CDCR and Prop 57

The information below and on the following pages is taken from Prison Law Office’s “Information on Proposition 57” as seen on their website. www.prisonlaw.org.

Your Responsibility When Using the Information Provided Below: When putting this material together, we did our best to give you useful and accurate information because we know that prisoners often have trouble getting legal information and we cannot give specific advice to all prisoners who ask for it. The laws change often and can be looked at in different ways. We do not always have the resources to make changes to this material every time the law changes. If you use this pamphlet, it is your responsibility to make sure that the law has not changed and still applies to your situation. Most of the materials you need should be available in your institution’s law library.

Proposition 57: CDCR’s New Credit and Early Parole Regulations
CDCR has announced new rules that will grant many prisoners additional good conduct and programming credits and allow some nonviolent prisoners serving determinate sentences to be considered for early parole. The rules are in effect on an emergency basis while the CDCR undergoes a formal rule-making process to enact the rules on a permanent basis. More information about the regulations and how to submit public comments are in this Proposition 57 information letter (updated 7/19/2017). The text of the regulations and additional information is available on the CDCR website.

PROPOSITION 57
PRISON CONDUCT CREDIT AND PAROLE CONSIDERATION

<table>
<thead>
<tr>
<th>Description of Current Offense and/or Sentence</th>
<th>Current CDCR Credit Rate</th>
<th>New CDCR Credit Rate1</th>
</tr>
</thead>
<tbody>
<tr>
<td>Life without parole (LWOP) and condemned</td>
<td>0%</td>
<td>0%</td>
</tr>
<tr>
<td>Indeterminate term (lifers) not previously eligible for credits (murder, etc.)</td>
<td>0%</td>
<td>20%</td>
</tr>
<tr>
<td>Violent offense -- third striker lifers</td>
<td>0%</td>
<td>20%</td>
</tr>
<tr>
<td>Violent offense -- determinate term -- 0 credits (a few other recidivists)</td>
<td>0%</td>
<td>20%</td>
</tr>
<tr>
<td>Violent offense -- determinate or indeterminate sentence</td>
<td>15%</td>
<td>20%</td>
</tr>
<tr>
<td>Non-violent offense -- third striker lifers</td>
<td>0%</td>
<td>33.3%</td>
</tr>
<tr>
<td>Non-violent offense -- second strikers with PC 290</td>
<td>20%</td>
<td>33.3%</td>
</tr>
<tr>
<td>Non-violent offense -- second strikers</td>
<td>33.3%</td>
<td>33.3%</td>
</tr>
<tr>
<td>Lifers eligible for 1/3 credits (some crimes in 1980s &amp; 1990s)</td>
<td>33.3%</td>
<td>33.3%</td>
</tr>
<tr>
<td>Non-violent offense -- determinate sentence</td>
<td>50%</td>
<td>50%</td>
</tr>
<tr>
<td>Lifers -- eligible for day-for-day (a few crimes)</td>
<td>50%</td>
<td>50%</td>
</tr>
<tr>
<td>Violent offense -- determinate sentence -- firefighters or in fire camp</td>
<td>15%</td>
<td>50%</td>
</tr>
<tr>
<td>Non-violent offense -- second strikers --- firefighters or in fire camp</td>
<td>33.3%</td>
<td>66.6%</td>
</tr>
<tr>
<td>Non-violent offense -- determinate sentence -- firefighters or in fire camp</td>
<td>66.6%</td>
<td>66.6%</td>
</tr>
<tr>
<td>Non-violent offense – Minimum A or Minimum B custody</td>
<td>66.6%</td>
<td>66.6%</td>
</tr>
</tbody>
</table>

1 The CDCR's titles for the various credit categories are NOT internally consistent.

- “15%” credit means a prisoner gets credit for 15 percent of the days actually served, and ends up serving about 85% of the actual time imposed.
- “20%” credit means a prisoner gets credit for 20% of the days actually served (one day credit for four days served) and ends up serving about 80% of the actual time imposed.
- CDCR's “33.3%” credit means a prisoner gets credit for 33.3% of the days actually served (one day credit for two days actually served) and ends up serving about 66.7% of the actual time imposed.
- BUT CDCR's "50%" credit does NOT mean a prisoner gets credit for 50% of days actually served. Rather, a prisoner gets credit for 100% of days served (day-for-day) and the prisoner ends up serving 50% of the actual time imposed (sometimes referred to as “half-time”)
- Similarly, CDCR's “66.6%” credit does NOT mean a prisoner gets credit for 66.6% of days actually served. Rather, a prisoner gets credit for 200% of days served (two-for-one) and the prisoner ends up serving about 33.3% of the actual time imposed. (Cont’d Page 2)
This letter discusses the new CDCR rules on prison credits (which apply to almost all prisoners), and the new rules about early parole consideration for nonviolent determinately-sentenced offenders. These new rules came about as a result of Proposition 57, passed by the voters in November, 2016. Proposition 57 established new Article I, section 32 in the California Constitution, which requires CDCR to issue rules regarding credits and early parole.

The new rules on credits and early parole consideration were issued by CDCR on an “emergency” basis on March 24, 2017. A copy of the new rules should be available in your prison law library; the rules are also on the CDCR website: www.cdc.ca.gov. As “emergency” rules, they are in effect on a temporary basis without a full formal rule making process. The CDCR started applying the new credit rules on May 1 (good conduct credit) and August 1 (various programming credits), and started the new early parole consideration processes on July 1. However, you and others will be able to comment on the rules before a final version of the rules is officially enacted; the comment period closes on September 1, 2017; see the Section III of this letter for information on how to submit comments.

Part I of this letter summarizes the new rules on credits. Part II summarizes the new rules on early parole consideration for nonviolent offenders. Part III describes how prisoners and others can comment on the new rules.

There may be legal disputes about whether or not the new CDCR rules are in accord with new Article I, section 32 to the California Constitution and with court orders setting a population cap on overcrowding in the prisons. There may also be disputes about exactly what the new rules mean and how they apply.

