LIFE SUPPORT ALLIANCE

Public Safety and Fiscal Responsibility

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THE NEWSLETTER OF LIFE SUPPORT ALLIANCE © LSA, 2019

THE GOOD NEWS: MORE GOING OUT THAN COMING IN

But violations are up as well

Appearing at Life Support Alliance's first lifer family seminar of 2019, Board of Parole Hearings Executive Director Jennifer Shaffer publicly broke the truly astounding news: in 2018, more prisoners were granted parole from their life terms than entered prison with new life sentences. More outflow than inflow. More leaving than coming in. More exiting than entering. Net numerical loss of life-term inmates.

Any way you state it, that fact is historic and quietly encouraging. Which is not to say there were no life sentences meted out in California, but more to the point, more lifers than ever before were granted parole. That's the good news. But for every ying, there is a yang.

Director Shaffer also reported that more parole violations by lifers are also being recorded. For decades lifers could boast the lowest—by far—rate of recidivism among all groups of prisoners released on parole. And while that is still the case, that low number is slowly creeping up; between 3 and 5% in the last few months. And, what so many have long feared has happened; for the first time in memory, a lifer currently on parole has been arrested for a violent crime.

Without prurient details, and for those few inside the wire who may not have heard, a lifer paroled roughly two years ago, was arrested and charged with an attempted armed robbery, resulting in the wounding of a bystander, in Sacramento. The parolee was quickly apprehended and is currently waiting prosecution on the armed robbery, felon in possession of a weapon, assault with GBH, and probably spitting on the sidewalk, in the Sacramento courts.

If convicted, which seems likely, the misanthropic parolee will also face reinstatement of his former life term, in addition to any new charges and sentences he may receive. Fortunately, the wounded bystander was not seriously injured, and the erstwhile robber was quickly apprehended. But the damage is done.

And while proponents of 'law 'n' order' quickly took to the public forums decrying the release of prisoners and the prospect of massive crime sprees, it appears the outcry was dampened by events

the following day that, for better or worse, pushed this issue to the back pages of the news. But it

seems inevitable that DAs and victim groups will weaponize this individual's actions against all prospective parolee. Just a cautionary word.

In other remarks Shaffer noted the pending and daunting increase in parole hearings scheduled looming within the next 2 years. Due to the influx of inmates headed to parole hearings via Prop. 57 and YOPH laws, the board expects to see a 38% increase in scheduled hearings by 2020. In raw numbers, that means scheduled hearings will jump from over 5,000 to over 8,000 a year. To accommodate this increase, expect to see two new parole commissioners added to the current 15-member board at the start of the next fiscal year, beginning in July 2019.

Those new hearings will include about 1,800 long-term determinant sentenced inmates, and an estimated 4,000 non-violent third strikers. Those third strikers who have served the longest will be brought to parole hearings first—if they are within 5 years of their MEPD they will have hearings by 2020, the remainder by 2021.

In 2018 nearly 40% of hearings scheduled were initial hearings and the 285 grants that came from those initial hearings represented nearly 25% of all grants handed down; a striking difference from 5-6 years ago, when only 40 grants were made at initial hearings. Shaffer reiterated what she has noted in the past: the standard to be granted parole is the same, no matter if at the first, fourth or tenth hearing, whether YOPH, elderly or third striker: is the inmate before the panel a current risk to society.

During discussion of the CRA process Shaffer noted the purpose of the CRA is to be a quasi-legal document for use by the commissioners in considering risk. The position of the Board is that the CRA is not a document actually meant for the inmates (the subject of the review and assessment), and therefore it is not critical that inmates thoroughly understand both the reasoning and conclusions. This was the first time we had heard this explanation of the CRA; with all respect to Ms. Shaffer, there are many who would disagree with this position, as it would seem clear that understanding a document important to a parole hearing would be at least beneficial, if not crucial, to the subject (the prisoner) of that hearing. But we digress.

