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## FINALLY! SB 261 SIGNED!

Alright, everyone exhale now. At last we can report that SB 261 has not only passed the legislature but had cleared the final hurdle and has been signed by the Governor—it will officially become an active law on January 1, 2016.

For many months and weeks the members of our prison community have been holding our collective breath waiting for the final results on the bill, to extend the considerations of Youth Offender Parole Hearings to those under the age of 23 at the time of their crime. The bill passed the legislature in early September, but Brown waited several months before signing. Pundits debated whether Brown would wait until the last moment, as he has done, to sign bills that might engender opposition in the public.

Saturday, October 3, a bare week before the deadline, was a pretty quiet day on the capital news scene, with an airshow at a local airbase capturing most of the attention. And so Saturday afternoon many missed the quiet news release issued by the Governor's office, disarmingly titled "Governor Brown Acts on Legislation to Strengthen Criminal Justice." And there it was, third from the last in a list of 13 bills signed into law, SB 261. Also approved were bills SB 230 and 519, both of which will impact how SB 261 is implemented.

SB 230 will codify the YOPH process, so that what has been policy and procedure will now be law. This includes the change from the old documentation hearings to the new consultation hearings, which now happen 6 years before a lifer's MEPD, giving the prisoner a 5 year window to know specifically what the board expects of him/her and follow the path. Initial hearings are still scheduled for one year prior to MEPD. And a YPED (Youth Parole Eligibility Date) will supersede an MEPD.

SB 519 is more impactful, and will change the way SB 261 is implemented from the manner the forerunner bill, SB 260, was effectuated last year. Cutting through the legal language and code references, SB 519 gives the BPH until Dec. 31, 2021 to bring to initial hearing those Determinate Sentenced Inmates (DSL) who fall under SB 261. The first YOPH gave the board only an 18 month implementation window, which saw lifers or Indeterminate Sentenced Inmates (ISL) brought to YOPH hearings within the first 12 months and DSL prisoners in the last 6 months.

The reason for the delay is found in the results of DSL hearings under SB 260. While the parole grant rate for YOPH hearings was positively impacted by the bill, at least for ISL prisoners, who had long known they would face a parole hearing, DSL inmates, most of whom never anticipated the chance to parole early, saw a dismal grant rate of about 5%. BPH theorized, and most who studied transcripts from DSL hearings concur, this disappointing result was due to DSL inmates being woefully unprepared in terms of programming, disciplinary-free time and basic understanding of the process and requirements for parole. Consultation hearings for DSLs will be held by January 1, 2018.

The provision of who comes under the umbrella of SB 261 is virtually the same as for SB 260, the controlling factors being the age of the inmate at the time the crime occurred (now under 23 years of age) and the crime (no sexual offenses and no convictions for violent crimes incurred while in prison) and time already served.

One last word—if you received a YOPH hearing under the original SB 260 and were denied parole, the implementation of SB 261 will not give you another immediate hearing. SB 261 simply brings more prisoners into the fold of youth parole consideration, it does not give you a 'do-over.'

## LATEST STATS

Newest results for the various specialized parole hearings were recently released by the BPH, demonstrating again that while YOPH, elder and NVSS parole considerations are impactful in parole grants, none are a free ticket home. All figures are for considerations held from the implementation of the hearing type through the end of September, 2015.

The three specialized parole considerations reported were for Youth Offender Parole Hearings (YOPH), Elderly Parole consideration and Non-violent Second Strike (NVSS) reviews. Of the three, the greatest impact appears to be for non-violent second strikers.

The NVSS process, which is less a parole hearing than a review, was implemented in January of 2015. Deputy Parole Commissioners reviewed the record of over 3,000 NVSS-identified inmates referred to the BPH by institutional classification committees and granted parole to 1,086 inmates, about 35%. Not all of the cases referred have been decided, as some are still pending, awaiting input from all stakeholders (including victims and DAs) or the inmate to reach the required 50% of time served before they can be officially considered for parole.

The YOPH process brought 836 prisoners to hearings, with 230, or about 27.5% being granted parole. Of interest is the result of YOPH proceedings for determinate sentenced inmates (DSLs), who reportedly received grants only in about 5% of hearings. Results were similar for those in Elderly Parole hearings. Of the 948 held, parole was granted to 259, a rate of just over 27%. In fact, many more elderly parole hearings were scheduled, but over 400 scheduled hearings were waived, postponed, postponed or rescheduled.


