. However, this memo focuses on some areas that have not received enough attention from Lifers, their supporters, or even the programs they participate in while in prison. You have to gain a clear understanding of the circumstances leading to the crime, about your background (including family relationships and prior criminal or juvenile record), and how you have resolved the circumstances that led up to the crime. These circumstances may include addiction, physical abuse, emotional difficulties, and other factors that contributed to the lifestyle in which the crime took place. (A person's ability to understand and discuss these factors determines whether or not the Board finds that he or she lacks "insight".) If you do not understand these factors, you will be denied parole—no matter how much time you have served and no matter how spotless your disciplinary record is.

The Board's theory is that, unless you truly understand how you ended up in the place where such a crime could be committed, then you cannot show that it is unlikely to ever happen again. Set forth below are some specific areas you need to explore when approaching your parole hearing. As you will see, family members and friends can help you explore these areas. You will also find that these topics touch on areas that are very sensitive and can reach down to the very core of what shaped your decisions about how to live your life. Although some of this material may seem "touchy-feely," you will find that exploring these issues can have a very powerful impact on your relationships and on your ability to show the Board just how much you have learned and changed while incarcerated. There is also a very good chance that this material will uncover issues that you only feel comfortable discussing within the confidential relationship you have with the attorney who is going to represent

Preparing for Parole Hearings

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you in your hearing. This is what we are here for, so take full advantage. If an attorney is unwilling to explore these issues with you, you should re-consider whether that attorney is really helping you get ready for your parole hearing.

PSYCHOLOGICAL EVALUATIONS

Roughly six months prior to the parole consideration hearing, the Board will send one of its psychologists to interview you, review your central file and write a report that tries to predict your risk of future violence. This report is perhaps the most important document in determining whether or not you will be granted parole. However, too many Lifers make the mistake of not hiring an attorney or working on the areas discussed in this memo until *after* the psychological report is already written. In many cases, it is too late by then to have a significant impact on the parole hearing. This is because the psychologist is really previewing the case for the Board. You should review your Probation Report, prior hearing transcripts and prior psychological evaluations before meeting the psychologist.

If the psychologist finds that you do not understand the factors that contributed to your crime or that you have not quite resolved some of those factors, the psychological report will conclude that you lack insight or need more time and therapy to work on those areas. This conclusion will almost guarantee a parole denial of at least three or five years. The denial will be longer if you also have recent rule violations. For these reasons, do not delay in contacting an attorney to start getting ready.

TOPICS TO EXPLORE

These topics are not intended to be tackled all in one sitting. Take the time to consider each topic and the various factors that have shaped your life.

1. What was your relationship like with your family as you grew up? Consider how well you got along with your siblings, whether your parents were divorced, abusive, addicts, incarcerated, deceased, etc., and what kinds of decisions you made about how you wanted to be (or not be) when you got older.
2. If you used drugs or alcohol at a young age (age 16 or younger), can you recall the circumstances surrounding your first time? Did your drug or alcohol use begin (or increase) because you were experiencing some other difficulty that you did not know how to deal with?
3. If you had a drug or alcohol problem at the time of the crime, write out a short "Relapse Prevention Plan" that identifies the following: (a) two or three potential triggers to relapse (feelings or thoughts, such as rejection, depression or low self-esteem) that may have been associated with using drugs or alcohol in the past; and (b) whom you would call (sponsor, mentor, spouse, parent, sibling) or where you would go (AA/NA or other 12-Step Meeting, church, etc) to make sure you do not use drugs or alcohol.
4. If you associated with gangs or participated in any gang-like behavior, when did you start to gravitate in this direction? Were there feelings of rejection or isolation that you wanted to avoid by associating with gangs?

THERE ARE MANY EXCEPTIONS AND VARIATIONS IN THE PAROLE CONSIDERATION PROCESS. YOU ARE ENCOURAGED TO CONSULT AN EXPERIENCED PAROLE ATTORNEY FOR SPECIFIC ADVICE IN YOUR CASE.

