

PAROLE MATTERS.

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THE PRESENT PAROLE GRANT RATE IS NOW AS HIGH AS 14%, A RECORD IN THE STATE. NOW IS THE TIME TO SEEK AND WIN PAROLE.

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PAROLE PLANS: The law and what to know about planning for the future.

Your parole plans are vital to your success after being released, but they also can prevent you from getting a date if your parole plans are shaky. Parole Matters clarifies the law on parole plans, and advises you how to prepare yours.

The law on parole plans

Good parole plans make you suitable under Title 15. Section 2402(d)(8) states that it tends to show suitability when an inmate has “made realistic plans for release or has developed marketable skills that can be put to use upon release.” Even though the law requires realistic plans *or* marketable skills, inmates hoping for parole should do both: make

realistic plans *and* develop marketable skills.

The Board and courts know that parole plans can be hard to arrange from prison, so the focus of your parole plans is whether or not they are reasonable. To qualify as realistic, your plans “need not be ironclad.” *In re Powell*, 188 Cal. App. 4th 1530, 1543 (2010). The regulation merely requires that your plans be practical. *In re Twinn*, 190 Cal. App. 4th 447, 464 (2010). In other words, you don’t need to plan for every conceivable event, but you do need to have achievable goals and a reasonable means of meeting your basic needs.

For example, in *In re Sena* the Board denied parole on grounds that the inmate lacked viable parole plans regarding housing and employment. The Court reversed, noting that even though the parole plans “were not the most elaborate or substantial plans possible, and [even though] he did not have letters of interest from potential employers,” his plans nevertheless were reasonable. He earned vocations and had a family member willing to help him with housing and find employment. *In re Sena*, 2011 WL 3199344, *22 (Ct. App. 2011). So remember, parole plans have to be realistic but not elaborate.

Let's go over some common topics.

1. Job offers and marketable skills

Having evidence of a job offer strengthens your parole plans. *In re Twinn* reversed the Governor's parole denial, when the Governor denied parole because he believed the inmate's parole plans were weak because he lacked a confirmed job offer. The court reversed the Governor because the inmate had evidence of a job offer paying \$15 per hour and a letter indicating that the inmate could apply to join an ironworker's program after release. *Twinn*, 190 Cal. App. 4th at 464-65.

In re Loesch affirmed that a lifer should have "marketable skills," but does not need a confirmed job offer to be suitable. In *Loesch*, the lifer earned several vocations and became a certified Radiological technologist. He also had a letter from a construction company saying that it would consider offering him a job, and someone who offered to mentor him after release. *Loesch* ruled that the lack of a "confirmed job offer" did not justify denying parole because the inmate's "employment prospects appear[ed] to be favorable." *In re Loesch*, 183 Cal. App. 4th 150, 162 (2010).

Even though you don't need a *firm* job offer, poor planning will hurt your parole chances. The Board denied parole in *In re Motley* because of the lifer's parole plans. He never earned a vocation despite the Board's telling him to do so in 2003. When asked what he would do upon release, the lifer replied, "I don't know." Although the lifer was interested in working with at-risk youth or as a caregiver for terminally ill patients, nothing in the record suggested that these were feasible, achievable goals. *Motley* affirmed the Board's denial of parole. The law requires that lifers do more than have hopes and aspirations for the future; they must have *realistic* goals supported by some evidence that they are achievable. *In re Motley*, 2012 WL 1493759 (Ct. App. 2012).

Another example comes from *In re Young*, which reversed a Governor denial and found the inmate's parole plans were not lacking. The Governor criticized the lack of a "confirmed job offer," but *Young* rejected the Governor's concern, because the inmate had marketable skills and social contacts to help him find work and housing. The court held, "it is unrealistic in this economic climate, when so many are unemployed, to expect and require an inmate who has been incarcerated for many years to obtain a concrete job offer before he has even been granted a parole date in order to be released." *In re Young*, 2011 WL 1167204, *24 (Ct. App. 2011).

You should have at least one marketable skills. *In re Sousa* affirmed a Board denial based on the Board's concern that the inmate had not learned a vocation or acquired marketable skills. The court affirmed that the lack of marketable skills increased the inmate's threat level. *In re Sousa*, 2012 WL 1049482, *20 (Ct. App. 2012).

To recap, realistic plans are required. Marketable skills are required. A confirmed job offer is not required, but helps.

