

PAROLE HEARINGS WORKGROUP

Appointed August 8, 2008



FINAL REPORT

November 12, 2008

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EXECUTIVE SUMMARY

Background / Scope of Report

The Oregon Board of Parole and Post-Prison Supervision (Board) has release authority over approximately 1,600 inmates, consisting of felony offenders who were sentenced to indeterminate prison sentences before Oregon implemented sentencing guidelines, dangerous offenders, and some aggravated and murder cases where the offender has the possibility of parole. The Board notifies District Attorneys and victims who register with the Board of parole hearing dates and release dates for these offenders.

The current processes, procedures, and rules that the Board relies on regarding its notification of victims and how it conducts parole hearings have been in place for many years and recently have been the subject of litigation and media scrutiny. On August 8, 2008, the Chairperson of the Board convened a 12-member workgroup composed of various Board stakeholders to make recommendations to the Board regarding victim notification and parole release hearings.

Over the course of three months, the workgroup held six meetings and agreed on a number of recommendations. This report sets forth the workgroup's consensus recommendations. The report also notes other areas that were discussed by the workgroup, but consensus recommendations were not reached.

Workgroup Recommendations

The workgroup reached consensus recommendations in 10 areas:

Board Membership. The workgroup did not recommend any changes in how Board members are selected, but supports the Board's 2009-2011 policy option packages that would fund one additional Board member and one additional support staff position.

Definition of Victim. Determining who is a victim for purposes of receiving notification from the Board and having the right to speak at parole release hearings is not clear-cut under existing Board statutes and rules. The workgroup recommends that the Board define victim as it is defined in the Oregon Constitution, which places the determination of who is a victim on the District Attorney or the court.

Communications with Victims. All of the written materials that the Board sends to victims need to be clear, easy to understand, informative, and victim-sensitive. Some of the Board materials should be modified to meet these goals.

Release Hearing Notifications. The Board's public website currently lists only the dates and locations of Board hearings. The information provided to the public should include the names and other identifying information of those offenders who are before the Board for parole release hearings. The District Attorney should identify, for the Board, those victims

who are entitled, under ORS 144.120(7), to speak at release hearings and to receive notification of release hearing dates if they so choose and register with the Board. After the Board receives this information, it should send a letter to each victim setting forth the victim's rights and providing clear information about the parole hearing process. All parties – the District Attorney, victims, and the offender – should be notified of the parole release hearing date at least 90 days before the hearing date.

Hearing Locations. The Board currently holds all parole hearings inside the Oregon State Penitentiary or the Oregon State Correctional Institution. The Board should consider holding hearings at a secure location other than a prison. All hearings, regardless of where held, should be conducted so as to minimize victim concerns about safety.

Statements at Release Hearings. The Board's existing rule that limits the statements of the District Attorney, the victim, and the offender's supporter to three minutes should be eliminated and replaced with a more reasonable time limit, such as 15 minutes. Additionally, the Board's existing practice that allows only one victim to speak, even if the offender's criminal conduct involved multiple victims, should be modified to allow any person designated as a victim by the District Attorney to speak. The offender should speak after all victims and the District Attorney have provided their comments. The parties who participate in the parole release hearing also should be allowed an opportunity to provide written closing remarks following the hearing.

Psychiatric/Psychological Evaluations. Because of the importance psychological and psychiatric evaluations play in the Board's decision-making regarding release, the Board should adopt rules setting forth minimum qualifications for the examiners hired by the Board. The Board also should have a contracting and quality assurance process in place that ensures the Board is hiring highly-qualified psychologists and psychiatrists to do this work.

Board Findings in Release Hearings. If the Board decides that an offender under its release authority should be paroled, it should issue a more detailed order explaining the Board's release decision than it currently issues.

Board's Key Performance Measures. The Board's key performance measure relating to victim notification should be changed to a more meaningful measure. In particular, the performance measure should focus on the steps that the Board takes to follow up on returned mail from victims who have registered with the Board to receive notification. The Board also may wish to develop a new performance measure that focuses on the timeliness of the Board's initial notification to those victims who have been identified as victims by the District Attorney. The Board's customer service performance measure should be expanded, or a new performance measure adopted, to include feedback from victims.

Appointment of Advisory Council. The workgroup recommends that the Board consider having a permanent advisory council, consisting of Board stakeholders appointed by the Board Chairperson.

The workgroup is not recommending any statutory changes; instead, it believes all of its recommendations can be accomplished by Board rule or policy changes. Some of the recommendations, if adopted, will have fiscal and/or workload impacts on the Board. A few of the recommendations also will have impacts on other agencies, including the Department of Corrections, the Department of Justice, and Oregon District Attorneys. The report identifies which recommendations will have fiscal or workload impacts on the Board and/or other agencies and which recommendations will require administrative rule changes.

Finally, the report identifies nine other areas that were discussed by the workgroup but did not result in consensus recommendations. These are areas that the Board may wish to explore further at some point in the future.

Conclusion

Workgroup members wish to commend the Board, especially Board Chairperson Steven Powers, Executive Director Nancy Sellers, and Executive Assistant Susan Deschler, for all of the help the Board and its staff provided to the workgroup and for opening itself up to stakeholder and public scrutiny. As workgroup member Bob Robison appropriately said at the last workgroup meeting:

“We commend the Board for inviting this transparent review of its practices and procedures to see if it is victim-sensitive. This kind of review should be considered a model and replicated by other segments of the criminal justice system that work with victims.”

The workgroup also wishes to thank the victims and their family members, other stakeholders, and defense attorneys who attended the workgroup meetings and provided us with their varied perspectives on the parole process. It was appreciated and provided us with valuable input that informed our recommendations.

Respectfully submitted November 12, 2008.

Brenda JP Rocklin
Workgroup Facilitator

INTRODUCTION

Appointment of Parole Hearings Workgroup

On August 8, 2008, the Chairperson of the Oregon Board of Parole and Post-Prison Supervision (Board) convened a workgroup composed of various Board stakeholders to make recommendations to the Board regarding its policies and procedures for notifying crime victims and conducting parole release hearings.

The workgroup was tasked with completing its work within 90 days to give the Board time to review the workgroup's recommendations and to determine if any statutory changes or budgetary requests needed to be presented to the Governor and the 2009 Oregon Legislature.

Workgroup Members

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Workgroup Charge

The Board of Parole and Post-Prison Supervision (Board) has seven key statutorily-mandated functions:

1. Conduct hearings to determine if and when certain offenders should be released from prison:
 - Offenders convicted of a felony where the criminal conduct took place before November 1, 1989 [the date Oregon implemented sentencing guidelines];
 - Offenders sentenced as “dangerous offenders” by a trial court regardless of the date the crime took place;
 - Offenders convicted of aggravated murder who are eligible to be considered for the possibility of parole; and
 - Offenders convicted of murder after June 30, 1995.
2. Notify District Attorneys and others, including crime victims who have registered with the Board, of upcoming Board hearings and inmate releases.
3. Order conditions of parole and/or conditions of post-prison supervision for all felony offenders released from prison.
4. Issue arrest or suspend and detain warrants for felony offenders who have either absconded from parole or post-prison supervision or who are in custody pending a hearing on a violation of supervision conditions.

5. Review and order sanctions for felony offenders who violate the conditions of parole or post-prison supervision.
6. Discharge felony offenders who have completed their term of parole or post-prison supervision.
7. Respond to administrative and judicial appeals filed by felony offenders under the Board's jurisdiction.

The Board Chairperson asked the workgroup to focus its attention on the Board's first two statutory responsibilities: its obligations to conduct release hearings for those offenders under its jurisdiction and to provide notification to District Attorneys and to victims of release hearings and release decisions.

The Board currently has release authority over approximately 1,600 inmates. This population consists of felony offenders sentenced to an indeterminate prison sentence prior to November 1, 1989, dangerous offenders, and some aggravated murder and murder cases. The Board conducts 20 to 30 release hearings per month for these categories of offenders.

The Board notifies the District Attorney of the committing county and those victims who have registered with the Board and provided a current address of release hearing dates and offender release dates.

The workgroup was asked to make consensus recommendations to the Board regarding changes to the Board's policies and procedures for parole hearings. Specifically, the workgroup was asked to:

Educate: Enhance stakeholders' and the public's understanding of Oregon's indeterminate sentencing system that has placed a number of offenders under the release authority of the Board of Parole and Post-Prison Supervision.

Clarify: Review and clarify the roles and functions of state and local governmental entities, including the Department of Corrections and District Attorneys from the committing jurisdictions, as well as victims, to identify opportunities to make the process more transparent and accessible.

Recommend: Review the Board's policies and procedures, including statutes and administrative rules, governing the Board's hearings and develop recommendations that will improve the process for all affected parties.

The Board Chairperson requested that the workgroup's recommendations be consistent with policies that:

- Protect the public safety;
- Protect the safety and individual rights of victims and of those under the Board's release authority;

- Support the successful transition of offenders from incarceration to supervision in the community through discharge or expiration;
- Recognize the realities of state and partner budget considerations; and
- Comply with federal and state laws governing parole hearings, including public records and public meeting laws.

Should the workgroup's recommendations necessitate statutory changes, those recommendations will be forwarded to the Governor for possible inclusion in the Board's 2009 legislative package.

Workgroup Meetings and Final Report

Over the course of three months, the workgroup held six meetings: August 8, August 21, September 4, September 18, October 2, and October 23. The agenda for each meeting and detailed minutes of each meeting are attached to this report as Appendix A.

The workgroup facilitator drafted the final report, with input from the workgroup members. The final report sets forth the workgroup's consensus recommendations to the Board in a number of areas. The report also notes those areas where the group did not reach consensus and sets forth the issues that the group discussed but ultimately decided not to make any recommended changes at this time.

The workgroup is not recommending any statutory changes; subject to review by the Oregon Department of Justice, the group believes that all of its recommendations can be accomplished under the Board's rule-making authority. There are staffing and budget implications to at least some of the workgroup's recommendations; those areas are noted in the report. Workgroup members agreed that the Board's current staffing is inadequate to take on the additional workload that some of the recommendations will entail.

BOARD MEMBERSHIP

Current Law and Practice

In 1969, the Oregon Legislature authorized the appointment of a full-time parole board consisting of three members appointed by the Governor, subject to Senate confirmation. ORS 144.005(2); ORS 144.015. The Governor also appoints the Board chairperson and vice-chairperson. ORS 144.025(1).

Board members do not serve at the pleasure of the Governor. Instead, the Governor has the power to remove Board members only for “inefficiency, neglect of duty or malfeasance in office.” ORS 144.005(2). Board members “serve for a term of four years.” ORS 144.005(2).

In 1975, the three-member Board was enlarged to five members, and the legislature added the requirement that at least one Board member must be a woman. ORS 144.005(1).

Beginning in 1992, the Oregon Legislature reduced the number of Board members to three by deciding to provide funding for only three positions, although the statute still allows for the appointment of up to five members: “A State Board of Parole and Post-Prison Supervision of a least three but no more than five members hereby is created.” *See also* OAR 255-010-0005 (“The Board of Parole and Post-Prison Supervision shall consist of those members appointed by the Governor, pursuant to ORS 144.005.”).

Workgroup Recommendations

The workgroup supports the Board’s 2009-2011 policy option packages that would fund one additional Board member and one additional support staff position.

Impact of Recommendations

<i>Fiscal or Workload Impact:</i>	Yes
<i>Impact on Other Agencies:</i>	No
<i>Statutory Change Required:</i>	No
<i>Rule Change Required:</i>	No

Summary of Workgroup Discussion

The workgroup supports the Board’s request that the Legislature provide funding for an additional Board member position and one additional staff position for two reasons. First, based on information presented to the workgroup, the Board’s current workload appears to justify additional personnel. Second, if the Board adopts the recommendations in this report, the recommendations will add to the Board’s workload.

The workgroup also discussed whether the current method of selecting Board members should be changed. In particular, the workgroup discussed whether the Board’s statutes

should be amended to provide for the appointment of Board members with particular backgrounds or who represent particular stakeholders, as other boards' statutes do. *See, for example*, ORS 238.640 (setting out specific requirements for PERS board membership). A number of workgroup members did not favor creating specific stakeholder spots.

Ultimately, the workgroup elected not to recommend any changes in how Board members are selected, but agreed that the Board's advisory council (discussed below) may want to explore whether the statute should be amended to provide for the appointment of Board members with particular backgrounds or who represent particular stakeholders (such as a victim advocate, mental health expert, social worker, former parole/probation officer, etc.).

DEFINITION OF VICTIM

Introduction

A major focus of the workgroup was to decide how “victim” should be defined for purposes of identifying those individuals who have the right, under existing Oregon law, to be notified of release hearings and release decisions and to speak at release hearings. The statute that grants these rights to victims, ORS 144.120, does not fully define who is a victim. Instead, the statute simply makes reference to:

“the actual victim, a representative selected by the victim, the victim’s next of kin or, in the case of abuse of corpse in any degree, an appropriate member of the immediate family of the decedent.”

The terms “actual victim” and “appropriate member of the immediate family” are not further defined. Because the determination of “victim” is key to determining who might have legal recourse against the Board if certain procedures are not followed, the workgroup spent considerable time attempting to clarify which individuals should be defined as “actual victims” within the meaning of ORS 144.120. Ultimately, as discussed more fully below, the workgroup concluded that this determination should be made by the District Attorney of the committing county, rather than by the Board.

Currently, the Board determines who the victim is by reviewing its records and selecting the victim of the charged crime for the purpose of determining who can speak at a release hearing. The Board Chairperson acknowledged that in some cases it is difficult to determine who the victim is, particularly in those cases where the offender originally had consecutive sentences imposed but one of the sentences has expired and in those cases where the Board is faced with determining a murder victim’s next of kin.

Current Definitions of “Victim” in Parole Board Statutes and Rules

ORS 131.007 defines “victim” for the purposes of ORS chapter 144 [the Parole Board statutes] and other chapters in the Oregon criminal code as:

“the person or persons who have suffered financial, social, psychological or physical harm as a result of a crime and includes, in the case of homicide or abuse of corpse in any degree, a member of the immediate family of the decedent and, in the case of a minor victim, the legal guardian of the minor. In no event shall the criminal defendant be considered a victim.”

ORS 144.120 sets forth procedures for the Board to follow in determining release dates for those inmates over which the Board has release authority. Subsection (7) of the statute provides for victim notification and allows certain victims to speak at the release hearing. The statute defines also “victim” for purposes of ORS 144.120(7):

“The State Board of Parole and Post-Prison Supervision must attempt to notify the victim, if the victim requests to be notified and furnishes the board a current address, and the district attorney of the committing county at least 30 days before all hearings by sending written notice to the current addresses of both. The victim, personally or by counsel, and the district attorney from the committing jurisdiction shall have the right to appear at any hearing or, in their discretion, to submit a written statement adequately and reasonably expressing any views concerning the crime and the person responsible. The victim and the district attorney shall be given access to the information that the board or division will rely upon and shall be given adequate time to rebut the information. Both the victim and the district attorney may present information or evidence at any hearing, subject to such reasonable rules as may be imposed by the officers conducting the hearing. *For the purpose of this subsection, ‘victim’ includes the actual victim, a representative selected by the victim, the victim’s next of kin or, in the case of abuse of corpse in any degree, an appropriate member of the immediate family of the decedent.*”

(Emphasis added).

The Board’s administrative rules define “victim” by reference to both of the above statutory definitions:

“‘Victim’: The actual victim, a representative selected by the victim, the victim’s next of kin or, in the case of abuse of corpse in any degree, an appropriate member of the immediate family of the decedent (Per ORS 144.120(7)). The person or persons who have suffered financial, social, psychological or physical harm as a result of a crime and includes, in the case of a homicide or abuse of corpse in any degree, a member of the immediate family of the decedent and, in the case of a minor victim, the legal guardian of the minor (Per ORS 131.007).”

OAR 255-005-0005(59). The statutes and Board rules do not further define “actual victim.”

Workgroup Recommendations

For purposes of determining which victims have the right to be notified of release hearings and to speak at release hearings, the workgroup recommends that the Board further define “actual victim” by adopting the definition of “victim” in Article I, sections 42, 43, and 44, of the Oregon Constitution. The constitutional definition provides:

“‘Victim’ means any person determined by the prosecuting attorney or the court to have suffered direct financial, psychological or physical harm as a result of a crime and, in the case of a victim who is a minor, the legal guardian of the minor. In the event that no person has been determined to be a victim of the crime, the people of Oregon, represented by the prosecuting

attorney, are considered to be the victims. In no event is it intended that the criminal defendant be considered the victim.”

The workgroup recommends that the Board adopt this definition (or one similar to it) by rule; workgroup members did not believe a statutory change was necessary.¹

As discussed more fully below in the section on Release Hearing Notifications, the Board’s rules also may need to address those situations where a District Attorney does not provide the Board with information regarding the identity of the victim or victims in a particular case.

Impact of Recommendations

<i>Fiscal or Workload Impact:</i>	No
<i>Impact on Other Agencies:</i>	No
<i>Statutory Change Required:</i>	No, unless DOJ concludes otherwise
<i>Rule Change Required:</i>	Yes

Summary of Workgroup Discussion

Oregon law defines “victim” a number of different ways depending on the context in which it is used. The workgroup reviewed a compilation of victim definitions put together by the Oregon Crime Victims’ Rights Compliance Project. Ultimately, and after extensive discussion, the workgroup decided to recommend that the Board adopt the constitutional definition of victim.

All workgroup members were comfortable with the constitutional language “any person determined by the prosecuting attorney”; the workgroup agreed that the District Attorney is the person most likely to have access to pertinent information about the identity of the victims in a particular case.

Some workgroup members, however, believed that the remainder of the constitutional definition might not be broad enough to include all victims, particularly in cases in which the named victim is deceased. These workgroup members proffered an alternative definition of victim that the Board may wish to consider:

“‘Victim’ means any person determined by the prosecuting attorney or the court to have suffered financial, psychological or physical harm as a result of a crime and includes, in the case of a homicide or abuse of corpse in any degree, a member of the immediate family of the decedent and, in the case of a victim who is a minor, the legal guardian of the minor.”

¹ The workgroup recommends, however, that the Board consult with the Oregon Department of Justice on whether a statutory change is needed.

This definition essentially adds the constitutional language “any person determined by the prosecuting attorney or the court” to the statutory definition of victim in ORS 131.007.

One workgroup member raised a concern that the last sentence in the constitutional definition, “In no event is it intended that the criminal defendant be considered the victim,” could unfairly exclude some victims from Board notification or other criminal justice services, such as crime victims’ compensation.

Finally, the workgroup discussed which victims the District Attorney should designate in those situations where allegations or charges against the offender do not result in a conviction. There was general agreement that, if the offender admitted the conduct as part of a plea bargain, it would be appropriate for the victims in the dismissed counts to be listed as victims by the District Attorney. At least one workgroup member, however, believed that in most cases only the victims for the conviction(s) at issue, *i.e.*, the convictions for which the release hearing is being held, should be allowed to testify.

COMMUNICATIONS WITH VICTIMS

Introduction

The workgroup reviewed the letters and pamphlets that are currently provided to victims who contact the Board.

Workgroup Recommendations

All of the written materials that the Board sends to victims need to be clear, easy to understand, informative, and victim-sensitive.

The initial letter that goes to those victims identified by the District Attorney needs to provide clear information on what steps the victim needs to take to register with the Board, the need for the Board to be kept advised of the victim's current address or other means of contact, and the rights the victim has to attend and be heard at release hearings. The Board should work with District Attorneys, the Crime Victims' Services Division of the Oregon Department of Justice, and other victims' advocacy groups in crafting this letter.

This letter also should advise victims that they can "opt out" of further contact from the Board and can "opt back in" at any time if they wish. The letter should explain that the victim would opt out by contacting the Board and similarly could opt back in by contacting the Board. The letter should describe the other ways in which victims may obtain offender release information, other than by registering with the Board, such as the Board's website and Victim Information & Notification Everyday (VINE).²

Any information provided by District Attorneys' offices and the Department of Justice regarding the parole hearing process also needs to be clear, easy to understand, and consistent with the information provided by the Board.

The public websites of the Board, District Attorneys, the Department of Corrections, and the Oregon Department of Justice should contain links to the Board's website so that victims and members of the public can obtain accurate, up-to-date information on scheduled release hearings and on how to register with the Board to obtain parole release information.

Impact of Recommendations

<i>Fiscal or Workload Impact:</i>	Yes
<i>Impact on Other Agencies:</i>	Yes
<i>Statutory Change Required:</i>	No
<i>Rule Change Required:</i>	No

² VINE is an automated system operated in Oregon by the Department of Corrections. Anyone may register with VINE to be notified about a particular inmate's status and location. A person may register with VINE by using an email address or telephone number; names and addresses are not required.

Summary of Workgroup Discussion

There was general agreement that the letters and pamphlets that are currently provided to victims who contact the Board should be modified to be more victim-friendly and informative as set forth in the workgroup's recommendations.

Additionally, the workgroup discussed the fact that victims are provided with information at many points in the criminal justice process, from police, district attorneys, advocacy groups, the Department of Justice, the Board, and the Department of Corrections. It may be important for victims to receive information at various points in the criminal justice process given the stress victims are under and the complexity of the criminal justice system. However, to the extent possible, efforts should be made to provide clear and consistent information to victims at every stage in the process.

Ideally, there would be one additional point of contact for victims that would be outside the criminal justice system, which would provide clear, accurate information about the system and would also provide advocacy and referral to community-based services. The workgroup recognized, however, that this goal was beyond the scope of its charge. Nevertheless, many members of the workgroup felt strongly that additional services and resources need to be created and funded to provide regular and in-person support for crime victims.

Finally, the workgroup heard from the Department of Corrections (DOC) on a new online web search tool – Oregon Offender Search – that will allow the public and crime victims to access certain information about an offender. The Board will have a link to this DOC site on its webpage. At the present time, this search tool will not include information about Board hearings because the IT systems used by the Board and DOC are not compatible. DOC and the Board have plans to replace their IT systems with a unified data management system. Workgroup members were supportive of this future direction.

RELEASE HEARING NOTIFICATIONS

Board's Current Practices

Public Notification

The Board posts public meeting notices for its release hearings on its website. These meeting notices list the dates and locations of Board hearings, but do not include any specific information about the cases the Board will hear. The website invites those interested in inmate hearings to contact Board staff. For example, the current website contains the following information:

HEARINGS

October 2008

Wednesdays: October 1st, 8th, and the 15th from the Oregon State Penitentiary (OSP)
Tuesday: October 14th from the Oregon State Correctional Institution (OSCI)

November 2008

Wednesdays: November 5th, 12th, and 26th from the Oregon State Penitentiary (OSP)
Tuesday: November 18th from the Oregon State Correctional Institution (OSCI)

December 2008

Wednesdays: December 3rd, 10th and 17th from the Oregon State Penitentiary (OSP)
Tuesday: December 16th from the Oregon State Correctional Institution (OSCI)

For more information about specific business meetings and agendas, please call Susan Deschler at (503) 945-0914. For information about inmate hearings, please call Kim Gonzales at (503) 945-0902. The Board's fax number is (503) 373-7558. The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting.

Notification of Victim and District Attorney

The Board has a statutory duty to "attempt to notify the victim, if the victim requests to be notified and furnishes the board a current address, and the district attorney of the committing county at least 30 days before all [release] hearings by sending written notice to the current addresses of both." ORS 144.120(7).³

³ See also OAR 255-030-0013(3): "The Board shall attempt to notify the victim, if the victim requests notification and furnishes the Board a current address, and the District Attorney of the committing county at least thirty (30) days before all hearings by sending written notice to the current addresses of both parties."

Thus, in order to receive notification of release hearings, victims are required to register with the Board and to keep the Board advised of their current address. ORS 144.120(7); OAR 255-030-0013(3). Victims can register with the Board by telephone, fax, email, or regular mail. Anyone may register with the Board to obtain notification; at this point in the process, the Board does not attempt to determine if the person registering is an actual victim.

Under the Board's current rules and procedures, the District Attorney is notified of the hearing date 45 to 60 days before; the victim is notified at least 30 days before; and the offender is notified at least 14 days before. OAR 255-030-0013.

Workgroup Recommendations

Public Notification

The Board should continue to post public notices of upcoming release hearings on its website. The notices, however, should contain additional information, including the name, state identification number (SID), and date of birth of the inmates scheduled for release hearings.

Notification to District Attorneys, Designated Victims, and Offenders

The District Attorney of the committing county should identify those victims who are entitled, under ORS 144.120(7), to receive notification of release hearing dates and to speak at release hearings for those cases under the Board's release authority:

1. Offenders convicted of a felony where the criminal conduct took place before November 1, 1989;
2. Offenders sentenced as "dangerous offenders" by a trial court regardless of the date the crime took place;
3. Offenders convicted of aggravated murder that are eligible to be considered for the possibility of parole; and
4. Offenders convicted of murder after June 30, 1995.

For the approximately 1,600 inmates who currently are under the Board's release authority, the workgroup recommends that the victims in those cases be identified using the following process:

- The Board will send each Oregon District Attorney a list of the offenders from that District Attorney's county who remain under the Board's release authority.⁴

⁴ The list should contain identifying information, such as the offender's date of birth and SID number.

- For each of these cases, the Board will ask the District Attorney to provide the Board with the name(s) of the victim(s) and, if available, the current address of each identified victim.
- The Crime Victims' Services Division of the Oregon Department of Justice has offered to assist District Attorneys with locating current addresses for victims.

The Board should send a letter, written in victim-sensitive and easy-to-understand language, to each victim identified by the District Attorney and for whom the Board has a current address⁵ that advises the victim of the following information:

- That the victim has the right to be notified of release hearings and release decisions and the procedures to follow if the victim wishes to receive such notification, including the requirement that the victim continue to provide the Board with a current address or other means of contact;
- That the victim has the right to participate, including the right to speak, at the release hearing;
- That the victim can “opt out” of further contact if the victim does not wish to have any further notification from the Board of upcoming hearings and release decisions;
- That the victim can choose to participate in the future if the victim opts out now but later changes his or her mind; and
- That registration with the Board does not serve to register the victim for any other criminal justice services, such as crime victims' compensation. Ideally, contact information for these other victims' services should be provided.

