

# LIFE SUPPORT

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*& California Lifer Newsletter*

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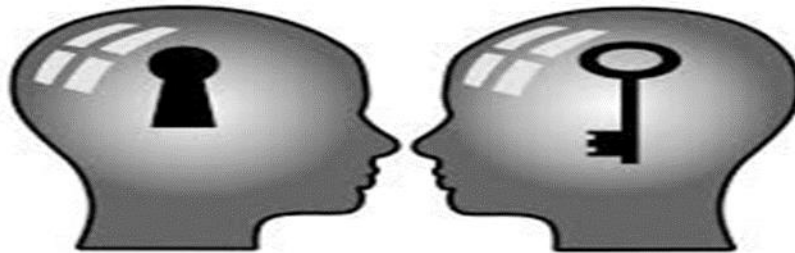
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## THE ANNUAL KUSAJ REPORT ON CRAs

The October BPH business meeting, held virtually, by teleconference, featured Dr. Kusaj's yearly report on CRAs conducted in the previous year. And while, as Dr. Kusaj noted, many of the statistical information points haven't changed much from previous reporting periods, there are some issues that merit both reaffirming and some new 'insights,' to coin a phrase.

In 2019 the FAD completed some 3,386 CRAs, and much in line with prior years, most inmates ended up with a moderate risk assessment. Specifically, 25% of those all prisoners evaluated received a low risk rating, 47% were rated moderate and 28% were deemed to be a high risk to recidivate.

In terms of gender, there is a decided difference, with women receiving a low risk assessment in 40% of those evaluated, 41% moderate and high only 19%. Men, however, were rated as low risk only 25% of the time, moderate 47%, and 28% received a high-risk rating.

Kusaj provided definitions of all three categories and noted 72% of those evaluated represented a non-elevated risk. This is something perhaps someone should tell Governor Newsom, who, when reversing parole grants, often likes to cite a moderate CRA as delineating 'elevated risk.' And maybe we're just the ones to do that.

Like all reports from Dr. Kusaj, this one is heavy on stats and numbers. But within those numbers is considerable information that we're extracting in as minute a detail as we can. Among the immediate takeaways—problems with insight should "not be an over-riding consideration" in parole decisions, according to Kusaj. Translation: finding an inmate has a lack of or insufficient insight should not be the only or overriding reason parole is denied.

Also per the report, the presence of risk factors (mental health issues, anti-social behavior, substance abuse) are less important to evaluating overall risk than the current relevance of those factors at the time of the interview and hearing. Meaning: if an individual has had problems with those and other issues in the past, they should be of great concern only if those issue continue to have 'current relevance.' This falls in line with the board's stated premise of evaluating the risk and rehabilitation of any given prisoner's current situation.

There's much more in this report and we're sussing it out. For a full summary and details, including those enticing statistics, send us a request and 3 stamps, we'll send you the summary and a copy of the power-point slides used in the presentation. Send your request to LSA, at the address on the top of the newsletter.



## **REOPENING? SAVE THE DATE. MAYBE.**

As we hit the press this month, the official acceptance of CDCR's Roadmap to Reopening still has not yet been publicly released, but we have it on good authority that the sort of bootleg copy we received a few months ago is a go, and the conditions laid out therein will be those governing reopening of the prisons. Reopening meaning the reinstatement of visiting, programs and other things that pass for 'normal' inside.

The Roadmap lays out 4 phases of opening, Phase 1, the most restrictive, being the state of things now—basically, noting going on. Various activities are made available and restrictions lifted in the remaining 3 phases, until Phase 4, promises "Return to 'new' normal program for all staff and the population." No indications what the 'new' normal will be.

Of prime interest is the reopening of visiting, which the Roadmap provides can be expected in Phase 2, well, sort of. Initially visiting will reopen with one visitor per inmate for an hour visit once a month, with staggered visiting schedule, mandatory masks, tables/chairs 6 feet apart and, reportedly, no personal contact (read hugs, kisses). This phase also may include the entrance of some outside vendors, non-essential contracts—read possibly some programs.

Phase 3 could see an expansion of visiting, 2 visitors per prisoner, twice a month, remaining restrictions apply. This would also include the re-opening of family visits, for one family visit per week per unit. Other restrictions regarding yard access, dayroom access and workers would be eased as well.

The key to the Roadmap is that each prison's reopening will be decided by the local administration, in consultation with Sacramento and subject to guidelines as to where that institution is in the CoVid situation. Phase 2 calls for a 'contained' CoVid outbreak, which includes no new CoVid cases (inmate or staff) in a 'rolling 14-day cumulative case rate." We're waiting for translation, though it seems to suggest no new cases in 14 days.

