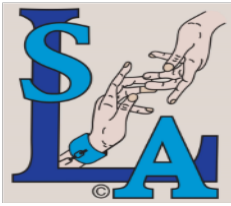


# LIFE SUPPORT

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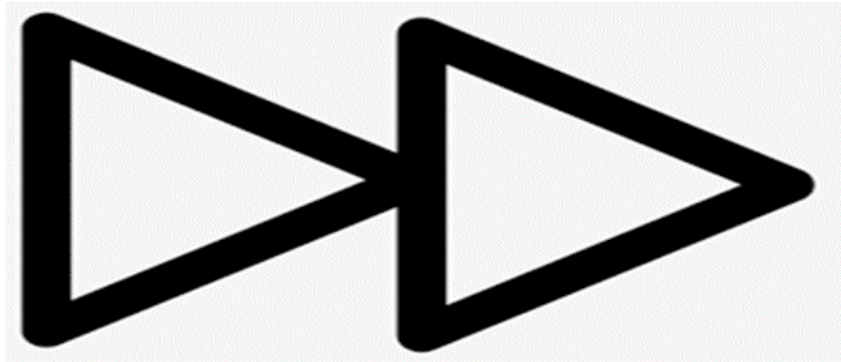
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## HOW NEW CREDIT EARNING AFFECTS LIFERS & OTHER TID BITS

The Board of Parole hearings recently received an overview of the new credit earning policies instituted in May by CDCR, focusing in particular on how the new changes will impact lifers.

And the answer is; slightly, possibly. At a recent Board Executive meeting the commissioners heard a recap those impacts, including:

- The new regulations can advance an inmate's initial parole hearing if it is based on a Minimum Eligible Parole Eligible Date. These credits will not advance youth offender parole eligible dates, nonviolent parole eligible dates, or elderly parole eligible dates.
- No credits are applied to subsequent hearing dates. These timeframes can change through the Board's Administrative Review or Petition to Advance processes.
- If an inmate is sentenced to 25 years to life, the credits would be applied to the 25 years, as are any pre-sentence credits, thus impacting the MEPD calculation.
- Credits can shorten the amount of time an inmate must serve if they are found suitable but have not yet reached their MEPD.
- The credits can also be earned/applied to a Thompson term, but the credits are prospective (meaning they are applied to time ahead, not already served). Credits earned during service of the life offense can only be applied to the life offense; once the Thompson term begins credits can be earned toward the Thompson term.

During the recent presentation of the May Budget Revise, the Governor's office requested funds for an additional 4 parole commissioners, which, if approved, would bring the board to 21 members. The increase in the size of the board is in direct response to the number of hearing BPH anticipated conducting in fiscal year 2021-2022, which the board now anticipated will number 10,986, give or take a dozen or so.

The reason for this rapid increase? Recent court decisions (Gadlin for example) and the expansion of elderly parole will require the board to hold many more hearings by the end of 2022 that originally anticipated. And many of those will be initial hearings, which often take significantly more time than subsequent hearings.

The board also anticipates continuing to hold at least some hearings by video/teleconference, with some adaptations (it's been suggested that while the hearing will be virtual, inmate attorneys may be allowed to be present in person with their client). At the recent monthly BPH Executive Meeting, Executive Director Jennifer Shaffer, in explaining the possible expansion of the board, noted the board would consult with stakeholders as to guidelines on identifying hallmarks of hearings categories which should be held in person, rather than video.

The board has become comfortable with conducting video hearings, especially since numbers from 2020 seem to indicate this method does not adversely affect the parole rate. In late May it was announced that the board will continue to hold hearings exclusively by video through the end of June, 2021.

In recent months we've noted an uptick in the number of parole grants being referred for the entire board's consideration under the en banc process, due to allegations of institutional misconduct after parole had been granted but before the decision was finalized by both BPH legal and the Governor. Perhaps this is a good time to reiterate that a grant isn't final until you walk out the gate. In the last several months several hard-won grants have been lost because of new confidential information or institutional misconduct occurring after the grant. In recent months some of that behavior has alleged involved inmate participation in scams involving federal stimulus checks and/or state unemployment payments expanded under CoVid conditions.