This letter, and other Board publications addressed to crime victims, also should advise victims where and how they can obtain information about the offender if they prefer to be notified of release hearings and release decisions by other means, such as VINE.

The Board should notify those victims designated by the District Attorney of the dates of release hearings and of release decisions unless the victim has notified the Board that the victim does not wish to be notified of this information (“opting out of the notification process”).

If a District Attorney, for any reason,⁶ does not provide the Board with information regarding the identity of the victim or victims in a particular case:

⁵ In some cases, the victim or victims designated by the District Attorney may already be registered with the Board and the Board may have a current address. In these cases, the Board would have the statutory obligation to notify the victim of release hearings and release dates even if the District Attorney did not provide a current address.

⁶ The workgroup recognized that some District Attorneys may have resource issues.

- The Board will continue to notify all persons who have registered with the Board to receive notification regarding a particular offender; and
- The Board will use the process it currently uses to identify those victims who have the right to speak at the release hearing, *i.e.*, by reviewing its records to determine who the victims are in a particular case.

After all identified and located victims in the initial 1,600 cases are contacted, the District Attorney would continue to notify the Board following the sentencing hearing of the identity and addresses of the victims in new cases whose offenders will be under the Board’s release authority, *i.e.*, aggravated murder, murder, and dangerous offender cases.

For those victims who register with the Board to receive future notifications, the Board should make reasonable efforts to locate those victims whose notification is returned to the Board due to an incorrect or outdated address. Reasonable efforts might include contacting the District Attorney of the committing county and the Oregon Department of Justice to request assistance in locating the victim.

These recommendations do not preclude others from registering with the Board to receive notification of release hearings and release decisions, but these individuals may not have statutory notification rights or the right to make a statement at the release hearing. Currently, the Board registers anyone who contacts the Board and asks to be registered; workgroup members did not intend to change this process.

All parties – the District Attorney, the victims designated by the District Attorney, and the offender – should be notified of the release hearing date at least 90 days prior to the hearing date.

Impact of Recommendations

<i>Fiscal or Workload Impact:</i>	Yes
<i>Impact on Other Agencies:</i>	Yes
<i>Statutory Change Required:</i>	No
<i>Rule Change Required:</i>	Yes

Summary of Workgroup Discussion

Public Notification of Hearings

The workgroup recommended that the Board put more information on its public website for two primary reasons: It will serve to increase the agency’s transparency to stakeholders and the public, and it will allow victims who do not wish to receive notification from the Board to nevertheless have a way to track when a particular offender comes up for parole.

Victim Notification

The process outlined in the above recommendations is designed to address a number of concerns that were brought to the workgroup's attention.

The information provided to crime victims by District Attorneys, the police, and victim advocates is better today than it used to be, although there is still significant room for improvement.

Many of the victims of the 1,600 offenders under the Board's release authority may not have had adequate information about their rights as crime victims at the time the offender was initially sentenced. As a result, the workgroup determined that it would be better to attempt to re-contact these victims to provide them with accurate information, even though some of the victims may not wish to be contacted and some may already be registered with the Board.

Some of these victims may have "opted out" of being notified years ago, but may now wish to re-engage in the parole process. The above recommendations will help to ensure that all of these victims have accurate, up-to-date information so that they can make the best decision on how to participate, or not, in their particular case.

Ideally, it would be best if the victims in these cases could be initially contacted by a victim advocate to explain why the victim was being contacted now, rather than simply getting a letter from the Parole Board; the workgroup, however, recognized that this might not be possible. Whether the initial contact is made by a victim advocate or by Board letter, victims should be clearly informed why the Board is contacting them. It also might be appropriate to provide information about supportive services available to crime victims.

The workgroup determined that the best source of information about past victims would be to start with the District Attorney of the committing county. That process will start with the Board getting each District Attorney a list of offenders in his or her county and asking the District Attorney to provide the Board with the names and, if known, current addresses of the victims.

The Crime Victims' Services Division of the Oregon Department of Justice has contact with many victims through its crime victims' compensation program. That agency may have more recent addresses for crime victims than the District Attorney. The department has agreed to work with District Attorneys in locating current addresses for those victims who have been identified by District Attorneys as the victims in a particular case.

Confidentiality Concerns

The workgroup discussed the fact that confidentiality issues may arise in some circumstances. For example, under its existing practices, the Board will not confirm, even to another law enforcement agency, whether a particular person is registered with the Board. Similarly, the Department of Justice has an address confidentiality program that allows

victims of domestic violence, sex abuse, and stalking to use a PO Box as an address. The Board and other public agencies can verify that a particular victim is in the address confidentiality program, but DOJ will not provide the address.

The workgroup concluded that these confidentiality concerns could be overcome in most cases. The recommendation asking District Attorneys to provide the names and addresses of victims to the Board, for instance, will not require the Board to divulge whether a particular victim is already registered with the Board. And the Board may be able to send victim notification letters to the Department of Justice to forward to those victims in the address confidentiality program instead of having DOJ divulge confidential addresses to the Board.

District Attorney Notification

If the Board agrees with the workgroup's recommendations in this area, all Oregon District Attorneys will need to be briefed on what the Board is asking of them as to the 1,600 offenders currently in custody and as to future offenders who come under the Board's release authority. The District Attorneys on the workgroup have agreed to work with the Board on this notice issue if the recommendation is adopted.

HEARING LOCATIONS

Board's Current Rules and Practices

The Board's existing rules provide that hearings will be held in a Department of Corrections facility when the inmate appears in person at the hearing. OAR 255-030-0026(5)(a). If the inmate appears by telephone or by videoconference, OAR 255-030-0026(5)(b) provides that hearings will be held "at the place in which the Board is meeting for purposes of conducting the hearing."

In practice, the Board currently holds all hearings in either the Oregon State Penitentiary (OSP) or the Oregon State Correctional Institution (OSCI). Inmates housed inside these two institutions may appear in person; inmates housed outside these two institutions appear via videoconference. District Attorneys, victims, counsel, and members of the public and press who wish to attend hearings in person must attend the hearings at OSP or OSCI. District Attorneys, victims, and counsel also may appear via telephone.

At one time, hearings were held in the Dome Building in Salem; all offenders appeared by video. That practice was discontinued when attendees attacked each other. Following that incident, the Board began holding all hearings in a secure facility. For about 20 months in 2000-2001, the Board held its hearings in the Marion County Courthouse; the county ended that practice because of scheduling, noise, and resource issues.

Workgroup Recommendations

The Board should consider holding hearings at a secure location outside prisons.

In any hearings location, hearings should be conducted so as to minimize victim concerns about safety.

Impact of Recommendations

<i>Fiscal or Workload Impact:</i>	Yes, if changes are made
<i>Impact on Other Agencies:</i>	Yes, if changes are made
<i>Statutory Change Required:</i>	No
<i>Rule Change Required:</i>	Yes, if changes are made

Summary of Workgroup Discussion

The workgroup spent considerable time discussing this issue, but ultimately did not arrive at a specific recommendation to change existing practice. There was strong agreement among workgroup members that it would be better for victims if they did not have to enter a correctional facility to attend release hearings in person. But the workgroup also recognized that there may be significant costs and security issues associated with changing existing practice and that some additional stakeholders may need to be consulted before any changes

are made. For example, a number of workgroup members felt strongly that the hearings should be held in a courtroom, but believed the judicial department should be contacted for input before any decision is made to move the hearings to a courtroom.

Because of budget and workload issues, the Board probably would need to hold the hearings at some location in Marion County so that Board members would not be required to travel to other locations in the state. There was general agreement that the hearings should be held at a secure location; the only place identified as such a location (other than a correctional facility) was the Marion County Courthouse.

Some workgroup members expressed concern about the expense, and security issues, of transporting inmates to locations outside a correctional facility; other workgroup members noted that inmates should be allowed to attend these hearings in person if they wish to do so. Ideally, both victims and offenders would be given the opportunity to appear in person or by video.

The workgroup also heard from victims who suggested that there were times during release hearings when they felt they were in too close proximity to the offender or had to face the offender when providing their statements to the Board. The Board should look for ways to minimize these types of situations, even if it decides to continue holding hearings inside a correctional facility.

STATEMENTS AT RELEASE HEARINGS

Board's Existing Practices and Procedures

Under the Board's existing rules, *see* OAR 255-030-0027, Board hearings generally follow this sequence:

1. The presiding Board member introduces the hearing, describes its purpose, and states who is in attendance.
2. Board members then question the offender.
3. The victim or the victim's representative is invited to make a statement to the Board.
4. The offender is offered an opportunity to make a statement to the Board in response to the victim's statement.
5. The District Attorney (if participating) is invited to make a statement to the Board.
6. The offender is offered an opportunity to make a statement to the Board in response to the District Attorney's statement.
7. The offender supporter (if participating) is invited to make a statement to the Board.
8. Board members may ask questions of those making statements to the Board at any time.

Under the Board's existing rules and practices, only one victim is allowed to speak at the release hearing, even if the offender's crime included multiple victims. Other victims must submit their comments in writing. The determination of which victim will speak on behalf of all victims is apparently left to the decision of the victims or the District Attorney.

OAR 255-030-0027 limits the amount of time the victim, the District Attorney, and the offender supporter may speak to three minutes:

- (1) During the hearing, the victim, personally, by counsel, or by representative, and the District Attorney from the committing jurisdiction, parole officer and institution counselor may make statements not to exceed three minutes.
- (2) Following the victim and the District Attorney statements, the person accompanying the inmate may make a statement not to exceed three minutes.

Workgroup Recommendations

- *Replace three-minute time limit with 15-minute time limit*

The Board should amend OAR 255-030-0027(1) and (2) to delete the references limiting statements to three minutes.

The Board should amend OAR 255-030-0027(1) and (2) to provide that statements by the victim or the victim's representative, the District Attorney, and the inmate's representative should not exceed 15 minutes.

The Board, in its discretion, may allow longer statements.

- *Allow more than one victim to speak*

The Board should amend its rules to provide that any victim designated by the District Attorney will be allowed to make a statement. The workgroup believes all victims in the case before the Board, as designated by the District Attorney, should be allowed to speak, if they wish to do so.

This recommendation does not mean the Board cannot limit otherwise repetitive and cumulative information, but each victim should have the opportunity to "adequately and reasonably express[] any views concerning the crime and the person responsible." ORS 144.120(7). The same statute gives the Board the authority to adopt "reasonable rules" for the presentation of evidence at these hearings. *See also* OAR 255-030-0032 (Board may exclude evidence that is unduly repetitious or irrelevant or immaterial).

- *Change the sequence of the hearing*

The workgroup recommends that all victims and the District Attorney speak before the offender is allowed to make a statement in response. The offender supporter, if any, would then be allowed to make a statement. Thus, the current sequence of the hearing (set forth above) would be changed as follows:

1. The presiding Board member introduces the hearing, describes its purpose, and states who is in attendance.
2. Board members then question the offender.
3. The victim(s) or the victim's representative(s) is invited to make a statement to the Board.
4. The District Attorney (if participating) is invited to make a statement to the Board.
5. The offender is offered an opportunity to make a statement to the Board in response to the victim(s)' and District Attorney's statements.
6. The offender supporter (if participating) is invited to make a statement to the Board.
7. Board members may ask questions of those making statements to the Board at any time.

- *Allow parties an opportunity to provide written closing remarks following the hearing*

A number of workgroup members advocated changing the sequence of the hearing so that the victim or victims would be allowed to make a rebuttal statement after the offender's case is presented. The workgroup did not reach consensus on this issue, largely because a number

of workgroup members believed that, because the burden of persuasion is on the offender to prove he or she should be released, the offender should be allowed to have the last word.

The workgroup, however, agreed that the Board should consider leaving the record open for seven days⁷ in certain cases to allow the parties to provide the Board, in writing, with closing comments:

1. When a victim participates in a hearing in person, by proxy, or by telephone, the record of the hearing will remain open for seven days to allow for written rebuttal by any participant in that hearing (including the offender) unless the victim waives the seven-day period.
2. When a District Attorney (but no victim) participates in a hearing in person or by telephone, the record will remain open for seven days to allow for written rebuttal by any participant in that hearing (including the offender) unless the District Attorney waives the seven-day period.
3. When neither a victim nor a District Attorney participates in the hearing, the Board may deliberate immediately and issue its decision.

The Board would decide the case, without holding another hearing, after the seven-day time period expired. Only those individuals who participated at the original hearing would be authorized to provide written closing comments.

Impact of Recommendations

<i>Fiscal or Workload Impact:</i>	Yes
<i>Impact on Other Agencies:</i>	No
<i>Statutory Change Required:</i>	No
<i>Rule Change Required:</i>	Yes

Summary of Workgroup Discussion

- *Replace three-minute time limit with 15-minute time limit*

All members of the workgroup were in agreement that the Board should eliminate the three-minute time limitation in OAR 255-030-0027. Workgroup members were advised that the Board does not strictly enforce the three-minute time limit, but victims who attended the workgroup hearings said that they were advised of the time limit before they spoke and felt pressured to complete their statements within the time limit.

Although workgroup members understood that three minutes may be adequate in some cases, they determined that it is often not an adequate amount of time for a victim, District Attorney, or offender supporter to make the points they wish to make.

⁷ The seven-day time period would be calculated pursuant to ORCP 10, *i.e.*, weekends would count as part of the seven-day period.

Workgroup members also agreed, however, that it would be appropriate for the Board to have some sort of time limit on statements made by victims, District Attorneys, and offender supporters. The workgroup ultimately picked 15 minutes as its recommendation, but members agreed that other time limits (for example, 20 minutes) also would be reasonable. Workgroup members believed a specific time limit of some sort should be in the rule, rather than just referring to a “reasonable” amount of time, so that victims and others will know the limits.

The Board would retain the discretion it currently has to allow longer statements in appropriate circumstances.

- *Allow more than one victim to speak*

All members of the workgroup were in agreement that the Board should allow more than one victim to speak when there are multiple victims involved in the offender’s case. As noted above, the issue of who is an actual victim consumed a great deal of the workgroup’s time; ultimately, as discussed above, the group decided that the District Attorney should be the one who makes that determination.

At least one workgroup member expressed a concern about having multiple victims speak at a hearing while limiting the offender, in those cases, to only one supporter. The workgroup, however, did not arrive at a recommendation to address this concern. Some members of the workgroup did not view this as a concern. One workgroup member pointed out that an offender may submit an unlimited number of written recommendations from supporters. Other workgroup members believed the Board would have the discretion to allow others to speak if there were a need to do so.

- *Change the sequence of the hearing*

The workgroup recommends that all victims and the District Attorney speak before the offender addresses the victims’ and the District Attorney’s remarks. The workgroup did not believe it made sense to have the offender respond after each victim made a statement.

- *Allow parties an opportunity to provide written closing remarks following the hearing*

Some members of the workgroup believed that the victims and the District Attorney should be allowed to make another statement (rebuttal) after the offender and the offender’s supporter (if any) speak. As noted above, the workgroup did not reach consensus on this issue. But, as an alternative, workgroup members agreed to recommend that the Board consider allowing the record to remain open for seven days after the hearing is concluded so that any party to the hearing could submit final written comments.

The workgroup intends this option to be available only to those parties and individuals who actually made a statement to the Board at the hearing. This recommendation is not intended to allow new individuals to offer written testimony after the hearing has been held.

The victim or District Attorney may waive the seven-day period and allow the Board to decide the case immediately following the hearing. The workgroup encourages the Board to fully advise the victim of the consequences of waiving the seven-day period.

The Board's decision when its deliberations are delayed for seven days would be announced in writing and posted on the Board's website; there would not be another hearing.

PSYCHIATRIC/PSYCHOLOGICAL EVALUATIONS

Current Practice

The Board currently contracts with four psychologists located in Oregon (two in Portland, one in Salem, and one in Pendleton) and one located in Washington who examine offenders at the Board's request. The Board has statutory authority to require psychiatric or psychological evaluations before an offender is released. ORS 144.125; 144.223; 144.226; and 144.228. *See also* OAR 255-060-0012.

The psychologists currently under contract with the Board have been on the list "for a number of years." They are required to have a current license and are required to submit written reports to the Board. The report is disclosed to the Department of Corrections and the inmate automatically, and to the District Attorney and victim on request. They are not required to attend the release hearings.

An offender may pay for a second psychological evaluation to be considered by the Board if the offender receives a negative psychological report. If the offender receives a positive psychological evaluation, *i.e.*, one that concludes that the offender's diagnosis is in full or partial remission, the Board automatically orders a second evaluation from a different evaluator.

Workgroup Recommendations

Minimum qualifications and contracting

The Board should adopt rules concerning contracting for psychological/psychiatric services and the minimum qualifications for obtaining such a contract. The workgroup recommends that any agency rule contain the following (or other equivalent language):

Psychiatric/psychological testing contracts

1. The Board shall submit an open RFP at each biennium for the performance of psychiatric and psychological testing.
2. Previous contracts with the Board shall not be considered in the award of new contracts.
3. Psychiatrists and psychologists must meet certain minimum qualifications to be awarded a contract, including the following:
 - a. A PhD or MD in psychology or psychiatry.
 - (i) A background in forensic and/or deviant specialties is preferred.
 - b. Licensed in Oregon
 - c. A minimum of five years' post-doctorate experience in the diagnosis and treatment of mental disorders.
4. The Board may waive the five-year experience requirement if (i) the Board, through the RFP process, is unable to find adequate candidates with five

years' experience, and (ii) highly qualified candidates with less than five years' experience are available.

5. In no case shall requirements (a) or (b) in subsection 3, above, be waived.

Appointment of professional workgroup

The Board should form, within the next 90 days, a professional workgroup charged with developing psychiatric and psychological standards for evaluations. The workgroup, at a minimum, should be composed of the following members:

1. Four licensed psychiatrists or psychologists, only two of whom can currently be under contract with the Board
2. At least one prosecutor
3. At least one defense attorney
4. At least one representative from the Department of Corrections
5. At least one victim advocate

The workgroup should be charged with developing a set of standards for psychiatric and psychological evaluations of Oregon inmates for purposes of parole and release. These standards, in format and content, shall be modeled off the "Standards for Forensic Psychological Evaluations of Adult Sexual Offenders" approved by the San Diego Sex Offender Management Council (2003).⁸ The standards should be updated to reflect the most recent scientific understanding and should not be materially inconsistent with the recommended practices of the American Psychiatric Association, the American Psychological Association, and the American Academy of Psychiatry and Law.

The Board should promulgate rules providing for the formation of this workgroup every four years for the purposes of evaluating the existing standards and ensuring they continue to meet industry practices.

Quality assurance testing

The Board should contract with a psychiatrist or psychologist for quality assurance purposes (QA psychologist).

Once a biennium, the Board should randomly select three psychiatric/psychological evaluations per contracted service provider for quality assurance (QA) testing. Those evaluations, with all accompanying diagnostic data and clinical notes, should be provided to the QA psychologist. The QA psychologist will inform the Board, in writing, whether the subject psychologist's methods and conclusions were within the scientifically accepted norm.

⁸ A copy of these standards is attached as Appendix B.

If the professional workgroup determines that three sample examinations are insufficient for QA purposes, the Board may increase the sample size to that workgroup's recommendation. In no case should the QA sample be less than three evaluations.

Impact of Recommendations

<i>Fiscal or Workload Impact:</i>	Yes
<i>Impact on Other Agencies:</i>	No
<i>Statutory Change Required:</i>	No
<i>Rule Change Required:</i>	Yes

Summary of Workgroup Discussion

Consensus Recommendations

There was universal agreement that psychological or psychiatric evaluations play an important role in Board decision-making regarding release. Because of their importance, workgroup members agreed that the Board should adopt rules concerning the minimum qualifications for examiners hired to do this work and that the Board should have a contracting and quality assurance process in place that ensures the Board is hiring highly-qualified psychologists and psychiatrists to do this work.

Workgroup members recognized, however, that they did not have the professional expertise to decide on specific standards for the psychiatric and psychological evaluation of Oregon inmates for purposes of parole and release. That is the reason for the recommendation that the Board appoint a separate professional workgroup to address these issues.

There undoubtedly will be costs associated with at least some of the recommendations made by the workgroup. At a minimum, the Board would need to obtain additional funding for the quality assurance testing.

Other Recommendations

The workgroup considered other possible recommendations that would have allowed the offender, the victim, or the District Attorney to challenge the methodology or conclusions of the Board-hired examiner, either by allowing the offender, victim, or District Attorney to hire another expert to examine the diagnostic data and clinical notes of the initial evaluator or by having the Board hire an additional evaluator or evaluators if the offender, a victim, or the District Attorney contested the methodology or conclusions of the initial evaluator.⁹

The workgroup determined that it would be best to have the professional workgroup determine if these additional steps are necessary. The workgroup also was concerned that public funding to obtain additional evaluators and evaluations would be difficult to obtain and that it would not be fair to allow only those with access to private funds to have the benefit of these additional challenges.

⁹ A copy of these proposed recommendations is attached as Appendix B.

Finally, the workgroup determined that the Board's advisory council (discussed below) should consider whether any additional changes are needed after the initial workgroup recommendations, if any, are implemented.

BOARD FINDINGS IN RELEASE HEARINGS

Current Law and Practice

The Board's release decision is initially reported in a Board Action Form (BAF), which sets forth the Board's release decision with a summary explanation of the basis for the Board's decision. The inmate is then entitled to seek administrative review of the Board's order. If the inmate does so, the Board will then issue a more detailed order called an Administrative Review Response (ARR). *See* OAR 255-080-0001 to -0015.

Following the administrative review process, the inmate is entitled to seek judicial review in the Oregon Court of Appeals. ORS 144.335.

ORS 144.135 requires the Board to "state in writing the detailed bases of its decisions under ORS 144.110 to 144.125." The Board also is required to issue particular findings of fact and conclusions of law in certain cases. *See* ORS 163.105(4) (findings required for aggravated murder cases); ORS 163.115(5) (findings required for murder hearings).

Workgroup Recommendations

If the Board decides that an offender should be released from prison, it should issue a Board Action Form (BAF) with a level of detail that is similar in content to the order issued in the administrative review process.

Impact of Recommendations

<i>Fiscal or Workload Impact:</i>	Yes
<i>Impact on Other Agencies:</i>	No
<i>Statutory Change Required:</i>	No
<i>Rule Change Required:</i>	Yes

Summary of Workgroup Discussion

An offender who is unsuccessful at a release hearing may seek administrative review from the Board, at which time the Board issues a more detailed explanation of its decision. If the offender is still unsuccessful, the offender has the right to seek judicial review in the Oregon Court of Appeals.

In contrast, if the Board votes to release an offender, victims and the District Attorney do not have the right to seek further review by the Board or the Oregon appellate courts. The workgroup concluded that in these circumstances, when the Board votes to release an offender, a more detailed order explaining the Board's release decision would promote public confidence in the Board process.

BOARD'S KEY PERFORMANCE MEASURES

Summary of Board's Current Performance Measures

The Board has eight key performance measures (KPMs) that have been approved by the Oregon Legislature. The workgroup reviewed a summary of these measures and the Board's progress on them for fiscal year 2006-07.¹⁰

The workgroup focused its attention on two of the performances measures, KPM 3 and KPM 8, because they were most closely aligned with the workgroup's charge.

Key Performance Measure 3 relates to victim notification.¹¹ Since 2002, the Board, with the goal of valuing victim interest, has measured the "percentage of active registered victims for which the Board has an accurate point of contact for notification of hearings and of an offender's release." In other words, KPM 3 measures the percentage of registered victims and stakeholders to whom the Board is able to make successful notification.

Key Performance Measure 8, which has been in place since 2005, is the Board's "customer service" performance measure. The Board surveys those, such as District Attorneys and defense attorneys, who have requested files and records from the Board in an effort to determine "overall customer service, timeliness, accuracy, helpfulness, expertise and availability of information." The Board does not survey victims.

Workgroup Recommendations

Key Performance Measure 3 should be changed to measure the Board's performance in taking steps to re-contact those registered victims who have mail returned to the agency due to an incorrect address or a change in address.

The Board also should develop a new KPM to measure the percentage of letters sent within 30 days by the Board to those individuals identified as victims by a District Attorney. The 30-day time period should run from the Board's receipt of notification from the District Attorney.

Key Performance Measure 8 should be expanded to include feedback from victims on their satisfaction with the agency's performance, or the Board should develop a new performance measure that will provide the Board with feedback from victims on their satisfaction with the agency's performance.

¹⁰ The report considered by the workgroup can be found on the Board's website at www.oregon.gov/BOPPPS.

¹¹ Victim in this context can include non-victim stakeholders who have registered with the Board.

Impact of Recommendations

<i>Fiscal or Workload Impact:</i>	Yes
<i>Impact on Other Agencies:</i>	No
<i>Statutory Change Required:</i>	No
<i>Rule Change Required:</i>	No

Summary of Workgroup Discussion

The workgroup did not believe Key Performance Measure 3 was a meaningful measurement. The fact that 90 percent (2007 target) of the individuals registered with the Board have provided accurate contact information does not necessarily mean that the Board has taken any steps to ensure the information is accurate. It may simply mean that 90 percent of those who have registered with the Board have kept their contact information up to date or have not moved.

The workgroup determined, instead, that it would be more helpful to focus on the steps that the Board takes to follow up on returned mail from registered victims. For those victims who have registered with the Board, the Board should make reasonable efforts to locate those victims whose notification is returned to the Board due to an incorrect or outdated address. Reasonable efforts would include contacting the District Attorney of the committing county and the Oregon Department of Justice.

Additionally, in light of the workgroup's recommendation that the District Attorney should identify for the Board who the victims are in each offender's case, workgroup members believed it would be helpful to have a KPM focused on the Board's initial timeliness in contacting those victims identified by the District Attorney. For example, workgroup members believe that when a District Attorney designates a victim and notifies the Board, a KPM could be the percentage of initial contact/invitation to register letters to the victims that are sent within 30 days.