I. PRISON TIME CREDITS FOR GOOD BEHAVIOR AND PROGRAMMING

The new CDCR rules regarding credits completely replace all previous California laws and CDCR rules regarding credits for good behavior and programming in prison, and appear to include all credits required by the February 2014 federal court order about reducing crowding in the prisons. Under the new rules described below, all CDCR prisoners will be eligible to receive at least as much credit to reduce their prison terms as under the old laws and rules, and some prisoners will be eligible to receive more credits than before.

1. Effective May 1, 2017, many prisoners earn more Good Conduct Credits so long as they comply with prison rules and programming duties. Good Conduct Credits are now available to all prisoners serving determinate (set-length) sentences and sentences of life with the possibility of parole. The Good Conduct Credit rules apply also to prisoners serving California sentences in out-of-state prisons, federal prisons, or state hospitals. There are different levels of credit eligibility depending on the prisoner’s offenses and sentence. (See chart on next page) (SJRA has put this chart on the Front Page)

Prisoners can still be placed on Zero Credit earning status for twice refusing to accept assigned housing, refusing to perform an assignment, or being a program failure (Work Group C) or due to placement in a segregation unit for a serious disciplinary offense or validation as an STG-I member or associate (D-2 status).

Prisoners can still lose Good Conduct Credits if they violate prison rules.

2. Effective August 1, 2017, all CDCR prisoners serving determinate sentences or sentences of life with the possibility of parole are eligible to earn additional credits for successful participation in approved rehabilitative programs.

The new and revised programming credits are:

• Milestone Completion Credits: These credits are awarded for achieving objectives in approved rehabilitative programs, including academic, vocational, and therapeutic programs. Milestone Credits are currently capped at a maximum of six weeks in a 12-month consecutive period. The new regulations expand Milestone Credits to 12 weeks in a 12-month period; excess credits will be rolled over to the following year. The new regulations get rid of restrictions that barred some types of prisoners from earning Milestone Credits. Milestone Completion Credits can be lost due to rules violations.

• Rehabilitative Achievement Credits: These credits are for participation in self-help and volunteer public service activities. Currently, there is no credit-earning attached to self-help activities. The new regulations will give prisoners one week of credit for every 52 hours of participation, with a maximum of four weeks credit per year, for participating in eligible self-help programs. The CDCR is still evaluating which activities will qualify for the credits. Rehabilitative Achievement Credits can be lost due to rules violations.

• Education Merit Credits: These credits recognize the achievements of prisoners who earn high school diplomas, GEDs, or higher education degrees, or complete the offender mentor certification program available at several CDCR prisons. Prisoners must earn at least 50 percent or more of the degree or diploma during their current term to receive Education Merit Credits. Prisoners who earn GEDs or high school diplomas get 90 days of credit and prisoners who ear other degrees or an offender mentor certification get 180 days credit. These credits will take effect in August 2017, but will be applied retroactively. Education Merit Credits apply to prisoners serving California sentences who are housed out-of-state, in federal prison, or in state hospitals. Educational Merit Credits cannot be taken away due to rule violations.

II. EARLY PAROLE CONSIDERATION FOR SOME DETERMINATELY SENTENCED NONVIOLENT OFFENDERS

Proposition 57 authorizes earlier parole consideration for prisoners convicted of nonviolent felony offenses.2

2 This part of California Constitution, Article I, section 32 states:

(a)(1) Parole Consideration: Any person convicted of a nonviolent felony offense and sentenced to state prison shall be eligible for parole consideration after completing the full term for his or her primary offense.

(A) For purposes of this section only, the full term for the primary offense means the longest term of imprisonment imposed by the court for any offense, excluding the imposition of an enhancement, consecutive sentence, or alternative sentence.

(b) The Department of Corrections and Rehabilitation shall adopt regulations in furtherance of these provisions, and the Secretary of the Department of Corrections and Rehabilitation shall certify that these regulations protect and enhance public safety.
The new CDCR rules provide for early parole consideration for “determinately sentenced nonviolent offenders” who meet certain other criteria. An eligible prisoner will be considered for parole suitability prior to his or her “Nonviolent Parole Eligible Date,” which is the date on which the prisoner has served the “full term” of his or her “primary offense,” minus pre-sentence credits awarded by the court and credits for time in custody between sentencing and arrival in the CDCR. “Primary offense” means the crime for which the court imposed the longest prison term, without taking into account enhancements, alternative sentences, or consecutive sentences. “Full term” means the time imposed by the court for the primary offense without considering credits earned in prison. The CDCR started determining which prisoners are eligible for parole consideration as of June 1, 2017 and started referring prisoners for parole reviews on July 1, 2017.

A prisoner must meet three criteria to get released early on nonviolent offender parole:
1. The prisoner must be a “Nonviolent Offender,” which is defined as a prisoner who is serving a sentence for a nonviolent felony offense. A nonviolent felony offense is any crime that is not listed in Penal Code § 667.5(c).

The new parole consideration process does not apply to any prisoner who:
- has a death sentence, a term of life without the possibility of parole (LWOP), or a term of life with the possibility of parole (such as three-strikers and other lifers), OR
- is serving a term for a violent felony crime or enhancement that is listed in Penal Code § 667.5(c), OR
- has any past or current conviction for an offense that requires sex offender registration under Penal Code § 290.

Sometimes prisoners are serving concurrent or consecutive sentences for a mix of violent and nonviolent offenses. A prisoner who is sentenced to concurrent terms is eligible for parole after the longest term. A prisoner who has finished the violent offense term and is currently serving only a term for a nonviolent offense, is eligible for parole consideration (this will be a rare situation because the violent offense term is usually the longest term). Also, a prisoner who has finished serving a term for a violent offense and is now serving a fully separate consecutive term for a nonviolent in-prison offense is eligible. The regulations do not specifically say whether a prisoner is eligible for parole consideration if the prisoner has consecutive sentences for a mix of violent and nonviolent crimes (with the nonviolent terms calculated at 1/3 of the normal base term) and has finished serving the portion of the term that is for the violent offense; there may be legal disputes about whether such prisoners are or should be eligible for parole consideration.

