



Public Safety and Fiscal Responsibility

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JUNE 2018

LIFER-LINE

VOL. 9 ISSUE 6

THE NEWSLETTER OF LIFE SUPPORT ALLIANCE © LSA, 2018



Scott Kernan



Gov. Edmund G Brown

KERNAN TO STEP DOWN AHEAD OF BROWN'S DEPARTURE

In mid-June Secretary of Corrections Scott Kernan announced he will step down from his position in August. Kernan had indicated in private and semi-public meetings since the first of the year that he would retire after Governor Brown left office. He had also indicated he expected to stay on until a replacement was found. Governor Brown will leave office in January, 2019, following election of a new Governor in November of this year. Brown cannot run again due to term limits.

Kernan, who first left the department in 2015, was appointed Secretary of the department in by Brown in 2016, and in the following years oversaw the realignment of corrections bringing down the population of prisons and providing new hope to long-term inmates about their chances to gain both rehabilitation and freedom. Kernan supported increased rehabilitative programming in the prisons, following Brown's lead in various propositions, legislation and legal agreements.

Acknowledging the changes in CDCR under his watch, Kernan, in a letter to employees, noted the department that has "dramatically changed how we incarcerate" and "now provides hope" to inmates. As with any change in administration, it is expected that other department heads and secretaries will retire or resign, opening the way for a new Governor to place his own appointees in various positions. As we go to press, no replacement or interim secretary has been named.

BPH DIRECTOR ON 'ESSENCE OF A PAROLE HEARING'

In February, BPH Executive Director Jennifer Shaffer spoke at a Life Support Alliance seminar for lifer families, discussing a variety of subjects on parole suitability and taking questions from the audience. Ms. Shaffer spoke for over an hour and remained at the event even longer, taking individual questions and concerns from family members.

LSA fortunate enough to capture Ms. Shaffer's remarks on video, so that other family members at other seminars can hear from her, but we've also plucked a few pearls of wisdom from those remarks to share with the end user, those inmates who will be facing a parole hearing. Her topics ranged from what she termed the 'essence' of a parole hearing to philosophy of the board. Herewith, a few nuggets from Ms. Shaffer's remarks.

Shaffer reiterated, as she has at past appearances, that the philosophy of the board, under her watch, is to "follow the law." She noted the board does not make the law, but is charged with implementing the laws passed by the legislature and/or voters. She also noted the current board strives for more transparency in its proceedings, noting she personally approves all individuals who appear at parole hearings as observers (this does not include victims' and victim representatives, whose attendance is regulated and mandated by law).

Citing statics on parole grants, she noted the grant rate has remained relatively stable for the last few years and confirmed more hearings (about 31%) now are initial hearings, the result of the implementation of YOPH laws. Shaffer confirmed that it was possible to be granted a date at an initial parole hearing, also noting that in the past, that was not the situation. Now, she noted "we have beat it into everyone's head" that suitable is suitable, whether at first or subsequent hearings, "the law is the law, there is no difference."

As to goal of a parole hearing, that, according to Shaffer, is "who was that person then, who is that person now, and what's the difference. That, she maintained, "is the essence of a parole hearing." And how is that determined? How have you been spending your time while in prison, how do you behave, how are your relationships and interpersonal skills now, do you know your triggers, have a realistic parole plan? What is your RVR and chrono history?

Regarding those chronos, Shaffer noted "nobody ever got a grant based on paper...they just didn't." Meaning, it's not the stack of certificates presented, but how the prisoner can respond to the board when asked what they've learned from those classes and groups, to exhibit the difference between who you were then, and who you are now.

As to the process of the hearing itself, Shaffer recounted that some paroled prisoners have recounted they felt "tremendous pressure" not to be completely honest at hearings, not wanting their families to fully know the extent of their behavior while in custody. And she stressed the importance of 'brutal honesty' at hearings, noting that commissioners, most of whom have considerable experience, "have very sensitive BS meters" when it comes to minimization.

And the need to be totally forthcoming, even in the face of family is one reason Shaffer noted, that inmate family members, absent also being classified as a victim of the life crime, are not cleared to attend parole hearings. That could, Shaffer explained, put an inmate in the position of choosing between family and freedom, "a very difficult position for any human being to be in." Commissioners do, however, pay particular attention to support letters from family members.