To move from Phase 2 to Phase 3 will require no new cases in a 60-day period and no current positive inmates. And going from Phase 3 to Phase 4, the establishment of the 'new normal,' calls for no new or positive cases for 90 days, but the possible continuation of precautionary measures like face masks and extra cleanings.

As of now, the end of October, no prison yet qualifies for the move from Phase 1 to Phase 2. While several prisons show no new inmate cases in 14 days, no location currently has no positive staff members and there is, for those of us not working at CDCR, no way of knowing the time line of new staff cases in various prisons.



## THE TWO FACES OF ELDERLY PAROLE

Following the passage of AB 3234, a budget trailer bill that finally managed to accomplish changing the qualifications for elderly parole consideration—at least to some extent—there is unsurprisingly considerable confusion about what elderly parole consideration means, who it applies to and when. We'll try to sort it out.

Elderly parole consideration, meaning the parole panels give consideration to several factors that might impact any given prisoner's ability to be an 'unreasonable risk of danger' to the public, began in early 2014, effectuated by an agreement between the BPH and the 3 federal judge panel (3JP) overseeing efforts to reduce the overall inmate population. The factors of elderly parole considered by the commissioners, and by the FAD clinicians in preparing CRAS, in addition to individual's 'advanced age,' include any 'infirmities' caused by age and the length of incarceration. All of those factors have been shown to reduce the likelihood of recidivism.

At the inception of the program the qualifications were set at 60 years of age and older, with at least 25 years of continuous incarceration. Both those benchmarks had to be met before the considerations of elderly parole kicked in. Those same benchmarks held when the elderly parole process was codified (made law, not just an agreement) in 2017 via bills passed by the legislature—

60 years of age and 25 years of continuous incarceration, meaning you can't be 65 and have served several short terms all adding up to 25 years.

And while the original agreement with the 3JP included third strikers (excluded LWOP and condemned), the subsequent legislation specifically excluded 3Xers. However, because the agreement was a federal agreement (3JP are federal judges) the BPH continued to include 3Xers, as well as other long-term determinate prisoners, in the elderly parole schedule.

This year's bill, while lowering the threshold to 50 years of age and 20 years of continuous incarceration, also specifically excluded 3Xers and those with a peace officer victim, along with LWOP and condemned. But again, because of the federal nature of the original agreement, BPH will continue to schedule 3Xers, who meet the original standard (60 years old, 25 years in) for elderly parole hearings.

Important to note here, that while elderly parole considerations can impact the decision on parole suitability, those considerations only impact the timing of the initial, or first, parole hearing. Under AB 3234 those who currently meet the new standards and, who have not yet had an initial board hearing, will have that hearing scheduled between Jan, 1, 2021 when the law goes into effect, and December, 2023. Again, that is ONLY for those who have not yet had an initial hearing and currently or by January 1 will meet those criteria.

So, while third strikers will continue to receive elderly parole hearings, it will be done when individuals meet to original benchmarks, 60 years old and 25 years in. Ultra-long-term determinate prisoners (those with 'toe-tag sentences) will be included in the elderly parole schedules as they reach the less restrictive levels. Thus there will be, at least for a while, two parallel elderly parole schedules, one for third strikers, who qualify under the old criteria, and one for non-3X lifers and long-term determinate inmates who can be included in parole hearings via the elderly route sooner.

Also of importance is the reminder that while what might be called the 'hallmarks of age' will be considered in parole hearings for any prisoner who meets the age and incarceration levels, those will not, in and of themselves, guarantee a parole grant. Indeed, the standard for suitability remains the same: is the individual under consideration a danger to society, likely to commit other crimes, or equipped and ready to lead a pro-social life?

Nor will the changes in who qualifies for elderly parole move forward hearing subsequent hearings for those who might now meet the new elderly criteria. Those elderly considerations will be considered at the next hearing, but simply now qualifying for elderly consideration will not move any subsequent hearing forward.

Elderly parole does not impact the denial lengths, which remain 3, 5, 7, 10 or 15 years. Being able to now be considered under elderly guidelines, however, can be one factor included in a PTA, under the heading of change in circumstance.

Schedules for hearings under the new law should be posted around the first of the year, for those, estimated at around 500, who qualify.

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*For info on LSA Correspondence Courses, Connecting the Dots and The Amends Project, write with inquiries. Coming soon: Preparing Parole and Relapse Prevention Plans.*



## **DON'T DRINK THE KOOL-AIDE**

Not sure if it's more painful/saddening or infuriating when we run across questionable 'offers' to 'help' inmates that are perpetrated by former inmates. Predatory is one word that comes to mind. This trend seems to be increasing in the last couple of months.