2. The prisoner must have good behavior in prison. Also, the prisoner’s Nonviolent Parole Eligible Date must be at least 180 days before the prisoner’s regular Earliest Possible Release Date (EPRD). The CDCR will screen a prisoner no later than 35 days before the Nonviolent Parole Eligible Date to decide whether the prisoner is eligible for referral to the Board of Parole Hearings (BPH) for parole consideration. The CDCR should tell the prisoner the result of the screening.

Some circumstances will make a prisoner ineligible for nonviolent offender parole:
- current Security Housing Unit (SHU) term or assessment of a SHU term for a Security Threat Group (STG) or disciplinary reason in the past 5 years;
- a Level A-1 or A-2 serious rule violation in the past 5 years;
- placement in Work Group C in the past year;
- 2 or more serious rule violations of any level within the past year;
- a drug-related rule violation or refusal to provide a urine sample in the past year; or
- a rule violation found to have a nexus to an STG group.

A prisoner who is deemed ineligible based on any of these circumstances will be screened again for eligibility after serving 1 more year.

A prisoner who is screened out by the CDCR can challenge the screening decision by filing a CDCR Form 602 administrative appeal.

3. The Board of Parole Hearings (BPH) must decide that the prisoner does not pose an “unreasonable risk of violence to the community.”

When a prisoner is referred to BPH for nonviolent offender parole consideration, the prisoner should be notified that he or she can submit a written statement to BPH. BPH will also notify the prosecutor and victim(s) that they have 30 days to submit written statements. We advise prisoners to submit a statement about why they should be paroled early, focusing on why they will not pose a risk of violence to the community if released. If possible, prisoners should have family, friends, potential employers or others with helpful information submit statements to BPH.

A BPH staff member (who is called a “hearing officer”), even though there is no actual hearing at which the prisoner or anyone else can appear) will double-check to make sure the prisoner is eligible for nonviolent offender parole consideration. If the hearing officer confirms the prisoner is eligible, the hearing officer will review documents including the prisoner’s central file and criminal history records and written statements by the prisoner, the prisoner’s supporters, the crime victims, and/or the prosecutor. Unlike lifer parole suitability hearings, there is no in-person hearing.

The hearing officer decides whether or not the prisoner “poses an unreasonable risk of violence to the community.” The hearing officer shall consider all the circumstances, including the nature of the prisoner’s current conviction, prior criminal record, in-prison behavior and programming, and any input from the prisoner, victims and prosecutor.

Parole will be denied if the hearing officer finds the prisoner poses an unreasonable risk of violence to the community. Parole will be granted if the hearing officer finds the prisoner does not pose an unreasonable risk of violence to the community. If a parole grant will result in the prisoner being released two or more years prior to the regular Earliest Possible Release Date (EPRD), a second BPH hearing officer must also approve the parole grant.

A prisoner who is granted nonviolent offender parole should be released 60 days after the date of the BPH decision. If the prisoner has an additional term to serve for an in-prison offense, the additional term shall start 60 days after the BPH decision. The prisoner will presumably serve the normal parole period that would apply to his or her crimes. Nonviolent offender parole can be vacated for subsequent crimes or parole rule violations.

A prisoner who is denied nonviolent offender parole can request a review of the decision. This is done through a special review procedure (NOT the CDCR 602 process). The prisoner must request review within 30 days after the denial. A BPH hearing officer who was not involved in the original decision will conduct a review within 30 calendar days after the prisoner’s request is received.

The hearing officer will either uphold the parole denial or vacate the parole denial and issue a new decision. The prisoner should be notified in writing of the review decision.

3 The new regulations are 15 CCR §§ 2449.1-2449.5 and 15 CCR §§ 3490-3493.
4 For example, this appears to mean that a person serving a doubled term under the two-strikes law (which is an alternative sentencing law) for a nonviolent offense is eligible for parole consideration after serving just the ordinary base term (without the doubling or any enhancements).
5 The exclusion of nonviolent sex offenders is being challenged in a lawsuit, Alliance for Constitutional Sex Offense Laws v. CDCR, Sacramento Superior Court No.80002581, as being contrary to Proposition 57. There may also be legal disputes over the exclusion of nonviolent third strikers.
6 It is not clear whether prisoners released on nonviolent offender parole can be placed on post-release community supervision (PRCS) rather than CDCR parole.
III. CAN YOU CHALLENGE THE NEW REGULATIONS?
California’s Administrative Procedures Act (APA) requires the CDCR to adopt its regulations in a formal manner that includes notice to the public, opportunity for public comments, and approval by the Office of Administrative Law (OAL), the agency that oversees compliance with the APA.

The CDCR issued the new Proposition 57 regulations pursuant to its power to adopt emergency regulations when necessary to operate the prison or parole system. The Proposition 57 emergency regulations were filed with the Secretary of State and went into effect on April 13, 2017.

To permanently adopt the Proposition 57 regulations, the CDCR must go through a formal rulemaking process by September 20, 2017; otherwise the emergency regulations will lapse and no longer be in effect. However, the CDCR may ask to extend the deadline for an additional 90 days.

The formal rule-making process involves giving notice to the public of the proposed changes and a statement of reasons for the changes. The CDCR “Notice of Change to Regulations” (#17-05) was issued on July 14, 2017 and should be distributed to prison law libraries, advisory councils and interested outside people, and made available to prisoners housed in SHUs. The notice is also on the CDCR website Regulations page at www.cdcr.ca.gov.

The public (including prisoners) may submit written comments on the proposed changes; the comment period closes on September 1, 2017. The address for comments is CDCR Regulation and Policy Management Branch, P.O. Box 942883, Sacramento, CA 94283-0001. The CDCR will also hold a public hearing to receive comments on the proposed changes on September 1, 2017, at 9 a.m. at the Department of Water Resources Building Auditorium, 1416 Ninth Street, Sacramento, CA, 95814.

