



Public Safety and Fiscal Responsibility

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2017 TRENDS AND REPORT FROM BPH DIRECTOR

October is one of two yearly training sessions for BPH commissioners, and as part of this month's reports, BPH Executive Director Jennifer Shaffer provided the board and the public in attendance with an overview of BPH events and activities in 2016 and apparent trends in 2017. Amidst reminiscences about changes since her tenure as BPH head since 2011, Shaffer hastened to reassure commissioners and others that this reflection was not a swan song, she has no plans to leave her post in the near future. Good news for lifers.

The grant rate for 2017 looks on track to be about 17% (based on grants per scheduled hearings), a bit lower than in recent past years. As to why this might be the case, many speculations have considered that over the last few years, as the impact of the Lawrence and other decisions have come into play, coupled with a new outlook at the board and increased training, many long-serving lifers repeatedly denied for their crime, a class somewhat akin to 'low hanging fruit,' have now found parole relief.

A note here: there are various ways of calculating grant rates. BPH has adopted the method of using the number of grants given against the number of hearings scheduled. However, since roughly half the parole hearings scheduled are not held, due to waivers, postponements, stipulations and the like; others maintain it's a bit inaccurate to calculate grant rate using raw number of grants and hearings scheduled, because if a scheduled hearing is not held, there can be no grant. Calculations using the number of grants relative to the number of hearings actual held report a grant rate of around 30%.

Shaffer reported that in 2016 the board performed 1188 Administrative Reviews in 2016, about 82% of which were approved, and 2017 looks to be about the same, with estimates of about 81% AR approved for advanced hearing. The parole grant rate of this group of inmates is the highest of any cohort, at about 27%. Petitions to Advance numbers were down slightly, but in 2016 about 70% of

those requests were granted. Approval rates for PTAs in 2017 look to be somewhat lower, at about 60%; however, the parole approval rate for PTA hearings is static at about 24%.

For the entire year of 2016 just over 6,000 inmates were referred by CDCR case records for Non-Violent Second Striker parole consideration by the BPH; with the passage of Prop. 57, the board received nearly 4,000 referrals over a 3-month period. Approval rate for the new referrals is somewhat lower than for the old NVSS review, most likely due in part to the small sample yet available for data collection. But Shaffer also noted those now being reviewed by the BPH on average have a higher classification and placement score, have not served as long a time nor participated in as much programming.

Passage of SB 394, automatically bringing LWOP sentenced for crimes before they were 18 years of age to parole after 25 years of age, initially will have little effect numerically on the board's hearing schedule, as relatively few have yet served the required 25 years. AB 1308, Shaffer noted, bringing the YOPH parole consideration age to 26, will have a more significant impact on the hearing schedule.

The confusion and dismay over passage of AB 1448, which codified elderly parole, but eliminated 3 strikers from consideration, was soothed a bit by Shaffer, who explained those changes in the elderly parole process via AB 1448 would be put on hold so long as the agreement between the 3 Judge Panel and the BPH remains in force. Until such time as the federal agreement is ended, an event not in the foreseeable future, Shaffer indicated third strikers will be considered for elderly parole as they have been since the implementation of the process.

GUN ENHANCEMENT BILL IS NOT RETROACTIVE

In a classic good news/bad news scenario, passage of SB 620, which would allow judges to strike gun enhancement sentences, will not be retroactive and therefore will not automatically apply to the sentence of those currently in prison or jail.

The bill allows courts to waive firearm enhancement sentences 'at the time of sentencing or resentencing,' but there is no stated provision for retroactive application to apply to current prisoners. Conversations with the office of the bill's author confirmed, SB 620 was not meant to be retroactive and will not apply to current inmates.

CDCR cannot automatically change a judicially imposed sentence simply because the bill passed. If a current prisoner is, for some reason, back in court for resentencing in a case where he/she is currently serving time on a gun enhancement, it is theoretically possible the judge could apply the new law (after it goes into effect on January 1, 2018), but there is no requirement to do so. Application of the law is at the discretion of the court.

And, passage of this bill does not, in itself, constitute sufficient reason for courts to approve a prisoner's request for resentencing. We've asked some attorneys to study the issue and provide us with their thoughts about how, if at all, current prisoners might be able to initiate court action that would enable them to be considered under this law, and we're awaiting their thoughts. If, and until, that work-around is discovered, those serving sentences with long gun enhancements must look elsewhere for relief.



UPDATE ON KUSAJ REPORT

Following a report to the BPH last December, the result of an agreement to settle the Johnson v Shaffer litigation, Forensic Assessment Division Chief Dr. Cliff Kusaj updated the FAD situation to the commissioners during their October training. The report offered no real new insights into the FAD or the success/applicability of CRAs, but did present a few new and interesting details.

