

Office of the Inspector General



REVIEW OF THE BOARD OF PRISON TERMS

MARCH 6, 2000

This report presents the results of the Office of the Inspector General's review of the Board of Prison Terms. The review was conducted at the request of [REDACTED]

[REDACTED] request was made pursuant to Penal Code Section 6126.

Background

The Board of Prison Terms considers parole releases for all persons sentenced to state prison under the indeterminate sentencing laws. The board also conducts parole revocation hearings for parolees who have violated parole terms. In addition, the Board of Prison Terms advises the Governor on applications for clemency and helps screen prison inmates who are scheduled for parole to determine whether they are sexually violent predators subject to potential civil commitment.

The statute authorizes the Governor to appoint nine commissioners to the board for four-year terms. The commissioners are subject to Senate confirmation. The Board of Prison Terms presently consists of seven commissioners who have been appointed by the Governor.

In addition to the commissioners, the board includes approximately 60 deputy commissioners. The deputy commissioners conduct parole revocation hearings, serve as the third panel member in hearings for prisoners serving indeterminate sentences, review administrative appeals, and conduct other hearings and functions within the board's jurisdiction. The deputy commissioners are appointed under state civil service rules and procedures.

The statute specifies that a hearing panel is to be comprised of three members, at least two of whom are board commissioners, with a board-appointed deputy commissioner usually serving as the third panel member.

The state's indeterminate sentencing laws generally apply to individuals who have been convicted of murder or other serious crimes. Under indeterminate sentencing, an offender's prison term is not fixed in advance by the court. Instead, the offender is sentenced to an indeterminate period (such as 25 years to life) and is eligible for parole consideration after he or she serves the minimum number of years in prison specified in state law for the crime committed. The board is required to follow established statutory and regulatory criteria in deciding whether to grant a prisoner's parole request.

Review Scope

A member of the Inspector General's staff met with [REDACTED] on February 11, 2000, to define and clarify the scope of the review. The [REDACTED] specified that the review should focus primarily on the board's procedures relative to parole hearings for prisoners sentenced under indeterminate sentencing laws. Accordingly, an agreement was reached that the review scope would include the following:

- Reviewing the board's system and procedures for tracking and managing hearings for those sentenced under indeterminate sentencing laws.
- Determining whether the board has considered established statutory and regulatory criteria when making parole decisions.
- Determining whether the board has adequately safeguarded the rights of the inmates in connection with the hearings, including timely scheduling and notification of hearings.

The scope of the Office of the Inspector General's review specifically excluded an assessment of whether the board's parole decisions were proper in light of established statutory or regulatory criteria.

Review Methodology

To accomplish the review objectives, the Office of the Inspector General performed the following procedures:

- Interviewed appropriate board commissioners and staff for clarification about board policies, procedures, and operations.
- Reviewed and analyzed past trends and patterns with respect to the board's workload for parole hearings of inmates with indeterminate sentences.
- Assessed the board's ability to address present and future hearing cases.

- Reviewed a sample of five hearing cases handled by each of the five active commissioners who held hearings during 1999 to determine:
 - Whether the inmate's rights were adequately safeguarded before, during, and after the hearing.
 - Whether the hearing panels consistently considered all statutory and regulatory criteria in making parole decisions.
 - Whether the hearing panels provided proper disclosure relative to the use of confidential information during the hearing.
 - Whether the victim representatives had opportunities to express their views and concerns.
 - Whether the basis for denying parole was clearly and fully disclosed.
- Interviewed inmates for possible problems and concerns. (A questionnaire for this purpose is included as Attachment A to this report.)
- Determined how requests from inmates for reasonable accommodation under the Americans with Disabilities Act were addressed.
- Interviewed the inmates' legal representatives for possible problems and concerns. (A standardized questionnaire for this purpose is included as Attachment B to this report.)

Findings and Recommendations

Based on its review of 25 hearing cases, the Office of the Inspector General concluded that the board has considered all statutory and regulatory criteria during the indeterminate sentencing hearings. A matrix showing the criteria considered during each of the 25 hearing cases is presented as Exhibit 1 of this report.

During the review, however, the Office of the Inspector General identified four conditions requiring management attention. Those conditions are described below.

- 1. Board of Prison Term's process for identifying and scheduling hearing cases is inadequate to ensure that hearings are properly managed and are handled on a timely basis.**

The board has statutory responsibility for ensuring that the hearings are conducted in a proper and timely manner, but it does not maintain its own tracking system to identify and schedule hearings. Instead, the board uses a labor-intensive process that relies on Department of Corrections institutions to carry out these functions. The process entails a

monthly exchange of faxes between the board staff and a California Department of Corrections coordinator at each of 32 California Department of Corrections institutions to provide the board with each institution's count of backlogged hearing cases and cases anticipated for the upcoming months. (One institution, the California Rehabilitation Center, houses no indeterminate sentence inmates.) The board schedules weekly hearings at selected institutions based on the reported caseload. When an institution is advised of an upcoming board hearing, it is responsible for scheduling the most delinquent cases for hearing.