Once the comment period is over, the proposed regulations must be reviewed by the OAL. The OAL determines whether the APA requirements have been met, and whether the regulation is necessary, based on proper authority, clear, consistent, properly referenced, and not duplicative. If the OAL approves the regulations, they will be filed with the Secretary of State.

Re: Prop 57 - E-Mail from Gov's Office

From: governor governor@governor.ca.gov
To: yeswecanchange3x yeswecanchange3x@aol.com
Subject: Re: Prison Issues/Concerns
Date: Wed, Jun 14, 2017 12:30 pm

Thank you for contacting Governor Brown’s office regarding the passage of Proposition 57. The language of this proposition entrusts the California Department of Corrections and Rehabilitation (CDCR) with developing regulations that must be certified as protecting and enhancing public safety. This process will take some time, but CDCR will be working on these regulations in accordance with the rulemaking process described in the Administrative Procedure Act (APA).

You may direct any further questions about the implementation of Proposition 57 to CDCR’s Office of Public and Employee Communications. Their phone number is (916) 445-4950.

We would also encourage interested inmates to remain in contact with their CDCR Counselor, who will be a good resource for information regarding this matter.

We hope you find this information to be helpful. Again, thank you for taking the time to contact Governor Brown’s office.

Sincerely,
Constituent Affairs
Office of Governor Jerry Brown

Public Hearing on CDCR Proposal for New Regulations
SEPTEMBER 1, 2017
9 A.M.
Dept of Water Resources
Building Auditorium
1416 Ninth St.
Sacramento, CA 95814

The CA Dept. of Corrections and Rehabilitation (CDRC) will conduct a hearing on Friday, September 1, during which the public has an opportunity to comment on proposed regulations which attempt to implement Prop. 57.

The hearing is scheduled to be held:
9 a.m. to noon
1416 Ninth Street
Dept. of Water Resources Building Audito-
rium
Sacramento

“The proposed regulations issued by CDCR are unlawful because they prohibit registrants and others from the benefits of Prop. 57,” stated ACSOL Executive Director Janice Bellucci.

Prop. 57, which was recently passed by the public, provides the possibility of shorter prison time for those convicted of non-violent offenses. The proposition did not exclude those convicted of sex offenses, third strikers or any other group of individuals.

Individuals opposed to the proposed regulations may also provide written comments via U.S. mail or E-mail no later than September 1 at 5 p.m. Comments must be submitted to:
CDRC Regulation and Policy Management Branch
By Mail:
P.O. Box 942883
Sacramento, CA 94283-0001
or by FAX: (916) 324-6075
or E-mail: CDCR-Prop57-
Comments@cdcr.ca.gov

CDRC previously issued emergency regulations which also created exceptions for registrants and others. The Alliance filed a lawsuit in Sacramento Superior Court in April 2017 challenging the early regulations. A hearing on that lawsuit is scheduled for October 2017.

I look forward to seeing you there!
Janice Bellucci, Executive Director
Alliance for Constitutional Sex Offense Laws
The Lifer, Prop 57 and the BPH

By Jonathan Franklin, AD-7473
HDSP, POB 3030, Susanville, CA 96127

Recently, I received documents from CDCR. The important 2 pages are enclosed and on your own, you can access the Public Record entitled “Initial Statement of Reasons NCR 17-01” dated 2-24-17. The document was in regard to changes made regarding Close Custody to be combined into on category of Close Custody.

Page 9 reads:

“Subsection 3375.2(a) (10) (B) is adopted, because a three year denial by the BPH represents the shortest length of denial and most favorable outcome during a parole consideration hearing that an inmate who has been denied parole may receive. BPH typically grant this length of denial for those inmates who have positively programmed and pose relatively lower risks to the safety of the public as compared to other inmates sentenced to life terms with the possibility of parole.” . . . “Consistent with the findings of the 2011 study by the Expert Panel, inmates who have reached or surpassed their MEPD’s [Minimum Eligible Parole Date] have been considered for release by the BPH, tend to be older and have reduced likelihoods of engaging in institutional misconduct, due in part, to their advanced ages. The Expert Panel also cited research that inmates sentenced to life terms with the possibility of parole are much less likely to engage in serious rule violations after they are within eight years of their MEPDs. Therefore, use of this criterion helps to ensure that life term inmates . . . pose lower safety and security risks relative to other life term inmates.”

Page 11 reads:

Subsection 3375.2(a)(10)(1) . . . “This adoption also provides clarification to staff and inmates that the “other life term” mandatory minimum score factor must be removed or not imposed prior to housing an inmate sentenced to a life term with the possibility of parole within a secure Level 1 facility. For example, an inmate serving a life term with the possibility of parole, who received an automatic VIO administrative determinant for a Murder 2nd conviction, has a preliminary score of 0, due to multiple continuous years of positive programming during his incarceration. The inmate’s most recent parole consideration hearing resulted in a three year denial by the BPH. The inmate’s most Comprehensive Risk Assessment identifies his potential risk for future violence as low. The inmate is not identified as a Public Interest Case. The inmate has no history of sex crimes and does not have an “R” Suffix imposed. The inmate has no history of escape or plotting or planning to escape. The inmate has Medium A Custody and does not require Maximum or Close Custody.” . . . “the inmate’s assigned Correctional Counselor does not impose the mandatory minimum score factor of 19 for “other life term,” because the classification committee has determined that the inmate does not pose a significant threat to the safety of the public, staff, and inmates, and can be housed within a secure Level 1 facility.

I read this document and the cited parts and my jaw dropped. With Prop 57, my first MEPD has been moved up to sometime this year. Even if this does not apply to you for a few more years it is important to understand the thoughts and actions of CDCR and the BPH.

Let me break it down. If you are a Lifer with a possibility of Parole Hearing, at your first hearing you will be denied. Wait, you say, I have no write-ups (115’s), and I have years of positive programming. Also, I am not a risk to anyone. The BPH does not care. Read those sections and reasons again. “The most favorable outcome” is a three year denial. The BPH typically grants this length to positive, continually programming inmates and inmates who pose low risk to the public, staff and other inmates. So, you can be an inmate with no 115s, not get into or cause trouble, be a low safety risk of violence, did your time, and you will still get the most favorable, typical denial of three years? You got it!

