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ALLIANCE & California Lifer Newsletter

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HOME

P.O. Box 277 * Rancho Cordova, CA. * 95741

* staff@lifesupportalliance.org *

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EARLY REPORT: COMMISSIONER GRANT RATES

Always a subject of interest, and yet not really true reflection of potential results, the compilation and release of the Commissioner Summary for the 2019 calendar year does provide some interesting information on the actions of parole commissioners. The source of this report is a chart from the BPH reporting only the raw numbers, but we've done some of the work for you, parsing out the answer to that eternal question---who gives the most grants?

We'll get to that, but first a few disclaimers. Grant rates are affected by many things, not the least of which is the readiness of the individual inmate. Some commissioners may appear to have significantly higher grant numbers than others, but that result is also affected by the character of the institutions where the commissioner(s) preside over hearings. Unsurprisingly, more grants are reported at Level II institutions than at Level IV, but that does not exclude those housed in higher security level prisons from being found suitable. So far, the BPH appears not to track grants by institution.

Thus, for commissioners who, by virtue of geography or just luck of the draw, hold hearings more often at Level II prisons, their grant rate numbers will be demonstrably higher than those commissioners who more regularly are presiding at hearings at Level IV and even Level III prisons. And as anyone who has studied statistics knows, a variety of factors, in this case, such things as how many stipulations/cancellations occur within a commissioner's assigned case load, can impact and skew the overall numbers.

And while these figures are officially from BPH, adjustments, even at this stage are possible. However, even given those caveats, there are some interesting trends to be noted. More detailed information will be available later when we've been able to thoroughly examine the 2019 Significant Events Report, recently released.

The number one question is always what's the grant rate? Having previously explained how we calculate the grant rate (number in grants in relation to hearings held to completion, not hearings scheduled) we can report the 2019 grant rate was 34%, the result of some 3,441 hearings held and 1,184 grants issued.

The raw number of grants represents the highest number of grant rates in anyone's memory and while the percentage is down slightly from the 2018 rate of 39% that change is probably reflective of the increased number of initial hearings held, which usually result in a lower grant percentage.

Overall, grant rates for individual commissioners ranged from a low of 27% to a high of 65%. And yes, while we could list each commissioner and their accompanying individual grant rate, we do not for several reasons, not the least of which is not having the desire to make those at either end of the spectrum targets of various groups. Suffice to say there were 12 different percentages among the 17 commissioners, 4 percentage numbers being met by more than one commissioner.

For example, 2 commissioners came in at 37%, 3 at 36%, 2 others at 33% each and an additional 3 commissioners racking up a 30% rate. Only 1 commissioner was at the low end at 27% and only one at the higher end, 65%.



Of the more than 2,250 denials of parole meted out only two (2), that's right, only 2 denials for 15 years. Commissioners Grounds and Thornton accounted for those decisions. And 10-year denials numbered only 44—still statistically insignificant over the course of the number of hearings held. Commissioner Grounds held the high ground (no pun intended. Well, maybe just slightly intended) in the 10 year denial lane, with 10 such decisions, followed by Anderson with 7 and Long with 5 decade long denials. Only Commissioner Gutierrez, who joined the board late in the year, recorded no denial longer than 7 years.

Given these numbers, fear of an unwarranted long denial should not deter anyone from going forth with their hearing via postponement or stipulation. In fact, far more lifers stipulated to unsuitability in 2019 (644) than were given lengthy denials. As in previous years, the vast majority of denials were for the minimum of 3 years.

In 2018 there were a total of 5 tie votes, requiring final determination at en banc proceedings, while 2019 saw nearly double that number, 9 tie votes. Commissioners Castro and Chappell each racked up 2 tie votes, with Grounds, (former commissioner) LaBahn, Roberts, Minor and Ruff each accounting for a single tie decision.

And while we don't attach names to specific grant percentages, we will reveal that Commissioners Dobbs, Long and San Juan were in the upper echelon of grant rates, while Commissioners Chappell, Grounds and Tiara were in the lower level. And by the way, these names are listed alphabetically, not by numerical standing.

