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MEMORANDUM

Date: November 10, 2014
To: Colorado Board of Parole
From: Brandon Shaffer, Chairperson
Subj.: Policy Concerning Victim Attendance at Parole Hearings

This Policy Concerning Victim Attendance at Parole Hearings (this "Policy") supersedes and replaces in its entirety that certain "Policy Pertaining to Victims of Crimes" adopted by the Parole Board dated October 7, 2011, and that certain Policy Concerning Victim Attendance at Parole Hearings adopted by the Parole Board dated September 19, 2014.

Capitalized terms used herein refer to defined terms used in the Rules Governing The State Board of Parole and Parole Proceedings, 8 CCR 1511-1 (2013) (the "Parole Board Rules and Regulations"); such terms shall have the same definitions as in the Parole Board Rules and Regulations.

Members of the general public, including supporters of individual offenders, who wish to attend any of the Hearing types described in this policy may do so at the Board's location and pursuant to the rules set forth in Colorado Department of Corrections ("CDOC") Administrative Regulation (AR) 550-09 and AR 300-27 and the Parole Board Rules and Regulations.

Pursuant to subsection 3.05 (C) (5) of the Parole Board Rules and Regulations, the Board creates the following procedures for Victim(s) to speak at Hearings.

1. **Victim participation at Application Interviews, Rescission Hearings, and SVP Designation Hearings.**

A. Victims who elect to attend Hearings in-person, by telephone, or by video conferencing may choose one or more of the following options, if they choose to speak:

i. Victims may speak privately, off the record to the Parole Board or Release Hearing Officer prior to the hearing to provide input, such comments made by crime victims shall remain confidential. After offering this private statement, Victims may:

a. leave prior to the commencement of the in-person, telephone, or video conferencing Hearing, or

b. remain in the room either within or outside of view of the offender.

ii. Victims may attend the Hearing within or outside of the view of the offender and, at the time and in the manner specified by the Board Member or Release Hearing Officer may, if they choose, provide a statement on the record.

iii. Victims who choose to remain for the entire Hearing may make pertinent final comments once the Hearing has been concluded and the Offender and the Offender's family members have been escorted from the Hearing. Such comments made by Victims shall remain confidential.

B. All comments by Victims, Offenders, and individuals in support of Offenders shall be addressed to the Board Member or Release Hearing Officer. Comments between Victims, Offenders, and individuals in support of or against Offenders are not permitted during or in conjunction with the Hearing.

2. **Victim participation at Probable Cause Hearings and Revocation Hearings.**

A. Victims who elect to attend in-person, telephone, or video conferencing Probable Cause Hearings or Revocation Hearings shall be afforded the following options:

i. Victims who have relevant information pertaining to the specific allegations brought against an Offender made in a Complaint filed by a Community Parole Officer, may testify as witnesses during the evidentiary portion of at a Probable Cause Hearing or Revocation Hearing; Victim testimony shall be received at the time and in the manner specified by the Board Member or Administrative Hearing Officer conducting the Hearing, and any such testimony shall be recorded and made part of the official record.

ii. Victims who wish to make a general statement about the Offender (i.e., a statement not necessarily relevant to the specific allegations made against the Offender on the Complaint), may do so, but shall do so after the evidentiary portion of the Hearing is completed and at the time and in the manner specified by the Board Member or Administrative Hearing Officer conducting the Hearing.

iii. The Offender shall have the right to confront and to cross-examine adverse witnesses unless the Board Member or Administrative Hearing Officer conducting the hearing specifically finds good cause for not allowing confrontation of a witness.

iv. Due to the evidentiary nature of a Probable Cause Hearing and Revocation Hearing, no ex-parte communications between Victims, witnesses, Offenders and Board Members or Administrative Hearing Officers are permitted.

B. All comments by Victims and Offenders shall be addressed to the Board Member or Administrative Hearing Officer. Comments between Victims, witnesses, Offenders,

and individuals in support of or against Offenders are not permitted during or in conjunction with the Hearing.