Think about it this way. If Mother Theresa was locked up and went to board after serving her term, she would not be released at her first hearing. She may have a job, housing, support networks and we can find a job. We return back to society based not on adjusted base terms, but based upon our low risks for violence and recidivism. We all have housing, support networks and we can find a job. We don’t need to be released at age 60 or 65, we need to be released at our first BPH.

I challenge the BPH to release some additional statistics. I will bet that in the past 5, 10, or 20 years no Lifer or maybe 1 per year at best, has ever gone to their first BPH and been released. I will also bet that all Lifers at their first BPH will receive a “typical” denial of three years or more.

Great!, So now what? That’s easy. As Lifers, we all need a class-action lawsuit to demand that BPH and CDCR release the truth and that we receive the raw data. I’m tired of the promises, “Be good, and you’ll get out at Board.” Come on, if Mother Theresa would be denied, then what hope do I have at my first BPH? I have no hope at my first hearing despite all I’ve done. Granted, I believed my lawyers, that if a guy like me was sent to prison, then I would get out at my first Board Hearing. It is time we as Lifers stand up and demand our rights for the fair opportunity to return back to society based not on adjusted base terms, but based upon our low risks for violence and recidivism. We all have housing, support networks and we can find a job. We don’t need to be released at age 60 or 65, we need to be released at our first BPH.

///

A PROUD SUPPORTER OF SJRA ADVOCATE

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L.W.O.P. ACTIVITY GROUP
(L)ifers (W)ith (O)ptimistic (P)rogress

Introduction:

L.W.O.P. ACTIVITY GROUP

The L.W.O.P. Group is also an acronym for the title “Lifers With Optimistic Progress.” It was founded by a California State Prisoner serving a Life Without Parole (LWOP) sentence. It’s commencement was proposed exclusively for those serving a sentence of Life Without Parole. Any other lifer may be allowed to become a participant upon a majority vote by the LWOPs.

The operation of the L.W.O.P. Group commenced on April 03, 2015, as the only known LWOP Group in Northern California. No more than fifty (50) participants may be in attendance for each facility, to combine a total of one hundred (100) participants at one time.

Operation:

- The L.W.O.P. Group’s name has become a permanent part of the group’s operation, to include two (2) web-sites.
- The L.W.O.P. Organization was established to provide a voice to an often unheard and/or overlooked segment of the prison population, to incorporate workshops to help and aid LWOP individuals claim their rights, to all available Rehabilitative Tools and Activities. The group consist of one (1) sponsor from Volunteer Educational Program (VEP) Coordinator, to preside over the entire group on both facilities.
- The group is operated by a Steering Committee with specific duties on behalf of the group who have been properly vetted and/or trained to facilitate.
- The Steering Committee consist of a Coordinator; Co-Coordinator; Secretary; Sergeant-At-Arms; Treasurer and an agreeable alternate. The principle Coordinators of the L.W.O.P. Operation are: R. Ross, and K. Moore.
- The L.W.O.P. Group has the ability to create and operate its own workshops on behalf of the L.W.O.P. Group.
- The L.W.O.P. Group is officially deemed as a Self Help Activity Group.

Motto:

The L.W.O.P. Group has a motto of, “Nothing Ventured, Nothing Gained!”

Program Workshop:

The L.W.O.P. Group has created the following workshop programs that are ran and operated solely by L.W.O.P. members, with great production:

Monday: 1430-1600
L.W.O.P. Creative Writing Class

Wednesday: 1430-1600
L.W.O.P. (Core) Activity Group

L.W.O.P. (Core) Activity Group

The Core Group brings all L.W.O.P. Group members together for the purpose of sharing any and all pertinent news governing LWOPs, their living standards or situation, changes in the Legislation, Judicial Courts, Department of Corrections Regulations etc., governing an LWOP. It also allows a member to ask specific questions, or raise significant ideas that may be conducive to the welfare of LWOPs, and the workshop programs. During this meeting, any and all members are to introduce themselves and outline their interest in the L.W.O.P. Group.

L.W.O.P. (Core) Activity Group

Wednesday: 1430-1600 (once a month)

The above workshops have curriculums with its goals to include but not limited to: Character Building, Gain Insight into the failures of one’s life, Opportunities to reinforce Social Skills, and Healing (Treating) the wounds (self-inflicted or otherwise), associated with long-term incarceration. The Support is a Men Helping Men, activity for significant help.

L.W.O.P. Web-Site:

Two (2) different styles of web-sites have been made on behalf of LWOPs and Lifers, the “Second Chance” site is solely for LWOP First Offenders, who have engaged in significant Rehabilitation and exhibited their Accolades. The site’s e-mail, [lwopsecondchance@gmail.com], or see Facebook [lwopsecondchance].

The second site is located at the [liferswithoptimisticprogress.wordpress.com], for both, LWOPs or Lifers, and those who retain more than one conviction, or offense. E-mail at espolsonol@yahoo.com, as this site addresses the Injustice of Disproportionate Sentencing for LWOPs & Lifers.

L.W.O.P.
(L)ifers (W)ith (O)ptimistic (P)rogress

For LWOP Second Chance
* Incorporated *

The Defined Synopsis of (L)ifers (W)ith (O)ptimistic (P)rogress
PER: Merriam-Webster’s Collegiate Dictionary (Tenth Edition), the L.W.O.P. acronym meanin and term is defined as…

Life: The quality that distinguishes a vital and functional being from a dead body.

With: Used as a function word to indicate a participant in an action, transaction, or arrangement.

Optimistic: An inclination to put the most favorable construction upon actions and events or to anticipate the best possible outcome.

Progress: To move forward, to develop to a higher, better, or more advance stage.

In essence, the substance of the L.W.O.P. acronym is to be a vital and functional participant in an action to anticipate the best possible outcome to develop a higher, better or more advance stage...

In such actions as thinking, and participating in the Art of Rehabilitation.