Shaffer also noted that while only a small percentage of CRAs result in a High-Risk evaluation, being granted parole with that rating is virtually impossible. When asked how many inmates in that category were granted, she replied "Less than 1%." She explained this by noting those with a high-risk rating could be expected, algorithmically, to commit another crime at or above the average recidivism rate for parolees (not just lifers) of about 48%. And, she explained, because many lifers have shown in the past that, at least at that time, they were capable of extreme criminal action, that is a chance too much for most parole panels to take.

Despite the troubling discussion of increased, though still low, lifer recidivism and the board's take on CRAs, Shaffer's remarks were nonetheless overridingly positive and upbeat. And as she noted and we have reported in the past, the grant rate for lifers continues to rise, while the recidivism rate remains the lowest of any parolee cohort—a rate she characterized as "stunningly low." Heads up, everyone. Let's keep it that way.

FIRST LOOK AT NEW LAWS & POLICY IMPACT

Now that the sweep of new laws and policies that became effective January 1 of 2019 have been in place for a few months the scope of change and impact of those new rules is beginning to be measurable. Kathleen Allison, CDCR Undersecretary of Corrections for Operations, speaking in mid-March at the LSA lifer family seminar in Sacramento, offered up a laundry list of numbers and statistics on how the department is implementing and tracking those laws.

The numbers are in some ways impressive, and while not all apply to the lifer population, the newly emerging picture is nonetheless a snap shot of how CDCR is changing. Allison also made the point that it remains early days yet in some of these new processes, regulations are still being crafted and training still sinking in.

For those prisoners sentenced to long terms under the felony murder rule, who now can be considered for recall of sentenced under PC 1170(d), Allison reported CDCR has already identified and referred about 800 individuals to various sentencing courts for consideration for resentencing. CDCR classification is automatically screening inmates for application of this new law (SB 1437) that went into effect January 1, 2019. She reported one of the first inmates so referred, whom she characterized as a 'poster child' for that law, has already had a hearing, with a substantial sentence reduction and has been released, as the final sentence was covered by the years that inmate had already served. That situation, however, will be the exception rather than the rule.

The referral for resentencing process can be initiated by CDCR (which is currently reviewing inmates for eligibility) or from the DA or Public Defender's office in the county of commitment, but not from the inmate or family by direct request. Should any inmate believe he qualifies for this consideration, he/she should request review by classification committee and then referral to the sentencing court or request the Public Defender the his/her county consider the referral. However, family or inmates cannot petition the court directly under 1437 for sentence recall and consideration.

Prop. 57 is having an impact, again, not just on lifers (for whom that impact is relatively small). Since the beginning of the year CDCR has affirmed 4.8 million (yes, million) credits under the 3 credit-earning areas of Prop. 57, which has resulted in a decrease of 13,000 (yes, 13 thousand) years of sentences to be served. That, alone, should save the state somewhere in the area of $920 million dollars, give or take pocket change.

Allison also spoke to the CDCR policies of behavioral overrides, which allow currently well-programming prisoners to be housed at a lower custody level yard than their custody points would otherwise dictate, and to the Non-Designated or 'mixed yards' program. Those prisoners who have been disciplinary free for a year and are on a path of positive programming can request consideration for transfer to a lower custody level yard, regardless of their total accumulation of points. These requests will be individually evaluated by staff at each prison and ultimately approved by wardens.

Allison noted the department recognizes many prisoners, through their actions in the early years of their incarceration (also known as the 'knucklehead years') managed to earn an often seemingly insurmountable number of disciplinary points, and though they may have turned the corner in behavior and self-understanding, the small number of points that can be deducted each year based solely on positive behavior means those prisoners would, barring the override process, never reach a Level II point level. To date, the department has authorized some 4,000 inmates to go to lower level facilities based on behavioral overrides. And while Allison noted this program is a classic 'carrot and stick' process (positive actions receive the carrot in the form of lower level custody, rule violations get the stick, in being sent back to higher custody levels), she also noted 'very few' inmates who received a behavioral override required that privilege to be rescinded.

Regarding the non-designated or mixed-yard program, Allison affirmed the department is moving forward with this policy, in the Level I and II prisons. She confirmed there are no plans to implement this program on higher security level prisons, but noted that with few exceptions, based mostly on facility design and/or shared services with higher level yards, most lower level institutions will become fully integrated. Currently, some 34,000 inmates are housed on non-designated yards and while Allison agreed there have been initial problems when the integration is implemented, she, as has CDCR Secretary Ralph Diaz, emphasized the incidents have been relatively low level and not on-going.

