

LIFE SUPPORT

HOPE



ALLIANCE

HELP

& California Lifer Newsletter

HOME

P.O. Box 277 * Rancho Cordova, CA. * 95741

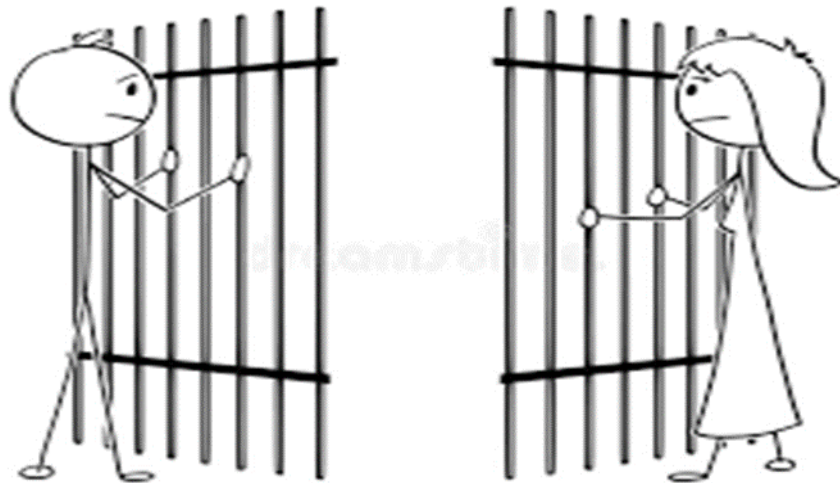
* staff@lifesupportalliance.org *

MARCH 2021

LIFER-LINE

VOL. 12; ISSUE 3

THE NEWSLETTER OF LIFE SUPPORT ALLIANCE © LSA, 2021



OPEN-OPEN-OPEN

Well, partially, at least. A few weeks ago, CDCR announced the 'reopening' of visiting in the prison system on April 10, roughly 13 months after in-person visiting was suspended statewide in the department's initial response to the CoVid pandemic. But what does that really mean?

Like much CoVid related, it depends on where and when. In the memo announcing the restart of visiting, CDCR promises not to throw open the visiting room doors, but to begin "a phased reopening that will allow limited in-person visitation beginning April 10, 2021." The reopening promises major changes in the visiting process, from shortened visiting hours to limited number of actual visitors. New entry protocols, including temperature and symptom screening, mandatory use of face masks and what the department vaguely terms "other expectations for visitors."

And the final word on when any facility will be open to visitors will be the province of the Warden and the Chief Executive Officer of each institution, who will decide if their location is ready to resume (dare we say welcome) actual visitors. CDCR promises each prison will update its visiting status on the prison's web page to keep visitors informed. As we go to print, each institutions' webpage simply refers the seeker back to the main CDCR visiting page. There's a name for that sort of system....circle...something. The name escapes us.

The date at which any institution will resume in-person visiting will depend on the number of active patient and staff cases at each institution. That of course changes almost daily, but in the last 2 weeks the trend has been steadily down.

Scuttlebutt is that in-person visits will be limited to perhaps as little as 30 minutes per inmate. While CoVid vaccinations for either party will not be required, the short visiting window, if true, will likely provide a self-imposed limit on the number of persons trekking to the prison for visits. Think driving 8 hours from LA for a 30-minute visit at HDSP, and then 8 hours back.

On the upside, video visits, which have been running more smoothly in the last few weeks, will be offered in conjunction with in-person visits, though it may be that any single inmate can only receive one or the other in a 30-day period, with one weekend day reserved for the in-person crowd (relatively speaking of course) and the other for the video kind. In fact, CDCR's new automated visiting scheduling program will not process any visiting request for an inmate who has had a visit within the previous 30 days.

While it seems visiting is on the near-horizon it will be, in that now tired and irritating phrase, a 'new normal.'

NEWSOM PROVIDES ADDITIONAL, LIMITED CLEMENCY PATH

In mid-March Governor Gavin Newsom, as part of his periodic clemency announcements, continued a recent policy of using a little-known or used path to limited clemency, Medical Reprieve of Sentence. Beginning last year, in a series of clemency actions, notice of which was largely overwhelmed by CoVid issues, Newsom eased the sentence of a handful of older, medically compromised inmates via a procedure known as Medical Reprieve of Sentence.

Between those actions in 2020, and another batch in March, Newsom has recently allowed about 20 inmates, all of whom, according to the proclamations, have been "determined to have elevated risk of morbidity should he become infected with CoVid19" to be released from custody in prison. Two recent actions in the last 6 months saw the Governor provide 14 inmates with that path to freedom.

The clemency announcements also note, "this reprieve...is temporary and can be nullified at any time for any reason resulting in ...being returned to custody." Sources note reprieve of sentence has been part of the state's Constitution for decades, and is not limited to use for medical reasons, it is still a little-used and politically dicey practice.

All but one of the 14 recent recipients of medical reprieve were third strikers; the last was a 75-year-old man who had served 37 years on a murder conviction. Medical reprieve is not a shortening or recall of sentence, but rather allows those involved to serve either the remainder of their sentence, or in the case of lifers, the time until their next scheduled parole hearing in what is termed "appropriate alternative custody placement in the community."

