LIFE SUPPORT ALLIANCE

Public Safety and Fiscal Responsibility

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FIRST LEGAL CHALLENGE TO PROP. 57 SUCCESSFUL

In a harbinger of what may be things to come, an early February decision by a Sacramento County Superior Court judge in Sacramento sided with plaintiffs in the first of what may be many challenges to who is and is not included in the early release considerations under Prop. 57. In this case, the exclusion of all sex offenders for this consideration, under the regulations currently in effect, was ruled to have gone too far in this exclusion. And other groups who have been dissatisfied with the implementation of Prop. 57 are eyeing the decision, weighing the decision to challenge those regs on behalf of their constituents on the same basis.

The suit, brought by the Alliance for Constitutional Sex Offense Laws, challenged the CDCR's version of who can be considered for early release, arguing the regulations excluded more inmates from this possibility than the proposition, and the voters, intended. Judge Allen Sumner rejected the state's argument that the proposition allowed the department broad discretion in who qualified for early release consideration. Instead, Sumner said, the scope of the regulations laying out those exclusions must be narrowed, to exclude only those currently serving time for a violent sex offense.

Those who are currently in prison on a new crime, regardless of whether or not they have previously been convicted of a violent sex offense and served that sentence, must be included in consideration for early release under Prop. 57, according to the judge's ruling. "If the voters had intended to exclude all registered sex offenders from early parole consideration under Proposition 57, they presumably would have said so," Sumner said.

And while Sumner agreed CDCR can make the case for excluding all those who must register as a sex offender from consideration release under Prop. 57 when the current version of regulations is re-written, the attorney for the plaintiff has promised additional litigation if it appears those exclusions go too far. And while CDCR has, at press time, not yet commented on the ruling or any possible appeals, such action would certainly be within CDCR's usual pattern.

The focus of this litigation, and potentially other challenges to who is and isn't considered a 'non-violent' prisoner, hinges on the definition of 'non-violent.' In the current case, the use of that term. And while the petitioners in this case argued for non-violent being defined by PC 667.5, the judge did not order that, deciding there was not enough evidence that the voters intended non-violent to be defined by this penal code section, just as, in his opinion, there was not enough evidence that the voters intended to exclude all sex offenders, serving either past or current terms for those crimes, from consideration for early release.

What makes this case of intense interest to other inmates, now excluded from early release consideration or other provisions of Prop. 57, is the potential argument being used for the inclusion of Third Strikers under Prop. 57. Current regs specifically exclude that cohort, in part relying on that same statue, PC 667.5 (c), including 667.5 (c) 7. The successful suit also uses this penal code, noting under the strict definition under this statue only 9 of 100 identified sex crimes would be excluded from Prop. 57 considerations.

Similarly, those arguing for inclusion of Third Strikers, note many in that group are serving a current sentence for a non-violent crime, not listed in the state's short (relatively) list of 23 crimes identified as violent, and are instead being screened out of Prop. 57 benefits, in part via the use of PC 667.5 (c) 7, a position they maintain was never intended by the voters who passed the proposition in 2016. It's an argument that until now has been largely academic, as the department has relied on the 7th item in 667.5 (c), which included "Any felony punishable by death or imprisonment in the state prison for life," under the heading "c) For the purpose of this section, "violent felony" shall mean any of the following:

"For their part, the opponents of this interpretation hold it's only the enhancements of third strikes that put prisoners in this category, not the primary crime itself, and thus is outside the scope of the department's authority to decide the voters' intention. What is specifically provided for in Prop. 57, what the department can and can't infer as to voter intent and how that impacts who can benefit from Prop. 57 and who will be excluded, was the basis of the successful suit regarding sex offenders. The same tactic may yet be used on behalf of third strikers.

As yet, no litigation has been filed, but conversation in many legal and advocacy circles is buzzing.

NO LEGAL MAIL, PLEASE

Just a reminder—LSA covers many areas, we're many things, including a pain in the neck to CDCR sometimes. But one very important thing we are not, is an attorney firm. We aren't attorneys, don't employ attorneys, can't give legal advice.

As part of that restriction, we are not entitled, under law, to engage in correspondence under the label of "Legal Mail." Those sending us letters under that banner should understand their mail to us is not protected in the manner it would be when sent to a legal firm. Nor can we return mail under that protection.

A respectful request to our readers and constituents: please don't send us mail marked legal mail. Why we know we're not a legal firm, and we try to make that very plain, we want no confusion on the part of CDCR, either as a department or as an individual prison, that we are portraying ourselves as such. That could lead to unpleasantries for us, and for our communicants.

‘NON-DESIGNATED’ OR MIXED YARDS—DON’T PANIC

As is often the case when CDCR changes direction and begins to implement change, rumors often outpace factual information and the thought process gets left in the dust by assumption and speculation. And usually with a deleterious result.