In the latter situations the board will investigate, evaluate, and decide on the level of participation and/or knowledge the potential parolee had in the scam, with parole riding on that decision. And sometimes, people just get cocky.

If you win a parole grant, you can also lose it. Be careful out there.

## **COVID WHACK-A-MOLE**

In some ways, the CoVid situation in the prisons these days resembles a game of whack-a-mole. Although the numbers systemwide are down dramatically, the persistent virus still pops up here and there over the past weeks.

At the end of May, there were less than 2 dozen positive cases systemwide, a system that at one point reported over 10,000 active cases for several days running. For the last several weeks the number of positive cases has fluctuated from a low of 9 (April 21, 2021) to less than 24, usually hovering in the mid-teens. And 10 or less institutions are reporting active cases.

But. During the course of the pandemic 224 state prisoners have died as the result of CoVid, their deaths often not reported until days later, once the cause of death is determined (not by CDCR but by local coroners) and relatives located and notified, sometimes a daunting task in the case of long-serving lifers. Institutions enduring the worst outbreaks and death numbers were CIM (27 fatalities) and SQ (28 deaths).

As the active cases wane, in line with the situation in the outside world, the attention to eradicating the virus in the prisons and providing protection turns to the vaccinations offered to prisoners and staff alike. And this is where the story becomes troubling.

As of early June, about 70% of inmates within the CDCR system had received full vaccinations (CDCR uses the 2-shot vaccines), not, apparently the result of failing efforts by CDCR, but, again mirroring the state of the world outside prison walls, reluctance or resistance to taking the vaccine.

Even more troubling, less than 50% of the staff working in the prisons have been fully vaccinated. And no, staff, like prisoners, is not required to be vaccinated.

And while the CoVid crisis isn't over, we can now, as May ends, look back through what we hope is the worst of the event, to find that while over 49,000 prisoners (give or take a thousand or so) reportedly contracted the virus, 13 prisons had less than 1,000 positive cases over the last 15 months, with the lowest numbers being at SAC, a total of just over 290 cases and PBSP, with less than 220 cases total.



## **THE MASK-UP DUST-UP**

In a late April report to the 3 federal judge panel overseeing both CDCR's population and the department's response to the CoVid crisis, the Office of the Inspector General's findings regarding prison compliance with mask requirements painted an interesting picture in 18 of the 35 adult institutions. This report was a follow up to a report following a similar review of the situation made by the OIG in January.

Of the 18 prisons visited by the OIG staff, only 2 were in full compliance regarding incarcerated individuals wearing masks, 10 were in significant noncompliance. Further, 9 institutions showed a decrease in their level of compliance from the January review, 5 saw no change and only 5 were found to have improved results.

Interesting, also, was the report on mask compliance among staff in the 18 prisons. A total of 7 were found in complete compliance with masking requirements, only 1 in significant noncompliance. No change in results was reported in 7 of the 18 prisons visited, while results were worse in 6 locations and improved in only 5.

For well over a year the masking issue has been a volatile issue, among both staff and inmates, but more touchy on the staff side. According to the report, the actions reported were taken between February 24 and March 31, 2021. During that time, the OIG reported 102 verbal counseling were performed among all the 35 adult institutions; 24 staff members received written counseling and 24 received Letter of Instruction. And while 1 person (at PVSP) was referred for investigation or punitive action, there were no actual punitive actions taken.

On the blue side of the equation, corrective Counseling was given to 74 inmates, and 46 RVRs were issued. Even more interesting, at CIM, one of the hardest hit institutions during the pandemic, NO staff disciplinary actions were reported, but 16 prisoners received counseling and 3 were hit with RVRs. Really.

The institution with the most inmate actions was SCC, where it was reported numerous inmates were observed by OIG staff not wearing masks, but the observers were told by prison staff that those not masked were members of the firefighter training program, and thus not required to wear masks. The OIG reported they were unable to find any documentation of such an exemption.

