LIFE SUPPORT ALLIANCE

Public Safety and Fiscal Responsibility

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WHAT HAPPENS WHEN A SENTENCE IS RECALLED?

Since January 1 California's lifers and even some LWOP inmates have new chances to find relief in the courts, even years after they were sentenced for murder and other felonies. Legislative bills SB 1437, AB 2942 and the 1170(d) review process all provide avenues for long-serving prisoners to go back to court to argue the possibility of being resentenced for their participation in crimes, sometimes as long as 30 years ago.

All three have various requirements and paths to the court room, and some are still under assault by 'law 'n' order' groups and will probably ultimately face challenges in the state Supreme Court. But for now, these new laws are pushing forward, courts are being deluged with petitions, attorneys are busy with petitioners and even CDCR is getting in the act, recommending some inmates for reconsideration and new sentencing by courts.

All of which means there are plenty of gears in motion right now, and some are already producing results. If you're called out to court for consideration of recall of sentence—what then? If the judge says yes, are you cut free from CDCR, never to see the inside of a dorm or cell again? And are you free of further supervision, via a parole tail?

To coin a phrase, or two; Well, maybe. It's complicated.

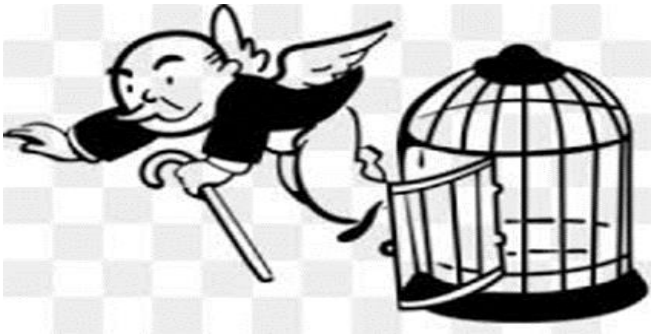
After speaking with some of the legal beagles (the real ones, at CDCR) that's about the only firm statement we can make. Each case will be judged individually and if that isn't enough to make it complicated, each sentencing court may consider evidence, even the constitutionality of the various resentencing laws, differently. So, once again, there are no guarantees. But. These processes represent one of the largest efforts for retroactive relief in decades and in many cases they are working.

It helps to understand than any change in a sentence must be done by a court and cannot simply be decreed by CDCR. Therein lies the 'out to court' process, as prisoners are entitled to be at the court proceedings where these changes are made, although he or she can waive that appearance. At any resentencing proceedings there will be legal representation, sometimes an attorney of the prisoner's

choosing, sometimes the public defender in the relevant county. It's important to note, a prisoner cannot be resentenced without legal representation at the resentencing hearing.

Once that court hearing is held and the presiding judge renders a decision, based both on the new laws and the relevant evidence in the particular case, that judge will decide if the inmate 1) qualifies under whatever new process brings him/her to court and 2) what the new (if any) sentence will be. That decision can be made and announced at that hearing or the court may elect to take the evidence under submission, to consider and hand down the decision at a later (though not much later) time.

In a best case scenario, when the new laws work, and a long-term or even LWOP inmate sees their sentence reduced (and the court consideration cannot result in a longer sentence, though it does not have to result in a sentence reduction, if the judge finds the evidence for reduction is not compelling), what then?



Well, the doors don't automatically fly open. Usually the prisoner is returned to custody while the inevitable paperwork gets done. The courts will issue and abstract of judgment or minute order, officially modifying the sentence. That document goes to CDCR case records, the denizens of which will then calculate the inmate's time based on the new sentence and giving full credit for all time incarcerated.

Usually these abstracts are sent to the individual prisons, where staff there makes the initial calculations, then forward results and supporting court documents to case records in Sacramento for review and implementation. The inmate and attorney are then notified, and the inmates' profile in CDCR's website Inmate Locator is updated to reflect the new information and parole and/or release date.

And here's where it gets really dicey and case-by-case. If the court resentences to a something-to-life term, then a parole hearing date will be scheduled, based on the new sentence and time already served by the inmate. And the parole hearing process will proceed as normal (or what passes for normal), but at an accelerated rate over what was in motion before.

If the court hands down a determinate term, perhaps modifying a life with possibility to parole to a determinate number of years or setting a new determinate term length, and the inmate has already served that number of years, or even longer, then the prisoner is eligible for immediate release. Which isn't to say the doors fly open that day, but the release process and timeline (usually 7-10 days) starts. If the new sentence is set at longer than the prisoner has currently served, he or she will still be in custody, but with a renewed release date and probably a new outlook on life.

For those that have served well past their new sentence length, the possibilities are even more problematic. Depending on the crime, the parole length usually associated with that conviction, the new sentence calculation and the inclination of the sentencing court, a long-time but newly resentenced prisoner may find himself released with no or less parole time than anticipated, as the excess time served can be applied to the inmate's parole tail.

