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Scott Kernan



Kevin Chappell

EVERYTHING OLD IS NEW AGAIN

Newly appointed Secretary of Corrections is no stranger

As noted in the December, 2015 issue of Lifer-Line, changes are afoot at CDCR, with late 2015 resignations and reappointments opening slots in CDCR and BPH administration and on the parole board itself. The vacancies left the way open for Governor Brown to appoint new faces to leadership positions. And so he did. Sort of.

Dr. Jeffrey Beard, late of the top spot at CDCR, made a quick exit from both the post and the state in December, announcing on December 3 that he was resigning, effective January 1, 2016, though we suspect he was in actuality 'gone' long before that January 1 date. Tapped to succeed Beard, who was viewed by many as an outsider brought in to oversee solution to the state's prison overcrowding, was anything but an outsider. Scott Kernan, long a familiar name in both institutions and at CDCR headquarters, and since March of 2015, an undersecretary with CDCR now heads the department.

Kernan's mother, Peggy Kernan, was also a California prison warden, and Kernan himself spent several childhood years living on the grounds of San Quentin. He began his first career with CDCR as a correctional officer in 1983, following the usual path 'through the ranks,' to eventually, in 2004, becoming Warden at Mule Creek State Prison in Ione. Prior to becoming a correctional officer Kernan served in the US Navy.

He continued what was to be a 30 year career with CDCR by becoming deputy director of adult institutions and chief deputy secretary of adult operations in 2007. In 2008 then-Governor Arnold Schwarzenegger made Kernan chief deputy secretary of adult operations. He retired from that post in 2011.

It hasn't been all smooth sailing for Kernan, however. In 2009 he was arrested for DUI, a charge to which he plead guilty, receiving a \$2,000 fine, 48 hours community service and 6 weeks unpaid suspension from his number two post in CDCR. Following his retirement—Kernan has always been careful to note he retired and did not resign—he operated a consulting firm, working with some of CDCR's largest contractors.

Some 4 years after his first retirement, in March, 2015, Kernan began his second career at CDCR, when he was tapped by Brown to return to CDCR administration as the Undersecretary of Operations. Now, pending Senate confirmation, Kernan, a Republican, will head the department, a post that includes a salary of \$243,360.

As to what the new Secretary's plans are for the department going forward, given the continued supervision of the federal judges, continued issues with medical and mental health care, realignment and rehabilitation proposals, we hope to find out. Kernan is no stranger to LSA principles either; we have many past dealings with him during his previous tenure at headquarters. And we have secured a meeting with him in late February, when we hope to ask the Secretary what he foresees for CDCR and California prisoners on the road ahead. Stay tuned.

Another familiar face appearing in a new seat was Kevin Chappell, former Warden (SQ) and custody staff and administrator at CDCR headquarters in Sacramento. Chappell is the newest Parole Commissioner, appointed Jan. 4 by the Governor. Chappell began as a custody officer in 1987 at Folsom and retired as a Warden in 2014.

Chappell did not, however, leave corrections. Since leaving SQ in 2014 he has been a correctional administrator retired annuitant at California Correctional Health Care Services since 2015. Chappell, a Democrat, filled the commissioner's seat formerly held by Amarit Singh, who resigned in late December. The position provides a salary of \$137,956.

Both Kernan and Chappell, as Governor appointees, must be confirmed by the Senate, a process that begins with hearings held before the Senate Rules Committee, where the public and stakeholders (that would be LSA) are permitted to speak in favor or opposition to the confirmation. And speak we shall. Our recommendations on each appointee are currently under review.

THOMPSON TERMS VS. FUTURE DATES: NOT THE SAME

With the start of the New Year and the implementation of many bills affecting lifers, including SB 230, dealing with release dates and future parole, there is much confusion (as evidenced by the upsurge in mail on the subject) on those lifers found suitable for parole, but not subject to 'immediate release.' The difference between those who receive a date and go home 'immediately' and those who are released from their life term but not custody is the difference between future release dates and Thompson terms.

Those lifers previously found suitable and having had their term calculated to show a release date more than 6 months from the time of their hearing (a future date), will probably be going out the gate

somewhat sooner than that calculated date indicated, due to the implementation, as of Jan. 1, 2016, of SB 230, which, according to a December, 2015 report to the Board by former Chief Counsel Howard Moseley, "allows for the immediate release of inmates found suitable for parole by the Board of Parole Hearings upon reaching their minimum eligible parole date, subject to the board's Decision Review process and the Governor's review. Going forward, inmates who reach the earliest of their minimum eligible parole date, youth parole eligibility date or elderly parole or elderly parole release date and who have been granted parole will be eligible for release."

