



Sen. Darrell Steinberg and Gov. Jerry Brown in friendlier times

DUELING POP CAP PLANS SPLIT DEMOCRATS

For literally years now California citizens, not to mention state prisoners, have tried to wade through and keep up with the charges, counter-charges, changes and suggestions lobbing back and forth between Gov. Jerry Brown and the 3 federal judges who ordered the state to reduce its prison population. In fact, this tempestuous issue even pre-dates Brown's tenure as Governor. And just when it appeared it all might be headed to a crashing crescendo and solution—another player jumps into the game.

After failing to convince the U.S. Supreme Court to prevent the 3 judge's deadline of December, 2013 for population reduction from being enforced, on Aug. 27th Gov. Brown, flanked by the who's who and who isn't of CDCR and other state agencies, including some well-known legislative faces, announced he would not release any prisoners, but instead planned to bring down the prison population by renting bed space for state inmates in local lockups, private, for-profit prisons both inside and outside the state and even possibly reactivating some long-dormant state facilities.

Proclaiming "Public safety is the priority, and we'll take care of it," the governor said he would ask state lawmakers to dip into the state's reserve funds to finance the lease/rent of more cell space. "The money is there," he said. Maybe. Brown's plan would initially cost about \$315 million and would send thousands of inmates to private prisons and vacant county jail cells, including excess jail cells from Alameda and Los Angeles counties, and renting an entire 2,300-bed private prison in Kern County from Corrections Corp. of America to be staffed by guards employed by the state, presumably from CCPOA. The Governor acknowledged that over the next two years the plan, which provides more space to house inmates but does not reduce the number of prisoners under state control, could cost as much as \$700 million.

Although Brown trotted out a veritable posse of supporters, from CDCR Sec. Jeffrey Beard to members of law enforcement agencies (including CCPOA, no surprise there) and several legislative 'names,' not all in the capitol who were impressed with the plan or convinced it was, to use a CDCR favorite, a 'best practice.' Although Brown had state Assembly Speaker John Perez, and a phalanx of Republican pols by his side, Sen. Darrell Steinberg, powerful President Pro-Tem of the State Senate was conspicuous by his absence. Steinberg later released a statement saying the Governor's rent-a-cell program has "no promise and no hope."

"As the population of California grows, it's only a short matter of time until new prison cells overflow and the court demands mass releases again," said Steinberg. Sen. Mark Leno (D-San Francisco) echoed Steinberg's concerns, noting the Governor's plan "doesn't solve the problem. What's the long-range solution here? Otherwise, we're going to find ourselves in the same situation over and over and over again."

To their credit, Steinberg and Leno, backed by their own squad of supporters, unveiled their own plan the following day, a plan that calls on all parties in the suit to agree to an extension of the deadline set to meet the population cap while at the same time forming an Advisory Commission on Public Safety with an eye to changing California's sentencing laws and an independent state panel to study and determine the acceptable population numbers for California prisons based on best practices from other corrections departments across the country.

In announcing the plan Steinberg said "We cannot build or rent our way out of overcrowded prisons. Relying solely on more prison beds is repeating the same failed investments of the past. We need solutions rooted in effective strategies to reduce crime, and we need the time to implement these real reforms. That's where I hope the Governor and the plaintiffs will find common ground."

The Steinberg plan asks all parties to agree to a 3 year extension of the deadline and promises to give counties grants amounting to about \$200 million a year for drug treatment and mental health care. Steinberg estimates his plan would cost the state some \$400 million over the same period of time Brown's idea would cost \$715 million.

Prison Law Office attorney Don Spector, who has represented the winning side of the overcrowding debate, indicated he would be "willing to negotiate an extension that is reasonable. We very much support Sen. Steinberg's proposal over the governor's proposal because we think it does have a lot of the elements that have a potential to resolve the overcrowding crisis, while the governor's proposal does nothing but postpone the inevitable overcrowding (to) sometime in the future," Spector commented.

As everyone begins to choose up sides the two opposing plans are generating some interesting political bedfellows. Brown, once the quintessential liberal Democrat, was backed by Perez, but also by Republican legislators Sen. Bob Huff and Assemblywoman Connie Conway, plus the usual law enforcement and victims groups cadre, a veritable law'n'order fellowship.

Steinberg and Leno were supported by a backdrop of Democrat Senators including Sens. Loni Hancock, Jerry Hill and Jim Beall. A Steinberg spokesman said the plan has the backing of all Democratic Senators. Assembly Speaker Perez, however, hinted he was attempting to circumvent Steinberg and approach individual Democratic Senators to convince them to jump ship and come aboard Brown's flotilla.