Can be applied, but it appears that isn't required as part of resentencing. And the statues for some crimes at some periods in the past require a certain number of years on parole, regardless of any

other intervening factors. It's all too complex to make blanket statements, but suffice to say, your experience may vary.

Reports say inmates up for resentencing and their attorneys may even be able to engage in a better-late-than-never plea bargain interchange with DAs, with the erstwhile prisoner agreeing to plead to a new charge, one with a much shorter sentence than the individual is currently serving, and the DA agreeing not waive further supervision under parole after that new time requirement is met. Again, the new sentence cannot be more severe than the original sentence. Some prisoners could even see the specter of state parole evaporate, if the nature of their instant offense is downgraded from a felony to an offense that would now require only probation at the county level.

So many possibilities.

But. And there's always a but. If the courts reduce any inmate's sentence to the point that he/she is released in a relatively swift manner (weeks or at most months after the resentencing hearing), that leaves long-serving inmates with a very short window to arrange support and plans for post-release. And for those who previously had a parole tail ahead of them and had made plans for transitional housing and reentry facilities, if that parole tail is dropped, those plans are moot. There will be no assistance to find housing, reentry programs, state funding for transitional housing, basically no support.

That's a bit of a scary situation. It's theoretically possible for a prisoner, 25 or more years into an LWOP sentence, to see that sentence wiped out at resentencing, released within a few weeks' time…and having never expected to be released have no plans on where to go, what to do, how to cope. A never-before-seen debit card with $200 gate money electronically applied to it and a cheery wave from the gate cop is all you get.

Oh, you have to get from Susanville to (what used to be) home San Diego and you haven't been on a bus or in a car for 27 years? Goodbye and good luck. Trying to find a pay phone to call anyone? Those are few and far between these days.

Like most in the prison reform movement, we're ecstatic about the changes in resentencing laws and looking forward to the positive changes those new laws bring. But perhaps it's the dark humor side of us---sometimes that's all that gets us through the day—that foresees some unintended consequences to be dealt with. But we're not alone. Several forward-looking individuals at CDCR and DAPO are also concerned and scrambling to find solutions.

Stay tuned, we'll let you know how things shake out.

NEW FACES IN THE FLOCK

After obsessively checking the Governor's website several times a day for the past month, we were finally rewarded (?) with what we were seeking—announcements of appointments and re-appointments of parole commissioners. Several familiar faces are returning, along with a couple of new candidates and the retirement of one seasoned commissioner.

First, the familiars. Commissioners Arthur Anderson, Randolf Grounds, Michael Ruff and Patricia Cassady were all reappointed by Gov. Newsom. Anderson, first appointed in 2008 by former Governor Schwarzenegger, is the senior member of the newly expanded board, and will now, if confirmed, serve another 3-year term. Cassady and Grounds, the former a past Deputy Commissioner and the latter a former Warden (most recently at SVSP), were both first appointed in 2016.

The final reappointment was Ruff, first appointed in 2017 to complete a term of a retiring commissioner, was a long-time CDCR employee, including a stint on the department's Special

Project Team before being tapped as a commissioner. All four reappointments will serve full 3-year terms.

New to the Commissioner's desk are Maria Gutierrez of Los Angeles, most recently an assistant sheriff at the Los Angeles County Sheriff's Department, where she served in several other capacities. She was also chief of the Court Services Division and Hispanic affairs executive at the LASD from 2016 to 2018. Also newly appointed is Mary Thornton of Fresno, until her appointment a deputy commissioner with the Board of Parole Hearings since 2018. Prior to that position Thornton served as a senior deputy district attorney at Madera County District and Kings County District Attorney's Offices.

One new commissioners, Ms. Thornton, was introduced at the August BPH Executive Board meeting mid-month, where it was also confirmed that the Commissioner Peter LaBahn of Riverside, a Commissioner continually since 2011 and for a brief stint in 2009/10, is retiring. With 4 reappointments, two new appointments and one retirement, that leaves the board at 16, on shy of the newly authorized total of 17 members.

Over the next few months LSA will be attending hearings chaired by the reappointed or newly appointed commissioners, so that we may offer our input at their confirmation hearings, scheduled sometime with the next year. And we offer our appreciation to Commissioner LaBahn, always a civil and pleasant but no-nonsense commissioner, who always made efforts to make sure prisoners before him understood the areas in which they were deficient and the reasons for any denial. LaBahn, like many commissioners, always seem genuinely happy to grant a suitable inmate a second chance.

His civil, thoughtful and gentlemanly presence on the board will be missed. When, or even if, we should expect a new appointment? Who knows? We're back to haunting the Governor's news releasees. Watch this space.

WHAT <u>NOT</u> TO SAY AT YOUR PAROLE HEARING

Since LSA has been authorized to attend parole hearings as non-participating observers we have seen the gamut of good, bad, troubling and surprising decisions and behaviors, both from commissioners and inmates. One of the saddest things we have often witnessed is a prisoner talking himself out of a date or worse yet, into a longer denial of parole. While we advocate for paroling lifers, we aren't Pollyannas; we know there are many lifers who are not ready to parole. Some not ready yet, some who, for various reasons, may never be ready. So, while we do not necessarily disagree with every denial of suitability, we nonetheless hope for the best outcome for all potential parolees.

