



Public Safety and Fiscal Responsibility

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2016-17 LEGISLATIVE HIGHLIGHTS RELATIVE TO LIFERS

The 2016-17 legislative voting session has come to a close, with some major steps forward for lifers. Below are the most important bills affecting life term prisoners. YOPH and elderly inmates will see some changes in their hearing process, as, for the first time in many years, will some LWOP inmates.

In all, while it isn't everything we could have hoped for, several bills passed by the legislature this session were helpful to many lifers and still others provide a stepping stone that hopefully can be used to further the progressive push in future sessions. As of the publication date of Lifer-Line, these bills have not yet been signed by Governor Brown, though there is no indication that the Governor is opposed to any of them. Once signed by the Governor they would become effective January 1, 2018.

AB 1308 requires a youth offender parole hearings for offenders sentenced to state prison for specified crimes committed when they were 25 years of age or younger, thus extending YOPH from the current 23 year old limit up to the age of 26. Hearings are to be completed by January 1, 2020, all youth offender parole hearings for individuals who were sentenced to indeterminate life terms who become entitled to have their parole suitability considered at a youth offender parole hearing on the effective date of the bill. Also requires all youth offender parole hearings for individuals who were sentenced to determinate terms who become entitled to have their parole suitability considered at a youth offender parole hearing on the effective date of the bill by January 1, 2022, and would require the board, for these individuals, to conduct a specified consultation before January 1, 2019.

AB 1448 establishes the Elderly Parole Program, to review the parole suitability of inmates who are 60 years of age or older and who have served a minimum of 25 years of continuous incarceration. This bill codified the current elderly parole process in place at BPH under an agreement between the state and the 3 Judge Panel, however, as amended, the bill would

exempt from Elderly Parole Program eligibility third strikers, a change from the current policy. It also exempts those sentenced to life in prison without the possibility of parole or condemned, and a person who was convicted of the first-degree murder of a peace officer or a person who had been a peace officer.

SB 394 makes a person convicted of a controlling offense that was committed before the person had attained 18 years of age and for which a life sentence without the possibility of parole has been imposed eligible for release on parole by the board during his or her 25th year of incarceration at a youth offender parole hearing. Requires the board to complete, by July 1, 2020, all hearings for individuals who are or will be entitled to have their parole suitability considered at a youth offender parole hearing by these provisions before July 1, 2020.

While this does not change the age stipulation enacted under SB 9 a few years ago, which provided the first, partial relief to LWOP, it does make the parole process automatic for those who qualify, thus providing relief to those from counties where courts routinely and repeatedly deny petitions for resentencing under SB 9. It may also provide a base, in future legislative sessions, to extend this automatic parole review to those inmates who fall under current YOPH guidelines.

SB421/384 commencing January 1, 2021, establishes 3 tiers of registration for sex offenses based on specified criteria, for periods of at least 10 years, at least 20 years, and life, respectively, for a conviction of specified sex offenses, and 5 years and 10 years for tiers one and two, respectively, for an adjudication as a ward of the juvenile court for specified sex offenses, as specified. Commencing July 1, 2021, establishes procedures for termination from the sex offender registry for a registered sex offender who is a tier one or tier two offender and who completes his or her mandated minimum registration period under specified conditions.

The bill requires the offender to file a petition at the expiration of his or her minimum registration period and would authorize the district attorney to request a hearing on the petition if the petitioner has not fulfilled the requirement of successful tier completion, as specified. The bill would establish procedures for a person required to register as a tier three offender based solely on his or her risk level to petition the court for termination from the registry after 20 years from release of custody, if certain criteria are met. The bill would also, commencing January 1, 2022, revise the criteria for exclusion from the Internet Web site.

SB 620 reconsideration of this suspended bill was granted on 9/12 and it passed on 9/13, deletes the prohibition on striking an allegation or finding of firearm enhancement and, instead, would allow a court, in the interest of justice and at the time of sentencing or resentencing, to strike or dismiss an enhancement otherwise required to be imposed by the above provisions of law. There is no indication that provisions of this bill will be automatically applied retroactively; in fact, it specifically says the provision of the bill may be applied 'at the time of sentencing or resentencing.' More on this bill as information become available.

SCR 48 This measure is not a bill, but a legislative resolution of agreement that recognizes the need for statutory changes to more equitably sentence offenders in accordance with their involvement in the crime. This is not a law, and currently has no impact on sentencing or prisons, but is the first step toward a possible bill in future legislative sessions addressing the felony murder rule.