Regarding gang involvement, she reaffirmed prisoners are not required to debrief to be found suitable but noted parole panels are looking for signs of involvement. Such things as how is an inmate spending his time, who is he associating with, what is his conduct if a fight breaks out? Is that inmate

still feeling the need to protect someone, basically sticking to the code of gang allegiance, but maybe 'doing a little programming on the side,' or has that person really left that lifestyle behind?

And she warned about the serious manner in which the board views substance abuse, noting relapse into substance abuse is "the number one reason" paroled lifers return to prison. The Board, she stressed, takes substance abuse "very seriously."

Shaffer noted parole decisions were a very human process and that while "we don't always get it right, and when we don't, someone sues us, and we change," she stressed all parole panels "work very hard to make good decisions."



COMMISSIONERS BY THE NUMBERS

Numbers don't always tell the complete story, but they can provide some interesting snapshots. And as spreadsheets go, the one detailing by commissioner all the figures relative to parole hearings, denials, grants, denial lengths and other minutia in a calendar year keeps getting larger and more complicated as the number of commissioners increases. The yearly recap spreadsheet from 2017 now exceeds normal, 8 X 11-page size.

While we've parsed through it and harvested some interesting items, it's important to understand that many factors contribute to the numerical sum of hearings, grants, etc. For example, there were several changes in commissioners last year, with half a dozen commissioners either resigning before the end of the year or being appointed sometime during that year. Thus, those coming-and-going commissioners served for less than a full year. And a shorter time on the board will automatically impact the raw numbers, and thus skew percentages.

This is a lead up to noting that numbers are interesting, but not a sole basis for any decision. Commissioners are not better or worse based solely on their grant numbers. Commissioners who hold court at lower level prisons tend to give more grants, because the inmates they are seeing are, by-in-large, more prepared for parole. A myriad of facts and issues go into each decision and each compilation of figures.

The grant rates of most commissioners are within 10 percentage points each other. There are a couple of 'out-lyers,' whose percentage of grants are significantly higher or lower than the average, but in at least one case, there appears to be a statistically significant reason for that. As noted in past stories, not all hearings scheduled by the board are held to completion; nearly half of all scheduled hearings are waived, stipulated, postponed or cancelled.

The figures reflect a total of 17 individual commissioners; the current BPH panel numbers 15, the extra two reflect commissioners appointed during the year to replace those who resigned or retired. For clarity, Commissioners Garner, Fritz and Taira left the board, and Commissioners Barton, Castro, Dobbs and Ruff joined the troop.

In terms of sheer numbers of hearings presided, top spot goes to Commissioner Randolph Grounds, who presided in 256 hearings last year, handing out 66 grants of parole, which works out to a grant rate of about 25.7%. By number of grants, the top spot goes to (former, and now once again new, see story elsewhere in this issue) Commissioner Troy Taira, who gave 82 grants in 2017, having presided at 248 hearings, for an overall grant rate of 33%. The commissioner who presided over the fewest number of hearings (49) in 2017 was Robert Barton, appointed later in the year.

And here is where the numerical aberrations show up. Since Barton headed the smallest number of hearings, he thus gave the smallest number of grants (25), yet recorded the highest overall grant percentage rate, 51%. And, lest anyone think Barton is a pushover, better take a look at the numbers for the first few months of 2018 before jumping to conclusions. And the lowest percentage nod goes to Commissioner Kevin Chappell, at 18.5%

Most commissioner grant rates hovered in the 25-35% range, with only a few lower or higher, and only the top and bottom percentages showing really significant differences. So, with the above caveats, herewith are the figures for 2017, relative to individual commissioners, grant rates, denial lengths and other hearing tidbits. As meaningless as it is, in terms of individual considerations, we have used the over-all grant rate percentage as a way to tabulate and list the information, from highest to lowest.