The Office of the Inspector General found that the current system is inadequate to meet the board's statutory responsibilities. First, the board has no means of ensuring the accuracy of the institutions' determination of the number of cases to be heard. Relying on potentially inaccurate records from the institutions increases the risk that the board may be delinquent in hearing cases or that cases may not be heard. Without accurate and reliable case totals, it is also difficult for the board to manage its workload effectively.

In addition, because the institutions do not provide the board with the names of inmates requiring hearings or the timeframe in which cases must be heard, the board has to rely on the institutions to schedule the hearings. Although it has instructed the institutions to schedule the most delinquent cases first, the board has no means of ensuring that the institutions are following that policy.

Finally, because the board has had a significant backlog of cases to hear, most of the hearings are delinquent by more than six months. The board has no means of notifying the inmates of hearing delays or of anticipated hearing dates. Again, the Board of Prison Terms relies on the 32 institutions, each using its own procedures, to perform these functions. As a result, the board cannot ensure that inmate notifications are adequate or that they are conducted in a uniform and consistent manner.

Recommendation

The board should immediately begin acquiring the resources to establish a centralized system for tracking hearing cases.

2. The Board of Prison Term's backlog of hearings is so large that most of the hearings are delinquent.

Although the Board of Prison Terms does not have reliable data for estimating its hearing backlog, it is indisputable that the backlog is significant. According to information compiled from the institutions, the backlog increased from 204 on June 30, 1998, to 695 on June 30, 1999. The board staff projects the backlog to increase to 1,050 by June 30, 2000. Because of the backlog, most of the hearings are delinquent by more than six months.

At the board's current pace of conducting hearings, the case backlog is not expected to decline measurably in the foreseeable future. If all factors remain constant, the board's staff estimated that it would require approximately eight years to clear the backlog.

The magnitude of the hearing delays could have severe consequences at the institutions. The inmates interviewed by the Office of the Inspector General staff expressed dissatisfaction and frustration over the hearing delays. The delays also can significantly increase workloads at the institutions, requiring staff to reschedule hearings, notify inmates and other interested parties, and repeat some of the necessary administrative procedures relative to the hearings.

One possible way for the board to address this issue is to increase the number of hearings by one case per day until the backlog is eliminated. Under this scenario, the case backlog would be eliminated in approximately 18 months instead of eight years. Based on an analysis of the board's hearing schedule patterns, the Office of the Inspector General believes this approach is reasonable. The board's current practice is to schedule two hearings per day on Mondays and Fridays (to provide for travel time), six hearings per day on Tuesdays and Wednesdays, and five hearings on Thursdays. A review of the hearing transcripts disclosed that an overwhelming proportion of the hearing cases took about one hour to complete. Increasing the number of hearing cases by one per day, therefore, would not appear to be overly burdensome to the board panels.

In addition, the Office of the Inspector General's review disclosed a consistent and widespread board practice of transferring the cases that were scheduled to be heard on Fridays to other days so that commissioners could take Fridays off. [REDACTED]

[REDACTED] That the board is able to hear more cases on other weekdays further supports the possibility that the board could hear more cases per week.

Recommendation

The board should increase the number of hearings by one case per day unless other measures are available to reduce the backlog more quickly.

3. One board commissioner reportedly makes it a practice to not attend the portion of the hearing in which the inmate is notified of the board's decision.

[REDACTED] reported that one of the board commissioners routinely leaves the hearing room during the phase of the hearing in which the inmate is informed of the panel's decision. [REDACTED] said that the commissioner goes to another room to do crossword puzzles during this time. [REDACTED]

[REDACTED] also reported that the commissioner is abrasive and confrontational during the hearing proceedings.

There is no statutory or regulatory provision defining the behavior required of commissioners during hearing procedures, but as a representative of the State, each commissioner is implicitly responsible for acting professionally during every phase of the hearings.

Recommendation

Because the conduct of the board members directly affects the public's perception of the Board of Prison Terms, the board should thoroughly investigate the allegations described above. If the allegations prove to be valid, the board should take appropriate action to prevent recurrences.

4. In two of the 25 cases reviewed, the inmate's request for a translator was not honored and no explanation for the action was given.

A review of the case files disclosed that two inmates who requested translators did not have translators present at their hearings. There was no explanation in the inmates' records or in the hearing transcripts as to why the requests were not granted. Further review of the hearing transcripts revealed apparent instances in which the inmates did not fully understand the questions or the commissioners had difficulty understanding the inmates during the hearing.

Given all the evidence presented during the two hearings, the Office of the Inspector General determined that the apparent lack of understanding did not affect the final outcome of the two hearings, but the failure to provide translators when requested or to explain why such a request is denied constitute procedural weaknesses that should be rectified.

Recommendation

The board should provide written notice if an inmate's request for a translator is denied. The basis for denial should be explained and documented at the hearing.

Conclusion

As discussed in the review scope section of this report, the Inspector General's review was limited to Board of Prison Terms procedures relative to parole hearings for inmates sentenced under indeterminate sentencing laws.

The Office of the Inspector General wishes to acknowledge the efforts of Board of Prison Terms Chairman James Nielsen and of the board staff, for their cooperation throughout the course of this review.