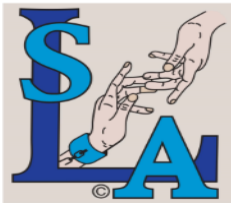


# LIFE SUPPORT

\*HOPE\*



# ALLIANCE

*& California Lifer Newsletter*

\*HELP\*

\*HOME\*

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## WHAT THE NEW LA DA MEANS FOR LIFERS

*We are covering this single county policy because it impacts a significant portion of the lifer population and because we hope it will become a template for other counties to change their reactive and vengeful policies regarding parole and release. These changes apply ONLY to those inmates who are serving time for crime committed in LA County and sentenced by LA County courts.*

In a real turn around, and one we hope will be the first step in a major road to change, newly elected Los Angeles County District Attorney George Gascone issued a directive to the Deputy DAs under his direction that lays out his philosophy and intentions going forward. This has the potential to have a major impact on those being prosecuted in LA County and will impact lifers and other inmates already serving time for crimes in that county.

Why are we discussing the actions of one DA in one county? Because roughly a third of state prison inmates come from Los Angeles County.

While we cannot tell you individually how, or even if, these changes will impact your situation, insofar as Gascone's expressed intention to change the use of enhancements in prosecution and sentencing, there are some things we can confirm about Gascone's new policy. Regarding resentencing, Gascone's statement notes: *"This Office declares that new Sentencing, Enhancement and Juvenile policies must apply with equal force to sentences where the judgment is final. Accordingly, this Office commits to a comprehensive review of cases where the defendant received a sentence that was inconsistent with the [new] charging and sentencing policies*

*In such cases, this Office shall use its powers under Penal Code section 1170(d)(1) to recommend recall and resentencing. While priority shall be given to the cases enumerated below, the ultimate goal shall be to review and remediate every sentence that does not comport with the new Sentencing, Enhancement and Juvenile Policies.*

*Specifically, this Office commits to an expedited review of the following categories of cases, which are themselves a subset of a universe of 20,000-30,000 cases with out-of-policy sentences:*

- *People who have already served 15 years or more;*
- *People who are currently 60 years of age or older;*
- *People who are at enhanced risk of COVID-19 infection;*
- *People who have been recommended for resentencing by CDCR;*
- *People who are criminalized survivors;*
- *People who were 17 years of age or younger at the time of the offense and were prosecuted as an adult.*

More directly for lifers, Gascone's office will no longer send DAs to parole hearings, almost without exception to oppose any parole at any time. And apparently, Gascone's making good on his policy, as lifer attorneys report they haven't seen LA DAs at parole hearings since Gascone took office in early December. And we can attest that those same attorneys, always and unfailingly speaking in opposition to parole at en banc hearings, were mercifully absent in at the December meeting, when we would have ordinarily expected their input in all cases from LA—5 in December, and not a DA sight (so to speak, as the meeting was via teleconference).

Gascone's lengthy directive, some 14 pages in length, covers many details and philosophical changes, and as these develop, we'll keep you informed. However, please don't ask us to tell you if, when or how these changes will impact you, if you're from Los Angeles. We aren't attorneys and certainly not seers—but if you feel the urge, contact Gascone's office and see where your case might be in those 20-30,000 they are reviewing.

But undoubtedly, this is a major and, for lifers, positive shift in the DA arena. What next? Watch this space.

## **VIDEO VISITING BEGINS**

Though controversial in some camps and not without its problems, video visiting between California inmates and family/friends has begun. All adult institutions are now on-line to participate in the 30-minute video calls, and despite some early and some still continuing glitches, those who have participated are delighted to see their LOs after so many months.

While CDCR put out guidelines and protocols, like all such pronouncements from CDCR, these seem more theoretical than mandatory, or perhaps individual institutions are just figuring out what works for them in any given circumstance. There is no cost for the calls, and while they are limited in both time and frequency, this is being done to allow more numbers to participate. We can't argue with that.

A few tips have emerged from those who have so far been able to tune in, to make future calls a better experience. Being able to hear each other seems to be the biggest issue, once connection is established. Families at home can help by using an auxiliary microphone on their computer and those inside can help themselves by bringing their earphone or earbuds to the call, to help screen out surrounding noise.

Be patient in waiting for the connection—sometimes it takes a bit. However, this problem seems to be getting better as everyone gets used to the technology and how it works. And, sometimes, it just doesn't.

However, the overwhelming response has been positive and CDCR is continuing to work on issues, both technical and personnel, to make the process more successful. What next? CDCR has been

plain in stating that video visiting will not replace in-person visits, but, conversely, the department has not said if this practice will continue once (whenever that may be) in-person visiting returns. It has, however, already proved a boon to those who are out of state, indeed, those family and friends who are out of country, in being to see and talk with their LOs.