5. If you sold drugs or engaged in other crimes, consider when you started doing this and why. Was there something you wanted to prove? Did you become addicted to that lifestyle?
6. At the time of the crime, what was going through your mind to have you make the decisions that lead to committing the crime? Why did you not stop the crime from happening?
7. What types of feelings/emotions can you identify from your past that you tried to deal with by engaging in misconduct? How have you learned to deal with those feelings/emotions in a pro-social way since you have been in prison, and what programs or activities have contributed to your new approach?
8. If you have had a negative disciplinary record in prison, explain what was going on in your life to have you engage in this misconduct, and explain what is different now.
9. What kind of relationships (with children, parents, siblings, significant others) have you either maintained or established since you have been in prison? And what kind of support system have you put in place to help you succeed once you are released?

SUPPORT LETTERS FOR YOUR HEARING

Prior to the parole hearing, and preferably before the psychological evaluation discussed above, the people who are in favor of your release should write a short letter (usually only one page) to the Board that explains the writer's relationship to you and why you should be paroled. These letters should avoid discussing legal statutes or cases.

Parole Plan Letters

These letters are the most important ones for you to have. At least one letter should provide specific information on where you would live, identifying the address of the home, the number of rooms, who else would live there and what your living arrangements would be. At least one letter should also describe *actual* (not potential) employment, including duties and pay, and any other information about how you would support yourself. The home and job should both be in the same county, but this does not have to be in the county of last legal residence or the county of conviction. The Board can approve parole in any California county. The Board can also approve parole out of state, but it is a little harder to accomplish. Letters offering placement in a Transitional Program are the absolute best, especially for people with histories of drug or alcohol abuse.

If you had a drug or alcohol problem at the time of the offense, the letter should identify places nearby where treatment can be obtained. The websites for Alcoholics Anonymous (AA) and Narcotics Anonymous (NA) often provide listings of all the available 12-step meetings in whichever geographic location your supporters search for. This information is critical for showing where you would seek this type of support once out on parole. A closely related issue to address in the letter is a relapse prevention plan, which should explain how the writer would help you if ever the urge to relapse arises.

THERE ARE MANY EXCEPTIONS AND VARIATIONS IN THE PAROLE CONSIDERATION PROCESS. YOU ARE ENCOURAGED TO CONSULT AN EXPERIENCED PAROLE ATTORNEY FOR SPECIFIC ADVICE IN YOUR CASE.

General Support Letters

The best support letters explain the writer's personal knowledge of how you have changed during incarceration, and why the writer believes you can safely be released. The writer can explain the kind of support he or she will provide to you, but that support should be as specific as possible. For example, it could identify a car that you could use, or an amount of money that could be provided to help you get on your feet. A generic letter that simply says "we will help him in any way we can" is not useful because it does not paint a clear enough picture for the Board. Writers must always remember to sign and date their letters.

The worst support letters try to minimize the seriousness of the crime or your role in it. They should never do this (and neither should you). Never refer to the crime as an "accident" or a "mistake." Also, even though signing a petition may be a good way to show support from a lot of people at once, petitions are of very little value to the Board because they suggest that the people signing do not actually know you or your case personally. It is also a bad idea to have several people sign their individual names to "form" letters that all say the same thing, just with different signatures. It is better to have three individualized letters than to have 15 form letters.

When and Where to Send Letters


You should start gathering support letters at least eight months before your hearing is due, even if the hearing has not yet been scheduled. In the past, it has been acceptable to obtain letters two or three months before the hearing; however, since a psychologist will be evaluating you and your parole plans many months before the Board actually does, these letters need to be in place even before the psychological evaluation.

The letters should be sent to you, to your attorney, and to the Board of Parole Hearings at P.O. Box 4036, Sacramento, CA 95814. However, under the best circumstances, when the process for gathering letters starts very early, rough drafts of the letters should be provided to the attorney so that any necessary changes should be made before they are sent to the Board. You should have copies of these letters in hand (along with their certificates, chronos, etc.) when you go to see the psychologist.

CONCLUSION

The directions provided here are generic. They are intended to give you a general idea of the things to expect and the things to work on as your hearing approaches. Within this framework, we will work with you on an individual basis to help you identify specific areas you need to address. However, you should review the contents of this letter and consider how each factor applies to you before our next meeting, at which more specific information will be discussed.

