

CDCR PAROLE RECORD RETENTION: OVERVIEW

Background

The mission of the California Department of Corrections and Rehabilitation (CDCR) is to enhance public safety through safe and secure incarceration of offenders, effective parole supervision, and rehabilitative strategies to successfully reintegrate offenders into our communities. The CDCR is organized into eleven programs, including the Division of Adult Parole Operations which monitors parolees and manages transitional programs to assist in the reintegration of former offenders. In FY 2009-10, the Department's budget was \$8.6 billion, of which \$772 million was allocated to Adult Parole Operations.¹

Adult Parole Operations, like those of other divisions, are governed by CDCR's Department Operations Manual (DOM). The DOM contains the official policies and procedures of the Department, including those describing what information should be retained in inmate and parolee files, how long those files should be retained, and when files should be destroyed.

Fourteen-year-old Amber Dubois was last seen on February 13, 2009, on her way to Escondido High School. Poway High School senior Chelsea King, 17, disappeared the afternoon of February 25, 2010 while running in a Rancho Bernardo park. Their bodies were found days apart in San Diego County in late February 2010. Police arrested a suspect—John Albert Gardner—and charged him with Chelsea King's murder. Gardner is also a person of interest in the murder of Amber Dubois.

These tragic events and the surrounding investigation brought to light the fact that CDCR Policy (DOM section 81090.8) requires the destruction of parolee Field Files one year after the offender is discharged from parole. Gardner is a sex offender who was discharged from parole on September 26, 2008. According to CDCR policy at the time, his Field File would have been destroyed on September 26, 2009. On March 5, 2010, CDCR issued a Fact Sheet to the public stating that the suspect's parole file has been destroyed "thus, there are no documents related to him."

CDCR Policy

Prior to September 22, 2008, CDCR policy required the destruction of parolee Field Files 120 days after discharge of the offender. From September 22, 2008 to March 11, 2010, CDCR policy required the destruction of those files one year after discharge of the offender.

On March 9, 2010, CDCR and Governor Schwarzenegger issued press releases stating that CDCR's policy for the retention of parolee Field Files had been changed. According to CDCR, "effective immediately" they would "retain all documents related to the parole supervision of all sex offenders indefinitely." Information provided to the Committee by CDCR indicates that the

¹ Department of Finance, *Governor's Budget 2010-11*

new policy was implemented on March 11, 2010. The new policy does not apply to all dangerous offenders and it is unclear whether it can be applied to existing parolees or only to future parolees.

For purposes of comparison, the Texas Department of Criminal Justice requires parolee files to be retained for ten years after discharge from supervision, or upon death (if the offender passes away within the ten year period). The CDCR operations manual requires other parole-related documents to be retained for longer periods of time than Field Files. For example, receipts and vouchers for specified parole-related financial transactions to be retained for up to four years,² and records regarding the use of firearms by parole agents must be retained for five years.³

The Central File is CDCR's primary record for each inmate/parolee. The Central File contains some elements related to parole but the Field File contains parole agents' detailed observations and records of interactions with parolees. The destruction of parolee Field Files within one year may impede the work of law enforcement and put the public at risk because it deprives law enforcement of valuable information regarding the behavior and habits of a suspect. A 2003 study by the US Department of Justice found that sex offenders are four times more likely than other types of offenders to be arrested for committing a sex crime after they are discharged.⁴

The Assembly Committee on Accountability and Administrative Review requested information from CDCR on March 11th regarding the process by which they determined that one year after discharge was the appropriate retention period for parolee Field Files, and any other alternatives they may have considered. The Committee also requested detailed information on what information CDCR destroys and what information it retains after an individual is discharged from parole. To date, the Committee has not received the requested information.

Although not part of the request to CDCR, the Committee has received information released to the public specific to the case of John Albert Gardner. On March 15th, CDCR released documents from Gardner's Central File related to his parole supervision. These documents describe Gardner's conditions of parole including a requirement to be placed on GPS monitoring, and a housing compliance issue that was reviewed by the Board of Parole Hearings. On March 17th, CDCR released the remainder to Gardner's Central File.

