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LIFER-LINE

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THE NEWSLETTER OF LIFE SUPPORT ALLIANCE

LSA REQUESTED HEARING ON TITLE 15 CHANGES SET

In response to formal call filed Dec. 3 by Life Support Alliance the Board of Parole Hearings (BPH) has announced it will hold a public hearing on proposed changes to Section 2240 of Title 15, dealing with psychological evaluations of term to life prisoners (see November 2010 Lifer-Line, "BPH Proposes Change to Title 15").

The BPH notified LSA on Monday, Dec 27 that the **hearing** on the proposed changes will be held **Monday, January 31, 2010 at 1 pm** in Room 550 of the BPH building located at 1515 K Street in Sacramento.

LSA has received information that two other groups or individuals have joined the call for a public hearing on these changes. As detailed in last month's *Lifer-Line*, the changes to Title 15 would codify and entrench the BPH's nefarious Forensic Assessment Division (FAD), a secretive group of inadequately trained and questionably qualified psychologists who are employed by the BPH to do nothing but perform psychological evaluations of term to life prisoners prior to parole hearings. On November 10, 2010 the Office of Administrative Law, the body which oversees and monitors the rule making process of state government, ruled the BPH's requirement that lifers undergo evaluations by the FAD has not been carried out under proper legal process. The OAL therefore ruled the mandatory use of the FAD to be an underground rule.

The Board's proposed changes to Title 15 would, going forward, legitimize the actions and existence of the FAD. The BPH first proposed these changes on November 16, 2010, opening an initial 45 day public comment period that would have ended on Dec. 31. LSA filed a call for a public hearing on Dec. 3; on Dec. 16 the BPH posted on the Department of Corrections and Rehabilitation's website a new version of the proposed changes, with several new sections added to the original version unveiled in November. Because of these changes, the public comment period began again on Dec. 16 and will end on January 31. Thus the BPH, while adhering to legal requirements to hold a hearing on such proposed changes if a petition for hearing is filed, is waiting until the last possible day in the public comment period to hold the hearing.

Following the hearing all comments raised must be addressed by the BPH in their final statement of reasons, which will then be reviewed by the Office of Administrative Law for compliance with the legal process, being sure all issues raised at the hearing are addressed by the BPH. It is the Board, however, who will have the final vote on the proposed changes. Should the BPH pass the proposed new language in present form or in a form stakeholders believe is in contravention to law on any level, those in disagreement may file a court challenge to the adopted language.

Our goal in insisting on a public hearing on the FAD and psychological examinations as presently being used by the BPH is to bring enough information into the public record to give a clear picture of the iniquitous methods used by the FAD/BPH for the purpose of denying term to life prisoner parole dates. Ultimately change in the BPH and its actions will need action on the part of the executive and legislative branches of state government and these governmental

venues will not act on simple request or plea, but must be presented with irrefutable facts on which to base their actions.

While the BPH has long been successful in shielding their actions and agenda from scrutiny by the public or other branches of government, the more the board is now forced to admit its biased actions and flawed reasoning, the more the true cost, both in monies and lives, can be revealed.

LSA believes when the true cost of the iniquitous work of the BPH and its henchmen FAD psychologists is known both legislators and the public will realize that while justice and social order are necessary in every society, California can no longer afford vengeance as public policy.

For the full text of the new proposed changes to Title 15, see elsewhere in this newsletter. For sample letters in opposition and suggested areas of contention and how to offer your comments and concerns in testimony at the hearing, please check the LSA website at www.lifesupportalliance.org or the website of prisoners' rights attorney Charles Carbone at www.prisonerattorney.com.

Mr. Carbone and LSA are cooperating in reaching out to as many lifers and lifer families as possible, seeking input from all concerned stakeholders. Attendance at the hearing is not necessary for your input to be considered. Comments and issues can be submitted to the board through mailed, FAXed or emailed submissions of testimony. Full information on how to accomplish this is available on the LSA and Carbone websites after Dec. 30.

PROPOSED CHANGES TO SECTION 2240 TITLE 15

PSYCHOLOGICAL EVALUATIONS

Note: the below text differs slightly from the text of the proposed changes first distributed by the BPH on Nov, 16, 2010 and reprinted in the November issue of Lifer-Line. This revised text was first posted on Dec. 16, 2010 and it is this version that will be the subject of the January 31 2010 public hearing.