Sincerely,


Keith Wattley,
Managing Attorney

THERE ARE MANY EXCEPTIONS AND VARIATIONS IN THE PAROLE CONSIDERATION PROCESS. YOU ARE ENCOURAGED TO CONSULT AN EXPERIENCED PAROLE ATTORNEY FOR SPECIFIC ADVICE IN YOUR CASE.

Suggested Book Report List

Anger

- *Freeing the Angry Mind*, Peter Bankart
- *The Anger Trap*, Les Carter
- *Transforming Anger*, Doc Lew Childre
- *Anger Among Angels*, William Defoore
- *Anger*, Thich Nhat Hanh
- *Healing Rage: Women Making Inner Peace Possible*, Ruth King
- *Letting Go of Anger*, Ronald & Pat Potter-Efron
- *Surprising Purpose of Anger*, Marshall Rosenberg
- *What's Making You Angry*, Marshall Rosenberg

Family/Parenting issues

- *Houses of Healing*, Robin Casarjian
- *An Adult Child's Guide to What's Normal*, Friel & Friel
- *Toxic Parents*, Susan Forward
- *Lost Fathers*, Laraine Herring
- *Parenting from Your Heart*, Marshall Rosenberg
- *Raising Children Compassionately*, Marshall Rosenberg
- *Respectful Parents, Respectful Kids*, Marshall Rosenberg

Forgiveness

- *I Thought We'd Never Speak Again*, Laura Davis
- *Forgiveness Is a Choice*, Robert Enright
- *Total Forgiveness*, R.T. Kendall
- *From Anger to Forgiveness*, Earnie Larsen
- *The Gift of Forgiveness*, Charles Stanley
- *Radical Forgiveness*, Colin Tipping
- *The Supernatural Power of Forgiveness*, Vallotton & Vallotton

Healthy self, healthy relationships

- *Why Does He Do That?*, Lundy Bancroft
- *Codependent No More*, Melody Beattie
- *The New Codependency*, Melody Beattie
- *Personhood: The Art of Being Fully Human*, Leo Buscaglia
- *Out of the Shadows: Understanding Sexual Addiction*, Pat Carnes
- *The Verbally Abusive Relationship*, Patricia Evans
- *Women Who Love Too Much*, Robin Norwood
- *Overcoming Passive-Aggression*, Oberlin & Murphy
- *Addiction to Love*, Susan Peabody
- *Courage to Be Yourself*, Sue Patton Thoele

Mindfulness

- *Peace Is Every Step*, Thich Nhat Hanh
- *The Miracle of Mindfulness*, Thich Nhat Hanh
- *The Heart of the Buddha's Teaching*, Thich Nhat Hanh
- *You Are Here*, Thich Nhat Hanh
- *Reconciliation*, Thich Nhat Hanh
- *Be Free Where You Are*, Thich Nhat Hanh
- *Being Peace*, Thich Nhat Hanh
- *Taming the Tiger Within*, Thich Nhat Hanh
- *Autobiography of a Yogi*, Paramahansa Yogananda
- *Spiritual Counsel*, Paramahansa Yogananda
- *Talks and Essays*, Paramahansa Yogananda
- *Inner Peace*, Paramahansa Yogananda
- *Living Fearlessly*, Paramahansa Yogananda
- *Where There Is Light*, Paramahansa Yogananda

Nonviolent communication

- *Nonviolent Communication*, Marshall Rosenberg
- *Being Genuine*, Marshall Rosenberg
- *Being Me, Loving You*, Marshall Rosenberg
- *Connecting Across Differences*, Marshall Rosenberg
- *Getting Past the Pain Between Us*, Marshall Rosenberg
- *Graduating from Guilt*, Marshall Rosenberg
- *Model for Nonviolent Communication*, Marshall Rosenberg
- *Peaceful Living*, Marshall Rosenberg
- *Speak Peace in a World of Conflict*, Marshall Rosenberg
- *Urban Empathy*, Marshall Rosenberg
- *We Can Work It Out*, Marshall Rosenberg

