



## **YOUTH PAROLE HEARINGS BEGIN**

SB 260, Youth Opportunity Parole Hearings (YOPH), will go into effect Jan. 1, 2014, and attorneys, prisoners, advocates, and families are scrambling to figure out just what these new hearings will mean for specific individuals and lifers as a whole. Also scrambling is the Board of Parole Hearings, charged with identifying those entitled to the new hearings, updating psychological evaluations (also to be done with new considerations) and scheduling hearings for all those entitled to a YOPH hearing, all in an 18 month window, ending on July 1, 2015.

Life Support Alliance was in attendance at an early December conference held at the BPH headquarters, where the process of the new hearings was explained. While as many as 3,000 prisoners are expected to eventually come under the umbrella of SB 260, some 21 individuals already in the BPH hearing schedule for January have been identified. Their hearings will be held on schedule, unless the prisoner opts to request a postponement, which will most likely be granted by the board.

SB 260 will affect all those sentenced to a life term and those who were given a lengthy determinate sentence (usually considered to be longer than 15 years) for crimes committed before the age of 18. If the individuals were arrested/prosecuted/sentenced after turning 18 they may still qualify, as the determining factor is the age at the time the crime was committed.

LSA has been able to construct the following brief summary of the new law; the details and specifics of the implementation are too long to include in this newsletter. Those interested should write (or have their families email us) requesting a copy of our free handout on SB 260. We also hope to have observers at several of the first YOPH hearings and will continue to attend YOPH hearings as the process evolves and is refined.

- **WHO:** Any prisoner convicted of a crime committed before the age of 18 and given either a long determinate sentence or a life with the possibility of parole sentence is eligible for a Youth Offender Hearing. This applies to both determinate sentenced prisoners and lifers. If the individual was convicted/sentenced after the age of 18 he/she may still be covered under the YOPH hearings, as the determining factor is when the crime was committed.

- **WHO ISN'T:** Those whose life sentence was the result of a third strike, a first strike rape (under Jessica's Law) and those sentenced to life without parole. LWOP prisoners may be able to pursue relief from the LWOP sentence under SB 9, passed last year, which could modify their sentence to a life with parole term. They would then be eligible to have their parole hearings considered under the umbrella of YOPH. Also ineligible are those who committed a new crime after the age of 18 that resulted in a long or life sentence (likely to have been committed while incarcerated).

- **HOW LONG:** Those with determinative sentences longer than 15 years are eligible for a YOPH in the 15th year of custody; for those serving a term of less than 25 to life (example: 15 to life) eligibility will begin in the 20th year of incarceration; and those sentenced to a term of 25 years or more to life will be eligible in the 25th year in prison. For those who have had an LWOP sentence modified to life with parole the same time lines apply. All incarceration time applies toward the minimum threshold, whether in state prison, county jail or CYA/DJJ facilities.

- **WHEN:** YOPH hearings will begin in January, 2014. Any lifer already slated for a parole hearing in 2014 or the first 6 months of 2015 and who qualifies under the terms of SB 260 will receive his scheduled hearing under the umbrella of SB 260. For those who fall under SB 260 and who do not have a hearing scheduled in those 18 months, including determinative sentenced prisoners, who heretofore were not seen by the parole board, hearings will be scheduled within that 18 month time frame. Those lifers who fall under SB 260 but were not scheduled in the 18 months between January 1, 2014 and July 1, 2015, will be placed into the parole hearing schedule as they are identified. Determinative sentenced prisoners will be the last group to be scheduled for hearings in the 18 month roll out period.

- **WHERE:** YOPH hearings will be conducted at every prison where affected individuals are held.

- **HOW:** The hearings will be held in much the same manner as current parole hearings, with the exception that psych evals and deliberations by the parole commissioners must give "great weight" to what are termed the 'hallmarks of youth;' diminished culpability, lack of clear understanding of impact of their actions, lack of impulse control and susceptibility to peer pressure, among other factors. The YOPH sessions will be conducted by the present Parole Board commissioners and Deputy Commissioners, who have received additional training on how to consider the "hallmarks of youth" variables in their deliberations.

