LIFE SUPPORT ALLIANCE
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Public Safety and Fiscal Responsibility

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WHAT DO YOU GET WHEN….

You mix 200+ paroled lifers and a city park, on a summer day?

The answer? A huge reunion of old friends, new friends, family, supporters and advocates. The net result? Smiles everywhere, an impromptu game of football, laughs, hugs, and more pictures than an album can hold. The second annual lifer picnic sponsored by Eccher and Chandler Consulting (that would be Gary "Red" Eccher and Keith Chandler, both former lifers) was even better than last year's, with food from pizza to fried chicken, warm sun, cool breezes and a huge and much appreciated helping of freedom.

Easily the biggest single gathering in the park at Buena Park that Saturday, the lifer event was also easily the happiest and friendliest. Reunions abounded, old times revisited and everyone agreed, any day on the outside is better than the best of days inside. Some parolees had been out only a few days, some several years, but all were united by the fellowship only earned through surviving the crucible of prison and parole.

Among the highlights were a reunion of nearly two dozen former residents of 5 yard at Avenal (some pictured above), the announcement of Eccher's impending marriage, and lifer attorneys (attending were Marc Norton, Diane LaTarte, Debbie Page and Jared Eisenstat) gratified to see their former clients thriving. Sister Mary Sean Hodges of the PREP program, a haven for many paroled lifers in

their first months out, held court to a constant stream of former PREP residents offering their thanks for her support and help and stories of their successful reintegration.

There were many "I never thought I'd see you again" moments along with plenty of "where did we do time together" ruminations. Lifer advocates like Donald "Doc" Miller and LSA Director Vanessa Nelson-Sloane (tagging along with husband David Sloane, one of the former residents of Avenal 5 yard) were also greeted with thanks and appreciation from picnickers for their work on behalf of lifers, past and present.

Next year's summer soiree promises to be even bigger as more lifers are coming home each year. Kudos and thanks to Eccher, Chandler and their faithful family helpers for putting on a great event.

DOES TERM SETTING = MANDATORY RELEASE?

In a word, NO. And here's why.

Following the recent Butler agreement, wherein the BPH agreed to calculate and set base terms for lifers at their initial, or next hearing, we've been peppered with comments, opinions and interpretations of Butler by a variety of inmate legal beagles. Many would like to believe, especially in light of the article in the LA Times alluding to term setting being an avenue for shorter terms for lifers (an article that was factually wrong), that term setting provides relief from incarceration past the end of the base term. Sorry, it ain't so.

We've checked with many sources and all have the same take on the issue; term setting sets a base term, but those two little words in every lifer's sentence, "to life," mean there is no mandatory release date. Former lifer John Dannenberg, who provides legal analysis for LSA and California Lifer Newsletter, prepared a reply to one such communicant, portions of which we are sharing here, in an effort to explain why Butler is not the gate opener many believe it should be.

"*The common question of 'what's the sense of setting my term if they don't cut me loose after I've served it' is a valid one, but conflates* [merges] *two concepts. The first is the base sentence, which is your punishment, which was set at (e.g.) 25 years (minimum). Your "term of confinement," on the other hand, is the amount of time you would serve, net of credits available, when you are deemed not to be an unreasonable risk of danger to society if released. But it is that last caveat that controls the gate to the door – being found not to be an unreasonable risk. If the Board never reaches that finding, you never go home – and wind up doing "life"— your maximum sentence. Stated another way, you cannot rewrite the sentence you received to mean that you must be released at the minimum term (25 years), or the base term fixed by the Board (ranges from about 25 – 31 years, in their matrix).*

"Your "maximum period of confinement" is in fact, life. That's the whole point of a "life" sentence – they don't ever have to release you. There is a presumption in the law, however, that you will be eligible for release at the minimum term (base term of your sentence), But this does not translate into a mandate to release you then.

"I agree that having your term fixed seems meaningless if they are going to keep you in longer than that period of time. But the reality is that they should be considering you for release at

that minimum term, which does not mean that they must release you at that minimum term. Today, a few guys are being found suitable at their initial hearings, and getting prospective release dates per the matrix. That didn't used to happen at all, because the Board just used "the crime" as reason to hold you (per Rosenkrantz and Dannenberg). That policy died with Lawrence.

"Simply stated, the minimum term (e.g., 15 or 25 years) is the presumptive punishment for the offense set by the Legislature. The "to life" portion is authority given to the Board (PC § 3041(b)) to not release anyone who is demonstrably dangerous, even after they have served their "punishment." Thus, "proportionality" would only logically apply to one's punishment phase, not to one's eventual time served. The time served after one's matrix term would be not for the purpose of punishment, per se, but to permit continuing rehabilitation. That time period is open-ended, culminating only when the Board no longer finds a preponderance of evidence of ongoing danger. Thus, the time you serve beyond your "matrix" is not for punishment, but rather, for rehabilitation. There is no concept of "proportionality" for the time it takes each individual to gain his or her rehabilitation, if ever."

As explained to LSA further by Howard Moseley of the BPH, term setting provides 'proportionality;' in other words, different individuals convicted of the same crime with similar circumstances would be assessed the same length of punishment. In a simplified example, two individuals convicted of the murder of a similarly aged victim, by similar means (weapon) and no aggravating circumstances (no kidnap, torture, previous relationship with victim) in either case, should receive the same basic term assessment; that is the punishment for that crime with those circumstances. Being sure all individuals in those situations receive the same base (punishment) term assures no one is assessed more punishment for the same crime.

The matrix used by the board allows for assessment of various time lengths of punishment based not only on the crime itself, but various circumstances of the offense. As explained above by Dannenberg, that base term is the measure of punishment assessed for the crime. But it is not the whole story.