(R. Ross)

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Many of you have heard the wonderful news that there is a resolution regarding aiders and abettors under the felony murder rule and natural and probable consequences doctrine being voted on by the California Legislature right now. Senate Concurrent Resolution 48 (SCR 48) has been passed by the Senate and will be scheduled for a vote by the Assembly sometime toward the end of August or early September, 2017.

You may be asking, “What IS a resolution and what does it have to do with me?” Senate Concurrent Resolution 48 (SCR 48) is a bipartisan resolution (authored by both Democrat Senator Skinner and Republican Senator Anderson) which discusses the felony murder rule and its consequential sentencing. It addresses the principle of law and equity - that a person should be punished for his or her own actions; resolves that reform is needed to limit convictions and sentencing in felony murder cases and aider & abettor matters under the natural and probable consequences doctrine so the law fairly addresses the culpability of the individual; resolves that it is fundamentally unfair and in violation of basic principles of individual criminal culpability to hold one felon liable for the unforeseen results of another felon's action, especially when such conduct was not agreed upon; recognizes that the law declares an aider and abettor as criminally responsible not only for the crime he or she intends, but also for any crime that "naturally and probably" results from his or her intended crime (the result of this doctrine is that all participants in a fistfight can be held liable for first-degree murder when only one defendant commits a murder); notes that the law has been abolished in other states including Hawaii, Kentucky and Michigan and that England, its country of origin, abolished the felony murder rule in 1957; and resolves that there is a resolution regarding aiders and abettors under the felony murder rule and natural and probable consequences doctrine. The natural and probable consequences doctrine is a species of felony murder. An example of this doctrine is when two people enter a store and one of the co-defendants is killed by the police or the victim of the robbery – a "natural and probable" consequence of the crime.

SCR 48 addresses the aiders and abettors under the felony murder rule as well as the natural and probable consequences doctrine. It does not address the "principal in the first degree," most commonly thought of as the perpetrator of the murder. It does not address all aiders and abettors, only those convicted under the felony murder rule or natural and probable consequences doctrine. The natural and probable consequences doctrine is a species of felony murder. An example of this doctrine is when two people enter a store and one of the co-defendants is killed by the police or the victim of the robbery – a "natural and probable" consequence of the crime.

It is important to note that SCR 48 is a resolution, NOT a bill. A resolution is, simply stated, an agreement that changes in the law need to be made. If SCR 48 is passed by both houses, the majority of the legislature has resolved and agreed that these changes need to take place. SCR 48 paves the way for future bills calling for these changes in the law. As Senator Skinner stated at the Senate Public Safety Committee hearing, SCR 48 educates the public and legislators on the felony murder rule and brings to the forefront the opportunity for open discussions in order to pave the way toward change.

The obstacle we face in eliminating the felony murder rule is that there are two kinds: simplicitor (penal code 189) and special circumstances (penal code 190.2) which is the list of 21 felonies that applies to felony murder and which calls for the death penalty or a life without the possibility of parole sentence. Penal Code 189 can be changed or eliminated by statute; however, since penal code 190.2 was put into place by ballot initiative, it needs a 2/3 legislative vote to amend (a much more difficult task). This being said, there is a lot of strategy behind how to change this and SCR 48 is the first step. Legislators, and the public, need to be educated on what the felony murder rule is, the ramifications of the law, who is affected by it and to what degree, before a bill is introduced to change it.

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Are there plans for a bill next year? Yes!! The draft for a bill is being worked on in committee. As it is in the drafting process and there is no concrete language yet, we haven’t the capability of giving specifics on what the bill will entail. There are limitations on a bill simply due to the 190.2 initiative situation, but a work-around is being diligently sought. The prime objective, however, is to make the bill retroactive. It would affect aiders and abettors under the felony murder rule as well as aiders and abettors under the natural and probable consequences doctrine.

These are huge and exciting advances taking place! Much discussion and many minds are hard at work to bring about these changes in the law. So much support has come from you and your family and friends in supporting these efforts and we thank you. Please continue to support SCR 48 to victory!

Joanne Scheer
Felony Murder Elimination Project
P.O. Box 441
Clayton, CA 94517

Without hope, growth is close to impossible.
Senator Gloria Romero

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LEGISLATIVE COUNSEL’S DIGEST

SCR 48, as amended, Skinner. Criminal sentencing. This measure would recognize the need for statutory changes to more equitably sentence offenders in accordance with their involvement in the crime.

Digest Key
Fiscal Committee: no

Bill Text
WHEREAS, According to the Department of Corrections and Rehabilitation (CDCR) Internet Web site, California continues to house inmates in numbers beyond its maximum capacity at an average of 130 percent of capacity. In some institutions, such as Wasco State Prison, the inmate population is at 169.7 percent of capacity, housing well over 2,000 people over the designed maximum capacity. Overpopulation has been the main contributing factor to inhumane and poor living conditions; and

WHEREAS, In California, incarceration of an inmate by CDCR is costing taxpayers $70,836 annually, according to the Legislative Analyst’s Office as of the 2016–17 fiscal year; and

WHEREAS, It is a bedrock principle of the law and of equity that a person should be punished for his or her actions according to his or her own level of individual culpability; reform is needed in California to limit convictions and subsequent sentencing in both felony murder cases and aider and abettor matters prosecuted under “natural and probable consequences” doctrine so that the law of California fairly addresses the culpability of the individual and assists in the reduction of prison overcrowding, which partially results from lengthy sentences which are not commensurate with the culpability of the defendant; and

WHEREAS, In California, defendants in felony murder cases are not judged based on their level of intention or culpability but are sentenced as if they had the intent to kill even if the victim of the underlying felony actually commits the fatal act; and

WHEREAS, In California, a conviction for capital murder results in a death or life without the possibility of parole sentence, a conviction for noncapital first-degree murder results in a sentence of 25 years to life imprisonment; and a sentence for second-degree murder as long as the facts do not indicate a shooting from a vehicle or the victim being a peace officer results in a sentence of 15 years to life; and

