

Provided Under Code of Virginia 2.2-313 B (Please do not further disseminate this report to preserve the integrity of the investigation) (Virginia Parole Board) FWA Hotline Case #18647 Issued 07282020
This request applies to the Chief of Staff, Speaker, Majority Leader, and Minority Leader of the House of Delegates, and the President Pro Tempore, Majority Leader, and Minority Leader of the Senate



COMMONWEALTH OF VIRGINIA
Office of the State Inspector General

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July 28, 2020

The Honorable Brian Moran
Secretary of Public Safety and Homeland Security
P.O. Box 1475
Richmond, VA 23218

Dear Secretary Moran:

The Office of the State Inspector General (OSIG) conducted an administrative investigation of the Virginia Parole Board (VPB), Case #18647, based on several complaints made to the State Fraud, Waste and Abuse Hotline. The allegations, and therefore the extent of the administrative investigation, involved violations of the Code of Virginia and VPB policies and procedures surrounding the parole of a Department of Corrections (DOC) offender.

The scope of the review was limited to relevant circumstances as specified in the complaints. Therefore, this inquiry was limited to interviews and review of pertinent statutes, regulations and documentation. The period covered by this review was November 2018 through May 2020.

Allegation

OSIG received several complaints alleging that VPB and former VPB Chair Adrienne Bennett violated Commonwealth of Virginia (COV) statutes and VPB policies and procedures regarding the parole of a specific DOC offender (VLM).

Background

VLM was sentenced to 30 years incarceration for a robbery (20 years) and possession of a sawed-off shotgun (10 years) that occurred in 1972. VLM served six years and was released on parole in August 1979. VLM was on parole for less than 100 days before he murdered a police officer in November

1979. He was originally sentenced to death, but upon appeal and retrial, he was sentenced to life in prison. In December 1980, VLM was convicted of capital homicide (life sentence), robbery (five years) and two weapon offenses (four years) in connection to the murder of a police officer, and 30 years with six suspended for the 1972 robbery and sawed-off shotgun possession. VLM first became eligible for parole in 1994, and VPB denied him parole at each review until 2020. VPB granted VLM parole on April 9, 2020, and released him on June 10, 2020. He served a total of 40 years and six months incarceration.

VPB uses Policy Manual Section I *Parole Decision Factors*, as a guide for an offender's release:

A. Compatibility of Release

Whether the individual's release at the time of consideration would be compatible with public safety and the mutual interests of society and the individual

B. Basis for Release

Whether the individual's history, physical and mental condition and character, and the individual's conduct, employment, education, vocational training and other developmental activities during incarceration, reflect the probability that the individual will lead a law-abiding life in the community and live up to all conditions of parole if released

C. Effect on Institutional Discipline

Whether the individual's release would have substantial adverse effect on institutional discipline

D. Sentence Data

1. Type of Sentence

A. Single (involving one offense)

B. Multiple (involving more than one offense and/or sentence)

C. Split (involving a sentence to prison plus a suspended term against which the offender can be held accountable by the court through probation or otherwise after released from prison)

2. Length of Sentence

3. Recommendations of court, Commonwealth's Attorney, and other responsible officials

E. Present Offense

1. Facts and circumstances of the offense

2. Mitigating and aggravating factors

3. Activities following arrest and prior to confinement, including adjustment on bond or probation, if any

F. Prior Criminal Record

1. Extent, nature and pattern of offenses

2. Adjustment to previous probation, parole and confinement

G. Personal and Social History

1. Family and marital history

2. Intelligence and education

- 3. Employment and military experience
- 4. Physical and mental health
- H. Institutional Experience
 - 1. Response to available programs
 - 2. Academic achievement
 - 3. Vocational education, training or work assignments
 - 4. Therapy
 - 5. General adjustment
 - A. Inter-personal relationships with staff and inmates
 - B. Behavior
- I. Changes in Motivation and Behavior
 - 1. Changes in attitude toward self and others
 - 2. Reasons underlying changes
 - 3. Personal goals and description of personal strengths or resources available to maintain motivation for law-abiding behavior
- J. Release Plans
 - 1. Residence
 - A. Alone
 - B. With family
 - C. With others
 - 2. Employment, training, or academic education
 - 3. Detainers
- K. Community Resources
 - 1. Special Needs
 - A. Substance abuse treatment and counseling
 - B. Rehabilitative services
 - C. Intensive parole supervision
 - 2. Volunteer Services
- L. Results of Scientific Data
 - 1. Psychological tests and evaluations
- M. Impressions Gained When an Interview is Conducted
- N. Information from Lawyers, Family Members, Victims and Other Persons