Insofar as who presided over the most hearings, that honor goes to Commissioner Tiara, at 263, but close on his heels was Commissioner Dobbs, at 260. And close behind her were Commissioners Roberts and Ruff, with 253 and 246 respectively. In fact, 13 of the commissioners racked up over 200 hearings last year.

Of course, the 3 new commissioners appointed late in the year (Gutierrez, San Juan and Thornton) posted lower overall numbers, as did former Commissioner LaBahn, who resigned in late fall.



ANOTHER NEW HOUSING/PROGRAM PROPOSAL

Just when the dust may be starting to settle from CDCR's implementation of the non-designated programming yards (and please note, we said 'may'—we know there are still issues in some locations), the department is preparing to roll out yet another housing shift. And while we can speculate on the reasons for why this one is on the horizon, so far, we've received little information.

Called the CITPP (yeah, more alphabet soup) the Condemned Inmate Transfer Pilot Program has the potential to bring death row inmates, long confined to San Quentin only, into a select number of Level III and IV prisons. In a memo dated January 29 of this year, the department proposes to allow condemned inmates to voluntarily transfer to one of eight prisons for men, while female condemned inmates would remain at CCWF, though they would be eligible to transfer to alternative housing assignments within the prison and participate in work and rehabilitative programs.

The following institutions would be eligible to house male condemned prisoners under the new program:

- California Correctional Institution
- California Medical Facility
- California State Prison, Corcoran
- Centinela State Prison
- Central California Women's Facility
- Kern Valley State Prison
- Richard J. Donovan Correctional Facility
- Salinas Valley State Prison

Female condemned inmates, now housed at CCWF in Chowchilla, will be allowed to transfer to alternative housing units within CCWF but cannot transfer to either CIW in Corona or Folsom Women's Facility on the grounds of old Folsom prison, due to the lack of electrified fences at those locations and because only CCWF is identified in the penal code as the facility to house female condemned inmates.

While under the pilot program participation would be voluntary, but once an inmate applies to participate and is approved to do so, then participation become mandatory. Men's Advisory Council, the Women's Advisory Council, and the Inmate Family Council at each designated CITPP institution, as well as the CDCR Office of the Ombudsman, have been advised of the new pilot program.

The memo notes that initial evaluation for inclusion in the program as well as considerations for placement will be based on safety and enemy concerns, as well as county of commitment. In

addition to classification staff, mental health clinicians will be party to the selection process. Any need for specialized medical services will also be considered.

Although there are several criteria to be met before an inmate is accepted into the CITPP status, two factors, currently serving a SHU term, or equivalent or an inmate with a pending or has been found guilty of Division A through B offenses within the last five calendar years from the date of his annual review, will be excluded. Those referred for inclusion in CITPP will be given a mandatory minimum score of 36 points and will be permanently assigned Close Custody designation, though MAX custody will not be assigned unless the case factors indicate.

Those inmates will be granted priority legal user status, attorney visitations, legal phone calls and consultations in line with statute and the receiving institution must provide sufficient storage space and access to the inmates' legal files and records. Additionally, the sending and receiving wardens must agree to the transfer.

While the memo states the transferring inmates will be "interspersed with other inmates in CDCR's population," it also notes placement could be in general population, SNY or non-designated programming yards, as the committee(s) feel appropriate. Participating condemned inmates will be issued job assignments, as available, based on their 'case factors,' and may be included in rehabilitative programs as available.

Public reaction to a potential program that hasn't even been fully approved as yet has already started with some DAs and victims groups decrying the 'slap in the face' to victims that allowing condemned inmates to live and work alongside other inmates, in their opinion, constitutes. And yet, ironically, those very factions may have brought this on themselves.

In pushing the successful effort in 2016 to speed up implementation of the death penalty, proponents of Prop. 66 made the argument that those sentenced to death needn't be housed exclusively in San Quentin, where costs are higher due to the age of the facility. Those backing Prop. 66 pushed the argument that those inmates awaiting implementation of their death sentence could be housed in other institutions as a way to "to defuse one of the contrary arguments" (against the death penalty), according to one Prop. 66 supporters.

