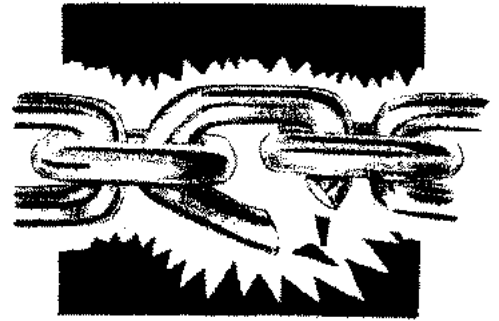




Voices.Con

Term-to-Life Prisoners Converse



Vol. 11, No. 5

www.VoicesDotCon.org

JANUARY 2014

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IS DISPROPORTIONATE TERM FIXING ON THE MEND?

No state parole process has ever spawned a greater need for continued litigation than California's Board of Parole Hearings (BPH). This is due, as most of the state's term-to-life prisoner population is already fully aware, to the board's wildly disproportionate term fixing practices where one prisoner is found suitable for parole, while five others are denied parole even though they all had relatively identical offenses of similar gravity and magnitude, and presented an equally stellar prison record.

This could happen merely because the five who were denied parole unfortunately had a victim representative(s) attending their hearing, opposing any grant of parole. This would not be a "legal" reason for the parole board to deny parole, but the statistical reality is, a term-to-life prisoner with victim opposition to the grant of parole is nearly 4 times more likely to be denied parole. These kind of disproportionate outcomes have continued with a sort of impunity for decades because the politics of vengeance have remained carefully cloaked within CA's BPH policy and procedure. It appears, however, that at least one court has finally recognized that some kind of fix is in order.

On December 13, 2013, Jennifer Shaffer, the Executive Officer for the BPH, and Amber Wipfler, Deputy Attorney General for the State of California, signed a Stipulation

and Settlement Order. The order was then signed by Judge Anthony Kline and filed with California's First Appellate District Court, on December 16, 2013. In this settlement, the BPH has agreed to "begin implementation of new policies and procedures that will result in the setting of base terms and adjusted base terms for [term-to-] life inmates at their initial parole consideration hearing, or at the next scheduled parole consideration hearing" whether the hearing results in the grant or denial of parole. The Settlement Order also tells the BPH that "the Board will commence rulemaking proceedings designed to memorialize and embody said new policies and procedures."

In setting your base term, the panel will be required to establish your date based solely on the gravity of your crime, and any aggravating or mitigating circumstances of the crime. These specific "circumstances" are listed within the Title 15, Division 2., at §§ 2403, 2404 & 2405. There are individual matrixes provided for 1st degree, 2nd degree, or attempted murder. The range of years within the matrix for 1st degree murder is 25 to 33yrs. The range for 2nd degree murder is 15 to 21yrs, and the range for attempted murder is 7 to 15yrs..

Most term-to-life prisoners can earn postconviction credit for each year spent in prison. Generally, this credit will amount

on the MEND, cont'd
to 4 months per year. The board may grant more or less than 4 months annual postconviction credit when the prisoner's performance, participation or behavior warrants such an adjustment.

Once the base term has been determined, any preprison credit shall be deducted from the total period of confinement. And finally, the total period of prison confinement is reduced by any postconviction credit that's been previously granted. This will typically result in the prospective parole date. For more information on all of these calculations, it is highly recommended that, well in advance of your next hearing, you give a thoughtful read to Title 15, Div. 2., §§ 2410 and 2411.

Most of today's term-to-life prisoners are likely to be somewhat rusty on making these kinds of term calculations; it has been several decades since the board has set any base terms for those of us not having first been granted parole. It would be wise, going into your next hearing, to have a clear understanding of exactly what an "aggravating circumstance" is, and how much credit you may have earned. If you do not make an effort to understand this prior to your next hearing, you can bet that the BPH will be happy to make these calculations without your input.

Although a base term will be set, by no means does this change your prospects of being found suitable for parole. There are some who have speculated that prisoners who appear before a panel prior to the expiration of the base term (i.e., the initial hearing) might find a panel unwilling to grant parole until the base term has at least been served. On the other hand, for those who come before a panel after having served the base term, they might find a panel hard pressed to find a justification for the denial of parole. Only time will tell how (if at all) this will effect parole decisions. Until then, please know that the rules regarding how the BPH determines your suitability for parole, have not changed.

