



Public Safety and Fiscal Responsibility

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CODIFYING AND CLARIFYING PTA AND AR REQUIREMENTS

For the past two months BPH administration has been working to rectify an oversight in the board's Administrative Review and Petition to Advance process that was exploited by the district attorneys' organizations and victims' groups in an effort to derail these processes that allow lifers denied parole to come back for hearings earlier than the denial length stated at their hearings. While the DAs bashed, berated and belittled those in prison reform who, a few years ago following the creation of the FAD, used a similar oversight to challenge that process, they showed no hesitation, hindsight or humility in self-righteously claiming the board to be promulgating an underground regulation regarding AR and PTAs.

A brief and perfunctory recap of the situation is this: in early August the Orange County Superior Court ruled in *Rackauckas v State of California* that the board, in not officially and formally giving Deputy Commissioners the duty and authority to make decisions to advance parole hearings under the PTA and AR process, had thus created an underground regulation. The DAs, in bringing this issue to the court, decided to pad their legal argument by focusing on a particular inmate's case, enfolding the victims' family in that case, making the claim that to advance hearings is to inflict 'harm' on those victims.

To support that argument, they prevailed on not only the victims' in the initial case under scrutiny in the suit, but also to victims' groups far and wide. While the OC Superior Court in its ruling did not outline what 'harm' the victims would suffer, victims' groups representatives, appeared at the August BPH monthly meeting, to sanctimoniously declare simply knowing about an advanced hearing was harmful to them. The various organizations and individuals also took umbrage at a statement contained in the board's reply to that charge that any harm to victims via advanced hearings was 'self-inflicted' harm, as there is no requirement that any victim appear in person at a parole hearing in

order to have their concerns heard and considered, a position Harriet Solarno of Crime Victims United found 'deeply offensive.'

As a solution to the issue of legality of the hearing advancement process BPH Executive Director Jennifer Shaffer "recommended that the Board vote to assign to deputy commissioners the duty of making decisions concerning the advancement of parole hearing dates." And to protect those decisions already handed down in advanced decisions, to ratify all previous advancement decisions made by a deputy commissioner.

When the floor opened for public comment on the proposal a veritable parade of DA representatives and agents of various victims' groups spoke in opposition; six Deputy DAs alone opposed the idea of the board assigning the DCs the ability to make advancement decisions, along with Solarno and affected comments read into the record from those not present. Amazingly, the only support for the BPH, for the idea of DCs making those decisions, indeed, making those advancement decisions at all, came from a prisoner advocacy group; that's right, us. Life Support Alliance.



The Board did, in fact, approve assigning deputy commissioners the duty to make decisions to advance hearing dates under and ratified all previous decisions made by a deputy commissioner to advance hearing dates. Shaffer then reported that the Board would soon draft regulations outlining AR and PTA procedures.

And, true to her word, at the September business meeting in Sacramento, the BPH was presented, considered and passed regulations outlining both the process and requirements for AR and PTA consideration and approval. While the process and requirements are essentially the same as those under which these processes have been performed for the last several years, the approved regs, now submitted to the Office of Administrative Law for review and approval, do provide more clarity and specificity regarding what DCs should be looking for to approve an advancement in a hearing.

So, the process for Administrative Review and Petition to Advance hearing dates continues, now in the process of being fully in line with legal administrative process and few changes, but more clarity. The regs do clearly lay out criteria for denial of a hearing advancement, as well as timelines for replies and an appeal process when a PTA is denied. While too long to reproduce in Lifer-Line, any prisoner wishing to obtain a copy of the regs can write us, include a stamp or SASE and we'll provide a copy of the complete 8-page document. Send your request to PO Box 277, Rancho Cordova, Ca., 95741, specify "PTA REGS" on the envelope.

In an interesting sidebar to the process, following LSA's comments at the August BPH meeting in support of the BPH's process and policy, several of the DAs in attendance were apparently piqued by our comments (which, we admit, included a reference to DAs continually seeking vengeance, with little regard to rehabilitation or change). They appeared quite surprised, and asked us if we really thought DAs were vindictive and vengeful?