During that hard-fought campaign the non-partisan Legislative Analyst's Office in Sacramento noted the costs to house high custody level inmates in the state's oldest prison were elevated in part because they were housed one to a cell also handcuffed and escorted by one or two correctional officers whenever they are outside their cells. Those practices will change, with the start of CITPP.

In another 'cost savings' move, 70% (plus service fee of 10%) of all monies earned by inmates in the CTIPP would go toward restitution, a jump from the 50% (plus 10% service fee) imposed on non-condemned inmates owing restitution. And while one victim advocated disputed that any victim would accept money from this process, it appears those funds could simply be applied toward the state's victims' compensation fund.

The change in housing potential for death row inmates means they will no longer be single-celled, but will be housed with main-line inmates, as well as receive visits in main line visiting facilities and be allowed telephone privileges in line with other inmates in the various institutions. Condemned inmates are not eligible to participate in family visits.

As noted, this program was only recently broached and is not yet in place, although CDCR anticipates the program will begin in March 2020. We've asked for additional details and as those filter out, we'll report.

At the end of the two-year pilot program, if regulations have not been approved through the regular process the program will lapse. If that eventuality occurs, no plans have been announced as to the re-housing of those participating in the program

GOING TO EN BANC?

If you find yourself in the position of having your grant reviewed in an en banc hearing by the BPH, be aware you can muster your supporting forces for an actual face-to-face with the commissioners. Yes, they'll have to travel to Sacramento and yes, they'll only have 5 minutes per speaker to make your case, but it really is the only time your friends and family can do so in person.

Finding out in time to marshal those forces, however, is often a problem. The communication system notifying potential parolees of their en banc hearing is at best insufficient and at worst non-existent. We've covered that issue before and continue to work with BPH and the Governor's office to improve, even install, a system to allow timely notice. But in the meantime, the only sure-fire way we know to answer that burning question depends on friends and family.

By law, the BPH must publish an agenda of their up-coming meeting at least 10 days prior to the meeting date. It's found on-line, on the BPH webpage, and giving credit where due, the board doesn't fail to meet that deadline. The Executive Board meetings, those proceedings where the en banc are considered, are held the third Monday and Tuesday of each month (unless the Monday is a holiday, in which case, it's Tuesday and Wednesday), so alert your possible speakers to check.

And if they decide to appear in person, please have them contact LSA, but phone or email, for assistance in what to say. It pains us deeply to watch (and in 10 years we've missed 1 meeting) friends and family, many of whom have traveled considerable distances, not make the best use of that precious 5 minutes by pouring out an emotional, but fact less appeal.

And while the board is sympathetic to the heartfelt pleas of those family members, as in the case of victims' next of kin who speak at en bancs, it's not the emotion, but the facts on which the commissioners are supposed to rely. To have a family plead with the board to 'let Johnny come home, he'll never do anything wrong again,' while heart-wrenching, provides the board with no factual reassurances that Johnny will, indeed, toe the line.

Better to speak to the maturation and change family has seen in their prisoner, recount the actual support they can offer that potential parolee and why that person is no longer a danger to society. And we always suggest writing out what comments your supporters want to make, and practice reading that statement for time constraints, so that they won't become inarticulate in the stress of the moment. Nor do they need to verbally prostrate themselves before the board, thanking them for the opportunity, the kindness of allowing them to speak.

It is their right to speak at en bancs, and while the board members are unfailingly polite and attentive, they are not granting any special favors, but simply exercising their responsibilities in hearing the comments. Contact us—we can help.

CDCR'S NEW MISSION

Earlier this year, California's Department of Corrections and Rehabilitation issued a new mission statement, designed, according to CDCR Secretary Ralph Diaz, to reflect the reality that most of those under CDCR's supervision will, eventually, return to society.

The new mission statement reads:

"To facilitate the successful reintegration of the individuals in our care back to their communities equipped with the tools to be drug-free, healthy, and employable members of society by providing education, treatment, rehabilitative, and restorative justice programs, all in a safe and humane environment."