3. Victim participation at Full Board Reviews, Early Discharge Reviews, and Special Needs Parole Reviews.

A. Victims may attend Full Board Reviews, Early Discharge Reviews, and Special Needs Parole Reviews in person, or by telephone, or by video conference to make a statement to the Board; Victims may also submit statements in writing to the Board prior to the Full Board Review for consideration.

B. Members of the public may attend Full Board Reviews, Early Discharge Reviews, and Special Needs Parole Reviews pursuant to the provisions of the Colorado Open Meetings Law, C.R.S. § 24-6-402; however, the Board Chairperson or Vice Chairperson shall take all necessary precautions to ensure the confidentiality of Victim testimony to ensure compliance with the Victims Rights Act, C.R.S. § 24-4.1-301 et seq.

C. The Board Chairperson or Vice Chairperson shall call the Full Board Review, Early Discharge Review, and/or Special Needs Parole Review session to order.

D. The Board Chairperson or Vice Chairperson shall take a roll call of Board Members present and determine whether or not a quorum is present (a quorum shall exist if at least four (4) Board Members are present).

E. The Board Chairperson or Vice Chairperson shall announce that, "Victim testimony is open," and shall invite Victims in attendance to make a brief statement to the full Board; the Chairperson or Vice Chairperson shall recognize each Victim wishing to make a statement to the Board prior to the individual addressing the Board.

F. All Board Members shall ensure that all Victims in attendance are treated with fairness, respect, and dignity; the Chairperson or Vice Chairperson will take necessary steps to ensure the confidentiality of Victim statements during the Victim testimony stage of the proceeding, such steps may include, without limitation, allowing the Victim to address the full Board outside the presence of others.

G. During Victim testimony, Board members may ask Victims questions.

H. After all Victims in attendance have had an opportunity to testify, the Board Chairperson or Vice Chairperson shall announce that, "Victim testimony is closed"; the Chairperson or Vice Chairperson may, in his or her sole discretion, reopen the Victim testimony phase of the proceeding at any time to take additional testimony.

I. Following Victim testimony, the Board may go into executive session to deliberate prior to voting.

J. The full Board shall publicly vote on whether or not to Release the Offender; the Chairperson or Vice Chairperson shall call the roll of Board Members present, and each Board Member shall indicate his or her vote by saying either "Release" or "Defer"; no Offender shall be approved for Parole unless such Offender receives at least four (4) "Release" votes.

ADDENDUM A

PROCEDURE FOR GOING INTO EXECUTIVE SESSION

I. Introduction

I am _____, Chairperson/Vice Chairperson of the Colorado Board of Parole. Today is _____ [DAY/DATE] _____; the time is _____. The members of the Colorado Board of Parole have convened to consider the parole application for Colorado Department of Corrections offender(s) _____ [Name] _____, DOC Number _____. (If there are multiple Offenders to be considered while in Executive Session, read all their full names and DOC Numbers.)

Pursuant to Colorado Revised Statute § 24-6-402 (3) (c):

Notwithstanding the provision of paragraphs (a) and (b) of this subsection (3), the state board of parole created in part 2 of article 2 of title 17, C.R.S., may proceed in executive session to consider matters connected with any parole proceedings under the jurisdiction of said board; except that no final parole decisions shall be made by said board while in executive session. Such executive session may be held only at a regular or special meeting of the state board of parole and only upon the affirmative vote of two-thirds of the membership of the board present at such meeting.

II. Vote for Executive Session

Is there a motion to go into Executive Session? (Yes/No)

Is there a second to the motion? (Yes/No)

We will vote by a show of hands. A two-thirds vote of the members present is required to affirm the motion. Members please raise your hands to signify your support of the Motion to go into Executive Session.

*Vote is counted and recorded.

Having called for a vote and two-thirds of the members of the Board of Parole voting to support a Motion for Executive Session, members of the public are now required to leave the room.

III. Executive Session

*The recorder is turned on.

