



Public Safety and Fiscal Responsibility

P.O.Box 277, Rancho Cordova, CA. 95741
lifesupportalliance@gmail.com

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PROP. 57 REGS—LITTLE IMPACT ON LIFERS

As anticipated, the regulations implementing changes under recently passed Prop. 57 show there will be little impact on lifers. And despite the wailing of many and angry calls to change the regs, that they are 'unfair' and not in the spirit of what the voters intended when they passed Prop. 57 last January—nonetheless, these, for now, are the regs.

In simple language, non-LWOP/condemned lifers will have conduct credit earning capability increased from a current range of 0-15% to a flat 20%. Any such credit goes towards their MEPD calculation (initial hearing date), but does not reduce their term, as set by the Board. It will have no effect on lifers who already have reached their MEPD, and it will not release any lifer before serving their term, as set by the Board in a lifer parole suitability hearing.

Prop. 57 specifically noted it would not impact those convicted of violent felonies. And violent crimes, notwithstanding the passage of Prop. 57, are defined in Penal Code 667.5 and still include the following: murder and attempted murder, voluntary manslaughter, mayhem, carjacking, rape (as defined), sodomy (as defined), oral copulation and lewd acts (as defined), kidnapping, assault, extortion, threats to victims or witnesses. And the list goes on, including one all-encompassing citation of specific impact for lifers; "Any felony punishable by death or imprisonment in the state prison for life."

That phrase, untouched by the passage of Prop. 57, basically encompasses all lifers. The issue in question, whether Prop. 57 will impact lifers and third strikers, hotly debated both before and after the passage of Prop. 57, is thusly addressed in the regs:

*"For the purposes of this article, the following definitions shall apply: (a) A "Nonviolent Offender" is an inmate who is **not** any of the following: (1) Condemned, incarcerated for a term of life without the possibility of parole, or incarcerated for a term of life with the possibility of parole; (2) Serving a term of incarceration for a "violent felony;" or (3) Convicted of a sexual offense that requires registration as a sex offender under Penal Code section 290.*

(b) A “Nonviolent Offender” includes the following: (1) An inmate who has completed a determinate term of incarceration for a violent felony and is currently serving a concurrent term for a nonviolent felony offense; (2) An inmate who has completed a determinate or indeterminate term of incarceration and is currently serving a determinate term for a nonviolent in-prison offense.

(c) “Violent Felony” is a crime or enhancement as defined in Penal Code section 667.5, subdivision (c).

(d) “Primary Offense” means the single crime for which any sentencing court imposed the longest term of imprisonment, excluding all enhancements, alternative sentences, and consecutive sentence (emphasis added).

Short answer: Prop. 57 will not impact the enhancements, sentences or term lengths of lifers, or Third Strikers. At least under the regulations as currently presented. Efforts are underway on several fronts to amend the current regs to include all non-violent prisoners, including third strikers. However, lifers, by virtue of their crimes and sentences, are not included in the Prop. 57 so-called ‘early parole’ consideration.

Where lifers will benefit is in the credit earning area, where all will now receive a flat 20% good-time credit earning, and for those who have not yet had their initial parole hearing, the inclusion of Milestone Completion Credits toward their MEPD. Again, per the regs, Inmates can earn Milestone Completion Credits for specific education or career training programs with attendance and performance requirements. Proposition 57 increases the amount of time inmates can earn for Milestone Completion Credits from 6 weeks per year to 12 weeks. Good conduct credits will begin May 1, with Milestone Credits kicking in Aug. 1.

Disappointing as this is to many, who held out hope that somehow Prop. 57 would reduce the term of lifers or give them a boost at hearings, those were, from the beginning, false hopes. Prop. 57 was always touted as impacting non-violent offenders, and while the debate goes on about what, exactly, is a ‘non-violent crime,’ a careful reading the initiative language and statements would have made it clear that Prop. 57 would only impact lifers marginally, via credits.

Perhaps the biggest benefit of the new law is that it removes from the hands of prosecutors and places in the purview of judges the decision on whether to try individuals as young as 14 years old as adults. This over-zealousness of many DAs in pursuing the harshest penalties possible for young offenders has contributed greatly to the number of relatively young men and women serving life terms.

