LIFE SUPPORT ALLIANCE
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Public Safety and Fiscal Responsibility

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PAROLE CONSIDERATION EXPANDS ON MANY FRONTS

Hard on the heels of the implementation of SB 260/YOP hearings, offering special consideration of factors to those who were under 18 at the time of their crime, comes not just news of but actual implementation of two, new, specialized parole procedures targeting specialized populations. Elder parole, for older, long-serving prisoners will begin October 1, 2014 and expanded medical parole guidelines, which were put in the mix on July 1.

Although the BPH estimates these new considerations will affect a relatively small number of lifers, any new development in parole matters is of great interest to lifers. And more than lifers. Like SB 160, which can apply to long-serving determinate prisoners, expanded medical parole and elder parole hearings will be held for those determinate sentenced inmates who fall under the qualifications of these new policies.

But while a new and encouraging development, even elder parole and medical parole won't provide an automatically opening door for those who qualify. The primary consideration, as it is in all parole hearings, is the suitability of the inmate, and his or her relative risk to the public. So all suitability factors remain in play, for lifers as well as those determinate sentenced inmates who now may have some hope of going home before the end of this century or their lives.

Included herein is the latest, and we trust, the last, word on how these hearings will be promulgated. LSA was in attendance, and participation, at a recent conference at BPH to outline and expand on the requirements and procedures for these new hearings.

ELDER PAROLE

Consideration for those inmates, including lifers, who are aging and have been incarcerated for an extended period will begin October 1, 2014. The BPH has established criteria for identifying those who are eligible for this special consideration and, in conjunction with the CDCR classification division, will be notifying those prisoners who qualify.

It is important to note that elderly or elder parole hearings are not in addition to regular parole hearings, but will be a factor that either generates a hearing or a factor of consideration in an already scheduled hearing. This is not a parallel track, an additional parole hearing, or a different hearing.

In brief, the qualifications for elder parole consideration are these:

- Be 60 years of age or older.
- Have served at least 25 years in custody (including time served for the offense in other than state prison custody).
- Can be either a life-term inmate (lifer) or a long- term determinate sentenced prisoner.
- Not be a condemned or LWOP prisoner.

Those lifers who are currently in the BPH parole hearing schedule for an appearance prior to October 1, 2014, will be considered under elder parole factors at their regularly scheduled hearing. For those who are not scheduled for a hearing prior to Oct. 1 or for those determinate sentenced prisoners who would otherwise never have a parole hearing, those hearings will begin on Oct. 1.

For those who have already had at least an initial hearing, their situations and factors will be considered by an administrative review with an eye toward advancing their next hearing, which will then be held under elder parole guidelines. Prisoners fitting the above guidelines may also file a Petition to Advance (Form 1045-A) to seek a new hearing, citing the implementation of elder parole as a new factor in their case.

All inmates considered under new elder parole standards will receive a new Comprehensive Risk Assessment (CRA, better known as a psych eval) from the FAD. These evaluations will specifically address how the standards of elder parole impact the prisoners' potential risk.

In all other matters elder parole hearings will be the same as regular parole hearing and if found unsuitable the prisoner will be under the standards of Marsy's Law for length of denial. Those denied will also receive a term calculation at the conclusion of the hearing and all normal review times and factors will be in play. This applies also to determinate sentenced prisoners considered for release under elder parole standards. While they will not receive a term calculation if denied, they are subject to the review times if granted and will be released following those reviews.

As to standards or guidelines for consideration in regard to aging prisoners, those include the documented lack of recidivism or criminal activity in those aged 60 and over (across the population, those 60 and over commit crimes at about the same rate as those 10 years of age and younger—what statisticians term 'statistically insignificant'), as well as any diminished physical or mental condition the prisoner may now exhibit. The CRA will also feature a special section that addresses these areas in relation to risk if released.

All prisoners who may qualify for elder parole hearings, whether lifers or determinate sentenced, should keep in mind that the factors governing suitability findings in normal parole hearings remain the same for elder parole hearings. The panel will consider the crime, institutional behavior, programming and parole or, in the case of determinate sentenced inmates, release plans, including housing, financial support and care needs.

Elderly parole is not a new avenue for lifer or long-term release, it is merely a new recognition by the state, and the BPH, that aging inmates are far less likely to endanger the public on their release than young or middle aged prisoners. Worldwide statistics show those who serve long sentences are, no

matter what age, less likely to reoffend once released. When added to the lack of recidivism risk for senior citizen inmates, these factors could prove an important consideration for lifers and long-termers seeking release. Once an inmate is identified as eligible for elder parole consideration each successive hearing, as with YOPH, will be held with those considerations. It is not an additional opportunity/hearing (parallel track) for parole.