§ 2240. Psychological Risk Assessments for Life Inmates

(a) Prior to a life inmate's initial parole consideration hearing, a Comprehensive Risk Assessment will be performed by a licensed psychologist employed by the Board of Parole Hearings, except as provided in subsection (g).

(1) In the case of a life inmate who has already had an initial parole consideration hearing but for whom a Comprehensive Risk Assessment has not been prepared, a Comprehensive Risk Assessment shall be performed prior to the inmate's next scheduled subsequent hearing, unless a Psychological Report was prepared prior to January 1, 2009.

(2) Psychological Reports prepared prior to January 1, 2009 are valid for use for three years, or until used at a hearing that was conducted and completed after January 1, 2009, whichever is earlier. For purposes of this section, a completed hearing is one in which a decision on parole suitability has been rendered.

(b) A Comprehensive Risk Assessment will be completed every five years. It will consist of both static and dynamic factors which may assist a hearing panel or the Board in determining whether the inmate is suitable for parole. It may include, but is not limited to, an evaluation of the commitment offense, institutional programming, the inmate's past and present mental state, and risk factors from the prisoner's history. The Comprehensive Risk Assessment will provide the clinician's opinion, based on the available data, of the inmate's potential for future violence. Board of Parole Hearings psychologists may incorporate actuarially derived and structured professional judgment approaches to evaluate an inmate's potential for future violence.

(c) In the five year period after a Comprehensive Risk Assessment has been completed, life inmates who are due for a regularly scheduled parole consideration hearing will have a Subsequent Risk Assessment completed by a licensed psychologist employed by the Board of Parole Hearings for use at the hearing. This will not apply to documentation hearings,

cases coming before the Board en banc, progress hearings, three year reviews of a five year denial,

The Subsequent Risk Assessment will address changes in the circumstances of the inmate's case, such as new programming, new disciplinary issues, changes in mental status, or changes in parole plans since the completion of the Comprehensive Risk Assessment. The Subsequent Risk Assessment will not include an opinion regarding the inmate's potential for future violence because it supplements, but does not replace, the Comprehensive Risk Assessment.

(d) The CDCR inmate appeal process does not apply to the psychological evaluations prepared by the Board's psychologists. In every case where the hearing panel considers a psychological report, the inmate and his/her attorney, at the hearing, will have an opportunity to rebut or challenge the psychological report and its findings on the record. The hearing panel will determine, at its discretion, what evidentiary weight to give psychological reports.

(e) If a hearing panel identifies a substantial error in a psychological report, as defined by an error which could affect the basis for the ultimate assessment of an inmate's potential for future violence, the Board's Chief Psychologist or designee will review the report to determine if, at his or her discretion, a new report should be completed. If a new report is not completed, an explanation of the validity of the existing report shall be prepared.

(f) If a hearing panel identifies at least three factual errors the Board's Chief Psychologist or designee will review the report and determine, at his or her discretion, whether the errors invalidate the professional conclusions reached in the report, requiring a new report to be prepared, or whether the errors may be corrected without conducting a new evaluation.

(g) Life inmates who reside in a state other than California, including those under the Interstate Compact Agreement, may not receive a Comprehensive Risk Assessment, Subsequent Risk Assessment or other psychological evaluation for the purpose of evaluating parole suitability due to restraints imposed by other state's licensing requirements, rules of professional responsibility for psychologists and variations in confidentiality laws among the states. If a psychological report is available, it may be considered by the panel for purpose of evaluating parole suitability at the panel's discretion only if it may be provided to the inmate without violating the laws and regulations of the state in which the inmate is housed.

(h) The provisions of this section shall not apply to medical parole hearings pursuant to Penal Code section 3550 or applications for sentence recall or resentencing pursuant to Penal Code section 1170. Note: Authority cited: Section 12838.4, Government Code and Sections 3052 and 5076.2, Penal Code. Reference: Sections 3041 and 3041.5 Penal Code.

End of proposed text

PAROLE BOARD CONTINUES SECRETIVE WAYS

Once again the members of the Board of Parole Hearings and their legal advisers have shown themselves to be opposed to transparency in government and fearful of public scrutiny of their actions and decisions.

