



*Public Safety and Fiscal Responsibility*

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## **THE COMMUTATION WAIT**

In mid-September Governor Gavin Newsom, who has since the beginning of his term, been pretty free with the reversal pen, at last began to show some signs of the reform-minded politician who ran for office. Newsom issued 21 commutations of sentence, and though it appears most of those individuals had submitted their petitions during the previous administration, Newsom does get the credit for taking action.

And there are some interesting trends, though whether or not these will hold as Newsom's term goes on is not clear yet. Of the 21 commutations, 17 were handed out to prisoners who qualify for YOPH consideration; 7 were to LWOP inmates and 3 were given to determinate sentenced prisoners.

Ages at the time of the crime varied from the youngest who was 15 to a couple of individuals in their late 40s. Most commuted are currently middle aged, 15 of the 21 now in their 30s or 40s, but there are also a couple of relative 'youngsters,' currently 22 and 26 years of age. The oldest commuted prisoner is an 80-year-old handicapped woman. Of the 21, 3 were women.

Although the nearly have those commuted had already served 20 years or more, there were two prisoners who have so far served less than 10 years. Nine of the commutations were for prisoners with first- or second-degree murder convictions and 5 were the result of gang activity. Another 4 were not the prime perpetrator of the crime.

In many cases Newsom's sentence reductions appeared to basically remove egregious enhancements that in many cases doubled the sentences for the actual crime, and in the case of lifers, that means those on the receiving end of these commutations will be before the parole board earlier, often much earlier, than they otherwise would have been scheduled. Most of the formerly LWOP prisoners were commuted to a term that will bring them before the board in rapid fashion. In the commutation letters of 4 others Newsom directed their immediate parole consideration.

And that's the key here, parole consideration. This batch of commutations, Newsom's first, did not fling open the doors for anyone, but did provide a shorter path to a chance for freedom for many. It's a good start. We hope to see more in coming months.



### **SURVEY SAYS.....**

*For the last several months LSA has been requesting, via both our newsletters, Lifer-Line and California Lifer Newsletter, inmates to weigh in on the performance of their attorneys at parole hearings. We've got quite a stack of responses now, enough to come to some conclusions. We reported those conclusions to the Board of Parole Hearings at their September Executive Board meeting. The comments we offered are below. BPH is currently re-evaluating the attorney selection process and we offered the results of our survey in the hope that the information would be of help as the new process moves forward.*

**REMARKS PRESENTED MONDAY, SEPT. 16, 2019 AT THE BOARD OF PAROLE HEARINGS EXECUTIVE BOARD MEETING DURING PUBLIC COMMENT**

“Although responses to our survey on the performance of inmate attorneys continue to be received, we’ve accumulated enough replies now to present some preliminary results. Certainly, we don’t represent this as a conclusive survey, an empirical study of great depth or precise scientific analysis, but it is interesting and definitely shows some trends and areas of concern.

It bears noting that we do not believe any particular attorney can achieve a grant of suitability for an unprepared inmate, no matter how good the attorney, nor can an inept attorney sink the chances of a well-prepared inmate, so from our point of view, simply the number of grants is not the measure of a well-performing attorney. However, attorneys can assist their client both in preparation and presentation. To us, that is the essence of attorney performance.

It isn’t therefore surprising that about 73% of those responding to the survey were denied parole at their hearing, about 1% of the outcomes were other, stips, waivers or continuances, and the remaining 26% were grants. Only a handful of the attorneys discussed in the surveys were private hires, the overwhelming majority state appointed. Responses came from roughly 20 different prisons, all security levels.

There some comments genuinely praising the attorneys, even from inmates who were denied....and there were other comments. A few appointed attorneys stood out, in both directions.

Attorney preparedness was the big issue, with more than half the inmates reporting they didn’t feel the attorney was prepared to represent them at the hearing, in large part, it appears, because of the lack of time spent with the client and/or his file. Prisoners report attorneys often meet with them only once prior to the day of the hearing, sometimes only a few days before the hearing, rarely more than the requisite 45 days. And those meetings are usually less than 20 minutes, often as briefly as 10 minutes.