If you believe you should be considered for elder parole and do not receive notification BPH suggests checking with your counselor (which may be an exercise in futility) and/or filing a 602. PTAs are also allowed and suggested for those who have had a prior hearing (which we suspect is the vast majority of those who qualify for elder parole) and wish to be reconsidered under the new standard.

EXPANDED MEDICAL PAROLE

Expanded Medical Parole which went into effect on July 1 with considerations and procedures to be followed in all medical parole hearings going forward. These medical conditions and considerations will not be applied to inmates sitting for regular parole hearings, regardless of age or other factors. For consideration under expanded medical parole the inmate must be approved for this process by the chief medical officer at any institution.

Requests for consideration under medical parole may be made by the inmate, a family member or the inmate's primary care physician within the institution. The evaluation will be reviewed by the CMO the request then goes through classification and parole at the prison level before being forwarded, if approved at prison level, to Division of Adult Institutions which will prepare a board packet and refer the inmate to BPH for scheduling.

In order to be considered for expanded medical parole an inmate must meet the following criteria:

- Suffer from 'significant and permanent condition, disease or syndrome' which results in physical or cognitive (mental) debilitation or incapacitation.
- Qualify for placement in a (licensed) skilled care facility under assessment by the Resource Utilization Guide IV (RUG 4) tool; more on this later.
- The prisoner is found not to be an unreasonable risk to public safety in said facility.
- The prisoner is not condemned or LWOP.

Expanded medical parole hearings will be conducted in the same manner as medical parole hearings in the past, and can be done literally at the bedside of the inmate. All factors regarding suitability will be in play, including institutional behavior, programming, and a psych eval. Additionally the medical/mental condition of the prisoner will also be given consideration. All the same parties to a hearing will be notified, including commitment county DA, victims/next of kin and the inmate will be afforded a state-appointed, or privately retained attorney.

If parole is granted, the board may stipulate that as a condition of the grant the inmate be housed in a care facility able not only to meet the medical needs of the inmate, but also the security and safety needs of the public, as determined by the board. This might include a locked facility, one that restricts access to minors, restrictions on communication or GPS monitoring. All restrictions would be "rationally related" to the inmate's prior conduct/crime.

Heretofore, if an inmate was considered for medical parole, the board would expect to see from him/her parole plans that included appropriate housing/medical care arrangements before a grant was made. Under the expanded guidelines, the grant will be made and at that point CDCR, in conjunction with DAPO, will identify approved facilities which meet all security and medical needs and secure placement. If no approved facility can be located within the 120 days review window afforded the BPH by statute, the grant expires and the inmate remains in CDCR custody.

Once a medically paroled inmate is placed in a care facility he/she will be monitored by an assigned agent from DAPO, to insure compliance with all regulations of the facility, including any restrictions on alcohol and non-prescribed drugs. Violations of these restrictions could cause the board to impose further restrictions and/or placement in another facility.

Part of evaluating the level of care needed by any ailing individual, inmate or not, is a 'tool,'' called the RUG IV, or Resource Utilization Guide; and we all know how much CDCR loves evaluation 'tools'. The RUG divided Activities of Daily Living (ADL) into four basic groups of activities:

- Bed mobility; how the individual is able to change positions while in bed or 'alternative sleep furniture,' which we suppose could be considered a bunk in prison housing, as few really refer to them as beds.
- Transfer; moves between beds, chairs, standing, exclusive of using bathroom facilities.
- Toilet use; rather indelicately phrased, but evaluates how well an individual can perform these necessary functions , including caring for catheter or ostomy bag if so needed.
- Eating; measures not manners, but how the individual receives sustenance, including eating, tube or IV nourishment.

The extent to which anyone can self-sufficiently handle these tasks and the level at which they need assistance is measured on a point scale, less self-sufficiency and more assistance required receiving higher numbers. As in golf, this is one exercise in which the lowest number is the best number. Scores can range from 0 to a maximum of 16, with the higher range of scores indicating a greater need for skilled care and assistance. The higher the score, the more likely any given inmate is to be considered for expanded medical parole.

But a high RUG score alone will not guarantee parole to a care facility. Those twin needs of proper treatment capabilities and sufficient security concerns must still be met. However, with the inclusion of RUG and language in the policy memorandum indicating cognitive or mental condition will now be considered as a health factor, BPH appears to be at last recognizing that some elderly inmates suffering from various forms and stages of dementia but otherwise in adequate health to care for their daily needs, could and should be placed in facilities other than main line prisons.