Sexual/Gendered violence

- *Courage to Heal: Women Survivors of Sexual Abuse*, Ellen Bass
- *Male Brain: A Breakthrough Understanding of How Men & Boys Think*, Louann Brizendine
- *Men Who Rape*, Nicholas Groth
- *Healing Violent Men: A Model for Christian Communities*, David Livingston
- *Understanding Sexual Violence*, Diana Scully

Substance abuse

- *Staying Sober*, Terence Gorski et al
- *Understanding the 12 Steps*, Terence Gorski et al



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Managing Attorney

Parole Hearing Day Breakdown

Keep in mind what the main purpose of this hearing is. It is for the Board to determine whether you have identified the factors that contributed to your crime and whether you have taken appropriate steps while incarcerated to make sure those factors will not contribute to another crime in the future. When the time comes, you will also need to explain how you have gained valuable tools through self-help and therapy programs (and books or other materials) in prison to make sure these issues do not lead to future violence. To be clear, though, **if the commissioners cannot write down a couple of words or phrases they hear from you (but not the generic ones) explaining what experiences, thoughts, feelings, or fears from your background led to the crime, they will not grant you parole.**

Here is a rundown of how the hearing process generally goes:

- Most hearing days have two or three hearings scheduled, set to take place at 8:30, 10:30 and 1:30. Shorter hearing days may have hearings scheduled for 1:00 and 3:00. However, the hearings rarely start on time. For a hearing scheduled for 8:30 a.m., they will probably bring you to the BPH area of the prison around 7:30 and 8:00 a.m. Counsel can meet with you around 8 or 8:15 to go over any last-minute issues before the hearing starts. (At some prisons, this meeting is not confidential so don't wait until this last meeting to discuss anything significant.) The hearing would then probably start around 8:40 or 8:45 and last approximately three hours (but it is impossible to predict the length – they can range from two hours to six). Hearings scheduled later in the day could therefore be delayed by a few minutes or a few hours, depending on what happens in the earlier hearings. Clients should be sure to eat breakfast and request a sack lunch, if possible.
- There will often be a representative from the District Attorney's Office present for the hearing, and it is possible that a victim, next-of-kin or a representative might be present – either in person or participating through videoconference. All of these people, along with the Commissioner and Deputy Commissioner, will already be seated when you and your attorney enter the room.
- Once we are seated, the Commissioner will start by explaining that the hearing is being tape-recorded and that everyone will need to state their names (spelling their last names) and you will need to add your CDC number so that they can all be made a part of the record. After that, the Commissioner will give you a quick overview of how the hearing will go, identifying which areas of your case will be covered by the Commissioner and which areas will be covered by the Deputy Commissioner. He or she will also explain that the DA's representative will be allowed to ask clarifying questions of the panel (they

are not supposed to directly question you, and your attorney should make sure they don't), and that your attorney will be able to ask you questions.

- Early in the hearing, the Commissioner will ask you questions to find out whether you have any disabilities (walking, seeing, hearing, talking, sitting, etc.) that will need any special attention during the hearing. You have the right to request assistance and the Board has to provide it. In order to determine your ability to understand and participate in the hearing, the Commissioner will ask you questions about your education on the streets, including how far you went, whether you were in special education classes, and whether you have participated in the mental health program in prison (either CCCMS or EOP). Just tell the truth about any previous challenges with school and about any help you think you need. (Your correctional counselor usually documents any requests for assistance on a BPH Form 1073.)
- The Commissioner will confirm that you met with your correctional counselor, who notified you of your rights in the hearing and gave you an opportunity to review your central file (Olson Review). The Commissioner will also confirm that you had a chance to meet with your attorney, who advised you of the hearing procedures and your rights.
- The Commissioner will confirm with your attorney that she or he has reviewed all the information contained in the 65-Day Board Packet and the 10-Day Board Packet, if this applies. These are the documents from your file that were shared with the attorneys prior to the hearing, which you should have already seen.
- The Board will sometimes ask your attorney whether you will be speaking to them during the hearing, about the crime and all other issues. Counsel will probably say that you are (unless there's a really good reason not to), after which they will ask you to raise your right hand and be sworn in. Nowadays, they often just swear you in without asking whether you will be talking to them. If this happens and you would prefer not to discuss the crime, your attorney will need to step in and assert your rights not to discuss the crime under Penal Code Section 5011 and Section 2236 of Title 15 of the Code of Regulations.
- The Board will adopt the statement of facts in your case from the Probation Officer's Report or from the Court of Appeal Opinion affirming your conviction. They will also probably look at the Risk Assessment (written by their psychologist) or other statements you have made to determine whether you have stated the facts differently prior to the hearing. Sometimes they read these facts and statements into the record. Other times they just jump right in and start asking you questions after saying they are incorporating those documents "by reference."
- Their first questions are usually about your family, your upbringing, school, violence, gangs, substance or alcohol abuse and divorce or separation between your parents. They want to get a sense of how you fit in with the family and how you got along with your parents and siblings prior to the crime. Some of this information will probably come from the first few pages of the Comprehensive Risk Assessment, which contains some

