

SEPTEMBER 2013

LIFER-LINE

VOL. 4 ISSUE 9

THE NEWSLETTER OF LIFE SUPPORT ALLIANCE © LSA, 2013



SB 260 PASSED, SIGNED, NOW THE LAW

New Category of Hearings Available for Those Convicted as Juveniles

After much discussion, compromise and amending the California legislature passed SB 260 (Hancock, D-Berkeley) which will enable those sentenced to life for crimes committed before their 18th birthday to have those special circumstances considered in a new parole hearing. Although passed and signed into law by Gov. Brown, the provisions of SB 260 are no walk in the park and won't go into effect until the beginning of 2014.

Like SB 9, companion legislation passed last year and dealing with those sentenced to LWOP as juveniles, SB 260, requires the serving of substantial years before the special hearings, a youth offender parole hearing. Perhaps the most efficient way to explain the provisions is to simply quote from the bill:

"This bill would require the Board of Parole Hearings to conduct a youth offender parole hearing to consider release of offenders who committed specified crimes prior to being 18 years of age and who were sentenced to state prison. The bill would make a person eligible for release on parole at a youth offender parole hearing during the 15th year of incarceration if the person meeting these criteria received a determinate sentence, during the 20th year if the person received a sentence that was less than 25 years to life, and during the 25th year of incarceration if the person received a sentence

that was 25 years to life. The bill would require the board, in reviewing a prisoner's suitability for parole, to give great weight to the diminished culpability of juveniles as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the prisoner in accordance with relevant case law. The bill would require that, in assessing growth and maturity, psychological evaluations and risk assessment instruments, if used by the board, be administered by licensed psychologists employed by the board and take into consideration the diminished culpability of juveniles as compared to that of adults, the hallmark features of youth, and any subsequent growth and increased maturity of the individual. The bill would permit family members, friends, school personnel, faith leaders, and representatives from community-based organizations with knowledge about the young person prior to the crime or his or her growth and maturity since the commission of the crime to submit statements for review by the board.

This bill would instead require the board to meet with those inmates, including those who are eligible to be considered for parole pursuant to a youth offender parole hearing, during the 6th year prior to the inmate's minimum eligible parole release date. The bill would also require the board to provide an inmate additional, specified information during this consultation, including individualized recommendations regarding the inmate's work assignments, rehabilitative programs, and institutional behavior, and to provide those findings and recommendations, in writing, to the inmate within 30 days following the consultation."

Important exemptions for SB 260 include those sentenced under Three Strikes or Jessica's Law and LWOP. LWOP prisoners, however, may seek relief under the provisions of SB 9.

Supported by the ACLU, Prison Law Office, Human Rights Watch and Life Support Alliance, among others, SB 260 was, predictably, opposed by many law enforcement and victims' groups, who maintained the new hearings could lead to the release of dangerous individuals and could be burdensome to victims and family members.

As for when the new youth review hearings will begin and how they will interface with regular parole hearings, sources in the BPH tell us the board is presently drafting an administrative directive document that will lay out these procedures. The draft document is expected to be presented at the Board's October meeting for public scrutiny and comment.

We, of course, will be at the meeting to do just that.

Youth review hearings are expected to be available beginning in January, 2014. As details become available and the procedures are formalized we will report to our readers.

CIW LONG-TERMERS TOP THE LIST!

Life Support Alliance received a huge boost in resources recently when the Long-Timers Organization at California Institute for Women (CIW) made us the beneficiary of their favor, donating proceeds from their food sale to LSA. And what a boost! The ladies at CIW lifted our spirits and our finances by a whopping \$2,957.63.

LSA has long depended on donations, subscriptions, volunteers and the pockets of our organization's officers to keep moving forward. And while our supporters have been generous and dependable in their assistance, this gratefully received gift from long-timers at CIW represents the largest single donation LSA has received.

What can we do with this money? Fund shared office space for a year, fund our website for a year, facilitate our trips to various prisons to observe parole hearings, office supplies, printing costs, help underwrite family and prisoner seminars, and on and on. If there's one thing we at LSA can do, it's make the most of our resources.

As much as we appreciate all donations to our cause, those from prisoners hold a special meaning for us, as we understand the limited resources available to prisoners and sacrifices these donations represent. So this generosity from the ladies at CIW is over the top and we are overwhelmed.

Just thank you doesn't seem adequate, so we'll show our appreciation by continuing to do all we can for the lifer cause. Last February we were privileged to speak to the members of the Long Termers and other prisoners at CIW, to bring them the latest news, observations and information. We hope to be able to make that trip and visit again in 2014, and then we can express in person our thanks and appreciation.

