



COMMONWEALTH of VIRGINIA

Virginia Parole Board

TONYA D. CHAPMAN
Chair

LINDA L. BRYANT
Vice-Chair

July 24, 2020

A. LINCOLN JAMES
Member

SHERMAN P. LEA, SR
Member

KEMBA S. PRADIA
Member

Michael Westfall, State Inspector General
Office of the State Inspector General
P.O. Box 1151
Richmond, VA 23218

Dear Mr. Westfall,

On July 23, 2020, the Office of the State Inspector General (“OSIG”) submitted a report to the Secretary of Public Safety and Homeland Security’s Office in which it concluded the Virginia Parole Board (“VPB”) did not follow certain procedures regarding the release of VLM.

Chair Chapman’s Response to OSIG Findings:

While the Board looks forward to OSIG’s recommendations regarding victim contact and specifically, the application of the term “endeavor diligently,” the Board must first point out that the OSIG’s conclusions are based on faulty assumptions, incorrect facts, a misunderstanding of certain procedures, and incorrect interpretations of the Virginia State Code as follows:

(1) OSIG’s determination that VPB did not provide the Richmond Commonwealth’s Attorney with notice within the statutory timeframe is incorrect. The Richmond Commonwealth’s Attorney was notified of VLM’s release more than 21 business days prior to his actual release on June 10, 2020.

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.”

The OSIG report states that: “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.*”

After VPB voted to grant VLM discretionary parole, his initial release date was set by DOC for April 30, 2020. However, upon receiving information that this date was inconsistent with the timeframe established in Code § 53.1-136(3)(c), Chair Tonya Chapman immediately requested DOC to adjust the release date accordingly. On or about April 17, 2020, a new release date for VLM was then set for May 11, 2020. Consequently, the CA had notice of VLM upcoming release more than 21 business days in advance of his scheduled release date. Subsequently, upon being notified of the pending OSIG investigation, Chair Chapman requested VLM’s release date be once again placed *on hold*, not to exceed 30 days. VLM’s *actual* release date was June 10, 2020.

Although VPB’s policies and procedures have not been updated since 2006 and 1996, respectively, VPB started the process of reviewing and updating its policies and procedures manual in April of 2020, within days after the start of Chair Chapman’s appointment. To VPB’s knowledge, although COVID-19 necessitated changes to business practices, many agencies, to include VPB, did not formally change its policies and procedures during that period.

(2) OSIG’s determination that VPB violated procedures or statute by not endeavoring diligently to contact the victim’s family before voting to grant VLM release on discretionary parole is based on OSIG’s faulty interpretation that the Code requires a victim be notified even if the Board is not inclined to grant parole.

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 Code § 53.1-155(B) which states: “The Board shall endeavor diligently to contact the victim **prior to making any decision to release any inmate** on discretionary parole.” (The dispositive and crucial words are “prior to making any decision to release.”) The Code section further states, “A 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 . . . [t]he definition of victim in § 19.2-11.01 shall apply to this section.”

In making its determination that VPB did not endeavor diligently to contact the victim, OSIG referenced VPB Procedure 1.225, *Victim Input* that states, “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. OSIG determined that VPB did not notify the victim’s family of these reviews, and OSIG determined that records show VPB did not perform any due diligence to contact the family. OSIG noted that 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 Parole Board 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.” According to the OSIG report, “*the employees stated that Bennett was vocal about not wanting to contact victims and in particular, that she did not want them contacted in the VLM case due to the expectation of their 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.*”

The facts however run counter to the above narrative, a narrative on which OSIG should not have relied when forming its official conclusions. Code § 19.2-11.01(B)(v) defines a crime victim as “a spouse, parent, sibling, or legal guardian of such a person who is physically or mentally incapacitated or was the victim of a homicide.” Family members and many other individuals provided opposition input to VPB, numbering over 25 individuals, many of whom were not victims as defined by Code § 19.2-11.01(B)(v).

Those members of the victim’s family who expressed interest in providing information relevant to the parole of VLM included the decedent’s mother, father, and three sisters. In addition, they provided input directly to Chairwoman Bennett, input which the Board members considered prior to the grant of parole to VLM.

Contrary to OSIG’s findings, VPB adhered to the requirements as outlined in Code § 53.1-155(B), which requires notifying a victim (prior to any decision to release being made) that they may submit to VPB evidence concerning the impact that the release of the prisoner will have on such victim. Complaints from the victim’s family aver, “They received a letter in early March and got a phone call from former Chair Adrienne Bennett on March 26, 2020.” The Victim’s Services Coordinator (“VSC”) initially contacted the family and left a message on March 4, 2020. The family returned the call to the VSC and a subsequent conversation took place on March 6, 2020. Chair Bennett was initially scheduled to speak with a member of the victim’s family on March 12, 2020, but due to illness, she rescheduled the call. A Board appointment with Chair Bennett was then scheduled for March 26, 2020. Not only did the family provide input during the Board appointment directly to Chair Bennett, VPB also received correspondence, emails, and phone calls containing opposition input. Between March 6 and March 30, 2020, the Board received over 20 letters, emails and phone calls of opposition from family, friends and former co-workers of the decedent. VPB Board members took this information into consideration prior to VPB voting on the case.