Well, yeah.



FINAL (almost) BILL RECAP OF 2017-18 SESSION

With the 2017-18 California legislative session now wrapped up, insofar as passage of bills is concerned, herewith is a recap of those bills most applicable to lifers and long-term inmates' prospects for parole, resentencing and day to day prison life. In reporting on the following bills, we note two of the most important to lifers, SB 1391 and SB 1437 have, as of press time (September 29), have not been signed by Governor Brown. Which is not to say they will not be signed by September 30, as this Governor signs bills daily, even on weekends. Even if not signed, unless Brown vetoes the bills, they will still go into effect.

Perhaps a brief civic lesson is in order first.

Under California law, any bill passed by the legislature by August 31 of any legislative year, goes to the Governor for action. By September 30 the sitting Governor must 1) sign the bill, 2) veto the bill or 3) take no action. If the Governor chooses to veto, or reject the bill, if the legislature can muster 2/3 of their membership to vote yes, that vote can over-ride the veto and the bill will become law.

Once the Governor signs legislation, it will become effective on January 1, 2019. Similarly, if he chooses to simply ignore the bill, and neither signs nor vetoes the legislation, it will become law on January 1.

So, while SB 1391 and 1437 have both passed the legislature and are, as of September 29, languishing on the Governor's desk, the chances of their implementation on January 1 remains likely. Staff in the offices of both bills' authors say they have no reason to believe Brown will veto either bill.

For those bills that have not reached the potential signature stage, that is, they are still languishing in various committees in one or the other house of the legislature, that, too is reported. Such bills will not likely be considered prior to the legislature reconvening on December 3.

The recap follows:

AB 665—would authorize any person who was sentenced for a felony conviction prior to January 1, 2015, and who is, or was, a member of the United States military and who may be suffering from suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of his or her military service, to petition for a recall of sentence under specified conditions. The bill would require the court to determine whether the person satisfies

the specified criteria and authorizes the court, in its discretion, to resentence the person following a resentencing hearing. This bill is currently stalled in the suspense file of the Assembly Appropriations Committee.

AB 1940—This bill would have created an earned discharge program to allow those on parole to earn credits toward their parole discharge date through accomplishment of various educational, vocational and public service activities. Lifers, subject to possible lifetime parole, could earn credits toward their discharge review date via the same activities. Parolees would have been able to earn as much as 12 months credit toward their discharge or discharge review date in a 12-month period, as well as an increase in the distance they are allowed to travel without written permission from their parole agent. This bill failed, unable to make it out of the Assembly Public Safety Committee on a tie vote.

AB 2550—prevents male officers from performing pat down searches of female inmates or entering areas where female inmates are likely to be undressed, unless there is imminent danger of harm to the inmate or others, or unless a female officer is not available. This bill passed and was signed into law by the Governor on August 20. It will be effective January 1.

SB 1242—This would add language requiring additional conditions to granting parole be codified, including demonstration of remorse and insight, reasonable time free of disciplinary, realistic post release plans, all of which are already part of parole consideration, though not in legal terms. In some way this bill impinges on the discretion of the BPH yet gives no specific standards/guidelines. More importantly, and the real purpose of the bill, would be to exclude from YOPH consideration those prisoners whose victim was a peace officer or former peace officer.

This bill has been referred to the Assembly Committee on Public Safety in June, where it remains stalled. Action possible when the legislature reconvenes.

SB 1391—This bill amends Prop. 57, as allowed in the language and consistent with and in furtherance of the intent that proposition, regarding the authority of the District Attorney relative to juvenile offenders. The DA is currently allowed to transfer a minor from juvenile court to an adult court cases where the minor is alleged to have committed a felony when he or she was 16 years of age or older or in a case in which a specific offense is alleged to have been committed by a minor when he or she was 14 or 15 years of age. This bill repealed the authority of a district attorney to make a motion to transfer a minor from juvenile court to adult court for those minors alleged to have committed specified serious offenses when he or she was 14 or 15 years of age.

