

# LIFE SUPPORT

\*HOPE\*



# ALLIANCE

\*HELP\*

*& California Lifer Newsletter*

\*HOME\*

P.O. Box 277 \* Rancho Cordova, CA. \* 95741

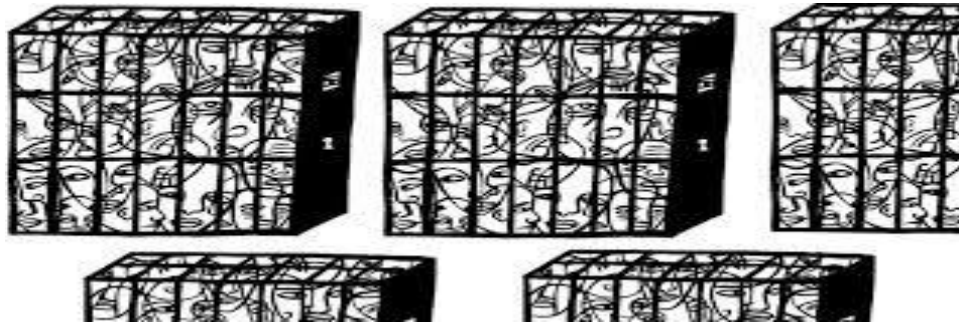
\* [staff@lifesupportalliance.org](mailto:staff@lifesupportalliance.org) \*

**MARCH 2020**

**LIFER-LINE**

**VOL. 11; ISSUE 3**

THE NEWSLETTER OF LIFE SUPPORT ALLIANCE © LSA, 2020



## **NEW SUIT SEEKS PRISONER RELEASE IN FACE OF COVID**

Attorneys for inmates, who were successful in litigating change in the system around medical care, have filed a new suit with the 3 judges on the federal oversight panel, U.S. District Judges Kimberly J. Mueller in Sacramento and Jon Tigar in Oakland and U.S. Circuit Judge Kim McLane Wardlaw of the 9th U.S. Circuit Court of Appeals. The action seeks an emergency order from the judges requiring the CDCR to release inmates due to the current CoVid 19 virus pandemic.

“I do think they should release 10,000,” said Michael Bien, an attorney at Rosen, Bien, Galvan, and Grunfeld, a lead attorney for mentally ill inmates in California prisons. “We don’t want to do anything sloppy, and there’s no way this administration is going to do that. But they should be looking in terms of (those) in hospice care, or who have applied for medical parole, people who have applied for compassionate release and have families or a place to go or benefits in place.”

Governor Gavin Newsom responded, “I have no interest — I want to make this crystal clear — in releasing violent criminals from our system. And I won’t use a crisis as an excuse to create another crisis...” If we start to release prisoners that are not prepared with their parole plans, they may end up out on the streets and sidewalks in a homeless shelter. If we don’t prepare people to get back on their feet, they may end up in the emergency rooms clogging the system that we were trying to address in the first place. We have to be very thoughtful about this.”

Noting several groups and individuals have called for the wholesale release of inmates, “Let’s just let out tens of thousands of prisoners,” Newsom characterized the requests. “That’s not the way we’re going to go about this,” he said. “It will be for those non-violent offenses, and we’re going to do it in a systemic way.”

On Sunday, March 22, Life Support Alliance sent the Governor a three point request, that the Governor refrain from reversing any parole grants this year; that Newsom commute to time served and immediate release all those granted parole last year and who he (Newsom) later reversed, and lastly, those who were approved by the BPH for compassionate release recall of sentence and were

subsequently denied that relief by their county sentencing court. As we noted in our letter to the Governor, “We believe these few steps could be immediately impactful on the health and safety of the inmate population and yet maintain the safety of the general public, given that all of the individuals who would be included in the above recommendations have already been evaluated by the Board of Parole Hearings and found to be not an unreasonable risk of danger to public safety. However, the above recommendations represent an already safety-evaluated population and while relatively small in number, release of these individuals can an exponentially positive step, given the demographics of these populations; usually older, medically more at risk and yet markedly less prone to recidivism.”

And while the current suit does not specifically address which prisoner cohorts would be considered for release, it does note, “A Prisoner Release Order Would Be Narrowly Drawn, Would Extend No Further than Necessary, and Would Be the Least Intrusive Means to Correct the Current Constitutional Violations” and the “Public Safety Would Be Served by a Targeted Prisoner Release Order.” The suit asks the judges to modify their 2009 order 2009 population cap and requiring the State to reduce the population in numbers that “will permit social distancing and protect the medically vulnerable by releasing or relocating class members who are at especially high risk of severe illness from COVID-19.”

