



COMMONWEALTH of VIRGINIA

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Virginia Parole Board

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Vice-Chair

October 6, 2020

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Member

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Member

The Honorable Brian J. Moran
Secretary of Public Safety and Homeland Security
1111 E. Broad Street
Richmond, VA 23219

Dear Secretary Moran:

The Office of the State Inspector General (OSIG) conducted an administrative investigation of the Virginia Parole Board (VPB), Case #18647, based on several complaints made to the State Fraud, Waste and Abuse Hotline. OSIG detailed a number of recommendations based on the findings of that investigation.

Before addressing OSIG's recommendations individually, the VPB would like to make the following remarks in response to the allegations concerning notification to the Commonwealth's Attorney 21-days prior to an offender's release on discretionary parole required under Code § 53.1-136(3)(6):

In response to concerns raised about the VPB's policies, practices, and release decisions, and upon assuming her role as Chair on April 16, 2020, Chair Chapman called for a thorough review of the VPB's decisions and actions during March and early April of 2020. While it is clear that the VPB complied with statutory requirements and VPB policies and procedures in the vast majority of cases, the VPB identified several limited instances in which it did not achieve compliance in notifying Commonwealth's Attorneys of an inmate's imminent release "at least 21 business days prior to release on discretionary parole" as required by § 53.1-136(3)(c). These limited instances identified by the VPB occurred only within a short time frame, during the end of March and beginning of April 2020.

Notably, the 21-day notification provision does not exist to seek Commonwealth's Attorney input to be considered by the VPB in deciding whether to grant discretionary parole, but rather it serves only to advise the Commonwealth's Attorney of the offender's imminent release on discretionary parole after the VPB Chair has certified the grant vote.

During late March and early April, the Commonwealth of Virginia saw a rising number of COVID-19 cases. As a result, the Governor declared a state of emergency on March 17, 2020. In response, certain measures were taken in precaution to the public health emergency posed by COVID-19 and procedures were implemented to limit affected populations. For example, the Governor and General Assembly authorized the Department of Corrections (DOC) to implement early release plans for those offenders with a year or less left in their sentences. In an effort to limit the spread of COVID-19 and minimize risk to offenders and staff members, the VPB expedited its review of eligible cases, resulting in an increased number of cases reviewed, granted, and denied. In some cases where offenders had serious underlying health conditions, the VPB felt that expediting release was appropriate, as these individuals may have been more at-risk for COVID-19 related complications and based on their institutional adjustment and low recidivism risk assessment scores, their releases were compatible with public safety.

Under normal circumstances, the VPB notifies the DOC that an offender has been granted parole, DOC sets the offender's final release date in consideration of numerous variables—i.e., the length of any re-entry planning ordered by VPB, DOC's investigation of a suitable home plan, preparations for supervision of the offender in the community by one of DOC's Probation and Parole district offices, and other processes necessary for release of an offender from a DOC facility. In response to the COVID-19 pandemic, the DOC suspended transfers between facilities and units in a majority of cases, and the VPB suspended its routine practice of requiring placement in a re-entry housing unit as a special condition of parole, which allowed for expedited release of offenders several months earlier than the typical release process.

While these measures were taken in an effort to minimize the spread of COVID-19, the unintended consequence was that a limited number of individuals granted discretionary parole or geriatric conditional release by VPB had their release date set prior to the Commonwealth's Attorney notification requirements being met. However, once the issue was brought to the VPB's attention, the VPB took immediate action to resolve the issue. The VPB Chair immediately contacted the Director of DOC to adjust the release dates of the other impacted offenders to provide enough time for the 21-day courtesy notification.

There are no systemic problems with the 21-day notification process. However, the unusual circumstances created during early responses to the COVID-19 pandemic, combined with a transition in VPB leadership in mid-April, highlighted several areas in policy, procedure, and Virginia Code that required additional clarity to improve the VPB's 21-day notification process.

The VPB has taken the following actions:

1. Chair Chapman instituted additional practices to ensure a thorough and multi-step review of every case before it is certified and a person is released. This should prevent any individual from being released prior to compliance with all required notifications.
2. Chair Chapman has ensured all VPB staff understand the 21-day notification requirement and has emphasized the importance of working with other stakeholders to best ensure compliance with this requirement.

3. The VPB revised procedures to document and log notification to the Commonwealth's Attorneys and confirm the receipt of notification in an electronic database for increased accessibility and accountability. Revised procedures also include provisions that the VPB will notify DOC not to release offenders prior to 30 days from the certification date to ensure release dates are set no sooner than 21 business days required for the Commonwealth's Attorney notification.
4. Chair Chapman and Vice Chair Bryant have engaged with legislators during the 2020 Special Session to clarify the roles of the VPB and ensure that release dates are set after the required notifications and timeframes have been met. While legislation addressing these issues during the Special Session were sent to the Crime Commission for study, the VPB intends to develop legislative proposals for the 2021 session.

