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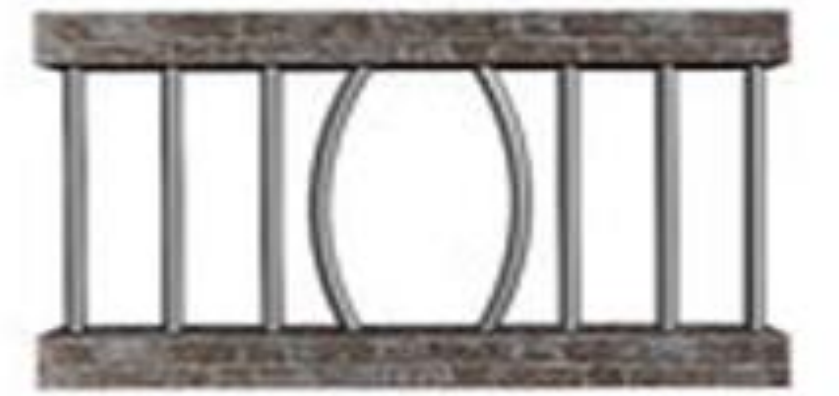

IMPLEMENTING SB 260, WHO, WHEN AND HOW

When and what to expect from Youth Review Hearings

Expectations are high for the implementation of Senate Bill 260 which officially takes effect in January, 2014. Several hundred California prisoners convicted and sentenced to long or life terms may achieve some sentence relief. For the past several months, since SB 260 was passed and signed, Life Support Alliance has been bombarded with questions from prisoners and family members asking for help, information and advice.

At the October Executive Meeting of the Board of Parole Hearings commissioners heard an extensive presentation from the board's legal team on how the process of Youth Review Hearings, mandated under SB 260, will proceed. First, it is paramount to understand that SB 260 is not an alternative way for those convicted as juveniles to achieve release. It is not an automatic release process and is not part of the so-called 'early release' drama currently underway. And, it has the potential to affect more than just lifers.

Briefly, SB 260 creates a new category of parole hearing, known as the Youth Offender Hearing, which will be conducted much like present parole hearings but with the directive that the "hallmarks" of youth (lack of maturity, flawed reasoning skills, susceptible to manipulation) be given "great weight" in suitability deliberations. New psychological evaluations will also be given to those covered under the new law, again with "great weight" given to the characteristics of youth when making psychological assessments.

Time frames for Youth Offender Hearing eligibility are as follows:

- DSL only: eligible at the 15th year of incarceration (still eligible for release under EPRD)
- Life term less than 25 years: eligible at the 20th year of incarceration
- Life term greater than 25 years: eligible at the 25th year of incarceration

Time of incarceration will be calculated using all time in custody, including time spent in local/county jails and CYA (now DJJ) facilities.

The BPH is currently evaluating all those previously denied prisoners who are eligible for Youth Offender hearing consideration with an eye toward advancing their next hearing in as timely a fashion as possible. The bill allows for an 18 month implementation window, beginning Jan. 1, 2014, during which time the BPH will identify those whose hearing should be advanced as well as some individuals who may be entitled to an initial hearing or consideration earlier than anticipated under their original sentence. Those who committed a crime before their 18th birthday, but were not convicted of or sentenced for that crime until after they turned 18 are still eligible for the Youth Offender hearing factors, as that eligibility is predicated on their age at the time of the crime, not conviction.

Howard Moseley, BPH Chief Legal Counsel commented to LSA, "With the enactment of SB 260 there will be numerous individuals who immediately qualify for a parole hearing that didn't qualify before, and others who already qualify for a parole hearing that will need to be considered" in light of the new law. Just who will go first and the timing for that first advanced hearing has not, according to Moseley, yet been decided, but he indicated the legal team would have an outline of that information at the November Executive meeting.

The controlling offense, for terms of hearing eligibility, will be considered to be the conviction which resulted in the longest term of sentence, even if that conviction is an enhancement. Those who were sentenced and incarcerated prior to the age of 18 but committed crimes after turning 18 (most likely while in prison) will not be eligible for the Youth Offender hearing considerations, but will maintain their spot in the regular parole hearing schedule.

The same factors that are now used to determine suitability at parole hearings are largely still in play for the Youth Offender hearings; all disciplinary actions, self-help, education and parole/relapse plan requirements will remain the same. The difference will be in the 'great weight' to be given, in the consideration of suitability, the psychological evaluation and even in determining the length of any denial, to what the bill terms the "hallmark factors" of youth and the "subsequent growth of increased maturity of the individual."

It is important to understand the Youth Offender Hearings will not be held on a parallel track with regular parole hearings but will be incorporated into the regular hearing schedule, with commissioners and deputy commissioners cognizant of the fact that special circumstances must be taken into account at a Youth Offender Hearing. For those who were convicted as juveniles and have already had one or more parole hearings, their next hearing will be held under the guidelines of Youth hearings.