Stay tuned.



## **HEARINGS RESUME BY VIDEO CONFERENCE**

After a CoVid-19 induced hiatus of just over two weeks, parole hearings are, as of the end of March, slated to begin again on April 1. Going forward, and for the foreseeable future, those hearings will be distance affairs, conducted primarily by video conference.

In mid-March the BPH first announced plans to hold video conference hearings, based on concerns regarding the CoVid 19 virus sweeping the nation, but, at that time, yet to make substantial inroads into the inmate population. The plans were to have all parties participating in parole hearings do so via a common video conference call, with possibly only the inmate and inmate attorney on site in the prison hearing room. The parole panel members, DAs and VNOK would be participating via teleconference.

This plan, again, created to minimize exposure of all concerned to the CoVid virus, was quickly attacked by the district attorneys associations and victim’s groups, who objected to the VNOK not being allowed to attend, contending it was a ‘violation of the rights’ of victims in participating in the parole hearing process. At the March BPH business meeting, held primarily by teleconferencing, with only presiding Commissioner Arthur Anderson, BPH Chief Counsel Jessica Blonien, a couple of DAPO security officers, a tech expert (for the recording and audio conferencing) a stray DC and the public, in the person of an LSA representative, attending ‘live,’ several DAs read into the record their offices’ objections to video conferencing hearings, calling instead for a suspension of hearings until such time as a way for everyone to safely attend could be found.

Almost with one voice, and certainly speaking from the same script, DAs and victims' groups decried teleconferenced parole hearings as disrespectful of victims and families and usurping their rights to be present at hearings. At the end of that meeting BPH Director Jennifer Shaffer, participating by telephone, announced the BPH would suspend hearings the rest of that week in an effort to find a solution. A scant 2 days later, on March 20, the board officially announced hearings would be postponed through March 31.

Fast forward yet another few days (4, to be exact), to a directive from the Governor's office, proclaiming teleconferenced hearings would go forward, one or before April 23 and that, by executive decree, due to the extraordinary circumstances, "For hearings conducted by videoconference during the next 60 days, and during the term of any extensions, the right of victims, victims' next of kin, members of the victims' family and victims' representatives to be present at a parole hearing will be satisfied by the opportunity to appear by videoconference, teleconference, or by written or electronically recorded statement,"

So, henceforth, until the current medical crisis is over or extended, scheduled hearings will be held at individual prisons, with perhaps only the inmate and requisite guards present in the hearing room, although it appears the inmate attorney can be present, should that individual agree, with all participants connected via video conference. To be sure, any inmate who chooses not to participate and wait for an in-person hearing may do so, postponing that hearing outside of the usual time requirements to request that action and with no penalty. BPH also confirms, those who do choose to postpone will be accommodated with an in-person hearing at the first opportunity after the video conference requirement is lifted.

For those who were scheduled for hearings in the shutdown, March 18-31, those inmates will be dropped into available hearing slots as quickly as can be arranged, certainly within 6 months, according to the board. And, Dr. Kusaj, head of the Forensic Assessment Division, confirms to LSA that comprehensive risk assessment interviews will go forward via teleconferencing, but will also "continue to conduct interviews in no-contact visiting rooms, in institutional locations that afford adequate social distance (i.e., board rooms)."

This is a rapidly and continuously evolving situation, LSA is endeavoring to keep on top of new developments. If you have friends or family on the outside, encourage them to sign up for Lifer-Line, as it is this email serve list that we use to post updates every day. Also, they can check our Facebook page for daily updates.

## **REVIEW OF NEWSOM'S FIRST YEAR OF REVERSALS**

By the time former Governor Jerry Brown left office for the second time in 2019, we'd had 8 years to figure out his 'triggers,' the things, details and issues that prompted many of his reversals of parole grants. It took a while, and it took considerable work. Each year, when the report to the legislature on the previous years' reversals was released, we would systemically comb through it, looking for traits, patterns—triggers.

It's a wearisome task, knowing that each of the letters represented dashed hopes after years of work by a lifer, who would not, then, be going home. Not to mention the mind-numbing reading of so much legalese, rationalization and posturing.