In fact the intra-party bickering has become so pronounced that Steinberg cancelled confirmation hearings for two of Brown's appointees to CDCR positions scheduled last week. Both appointees (Jay Virbel, Associate Director of CDCR Female Operations and Programs and Dan Stone, tapped to head the Division of Adult Parole Operations) must be confirmed by Sept. 13 or their appointments are automatically voided.

The upshot of all the bickering and multi-plan shuffling is that once again the prospects for settlement of the population cap order are in chaos. No matter which plan is eventually adopted, or if the federal judges simply Stooze-slap everyone and proceed on their own, the prospects for lifers being summarily released remain the same: none. Both plans would scrap the possible advancement of parole hearings for elderly and ill lifers and both plans would eliminate the so-called "Low Risk List," the list of some 1,200 inmates CDCR estimated could

be released early without danger to the public. Once again, we note, NO LIFERS were ever included on the Low Risk List; in fact, they were specifically excluded, as those on the list could not have been convicted of a serious or violent crime.

LSA and Lifer-Line will try to keep all the competing proposals straight and provide the latest information in an ever-changing scene to our readers.

BPH COMMISSIONER CHANGES

Arthur Anderson Jr., 65, of Roseville, a former member of the CHP and parole commissioner since 2008; Cynthia Fritz, 41, of San Ramon, a board member since 2011 and formerly with the Attorney General's office; Pete Labahn, 57, of Laguna Beach, past member of the Riverside County Sheriff's Department and a commissioner since 2011 (and a term from 2009-2010) and Ali Zarrinnam, 38, of Encino, who was a Deputy Commissioner prior to becoming a commissioner in 2012, were all reappointed by Brown. All must be approved by the Senate Rules Committee and the full Senate within the next year. Anderson and Fritz are Republicans, LaBahn and Zarrinnam, Democrats. The salary for parole commissioners is \$111,845 annually. Gone are Commissioners Dan Figueroa, who resigned in June and Jeff Ferguson, who resigned effective the end of August. Their replacements were named in late August by Gov. Brown as follows.

Richard Guerrero, 64, of Pasadena. Guerrero has been a special agent at the California Department of Justice since 2006 and a special investigator at the California Horse Racing Board from 2001 to 2006. Prior to those positions he held multiple positions at the Los Angeles Police Department from 1974 to 2000. Guerrero has a Master of Leadership degree from the University of Southern California, School of Policy, Planning and Development. Guerrero is a Republican.

Elizabeth Richardson, 55, of Huntington Beach, has served as a Deputy Parole Commissioner since 2013 and at the Board of Prison Terms from 1997 to 2007. She has also been a special assistant inspector general at the California Department of Corrections and Rehabilitation, Office of the Inspector General from 2007 to 2012 and deputy city attorney for the City of Long Beach from 1995 to 1997. She has also served as a teacher for the Los Angeles Unified School District and as captain in the U.S. Marine Corps from 1980 to 1984 and in the U.S. Marine Corps Reserve from 1984 to 2010, retiring as a colonel. Richardson earned a Juris Doctorate degree from Southwestern Law School. Richardson is registered decline-to-state.

Both must be confirmed with 365 days by both the Senate Rules Committee and the Senate as a whole.

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DO VICTIMS WANT VENGEANCE?

A new survey, completed and released in June of this year by a non-profit social justice coalition, suggest that not all victims of crime are bent on never-ending vengeance and that possibly those victims' rights organizations who continue this campaign are not realistically representing their constituency. *The California Crime Victims' Survey*, commissioned and published by Californians for Safety and Justice (CSJ) contends the majority of victims are not looking for harsher criminal penalties, but are seeking healing for themselves and their families.

The results of the study, published in the California Progress Report, found most crime victims favored rehabilitation and treatment of those who had committed crimes rather than long-term incarceration. And the study notes that while this finding may be contradictory to what passes for conventional wisdom, a closer look at what constitutes the majority of victims brings a clearer understanding of the report.

The study notes that most well-known (and highly visible and vocal, not to mention well-financed) victims' groups appear to represent primarily middle class, white victims while the majority of victims are "people of color from low-income communities." Many have been victims of multiple crimes, know others who have been victimized and may know well or be related to the perpetrator of the crime. Most telling is what the survey found in the "clustering" of crime victims in communities with the highest crime rates, a situation that is self-perpetuating.