Findings of Fact

(1) OSIG determined that VPB did not initially provide notification to the Richmond Commonwealth's Attorney (CA) within the statutory timeframe, as per the original release date of April 30, 2020 (he was subsequently released on June 10, 2020). COV Code §53.1-136 (3) (c) *Powers and duties of Board; notice of release of certain inmates* states that VPB shall "notify by certified mail at least 21 business days prior to release on discretionary parole of any inmate convicted of a felony and sentenced to a term of 10 or more years, the attorney for the Commonwealth in the jurisdiction where the inmate was sentenced..."

VPB granted VLM parole on April 9, 2020. On April 15, 2020, VPB received notification from DOC that VLM's release date was scheduled for April 30, 2020. On April 15, 2020, the CA received notification from VPB that VLM had been granted discretionary parole and would be released within 30 days or after completion of a re-entry program. By the time the CA received notification, the scheduled release date of April 30 did not allow for the 21 business day notification required by Code. *Note that VPB did not update or change any policies or procedures in relation to the COVID-19 pandemic, to include the re-entry program, which was waived during this time by DOC.*

(2) OSIG determined that VPB did not "endeavor diligently" to contact victims prior to making the decision to release VLM on discretionary parole, as required by COV Code §53.1-155 (B) *Investigation prior to release; transition assistance*, "The Board shall endeavor diligently to contact the victim prior to making any decision to release any inmate on discretionary parole. The victim of a crime for which the prisoner is incarcerated may present to the Board oral or written testimony concerning the impact that the release of the prisoner will have on the victim, and the Board shall consider such testimony in its review...The definition of victim in §19.2-11.01 shall apply to this section." In addition, VPB Procedure 1.225 *Victim Input* states that "victims and/or their families have 50 days to respond to the pending grant decision."

VLM first became eligible for parole in 1994 and subsequently received annual parole reviews. VPB did not notify the victim's family of these reviews, and records show VPB did not perform any due diligence to contact the family. The first written notification the family received was dated March 4, 2020, when the family was instructed to provide input regarding the discretionary parole release of VLM within 21 days, even though VPB procedure allows 50 days for victim response.

OSIG determined that a VPB employee obtained victim contact information on October 30, 2019, through a law enforcement database. A hearing examiner obtained additional victim contact information on December 11, 2019. During OSIG interviews, several VPB employees stated that Virginia Code and VPB policies and procedures regarding proper victim notification were not always followed under Bennett's tenure as Chair. The employees stated that Bennett was vocal about not wanting to contact victims and particularly not in the VLM case due to the expectation of opposition because the victim was a police officer. One employee stated that Bennett instructed the VPB Victim Services Unit that if the victim of a crime was deceased (as in the VLM case), no further victim notification research needed to be performed. However, the definition of "victim" as per COV Code §19.2-11.01 (B) (v) *Crime victim and witness rights*, includes "a spouse, parent, sibling, or legal guardian of such a person who is physically or mentally incapacitated or was the victim of a homicide." The victim's family interested in providing information relevant to the parole of VLM included his mother, father and three sisters.

(3) OSIG determined that VPB did not allow the victim's family or other interested parties to meet with VPB in accordance with VPB policy and procedures. Per VPB Policy Manual Section I (N) *Parole Decision Factors, Information from lawyers, family members, victims and other persons* and II (F) *Parole Consideration Policies and Practices, Board Appointments*, "family members, friends,

employers, attorneys and other interested persons, including victims and persons opposed to the parole release of an offender, may meet with a member, or other representative, of the Board to discuss specific cases and to offer information relative to the parole of any offender.” Per VPB Procedure Manual 1.112 (6) *Parole Process*, “...victims notified under Section 1.225 procedures will have access to a Board Appointment with a Board Member as needed.”