WHEREAS, A 17-percent grant rate in 2016 according to CDCR demonstrates that a 25 years to life sentence generally results in few defendants being granted parole; and

WHEREAS, Prosecutors must prove beyond a reasonable doubt that a defendant acted with premeditation and deliberation and expressly intended to kill the victim in order for the defendant to be convicted of first-degree murder; and

WHEREAS, Under the felony-murder rule, criminal liability for a homicide is significantly broadened; and a prosecutor only needs to prove that the defendant is involved in the commission, attempted commission, or flight following the commission or attempted commission of a statutorily enumerated felony (Section 189 of the Penal Code) to secure a first-degree murder conviction even if the defendant did not do the killing, and even if the killing was unintentional, accidental, or negligent; and

WHEREAS, In the case of second-degree felony murder, the prosecutor only has to prove that the defendant intended to commit an “inherently dangerous” felony; and

WHEREAS, Under the felony-murder rule, a defendant does not have to intend to kill anyone, nor commit the homicidal act, to be sentenced to first-degree murder or second-degree murder; and

WHEREAS, It is fundamentally unfair and in violation of basic principles of individual criminal culpability to hold one felon liable for the unforeseen results of another felon’s actions, especially when such conduct was not agreed upon; and

WHEREAS, Criminal liability and sentencing should comport with individual culpability, thereby making conviction under a felony murder theory inconsistent with basic principles of law and equity; and

WHEREAS, In California, to be liable for special circumstance felony murder and sentenced to death or to life without the possibility of parole, pursuant to Section 190.2 of the Penal Code, the prosecution must prove the defendant intended to commit the underlying felony and also prove two additional elements: that the person who did not commit the homicidal act acted as a major participant in the felony and acted with reckless indifference to human life; (see People v. Banks (2015) 61 Cal.4th 788); and

WHEREAS, The California Supreme Court in the Banks decision stated that imposing these two statutory additional requirements—required to impose either life without the possibility of parole or a death sentence—comports with the United States Supreme Court Eighth Amendment jurisprudence proscribing cruel and unusual punishment; and

WHEREAS, In cases not prosecuted under a felony-murder theory, in order to convict a defendant of first-degree murder, a jury has to find beyond a reasonable doubt that a person acted with intentional malice; and

WHEREAS, In California, under the felony-murder rule, the prosecution does not have to prove that a killing was intended and need only prove that a defendant intended to commit the underlying felony or intended to commit an inherently dangerous felony; and

WHEREAS, Both Hawaii and Kentucky eradicated the practice by statute and Michigan abrogated the felony-murder rule through case law; and

WHEREAS, The Michigan Supreme Court noted when it abolished the felony-murder rule, “Whatever reasons can be gleaned from the dubious origin of the felony-murder rule to explain its existence, those reasons no longer exist today. Indeed, most states, including our own, have recognized the harshness and inequity of the rule as is evidenced by the numerous restrictions placed on it. The felony murder doctrine is unnecessary and in many cases unjust in that it violates the basic premise of individual moral culpability upon which our criminal law is based” (People v. Aaron (1980) 299 N.W. 2d 304); and

WHEREAS, The due process clause found in both the Fourteenth and Fifth amendments to the United States Constitution requires proof beyond a reasonable doubt of every fact necessary to constitute the crime in order to convict the accused. This should hold true for felony murder cases, but the doctrine of felony murder circumvents this important principle and allows for conviction and punishment to be the same as for those who committed a murder with malice aforethought; and

WHEREAS, Felony murder was conceived in England in the 1700s and brought to the United States in the early 1800s. After much criticism from the courts in England due to the disproportionality of sentencing individuals who had no malice or intent to kill the same as perpetrators of the fatal act, Parliament abolished the felony-murder rule in 1957; and

WHEREAS, The United States is one of the only countries in the world that still allows prosecutions under the felony-murder rule; and

WHEREAS, In addition to the disproportionate sentencing that occurs in felony murder cases, there is need for additional reform when addressing aider and abettor liability for other criminal matters, specifically the “natural and probable” consequences doctrine, which also results in greater punishment for lesser culpability; and

WHEREAS, In California, people who commit a felony are not sentenced according to their individual level of culpability, but all participants, even those who indirectly encouraged the commission of a felony, even by words or gestures, may be held to the same degree of culpability as the person who committed the offense (People v. Villa (1957) 156 Cal.App.2d 128); and

WHEREAS, Defendants charged and convicted under felony murder are subject to the same sentencing as the actual perpetrator of the murder, even if their actual (Page 7)
involvement was limited to a lesser crime, judges and jurors are not allowed to appor-
tion degrees of culpability. Good public pol-
icy dictates that after conviction, judges or jurors should be given this opportunity; similar to the method currently employed for serious felonies called “strike hearings.” In this way a defendant may receive a more appropriate sentence for the crime committed; and

WHEREAS, An aider and abettor is criminally responsible not only for the crime he or she intends, but also for any crime that “naturally and probably” results from his or her intended crime; the result of this doctrine is that all participants in a fistfight can be held liable for first-degree murder when only one defendant commits a murder, notwithstanding the fact that the other participants did not know the defendant was armed, the killing occurred after the fistfight ended, and the participants did not aid or abet the shooting (People v. Medina (2009) 46 Cal.4th 913); resulting in individuals lacking the mens rea and culpability for murder being punished as if they were the ones who committed the fatal act; and

WHEREAS, As stated by Justice Goodwin Liu in People v. Cruz-Santos, this leads to overbroad application: “At its essence, the natural and probable consequences doctrine imposes liability on the basis of negligence layered on top of a defendant’s culpability for aiding and abetting a target offense. (See People v. Chiu, (2014) 59 Cal.4th 155 at p. 164 [“because the nontarget offense is unin-
tended, the mens rea of the aider and abettor with respect to that offense is irrelevant and culpability is imposed simply because a reason-
able person could have foreseen the com-
mission of the nontarget crime.”].) Although reasonable foreseeability can be a legitimate basis for assigning culpability, courts and commentaries have long observed that the concept is susceptible to overbroad application. (See Thing v. La Chusa (1989) 48 Cal.3d 644, 669 [“there are clear judicial days on which a court can foresee forever”]; Goldberg

Worse Than Purgatory

By Dortell Williams

According to Roman Catholic doctrine, purga-
tory is a middle place. A place of punishment where the souls of those who die in God’s grace may atone for past offenses and become fit for heaven. There is hope in purgatory, a place of grace and redemption.

