LIFE SUPPORT ALLIANCE

Public Safety and Fiscal Responsibility

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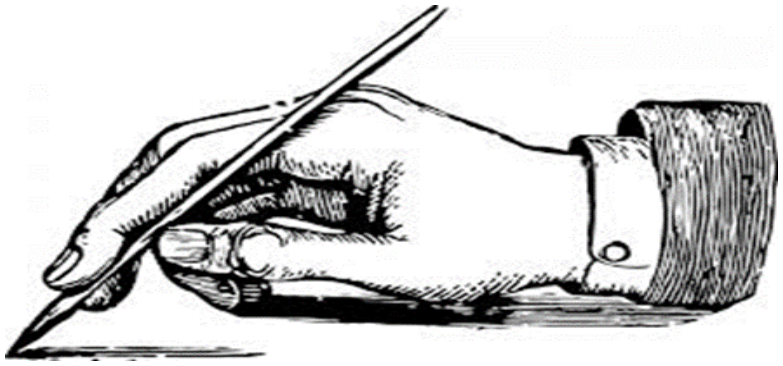

PROP. 57; THE FINAL (PROBABLY) VERSION

Just released on Wednesday, Nov. 29, what CDCR hopes will be the final version of regulations implementing the changes wrought by Prop. 57, is already the subject of intense debate, reaction, angst, and for our part here at LSA, a feeling of time to move on to the next step. Prop. 57, a Constitutional amendment passed by voters last November, was hyped, heralded and hoped to be the solution that would provide relief for Third Strikers, the key that would set them free.

Except, that from the outset, it wasn't. That was very apparent from the language of the initiative, and those who continued to push Prop. 57 as an avenue of relief for third strikers or lifers were either intentionally misleading their audience, did not fully read and understand the proposal or were engaging in uber-wishful thinking. This is not to say that perhaps third strikers shouldn't have been included in the target populations for Prop. 57. That's another discussion.

The issue at hand is whether or not the intent of the initiative as written was to include them. And while the language of the ballot measure did not specifically exclude third strikers, it also did not specifically include them. Only the naive would assume CDCR would be expansive in their reading of such measurers.

On the biggest, most controversial question relating to Prop. 57, the inclusion of Third Strikers in the Non-Violent Parole Process, the answer remains no. The rationale for this decision, made when the first version of the regulations was released, is three-fold: non-violent third strikers already received relief under Prop. 36 (2012); sentencing or resentencing is the purview of the courts, not CDCR and Penal Code 667.5 (c) (7) defines those who are serving life sentences, including third strikers, as having committed a violent offense.

Another high-profile issue was allowing inmates to earn credits retroactively. Again, CDCR did not make changes from the originally proposed regs, which allow retrospective application of credits only for Educational Merit Credits and Extraordinary Conduct Credits. Credits for Good Conduct,

Milestone Completion Credits and Rehabilitative Achievement Credits are prospective only, meaning they will only be applied for accomplishments in these areas going forward from the time of Prop. 57 implementation.

CDCR bases this decision on avoiding disparate treatment of inmates, because inmates who choose other venues, such as jobs, over participation in the now-credit eligible programs when they were not credit applicable should not be penalized for those decisions. The department also acknowledges that its own records may not accurately reflect past participation in programs that now are credit-eligible, thus acknowledging credits retroactively may not fairly reflect any given prisoner's participation.

Nor was the rate of Good Conduct credit earning increased, remaining at 20% for ISL or DSL inmates convicted of a violent offense, non-violent second or third strikers receiving 33.3% and remaining inmates can receive 50% good conduct credits. All good time credits exclude LWOP and condemned inmates. CDCR decided the present system, which assigns credit earning ability based on the gravity of the offense, was the most appropriate way to maintain public safety.

In a similar move, no additional credits toward the date of YOPH hearings will be awarded, other than the possibility of moving forward the initial hearing, under both the guidelines of SB 260-261 credit awards under Prop. 57. These advancement credits apply only to the initial hearing; those eligible for YOPH will not be able to advance any subsequent hearing via application of Prop. 57 credits.
CDCR's decision, it reported, was based on maintaining the "legislative intent behind the youth offender law," which gave substantial relief to many YOPH candidates, both ISL and DSL, in scheduling their first (and for DSL inmates, unexpected) first hearing. The department's response noted the relief provided by YOPH laws, to bring those inmates to a parole hearing after 15, 20 or 25 years was done without regard to credits earned.

