



DIRECTIVES: COMPLAINANT INVOLVEMENT IN PAROLE BOARDS

Building a caring correctional system that truly belongs to all

Purpose

To brief the Committee on the Directives dealing with Complainant involvement in Parole Boards

Mandates

- Correctional Services Act, 111 of 1998 - section 75 (4) - Promulgated on 1 October 2004
 - Where a complainant or relative is entitled in terms of the Criminal Procedure Act, to make representations or wishes to attend a meeting of a Board, the Commissioner must inform the Board in question accordingly and that Board must inform the complainant or relative in writing when and to whom he or she may make representations and when and where a meeting will take place.

Mandates continued

Section 299A of the Criminal Procedure Act promulgated 1 April 2005

- 1) Places an obligation on the court:
 - When a court sentences an offender for certain specified crimes, the court must inform a complainant if he or she is present that he or she has a right, subject to the directives issued by the Commissioner of Correctional Services to make representations when placement of the offender on parole, on day parole or under correctional supervision is considered or to attend any relevant meeting of the parole board.

Mandates continued

2) The following offences are specified:

- murder or any other offence which involves the intentional killing of a person;
- rape;
- robbery - wielding of a fire-arm, any other dangerous weapon, infliction of grievous bodily harm or the robbery of a motor vehicle is involved;
- assault of a sexual nature;
- kidnapping; conspiracy, incitement or attempt to commit any offence mentioned above

Mandates Section 299A continued

3) Complainant refers to the complainant/ victim of the crime or in the case of murder or intentional killing, any immediate relative of the deceased

Mandates Section 299A continued

4) If the complainant or a relative intends to exercise the right by making representations to or attending a meeting of the parole board, he or she has a duty-

- to inform the Commissioner of Correctional Services thereof in writing;
- to provide the said Commissioner with his or her postal and physical address in writing and
- to inform the said Commissioner in writing of any change of address
- parole board shall inform the complainant or relative in writing when and to whom he or she may make representations or when and where a meeting will take place

Mandates Section 299A continued

5) The Commissioner of Correctional Services must issue directives regarding the manner and circumstances in which a complainant or relative may exercise the right contemplated in the act.

- Directives issued must be published in the Gazette
- Before the directives issued are published in the Gazette, the Commissioner of Correctional Services must submit them to Parliament, and the first directives so issued, must be submitted to Parliament within three months of the commencement of this section.
- Any directive issued must be amended or withdrawn in like manner

Status

- Has been consulted with the Department of Justice
- Initiated changes to Section 299A as contained in the Judicial Matters Amendment Bill, 2005 which deals with
 - confidentiality and
 - prescripts on how a complainant or relative who was not in court when the court sentenced the person in question may be informed of his or her right as contemplated in this section

DIRECTIVES

1. Definitions.
2. Information on complainant involvement in parole board hearings
3. Notification
4. Confidentiality
5. Statements
6. Right of the offender
7. Content of representations
8. Influence of representation on decision of Parole Boards
9. Legal representation
10. Costs
11. Dealing with parole violations
12. Complainant interaction

1. Definitions

- Complainant - complainant or relative - Section 299A (1) of the Criminal Procedure Act;
- Parole - means correctional supervision, day parole or parole contemplated in the Correctional Services Act;
- Parole Board - means a Correctional Supervision Parole Board - Section 74 of the Correctional Services Act, 1998 (Act No 111 of 1998).

2. Information on complainant involvement in parole board hearings

Sub section 1 - Court:

- to inform complainant during sentencing, if present or right to make presentations or attend meeting of Parole Boards when placement of offender is considered.

Sub section 2 - DCS

- ensure that posters and information brochures are made available to the public, at the various courts, and at all correctional institutions including Head Office, Regional Offices, Parole Boards and Community Corrections offices

- (c) the case number, the date and the name of the court where the offender was convicted; and
- (d) the physical and postal address of the complainant.

- representations may assume,
- (c) at least 30 days in advance of when and where a meeting of the Parole Board will take place;
 - (d) of the name and contact particulars of member of staff who may be contacted for more information;

term of imprisonment request to be involved in Parole Board hearings

without giving any details about the complainant.