Those granted the reprieve ranged in age from 56 to 87 (average age, 68.5 years) and had served an average of 23 years of incarceration (18 to 37 years). The Governor started slowing, granting 4 reprieves in November, and quietly added 10 more in March.

After checking with the BPH we can confirm that those who have upcoming parole hearings, many it appears, this calendar year, will attend those hearings virtually, from whatever 'alternative custody' housing they are residing in at the time of the hearing, or, if no appropriate technology is available there, at their local parole office.

As to what happens of anyone of those physically out of prison but technically not out of custody is not granted parole at an upcoming hearing (and most seem to be scheduled sometimes in the next several months), well, this is unknown territory and there are no real answers. Theoretically the medical reprieve, absent any behavior that returns any individual to incarceration, could continue until the next hearing. Or, as noted in the Governor's reprieve messages, that status can be revoked at any time for any, or no, reason.

Stay tuned.

CATCHING UP ON COMMUTATIONS

As noted elsewhere, the CoVid disaster has, for months, consumed most of the news oxygen in any given room, often overshadowing other correctional-centered events and actions. That was the case in November, when Gov. Newsom's office announced several commutations of sentence from the Governor.

The recent announcement of yet another group of commutations gives us an excuse to go back and recap those actions from a few months ago. While the Governor extended commutation to only one prisoner in March, in November he took action on 13 individuals.

Overall, among those 14 inmates, the Governor essentially released 8 individuals to immediate parole, basically commuting their in-prison stay to time served, though they will continue under supervision on parole. Of the remaining 6, who will go to board hearings earlier than previously scheduled, 3 of those hearings will be held in April and 3 in May.

Of the 14 who saw sentence reductions, 7 had murder convictions, 6 were convicted of attempted murder and one received assault. Only one had previously had an LWOP sentence, with others ranging from 50 years to life to two with determinate sentenced inmates. The determinate sentenced prisoners, one of whom serving 15 years on an assault conviction, a sentence Newsom commuted to total of 8 years, and the other serving a term of 29 years that was commuted to time served, have already been released from CDCR custody.

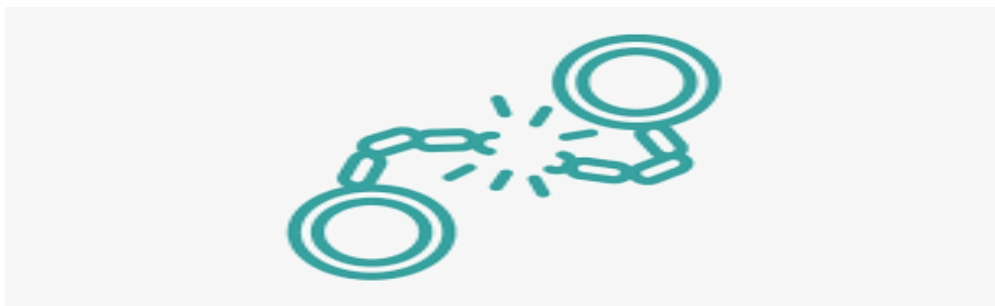
Most, 10 of the 14 commuted, were sentenced while under the age of 25, two as young as 15 years old; four were women.

Those seeing commutations in November were: Sandra Castaneda, 40- L to immediate hearing; Enrique Cristobal, 27-L to immediate parole; Casey David, 29 years to immediate release; David Diaz, 37- L to immediate hearing; James Jacobs, 40-L to immediate hearing; James Jacobs, 40-L to immediate hearing; Patrick Leach, 15 years to 8 years; Tylor Lord, 32-L to immediate parole.

Fernando Murillo, 41-L to immediate parole; Francis Pedroza, 34-L to immediate parole; Ellen Richardson, LWOP to 25-L immediate hearing; Gary Roberson, 50-L to immediate parole; Chan Saeteurn, 25-L to immediate hearing and Anna Villa, 25-L to immediate parole.

In March Newsom also commuted the 25-L sentence of Teresa Paulenkonis to immediate parole.

Since taking office Newsom has granted 79 commutations, 20 reprieves, while reversing 46 grants of parole.



NOTES ON 1170 (d)

There seems to be tremendous confusion, not to mention interest, in the relatively new process involving PC 1170(d), which allows referral of prisoners back to their sentencing court for possible resentencing consideration. While 1170 (d) isn't really new, changes in 2018 also allowed DA offices to make those referrals.

The two biggest things to remember about the 1170 process?

1. The recommendations to the court for resentencing can only come from 2 places—CDCR or the DA's office. And CDCR does not take suggestions, requests or appeals from inmates or family to consider anyone for recommendation.
2. The recommendations to the court for resentencing are just that—recommendations only. The courts are not required to even hear the request, much less act on it or act positively.

So how does an enterprising, and well-performing inmate get a referral from CDCR? Basically, you hope a CDCR staffer recognizes your efforts at rehabilitation and positive change and refers your name up the chain of command. That CDCR person can be custody or free staff, even volunteers. A referral doesn't mean that submission will continue up the command chain, but it is a start.