"[T]he communities suffering the greatest victimizations are the same communities devastated by tough criminal justice policies. The high rates of incarceration in these communities disrupt families, weaken social ties, and increase unemployment and homelessness--resulting in more crime and thus perpetuating the cycle of victimization," the study explains. And while crime victims organizations have long had an open forum in the media and legislature, able to pass (and name) legislation based on crimes involving primarily young, female Caucasian victims of heinous (but relatively uncommon) crimes, [think Marsy's Law, Megan's Law, Jenna's Law, etc.] these laws do little to help the majority of crime victims or improve the over-all record of public safety.

The social justice system, not the criminal justice system, the study suggests, is better suited to healing the majority of crime victims and providing the support and services they need. Social justice, however, is, by in large, not on the radar of most well-known victims' groups.

The study concludes that policy makers and leaders who want to truly make a difference in both the needs of crime victims and societal safety and justice would do well to address these needs, not spend more time, money and bluster on tough on crime laws, more prisons and longer sentences. We, at LSA, concur.



NEW REVIEW OF 3 YEAR DENIALS WILL BE AUTOMATIC

From now on lifers who receive a 3 year denial of parole will get an automatic review of their hearing and possible chance to advance the next hearing ahead of the 3 years under a new policy put into effect recently by the Board of Parole Hearings (BPH). The Administrative Review process will be initiated by the BPH and will not prevent prisoners from filing a 1045A Petition to Advance (PTA) at any time during the 3 year period.

When Marsy's Law passed and expanded the parole denial range from 1 to 5 years to 3 to 15 years several legal actions were filed seeking to have this provision of Marsy's thrown out as ex post facto. The most recent and well known of these, In Re: Vicks, was decided in April, with the court ruling the expanded denial time was not ex post facto, as it allowed a remedy for inmates given long denials through the PTA process. At the same time, the court said in In Re: Morganti, that it would be prudent of the BPH to begin what the court called sua sponte, or of its own accord, review of denials. Hence, the new policy.

The new system, which will operate much like the inmate-initiated PTA process, will be done in a month-for-month time frame in the year following the denial. Thus, a 3 year denial given in August, 2012, will be reviewed in August, 2013 to see if the prisoner is eligible for an advanced hearing. Prisoners are still free, and encouraged, to file the 1045A PTA form, but if they do not, their situation and denial will nonetheless be reviewed a year later to determine if a review of the merits of the case should be conducted.

These reviews will be conducted at the BPH headquarters in Sacramento, by a cadre of Deputy Commissioners, whose primary job will be to review, consider and decide on these potential hearing advancements. If a "change in circumstances or new information" and "after considering views and interests of victims," there exists a "reasonable likelihood that consideration of public and victim's safety does not require the additional incarceration," a hearing date will be advanced.

The decision on whether to advance a hearing or not could take anywhere from 2 weeks to more than 30 days, depending in part on whether or not there are registered victims who must be notified. The new hearing could then be held within 5 months.