The workgroup also determined that the Board's existing customer service performance measure should be expanded, or a new performance measure added, to obtain helpful victim feedback, such as a survey asking victims whether the hearing facilities were acceptable and whether they believed they were treated with respect and dignity and had their rights as a victim honored during the hearings process.

APPOINTMENT OF ADVISORY COUNCIL

Workgroup Recommendations

The workgroup recommends that the Board consider having a permanent advisory council consisting of stakeholders from the various groups that were a part of the parole hearings workgroup.

The Board Chairperson should appoint the members of the advisory council.

The advisory council would meet at least once a biennium and otherwise at the direction of the Board Chairperson.

Impact of Recommendations

<i>Fiscal or Workload Impact:</i>	Yes, but minimal
<i>Impact on Other Agencies:</i>	No
<i>Statutory Change Required:</i>	No
<i>Rule Change Required:</i>	No

Summary of Workgroup Discussion

The workgroup determined that this process had worked well and that it might be helpful to have a permanent committee available to the Board to: (1) make recommendations in areas that this workgroup was unable to get to due to time limitations; (2) serve as a stakeholder advisory council to the Board; and (3) review whether the recommendations made by the existing workgroup and adopted by the Board are working as intended and, if not, to make additional recommendations to address the concerns that have been raised.

OTHER ISSUES DISCUSSED BY WORKGROUP

During the course of its meetings, the workgroup discussed all of the issues listed on pages 4-5 of the August 8, 2008 minutes. *See* Appendix A. Those issues that generated consensus recommendations are set forth above. The remaining issues are set forth below, with a brief summary of the workgroup discussion on each issue.

Administrative Procedures Act

The Administrative Procedures Act generally does not apply to Board hearings. ORS 183.315(1) and (5). The workgroup discussed whether certain provisions should apply, specifically the provisions of ORS 183.413 relating to the notice given to parties in a contested case of their rights, the issues that will be considered at the hearing, and the procedures that will be followed, but ultimately decided, in light of the other recommendations reached by the group, not to make any recommendations in this area. This may be an area, however, for further action by the advisory council.

Board Deliberations

The Board's deliberations are exempt from the Oregon Public Meetings Law. ORS 192.690(1). The Board Chairperson and staff explained the value of having the deliberations done in private; the workgroup decided not to make any recommended changes to existing practice.

Deferral of Parole Release Dates

ORS 144.125(3)(a) provides:

“If the board finds the prisoner has a present severe emotional disturbance so as to constitute a danger to the health or safety of the community, the board may order the postponement of the scheduled parole release until a specified future date.”

Under Board rule, a parole release hearing is scheduled every two years:

“The majority of the Board may defer a scheduled parole release date up to two years. A panel may defer a scheduled parole release date up to 18 months.”

OAR 255-060-0012(5). The Board selected two years in its rule because that time frame is consistent with other statutes that require release hearings every two years. *See* ORS 163.105(5) (aggravated murder); ORS 163.115(5)(f) (murder); and ORS 144.228 (dangerous offenders).

There was agreement from many workgroup members that the two-year period should be extended to a longer period of time, such as five years, so that victims do not have to go through a hearing every two years when the Board already has found that a particular inmate has a present severe emotional disturbance that constitutes a danger to the health or safety of the community.

The workgroup ultimately did not reach agreement on this issue. A number of legal concerns were raised, including whether any changes to the rule might implicate due process or *ex post facto* concerns. The workgroup recommended that the Board seek advice from the Department of Justice on whether the two-year period could be extended to a longer period of time without violating the offender's statutory or constitutional rights. If it can, a number of workgroup members would like the Board to explore changing its rule.

Governor's Authority to Override Board Decisions

In some states, the governor has the power to override parole board decisions. In Oregon, the Governor has the power "to grant reprieves, commutations, and pardons, after conviction, for all offences except treason," but does not have the power to overrule a Board's release decision. Or Const, Art V §14.

Four members of the workgroup voted to recommend that the Governor should have the power to override a Board decision; four members voted not to change existing practice; two members abstained from voting on this issue; two members were absent. Some members of the workgroup believed the Governor should have the power to override parole decisions; some members feared this change could politicize the parole process; and others believed the workgroup's consensus recommendations, if adopted by the Board, should be adequate to address the concerns that have been raised about the parole process.

Judicial Review

Under existing law, an offender "adversely affected or aggrieved" by a final order of the Board, and who has exhausted administrative review under the Board's rules, may seek judicial review in the Oregon appellate courts. ORS 144.335. The workgroup briefly discussed whether victims or District Attorneys also should have the right to seek judicial review when they disagree with a Board decision.

The workgroup agreed that it would not recommend any changes to existing practice.

Mission Statement

The agency's mission statement is:

"To protect the public and reduce the risk of repeat criminal behavior through incarceration and community supervision decisions based on applicable law, victims' interests, public safety, and recognized principles of offender behavior change."

Workgroup members reviewed the mission statement to determine if it focused appropriately on public safety and victims' interests. The workgroup concluded that the language did that.

Packets for Board Hearings

Workgroup members heard a presentation from the Board Chairperson and from Board staff on the contents of Board packets. *See also* OAR 255-030-0035 (setting forth required contents of Board Review Packet).

Some members of the workgroup expressed concern that the Board packets do not contain police reports, indictments, trial transcripts, or victim impact statements from the original sentencing hearing. Other members expressed concern that the newer presentence investigation reports (PSIs) are not as detailed as they used to be before sentencing guidelines.

There was general agreement that, at a minimum, victim impact statements presented at an offender's sentencing hearing should be part of the Board record. The Board Chairperson would like the District Attorney to send these statements to the Parole Board.

Some of the materials in the Board packet are treated as confidential and are not reviewable by anyone other than the Board. For example, if a victim writes a letter to the Board and asks that it be kept confidential, it will not be shown to the District Attorney, inmate, or the inmate's attorney. There was some discussion by workgroup members about whether counsel should be able to review confidential items *in camera*.

The workgroup did not arrive at any specific recommendations, but this is an area that might warrant further exploration by the advisory council. In particular, the workgroup discussed the possibility of having a Board employee prepare a pre-release report (similar to a PSI) that would contain relevant information about the crime, the offender's criminal background, the offender's conduct in prison, and the community supervision options.

Parole Release Plans

There was some discussion by the workgroup that a formal DOC-prepared release plan should be submitted as part of the Board Hearing Packet so that victims and the District Attorney have an opportunity to provide input on the plan before a release decision is made. The current process involves DOC, the local community corrections agency that will supervise the inmate, and the inmate preparing a formal release plan, which includes plans for residence, employment, etc., as part of the transition planning process that begins once the inmate has a firm release date.

Recognizing that changing the process would have a workload impact on DOC and local community corrections agencies, the workgroup made no recommendation. However, the

Board may want to explore opportunities to make this type of information available during the release hearing process.

Public Records

Some Board records are exempt from public disclosure. ORS 192.502(5), for example, provides that the following records need not be disclosed:

“Information or records of the Department of Corrections, including the State Board of Parole and Post-Prison Supervision, to the extent that disclosure would interfere with the rehabilitation of a person in custody of the department or substantially prejudice or prevent the carrying out of the functions of the department, if the public interest in confidentially clearly outweighs the public interest in disclosure.”

See also OAR 255-015-0010 (specific list of Board documents exempt from public disclosure).

The workgroup did not focus on this area and did not see the need to make any changes to existing law.

Appendix A:

Parole Hearings Workgroup Meeting Minutes

Meeting #1, August 8, 2008

SAIF Boardroom, Salem, Oregon

Present: Brenda Rocklin, Steven R. Powers, Mark Cadotte, Steve Krasik, Bronson James, Greg Horner, Walt Beglau, Shannon Wight, Colette S. Peters, Steve Doell, Bob Robison, Cynthia Stinson, Nancy Sellers, Susan Deschler

Excused: Mary Elledge, Bill Taylor

Guests: Tiffany Edens, Caylor Roling

Media: Dave Hogan (*The Oregonian*)

Welcome: Steven Powers welcomed the workgroup and discussed goals. He explained that the Board will celebrate its centennial in 2011, and that it is more important than ever for people to understand the complexities of the Board's operations. This workgroup will assist with that important task, and he thanked the group for their willingness to take on this challenge.

Introductions/Notebooks: Nancy Sellers led introductions of the workgroup and discussed the contents of the notebooks provided to each member. As staff to the workgroup, she will assist members in getting any additional information they require. Susan Deschler will assist.

Workgroup Charge: Facilitator Brenda Rocklin spoke about her role and the background she brings as facilitator of the workgroup (attorney, former prosecutor, DOJ Appellate Division, director of Oregon Lottery, and currently SAIF president and CEO). She will keep the workgroup on task, ensure that all members participate to reach the workgroup's goals, and will write the final report. Other key points:

- These are public meetings and public input will be welcomed.
- Brenda will be the public records officer, and needs each member of the workgroup to ensure their portion of the public record is preserved.
 - If a member of the workgroup sends an e-mail related to the workgroup, it must be retained as a public record. Please copy her on these e-mails for the record.
 - Notes taken by members about the workgroup must be retained. Please keep all notes in the "Meeting Notes" tab of your notebook. Brenda will make copies of all notes for the record at the end of the workgroup.
- The focus of this workgroup is on the Board's hearings, both procedures and processes. There should not be discussion about the merits of any particular case.
- This group is on a fast track; policy, rule, and procedural change recommendations will go to the Board for consideration at its November meeting. If there are recommendations for statutory or other changes requiring legislative action, the next session begins in January.
- Both consensus and non-consensus recommendations, if any, will be in the final report to the Board.

Goals for today: Discuss how the process currently works. Get an initial agreement on an issues list and discuss the issues over the next couple of months. Discuss what the workgroup will do at the next meeting. Walt Beglau inquired if the workgroup can get other key players involved, and Brenda said yes, since key players can provide helpful information to the group. Mark Cadotte wanted to know if the report will be distributed. Steven Powers stated it would be going to the Governor's Office and the Legislature, and will be used for budget planning. Steve Doell requested that certain legislators in particular should get the report. Nancy Sellers will send notebooks to those members excused today. Members may participate in future workgroup meetings by telephone if they are unable to attend in person.

Board Overview: Steven Powers and Nancy Sellers gave an overview of what the Board does as a separate agency and noted that the Board is governed by statutes. The Board currently has three members appointed by the Governor and confirmed by the Senate, an executive director, and 11 staff. By statute, one Board member must be female. The terms are staggered four-year terms or filling unexpired terms. The statute allows for five members; expansion would require legislative approval of funding. Steve Doell asked how other states select Board members. Walt Beglau asked if there has been a screening committee for Board members. It was explained that each Governor chooses his or her selection process.

Steven Powers went over how an offender flows through the judicial process, the Board's release authority, and the Board's supervision duties. Steve Doell asked about murder and Measure 11 crimes.

Nancy Sellers discussed her recent review of Board staff workloads and time study. As the Department of Corrections' (DOC's) inmate population increases, the Board's workload also increases. A conservative estimate is that every 100 inmates entering the prison system will create 155 hours of Board staff work over the life of the inmates' sentences and supervision. Steven Krasik asked if post-prison supervision numbers in the study includes parolees. Nancy stated that it does. Bob Robison inquired about transitional/AIP releases and the response was that the Board is not involved until the offender leaves DOC custody/supervision and transitions to serving the term of post-prison supervision.

Statewide, district attorneys are providing information about victims' rights at the time of sentencing. The Board can register victims by phone, e-mail, or mail. Any stakeholder may register a victim. Registering with VINE does not register a victim with the Board because of VINE confidentiality issues and limits on the information VINE collects. Because VINE cannot share victim information and does not gather names and addresses, the Board does not know who is registered with VINE. Additionally, anyone may register with VINE, whether they are a victim or not. Cynthia Stinson raised a concern about offenders being released who were sentenced before 1989, as she believes the system was not set up to coordinate registration for victims pre-1989.

Steven Powers explained that the Board must follow the laws and rules in effect on the date of the offender's crime. He reviewed the Board's responsibilities including release authority, setting conditions of supervision in the community, and issuing orders related to an offender's transition to and supervision in the community (e.g., sanctions or warrants). There are approximately 13,500 offenders in DOC custody, and the Board has release authority on about 1,600 of them (12 percent). Bronson James inquired about types of Board actions. Brenda Rocklin asked about DOC's role in release planning and setting conditions of supervision. Steven Powers explained that DOC leads

the release plan process with the offender, which then is sent to the local community corrections agency where the offender will be supervised and sent to the Board for approval and supervision conditions. Cynthia Stinson asked if offenders with unpaid restitution can be blocked from leaving post-prison supervision. The answer is no, but if there is documented court-ordered restitution, the Board gives the offender a special condition of supervision that requires payment of that restitution.

Steve discussed the Board's statutory authority and the three major types of Board hearings: murder review hearings, dangerous offender hearings, and matrix offender hearings. Predatory sex offender designation hearings are a separate process. Some supervision conditions are set by statute. The Board issues orders of supervision, which sets the conditions of supervision, for every offender going into the community. The Board sends notifications to DAs, registered victims, and other agencies. The Board issues arrest warrants, imposes sanctions for violations, and issues revocations for supervision violations.

Future disposition (FD) hearings are held for those offenders under the Board's jurisdiction who may be revoked and sent back to prison. A FD hearing is held to determine the length of that term of incarceration. Offenders may seek administrative review and judicial review through the Court of Appeals.

Overview of Board Hearings: Steven Powers gave an overview of the hearings process and the timelines when a hearing is scheduled. When the Board schedules a hearing it flags VINE; the Board also sends written notification to registered victims approximately 30 days prior to the hearing. The file for Board hearings may include some confidential documents including victim letters and pre-sentence investigations that are shielded from disclosure under the Oregon Public Records Law.

Brenda inquired why the notification is sent to the victim and the victim's attorney 30 days out but inmates are notified only 14 days out. Steve said it usually goes out to the inmate 30 days ahead, but that the Board must provide notice and materials to the inmate at least 14 days in advance. Brenda inquired if the district attorney can see the victim's letters sent to the Board; the answer is no, unless the victim chooses to provide them independently to the DA. Bronson James asked to discuss *in camera* review of confidential items in the record by defense counsel.

Psychological evaluations can be reviewed by the district attorney and victims. Presentence investigations are not disclosable under the public records law. An inmate may have a court-appointed attorney in murder review hearings only.

Individual inmates' hearings dates often change after initial scheduling. Steve Doell asked to discuss victim notification dates and have it reflected in the minutes. Colette Peters asked if the VINE system spells out to the victim to notify the Board.

Bronson James requested information on the role of psychologists, the process, who is selected, and how the reports are used.

Steve Doell asked about victim impact statements from the original sentencing hearing and it was explained that the Board does not usually have these. Steven Powers explained the contents of Board hearing packets.

Steven Powers concluded with a brief explanation of exit interviews, murder review hearings, and Board Action Form (BAF) language.

Discuss and Decide on Issues List to be Addressed by Workgroup:

Brenda Rocklin asked the members to discuss what issues should be on the workgroup's list and to prioritize them. The prioritized list (with the number of votes for each item) follows:

- Victim/Public Notification – 11
 - Services
 - Continued contact with victims
- Psychological Evaluations – 9
- Board Values/Mission – 8
 - Victim focus
- Board Membership – 5
- Hearing Locations – 4
- Statements at Board Hearings – 4
- APA Issues – 4
- Board Findings – 3
- Staff Resources – 3
- Judicial Review – 2
- Automation – 1
 - All stakeholders
- Board Deliberations – 1
- Public Records – 1
- Board Packets – 0

Additional topics for possible discussion at future meetings:

- Bronson James: Administrative Procedures Act in relation to the Board.
- Cynthia Stinson – Should the Board be more victim centered?
- Colette Peters – How can the victim notification system be streamlined and pick up pre-1989 victims who may now want to register for notifications?
- Steve Doell – A more automated system for providing notice of upcoming Board hearings and actions.
- Colette Peters – DOC will soon begin a Web-based Oregon offender search engine.
- Steve Doell – Statements at Board hearings, including time limits and number of statements.
- Bob Robison – Continued notification of victims.
- Steve Doell – Parole plans in the Board packet and timing of planning.
- Bronson James – Public notification of release hearings.

- Walt Beglau – Paradigm shift – process related.

Information requested for the next meeting on August 21, 2008:

- Colette Peters – Other states' victim notification processes and how Board membership is selected?
- Walt Beglau – What are current victim expectations? More information on DA notifications and interactions with the Board?
- Shannon Wight – What laws prohibit/hinder sharing of victim notification information? Why not one central comprehensive site for all victim services?
- Steve Doell – Opt in or opt out issue for victim notification?

For future meetings:

- The Board will provide sample engagement letters sent out to the psychologists who provide the Board with psychological evaluations for discussion at the September 18 meeting.
- Colette Peters offered to investigate options for meeting at Coffee Creek Correctional Facility in Wilsonville. (*Post-note: The facility is not available for needed workgroup dates.*)

Closing comments:

- Brenda Rocklin asked if any nonmembers of the workgroup would like to say anything. Tiffany Edens would like to talk about a few things at the next meeting.

The meeting adjourned at noon.

Next meeting: 8:30 a.m. – noon, Thursday, August 21, 2008, SAIF Boardroom.

- Discussion of victim services and notification.

*Respectfully submitted,
Nancy Sellers/Susan Deschler, Workgroup Staff*

Meeting #2

August 21, 2008 – 8:30 a.m., SAIF Boardroom

Present: Brenda Rocklin, Steven Powers, Steve Krasik, Bronson James, Greg Horner, Mark Cadotte, Bill Taylor, Nancy Sellers, Shannon Wight, Bob Robison, Cynthia Stinson, Steve Doell, Colette Peters

Excused/Absent: Mary Elledge, Walt Beglau

Guests: Terrie Quinteras, Tiffany Edens, Rebecca Ahsing, Carol Schrader, Margaret Braun

Media: Mara Stein, Tony Green (via telephone)

Recap: Brenda Rocklin recapped the last meeting. She reiterated that these are public meetings; as the public records officer for this workgroup, she requested that all e-mails related to the workgroup be sent to her. Workgroup members may retain their notes and submit them to Brenda at the end of the workgroup. Communications by members with those outside of the workgroup are also public records. Brenda advised Bill Taylor to follow the usual practice for communication with legislators and their staff. Steve Krasik asked if workgroup members are required to take notes of conversations with others. Brenda stated that there is no requirement to create a document for public record purposes.

Approval of August 8, 2008 Minutes: Nancy Sellers corrected the bottom of page 3: "Colette Peters asked if the VINE system spells out to the victim to notify the Board." The minutes were approved as amended.

Discussion of Board Mission and Values: The Board's mission statement reads: "To protect the public and reduce the risk of repeat criminal behavior through incarceration and community supervision decisions based on applicable law, victims' interests, public safety, and recognized principles of offender behavior change."

Bob Robison talked about victim-centered/victim-sensitive, and using the Board's existing mission statement as a lens to view the impact on victims. Bob stated that the criminal justice system is often focused on the offender and not so much on the victim.

Greg Horner said that the words in the mission statement are not the problem; the issue is how to bring life to the words. Steve Doell agreed. He said that he has seen all sorts of mission statements and they need to be applied so that they are more than just words.

Bronson James stated that any policy or rule that is promulgated by the Board should be matched each time against the Board's mission statement to gauge how it furthers or detracts from that mission.

Greg Horner pointed out that the Board's mission statement conveys a wide variety of perspectives, some of which may be in conflict; he recommended that the priority should be community safety and victim interest.

Bob Robison said that it is important to align values with resources, and that the workgroup should support the Board in getting any additional resources needed to support workgroup recommendations.

Steve Doell brought up Article I, section 15, of the Oregon Constitution and suggested auditing the Board's actions to ensure they are victim-centered. Brenda asked what type of audit could be done. Steve Doell suggested looking at each one of the issues mentioned in Article I, section 15, every year as benchmarks.

Bob Robison suggested establishing performance measures, including surveying victim satisfaction with the process. Mark Cadotte asked about key performance measures. Steven Powers said that the Board has key performance measures set by the Legislature. Brenda asked if the performance measures include a victims' survey; Steven Powers said no. Nancy Sellers told the group that the Board's key performance measures are available on the Board's website and will be brought to the next meeting.

Greg Horner said that it makes sense for the workgroup to recommend some victim-related performance measures to the Legislature.

Brenda Rocklin asked how many victim notifications are given out each year. Steven Powers reported that the July monthly average was 514, including 180 victim contacts for the month, and 100 – 122 victim letters. Nancy Sellers will work on compiling annual statistics, which would be helpful in terms of a survey. Steve Doell advised not to use the term "customer service" as a category on a survey related to public safety.

Overviews of Victim Services

Department of Justice: Cynthia Stinson provided information on the DOJ Crime Victims Compensation Program, which provides reimbursement to victims of crime. Brenda Rocklin asked about how a crime victim finds out about this program. Cynthia stated most often it is through the District Attorney's office and police; victims also learn about the program through shelters, advocacy groups, and the Internet. Shannon asked if there has to be a conviction before someone can apply, and Cynthia said no, the case does not have to be prosecuted, but does have to be reported to police. Brenda asked if a claim can be denied if there is a conviction, and Cynthia said yes. Prosecution does not dictate their decision. Claims are open for adults for three years. Children's claims are open until they are 21 or for three years, whichever is longer. Brenda asked if DOJ pays both victims and providers. Cynthia said they pay either the victim or the provider, and there is a monetary limit. Shannon asked if, in the case of domestic violence, a victim can be excluded from services if the victim is a drug addict. Cynthia said it depends; every case is different. The program's intent is to provide financial assistance to innocent victims of crime. Brenda asked if the funds for this program are through the General Fund. Cynthia explained that the funds come from unitary assessment, federal and other funds. Brenda asked what happens if the program runs out of money. Cynthia said that DOJ reduces the reimbursement amounts when this happens.

Bronson James asked how denied claims are challenged. Cynthia said that victims may request that denials be reconsidered. If the denial is upheld, the victim may appeal to the Workers' Compensation Board.

Mark Cadotte asked about restitution payments. The Victims Assistance Program can request an order of restitution from the judge at the time of sentencing.

Mark Cadotte also asked Steven Powers about the Board's authority to set special conditions of supervision. Steven said that the general condition to pay all fines and fees appears on offenders' supervision orders under General Condition #1. Special conditions related to restitution are required to be in the court order.

Shannon Wight raised concerns about victim notification and confidentiality issues. Cynthia Stinson said there are about 6,000 claims a year received by DOJ and entered into a database, which is protected because of medical payments and HIPAA. Shannon believes that a victim should be able to register with all victim services by calling one number; the current process is too complicated and the system should be made simpler for the victims. Steve Doell agreed that the system needs to have a funnel-like effect in terms of victim notification. The other piece that complicates the notification issue is the lag time for the victim between the crime and the time when the offender is up for release.

Bill Taylor said that he is on another workgroup looking at similar issues and asked whether victim information could be put in a searchable computer database and, if so, who would do the entry and maintain the computer. Shannon Wight suggested there should be a database where every agency can go to look up a victim. Bob said there is not one place that currently exists, but the one that comes closest is the DOC400. Victim information on the DOC 400 is entered primarily by Parole Board staff and access to the system is limited. Colette asked if VINE could be the main resource.

VINE Discussion: Nancy Sellers explained that VINE is an automated system adopted by DOC and DOJ and funded by DOC through inmate funds. Anyone may register with VINE, not just crime victims. A registrant's information is limited and confidential. Names and addresses are not required; VINE requires only an e-mail address or phone number.

Bronson reminded the group to keep in mind the legal consequences of failure to notify victims, and asked how "victims" are defined. Steve Doell said that "victim" is defined in the constitution, but VINE is for everyone.

DOC tracks the location of offenders and it goes into VINE, which updates every 15 minutes. Bob Robison said that gangs often use VINE to track releases of rival gang members.

Bill Taylor asked about the Board's definition of "victim." Steven Powers said the Board does not define victims when registering them. However, the Board reviews its files to determine who should be eligible as a victim to speak at a hearing and to look through the offender's file.

Cynthia Stinson discussed DOJ's address confidentiality program (ACP). Victims of domestic violence, sex abuse, and stalking may use a PO Box as an address for interactions with public agencies. The Board or any agency can verify that someone is a participant in ACP, but cannot get an address.

Bill Taylor asked whether the court designates a "victim" if there is a trial. Greg Horner said that it depends on the case; there is no formal certification of victims. Steve Krasik agreed and said that there are times when the DA does not list all possible victims. He said there is much more up-front sentencing work done now.

Steve Doell said that he believes a system can be set up that would operate as a clearinghouse for all agencies but information would be kept private.

Brenda suggested that the issue of a centralized victim database might be the subject of other workgroups.

Greg Horner asked about the Board's notice requirements. Steven Powers said that by statute the Board provides at least 30 days' notice to registered victims. Greg asked how the Board deals with victims of inmates who have been in prison a long period of time. Steven said that if someone is registered with the Board, they are notified. Also, if they are registered with VINE, they will be notified if a hearing is scheduled. Bob Robison said we should look at cases in which the Board does and does not have release authority, because the impact on the victim is the same.

Clackamas County: Greg Horner provided the group with information about Clackamas County's victim services. They are not actively involved in Parole Board hearings notifications. Murder cases get the most attention. The front-end work with victims is the priority for the DA. The DA has the first contact with the victim and follows up with them throughout the pending case. Victims also get information from police. After a case closes, there is limited involvement.

Department of Corrections: Colette Peters said that DOC has formal and informal contacts with victims. The formal contact is primarily with VINE, but DOC also offers a facilitated dialog program where a victim may request a dialogue with the offender. The informal is when a victim contacts DOC requesting information on an offender. Soon to go on-line is Oregon Offender Search, a Web-based portal that will allow the public to access an offender's status, including current crimes of conviction, SID number, date of birth, photo, etc. This will also allow victims to be proactive in searching for information on DOC's Web page. The Board will have a link through DOC.