## **COVID—DOES IT EVER END?**

The above is rhetorical question, as no one knows the answer. The ups and downs of CoVid numbers in the prisons, were we to write it all out, would require a volume the size of an encyclopedia. And it changes not just daily, but hourly.

As we put this newsletter together news of an additional 6 deaths over the last weekend in December were reported, bringing the total number of fatalities in the inmate population to 120 since the beginning of pandemic. Every single prison in CDCR's string of institutions has positive cases, some a few, some several hundred.

At this snapshot in time, 26 of CDCR's 35 prisons register over 100 cases, and 21 report over 200 cases, the number which defines a 'major outbreak.' Some locations have hit over 1000 positive cases in a single day, only to bounce down into the 8-900 range. And some long-suffering prisons have experienced not one, or two but 3 outbreaks and simply cannot seem to shake the lingering virus.

By the time you receive this newsletter the numbers will have changed, but what remains clear—things are worse now, in December, than the overall picture was in the summer, during the height of the San Quentin outbreak which caused so much outrage. And there are no signs that CDCR has any better control of the virus now than it did then.

But, to be fair, there is relatively few measurers CDCR can take. No one who has a mind based in reality expects the department to halve the population within days, by simply opening the gates. Once again, it comes down to everyone doing everything they can to protect themselves and each other. Which, by the way, is pretty much what those of us out here are facing as well.

We can't tell you what's going to happen, not even what's happening 'now,' as our 'now' won't be the same as your 'now' when you receive the newsletter. But we can give you a snapshot and some perspective.

By late December some 38,300+ inmates had contracted CoVid 19 since the start of the pandemic. And while most cases had 'resolved,' or recovered, still, 120 prisoners had died from the virus. Staff numbers were astounding also, with over 3,700 staff, custody and free staff, positive and more than 300 other positive cases reported in CDCR office locations and complexes.

And while these next figures are not entirely and completely accurate, the trend is still real. While San Quentin was the face of CoVid in CDCR for some time and suffered massive infection and the highest number of deaths, it was actually Avenal that experienced the largest number of cases, both in sheer numbers and in percentage of population.

CDCR notes that as of end of December the population in the prison system was 95,900, give or take a dozen or so. Using that number, the over 38,000 cases of CoVid in the whole system represent 40% of the inmate population who, to greater or lessor effect and damage, contracted the Corona virus. And using population numbers for both Avenal and San Quentin, it appears both have reached the level of 'herd immunity,' Avenal's 3,076 cases represents roughly 90% of the population; San Quentin's (to date) 2,734 cases show about an 82% rate of CoVid. Astounding.

Please, be sure you follow all the advice regarding wearing masks (yes, we're still reporting those staff members not masking and yes, CDCR and the courts seem to be taking it more seriously), cleaning your space as best possible (use hot water if nothing else is available) and distancing yourself as much as possible. It isn't much protection, but it's what's available and those of us out here are doing versions of the same.

Our understanding is that vaccines are already being shipped to some prisons (CHCF, a medical center, began vaccinating staff on Dec. 20) and while we can't say when those shots will reach everyone, we are hopeful that the congregate living situation of inmates will be considered in making that decision. There are eyes on this situation, and if any of us had any sure-fire techniques or solutions, we'd be shouting from the roof—or at least at the gate.

## **NEW REGS ON CRAs IN THE OFFING**

Up for discussion at January's BPH business meeting are proposed changes to the regulations for § 2240, the section of Title 15 that regulates the Comprehensive Risk Assessments. The reason for the proposed changes is the workload presently facing both the BPH and the FAD (Forensic Assessment Division) in the next couple of years.

Because of legislation in recent years that will bring more third strikers and more determinately sentenced inmates who qualify for YOPH hearings to the board with a deadline—initial hearing for those in this cohort must be held by Dec. 21, 2021, the board's burden of hearings has increased significantly.

And, as noted by BPH staff at the recent monthly business meeting, more than twice the usual number of hearings have been postponed, in part because of an inability of the board and FAD to produce timely CRAs. If the new regulations pass the board's approval, a certain cohort of inmates will not receive new CRAs within the 3-year timeframe that the board has set, even if they have a parole or reconsideration hearing scheduled during the 14-month period between April 1, 2021 and June 30, 2022. And for those who fall into the below categories, there will not even be an initial CRA.

