



Public Safety and Fiscal Responsibility

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LIFER-LINE

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MISCELLANEA FROM BOARD BUSINESS MEETING

The monthly Executive Board meeting of the BPH, where the commissioners tend to the other business of the board (other than parole hearings) were flooded in February and March by en banc referrals from newly-installed Governor Newsom, asking the entire 15 member board to double check their decisions on no less than 31 cases.

Unprecedented? Seemed to be. And disturbing.

But, the board itself seems to be standing firm, at least generally. As a rule of thumb, it has appeared over time that the full board usually stands behind their fellow member(s) who made the original decision, at last about half the time. In these recent tumultuous months, the board has carried forth, affirming the decisions of the original parole panel in 20 of the 31 cases before them, or about 65% of the time.

Before detailing the individual decisions, pardon us if we simply cut to the chase regarding DA comments. While not every inmate up for en banc consideration had speakers in favor or opposed to said grant, in most cases, if anyone appeared, it was the DA from the commitment county (usually the larger, more urban counties). And without exception those DAs, usually touting themselves as speaking 'for the people,' opposed the grant of parole. And almost without exception those reasons for opposition boiled down simply to the grant itself and usually a recitation of the facts of the crime.

In 21 of the 31 cases considered a DA was there to state opposition. Interestingly, however, the DAs were not always successful in opposing the grant a reassuring exhibition of independence by the Board. And to end on an interesting and hopefully encouraging note, in a sharp change from the previous months, Newsom has only referred two grants for en banc consideration in April.

This is more in line with the heretofore normal rate of referral and hopefully signals both a change and new understanding for this new governor and his staff.



REVERSAL NUMBERS SO FAR

His first few weeks in office Gov. Gavin Newsom created a series of what the heck moments, with reversals and en bancs showing up in alarming numbers. While people in a position to know urged patience and calm, the Gov's office itself was irritatingly and smugly uncommunicative about the issue.

Rumors abound—200 grants have been reversed; Newsom is sending all grants back, either through en banc or reversals; he's bringing back the 'no parole' policy. But—take heed folks, things can't be hidden forever, or even for long. Real facts are starting to trickle out regarding the real numbers of lifer grants impacted by Newsom.

According to the Governor's office, in the first couple of months Newsom has reversed the parole grants for 46 lifers, plus those sent to en banc discussed elsewhere. A much smaller number than the 200+ rumored, and more in line with the 50 +/- that we heard from reliable sources and reported.

There has been much speculation about the seemingly contradictory positions Newsom has exhibited, putting a halt to executions during his term in office, yet reversing more lifer grants in his first 2 months in office than Brown did in all of 2018. It has been suggested that Newsom's action on lifer grants may be in part a balancing effort because of the execution moratorium; that he needs to show he is thoughtful, firm and yet not draconian on corrections matters.

As the weeks go on, we're monitoring Newsom's actions and 'keeping our powder dry.' Everything has a learning curve, even being Governor. We hope this governor is quick study.

KEEP THOSE LETTERS COMING

Last month we asked our lifer constituency to help us out by sending copies of letters they may have received from Governor Newsom's office regarding en banc referrals or grant reversals. And thank you, ladies and gentlemen, for responding.

But keep it up. The larger bank of information and data we have, the more useful and informative it is. If you need the original back, please let us know and we'll make a copy, or if you can send a copy, even better.

And while it looks like the initial rush of reversals may have slowed, we still want that information. Keep those letters coming!

RESCISSION HEARING PROCESS

Grant rescission hearings usually occur when the Governor refers a lifer's parole grant for consideration by the entire board and the majority of those members want to take a second look at the case. These considerations, held at the monthly Executive Board meetings and known as en banc hearings, are not themselves a reversal of parole grants, but signal a new hearing will be scheduled, where the actual decision will be made. Detailed below is the actual process and time line.

A panel of 3, two commissioners and one DC will consider the validity of the original grant and if the original decision is affirmed by the reviewing panel those prisoners will be released pretty quickly. If the reviewing panel decides to rescind the grant, a new hearing will be held at in a few months and the process begins again.

The en banc referral and consideration with possible accompanying rescission hearings, affect only those lifers without a murder conviction. For those with a first or second degree murder conviction the Governor can simply reverse (or 'take') a parole grant, leading to a new hearing roughly a year later.

It is possible, should the prisoner be granted parole again, that the Governor could also once again refer for en banc consideration or could reverse again, starting the process yet again. In the words of that great American philosopher, Yogi Bera, 'déjà vu all over again.'

REFERRAL FROM GOVERNOR

The Governor states reasons for the request.

The Governor states whether the request is based on public safety concerns.

Concern the gravity of current or past offenses given inadequate consideration.

Other factors.

GOES BEFORE EN BANC BOARD

Board reviews earlier grant of parole.

Majority vote in favor of parole. Grant is upheld and matter is concluded.

Majority determines that grant and current release date may not be appropriate and thus improvident.

Board orders rescission hearing to determine whether inmate will pose an unreasonable risk to public safety if released to parole.

Matter is set for rescission hearing

RESCISSION HEARING PANEL REVIEW

Panel determines if parole was improvidently granted.