The so-called 'Thompson terms,' however, differ from a future release date. A Thompson term, for those lucky enough not to be under one, is a determinate sentence imposed on an inmate for a crime committed while in prison. This can be for anything from possession of drugs, to assault, to possession of a weapon or worse. Prisoners, including lifers, can come a foul of various laws, be tried, convicted and sentenced while serving their life terms. And when that occurs, the resultant sentence, 2, 5, 7 or more years, is called a Thompson term, in honor of a prisoner who attempted to litigate the matter.

Thompson terms are assessed for another crime, not the life crime. So while you may have done your time on that instant offense, you must still answer for whatever caused you to receive the Thompson term.

For those lifers found suitable, and who make it through the review periods, the BPH issues a memo to the prison, which authorizes the "immediate release" of the named inmate---but specifically limits that release to 'from their life term.' And that order applies only to the life term; it does not impact the Thompson term.

Double jeopardy? Not so. You are serving a life term for one crime, the Thompson term is imposed for yet another crime, this one after the life crime. So you aren't a victim of double jeopardy. The BPH as determined the Board has no authority over determinate terms, other than those specifically outlined under elder, youth or medical parole considerations.

The BPH and CDCR have agreed that Thompson terms are to be served AFTER conclusion of the life term, and are not concurrent. This is supported by case law including IN RE Damien Coleman, published in May 2015. Many lifer attorneys are in disagreement with the board on this matter, and there has been some preliminary talk of filing on the issue, most especially for those long-serving lifers who have been incarcerated well past their MEPD---do those years of 'extra' time not provide sufficient incarceration to cover the Thompson term?

Apparently not, at least in the CDCR's view. And for now, there it remains; if you have a Thompson term, you'll stay in the tender care of CDCR until that determinate term runs its course. The good news—you are eligible for good time credits, which may shorten the actual time you'll be in custody. As to the old 'future date' decisions, those, have indeed gone away via the enactment of SB 230, for those who have consecutive sentences or were found suitable before the final date of their calculation of base term---you'll be going home 'immediately' after being found suitable and prevailing through the review period.

But remember, 'immediate' is a relative term for CDCR. Once the memo to release from the life term is received by the institution, it usually takes another 7-10 days for all the doors to open. So be patient and glad you don't have a Thompson term to lengthen you stay.

THE AMENDS PROJECT—CONTINUED

Since the announcement last month (see December, 2015 issue of Lifer-Line) of LSA's Amends Project to assist lifers in writing letters of apology and amends to their victims, our mail volunteers have been kept busy answering the response. To date, prisoners and/or staff in at least 17 institutions have expressed their interest in being included in the project.

For those who have already requested inclusion, we're working with individual institutions and CDCR on clearance and passes and expect to begin first sessions in February. As noted in the original announcement, currently LSA is not able to accommodate individual prisoners, but will work through ILTAG or other self-help groups to present the curriculum and project to as many inmates as possible.

If you're interested, send us the information on your group, including the name and/or contact information for your sponsor or staff facilitator so that we can begin the gate clearance process. As with all things CDCR, it is a process and does take some time to secure the proper authorization to enter the prison, as well as provide the administration with samples of the collateral material we will provide to inmates.

However, please understand, that as of now, we are not set up to present the material to individual prisoners, nor can we, with present staff, critique and respond to individual apology letters sent to us by individuals. As The Amends Project develops and evolves, this may be in the future, but the future is not now.

If you have received a response, then you know we've registered the interest of your group and institution and you're on our list—we WILL be seeing you.

ONCE AGAIN: CONSULTATION IS NOT CONSIDERATION

From the many letters we continue to receive at the LSA offices it appears that there is still considerable confusion among many prisoners, fostered oftentimes by counselors' lack of information, on the difference between a Consultation Hearing and a Consideration Hearing. So, one more time, here's a compare and contrast.

Consultation hearings are being held about 6 years BEFORE the date for a prisoner's first parole hearing, whether that parole hearing (the Consideration hearing) is generated by an MEPD, YPED or EPED. MEPD; Minimum Parole Eligibility Date. YPED: Youth Parole Eligibility Date. EPED: Elderly Parole Eligibility Date.

The Consultation hearing is less a hearing than a meeting, where a parole commissioner or deputy commissioner meets with an inmate, no attorney needed or present, reviews the inmate's file and offers advice on what the individual prisoner should do in the next 6 or so years to have the best chance of gaining parole.