Many attorneys appear to come unprepared, without requisite forms and documents sent to them by prisoners. Inmates often report they have trouble getting these documents back from attorneys as well. Attorneys often commented to their clients they didn't have time to fully prepared, as they were over-burdened with cases, or were unfamiliar with some of the finer points of parole hearings, including discussing the CRA, YOPH factors, one even telling the inmate, "I dropped the ball."

About a third of the time inmates reported their attorneys, always appointed, recommended they stipulate to unsuitability; this is a marked increase from previous survey result on this question. It's also troubling to us this appears to be a recent upswing in this trend, with several inmates reporting their attorney advised this tactic after meeting alone with commissioners. That's a practice we'd like more information on.

As to those stand out attorneys, one state appointed got 80% thumbs up rating, spending an average of 90 minutes with her clients. And another, who shall be nameless unless we're specifically asked, recommend to 75% of her clients that they stipulate and, when questioned by her client about this recommendation, reportedly leaned close to tell him, "F you. Don't ever question my integrity or performance"—said performance was reportedly witnessed by a CO, who, we hope, followed through on his stated intention to make the presiding commissioner aware of the interaction.

And yet another attorney who told his client to just say what the panel wanted to hear, regardless of whether or not it was the truth. We believe the phrase for that behavior is suborning perjury.

To be fair, of those private attorneys for whom we received surveys, several were singled out as not informed, prepared or effective—and without exception those attorneys were individuals we've not run across before and were new to parole hearings. It appears these mismatches were the result of inmates and families simply hiring a friendly attorney, much like seeing a podiatrist when they needed a pediatrician."

## **NOTES FROM THE EXECUTIVE BOARD MEETING**

→During September's Executive Board meeting of the BPH (the business meeting), Executive Director Jennifer Shaffer offered additional information on the impact of Structured Decision Making Format on parole hearings. Since SDMF went into effect in July Shaffer reported the board had been able to schedule 21% more hearings than the previous 3 months.

Those hearings held were, on average, 33 minutes shorter than previously, the number of hearings postponed was down by 7% and the grant rate fluctuated less than 1%. The increase in the number of hearings scheduled and the decrease in postponements is notable as the BPH looks ahead to next year and an approximately 36% increase in the number of hearings they will need to conduct.

As Shaffer has repeatedly reported the purpose of adopting the SDMF was to allow parole panels to hold shorter and more efficient hearings, leading to more hearings per commissioner, all without negatively impacting the quality of decisions and the overall grant rate. So far, results seem to support the SDMF.

As LSA attends more hearings to observe the process in action we'll keep our readers informed of the changes and what to expect.

→The BPH will soon begin accepting applications from attorneys wishing to be included on the board's state appointed attorney roster. A new process is being implemented, which is intended to provide more accountability from the attorneys and better compensation to those attorneys. For the first time, screening interviews will be held before an attorney is accepted on the roster. Stay tuned.

→Though certainly not the result of any survey, study or data-specific results, those in attendance at Executive Board meetings over the past few months have noticed what seems to be a trend in pardon applications. Pardons are available to those who have served their sentence and been discharged from parole, via application to the Governor, investigation, referral and decision by the BPH, which then returns a recommendation to the Governor.

There has certainly been an uptick in pardon applications in the last 2 to 3 years, but recently those seeking pardons have increasingly been those individuals who are in danger of deportation by ICE. Non-citizens with felony convictions are subject to possible deportation and several pardon applications in the last 6 to 10 months have been from those in such situations.

→For the past two months the BPH Executive Meetings have been held off site of the BPH offices, while the board's meeting room undergoes renovations, to allow seating for a complete compliment of the 17 possible parole commissioners now authorized, as well as administrative staff and the public. Currently there are 16 appointed commissioners as last meetings in the board's old home were notably cramped. The new room is expected to be ready for the October meeting.



### **KEEP THOSE LETTERS COMING**

As noted elsewhere, Governor Newsom has begun considering and granting commutations and pardons. But he also continues to issue parole grant reversals and send many lifers to en banc consideration. Why? We don't know. Yet.

Early next year we can expect a report to the legislature of Newsom's reversals, but not en banc referrals. But we don't want to wait that long.