- **WHAT IS DIFFERENT ABOUT YOPH?:** Parole board commissioners and Forensic Assessment psychologists will be instructed to consider the youthful nature and development of those convicted of crimes before the age of 18 in a different light than those who were adults at the time of the crime. The Board should consider the youthful factors as mitigating circumstances and thus supportive of a finding of suitability. This will hopefully increase their chances of being paroled. The new YOPH will also allow family, friends, school personnel, faith leaders, and representatives from community-based organizations who knew the person prior to the crime, or who can attest to growth and maturity since the time of the crime to submit letters in support of parole. While this was always allowed in regular parole hearings, the fact that the law now specifically mentions such letters will hopefully cause commissioners to view such letters with greater attention.

• **WHAT I NEED TO DO:** Get ready. If you are eligible for parole consideration under the YOPH guidelines, even if you are a determinant sentenced prisoner, the BPH will identify your case and schedule a hearing for you as well as provide an attorney (if you cannot or choose not to hire a private attorney) and notify you of your hearing date. Understand, that determinate sentenced prisoners will be in the later group of inmates scheduled for hearings. At present there is no mechanism available to determinate sentenced individuals to request their hearing be held sooner, as there is for lifers via a Form 1045-A, Petition to Advance. Lifers who fall under SB 260 and were previously denied parole may ask to have their next hearing date advanced by filing a Form 1045-A, Petition to Advance, as the passage of this new law constitutes the “new information” required to advance a hearing. There will be no automatic advancement of hearings by the BPH for SB 260 purposes.

• **THEN WHAT?:** If found suitable at a YOPH hearing prisoners will be paroled, either in accordance with statute for their offense (in the case of lifers) or released right away, in the case of determinant sentenced inmates. Lifers must still undergo the Governor’s review, but the clear intent is that the Governor also will give ‘great weight’ to the young age at the time of the crime. If found unsuitable the requirements of Marsy’s Law still remain in play, but once again, the impact of the hallmarks of youth are supposed to be considered by the commissioners in deciding on denial length. For those with determinate sentences, they will receive another hearing either at a date set by the board (length of denial) or be released at the end of their sentence, whichever comes first. Prisoners may also appeal denials via writs. For those who are denied parole at their first YOPH hearing, every hearing after January, 2014 will be held under the considerations of YOPH until they are either found suitable or reach the end of their sentence term, for determinant sentenced prisoners.

• **WILL ATTORNEYS BE NEEDED FOR YOPH HEARINGS?:** Yes, the same rules apply as for regular parole hearings; prisoners may hire a private attorney or have a state-appointed attorney assigned to them. Many lifer attorneys are now gearing up for the new YOPH procedures.



• **WHAT WILL IT TAKE TO BE FOUND SUITABLE?:** From all appearances the qualities the BPH commissioners will be looking for in deciding suitability for parole remain largely the same; first and foremost, a determination that the prisoner is no longer a danger to society. Other factors, such as insight, remorse, parole plans (for lifers), and behavior in prison remain the same, but with the caveat of the hallmarks of youth consideration.

• **ABOUT MULTIPLE TERMS/CONVICTIONS:** For those prisoners serving concurrent/consecutive terms the determining factor will be the longest sentence, whether a sentence for the crime or an enhancement. Those found suitable under YOPH hearings do not have to serve a minimum amount of sentence for any consecutive sentences.

- **WHAT IS IMMEDIATE RELEASE?:** Although the new law states some individuals found suitable for parole under SB 260 are subject to 'immediate release,' immediate is a relative term. For any suitability finding the normal review periods, up to 120 days for the BPH legal review and then another 30 days for the governor (in cases of murder convictions) still apply. So someone found suitable under YOPH guidelines will not be released the following day.
- **CAN SB 9 AND SB 260 BE COMBINED?:** Yes, Those sentenced to LWOP as juveniles may petition to have their LWOP sentenced converted to a life with parole term and then will fall under the time requirements for SB 260.

One more important point: letters from family and friends who knew the prisoner going for parole consideration under SB 260 may want to tailor their support letters, to reflect the situation the person was facing at the time of the crime. Was the household in turmoil, what sort of conditions/situations was this young person facing that might have influenced their immature decisions and actions? These letters should be sent as soon as feasible, as it is possible such letters and information may be used by the FAD psychs in updating their evaluations based on the hallmarks of youth.

As new or additional information become available and as the hearings themselves begin to be held, LSA will do our best to keep our readers and supporters informed. Those wishing to receive the fact sheet on SB 260, which contains a more detailed explanation of the process and law, may write to us at P.O. Box 277, Rancho Cordova, Ca. 95741 or have friends or family email us at [lifesupportalliance@gmail.com](mailto:lifesupportalliance@gmail.com) for an electronic version. A Spanish language version will also soon be available.



