



Public Safety and Fiscal Responsibility

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LAST YEAR IN PAROLE

Last year in parole? It was pretty good. True, there were still more denials than grants; yes, there were still long denials. But for the first time in anyone's memory who we can find, the grants number over 1,000; 1,135 to be exact. And that, folks, based on the number of hearings held (as opposed to those scheduled) is a 39% grant rate.

In 2018 the BPH scheduled 5,226 hearings, with 2,923 actually proceeding to conclusion. Of the 1,000+ grants, 285 were given at initial hearings—that's right, not only is it now possible to be granted at a first hearing, a full quarter of the grants given were at first hearings. Parole panels also handed down 1,789 denials. The remainder of the scheduled hearings fell victim to stipulations, continuances, waivers, postponements and cancellations.

And as in previous years the vast majority of the denials were for the minimum 3 years: 1,407, some 79% of the denials made. The more long-term denials, 10 and 15 years, totaled 30 and 7 respectively, so chances of getting a lengthy denial, absent aberrant behavior.

Aside from the grant rate percentage, the next most pressing questions are always which commissioners give out the most grants? And that's something of a conundrum. While we can, and do, calculate those percentages the meaning of the numbers isn't as clear-cut as it might seem. There are many variable factors affecting how many grants any given commissioner awards.

Commissioners who spend more of their hearing days at higher level prisons will have a lower grant percentage, in part because many of those inmates they see may be less prepared (and thus suitable) for parole, which, of course, contributes to their high-level housing assignment. A bit of a circular firing squad. While we have determined laying out exact grant rates for each commissioner can be a double-edged sword, we will give you a heads up on which commissioners fall above or below the average.

So, for the record, those commissioners who, in 2018, were in the top half of the decision ranking and are still on the board, were, in alphabetical rather than ranking order, Barton, Cassady, Dobbs, Long, Schneider, Sharreff and Tiara. This list doesn't include Peck, Turner or Montes, all of whom left the board before the end of the year.

Which leaves the following in the 'under the bar' these commissioners: Anderson, Castro, Chappell Grounds, LaBahn, minor Roberts and Ruff. And while we note the average grant rate is 39%, to be fair, several of this last group are only barely under that average.

As noted, few long-term denials were handed down, but it bears acknowledging which commissioners were the most generous with those decisions. Honors, so to speak, in this category go to Grounds and LaBahn, with 2 15-year denials each, but Grounds wins the sweepstakes, as he also issued 7 10-year denials, compared to LaBahn's 4 decade long denials. Also chiming in on the 15-year level were Minor and Ruff, with one each, Minor also posting 2 10-year denials and Ruff, 3 denials of 10 years.

Others with decade denials were Anderson (4), Cassady (1), Castro (2), Long (2), and Roberts (1). Only 5 hearings last year ended in a tie vote. Commissioner Castro participated in two of those hearings, while Commissioners LaBahn, Roberts and Ruff each were party to one tie vote. Tie votes are referred to the entire parole board for en banc consideration.

The busiest commissioner, at least in terms of scheduled hearings, was Commissioner Roberts, scheduled to preside at 295 hearings. But honors for most hearings held goes to Commissioner Ruff, who held court at 228 panels.

Turning to figures for the start of 2019, results are pretty scattered and mixed. And while it's too early to say for certain, it appears many of the 'under performers' from last year are on track for similar honors this year. But, it's early days yet, and things could change. But our concerns are piqued, as one commissioner racked up a dismal 5% grant rate in January. Concerning, and we'll be watching.

However, the swirl of numbers aside, the take away from last year's statistics is this: lifers are coming home in greater numbers than ever. The Board is approaching the mystical level articulated in 3041, where the language of 'shall normally grant' has long been defined as 50%+1. Granted, 39% isn't 50%, but it's far from the 11% of not too many years ago.

The end lesson, parole grants are there. But it isn't an easy get—it isn't supposed to be easy. But it is possible and as over 1000 lifers could testify to last year, it happens.

NEW GOVERNOR'S REVERSALS—DON'T PANIC. YET.

New players in the game, whether on the yard or in the Governor's office, always bring a little trepidation. And any action can be seen as a harbinger of things to come, starting rumors flying.

After 8 years of identifying and addressing Jerry Brown's triggers regarding lifers and parole, we're all now faced with the unknown quantity of Gavin Newsom. Yes, it's true, Newsom reversed many grants and send more than a dozen more back to en banc consideration by the entire 17-member board. Lots of numbers floating around about how many were actually reversed, probably somewhere around 50-90 +/- but not the 200 reported in some spots. An additional 15 grants were sent for en banc in January.

Why so many? Here's what we hear from sources in various divisions of CDCR, all off record, but very reliable. In the waning weeks of his time in office Brown was virtually consumed by plowing through the mountain of pardon and commutation applications that had been swamping his office and staff for months, to say nothing of the day-to-day business of state government and countering reactionary moves at the federal level. And while Brown's attention was intensively and narrowly focused on commutation and pardons, the BPH kept on granting paroles, to the tune of 105 grants in December alone. In an effort to make as much headway as possible with minimum distraction from

the commutation efforts, Brown's legal team culled out the 'low hanging fruit' of grants, presenting those cases to Brown that would be easy for him to decide.

