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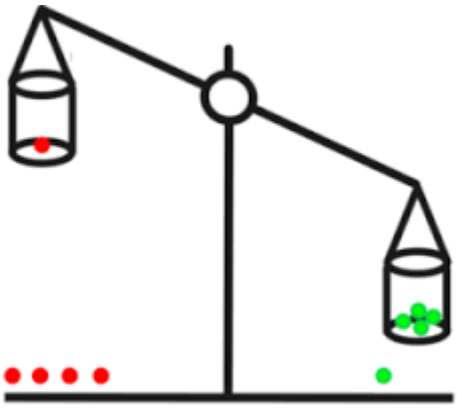

LATEST ON BUTLER: EVERYONE MUST HAVE TERM CALCULATED

In late 2013 the BPH came to an agreement to settle IN RE: Butler, and began, at a lifer's initial parole hearing, to set their term. For those lifers whose initial hearing had already been held, often long ago, the board agreed to provide that term calculation at their next hearing. Prior to the settlement the board's long-standing practice had been to set the term only if and when an inmate was found suitable for parole.

The Butler decision was heralded by inmates and attorneys as a way to make sure there was proportionality in sentences effectively served by differing inmates for largely the same sort of crime. But with regard to two specific groups, inmates who come under YOPH consideration and those who qualify for elderly parole, the board has not been setting base terms at the initial or next subsequent parole hearing, holding instead that by virtue of the inmate qualifying for either of those specialized proceedings he/she had, in fact, met the base term. Since the settlement agreement the board has reportedly held over 1,000 such hearings for YOPH or elderly parole candidates at which terms have not been set.

Inmate attorneys, filing a contempt complaint against the BPH in the First District Court of Appeal in San Francisco, said the Board had "willfully disobeyed the settlement order" and asked the court to hold the Board in contempt and hand down a fine of $1000 for each such occurrence. In addition, the inmate lawyers allege that in over 500 cases parole panels have not pronounced a base term for inmates who were neither YOPH or elderly candidate and no explanation.

Attorney General Kamala Harris' office, in a June 7, 2016, letter to the court, maintained the BPH was not calculating base and adjusted base terms for "who qualified for youth-offender or elderly-parole hearings" because "the youth offender law and the federal court order in the Three Judge Panel proceedings mandate the immediate release of these inmates once their parole grants become

effective." In other words, once qualified for YOPH or elder hearings and found suitable, these inmates would be 'immediately' released, subject nonetheless to all review periods.

According to court filings, the parole board decided last year that, because of new state laws, it lacked authority to give the notice required by the settlement to those two groups of life prisoners. Because of YOPH and elderly parole procedures some prisoners might be found suitable and released before completing their standard base term, leading state lawyers to contend that the base was no longer meaningful to either group and thus panels were not required to provide base and adjusted base term calculation.

But the appeals court, in the person of Judge Anthony Kline, felt otherwise. In late July Kline refused to change the settlement terms, saying that for all life inmates, YOPH and elderly notwithstanding, the base term is important because it "indicates the point at which a prison term becomes constitutionally excessive." He also suggested the requirement for the board to notify inmates of their base term (calculate their term) might increase the likelihood of an appropriate sentence.

Andrea Nill Sanchez, an attorney representing the inmates, said that in the period from the settlement being reached until the Aug. 15 filing, the board held 466 elderly parole hearings, and 676 YOPH hearings without calculating and setting base terms for those inmates. And while no inmate has yet challenged a parole denial on the basis of having served past their base term it is a hot topic of discussion, especially among older inmates with early alphabet designations. Another inmate attorneys speculated that once base terms are provided to all inmates, including those at elderly or YOPH hearings, such calculations could be "a starting point for a constitutional challenge."

What happens next in regard to those inmates whose term was not set at their last hearing currently is not known. The BPH and CDCR have declined to comment, as the situation is still currently in litigation. A conference with the court and all attorneys is scheduled for mid-September.

NEW FACES, (Maybe) SOME CHANGES

Both women's prisons in the CDCR system will be receiving new wardens, following the recent and sudden retirement of wardens at both institutions. Both departures come amid controversy and allegations of problems including sexual abuse of inmates at one institution and persistent suicides at the other.

Although CDCR characterized the departures of Deborah Johnson at CCWF and Kimberly Hughes at CIW as "routine retirements," after 30 and 27 years of employment respectively, the departures of both wardens came virtually overnight and without the fanfare and succession planning usually attendant to a warden's retirement. While the department maintained there was "really no connection" between the retirements and newly-public problems at the prisons, two other senior members of staff at Chowchilla were also 'reassigned' and reportedly walked off grounds.