Not so in man’s land, or at least in the California prison system. In the Golden State those sentenced to life without the possibility of parole are granted no grace, no redemption.

Now if this sounds contradictory to purgatorial doctrine, that’s because it is.

In contrast, a redeemed murderer could find much hope in Oregon and other American states, and in just about every European country: Great Britain, Germany, Sweden, to name a few. In Oregon, prisoners must complete 20-
years for aggravated murder. Following this mandatory period, the murderer is scheduled for a “rehabilitation hearing” to consider his prison conduct and to review any efforts at rehabilitation. If the Oregon prisoner has dem-
onstrated that he is redeemable, his sentence is reduced to life with the possibility of parole. He must then work toward proving that he has completely transformed himself.

In European countries such as Germany, the murderer is given the tools, assistance and guidance to redeem himself. Nicholas Turner, president of the Vera Institute, says “In Ger-
many we saw what a system with the goal of rehabilitation looks like in action.” He de-
scribes the prison setting: “The men serving time wore their own clothing, not prison uniforms . . . They lived one person per cell. Each cell was bright with natural light, decorated with personalized items such as wall hangings, plants, family photos and colorful linens brought from home. Each cell also had its own bathroom separate from the sleeping area and a phone to call home with. The men had access to communal kitchens, with utensils a regular kitchen would have (in other words, knives) where they could cook fresh food purchased with wages earned in vocational programs.”

In Germany, prisoners are treated humanely, and thus they respond civilly.

Germany’s approach is significant because if prisoners can retain the cultural set-
tings of the outside world from which they come from, transitioning back to it becomes much easier. German prisoners never become institutionalized. In contrast, many rightfully question how we can actually rehabilitate hu-
man beings in a cage.

Furthermore, by allowing prisoners the privacy and solitude they need, they can better focus on themselves without the distraction of a cell partner — incredibly inhumane and cramped space. And of course, ready access to a phone helps prisoners maintain those impor-
tant family connections that are critical when they are released. And access to kitchen uten-
sils such as knives prevents the culture of vio-

Germany’s success rate is almost double that of California’s. With just over 50 per-
cent of California’s prisoners returning to prison within three years, California has a long way to go. Ironically, California’s lifer popula-
tion returns to prison at just under 1 percent as a result of motivated inner-work and maturity. Those sentenced to live without the possibility of parole for whom rare circumstances have permitted release have also demonstrated the same rate of success. Yet, on the rare occasion German prisoners have failed, it is the prison officials that ask, “What did we do wrong?”

In Germany and other European coun-
tries, there is healing, resocialization and an end to purgatory, as morality demands.

Sources:
Neath, Scarlet, “Watch 60 Minutes on Sunday to See What We Learned by Touring German Prisons,” March 31, 2016

Webster’s Collegiate Dictionary, p. 879 (Purgatory)

Turner, Nicholas and Travis, Jeremy, “What We Learned From German Prisons,” The New York Times, August 6, 2015
Note from Barb  Aug 21, 2017

Dear Loved Ones,

So many things going on at this time, it’s hard to get everything into our newsletter. Briefly, to catch up on some of the bills, here is the progress on bills shown in the last issue of Advocate.

SB620-Allows a court, in the interest of justice, to strike or dismiss a firearm enhancement / This bill was read the 3rd time, refused passage, on 07/10/17. (Ayes-31, Noes-34), a motion made to reconsider by Assemblymember Weber.

SB180-Limits the current three year enhancement for a prior conviction related to the sale or possession for sale of specified controlled substances to convictions for controlled substance offenses where a minor was used or employed in the commission of the offense. This bill was read the 2nd time, ordered to 3rd reading on 06/28/17.

SB355-This bill will make reimbursement for counsel and other legal assistance applicable only in cases where the defendant is convicted of a felony or a misdemeanor. Passed, approved by Gov, chaptered by Secretary of State. On July 10, 2017.

SB393-Create a process for a person to petition a court to seal and destroy records of an arrest that did not result in a conviction. Read second time and amended. Re-referred to Com. on APPR. on 07/17/17.

SB421-This bill would recast the CA Sex Offender Registry scheme to a 3-tiered registration system for periods of 10 yrs, 20 yrs, or life for a conviction in adult court of specified sex offenses. Assembly Appropriations Committee will be hearing the Tiered Registry bill—Senate Bill 421—on August 23. Supporters have been urged to call all members of Appropriations.

Now, before I close this issue, I want to let you know why I am so late getting this issue out.

I was driving for the first time an ATV (quad), as some call it. My sweetheart was driving another, and I was following him, on a level dirt road, when he crossed a very small wash-out, and I was following him. He went over it just fine, but my tire got hung in the wash-out, and the quad tipped over on its side. I was still hanging on for dear life. My sweetie said I bounced about 18-24 inches and slammed back down on the seat. I was hurt pretty bad, fracturing my lower lumbar (L4), and tearing ligaments in my left hip area. It was a nightmare, of pain, but to cut the story short because of space, I was in the hospital for 3 days, the nursing home for about 20 days, and I’m still recovering, but coming along very well. Don’t worry about me, as I don’t believe I will return to the quad...too much pain for too long of time...But I’m Grateful to be alive and not paralyzed and I’m not in a wheelchair or walker anymore, and my walking has improved greatly. I’m doing some physical therapy, and have to make sure I do the exercise I need so that I can be fully and completely healed, by the Grace of God. In the meantime, I get on the computer to get the newsletter out, and hope to be at Public Hearing for CDCR new regulations on Prop 57, Sept 1, 2017. God is good!......

If you want to Volunteer, Contact:
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