Cynthia Stinson clarified that VINE must be done by an individual because access is through a PIN. Nancy Sellers said she expects a link from VINE to the Board's Web site to be in place next week.

Multnomah County Department of Community Justice: Bob Robison pointed out that the back-end of the criminal justice system is different in each county. In Multnomah County, the primary point of contact with the victim is the Parole Officer. Multnomah, Marion, Clackamas, Washington, and part of Columbia are the only counties with formal victim advocates as part of the parole and probation system. He said there are three areas of victim concern:

1. Safety (real and perceived)
2. Restitution
3. Navigating a complex system. How do we simplify?

What they all do is rely on the Board for parole notification. However, local control offenders are handled separately, as they are not under state control. They provide services to victims such as who the PO is, whether restitution has been ordered, etc. Victims may request notification of parole violation hearings or just the outcomes. Bob believes there should be a central registry, with general information available through a toll-free number and on the Web. On the opt-in/op-out of registry issue, victims receive information at the time of sentencing when DAs notify them of their rights. They could be given the option to receive follow-up calls at later dates.

Board of Parole & Post-Prison Supervision: Board Victim Specialist Debbie Wojciechowski explained how victims are registered. Victims are notified 30 days before hearings and 90 days prior to release. Registration is available by phone, mail, fax, and e-mail.

Brenda Rocklin asked how it is determined if a registrant is a true victim. Debbie said that the Board does not verify crime victim status for notifications. Steve Krasik asked if DAs and public defenders may register. Debbie said they can.

Greg Horner asked if the hearings are public information and is it possible that the offender could have his or her name on the new DOC offender information Web site. Nancy Sellers said there is a barrier to putting the offenders' names on the DOC system. Issues with outdated and fragile computer programming with the two systems make it impossible to link the systems now; however, it may be possible when the systems are replaced in the future. Currently, the Board posts the hearings dates and times and not offenders' names. Greg asked how hearing information could more available to the public with offenders' names. Nancy said that it would not be technically difficult for the Board to post the names of those with upcoming hearings on its Web site.

Brenda Rocklin asked whether the Board can also list the name of the offender when it issues a public meeting notice. Steven Powers said that the Board can post scheduled hearings with names and SID numbers; if the recommendation is made to provide more notice via the Web, the Board can do it. He also noted that the State of Washington issues press releases.

Bronson James asked about sending notifications, and whether those automatically included hearings packets, psychological evaluations, etc.? Brenda Rocklin asked how the Board identifies who gets these packets. Debbie said that packets are not sent to victims automatically. Pre-Sentence Investigations (PSI) are not released to victims, but may be viewed by victims. The Board provides copies of psychological evaluations to DAs and victims with instructions to hold them confidential. Greg Horner noted that the practice of preparing PSIs has changed dramatically over the years. PSIs used to be used more to set sentences and were more detailed than they are now.

Steve Krasik said Judge Lipscomb wrote a letter opinion which might have a lot of information on our discussions. Nancy Sellers will e-mail copies of the letter to the workgroup.

Debbie talked about the Board's commitment to protecting victim information. It is available to DOC and POs for internal use, but they may not share information about victims – even to the point of not acknowledging that certain victims are or are not registered.

Steve Doell asked who can be a victim representative. Debbie explained that the victim may designate anyone as the victim's representative.

Debbie explained that when a release plan is entered into the computer system 90-120 days prior to release, VINE will be triggered to notify anyone registered in the VINE system. The Board notifies victims by mail of releases 30 days in advance of release. The Board does not notify victims when an inmate qualifies for DOC's alternative incarceration programs (AIP) or when an Interstate Compact is being considered.

Steve Doell asked about the public sending in information and if any document from the public is given to the offender. Steven Powers said that if victims request confidentiality, their written submissions will be redacted from the hearing packet provided to the offender and the public. Colette Peters asked if the Board accepts anonymous letters. Steven said that it does. Bronson James asked who makes the decisions in releasing documents to offenders and their counsel. Steven explained the disclosure form (in workgroup notebooks) that outlines what is shielded from disclosure under the public records law. Steve Doell would like to return to the issue of letters going to inmates. Steven Powers reiterated that only victim letters asked to be confidential are not disclosed. They are provided only under seal to the court if challenged.

Brenda Rocklin said that so far there are two potential recommendations for consideration by the workgroup:

- (1) Web-based parole hearing notifications.
- (2) Public meeting notices that include names and SID numbers of inmates who are up for hearings.

Comments by Guests: Tiffany Edens was invited to share her thoughts. She believes some victims are falling through the cracks on older cases. There were a lot of flaws about being notified with her case. The district attorney told them to write a letter to the Board to register and they did, but the city address changed because of annexation. She stated there are ways to find a person if a letter is returned back in the mail. Rebecca Ahsing said that when they entered the system, they didn't know what to request or what their rights were. She recommended that information be included in written notifications that explain parole plans and other information. They did not know they could get psychological evaluations from the Board. They did not know how pertinent that information would be to the process.

Notification Issues: Steve Doell suggested there should be an attachment to the letter from the Board stating clearly what is available to the victim for viewing. Tiffany Edens suggested that all documents and reports that are available for the victims should be listed as bullet points. Steve Doell said sometimes victims get to view psychological evaluations only a short time before a hearing, without sufficient time to prepare.

Bob Robison talked about Multnomah County's outreach efforts. He recommends that the workgroup recognize that there may be a period of time when people might not have been notified. Cynthia Stinson noted that it was 2001 when all counties began offering victim services through the DA's office. Bob recommends a Parole Board brochure that is easy to read and ties in with VINE.

Shannon Wight said that there needs to be system-wide simplification, not just with Board hearings and releases. All victims need more information and more human contact. She recommended a 1-800-Victims phone line that anyone can call and talk to a person who will walk them through the process. Nancy Sellers asked if she was talking about a victims' ombudsman. Steve Doell said Washington State has an ombudsman, and that there was failed legislation in 1999 to create such a position for Oregon. Problems centered on ownership – where should the position be located? Shannon said it is important to keep the position independent.

Colette Peters asked the number of returned victim notifications to the Board each month? Debbie said it is about 15-20 letters each month, even though the Board is

stamping envelopes with "Address Correction Requested, Return Postage Guaranteed"; US Postal Service forwarding lasts only six months.

Brenda Rocklin asked if it would be overwhelming to send the notification to the district attorneys to see if there is a way to contact victims who opted out of notification at one time but who might want to opt in now, particularly for those 1,600 inmates over whom the Board has release authority?

Cynthia Stinson said that there are limited resources find correct addresses for victims. DOJ is working on a process to find people to explain their rights to them and how to become registered. There may be some victims who get angry at being contacted, but there likely are others who will be pleased. Brenda Rocklin asked if this would require a statutory change; is it DOJ's charge to find victims?

Bill Taylor asked how far down do you go and what resources would it take? What defines reasonable efforts to find victims? Should this be the responsibility of the DAs or the Parole Board? DOJ could be involved in inviting counties to help victim services agencies find victims. The Oregon Judicial Department also may have resources through its restitution efforts on behalf of victims. Steve Doell asked about using DA investigators to find victims.

Bronson James noted that the Board is exempted from the Administrative Procedures Act (APA). Steven Powers talked about the difference between contested case hearings with one party and parole hearings with multiple parties and multiple hearings. Bronson believes the APA is well able to handle multiple-party hearings.

Next Meeting: Brenda Rocklin reminded the workgroup that the next meeting will be September 4, 2008. At that meeting, the group will continue its discussion of the hearings process, including who speaks and for what length of time and where the hearings are held. The group also will discuss the APA issue raised by Bronson.

The meeting on September 18 will cover psychological evaluations.

Shannon Wight requested a future discussion of the contact process and information provided to victims of prior crimes when they are found.

The meeting was adjourned at 12:11 p.m.

Respectfully submitted,

Susan Deschler and Nancy Sellers, Workgroup Staff

Meeting #3

September 4, 2008 – 8:30 a.m., SAIF Boardroom

Present: Brenda Rocklin, Nancy Sellers, Shannon Wight, Bob Robison, Bronson James, Walt Beglau, Steve Krasik, Greg Horner, Cynthia Stinson, Mark Cadotte, Mary Elledge, Steve Doell

Excused: Steven Powers, Colette Peters, William Taylor

Guests: Carol Schrader, Caylor Roling, Terrie Quinteros, Margaret Braun, Rebecca Edens-Ahsing, Tiffany Edens

Board staff: Debbie Wojciechowski, Kim Gonzales

Guest Terrie Quinteros shared concerns about a centralized victim database. She pointed out that family violence is underreported and said that these survivors are among the hardest to keep safe. If a central database is established, controls should be put in place limiting access.

Brenda Rocklin wants the group today to try to wrap up the discussion on notification issues; discuss the hearings process, including locations and statements; and agree on some initial recommendations. The September 18 meeting will cover psychological evaluations and other information the Board has in its hearings packets, as well as access to that information by different stakeholders. On October 2, the group will address other topics identified by the group including Board membership, judicial review, and Board deliberations and findings.

Approval of Minutes: Cynthia Stinson offered amendments to the minutes on pages 2 and 3 under the Overviews of Victim Services section. The minutes were approved as amended.

Notification Issues: Brenda Rocklin asked if there were any questions or comments regarding the group's earlier discussions related to victim notification. Walt Beglau pointed out that he had prepared a written response to some of the earlier questions raised by the group that Nancy Sellers will distribute to group members. Walt stated that Marion County researches victims for notification on a case-by-case basis depending on the nature of the offense and victim needs.

Brenda Rocklin asked how many of the 1,600 inmates under the Board's release authority have victims attending hearings? Kim Gonzales said it varies from month to month. The Board averages 20 hearings a month, and usually only a few of these have victims in attendance.

Greg Horner asked if there is a way for the Board to identify inmates under the Board's release authority by county regardless of hearing date so the DA can prioritize the cases. Kim said she schedules hearings about three months in advance. Brenda Rocklin suggested there could be a list about a year in advance. Greg believes that DAs need to be proactive about contacting victims on cases from years ago. Greg said all DA offices should be made aware of notification issues, and the topic should be considered for the next DAs' conference. Nancy Sellers believes it is possible to get a list by county of all

offenders under the Board's release authority by crime type, but this list would not include the hearing date.

Steve Krasik asked about the 100-110 inmates "in limbo" waiting for parole decisions and asked if their cases are going to be reopened/reheard under Judge Lipscomb's letter? Nancy Sellers said that would likely be best answered by the Board's legal counsel at DOJ.

Cynthia Stinson would like to have the list by county, because she would like to start fresh with the victims to make sure that all victims are notified of their rights and have their addresses current. She believes it would be easier to do this in smaller groups. Mary Elledge agreed with Cynthia. The question to a victim is, if you have opted out of being notified, would you like another chance? Mary believes most victims would like to be notified again about opting in.

Debbie Wojciechowski said that recently she has had experience with Multnomah County DAs attending hearings. She suggested that the DAs be especially sensitive to the victims that have chosen to opt out of hearings; if they now choose to opt in, they should be encouraged to be comfortable with their past choices. She asked that DAs and victims contact the Board for correct information on hearing procedures. Steve Doell concurred.

Walt Beglau said a comprehensive list by county should be used to invite reengagement in the system by victims. He pointed out that DA investigators and victim advocates are a resource to work with the Board.

Bob Robison talked about the sensitivity to the victims and agreed with Cynthia Stinson's comment about having a smaller group to talk about this. Bob would be willing to participate in this group.

Brenda Rocklin asked if there is an upcoming DA conference, and Walt Beglau said there will be one on December 3, 2008.

Bronson James said he believes the workgroup needs to recommend a clear definition of the term "victim." Who has enforceable rights that lead to consequences when the rights are violated? Brenda Rocklin said that there is a fairly broad definition of "victim" in ORS 144.120. Greg Horner said the minimum is the statutory definition; the question is how/if to expand.

Cynthia Stinson suggested that DAs and others working with victims of older crimes be given some type of script that recognizes the differences in the circumstances and needs of victims at different stages. She also asked who are the victims with rights to legal remedy?

Brenda Rocklin asked if there is some definition in the criminal code, and Walt Beglau referred the group to ORS 135.530. Cynthia Stinson suggested that we go back to the constitution. There are rights in the constitution and now there are remedies. Brenda said the Board needs to rely on the current statutory language unless there is a statutory change.

Steve Doell asked what does "next of kin" mean in ORS 144. 120 in terms of selecting the victim representative? Does it include cousins? Bronson James said it goes down the line in terms of intestate succession. It would not include all relatives.

Brenda Rocklin asked why the three-minute limit on victim statements exists? Nancy Sellers and Kim Gonzales explained that the limit is in the Board's rule, but is not enforced. Steve Krasik asked what would prevent someone from talking all day? Nancy said the presiding officer determines a "reasonable" amount of time. Steve Doell asked how long can an offender speak? Nancy explained that with the exception of being asked to respond to the victim and DA statements, the offender does not speak except in response to Board members' questions. The Board may also ask questions of anyone making a statement.

Steve Doell asked if the victim can respond to the offender's statements? Nancy Sellers said that a hearing is an information gathering process for the Board, and that if a Board member needs more information from the victim, he or she may question the victim. Steve Doell said a number of victims had told him that the Board's questions to the inmate are open ended and the inmate can go on and on, but the victim is told up front about the three-minute rule. Victims feel very limited on what they can say and there should be a balance on this. Nancy Sellers said the Board asks detailed questions of offenders to determine if the offender is ready for parole release. Steve Doell feels it is important for the Board and inmate to be aware of the impact this has on the victim. Nancy said that Board members spend hours preparing and reading the hearing packet material and forming their questions. The Board gives equal weight to written statements in the packet as it does to oral statements in person or by phone.

Shannon suggested victims should have more time and more information on why they are not getting more time to talk.

Rebecca Edens-Ahsing said that Board member Candace Wheeler told her there is a three-minute rule, and though it would not be enforced, she felt it was intimidating in the hearings process. Tiffany Edens said Candace Wheeler told her not to read her husband's statement because there was not enough time, and that the Board members could be more sensitive to the victims.

Debbie said that the lead Board member meets with the victims after deliberations as an informal, informational opportunity for victims to have their questions answered.

At Bronson James' recommendation, the workgroup reached consensus to recommend striking the three-minute rule.

Steve Doell suggested that victims have a reasonable amount of time to talk, perhaps not to exceed a set number of minutes. Walt Beglau said there are actual or perceived inequities in the process, with length of statement being intertwined with the location and the deliberative process.

Cynthia Stinson and Brenda Rocklin asked why, if an offender has victimized more than one person, only one victim can speak at the hearing?

The workgroup reached consensus to recommend that more than one victim be allowed to speak, although who those victims would be is not yet defined.

Rebecca Edens-Ahsing said that in the Gillmore case he was prosecuted for two crimes and she was not able to speak on the crime of him illegally entering her home. Nancy Sellers said that the definition of victim also needs to clarify whether statements from victims of expired crimes and unprosecuted crimes are included.

Bronson James discussed the Administrative Procedures Act (APA) and its provisions relating to the contents of hearing notices. He said that, at a minimum, notices should include the issues to be considered at the hearing, who speaks and for how long, etc. The Board is statutorily exempt from the APA except for murder review hearings. DOC's hearings also are exempt. Bronson said some APA provisions are off the table, such as cross-examination of victims. He believes there are portions of the APA that can be used by the workgroup. He said the list of attorneys representing inmates is short and specialized. Victims may wish to enlist attorneys to enforce procedural rights. There are few attorneys in this niche of procedural law since it is so specialized. Brenda Rocklin pointed out that the Board could be exempted from the APA in statute, but still choose to adopt certain APA provisions by rule.

Mary Elledge commented that the Parole Board once added four years to an inmate's sentence, and wanted to know how does that happen? Nancy Sellers and Kim Gonzales explained different sentencing systems of the past and how those result in different types of hearings before the Board.

Brenda Rocklin asked about the location of Board hearings. Nancy Sellers gave a brief history. Hearings used to be held in the Dome Building, with offenders appearing by video. Security concerns regarding victims and offender families led the Board to move to a more secure location. Kim Gonzales said that for about 20 months in 2000-2001, the Board held hearings at the Marion County Courthouse, but the county ended that practice because of scheduling, noise, and resource issues. Nancy explained that moving inmates outside a secure facility for hearings would have a fiscal impact on DOC. Also, many inmates do not want to be moved because they can lose their housing, work, and other assignments.

Walt Beglau said he wants hearings held at county courthouse. He described going into prisons for hearings as "horrific," that prisons are terrible places to hold hearings.

Steve Krasik asked Tiffany Edens where she would have liked the Gillmore hearing to be held. She described the two hearings at OSCI and that they were not comfortable. She would like a courtroom setting. The first hearing she went to was too close for comfort. At the second hearing, the offender was not handcuffed. Steve Krasik asked if video hearings would be better. At the last hearing Tiffany felt that it was not right having the offender sit up near the Board members. Tiffany felt there was a posturing aspect to this. She felt it needs to be equal between victim and offender.

Steve Doell said that hearings should be on neutral territory, that going into the Oregon State Penitentiary is going into the "bowels of the prison system," and that there are safety issues.

Bronson James suggested administrative law courtrooms rather than circuit courts. Steve Krasik said the security situation would have to be addressed. It was suggested to have a new building for the Board of Parole with a secured courtroom inside of it.

Walt Beglau wondered how to centralize the Board and feels there is latitude. Brenda Rocklin asked Walt if hearings would it be held in the county of conviction or where the offender is housed? Kim reported that 60 percent of parole hearings are with inmates housed outside of Marion County and are conducted by video with the Board members and staff in Salem.

Bronson James disagreed with forcing inmates to appear by video. Nancy Sellers said that the Board gives no preference or advantage to inmates appearing in person.

Steve Doell suggested leaving the inmate at the institution if no victims will appear in person, and that all in-person hearings should be held in Marion County. This would be preferable to having victims travel around the state.

Kim Gonzales discussed the scheduling challenges of having live hearings in one venue and video hearings in another venue on the same day. It is difficult to predict hearing length and scheduling would be difficult.

Brenda Rocklin asked about the consensus of the group if she should talk to the chief justice regarding this matter. Steve Doell would like victims out of institutions. Greg Horner talked about resource issues and the need for the opportunity for hearings outside of institutions. As to where, he said that there are no easy answers, and that all options will have some barriers to overcome.

Brenda Rocklin asked Steve Krasik and Bronson James whether the offender could stay inside and the victim could be somewhere else? Steve Krasik said private attorney-client communication is needed, but that already happens with video hearings. Greg Horner asked if it is a problem to have the offender appear by video? Shannon Wight feels there is a problem about appearing by video, since the Board is trying to assess the offender. Steve Krasik said that TV masks 80 percent of nuance. Walt Beglau said Marion County had a failed video experiment, and that there is a shift in power when one side appears by video and that courtroom presence is the best. Steve Doell emphasized the need for real-time video technology, which the Board currently has.

Greg Horner said that video can be powerful and effective, particularly with bigger, newer screens; there is only a marginal trade-off from appearing in person. He said it is not wise to move inmates to other facilities. Nancy Sellers explained how an inmate's transfer could be disruptive to housing, work, and other assignments. Inmates who are transported could be out of their assigned institution for a month. Because DOC facilities are so full, there also are no assurances that the offender will be returned to the same prison.

Brenda Rocklin asked why inmates would have to come to Salem and whether the Board could travel instead? She asked about the 1,600 inmates under the Board's release authority, their ages, and will this number shrink? Bronson James stated the population under the Board's authority will eventually shrink from 10 percent to 2 percent as those in detention age out.

Shannon Wight said that few offenders are security issues, and inmates should be allowed to opt-in or opt-out from in-person hearings. Cynthia Stinson said that security concerns are real.

Bronson James said that most inmates coming before the Board do not want to be transported, but they should have the option to appear in person if they choose .

Brenda Rocklin asked if it is reasonable to give 48 hour notice to victims that the inmate would appear in person. Nancy Sellers suggested a longer notice would likely be necessary. Kim discussed scheduling difficulties, particularly since each prison has hearings only one day per month. Brenda Rocklin asked if hearings are held only one

day each week? Kim said yes, and that there are restrictions on scheduling with DOC institutions and the timeframes required for hearings in statute.

Greg Horner doesn't want victims to have to travel, and he wants to keep them out of the prisons.

Steve Doell asked if hearings from different facilities are held on the same day? Kim Gonzales said no, they schedule one day a month for each institution. Nancy Sellers explained that having the Board travel to institutions statewide would be more than a resource issue, that it also would be a workload issue for the Board members, as their workload is significantly more than conducting hearings. Nancy expressed that if offenders are given a right to transfer to Salem to appear in person before the Board, that DOC would likely need the authority to override that transfer because of individual security concerns.

Greg Horner believes the underlying issue is preventing victims from having to go into the institution. Nancy Sellers explained that victims now have the option to appear by phone, letter, or proxy if they do not want to attend the hearing in person. Steve Krasik asked if a victim could appear by video from a courthouse while the hearing is at the institution, and the victim could then be anonymous? Cynthia Stinson said that DHS has real-time video. Greg suggested that, at a minimum, an investment in improved technology would increase flexibility.

Bronson James suggested that if the victim notifies the Board that they do not want to be there in person, then the Board could revoke the inmate's right to appear in person. Nancy Sellers asked if this could be done far enough in advance that the inmate's transfer to the valley could be stopped? Greg Horner said the Board needs to promulgate reasonable rules for such timelines.

Cynthia Stinson said the sooner that these victims of older crimes are contacted the better, that they need to know their rights sooner than 30 days prior to the hearing. Shannon Wight believes the technology recommendations are good, but to remember that we are talking about humans who need to connect to advocates. She also asked whether the inmates are getting the services they need from the prison so they can transition out.

Steve Krasik said the group should come to consensus that more and longer notices of hearings is better.

Mary stated there was a co-victim who, when notified by mail, took three weeks to open the envelope. For a victim, the anticipation of going is worse than when they get there. Victims need more than 30 days, but they also don't want to be notified six months out. Debbie Wojciechowski stated that offenders get a 30-day notice; DAs are notified two months in advance. The victim letters go out 35 – 40 days in advance. Brenda Rocklin asked why all parties don't get notified at the same time? Debbie said that hearings are often rescheduled early in the process and that can be disruptive to victims.

Steve Doell suggested having "time sensitive" or "hearing notice" stamped on the envelope so that victims may open the letter sooner. Brenda Rocklin asked why the DA, offender, and victim notifications don't go out at the same time. Kim Gonzales said she sends the hearing packet to the inmate about 25 days in advance along with their notice of rights. They are required to have it at least 14 days in advance. Brenda

Rocklin asked about the notice going out earlier than the packet. Nancy Sellers asked Kim if there are any statutory restrictions from sending the information earlier. Kim said there are not, but that parole violation hearings are statutorily set.

Brenda Rocklin believes there needs to be some degree of time to prepare for the hearing in order to have a meaningful response. Steve Doell said some information is only available for viewing in Salem, and victims have to travel to review the record.

Shannon said we should use the notice as an opportunity to offer services that victims might need. Steve Krasik suggested a personal phone call. Shannon suggested a central resource with a live person who is regularly accessible to provide the full gamut of involvement in the criminal justice process for these victims 30 years out. Brenda Rocklin asked Steve Doell about the failed legislative effort to establish a victim ombudsman position in 1999. Mary Elledge said the Board needs more staff.

Nancy Sellers talked about the role of Debbie Wojciechowski as a victim specialist and explained that she is not a victim "advocate" in the true sense of the term. Debbie's role is to serve as a liaison between the Board and victims, providing services and assistance. She then can refer victims to advocates who are able to provide a greater range of services and support, including true advocacy. Cynthia Stinson asked how Debbie knows when is it time to refer a victim to a community-based advocate? Debbie said she keeps a current list, and has developed a good sense for when it is best to direct their more general victim rights/support questions to a community-based advocate. Steve Doell suggested that Debbie's title be changed to Victim Liaison.

Brenda Rocklin invited more comments. Bob Robison said this is a complicated problem, and that Debbie has notification responsibilities for more than the 1,600. The Board must also notify registered victims of releases from the general inmate population. Also, how does the state respond to notification issues in regard to probation cases? Bob said that the "advocate" term brings with it an ethical pledge, and providing that level of support takes hours.

Debbie Wojciechowski stated there is a federal definition of advocate. Cynthia Stinson said there are a lot of different definitions. From a victim's perspective, Debbie is a touchstone. There are not a lot of free resources for victims. Victims want a warm body at the end of the line.

Bob said if there are changes, then the workgroup needs to keep on the table that the Board gets the resources they need.

Next week:

Brenda Rocklin made the following assignments for next week:

1. Workgroup members should review the Key Performance Measures (KPMs) for the Board that are reported to the Legislature. Are there measures related to victims, and, if not, should there be? See if the performance measures are lacking in other areas in the workgroup's opinion.
2. At the next meeting, we will return to the issue on who should be allowed to speak at hearings. Before the next meeting, workgroup members should consider what recommendations, if any, are needed in this area.

3. Workgroup members should take a look at the definition of "victim" in ORS 144.120(7). Is this the right definition?
4. Bronson James will provide more information on the APA, including who can speak. Mark Cadotte asked the group to consider whether victims should be allowed to rebut offender statements at the hearings.

Brenda Rocklin returned to the issue of providing public notice of the hearings on the Board's website; the current notice only provides the dates and times of the hearings but does not list the names of the inmates. Should the name of the offender be posted? Steve Doell said this addresses the needs of public safety. Brenda Rocklin pointed out that some victims might not want to register with the Board, but might want to be able to look up upcoming hearing dates for particular offenders. This could be another option for a victim. Mary stated that some victims do not want to be notified for various reasons, including not wanting their current families to know about prior crimes against them.

The workgroup reached consensus that the Board should post public notices on its website of upcoming hearings with the name, SID, and date of birth of the inmates scheduled for parole hearings.