The Parole Board also submits the following recommendations for your consideration regarding additional resources necessary to support the agency's critical functions:

1. Additional resources should be provided to VPB to support its critical functions, including victim services, parole reviews, pardon investigations and administrative processes. The agency prides itself on its ability to carry out its critical public safety mission at its current staffing level, but as its responsibilities continue to grow and best practices evolve, VPB needs additional staff members to continue to operate efficiently and effectively.

There are over 3,000 offenders eligible for parole and numerous pardon petitions awaiting investigation. Several bills passed during the 2020 legislative session to expand parole eligibility to include individuals affected by *Fishback v. Commonwealth* and individuals who were juveniles at the time of their offense. Additionally, there are several bills pending in the 2020 Special Session that would further expand access to parole and in turn increase the Board's responsibilities.

The VPB currently has a total budget of \$1,839,171. Of that budget, \$1,749,762 is allocated for personnel costs. VPB staff include:

- 5 Board Members (2 FT and 3 PT)
 - 1 Victim Services Coordinator (FT) and 1 Victim Services Assistant (PT)
 - 7 Support Staff (1 Board Administrator (FT), 2 Executive Secretaries (1FT/1PT), 1 Program Support Tech (FT), 1 Lead Probation Officer (FT), 1 Probation Officer (FT), 1 Pardons/Procurement (PT))
 - 9 Parole Examiners (PT)
 - 8 Special Investigators (PT), two of which are funded by DOC
2. With these increased responsibilities, in order to adequately perform its duties, the VPB recommends funding for additional staff to include a victim services assistant, an office manager, parole examiners, and additional investigator positions.

3. VPB's internal case management system is maintained in the Virginia Corrections Information System¹ (VACORIS). Additional funding is needed for upgrades to the VPB-specific application modules on VACORIS to ensure the agency is able to make adjustments and improve processes as needs evolve.

OSIG Recommendations and VPB Responses

1. VPB should develop and attest to a Code of Ethics that focuses on impartiality, integrity and transparency when making all parole-related decisions.

The Secretary of the Commonwealth administers an Oath of Office to each member of the Board upon their appointment. VPB is made up of five members with diverse personal and professional experiences. Due to the complex and sensitive nature of its work, VPB requires a high degree of professionalism and competence from each of its members and its staff. VPB prides itself on its ability to engage with offenders, stakeholders, victims and community members in a respectful, impartial and transparent manner. In doing so, VPB has a demonstrated track record of making sound decisions that are compatible with public safety.

While the VPB strives to be as transparent as possible in carrying out its mission, additional resources would facilitate greater transparency with the public. In order for the VPB to achieve greater transparency, more funding is needed to develop a better digital platform for the public. As noted above, VPB's internal case management system is maintained in VACORIS operated by DOC and is not intended for public access. Adding a case management database platform to the VPB website, more akin to www.courts.state.va.us would benefit VPB and the public.

2. VPB should review all VPB policies and procedures, as well as Commonwealth of Virginia (COV) statutes regarding VPB's responsibilities and duties. VPB should document that staff have reviewed and understand all applicable statutes, policies and procedures.

The VPB concurs with this recommendation. VPB's Policy Manual and Administrative Procedures Manual have not been updated since 2006 and 1996, respectively. As explained below in response to Recommendation #3, VPB is currently in the process of updating both manuals. All VPB employees will be required to review and verify their review upon completion.

3. VPB's Policy Manual and Administrative Procedures Manual should undergo thorough reviews to ensure all policies and procedures are clear, accurate, reflect best practices, and are consistent with one another and relevant statutes. VPB should consider combining both manuals into one comprehensive reference manual. Resources: <http://apaintl.org/surpub.html>

¹ CORIS® is an offender case management system for high-volume corrections agencies that efficiently captures and manages critical data about every offender. It provides essential information on demand to corrections professionals to ensure they know who the offender is and how that individual needs to be managed. CORIS is used in many states and is referenced throughout this document as "VACORIS." (Reference, www.alibis-solutions.com/coris.)

As previously indicated, VPB's Policy Manual and Administrative Procedures Manual have not been updated since 2006 and 1996, respectively. VPB initially started their review of both manuals in April 2020, upon the arrival of the new Chair. The preliminary review and revisions to the Policy Manual revisions were completed in early May 2020; however, the final review and revisions were delayed due to the onset of the OSIG investigation and any new legislation resulting from the 2020 Special Session. As certain revisions require the Governor's approval pursuant to § 53.1-136(1) and (2), the VPB elected not to submit the revised manuals until after the 2020 Special Session.