2. Having a relapse-prevention plan

Substance-abuse prevention commonly plays a role in decisions involving parole plans. For inmates with a history of substance use, it is mandatory that the inmate's parole plans include goals and steps to avoid relapse. The law in this area is both good and bad.

The latest bad case was *In re Davidson*, which affirmed a Board's parole denial based on the inmate's history of alcoholism and the Board's concern over the inmate's ability to remain sober after release. *In re Davidson*, 207 Cal. App. 4th 1215, 1223 (2012). The Board denied parole for three years and told the inmate to update his parole plans to include a relapse-prevention plan. *Id.* While in prison, the inmate had "continuously participated in AA programs" and remained sober the entire time. His parole plans included attending substance-abuse programs for the rest of his life, immediately finding a sponsor after release, and going to a transitional-housing facility that included residential 12-step programs. *Id.* at 1219-20. This case is confusing because the court admitted that the lifer "has good plans and has expressed good intentions." Despite the good plans, *Davidson* said that the Board could deny parole anyway: "It was for the Board to decide whether he would be able to carry them out." *Id.* at 1223. In essence, *Davidson* held that the Board could speculate whether the inmate would be able to carry out a relapse-prevention plan.

We believe that *Davidson* reached the wrong result, because several other cases hold that the Board cannot deny parole based on a risk of relapse unless there is some evidence indicating the inmate poses a risk to relapse. For instance, *In re Loesch* held that to deny parole, concern about a relapse must be based on reliable *evidence*, not merely *speculation*. *In re Loesch*, 183 Cal. App. 4th 150, 163 (2010).

In re Morganti is a very good case reversing a Board denial. The Board denied because of the risk of relapse. But the lifer attended AA and NA, had not used alcohol or drugs since 1994, and had a significant history of participating in substance-abuse

must address that history in their parole plans.

3. *Housing plans*

The Board and courts want to know that inmates have realistic plans for housing. But again, the plans need only be practical and realistic, not ironclad.

In a case won by Parole Matters (Charles Carbone), *In re Liftee* reversed a Board denial and held the inmate's parole plans were adequate. The inmate had three housing offers, but the Board had found the plans deficient because the inmate had not taken into consideration legal restrictions limiting where sex offenders can live. *Liftee* reversed and held that the parole agent would confirm the housing plan, and the "mere possibility that [the inmate] might not be able to live in any of the three identified locations is insufficient to find him ineligible for parole." *In re Liftee*, 2010 WL 3374642, *5 (Ct. App. 2010).

A more-recent case affirmed *Liftee*'s holding. In *In re Ferguson*, the Board denied parole and found the inmate's parole plans lacking because his living arrangements were "outdated." But *Ferguson* reversed and held that once an inmate receives a parole date, the parole agent will confirm housing plans, and if they are unsuitable, the agent must try to develop "an appropriate alternate program." *In re Ferguson*, 2012 WL 6621751, *7 (Ct. App. 2012). *Ferguson* also held that because the inmate had money to find a place to live (and survive without a job), concerns over his parole plans did not justify denying parole. *Id.*

Another case recently confirmed that when an inmate has realistic, viable parole plans, but the Board believes another plan would be better, the proper course is to address the Board's concerns through parole conditions, not through denying parole. *In re Soriano*, 2011 WL 2027918, *19 (Ct. App. 2011); *Powell*, 188 Cal. App. 4th at 1542-43 (holding same).

4. *Community support*

Having a support network ready to help you transition to society will favor suitability. Although not technically part of the regulation, community support is an important part of your parole plans.

For example, *In re Vanlandingham* reversed a parole denial that was based in part on a lack of adequate parole plans, including the lack of a fall-back plan if his first job opportunity did not work out. The court reversed, noting that the inmate had "letters of support from other relatives who vowed to provide support to assist [the inmate] with the transition back to the community." *In re Vanlandingham*, 2011 WL 193383, *11 (Ct. App. 2011).

B. *Preparing your parole plans*

Now that you have a better understanding of the law, here are some steps you should work on to make your parole plans as strong as possible.