To initiate consideration for medical parole an inmate, medico or family member may request evaluation by a prison physician, including performing a RUG IV assessment and completing a CDCR For 7478. Medical parole, alone of the new parole consideration criteria, does provide a parallel track. Prisoners granted medical parole and housed in appropriate facilities may be subject to a regular parole hearing in the natural schedule of hearings; such a hearing could provide the opportunity for such inmates to be paroled in the normal fashion.

DEAR JERRY……WHAT'A YA THINKING?

An open letter to the Governor.

Dear Governor Brown,

Although you declared, last year that the prison crisis was over, surely you, as well as the public, prison advocates and certainly the 3 federal judge panel, know that the crisis is most certainly not over. And although your administration and the legislature have made considerable strides, via legislation and various acts of legerdemain, in addressing overcrowding the larger issue, who should we incarcerate and for how long, remains.

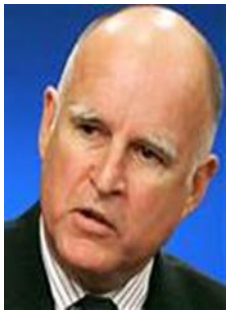
So it puzzles me, and many other prisoner advocates, when you continue to refuse to release clearly reformed, rehabilitated and undisputedly transformed prisoners, granted parole by your own Board of Parole Hearings. Yes, these life term inmates have committed the most serious of crimes. But they are also the most serious about rehabilitation, life change and becoming productive citizens. This group, alone of all the prisoner cohorts, MUST engage in the deep introspection, self-examination and the true personal change we hope to see in all those subjected to society's correction.

They have proven that change before your own appointees on the Parole Board, often more than once. And it is undeniable that these men and women, many of whom have served decades in prison for crimes committed in their youth, do not recidivate, reoffend or continue to prey on society.

The number of paroled lifers returned to prison for another crime over the last 20 years is in the single digits—and none for a similarly violent offense. No other group of released prisoners, whether from local correctional facilities, state prisons, probation, programming or parole, can match the stellar performance of paroled lifers in remaining offense free and contributing to society.

Yet you refuse to sanction their release. In 2013 you repudiated 100 men and women found suitable to return to society by the parole board--your parole board. This year it appears you are on track for a similar performance. That is an additional 200 souls still in California's overcrowded prisons who could be safely released, cutting expenses and above all, proving we are a society of law coupled with humanity.

And while your reversal missives often chastise these lifers for their 'lack of insight' or 'failure to understand' the reason for their long-ago crime, we believe it is you, Governor Brown, who exhibits a



habitual lack of insight and understanding, even obstinacy. You repeatedly criticize those who you refuse to release for being unable to explain why they committed the life crime, even in the face of turmoil, chaos and upheaval in their lives at the time. You ask, why did they turn to crime to cope, when others in similar situations did not?

Our question to you, Governor, is: do you really expect an answer? Criminologists, sociologists, psychiatrists, therapists, doctors, lawyers and pastors have been searching for the answer to that question for ages. If anyone could provide that answer society's ills could be cured. There is no simple or single answer and to expect such demonstrates a lack of understanding of crime and society at the most basic level. So much for your understanding.

As for insight; you have before you simple documents, words on paper and nothing else to convey to you the essence of the person under consideration. You cannot look into their faces, see their emotions, and read the deep and real remorse reformed lifers carry with them forever. These are the things your parole board commissioners witness, evaluate and understand before finding a lifer suitable for parole. That, Governor, is insight you lack.

And then there is trust. By refusing to allow these lifers to parole (where, by the way, they are firmly supervised) you declare your mistrust of them. That, perhaps, we could understand. But you also thusly declare your mistrust of your own appointees, as each and every one of the 12 current members of the Board of Parole Hearings has been appointed or re-appointed by you, personally.

If, Governor Brown, you do not trust these men and women to make serious, considered decisions, why in the world would you appoint and then reappoint them? If you don't trust them, remove them, or allow them to do the job you evidently, at one time, thought they could be trusted with. Micro-managing and second guessing those in whom you have publically proclaimed your trust via gubernatorial appointment is unseemly, unwise and, hopefully, will be held unlawful under litigation currently in the courts.

But you can prove us wrong. You can show your understanding, insight and trust of your agents and your own judgment by curtailing your parole reversals, allowing those life term inmates granted parole by the Board of Parole Hearings to return to society, as the law promises those who prove their suitability.

That, perhaps, would be the most understanding and insightful act of your governorship.

Sincerely,

Vanessa Nelson-Sloane, Director
And the Staff ofJULT
Life Support Alliance