The VPB will consider OSIG's recommendations during its review and revision of existing policies and procedures.

4. VPB should develop policies and procedures for proactively contacting victims of crimes that occurred prior to the implementation of the Virginia Victim Information and Notification Everyday (VINE) system (including accessing law enforcement databases and social media, contacting the appropriate Commonwealth's Attorney's office, etc.), particularly if the victims are not registered. Per the Association of Paroling Authorities International (APAI)'s Victims Service Best Practices, the opportunity to submit victim input should be obtained for consideration before the offender's parole review. All available victim input obtained prior to the offender's parole review reduces issues relating to impartiality, fairness and injustice.

VPB has hired a new, full-time, Victim Witness Coordinator and will ensure that all employees responsible for victim notification are properly trained and have reviewed all applicable laws, policies and procedures.

Per § 53.1-155(B), "The Board shall endeavor diligently to contact the victim prior to making any decision to release any inmate on discretionary parole." OSIG is interpreting this section to require victim input where the Board is not inclined to grant parole and therefore no possibility exists that the inmate will be released on discretionary parole. OSIG is also interpreting this section to require victim notification and input before the Board even knows if it is inclined to grant parole. However, § 53.1-155(B) does not require VPB to contact the victim prior to making a decision *not* to release an inmate on discretionary parole.

OSIG's position that all victim input should be obtained prior to the offender's parole review presents practical and moral challenges. For victims who are not registered in Virginia Victim Information and Notification Everyday² (VINE), the practice has been to wait until enough Board members have voted to grant to indicate that a decision to grant parole is even a possibility before endeavoring diligently to locate them. It has never been the practice to notify them before the voting process even starts. Consistent with § 53.1-155(B), it has always been the practice of the Board to endeavor diligently to contact victims, who are not registered or receiving automatic notifications from VINE, before the Chair certifies a grant vote of the Board. It is important to note that the Chair's certification of a case as the official action of the VPB is what triggers the release process, not a vote by the Board to grant parole.

² Virginia VINE provides notification alerts to victims of an offender's custody change events including release, transfer, escape/return, death, parole events, and advance notice 30 days prior to the offender's release date.

This practice, that is consistent with the Code, not only allows the Board to maximize its limited resources, but it also prevents the Board from burdening victims in cases where a grant decision is unlikely. The Board recognizes that the parole review and victim input process can re-traumatize victims and cause emotional and physical distress. It is the Board's position that the General Assembly recognized this when crafting § 53.1-155(B), therefore only requiring outreach, for victims not receiving automatic VINE notifications, when the Board is inclined to grant.

The Board attempts to obtain victim input prior to the parole review. However, OSIG fails to acknowledge VPB has a statutory obligation under § 53.1-136(8) to ensure that every offender "eligible for parole receives a timely and thorough review of his suitability for release," which includes having their case voted on by the Board in a timely manner, and a statutory obligation under § 53.1-154 to consider every eligible offender during the same quarter every year. VPB must vote on cases in a timely manner and cannot keep a case open indefinitely, pending in voting status, while awaiting victim input. Sometimes the Board moves forward with the voting process, and learns about victim input after the Board votes, but before a case is certified by the Chair for release. Accordingly, the Chair will circulate the case around for a reconsideration based on the victim's input.

Finally, the VPB is limited in its ability to conduct research in several manners suggested by OSIG. For example, law enforcement databases may only be accessed for law enforcement purposes, often by law enforcement personnel. Additionally, VITA and DOC regulations prevent accessing social media platforms for these purposes. While certain VPB personnel have limited access to an additional database for victim research, the VPB is reviewing funding options to expand access for additional personnel.

5. VPB should develop standard questions to be used in victim board appointments. Per APAI's Victim Services Best Practices, these questions may include, but are not limited to:

- What considerations would you like VPB to factor into today's hearing about the process?***
- If the offender is released, what are some post-release considerations that VPB should consider?***
- What long-term effects have you incurred since the crime that you are comfortable with sharing today?***
- In the event you were able to have an opportunity to receive an apology from the offender, would you like to receive one? If yes, how would you like to receive this apology? (by phone, in writing, etc.)***
- What considerations would you like VPB to make about safety or precautions if the offender is released?***

The VPB concurs with this recommendation. VPB is currently working with law students from the University of Virginia to research best practices for parole review and reform. VPB will have the UVA law students include this recommendation in their research. VPB is also working with VCU's Performance Management Group to review current practices and provide guidance for improvement.

6. VPB should develop policies and procedures for the voting process for VPB members. This procedure should include adding all victim and opposition input into the offender's case

summary report prior to voting, performing all VPB appointments and documenting results before voting, and detailing the process of how VPB members vote.