Sources: In re Roy Butler, Stipulation and Order, #91694B, 12/16/13, Title 15, Div. 2., §§ 2403, 2404, 2405, 2410 & 2411.

Editor's note: For additional information relating to California's failure to fix proportionate base terms since 1978, see the following editions of Voices.Con: Nov/2012-Pg. 5, Dec/2012-Pg. 5, May/2013-Pg. 4

Man, as a physical being,
is like other bodies governed by
invariable laws. As an intelligent being,
he incessantly transgresses the laws
established by God,
and changes those of his own instituting.
He is left to his private direction,
though a limited being, and subject,
like all finite intelligences,
to ignorance and error:
even his imperfect knowledge he loses;
and as a sensible creature,
he is hurried away
by a thousand impetuous passions.

CHARLES MONTESQUIEU (1734)

PUBLIC POLICY REPORT

The Public Policy Institute of California recently reported that, within the state, murder, rape and most other violent crimes have gone up slightly since realignment began. However, they said these rates could not be attributed to realignment. Instead, they said there is "robust" evidence that realignment has increased property crimes.

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FAMILY MATTERS

So many things come down to the decisions we make in life. Some are easy; chocolate or vanilla, steak or fish, Hawaii or Bora Bora? Well maybe that last choice is a little tougher, but the point is that for those decisions which come down to a preference for us, without any sacrifice involved, it can be quite simple. Decisions become much more difficult when they begin to involve sacrifice. How easy would it be to decide between one job with less money and many people you like and know, or a different job with much more money, but it's doing something you don't like and there's nobody you know? Either way, you are probably sacrificing happiness or money, right? Okay, now let's consider this in light of the term-to-life prisoner who is attempting to explain their sentence, or their time inside, to a family member who loves them. How do you do this?

One option of course, is to be completely honest with your family, by answering all of their questions, being open with your knowledge (and possible experience), and finally being willing to be patient with them as you explain all of this to them maybe multiple times over. The sacrifice in this, is that you might hurt their feelings, make them angry, confused, afraid, disappointed, or cause them to lose hope. It is a painful experience to have to share with your family the truth that you don't specifically know when you are coming home again, if ever. The possibility exists for every term-to-life prisoner that they will not return home again, especially if their family is ill, infirm, or of an advanced age.

Another option is to shield them from the truth by telling them a version of the truth that you believe they will be able to cope with and accept, without further prying or questions; even if they suspect you aren't being forthright with them. The sacrifice in this is that you are being dishonest and not allowing your family the ability to grieve for your absence. You leave them in a perpetual state of waiting, hope, disappointment, and frustration. In addition, after a period of time it is likely that they will begin to doubt you, mistrust you, and even become angry with you, especially if they find out the truth somehow.

Some term-to-life prisoners might believe that they can achieve a balance of sorts between the two, whereby they would be honest with their family initially, but then indulge their family's "hopeful optimism." (Which might be an inability to accept such a sentence as real) You then consider to yourself whether you should allow them this method of coping, even though you know it is not based in reality? Or, do you again give them

the truth about your sentence when they may be unwilling to accept it, at the risk of causing them emotional pain?

The crux of the issue is our fear of setting them up by being dishonest with them. Of course we desire to protect them from any emotional pain, but if our perspective is for the long-term, then what happens when we go to our hearing and are denied release? What do we say then, after our family had already furnished a room for us, expecting us to be home with them? What is it you are sacrificing in this scenario? Maybe again, their trust in you. It could also be that you are attempting to avoid the guilt and shame yourself for causing your family to suffer along side of you.

There is no easy answer to any of this, but some would say there is a right answer that includes being honest, open, and patient as you help them to understand your situation and find acceptance in reality. It is important that we support our loved ones as they support us, and including them in our lives means that we are honest with them about our potential term of imprisonment. Don't sacrifice the truth for pain. Pain will go and you'll

(Cont'd on page 4)

PRIVATE PSYCHOLOGICAL EVALUATION FOR LIFERS

Many lifers are receiving CDCR/BPH FAD psychological evaluations indicating a moderate or high risk that they do not deserve, based upon the misuse of actuarial measures. This will result in a BPH lengthy denial and many more years of suffering.