*The Parole Board, while the recorder is on, reviews the file and parole application and has their discussion of the file. (If there are multiple Offenders to be considered, about whom there was Victim testimony, these specific files will all be discussed at the same time while the Board remains in Executive Session. Any remaining Hearings – those with no verbal Victim testimony – will be conducted after those with verbal Victim testimony have concluded.)

IV. Come Out of Executive Session

Is there a motion to conclude this Executive session? (Yes/No)

Is there a second to the motion? (Yes/No)

We will vote by a show of hands. A two-thirds vote of the members present is required to affirm the motion. Members please raise your hands to signify your support of the motion to conclude this Executive Session.

*Vote is counted and recorded.

Having called for a vote and two-thirds of the members of the Board of Parole voting to support a motion to end executive session, members of the public are allowed to return to the room.

*The recorder is turned off.

V. Public Vote

*The public is returned to the room.

I am _____, Chairperson/Vice Chairperson of the Colorado Board of Parole. Today is _____ [DAY/DATE] _____; the time is _____. The members of the Colorado Board of Parole have considered the parole application for Colorado Department of Corrections offender(s) _____ [Name] _____, DOC Number _____. (If multiple Offenders were considered while in Executive Session, read all their full names and DOC Numbers.)

The executive session is concluded. The Colorado Board of Parole will now decide on said parole application(s).

The question before the Board is whether or not to grant parole to Offender _____, DOC Number _____.

*The full Board shall publicly vote on whether or not to Release the Offender; the Chairperson or Vice Chairperson shall call the roll of Board Members present, and each Board Member shall indicate his or her vote by saying either "Release" or "Defer"; no Offender shall be approved for Parole unless such Offender receives at least four (4) "Release" votes.

*The final vote is recorded in the minutes of the meeting.

If four (4) or more Board Members vote to Release: "With _____ votes to Release, and _____ votes to defer, Offender _____, DOC Number _____, is approved for Parole.

If four (4) or more Board Members vote to Defer: “With _____ votes to defer, and _____ votes to Release, Offender _____, DOC Number _____, shall not be Released on Parole and shall be deferred for a period of one (1) year. (If permitted by law, the Board may defer an Offender for more than one (1) year; however, a longer period of deferral requires a separate vote of the Board on the issue of the deferral period.)

*If multiple Offenders are to be voted on by the Board, the same process is followed for each successive Offender to be considered.

*All final votes shall be recorded and transmitted electronically through the Parole Board electronic voting system.

ADDENDUM B

RELEVANT STATUTORY/REGULATORY REFERENCES

Victims Rights Act, C.R.S. § 24-4.1-302.5 (1) (j):

The right to be informed, upon written request from the victim, of any proceeding at which any postconviction release from confinement in a secure state correctional facility is being considered for any person convicted of a crime against the victim and the right to be heard at any such proceeding or to provide written information thereto. For purposes of this subsection (1), "proceeding" means reconsideration of sentence, a parole hearing, or commutation of sentence.

Right to Attend Parole Hearings, C.R.S. § 17-2-214 (1):

The victim of any crime or any person requested by the victim to appear on behalf of such victim or a relative of the victim, if the victim has died or is a minor or is incapacitated and unable to appear, has the right to attend any parole proceeding under this title relative to said crime and has the right to appear, personally or with counsel, at the proceeding and to reasonably express his or her views concerning the crime, the offender, and whether or not the offender should be released on parole, and if so released under what conditions. The board, in deciding whether to release the offender on parole, and if so under what conditions, shall consider the testimony of such person.

Open Meetings Law, C.R.S. § 24-6-402 (3) (c):

Notwithstanding the provision of paragraphs (a) and (b) of this subsection (3), the state board of parole created in part 2 of article 2 of title 17, C.R.S., may proceed in executive session to consider matters connected with any parole proceedings under the jurisdiction of said board; except that no final parole decisions shall be made by said board while in executive session. Such executive session may be held only at a regular or special meeting of the state board of parole and only upon the affirmative vote of two-thirds of the membership of the board present at such meeting.