We're renewing our request for those lifers who have been reversed by the Governor, or referred to en banc consideration, to share their letters from the Governor with us. We won't be publishing your name, case or calling you out in any way, but we will be combing the letters we receive for what may 'trigger' this Governor. By the middle of former Governor Brown's term, we had a pretty good idea who would be under greater scrutiny for reversal or en banc, but we're still working on that size-up of Newsom.

If you've had your parole grant reversed or been referred for more consideration by the board via the en banc process, please send us those notification letters, as well as let us know when you received that letter, as timely notification of these actions has been an issue.

If you send us the original letter be sure to let us know you want it returned, we'll make a copy and send it back to you. To those who have already sent letters, our appreciation—know that you're helping in the effort to increase parole process transparency.

Send your letters to: LSA, PO Box 277, Rancho Cordova, CA. 95741, please note 'Governor Letter' on the envelope. Thank you for your support.

## YOU GOTTA HAVE A PLAN

You really do—a parole and relapse prevention plan, that is. That's always been the case, the parole panels want to know what your plans are if released, but now, with new changes in the hearing process, an organized and examinable parole plan is crucial. Not just vague ideas in your head you can talk about, something in writing the commissioners can examine and discuss. And you'll need a relapse prevention plan, even if you've never had substance abuse issues—you've got other issues to address.

Adequate parole plans don't have to be complicated or presented in an elaborate manner, but they do need to be comprehensive, covering the areas the board is concerned about, and providing a realistic and verifiable plan of action. The board is concerned with the basics: shelter, sustenance and support. Where will you live, how will you make a living and who will be there to help?

Where will you live?

- Transitional housing (preferred by the board)
- With family (also possible) where and with whom
- Is the proposed location acceptable to likely parole conditions (if you have a 290, there are restrictions)?
- Is there verification of that residence (a letter of support or acceptance from a transitional facility)?
- If you have an ICE hold it's a good idea to have plans for California and the country you may be deported to, covering the same categories

How will you support yourself (legally)?

- Do you have a marketable skill (a vocation) and an idea where to look for work? (It isn't necessary to have a firm job offer).
- Are there sufficient funds and/or promise of financial support to live for the first 6-12 months?

What support do you have and what do you plan to do?

- You'll need support letters from family, friends, organizations
- How that support is going to assist in reentry into society—what specifically is being offered?
- What support groups will the parolee to continue to attend, pro-social activities do you plan to engage in?

Relapse prevention plan (Not just for substance abuse, but for other trigger issues such as anger, low self-esteem, co-dependency).

- Know where meetings/resources are to address these issues and commit to taking advantage of the help available.
- Know the things that trigger your individual issues in these areas.

Don't overthink the process but be realistic. Basic, simple stuff, but absolutely necessary. You've put a lot of work into your rehabilitation. Don't let your insight end at your parole hearing, the rest of your life deserves the best of your attention too.

Those who fail to plan, plan to fail.

## CRA SURVEY

*As with our previous surveys on attorneys, we are asking lifers to contribute to our understanding and information of the CRA interview process and results. Please fill in all categories; details are critical. As we continue to advocate for lifers and improvement of the CRA process actual your participation is our best resource. Mail to LSA, PO BOX 277, Rancho Cordova, Ca. 95741. Please note "CRA Survey" on the envelope. We would also appreciate a copy of your CRA.*

Date of Interview \_\_\_\_\_ Length of interview \_\_\_\_\_

Name of clinician \_\_\_\_\_ Risk rating: Low Moderate High

What was your crime? \_\_\_\_\_ How long incarcerated? \_\_\_\_\_

How many parole hearings have you had? \_\_\_\_\_ Date of last hearing \_\_\_\_\_

Was CRA cited in denial or grant? YES NO Were you aware ducat was for CRA? YES NO

Have you had a previous CRA? YES NO If so, what was the rating? Low Moderate High

Are you YOPH? YES NO How long before hearing was CRA received? \_\_\_\_\_

If you were convicted of a sex offense, were you a minor time of crime? \_\_\_\_\_

Were there factual errors in the report? YES NO Have you appealed? YES NO

Any comments you wish to make regarding interview, clinician, results.