And so it appears it may be with the ‘Non-designated Programming Facilities’ approach, currently in progress at a scant handful of prisons in the system. A lot of sound, a lot of turbulence and more than a little fear-mongering. And a big, gapping void of facts.

Here’s what we know, from information directly from CDCR sources:

1. There is no plan, either in current or future, to mix, on a mass level, inmates currently on SNY yards and those on GP yards.
2. This is no plan to flip, on a wholesale level, any yard from either GP to SNY, or SNY to GP.
3. Not all prisons will eventually be participating in this new policy that mixes populations from previously specially designated yards to housing all populations together.
4. Busloads of inmates are not being shipped across the state to other institutions, where they will be unceremoniously dumped into a yard of a different character than they left.
5. There is a policy to provide inmates both the opportunity and responsibility to prove they can interact safely and positively with all segments of the population.
6. Those inmates to be assigned to Non-Designated Programming Facilities are individually selected.

According to sources, the Non-Designated Programming Facility process will mean a few, carefully selected yards in a handful of prisons, will see new inmates housed there, and those inmates themselves will be individually considered by classification committees to decide if they meet the programming and behavioral criteria to participate. Sources confirm, selection for the move is considered by CDCR, and the department hopes will be seen by prisoners, as a positive affirmation of their progress and continuing success in rehabilitation.

Quietly acknowledging the long-time effort to blunt prison politics and resulting violence by offering to separate those who wanted to program removed from the drama via the creation of Sensitive Needs Yards (SNY) have resulted not in a reduction of gang activity and security issues, but in many cases only led to the creation of a whole new range of gangs (Security Threat Groups, or STGs) native to the SNYs, CDCR has decided what perhaps many suspected: you can’t solve a societal problem by

isolating it. The Non-Designated Programming Facility program is the department's answer to the old Rodney King question, "Can't we all just get along?"

Planned only for Level I and II prisons, and, in most cases, only on selected yards in those prisons, the NDPF yards will house all pedigree of inmates, who "have demonstrated positive programming efforts and a desire to refrain from violence." The roll-out of the program began at RJD some months ago and is now largely complete. Officials express themselves to be satisfied with the results, noting initial problems and mis-understandings have been worked out and programming is now running smoothly.

Also planned for NDPF are CHCF in Stockton and San Quentin. In both these facilities the entire institution will be designated as NDPFs, due to the nature of the physical plant. Other yards in Level I and II prisons will be considered, but for now, the department apparently plans to let the newly created yards settle into normalcy.

Rather than a flood of new inmates, CDCR emphasizes the change will be done more along the lines of a trickle, a few selected inmates at a time. And those inmates who, for their own safety, must remain in specialized yards will do so. No mass clearing of SNYs.

The changes apply to lifers and determinately sentenced inmates, because, as CDCR notes, about 90% of all current inmates will eventually be released back into society and it would behoove the department to help those returning citizens experience the variety of normal life experiences, including interaction with all variety of flora and fauna.

So the message here is take a breath and stand down. SNYs are not being cleared or invaded by general population inmates or being forced on a wholesale basis to transfer to yards where their lives will be in danger. For those selected for transfers to NDPF and who don't want to go, the old 602 process is the recourse, because, as we've all known for some time, CDCR moves prisoners around much like canned peas on the market shelf.

ACTUAL CHANGE TO FELONY MURDER LAW PROPOSED

Following the confusion engendered by the passage of SCR 48, a senate resolution, but not an actual law change last year, in mid-February an actual bill, addressing a proposed change in the felony murder law was introduced in the state Senate. SB 1437, introduced by Sens. Skinner, would change the law, but would also provide a path for retroactive relief for those languishing in prison as a result of the language

The bill has yet to be assigned to committee (Senate Public Safety is a safe bet) and scheduled for the first of what will no doubt be a series of public hearings, but the possible relief has been proposed. SCR 48, passed to much excitement last year, was not a bill, changed no law, but stated the legislature's intent, via statement of the Senate, with agreement by the Assembly (hence concurrent resolution title) to change this law.

The important component of the bill, quoting from the language*, "This bill would prohibit a participant or conspirator in the perpetration or attempted perpetration of one of the specified first degree murder felonies in which a death occurs from being liable for murder, unless the person personally committed the homicidal act, the person acted with premeditated intent to aid and abet an act wherein a death*

would occur, or the person was a major participant in the underlying felony and acted with reckless indifference to human life."