Nancy Sellers suggested that DAs also might want to post this information on their websites. Mary Elledge believes the public and victims will feel better if more information is posted. Tiffany Edens expressed her view that the more information the better.

Mark Cadotte asked if someone clicks on the offender's name in the new DOC look-up system that will go online this fall, would it include parole hearing information? Nancy Sellers explained the limitations of PBMS and DOC CIS programming, and that the two systems currently cannot be programmed to share that information. However, DOC and the Board are moving forward with plans to replace these systems in coming years with a unified data management system. Nancy encouraged the workgroup to also consider recommendations that are outside of currently available technology that could be implemented as systems are replaced.

Brenda Rocklin reminded the group that the next meeting would be September 18, when the topic will be psychological examinations.

The meeting adjourned at 11:46 a.m.

Respectfully submitted,

Susan Deschler and Nancy Sellers, Workgroup Staff

Meeting #4

September 18, 2008 – 8:30 a.m., SAIF Boardroom

Present: Bronson James, Walt Beglau, Brenda Rocklin, Nancy Sellers, Mary Elledge, Mark Cadotte, Shannon Wight, Steve Krasik, Cynthia Stinson (by phone), Steven Powers, Bob Robison, Bill Taylor, Steve Doell, Colette Peters

Excused: Greg Horner

Guests: Steve Gorham, Tiffany Edens, Rebecca Edens-Ahsing, Caylor Roling, Carol Schrader, Kim White, Kathie Beach

Approval of Minutes: The September 4, 2008, minutes were adopted as submitted.

Review Consensus Recommendations:

Brenda Rocklin handed out a summary of the workgroup recommendations reached to date and a handout from the Oregon Crime Victims' Rights Compliance Project compiling various definitions of "victim" under Oregon law.

The workgroup reached consensus that it will make no recommendation for the Board to change its current mission statement.

The workgroup discussed various definitions for "victim," including the Board's current definition of "victim" in ORS 144.120(7) and the definition of "victim" in ORS 131.007.

Hearings Notification. It was a consensus decision at the last meeting that the Board should post more information on its public website about upcoming hearings. The workgroup returned to a discussion of statements at Board hearings. Mark Cadotte asked if the victim can make a rebuttal statement after the inmate's case. Steven Powers said that under the current structure, the answer is "no."

Steve Doell asked what statute the Board uses to defer parole after a hearing. He said he feels that a two-year deferral is too short of a time period and that the presumption should be on the inmate to show readiness before being eligible for another hearing. Walt Beglau also expressed concern about the two-year deferral period.

Steven Powers explained that once an inmate serves his minimum term, he is eligible for an exit interview. Although the statute (ORS 144.125) allows for open-ended deferrals, the Board's rule sets out a two-year period of deferral for matrix inmates. As he understands it, this has been the Board's historical practice and aligns with the dangerous-offender statute (ORS 144.228), which requires hearings every two years if parole is denied. Guest Steve Gorham suggested that the workgroup should look at case law and constitutional restrictions if it decides to recommend changing the length of deferral for existing inmates, as this may trigger ex-post facto considerations.

Bill Taylor asked for details regarding a matrix offender's release versus a prison term. Steven Powers explained that for matrix inmates, the Board's release discretion covers the time between the inmate's minimum prison term and maximum sentence date.

Steve Doell suggested that subsection (3) of ORS 144.125 should be changed so that the deferral period is set by statute and not by Board rule. Steven Powers said ORS 144.228 sets out a two-year deferral for dangerous offenders.

Shannon Wight expressed concern that discussions were straying from the workgroup's own identified priorities. Walt Beglau said that this topic is important and should be discussed, as the ODAA also is concerned about the two-year deferrals. The workgroup could be a sounding-board for issues. Bronson James agreed that the issue should be on the agenda at a future meeting.

Steve Doell said that he would be "bringing this [issue] down the pike, one way or another," because victims agonize knowing that they will have to face another parole consideration hearing in two years.

Brenda Rocklin said that the next agenda would include a discussion on this issue.

Steve Doell raised another issue. He said there are some states that allow the governor to override Board decisions, and gives the governor ultimate responsibility for the parole decision. Nancy Sellers pointed out that this would likely require a statutory change. Steve Krasik said that this would create symmetry, as Oregon's governor already is able to commute a sentence.

Bob Robinson would like the recommendations to include improvement to the public information materials given to victims. This includes making the Board's brochure easier to read, and that the DA's notice to victims be clear about the need to register with the Board. **Brenda Rocklin said there will be a specific recommendation in the report that addresses this issue.**

Brenda Rocklin asked for ideas regarding the opt-in versus opt-out issue. Mary Elledge suggested that a concerted effort be made through various groups six months prior to a hearing to locate matrix offenders' victims to give them an opportunity to register. She also said that notifications must be made with sensitivity to the victims.

Brenda Rocklin said that it would be a good idea to have the Board's website fully explain victims' options.

Bronson James said that the letters that the Board already sends to the DAs notifying them of upcoming hearings would give the DAs time to find and notify victims if the letters went out sooner. Brenda Rocklin suggested sending the letters six months in advance instead of 90 days. Walt Beglau said that would work.

Shannon Wight suggested that Cynthia Stinson's division at the Department of Justice could work with the Board and District Attorneys to get a list of hearings, and that the DA victim advocates or an advocate at DOJ could make phone calls to victims.

Cynthia Stinson agreed that her office is likely the best resource, as they already are helping DAs track down crime victims for other reasons. She offered to partner with the Board and DAs to conduct a mass search to contact victims. She suggested a workgroup, possibly with the Parole Board, DAs, and Crime Victims United.

Shannon Wight said that Cynthia Stinson's offer could be a good way to get at the backlog of identifying victims of older cases.

Brenda Rocklin said that we first need to define who a victim is for notification purposes. Then, the Board can provide DAs and DOJ with a list of all matrix offenders eligible for future hearings by county, as discussed at prior meetings. The constitution says it is the DAs who define the victim; the DAs and DOJ can then decide which victims need to be located.

Walt Beglau said that DAs are the ones who prosecuted the original cases. He recommended that DAs need to get the list of the 1,600 inmates under the Board's release authority and then set up a collaborative process among DOJ, DAs, and the Board to locate the victims. Ensuring sensitivity to victims is important.

Bob Robison asked if victims are listed in the Oregon Judicial Information Network (OJIN). Steven Powers said that the victims being sought for Board hearings likely are not. Walt Beglau said that Oregon's records from the past are not always good; he emphasized the importance of thinking forward to future cases to ensure that proper records are being kept now. Brenda Rocklin said it would make sense going forward if the DA would identify who the victims are in any given case that will someday come before the Board. Steven Powers agreed, saying that knowing who the DA has identified as the victim in an aggravated murder case today will be critical to the Parole Board of 2025.

Mary Elledge said there needs to be public service education to prior victims of violent crime and an invitation to participate in the parole hearings process. Steven Powers said that the Oregon Department of Justice also may be a source of information on past victims.

Mark Cadotte said that DOC would have copies of pre-sentence investigations. Cynthia Stinson said DOJ would have police reports in its archives if the victim had filed a claim for crime victims' compensation. She said that, in high-level felonies, victims tend to file claims. The program began in 1977 and advocates have always encouraged victims to file.

Walt Beglau said that public safety and public expectations require a statewide system of electronic records and data retention that looks at Oregon as a whole, not simply DOJ, DOC, DAs, and the Board.

Bill Taylor said that since the DAs would provide information on victims to the Board, how would we "replace" victims who die? Next-of-kin? Should there be a statute to require DAs to make this determination? Walt Beglau suggested a joint process with DAs and DOJ.

Brenda Rocklin asked how the Board currently determines who the victim is under the statute. Steven Powers said, historically, it is the victim of the charged crime for the purpose of determining who may speak at a hearing. Others may submit written statements for the Board's consideration. Steven discussed the difficulties of determining who the victim is in certain circumstances, particularly in the case of consecutive sentences when one sentence has expired, or with determining who a murder victim's next-of-kin is. Bill Taylor asked about constitutional limitations and due process issues.

Steve Doell said that the system should gather more information on murder and aggravated murder cases, that parents or only children who register as victims should be asked to self identify their next-of-kin in case that victim dies. He also suggested using the inmate to help identify their victims. Shannon Wight agreed that in most of these cases the criminal and the victim know each other.

Steve Doell reiterated the need to clarify the opt-in/opt-out issue, and that it is clear that, as humans, we all change our minds. He said there needs to be a mechanism that once a victim opts in, there will be continued contact.

Bob Robison warned that some advocates may be concerned about contacting victims of sexual assault who have not previously requested such contact. He said there is a general assumption that this may re-traumatize the victim. He recommended that the staff of the Sexual Assault Taskforce be involved in determining the best way to inform sexual assault victims. Steve Doell said it is more traumatic to the victim to find the offender paroled than to be notified.

Bronson James recommended, as to the current population of 1,600 inmates under the Board's release authority:

- (1) That the Board compile a list of inmates by county that includes SID number and date of birth and provide each DA with his or her county's list.
- (2) Each DA would then review the files and identify the victim of each offender and submit that name to the Board.
- (3) The Board would serve as the coordinating entity to locate the victim.
- (4) That, going forward, the DA identify the victim from the crime of conviction and provide that victim's information to the Board. The Board would then send a letter to the victim with the choice to opt-in or opt-out, and also to identify next-of-kin.

Nancy Sellers questioned the availability of resources in some counties to locate the victim. Bronson James said that the workgroup's recommendation will be important and that it needs to be funded. If not funded, it will not be done.

Steve Doell asked why wouldn't the DA loop in to Cynthia Stinson's office. Bronson James said it would not preclude them from doing so. Steve Doell asked about DOJ getting money from a federal grant. Guest Carol Schrader said it might be appropriate that the Board apply with DOJ for funding.

Brenda Rocklin said that 1,600 inmates does not seem like a huge number, especially when it is split among all the counties. The DA may already know who the victim and next of kin are and where they are located. She suggested that the recommendation is doable and that the DA could contact DOJ for help in tracking down victims on the list. Walt Beglau said you would need an investigator and an advocate, which could be a simple package. Steven Powers said the Board would have to have someone to coordinate all of this at the Board and that the Board can partner with DOJ and DAs, but that cannot be assumed with current resources. Bronson James suggested the Board could just be a project manager. Steve Doell said that Cynthia Stinson's offer was a

tremendous resource. Bill Taylor said this is doable. Shannon Wight suggested using DOJ resources with volunteers.

Steven Powers asked if workgroup members had concerns about sharing information with other agencies in light of confidentiality promises the Board made to victims when they registered. The Board currently does not share its records. Brenda Rocklin asked if Walt sent names and addresses to the Board, would the Board later disclose them. Steven Powers said that under the current process, the answer is "no," because this was a promise the Board made to the victims. This information is exempted from public records disclosure. In fact, the Board does not disclose whether or not it has victims registered for an individual offender. Bill Taylor said that the law could be changed to allow disclosure about victims to other public safety agencies. Mary Elledge cautioned that many victims would not even write to the Board without full confidentiality.

Walt Beglau said we need to take a very measured approach. Not all victims are pleased with a DA's actions in any given case. Generally, it is good policy to have public safety partners able to share and that we can work our way through it.

Bronson James pointed out that the promise of confidentiality was in the past, and could change in the future. Steve Doell said that confidentiality could be respected when passing along information within the public safety system.

Bob Robison said that any improvements to informing and notifying victims of the 1,600 offenders under the Board's release authority also be considered by the Board and DOC for notice to victims of other prison releases. He said that the Board now registers victims for notice of these other releases.

Brenda Rocklin asked how "victim" should be defined. Bronson James said that there needs to be some core class of victims who have rights to seek participation for whom failure to notify would result in an actionable cause to invalidate the Board's decision. This would require a statutory change. The current statute provides that the Board must attempt to notify registered victims; Bronson James believes that needs to change to successful notification of whomever the DA has identified to the Board as the victim; there would be no next-of-kin requirement more than an attempt to notify.

Brenda Rocklin asked, if the Board used due diligence to notify a victim, but was unable to do so, could the hearing go ahead?

Bill Taylor suggested having the wording be "reasonable efforts" to notify, and if the Board made a decision to release the inmate, there would not be good grounds to challenge that decision. Bronson James suggested the Board could promulgate rules with some limits on the procedural circumstances, including that the Board's decision is not final until the inmate is released from prison.

Steve Doell said that Ballot Measures 49 and 50 gave victims the right to halt bail release hearings, but parole hearings would require a mandamus action. Bill Taylor said mandamus is a legal action to order a public official to do or not do something.

Brenda Rocklin handed out the victim definition in Article 1, Section 42(3), of the Oregon Constitution and asked if this is a better definition than the one in the statute. It was asked whether there would be any legal issues presented if a DA named multiple victims. Bronson James said that he did not think this would present ex-post facto problems if it were a procedural change.

Bill Taylor asked if Crime A has no victim at the hearing, would the victim of Crime B speaking on Crime A be valid. Walt Beglau said that the courts have this discretion now. Steven Powers asked whether, when one count is dismissed, the court hears from both victims. Walt said the court generally hears only from the one victim on sentencing matters, but looks at all the information. Steve Krasik said it is not uncommon to dismiss count two and ramp up restitution on count one. Bronson James said that, in courtrooms, if someone wants to speak, they are usually allowed to speak. Steven Powers asked whether, when there are consecutive sentences and two different victims have an interest in speaking at the hearing, both would be allowed to speak. Brenda Rocklin said that, in that circumstance, both would be allowed to speak.

Nancy Sellers asked the group to clarify the range of victims who would be allowed to speak, particularly those victims of crimes that were less serious, but still on the record. Walt Beglau said it should be limited to current proceedings. Steve Krasik pointed out that aggravated murder cases consider prior crimes. Brenda Rocklin asked whether, if an inmate is in prison for two crimes, a serious person crime and a property crime, both victims should be able to make statements. Guest Tiffany Edens said that, in her case, the offender was convicted of both Burglary I and Rape I, which took place in her mother's home; her mother was not allowed to speak as the victim of the expired burglary crime.

Steve Krasik said if you look at the record of sentencing it would be difficult to identify who the victims are, and there should be a more formal process to declare who the victims are. Bronson James suggested that the DA send a letter to the Board to identify the victims.

Steven Powers asked if, in the future, the Board could ask the DA's office to send a letter to the Board identifying the victims in any case over which the Board will have release authority, and to include a copy of any victim-impact statement for the Board's records. Walt Beglau said that DAs document all history in these cases, and that they could pull that information out and onto one page for the Board.

Steve Doell asked if victim impact statements are being sent to the Board. Steven Powers said "no," and it would be a good recommendation to have the victim impact statements sent to the Board. Bronson James recommended adding the indictment.

Guest Carol Schrader warned that some counties may have more restricted views of who is a victim than others. Steve Doell suggested a meeting with the ODAA to fix this.

Brenda Rocklin asked the workgroup to determine how broad the definition of "victim" should be. Walt Beglau stated there are different drivers in various counties, and territorial issues to address. Bill Taylor expressed concern about writing a definition taking away discretion from a public official, and that the Oregon Constitution allows the court to define a victim. He said there is now a workgroup on a bill to implement Measures 49 and 50 that meets on September 23.

Guest Carol Schrader said there are multiple definitions of "victim" under Oregon law. Brenda Rocklin asked if the constitutional definition would be a better definition because it requires the DA to determine who the victim is. Bronson James said he preferred having the DA determine the victim as he or she is closest to the source and recommended a statute change to require the Board to use the Constitution's definition

of victim. Walt Beglau said that DAs are elected officials at the epicenter of victims' rights, and that he agrees with this recommendation.

Steve Doell asked about victims of crimes that were not tried because of the statute of limitations. Bill Taylor asked whether, if there is a victim of a crime that the offender has admitted to but for which there was no indictment, that victim could speak. Brenda Rocklin asked if the DA would designate those victims. Shannon Wight expressed a concern for due process for those charges that are dismissed. Colette Peters said that when an inmate admits he committed a crime, the Department of Corrections calls in the Oregon State Police to investigate.

Bronson James said that the best public policy would be for the DA to define/determine who the victim is for the Board. Steven Powers asked about the consequences of substantive/procedural rights and what the constitutional definition of "victim" means for Board hearings? Bob Robison asked if the Board limits who attends or is notified. Nancy Sellers said that notifications go to everyone registered, regardless of whether they are an "official victim"; as public meetings, anyone may attend a Board hearing. She said that anyone may send written statements to the Board for consideration. Bill Taylor said that clearly defining who is a victim will limit who has the right to speak.

Guest Steve Gorham said the statutory definition of "victim" is very broad, and includes "psychological harm" from seeing a crime from a distance. He believes that the constitutional definition is more precise.

Bob Robison said that practices differ by county, and asked about those victims who may find themselves without standing? Brenda Rocklin said that the constitutional definition would allow the DA or the court to determine victim status, and that should alleviate concerns.

The workgroup reached consensus that the Board seek a statutory change of its definition of "victim" to be the same definition as the definition of victim in the Oregon Constitution.

Steven Powers said that the Board can work with the DAs on a uniform practice.

Notification: Brenda Rocklin returned the conversation to reasonable efforts at notification versus actual notification. Shannon Wight said that requiring actual notification was an unreasonable burden, and that the Board was already doing a good job of notifying those victims who are registered. Steve Doell suggested using all available resources. Nancy Sellers asked for clarification, as the definition of "available" could include resources beyond the Board's current capacity, such as hiring investigators. Walt Beglau suggested that notification efforts should be reasonable and in good faith, which are terms already defined in case law. There could be a rulemaking process to help the Board define what is reasonable. Walt said that "reasonable" and "good faith" are defined in case law. Mary Elledge expressed concern about resource limitations in smaller counties. Bronson James said that if some counties are uncooperative, the Board could seek DOJ and DOC assistance to achieve the reasonable effort standard.

Psychological Evaluations: Nancy Sellers handed out four sample letters related to psychological evaluations. Steve Powers explained the Board's statutory authority to require psychological evaluations. Brenda Rocklin asked how examiners are selected. Steven Powers explained that the Board has five psychologists on contract and they are

assigned randomly by the Hearings Specialist, but that she works to avoid duplication with the prior evaluation. Another factor in selection can be where the inmate is housed. The offender does not choose who does the examination.

Bronson James asked how psychologists are selected for the contract. Steven Powers said that the current list has been in place for some time. Contractors are prohibited from doing other work in the institution. Nancy Sellers explained that the Board follows all state contracting processes and rules. Steven Powers said that the Board worked with the Sex Offender Supervision Network to screen evaluators for predatory sex offender designations. Guest Steve Gorham asked if the evaluators must be licensed. Steven Powers said "yes," the contract requires a current license. Bill Taylor asked if an offender can have a private psychologist conduct a psychological evaluation. Nancy Sellers said "yes," if self paid, but that it would not replace the Board's contracted evaluation(s). Mary asked what happens if different evaluators disagree? Steven Powers said that if a Board-contracted evaluation reports that an inmate's diagnosis is in full or partial remission, the Board requires a second evaluation.

Steve Doell asked if a DA could bring in a psychologist. Steven Powers said the Board has the authority to compel the offender to undergo an evaluation, but that the DA does not have this authority at this point in the offender's sentence.

Bronson James asked if the Board had an audit process to ensure the value of individual psychological evaluations. Steven Powers said the only audit is in determining whether to renew the contract with an individual psychologist. Bronson asked if it is difficult to find psychologists because of the rate of pay or if it is difficult to find people to do this kind of work. Steven Powers said it is difficult finding doctors to do this kind of work who are not identified with either the prosecution or defense. The challenge is to find both neutral and experienced qualified examiners.

Walt Beglau asked if the Board currently ever meets with the examiners, or does it rely on the written report? Does the Board ever call the psychologist to the hearing? Steven Powers said "no," because this is a hearing, not a trial. He explained that the psychological evaluation and the examiner's professional opinion is only one piece of the information brought before the Board for its decision. Walt Beglau asked if the report is a key piece in the Board's decision or is it the totality of the circumstances. Steven Powers said the Board's statutory authority is tied to the psychological evaluations, but that the Board considers much other information; what the Board may consider is governed by the laws and rules in effect when the crime was committed. A diagnosis is key to the Board's ability to defer release, but it isn't the only factor. Bronson James said the courts have held that the diagnosis in the evaluation is a legal determination and not a medical determination.

Mary Elledge asked if the Board must release an offender it knows to be dangerous if the sentence runs out. Steven Powers said "yes." Bill Taylor asked about the possibility of civil commitment. Steven Powers said that mental commitments are for 180 days, and that this is not what the Board looks for in its psychological examination.

Brenda Rocklin asked how long examiners contracted by the Board are allowed to be on the list. Steven Powers said the contracts are renewable each biennium, and that those on the current list had been there for a number of years. There was a failed request for proposals (RFP) for additional examiners for the east side of the state last biennium (no qualified applicants).

Bob Robison reminded the workgroup that dangerous offender and predatory sex offender designations are different. Steven Powers stated the Board does not designate dangerous offenders – that designation comes from the courts, and the Board has release authority over these offenders. The Board does designate predatory sex offenders, but that only determines the type of supervision they will receive in the community. A predatory designation does not give the Board release authority over the offender unless the sentence already put him under the Board's authority.

Mark Cadotte asked what information the Board weighs in addition to the psychological evaluation. Steven Powers said the evaluators also may conduct tests, look at reports and records from DOC on conduct in the institution, any misconduct reports, and other information along with prior diagnoses.

Brenda Rocklin asked who can see the psychological evaluation. Steven Powers said they are disclosed to DOC and the inmate automatically, and to the DA and victim on request. He said the Board is the client of the psychologist, not the inmate, and it is the Board's privilege that is protected. Bill Taylor asked if HIPAA applied. Steve said the Board's psychological examinations are exempt.

Brenda Rocklin asked the group to define the issues to discuss and any recommendations to be made. Mary Elledge expressed nervousness about how much training in deviant behavior the evaluators have.

Bronson James listed a number of concerns he has about the process for psychological examinations:

1. There is no real standard for selecting examiners.
2. Renewals of evaluator contracts are not done through an RFP process.
3. Evaluators do not make adequate treatment recommendations on how the offender can be controlled in the community.
4. The quality of evaluations and reports is not being adequately audited.
5. Actual evaluations are not in accordance with American Psychological Association standards.
6. The statutory requirement for the psychological determination of present and severe emotional disturbance is a childhood definition not used under the current criteria of the industry, such as DSM4.

Walt Beglau expressed concern that the DA and victim have no right to meaningful cross examination of the evaluator and no right to compel the offender to participate in a DA or victim-ordered evaluation.

Mark Cadotte asked if the contracts with the providers contain requirements for the evaluations. Steven Powers said "yes," but the standards are more general than specific. The Board would welcome a recommendation on standards the Board should use in contracting with evaluators and for their reports. He said that other states do independent risk assessments, similar to the LSCMI that DOC and community corrections use. Could the DOC counselor conduct this risk assessment? Steven Powers

encouraged the workgroup to think broadly in how best to gather this information for the Board.

Cynthia Stinson asked if police reports and court transcripts are available to the evaluators. Steven Powers said that the Board does not have trial transcripts or police reports in its own files, but that the psychological evaluators have access to the full DOC inmate file if they choose to review it; some do and some do not.

Cynthia Stinson expressed concern about consistency and standards if the evaluator does not review the entire DOC file. Nancy Sellers said that the PSI is a key document, as it summarizes the police reports and court transcripts into a single document outlining the details of the crime. This is a valuable piece of the record. The Board would welcome receiving victim impact statements from the DAs, as they are not currently included in Board files.

Bill Taylor said the definition of mental disease and defect is an unclear fit with the Parole Board. Has anyone ever challenged the Board on this? Bronson James said some challenges have been more successful than others. In the interests of public safety, the definition could be tightened up so the decision making of the Board was on more sound footing. He said there is a universal interest in accurate and complete information. There could be a statutory and rule change asking for a DSM4 diagnosis.

Steven Powers asked about the model of the courts: when making a determination of dangerous offender status, the DA orders a psychological evaluation. Steven asked if the Board could adopt the same standards that the DAs have used to identify their psychological examiners. The Defense Bar? Steven Powers asked what criteria the DAs use in contracting with their psychologists. Walt said there are no criteria.

Guest Steve Gorham said all sides believe that hired experts are "prostitutes" for the side that hired the expert. Bill Taylor advised against getting into situations with "dueling experts" in hearings, which would change the character of the hearings.

Bronson James said that inmates want the "raw data," clinician notes, and diagnostic tools from the evaluator to give to their outside psychologist. These are denied to the inmate. Bill Taylor asked who pays for the outside psychologist, the state or the defendant. Bronson James said it is the inmate. Guest Steve Gorham said that the Parole Board pays for inmate legal representation at Murder Reviews.

Brenda Rocklin asked Walt Beglau if psychological evaluations are always used in Dangerous Offender sentencings. He said "yes." Guest Steve Gorham said that a defense attorney would always request a psychological evaluation. Walt said there is a dearth of experts in this field.

Shannon Wight reminded the workgroup that inmates in parole hearings are not in litigation or criminal proceedings, and that we can't stay in that model to best serve public safety. She suggested finding best practices standards such as from the American Psychological Association.

Brenda Rocklin asked Bronson James and Walt Beglau to come up with some recommendations to share with the group. She asked that they send them to Nancy Sellers for distribution to the group for consideration in advance of the next meeting.

Bob Robison said that in working with victims, their big question is whether the offender has changed, and are they ready for release? Psychological evaluations and risk assessment are valuable to them in this determination.

Bronson James expressed concern about having the psychologists at the hearing, because the more information that the offender shares with the evaluator in confidence that is made public, the more chilling the effect on getting the offender to provide honest and complete information.

Shannon Wight said that the Board's current practice of not providing a full copy of the psychological report to the public protects the process and still meets the victims' needs for safety planning.