And while Prop. 57 is a big step in the right direction, and a tacit acknowledgement by society and the system that this alleged ‘tough on crime’ policy has failed, it is not a real solution, as the provision regarding youthful prosecution are not retrospective—not applied back, to those currently serving long terms who were young at the time of their sentencing. In fact, the only provision of Prop. 57 that is retrospective (applied back) is the Milestone Credit earning, which can be applied to all those achievements an inmate has accumulated during his/her current term. All other provisions are prospective, or applied going forward from the date of implementation.

Summation, quoting again from the Prop. 57 FAQ sheet; “Proposition 57 does not grant early release, but does give eligible inmates the opportunity to earn additional credits or time off their sentences. Credits can also be earned to advance an inmate’s initial parole hearing date if he or she is sentenced to an indeterminate term with the possibility of parole. Credits can also be taken away for breaking prison rules.”

Family

FAMILY VISITS—THEY'RE HEEERE

It's taken the better part of a year since the restoration of family visits for lifers was first announced, but they are, at last, finally, actually happening. Within the last two weeks lifers and families at a handful of prisons have already had their first family visits in over 20 years, and visits are scheduled at more prisons in the coming months.

To be sure, it has not been without problems, frustrations and angst and there are still issues to be resolved, but the visits are indeed happening. And so, we say to all the counselors, COs and others who maintained for months that family visits for lifers would never happen...well, we can't say what we'd say. No profanity allowed.

Some problems still remain, including the lack of family visiting units, causing additional delays in scheduling more visits, old regs that exclude many lifers from participating for long-ago problems and still some slowdowns in processing applications. We and many others are working on the first issue, hoping to see funds for reclamation or rehabilitation of additional units in next year's budget. We hope to see some improvement in the second issue, via new regulations on who can participate in family visits which are scheduled to be released soon and as to the last—we're still happily reporting, by name and institution, any willful obstruction of the process.

Please keep us advised on how things are progressing at your institution, keeping in mind, as with anything in CDCR, there will be issues to be worked out, things will move slowly and imperfection is predictable. And as the new regs governing who can participate are released, we'll be sure to put the word out.

GOV REVERSALS—FIRST GLANCE, SAME STUFF

Although released about a month after their usual February appearance, the collection of parole reversal notices from Governor Brown in 2016 have at last been released. In 2016 the BPH handed out 903 grants of parole. For his part, the Governor reversed 99 grants.

And while some of the reversals in 2016 were for grants handed down late in 2015, and some of the grants handed down late in 2016 are still in reverse-possible territory, by in large we can extrapolate from these numbers that the Governor's reversal rate was about 11%, based on hearings held.

And while we'll go through the report, letter by letter, looking for the commonalities in the reversals,

what we call the Governor's triggers, first rapid read appears to tell us what we already know; it's the characteristics of the victim that seem to be the primary concern. Victims who are women, children, those who are in some way vulnerable are of special concern to Brown.

Once we've had a chance to review the letters and pull out salient information, hopefully in next month's newsletter, we'll let everyone know what was on the Governor's mind in reversals last year. The good news is that, again this year, the reversals were a relatively low 10-11%.



RAW NUMBERS

The debate about whether or not numbers lie is continual, and not just in corrections. While many, especially in various divisions of CDCR are enamored of statistics and data, and we find numbers useful, they rarely tell the whole story. However, raw numbers are a place to start.

The numerical record of commissioner hearings, grants, denials and other relevant factors is available, and one of the pieces of information we always avail ourselves of. The listing lays out, by commissioner, how many hearings each one held, how many grants and denials given, the length of denials, tie votes and how many hearings on each individual commissioner's plate were, through waivers, postponements, etc. simply not held. It's an interesting document that usually creates as many questions as it answers, questions we'll be exploring in the coming months, in search of those answers and what they mean to lifers.

Included here are those raw numbers, so that lifers can examine the record of each commissioner. Keep in mind, some commissioners are, but luck of the draw, location or other extenuating circumstances, assigned to hearings at Level II institutions more often than other commissioners, and, frankly, more grants come out of lower level prisons; no news there. Also, the numbers below only speak to the number of hearings scheduled for each commissioner, grants and denials given. The grants and denials will not equate to the total number of hearings held, due to the above mentioned reasons for hearings not being completed.

But the following figures are still interesting. It's worth noting that not all commissioners served on the Board for the full year of 2016. Commissioners Richardson and Zarrinnam resigned prior to the end of the year, and Commissioners Cassady, Ground and Taira were appointed in the latter part of the year. Of the 2,163 denials recorded more than half, 1,480, were for the minimum 3 years. The maximum 15-year denial length was handed down 14 times, and 75 inmates received 10-year denial lengths.