background information about where you were born and about your family. They are usually trying to establish that you had an “unstable social history,” but this is not really a problem as long as you are prepared to later discuss how you have maintained relationships with your family members over the years, especially if they visit, write or talk to you often.

- They will also ask you about prior arrests or convictions, including any juvenile incidents. They may even ask you if you had ever committed crimes that you were never arrested for. It generally does not hurt to admit these things at this point, as long as they were not recent crimes that could potentially carry a lengthy sentence if convicted.
- Some commissioners will then move right into reviewing your letters of support and documenting who is writing and what kind of support (residence, job, sobriety sponsorship, etc.) they are offering you, as opposed to *general* letters of support for your release. Most commissioners, however, will move into asking you to describe the circumstances surrounding the crime. Sometimes they just ask you to tell them what happened. Other times, they read some parts of it into the record and ask you specific questions about it. Whichever way they bring it up, be prepared to tell the story of what happened in your crime. It is also really helpful when you are telling what happened if you admit (without them asking) that you have lied in the past about certain aspects of the crime. Volunteering this kind of information before they ask you about past lies gives you better credibility with the Board and is a clear indication that you recognized the need to change your past behaviors and attitude.
- After hearing what happened in the crime, the commissioners will try to nail down the specific causative factors for the crime. They will either ask you to identify those factors, or they will ask you to explain WHY the crime happened. Some commissioners will just ask for your “insight.” **Again, as I explained above, if they cannot write down a couple of short words or words they hear from you explaining what experiences, thoughts, feelings, or fears from your background led you to commit the crime, they will not grant you parole.**
- After they have asked all the questions they have about your background and the crime, the Deputy Commissioner will talk to you about all the positive and negative factors from your time in prison (“postconviction factors”). He or she will discuss your work, educational and vocational assignments, your disciplinary record (asking you to discuss all your incidents, including 128A counseling chronos) and your self-help and therapy programs. They will review the chronos and certificates they find in your Central File, but be sure to have your own copies because those documents are often missing from the file. In the best case, your correctional counselor will have already documented all of your achievements in his or her report, but counselors often miss at least a few things, and those reports will not include anything you have done within the month or so immediately before the hearing. Most prisons have stopped having correctional counselors do these reports at all, though the documents you give your counselor in advance of the hearing are supposed to be placed in the file.