According to Kusaj, of the CRAs performed in 2016, 49% of inmates received a moderate risk rating, 28% were assessed as a low risk and 23% were considered high risk. Kusaj also reaffirmed his conclusion from last year, that Low Risk inmates are expected to commit violence less frequently than all other parolees, High Risk inmates are expected to commit violence more often than low or moderate risk inmates (and on a scale about equal to all other non-long serving parolees) and Moderate Risk Inmates fall somewhere in the middle. No news there.

However, figures reveal that long-term inmates who are 'discretionarily released' in California via the parole hearing process, actually recidivate less than anticipated. According to figures provided during the presentation, 3-15% of inmates released after parole were expected (apparently by the FAD, as no other body was mentioned) to be arrested and convicted again within 3 years for violent crimes; in fact, that number turned out to be less than 1%, thus upholding a long-standing lifer tradition of being safest prisoner cohort to release.

Arrests and conviction for non-violent crimes with 3 years post-release were estimated at 10-25%, and in actuality, only 1-5% did so. And 20-40% were expected to return to jail or prison from arrests stemming from new crimes and/or parole violations. Results, however, report that only 5-10% have been returned to custody. All these results are consistent with figures dating back many years, which, to us, begs the question of why the estimates, from the FAD, were so high in the first place. Yes, it is a rhetorical question.

As expected, risk assessments also reflected age, as younger inmates tended to receive higher risk evaluations. The average age of a high-risk prisoner was just over 48 years, while low risk inmates averaged just over 51 years of age. Placement scores also correlated with risk ratings, high risk inmates averaging a score of 114 points, low about 23 points and moderate risk, 37 points. Again, no news there.

That old nemesis, insight, also reared it's hoary head, Kusaj reporting to the board that while 79% of inmates evaluated were 'assessed to have recent problems with insight,' how much those problems impacted the risk rating varied, depending on 'relevant' that insight problem was judged to be by the clinician. According to figure presented, 99% of High Risk inmates had problems with insight, and those problems were judged to be relevant to their risk 79% of the time.

Other interesting factors noted by Dr. Kusaj was a change over the past 3 years in the percentage of inmates receiving low, moderate and high risk ratings. In 2014, 35% of rating were low, another 45.5% as moderate and the remaining 19.5% were high. By 2016 those percentages had changed, with a reported 28% as low risk, 49% as moderate and 23% as high risk.

What happened? In conversation, Kusaj speculated the change was likely the result of the influx of determinately sentenced inmates (DSL) into the parole cycle, and thus CRA cycle. DSL inmates tend to have programmed less, have higher placement scores and less insight. This was borne out by figures showing that while a relatively sizable percentage (29%) of indeterminately sentenced prisoners (ISL, or lifers) were rated as low risk, only 8% of DSLs received the same risk assessment. Conversely, 22% of ISLs were rated as high risk, while more than twice as many, 48% of DSLs were considered at high risk to reoffend.

And although the FAD has evaluated relatively few Third Strikers as yet, early indications are they may reflect the results of DSL assessments. Of those evaluated so far, only 14% were considered low risk, 46% moderate and a whopping 40% were tabbed as high risk.

As with the last report, LSA will make the details and particulars of this Kusaj update available to lifers and others. To receive a copy of the report please send 3 stamps to PO Box 277, Rancho Cordova, Ca. 95741, as request the Kusaj Update. For the original Kusaj Report, send 4 stamps the same address and note you are requesting the original report. To receive both reports, send 5 stamps and request both.

AND MORE ON THE ELDERLY PAROLE FRONT

A new ballot initiative, hoping to secure a spot on the November, 2018 ballot, would propose yet another variation on the elderly parole front has been cleared to begin gathering signatures to qualify the proposal for the ballot. The prospects for this version, however, are a bit clouded by the passage of aforementioned AB 1448.

Currently known as the California Elderly Inmate Parole Initiative, the proposal would make eligible for parole consideration those inmates who are 80 years old and over and have served at least 10 years of incarceration. The language excludes condemned and LWOP inmates, but states it would apply to those “who are not covered by parole prohibitions imposed by other ballot measures,” as nebulous a wording as any ballot measure is likely to have.

In fiscal year, 2015-16, BPH held 658 elderly parole hearings under an agreement with the federal 3 Judge Panel, that resulted in 154 grants. The Legislative Analyst’s office estimates enactment of the proposed initiative would impact an additional 100 inmates.