If you're getting ready to do the math, calculating each commissioner's grant rate percentage, remember, the hearing numbers noted are the number of hearings scheduled; many are not held. As an example, the Board scheduled 5,361 hearings in 2016, but only 3,066 were held to competition.

| COMMISSIONER | HRGS | GRANTS | DENIALS |
|--------------|------|--------|---------|
| • Anderson | 314 | 66 | 179 |
| • Cassady | 158 | 45 | 83 |
| • Chappell | 248 | 37 | 171 |
| • Fritz | 293 | 72 | 178 |
| • Garner | 324 | 82 | 157 |
| • Grounds | 47 | 10 | 28 |
| • LaBahn | 265 | 65 | 152 |
| • Minor | 302 | 68 | 176 |
| • Montes | 320 | 65 | 177 |
| • Peck | 289 | 56 | 175 |
| • Richardson | 191 | 41 | 105 |
| • Roberts | 318 | 58 | 150 |
| • Taira | 174 | 53 | 88 |
| • Turner | 339 | 109 | 170 |
| • Zarrinam | 325 | 79 | 174 |



CONFIDENTIAL FILE-MORE INFO AVAILABLE?

Starting in the next few months inmates and their attorneys may be able to get a better grasp on the issues in the prisoner’s confidential file that should be addressed at a board hearing. The BPH announced late last year the implementation of a new unit, composed of CDCR personnel who would review and summarize the relevant items in the confidential file prior to a hearing.

The summary of that review would then be made available to the inmate, his/her attorney and the District Attorney, as well as the members of the parole panel. The intent is to wade through the detritus in the confidential portion of the C-file, sift out any bits and pieces that may be impactful to a parole consideration and summarize those, while still maintaining the ‘safety and security’ of the both institution and the source, such as it is, of the information.

The use of confidential information as part of the decision to deny parole has long been controversial, inmates and attorneys (and advocates) contending to be accused, tried, and found guilty of an alleged incident without being able to know or address the allegations violates some pretty basic Constitutional rights. Even the DAs were not happy with being excluded from knowing all the (alleged) dirt available.

Housed at the BPH, the new unit, still being staffed, is now getting underway, with results expected to be in the hands of the concerned parties within a couple of months. We're very interested in the work product of this new venture, how accurate and complete it will be and how useful to prisoners in addressing those shadowy, often vague and questionable allegations will be.

As inmates receive these summaries, we're asking for your input, let us know when you received them, how accurate they appeared to be, if they were helpful and if your attorney discussed the summary with you. We'll collect the results of your comments and convey your concerns to the BPH.

LEVEL I FOR LIFERS—WELL, MAYBE A FEW

The new custody regs, barely a month old, are already generating nearly as many questions and rumors as Prop. 57. Most of the excitement and angst appears to revolve around the provision that would allow lifer to be housed in secure Level I facilities. The key words here are 'allow' and 'secure.'

Being allowed to be housed in a Level I facility does not mean there will be mass movement of lifers to Level I beds. In fact, just the opposite is true. There are not that many Level I beds in 'secure' (read electrified fence) facilities, nor are lifers now eligible to be housed out of state. In fact, all the changes through classification and Prop. 57 are actually meant to make it possible for the state to bring back those 4,000+ California inmates now housed out of state. Sacramento isn't looking to send more of our prisoners elsewhere.

And there are some pretty definite criteria for those lifers to be placed in Level I:

- Most recent parole hearing resulted in no more than a 3-year denial
- Most recent CRA from the FAD is a low or moderate
- The board has granted parole and the Governor has completed his review
- There is no VOI imposed
- The case is not identified as a public interest matter
- Does not have and "R" suffix imposed
- No history of escape or attempted escape
- No mandatory minimum score factor that would preclude Level I placement
-

The regs go into greater detail on the specifics of the various criteria, but the above list contains the main factors. LWOP inmates may now be housed in Level II prisons, with the following caveats:

- Such placement must be authorized by the Department Review Board
- The facility shall have an electrified fence.

Each case is to be considered by the Classification Committee individually, taking into consideration all factors in each inmate's case and situation. This individual consideration alone will prevent 'mass transfers' of lifers to Level I prisons, even if enough beds were available.