## ‘FUTURE DATES’ HAVE NO FUTURE

Those lifers found suitable but still cooling their heels inside as a result of having been assessed a ‘future release date’ may see that future coming faster than expected. Under agreement with the 3 judge federal panel overseeing implementation of the population reduction policies under settlement of the Plata suit, those prisoners are being reviewed on a continuing basis. If their disciplinary record, any outstanding holds, detainers, warrants, or Thompson terms are all satisfied and their parole plans are in good order the board then “issues a memorandum to institutions releasing the inmate from his or her life term.” Viola~’early release.’ About the only ‘early release’ lifers are likely to see.

However, with the signing of SB 230, a companion bill to SB 261, this process will change. Under SB 230, which goes into effect on January 1, 2016, life inmates who are granted parole will be eligible for release, subject to applicable review periods, upon reaching their minimum eligible parole date. Life inmates will no longer be granted parole with future parole dates. In other words, if granted parole, and after the 150 day review period, suitable lifers will go home. Immediately is the word used, but ‘immediate’ is a relative term.

It may take several days for the institution process the release orders, if prisoners have additional time on other life sentences to be served consecutively, those are virtually wiped away. For those who have been given determinate terms for crimes committed while in prison (so-called Thompson terms), CDCR and BPH will decide, before the bill goes into effect, what has precedence on those, the conviction or the enactment of the new bill.

For those still awaiting a currently calculated ‘future date’ the Board will continue the review process until the effective date of SB 230, which is January 1, 2016.

## SB 261 QUICK FAQ

SB 261 extends Youthful Offender Parole Hearing considerations to those under 23 years of age at the time of their crime. Eligibility also depends on sentence length, time served and nature of crime.

Qualifying lifers will receive a parole hearing by July 1, 2017; qualifying determinate sentenced prisoners will be seen by the BPH by Dec. 31, 2021.

If you had a YOPH hearing under SB 260 and were denied you will not receive an advanced hearing under SB 261.


## DON'T PUT YOUR FACE ON FACEBOOK!

It happened again this month, at the October Executive meeting of the parole commissioners, a lifer found suitable had his date sent for reconsideration and possible rescission because of his (alleged) participation in social media. This isn't the first time the issue has come up, but it appears to be steadily growing, in no small part because CDCR and BPH investigators are now actively looking for inmates with a social media presence.

In the October case, as in some previous instances, the inmate and his supporters maintained that his Facebook (FB) page was created and administered by family and friends, and that he, himself, had no access to the page. This, of course is important, because access to Facebook for most prisoners could only come through use of a cell phone, a huge issue for CDCR/BPH. In this situation supporters of the lifer came to assure the board that they or other third parties were responsible for the FB activity, even bringing telephone bills to prove the inmate's calls to them were from the allowed prison phones, via GTL. All to no avail, as his grant was sent for rescission consideration.

We're not naïve here, we know cell phones are in prisons and are used for a variety of purposes, though not nearly so many nefarious reasons as CDCR would have everyone believe. We neither condone nor condemn cell phone use/possession. But what we can say is that any activity that leads 'the system' to entertain the notion that any given inmate might have access to and use a cell phone is bound to be a source of grief for that inmate.

Yes, we know many prisoners' families maintain FB pages for them, posting news about their loved one and pictures from visiting, so that others interested in him/her can get up to date information. We've even seen appeals for support letters posted on those pages, to reach the maximum number of people. But, we've also seen pages with pictures obviously taken inside the wire, and we don't mean in the visiting room. It's pretty easy to tell the difference and one such picture on a FB page is all CDCR/BPH need to confirm cell phone activity. And 'poof' goes a parole date.

As an illustration of how easy it is to figure this out, LSA has a Facebook page, and there is an ancillary page for paroled lifers, Lifers Success Association, which we encourage you to access AFTER your release. Recently Lifers Success received a request to be included from a prisoner we'll call 'Jonathan Taylor' (there is no prisoner currently in CDCR inmate locator by that name, so we feel using this pseudonym, which is not the name the inmate in question used, won't put anyone in jeopardy). But Mr. Taylor's profile picture, on his FB page, was clearly taken inside a housing unit. Clue #1.

And all the other photos on his page are obviously taken in a dorm setting—yeah, the sheet hung behind you isn't much in the way of camouflage. Clue #2. Friends and family in his conversations never referred to him as Jonathan or Jon, or even Taylor, but they did use other names. Clue #3.

Cut to the chase, it took us about 10 minutes to figure out who this inmate really is, what his CDCR number is, his birthdate and where he's housed. And we don't even have access to court orders allowing us access to such information.

And what are we going to do with this knowledge? Absolutely nothing, except inform Mr. Taylor that we don't think he's eligible for membership in Lifers Success Association (for paroled lifers)—and advise him of the danger he's putting himself in. What he decides to do is up to him and not something we will try to influence or impact. We aren't babysitters.

