



SB 261 ADVANCES; 224 STALLS

Update on the two pending bills of great interest to lifers, SB 224 (Elder Parole) and SB 261 (YOPH). SB 261 passed the Senate floor vote on a 21-15-4 vote; 21 in favor, 15 opposed and 4 not voting. That bill is now in the Assembly, where it will undergo a similar process, going through committees before taking a floor vote. This bill has so far made it through about half the legislative process relatively unscathed.

As currently written SB261 will extend the considerations of youth offender parole hearings to those who were under 23 years of age at the time of the crime, a change from the current YOPH process that allows those who were under 18 years old when the crime was committed to benefit from this consideration.

Of interest was the breakdown in votes--it was largely partisan, with only 1 Republican (Cannella) voting in favor of the bill; all the rest of the aye votes were from Democrats. On the nay side, almost all were Republican, with only 4 Democrats (Galgiani, Glazer, Pavley and Videk) opposed. As SB 261 continues its journey through the legislative process we will keep our readers informed

SB 224, to codify elder parole, is now an inactive bill and will not be considered until next year. As introduced at the beginning of this legislative session by Sen. Carol Liu (D-Glendale) SB 224 would have expanded the reach of elderly parole consideration from the present 60 years of age and 25 years incarceration to apply to those prisoners 50 years of age and who have served 15 years. LSA was an early supporter of this effort and spoke with Sen. Liu's staff early on; in fact, we testified in support of the bill at its consideration before the Senate Public Safety Committee.

Although always something of a reach, as it pushed the boundaries of what could be considered 'elderly,' Sen. Liu's staff was optimistic about passage of SB 224 this season. The bill did in fact pass the Senate Public Safety Committee and went on for consideration in Senate Appropriations. From

there the news was not so good. Although held in the suspense file as expected, there were some other developments.

On the final day possible for the bill to get out of Senate Appropriations it was amended to change the eligibility criteria for the program from 50 years to 60 years old, and from 15 years to 25 years served. This amendment happened with very little notice, and with no chance for input from any of the sponsors.

Later, two days before the deadline to get the bill out of the Senate, it was discovered that the Legislative Counsel had noted the bill for a 2/3rds vote due to a conflict with Prop. 184, the original Three Strikes Law. Since this was a voter-passed initiative, any change to the law requires a 2/3 vote of the Senate, rather than by a simple majority to get it off the floor.

Not being sure they had a 2/3rds vote, the authors and sponsors decided to pull the bill into the inactive file, to regroup and bring it back in January, when hopefully language resolving the Three Strikes issue can be added or additional legislative support secured.

Prisoners currently serving Three Strikes terms that have a mandatory minimum term of more than 25 years are eligible for this program after serving 25 years because the current elderly parole process is an agreement between the BPH and the federal court, thus the agreement can bypass the Three Strikes mandatory minimum. The authors and sponsors hope to be able to amend the bill to alleviate the conflict without making the codified elder parole process less inclusive than that currently underway.

While the withdrawal of SB 224 is a disappointment, it is important to remember that the considerations for elder parole generated by that agreement between the BPH and the 3 judge panel is still in effect, so those prisoners who are 60 and older and with 25 or more years in will continue to receive this special consideration.

A PERSPECTIVE ON ELDERLY PAROLE

Just how many California inmate potentially could be impacted by SB 224 and who they are, the nature of their crimes and sentences is and will continue to be the subject of debate and work in the coming months as efforts to get this bill back on track continue. While we wait out this process it might be well to reflect briefly on what that 'elderly' population in CDCR looks like.

At last official update there were, according to the department, 35 prisoners still in California prisons who are identified by numbers starting with "A." Ages within this elite club of "A" numbers range from 90 years old and a couple in their 80s, to a couple of relative youngsters, at 67 years old, and less than half dozen in their late 60s. The rest have reached their 70s and 80s. The average age is 74, some have been incarcerated since 1955.

And although some of these long-timers may be serving LWOP or sentences for crimes that otherwise would exclude them from elder parole consideration, those odds are low. Even though the version of SB 224 that was withdrawn had been considerably scaled back from the original proposal to cover those aged 50 years and over and with 15 years or more in, to simply meet the definition of elderly currently in use by the BPH (60 years and older with 25 years in), passage of even the amended version of SB 224 would probably impact most of this A group.

Over half could even become double-dippers; not only would they qualify for elder parole, but for Youth Offender Parole Hearings as well. Only 16 of the 35 were 23 or over, ages that would not be covered by the expanded version of SB 261 that seems on the way to passage this session, and 7 of those were just 23, barely outside the consideration. One committed his offense at the hardened age of 15 and fully a third were in their teens, with the oldest two 31 when their crimes were committed.



Moving on to “B” numbers, there potential impact of elder parole really starts to show. There are 717 prisoners identified with the “B” prefix, ranging in age from mid-50s to 80s. When scanning through the pages (36 pages to be exact) of B numbers on CDCR’s website, it becomes apparent that while not all this cohort would be caught in the net if elder parole were expanded, there are many who would qualify. And as for C numbers, well, there is where the real weeding out will come.

At present the bill to codify elderly parole is on hold (see previous story), pending resolution of issues regarding how the perimeters of elderly parole would impact three strikers. If the eventual language of the bill will allow three strikers to be considered under elderly parole, then the possible number of prisoners impacted by elderly parole could greatly increase.

BPH STAKEHOLDER MEETING~WE’RE THERE

Stakeholder meetings/conference calls are held roughly every quarter at the BPH office in Sacramento. These meetings/calls are open to just about anyone who chooses to be present either in person or via the toll-free call-in number and provide a chance for stakeholders (those of us who have an interest in parole) to not only hear a recap of the past quarter’s events but to ask questions as well.