In a series of training and information sessions for the commissioners held over a three day period from December 15-17 the board, on recommendation from their chief legal counsel, closed more than half these sessions to the public. Life Support Alliance has challenged the excessively reclusive actions of the BPH both publicly, at the Dec. 14 Executive Board Meeting, and in communication with the board's chief legal counsel Anna Awiszus.

LSA is not alone in our belief and contention that the Board is in contravention of provisions of the Bagley-Keene Open Meeting Act, which lays out very specific perimeters for allowable closed meetings; closed meetings must deal with pending, imminent or current litigation or personnel matters. Of the 17 training sessions held over the 3-day period, nine were closed to

the public. LSA takes particular exception to three closed sessions, dealing with topics which in no way appear to fall under the provisions for allowable closed meeting.

Those sessions, we were told, dealt with Administrative Services, Use of Psychological Evaluations in Deliberations and, most curiously, SB 1399, Medical Parole. SB 1399, passed during the recently concluded legislation session, has not yet gone into effect. Sen. Mark Leno, the bill's author, was unaware the BPH would be discussing this legislation, let alone in closed session.

Since the provisions of SB 1399 do not go into effect until Jan. 1, 2011, it is especially difficult to understand how a discussion of the new bill would be subject to closed session under pending or current litigation or under the employee matters provisions of the Open Meetings Act. The same provisos apply to discussions of Administrative Services and the use of psychological evaluations in parole deliberations.

Board Chief Counsel Anna Awiszus complacently assured LSA in an email that closed sessions on these and all other topics so designated were sanctioned as the board "was receiving legal advice."

LSA holds such a broad, sweeping disclaimer is not sanctioned under the Open Meetings Act, which in fact seems to put the emphasis more on reasons for keeping meetings open to public attendance than excuses for closing them for reclusive action. The Open Meetings Act of 2004 also provides for remedial actions against public bodies that hold unauthorized closed meeting, including court actions. LSA is presently exploring these remedies in the hope of forcing the BPH, and their legal counsel, into the sunlight of public scrutiny.

If the BPH is certain their actions and discussions are legal, ethical and appropriate, commissioners should welcome public attendance at their discussions and training sessions.

BPH, OIG TO COOPERATE ON COMMISSIONER "TRAINING"

In a series of meetings held earlier this month in conjunction with their monthly Executive Board Meeting, parole commissioners reportedly participated in a number of "training" sessions, covering topics from rules of evidence to psychological evaluations. We stress "reportedly," as the majority of these "training" meetings were held in closed session, away from the prying eyes of the public and far removed from the transparency and openness we believe the BPH should both strive for and be accountable to provide.

One of the few such training sessions open to the public was an overview of commissioner training, presented by BPH Executive Director Martin Hoshino and Ray Westly, head of the Inspector General's Office of Independent Review, the agency that in July of 2010 issued a report critical of the training (or lack thereof) of the commissioners and deputy commissioners.

BPH Executive Director Hoshino announced the OIG will be working diligently with the BPH over the past several months to provide a training pilot program for commissioners and deputy commissioners. Hoshino and Westly stressed this cooperation would provide "a new set of eyes" on the training. A new set of eyes possibly, but apparently not a public set of eyes.

Westly stated the OIG's office is part of the oversight process for the Department of Corrections (of which the BPH is a part) and works to bring transparency to the CDCR and to assure CDCR and BPH functions are "consistent, fair and open" throughout the state.

News flash, Mr. Westly—your oversight isn't working. Very little in the parole hearing process is fair. Or consistent. Or open.

Westly mentioned that as part of this oversight process the OIG has undertaken a series of conversations with stakeholders in the parole process, but in mentioning those the OIG has spoken with, Westly named only groups on the custodial side of the issue. Life Support Alliance, in fact, has been one of the stakeholder groups that has participated in this conversation process, though Westly put prisoners' attorneys and victims' rights groups in the same category. Clearly, Mr. Westly needs some training.

Westly reported that staff from the OIG's office, whom he touted as "lawyers, peace officers, administrative and trial lawyers with court experience" would now be providing input into the commissioner training process, though he did not offer any specific examples. Westly did mention he was himself participating in a training session later that day on Rules of Evidence. That session was closed to the public. So much for promoting transparency and openness.