Commissioner	# Hearings	# Grants	% Ranking
Barton*	49	25	51%
Turner	238	94	39.4%
Taira*	248	82	33%
LaBahn	213	70	32.8%
Anderson	224	73	32.5%
Garner*	120	32	32.5%
Cassady	216	61	31%
Dobbs*	80	25	31%
Ruff	196	58	29.5%
Montes	215	62	28.2%
Peck	236	66	27.9%
Roberts	212	56	26%
Grounds	256	66	25.7%
Fritz *	247	63	25.5%
Minor	225	54	24%
Castro*	145	34	23.4%
Chappell	226	42	18.2%

Always scary is the possibility of receiving a 15-year denial. The report on that front is encouraging. In 2017 the entire BPH panel handed down only 5 15-year denials, compared with a total of 14 in 2016. The same holds true for 10-year denials, with a total of 66 in 2017, down from 73 in 2016.

Minimum, 3-year denials clearly outpaced any other denial length, comprising about 80% of all denials. Nearly all commissioners racked up 3-year denials at a pace usually twice the number of longer denials, though it is notable that Commissioners Montes and Taira pegged a full 10 10-year denials each last year, those two commissioners alone accounting for nearly a third of those long-term denials. In terms of the most drastic denials, 15 years, Commissioners LaBahn, Montes, Roberts, Ruff and Taira each counted for one such decision.

**Commissioners who served less than a full year, due to resignation, retirement or mid-year appointment.*



CONSULT MEANS ADVICE

When lifers go to a consultation ‘hearing,’ that’s what they’ll get; advice. Not a decision on parole, not an attorney-aided presentation. It’s you, Mr. Lifer, and a parole commissioner or deputy commissioner, looking at your prospects for that parole decision a few years in the future.

Ideally scheduled for about six years before a lifer’s initial hearing (though due to changes in laws some consultation hearings are held with shorter lead time), is intended to, in the board’s words, review and document your activities and conduct pertinent to parole eligibility. The Board shall provide you with information about the parole hearing process, legal factors relevant to your suitability or unsuitability for parole and provide you with individualized recommendations regarding your work assignments, rehabilitative programs, and institutional behavior.”

During the consultation hearing, prisoners have a right to be present, ask questions and speak on your own behalf if you choose to do so. There is no requirement for you to attend. Since no decision regarding release is made, no attorneys will be present, not witnesses will be called, and neither DAs nor victims will be present. However, if the prisoner needs accommodation in terms of interpreters or other ADA assistance, that will be provided.

Basically, the commissioner or deputy commissioner will review the contents of an inmate’s C-file and offer up suggestions on what areas of rehabilitation the prisoner should focus his/her attention on for the next few years, to be as prepared as possible for the upcoming hearing. A written report of those recommendations will be provided within 30 days of the consultation.

A consultation hearing does not take the place of an actual parole suitability hearing, will not change the timing of that hearing and is not a hearing in the usual, legal sense of the word. It is a step toward getting ready for that real hearing, something to be taken seriously and the recommendations from that meeting used wisely

ATTORNEY SURVEY

Life Support Alliance is seeking information on the performance and reliability of state appointed attorneys in the lifer parole hearing process. Please fill out the form below in as much detail as possible, use extra sheets if needed. Please include your name, CDC number and date of hearing, as this will allow us to request and review actual transcripts; your name will be kept confidential if you desire. Details and facts are vital; simple yes or no answers are not particularly helpful. Mail to PO Box 277, Rancho Cordova, CA. 95741. We appreciate your help in addressing these issues.

NAME* _____ CDC #* _____ HEARING DATE* _____

COMMISSIONER _____ GRANTED/DENIED(YRS) _____

INITIAL/SUBSEQUENT (how many) _____ EVER FOUND SUITABLE/WHEN _____

ATTORNEY:private/state* _____ PRISON _____

MEET BEFORE HRG? (# of times, length) _____ HOW FAR IN ADVANCE OF HRG? _____

TIME SPENT CONSULTING _____ OBJECT TO PSYCH EVAL? _____

LANGUAGE PROBLEMS? _____ WAS ATTORNEY PREPARED? _____

DID S/HE BRING ANY DOCS NEEDED? _____ SUGGEST STIP/WAIVE? _____

COMMENTS:

(Please provide details regarding attorney's performance, or lack of, including interaction with parole panel and/or any DAs and VNOK present. Was attorney attentive during pre-hearing meeting and hearing, did s/he provide support/advice to you? Was s/he knowledgeable re: your case and/or parole process? Had s/he read your C-file before meeting with you?)

*required