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family MATTERS, cont'd
 be left with the truth. But you will never re-
 gain the truth without causing even more pain.

TO BE DETERMINED (Pt.2)

The parole consideration hearing takes place in a political climate that is changed from what it once was at the time of sentencing, and the discretion of the commissioners who make up the panel, is vulnerable to many forms of bias. Among them are issues that are personal, how the crime was carried out, age and sex of the victim, sexual orientation, education, a victim or victim's representative being present at the hearing, or the DA's presence, particularly when both are present and opposing the grant of parole. These panel members also have political views and aspirations for themselves, or for the governor who appointed them to the parole board in the first place. This is not to mention the array of inherent bias's that many have toward things like personal appearance, being an attorney that represents the convicted, etc..

As we can see, great discretion is afforded, so great that the courts have sometimes described the board's discretion as "almost unlimited."

(Cont'd on page 6)

** UNLIMITED DISCRETION **

A C I X I L P M Y C U F U R V G A
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 K S A T T V A I C T M F E N P L B
 C E M H O M I H R F A N E R I A I
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 E D O R U C A N C A T I I X L N V
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 D U P E I T R T I A J E T E S M B
 S O D X U N S E L T N B C C S E A
 O B L D B E I N S S A N U A I G T
 T V E Y R A N O I T E R C S I D N
 R O H N D Y J V N L R W I V D U A
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 C K N P P E R C E P T I O N L D F

- | | |
|------------------|------------------|
| 1) Appraisal | 13) Judgemental |
| 2) Belief | 14) Obtuse |
| 3) Boundless | 15) Opinion |
| 4) Decider | 16) Perception |
| 5) Dictatorial | 17) Prevalence |
| 6) Discretionary | 18) Subjective |
| 7) Estimate | 19) Supremacy |
| 8) Excess | 20) Totalitarian |
| 9) Extensive | 21) Unchecked |
| 10) Flagrant | 22) Unrestrained |
| 11) Infinitude | 23) Unrestricted |
| 12) Inordinate | 24) Vast |



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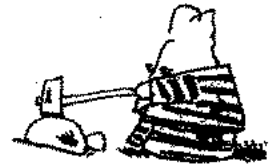
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LITTLE KNOWN REASONS TO PAY ATTENTION



The following statistics are taken from the California Board of Parole Hearings (BPH) and cover the months of September and October 2013:

Month of September (30 days):

| | | | |
|----------------------------------|------------|---------------------------------------|------------|
| Total Parole Hearings Conducted: | <u>294</u> | Stips/Waivers/Postpons: | <u>133</u> |
| Granted Paroles: | <u>48</u> | Deferred 5yrs or more: | <u>57</u> |
| Denied Paroles: | <u>98</u> | Deferred 3 Years: (Includes Stips) | <u>54</u> |

Month of October (31 days):

| | | | |
|----------------------------------|------------|---------------------------------------|------------|
| Total Parole Hearings Conducted: | <u>417</u> | Stips/Waivers/Postpons: | <u>134</u> |
| Granted Paroles: | <u>75</u> | Deferred 5yrs or more: | <u>72</u> |
| Denied Paroles: | <u>159</u> | Deferred 3 Years: (Includes Stips) | <u>104</u> |

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* Although the commissioners who currently make up California's Board of Parole Hearings now seem to appear a bit more diversified with five out of twelve members being women, all twelve commissioners still have some kind of background in law enforcement. Among these current parole commissioners are a former police chief, a former assistant sheriff, and a former deputy attorney general. The board's Chief Executive Officer Jennifer Shaffer, is an attorney whose background includes working nine years as a victim's advocate, first with the Office of Victim and Survivor Services and later for the California Department of Corrections and Rehabilitation. It is said that new commissioners are given a six-week training period before they are permitted full responsibilities to conduct parole hearings. Each commissioner is paid an annual salary of \$111,485.