It is very important that you have stable housing and your basic needs met. If you have no means to make money, the Board will worry that you may resort to crime to support yourself. Same goes with housing. If you have family or friends who will help, have them write a letter of support indicating exactly what they will do for you. For instance, "I will give [the inmate] room and board for at least six months, if needed." Be sure that the letter is dated so the Board knows it is a current offer. If you don't have family or friends offering help, you should consider transitional housing programs. Write to them and see if they will accept you. If so, get them to write a letter confirming that they will accept you, and describing what services they will provide. If you are not certain what county you will live in, write to transitional housing programs in each possible county. The goal here is showing the Board that you will enter

YOUR PAROLE PLANS SHOULD IMPRESS THE BOARD THAT YOU HAVE A CONCRETE PLAN WHICH INCLUDES MULTIPLE JOB OFFERS AND RESIDENCES WITH FAMILY AND FRIENDS WHO WILL STAND BY YOU IN YOUR TRANSITION INTO THE COMMUNITY. YOU SHOULD NEVER LOSE A PAROLE GRANT BECAUSE OF LACKING PAROLE PLANS.

a stable situation where your basic needs are met.

Have your friends and family write support letters. Keep them to one page each (two pages maximum). The letter should say how they know you and include an offer of support. It can be general ("I'll support [the inmate] with whatever he/she needs") or specific ("I can offer housing"; or maybe "I can loan [the inmate] a car/provide transportation"). The more letters the better, but not everyone has people to lean on. If you don't, then focus on improving the other aspects of your plan.

You should also show the Board that you have a source of income. Again this can be from friends and family, if you have them offering to help. Also provide proof of job offers, potential job offers, or at the very least, marketable skills. Try to earn a vocation or get a prison job that will give you skills relevant to jobs outside of prison. There are correspondence courses that teach skills and provide certificates. You don't need a concrete job offer, but having no prospects and no skills is unacceptable.

CONTINUED: The law of parole plans....

Work on your relapse-prevention plan. This means finding substance-abuse programs in the county where you hope to parole to, and writing to those programs. Ask them how often they meet, and where. Learn about them. Then ask someone in the program to write a support letter on your behalf indicating that you have contacted them and will be welcome to attend. Have a specific plan regarding how often you'll attend, how you will get there and back, etc. You should also identify your relapse triggers and consider what situations in society you might encounter them. Then develop a plan to both avoid your triggers, and handle them when you cannot avoid them. If you use religion to maintain sobriety, find church groups in the community; make contacts; ask the church leader to write a support letter that you are in contact with them and willing to seek help. Your goal is twofold: (1) develop a detailed and realistic plan; and (2) prove to the Board that you developed and will execute your plan.

Another important point is to connect your parole plan to aspects of your crime. If it was a gang crime, find gang-diversion programs and plan to stay out of gang areas. If your crime involved domestic violence, find a support group on that topic and plan very carefully how and when you will start dating again, if ever.

Being released from prison brings unexpected challenges. You should include in your parole plans what you will do when you encounter them. Whom will you turn to for help? What do you do when you feel overwhelmed or frustrated? You can't foresee every obstacle, but you can try to plan your reaction to obstacles overall.

Your health and happiness come down to creating positive and healthy aspects to your: physical health, relationships, professional growth, financial health, mental attitude, spiritual connections, creative expressions, sexuality and intimacy, and a healthy environment and living space. Create health in these areas and you can't go wrong. Plus, by looking at successful people we know that they succeed because they are agents not subjects in their lives. Stuff doesn't just happen to them. They make things happen. That's the difference. The best part of this agency and living approach is it requires that YOU are in charge.

1. Be scientific – experiment! See what works well, try new patterns, new ideas, new ways of relating to people. Don't get stuck doing things one way.
2. Make it personalized. Your life should be what works for you, makes you your best.
3. Identify critical moments. Know about when you tend to get weak or fold. Plan for those moments.
4. Create vital behaviors—these are specific things you do which are connected to achieving a positive outcome and carry other good behaviors along.
5. Engage all positive sources of influence—be around positive influences.
6. Turn bad days into good data. When you do wrong or have a bad day, at least learn from it. What went wrong? Why? Remember, live YOUR life. You have earned your freedom. Don't spoil it.

THE RECENT & MAJOR PAROLE LAW CASES:

TO KEEP LIFERS ON TOP OF THE LAW, PAROLE MATTERS HIGHLIGHTS THE RECENT AND MAJOR CASES FOR YOU.

In re Andrea Mims

203 Cal. App. 4th 478 (2012)

This is a bad case concluding that the psychiatric evaluation's conclusion that the inmate lacked insight into the crime was sufficient to support the Board's denial of parole. The inmate claimed PTSD (post-traumatic stress disorder) as a reason for the crime when the psychiatrist found no evidence of this.

