

Parole and Probation in New Mexico:

How the Parole Board Handles Lifers

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1

HOW ARE PROBATION AND PAROLE IMPOSED/REVOKED?

PROBATION

- ▶ Part of a sentence imposed by a judge
- ▶ A probation violation is reviewed by the judge
- ▶ Can be reviewed on appeal

PAROLE

- ▶ Part of a sentence imposed by the legislature. Every person who leaves prison must serve a term of parole
- ▶ A parole violation is reviewed by the Parole Board
- ▶ Review by a court is difficult

2

HOW DO THEY WORK TOGETHER ?

- ▶ Some inmates serve both a parole term and a probation term
- ▶ There is a complicated explanation for how they must be served. From an inmate's perspective – they run concurrently
- ▶ One officer supervises the probationer/parolee even though the conditions of each supervision will be different

3

WHAT HAPPENS WHEN A NON-LIFER GOES BEFORE THE PAROLE BOARD?

Non-Lifers have a determinate sentence – They know how long they must serve when they enter, minus any good time earned

They go before the board to get their parole plan approved. No matter what they do in prison, if they have a parole plan, they must be released

If there is no acceptable parole plan, they serve in-house parole and leave with no supervision

4

WHAT HAPPENS WHEN A LIFER GOES BEFORE THE PAROLE BOARD?

After 30 years in prison, a Lifer comes before the parole board. A panel of three board members decides whether the Lifer deserves to be released.

If the Board approve release, the inmate leaves the institution

If the Board denies release, the inmate can come back in 2 years

5

HOW DOES THE BOARD DECIDE?

- ▶ DOC prepares a parole package with the inmate's records
- ▶ The victim's family can appear at the hearing (or submit a letter) and ask the Board to keep the inmate in custody
- ▶ The inmate may be allowed/denied an opportunity to make a statement
- ▶ The inmate must answer any questions posed by the panel
- ▶ The panel meets after the hearing to decide and provides the inmate with written notice of its decision

6

WHAT ARE THE LIFER'S RIGHTS AT THE HEARING?

- Lifers are not allowed to have a lawyer to help prepare for the hearing or to attend the hearing - even at their own expense
- Lifers do not get any counselling (legal or psychological) to prepare for the hearing
- Lifers do not get discovery before the hearing
- Lifers do not see the materials in front of the board at the hearing
- Lifers cannot address the concerns of the family
- Lifers do not know who will be appearing at the hearing

7

WHAT RIGHTS DOES A PROBATIONER HAVE AT A REVOCATION HEARING

State v. Guthrie, 2011-NMSC-014

AT A HEARING ON A PROBATION VIOLATION

- written notice of the claimed violations
- disclosure of evidence against him
- opportunity to be heard in person and to present witnesses and documentary evidence
- the right to confront and cross-examine adverse witnesses
- a 'neutral and detached' hearing body
- a written statement by the factfinder as to the evidence relied on and reasons for revocation

8

HOW ELSE IS THE PAROLE PROCESS FLAWED FOR LIFERS?

WHAT THE BOARD CONSIDERS

- ▶ The circumstances of the offense
- ▶ Mitigating and aggravating circumstances
- ▶ Whether a deadly weapon was used in the commission of the offense
- ▶ Whether the inmate is a habitual offender
- ▶ Any reports of physical and mental examinations from the institution.

WHY THESE FACTORS ARE A PROBLEM

These are all static factors that no amount of rehabilitation can change

9

WHAT IS THE SOLUTION?

▶ CHANGE THE BURDEN FOR A PAROLE HEARING

- ▶ If there is no reason to deny parole – the Board should grant parole
- ▶ If there is a reason to deny parole – the Board should not grant parole

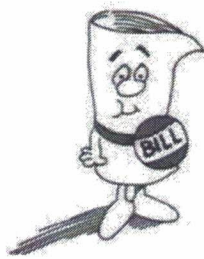
▶ PROVIDE SOME DUE PROCESS

- ▶ Provide some due process rights to Lifers at an initial hearing --- similar to rights at a probation revocation hearing

10

A LIFE SENTENCE SHOULD NOT BE THE SAME AS LWOP

- ▶ Sentencing is set by the legislature



“Where does seeking justice end and seeking vengeance begin?”

11

FINAL THOUGHTS

- ▶ Lifers are the oldest (and probably the sickest) inmates in the institution, but they are not eligible for medical or geriatric parole
- ▶ Lifers have the lowest recidivism rate – for any crime. They pose the least risk to the community
- ▶ Lifers have developed skills and insights that could be helpful in violence prevention programs. Keeping them locked up forever is not only illegal, it's a waste of human resources
- ▶ Lifers (like all parolees) need a lot of support to reintegrate into the community - there are programs that have done it successfully.

12