The most recent meeting saw Life Support Alliance again nearly the only ‘civilian’ stakeholder in attendance. We were there in person, while others in the room all appeared to be government related in some fashion—members of the BPH staff, representatives from the Office of Victims and Survivors Rights and Services and a smattering of DAs were also in attendance. Those participating via phone appeared to be largely more DAs and inmate attorneys, both state and private.

Many agenda items were a recap of procedural changes, BPH Executive Director Jennifer Shaffer also discussed results of specialized hearings held in conjunction with the 3 judge panel overseeing population reduction; Elderly parole, YOPH and expanded medical parole. The results were revealing.

Since YOPH went into effect on January 1, 2014 (when SB 260 went into effect) the BPH has scheduled some 894 such hearings, 691 of those for Indeterminate Sentence Length (ISL), or lifers, the remaining for those Determinate Sentence Length (DSL) inmates who fall under the guidelines. Although, as with regular parole hearing, many scheduled hearings are not held due to waiver, stipulation, postponement, etc., the results for those that were held reveal that grant rate of YOPH hearings in the first year, 2014, was about 27%, while the grant rate overall grant rate to date (from January, 2014 through April 30, 2015) is 19%.

The decrease may possibly be attributable to a couple of things. Those seen during the initial roll out of YOPH were often long-serving lifers who went in at a young age and had been repeatedly denied parole. Many were pretty well prepared and might likely have been granted parole at their next hearing, whether or not YOPH had been enacted, in other words, they were the low-hanging fruit, waiting to be harvested via parole.

When DSL inmates, many of whom had never expected to be considered for parole and who often had impossibly long sentences that amounted, in all but legal language, to LWOP terms, many were unprepared for parole consideration. Shaffer noted the "significant disparity in grants" rate for DSL, a dismally low 4.7%, showed the unprepared nature of these prisoners and commented that CDCR, in light of these statistics was reassessing programming available.

Elder parole, implemented shortly after YOPH, have seen 847 hearings scheduled through April, 2015, only 26 of those for DSL inmates. Those DSL inmates appearing at hearings seem to exhibit the same problems and issues as those in YOPH hearings and out of the 26 DSL elder hearings there were no grants; 180 grants were given to ISL elder candidates, through April of this year.

Results from both these specialized hearings point to the importance of preparedness, programming and readiness. While the results for both YOPH and elder parole are disappointing, especially in regard to DSL prisoners, it is well to remember that these new considerations put those DSL inmates in the hearing cycle; though denied at their first-ever parole hearing, those prisoners will now be seen by the board again, and can seek to advance their hearing dates through PTAs and Administrative Reviews.

Absent YOPH and Elder Parole programs, many DSL inmates serving determinate sentence terms of 50, 75, even 150 years would never have a chance at release via parole. For long-sentenced DSL prisoners that possibility would otherwise be out of reach. And even if not prepared at their first hearing, every subsequent parole hearing will be held with those specialized considerations in place.

Expanded medical parole, a wholly different aspect of parole, began in July of 2014 and through early May, 2015, some 46 hearings had been scheduled, equally divided between ISL and DSL inmates. Shaffer noted there was 'no significant difference' in the outcome this cohort between ISL and DSL, with 19 grants given, 11 for DSL and 8 for ISL.

Petitions to Advance (PTA) and Administrative Review (AR), have brought more prisoners to hearings more often, with varying results. Between July, 2013 and the end of September, 2014 the Board received 1,412 PTA requests, of which 1,170 were reviewed on the merits of the request. Just over 67%, 790 requests, were approved, with an additional 10 seeing either the denial or stipulation length decreased via the PTA, and while 370 were denied.

The AR process, which automatically reviews every 3 year denial of parole for those prisoners with a low and/or moderate CRA risk evaluation around the one year mark after the denial, looked at 1,143



NOTES FROM THE BOARD'S MONTHLY MEETING

Of note among the more routine topics discussed at recent BPH monthly meetings were a presentation by the Office of Victims and Survivors Rights and Services in light of National Crime Victims' Week, April 19-25, and other activities of that office and a report from Chief Counsel Howard Moseley on the depublication of In RE: Young. Executive Director Jennifer Shaffer also discussed her outreach program, meeting with various stakeholder groups, including prisoners at various institutions.

Shaffer noted she had spoken to LSA's lifer family seminar, as well as prison staff and parole administrators, providing what she termed "factual information" on the BPH. Those discussions had, she said been "fairly well received" (she was well received at the LSA event) and she hoped to visit all California prisons by the end of the year.

The report on the activities of the OVSRS, presented by Director Cynthia Florez-DeLyon, informed the board that in an average month the office receives 2,400 contacts (email or phone), 500 notification requests and assists 175 victims or VNOK in attending hearings. The office also 'finds' 175 'unknown victims' and collects \$1.6 million in restitution. Our tax dollars at work.

Moseley, reporting at the May meeting on the depublication of In Re: Young, noted that the Board had requested the depublication, feeling the issues therein addressed were moot, as the Board was in compliance with the court order. Since depublication In re Young can no longer be cited as case law.

Actions by the parole commissioners at en banc hearings in April and May proved once again that simply being terminally ill, even in the eyes of CDCR medicos, is no guarantee of compassion or release by commissioners. In the two months commissioners were asked to consider so-called compassionate release of 3 individuals, and all three came away still in CDCR custody. Since January the Board has approved 6 'compassionate release' referrals and nixed 5.

In the last 6 months the board has, in 11 cases, affirmed the parole denials but instructed that new hearings be held, "for the sole purpose" of recalculating the prisoner's term. These 'hearings' are held when the term calculation was discovered to be incorrect, usually due to the wrong matrix factors being used in the calculation and are only held when the recalculated term will mean a longer incarceration.