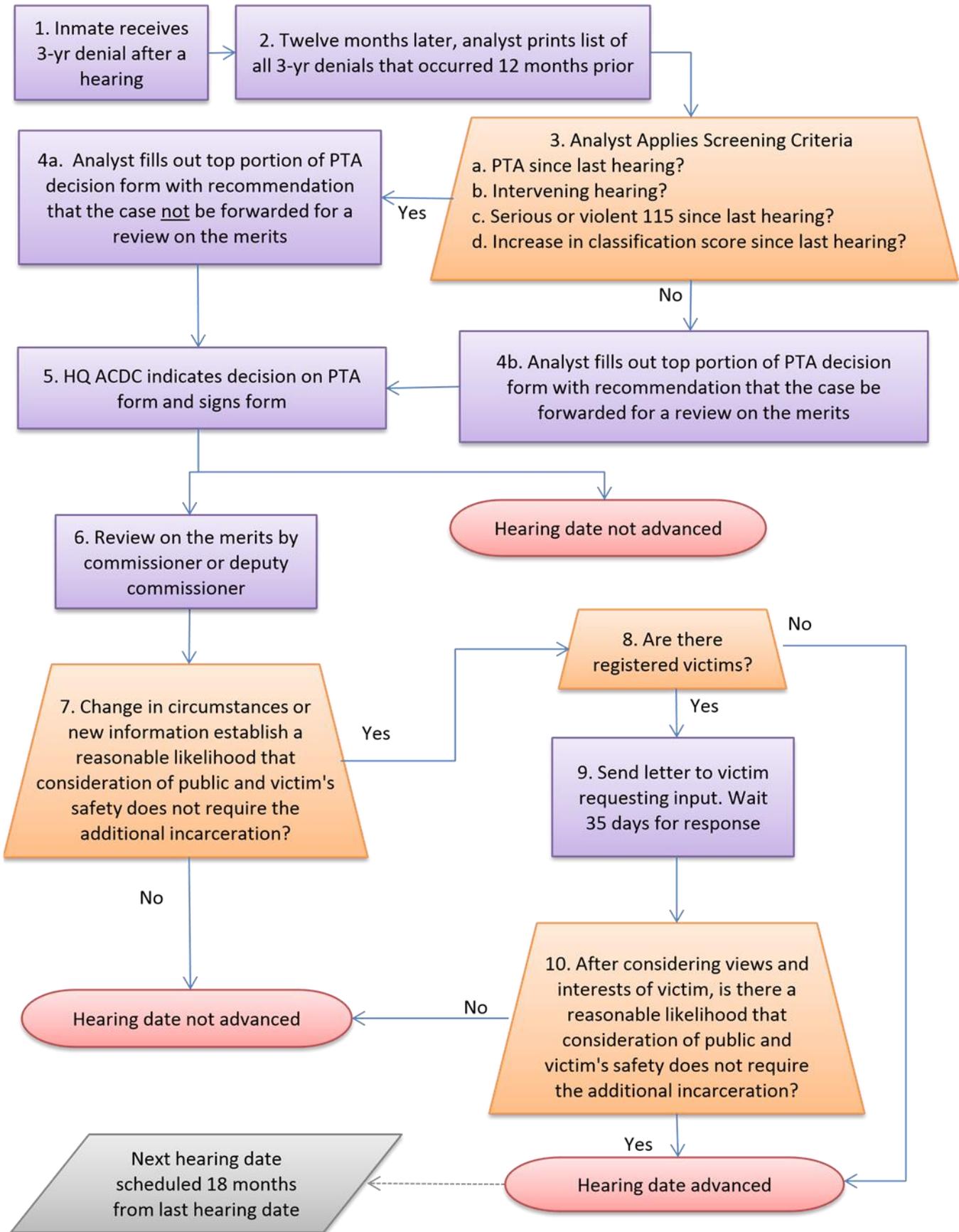
Officials note that 60% of parole suitability denials are for 3 years. In 2012 inmates filed 329 PTA requests, of which only 29 were granted and hearings moved forward. From January to June, 2013 some 251 PTAs were filed by inmates, of which 129, or 53% have so far been approved for advanced hearing.

The new administrative review process will provide a fresh look at even 3 year denials but is not a guarantee of an advanced hearing. Below is a flow chart, which will hopefully explain the new review process. It is important to remember, if an inmate's last denial is reviewed under the administrative process and an advanced hearing is not granted, he or she still has the option to request a new, advanced hearing under the regular PTA process, essentially giving prisoners two possible bites of the apple

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ADMINISTRATIVE REVIEW PROCESS



VICTIMS' ROLE AT PAROLE HEARINGS EXPLORED

Recently representatives from LSA met with Cynthia Florez-DeLyon, CDCR Assistant Secretary in the Office of Victims Services and Katie James, Victims Services Manager to discuss the OVS, how it operates, how the department is implementing Marsy's Law in the absence of directives contained in the proposition, and other related matters. It was a beneficial exchange of information and ideas, which gave us a better perspective on how decisions are made and the possibilities for input and change.

Perhaps the most interesting, and still not comprehensively defined question is, "What is a victim?" And in this simple question alone, there are differences. According to the OVS 'Parole Suitability Handbook,' "The victim or if the victim has died, family members may attend and speak at the hearing in the following order of priority: Spouse, children, parents, siblings, grandchildren and grandparents." The handbook also notes "Two representatives may accompany the victim or each family member to the hearing. Victims and their families may choose to designate a representative to speak on their behalf."

However, the Attorney General's website offers the following definition of a victim: "a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act. The term 'victim' also includes the person's spouse, parents, children, siblings, or guardian, and includes a lawful representative of a crime victim who is deceased, a minor, or physically or psychologically incapacitated."

The OVS representatives indicated to LSA that the average number of VNOK to attend any hearing is 3-4 individuals. As to the number of parole hearings that see VNOK in attendance, they indicated that overall about 20% of parole hearings are attended by victims or representatives, but when just lifer hearings are considered, that percentage jumps to just over one-third, or 34% of hearings.

Although in order to get clearance to attend a hearing victims must be registered with OVS, that registration can be done at any time, via mail or on-line, so that victims from decades-old crimes can register at any point. And how do victims from older crimes decide to register? While OVS staff indicated they are unsure, from anecdotal and research by LSA it appears many District Attorney Offices are seeking out unregistered victims, advising them to register and directing them to OVS to do so. Mses. Florez-DeLyon and James emphasize, however, that OVS does not take part in seeking out and soliciting registration by victims. Once registered, a victim remains registered, unless they contact OVS and ask to be removed or change residence and fail to notify OVS of their new location.