What does all this mean? In short, third strikers, lifers and other prisoners who are serving time for crimes that are defined as 'violent,' whether or not the common definition of violence applies, will not see much impact from Prop. 57, specifically via the Non-Violent Parole Process. And while some, including YOPH candidates, can realize some forward movement of their initial parole hearing, for YOPH inmates that opportunity applies only to initial hearings.

In a press release accompanying the publication of the revised regs, Secretary of Corrections Scott Kernan commented, "Our decisions were not made lightly nor were they made in a vacuum. CDCR heard arguments representing a wide range of views, and concluded that many of the suggested changes would be contrary to existing law or would result in disparate treatment of inmates. Our intent is to incentivize inmates to participate in rehabilitative and self-help programs that will make them better individuals, and to do so in a way that enhances public safety. I remain committed to putting in place a fair credit system that acknowledges good behavior and hard work." CDCR reportedly received over 12,000 comments from the public in the time from initial release of the regs until the final public hearing on September 1, 2017.

There remains a 15 day comment period and review by the Office of Administrative Law before final approval. The department will also issue a Final Statement of Reasons, as to why these regulations best follow the spirit and intent of Prop. 57, all the while maintaining public safety. Barring any unexpected—and unlikely—delays, the regs will go into full effect, having the force of law, by mid-March.

NEXT UP—FAMILY VISITING REGS

Now that the latest and probably last version of regulations to implement Prop. 57 have been released, the minions at the regulation-writing division of CDCR can, and reportedly will, focus on finishing those long-awaited and much anticipated changes to the regs determining who can participate in recently expanded family visiting. While family visits for lifers and LWOP inmates were officially restored nearly 18 months ago and actually began almost a year ago, those visits have been operating under the old regs, which have precluded many lifers from being included.

CDCR, acknowledging those regulations required revision began working on those changes nearly a year ago. And while we've said (only partly in jest) that it didn't take this long to write the 10 Commandments, sources in CDCR now say that this effort has now taken top priority to complete.

The biggest botherations screening out inmates in the existing regs fall mostly in 3 areas;

- Victim of the crime was a minor
- Old and often unproven allegations of domestic violence
- Drug trafficking charges picked up while incarcerated

Throughout the time the new family visiting regs have been under review, contacts in CDCR have acknowledged that some of these make little sense. For example, those inmates with a minor victim were also, themselves, minors at the time of the crime, and, given the purpose of YOPH laws, seems a bit counter-productive. Old domestic violence charges, often never prosecuted or proven, seem stale and less than probative years, often decades later, and which could also be said of long-ago trafficking charges.

Now comes word that the new family visiting regs will almost certainly be released by mid-January, and those same contacts in CDCR, well aware of our concerns especially about the above preclusions, have told us substantive changes will be evident in those new regs, and that we will, they feel, be 'very pleased' with the changes.

Hope so. We've been waiting long enough. Watch this space, and we'll let you know.

PREPARING YOUR PAROLE PLANS

One factor parole panels examine in determining parole suitability is the appropriateness and pragmatic nature of any parole plan offered up by the prisoner in question. It behooves every inmate to give thought to his/her parole plans, not just go to your hearing assuming you'll figure it out after you're granted.

Adequate parole plans don't have to be complicated or presented in an elaborate manner, but they do need to be comprehensive, covering the areas the board is concerned about, and providing a realistic and verifiable plan of action. The board is concerned with the basics: shelter, sustenance and support. Where you'll live, how you'll make a living and who will be there to help you.

Where will you live?

- Transitional housing (preferred by the board)
- With family (also possible)
- Is the proposed location acceptable to your likely parole conditions (if you have a 290, there are restrictions)?
- Do you have verification of that residence (a letter of support or acceptance from a transitional facility)?

Do you have an ICE hold?

- If so, make plans for California (in case you aren't deported) as well as your home country.
- Same categories apply: home, job, support.

How will you support yourself (legally)?

- Do you have a marketable skill (a vocation) and an idea where you can look for work?
- Do you have sufficient funds and/or promise of financial support to live for the first 6-12 months?
- It isn't necessary to have a firm job offer

What support do you have?

- Support letters from family, friends, organizations
- How that support is going to assist you in reentry into society—what specifically is being offered?

What do you plan to do?

- What are your long term and short-term goals?
- Goals should be realistic—you aren't going to be able to support yourself right away on a business you start after release, so have a stop-gap plan.
- What support groups do you plan to continue to attend, pro-social activities you plan to engage in?