Thank You, Long Termers Organization and ladies at CIW! Your help will benefit so many prisoners in so many ways!

COURTS: SHORT DELAY, BUT NO MORE OUT OF STATE

The three federal judges overseeing California's prison population reduction and who have been a thorn in Jerry Brown's side, and plans, tossed the Governor a bone in late September, when they agreed to a short delay in the deadline to reach the population cap. And short is the operative word.

The state had requested a three year delay, while seeking to implement a new set of plans. The court, however, gave the Governor only 27 additional days, with the added caveat that it receive a progress report by Oct. 21, 2013. During that time the judges directed both representatives from the state and the inmates' attorneys to meet with Judge Peter Siggins (of the 1st District Court of appeals and not part of the 3 judge panel) on an additional extension of time and what could be accomplished, should that extension be granted.

Perhaps as important as the short delay and new plans was the court's admonishment that CDCR not send any additional prisoners to private or out of state institutions. Just a day before the new ruling the state reportedly contracted with one private correctional company for use of 1,400 more beds in two California locations.

Under the recently passed and signed SB 105 Brown and the legislature agreed to use mental health and drug treatment programs to limit the number of inmates being sent to state prison for new crimes, while at the same time requesting three more years to meet the population reduction goal. Barring that time extension officials said they would spend more than \$300 million to ship inmates to private prisons and prisons in other states, a process already begun and already wreaking havoc with prisoner programming and families.

Although the judges did not rule out granting the state additional delays Don Spector of the Prison Law office said the short delay should not be construed as a signal the court is willing to countenance further long delays. "It orders us to engage with the state and see if we can come to an agreement about how the state could meet the court-ordered population levels without sending prisoners out of state," he said, adding that since the litigation has been in progress for over 7 years a delay of one month is "not really significant."

The judges indicated they were seeking what they termed "a durable solution" to California's prison overcrowding but did not tip their hand as to whether or not they would accept the compromise reached by Brown and Senate Pro-Tem Darrell Steinberg regarding ways to deal with the overcrowding. They did, however, instruct state officials and inmates' advocates to concentrate their attention on several categories, including elderly and juvenile inmates, immigration violators, seriously ill and three-strikers. Also mentioned were those inmates on the much bally-hooed Low Risk List.

The attention of all sides now turns to the report that will be issued Oct. 21 following meetings with both sides of the litigation and Judge Siggins. The timing, terms and outcome of the population cap battle may be nearing the final act.

PEPPER SPRAYING OF MENTALLY ILL PRISONERS TO BE SHOWN

U.S. District Court Judge Lawrence Karlton has decided that videos showing guards pepper-spraying mentally ill inmates can be shown in open court as part of a lawsuit on behalf of 30,000 state prison inmates suffering from a mental illness. Michael Bien of Rosen, Bien, Gavan and Grunfeld, a San Francisco law firm representing the inmates, had sought to show the videos, while the CDCR and administration of Gov. Jerry Brown had hoped to quash the videos or have them viewed only by the judge in his chambers.

The trial, slated to begin the first week of October, is part of on-going litigation involving the state's treatment of mentally ill prisoners and has been in the courts since 1991. Earlier in the year Brown had claimed that state treatment of the mentally ill in prisons had vastly improved and the state should be allowed to retake control of the prison mental health system from a court-appointed overseer.

Bien and other prisoner advocates maintain that characterization is far from accurate. "I was rooting for the governor. If he was right, that was good," Bien said, adding "Unfortunately, whatever information he was relying on was tremendously unreliable."

The courts have rejected Brown's request to take back control of mental health care of state prisoners after finding on-going violations. Inmate attorneys have brought forth a range of new and additional problems including access to inpatient care for inmates on Death Row, the use of force against mentally ill inmates and treatment for prisoners in isolation units. The videos are part of their case.

Bien described the videos as "very powerful," and should illustrate why the treatment meted out in many prisons is "improper and dangerous and harming the mentally ill." The videos were shot by prison guards.

Expert witnesses who viewed the videos report they depict prison guards tossing chemical grenades and sending streams of pepper spray into the cells of screaming mentally ill inmates, pepper spray being used on asthmatic inmates and leaving one mentally ill inmate "completely delirious" after he was repeatedly sprayed with pepper spray for refusing to leave his cell.

Bien maintains it was important to show the videos publicly to fairly assess the state's claims of improved mental health treatment and to give experts on both sides of the suit an opportunity to explain the events. A spokesman for CDCR said if the videos are shown in open court the state wants them to run in their entirety to provide the proper context.



THE GOOD, THE BAD AND THE REALLY UGLY

THE GOOD: Perseverance and programming does, eventually, pay off.