- When you are discussing your programming, try to avoid simply giving yes or no answers to their questions about the different programs, even if that is what they seem to be looking for. Remember that this is YOUR HEARING, and you need to take the time to explain to them what you have gained through this programming, especially if there are a couple of programs or activities you have found to be especially helpful in your growth.
- The next topic is usually the psychological evaluation, which will either be a Comprehensive Risk Assessment (CRA) or a Subsequent Risk Assessment (SRA). Both reports are written by psychologists employed by the Board of Parole Hearings. The CRA is longer, covers many aspects of your life, discusses how well you understand the causes for the crime and accept responsibility. The CRA also uses at least one risk assessment tool (the HCR-20, version 3) to produce a rating of either low, moderate or high risk of future violence. (Prisoners with convictions for sex offenses committed as an adult will probably receive the Static-99, which is a test to measure the risk of future sexual violence.) The SRA focuses on insight and acceptance of responsibility, as well as everything that has changed since the last CRA. The SRA does not reach its own risk assessment of low, moderate or high, but it is supposed to explain what, if anything, makes you a higher or lower risk than was shown in the most recent CRA.
- They will then move on and ask you about your parole plans. Specifically, they want to know where you will live, where you will work, and how you will continue with any beneficial self-help or therapy programs from the inside once you are released (especially AA or NA). If you do not have a firm job offer, be prepared to discuss some ways in which you might use some of the vocational skills you have obtained while in prison. While the Board generally prefers to see that you are paroling to a transitional program, this is not a requirement, especially if you have not been identified as being dependent on drugs or alcohol in the past. Even if you do have a transitional program offering residence, you should explain where you will live after the six months to a year you are in that program.
- The Board will usually not read all the letters of support into the record, especially if there are a lot of them. But you need to make sure they mention all letters that offer the specific type of support discussed above. It is also a good idea to point out any special letters, even if they are considered “general” support as opposed to parole plans. These might include letters from prison staff or volunteers, elected officials, victims’ family members, judges, attorneys, etc.
- After all this material is covered, the Board will give the DA’s representative an opportunity to ask questions. They are technically asking questions *to the Board* about things they want clarified for the record. Your answers are also supposed to be directed to the Board and not directly to the DA’s representative. But here are a few words of caution: First, pause after the DA asks each question because the commissioners may either re-phrase the question, tell the DA they are not going to have you answer the

question, or they may go ahead and answer the question themselves based on what they have read or on your earlier testimony in the hearing. Also, your attorney might object to the question, answer it himself/herself, or tell the Board and the DA that you are not answering the question. As you can see, a lot can happen when the DA asks questions, so you need to wait to see whether a question is actually going to be put to you for sure. The best way to limit or eliminate the DA's questions is to admit that you lied about certain aspects of the crime in the past because you were deeply ashamed of what you did, you were in denial and you wanted to avoid responsibility. This often takes the wind out of their sails and does not really hurt you in a parole hearing – just about everyone lies to avoid responsibility in the beginning of their case.

- Once the DA is finished asking questions, the Board will give your attorney an opportunity to ask questions. Attorneys use this time to come back to any questions that may have given you trouble earlier in the hearing and we need you to discuss further and better. Your attorney should also have a short list of issues they know you need to discuss in order to demonstrate remorse, acceptance of responsibility and insight into the crime. If any of those issues have not yet been addressed, your attorney will ask about it at this time.
- After questioning, the DA's representative gets to make a closing statement/argument. They almost always focus on the nature of the crime and your previous attempts to avoid responsibility. In addition, they will highlight a few statements found in the psychological evaluation in their effort to connect the historical factors surrounding the crime to some *current* evidence of dangerousness. Be sure not to react visibly or verbally to what the DA says in his or her closing. The more experienced ones know how to get you upset and their goal is to have the Board see this. Your attorney will then get a chance to make a closing statement/argument, and you will, too.
- Your closing statement should be limited to expressing remorse for the harm you caused the victim and victim's family. It is normal for people to write it down and read it at this time because it helps them stay focused and speak clearly. Do not try to respond to or address anything the DA has said during his or her questions or closing. This is a trap that you need to avoid.
- If the victim or a representative is present, he or she will be given an opportunity to talk to the Board about the impact of the crime and why they think you should remain in prison (unless they are actually supportive of your release). While you will technically not get a chance to say anything after they have finished speaking, your attorney will sometimes object if they make statements that are completely false, including wild accusations that have never been proven.
- After all of this, the commissioners kick everyone else out of the room and they deliberate on whether to grant or deny parole. Their deliberation generally takes between 20 minutes and an hour, but it can sometimes take longer. (The length of the deliberation does not tell you anything about whether parole is being granted or denied.) When they

call you back into the room, they will read their decision, after which they will give you a three-page printout of what their decision was. A full transcript from the hearing will be sent to you in approximately 30 days.