Rules Governing the State Board of Parole and Parole Proceedings, 8 CCR 1511-1, Section 3.05(C):

C. Victim Attendance at a Hearing

- (1) The Board is committed to preserving, protecting, and honoring the rights of crime Victims in accordance with the Colorado Victim Rights Act. [§ 24-4.1-301 through § 24-4.1-304, C.R.S.].
- (2) For Application Interviews, Victims may attend Hearings in person at the location of the Parole Board Member who is conducting the interview.
- (3) Victims shall be allowed to attend all types of Board Hearings (i.e., Application Interviews, Full Board Reviews, Rescission Hearings, Revocation Hearings). Victims may attend in person or by telephone or video conference.
- (4) While on facility property, Victim(s) and their visitor(s) will be separated from individuals appearing in support of the Offender. [§ 24-4.1-303(5), C.R.S.] Whenever practicable, a separate waiting area will be provided for the Victims.
- (5) The Board shall establish procedures for Victim(s) in attendance to speak at the Hearing.
- (6) Victims shall request to attend a Parole Hearing through the Victim Services Unit (VSU).
- (7) Victims who have restraining orders on file may still attend the Hearing and may remain throughout the proceeding, if the Victim so chooses.
- (8) The facility must first consult with the victim services coordinator if a Victim is denied access.

- (9) The Administrative Head of an applicable facility, or the Chairperson, may deny access to the Hearing if the Victim is currently under criminal supervision (e.g., probation, Parole, community corrections), or under the terms of an active deferred sentence, whether supervised or unsupervised.
- (10) The VSU will be notified immediately by the case manager or community parole officer of any changes in the scheduled date, time, or location of the Hearing.
- (11) Victims may be accompanied by a member of the VSU staff or an approved volunteer victim advocate at all times.
- (12) If a Victim appears unannounced to a Hearing, the Victim cannot be excluded from the Hearing, nor can the Hearing proceed without the Victim, unless the Victim is currently under criminal supervision. If the Administrative Head feels there is a security risk, then the Victim may be escorted and monitored by facility CDoC employees, give the opportunity to be heard by the Board, and then escorted out of the facility.
- (13) An individual may testify at any Hearing, personally or with counsel, on behalf of the Victim if the individual:
 - (a) is a Victim of any crime; or
 - (b) is requested by the Victim to appear on behalf of such Victim; or
 - (c) is a relative of the Victim if the Victim has died, or
 - (d) if the Victim is a minor, or
 - (e) if the Victim is incapacitated and unable to appear. [§ 17-2-214(1), C.R.S.]
- (14) A victim or his or her representative may:
 - (a) Not directly address the Inmate or the Inmate's family members;
 - (b) Elect to attend in person or telephonically;
 - (c) Speak on or off the record to the Board or release Hearing officer prior to the Hearing to provide input; or
 - (d) Make pertinent final comments at the conclusion of the Hearing.

Definitions from the Rules Governing the State Board of Parole and Parole Proceedings, 8 CCR 1511-1, Section 1.00:

“Administrative Head” – the chief executive officer for a facility, center, division, office or unit of the CDoC organization or community corrections or its designee.

“Application Interview” – an interview of an Inmate eligible for Parole, convened to consider the Inmate's parole application and to determine conditions of parole. The Parole Application Interview shall be a face-to-face interview, a live telecommunication interview, or a telephonic interview at the discretion of the Board.

“Board” – the State Board of Parole, created pursuant to § 17-2-101(1), C.R.S. For purposes of these rules, reference to the “Board” includes a Member of the Parole Board acting on behalf of the Board.

“Case Manager” – an individual employed by the CDoC responsible for direct involvement with Offenders and ensuring an ongoing process of case monitoring, case recording, counseling, and guidance.

“Chairperson” – the Chairperson of the Board appointed by the Governor of the State of Colorado pursuant to § 17-2-201(2), C.R.S.

“CDoC” – the Colorado Department of Corrections.

“Complaint” – a formal document containing allegations of a violation of one or more conditions of Parole.

“Correctional Facility” – any Colorado Department of Corrections facility or institution, including but not limited to a prison, a private correctional facility or community corrections facility under contract with the CDoC, or the location of an Inmate placed in intensive supervision parole Inmate (“ISPI”).