The cohort of prisoners to whom these new regulations will apply include those individuals who:

- *“(A) [is] designated by the department as Security Level IV; and*
- *(B) has received two or more Rules Violation Reports classified by the department as serious or administrative for which the department found the inmate guilty at a disciplinary hearing between January 1, 2018, and January 1, 2021.”*

Translation: If you have a hearing before the parole board, be it subsequent, initial or reconsideration, scheduled between April 1, 2021 and June 20, 2022, you probably won't receive a new CRA, even if the one you have (if you have one) was done longer than 3 years ago. And if either of the above situations fits you, you won't even get a CRA for your initial hearing, should it fall within the dates indicated.

You'll be notified 60 days before your hearing that no or no new CRA will be done, and your attorney may challenge this decision. Also, during the course of that hearing, if the parole panel decides it needs a new CRA for its considerations, they, too can request one.

Comments on the proposed reg changes will be taken by mail or at the BPH monthly meeting in January. The proposed changes themselves are about a page in length, and while too long to reproduce in this short newsletter, send us a request and a stamp and we'll send you the text of the proposed changes and where you can send your comments.

Mail your request to LSA, PO Box 277, Rancho Cordova, CA 95741 and note "CRA Regs" on the envelope.



## LOOKING AHEAD

As our LSA staff and volunteers (we're all volunteers, some just have specific tasks, some step up to the plate as needed) head toward the 11th anniversary of our organization, we find ourselves in a far different place than past years, and not just in terms of CoVid restrictions, though certainly those have greatly impacted our work and our plans. When the world was normal, we spent nearly every weekend in various prisons, offering workshops and courses, interspersed with seminars for lifer families. In fact, on March 14, just days before CDCR locked down entry to prisons, we held an in-person workshop at Folsom.

This year has marked some major changes, forced everyone to think outside the box and be creative in both practices and ways to stay stable and positive. We hope we've helped both the inmate population and their families in this effort-that's our goal and what we continue to hope to do. And although we can't, at least yet return to those in-person groups, we haven't given up on working with lifers to help them understand how to reach suitability and exhibit that quality to the parole panels. Our in-person groups have become correspondence courses, correspondence consultations and an un-expected opportunity to provide cognitive behavior therapy courses.

We've also moved to new offices, to accommodate our growing cadre of volunteers, some former lifers, who are helping us with policy and practice, as well as those responding to the study replies.

We're doing more consulting, with other like-minded groups and individuals, preparing groundwork for the coming legislative session and future bills. And we're looking for other ways to reach inside the institutions, perhaps by video or DVD presentations at those prisons that are forward thinking enough to make those options possible.

And, like everyone else, on both sides of the wire, we're dealing with CoVid, social distancing (easier out here than in there), changed work schedules, masks, gallons of hand sanitizer and constant worry. In that respect, we're really are in this together.

It's been a year like no other, but we're coming through it just as determined and just as ready for the next year as ever, and with more support and ideas than ever before. Thinking outside the box has become the norm this year, and as we continue to do what we have to do to reach inside, we'll depend on you to stick it out also, because our message, the hope and reality of coming home, is still there, still working and the need is even greater.

That's who we are, what we do and what we'll continue to do, and we'll be back inside as soon as the lockdown lifts. And while this year has indeed been a time like no other, what we've learned in 2020, we'll use to make 2021 more successful.

Nearly 11 years ago, this organization was formed to understand parole and pass that understanding along, mostly so the founders could help their LOs inside. In the course of that effort, we've discovered an essential truth—when you help others, you end up helping yourselves and your LOs as well.



## **QUICK COURT UPDATES**

In RE Gadlin: On Mon. Dec. 28, CDC's exclusion of certain sex offenders from parole eligibility is overturned. An inmate may not be excluded from nonviolent offender parole consideration based on a current conviction for a registerable felony offense that the Department's regulations have defined as nonviolent.

The recent post-Prop. 57 regulations, 15 CCR section 3491, subd, (b)(3), and section 3496, subd. (b), are voided and repealed.

In RE: von Stiach: The following order was issued Wednesday, Dec. 23. It vacates the earlier DCA decision, grants review, returns the case to the DCA and asks the DCA to hold an evidentiary hearing and redetermine the case in light of specific CA Supreme Court precedential case law. The request for depublication of the earlier DCA decision was denied, but it's moot anyway, since that decision was now just vacated.

The petition for review is granted. The cause is transferred to the Court of Appeal, First Appellate District, Division Two, with directions to vacate its decision and reconsider the cause in light of People v. Duvall, supra, 9 Cal.4th at pages 482-483 and 485, the Attorney General's Return to the Order to Show Cause at pages 13-19, and the supporting Memorandum of Points and Authorities at pages 32-38. (Cal. Rules of Court, rule 8.528(d).) The request for depublication is denied.