## LSA IN THE NEW YEAR

Nearly four years ago Gail and I sat in a Sacramento restaurant and decided something had to be done about the plight of lifers. We were both years-long veterans of prison reform and rights groups and had found most to be long on talk, short on action, and, most importantly, unaware of the special situation of lifers. And so Life Support Alliance was created.

With the active encouragement and involvement of Gail's husband, Barry, and my (eventual) husband, Dave, we made the commitment to take on the lifer cause. At that point all the buzz about possible "early release" of prisoners was beginning, amid much hysteria and confusion. We began asking—to heck with early releases (which, by the way, still have not occurred) what about late, overdue releases, parole of lifers years past their MEPS and fully rehabilitated, no threat to public safety?

Our first forays into the legislative offices led us to some open doors and some cautious interest by select legislators. Our first appearances at the public meetings of the Board of Parole Hearings engendered a different response—who the heck are these two pushy middle-aged broads, with no money and no backing, and why the heck won't they leave us alone and get off our case?

We were delighted (and almost overwhelmed) when Assemblyman Tom Ammiano's Public Safety Committee decided to make lifers the subject of an informational hearing just a few months after we approached them. And we looked at each other in amazement when a state Senator, in a public hearing, repeated a phrase we were using in our literature—'California can no longer afford vengeance as public policy.' But when the then-Executive Director of the BPH asked to meet with us, and none-too-subtly, tried to find out just how big we were (at that point there were less than 6 of us in the free world) we knew we had hit a nerve.

Since that time many things have coalesced; a changing political climate, a governor with a different attitude and agenda (though we still have some issues with him), more court decisions against the tawdry practices of the CDCR, a subtle shift in public opinion as well as our own increasing knowledge and ability. Perhaps most importantly, the membership of the Parole Board has undergone a 66% personnel change in the last four years.

From an almost exclusively white, retired law enforcement background, the parole commissioners now include five women, four attorneys and several not-ready-for AARP members, as well as people of color. The current Executive Director and Chief Legal Counsel have stated their intention to follow the law and are making good faith efforts to provide fair, transparent hearings and meetings. The above two developments are in themselves a seismic change for lifers.

About a year and a half ago LSA assumed responsibility for publishing California Lifer Newsletter, the seminal lifer self-help publication, started several years ago by Donald "Doc" Miller. In addition to this bi-monthly newsletter containing legal analysis and news, we continue to produce this free monthly publication, Lifer-Line, as well as answer several hundred letters, write position papers, letters of support/opposition for legislation, newspaper opinion pieces, and several free handouts for prisoners on various topics, most recently SB 260. We are also attending each monthly meeting of the BPH, all legislative hearings relevant to our cause, meeting with legislative staff and CDCR Staff, and attending parole hearings. Our goal is to attend parole hearings at each prison in the state, as we have found each institution has its own 'flavor' at hearings.

And we will again be testifying at various legislative hearings, including confirmation hearings for parole commissioners and CDCR personnel. Two significant new doors that have opened for us are CDCR's inclusion of LSA in planning programs for 'long-term offenders' (lifers) and the symbiotic working relationship we have developed with the Division of Adult Parole Operations. In both these ventures we hope we can provide significant input into programs and policies affecting lifers.

We answer about 200 letters a month from prisoners, and more phone calls, emails and personal contacts from family members than we can count. Our series of educational seminars for lifer families will hold at least 4 seminars this year, up and down the state.

So, four years later, those two pushy middle-aged broads are still bugging the legislature and CDCR, now backed by two non-profit organizations (LSA, a 501 (c ) (4), which allows us to lobby legislators, and Victims of Injustice/Life Support Alliance Education Fund, a 501 (c ) (3) which is tax deductible and produces CLN and our seminars), as well as a board of directors, and advisory board (3 members of which are ex-lifers) and a phalanx of members who not only depend on LSA for news

and help, but help us as well through our mail tree to provide Lifer-Line to indigent prisoners, and from many, much appreciated donations of funds to keep us going.