How such a bill would interface with the current elderly parole program administered under the 3-judge agreement, or with the provision of recently passed but not yet implemented AB 1448 are questions no one has yet addressed. Backers have until late January to convince about 365,880 valid voters to sign the petitions asking for ballot inclusion. If this initiative fails to make the ballot, or makes the ballot and fails to pass the voting process, it will have no effect on either the current elderly parole process or the process as codified in AB 1448.



NOTES FROM BPH BUSINESS MEETING

The monthly BPH business meetings, known as the Executive Board Meetings, always provide a few snippets of information on various board matters. This month the 'news' out of that meeting included BPH Chief Counsel Jennifer Neill's announcement that the Board has filed an appeal with the First District Court of Appeal, requesting de-publication of the In Re Palmer decision and a stay of that decision, pending resolution of the Butler litigation.

Palmer involved the board's failure to set a base term for YOPH inmates, a practice now abandoned by the Board. The court also expressed skepticism regarding the conclusions expressed in the CRA. Neill also reported to the commissioners that the board administration filed proposed regulations dealing with Comprehensive Risk Assessments with the Office of Administrative Law, another step of making those regulations fully official.

However, as noted by Keith Wattley, counsel for the class in the Johnson v Shaffer settlement relative to the FAD, the court recently intervened in the process, siding with Wattley's allegation that provisions within the regulations detailing how inmates may challenge the CRAs were overly narrow in defining what constituted an error in the CRA. Wattley said the court ruling would, in effect, prevent the OAL from approving the proposed regulations in present form. Neill indicated the board had yet to decide whether to appeal the ruling, or what the next legal step might be.

BPH Executive Director Jennifer Shaffer noted new changes to CDCR's Inmate Locator webpage, which now provides considerably more information on each CDCR inmate. Now available is not only the name, age, admission to CDCR date and present institution of all inmates, but also a full report on BPH past and potential future actions regarding that inmate. Including upcoming (tentative) parole date, past parole decisions as well as tentative release dates for determinate sentenced prisoners.

The information now offered also provides the public with information on sentences (what is an LWOP, if an inmate qualifies as a YOPH candidate) and information on possible considerations that would affect MEPD or release date. These changes and increased transparency in possible parole hearing and/or release dates, appear to be at least in part the result of continuing confusion and controversy regarding who will and will not be affected by the provisions of Prop. 57 and just what those changes will engender. It should be noted that each page of inmate information also contains information about and a link to the webpage for Office of Victims and Survivors' Rights and Services, where victims are advised they can register to receive notification of same.

BRINGING LSA TO YOU

Currently Life Support Alliance offers two workshop programs for lifers and other long-serving inmates, both aimed at helping our constituents understand and achieve the goals to be found suitable for parole. Although we'd like to say we'll go anywhere, the reality is, we must be invited, usually by an ILTAG or self-help groups, as guest speakers.

In the last month, we've rolled out Connecting the Dots, a 2-part workshop designed to help prisoners identify the causative factors in their life (their 'dots') that helped lead to their criminal behavior and how to understand and overcome those tendencies (the connecting part). And we are nearly 2 years into The Amends Project, assisting inmates in understanding how to write an appropriate, meaningful and healing apology letter to their victims and/or victims' family.

As part of both workshops LSA staff comes to you (yeah, it would be nice if you could come to us, but it is what it is), bringing tips, insight and resource materials to help you surmount the obstacles of insight and understand making amends. And while we'll go to any institution, the key is getting an ILTAG or self-help group to sponsor our clearance.

If you are currently participating in a group that you feel would benefit from the information and insight LSA can bring, let us know. Better yet, ask the group sponsor to contact us. We'll be happy to provide them with information about either or both workshops and set a date when we can present. Alternately, you can send us the name and contact information of your sponsor, and we'll start the ball rolling. But it's important that you send the contact information as well as the name, so we can reach out right away.

Two more workshops, on mock board hearings and relationship issues after release, are in the works, and as those become available, we'll let you know.



... AND LSA THANKS YOU!

Our great and excited thanks to the men at Folsom State Prison, who made LSA the beneficiary of their recent food sale, plumping up our coffers considerably! These funds join earlier contributions this year from Chuckawalla Valley State Prison and Sierra Conservation Center, and while we are always appreciative of donations to help fund our efforts, those donations that come from inmates are especially meaningful to us. We know how difficult it is for prisoners to support their own needs in prison and the willingness of lifers at Folsom and other prisons to share their resources with us, and through us, other lifers, exemplifies the give back attitude of long serving prisoners and one of the reasons we continue our work. Thank you!