Allison also spoke to the long awaited and equally long-delayed new regulations regarding family visits for lifers. Those regs are now fully in place, and while the Undersecretary indicated there still may be some training issues in various prisons, the process for approving family visits for lifers and LWOPs and changes in those allowed those visits should be uniform across the state. As Allison discussed, one of the biggest changes, other than simply allowing LWOP and lifers to participate, is the removal of the blanket ban on family visits for those with previous domestic violence or crimes against family designations.

Those situations are now to be evaluated, by committee, not one person, on a case-by-case basis, with Allison noting the department (at least at the higher levels) recognizes that violence against one family member does not automatically assume violence against another family member. This, however, seems to be proving problematical for some prisons, as we continue to receive notices from many families on this issue.

IN THE MONTHS BEFORE A HEARING

While the years leading up to a parole hearing, especially an initial hearing, are long and arduous, once the hearing date approaches many things begin to happen in a rather rapid fashion. As provided by the BPH, these are the events taking place in a roughly 6-month period before a hearing.

Within a 4-6-month period before a hearing (usually 6 months before an initial hearing, as short as 4 months before a subsequent hearing) the hearing date is set and:

- a specific hearing date will be set, and the prisoner notified of that date, along with service of Notice of Rights for the hearing.
- He/she will be asked if he/she wishes an appointed attorney and is afforded a review of the C-file (Olson review)
- The prisoner is interviewed by the Forensic Assessment Division for risk assessment (if for a subsequent hearing and the current CRA is more than 3 years old a new CRA will be filed)

About 4 months prior to the hearing date:

- The correctional counselor will provide a summary of the prisoner's institutional behavior and programming since admission to the prisons system (for an initial hearing) or since the last hearing (for a subsequent hearing).
- The prisoner is appointed a specific attorney, if he/she has not hired private counsel

At the 3 month prior to hearing mark:

- Notice of the hearing date is sent to the DA in the county of commitment, victims and victims' family members (who are registered with CDCR's Office of Victims Services), alerting them to the date and location of the hearing

- Notice is also sent to the attorney of record at sentencing, the sentencing judge, any law enforcement agencies involved in the original case and are provided the chance to provide statements for inclusion in the hearing record.

About 2 months before the hearing date:

- The opportunity to do an Olson review is scheduled
- The CRA is delivered to the inmate and inmate attorney
- Both inmate counsel and the DA's office are allowed access the electronic version of the prisoner's C-file, absent the Confidential portion of the file.

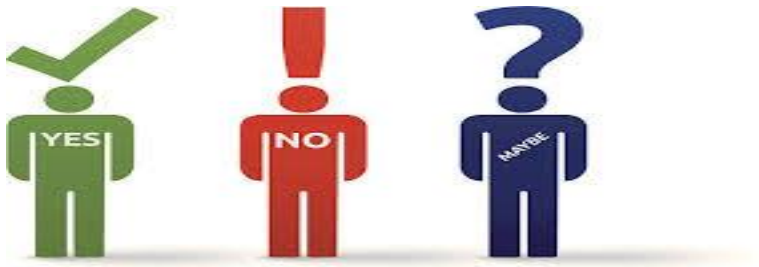
In 1-2 months before the hearing:

- The prisoner is served with official notice of the date of the hearing
- He/she is asked if reasonable accommodations (hearing assistance, special circumstances for mobility, or other ADA needs) are needed to facilitate participation in the hearing process.
- About a month before the actual hearing date an interpreter is hired for hearing impaired inmates, if required and requested.

In other timing matters, if a prisoner's grant of parole is reconsidered at an en banc hearing (for those lifers without a 187 conviction and referred back to the board by the Governor) and those considerations result in a referral for a rescission hearing, that hearing will be scheduled within 4 to 6 months of the Executive Board meeting where that rescission decision was made. That hearing, usually held with a 3-member panel of 2 commissioners and 1 deputy commissioner, will consider any new information or if a fundamental error of law was committed by the panel making the parole grant decision.

