



SAMPLE OPPOSITION LETTER:

I oppose the proposed changes to Title 15 language dealing with psychological evaluations on the following basis:

The proposed changes would not allow inmates to sufficiently address errors of fact or erroneous conclusions once entered into the psychological evaluation made by Forensic Assessment Division. Although inmates could offer challenge to the evaluation, the report itself and any erroneous statements or fact or faulty conclusions would remain and the degree to which even an egregiously inaccurate report would be considered could vary from hearing to hearing within the 5 year life of the hearing. *“The hearing panel shall determine, at its discretion, what evidentiary weight to give the challenged report.”*

The proposed changes would require life term inmates to be evaluated by a cadre of psychologists retained by the BPH via the Forensic Assessment Division. This division is needlessly dupliucative of work already being performed by several hundred psychologists employed by the CDC and already working within prison assessing, interacting and evaluating inmates daily. To authorize this additional expenditure is needlessly and fiscally irresponsible.

The proposed changes to Title15 would allow the BPH to retain the Forensic Assessment Division at as yet unknown fiscal cost to the state. The creation of yet another agency in the already bloated CDCR flies in the face of current legislative efforts and voter messages to pare state fiscal expenditures and streamline departmental performance

The FAD was created on an emergency basis to deal with a backlog of term to life inmate psychological evaluations and was funded by temporary emergency contracts let without competitive bidding. The glut of past due evaluations has now abated, thus negating the need for the FAD. The original contracts to private, third party employment agencies noted these services would be provided on as “as needed basis,” that need no longer appear to be crucial, thus there no longer appears to be a need for this massive expenditure.

The BPH, despite many requests, has not been able or willing to provide financial data relative to the cost of maintaining the FAD and has not done so in requesting this proposed change to Title 15, which would solidify the status of this hereto fore temporary agency. There can be no genuine public debate or evaluation on the advisability of entrench another level of bureaucracy and budgetary requirements until this information is forthcoming.



No actual need has been established, whether through psychological data or legal advisability, for every term to life inmate to be forced to undergo a psychological evaluation.

The Comprehensive Risk Assessment, insofar as can be presently ascertained, does not appear to allow for the inclusion or sufficient consideration of dynamic factors mitigating the risk of future recidivism, including those admitted by the CDC to the basis for lower risk levels.

The California Static Risk Assessment referenced in the proposed regulatory changes does not, as stated, allow psychologists to evaluate an inmate's potential risk of violence. There are currently no empirical tests available which can to any degree of scientific certainty, allow clinicians to predict risk of violence in any population. Indeed the SRS is admitted in these proposed changes "*will provide the clinician's opinion,*" of the inmate's potential for future risk.

Those term to life inmates under authority of the CDCR but housed out of state in for-profit prisons, would not be subject to the same battery of tests and evaluations delineated under this proposed wording. This could result in a out of state inmates being held to a potentially higher or potentially lower standard of suitability; in either case, it would not allow for equal protection under the law.

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BACKGROUND ON PROPOSED BPH PROPOSES CHANGE TO TITLE 15

In an effort to do an "end run" around their own questionable actions in requiring every term to life prisoner to undergo a pre-hearing psychological evaluation by its own group of hired-gun psychologists, the Board of Parole Hearings (BPH) recently fired the first salvo in the effort to ex post facto codify the Forensic Assessment Division (FAD) and resultant psychological evaluations.

By unanimous vote the BPH commissioners gave initial approval to new wording to be added to section 2240 of Title 15, dealing with psychological risk assessments. This initial approval opens Title 15 to potential modification and begins the 45-day public comment period for the proposed new wording to section 2240. Elsewhere in this newsletter LSA will print the proposed new language in its entirety, but first a bit of back story on this issue.



As detailed in previous newsletters the BPH created the FAD expressly for the purpose of eliminating the backlog of lifer parole hearings accumulated over a period of years. That backlog has dwindled from several thousand to just 50, as of the Nov. 16 BPH meeting. Despite the CDCR employing nearly 900 psychologists in prisons, the BPH hired its own set of psychologists to staff the FAD, hired on an emergency basis through no-bid contracts to third party recruitment firms.