In re Gilbert Coronel

149 Cal.Rptr.3d 101 (2012)

This is a great case where the Court of Appeals ruled that the any problem with insight must include a "material deficiency" meaning that a lack of insight must relate to an important aspect of the crime. Plus, the lack of insight must relate to the inmate then being a threat to the public. Mere discrepancies between the inmate's version of the crime and the official version of the crime are not automatic insight problems which would prohibit parole. And the court ruled that an inmate must merely possess a "truthful appreciation of the wrongfulness of their actions."

In re Denham

211 Cal. App. 4th 702 (2012)

This is a good case again on the topic of insight again ruling that there must be specific facts supporting that an inmate is being dishonest and less than forthright. The court noted that to find a lack of insight the Board must have "specific evidentiary discrepancies."

In re Kenneth Ferguson

2012 WL 66217151 (2012)

This is a good case which held that an inmate does not need a verifiable job or residence for his parole plans when he has ample savings (money) in the bank to reply upon.

In re James Stevenson

2012 WL 97758 (2012)

This is a bad decision which concluded that the lifer lacked insight into his past criminal history because he could not address "shortcomings in his relapse plan" and this was a concern given the inmate's "long history of alcohol and drug abuse." Lastly, the court noted that he could not explain what he learned from anger management self-help despite having a history of anger problems.

Salinas v. Santa Clara Superior Court

2012 WL 662261 (2012)

This is a bad decision ruling that the Superior Court could not conduct an evidentiary hearing into the meaning of

"moderate" overall risk assessment because a hearing would constitute a re-weighting of the evidence.

In re Donnell Jameison

2012 WL 5265185 (2012)

This is a bad case ruling that a 2007 rules violation for marijuana was sufficient to deny parole when the life crime involved drugs.

In re Erika Schomber

2012 WL 5357837

This is a bad case finding that an inmate's inability to identify the causative factors for the crime in combination with a 2009 rules violation (unauthorized copies of law books) were sufficient to deny parole.

In re Nelson Gamez

2012 WL 6635047

This is bad ruling that concluded an inmate lacked insight and could be denied parole because the prisoner described mortal stabbing wounds as "not that deep." This was evidence of minimization and a lack of understanding into the magnitude of the crime.

In re Jennifer Hall

2012 WL 5937499

This is a great case won by **Charles Carbone** and **Evan Greenberg** where an inmate could not be denied parole simply because she still could make more progress around the topic of insight. Benefitting from further exploration alone was not enough to deny parole. This case is especially valuable because the psychiatric evaluation concluded the inmate lacked insight by that any deficient insight still meant she was a low risk to the public.

In re Michael Vicks

- P. 3d -- (2013)

This was the case that many lifers were waiting on to decide whether Marsy's Law or Proposition 9 was an ex post facto violation. It is not -- meaning Marsy's Law will not be ruled unconstitutional. It remain the law. The good news of the case is that the mere passage of time -- evidencing "positive changes in the prisoner's maturity, understanding, and mental state" is a change of circumstances that the lifer can rely on to file an Application to Advance a Hearing Date. Plus, the decision affirmed that the Board cannot deny parole based on "victims' opinions and public outcry."

**CHARLES CARBONE, ESQ.
CONGRATULATES THESE CLIENTS FOR
WINNING THEIR PAROLE DATE AND OR
RELEASE IN THE LAST FEW MONTHS:**

JOSE RODRIGUEZ, BOYD HALL,
THANH NGUYEN, LUIS MORALES,
JASON FRANKS, RUDOLFO ZAMARANO,
LISA MUSTARD, LOUIS GARY, KELLY
DRESEN, CHRISTOPHER GILMORE,
KRISTIANNE CLIFFORD, JOHN
BALOCCA, BRUCE KINGMAN, DUANE
JONES, HOWARD SCOTT, GUILLERMO
ZOLOZABEL, MARTIN SERNA, CESAR
SOTO, ROBERT STYRE, MERLE LOPEZ,
JENNIFER HALL, AND ELIZABETH
NELSON.

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PAROLE DATE
ALSO MEANS
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PAROLE
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WILL HAVE. IT
IS VITAL TO
WIN A DATE
THAT WILL
STAND UP TO
THE
GOVERNOR'S
REVIEW.**

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