The OIG report also compared the number of active CoVid cases (as of April 14, 2021) among both staff and the incarcerated population as well as the percentage of staff and inmate population who had been vaccinated. The word that comes to mind is dismal.

Of the 18 prisons visited everyone had more active CoVid cases among staff than among the incarcerated population. Sometimes by ridiculously large variance: 13 staff cases, to a single case in the inmate population. In fact, 11 of the visited prisons reported no inmates suffering from CoVid on the reporting day, but every single location reported from 13 to 1 active case among staff.

And the vaccination picture was not prettier. In only 4 institutions did the percent of staff vaccinations exceed that of the incarcerated percentage, and in more than a few cases the inmate vaccinated percentage was more than double that of staff.



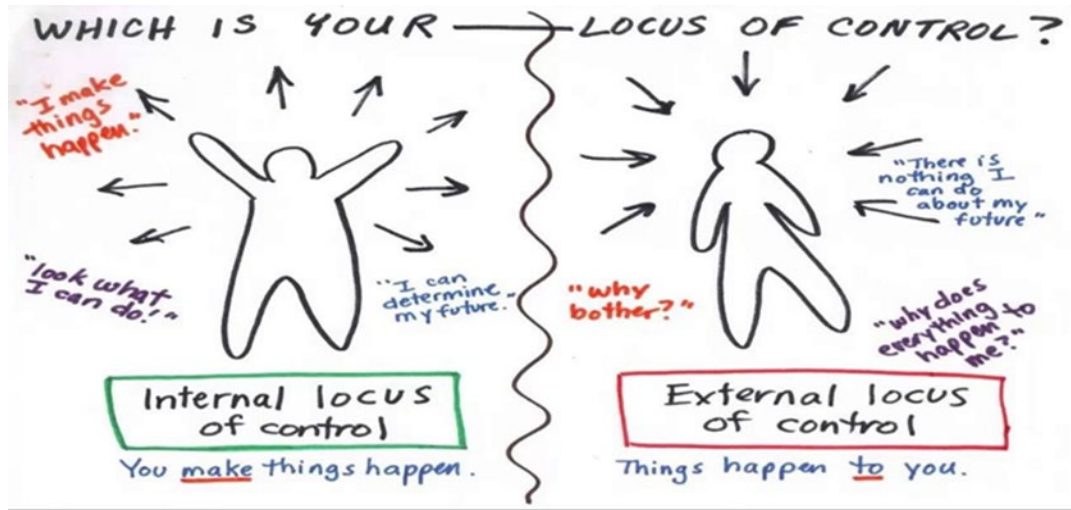
## **DEVELOPING YOUR OWN “AGENCY”**

New studies show one of the biggest reasons those who formerly were involved in criminal activity refrain from doing so is the development of ‘agency,’ or ‘personal agency’ among those individuals. What is agency?

Personal agency is the ability to think of and implement actions for given purposes. It is influenced by the belief in your own effectiveness in performing tasks to direct your life, as well as having the skills to do so, in performing specific tasks, which is termed self- efficacy, as well as by one's actual skill. A sense of agency is needed for you to feel in control of your life: to believe in your capacity to influence your own thoughts and behavior and have faith in your ability to handle a wide range of tasks or situations.

Personal agency also includes beliefs, perceptions, feelings, thoughts, choices, values, attitude, tools and anything which is going on within our minds that can affect what we do. The more self-worth we have, the better we can access our own personal agency; our self-worth determines what we believe about what is possible for us.

This is also related with our “locus of control.” We either have an internal, or external, locus of control. Locus of control is where we believe the power to alter events in our lives resides. If we believe we have the tools to shape events in our lives, then we have an internal locus of control. If we believe those events shape us, then we have an external locus of control.



So, agency depends on both having the knowledge and having the tools. Which is why the Parole Board wants to know what tools you'll use to provide you with 'agency.'