When questioned by LSA about the July OIG report critical of commissioner training Westly sought to downplay that report's negative findings, saying the OIG simply meant they could not find actual documentation of all required training; the training may have been provided, but documentation of those sessions was missing. Hoshino was quick to admit that if the training could not be documented, it could not be considered having been offered.

In response to additional questions by LSA Westly said the OIG may do a follow-up audit on commissioner training or possibly a yearly update. He also indicated no report on the OIG's conversations with parole stakeholders would be forthcoming, as the comments gleaned from those talks were for the OIG information only.

Hoshino, also in response to an LSA question, acknowledged that newest parole commissioner Anthony Adams, appointed by Schwarzenegger only a few weeks prior to the date of the meeting, had not finished his training, but was voting on en banc considerations because he had "been brought up to speed" on the information needed to make decisions in en banc considerations. (LSA finds this reasoning odd. Given that en banc considerations are the last stop in the parole grant/denial dance, how commissioners can be brought up to speed on the last phase of the process without being trained in the preceding phases is a bit puzzling.)

The Executive Director asked for patience, noting the training program is "a work in progress." LSA believes prisoners, families and the public have been patient long enough. So many lives and so many public resources should not hang in the balance of a work "in progress."

HEARING FUNDING; MOUNTING AND APPRECIATED

Following last month's appeal Life Support Alliance has received several generous donations toward underwriting the costs associated with the up-coming Title 15 hearing. We are deeply appreciative of all financial help received. We understand the difficulties faced by prison families, especially in trying economic times.

With the hearing date now set and production of our written testimony and presentation underway we will continue to apply all donations noted for Title 15 expenses to that category. We are making every effort to keep costs to a minimum.

Again, we thank all those who have sent in donations to help with this effort. Every contribution is appreciated and used wisely.

FOR THOSE ON THE INSIDE

LSA receives many letters from prisoners asking about a variety of issues and seeking information or advice. We are happy to provide any information we have on the various prison issues we target, but we are not the final word on all issues.

Regrettably, we are not attorneys and therefore cannot offer legal advice or assistance. We are happy to provide a list of attorneys who specialize in lifer hearings and litigation, but we recommend no one in particular. We can also refer inquiries to other groups targeting other issues. Nor are we able to offer jobs to paroling lifers or other re-entry services, though we are happy to provide information on such services as we are aware of.

LSA is focused on the parole board, their unacceptably low rate of parole date grants and specious reasons for denial. While we support or oppose legislation and actions affecting a variety of prison issues, parole for lifers is our focus.

We strive to respond to all letters in a timely fashion, but we ask for patience, as our staff is small and the amount of correspondence great. Prisoners who send stamps or SASE to help defray costs are greatly appreciated, but we will respond to all inquiries. Please remember to include your name, CDC number and housing address in the body of your letter; envelopes can become separated from letters.

In our appeal for funds to assist with publication costs associated with the upcoming Title 15 change hearing we suggested those wishing to help with these expenses note Title 15 Hearing on their checks. We have received comments from prisoners who wish to donate via their trust accounts but are concerned that placing such a notation on their donation could in some way be seen as legal fees or cause difficulty for them. We are very deeply appreciative of any donations from prisoners and to prevent any potential problems, any donations received from trust accounts until the date of the hearing will be considered as being intended for the hearing expenses, without any specific notation on the warrant.

Please continue to send us your comments and questions, each one is read, considered and will be answered as quickly as possible. Some of our favorite letters are from those who have received a parole date and write to tell us they are going home.

If you have family or friends on the outside who you would like to receive our newsletter, ask them to email a request to our email address or send us their email address and we will be happy to add them to our growing list of supporters. The easiest and most cost effective way for LIFER-LINE to reach more prisoners is for their friends and family to receive the newsletter via email, print and mail it to their prisoners. Back issues are also available.

REMINDERS

LIFE SUPPORT ALLIANCE website: www.lifesupportalliance.org

LIFE SUPPORT ALLIANCE email: lifesupportalliance@gmail.com

MAILING ADDRESS: PO Box 3103, Rancho Cordova, Ca. 95741

Check our website after Dec. 30 for suggested letters in opposition to changes in Title 15.

PUBLIC HEARING ON TITLE 15 CHANGES: JANUARY 31, 2011 1 PM. 1515 K ST.

ROOM 550, SACRAMENTO, CA 95814