Lifers must prove their 'rehabilitation' and that they are no longer an unreasonable danger to society. This is where the 'to life' portion comes into play. If any given lifer is sufficiently rehabilitated so that he/she no longer presents an unreasonable danger by the end of their base (punishment) term, then a finding of suitability is possible. It happened 40 times last year, when lifers appearing at their initial parole hearing were found suitable.

However, if, at the end of the base term, that lifer has not yet fully rehabilitated and in the estimation of the parole panel still remains dangerous to society, he/she will remain in prison to complete that rehabilitation until he is no longer a danger. Even if that takes the rest of his/her life.

ARE YOU READY FOR AFTER*LIFE?

For those of you on the way out—back to life in society, remember to sign up for **After*Life**, LSA's new, free monthly newsletter for paroled lifers. When you're home and have your email address established (which is usually the second thing freed lifers do, after getting a cell phone. Legally.) send us your contact information and you'll be added to the email list.

After*Life will cover topics of interest to paroled lifers, including new procedures in DAPO, travel passes, goals and progress reports to agents and even discharge procedures. It's free. It's informative. And it's yours for the asking, at lifesupportalliance@gmail.com

ELDER PAROLE BEGINS

And none too soon.

Hard on the heels of new considerations at parole hearings for those who were juveniles at the time of their crime (SB 260 YOPH) the Board of Parole Hearings has announced the basic requirements for special consideration of parole in the other direction—those prisoners who are now aged and possibly ill. Elderly parole hearings for those inmates who are over 60 years of age and have served at least 25 years will begin October 1, 2014.

The initial requirements are fairly simple, age and time in. This applies to determinate sentenced prisoners as well as lifers; once again, long-serving determinate sentenced inmates, who never thought they would have a chance at a parole hearing, and perhaps have never begun to prepare for one, have a new and unexpected opportunity.

It is important to understand, neither YOPH hearings nor elder parole hearings are a parallel track with regular parole hearings. If a prisoner qualifies for either consideration, his next and subsequent hearings will be held under those guidelines—it is not a one-shot chance.

As to who will be called to board and in what order, the explanation offered is thus:

"Eligible inmates who are not currently in the board's hearing cycle (i.e., those who are serving a determinate term or serving an indeterminate term and have not yet had their initial parole suitability hearing), will be referred by CDCR to the board and scheduled for an initial suitability hearing.

"Eligible inmates who are currently in the board's hearing cycle (i.e., those who have already had their initial suitability hearing or will have it before October 1, 2014) will be considered for a new hearing consistent with the California Supreme Court's decision in In re Vicks, meaning the board will initially focus its resources on those inmates who are most likely to be found suitable for parole. This will be accomplished through administrative review of the inmate's record by the board for possible advancement of the inmate's next hearing date, if the board finds a reasonable likelihood that consideration of the public and victim's safety does not require the additional period of incarceration of the inmate. Eligible inmates may also continue to petition to advance their next hearing pursuant to the provisions of Penal Code section 3041.5(d)."

The memorandum outlining the initial requirements for elder consideration also note that the BPH review process will give "special consideration to eligible inmates' advanced age, long-term confinement, and diminished physical condition, if any." Those who qualify for elder parole consideration will also receive a new or revised Comprehensive Risk Assessment (CRA, better known as psych evals) that will, purportedly, take into consideration factors such as advanced age, effects of long-term imprisonment and any physical problems and how these factors might affect an individual's risk of dangerousness.

In all other concerns the same factors will be considered as at any parole hearing, with the ultimate question being, does the individual still pose an unreasonable risk of danger to society.

The BPH has acknowledged, however, in a rather tedious and relatively lacking in new information presentation by head FAD-man Dr. Cliff Kusaj, that increasing age has a direct and inverse relation to risk of recidivism. Dr. Kusaj's monologue, entitled, "Elderly Offenders: What We Know About Their Likelihood of Violent Reconviction and Their Associated Risk Characteristics," (whew) could easily have been summed up in two words: They Don't.

Although he presented no new information, Dr. Kusaj did confirm that older inmates do not reoffend, with recidivism risk dropping in relation to age and almost falling off the charts by age 60. Although not forthcoming as to what relevant training FAD clinicians will or have received as to these facts and how they should be addressed in a CRA, Kusaj did note that of 33 lifers aged 60 and over who received CRAs in the first 3 months of 2014, all received findings of "non-elevated risk relative to other parolees," (we're still waiting for a definition of that one) or "average risk relative to other parolees." Which just may be a convoluted way of saying they were moderate or low risk, but with Kusaj-speak, who knows?

As to when, how or even whether individual inmates will be notified of their inclusion in the elder parole category and when those determinate sentenced prisoners will be coming to board in this classification, we don't yet know, but we will be front and center at an up-coming meeting at the BPH that will spell out more details.

COMING SOON IN ***LIFER-LINE***

The July issue of ***Lifer-Line*** will contain all available information on elder and expanded medical parole, details that are due to be released within a few days. Also information on new directives for substitution of inmate counsel, updates on SB 260 hearings, and more in "Inmate Exhibits at Hearings," probably more on the infamous 20 page rule.

Also expected, discussion of CRAs done for PTA and AR hearings and the scoop on pre-hearing postponements. In the next few months you'll also find a survey on the performance, or lack of, of state-appointed counsel, now that many of the newly-minted hearing attorneys are making their appearances for the first time, as well as questions for those prisoners who have had CRAs under the guidelines of SB 260 and/or elder parole.

We appreciate your responses to our surveys; your factual information makes it possible for us to work on your behalf.

MORE FROM THE PICNIC

Sister Mary Sean, Diane LeTarte and Vanessa Sloane

Lifers are always ready to eat

There are friends…..

…and then there are Friends

No goal posts...but no guard towers either!