The questionable backgrounds and actions of many of these FAD psychologists have been reported in previous *Lifer-Line* issues. In summary, since FAD psychologists began performing pre-parole hearing evaluations using a new and highly suspect series of "assessment tools," many prisoners have been subjected to prurient questions having nothing to do with their life crime, commissioners have found quasi-validation for their favorite lack-of-insight denial finding and many prisoners have seen their risk assessment levels suddenly elevated. A perfect-storm atmosphere for parole denials.

These actions did not go entirely unnoticed or unchallenged, however. The information gleaned from LSA's lifer surveys was evaluated, documented and presented to select legislators in the form of a 35+ page report which has been well received, one senate office commenting it was among the most complete and professional they had ever received from a non-official source. This has brought the BPH, FAD and questionable psychological evaluations to light and to the attention of the law makers.

The legality of this practice was also challenged by a life-term prisoner, who in late June, filed an underground rule challenge with the Office of Administrative Law (OAL). Following investigation and review, the OAL, just days before the BPH's Nov. 16 action, ruled in favor of the prisoner, affirming the BPH's practice of requiring every term to life prisoner to submit to a psychologist evaluation by FAD psychologists, to indeed be an underground rule and thus not legally enforceable.

The Nov. 16 action of the BPH is the board's effort to now make this policy legally enforceable by including it officially in Title 15. Having been told what they are doing is legally improper, the BPH, rather than look to find a legal, fair and fiscally responsible way of dealing with potential psychological issues some prisoners may have, has instead opted to quietly legitimize their misbegotten creation.

LSA will oppose this new wording to Title 15 and urges all stakeholders in prison reform to do likewise. The public comment period began Nov 16 and ends Dec. 30. Letters regarding this issue should be sent to the BPH Executive Committee,



PO Box 4036, Sacramento, Ca. 95812. We further suggest our supporters contact their respective state Senators and Assembly members expressing your concern and opposition to this proposed change.

In coming updates sent to our email list we will provide suggested discussion and opposition points as well as a list of addresses of lawmakers critically positioned to influence this proposal.

Proposed text of the new addition to Title 15 legitimizing the Forensic Assessment Division

PROPOSED REGULATORY TEXT

2240 Psychological Risk Assessments for Life Inmates

(a) Prior to a life inmate's initial parole consideration hearing, a Comprehensive Risk Assessment shall be performed by a licensed psychologist employed by the Board of Parole Hearings.

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 prepared prior to January 1, 2009 is valid for use at the hearing.

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 shall consist of both static and dynamic factors which may assist a hearing panel or the Board in determining whether the inmate shall be suitable for parole and, if paroled, the level of supervision the inmate may require. It will include an evaluation of the prisoner's remorse, insight, and an exploration of the commitment offense, as well as the need for additional institutional programming. Risk factors from the prisoner's history, such as the role drugs and alcohol played in commitment offense will be evaluated. 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 will



incorporate actuarial derived and structured professional judgment approaches to evaluate an inmate's potential for future violence.

(c) During the five year shelf life of the Comprehensive Risk Assessment, life inmates who are due for a regularly scheduled parole consideration hearing shall have a Subsequent Risk Assessment completed by a licensed psychologist employed by the Board of Parole Hearings for use at the hearing. The Subsequent Risk Assessment shall predominantly consist of dynamic factors which may assist a hearing panel or Board in determining whether the inmate shall be suitable for parole and, if paroled, the level of supervision the inmate may require.

(d) The CDCR inmate grievance 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 shall determine, at its discretion, what evidentiary weight to give the challenged report.

(e) A new Comprehensive Risk Assessment or Subsequent Risk Assessment will not be prepared for an upcoming hearing where the previous hearing was postponed or voluntarily waived at the inmate's request, nor will one be prepared for hearings that are scheduled pursuant to court order.

(f) Life inmates who are housed in a state other than California shall 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 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.

--End of proposed text--

CDCR REPORT: OLDEST AND LONGEST SERVING SAFEST TO RELEASE

As reported in a recent email up-date to our friends and supporters CDC recently released a report which provides validation from the CDC research division itself of many of the points LSA has been advocating over the past year.



