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& California Lifer Newsletter

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THE NEVER-ENDING STORY: COVID

Or so it seems, but there are encouraging signs

We've lost track of how many newsletters have begun with the ravages of the Corona virus in the prisons, and it seems this month is no different. At the end of August, the number of positive cases within the prisons (remember, this is literally a moment in time, things can and do change hourly) is just over 1,000 and seems to be declining. Seems, however, is the operative word.

A few weeks ago, the total number of current cases was under 1,000 only to see the next day's numbers shoot back up, so nothing is assured. That said, and noting there are still outbreaks and increases at several prisons, the rapid rise at several prisons simultaneously and daily deaths, seems to have slowed. Currently, Avenal and old Folsom and, most recently SATF, seem to be in the throes of outbreaks, but other prisons, specifically those hardest hits in the past (SQ, CVSP, CIM) seem to be in a sustained decline.

Still, the toll so far from the virus' entry into the prison system has been devastating. A total of 57 prisoner lives have been lost to the disease, 26 at SQ, 21 at CIM, 5 at ASP, 2 at CVSP and one each at CIW, COR and MCSP. In all, some 10,376 inmates tested positive for the virus, and to date, 8,870 have been 'resolved,' CDCR's term for recovered. The remainder are still positive for the virus, have succumbed or were released at the end of their term while still testing positive.

Programming, including visiting, is still suspended and as difficult as this has been, yes, there are plans in the works for re-opening of the prisons, entry into what will, at least for the foreseeable future, be a 'new normal.' For more on that prospect see the 'Roadmap' story elsewhere in this issue.

Also, of interest, the Inspector General's first report on the CoVid outbreak, which is subtitled "Inconsistent Screening Practices May Have Increased the Risk of CoVid-19 Within California's Prison System." Annd—that pretty well says it all. Subsequent reports by the IG's office will examine the distribution and use of personal protective equipment by CDCR and the treatment of CoVid-positive individuals.

In the months since the outbreak started, only 2 prisons, to date, have managed to remain virus free in the inmate population—PBSP and DVI. A handful of others have registered cases in single digits, but 4 stand out as the worst impacted. San Quentin, of course, tops the list with a total of 2,236 cases and the highest number of deaths; Avenal is second in overall cases, at 1,799 cases, though a lower number of deaths.

CIM, third in number of cases at 1,110 had the second highest number of deaths and CVSP at 1,054 positive cases and 2 deaths. Several prisons reported cases in the triple-digit range, with both COR and CIW in that group.

The virus has not gone away, is still a danger to inmate population and staff. Do not let your guard down, continue to practice all the safety measures you can.



PENDING CHANGES FOR ELDERLY PAROLE—MAYBE

SB 118, a budget trailer bill that would set out how money allocated to CDCR would be spent, contained, in its original form, a proposed change to the elderly parole process. Although SB 118 has been passed and signed into law, the changes to elderly parole were eliminated from the bill prior to passage.

However, those changes, which would lower both the age threshold and the number of years required to be served, were picked up in another budget bill, AB 3234, still in the floor process within the legislature. As we go to press, the bill has passed the Assembly, but is now in the consideration by the Senate.

If passed, it would change elderly parole consideration to age 50 years or over and 20 years or more of continuous incarceration, both down from 60 years of age and 25 years served. Again, the bill has not yet passed, as we go to print.

The new elderly parole program would specifically exclude LWOP inmates, those who are condemned and those whose victim was a peace officer. It also specifically notes all incarceration time, state and county, would count toward the total 20 years.

The bill would not impact a large number of inmates, but certainly for those who are impacted, that impact would be major. Elderly parole consideration, like other special parole considerations, is not a golden key out, but directs the board to “give special consideration to whether age, time served, and diminished physical condition, if any, have reduced the elderly inmate’s risk for future violence.”

Unknown is the impact this change would have on the inclusion or exclusion of third strikers, who are included in elderly parole consideration under the original guidelines of elderly parole as agreed to by

the BPH and the 3 judge panel, but are excluded from elderly parole under the perimeters of the 2017 law, AB 1448, that codified elderly parole. The language of this bill does not address this cohort in any fashion, though it does announce, “The Elderly Parole Program is hereby established.”

However, because the original elderly parole was initiated by agreement with a federal agency (3 judge panel) that agreement takes precedence over the state law. How this change, if passed would impact that inclusion/exclusion dynamic is yet unknown. Stay tuned.



THE ROADMAP TO ‘NORMAL’—AND VISITS

CDCR will soon release what they hope will be a path to whatever will pass for normal operations once the CoVid pandemic slows down. “Institutional Roadmap to Reopening,” potentially set for release at the end of August, lays out a 4-phase path back to business as usual in the prisons, based largely on what individual institutions are in the scope of CoVid infection.