The path via the DAs offices is a bit more user-friendly, as anyone can contact any given DA office and request they consider referring X inmate to the process. Some counties, including SF, Alameda, San Joaquin and Santa Clara are now accepting requests for 1170(d) consideration. While LA County's DA, Gascone, has committed to reviewing several thousand cases for possible referral, they are not taking requests, as the process is already ploddingly underway. And you can only request this consideration from the county of commitment.

While there are only a handful of counties with staff working pro-actively resentencing recommendations, the DA route is at least a possibility for an attorney or other interested party to approach. However, beware of any attorney, individual or group who touts their sure-fire ability to get a recommendation from any DA for you. Ask for evidence—who else have they done this for? What tact are they taking in persuading the DA the YOU are a prime candidate for this process.

To reiterate, there is no way any person or group can guarantee that you will be referred to the court, and certainly no way to predict that the court, any court, will consider that recommendation. Many such recommendations have been summarily denied by the receiving courts.

Worth a try? If you can get it accomplished, yes. Courts cannot increase any sentence, only decrease it.

Every avenue is worth trying.

The Legislative Branch



BILL UPDATE

Last month we noted a handful of bills introduced this legislative session that could have important impact on lifer matters. This month we'll add a few more to the list of those we're watching. Yes, there are other bills related to prison, parole and sentencing, but we only have so many eyes and ears to watch a limited number of proposals.

Last month we noted:

SB 248: would require that proceedings for the civil commitment of a sexually violent predator be in open court, on the record, unless the court makes certain express findings, including that there exists an overriding interest, based on compelling and extraordinary circumstances, that overcomes the right of public access to the proceedings.

AB 328: would establish the Reentry Housing Program. The bill would require the department to, on or before July 1, 2022, take specified actions to, upon appropriation by the Legislature, provide grants to counties and continuums of care, as defined, for evidence-based housing and housing-based services interventions to allow people with recent histories of incarceration to exit homelessness and remain stably housed.

SB 300: would repeal the provision requiring punishment by death or imprisonment for life without the possibility of parole for a person convicted of murder in the first degree who is not the actual killer, but acted with reckless indifference for human life as a major participant in certain specified violent felonies; would also provide a procedure for incarcerated inmates previously convicted under that provision and awaiting execution or serving a sentence of imprisonment for life without the possibility of parole to petition the court to recall the sentence and resentence the inmate.

Now we add to the watch list:

SB 481: Currently those prisoners sentenced to an LWOP sentence for a crime committed while under the age of 18 to petition for recall of sentence, unless the victim of the crime was a peace officer, or the murder was gang related. This bill would extend that opportunity to petition for recall of sentence to those who received an LWOP sentence for a crime committed under the age of 26 and would include those whose victim was a peace officer and/or a gang-related crime.

Because this bill would amend Prop. 21, it requires a 2/3 vote of the legislature.

AB 960: Allows, in the event of a pandemic, health professionals from the state Dept of Public health to assist CDCR in identifying those inmates who should be considered for compassionate release. (A little late in the game.)

AB 1509: would change the sentence for certain enhancements from a possible 25 to life to a maximum of 3 years.

SB 445: amends the elderly parole program of 50 years of age and 20 years of incarceration to exclude certain sex offenders from elderly parole consideration.

AB 1210: perhaps the most interesting, and, in our eye, potentially the most troublesome. It would require that a majority of the 17-member parole commissioners fit into at least one of 8 categories. While this bill is presented as a way to be sure the board better reflects the diversity of the state's populace, some of the categories are clearly more to meet political agenda(s) than provide a more grant-friendly board.

We're speaking with this bill's author, in hopes of discovering the 'wisdom' behind this proposal and, perhaps, providing a more detailed perspective. While some of the categories have merit and are interesting (a former lifer, for instance), others are simply puzzling politically correct window dressing (a geriatric doctor, deportation attorney) and could backfire.

GRANT RATES IN VIDEO TIMES

When parole hearings went virtual about a year ago one of the big concerns was the effect that process would have on the overall parole grant rate. To date, it seems that question can be answered by a couple of words—not much.

While we await the release of BPH's yearly Significant Events report, summarizing data points of all varieties relevant to parole hearings, we can glean a hint from comparing grant figures from January 2020, before the virtual experience, and January 2021, well into that process.

We ran numbers from the hearing summary for the two Januarys; the overall grant rate in January, 2020 was 34.1% of hearings held to completion. In January, that rate was 39.1%. So much for the concern that video hearings would lower the grant rate.

Among the commissioners in January of 2020 grant rates ranged from a low of 13% to a high of 57%, while a check of commissioner individual decision in January of 2021 showed a range from 20% to 61%: again. Again, this is just the snapshot of two individual months—including the rest of the video hearing months will change the perspective somewhat.

In 2020 January saw 662 hearings scheduled, but also 150 hearings postponed, and another 87 inmates stipulate to unsuitability at that time. In January 2021 640 hearings were scheduled, with 16 stipulations and 147 postponements brining the actual number of hearing held down somewhat.

We'll have a complete look at the 2020 video hearing year in our next issue, when final figures for 2020 are available.