

Interestingly, though waiver of hearings were up, with CoVid accommodations changing the rules to not a reason for a waiver request, and postponements were nearly double the year before, stipulations were down. Medical parole hearings, to no real surprise, were up nearly four-fold. Medical parole hearings should not be confused with 1170 (e), compassionate release hearings.

Medical parole hearings are for those suffering from chronic and debilitating health issues and often result in the lifer being paroled to a skilled nursing facility to receive the level of medical and palliative care required. Compassionate release hearings are reserved for those whose health issues are judged to be probably terminal with 6-12 months.

Now for a little statistical snowstorm:

- 4% of those found suitable were women prisoners.
- 42% of grants were given to those experiencing their first (initial) hearing.
- 52% of those found suitable were youth offenders.
- 26% qualified for elderly parole consideration.

Yes, some of those categories overlap, as it is not infrequently that the board sees an individual who qualifies for both YOPH and elderly parole consideration, as an example.

Women lifers accounted for 3% of the hearings scheduled, but 40% of women lifers whose hearings were held were granted parole. There was also a noticeable difference between the success rate of those appearing before the board who were 'traditional' lifers (those with an indeterminate term, known as ISL and containing the phrase "to life") and those who came to board as a result of a very lengthy determinate sentence (150 years, for example, known as DSL). Under recent laws, many with those DSL terms, who otherwise might die in prison before finishing enough of their term to qualify for release are finding new hope in parole hearings.

However, only 22% of those DSL inmates who came to the board as a result of YOPH laws were granted parole, while 43% of YOPH ISL (lifer) inmates were found suitable. The same variance was seen in those DSL elderly parole candidates, only 18% of whom were granted parole, while elderly ISL inmates found grant success 37% of the time.

On the flip side, taking a look at the denials handed down, those numbered 2,225. The vast majority, some 74% (1,652 by count) were for the minimum 3 years. For those new to the party, Marsy's Law requires parole denials can be given only for a specific number of years, 3m 5m 7, 10 and 15, to be specific.

As might be expected, the number of 5-year denials was next (729), followed in order by 7-year denials (171). While many of those facing a hearing are wary of long denials, in 2020 only 38 individuals were denied parole for 10 years and only 3 received the maximum 15-year denial. And while those long denials are undoubtedly a blow to those on the receiving end, the actual count of those decisions are so small (1.7% and .13% respectively) as to be labeled 'statistically insignificant.' For each 3-year denial, the board will review that recipient about 12 months after the hearing under the Administrative Review process, and if s/he meets all qualifications, their hearing can be advanced to bring them back to board in roughly 18 months after the 3-year denial. Last year 77% of those whose 3-year denial was reviewed on merit saw their hearings advanced, and 60% of those with the advanced hearings were then found suitable, the highest success rate of any parole consideration cohort.

Those with longer denials can file a Petition to Advance (Form 1045A) requesting the board review their progress and advance their hearing date. In 2020 nearly 900 prisoners did so. The board

reviewed 73% of those requests on merit (many were denied on procedural issues, which all lifers should be aware of), granting advanced hearing to 69% of those reviews, resulting in a grant rate among that cohort of 32%.

The big take-away—the highest number of grants ever, following several years of continuing increases in grant rate. Lifers are coming home. Be sure you qualify to be one of them.



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SUMMARY OF 2020 COURT CASES

Lifted directly from the 2020 edition of the BPH's Significant Events report, here is a brief and useful summary of the lifer-centric cases decided by the courts in 2020.

In re Gadlin the courts held persons required to register under Penal Code section 290, et seq. based on a prior conviction cannot be categorically excluded from parole consideration under Proposition 57. The Court also held the Department's regulations cannot exclude inmates for a current offense unless it is defined by the regulations as a violent felony. The Gadlin decision applies to indeterminately sentenced nonviolent offenders who were previously excluded from parole consideration under Proposition 57.

The Court also held the regulations cannot exclude inmates for a current offense not defined by the regulations as a violent felony. The Court directed CDCR to treat as void and repeal title 15, sections 3491, subdivision (b)(3) and 3496, subdivision (b) and to make any necessary conforming changes to the regulations.