At those hearings where the victims choose to attend and/or speak, there are a few rules, nearly all of which apply to what the victims can do and what the prisoner, or his attorney, cannot do. Victims are afforded the right to speak last, and uninterrupted; they can speak at virtually any length, can and often do present exhibits. They cannot be questioned or challenged either by the inmate or his attorney, nor their remarks limited or cut short in any fashion. While the supposed aim of these admonitions is to protect the victims from further emotional pain or 'intimidation' by the prisoner or his attorney, in reality these restrictions give both victims and their anointed representatives virtual carte blanche.

Prisoners and their attorneys report, via LSA's survey process, and we have seen first-hand at hearings where we have been observers, that at times victims can become verbally abusive, emotionally overwrought and condemning. In some cases accusations, without any substantiation and not related to the life crime are made, the prisoner is reviled and insulted. All of these situations are difficult for the inmate in the hearing to endure and add little to the content of the hearing.

To address some of these procedural issues the Board of Parole Hearings is currently grappling with an Administrative Directive that would provide commissioners with guidelines on how to better handle VNOK hearings, to ensure the rights and sensibilities of both sides are adequately protected. This directive, in draft form, was first presented a few months ago at a BPH Executive Meeting. However, LSA, in attendance at that

meeting, and other parties of interest, questioned many aspects of the directive and the draft was withdrawn for further work. As of this writing it has not yet been re-presented to the BPH board.

In the end, what impact do victims have on parole suitability decisions? That appears to depend significantly on the commissioner involved in the hearing. Preliminary statistics seem to indicate grants are less likely when victims/representatives appear, but not excessively so. In actuality, it appears the impact of victims' statements may have more impact on the Governor's likelihood of reversing a suitability grant or referring such grant back to the BPH for an en banc hearing than the panel's finding itself. Our research on reversals of parole by Gov. Brown indicate that in about 10% of the grant reversals Gov. Brown cites 'heartfelt' letters from the victims requesting he nullify a parole grant. We cannot, as yet, say that victims' statements at hearings result in denials 10% of the time; more research is needed on that count.

One unforeseen development of Marsy's Law is the increasing use of professional, paid "victims' representatives." This last area seems to have become something of a cottage industry of late, with a variety of individuals, some attorneys, some termed-out law'n'order legislators and some simply professional victims, plying their new trade for compensation. While OVS does not provide this compensation, it appears, from some evidence, that these appearances may well be funded by one of several victims' rights organizations, many of which receive substantial funding from our old friends at CCPOA.

On one aspect of prison families' interaction with OVS we are still awaiting a definitive answer, and that is whether under the rather nebulous language defining a victim as having suffered "direct or threatened physical, psychological, or financial harm as a result of the commission.." of the crime could be applied to family members, who often suffer great and direct psychological and financial harm as a result of their loved one being imprisoned. Since, according to Ms. Florez-DeLyon, this provision has been interpreted to allow business associates of a victim, who may have suffered financial harm as the result of a crime in which they were not the direct victim, it would seem to us that the direct financial harm suffered by many prison families as a result of their loved ones' incarceration, might also qualify them as victims of that crime.

A long shot? Perhaps, but worth inquiring about. Other options are to work with the BPH and CDCR to more clearly and equally define the provisions of Marsy's Law and mount challenges, where possible, against the interpretation of those vague passages within the language that have allowed for potentially questionable practices. These are options we are exploring.

LIFER FAMILY SEMINAR COMING TO BAY AREA

Although the venue has yet to be finalized LSA will hold a seminar for lifer families Oct. 5 in the Bay Area. The full day of discussion and information sharing will include information on parole process, writing good support letters, challenges facing paroled lifers and the opportunity for friends and family of lifers to meet and speak with one of the premier lifer attorneys in California.

'Doing Life as a Family' gives families of lifers a chance to catch up on the latest situations in politics and law and learn how they can help their lifer become ready for parole. Our seminars cover a variety of parole planning topics from transitional housing to book reports, give those in attendance a basic understanding of how the parole hearing works, how lifers can be released and how they can become an active part of their prisoners "support system", both while inside and after release.

Lunch is provided, a stack of printed information is distributed and connections are made with other families and friends who can offer support and encouragement. We even bring along a few paroled lifers, so everyone will know parole and reentry is possible and happening.

Those interested can contact LSA at PO Box 277, Rancho Cordova, Ca. 95741 or email us at: lifesupportalliance@gmail.com. Cost for the day is \$20 pre-registration or \$25 at the door, including lunch.