Relapse prevention plan

- Not just for substance abuse, but for other trigger issues such as anger, low self-esteem, co-dependency.
- Know where meetings/resources are to address these issues, and commit to taking advantage of the help available.
- Know the things that trigger your issues in these areas.

Your plans don't need to be memorialized in a fancy binder, tabbed and annotated. A simple summary, with supporting documentation (letters of acceptance from transitional housing, a list of your vocations, possibly companies where you might seek employment, support letters) is sufficient. It's less about the presentation than about the facts: what's real here, that the parole panel can reasonably believe will happen and what could be pie-in-the-sky wishful and aggrandized thinking on your part.

Don't over-think or complicate the process. The board is less concerned about how many bedrooms your eventual home will have and more concerned that you have a place to stay and support to help you navigate reentry. If you don't have family to return to and haven't yet found a transitional facility, your fallback position can be the parole unit housed at each prison, that will interview you before release and be sure you have a place to stay.

While some prisoners are simply released at the end of their term, lifers, in this and many other areas, are held to a higher standard and must know where they are headed. Don't just assume you can go home; be sure not only that it works for your family, but that it's appropriate for the parole conditions likely to be imposed on you by either the board or DAPO.

If you need a list of possible transitional housing facilities to write to, send a request to LSA (and a stamp, please) and we'll send you a list with a variety of possibilities in various areas of the state. If you're within a year of a parole hearing, you should be finalizing those parole plans now.

(UNOFFICIAL) TRANSCRIPT OF PAROLE HEARING FOR INMATE S. CLAUS, CDCR NUMBER ZZ 01225

We offer the following purely imaginative, but based on facts, hearing for the bemusement of our readers. Those who have witnessed or experienced a parole hearing will understand. Creative license fully in play. Happy Holidays to all, stay well, stay safe.

This is the umpteenth parole hearing for Inmate Santa Claus, CDCR number ZZ01225. The hearing is being conducted by Commissioner E. Scrooge and Deputy Commissioner T. Grinch. Inmate Claus was received into the California state prison system under habitual offender guidelines on two million counts of breaking and entering over a multi-year period. Today we will be discussing the crime, the prisoner's insight and remorse, institutional and disciplinary history and psychological evaluation.

Inmate Claus confessed to repeatedly entering homes during early morning hours. He has continually minimized his involvement in this crime by saying he was leaving gifts, not taking anything from the victims. He did, however, admit to eating milk and cookies in each home. He expresses no remorse.

His psychological evaluation, performed by Dr. N. Accurate, of the BPH Forensic Assessment Division, notes shallow affect and overly-friendly presentation. The clinician continues that he cannot comment on the inmate's early life, as the inmate claims not to remember those years. This led the doctor to diagnose Claus as having an unstable social history and anti-social personality disorder.

The report continues that the inmate claims to have had no sexual partners but seems overly consumed with prurient interests, prefacing nearly every statement with "Ho Ho Ho," which the clinician concludes is an obsessive anti-social reference to females. He also notes Inmate Claus has an unusual interest in and knowledge of individuals of abnormally small stature, which the psychologist concludes may be a repressed sexual deviancy. He is also concerned with the inmate's self-confessed habit of having children sit on his lap.

The FAD evaluation concludes Inmate Claus lacks insight, has possible homosexual tendencies and an expressed desire to make everyone happy, which the report concludes, makes Claus clearly an unreasonable risk to society if released.

The inmate's institutional history reflects possible gang affiliation. We note the inmate has an AKA of "St. Nick," and has confessed to habitual association with a group of aberrant individuals who dress in specific colors (red and green), wear unusual and conspicuous items of apparel (curled toe shoes and bells), use jargon such as "Merry Christmas to all and to all a goodnight," and call themselves "The Elves." Claus also has numerous 115s for over-familiarity with staff, which he minimizes as being nice, not naughty.

The inmate also has inadequate and unrealistic parole plans, stating he will live at the North Pole and find employment driving a sleigh. This appears to be seasonal work at best. Claus also describes his potential residence as having plenty of snow, which, if true, could result in drug addiction.

We therefore deny parole to Inmate Santa Claus, finding his crime to be heinous and callous, noting his lack of insight and remorse and unstable social history make him an unreasonable danger to society and likely to commit random acts of kindness, which could clearly pose a risk to society.

Parole is denied for 15 years, during which time we suggest the inmate upgrade professionally, seek positive chronos and generally get a life.