Four years ago only a handful of lifers paroled each year; this year, well over 400 will come home to join the nearly 1,400 lifers already released on parole. But so many remain inside, including Gail's husband, Barry; though happily, my own personal lifer, Dave, paroled earlier this year. And so our work goes on, with new opportunities and new challenges every month. We hope, in the next few weeks, to open an office in Sacramento, where our local volunteers can meet to help us with correspondence, translation of our handouts into Spanish, learn how to lobby legislators and generally grow our organization.

Changing the culture of CDCR and our lock 'em up society is a huge undertaking, something akin to turning the Queen Mary around in a duck pond—but it is happening. To borrow a phrase from self-help groups, "We're not where we need to be, but thank God we aren't where we were."

Stay with us. Keep providing us with questions, information, input, and, when you can, support. We're in this for the long haul, because we know it will be both long and an up-hill haul. But we can, we are, making a difference.

Our wish for everyone in the New Year is freedom, peace and hope.

## THE JUDGES SPEAK

The 3 judge panel overseeing the prison population reduction has once again, and perhaps for the last time, extended the deadline facing the state to meet that population cap. On Dec. 11 the judges, in a brief and succinct one paragraph notice, gave the Brown administration until April 18 to bring the population of California inmates to 137.5% of design capacity.

The judges further indicated that, "absent extraordinary circumstances," they would countenance no further delays or allow any further extensions. They also ordered the state to continue negotiations with prisoner advocates and representatives until Jan. 10, 2014, on ways to accomplish the population reduction, short of releasing prisoners prior to the completion of their sentence. Despite realignment, delays and shipping thousands of inmates out of state there are still about 4,400 inmates over the number the judges say they will allow.

Although as part of their initial time extension the judges ordered the state not to send additional prisoners to out state prisons, there have been numerous reports of new 'deportees' to private prisons in Arizona and Oklahoma. LSA queried several senate and CDC sources on this and were told that so long as the total of prisoners out of state does not exceed that when the decree was issued the state remains in compliance. In other words, as determinant sentenced prisoners housed out of state complete their terms and are released bed space is opened up. The state has begun shipping out new prisoners to fill those beds, thus using a cunning mathematical trick to keep the actual number of out-state inmates at the same level as when the judges issues their order, yet still subjecting new inmates and families to out of state housing.



2014 is the Year of the Horse in the Chinese calendar, marked by an increase in business and waste.

# A REALIGNMENT CAROL

*Sung to the tune of "Up on the Rooftop"*



Out at the front gate guards all pause,  
Up jump three judges, waving laws,  
"Too many prisoners, they've got to go,  
Time and again we've told you so."

Why not just let old lifers go,  
That saves the state a lot of dough,  
Just tell the board to send them home,  
We know they'll make it on their own.

Ho, ho, ho! Who wouldn't go!  
Ho, ho, ho! Who wouldn't go!  
Open the front gates, click, click click  
Out with the inmates, quick, quick, quick!

Ho, ho, ho! Who wouldn't go!  
Ho, ho, ho! Who wouldn't go!  
Open the front gates, click, click, click,  
Out with the inmates, quick, quick, quick!

First came the ruling and failed appeal,  
Now dear old Jerry wants to deal,  
Sending more prisoners out of state,  
That's not the way to end debate.

So here's a message to our dear Gov,  
Get off your high horse and show some love,  
Release more lifers and you will see,  
How great an asset they can be.

Ho, ho, ho! Who wouldn't go!  
Ho, ho, ho! Who wouldn't go!  
Open the front gates, click, click, click,  
Out with the inmates, quick, quick, quick!

Ho, ho, ho! Who wouldn't go!  
Ho, ho, ho! Who wouldn't go!  
Open the front gates, click, click, click,  
Out with the inmates, quick, quick, quick!



## **CDCR CREATING NEW LIFER PROGRAMS-WORK IN PROGRESS**

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 or 5 year denial and, along with a forthcoming companion program for recently released lifers, represents a new effort

by CDCR's Division of Rehabilitative Programming (DRP) 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 overseeing the program content and implementation.

While the whole project sounds like a positive development, and we at LSA/CLN believe it can become a useful asset for lifers, there are concerns about the way in which the new pilot program is being introduced to lifers. Initially configured so that those employed lifers would be required to quit their prison jobs to participate, sources in the DRP now report modifications are underway that would allow participating lifers to either continue working or receive a leave from their jobs to participate in the program modules and once completed return to their former employment positions. But, again, no details are available.