“2010 Adult Institutions Outcome Evaluations Report” presents, in a myriad of categories, groups and subgroups the characteristics of those prisoners released on parole during the fiscal year 2005-06 and follows the outcome of their parole for the 3 year period ending in fiscal year 2007-08. As noted, however, the one glaring omission in this report is its failure to address the parole behavior and recidivism rate of paroled term to life prisoners. Although logic would lead one to believe this would be one of the easiest sub-groups to break out of the entire cohort and the group whose recidivism rate would be the subject of keen interest by many observers, life term prisoners are not, as a group, addressed. A small foot note gives the CDC's explanation for this omission being when the subgroup was too small, recidivism rates were not calculated. A telling statement in and of itself.

While the above named report contains considerable information which should be of interest and use to a variety of stakeholders in the prison community, the most on point revelations from LSA's point of view can be condensed to half a dozen:

1. Individuals “age out” of criminal activity and thus recidivism
2. Those persons serving 15 years or more in prison at re-offend at the lowest rate
3. The severity of the crime is not related to increased rate of recidivism
4. Those prisoners labeled “serious/violent” offenders by the nature of their crime recidivate at a lower level than those not so designated
5. Individuals imprisoned for property crimes (less likely to be life term inmates) re-offend at a much higher rate than those convicted of crimes against persons (more likely to be lifers)
6. And those serving 15 years or more in prison in one term (and most likely to be lifers) make up only .2% of the total number released on parole.

All of these revelations have been proven in countless studies and official reports from other states and the federal justice system. CDC's authentication of them, though tardy, is a step in the right direction and will provide LSA with additional validation of our message that life term prisoners are the safest of any prisoner population to parole.

We have already made several attorneys who specialize in lifer parole hearings aware of the report and in the next two weeks will be speaking with lawmakers, bringing them an in-depth analysis of this report as it relates to life term prisoners and their likelihood to re-offend.

LIFE SUPPORT ALLIANCE



(916) 743-1654
(916) 402-3750

Public Safety and Fiscal Responsibility

At the recent November 16 Board of Parole Hearings Executive Meeting LSA reminded the BPH commissioners (or in some cases, from the expressions we observed, informed them) of this report, putting into the official public record the findings relative to life term inmates (see following for LSA's comments at that meeting).

Those who are facing a parole hearing in upcoming months, or those who's loved one will be going to a hearing, should be certain the prisoner's attorney, state or private, is aware of the findings in the report and urge the parole panel to give due weight and consideration to those mitigating factors for dangerousness delineated here.

The report in its entirety is available online at http://www.cdcr.ca.gov/Adult_Research_Branch/Research_Documents/ARB_FY_0506_Outcome_Evaluation_Report.pdf

Our website: www.lifesupportalliance.org

LIFE SUPPORT ALLIANCE CURRICULUM VITAE

Life Support Alliance is a lobby effort working for increased grants of parole for term to life prisoners in the California prison morass. Our mantra is "public safety/fiscal responsibility." We know and offer solid proof that life term prisoners pose the lowest risk of recidivism and thus lowest risk to public safety of any prisoner cohort, while simultaneously, due to their often aging status and years of incarceration, are among the most expensive individuals to continue to imprison.

We believe the California taxpayer would be well served, in terms of preservation of public safety and responsible and judicial use of dwindling tax resources, by an increase in numbers of term to life prisoners released on parole from our overcrowded prisons.

Our goal is to change the actions and focus of the Board of Parole Hearings through legislation, executive or administrative policy change. We believe increased oversight and accountability of the BPH is necessary.

Headquartered in Sacramento, we are uniquely positioned to bring our message daily and in person to legislators and other officials, compelling their attention to the unheard and often ignored voices of term to life prisoners and their families

LIFE SUPPORT ALLIANCE



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Public Safety and Fiscal Responsibility

We are not attorneys and as such cannot offer legal advice. We urge all term to life prisoners to complete and send to us our Lifer Parole Hearing Survey, available on our Facebook page or by emailing a request to lifesupportalliance@gmail.com or requesting a copy via mail.

In that we endorse or oppose political causes and, on occasion, candidates, we are classified as a 501 [c] 4 non-profit organization. As such, by virtue of our endorsement or opposition to political issues, donations to LSA are not tax deductible.

*We are self-funded but accept and deeply appreciated donations from our supporters to assist in printing, mail and website expenses. Donations and correspondence may be sent to
Life Support Alliance
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Rancho Cordova, CA. 95741*