SB 260 does not remove those youth-sentenced prisoners from the effects of Marsy's Law, should they receive a denial under the Youth Offender hearing guidelines, but the parole panel is also to use the same mitigating 'hallmarks of youth' when determining a length of denial. However, if found suitable, "[O]nce the inmate is found suitable, he or she is immediately eligible for parole," subject to the usual BPH and Governor review; this means once found suitable under Youth Offender guidelines no term calculations are required.

The panel is also required to take into consideration letters from those who may have known the prisoner in his/her youth, at the time of the crime. While similar to the current support letters, these missives can address the problems of the youthful individual and the growth and change shown over the years.

In an interesting domino effect, if a prisoner was previously serving an LWOP sentence imposed as a juvenile and has had that sentenced modified to a life with parole sentence under SB 9 (passed last year), he can now apply for a Youth Offender hearing, which would accelerate his hearing schedule. Those who may be serving multiple life sentences imposed as juveniles need only be found suitable on one of the life sentences to be eligible for immediate (following review period) parole, meaning they do not have to serve a set minimum on all life sentences in order to be released.

While SB 260 will apply to some prisoners serving extensive, but not necessarily life sentences, the board indicated as they begin to schedule advanced hearings those with life terms will be given precedence over those with long-term but determinate sentences. And, importantly, for those who fall under the intents of SB 260 and have received a recent, or not so recent denial, the option of filing a Petition to Advance request (PTA, CDCR form 1045A) should be considered.

PTA requests are usually required to be based on the development of new information; however, the enactment of SB 260 constitutes new information. Board officials, while unable to give a blanket assurance that all such PTA requests will be granted, indicated to LSA that they will be disposed toward the granting of advanced hearings under these circumstances.

BPH officials indicate that hearings held between now and January, 2014, will likely be held under the "hallmarks of youth" standard when appropriate, as will every hearing after that date. However, they acknowledge, some prisoners may seek to postpone or waive hearings slated to be held before the official start date of SB 260, in order to be sure they are afforded the new considerations. New psych evaluations will begin soon, with the FAD's clinicians beginning training soon on the new "hallmarks of youth" standard.

Another, lesser known change wrought by SB 260, is in the documentation hearings, which will now be called 'consultations' and will be held in the 6th year prior to the MEPD. The new consultation hearings will reportedly be 'clarified,' as to the purpose of the first hearing and suitability requirements. The new process will also require the BPH to provide prisoners with written recommendations with 30 days of the consultation hearing.

As more substantive information regarding the scheduling of new or advanced hearings under SB 260 becomes available, LSA will report to our readers.

THE HCR-20 V-3; NEW AND IMPROVED!!! REALLY?

The psychologists of the Forensic Assessment Division have always been something of a wonderment to LSA. We wonder where and how they were educated, whether or not they were trained in the 'assessment tools' they purport to use and how in the world they arrive at their 'risk assessments.' From our research few were stellar scholars, insightful clinicians or intuitive helpers. Most seem to use a quick cut-and-paste method of evaluation, some even seem to possess a real negative view of their 'clients,' better known as those captive guinea pigs, lifers. And those are the good things we have to say about them.

And as to their vaulted 'assessment tools,' well, don't even get us started. So it was with real interest that we listened last month to Dr. Cliff Kusaj, head conjurer of the FAD, as he informed the BPH that beginning in January, 2014 the FAD would begin using the new version of the HCR-20 risk assessment test. Despite spending the last few years defending the HCR-20 and its use on lifers for assessing potential risk, Dr. Kusaj, who cannot seem to speak in anything less than dozens of multi-syllabic words in a single sentence, blithely informed the BPH that the new test version, dubbed HCR-20 V3 (for version 3), is "a better instrument because it connects the relevance of risk factors, provides structure for risk judgments, adds several sub-items for the evaluation of complex risk factors, provides better definition of all factors and provides better clarity and reduced redundancy with other tests." Uh-huh.

All these changes brought to mind several questions, none of which we were able to pose to Dr. Kusaj in September, but were able to put on record at the meeting. First and foremost, if this new version is so superior to the former version, what of those evaluations already done under the previous, allegedly inferior test? Is there an accuracy index or some method by which evaluations done under the old test can be checked for relevance? If the new test will be in use beginning in January, are FAD agents using the older version for evaluations scheduled between now and then?

So imagine our bemusement when, at the October Executive BPH meeting, Dr. Kusaj again came forth with more information on the 'new and improved' HCR-20, with many of his comments clearly directed at our previously posed questions. The 'old' HCR-20, now jettisoned in favor of the 'new and improved' version, he hastened to assure everyone (mostly LSA) was not inferior or flawed in any way, and it's just that the new version is somehow better. And while he said 'long-term offenders' were included in the studies of the test, he could not say how many or if these long-termers were lifers, there being no data specifically on this, though he felt it was "likely" lifers were included.
Perhaps the most interesting revelation, and amusing in a sad and troubling way, came when Kusaj was asked by a commissioner how the FAD determined how accurate their assessments of risk and

other labels were. It appears the FAD correlates their assessment level with whether or not the prisoner is granted parole.