There is a spectrum ranging from no control, degrees of influence, to total control. For example, you can influence the blinking of your eyes, but can't stop blinking entirely. But you do have total control over whether to punch or stroke someone with your hand. So, in terms of actions, most people correctly recognize we have control over our actions, and we are held responsible for our actions:

Emotions, which often drive our actions, have a volume setting. You can feel irritated, annoyed, frustrated, angry, and enraged: that's all the same emotion, but each word describes a different volume setting. Who has the most agency (control) over their thoughts and actions? The irritated person or the enraged person?

A person who can't control their own emotions (by turning the volume down) feels little agency over their own feelings and often their thoughts and actions, too. The biggest challenge to personal agency is exercising control over your emotions. Whenever you feel enraged, the best course of action is typically to take some deep breaths and find some space of your own to calm down in until you can think clearly again, to maximize your control over the situation—turn down the volume so you can hear the voice of reason. Wise people make contingency plans (relapse prevention plans) so they are unlikely to become overly emotional.

The rule of thumb regarding the boundaries of personal responsibility is “that which you create, you own.” If you created chaos and violence with your lifestyle, then you won the results of that chaos and violence—you own your crime. You are responsible for your thoughts, feelings, and actions. You can develop agency over those thoughts, feelings, and actions

But if you lack the knowledge and tools, it will limit the amount of influence you can exert over those thoughts, feelings, and actions. So, you need both, an understanding of where those thoughts and feelings come from, and the tools to deal with them, before they lead you into actions you'll have to own.

Agency is you, exercising your power to be the person you want to be, the person you know you can be. But you can't exercise that power without knowing where it comes from and what tools you have to use it.

The bottom line, the thing the parole board is looking for, is do you have the personal agency to be in control of yourself and your life? Are you able to see, understand and accept that your locus of control must be internal—whether you call it connecting the dots, boss of your brain or personal agency, you must be able to control you.

Your first line of defense against anti-social and often illegal actions is you—after all, you're the only person who's always going to be there in situations you need control. Yes, you need to know when and how to reach out for support, but that understanding starts with you being willing to develop that personal agency, the responsibility, that makes recognizes you can control your actions.

It takes a strong and resilient individual to develop agency, especially in trying and frustrating circumstances and environments. But lifers are already among the strongest and most resilient individuals in the prison environment, simply by virtue of their ability to survive long-term incarceration. Put that resiliency to good use in creating the personal agency that will take you out the gate and into a new life.

## **SB 1437 IS NOT THE GOLDEN KEY, CASE IN POINT**

A Contra Costa judge's recent decision not to overturn the life sentence of a now 29-year-old woman's 2014 second degree murder conviction in an SB 1437 hearing is once again putting paid to the theory that the 2019 bill was a shortcut to parole and release. Getting a hearing is only half the battle.

SB 1437, passed in 2019, says prosecutors cannot (now) file murder charges against those who didn't play a major role in a homicide. Pre-SB 1437, a person who participated in a felony such as burglary or robbery could be convicted of murder if a cohort, acting on their own, decided to kill someone.

In the Contra Costa case the woman was part of a quartet involved in a 2011 murder of a Contra Costa woman in a scheme to take over the victim's home. While the prisoner in question was not the person who actually killed the victim, she nonetheless pleaded guilty to second degree murder in 2014. She then petitioned for release under SB 1437, and in June 2020 the First District Appellate Court, ruled she was entitled to an evidentiary hearing to determine whether she qualified for legal relief under SB 1437.

In the recent hearing in Contra Costa County's Superior Court, the judge upheld the second-degree charge, noting the woman was an active participant in the crime and could have removed herself from the situation at any time, but chose not to do so. He also agreed with the prosecution that petitioner's explanation of being in fear of the principal actor in the crime wasn't credible. As a result, the second-degree conviction and life term stand, even after the evidentiary hearing.

While many lifers are exploring possible sentence relief (not to say release or parole) under SB 1437, it should be remembered that to do so requires the court to agree to hold a hearing and the petitioner to be able to make their case for minimal involvement. Neither is guaranteed under 1437.

The bill does not require courts to hold the evidentiary hearing and many counties simply say no. As do some judges, including those in LA County, to resentencing, even if a hearing is held.