Guest Rebecca Ahsing is concerned about the victim's ability to view the psychological report on their offender, and to challenge that information. Guest Tiffany Edens said that there needs to be criteria to protect both victim and offender and public interest. The victim needs to be able to report when the offender is being dishonest.

Guest Kim White expressed distress that the Board does not have the entire police report. Guest Rebecca Edens-Ahsing said that she filed the entire case record on her offender with the Board. Tiffany Edens said that there should be cross examination to get to the truth. Bronson James said that, if cross-examination is allowed, there would be a need for indigent counsel/state-paid attorneys at all Board hearings.

Nancy Sellers reiterated that the Board welcomes information and participation from DAs and victims to ensure the Board has accurate and complete information.

Steve Doell would like police reports and victim impact statements in the file; he does not believe PSIs describe the crime in enough detail. He also believes there should be a third psychological examination if the first two are inconclusive, and that the examiners should be experts on criminal minds.

Guest Steve Gorham said that psychological testing is expected to be valid and reliable. If the offender is lying, the examiner should be able to tell. However, PSIs are usually well done and contain the relevant information from the police reports.

Brenda Rocklin wrapped up the meeting saying that the Board's Key Performance Measures 3 and 8 will be discussed at the next meeting.

The next meeting will be October 2, 2008.

Meeting adjourned at 12:03 p.m.

Respectfully submitted,

Susan Deschler and Nancy Sellers, Workgroup Staff

Meeting #5

October 2, 2008 – 8:30 a.m., SAIF Boardroom

Parole Hearings Workgroup – 10/2/08

Present: Bronson James, Steve Krasik, Brenda Rocklin, Shannon Wight (via phone), Steven Powers, Nancy Sellers, Mary Elledge, Bob Robison, Walt Beglau, Cynthia Stinson, Bill Taylor

Excused: Colette Peters, Steve Doell, Greg Horner, Mark Cadotte

Guests: Chane Griggs, Tiffany Edens, Rebecca Edens-Ahsing, Margaret Braun, Carol Schrader, Ken Edens, Cathy Beach, Steve Gorham, Kerry Naughton, Caylor Roling, Kim White

Approval of Minutes: Members proposed a number of edits to the September 18, 2008, minutes, which were adopted. Corrections will be made to the minutes and sent out to the workgroup.

Brenda Rocklin briefly went over the issues to be covered at today's meeting, including a summary of the consensus recommendations reached to date. Agenda item #7 will be tabled until the next meeting because of Steve Doell's absence today.

Definition of "victim" and victim notification. Bob Robison said that it is important to use a broader definition of "victim" when it comes to victim notification and that information that gets communicated to crime victims should be written and clear. Bronson James reiterated the need for a distinction between those who may present information to the Board versus those who have an enforceable right to be present and who may be able to undo a decision if the Board fails to comply with certain requirements.

Cynthia Stinson said that she feared a narrow definition of "victim" could exclude parents of murdered children or other family members of victims. Brenda Rocklin pointed out that ORS 131.007 is a narrower definition of those with enforceable rights and that identifying the victims should rest with the prosecuting attorney rather than with the Board. Nancy Sellers said the Board would not exclude anyone requesting notification, regardless of whether they had been identified as a victim by the DA.

Bronson James discussed the possibility of creating an appellate avenue for victims if the DA or court doesn't determine them to have victim status. Mary Elledge talked about protecting the rights of custodial grandparents.

Walt Beglau agreed with the fundamental concept that DAs are the gatekeepers to designate the core class of victims using the constitutional definition. This will require training in its application as DAs are independent elected officials.

The workgroup reached a consensus agreement that the DA of the county of conviction should identify the victims of record for the Board. There will be a reach-back process for the 1,600 inmates currently in DOC custody under the Board's release authority. Looking forward, victims of offenders under the Board's release authority will be identified by the DA at the time of sentencing, and the DA will send

their names and contact information to the Board. This will include changing the registration form to give identified victims the opportunity to name their next-of-kin successors for victim status.

Bob Robison asked if victims who are not identified by the DA have an enforceable right to speak at a hearing. Brenda Rocklin said they would not have the right to speak, but could write to the Board. The designated victims could participate and speak. Bronson James said that the Board has always accepted written submissions by anyone, and that the Board has discretion to hear testimony from anyone if it chooses to do so.

Steven Powers noted that the Board's current administrative rule adopts the definition of "victim" in ORS chapters 144 and 131, but does not include the constitutional definition of "victim."

Guest Ken Edens said that at the October 14, 2007, hearing of Richard Gillmore, they had all prepared statements and were told at the last minute that only one person was allowed to testify. They had to decide at the table who was to speak and it flustered the family. Steven Powers explained that the workgroup has been addressing the broader issue over the past several weeks and that he expected there would be a recommendation to allow more than one victim to speak and to abolish the three-minute rule. Brenda Rocklin agreed.

Mary Elledge asked if previous Boards allowed more than one victim to speak. Steven Powers said "no"; historically, it has been one victim, one DA, and one offender supporter.

Psychological Evaluations: Bronson James handed out a packet of information regarding proposed standards for psychological evaluations that he and Walt Beglau worked on as a subcommittee. Bronson surveyed a number of jurisdictions and discovered there are some universal themes. The appendix is a good example of concrete recommendations from San Diego.

By consensus, the workgroup adopted recommendations 1-4 proposed by the psychological evaluation subcommittee (comments/discussion follow):

Recommendation 1

The Board should adopt, via agency rulemaking, rules concerning the contracting for psychological services, and the minimum qualifications for obtaining such a contract. The workgroup recommends any agency rule contain the following, or other equivalent language:

Psychiatric/psychological testing contracts

6. The Board shall submit an open RFP at each biennium for the performance of psychiatric and psychological testing.
7. Previous contracts with the Board shall not be considered in the award of new contracts.
8. Psychiatrists/psychologists must meet the minimum qualifications to be awarded a contract:
 - a. PhD in psychology or psychiatry
 - i. Preference for forensic and/or deviant specialties
 - b. Oregon licensure

- c. A minimum of five years' post-doctorate experience in the diagnosis and treatment of mental disorders.
9. The Board may waive the five-year experience requirement if (i) the RFP process is unable to find adequate candidates with experience, and (ii) highly qualified candidates with less than five years' experience are available. In no case shall requirements (a) or (b) [in subsection 3, above] be waived.

Recommendation 2

The Board should form, within the next 90 days, a professional workgroup charged to develop the psychiatric and psychological standards for evaluations. That workgroup should be composed of, at a minimum, the following:

6. Four licensed psychiatrists/psychologists, only two of which can currently be under contract with the Board
7. At least one prosecutor
8. At least one defense attorney
9. At least one representative from the Department of Corrections
10. At least one victim advocate

Recommendation 3

The aforementioned workgroup shall develop a set of standards for psychiatric and psychological evaluations of Oregon inmates for purposes of parole and release. These standards, in format and content, shall be modeled off the "Standards for Forensic Psychological Evaluations of Adult Sexual Offenders" approved by the San Diego Sex Offender Management Council (2003). The standards should be updated to reflect the most recent scientific understanding and should be not materially inconsistent with the recommended practices of the American Psychiatric Association (APA) and the American Academy of Psychiatry and Law (AAPL).

The Board will promulgate rules providing for the formation of this workgroup every four years for the purposes of evaluating the existing standards and ensuring they continue to meet industry practice.

Recommendation 4

The Board should contract with a psychiatrist/psychologist for quality assurance purposes.

Once a biennium, the Board should randomly select three psychiatric/psychological evaluations per contracted service provider for quality assurance (QA) testing. Those evaluations, with all accompanying diagnostic data and clinical notes, should be provided to the QA psychologist. The QA psychologist will inform the Board, in writing, whether the subject psychologist's methods and conclusions were within the scientifically accepted norm.

If the professional workgroup determines that three sample examinations are insufficient for QA purposes, the Board may increase the sample size to that workgroup's recommendation. In no case should the QA sample be less than three evaluations.

Comments/Discussion:

Recommendation 1: Brenda Rocklin asked why contracts would be biennial. Bronson James said it could be any time; however, state agencies are usually on a biennial budget so that is why he proposed a two-year contract period. Brenda Rocklin raised the possibility of a three-year contract. Nancy Sellers suggested a rolling process with half of the contracts expiring each two years to ensure continuity during turnover of contractors. Bronson said he was looking for a reasonable contract period, not a specific length.

Brenda Rocklin asked if subsection 2 precluded repeat contracts. Bronson James said that subsection 2 only means that you do not get preference in the RFP process for having an existing contract, and there is no automatic re-upping of a contract.

Bronson James suggested minimum qualifications: Oregon license, Ph.D., MD, DO, and experience with forensic and deviant populations. Steven Powers asked about out-of-state contracts; Bronson said these standards would not apply to out-of-state evaluations or to those over whom the Board has no control. Guest Margaret Braun suggested a Ph.D. in clinical psychology, as clinical is the only branch of psychology that receives training in diagnosis.

Recommendations 2 & 3: Walt Beglau suggested having the recommendations evaluated by experts. Bronson James said the professional workgroup in recommendation 2 would serve that purpose. The professional workgroup should have a set of standards for evaluating sexual offenders; Bronson pointed out that page five of the appendix talks about different components of a good evaluation.

Steven Powers asked if the American Psychological Association (APA) was left off the list of standards for a reason. Bronson James said "no," that he was looking for a common denominator for standards. Bob Robison said that the APA does have established standards that meet the most recent scientific understanding; the Board's standards should not be materially inconsistent with the practices of the APA.

Bronson James said the Board should promulgate rules for the purpose of evaluating and revising standards as necessary.

Recommendation 4: Steven Powers asked if the QA review provision would waive the Board's confidentiality privilege for clinical notes. Bronson James said that the Board would not have a privilege, but that the person's name could be redacted from the report. What you are looking for is the quality of the evaluation and the scientific conclusions that are drawn.

Brenda Rocklin asked whether the Board could provide by rule that QA testing does not waive any available privilege. Steven Powers said licensing boards might have issues with the QA testing process. Bronson James said this would be a quality check that the agency is getting what it is paying for.

Shannon Wight voiced a concern that offenders might not fully share information with the evaluator if the notes are to be made public. Bronson James said that the San Diego model requires the evaluator to be very clear to the inmate about who would see the notes. Bronson James said checking best practices on this issue is something the Board would ask the professional workgroup to address.

Brenda Rocklin suggested that it might be possible to treat this information the same way a PSI is treated, where victims and DAs could see the information but it is shielded from public disclosure.

Recommendations 5 & 6

Recommendation 5

The Board should adopt, via agency rulemaking, rules providing that at the request of the inmate, the Board, the victim, or the District Attorney, the examining psychologist/psychiatrist shall provide all diagnostic data and clinical notes upon which he/she based the evaluation. Inmates, victims, or District Attorneys may submit, in writing, the report of a psychiatrist or psychologist commenting on the methodology and conclusions of the examiner, provided that such psychiatrist or psychologist himself meet the minimum qualifications for Board examiners.

***Alternative Option:** The above recommendation supposes private funding for retention of review psychologists. This option would have the Board seek legislative funding for public payment of such review psychologists at the request of the victim or the inmate. Review at the request of the District Attorney would not be paid by state funds.*

Alternative Recommendation 5 (This completely replaces 5 above).

The Board should adopt, via agency rulemaking, rules providing that at the request of the inmate, the Board, the victim, or the District Attorney, the examining psychologist/psychiatrist shall provide all diagnostic data and clinical notes upon which he/she based the evaluation. Upon reasonable notice by the inmate, the victim, or the District Attorney, contesting the methodology or conclusions of the psychological/psychiatrist evaluation the Board shall submit the evaluation, along with all supporting data and clinical notes to two (2) other Board contracted evaluators. These two evaluators will submit, in writing, a joint evaluation of the methodology and conclusions of the examiner.

***Alternative Option:** Rather than a panel of two (2), the Board shall submit the evaluation, along with all supporting data and clinical notes to the psychologist/psychiatrist contracted to perform QA review.*

Recommendation 6 (This recommendation is compatible with either version of Recommendation 5). Upon submission by the inmate, the victim, or the District Attorney of a written report wherein a qualified psychologist or psychiatrist raises a challenge to the methodology or conclusions of the Board evaluator, the Board shall determine whether such a challenge raises a reasonable question as to the reliability of the evaluation. If the Board so determines, it shall require the evaluator to appear at the hearing, at which time the Board can question the evaluator as to his/her methodology and conclusions. Such questioning shall be by the Board, and in no case shall any individual direct questions, or otherwise engage in cross-examination of the evaluator.

Comments/Discussion:

Bronson James explained the options in recommendations 5 and 6 that the professional workgroup would look at. Guest Steve Gorham questioned the willingness of evaluators

to put themselves under that level of scrutiny; he recommended that the workgroup not put in too many onerous conditions that would severely limit the pool of evaluators. Brenda Rocklin pointed out that recommendation 4 has a price tag. Mary Elledge said if evaluators are confident in their work they should be open to review. Bronson James acknowledged that Steve Gorham presents very practical issues, but believes that tax dollars being spent merits peer review. Steven Powers pointed out that this QA standard is not being used at the trial level for psychological evaluations. Bronson James said that the cross-examination at the trial is the equivalent of the QA process. Bill Taylor asked what happens if no one wants to contract for conducting psychological examinations. Steven Powers said that, without psychological evaluations, the Board will lose its ability under the applicable laws to defer parole. Bronson James said that if the RFP resulted in no contracts, then the Board could modify the rule.

Guest Steve Gorham questioned the Board's payment levels for psychological evaluations, saying that the more you are willing to pay, the more evaluators will be willing to participate. Offering \$5,000 will get you a much different pool than offering \$100. He said it is important for the workgroup's recommendations to reflect experience in contracting with public bodies.

Guest Caylor Rolling reminded the group that both sides have expressed a desire for quality standards on psychological examinations.

Guest Ken Edens commented on the process for selecting psychologists for the October 2008 Gillmore hearing, and not being allowed to choose Dr. Colistro.

Bronson James said that recommendations 5 and 6 operate together. Number 5 is a case-by-case QA, written under the presumption that it is a self-pay option. Brenda Rocklin asked if this would be for comment only and not compel the inmate to be re-examined. Bronson James said that is correct, and that persons external to the process have no right to compel the inmate to be examined. This would be an expert commenting on the evaluation.

Steve Krasik asked about the psychological report timeline. Steven Powers said it is important for the evaluations to be timely, and the Board orders them no more than 60 days out. The inmate must receive the report at least 14 days prior to the hearing. If there is a second evaluation ordered by the Board, the timeline for that evaluation is already short. Bronson James said if this recommendation is adopted, the timeframes would have to change.

Bronson James discussed the two options of private versus public funding to contest the quality of psychological evaluations. He said recommendation 6 is separate from and compatible with 5. If the psychological evaluation is not adequate, the Board then will determine if it will require the evaluator to appear at the hearing and answer questions. Such questioning will be by the Board only, which would preserve the nature of the hearing as an administrative hearings rather than a trial.

Nancy Sellers asked if the Board would have a reason to go forward with the hearing if the Board believed the evaluation to be inadequate. She asked whether the Board would administratively postpone the hearing under these circumstances. Bronson James said the Board would postpone the hearing and get a new psychological evaluation.

Guest Ken Edens asked what would prevent every inmate from challenging any negative evaluation. Bronson James said private funding would limit challenges, but

that public funding would be different. There is a price tag attached – there is no way this can be done for free.

Mary Elledge asked if anyone can raise concerns. Brenda Rocklin said the Board could determine what has merit.

Bill Taylor asked if inmates have any constitutional right to have the state pay for additional psychological evaluations. Bronson James said they do not, and he does not expect consensus on this recommendation. He has concerns about both a private pay system and a public pay system, including concerns that this might draw money away from indigent defense at the trial level. Brenda Rocklin pointed out that receiving additional resources in the current economic climate would be difficult.

Bill Taylor asked Steven Powers what would work best. Steven Powers said he is still evaluating the options in recommendations 5 and 6. Right now, clinical notes are held by the psychologist. It complicates the evaluation process but he understands the goal to make sure these are the best possible evaluations. He asked if it is best to focus our time and resources for decisions to hinge on evaluations, or should the Board continue to focus on the broad body of evidence and other ways of getting information from and about offenders. He said that it isn't useful to the Board to have evaluations that are six to nine months old.

Bronson James said that his role was to write the recommendations, but that did not necessarily mean he would vote for them.

Bill Taylor asked for more information about what the Board currently considers at a hearing, such as risk-assessment tools. Steven Powers said the Board relies on a range of sources in addition to psychological reports, including DOC institutional reports; disciplinary reports; records of work, treatment, programming, and classes; pre-sentence investigations, etc. He said the Board would value having risk-assessment evaluation information. Bill Taylor said that the Legislature has heard several presentations on risk assessment.

Guest Tiffany Edens wanted to confirm that recommendation 5 is just an evaluation of the report and not a reevaluation of the offender. Bronson James said that was correct. He would expect the professional workgroup to question the practice of having a second evaluation so close to the first, because that can skew the reliability of the second evaluation.

Guest Tiffany Edens commented that there is a price tag to QA, but that it is important. She suggested that everyone might feel more comfortable with the process if QA was checked at random intervals.

Bob Robison asked what test the Board is using to determine if the offender can be supervised in the community. Walt Beglau stated that the current psychological profile is the lynch pin in the Board's decisions and there should be a high standard for the evaluations. He said that victims can only really restate what happened to them.

Nancy Sellers emphasized that the Board's current practice allows an offender to order and self-pay for a second evaluation to be considered by the Board if the offender receives a negative psychological report (that the inmate's psychiatric or psychological condition still exists). However, if the offender receives a positive psychological report (that the condition is in full or partial remission), the Board already orders a second

psychological evaluation from a different evaluator at state expense. She asked how this practice would change under the proposed recommendations.

Walt Beglau said that, in his view, the critical piece is having two or more evaluations. A set of three would provide more weight and more information to make a decision. Guest Caylor Rolling pointed out that DAs have their own funding streams, and that victims and offenders often have limited resources.

The workgroup agreed it had reached consensus on recommendations 1-4.

Cynthia Stinson recommended deferring recommendation 5 to the professional workgroup, saying it could become complex and costly. Bronson James said this workgroup is more politically based, and the professional workgroup would be more focused on reconciling the recommendations and the practical solutions on those that are adopted.

Guest Steve Gorham said the conflict is whether the evaluation is reliable. If the evaluation is good, the offender is happy and the victim unhappy. If everyone buys into the quality of the evaluation, then you are able to get away from advocacy problems. Recommendation 5 may either go too far or not far enough.

Bob Robison recommended turning this issue over to the professional workgroup. He asked them to consider people of limited means and seek public funding.

Brenda Rocklin asked which option in recommendation 5 the workgroup wanted to pass forward to the professional workgroup. The workgroup members will send their preferences by e-mail to Nancy Sellers, who will compile and provide the information to the professional workgroup.

Key Performance Measures (KPM): Nancy Sellers gave a summary of the Board's KPM 3 and 8. KPM 3 is victim notification, but measures only success in reaching those victims who are registered with the Board and have accurate mailing addresses. KPM 8 is a survey of customer satisfaction for those who request files and records from the Board.

Brenda Rocklin asked if the workgroup wanted to recommend a KPM with more relevance to victims.

Bob Robison said the most accurate measure might be the number of successful victim notifications. Nancy Sellers said that with a reach-back to identify victims for the 1,600 inmates under the Board's release authority, the numbers will surge over the next biennium. Because KPMs are meant to measure performance across biennia, the Board may need to set a new baseline for measurement.

Bronson James suggested that when the DA designates a victim and notifies the Board, a KPM could be the percentage of initial contact/invitation to register letters to the victims that are sent within 30 days. Nancy Sellers said this would be an excellent recommendation, as she and the Board would like to see a tight turn around on contacting victims. Mary Elledge suggested ensuring the materials are victim friendly, as many victims are fearful and may want to write later.

Cynthia Stinson suggested actual victim feedback, such as a survey asking whether their rights were honored, were facilities acceptable, and were they treated with respect

and dignity. She warned that there would likely be a small rate of return, about 10 percent. Nancy Sellers asked if the survey would go to victims who come to the hearing or to any victim who interacts with the Board. Cynthia Stinson said it would depend on how it is crafted on the survey. Walt Beglau said he has a good example that he will send. Nancy Sellers asked the workgroup for suggestions and will compile them.

The workgroup reached consensus to recommend that the Board's current KPM 3 be changed to measure the percentage of letters sent to identified victims within 30 days of the Board's receipt of notification from the DA. The workgroup would also like the Board to develop a new performance measure on victim feedback.

Bob Robison discussed the need for the Board to have a means to follow up on returned mail from registered victims. Cynthia Stinson said that falling short on a KPM can be a helpful tool in seeking additional staffing.

Bob Robison and Cynthia Stinson discussed using the first two biennia to set a baseline for future measurement.

The workgroup reached consensus that the Board should develop a measurement on successful re-notifications of those registered victims who have mail bounce back due to a change in address. This should measure the Board's performance in taking steps to relocate the victim.

Three-minute rule: Brenda Rocklin noted that the workgroup already had recommended that the Board's three-minute rule should not apply to statements at hearing, but raised the issue whether the Board should place some sort of reasonable time limit on statements. Bob Robison asked what was reasonable. Mary Elledge suggested making clear it is a maximum time, not a minimum time, as victims might feel pressured to speak longer than they want. Bronson James suggested time limits for everyone, and that the Board cap total hearing length to ensure there never again is a 10-hour hearing.

Mary Elledge asked if an attorney can speak for the victim. Nancy Sellers explained that the victim may choose an attorney as a proxy, but, under the rule, both would not speak.

Guest Tiffany Edens pointed out that the 10-hour case was unique, and would like to see a reasonable timeline for regular hearings. Bronson James said that in cases where there is a large number of victims, there may need to be a general cap to prevent the hearing from going too long. Guest Ken Edens said that inmates should not get the first and last word in hearings.

Caylor Rolling commented that as with APA guidelines, the Board can limit submissions to information that is relevant and not unduly repetitive/cumulative.

Brenda Rocklin asked Nancy Sellers to comment on what would be a reasonable recommendation. Nancy Sellers said that limiting the time for statements to the Board should not limit the questioning of the offender by the Board members. The Board's interest is in getting the most complete understanding of the offender and his or her potential readiness for parole. Limiting questions by the Board would hinder that effort. Also, the Board has the ability to ask questions of the presenters if they believe the presenter has additional relevant information.

Bob Robison asked if it would be helpful to pick a number of minutes. Mary Elledge suggested 15 – 20 minutes per victim to speak. Walt Beglau agreed that also is reasonable for a DA statement, and that he would also like to limit offender statements.

The workgroup reached consensus that statements to the Board by victims, district attorneys, and offender supporters be limited to 15 minutes, and that this should be clearly conveyed to all parties in a hearing. At its discretion, the Board may allow longer statements.

Sequence of statements at hearings: Bob Robison asked for the sequence of who speaks in hearings. Nancy Sellers explained the current practice:

1. The presiding Board member introduces the hearing, its purpose, and who is in attendance.
2. The Board members question the offender.
3. The victim or the victim's representative is invited to make a statement to the Board.
4. The offender is offered an opportunity to make a statement in response to the Board.
5. The DA (if participating) is invited to make a statement to the Board.
6. The offender is offered an opportunity to make a statement in response to the Board.
7. The offender supporter (if participating) is invited to make a statement to the Board.
 - The Board members may ask questions of those making statements to the Board at any time.

Bronson James said that if multiple victims are allowed to speak, it would be good to have the inmate's response be cumulative, instead of after each person making a statement to the Board.

Nancy Sellers asked about prior workgroup comments about having the offender supporter speaking last. Walt Beglau said he would like to have the victim have rebuttal time at the end of the hearing. Bronson James pointed out that the offender has the burden of persuasion and that is why the offender gets the final word. Guest Caylor Rolling asked if there would be more speakers on the offender supporter side. Nancy Sellers said an offender can choose one supporter to speak. Bronson James said the inmate may submit unlimited written recommendations from supporters. Walt Beglau asked about allowing victims to reserve some of their 15-minute statement time to make additional comments at the end of the hearing. Brenda Rocklin said the offender would still need to have a rebuttal.

The workgroup reached consensus to recommend that the victim(s) and the DA would all speak before the offender is allowed to make one statement in response. The offender supporter would then be allowed to make a statement.

Rebuttal of inmate statements at hearings: The workgroup discussed a rebuttal period at the end of the hearing for the victim(s). Brenda Rocklin reiterated that the burden of persuasion is on the offender. Walt Beglau asked what other states do in regard to this at hearings. Nancy Sellers reported that most states bifurcate the process. Instead of one comprehensive hearing to gather information, they hold a victim testimony day and bring a synopsis of the victims' statements to the offender's hearing.

After discussion, Brenda Rocklin asked the group if it agreed to disagree on this topic.

The workgroup did not reach consensus on a recommendation regarding rebuttal by the victim(s) at the end of the hearing.

Bronson James suggested that, as in the recent hearing governed by a stipulated agreement, the Board could hold the record open for seven days so all parties could submit their concluding thoughts in writing to the Board. Guest Tiffany Edens supported the idea, saying she felt that the offender got the last word in her case. She believes this would be more fair, and give the victim and family more time and opportunity to react and respond. Brenda Rocklin said this would change the current practice of deliberating and announcing the decision the same day.

Bob Robison asked who would have the right to add to the record; would it include victims of prior crimes who had not testified. Nancy Sellers said that at the Gillmore hearing in June, only those who were party to the hearing were allowed to submit written materials for the record. Bronson James said that if you were at the hearing and spoke, you would have a right to submit something in writing for the record. Mary Elledge was concerned that victims would feel burdened to write to the Board. Guest Tiffany Edens said that victims would have the opportunity to discuss their thoughts with their representative, and that the representative could write the response without burdening the victim.

Guest Kim White said she would have liked the opportunity to give a written comment following the hearing for the offender of whom she is the victim; it would have given her time to go home and contemplate a response.