So, OK, let's think about this. The FAD offers up their evaluation, High, Moderate, Low. The BPH uses those evaluations as part of the consideration as to whether or not to grant parole. And that decision is then used by the FAD to validate their evaluation.

So, if the FAD gives a high risk determination, chances are the prisoner will not be granted a date, because the commissioners see a high risk label. And that denial is then used by the FAD to say, 'see, we were right—he's a high risk/dangerous.' A better example of circular reasoning we have never seen.

There are other proposed changes to the FAD sideshow, not all of which have yet been accepted and decided on. One will be a change in levels of risk assessed, the FAD announcing its intention for going from 5 levels (low; low/moderate; moderate; moderate/high and high) to a simple 3, low, medium and high. Kusaj indicated he expected those who previously received the two-level risk (low/moderate and high/moderate) would break about even in the new system, about half of the total falling into the lower range and half in the higher range. But, of course, no guarantees and no way of knowing until the new system is in action and has done its dirty work for a while.

We expect to have more to report on this new and improved nostrum, as LSA will be among the stakeholders offering input and comment on the new tests and process prior to adoption. At least, that's the promise from the BPH.

LATEST WORD ON POPULATION CAP

The three judge panel monitoring California's somewhat off-and-on efforts to decrease its prison population have extended the deadline for reaching that goal to late February, 2014. This appears to be in response to on-going negotiations between CDCR and attorneys for prisoners, as reported to the judges by their intermediary, Circuit Court Judge Peter Siggins.

First set as Dec. 31, 2013, the deadline for the state to reach a maximum of 137% of design capacity for California prisons, the deadline was pushed to late January as the result of possible progress in plans for changes being put forth by both the Brown administration and the legislature, with the caveat that the involved parties enter into continuing talks. Those meetings were monitored by Judge Siggins, who issued a confidential report to the judges in late October.

Following that report the panel, led by Judge Thelton Henderson, agreed to again extend the deadline, this time to the end of February. While the talks continue the judges have halted Brown's plans to transfer thousands of inmates to both in-state and out of state private prisons.

In late October, following the deadline extension, Brown announced he plans to ask the U.S. Supreme Court, which has twice refused to intervene in or modify the 3 judge panel's directions, to lift the transfer block. No decision on that appeal has yet been announced, but the high court seemed disinclined to intervene in the past.

Whatever happens in the on-going battle of wills between the Governor and the judges, it bears repeating, that NO LIFERS WILL BE RELEASED EARLY AS A RESULT OF ANY POPULATION CAP ACTIONS. All plans involving so-called early release, no-risk list or other shortening of

sentences have ***never*** included lifers, as all these plans specifically state any inmates released early must be in the “non-non-non” category; non-violent, non-serious, non-sexual. Lifers, by virtue of their life sentence, fall into at least two of those prohibited categories.

What may provide some relief for lifers is the possibility of increased consideration for parole of elderly or infirm inmates in coming months.

CDCR CREATING NEW LIFER PROGRAMS

Many lifers may have seen a notice posted in housing units announcing interviews for a new pilot program targeting lifers “to assist long term inmates in addressing their criminogenic needs.” The specifics of the program, though not yet finalized, will be tailored to those specific areas of interest to parole panels.

This program will be offered early next year to those lifers who have received a 3 year denial and, along with a forthcoming companion program for recently released lifers, represents a new effort by CDCR’s Division of Rehabilitative Programming to provide meaningful and useful curriculum for lifers. Although details are somewhat lacking, Life Support Alliance (LSA) is a part of the Director’s Workgroup on Long Term Offender Programming, the body charged with creating the program content and implementation.

We are but one voice at the table, but we are there to represent the needs of lifers and provide practical experience and options to balance the myriad of theoretical offerings presented. More information on both the in-custody and the on parole pieces of the program will be published as they become available. And we look to our readers *(that’s you!)* for comment and reports of your experiences with the process.

NEW RULES FOR PEPPER SPRAYING MENTALLY ILL

Perhaps hoping to get ahead of the outrage CDCR recently announced it is changing the rules for use of pepper spray on mentally ill inmates. The new procedures, still being written and not yet public, will reportedly limit the amount of pepper spray and similar chemicals that can be used on an inmate and how quickly the decision to use the spray is implemented.

All this comes in the midst of a trial in Sacramento where videos of massive amounts of pepper spray used on mentally ill inmates was played in court to a public audience. The trail involves allegations of excessive use of force against the mentally ill in California prisons. Many who have seen the videos have described them as disturbing and sickening to watch.

A CDCR representative said "Obviously, it's our goal to use a minimal amount of force.” Inmate attorney Michael Bein called the proposed changes “A big step,” and noted, it was “a significant admission that the department needed to reform.”

Although the videos showed massive force, both physical and chemical, used to force inmates from their cells or obtain other objectives, state psychologist Dr. Ernest Wagner maintained he has not seen any lasting harm to inmates who were pepper sprayed. He told the court large quantities of the chemical are not usually needed, adding, “Most of the time just one spray and they comply.”