Panel can determine this under:

Circumstances that existed at the time of the hearing, or

Circumstances that appear later.
Panel looks at factors identified by Governor.
Can be factors identified by granting panel.
Can be new factors
Panel looks at full record and independently reviews the record. The panel is constrained by the record and it is mostly a paper review.
Constrained by the record.
No new factual development.
No questioning of witnesses.
No questioning of inmate.

FORMAT

The review is (mostly) a paper review.
The inmate/inmate’s attorney provided an opportunity to make a statement to address the Governor’s concerns.
The inmate is not obligated to make a statement.
No follow up questions from the panel or any other hearing participants.
The DA provided an opportunity to make a statement to address the Governor’s concerns.
The victim/VNOK provided an opportunity to make a statement.

THE PANEL’S DISCRETION

Permissible for the panel to reweigh the factors identified by the Governor, but only those factors. (In re Johnson (1995) 35 Cal.App.4th 160, 169.)

WHEN WEIGHING A FACTOR DIFFERENTLY

Must identify and articulate a factual basis to say that the factor should be weighed differently.
Board cannot simply mouth words saying cause for rescission, must be an adequate factual underpinning for the good cause determination.
Not enough to simply disagree with granting panel.

EVALUATION

Review the record, consider the inmate, DA, and victim statements if any were given, consider and weigh the Governor’s concerns against the record.
May find cause to rescind on the basis of a public safety concern.
May find cause to rescind on the basis that the gravity of the current or past offenses may have been given inadequate consideration.
May find cause to rescind based on other factors identified by the Governor

DECISION

Conclude that the parole grant should stand. Process concluded.

Or Conclude that parole was improvidently granted. Rescind parole.

Inmate will be scheduled for new parole suitability hearing.



BILL WATCH

As many have predicted, the 2019-2020 legislative session seems to be boiling down to protecting many of the progressive and socially responsible changes made over the last few years. It's interesting that many bills introduced would gut past changes, potentially pulling criminal justice reform backward.

The below list of bills are some of the more impactful we're watching. Most would exclude specific groups of inmates from already instituted reforms. Despite the relative success of YOPH and elderly parole programs with no associated increase in crime rates, many of the below bills would weaken or gut those reforms.

As these proposals roll through the legislative process we'll keep alert to votes and changes. Savvy prisoners should alert their friends and family on the outside to contact their state legislators to express their opinion on the wisdom of these bills and how their respective legislators should vote. That's what the political process is all about, and just because prisoners can't vote, doesn't mean you can't participate.

SB bills denote those originating in the Senate while the AB notation is for those bills coming out of the Assembly. And while we go out of our way not to appear partisan, we do find it interesting the number of backward progression bills in this list were introduced by Republican legislators. Just sayin'.

SB 141 (Bates-R, Laguna Hills)—would extend BPH authority to refer for Sexual Violent Predator confinement to those with indeterminate (life) terms, this bill is in committee process and is supported by DA and law enforcement associations and opposed by public defenders and ACLU.

SB 411 (Jones-R, Escondido)--removes those convicted of specific sexual offense (667.61, sections b through i) from consideration under the elderly parole hearing process. This bill is supported by supported DA associations, Crime Victims United and opposed by public defenders and the ACLU.

AB 580 (Lackey-R, Palmdale)—would require written notice to DAs and victims before the Governor takes action on a commutation of sentence the victim’s family could also request a public hearing before the board regarding commutation of a death sentence and requires other notification standards. This bill is supported by the Peace Officers Research Assertion and opposed by various groups faith and social justice groups as well as the ACLU, California Attorneys for Criminal Justice and public defenders.

AB 665 (Gallagher-R, Chico co-author Sen. Nielsen-R, Roseville) would essentially gut previous bill SB 394 that extended parole hearing for LWOP inmates who were under 18 at the time of their crime. This bill would negate that consideration, that has provided great hope to the LWOP community.

AB 965 (Stone-D, Santa Cruz)--would apply credits earned by prisoners toward reduce the minimum of 25 years of continuous incarceration to be eligible for the Elderly Parole Program or advance the date of initial YOPH hearing date. The sheriffs’ associations oppose.

AB 164 (Kiley-R, Granite Bay) would remove those prisoners with murder convictions from being included in the YOPH consideration date and parole suitability consideration.



ARE YOU READING A BORROWED NEWSLETTER?

WANT YOUR OWN?

If the copy of this newsletter you’re currently reading isn’t yours, but shared from another prisoner, and you’d like to receive your own copy each month, it’s pretty easy to get on the list.

Lifer-Line is a free newsletter for lifers and other long-term prisoners. We keep it free by minimizing the postage costs to LSA by tapping into a resource most prisoners have, a friend or family member on the outside who can receive the newsletter each month by email, to then print and mail to their inmate. If you have someone who can provide this service for you, have them go to our webpage, www.lifesupportalliance.org, and on the Resources page they’ll find a quick and easy way to be added to the mail serve list.

And what if you don’t have someone able to get the email version for you? We’ll still try to include you. Write to us, ask to be included on the mail tree list and one of our super volunteers will ‘adopt’ you and mail the newsletter to you. Just to be clear—please don’t take advantage of this service if you do have someone who can help you out—our volunteers are stretched pretty thin.

To be added to our mail tree send us your info, including housing designations, to PO Box 277, Rancho Cordova, Ca. 95741.

Oh, and about the ‘adoption,’ just so ya know, it’s only for the newsletter. Nope, packages, letters and the like aren’t included.