Once Gavin Newsom took the helm, all that learned information was out the window, all bets were off, and the slate wiped clean. And Newsom's first months in office didn't do much to mitigate everyone's concerns about the new sheriff in town. Newsom took office on January 7, 2019 and barely 11 days

later, on January 18, he signed his first denial of parole, to a lifer already granted parole, and denied, 3 times previously.

And a mere 7 days later, he reversed 13 more grants. Another 17 reversals came in the next 7 days: and 8 more by the end of his second month in office. Total, 40 in just under two full months in office. Alarm bells and rumors everywhere.

Then, for reasons we can discuss, speculate about and dissect, things slowed a bit. In the end, the first two months of Newsom's term accounted for just over 40% of the total reversals for the year. Did calmer heads prevail? Did a greater understanding of the process take hold? Did the Governor hear the outcry from the advocacy community? Hopefully, all of the above.



The report released in February on all reversals in 2019 detailed a total of 97 reversals, and, given that the parole commissioner made 1,184 grants of parole in 2019, Newsom's first year reversal rate was about 8%. In comparison, not bad. But the details are troubling.

While Brown's concerns regarding the demographics of the victims was one of the main reasons for his reversals of parole grants, Newsom, though also demonstrating that as a major issue, also show some, to coin a phrase, concerning concerns. Troopers that we are, we took that 250+ page report, read and dissected it all, to identify the triggers and concerns of the new Governor. And here they are.

One of Newsom's more alarming traits, at least in this first year, has been his propensity to reverse, again, those who have been reversed previously. Indeed, nearly a quarter of his reversals, 24 of the 97 total reversals, were for prisoners who had been found suitable and reversed at least once before. And it doesn't stop there.

Sixteen (16) suffered a second reversal at Newsom's hand (or pen), a trio (3) saw their fourth (4th) reversal, four (4) were reversed for the third time and one was reversed for an astonishing sixth (6th) time. All of this begs two questions: aren't we getting awfully close to actual LWOP sentences, even when the court imposed sentence was life with possibility of parole, and at what point do these inexplicable decisions become so dependent on political considerations that the afflicted inmates have become political prisoners?

All questions we continue to discuss with the Governor's staff...and as our readers know, we don't give up.

Of the Governor's reversals, 10 were for female lifers and more than half, 52, were for inmates who qualified for YOPH consideration, 29 of those under the age of 20 at the time of the crime. Age didn't seem much of a mitigator, as there were many senior citizens in the group, including 2 who were 86 years old, 2 were 79 years of age and 7 more were in their 70s.

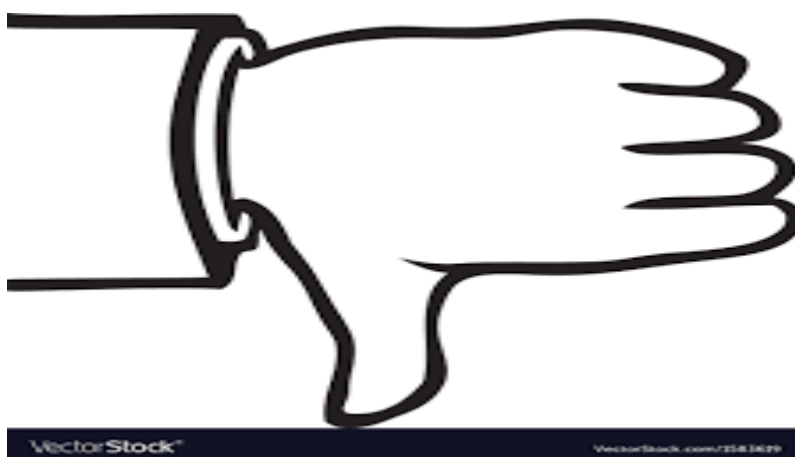
Nor did time incarceration time hold much sway, as 7 of those denied release have served 40 years or more and only 9 had served less than 20 years.

Those convicted of second-degree murder fared no better than those with a first-degree conviction; 50 of the 97 reversals were for first degree, leaving the remaining 47 second degree convictions. As with Brown, those inmates whose victim was female, a child, aged, or otherwise exceptionally vulnerable, were a special target or reversal consideration; 31 of those reversed had female victims.

Other than characteristics of the victim where were several other identifiable, and frankly troubling, commonalities in Newsom's reversals. Most troubling to us, and one we continue to question to the Governor, was Newsom's use of the Comprehensive Risk Assessment, the CRA, as a reason to deny. Particularly troubling, and factually incorrect, is his repeated notation of an 'elevated' CRA risk rating.