Phase 1, where we are all now, is the most restrictive, with most all activities and grounds closed. Each phase thereafter eases into more open and available activities, driven by the situation and the decision on entering that phase made by the administrations at the various prisons. Each, phase, however, bears the caveat that if things go south, institutions are to backup and return to the previous phase. And yes, the roadmap speaks to the resumption of visiting, though probably much changed from the cluster fest of past decades.

While the plan is not officially out, we’ve seen a draft copy and can report the major points, always pending change to those points when the final document is approved and released. For now, a peak tells us that the 4 phases are these:

- Phase 1-2: no new cases of Covid on a rolling 14-day cumulative new case rate.
- Phase 2-3: No new cases on a rolling 60-day cumulative new case rate.
- Phase 3-4 No positive or new cases for 90 days
- Phase 4: Reopening to normal operations, with the provision that some measures such as face masks, may be retained.

Preliminary suggestions are that visiting, one visitor per inmate for a one hour visit once a month, with tables 6 feet apart, staggered schedules and masks can begin in Phase 2, but no family visits. Limited day room activities will continue.

In Phase 3, visiting may expand to 2 visitors for one hour per inmate, twice a month, other restrictions as in Phase 2. In Phase 3 family visits may be reinstated, one family visit per week per family visiting unit.

The draft roadmap also notes ‘movement between phases will be at the discretion of the warden and Chief Executive Officer who shall report daily to the Department Operations Center their current phase, and any plans to move to different phases on subsequent days.’ This allows for prisons to move at

various paces in reopening, depending on their individual situation, moving to less or more restrictive operations as those individual factors indicate.

If a new outbreak occurs, administration is expected to put more restrictive measures in place. A new outbreak is defined as 3 or more CoVid positive cases. The roadmap also allows for various areas within each prison to be held to more restrictive requirements, if needed

Areas of operation such as Health Care operations, Institutional Operations and Inmate Programs are detailed, by phase. Regarding Inmate Programs the draft roadmap notes “individual institutions shall adapt to their local, changing needs...the roadmap conceptualizes many potential programming options as a ‘menu’ from which institutions may select the program delivery methods which meet current operation and safety needs within the phased guidelines.”

Those options include reduced group sizes, staggered schedules or programs held outside or in non-traditional locations and modified hours. Not exactly what ‘was,’ but perhaps a glimpse of what ‘will be’ going forward. However, this is the first glimmer of light at the end of the CoVid tunnel. Stay tuned, more as we know it and as the plan becomes official.



PAROLE UPDATE

In late August, BPH Executive Director Jennifer Shaffer announced the executive order from Governor Newsom, directing parole hearings to be held by video conferencing, has been extended yet another month, effective through the end of September. At the same time, the BPH released results for hearings held during the CoVid shutdown, numbers that are somewhat reassuring.

The Board of Parole Hearings (BPH) held 1,356 parole suitability hearings by video and telephone conference between April 1 and August 7. Of those, 466 resulted in grants (34.4 percent), roughly the same rate as for all of 2019, when the at-hearing grant rate was 34 percent.

In addition to the 890 denials, there were 93 waivers of hearing, 283 hearings were postponed, 117 stipulated to unsuitability, and 14 were continued. All this means—for those with scheduled hearings through September of this year, your hearing will be held by video conference.

The Board has worked out a method for private consultations with attorneys during the hearings that appears to work, from reports by those attorneys. While there is no indication as yet about timelines for resumption of in-person hearings, it's important to note that most court proceedings are now being done by video conferencing and no jurisdiction seems in a hurry to be the guinea pig who opens first. As to whether or not to go through with your hearing, that's a decision only you, in conjunction with your attorney, can make. But it does bear remembering that the video conferencing has not impacted the overall grant percentage.

Other new considerations in parole hearings is the following information, again, directly from the BPH:

Expedited Review of Parole Grants

As a result of COVID-19 and CDCR's on-going efforts to promote the health and safety of CDCR staff and inmates, the Board and Governor's Office are expediting review of parole grants. Under Penal Code section 3041(b)(2), decisions made by parole panels finding an inmate suitable for parole are final within 120 days. During this time period the Board reviews the parole grant and parole plans are confirmed for each inmate. The Board's legal department is regularly screening the list of inmates granted parole to prioritize review of grants for inmates who face the greatest risk due to COVID-19. Review periods are generally about 90 days, with those at institutions with COVID-19 outbreaks being completed even faster. The purpose of the Board's review is to ensure parole decisions comply with the law, that there is no error of fact, and that there is no new information that would have a substantial likelihood of resulting in a substantially different decision.