- In their decision, whether they say that you are suitable or unsuitable for parole, they will calculate a term of your confinement that they think matches the seriousness of the crime. If they are granting you parole, they will then subtract months from that term based on how many years you have spent in prison avoiding rule violations and participating in programs since you started serving your life term. On average, they will give you four months of additional credit for each disciplinary-free year, but they could give you six or eight or even twelve months of additional credit for each year you did something outstanding, such as college degrees, specialized vocational training, saving someone's life or some other pro-social activity. Once they subtract those credits from the base term they set based on the crime, the result is your Total Term of confinement. Your actual release date is then calculated by adding that total term to the date you started serving your life term.
- You and your attorney will have a chance to talk during any recesses that are called in the hearing (either for a restroom break, for deliberations or for any other reason), and you two will have a few minutes after the hearing to discuss the next steps to be taken, whether the decision is to grant parole or to deny it. If parole is denied, you may have to wait until you get the transcript in about 30 days before you can talk more about what options are available to you.

Hopefully, this takes some of the mystery out of hearing day. Keep in mind, also, that you can ask for a brief recess during the hearing to either meet with your attorney or to use the restroom. Good luck!

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“UnCommon Law Guide to Lifer Support Letters”

The Board often complains that prisoners’ parole plans are lacking something. Usually, this is because the prisoner, attorney and other advocates have not coordinated their efforts to make sure that all the important grounds are covered. Although we cannot give legal advice for any specific prisoner’s situation, this guide should give you the best chance to avoid this problem in the future.

A. What is a Support Letter?

This should be a short letter (usually only one page) that typically explains the writer’s relationship to the prisoner and why he or she should be paroled. These letters should almost always avoid discussing legal statutes or cases. There are three main types of support letters: *(1) Parole Plans; (2) General Support; and (3) Testimonial*. Each type is discussed below.

1. Parole Plans

This letter is the most important for most lifers. It should provide specific information on where the prisoner would live, identifying the number of rooms and the prisoner’s living arrangements. A letter should also describe actual (not potential) employment, including duties and pay, and any other information about how he or she would support himself or herself. The home and job should both be in the same county, but this does not have to be in the county of last legal residence or the county of conviction. The Board can approve parole in any California county.

If the prisoner had a drug or alcohol problem at the time of the offense, the letter should identify places nearby where treatment can be obtained. The websites for Alcoholics Anonymous (AA) and Narcotics Anonymous (NA) often provide listings of all the available 12-step meetings in whichever geographic location you search for. This information is critical for showing where the prisoner would seek this type of support once out on parole. A closely related issue to address in the letter is a relapse prevention plan, which should explain the steps to be taken when the urge to relapse arises. This plan should explain who the prisoner would call or meet with to support his or her continued sobriety.

2. General Support

This letter should explain the writer’s personal knowledge of how the prisoner has changed during incarceration, and why the writer believes the prisoner deserves to be paroled. This letter should not try to minimize the seriousness of the crime or the prisoner’s role in it (leave that to the lawyer at the hearing or in court). Focusing on such issues here would harm the writer’s credibility with the Board. Also, “petitions” signed by people without personal knowledge of the case should generally be avoided because they have very little impact on the Board and can take up a lot of space in a hearing packet with almost no benefit.

3. Testimonial Letters

The testimonial letter should come from someone familiar with the case over a long period of time, but this generally should not include family members and friends. Typical writers include the defense attorney, judge or prosecutor at the time of trial; investigating officers, jurors, etc. These writers (unlike those writing “general support letters”) may be able to explain the prisoner’s role in the offense without appearing overly biased in the prisoner’s favor. Many times, the people involved at the time of trial did not expect the prisoner to remain in prison decades later, and many times they will explain why the prisoner has done enough time for his or her role. Since some of these writers will be from the same segment of the community (i.e., law enforcement) as the parole board members, their input may be very influential.