A Parole Consideration hearing is the real deal—where the suitability of the inmate is assessed by a parole panel, the inmate has legal representation and a decision will be made whether the prisoner

will be granted or denied parole. This is what lifers are working toward, and what the Consultation hearing is to assist them in preparing for.

The two are not the same. At a Consultation you'll be given advice. At a Consideration Hearing, you may be given your freedom.



BROWN'S 2016 SENTENCING INITIATIVE

Don't pack your bags yet.

In late January Gov. Brown, backed by a phalanx of law enforcement and faith leaders, announced his support for “Public Safety and Rehabilitation Act of 2016,” a ballot initiative that, according to the Governor, will “protect and enhance public safety, reduce wasteful spending on prisons, improve rehabilitation and prevent federal courts from ordering the release of prisoners.” It’s that last part that we think may have really prompted Brown to throw his political weight behind the proposal.

And of course, the rumors about everybody going home have already started. But hold up folks. Before anyone packs their bags, disposes of their property and fills out a postal change of address form, there are a couple of things to consider.

First, this is a ballot initiative. That means it has to go before the vote of the people. All the people, supporters, haters and the “I don’t give a gosh darn so long as it doesn’t cost me any more taxes.” A majority of the voting populace must say yes before any changes are made. Just what those proposed changes are we’ll get to in a minute.

Secondly, even if Brown et al prevail, few, if any, lifers will be impacted. That’s right, this is another one of those ‘no lifers need apply’ situations. In a nutshell, and right off the Governor’s announcement about the initiative, here’s what the measure would do:

- Authorize parole consideration for nonviolent inmates who complete the full sentence for the primary offense.
- Allow inmates to earn credits for good behavior, education and rehabilitative achievement.
- Require judges rather than prosecutors to decide whether juveniles as young as 14-years-old should be tried as adults.

If you’re paying attention, you’ll notice that term “nonviolent inmates.” That, in itself, precludes most lifers from consideration under these proposed changes. And while the measure’s official language says it is to be “broadly” and “liberally” construed to accomplish its goals, it does not, in fact, state that there is a retroactive component to the initiative, were it to pass.

Overall, while the proposal will, according to some sources, reduce the length of time some individuals convicted of felonies spend in prison and address juvenile sentencing, the impact on the existing lifer population is seen as minimal. The initiative comes at a time when mandatory minimum sentencing, the prosecution and incarceration of juveniles as adults and long-term isolation and solitary confinement practices are all under attack and scrutiny on both the national and state level.

So far the initiative has the support of an interesting mix of officials and high profile individuals, including Los Angeles Police Department Chief Charlie Beck, San Diego County District Attorney Bonnie Dumanis, Amador County Chief Probation Officer Mar Mark Bonini, Napa County Chief Probation Officer Mary Butler and California Catholic Conference of Bishops Deacon Clyde Davis. Also expressing support were such organizations as Californians for Safety and Justice and several public defenders. It is expected, however, that the proposal will find opposition among the state's District Attorneys and law enforcement organizations, and Republicans in the legislature have already voiced their opposition.

Brown, who has acknowledged that his support of the determinate sentencing practices during his first incarnation as governor was a mistake, noted during the launch of the initiative, "We see now that the determinate sentence, which I signed, needs substantial revision. [B]efore we keep going down this road, I think we should pause and reflect on how our system of criminal justice could be made more human, more just and more cost-effective." It appears the Governor is ready to put left over funds from his last gubernatorial campaign to help finance the initiative.

Well, it's a thought. And a good one. But it isn't the all clear for lifers.

Along the same vein, the recently signed order by President Barack Obama banning solitary confinement for juveniles in federal institutions will have no effect on prisoners, juvenile or adult in the California prison system. In fact, while the President's order is a step forward and will hopefully be a North Star for other corrections authorities, there are only a few dozen juveniles in federal custody and only about a dozen in solitary confinement who will be affected by the order. And, again, no one in a California state-run prison comes under the federal order.



LSA'S 2016 PLANS

- Roll out of The Amends Projects
- Completion of first From the Date to the Gate module
- Six lifer family seminars, from Sacramento to San Diego
- Prisoner Art Show
- Second Annual Northern California Lifer Picnic
- Relationship building seminars for paroled lifers and their significant others
- Hearings: Parole hearing observations, legislation hearings, confirmation hearings
- Letters, letters, letters—and more letters
- And—celebrating more parole grants to suitable lifers