REGS WATCH

The waiting, not always patiently, continues for release of the much anticipated and eagerly awaited new regulations implementing both Prop. 57 and family visits. As we go to press, neither set of regs has been released to the public, but both are reportedly getting closer; and should be released within the next 60 days.

The final public hearing on changes to regulations providing enactment of Prop. 57 was held September 1, with more than 90 individuals and groups speaking, most decrying the exclusion of third strikers from Prop. 57 impact. This is a topic we have reported repeatedly and won't detail here again. Suffice to say, early indications from sources report some changes will be made, most likely in allowing some credits retrospectively, but the chances for inclusion of third strikers look, at present, dim.

On the family visiting front, sources say those regs have been approved by CDCR and are presently under review by CDCR legal, to assure all legal minutia have been covered. Those new regs will reportedly allow 'a lot' more lifers and LWOPs to be included in family visiting.

Hopefully this will mean changes to the current prohibitions on those with minor victims and old domestic violence accusations being included; however, those prisoners currently not allowed family visits due to a distribution or trafficking charge may have a harder time finding inclusion.

When the new regs on either topic are released we will make them available to inmates and family members. Both sets of regulations have been in the works so long our grievance with CDCR still stands; it didn't take this long to write the Ten Commandments.



WHAT YOU SHOULD EXPECT FROM A STATE ATTORNEY

State appointed attorneys have largely been given a bad rap. Certainly there are highly competent, dedicated and passionate individuals in that cohort. In fact, many of the best now exclusively privately retained attorneys began their parole hearing career as appointed counsel. However, no attorney, no matter how competent or incompetent, how highly or modestly paid, can win a parole hearing for an unprepared inmate, nor lose a grant for a prisoner who is ready to parole.

Can they help? Of course. And understanding what sort of help they can offer and how much is crucially important. The primary duty of any attorney is to be sure his/her clients' rights are recognized and met, but the training provided now to commissioners, coupled with an in-house BPH review process and a legal team more committed to following, rather than circumventing the law (a practice driven from the Executive officer down), there are less glaring examples of parole panels blatantly going their own way.

If you find yourself deciding on using the services of the state-appointed attorney provided by the BPH there are some limitations you should be aware of, before deciding your attorney was a 'dump truck,' and some actions you have a right to expect as their client. Because you are their client; the state may be paying the bill, but you are the client.

Keep in mind, state-appointed parole attorneys are very experienced in parole hearings and can often provide you with better representation in that venue than an attorney unfamiliar with parole proceedings. As you wouldn't use a podiatrist if you needed an optometrist, don't expect a criminal defense attorney to understand the nuances of parole hearings. And we won't even mention the cases who've woefully lamented to us about their error in using mom's real estate attorney, their former divorce attorney or cousin John, who just hung out his shingle, at their hearings because they offered 'a good deal.'

If you plan, through preference or finances, to utilize a state-appointed attorney there are some basic tasks both you and the BPH expect from them. Among those:

- Meet with you at least 45 days before the hearing, in a confidential setting
- Have reviewed your C-file and hearing packet prior to the meeting
- Make sure that any potential communications problems (i.e. language, cognitive issues or hearing) have been identified and remedies applied for both the meeting and hearing
- Bring CDCR Form 1003 (to stip or waive the hearing or change attorneys) with them and see that it is filed, if necessary
- Identify issues or documentation of possible concern at the hearing
- Inform you of your rights and what to expect at the hearing
- They should also respond to your (and your family's) letters or calls in a timely manner
- Oh, and did we mention actually showing up at the hearing (yeah, that's been an issue) and actively advocating for your rights.

Given all this, you should understand, state attorneys are appointed for a limited scope of services, basically the hearing and modest pre-hearing consultation. By in large, their fee structure does not provide for post-decision work, multiple visits or monopoly of their time. Be sure at your initial meeting that you express to your attorney your goals at the hearing; if you know some areas and issues in the hearing may be of concern, be sure to let him/her know those areas and how you're prepared to address them.

Never let any attorney pressure you into a stipulation if that isn't what you want to do. There's a difference between advice and pressure; one is allowed and expected, the other is unethical. While you should listen to your attorney's advice, the ultimate decision is yours. As mentioned before, it's you, not your attorney who is being assessed by the parole panel, and while an attorney can help you a lot or hinder you some, the ultimate decision of suitability does not rest on the attorney's performance, but on your suitability and ability to convey that suitability to the panel.