Testimonial writers may also come from within the prison community. Educational or vocational instructors, volunteers in self-help and therapy programs, and work supervisors offer some of the best current evidence of how a prisoner gets along with others and how he or she approaches his or her responsibilities. Many times, these people have had the opportunity to observe a particular prisoner over a long period of time and can either talk about positive changes they have observed, or discuss the prisoner’s consistently positive conduct throughout a variety of situations. These letters can also help minimize the impact of negative information in the prison file, such as 115s or 128s, either by providing important background information or by explaining how the prisoner has changed in the period since those write-ups occurred.

B. When and Where Should You Send your Support Letters?

Prisoners should start gathering support letters as soon as they know when their hearings have been scheduled. In years past, most scheduled hearings ended up being postponed or cancelled for one reason or another. They were often held many months after the original due dates, and the Board would sometimes complain that the support letters were too old and needed to be updated. Nowadays, the postponement rate is much lower than it used to be; however, prisoners still should not obtain letters until they are actually *scheduled* for a hearing. The safest approach is to have the letters arrive 2 ½ to 3 months before the scheduled hearing. When that is not possible (because, for example, plans are still being put together), they should still be obtained as soon as possible after that period in order to increase the chances the letters will be included in the “Board Packet,” which includes documents pulled together at the prison and sent out to the commissioners and attorneys roughly 60 days before the hearing.

No matter when the letters arrive, they should be sent (or faxed, where possible) to the Board of Parole Hearings Desk (lifer desk) at the prison, to the prisoner’s correctional counselor, the prisoner and the prisoner’s attorney. At the very least, the prisoner should keep a copy of all the letters because too often, for one reason or another, no one else has copies at the time of the hearing. Late letters that get to the prisoner or his/her attorney on the eve of the hearing (or even on the morning of the hearing) can also be provided to the panel at the time of the hearing, if it cannot be avoided.

HOW PROPOSITION 9 (MARSY'S LAW) IMPACTS LIFERS

1. Dramatically increases the maximum period of a parole denial to *fifteen* years from two years for prisoners convicted of crimes other than murder, and from five years for those convicted of murder;
2. Requires that the maximum 15-year denial period also be the *default* denial period in all cases, even for those with minimum prison terms of only seven years (i.e., most cases not involving murder).
3. Replaces the *minimum* denial period of one year with a minimum period of three years, eliminating the Board's ability to deny parole for only one or two years – the options previously chosen by the Board in 72% of all parole denials before Proposition 9.
4. Creates new hurdles the Board's commissioners must overcome (i.e., finding "clear and convincing evidence") to justify a denial period shorter than fifteen years. In fact, the denial period is now determined through a process of *decreasing* lengths from fifteen years to ten, seven, five, and then three years. Under the prior law, the denial period was reached through a process of *increasing* lengths from one year to five years – and even then only in exceptional circumstances.
5. Drastically reduces the availability of an earlier review following a lengthy denial period. Rather than an automatic review after three years, there is now an optional review that is only available if the prisoner makes a request (available only once every three years) and establishes changed circumstances or new information.
6. Requires 90 days' advance notice instead of 30 days' advance notice of parole hearings be provided to victims, their next of kin and other representatives.
7. Substantially expands the number and definition of victims, their relatives and designated representatives who can attend parole hearings and provide unsworn testimony during which they cannot be interrupted or questioned by prisoners or their attorneys.
8. Allows victim-related attendees to make statements on the record regarding matters completely unrelated to the prisoner's current risk to public safety.
9. Specifically excludes anyone who is currently incarcerated from the definition of victims or their representatives who may now attend parole hearings.
10. Requires that copies of the unchallengeable victim/representative statements be considered at all future parole hearings.
11. Eliminates prisoners' access to rehabilitation programs that are not specifically required by the United States Constitution or by the laws of the State of California – indeed, the very programs in which prisoners participate in order to rehabilitate themselves.
12. Prohibits any expedited release programs to relieve the unconstitutionally overcrowded conditions in California's prisons.
13. Requires all of the above-mentioned changes to apply to prisoners sentenced both before and after Proposition 9 passed.

A complete copy of Proposition 9 and the changes in Penal Code sections 3041.5 and 3043 can be obtained from www.theuncommonlaw.com)