4. Confidentiality Continued

- (4) The CMC to indicate on the Parole Profile report that complainant must be informed in order that the Parole Board can contact and inform complainant of any dates of hearings/ or approved parole dates.
- (5) A complainant's particulars shall only be available at and for the purposes of the Parole Boards.

5. Statements

- Complainant impact statement
- Statement of opposition
- Audio tape
- Personal representations
- Video tape
- Evidence of significant other persons
- Chairperson of the Parole Board may request additional information or clarification of the representation on condition that the information should be provided without further delaying the proceedings of the Board

6. Right of the offender

- 1) All written representations, audio and video recordings will be brought to the attention of the offender during the Parole Board hearing in order to ensure a fair application of the audi alterem partem rule, and the offender shall be afforded the opportunity to respond to the statements made by the complainant.
- (2) Verbal representations by the complainant during the Parole Board hearing, shall take place in the presence of the offender.

7. Content of representations

A representation may deal with-

- (a) a statement on the impact of the offence on the complainant - may contain a description of the effects of the offence committed as well as the physical, financial and emotional effects which the offence had on the complainant and family members;
- (b) reasons why the offender should not be released on parole for example, the risk the offender may pose to the complainant after release; and
- (c) recommendations on possible parole conditions which may be imposed on the offender to reduce this risk to the complainant, should placement on parole be approved.

8. Influence of representation on decision of Parole Boards

The complainant to be informed by the Board that not only representations will have influence on the Board, but balance of the representations and the following factors:

- a) the offender's response to development and treatment programs associated with rehabilitation;
- b) the existence and quality of support systems in the community;
- c) the probability of re-offending;
- d) the risk that the offender may pose to the community at large; and
- e) the risk to the complainant.

8. Influence of representation on decision of Parole Boards Continued

- (2) A complainant does not have a vote on the decision of the Parole Board but may be present for the duration of the hearing of the specific offender's case.

9. Legal representation

- During the Parole Board hearings no focus or debate on legal issues will take place but it is left to the discretion of the complainant whether he or she requires the assistance from a legal advisor.

10. Costs

- A complainant is responsible for his or her own arrangements and costs incurred in attending a hearing of a Parole Board, including travel and accommodation.

11. Dealing with parole violations

- (1) A Parole Board shall inform a complainant of any parole revocations relevant to the offender.
- (2) In the event of parole revocation, the same procedure that was applicable before the initial approval of parole shall be followed before parole is again considered.

12. Complainant interaction

- (1) Chairperson must address the needs and concerns of complainants by-
 - providing complainants with comprehensive information about the process, the proceedings of the hearing and their role therein;
 - identifying the complainant's actual and perceived fears and addressing those issues;

12. Complainant interaction

Continued

- ensuring that the process is "complainant-sensitive" and attentive to the complainant's needs and concerns;
- designating a staff member to guide complainants and to provide information and assistance,
- providing accompaniment to vulnerable complainants - accompanied by a family member to provide support, in which case, the person accompanying the complainant may not make any inputs during the parole hearing.

12. Complainant interaction *Continued*

- (2) The Parole Board may ask questions to the complainant to ensure that the information provided are useful and relevant to their decision making process and to enlighten the statement or representation made to the Board.
- (3) The questions contemplated in paragraph 12 (2) shall not be interrogative of nature and shall be asked with dearness and compassion for the complainant and the impact of the offence on him or her

Marketing

- Government Gazette
- Pamphlets and posters will be distributed:
 - courts,
 - correctional institutions,
 - community corrections offices, and
 - parole boards – market to community forums
- Internet
- Will be marketed at interdepartmental and public forums

Conclusion

- Directives has been dealt with at the training sessions of the Parole Boards
- Policy and Procedures have been developed and will be consulted and tested in practice before finalization
- We acknowledge that this is new field and we will learn through experience – directives, policy and procedures are dynamic and will be changed as need arises
- DCS and specifically Parole Boards are committed to ensure the success of complainant involvement.

Thank you

Together we can...



Building a caring correctional system that truly belongs to all