According to the victim’s family, after being notified about VLM’s parole on March 4, 2020, the victims contacted VPB and a Board Appointment was scheduled via conference call with Bennett and the Victim Services Coordinator for March 12, 2020. The victim’s family was present for this call, but neither Bennett nor any other representative from VPB honored this scheduled interview. VPB scheduled another Board Appointment via conference call on March 26, 2020, to include Bennett, the Victim Services Coordinator and the family of the deceased victim. The family asked if they could speak to each VPB member on an individual basis, but Bennett denied this request quoting policy that only one VPB member is to conduct the appointment and then share the information provided. The family asked if they could come in person to meet so they could adequately express their emotions and concerns. Bennett denied this request because of COVID-19. *Note that VPB did not update or change any policies or procedures in relation to the COVID-19 pandemic.* The Parole Report prepared by the Victim Services Coordinator noted that Bennett stated she “had been working on this case for four years and the family’s input was the last piece of the puzzle and the Board was reluctant to reach out, but is required by law.”

On April 13, 2020, a co-defendant (who had already been paroled) in VLM’s 1979 murder case submitted a general VPB email requesting that a representative contact him about concerns with VLM’s release. On April 20, 2020, the co-defendant’s email request was forwarded to Vice Chair Linda Bryant. Bryant reviewed the co-defendant’s record and briefed current Chair Tonya Chapman in person about this request. In a subsequent email between Chapman and Bryant, Bryant deemed the co-defendant not credible because of his history of “lying, cheating, and stealing since the VLM conviction” and recommended to Chapman that VPB not contact him. Although VPB deemed this parolee not credible, VPB allowed other parolees and current inmates to provide recommendations of support for VLM through letters and in person during pre-pandemic Board Appointments with VPB members. However, per VPB Policy Manual Section I (N) *Parole Decision Factors, Information from lawyers, family members, victims and other persons* and VPB Policy Manual Section II (F) *Parole Consideration Policies and Practices* “...other interested persons, including victims and persons opposed to the parole release of an inmate, may meet with a member, or other representative, of the Board to discuss specific cases and to offer information relative to the parole of any inmate.”

On April 15, 2020, the CA received notification from VPB that VLM had been granted discretionary parole. The Richmond CA therefore could not provide any input regarding his release because VPB had already voted for his parole between April 2-9, 2020.

On May 18, 2020, an alleged prior shooting victim of VLM requested a Board Appointment to express concerns over the release of this inmate. Chapman denied this request because VLM was never charged

with the crime and cited the COV Code §19.2-11.01 definition of a victim. Again, per VPB Policy Manual Section I (N) *Parole Decision Factors. Information from lawyers, family members, victims and other persons* and II (F) *Parole Consideration Policies and Practices, Information from Lawyers, Family Members, Victims and Other Persons* "...other interested persons, including victims and persons opposed to the parole release of an inmate, may meet with a member, or other representative, of the Board to discuss specific cases and to offer information relative to the parole of any inmate."

(4) OSIG determined that Bennett did not cause the keeping of meeting minutes as required by COV Code §53.1-139. According to that section, the Chairman of the Board shall: (1) "Preside at all meetings of the Board; cause the keeping of minutes of its proceedings and all other records required by law or by the Board incident to its functions, powers and duties."

On May 22, 2020, OSIG requested Board meeting minutes for October 2019-present. Chapman responded by email on May 26, 2020, stating, "Bennett's Board meetings were often scheduled, but did not always occur and there were no Board meeting notes taken." There are no records of VPB meeting minutes for October 2019-March 2020.

Conclusion

The allegations that VPB and former VPB Chair Adrienne Bennett violated COV statutes and VPB policies and procedures regarding the release of DOC offender VLM are **substantiated**.

Recommendations

Potential recommendations will be outlined in a subsequent report.

OSIG appreciates the assistance provided by VPB during this investigation. Please contact me with any questions at 804-625-3255 or michael.westfall@osig.virginia.gov.

Respectfully,

7/28/2020

X Michael C. Westfall

Michael C. Westfall, CPA

State Inspector General

Signed by: Westfall Michael wzg39453

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