Be careful, prudent and smart. If your family wants to maintain a Facebook or similar social media page for you, think it through and let them know of the problems this could cause. Even if someone outside prison is the only one maintaining social media presence for you, you may have a hard time convincing either CDCR or the BPH of this, and, in the end, is it worth it?

## NO BLANKET EN BANC POLICY

LSA has been contacted repeatedly in recent weeks about a supposed 'blanket policy' from the Governor's office that would send to en banc review any grant of parole for an inmate convicted of a sex offense. We've even heard there are over 200 such referrals 'backlogged' before the board, and that as each grant is considered, the full commission rescinds the grant.

We can't speak for the Governor's office, but we don't, at this point, see any 'blanket policy.' And speaking with sources at the BPH, that agency also has not, as yet, noticed an organized change in policy. And there is no 'backlog' of en banc cases, certainly not a 200 case backlog of any sort of parole decisions.

Certainly we don't see a mass rush by the whole board to reverse any grants issued to those whose crime involved a sex offense. In fact, a quick review of en banc reviews referred to the Board by the Governor so far this year shows the board as a whole tends to stand behind their fellow commissioner who gave the original grant.

However, at the last (October) BPH Executive Board meeting there were 7 referrals for en banc consideration sent by the Governor's office and while some of those cases appeared to involve sex offenses, either alleged or convicted, it was by no means clear that this was the case in the majority of the considerations. Although those grants referred back for en banc consideration by the Governor are noted as such on the meeting agenda, the reasons the Governor cited for that referral are not listed.

From January through October the Governor referred a total of 23 grants for reconsideration. Of those 23 referrals, 7 grants were sent for rescission consideration by the Board. By contrast, during the same time frame, 4 grants were sent to re-consideration due to new confidential information surfacing since the parole hearing and another 2 grants were to be reconsidered due to the prisoners receiving RVRs since the grant.

So while we can't, at this point, note a trend based on the type of crime being sent for en banc, we will keep a close watch on the situation, with the knowledge that crimes against women, in particular, have been shown to be one of Gov. Brown's 'triggers' for reversals. Tracking this however, may be a bit tricky, as the reasons for the Governor's referral are not articulated on the agenda, often are not expressly spelled out in the discussion at the meeting, and the letters to inmates from the Governor advising them of his decision to refer their parole grant are not made available to the public.

Indeed, the BPH does not receive these communications, but must rely on the various institutions to forward the letters to the BPH. And since reasons for these referrals are not always given at the BPH monthly meetings, unless prisoners being referred to en banc make us aware of that finding and the reasons outlined in the letter from the Governor, it may be difficult for us to track. But our interest is piqued and we'll be alert.

## CHANGES IN THE CRA PROCESS

It's still with us, and apparently will be for some time, that nemesis of prisoners, the Forensic Assessment Division and the result of their efforts, the Comprehensive Risk Assessment (CRA), more colloquially known as the psych eval. Nothing in the parole hearing process seems to be so polarizing, controversial and arguably ill-suited for lifers. And perhaps nothing seems to cause as much angst among inmates, not only because the conclusions set forth in CRAs can so impact a parole decision, but because so many times much of the language, conclusions and intent seems incomprehensible.

Problems of content aside, recently one of the largest issues with CRAs has been their late-in-the-game appearance, many lifers and attorneys not receiving these critical (in more than one sense) documents until a few days before a scheduled hearing. Far too few days to read, absorb, rebut and appeal the report before the hearing. This laggard performance was the result of the number of CRAs needed for hundreds of elderly parole eligible inmates entering the hearing cycle, as well as SB 260. New hires to the FAD will hopefully resolve this problem and the BPH plans to be back on track, by January, providing CRAs to pertinent parties, about 60 days in advance of the hearing.

As part of a changed process, all inmates will now receive a new CRA every 3 years, a decrease in the previous 'shelf life' of an assessment of 5 years. And no Supplemental Risk Assessments, those in-between evaluations given after 3 but before 5 years of a new CRA, will no longer be performed. The BPH has announced, to the surprise of few, that SRAs were not particularly useful.

However, the 'instruments' or tools used by the FAD to make their prognostications on lifers have not changed, and the training for FADers, slated for November, will be presented by the same 'expert' who has performed that service in previous years. Not much new there.

At this point the best a lifer with a 'non-supportive' CRA can do is perhaps get is either a new report, if 3 major errors can be found, or a new report after 3, rather than 5 years. Not much comfort.