None of these documents contain the detailed observations and notes of the parole agents involved in the case, since these were destroyed pursuant to CDCR policy.

² DOM 81070.9

³ DOM 86010.5

⁴ Source: <http://bjs.ojp.usdoj.gov/content/pub/pdf/rsorp94.pdf>

CDCR DEPARTMENT OPERATIONS MANUAL: SELECTED SECTIONS

Below are the sections of the CDCR Department Operations Manual pertinent to today's hearing and referenced in the Overview document.*

81070.9 Record Retention and Disposition of Parolee Account Sheet Policy

The cash assistance receipt book, and vouchers shall be retained by field units for audit by Internal Audit Unit for at least two years. After two years, destroy after audit or four years whichever comes first. [Page 703]

81090.8 Field File Disposition Policy

When a case is closed by reason of discharge or death, the Field File shall be retained for 120 days and then destroyed by burning or shredding. Field Files for parolees returned with a new commitment shall be destroyed after the face sheet and activity report (Closing Summary) have been removed. The Closing Summary shall be forwarded to regional records. [Page 708]

86010.5 Shooting Incidents--Retention of Records and Reports

All records and reports regarding the use of firearms will be maintained by the Regional Administrator for five years. These records and reports will not be destroyed until five years after they are dated and then only after approval is obtained from the Deputy Director, Legal Affairs. [Page 755]

*For the original documents see CDCR Policies Files

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March 11, 2010

Secretary Matthew Cate
California Department of Corrections & Rehabilitation
P.O. Box 942883
Sacramento, CA 94283-0001

Dear Secretary Cate,

I was troubled to learn that it is the policy of the California Department of Corrections & Rehabilitation (CDCR) to destroy parolee records one year after the offender has been discharged. The recent arrest of John Albert Gardner on suspicion of the rape and murder of Chelsea King, just months after the destruction of his parole records, is a poignant example of how this policy negatively impacts our public safety.

Although this particular case is ongoing and the facts are still being determined, it is evident that Gardner's parole records could have been valuable to law enforcement in this case. Most importantly, these records could have assisted in the apprehension of the suspect before the tragic events that occurred last month in Poway.

The Assembly Committee on Accountability and Administrative Review is investigating CDCR's parolee record retention policy and its implications on public safety. As such, we request that CDCR provide the following information to the Committee:

- What is the origin of Department Operations Manual (DOM) sections 81090.6 through 81090.8? Is there statute or case law that dictates the timeline for the disposal of these records?
- Please provide the Committee with any documentation related to the development of the current DOM 81090.8. We are particularly interested in how CDCR determined that one year after discharge was the appropriate retention period for parolee field files.
- Once CDCR destroys the parolee field file, what records—if any—does CDCR retain pertaining to an offender's parole?
- Does CDCR plan to review or revise its field file retention policy in light of recent developments?

In order to conduct oversight in a timely manner, we would like to receive the information requested above by Wednesday, March 17th. Should you have any questions about this request, please contact Nancy Chaires at (916) 319-3600.

Sincerely,

HECTOR DE LA TORRE

Chairman, Assembly Committee on Accountability & Administrative Review



For Informational Purposes
March 5, 2010

Contact: Gordon Hinkle
(916) 445-4950



Discharged Offender John Albert Gardner, P-89529, age 30

- Received from San Diego County on Sept. 18, 2000 with a six-year sentence for two counts of Penal Code 288(A), lewd and lascivious acts on a child under 14 and one count of Penal Code 236, false imprisonment.
- Admitted to R.J. Donovan Correctional Facility near San Diego.
- Transferred to California Correctional Institution in Tehachapi on Dec. 4, 2000.
- Transferred to Avenal State Prison on April 6, 2004.
- Released to parole on Sept. 26, 2005.
- Transferred to Inland GPS to a passive GPS caseload on Jan. 23, 2008.
- Discharged from parole on Sept. 26, 2008.
- Gardner was not subject to Jessica's Law, which was passed by California voters on Nov. 7, 2006. He was released to parole prior to the passage of Jessica's Law.