To be sure there are some legit offers to help emanating from former prisoners, wanting to reach back and help others still inside, and we applaud, encourage and engage in those efforts. But—there are others. Here's a couple to beware of, a couple that are legit and even one, well, we're not sure about.

Total Scams: withoutoneplea.com, or anything emanating from that 'source.' Anything that purports that any CDCR or other official has recently stated parole hearings and CDCR incarceration are illegal and everyone will soon be released, either with or without getting money for each day of their 'illegal' incarceration. All this offal comes from one individual, who shall be nameless as well as shameless, and it is pure and complete junk. Do not believe a word of it!

Beware of 'offers' of writs from jailhouselawyer 360. While it is legal for some to assist you in writing a writ, the individuals behind this 'organization' is clearly walking a very fine edge and predatory, requiring a 'case management' fee of \$150 per month—when there is no 'case' to maintain. This is former inmate, and all attorneys' we've spoken with agree, this is both predatory and borderline illegal behavior. And the state bar association is very interested in his claims and actions.

To be sure, there are legal and on the up-and-up services to help lifers prepare for hearings, usually in terms of assisting with presentation and/or understanding. Legit paralegals will help you prepare a writ, that you will file in pro per, and will tell you that ahead of time, or they work with an attorney. And they usually depend on you contacting them, not unsolicited mass mail-in appeals and promises.

Also real is the chance for prisoners to share in the CoVid stimulus money, via filing with the IRS. There are perimeters, and not everyone will qualify, but it is legal to apply and, wonder of wonders, CDCR is cooperating in this effort. If you have not yet seen or received the forms and paperwork to apply for this, ask your counselor or housing officer, or have your family contact us. And be aware, if you owe restitution, CDCR will extract 55% of your federal money toward that debt.

And recently it's been brought to our attention that a new, umm, service has been making offers to prisoners. This 'service' offers to help those getting ready for a hearing shore up their job prospects through creation of an on-line resume and profile with one of the many on-line employment services. Sounds legit, and not too expensive—but, is it really necessary, useful?

Keep in mind, if CDCR becomes aware that any inmate has an on-line profile, like, say, an email address (which this company promises to create for you), a Facebook page or other internet

presence, custodial paranoia sets in and often results in a search of housing (for those nasty cell phones), messages or other no-nos. So, consider if you want to put yourself in that position. Plus, while this group suggests you start this process 3 years before your next hearing and the employment service they use is an immediate response agency—in 3 years, your resume and profile may well be so far buried in the inactive file no one can find it.

Consider and be thoughtful. If it sounds too good to be true, chances are, it isn't.



## QUICK UPDATES

**CoVid:** The virus continues to sweep through the prison system, though will seemingly less ferocity and intensity. Several locations are currently experiencing new waves, second or third, depending on the definition of a wave. Certainly, the death toll has increased, with 77 deaths attributed to the virus. At the height of the pandemic, or at least what at this point has been the worst, CDCR reported 2,618 positive cases among the inmate population on June 30. Since that time the daily count has roller coastered up and down, with new outbreaks in several locations bringing the total, at the end of October, to just over 500. Over 100,000 prisoners have received CoVid tests, though it's unclear if this includes those in some prisons who have been tested several times (San Quentin, CIM, CVSP, ASP and FSP among those). The only defense against the Corona virus remain the same—masks everywhere on everyone, extra sanitary measures and distancing as much as possible.

**Parole hearings:** In late September the BPH announced Gov. Newsom had extended the executive order mandating parole hearings be held remotely through Nov. 22, 2020. We will be very surprised to see that order not be extended through the end of this calendar year, if not longer.

Although there is some discussion about letting inmate attorneys have in person visits with specific measures in place to protect both prisoner and attorney, so far none of that has come to pass. And, BPH is working on new ways of assuring confidentiality between inmate/attorney telecommunications and making participation in distance hearings easier.

On the upside, the continuation of video hearings has not negatively impacted the grant rate, which continues to be at or slightly above the percentage of last year (34-36%). You remember last year—when things were 'normal?'

**Commissioners:** For those that may have missed it, in the CoVid madness, there are 2 new commissioners on the 17-member board, meaning 2 familiar faces have left the building. Appointed in July (and briefly reported in August in Lifer-Line) was Minerva De la Torre, who has worked in parole in both California and Nevada. In Nevada, circa 2018, she served as a parole commissioner. She is a former parole agent in California and a Social Worker by training and background.

The most recent appointment to the board was in late August, when William "Joe" Sullivan, former warden at CCI, amid other CDCR positions. De la Torre replaced former Commissioner Brian Roberts, who retired after 8 years as a commissioner. Sullivan took the place of former Commissioner Rosalio Castro. Castro, a commissioner since 2015, returned to a Deputy Commissioner position, one he had held prior to appointment to the Commissioner seat.