Parole Plans and Transitional Housing.

NEW CDCR SECRETARY OCTOBER 1

Just as we go to print, Gov. Newsom has announced current CDCR Secretary Ralph Diaz will retire October 1, to be replaced by his current second-in-command, Kathleen Allison. Diaz, who has been with CDCR for 29 years, has served as Secretary since 2018.

Allison, who has also been with CDCR for decades, was previously a warden at SATF before taking on a variety of position in Sacramento. Most recently she was been the Undersecretary of Operations.

Whether Allison will continue Diaz' commitment to culture change and rehabilitation remains to be seen. LSA has known Allison for years. End of comment. For now.

DOWN YES, BUT ARE THE POPULATION NUMBERS A SHELL GAME?

Late last month CDCR announced what, seemingly, was a major landmark in the long and fraught battle to reduce the population of California's prisons. For the first time in three decades, the incarcerated population inside California state prisons, according to CDCR, is below 100,000 persons.

On July 30, the Department announced the in-prison population was 99,929. "The last time that number was below 100,000 was in 1990, when California's overall population was almost 10 million less than it is today.

"Since March, CDCR has taken extraordinary measures to directly address the COVID-19 pandemic in its institutions, including one of the largest reductions in state prison population in recent history. In that timeframe, CDCR has reduced its total incarcerated population by more than 16,000 through the suspension of county jail intake, the expedited release of approximately 3,500 people in April, and more than 6,700 in July as a result of those eligible under the series of release actions announced July 10, and those being released naturally after having served their full term as defined by the law."

That was on July 30. On July 31, CDCR released a population report to the 3-judge federal panel, which oversees the population and other aspects of Corrections in California. And interestingly, that report showed the population count at 101,523; that's 9,594 more than the number announced just the day before.

And intake from county has been suspended for some time, and not scheduled to begin again until August 9 (at last report, which can and does change almost daily). Soooo, where did these 10K new bodies come from? Where were they the day before, when the 'count' was made?

And why, in the July 31 report, was California City Correctional Facility (CAC) not on the report? Is it not a California prison? We're pretty sure the men incarcerated there think it is, as does CCPOA, who staff that somewhat hybrid facility. CAC, officially owned by private prison firm CoreCivic, is leased by CDCR and staffed by CDCR (CCPOA), which, one would think, would mean those souls were included in the population count---but if so, we're not seeing it.

Was the population CAC, which is March, the last month for which we can find figures, was 2,070, included in that 99K+ figure? Can't tell but doesn't seem to be. And how do we make sense of CDCR's changing numbers from July 30 to July 31? Questions. We had questions. We had loads and loads of questions.

And we have the same questions after August's population figures were announced, on August 25. The public report noted a population of 95,712; however, on the same day, the report turned in to the 3 judges listed a population of 97,515. Poof! 200 inmates disappeared in a few hours? And, again, CAC was NOT listed in the report to the judges.

Clearly, the population is down, due to all the factors enumerated in the CDCR press release of July 30, but—and this could be a game changer, there had been no new incoming inmates for several weeks and the intake process has not been at full capacity in months. When intake was tentatively started a few months ago at a slow pace in only a few reception centers, those locations did see an uptick in CoVid cases. In part because it appears there is no standardized practice for CoVid testing among the counties—it's pretty much a hit and miss affair. It does not appear much has changed on that front, but it appears intake is once again opening.

On August 25 CDCR announced, "DCR and CCHCS are working to resume county jail intake in a safe, controlled manner that protects the health and well-being of all who live and work in state prisons. Since March, the majority of individuals sentenced to state prison have been retained in county jails pending transfer to CDCR. A limited reopening occurred in May but, out of an abundance of caution, was halted to allow CDCR and CCHCS to implement robust testing and transfer protocols that aim to limit risk of transmission of COVID-19 within California's prisons.

The department has worked closely with the California State Sheriffs' Association and public health experts to develop a plan to resume intake in a controlled, limited manner beginning the week of August 24. These guidelines were created with both internal and external input from health care, custody operations, stakeholders, and public health experts in a concrete effort to decrease the risk of COVID transmission while allowing for the utmost precautions when moving incarcerated individuals as needed."

So, while CDCR has been able to reduce the population during the pandemic shutdown, the looming reopening of intake will certainly make major changes in whatever the true number is. Currently, the most recently released number, roughly 95,500+/-, equates to about 108.8 % of current design capacity, well below the bar set by the federal judges.