Related to Gardner's Parole Records:

A parole agent's records of parolee activities during the designated parole time are only retained for one year after an offender has been discharged. After one year, the records are destroyed by burning or shredding through a State-approved contractor authorized to destroy original documents.

Gardner was on active parole from September 26, 2005 through September 26, 2008. He was discharged from parole on September 26, 2008. His parole field file has been destroyed; thus, there are no documents related to him.

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Summary for Incarceration and Parole for John Albert Gardner

Discharged Offender John Albert Gardner, P-89529, age 30

Born in Culver City, California.

Received from San Diego County on Sept. 18, 2000 with a six-year sentence for two counts of Penal Code 288(A), lewd and lascivious acts on a child under 14 and one count of Penal Code 236, false imprisonment. The offenses were to be served concurrently.

PC 288(A) is a violent offense as defined by the Penal Code; thus, Gardner's credit reduction was limited to 15 percent.

Sept. 14, 2000: Admitted to R.J. Donovan Correctional Facility near San Diego. He was classified at a Level II custody level.

Dec. 4, 2000: Transferred to California Correctional Institution (CCI) in Tehachapi.

Between March 2001 and November 2003, Gardner incurred six rules violations while at CCI: coming to class late, refusing to participate in a work program, possession of a butane lighter and three times for smoking in a state building. All the rules violations were considered minor. Three resulted in a loss of credits totaling 90 days. The 90 days were restored because Gardner incurred no further rules violations.

In 2001, Gardner completed an academic education program and received 32 certification units in a vocational drafting class.

At CCI, Gardner had several prison jobs. From April to June 2002, he worked as an assignment clerk. From July 2002 to January 2003, he worked as a teaching assistant for English as a second language, math and English.

From November 2003 to February 2004, Gardner had a job in a Prison Industry Authority inmate clothing operation. Gardner's job as a trimmer was to cut the threads and trim the fabric after clothing was sewn together.

Feb. 6, 2004: Gardner was placed in the Administrative Segregation Unit at CCI for his safety after he experienced verbal and physical confrontations from other inmates.

April 6, 2004: Transferred to Avenal State Prison. The transfer was for safety concerns.

Sept. 26, 2005: Released to parole. Gardner was not subject to Jessica's Law, which was passed by California voters on Nov. 7, 2006. He was released to parole prior to the passage of Jessica's Law.

At the time of his release to parole, Gardner's conditions of parole included participating in anti-narcotic testing and abstaining from alcohol. Gardner was not to have any contact with anyone under 18 without approval from his parole agent. He was prohibited from living within a half mile of a K-6 elementary school.

Gardner was not to date or socialize with anyone who had custody of a minor and was to have no contact with the victim of his crime and the victim's family and friends. Gardner was not to have or view any pictures, videos or movies geared toward his criminal history or of a sexual nature. He was not to possess any pornography or obscene material, children's games and toys, and pets.

Gardner was to register as a sex offender and be compliant to registration laws and requirements. He was also required to disclose his registration status.

Gardner's parole agent documented on seven occasions that an initial finding of probable cause existed for potentially violating his parole terms. As detailed below, the most serious of these violations was referred to BPH. The other occasions included four low battery alerts from his GPS unit, one suspicion of marijuana possession and one missed meeting at a parole office. None of those six were referred to the board for revocation presumably due to their minor nature. The department is reviewing to determine if the actions taken were consistent with policy and law.

Key paroled activity dates include:

Sept. 13, 2007: Gardner's parole was never revoked; however on this date, he incurred a parole violation when his parole agent found that the college he was living near had a day care center. On Sept. 16, 2007, Gardner was told to move.

Sept. 25, 2007: The Board of Parole Hearings continued Gardner on parole because he had found compliant housing.

Sept. 25, 2007: Placed on GPS monitoring. Even though Gardner was not subject to Jessica's Law, he was on GPS monitoring until he was discharged from parole.

Sept. 26, 2008: Discharged from parole.

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