YOU ARE A PUBLIC RECORD

From time to time we have referred here, and in our sister publication, California Lifer Newsletter, to cases or decisions involving specific inmates, using that inmate's name. And from time to time we've heard from some of those prisoners, sometimes requesting we not report their cases, some asking for copies of the story and some even trying to extort money from us for using their name without their 'express permission.'

So news flash everyone. Once you become a prisoner, even a defendant, much of what constitutes your life and criminal situation will become public record. As in available to anyone, the public, with or without your 'express permission.' This includes judicial decision on any appeals or filings and, please note, your hearing transcripts as well.

Some aspects of that record just got easier for the public to access with changes to the CDCR website and BPH home page, allowing the public, including family, friends, interested parties and victims, to find out not only where you are, your age and how long you've been in, but now also when your MEPS date (or for DSL inmates, possible release date) is calculated.

Improvements to the BPH site have been in the works for some time and the recently unveiled changes may not be the end of modifications. These were undertaken to provide more public information and transparency and to a large extent, on those fronts the changes are successful. The BPH has, for some years now, made it a practice to provide, via email and at no cost, transcripts of hearings to members of the public who request them. There are some precautionary questions the board asks before pushing the 'send' button for transcripts, but by in large transcripts are readily available.

This availability, coupled with the new release/parole eligibility date information now accessible, has caused some a bit of tumult from time to time, if prisoners don't want their family to read hearing transcripts. Our response to that has always been, if you can't be honest with your family and the ones who care most for you, how can you be honest with the parole board, where your freedom depends on that honesty?

And now it appears the recent changes offering up information on release and hearing dates are causing a new a new opportunity for hubbub, as girlfriends, paramours and sometimes even some wives discover their prisoner paramour has not been entirely precise in relating possible homecoming dates or opportunities. Some of those waiting at home are noting supposed release dates are considerably farther in the future than they were told/led to believe; parole hearing dates are not right around the corner, and sadly, some even finding their loved one has neglected to tell them he/she is serving an LWOP sentence.

In all things, it appears, the truth will eventually come out, so that old canard about honesty being the best policy is probably a watchword in those situations. Honesty is the best policy. Start with those closest to you and it will be easier to maintain that standard with everyone else. Especially now, when it's easier to check.



TIPS FROM HEARINGS

Don't let the little things trip you up. Every parole hearing is a stressful event and you're bound to be nervous. But there are some basic strategies you can use to help calm those nerves and assist you in making your best presentation possible to the parole panel.

None of these baker's dozen of items will assure you of a grant, but they will help you put your best foot forward and remove some small but important details that could trip you up. After going to more hearings than any inmate will ever have to endure, LSA staffers have put their collective heads together and come up with a short list of helpful hints.

1. Read the transcript of your last hearing; note what the commissioners told you to work on and be sure you can show progress in those areas.
2. Be sure to speak when answering questions; the transcriber can't hear a nod of the head.
3. Don't interrupt the pane members; they'll let you know when they've finished their questions and want your response.
4. Don't use 'bad decisions' as the reason for your crime; bad decisions lead to wearing brown socks with a black suit, not committing a crime
5. If AA is a part of your recovery, know the 12 steps. If you can't memorize all of them, know which one is the most important to you and why.
6. Ask your attorney what questions he's likely to ask you—you don't want any surprises there.
7. Don't say you'll deal with anger and stress by never getting mad or letting yourself get stressed. Reality check—it will happen, but it's how you deal with it that matters.
8. If you have victims at hour hearing, keep your eye focused on the panel during their statements. The commissioners understand this and the better ones will tell you to do so.
9. Wait for the commissioner to paraphrase or repeat clarifying questions from the DA and then answer the commissioner. The DAs are not to question you directly and the commissioners sometimes decide some questions are irrelevant and don't require you to answer.
10. If you start to feel stressed and overcome, don't be afraid to ask for a short break. Chances are the panel members could use one, too.
11. Don't try to impress anyone with your vocabulary. Even if you know what that 11-letter word means and when it use it (and chances are pretty good you only think you know) this is the place to keep it humble and simple
12. If you are denied, don't become angry. Look at it as a temporary setback and read your transcript for what areas you need to work on and improve. Showing your anger at a disappointment is proof to the panel that you might be dangerous.
13. Be honest. Don't take the blame for something you did not do and don't try to make yourself look good. Honest works, and it's much easier to deal with in the long run.