“C.R.S.” – Colorado Revised Statutes.

“Discretionary Parole” – at the discretion of the Board, the release of an Inmate who has met his or her Parole Eligibility Date but not yet met his or her Mandatory Release Date, and is returned to the community subject to conditions imposed by the Board, and subject to the custody of the Division of Parole and jurisdiction of the Board.

“Division” – the Division of Adult Parole, Community Corrections, and Youthful Offender Services of the Colorado Department of Corrections.

“Executive Director” – the Executive Director of the CDoC pursuant to § 17-1-105, C.R.S.

“Executive Session” – as defined in § 24-6-402(2), C.R.S.

“Full Board Review” – a meeting of the Board convened to consider all cases involving a violent crime, history of violence or propensity for violence and all other matters recommended for Full Board Review by Board Member(s) who conduct the parole Application Interview Hearing.

“Hearings” – Application Interviews, Full Board Reviews, Probable Cause Hearings, Rescission Hearings, Revocation Hearings and SVP Designation Hearings.

“Inmate” – a person sentenced to or in the custody of the CDoC; also referred to herein as an “Offender.”

“Mandatory Parole” – the Release of an Inmate who was sentenced to one or more terms of imprisonment, has met his or her statutory Mandatory Release Date, and is returned to the community subject to conditions imposed by the Board, and subject to the custody of the Division of Parole and jurisdiction of the Board.

“Mandatory Release Date (MRD)” – Parole Release date over which the Board has no discretion that mandates an Inmate’s Release to Parole.

“Member” – a Member of the State Board of Parole appointed by the Governor of the State of Colorado pursuant to § 17-2-201(1), C.R.S.

“Parole” – the conditional Release of an Inmate from prison pursuant to certain terms and for a determinate period of time, before the full sentence has been served, where the Inmate is determined to be eligible pursuant to § 17-22.5-403, C.R.S., and where the purpose conforms to § 17-22.5-102.5, C.R.S.

“Parolee” – an Inmate transferred to the jurisdiction of the Board.

“Parole Eligibility Date (PED)” – The earliest possible Parole Release date, which is established by length of sentence, computation of time served, good time credits earned and/or lost, and governed by statute as calculated by CDoC’s offender time/release operations. PED reflects the first date for which an Inmate is eligible to make initial Parole application.

“Probable Cause Hearing” – a Hearing held pursuant to § 17-2-103(2)(a), C.R.S. relating to the revocation of parole.

“Release” – the physical departure of an Inmate from the facility in which the Inmate is housed on the effective date of Parole.

“Rescission Hearing” – a Hearing held by a single Member of the Board prior to Parole to determine whether the decision granting Parole should be rescinded for cause.

“Revocation Hearing” – a Hearing held on a Complaint held to determine whether Parole should be revoked and whether the Parolee should be returned to a CDoC facility.

“Special Needs Parole” – a Parole granted to a special needs Offender prior to the Offender’s Parole Eligibility Date. A special needs Offender is an Inmate in the custody of the CDoC who, based on his or her condition and a medical evaluation, is determined to have special needs, does not constitute a threat to public safety and is not likely to commit an offense.

“SVP Designation Hearing” – a Hearing held pursuant to § 18-3-414.5(3), C.R.S. wherein the Board shall make specific findings concerning whether the Offender is a sexually violent predator, based on the results of a sexually violent predator assessment.

“Suspension” – the deferment of an Offender’s Parole Release pending a Rescission Hearing.

“Vice Chairperson” – the Vice Chairperson of the State Board of Parole appointed by the Governor of the State of Colorado.

“Victim” – any natural person against whom any crime has been perpetrated or attempted unless the person is accountable for the crime or a crime arising from the same conduct, criminal episode, or plan as the crime is defined under the laws of the State or of the United States, or if such person is deceased or incapacitated, the person’s spouse, parent, child, sibling, grandparent, grandchild, significant other or other lawful representative. *See* § 24-4.1-102 and § 24-4.1-302(5), C.R.S.