For rescission hearings the prisoner will be provided an attorney, and if the new hearing is based on a determination of new information coming to light, he/she will be able to call witnesses to provide testimonial evidence. Notices of the rescission hearing will also be sent to the DA and victims, who may also attend.

If the rescission consideration finds there is no good cause to rescind or postpone the original grant, the prisoner will be processed for timely release by CDCR and will not require any further review by either the Governor or the BPH. However, if the panel finds there is good cause to rescind the grant, a new hearing will be scheduled in a few months' time.



SEEKING VERY SPECIFIC LETTERS

It didn't take long for in-coming Governor Gavin Newsom to ruffle lots of feathers in the prison advocacy community, on both sides, including ours. After 8 years of Jerry Brown, most in the field had a decent read on the former Governor's triggers, who and why he was prone to reverse on parole grants and/or send to en banc consideration.

Not that we got that understanding immediately, but Brown didn't veer far from the guideposts he set from himself early in his second two-term stint. Newsom appeared to start off with a bang, though not quite as big a bang as some rumors would contend. At LSA we've been peppered by letters, calls, emails, questions all about the current Governor's 'massive' number of reversals. Those numbers range anywhere from 50 to 240 to over 500 reversals and 'everyone' else to en banc.

And while those numbers are inflated (it appears to be more in the area of 50 or so reversals and 30 +/- en banc referrals), it is true Newsom appeared to be pretty free with the veto pen in his first weeks in office. Of course, we, and lots of others, want to know exactly how many and why.

The obvious thing, to us, seemed to be to ask the Governor. And so, we did—posing the question both in email, through his website (the preferred method) and by phone to staff in his office. How many parole grants did Governor Newsom reverse in his first weeks in office and how many grants did he refer to en banc proceedings at the BPH? Pretty straight forward and simple; at least we thought so.

And while the result wasn't exactly a stonewall, it certainly wasn't transparent. But—we are nothing if not persistent, so when the Newsom's staff haughtily suggested (by emailed letter) we might have to file a FOIA (Freedom of Information Act) request for 'specific documents,' (even though we hadn't asked for documents, only numbers), well, OK, it that's the way you want it, we'll be happy to accommodate you.

So, while the process of crafting the letter citing 'specific documents' we'd like to see is being created, we thought we'd reach out to a much more forthcoming and helpful population—lifers who received those grant reversals and en banc referrals. It appears those letters from the Governor's office to the inmates affected might not be wholly in the realm of public record, at least not until the end of the year when by law the Governor's office is required to report on reversals to the state legislature.

But we don't want to wait until then. We're persistent, yes, but not terribly patient. Which leads us to this: for those lifers who were reversed by Newsom and/or had their parole grant referred to the BPH for en banc, we're asking you to contribute to our data and information bank by sending us a copy of those letters notifying you of the reversal or en banc referral. If you send us the original, we'll copy it and send it back, just specify if you need it returned.

What do we hope to learn from this? As with our past examination of reversal letters from Brown, we hope to mine each letter for the specific reasons the Governor noted in making his decision, as well as get something of a 'read' on just how many dates were impacted in Newsom's first weeks. Your name won't be used, but your information could provide real 'insight' into this new era now underway.

And we would be remiss here, if we didn't give credit where due. Even though we're a bit flummoxed by Newsom's apparent nervousness about releasing lifers, we are heartened by his moratorium on executions. On March 12 Newsom signed an executive order halting execution during his time in office.

While Newsom's action does not do away with the death penalty (only an amendment to the state Constitution can do that), it does mean that while this debate rages on no more men or women will be subjected to state-sanctioned murder during Newsom's term. So far, Governor, you're 1 and 1: kudos on the death penalty action, but ya gotta loosen up on parole grants and provide us, the public, with some solid information.

In the meantime, if you've had a grant reversed or sent to en banc since January 7, please send us that notification letter: PO Box 277, Rancho Cordova, Ca. 95741. Be sure to note if you're sending us a copy, or the original that you want back.

This is the first step in trying to read the new Governor's 'triggers,' and we don't want to wait until next year to start on that task. Thank you for your support.