This bill has been passed the legislature and was sent to the Governor on September 5. It awaits his signature as of press time.

SB 1437—changed the felony murder rule, through legal language that would removes malice from consideration in a crime unless the individual charged personally committed the homicidal act, acted with premeditated intent to aid and abet that act where in death occurred or the person was a major participant in the underlying felony and acted in reckless indifference to human life. It would also be retrospective, providing a method of resentencing those convicted of first or second-degree murder under the felony murder rule or the natural and probable consequences doctrine.

This bill passed and was sent to the Governor on September 7. It awaits his signature, as of press time.

PLEASE HELP YOURSELF

While we at LSA are happy to help inmates with information and assistance, there comes a time when we have to steer some inquiries in another direction. We can't take on all requests, especially those that ask us to become an individual's personal research firm, letter writer, analyst or life coach. We're here to help you, not adopt you.

Rather than put ourselves in the middle of every inquiry, we'd rather provide you with the contacts on how to get some of the information you need, directly from the source, and remove ourselves as the middle man (or woman). Here you'll find information and addresses for various agencies and organizations who can provide information we're often asked for.

While we'll continue to provide those esoteric things other groups don't (like the Kusaj report, Dr. Hall's notes on adolescent brain, and, more recently, the new regs on PTA and AR policy), providing you with direct information will make our, and your, lives much easier.

Legislative Bill Room

(free copy of any legislative bill, provide bill #)
State Capitol, Room B 32
Sacramento, Ca. 95814

California Innocence Project

(claims of factual innocence)
225 Cedar
San Diego, Ca. 92101

California Correctional Health Care Services

(for prison health care related issues, services or illnesses)
PO Box 588500
Elk Grove, Ca. 95978

Office of the Ombudsman

(note Ombudsman's office on health envelope)
1515 S Street
Sacramento, Ca. 95811

Office of Victims and Survivors Rights/Services

(for restitution inquires, not apology letters; note on envelope restitution inquiry)
PO Box 942883
Sacramento, Ca. 94283

Board of Parole Hearings

(note on envelope if a PTA or DR request or appeal of CRA)
PO Box 4036
Sacramento, Ca. 95811

California State Bar Association

(attorney complaints)
845 South Figueroa St.
Los Angeles, Ca. 90017

Prison Law Office

(information or class actions)
General Delivery
San Quentin, Ca. 94964

Please be aware, legal research or representation for your individual or particular circumstances is seldom available pro bono. However, for any questions or particular problems contact the relevant agency for information or possible referral.

ATTORNEY SURVEY

Life Support Alliance is seeking information on the performance and reliability of state appointed attorneys in the lifer parole hearing process. Please fill out the form below in as much detail as possible, use extra sheets if needed. Please include your name, CDC number and date of hearing, as this will allow us to request and review actual transcripts; your name will be kept confidential if you desire. Details and facts are vital; simple yes or no answers are not particularly helpful. Mail to PO Box 277, Rancho Cordova, CA. 95741. We appreciate your help in addressing these issues.

NAME* _____ CDC #* _____ HEARING DATE* _____

COMMISSIONER _____ GRANTED/DENIED(YRS) _____

INITIAL/SUBSEQUENT (how many) _____ EVER FOUND SUITABLE/WHEN _____

ATTORNEY NAME:private/state* _____ PRISON
_____ PET

MEET BEFORE HRG? (# of times, length) _____ HOW FAR IN ADVANCE OF HRG? _____

TIME SPENT CONSULTING _____ OBJECT TO PSYCH EVAL? _____

LANGUAGE PROBLEMS? _____ WAS ATTORNEY PREPARED? _____

DID S/HE BRING ANY DOCS NEEDED? _____ SUGGEST STIP/WAIVE? _____

COMMENTS:

(Please provide details regarding attorney's performance, or lack of, including interaction with parole panel and/or any DAs and VNOK present. Was attorney attentive during pre-hearing meeting and hearing, did s/he provide support/advice to you? Was s/he knowledgeable re: your case and/or parole process? Had s/he read your C-file before meeting with you?)

*required