The bill would also provide an avenue for retrospective relief for those already serving life or LWOP sentences under the felony murder rule, by providing *a "means of resentencing a defendant when a complaint, information, or indictment was filed against the defendant that allowed the prosecution to proceed under a theory of first degree felony murder, 2nd degree felony murder, or murder under the natural and probable consequences doctrine, the defendant was sentenced for first degree or 2nd degree murder or accepted a plea offer in lieu of a trial at which the defendant could be convicted for first degree or 2nd degree murder, and the defendant could not be charged with murder after the enactment of this bill. The bill would provide that the court cannot, through this resentencing process, remove a strike from the petitioner's record."*

Because the bill requires actions from the DAs and public defenders in the resentencing aspect of the process it is deemed to have a financial impact on counties and cities, and state law requires the state to reimburse those municipalities for any state-imposed costs, the bill also addresses how those costs will be determined and reimbursed, meaning it will more than likely also face the Senate Budget committee.

It is early days in this bill's life yet, but as it hopefully develops 'legs,' in legislative parlance, we'll support and report on this legislation.

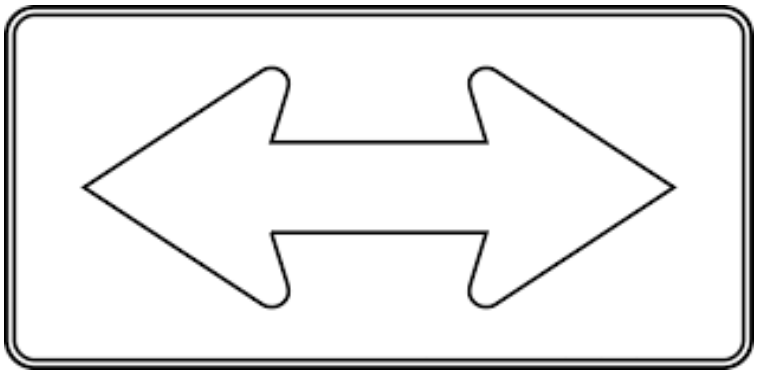
AN EYE ON THE STATS

Signs of the changing times: in three of the last 4 year the BPH has meted out over 900 parole grants each year. Over 900 men and women have been approved by the board to return to society. Let your mind absorb that, and the contrast it represents from 10 years ago, when only 393 grants were handed down.

These are, relatively speaking, positive times for lifers. In 2017 to board made a record 915 grants. Those grants came as part of the 5,335 scheduled hearings. Do the math, of 5,335 scheduled hearing and 915 grants, with the events of 2006, when the board scheduled a massive 6,928 hearings and declared only 241 lifers suitable.

Why didn't the year with the record number of hearings result in the record number of grants? A couple of words: In RE: Lawrence. Prior to Lawrence parole panels could, and did, continually use the crime itself, no matter how old, as the reason for denial. Lawrence changed all that. And in 2009 Marsy's Law, which allowed the board to deny parole for longer periods of time, including moving the shortest possible denial length from one to three years.

Those factors, combined with better commissioner training, more transparency and changing attitudes, have resulted in a change in 2006's grant rate of 3% to a 4% grant rate in 2008. And today, when the 'official' grant rate is 17%. And climbing.



A WORD TO THOSE INSIDE, FROM THOSE OUTSIDE

What awaits those long-term inmates who are released and reenter society? Where do challenges come from, how do you deal with them and where can you find the support and help, once you're out, to face those unknowns? A group of lifer parolees, meeting monthly, for what could easily be called 'educational and informational purposes,' have a few tips for those coming home.

What challenges did they find in their reentry? Many noted the same issues: technology, society that moves and the speed of sound, and trying to make up as fast as possible for all that lost time. In addition to the obvious issues of obtaining IDs, finding a job, dealing with endless paperwork, there are the more subtle challenges of trying to fit into a new world, with too many choices, often in a new city or area. Sometimes these issues are complicated even more by failing relationships, outdated communication and social skills.

How did these successful former lifers cope? Most reported patience, staying positive and learning to slow down were important. But the words heard the most were reaching out, being willing to ask for help and continuing to grow and learn.

Who to reach out to? Family and friends, of course, as well as those in support groups such as AA and church, even fellow house makes in transitional housing facilities. But over and over, lifers mentioned a couple of important resources that might not come to mind at first: other lifers, and their parole officers.

Lifers know, while inside, other lifers are an important part of their support network. And so it remains on the outside, with other lifers, out a few days to a few months longer than you, can provide the support and advice to get you through those early and sometimes surprising challenges.

And surprisingly to some, parole agents, no longer always on the alert for reasons and ways to violate lifers on parole and return them to custody, are now tasked with helping those lifers successfully reenter society. And lifers who reach out to those agents have often been found the help they need there. Another sign of the changing times in lifer-world.

QUESTIONS?

Comments, questions, survey responses, and general communication, all come to LSA at the same address: PO Box 277, Rancho Cordova, Ca. 95741. We'll try to answer as many of your questions as possible, provide you with handouts on various topics and entertain your input on various topics.

Please keep your letters brief, on topic and non-personal. And we greatly appreciate the inclusion of a stamp, to respond to your queries.