

# PAROLE MATTERS.

FALL 2013. PAROLE MATTERS

BIG NEWS AND IT'S  
GOOD FOR LIFERS  
FOUND INSIDE.

PAROLE  
MATTERS IS  
PUBLISHED  
BY  
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## **BIG NEWS: Lifers with a 3 year denial get automatic review for a new hearing**

There is big news and it's favorable. In light of litigation in federal court, *Gilman v. Brown*, the Board will now be reviewing every three year parole denial for a possible new parole hearing. The review will occur by the Board at its own initiation. Lifers who were denied for three years don't have to do anything to get this review -- it is automatically done 12 months after the three year denial.

Only those hearings subject to an actual denial rather

than a stipulation, postponement, or waiver will get the review 12 months after their 3 year denial.

And lifers can still file their petitions to advance a hearing date which are not impacted by the Board's 12 month review.

These reviews -- let's call them the "12 Month Review" -- are done by Deputy Commissioners or Presiding Commissioners in Sacramento, and there is no ability to provide testimony,

documents or otherwise present evidence particular to the review.

Despite this, there is specific criteria whether the lifer gets an earlier hearing. And it looks a lot like the same criteria used in the petition to advance the hearing date originally implemented with Marsy's Law when the denial periods were extended to 3,5, 7, 10 and 15 years. The criteria is whether there is a "change in circumstances or new information" and "after

considering views and interests of victims” there exists a “reasonable likelihood the public and victim’s safety does not require additional incarceration.”

If these factors are met, a new hearing will result.

In light of this criteria, one thing is certain: any lifer who gets a violent or serious rules violation since the three year parole denial will automatically be excluded from the review for an earlier hearing.

This means that lifers should work their rehabilitative efforts after getting a 3 year parole denial because if the lifer improves their program -- via a new trade, more self help, new documented parole plans, additional laudatory chronos, remaining 115/128 free, etc. -- there is a good chance a new hearing will occur in less time than the three years.

In all of this, there are some important dates to keep in mind. If there are no registered victims in your case, the review could take as little as two weeks to complete. If there are registered victims, notice has to go out to those victim(s) which will delay the review process by 35 days for the victim’s response.

Once a new, earlier hearing is awarded, the hearing will occur within 18 months of the last hearing date or as early as about 5 months from the date of the review.

This new policy creates a strong incentive for lifers to program as much as possible especially after the news of a three year parole denial.

Parole Matters is genuinely excited about this good news and any lifer should as well. More opportunities to get before the Board means only one thing -- more chances for parole. It is important to note that because well over 50% of all denials are for 3 years, this new policy will affect thousands of lifers. If you are one, it means the Board is serious about re-hearing and re-considering your parole. Make sure you are ready for that new hearing including updated parole plans.



## SB260 - MORE GREAT NEWS FOR JUVENILE OFFENDERS.

The Governor signed into law SB260 which gives a special and unique parole hearing called a “Youth Offender Parole Hearing” to any lifer who committed their crime when they were a juvenile as defined as a person under the age of 18 at the time of the crime.

This law is huge victory for justice as courts have come to slowly recognize that juvenile offenders are less culpable for their crimes because of their relative under-developed brain chemistry and greater capacity for reform and rehabilitation. A whole host of U.S. Supreme Court cases recently noted this including *Graham v. Florida* in 2010, *Miller v. Alabama* in 2012, and in cases before the California Supreme Court in *In re Shaputis* in 2012 and *People v. Caballero* in 2012.

The law does a number of excellent things which are described here:

1. The law creates a new documentation hearing which means that the Board -- typically, by a Deputy Commissioner -- has to meet with any lifer who committed their crime as a juvenile 6 years prior to the inmate’s first parole

hearing to give those inmates good information about how to prepare for a parole hearing. This is often called a documentation hearing and youthful offenders will get one 6 years before their actual hearing. Bear in mind, there is no parole consideration at this phase just a Deputy Commissioner telling a lifer to keep their nose clean and to prepare for a hearing in 6 years. The Board is required to offer the lifer written comments as “its positive and negative findings and recommendations to the inmate in writing” 30 days after the documentation hearing.

2. If a lifer is found suitable at a “Youth Offender Hearing,” no further parole hearings are required (provided the Governor approves the date), and a parole grant at this Youth Offender Hearing supercedes any other parole decision made at a normal parole hearing.
3. The date of when the lifer gets the Youth Offender Hearing depends on the type of sentence the lifer received. Any lifer with a straight indeterminate sentence, such as 7 to life, gets the Youth Offender hearing on their 15th year of incarceration. Any lifer with a sentence less than 25 to life gets the Youth Offender

The real impact of SB 260 is on juvenile offenders who have sentences greater than 25 years to life because in those situations after 25 years of incarceration there is a real chance of parole a lot earlier than expected. Those lifers have to program effectively to maximize their prospects for the SB260 parole hearing and they need an exceptional lawyer.

hearing on their 20th year of incarceration. And any lifer with a sentence of more than 25 years to life gets the Youth Offender Hearing on their 25th year of incarceration.