Steve Krasik asked about having a copy of the hearing to listen to so that he can rebut. Nancy Sellers said "yes," anyone can request a copy of the hearing tape or CD. However, there would be time challenges, in that it takes time to download the digital audio file and make the copies. If the CD then needed to be mailed, the recipient might not receive the file with much time for response.

Brenda Rocklin asked if everyone is in agreement that if no one shows up for the hearing, the Board would be allowed to deliberate and decide the case that day. Bronson James said everything can be waived. Cynthia Stinson recommended that DAs can waive the seven-day period, but that if a victim attended, the record would be held open. This would be paired with better education of advocates to help victims to understand their rights and to be prepared instead of intimidated.

Walt Beglau had another commitment and needed to leave the meeting. The workgroup set the next meeting date for Thursday, October 23 beginning at 8:30 a.m. and potentially going all day. Brenda Rocklin asked the workgroup to also reserve Friday, October 24, in case more time is needed to complete the workgroup's tasks.

Bob Robison asked to see draft language of the recommendations at the next meeting. Brenda Rocklin said that is her goal and reminded the workgroup that it will have the right to recommend edits.

Brenda Rocklin asked the workgroup to return to the issue of holding the hearing record open for seven days. Steve Krasik asked how the seven days would be measured. Mary Elledge asked if the decision would be issued by mail and not require victims to

reconvene. Nancy Sellers said that the Board could mail the decision, and could call the victims and DA with the decision. She said the decisions could be posted on the Board's website, and that it also may be possible to add decisions to VINE notifications in the future. Steve Krasik asked if this could be a new performance measure.

Carol Schrader wanted to be certain that if a victim had a proxy – including the Board's victim specialist – read his or her statement that the victim's right to submit a written rebuttal would be preserved. Bronson James said that all information received prior to the hearing would be included in the record, but only the rebuttal statements received during the seven days from those with standing would be considered by the Board for this decision. Any additional information received would become part of the record for any future hearing.

The workgroup reached consensus to recommend that:

- 4. When a victim participates in a hearing in person, by proxy, or by telephone, the record of the hearing will remain open for seven days to allow for written rebuttal by any participant in that hearing. The victim may not waive the seven-day period.***
- 5. When a DA participates in a hearing in person or by telephone, the record will remain open for seven days to allow for written rebuttal by any participant in that hearing unless the DA waives the seven-day waiting period.***
- 6. When neither a victim nor a DA participates in the hearing, the Board may deliberate immediately and issue its decision.***

Other topics: Brenda Rocklin said that if workgroup members have particular topics of interest/recommendations to discuss at the next meeting, it would be useful to e-mail those out to the group in advance. Please send them through Nancy Sellers for distribution.

Cynthia Stinson said she believes the workgroup is close to consensus on how to research the victims of the 1,600 in custody under the Board's release authority. Brenda Rocklin said that she believes that consensus recommendation is in the minutes from the last meeting. Cynthia Stinson would like more discussion on the timing of hearing notices to the parties.

Meeting adjourned at 11:48 a.m.

Respectfully submitted,

Susan Deschler and Nancy Sellers, Workgroup Staff

Meeting #6

October 23, 2008 – 8:30 a.m., SAIF Boardroom

Present: Brenda Rocklin, Nancy Sellers, Greg Horner, Bronson James, Mark Cadotte, Walt Beglau, Shannon Wight, Bob Robison, Steven Powers, Cynthia Stinson, Steve Doell, Bill Taylor, Mary Elledge

Excused: Colette Peters, Steve Krasik

Guests: Margaret Braun, Chane Griggs, Rebecca Edens-Ahsing, Tiffany Edens, Ken Edens, Carol Schrader, Kim White, Caylor Rolling

Approval of Minutes: The minutes from the October 2, 2008 meeting were approved as submitted.

Review of Today's Agenda: Brenda Rocklin reviewed the consensus recommendations reached to date and discussed the status of the remainder of the workgroup's original ideas for discussion, including the Board's mission statement, victim notification, statements at Board hearings, psychological evaluations, automation, staff resources, Board deliberations, Board membership, hearings locations, APA issues, Board findings, Board packets, public records, and judicial review. Additional topics proposed by Steve Doell are possible amendments to ORS 144.125(3) and the Governor's ability to override Board decisions.

Final Report: Brenda Rocklin reviewed the format for the final report.

The workgroup is still in agreement that it will not make any recommendation to change the Board's mission statement.

Victim Definition:

At the last two meetings, the workgroup agreed to recommend that the Board adopt the definition of "victim" found in the Oregon Constitution. Steven Powers asked what the workgroup wants from the definition and whether a rule change would be sufficient or whether a statutory change would be required. Cynthia Stinson said that one omission in the constitutional definition is when the actual victim is deceased; in these circumstances, who is granted victim status? Cynthia believes that in cases when there is an obvious successor, the Board should be able to identify the victim without having to go to the DA. She is concerned that the Board and District Attorneys are locking themselves into extra steps. There could be a way to craft the language so that the Board could contact the victim's family.

Bill Taylor was unsure whether constitutional protections for victims apply at Board hearings, as they are not criminal proceedings. Brenda Rocklin said adopting the constitutional definition would help unify the definition of victim. Cynthia read a proposed alternative definition for the workgroup to consider: "Except as otherwise provided or unless the context requires otherwise, 'victim' means any person determined by the prosecuting attorney or the court to have suffered financial, psychological or physical harm as a result of a crime and includes, in the case of a homicide or abuse of corpse in any degree, a member of the immediate family of the decedent and, in the case of a victim who is a minor, the legal guardian of the minor."

She said this definition would give the Board discretion, when “the context requires otherwise,” to allow immediate family members to be considered victims. Brenda Rocklin said she was not certain, from a legal perspective, whether the language “unless the context requires otherwise” would be interpreted that way.

Steve Doell expressed concern about the situation where the murderer was part of the family; he said he would hate to see a situation where no one arrives to speak on behalf of the victim because the Board had determined that the victim allowed to speak was actually an offender supporter. Nancy Sellers said that the model the workgroup is considering allows individuals to appeal to the DA to be named as victims, and this would avoid the problem. Brenda Rocklin said that if the only “victim” left is a supporter of the offender then the prosecuting attorney could speak on behalf of the direct victim.

Bronson James pointed out the Board’s differing levels of responsibility to victims as opposed to other stakeholders. With victims, the Board has an affirmative obligation to involve them. An encompassing definition would help avoid litigation.

Bill Taylor said the Parole Board, prosecutor, or court could identify victims. Greg Horner said the gatekeeper with more authority is the DA to make the meaningful call on victim status. Carol Schrader explained that the constitutional amendments on victim rights that passed earlier this year have not been printed in the statute books yet.

Bob Robison explained that there are three categories of persons with relationships to parole hearings: those with enforceable rights, those with the opportunity to speak at the hearing, and those who may submit written comments. Bronson James pointed out that anyone may send written comments.

Shannon Wight discussed concerns about the rights of victims without due process for unprosecuted cases. Steve Doell said there is a difference where the convicted person has made a confession to crimes even though they have not been tried in a court of law. Brenda Rocklin said that under these circumstances, the DA may designate multiple victims. Greg Horner agreed and said there should be a certain amount of judgment in cases where someone has admitted to other crimes and the victim has come forth, making it an easier decision.

Shannon Wight expressed concerns about what the hearings will become, and said that this isn’t an opportunity to have another trial. Steve Doell said that, in the Gillmore case for example, the offender admitted to other victims, and asked whether they would be allowed to speak at the parole hearing. Cynthia Stinson said it would be difficult to measure rehabilitation unless the offender talked about all crimes. She said it is important to evaluate where the offender is now, and not exclude other victims.

Brenda Rocklin asked the group where it wants to go in terms of a recommendation to the Board about adopting a new definition of victim to identify those individuals the Board would have an obligation to notify and that would be allowed to speak at hearings. Walt Beglau said that there must be central accountability and that best resides with the DA now and in the future. The DAs will be able to sit down with the families of crime victims to make the right decision for each case.

Cynthia Stinson said that if there are disagreements between potential victims and the Board, there needs to be clear guidelines and a procedure to appeal to the DA. Nancy Sellers said when the Board gets bounced-back letters from DA-identified victims, the

Board would turn back to the DA to attempt to relocate the victim. Guest Carol Schrader said the alternative definition would meet the needs of DAs. Walt Beglau agreed, particularly in cases of homicide.

Bill Taylor said the constitutional definition speaks to the DA and the court identifying victims and asked if it would be both? What if there was an anomaly where the court determined a victim and the DA disagreed?

Walt Beglau said that, in general, the courts would not be involved in determining victim status. Steve Doell said he has no problem with the DA serving as the gatekeeper of victim status. He said he does have lingering concerns on the legal definition of immediate family, and asked what happens in the example of when the only surviving family member is a second cousin.

Greg Horner said the constitutional definition does not exclude the cousin, because the definition allows those who have been harmed to have rights, and even a second cousin could reasonably argue psychological harm and be determined a victim. Bronson James recommended adding language "if deceased, the next of kin."

Brenda Rocklin said the constitutional definition is broader than the statutory definition. Bronson James reiterated the need to balance inclusion and exclusion, as this could be problematic for the Board as it deals with a finite group of legally defined individuals.

Mary Elledge asked about domestic partners and how they would be treated. Cynthia Stinson asked if there are three cousins, are they all next of kin. Greg Horner said that we can't possibly anticipate all the possible scenarios, and that DAs would need to use good judgment. Steve Doell asked Bronson James to re-read his proposed definition: "Except as otherwise provided or unless the context requires otherwise, 'victim' means any person determined by the prosecuting attorney or the court to have suffered financial, psychological or physical harm as a result of a crime and includes, in the case of a homicide or abuse of corpse in any degree, a member, or if deceased, the person's next of kin, of the immediate family of the decedent and, in the case of a victim who is a minor, the legal guardian of the minor."

Bill Taylor recommended using the constitutional definition. Bronson agreed, saying that there is an entire other process going on with the constitutional definition and that will keep the Board's definition in context with the legislative process.

Brenda Rocklin polled the workgroup members: Five voted for the constitutional definition of victim and two voted for the alternate definition.

Steven Powers said the Board would work to accommodate the concerns of those voting for the alternate definition. Nancy Sellers said that the change in the Board's definition would require a rule change, which also would offer an opportunity for public comment.

Walt Beglau said that it should not be a statutory change. Brenda Rocklin agreed, and said that the Board could say that "actual victim" means whomever the DA has identified.

Cynthia Stinson said that the constitutional definition is clear, and that she is fine with the DA making the determination, as victims have not had remedies before. She said to note the difference between proximate victims and actual victims, and doesn't want red tape to prevent the logical person to be excluded. Steve Doell concurred that it would

not require a statutory change for the Board to adopt the constitutional definition of victim, and emphasized Bill Taylor's point that the constitutional amendments were for criminal proceedings only.

Shannon Wight said that she wanted on the record that she wants balance between the number of victims allowed to speak at the hearings with the number of offender supporters.

Brenda recapped that the recommendation of the majority is to ask the Board to adopt the constitutional definition of victim, but that she will include the minority recommendation in the final report.

Hearing Notifications:

Bob Robison said that it is important for victims to know of their rights, and that the Board should ensure that its public information is reader friendly. He said that people should know that registration applies to PPS releases, not just parole releases. He would like the websites of stakeholders statewide to include appropriate links to each other. He concluded with a recommendation that the process for DAs and DOJ to contact the victims of the 1,600 offenders under the Board's release authority should focus on being sensitive to the needs of the victims.

Greg Horner asked about the compilation by county so each DA will know their population of offenders that come under the Board's release authority. Steven Powers said that the process would be forward-looking as well, because there will be victims of future offenders who will come under the Board's release authority.

Brenda Rocklin said that the report would show the workgroup recommending a performance measure on attempts to relocate victims when notifications are returned in the mail.

Bob Robison said that when an inmate is released from prison it is hard for victims and they need time to prepare. Steven Powers said that the Board would welcome recommendations for improved public information on registration for victims of all offenders, including those going out on PPS.

Shannon Wight suggested that human contact with victims being invited to register would be ideal to give them the full range of information and connect them with other services. Cynthia Stinson agreed that the personal touch would be ideal, but would be a major resource issue. She would like there to be more standardization of information coming out from the 36 counties to victims.

Bronson James asked for clarification of the process going forward: the DA gets a conviction and closes the case, sending a letter to the Board with the names and addresses of identified victims. The Board would then contact the victims by letter inviting them to opt out or else they will be contacted and informed of all decisions. Greg Horner said that the Board already sends notices to all victims who have registered and that we are mixing our tasks. He emphasized that the workgroup's scope is only for those offenders under the Board's release authority.

Guest Chane Griggs reminded the group that all victims and other stakeholders may register for notifications through VINE. Bob Robison recommended that the written materials to victims be improved.

Walt Beglau clarified that we also need to focus on reaching those future victims in dangerous offender, murder, and aggravated murder cases under the Board's release authority, as well as the 1,600 offenders already in custody.

Steve Doell suggested that the types of hearings held by the Board need to be clearly detailed by the Board, because not all hearings are release considerations. There are seven different hearings and these should be defined. Brenda Rocklin said this goes back to the recommendation on improved communication.

Mark Cadotte asked about the timelines of notifications. Steven Powers discussed the current practice of 90 days' notice to DAs and 45-60 days' notice to others, with the inmate receiving notice at least 14 days ahead of the hearing.

The workgroup reached consensus that notification of a scheduled hearing should be mailed to all participants no later than 90 days prior to the hearing.

Hearing Locations:

Brenda Rocklin asked the workgroup if it had a specific recommendation regarding the location of hearings. Steven Powers said that all hearings are now held in the institutions. Bill Taylor asked what the cost would be if they were held outside of the institutions. Steven Powers said they have not done a cost analysis, but that there would be costs to the Board and to the Department of Corrections, particularly for inmate transport and security. Guest Chane Griggs discussed concerns about security any time an offender is moved outside a secure institution. Nancy Sellers said that it would be logistically improbable that the Board could travel to the counties to hold hearings given its workload and time constraints, even if it had the financial resources.

Greg Horner recommended that the Board consider all factors and work for hearings to be more victim friendly, including looking at video options, accessibility, and comfort concerns. Bronson James reiterated his position that if a victim is appearing in person, it should trigger a right of the offender to also appear in person. Mary Elledge said that, in her experience, most victims prefer the setting at OSP where the offender is in the cage as opposed to being in the same room without a barrier. Shannon Wight suggested that both the victim and prisoner should have the right to appear by video or in person.

Walt Beglau reiterated his position that the location of hearings needs to be safe, structured, and dignified, and that hearings need to be moved out of prisons. He said that courtrooms are safe, and that he doesn't want victims to have to go into prisons. Steve Doell agreed that courthouses would be less traumatic for victims.

Mary Elledge said that, 20 years ago, the Board held hearings in the State Capitol Building (in the Treaty Room). Bill Taylor pointed out that the Capitol is not a secure facility and asked if the Board holds hearings in Pendleton. Steven Powers said only by video from OSP. The Board used to hold hearings by video from the Dome Building, but there were security concerns with family members fighting. Steven Powers said that the question is who should appear in person and who by video. All parties could appear by video, with the offenders in prison and the victims at a local courthouse or other facility.

Guest Kim White said she had been to three parole hearings. At the first two, the offender was in the room in a cage, but at the third she had to look directly at the offender, and felt revictimized.

Cynthia suggested that if a victim is not present, the hearing could be held in prison. Nancy Sellers asked what might be a reasonable notification by a victim that she or he wanted to attend a hearing and to move it outside the prison. Bob Robison suggested a reasonable cut-off date. Mary Elledge asked about disabled access. Steve Doell recommended courthouses, because they are already set up for hearings. Mary Elledge asked if courtrooms would be available. Walt Beglau said they are under high demand. Cynthia said she recognized there would be a fiscal impact.

Brenda Rocklin said the Board should consult with other stakeholders including DOC and Marion County as it considers whether to hold some or all hearings outside of DOC institutions.

Statements at Board Hearings:

Brenda Rocklin reminded the workgroup that it had reached consensus to recommend that the Board's three-minute rule be changed to a 15-minute time limit and that more than one victim be allowed to speak. The group did not reach consensus on allowing the victim or DA to rebut the offender's statements at the hearing, but did agree that the record should be left open for seven days following a hearing where a victim participated to allow for written rebuttals by all parties.

Shannon Wight said that she would like balance if there is more than one victim speaking at the hearing; she said that the Board, in these circumstances, should allow more offender supporters. Cynthia Stinson disagreed, saying the balance comes with the offender choosing to victimize a number of victims. Shannon said that there are multiple purposes of a hearing; the real decision is what is best overall in terms of community safety. Mary Elledge agreed with Cynthia that when there are multiple victims each should get the right to speak. Guest Caylor Rolling said that the Board should hear from those who can provide information about the offender.

Brenda Rocklin said that the Board already gets information from multiple offender supporters in writing, but there may be circumstances where the Board wishes to hear from more than one offender supporter.

Steve Doell said it seems that, at the hearings, victims are on almost sensory overload from what they hear from the offender, and that things already seem too weighted to the offender's side. Mary Elledge said the Board spends a lot of time asking the offenders to speak about themselves already. Bob Robison said it is important to remember that the purpose of a hearing is to learn the extent to which an offender is rehabilitated, able to be supervised in the community, and the impact on the victims. Bronson James agreed, saying that the process is a public safety decision. In any release decision, if the offender wants to propose multiple speakers, the Board should be able to allow that. He said that this is not a trial, it is a civil inquest, and the Board is a fact finder.

Mark Cadotte asked if the limit on one offender supporter is by rule or by practice. Steven Powers said it is by rule. Brenda Rocklin said the rule would not preclude the Board from allowing more. Greg Horner asked if one offender supporter was adequate to get a good read on making a good decision, when combined with all the written reports and evaluations. Steven Powers said it is good process, and that having the information is more important than whether it is received in writing or in person.

Guest Ken Edens said this is a process to find the truth of release readiness. His offender had multiple letters of support, but staff were not in agreement. He asked if

some of the people who have day-to-day contact with the inmate are allowed to come in and give testimony for or against the offender. Cynthia Stinson asked if there is room for the Board to question an independent evaluator from the prison's staff. Steven Powers said "no," but pointed out that the institution prepares a report for the Board.

Walt Beglau suggested that someone prepare something that might be a "release pre-sentence investigation" as a comprehensive fact-finding tool for the Board. He also suggested having the evaluator show up at the hearing in person to be questioned if called.

Steven Powers said that other states have objective reviewers with investigative duties who interview the inmates and others. There is an important separation from those who have responsibility for the management of inmates. Brenda Rocklin said there would be a cost involved in doing this.

Bob Robison said that, ideally, three things should be looked at in regards to release decisions: inmate rehabilitation, the ability to be supervised safely in the community, and the impact on the victim.

Walt Beglau said that PSIs are not done much any longer, and that the courts used to rely heavily on this information. Without a PSI, future Boards will have lost an important tool. It may be better for the Board to have its own investigative role.

Greg Horner agreed that there is decreasing reliance on the PSI. He said it is important to consider the biases of those who are doing the investigations and writing the reports, and is concerned about replacing the judgment of the Board.

Bronson James said there would be value in having neutral fact finders with appropriate controls in place, but understands there are funding issues. Brenda Rocklin suggested that the Board might consider this in the future. Cynthia Stinson suggested the Board look at the models used in other states.

Steven Powers asked why the workgroup had recommended that the seven-day waiting period not be waivable by the victim. He discussed the Board's current ability to explain its decisions to victims and to talk about what comes next, and that they would lose that personal contact with the victims with a delayed decision.

Brenda Rocklin said the discussion was that sometimes a victim with the option to waive will waive the seven days but then regret the decision later. Steven Powers asked if this would be a situation where we would be taking flexibility away from the victims. Shannon Wight warned to be careful to not create rules only to control extraordinary situations and to keep things flexible.

Steve Doell said there is so much emotion flowing at hearings that it is important to have the opening left there for the victims. Greg Horner said the downside is that the victim might want it resolved immediately, but would not have that option. Cynthia Stinson said that the victim specialist could explain the process in advance of the hearing. Steve Doell said that the Board could make it clear on the record as a judge does to offenders when making a plea. Bob Robison recommended adding the information to the Board's brochure.

Governor's Authority / Judicial Review / Board Membership / Advisory Board:

Brenda Rocklin asked if the governor's authority to override Board decisions would be a constitutional or statutory change. Walt Beglau said he believed it would be statutory. Steven Powers said that the Governor's release authority embodied in statute doesn't consider any other level of authority to override a Board decision. Bill Taylor discussed the Governor's ability to pardon and grant clemency, and that he couldn't foresee the Governor seeking this authority. Steve Doell said it is done in other states. Shannon Wight talked about how highly politicized the process has become in Louisiana where the governor has this power. Guest Caylor Rolling said that the California governor can veto parole decisions, but there is a lawsuit pending.

Guest Ken Edens asked about state oversight of the Board. Bill Taylor explained that the Governor appoints the Board members, but does not control Board decisions.

Bronson James said that offenders can seek judicial review of board decisions. Brenda Rocklin said that is because they are the "aggrieved person." Steven Powers said that judicial review is for those over whom the Board exerts its jurisdiction. Steve Doell said that a victim cannot seek judicial review. Bill Taylor said that is the nature of the hearing – the decision of whether an offender is safe to be released.

Cynthia Stinson asked if the other recommendations of the workgroup might provide enough change to remove the need for the Governor to have the ability to overturn a decision. Bill Taylor said that the DA already has the ability to seek review for abuse of discretion.

Greg Horner said he would support some form of consideration for review by victims for factual and procedural issues. Shannon Wight asked about the APA. Bronson James said that if judicial review rights expand beyond the inmate, it would fundamentally change the role of the hearing to be adversarial, and that it opens a gigantic can of worms. He recommended not politicizing these decisions, and has questions of constitutionality regarding the governor's oversight. Greg Horner agreed that a change at the top drives changes all the way down.

Brenda asked if there was indeed no consensus on this issue. Greg Horner said there are compelling arguments that judicial review not be recommended because of unintended negative consequences.

The workgroup agreed there is no consensus recommendation to expand judicial review, although some workgroup members expressed a desire for gubernatorial oversight.

Bill Taylor asked if the Board members are appointed to terms or serve at the pleasure of the Governor. Steven Powers said that, as an independent administrative body outside of partisan politics, the Board members cannot be removed except for malfeasance.

Steve Doell asked if that meant there would be no accountability for a bad decision, and said that, in the end, it is all political.

Bob Robison went back to Cynthia Stinson's question about whether other recommendations for Board improvements would mitigate the need for increased oversight, including increased victim involvement, pre-release reports, better

psychological reports, etc. He believes that parole and probation officers can do sound risk assessments.

Cynthia Stinson said that one of the reasons this group was formed was to convene a group who could give suggestions, and recommended that the Board convene such a group at least once each biennium to review practices, key performance measures, and other progress.

Bronson James agreed that it is a good idea to have controls in place to increase public confidence in decision making by the Board. He said he would like to see the Board return to five members. Mary Elledge asked when the Board was reduced from five to three. Steven Powers said that it was in 1989. Shannon Wight recommended prioritizing this recommendation with the fiscal impact of other recommendations.

Brenda Rocklin asked about Board membership. Walt Beglau suggested looking at volunteer citizen membership to bring the Board up to five members without additional cost. Steven Powers said he knows that some states have a mixture of full and part-time Board members, but that they are paid. Brenda Rocklin pointed out the level of work and reading required would make it difficult to have volunteers. Steve Doell expressed concerns that volunteers or part-time members wouldn't have the level of expertise that is needed. Mary Elledge talked about the history of the Board and the importance of professionalism and common sense.

Steve Doell said that other states have criteria for various board member slots, such as victim, DA, defense attorney, etc.

Brenda Rocklin asked if there should be a recommendation in the report that the Governor should have statutory authority to override Board decisions. Four workgroup members voted for, four against, with two abstentions.

Shannon Wight asked if the cut from five to three Board members was a fiscal decision. Steven Powers said that it likely was, with the role of the Board changing at the time, as the Board had fewer hearings. Nancy Sellers explained the growth in the Board's workload in other areas, and said that the Board has requested a fourth member in its 2009-11 Agency Request Budget.

Greg Horner asked if volunteers could be a good addition to the Board. Steven Powers said he didn't know if it would be helpful. The Board of Parole and Post-Prison Supervision is very different from other boards and commissions in Oregon. He discussed the Board's request for Police & Fire PERS status for Board members as a recruitment tool in the future.

Bill Taylor asked about the background of the Board members. Steven Powers explained that one board member spent 25 years as a parole officer, one has a social work background and is a paralegal, and he is an attorney and worked at the appellate division of DOJ with an experience in criminal cases as one of the Board's attorneys. There now is no formal process for selecting and appointing Board members.

Steve Doell asked Steven Powers if it would be advantageous for the Board to have additional Board members or additional staff. Steven Powers said that is a tough question, as current Board members work up to 60 hours a week. There are policy option packages for both.

The workgroup reached consensus to support the Board's budget requests for an additional Board member and an additional staff member.

Steve Doell said the continuation of an advisory committee is a good idea. Cynthia Stinson agreed and suggested that if there are openings on the Board, the group might come together to make a recommendation to the Governor for appointment. Walt Beglau recommended the Board be increased to five members to edge the Board forward with depth and support.

Steve Doell suggested an advisory council that looks similar to what is here today. Brenda Rocklin said an advisory council could be appointed by the chairperson of the Board and then the chairperson could decide on the frequency of meetings. Cynthia Stinson suggested meeting at least once each biennium.

The workgroup reached consensus to recommend a permanent advisory council.

Length of Parole Deferral:

Brenda Rocklin initiated a discussion of the length of time between parole consideration hearings, ORS 144.125(3). Steve Doell would like the Board's deferral of parole to expand from two years to five years, with the presumption on the offender to prove readiness for parole.