VPB has instituted additional processes to be completed prior to the Chair's certification of a parole release to ensure all requirements have been met. The VPB strives to collect victim and opposition input prior to voting; however, as outlined above this is not always feasible. In cases where input is received after a case has been voted but prior to certification, the Chair will often recirculate cases to members to allow for review and reconsideration. In cases where victim or opposition input is received after the Chair has certified the grant, the Chair will ask the Board members to consider the input regardless, to determine whether to suspend the official grant and proceed with a rescission hearing.

VPB intends to create a standard operating procedure articulating how to consider and document victim or opposition input in cases where the input is received after voting has commenced or has been completed, but prior to certification of the case for release. Furthermore, as indicated above in response to Recommendations #2 and #3 the VPB is currently in the process of reviewing and updating the VPB's Policy Manual and Administrative Procedures Manual.

7. VPB should develop policies and procedures for documenting reasons for both grant and non-grant decisions.

The VPB concurs with this recommendation. Current law requires the VPB to provide the offender, and publish publicly, the reasons the Board decided to not grant release on parole. However, there is no such requirement to provide specific reasons the board decided to grant parole upon concluding the offender "will not be incompatible with the welfare of such person or of society." The VPB's voting process is done within VACORIS. Presently, the VACORIS parole board module only has a drop down-menu to select "not grant" reasons. To add a drop-down menu allowing Board members to select "grant" reasons will require additional funding for upgrades to VACORIS. If there is a continued desire to make individual Board member votes available to the public, upgrades to VACORIS, including a drop-down menu with reasons for the grant decision, are essential.

8. VPB should develop standard victim and Commonwealth's Attorney notification letters specifically for conditional geriatric releases.

VPB currently has a standard Commonwealth's Attorney (CWA) notification letter for all offenders granted parole or conditional release. The CWA letter was recently revised.

It should also be noted that the 21-day notice provision of § 53.1-136(3)(c) applies only to situations when an inmate that was convicted of a felony and sentenced to a term of 10 or more years is released on "discretionary parole." Code § 53.1-136(3)(c) only imposes statutory obligations related to the release of inmates on discretionary parole as described by Chapter 4 of Title 53.1. There is no statutory basis to extend the application of § 53.1-136(3)(c) to encompass § 53.1-40.01, the provision authorizing geriatric conditional release contained in Chapter 2, of Title 53.1. Accordingly, there is no statutory requirement to provide notification to the Commonwealth's Attorney 21 days prior to an offender's release in geriatric conditional release

cases. However, irrespective of any statutory obligation, the VPB has chosen to notify Commonwealth's Attorneys as a courtesy in the past and will continue to do so moving forward.

The VPB also has a standard victim notification letter used in both discretionary parole and conditional release cases. Victim notification letters are sent to victims that are not registered in VINE or have elected to only be notified where the Board is inclined to grant. The letters are meant to inform the victim that the offender is being reviewed for parole and to seek input concerning the impact that the release of the offender on parole would have on them. VPB will review the victim notification letter and determine if any revisions are necessary.

9. VPB should promulgate regulations as required per COV Code §53.1-40.01 Conditional release of geriatric prisoners and §53.1-151 (B) (1) Eligibility for parole, in addition to any others required by Code.

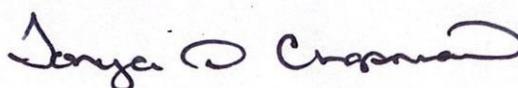
The VPB already has policies and procedures governing conditional geriatric release (§ 53.1-40.01) and eligibility for discretionary parole release pursuant to § 53.1-151(B1). The VPB's ability to effectively update policies and procedures is wholly contingent upon the number and speed of changes to the Code and case law evolution. For example, there have been many changes to the Code and case law involving juveniles at the time of the offense (sentenced to life without parole). Case law has been in a constant state of flux for the last decade, at the federal and Supreme Court level. Nevertheless, the VPB under the current chair has already updated its policies but has delayed final revision until after the conclusion of both OSIG's investigations and Special Session. Regulations governing conditional geriatric release pursuant to § 53.1-40.01 and eligibility for discretionary parole pursuant to § 53.1-151(B1) are exempt from the provisions of the Administrative Procedures Act, § 2.2-4002(B)(9)-(10).

10. VPB should review and develop notification procedures to ensure consistent and timely notifications.

While the VPB is unsure of exactly what types of notification the OSIG is referring to, the VPB has established new procedures for CWA and victim notification to ensure accurate and timely documentation. Our new Victim Witness Coordinator started on September 25, 2020. The team and other stakeholders are scheduled to meet on October 8, 2020, for training and make sure we are collaborating effectively to ensure victims receive proper notifications and feel heard.

I welcome your input on the above issues. If you need additional information, please don't hesitate to contact me.

Respectfully,



Tonya D. Chapman, Chair