In 2020, 252 indeterminately sentenced nonviolent offenders were referred to the Board for a parole hearing and the Board scheduled 1,249 parole hearings (for persons referred in 2019 and 2020), resulting in 189 grants, 412 denials, and 51 stipulations to unsuitability. The remaining 562 scheduled hearings were waived, postponed, continued, or cancelled.

In re Palmer II: The Court dismissed this case on the basis that the Board adopted final regulations governing youth offender parole hearings. Because the regulations affect all of the Board's parole suitability determinations for youth offenders, and because the regulations were not in effect when the Board held the parole hearing and issued the decision at issue in this matter, review was dismissed.

In re Canady: The Court opined an inmate's "full term" under Proposition 57 should not be reduced with an inmate's conduct credits. The Department's interpretation that credits should not be applied to the full term is consistent with the plain text of the initiative and with the broad authority conferred on the Department and furthers the initiative's statutory goals.

In re Poole: Poole's habeas petition was transferred from the court of appeal to the superior court for an evidentiary hearing. Following multiple days of testimony, the court found that there was no

evidence that the Board's implementation of Marsy's Law creates a significant risk of prolonged incarceration when compared to a person who would receive a one-year denial pre-Marsy's Law. Poole's claim that the Board's fee structure resulted in representation falling below a reasonable professional standard failed due to no persuasive evidence being presented.

Inmate Writs of Habeas Corpus: In 2020 the state was required to file a response to 97 habeas petitions filed in state and federal court (down 25% from 130 in 2019). In 2020, the Board held 25 court ordered parole suitability hearings as a result of inmate habeas petitions that were granted by the court; 17 of the court-ordered hearings were due to Proposition 57 litigation, and eight followed a review of the merits of the parole decision (down from 11 in 2019).

[Editor's note—the above report on inmate filed writs should be noted by those who remain willing to pay a third party, be it another inmate 'legal beagle' or an outside 'business' promising everything from new hearings in 3 months to release. Of the literally thousands of writs filed in 2020, the courts found only 97 worth asking the state, in this case BPH, to respond to and of those 97, only 25 new hearings were ordered. The days of writs being a promising path to a new hearing and/or release have passed.]

AND A WORD ON ELDERLY PAROLE: With the passage of Assembly Bill 3234, there will be two groups of persons eligible for an elderly parole hearing. Persons who are sentenced under the Three Strikes Law or who were convicted of first-degree murder of a peace officer will be eligible for a parole hearing after reaching age 60 and after having served 25 years of continuous incarceration. Persons not sentenced under the Three Strikes Law or convicted of first-degree murder of a peace officer will be eligible once they are age 50 or older and have served 20 years of continuous incarceration.



THE GOVERNOR'S DECISIONS

Each year LSA retrieves the Governor's Executive Report on Parole, offered to the legislature by the sitting governor, summarizing his actions in the previous year regarding reversal of parole grants made by the Board of Parole Hearings. And we data-mine the report for insights (yes, that word again) into what each Governor is looking at in deciding not to allow the release of an inmate duly found suitable by the Governor's own representatives, parole commissioners.

The burning question we get yearly is, 'what's his reversal rate?' That's a hard one to calculate, not because we can't do the math, but because some of those reversals impact grants made in the waning months of the previous year—example—reversals handed down in the first 2-3 months of any calendar year affect grants handed down in the last 2-3 months of the previous calendar year. Rather

than try to figure out the convoluted answers, we'll just stick with—how many did the Governor reverse last year.

The answer to that is easy—33. What's important about that number is it is roughly a third of the number of reversals Newsom dispensed in 2019, his first year in office, when he reversed a stunning 96 parole grants. By comparison, in his last year in office (2018) former Governor Jerry Brown reversed a total of 28 grants. So, perhaps we're still on a learning curve here.

As for interesting (or troubling) commonalities, there are some interesting details. Of those reversed, 3 were women lifers, 19 were under the age of 26 at the time of their crime and thus qualified for YOPH consideration, time of incarceration alone had no apparent impact, as a few of those reversed had spent as (relatively) little as 15-16 years in prison, while several others exceeded 30 years and a couple of those have already spent 50 years or more inside. Nor is being elderly a major benefit, as at least 10 of the reversals were for those over the age of 50.