Sources at CDCR headquarters in Sacramento acknowledge issues at both prisons and promised a 'careful' screening of new candidates before making a final selection. In the meantime, a series of retired annuitants are expected to oversee operations at both CCWF and CIW.

In a related development, the Joint Legislative Audit Committee (JLAC) in Sacramento recently approved a request by Sen. Connie Leyva (D-Chino) to examine suicide prevention and reduction policies, procedures and practices at state prisons across California, with special focus on CIW. In an 18-month period in 2014-15, the suicide rate at CIW was noted at eight times the national average for women prisoners and five times the rate for the entire California prison system, with four suicides and at least 35 suicide attempts.

Since the beginning of 2016, there have been two suicides at CIW. The audit, conducted by the California State Auditor, is expected to take several months and will be made public on completion.

ANOTHER OPENING ON THE PAROLE BOARD

Although not unexpected the resignation of one parole board commissioner has come earlier than rumored. It was announced at the August Executive Board meeting that Commissioner Elizabeth Richardson, a commissioner since 2013, would retire at the end of August.

Rumors of Richardson's impending departure had been circulating, usually with an end of the year date. But after receiving thanks from BPH Executive Officer Jennifer Shaffer for her service, Richardson commented that while she had 'enjoyed doing this, I'm now ready to enjoy not doing this.' Appointed as a commissioner by Gov. Brown, Richardson had previously served as a Deputy Commissioner, special assistant inspector general at the Office of the Inspector General and positions in other governmental agencies and private law firms.

Perhaps most memorable of her past positions was as a captain in the U.S. Marine Corps and in the U.S. Marine Corps Reserve from 1984 to 2010, retiring as a colonel. Lifers appearing before Richardson could count on an aggressive interrogation, a no-nonsense approach and no tolerance of cell phones.

Those inmates who had served in the military prior to their crime could count on a particularly tough grilling. Yet her grant rate was not especially low and those who were denied were left with no doubt where their issue lay and what they should do the next time around.

Richardson's departure will leave the board short one commissioner for the remainder of the year, with the rest of the commissioners taking up her share of scheduled hearing. Since the state budget for the coming year includes funds for two new commissioners, in addition to the current 12, Richardson's departure leaves Gov. Brown with three parole commissioner positions to fill.

DO YOU NEED A CONSULTATION?

If you are a YOPH-eligible inmate, with a hearing scheduled in the next 3 years, and have not yet been received or been notified of a date for a consultation hearing, please let us know. Under new procedures consultation for inmates are to be held 6 years prior to their first board hearing, or ASAP, if that hearing is rapidly approaching. We've found a few instances in which YOPH candidates have slipped through the cracks, and the BPH is intent on rectifying such situations—but they must know of them first. Let us know, or contact the BPH directly, and do it now!

THE NOVEMBER BALLOT

California is one of the few states in the nation where new laws can be proposed, debated, voted on and implemented without the involvement of the state legislature. That process is known as the initiative or proposition process. It's a hard road, as those championing one cause or another must write the initiative/proposition, get it past the Secretary of State and then canvass the voters throughout the state, convincing a certain percentage of them to sign petitions expressing their desire to see the proposal on the ballot for a vote.

It's a disjointed, confusing and inefficient way to govern, but its California's own. Most ballot initiatives never really make the ballot, many falling short of collecting the number of signatures required, or if they do make the ballot, often go down to defeat because of the costs necessary to promote the cause throughout the large and diverse state.

On the ballot for Nov. 8, 2016 is the usual mish-mash of proposals, but 3 that are of real interest to lifers and proponents of prison reform. And while no one in prison or still on parole can vote, it would behoove all prisoners to encourage their friends and family to register and vote and, once off parole, register themselves.

Proposition 57 Criminal Sentences, Juvenile Criminal Proceedings and Sentencing Initiative Constitutional Amendment and Statue.

Allows parole consideration for persons convicted of nonviolent felonies upon completion of full prison term for primary offense, as defined. Authorizes the Department of Corrections and Rehabilitation to award sentence credits for rehabilitation, good behavior or educational achievements. Requires Department of Corrections and Rehabilitation to adopt regulations to implement new parole and sentence credit provisions and certify they enhance public safety. Provides juvenile court judges shall make determination, upon prosecutor motion, whether juveniles age 14 and older should be prosecuted and sentenced as adults.

This is Governor Brown's initiative. Note the language applies only to nonviolent crimes in allowing parole after serving sentence for the primary offense. Whether other aspects of this initiative would apply to lifers is the source of confusion and disagreement. However, we view it as an important step forward in sentence reform.