* According to a poll released last month by the Public Policy Institute of California, about 50% of likely voters support Gov. Brown's plan to reduce the prison population. However, his plan is contingent on the federal courts allowing him another three years to carry it out. (Which is ludicrous) About 77% of likely voters said they are very concerned that the federal courts are likely to force the state to release thousands of prisoners early. About 48% of likely voters said "street crime" is somewhat of a problem in their communities, with black and Latino voters being the ones who most frequently report these concerns. About 50% of voters said that local government is doing enough to combat crime, while 39% said they could do more.

* According to a new study recently released by Stanford, by 2017, the net decrease in California's incarceration rate (under realignment) since 2010 will only be 5%. The co-author of the study Deborah Mukamal, told the San Jose Mercury News last month that "The very provisions of realignment have accelerated decarceration in California in the immediate term. Over time, though, those effects will lessen...unless the state engages in significant reform of its sentencing laws and invests much more substantially in alternatives to incarceration."

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to be DETERMINED, cont'd

People in the free world are quick to cry out the word "justice," but how many actually visit and tour a prison to see what they are crying out for? Shouldn't we know first, before sentencing someone, what we are sentencing them to?

Anyone who has worked in a prison can tell you that term-to-life prisoners toe the line of good behavior and have a general can-do attitude toward rehabilitation, while prisoners with a determinate sentence (by and large) don't take prison seriously. When a non-lifer paroles and commits another serious crime while on parole, the media, the lobbyists, even the legislature go into a knee-jerk reaction mode, and find that the easiest and quickest way to assuage their offended emotions is to make it harder to parole by affecting changes to the parole consideration process, which affects only term-to-life prisoners. We need reform. The parole process is as confusing as the tax code, and equally as fraught with corruption.

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According to a new Stanford study, violent crime in CA rose 2.8% between 2011 and 2012. That's a normal per capita rise. But during the same period, property crimes rose 6.9%.

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The Voices.Con newsletter is written exclusively by term-to-life prisoners, unless otherwise noted, focusing on issues of primary concern to those serving a long-term incarceration. The newsletter is published monthly at the VoicesDotCon.org website. This information has been designed to be of potential benefit in any jurisdiction having term-to-life and long-term prisoners and is made available to any other supportive family and friends as well. No persons affiliated with the Voices.Con newsletter are lawyers. Information provided herein is not intended as a substitute for proper legal advice. All questions or comments on information contained herein should be directed to the Editor at the above E-mail address.

ABOUT VOICES.CON

Voices.Con is an excellent source of nuts and bolts information relating to parole preparation, parole related politics, understanding parole law and current rulings and the importance of retaining the proper counsel and psychologists for parole hearings. This information is provided exclusively by long-term prisoners who have been there and are currently experiencing the ups and downs of the parole process. We are sorry to say that we do not have the resources to hire staff lawyers or provide legal documents of any kind. **We do maintain a mailing list for paid monthly newsletter subscriptions (\$11 annually.)** The Voices.Con newsletter and all past editions, may be downloaded at no cost by any friend or family member at the VoicesDotCon.org website. On occasion, we may have a current or past edition that can be mailed to a prisoner who has nobody else to download it for free. However, this remains completely contingent on the number of donations received at our mailing address. **Please include a Self Addressed Stamped Envelope in any correspondence requiring a response.**

SUGGESTED GUIDELINES FOR SUBMISSIONS

1. We have only one agenda; advocating on behalf of the term-to-life prisoner and distributing information that will further this cause, enabling the term-to-life prisoner to effectively advocate on his or her own behalf.
2. You may write an essay/article on any related subject or issue of concern to the term-to-life prisoner population.
3. We prefer that all submissions be between 250 and 500 words. Please clearly print or type all submitted material.
4. We also accept and encourage all submissions of topical artwork. Please include a Self Addressed Stamped Envelope with any submissions of artwork or written material where a return has been requested.

A FEW FACTS TO REMEMBER

- ⇒ Today, more prisoners in U.S. prisons are serving life terms than ever before. With a U.S. prison population of 2.3 million people, 140,610 are serving life terms.
- ⇒ California's prison system peaked at 173,000 prisoners in 2007, making it the largest prison system in the nation. With 34,164 prisoners serving life terms, it also has the most lifers.
- ⇒ In Alabama, California, Massachusetts, Nevada, and New York, at least 1 in 6 prisoners are serving a life term.

OTHER AVAILABLE MATERIAL PUBLISHED AT VOICES.CON WEBSITE:

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