Another concern and potential problem is the manner in which those who will participate in the program will be chosen and how the various aspects of the rehabilitation will be offered to them. One of the major problems in this area, from the prospect of advocates, is the use of a twice-adapted psychological 'test,' our old friend the COMPAS, or at least a somewhat adulterated version of it, created just for DRP. The test, administered by either staff from Sacramento CDCR headquarters or by local correctional counselors, comes in different versions for men and women and purports to identify the "criminogenic needs" of inmates, the better to address areas where they need assistance.

Problem one: to look for 'criminogenic needs' presupposes the inmates seeking parole are still, and will continue to be, criminals. It fails to recognize any rehabilitation already accomplished, or even the possibility of any existing rehabilitation.

Problem two: Many of the questions on the DRP version of COMPAS are evocative only of past issues, including alcohol and drug addiction, past associations and problems.

Problem three: Many lifers already interviewed for participation in the pilot (at Solano and CMC for men, CCWF for women) report they are being told that declining to participate "won't look good to the board," that they must participate in the program and/or that any previous self- help accomplishments will not count before the board.

*We posed that question to sources at DRP, who responded that this was a misrepresentation; non-participation will have no effect on an inmate's chances for parole and any and all self-help programming done outside of the new program will indeed be considered by the BPH. Those facts were confirmed by the BPH as well.*

Problem four: Which modules of rehabilitative programming that will be available to lifers will be decided by their 'score' on the COMPAS test, flawed though it may be. The test is purported to identify the areas, such as domestic violence, anger management, substance abuse, that the inmate should address and provide relevant programming.

However, it is unclear how discerning the test will be in identifying which needs are still unmet in potential parolees and which are simply old news. Nor is it clear if participants in the program can request inclusion in other modules, not identified as part of their 'criminogenic needs.'

The pilot project will have a 2 year run, with interviews initially being conducted and slots in the program being offered to those prisoners who received 3 and 5 year denials. At the end of the pilot the assessment of its success will be whether or not a greater percentage of participants were found



suitable (no longer a danger to society) than the control population of lifers. The reasoning behind initially looking to 3 and 5 year denials for participants is that these individuals represent those prisoners closest to being found suitable and thus quickest out the door, if their rehabilitation can be completed, in the eyes of the board. LSA has suggested to DRP that those prisoners who have been granted parole and had that date reversed by the Governor, should also be considered.

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 for comment and reports of their experiences with the process. If you have been interviewed for inclusion in the new lifer project, please send us your impressions, reactions and conclusions. Tell us who interviewed you, who administered the COMPAS test; were you told the results of COMPAS and/or given a risk assessment based on that test?

Any information about the actual interviews, details and facts, will be immensely useful for us, as we push to make this Long Term Offenders program truly relevant and useful to lifers, not simply a window-dressing for the department. The concept of tailoring special programming for lifers is a good one—but the devil is in the details of implementation, and we intend to be that devil.

## **WHEN INNOCENCE IS REAL**

For 34 years Kash Register, identified by two eye witnesses in 1979 as the shooter in a fatal robbery gone bad, maintained his innocence. Though the two witnesses were of sketchy reliability even then, the depth of their lack of credibility was withheld from Register's original defense team. Other legal shortcomings by the arresting jurisdiction (LA County) included improperly seized and processed evidence, information on the alleged witnesses withheld from the defense counsel, perjury on the part of several witnesses during the trial and the implausibility of the original witnesses' statements.

All this came to light in late 2011 when ex-lifer-now paralegal Keith Chandler received new information. Chandler and fellow ex-lifer Gary Eccher, aided by attorney Steve Sanders filed a writ for Kash, which resulted in appointment of counsel Herb Barish, who in turn enlisted the Loyola University Law School Project for the Innocent. Two years later a 2 week evidentiary hearing was held at which Judge Katherine Mader found 6 legal violations by LA county law enforcement and DAs. She exonerated Register of murder and he was released the next day.

Lifer attorney Marc Norton, who represented Kash at his latest (2011) parole hearing, where he was once again denied because he continued to declare his innocence, recounted Kash's story to the board and took to task LA DA Alexis de la Garza for her performance at that hearing. Norton made the point to the board that a claim of innocence is NOT a reason to deny parole. Kudos to Norton for his eloquent and impassioned presentation of Kash's long struggle.

Sometimes, innocence is real; as real today as it was 34 years ago.