Proposition 62 Death Penalty Initiative Statute

Repeals death penalty as maximum punishment for persons found guilty of murder and replaces it with life imprisonment without the possibility of parole. Applies retroactively to persons already sentenced to death. States that persons found guilty of murder and sentenced to life with the possibility of parole must work while in prison as prescribed by the Depar6tment of Corrections and

Rehabilitation. Increases to 60% the portion of wages earned by persons sentenced to life without the possibility of parole that may be applied to any victim restitution fines or orders against them.

If passed, and a similar measure was narrowly defeated last election, this would abolish the death penalty and those now condemned would be automatically sentenced to LWOP. What would become of those currently under LWOP sentences is not clear, but the possibility of their status being similarly downgraded to life with parole has been discussed. For many reasons, we support this proposition.

Proposition 66 Death Penalty Procedures Initiative Statute

Changes procedures governing state court appeals and petitions challenging death penalty convictions and sentences. Designates superior court for initial petitions and limits successive petitions. Imposes time limits on state court death penalty review. Requires appointed attorneys who take noncapital appeals to accept death penalty appeals. Exempts prison officials from existing regulation process for developing execution methods. Authorizes death row inmate transfers among California state prisons. States death row inmates must work and pay victim restitution. States other voter approved measures related to death penalty are null and void if this measure receives more affirmative votes.

In total opposition to Prop. 62, this initiative would not only entrench the death penalty in California, but also speed up the implementation of any such sentence. It would also require those condemned to work while awaiting their execution. Draconian? Yeah, we think so.

THE DEMON CELL PHONE: HARDER TO KILL THAN A COCKROACH

In spite of best efforts CDCR to eliminate cell phones from inside prisons, that drive hasn't exactly been a rousing success. In 2006 the department reported confiscating 261 cell phones. Four years later, in 2010, that number had jumped to over 11,000. Joe Orlando, public information officer for the California Department of Corrections and Rehabilitation reported, "We're constantly finding five, six, 10 cellphones in a couple hours on sweeps."

Efforts at both interdiction and penalizing have been only marginally successful, despite a 2011 bill that increased penalties for an inmate found with a cell phone as well as a crime for anyone to bring one into a prison. And that bill paved the way for what was then considered 'state of the art' blocking and jamming technology, placed around 18 select prisons in 2012 to prevent calls or messages going out or coming in.

But those jammers have proven to be a “marginally effective system” and there seems little appetite for either expansion or continuation of the contract. And now, due to an inmate-filed law suit, CDCR appears in some cases, to be backing away from imposing some penalties called for under the passed legislation. Currently, an inmate found with a phone can lose to up to 90 days good-time credit and anyone brining in a phone to an inmate would be guilty of a misdemeanor and face up to six months in prison and a $5,000 fine.

Officials are rolling back the penalties after they came to the conclusion that there was some confusion as to whether those maximum penalties laid out in the bill were meant to be imposed on prisoners who actually had cell phones or just any phone-related items. While acknowledging that there was a ‘vulnerable spot’ in the legislation-imposed penalties and noting CDCR has no plans to sponsor legislation to clear up the confusion, department spokesperson Vicky Waters maintained the change would have no adverse effect on efforts to prevent prisoners from obtaining cell phones.

New York and federal DOJ recognize the large part staff participation plays in this enterprise and are taking steps to address the issue. “The main source of contraband introduced into the system is through employees,” says retired NYPD detective sergeant Chris Cincotta, speaking about the problem of contraband entering prisons there. During a 9-month investigation into contraband interdiction in federal institutions the DOJ found numerous problems making it easy for staff to enter with items ranging from simple tobacco to street drugs and the dreaded cell phones; the Bureau of Prisons has promised to “develop and propose changes to the staff search policy.” No word on similar consideration in California prisons.

UPDATE ON FAMILY VISITS

Little news on this front, other than the process of changing CDCR regulations to include lifers and LWOP in family visits is progressing. Two weeks ago the revised regs hit CDCR Secretary Scott Kernan’s desk for his input and review, next step will be publishing those regs and providing time for public comment.

And although we know many counselors are still saying it’s a rumor, we can’t say it often enough—it’s true. The intent of all we speak with at CDCR, and we are frequently in contact with officials there, is to get this process finished and visits started as soon as possible. But as we know, ASAP in CDCR-speak is different from ASAP anywhere else. But we can say officials do not seem to be dragging their feet or delaying the process, but, it is a process.

Our best counsel is to continue to be patient and know it will be sooner rather than later. When the window for public comment on the proposed regulations is announced, we’ll publish that and let our larger, outside community know, so we can collectively let CDCR know how much we support this new policy, how effective it can be in rehabilitation and smoothing the way to reentry into society.