The rest, those that might take more study and consideration, were a bit more dicey and those with final action dates a not imminent, were left for Newsom's incoming team. And that team, recruited not just from California but across the country (Newsom does have higher political aspirations), less savvy and experienced in parole matters than Brown's seasoned legal team, and often (being from out of state) pretty unaware of the nuances of California's parole system and in many cases facing legal deadlines to make decisions, may have erred on the sense of 'public safety' in recommending numerous denials. It is, as we've come to understand, a pretty steep learning curve to master all the nuances of the California model.

Indeed, from the information we've received, many of those reversal and en banc referral letters read as though created by someone not intimately familiar with California politics, corrections and court precedent. So, while the turn down rate was a bit jarring sources seem pretty confident this doesn't signal a trend or precedent for coming months. Indeed, the new Governor's legal team and staff are receiving something of a crash course on California parole from those who know it best. Best advice at this point: don't panic.

Everyone we've spoken to, and that number is considerable, has cautioned against making snap judgements about Newsom's intent going forward. The Governor's staff is tackling that learning curve, conferences and meetings with numerous CDCR personnel are on-going, and many advocates, including LSA, are intent on meeting the new guys in town and claiming our place at the stakeholder's table.

While little solace to those reversed, but they will be back before a parole panel about 12 months after the reversals and for those 15 referred to en banc consideration in February, a full two-thirds of the grants, 10 in all, were affirmed, with only 5 sent for rescission hearings. Hopefully, this will be more indicative of Newsom's path.



RANDOM PAROLE DEVELOPMENTS

Despite concerns resulting from parole reversals by now-Governor Newsom, 2019 is off to a promising start, with 133 parole grants handed down in January alone. With the number of commissioners now at 15 more and more hearings are held each month. The total results from 2018 were recently released, with numbers not only of total grants overall, but by commissioner. See following story for those results.

BPH is on track to schedule over 7,000 hearings this calendar year, and more than 8,000 next year as Third Strikers swooped up in Prop 57 and newly-commuted-from-LWOP-to-lifers making up a big

part of that increase. Indeed, most of those prisoners commuted by former Governor Brown since August of 2018 have already been scheduled for hearings this year.

Why so fast? Because Brown had a penchant for commuting LWOP sentences to 25 to life, and many of those who receive that grace have already served at least 25 years, meaning the BPH is scrambling to schedule those hearings ASAP.

And it appears 2 more commissioners will be joining the board, possibly as soon as the start of the fiscal (not to be confused with the calendar year) year in July; CDCR has requested funding for those two positions in order to keep up with the increased pace of hearings. Further reports are that BPH is reviewing the number of waivers, postponements, stipulations and continuances, which early statistics indicate happen more often at some prisons than others (mostly the higher security level facilities), with an eye to ramping up the number of hearings scheduled at those locations, knowing that many will not take place.

Also, on the horizon, and at least in partial response to the marked increase in hearing numbers, the board is studying implementing 'structured decision making,' reportedly a more measured, somewhat less subjective method of considering suitability. Although not a 'scorecard' or 'menu' of suitability points or factors, structured decision making, developed and used in Canada, identifies 7 domains of importance in suitability and assigns aggravating or mitigating weight to those factors depending on the specific situation, case and individual.

More information on the system, also used by 7 states in the US, is expected in coming months, as the budgetary process rolls on, and new details on various projects and policies comes to light. Should the policy be adopted, much of the training for commissioners on how to use the practice is expected to be held in open session, where LSA will be present to learn, and report.

While questions about the ramifications of AB 2845 and the commutation/pardon process abound, answers aren't so abundant. However, BPH and the Governor's office are working together to working together to create an easy to follow application, which will be on both the Governor and BPH webpages when complete, as well as through institutional counselors. Once the application is finalized and released, we'll alert our readers and go one step farther, and make that application available, if you can't find it anywhere else.

LEGISLATIVE ALERT!

While, at least for now, prisoners can't vote, most have relatives out in the world who can. Now's the time for those family and friends to make their voices heard by the elected state officials—assembly members and state senators.

Recently introduced by Republicans Jim Gallagher (R-Yuba City) and our old nemesis and former Chairman of the (old) parole board Sen. Jim Nielsen (R-EI Dorado Hills), **AB (Assembly Bill) 665** which would basically repeal SB 394, the bill that brought juvenile LWOPs to parole consideration after 25 years. Although we hear there isn't much support for this abomination, we'd like to see it brought down swiftly and decisively. The success of any legislation of this sort only encourages those who want to keep everyone down forever to continue such proposals.

The first hearing is now scheduled for March 21 (tentative date) in the Assembly Public Safety Committee, and we'll be there. But your family doesn't have to be in Sacramento to weigh in. Enlist everyone interested in lifer issues, restorative justice and just plain justice to KILL THIS BILL.