That alleged justification for reversal was used by Newsom 44 times, each time claiming the 'elevated' nature of the CRA justified, in part, his denial. However, of those 44 cited CRA ratings, all but 7 were moderate, and three of those were low. And as we reminded the Governor's office, moderate is NOT elevated and Dr. Kusaj has noted a moderate risk rating for a lifer is akin to a low risk rating for other released cohorts.

Thus, the Governor's characterization of a moderate risk rating as elevated is wrong, plain and simple. And then there are those 3 individuals who were reversed with a low risk rating, but that rating still cited in the reversal letter. Perhaps we should send the Governor a dictionary, with the definition of 'moderate,' 'low' and 'elevated' highlighted.



There are some familiar factors in Newsom's reversals. He frequently falls back on that old favorite, insight, or lack thereof, as a reason to say no. In fact, 38 times the Governor opined the insight exhibited by the prisoner in question was 'insufficient,' 'shallow' or inadequate.' At least it's not the blanket 'lack of insight' formerly cited by Brown.

But, as we've often said, insight is always evolving---and hopefully even the Governor will continue to develop greater insight as time goes on, because at present, his insight seems a bit shallow to us. Another commonality with Brown is Newsom's concern with salacious, troubling details of the crime. Situations like torture, extreme violence, abuse of a body after death. And, undeniably, sex offenses are triggering for Newsom.

And while we haven't seen from this Governor the virtual nods to VNOK objections we became accustomed to from Brown (references to the 'heartfelt objections' and letters from victim families), it is nonetheless clear Newsom is subject to such pressure, particularly if the crime is high-profile or with a high-profile victim, say, a police officer. This is an area ripe for more examination and exploration with Newsom, an area we will be addressing.

Other issues frequently cited by this Governor: concern about re-occurring mental health issues, understanding of domestic violence, knowledge of the 'causative factors' of the crime and, when all else fails, simply a mention that in Newsom's mind, the individual simply needs 'more time.' Hardly definitive.

Reversals remain a topic of concern and study for LSA/CLN, and we'd like to be able to address these issues on a continuing basis. But that takes some help from those who are reversed, as we don't have access to those reversal notifications or reasons, save for the once-yearly report. So again, we ask those of you who have been reversed, please send us that letter, let us know when and how you were notified of the reversal. The more information you provide us, the better and more quickly we can address reversal issues.

We also are in need of letters from the Governor sending parole grants to en banc consideration, as well as information about when those notices were received, relative to when the en banc hearing was scheduled. We're working on identifying Newsom's triggers for en banc referral and since there is no definitive report of these decisions, we must depend entirely on our readers providing us with that information.

The reasons for en banc referrals, as well as the timing of that notification is of concern. We continue to discuss with the Governor's office creation of a reliable and accessible way for lifers and their families to know where grants of parole are in their path through the Governor's review process. It's an on-going process, but we've seen some recent encouraging actions, so we'll keep working.

Send your communications from the Governor, either reversals or en banc referrals to the below address, and please note if you need the document returned to you.

Life Support Alliance  
PO Box 277  
Rancho Cordova, Ca. 95741  
Attn: Governor Action

### **COVID UPDATE, AS OF MARCH 26, 2020**

As of this date, the confirmed number of cases of the CoVid-19 (Corona) Virus remains at one inmate and 12 staff members.

One inmate, at CSP-Lancaster, has been confirmed to have the virus. The individual has been in isolation since March 19, with test results confirming the infection on March 22. A total of 12 staff members have also been confirmed; 4 at CIM, 3 at CSP-SAC, one each at FSP, SATF, Wasco, CHCF and San Quentin.

As of March 27 CDCR will institute mandatory fever checking of all persons entering the prisons. Those individuals refusing to have their temperature checked will be denied access.

The best defense for infection continues to be cleanliness, always a challenge in prisons. If you are experiencing difficulty in obtaining cleaning supplies at your institution, please let us know, have your family contact us, with specifics, our email is: [staff@lifesupportalliance.org](mailto:staff@lifesupportalliance.org).

Note: inmates will not be issued hand sanitizer, due to the alcohol content, but CDCR reports cleaning supplies for living quarters as well as soap and cleaning appliance are being distributed. Let us know.