4. The primary parole consideration criteria used at any normal parole hearing applies except that: a) the psychological evaluations used shall explicitly consider the status of the prisoner as a juvenile at the time of their offense; and b) letters may be submitted from “family members, friends, school personnel, faith leaders, and representatives from community-based organizations with knowledge about the individual before the crime or his or growth and maturity since.”
5. If found suitable at the Youth

# CONTINUED: SB260...Great news for juvenile offenders.

5. If found suitable at the Youth Offender Hearing, the parole date or setting of the prison term is done exactly like it is at any parole hearing according to the sentencing matrix.
6. Unfortunately, the law does not cover those convicted of LWOP sentences or those who originally were eligible but who then were convicted of a subsequent life crime while in prison as an adult.

The Board now has **until July 1, 2015** to conduct all of the Youth Offender Hearings for those that are presently eligible for one by having served enough time in prison (i.e. the 15, 20 or 25 years required).

This is BIG news and parole matters expects that those lifers who were sentenced to excessive sentences of 50 to life or 75 to life will be the ones who will most benefit from SB260 because those lifers will get a parole hearing once they have served 25 years. But the law has the possibility of helping many lifers overall as well. It does mean, however, two things become even more important: (1) having a lawyer who understands the law and how these new hearings work; and (2) having a strong program by the lifer in place to maximize their chance of parole at a Youth Offender Hearing. Parole Matters looks forward to more lifers going home because of SB 260.

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## LAST MINUTE PREPARATIONS: What are THREE things lifers can do just before their parole hearing?

Most lifers get nervous just before their parole hearing. It's understandable. It is a big day. Here are 3 quick tips for all lifers to consider just before going to Board.

1. **Don't make any major life decisions *just prior to going to Board*.** Now is NOT the time to get married, get divorced, go SNY, sober up, use drugs, freak out on a family member, or any of it. Keep your normal routine in place. Too many lifers try to make major last minute changes thereby become a little (or a lot) unstable just before their hearing. You want to be stable and comfortable. No major life changes please.
2. **Get plenty of rest.** I have seen many lifers stress themselves out without getting enough sleep or rest. None of us do well when we are sleep deprived. It's hard to think on your feet. Get enough rest.
3. **Go over your crime.** Too many lifers forget the obvious. They forget the ability to recall details of their crime, the names of the witnesses or victims, or the specifics of the impact of their crime. Revisit the crime, several times, before going into the hearing room even if you are not speaking about the life crime. This will ensure that the Board won't look at you astonished and perplexed that you can't recall the specifics behind why you are in front of them to begin with.

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# THE RECENT & MAJOR PAROLE LAW CASES:

TO KEEP LIFERS ON TOP OF THE LAW, PAROLE MATTERS HIGHLIGHTS THE RECENT AND MAJOR CASES FOR YOU.

**The past few months have been notably quiet in the courts on parole cases.**

**In re George Kruse  
First App. District 2013  
2013 WL 4477056**

This is a great and valuable case in which the First Appellate District affirmed that the Governor cannot require additional sobriety related self-help when the inmate already was active in a variety of 12 step and recovery programs and when there is no evidence of a risk of relapse greater to the risk typical of recovering addicts.

**In Robert Morales  
Third Appellate District 2013  
2013 WL 5175574**

This is another great case which ruled in three areas.

First, an inmate who acknowledges a *past* false claim of self defense does not have a *present* deficiency over their insight and is not presently blaming others for their crime.

Second, the failure to explicitly say "I am sorry" is not a lack of insight because remorse can be expressed in a variety of ways especially when the inmate has shown remorse through other means (writing letters, behaving better, etc.).

And third, an administrative counseling chrono for stealing food is not evidence of a present danger and is not a sufficient reason to deny parole. This is especially true when the inmate was otherwise 115 free for the last 22 years and his overall record in prison was good.

**In re Hui Kyung Kang  
Sixth App. District 2013  
2013 WL 3745997**

This is a bad case which ruled that while -- yes 10 years of being 115/128 free is not evidence of a present danger or reason to deny parole -- the inmate lacked credibility over their story of having an epiphany immediately after a drug trafficking related 115. The Board could ascertain this lack of credibility and presume it to be true and a reason to deny parole.

**CHARLES CARBONE, ESQ.  
CONGRATULATES THESE CLIENTS FOR  
WINNING THEIR PAROLE DATE AND OR  
RELEASE IN THE LAST FEW MONTHS:**

HALL TRACY, TADEO  
GUERRERO, SAMPSON  
HERNANDEZ, GINA FLORIO,  
PABLO IMERI, BOBBY MARLING,  
JONATHAN WILLIAMS, CLIFFORD  
BAIR, ANTHONY CASTRO, JESSE  
RUGGE, MIANTA MCKNIGHT,  
ROBERT MCKINLEY, ANTONIO  
ALEGRE, JESSE COTA, AND MACEO  
WARMACK.

LEGAL ADVERTISEMENT: Although its primary purpose is to educate lifers about their parole prospects and the law of parole, some may construe Parole Matters as a legal advertisement. Charles Carbone, Esq. is responsible for its content and no case discussed in it is a predictor or guarantee of an outcome in any other case.

The Governor is overturning parole grants when: a) the psych eval. is moderate; b) when the crime involves women or law enforcement; c) when there is serious victim opposition; or d) when the crime is especially heinous. When the gov. reverses, lifers must appeal.

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