It took 34 years and 18 tries, but Lewis Haggard, Jr. was finally granted parole. In 1979 Haggard pled no contest to kidnapping for robbery charges and became eligible for parole in 1986, 7 years after his incarceration. That was only 17 years ago.

If Gov. Brown does not send Haggard's case for en banc review by the parole board, Haggard should be leaving San Quentin around the first of the year.

THE BAD: Michael R. Morrow, now 70, escaped from the California Institution for Men, Chino, in San Bernardino County on Aug. 27, 1977. He was 4 years into a 5 to life sentence for first-degree robbery with the use of a firearm.

In late September, Morrow, for the last 35 years known as Carl Frank Wilson to his neighbors in Arkansas, was arrested by CDCR's Special Service Unit, the FBI in Little Rock, Ark., and the Garland County, Ark. Sheriff's Department at his home. Morrow is being held in the Garland County Jail awaiting extradition back to California to finish his sentence.

THE REALLY UGLY: A Los Angeles County Sheriff's deputy is back behind a desk, but not until after being involved in the 7th shooting of his 18-year career. Deputy Anthony Forlano was involved in the fatal shooting of a 23 year old East Los Angeles man who deputies say, fought with them. A handgun was reportedly found at the scene but reports do not indicate shots were fired at officers.

Forlano's 6th shooting was less than year ago, October, 2011. In three previous shooting incidents involving Forlano, deputies had also reported seeing firearms, though in those cases no firearms were found. One previous Forlano-involved incident cost LA County \$150,000 in settlement. A lawsuit is pending in another shooting incident from 2011 in which a suspect was wounded at the end of a pursuit.

"Seven is a lot," said Michael Gennaco, a former federal prosecutor and Chief Attorney for the County's Office of Independent Review, adding most deputies can spend an entire career without discharging their weapons in the field. Gennaco is slated to meet with LA Sheriff Lee Baca to discuss the situation and to formalize procedures for such cases.

LIFER PICNIC

Watch next month's ***Lifer-Line*** and **CLN** for news, pictures and updates on paroled lifers who will be attending Don "Doc" Miller's picnic Oct. 12 in Walnut, CA. LSA will be attending, camera in hand!

LATEST LIFER STATS FROM BPH

According to statistics recently compiled by the Board of Parole Hearings there are currently some 35,250 lifers in the California prison population; that represents about 28% of the current prison population of 125,000. Of those, 9,499 are included in the board's calendar, which means they are within 12 months of or past their MEPD. The average age of lifers in the BPH calendar is 45, a bit older than the average age of prisoners in general, at 38.

In line with the prisoner population, where women represent about 4.7% of prisoners, in the BPH calendar women account for 4.3% of those awaiting hearings. In 2012 the board scheduled 4,760 hearings, 830 of which were initial hearings. Although there are no firm figures available the best research indicates parole is granted at initial hearings less than 4% of the time, at least in data available for the first seven months of 2013. On average, an inmate is granted parole at his/her 7th parole hearing.

In calendar year 2012 the BPH made 670 findings of suitability, or a grant rate of about 17%. Governor Brown reversed approximately 18% of those grants in 2012.

And while this number is surely not where we would like to see it, or believe it could and should be, we need to keep perspective on the numbers. Ten years ago, in 2003, the board held 4,478 parole hearings and gave only 168 grants; a grant rate of 3.8%. Nearly the same number of hearings in 2012 resulted in nearly 4 times the number of grants.

Even 5 years ago, in 2008, a total of 6,883 hearings, 30% more than in 2012, resulted in only 293 grants, less than half the number found suitable last year. By the time Life Support Alliance was formed, in 2010, the grant rate had risen to about 8.8% with 2011 grants coming in at a rate of 11.5%. At present, best indications are that over 1,200 former life term prisoners are on parole in California.

Times are changing and so are opportunities for lifers.

INPUT ON NEW COMMISSIONERS SOUGHT

With the appointment of two new parole commissioners (Richard Guerrero and Elizabeth Richardson, see *Lifer-Line*, August, 2013) LSA is seeking input on prisoners' experiences with these commissioners at parole hearings. After undergoing approximately 6 weeks of training Guerrero and Richardson will be chairing hearings on their own.

While LSA will be attending these hearings, most likely beginning in November, we need input from prisoners and their attorneys on the performance and action of these new commissioners. Our practice, prior to speaking at commissioners' confirmation hearings in the Senate, is to research as much factual information as possible and base our recommendations and comments on this empirical data.

If your next hearing is held with the new commissioners as presiding officer, please send us your results and comments. No need to send transcripts, we can access those, to read the full story in context. Send your information to: LSA, P.O. Box 277, Rancho Cordova, CA. 95741.