VPB Procedure 1.225 *Victim Input* states, “If a victim has requested to be notified of a decision to grant only, the victim will be notified by the Department of Correction’s Victim/Witness Program Coordinator. The victim will be notified of the pending grant decision and advised that they have 50 days (allows for mail, etc.) to respond . . .” This procedure is not applicable to the VLM case as the victims have never requested to be notified of a decision to grant only – nor were they even registered in the Victim Information Notification Every Day (VINE) before March 13, 2020. Furthermore, even if this procedure were applicable in this case, nothing in the procedure requires VPB to wait until the end of 50 days to vote if input is received in advance. VPB received victim input within 50 days, well before the Parole Board vote, which occurred between April 2-9, 2020.

Although there is no specific information in VPB’s database (CORIS) that indicates when VPB first acquired victim contact information, it is clear that VPB adhered to the statute as VPB did

contact and obtained input from victims, as defined by Code § 19.2-11.01(B)(v), prior to a decision to grant.

OSIG's determination fails to address clear facts, which substantiate the exact opposite of the hearsay opinions and facts OSIG relies on in its report. Specifically, the OSIG report inappropriately relies on an employee(s) statement that Chair 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*". Similarly, the OSIG report inappropriately relies on one employee who stated that: [Chair] 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"; yet again, clearly, VPB contacted the victims, Chair Bennett met with the victims, and ample victim and non-victim input was received. The amount of input received by VPB from victims and non-victims in the case of VLM, and the fact that Chair Bennett herself conducted a telephone appointment with 9 members of the victim's family renders conclusory assertions and opinions to the contrary not credible, and spurious.

Victim contact was made in accordance with statutory requirements. It is the practice of the Board not to unduly burden victims if they have not requested to be contacted or unless there is an inclination to grant parole, as required by Code § 53.1-155(B). As such, the victims were not contacted until Chair Bennett believed there was a significant possibility that VLM could be granted parole and released.

(3) OSIG's determination that VPB violated procedures by not allowing the victim's family or other interested parties to meet with VPB before voting to grant VLM release on discretionary parole is contradicted by the facts presented in its own report and relies on OSIG's faulty interpretation that VPB procedures provide that non-victim interested parties are entitled to an in-person meeting with a member of the Board.

OSIG inaccurately reports that VPB did not allow the victim's family to meet with VPB. As explained above, Chair Bennett herself conducted a telephone appointment with 9 members of the victim's family on March 26, 2020. Not only did the family provide input during the Board appointment directly to Chair Bennett, VPB also received correspondence, emails, and phone calls containing opposition input. Between March 6 and March 30, 2020, the Board received over 20 letters, emails and phone calls of opposition from family, friends and former co-workers of the decedent. VPB Board members took this information into consideration prior to VPB voting on the case, which occurred between April 2-9, 2020.

VPB staff members and Board members receive a large volume of calls and emails every working day from individuals who want to provide input to VPB about an individual being considered for parole. VPB has excellent front line staff that handle inquiries and respond to callers daily. It is not possible to meet with every individual who calls, and neither statute nor policy requires this. OSIG determined that VPB did not follow procedures, by failing to meet with a co-defendant who testified against VLM and received a lighter sentence, and by failing to meet with an accuser in an uncharged offense that allegedly happened over 40 years ago. OSIG has confused that which VPB *may* do with that which it *must do*. VPB is not required to meet and have a conversation with non-victims who seek an in-person conversation with Board members and VPB is not required to meet with co-defendants who may have the malapropos interest of keeping a potential parolee, against whom they testified years ago, in prison.

Chair Chapman’s Response regarding the Application of the Term “Endeavor Diligently”:

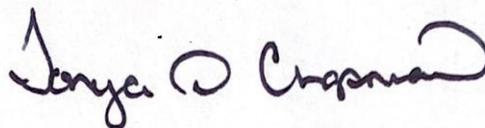
Regarding Code § 53.1-155(B)(1), and the meaning of the term “endeavor diligently”, VPB recommends an examination of the appropriate application of that term. In recent years, VPB has increased the number of individuals to whom it grants parole. The recidivism rate of those granted parole by VPB is very low, lower than those released by DOC generally. While VPB believes it makes sound release decisions, VPB also acknowledges that the parole process is difficult for victims.

The increase in the number of individuals for whom VPB is inclined to grant parole, means more victims will be contacted per Code § 53.1-155(B)(1). In recent years, VPB has struggled with the following questions and concerns:

1. At what point should victims be notified? When one member is inclined to grant parole? When two members are inclined? Or three? (Four board members must vote to grant parole in the case of one sentenced to Life for First Degree Murder, in all other cases, three grant votes are required.) Prematurely notifying victims may cause undue anxiety and heartache.
2. If a victim is not registered in VINE, what type of investigation should take place to find the victim? How many resources, and what type of resources, should be allocated to locating victims? The majority of the individuals eligible for parole were convicted for offenses which took place before 1995, some as far back as the late 1960s and early 1970s. As such, victims are often difficult to locate due to the lack of historical information, unless they are registered in VINE.
3. What role should local Victim Witness programs have in locating victims who are not registered in VINE?

VPB welcomes input on the above issues. If you need additional information, please contact me at (804) 401-3618 or tonya.chapman@vpb.virginia.gov.

Respectfully,

A handwritten signature in dark ink, appearing to read "Tonya D. Chapman". The signature is written in a cursive style with a large initial "T" and a distinct "D" and "C".

Tonya D. Chapman, Chair