Often, we see inmates who answer commissioners' questions too quickly, before all the words are even spoken; and often those hasty answers are not on point, don't provide the information the

commissioner is seeking or may actually muddy the waters of understanding. Discussing all aspects of an inmate's situation with legal counsel could certainly provide some help in many cases, at the least adequate counsel might be able to alert the prisoner to possible areas of inquiry and have him better prepared to answer difficult questions. In truth, these situations occur most often when the prisoner is 'represented' by a state-appointed attorney, some of whom seem perfectly happy to allow their 'client' to sink himself without the counselor throwing a lifeline in the form of advice or intervention. After all, they will be paid in any case and another lifer denied parole means another hearing for them a few years down the road.

Since LSA/CLN is not a legal firm and can't give legal advice, we can't tell you what to say or when to decline to answer. But we can offer up some recent scenarios that we think illustrate what we are concerned about. The following situations are mined from real hearings (identifying information redacted) and hopefully will provide some food for thought. And possibly, some dark humor.

Commissioner: I see you have support letters from several women. How did you meet all these ladies? And how do you keep in contact with them?

Inmate: Through the internet. (Decision: denied 5 years)

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Commissioner: How much did that cell phone you had cost you and how did you pay for it?

Inmate: Cost me $1000 but I didn't have to pay for it, 'cause I sold another one for the guy, so he gave me one.

Commissioner: Oh, so you were involved in a criminal enterprise while in prison.

Inmate: Yeah, I guess. (Decision: denied 7 years)

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Commissioner: Tell me, who do you think your victims are?

Inmate: The lady, her family and me.

Commissioner: You're a victim?

Inmate: Yeah, cause I been in here (XX years) and it wasn't even me that shot her. I done my time and I deserve to go home and start my life over. (Decision: denied, 7 years)

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Commissioner: How will you handle your anger once you're released?

Inmate: I won't ever get angry again. (Decision; denied 3 years.)

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Commissioner: Why did you get involved in gangs while incarcerated?

Inmate: I'm not a gang member.

Commissioner: Did you ever do any work for them?

Inmate: Well, I did a few things, but somebody else ordered it. I'm not a gang member. (Decision: denied: 10 years)

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The saddest part of these examples is the lack of basic knowledge of suitability these inmates evidence. There are two basics the board requires: honesty and acceptance of responsibility.
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Of all the problematic statements above, the inmate nominating himself as a victim was perhaps the most egregious. To place yourself in the victim's column, regardless of the circumstances of the event, is a sure-fire way to receive not only a denial, but a longer than average denial. You may feel like a victim, you may indeed be a victim of society, a victim of circumstances, a victim of over-prosecution. But you are not a victim of the life crime and it is that crime that is under discussion at your hearing. When commissioners say they want inmates to realize and recognize the larger pool of victims to their actions, it does not mean that pool extends to the prisoner.

Similarly, many inmates come into their hearings angry. Angry at CDCR, the Board, their cellie, the world. We even know of instances in which the prisoner has expressed his anger and frustration to the board in very personal and descriptive terms. Not only does such delivery guarantee a denial, subsequent hearings, even those for medical parole and compassionate release, can be adversely affected, as you have to answer for that anger.

And as for cell phone beefs, these should be discussed with your attorney, not only in terms of how to address the resultant 115, but also how to handle the sorts questions from commissioners we are more frequently hearing, delving into the manner of acquisition of the phone. At least one commissioner has attempted to solicit information at a hearing on names of other prisoners in the facility might have cell phones. Whether and how you should answer such inquiries, should they occur at your hearing, is an issue to be resolved with your attorney prior to the hearing; but be aware, these questions are possible.

Perhaps the best advice is to slow down and consider your answer before responding. You've been there awhile. Take a few seconds to think about what you'll say, in case those few seconds spent in consideration may help you, overall, spend less time where you are now.

And don't lie. About anything. Even something as seemingly unimportant as visitors and support letters. If you say you keep in contact by visiting, be aware the parole panel has access to visiting logs during the hearing. They can and do check to see who's been visiting you and when, if they feel it's relevant.

Don't present phony support letters…it isn't quantity, but quality that matters here. If you don't have many support letters, don't give into the temptation to have some one 'create' additional letters. There are tell-tale signs in pseudo support letters, and we've known commissioners to recess hearings to contact the supposed author of the suspect letter to check. Not the mention the two inmates in the past year who saw their parole grants rescinded after it was discovered some of their support letters were fake.

If your relatives volunteer to 'help' you out by doing some creative writing in the support letter category, let them know, it's a crime to submit false documents to CDCR, even in a parole hearing setting. They could be joining you.