Greg Horner said it is a small number of offenders who have truly bad evaluations who are not ready for release, and that extending the deferral would be a tangible support of victims. Bronson James pointed out that this would apply to a finite number of people. Changing the deferral for existing offenders could present *ex-post facto* issues because it would be taking away the potential for biennial hearings after the fact.

Greg Horner agreed that this is clearly a potential issue, because the sentence is already established. He suggested that DOJ could investigate the validity of such a change. Bronson James said this could lead to changes in three statutes, including those governing murder reviews and dangerous offenders.

Shannon Wight asked how the deferral period was established. Bill Taylor said that the Legislature had looked at this about a dozen years ago. Steven Powers said that was when the deferral was standardized the Board settled on 24 months, where it used to be 12-24 months. The 24-month deferral is in rule for matrix offenders but in statute for murder reviews and dangerous offenders. Bill Taylor said that offenders have a right to a hearing to determine when their prison term ends, and changing this might require a constitutional amendment.

Steven Powers said that, upon admission to prison, matrix offenders receive a hearing to set their prison term, which then sets the two-year cycle into motion. Walt Beglau suggested a floor at five years, with the ability to petition for an earlier hearing after two years. Steven Powers asked what the process would be for that review. Greg Horner said that nearly all inmates would petition, so this would create a workload issue for the Board.

Mary Elledge asked if everyone must be seen every two years, no matter how bad they are. She discussed one hearing where the inmate verbally attacked the victim and asked why the Board would consider that person again in two years.

Cynthia Stinson recommended the Board explore the history and legal options of the deferrals. Mark Cadotte asked if the Board could have the authority to hold a hearing and extend the deferral up to five years.

Bronson James said he couldn't agree with this change, but that it makes sense to have a range available for case-by-case determinations. He said he understands the perspective of victim sensitivity to push out the hearings as far as possible, but that there also are policy reasons to release offenders when they are ready.

Greg Horner acknowledged the financial issues involved with having a range of deferral lengths, but suggested that extensions might reduce the Board's hearing workload. Bronson James pointed out that this might increase costs to DOC if offenders are held in longer. Guest Chane Griggs said that DOC's Office of Population Management and its Research and Evaluation Office would have to run numbers to arrive at potential costs.

Shannon Wight said that it is important to ensure some level of supervision, which is best for everyone, and that allowing inmates to flat time and release without supervision would have real policy and safety issues.

Guest Ken Edens said that, once rehabilitated, an offender should get out. He asked if an inmate could pay for his own evaluation, and if he showed a marked improvement, he could then get a hearing. Bronson James said that you would need to have public funding in these cases for the inmate to get the evaluation.

Guest Tiffany Edens said some conditions are not fixable, such as an Axis II diagnoses with no treatment. She believes that treatment needs to be in prison instead of outside prison where there is a higher risk to other victims. She would like more money to come from community corrections funding into the prisons for treatment. Shannon Wight agreed that there should be more programs inside prisons.

The workgroup did not reach consensus on extending the parole deferral period, but did agree to ask the Board to explore with DOJ the possibility of extending the period up to five years and to look at what criteria would be used for extending deferral.

Next Steps:

Brenda Rocklin said that, by Wednesday, she will launch the draft final report with an option to send edits to her or to hold another meeting. The workgroup decided to leave it to the facilitator to decide if a meeting is needed. Workgroup members are to have their comments to Brenda by Friday afternoon.

Psychological Evaluation Options:

The group discussed options 5 and 6 and which option should be referred to the professional workgroup. Bronson James summarized the differences between the two options. Both options would provide an avenue for victims, the inmate, or the inmate's attorney to challenge the Board-ordered evaluation. It would not be a new evaluation, but would allow a party to call into question the validity of the Board-ordered evaluation. Bill Taylor pointed out that there is no constitutional right to public funding, and that if public funds were to be used, it would likely come from the funding that is provided to Bronson's office. Shannon Wight said that there would be an imbalance between who can afford a review and who could not. There would need to be funding with an indigent standard.

Greg Horner pointed out the likelihood that all offenders with negative evaluations would demand an appeal, and that there would be cost issues. Bronson James agreed that he sees more negative psychological evaluations than good evaluations and that contesting their validity will tilt the process toward the offender. Bill Taylor said that psychologists for other state functions don't take the stand.

Bronson James said that the need for options 5-6 might diminish if the Board puts options 1-4 in place.

Brenda Rocklin suggested that the workgroup refer these issues to the professional workgroup for recommendations to the Board. Greg Horner agreed, saying that would be the careful approach.

Bronson James suggested that options 5 and 6 could be looked at four or five years from now after options 1-4 are implemented and their effectiveness is evaluated.

Steve Doell asked how recommendations would be decided. Steven Powers said that, ultimately, the Board has responsibility for discussing and deciding which recommendations to adopt.

Brenda Rocklin summarized the group's discussion as follows: The workgroup considered options 5 and 6 and ultimately decided to refer them to the professional workgroup to recommend at a later date if needed.

Other Issues:

KPMs: Brenda reminded the group that, in terms of key performance measures, the workgroup wanted the Board to measure the percentage of letters to identified victims that went out within 30 days of notice of victim status by the DA, a customer service survey for victims, and a measure of the Board's responsiveness to undeliverable victim notification letters.

Communication: Nancy Sellers agreed that communication with victims (and all parties) needs to be sensitive and clearer. She said she is already working on ensuring that communication is clear, copious, and coordinated with other stakeholders. Because of resource constraints, volunteer assistance in these efforts would be welcomed. Mary Elledge and Bob Robison volunteered. Mark Cadotte asked if Board information is available in Spanish. Nancy Sellers said that at this time very little is available.

Board Findings: Bronson James said that BAFs should more closely resemble the length and scope of administrative review responses (ARRs), with more narrative, particularly for release hearings.

Brenda Rocklin asked if that might put an end to some of the appeals. Steven Powers said he believed that it would have the opposite effect and give inmates more grounds to dispute in their administrative review requests, of which the Board now receives about 30 each month. He said that having more explicit findings opens the process more and that preparing findings of fact takes time and sets up legal challenges for what is adequate. He said the Board is open to recommendations, but there are disadvantages as well. At the minimum, the BAF language models its findings on the statutory standard to defer or grant parole.

Brenda Rocklin asked if Judge Lipscomb required expanded findings in his order on the Gillmore case. Steven said yes, but his opinion relied on a statute that applied to a different type of hearing. The more information that goes into a BAF that defers parole, the more potential there is for litigation by the offender, particularly if the Board outlines some reasons for denial but isn't exhaustive, then it looks as if the Board is moving the goalposts for release at future hearings.

Bronson James said that if the Board is denying parole, the inmate has the administrative review process. If the Board is granting parole, the victim has no right for more information. He suggested the BAF be expanded if there is a release of an inmate.

The workgroup reached consensus that when the Board makes a decision to grant parole, that it use language in the BAF similar to the level of detail used in ARRs.

Closing Comments:

Bob Robison said he commended the Board for conducting this transparent review of their practices and procedures to see if it is victim sensitive. This kind of review should be considered a model and replicated by other segments of the criminal justice system that work with victims.

Steve Doell agreed, and wants Bob Robison's statement to be in the minutes and in the final report.

Mary Elledge agreed, saying she appreciated the cross-section of people on the workgroup.

Steven Powers thanked everyone and the guests who attended regularly for their participation and insights.

Brenda Rocklin thanked the guests for their perspectives. She will distribute a draft report on Wednesday and requested that comments be returned by Friday.

Meeting adjourned at 1:30 p.m.

Respectfully submitted,

Susan Deschler and Nancy Sellers, Workgroup Staff

Appendix B:

Psychiatric/Psychological Recommendations

3rd DRAFT PSYCHIATRIC REVIEW PROCESS – B.James 3rd DRAFT

TO: PAROLE WORKGROUP

RE: PSYCHIATRIC REVIEW PROCESS RECOMMENDATIONS 3rd DRAFT

Recommendation #1

The Board should adopt, via agency rulemaking, rules concerning the contracting for psychological services, and the minimum qualifications for obtaining such a contract. The workgroup recommends any agency rule contain the following, or other equivalent language:

Psychiatric / psychological testing contracts

1. The Board shall submit an open RFP at each biennium for the performance of psychiatric and psychological testing.
2. Previous contracts with the Board shall not be considered in the award of new contracts.
3. Psychiatrists/psychologists must meet the minimum qualifications to be awarded a contract
 - a. PhD in psychology or psychiatry
 - i. Preference for forensic and/or deviant specialties
 - b. Oregon licensure
 - c. A minimum of 5 years post-doctorate experience in the diagnosis and treatment of mental disorders.

2nd DRAFT POSSIBLE ADDITION: The Board may waive the 5 year experience requirement if (i) the RFP process is unable to find adequate candidates with experience, and (ii) highly qualified candidates with less than 5 years experience are available. In no case shall requirements (a) or (b) be waived.

Recommendation #2

The Board should form, within the next 90 days, a professional workgroup charged to develop the psychiatric and psychological standards for evaluations. That workgroup should be composed of, at a minimum, the following:

- a) 4 licensed psychiatrists / psychologists, only two of which can currently be under contract with the Board
- b) at least one prosecutor
- c) at least one defense attorney

3rd DRAFT PSYCHIATRIC REVIEW PROCESS – B.James 3rd DRAFT

- d) at least one representative from Department of Corrections
- e) at least one victim advocate

Recommendation #3

The aforementioned workgroup shall develop a set of standards for psychiatric and psychological evaluations of Oregon inmates for purposes of parole and release. These standards, in format and content, shall be modeled off the STANDARDS FOR FORENSIC PSYCHOLOGICAL EVALUATIONS OF ADULT SEXUAL OFFENDERS approved by the San Diego Sex Offender Management Council (2003) (See attached). The standards should be updated to reflect the most recent scientific understanding and should be not materially inconsistent with the recommended practices of the American Psychiatric Association (APA) and the American Academy of Psychiatry and Law (AAPL).

***2nd DRAFT POSSIBLE ADDITION:** The Board will promulgate rules providing for the formation of this workgroup every four years for the purposes of evaluating the existing standards and ensuring they continue to meet industry practice.*

Recommendation #4

The Board should contract with a psychiatrist/psychologist for quality assurance purposes.

Once a biennium, the board should randomly select three psychiatric / psychological evaluations per contracted service provider for quality assurance testing. Those evaluations, with all accompanying diagnostic data and clinical notes, should be provided to the QA psychologist. The QA psychologist will inform the Board, in writing, whether the subject psychologist's methods and conclusions were within the scientifically accepted norm.

***2nd DRAFT POSSIBLE ADDITION:** If the professional workgroup created pursuant to Recommendation #2 determines that 3 sample examinations are insufficient for QA purposes, the board may increase the sample size to that workgroup's recommendation. In no case should the QA sample be less than 3 evaluations.*

Recommendation #5

The Board should adopt, via agency rulemaking, rules providing that at the request of the inmate, the Board, the victim, or the District Attorney, the examining psychologist / psychiatrist shall provide all diagnostic data and clinical notes upon which he/she based the evaluation.

Inmates, victims, or District Attorney's may submit, in writing, the report of a psychiatrist or psychologist commenting on the methodology and conclusions of the examiner,

3rd DRAFT PSYCHIATRIC REVIEW PROCESS – B.James 3rd DRAFT
provided that such psychiatrist or psychologist himself meet the minimum qualifications for Board examiners.

***3rd DRAFT POSSIBLE ADDITION:** The above recommendation supposes private funding for retention of review psychologists. This option would have the Board seek legislative funding for public payment of such review psychologists at the request of the victim or the inmate. Review at the request of the District Attorney would not be paid by state funds.*

2nd DRAFT ALTERNATIVE RECOMMENDATION #5 (This completely replaces #5 above)

The Board should adopt, via agency rulemaking, rules providing that at the request of the inmate, the Board, the victim, or the District Attorney, the examining psychologist / psychiatrist shall provide all diagnostic data and clinical notes upon which he/she based the evaluation.

Upon reasonable notice by the inmate, the victim, or the District Attorney, contesting the methodology or conclusions of the psychological / psychiatrist evaluation the Board shall submit the evaluation, along with all supporting data and clinical notes to two (2) other Board contracted evaluators. These two evaluators will submit, in writing, a joint evaluation of the methodology and conclusions of the examiner.

***ALTERNATIVE OPTION:** Rather than a panel of two (2), the Board shall submit the evaluation, along with all supporting data and clinical notes to the psychologist / psychiatrist contracted to perform QA review.*

2nd DRAFT RECOMMENDATION #6 (This is entirely new in this draft and is compatible with either version of Recommendation #5)

Upon submission by the inmate, the victim, or the District Attorney of a written report wherein a qualified psychologist or psychiatrist raises a challenge to the methodology or conclusions of the Board evaluator, the Board shall determine whether such a challenge raises a reasonable question as to the reliability of the evaluation. If the board so determines, it shall require the evaluator to appear at the hearing, at which time the Board can question the evaluator as to his/her methodology and conclusions.

Such questioning shall be by the Board, and in no case shall any individual direct questions, or otherwise engage in cross-examination of the evaluator.

**STANDARDS FOR
FORENSIC PSYCHOLOGICAL EVALUATIONS
OF ADULT SEXUAL OFFENDERS**

Approved on March 24, 2003 by:

The San Diego County Sex Offender Management Council

Submitted by the Legal Process Subcommittee in January 2003:

**Eugenia Eyherabide, DDA, Family Protection Division Chief, District Attorney's Office and
Legal Process Subcommittee Chair**

Richard Geiler, Secretary to DDA Eyherabide and Legal Process Subcommittee

Margaret Bullens, Polygraph Examiner and SOMC Director

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Dr. Miccio-Fonseca, Forensic Psychologist

Dr. James Reavis, Forensic Psychologist

Kevin Farrar, Forensic Advocacy - TMI

STANDARDS FOR FORENSIC PSYCHOLOGICAL EVALUATIONS OF ADULT SEXUAL OFFENDERS

Overview

Purpose

The purpose of the psychological sexual offender evaluation is to:

- Educate the Court, counsel and probation regarding this offender
 - Document the treatment needs
 - Provide a written clinical evaluation of the psychological and sexual dynamics leading to sexual offending
 - Help determine the offender's risk for re-offending
 - Help determine amenability for psychological and psycho-sexual treatment
 - Guide recommendations for the conditions of treatment and supervision of the offender
 - Help identify the optimal setting, intensity of intervention, and level of supervision necessary
 - Help identify offenders who should not be referred for community-based treatment
-

Credentials of evaluator

The evaluator shall be a psychiatrist or licensed psychologist who has a doctoral degree in psychology and at least 5 years postgraduate experience in the diagnosis and treatment of emotional and mental disorders or the evaluation shall be from a recognized treatment program pursuant to Penal Code section 1203.066 (e).

Protocols, Considerations and Substantiation of Findings

Protocols re: the offender

The evaluator shall adhere to the following protocols regarding the offender:

Obtain the informed consent of the offender for the evaluation

Inform the offender of:

- the assessment and evaluation methods
- how the information will be used
- to whom it will be given
- the nature of the evaluator's relationship with the offender and the court

The evaluator shall respect an offender's right to be fully informed about the evaluation procedures.

Results of the evaluation should be made available to the offender.

Additional issues

The evaluator shall assess any cultural, ethnic, developmental, sexual orientation, gender, medical and/or educational issues that may arise.

Substantiation of findings

The evaluator shall base assessments, recommendations, reports, opinions, and diagnostic and evaluative statements on information and techniques sufficient to substantiate the findings.

Evaluators shall use assessment instruments whose validity and reliability have been established for members of the population tested. When this is not possible, the limits of the findings shall be discussed.

Testing information

The evaluator shall include in the report a description of the following:

- the tests used
 - the purpose of each test
 - why each test was selected (See attached chart)
-

Recommended Approaches and Items to Be Included

Recommended approaches

Because of the uncertainty of risk prediction for sexual offenders, the following approaches to evaluation are recommended:

- Use of instruments that have specific relevance to evaluating sexual offenders (See attached chart)
 - Use of instruments with demonstrated reliability and validity (See attached chart)
 - Integration of collateral information
 - Use of multiple assessment instruments and techniques (See attached chart)
 - Use of a structured clinical interview which assesses all of the areas of functioning determined by the research to be relevant to sexual offenders, i.e. “empirically guided structured clinical interview”
 - Use of interviewers who have been trained to collect data in a non-pejorative manner
 - When an opinion is based in substantial part on the information from the subject, consideration should be given to the presence or absence of corroboration of those facts.
-

To be included

The psychological evaluation of the sexual offender shall include:

- Examination of the criminal justice information, including all the discovery, the tape of the interview with the victim, and documents that describe victim trauma when available
 - Examination of collateral information, including information from other sources on the offender’s sexual behavior, when available
 - Empirically guided, structured clinical interview and sexual history
 - Psychological testing (See attached chart)
 - Medical examination/referral for assessment of pharmacological needs if indicated
 - Evaluation of deviant arousal or interest
 - A measure of response set and deception. Physiological testing through the use of polygraph examinations may be recommended in the evaluation process.
-

Recommended Approaches and Items to Be Included, Continued

Factors to consider

The psychological evaluation of the sexual offender shall consider the following:

- Sexual developmental history, sexual arousal patterns and interest, deviance and paraphilias
 - Character pathology
 - Level of deception and/or denial
 - Mental and/or organic disorder
 - Drug and alcohol use
 - Stability of functioning
 - Medical/neurological/pharmacological needs
 - Level of violence and coercion
 - Motivation and amenability for treatment
 - Escalation of high-risk behaviors
 - Risk of re-offense
 - Treatment and supervision need
 - The impact of the offense on the victim if the data are available
-

Cases covered by PC1203.066

In cases covered by Penal Code section 1203.066(c), the evaluator shall consider whether:

- a grant of probation is in the best interest of the child (to the extent that the data are available)
 - rehabilitation of the defendant is feasible
 - the defendant is amenable to undergoing treatment and can be placed in a recognized treatment program designed to deal with child molestation.
-

ACCEPTABLE EVALUATION INSTRUMENTS AND PROCEDURES*

Mental and Organic Disorders

- Evaluation Areas** Assessment of mental and organic disorders can address the following evaluation areas:
- Cognitive functioning
 - Neurological screening
 - Mental Illness
-

Cognitive Functioning

ACCEPTABLE EVALUATION PROCEDURES	
Description	Examples
History of Functioning and/or Standardized Tests	<ul style="list-style-type: none"> • Wechsler Adult Intelligence Scale 3 • Wechsler Abbreviated Scale of Intelligence • Kaufman Brief Intelligence Test • Kaufman IQ Test for Adults • Test of Non-Verbal Intelligence • Woodcock-Johnson 3 • Other standardized, reliable, valid assessment instruments

Continued on next page

* *The Abel Assessment, Plethysmograph, Polygraph, VRAG, SORAG, RRASOR, Static-99 and other tools designed to predict probability of re-offense, measure deception or detect the presence of deviant arousal patterns must be reported and interpreted with caution and tied closely with research developments on validity and reliability of these tools to prevent the misinterpretation and over-reliance on these results by the Courts, Attorneys, Probation Officers, Parole Agents and others who depend on the information in the Psychological Assessment.*

Mental and Organic Disorders, Continued

Neurological screening

ACCEPTABLE EVALUATION PROCEDURES	
Description	Examples
History of Functioning and/or Standardized Tests	<ul style="list-style-type: none"> • Wechsler Memory Scale • Neuro-Behavioral Cognitive Status Examination • Trail Making Test • Other standardized, reliable, valid assessment instruments

Mental illness

ACCEPTABLE EVALUATION PROCEDURES	
Description	Examples
Mental Status Examination and History of Functioning	<ul style="list-style-type: none"> • Minnesota Multiphasic Personality 2 • Millon Clinical Multiaxial Inventory 3 • Personality Assessment Inventory • Personality Assessment Screener • Other standardized, reliable, valid assessment instruments

Drug/Alcohol Use

Use/Abuse Relapse History

ACCEPTABLE EVALUATION PROCEDURES	
Description	Examples
History of Functioning, Structured Interview and/or Standardized Tests	<ul style="list-style-type: none"> • Substance Abuse Subtle Screening Inventory • Adult Substance Users Survey • Drug and Alcohol Screening Test • Michigan Alcohol Screening Test • Collateral Information • Other standardized, reliable, valid assessment instruments

Personality Functioning and Character Pathology

Functioning, disorders and impairment

ACCEPTABLE EVALUATION PROCEDURES	
Description	Examples
History of functioning and/or empirically guided structured interview	<ul style="list-style-type: none"> • Hare Psychopathy Checklist Revised • Millon Clinical Multiaxial Inventory 3 • NEO Personality Inventory – R • Minnesota Multiphasic Personality Inventory 2 • Personality Assessment Inventory • Personality Assessment Screener • Rorschach Psychodiagnostic • Other standardized, reliable, valid assessment instruments

Stability of Functioning

Evaluation areas

Assessment of stability of functioning can address the following evaluation areas:

- Early Family Stability
- Education History and Employment History
- Social Skills
- Social Support
- Developmental History
- Physical Functioning

Continued on next page

Stability of Functioning, Continued

Early family stability

Early family stability refers to a history of family violence, financial and housing stability and marital history and stability.	
ACCEPTABLE EVALUATION PROCEDURES	
Description	Examples
History of Functioning and/or Structured Interview	<ul style="list-style-type: none"> • When indicated, measures of family adjustment • Collateral information • Other standardized, reliable, valid assessment instruments

Educational and employment history

ACCEPTABLE EVALUATION PROCEDURES	
Description	Examples
History of Functioning and/or Structured Interview	Collateral information

Social skills evaluation

ACCEPTABLE EVALUATION PROCEDURES	
Description	Examples
History of Functioning and/or Structured Interview	<ul style="list-style-type: none"> • Collateral information • Other standardized, reliable, valid instruments

Social support

ACCEPTABLE EVALUATION PROCEDURES	
Description	Examples
History And/or Structured Interview Information	Collateral information

Continued on next page

Stability of Functioning, Continued

Description of developmental history

Developmental history refers to the following:

- Parent/Child Relationships
 - Behavioral Problems
 - Special Education Needs
 - School Achievement
 - Problems with Attachment
 - History of peer relationships
-

Evaluation of developmental history

ACCEPTABLE EVALUATION PROCEDURES	
Description	Examples
History of Functioning and/or Structured Interview	Collateral information

Physical Functioning

Physical functioning refers to the following:

- Relevant Medical Conditions
- History of illness, injury, surgery
- Medication history
- Current Medication Use

ACCEPTABLE EVALUATION PROCEDURES	
Description	Examples
History of Functioning and/or Structured Interview	<ul style="list-style-type: none"> • Collateral Information • Medical Tests

Sexual Evaluation

- Definition** Sexual evaluation refers to developmental sexual history and past and current sexual functioning, including:
- arousal patterns
 - sexual interests and preferences
 - deviance
 - dysfunctions

ACCEPTABLE EVALUATION PROCEDURES	
Description	Examples
History of Functioning and/or Structured Interview	<ul style="list-style-type: none"> • Personal Sentence Completion Inventory by Miccio-Fonseca, Ph.D • Clarke Sexual History Inventory • Abel Assessment • Plethysmograph • Collateral Information • Other History and Data Gathering Inventories

Offender's viewpoint Evaluation of the offender's viewpoint can include attitudes/perceptions of sexual functioning, deviance and/or dysfunction.

ACCEPTABLE EVALUATION PROCEDURES	
Description	Examples
History of Functioning and/or Structured Interview	<ul style="list-style-type: none"> • Abel Assessment • Multiphasic Sexual Inventory • Autobiography • Collateral Information • Other standardized, reliable, valid assessment instruments

Continued on next page

Sexual Evaluation, Continued

Offense information

Offense information refers to specifics of:

- the current offense
- past sexual offenses
- non-sexual offenses

Specifics might include onset, frequency, victims, threats, weapons, mental and emotional states, etc.

ACCEPTABLE EVALUATION PROCEDURES	
Description	Examples
History and Structured Interview	<ul style="list-style-type: none"> • Collateral Information • Review of Criminal and Juvenile Records • Information from Victim • Polygraph, where indicated

Evaluation of denial and deception

ACCEPTABLE EVALUATION PROCEDURES	
Description	Examples
History of Functioning and/or Structured Interview	<ul style="list-style-type: none"> • Collateral Information • Polygraph • Other standardized, reliable, valid assessment instruments

Risk Factors

Description of risk factors

Risk factors include the following:

<ul style="list-style-type: none"> • Level of violence • Overall pattern of assaultiveness • Pattern of escalation of violence • Access to victim pool • Life-Style Characteristics • Other Psychopathology • Substance Abuse • Other Criminal History 	<ul style="list-style-type: none"> • Social Support Systems • Motivation for Treatment/Rehabilitation • Ability to Self-Structure • Prior Treatment • Neurological Risk Factors • Impulse control • Etc.
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Evaluation of risk factors

ACCEPTABLE EVALUATION PROCEDURES	
Description	Examples
History of Functioning and/or Structured Interview	<ul style="list-style-type: none"> • Collateral Information • Review of Criminal Records • Analysis of Offense Information • Abel Assessment • Plethysmograph • Other standardized, valid, reliable assessment instruments

Recidivism Assessment and Final Report

Evaluation

ACCEPTABLE EVALUATION PROCEDURES	
Description	Examples
Risk factors as noted on the previous page	<ul style="list-style-type: none"> • History • Collateral data • Psychological test results Standardized, valid, reliable actuarial instruments, normed on appropriate samples such as the VRAG, SORAG, RRASOR, Static-99, and others.

Final report

Evaluation report shall integrate the findings and give useful information regarding:

- Risk factors
- Success factors related to the likelihood of successful outpatient treatment
- The recommended level of intensity of offense-specific treatment needs
- Level and intensity of treatment for co-existing conditions
- Level and intensity of behavioral monitoring required
- Other necessary external controls particular to the offender
- Neuropsychological, medical, pharmacological treatment, if indicated
- Methods to lessen victim impact, where indicated and where data are available