First or second-degree murder convictions (those with a murder conviction are subject to the Governor's unilateral reversal decision) didn't seem to foretell whether a reversal would be forthcoming. Perhaps the most predictive factor certain characteristics of the victims. Fully three-fourths of those grants reversed were for crime perpetrated on victims who had special characteristics; women, children, law enforcement, particularly vulnerable in some way (elderly or developmentally challenged).

As to reasons for reversal, it all seems to continue to boil down to those few words: insight (lack or inadequacy thereof), remorse (insufficient or insincere) and understanding (of why the crime was committed). Interestingly, the Governor, in a change from last year, while still referring to information contained in the CRA, did not cite moderate risk CRAs as 'elevated' and a reason to deny.

Gov. Newsom also several times noted his concern with 'manipulation' by the inmate, continued gang involvement and, in some cases, mental issues. In some of his letters of reversal the Governor makes some surprising, and in our view, less than insightful statements, such as "an attack on a sibling is of course unrelated to his (inmate's) stabbing a coworker with no connection to the sibling [we would refer Gov. Newsom to ACE events and the best practices based curriculum of LSA's Connecting the Dots]; "psychologist concluded that his assertion suggests some superficial understanding of maladaptive relationship dynamics and the internal factors that drove them what, huh?"; "Mr. X is not required to admit guilt to be granted parole, but I am also not required to accept his claim of innocence" [a quote lifted directly from the text of some reversals from the Jerry Brown era].

As we learn more about this Governor it's clear, lifers should pay attention their ability to articulate their change, understand the causative factors of their crime and how those factors impacted their actions in committing that crime, and what specific tools they have now to overcome the factors. Increasingly, this Governor is concerned with the remorse expressed by those before him for review (more on that next issue) and efforts that individual has made to both express and fulfil their apology and amends to the victims and family.

The Governor also appears, rightly we think, to be concerned about how relationships, once the lifer is paroled into the community, could impact his/her stability and continued progress. For those with a history of domestic violence or similar relationship issues, it would be prudent to be sure those bases are covered, insofar as programming, understanding and ability to discuss that new-found understanding at their hearing.



ON THE COVID FRONT

As we go to print in late April, things are looking up for the CoVid situation within the prisons. Within the last 2 weeks the trend has predominately been down, at one point the entire system reporting only 9 positive cases. While the overall number has waxed and waned in the days since that low point, it has not exceeded 15 in the last 7-10 days.

At month's end, less than dozen institutions reported any positive cases, and only 2 locations reported more than 1 case. These encouraging results have led to the reopening, on a limited basis, of in-person visiting and, from the sounds of things, the genuine possibility that the return of in-person programming is on the horizon. We're ready.

While we continue to receive reports of non-masked staff and prisoners, a potentially bigger issue is the level of vaccinations in the system. Not among the inmate population, however, latest CDCR reports show that nearly 62,000 prisoners have been fully vaccinated and another 5,000 have received a single dose of the 2-dose regime. Given that the population currently stands at just under 96,000 inmates, the fully vaccinated percentage of the population is very encouraging.

Add to that the fact that over 49,000 prisoners at one time or another had the virus and you've got the makings of a pretty positive path to herd immunity. And testing continues at each institution, for both residents and staff.'

Speaking of staff, the fully vaccinated number of prison staff is rather on the anemic side, with just over 26,000 staff fully vaccinated, out of a total staff population of over 65,000. Not good. Only 1,800 additional staff members have received partial vaccinations. Obviously, leadership by example isn't a thing in this situation.

Nonetheless, things are looking better than before, and caution is still advised. While visiting is slowly returning, new policies are in effect, but the penalties remain the same. Reports have already been confirmed of some visiting privileges being lost due to not following those new rules and guidelines. CDDR remains CDCR, all penalties fully in place.

There is no word yet on the return of family visiting. BPH hearings will continue to be held via video for the next month, but there are credible rumors that inmate attorneys may be allowed in on a limited basis for consultations and to be present with their client during the hearings. Stay tuned.