

FAMILY VISITING REGS: CLEAR AS MUD

In the waning days of 2017, on December 29 of last year, CDCR finally released the proposed changes in regulations governing family visiting, a change avidly anticipated by lifers and families, who recently saw those visits restored after more than 2 decades of denial. And while the proposed regs do change the limitations on who will be allowed to participate in family visiting, as initially presented, the language is confusing, cloudy and creates almost as many questions as answers.

Major concerns under the old regulations were the permanent screening out of family visits of those prisoners:

- With a minor victim
- With old domestic violence allegations/convictions
- With distribution charges garnered while in custody

And while the new regs address, in one fashion or another, address these issues, the vague and obscurely worded changes have provided few clear answers. In summary the news regs provide the following, in relation to the concerns listed above:

- Prisoners convicted when they were a minor of an offense where the victim was a minor or a family member must be free of any serious rules violations for 5 years and have documented participation in self-help groups
- Prisoners convicted they were an adult of an offense where the victim was a minor or family member must be free of any serious rules violations for 10 years and have documented participation in self-help groups
- Prisoners convicted of distribution of a controlled substance must be free of any similar charge for 12 months.

Additionally, the proposed regs place the decision on allowing individual inmates to participate in family visiting not in the hands of an individual, but with the classification committee, after review of the inmate's file and interview with the inmate. And the decision is appealable, via the 602 process. The proposed changes, however, still prohibit sex offenders and condemned inmates from receiving family visits.

The regs are currently in the public comment phase, with the department taking comments/suggestions and complaints from the public until Feb. 22, 2018, when a public hearing on the proposed regs will be held in Sacramento. For those who would like to comment, mail your two-cents' worth to: CDCR, Regulation and Policy Management Branch, P.O. Box 942883, Sacramento, CA 94283.

As noted at the beginning, the wording and explanation offered in the regs is less than stellar. There are several areas of contention, not the least of which is the definition of 'minor.' CDCR is currently employing the straight legal definition of minor, someone under 18 years of age at the time of his/her crime.

The wording in the regs, referencing a victim who was a 'family member,' provides relief for those with old domestic violence convictions/allegations. The difference in the clean time requirement for those who were minors at the time of their crime and those who were adults reflects the department's concession that youth offenders are more readily rehabilitated than those committing crimes at older ages.

And some have questioned the department's use of the strict legal definition of a minor as being under 18 years of age, given the changes and considerations given to youth offenders. If, under the series of YOPH laws enacted, those under the age of 26 are less culpable than their 'adult' counterparts, why should this lesser culpability not continue to consideration for family visits? Perhaps an area to address in public comments on the regs.

The 12-month clean time requirement for those with distribution charges caught while in prison provides a path for those inmates, now permanently barred from family visiting, to once again participate in this important privilege. Many have asked when the 'clean' time for being free of RVRs begins; after the last RVR, or from the date of the adoption of the regs, still some weeks off. CDCR's answer to that one is that the clean time begins from the last RVR, not adoption of the regs.

However, questions remain and, yet another new controversy has erupted. A great deal of chatter and drama has sprung up regarding the provisions in the regulations exacting punishment for cell phone, including possible long-term loss of family visiting for those receiving a 'third strike' cell phone write up. While many maintain the new regs outline 'new' punishment for cell phone possession, including 'constructive possession,' the fact is that cell phones, rightly or wrongly, have long been considered contraband by CDCR, and in the category of potentially dangerous contraband. So, it should come as no surprise that the department would use every weapon available to it to combat this 'menace,' including loss of privileges, up to and including visiting and family visiting. Is this an over-reaction? Possibly. But that, too, should be no surprise.

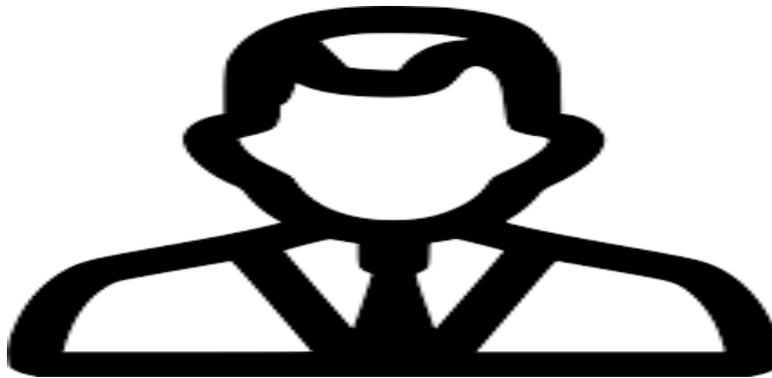
The reality is that CDCR is not going to consider cell phones as a minor violation of rules and, given that the privilege of family visiting is earned via good conduct and positive activity, it follows the

pattern that this privilege would be considered a prime tool in the 'carrot and stick' school of thought. Cell phones have always been a difficult topic, prisoners and families balancing the importance of family contact against the possible penalties of a write up, CDCR regarding the phones as potentially criminogenic tools and always a bit paranoid about any possible threat to the 'safety and security' issue.

Bottom line is this: CDCR will exact a price for any rules violation, and currently cell phone possession is a rules violation. And the department is making no secret of the reason for this, quoting from their own Statement of Reasons, "The inclusion of loss of family visits for being found guilty of possession of dangerous contraband and/or any component or accessory of any cellular telephone or wireless communication device is to encourage an inmate to refrain from participating in the introduction of contraband."

And the regs do differentiate between penalties for introduction of contraband (cell phones in particular) and distribution of controlled substances (drugs). A third conviction for distribution can result in permanent loss of family visits, while a third conviction for cell phone possession carries a hefty, but not permanent, 5-year loss of family visiting.

In all, it pays to remember, like it or not, family visits, which so many fought for so long to restore, are and always have been considered not a right, but an earned privilege. Again, quoting from the new regs: "CDCR reiterates that family visits are a privilege, and not a right afforded to inmates."

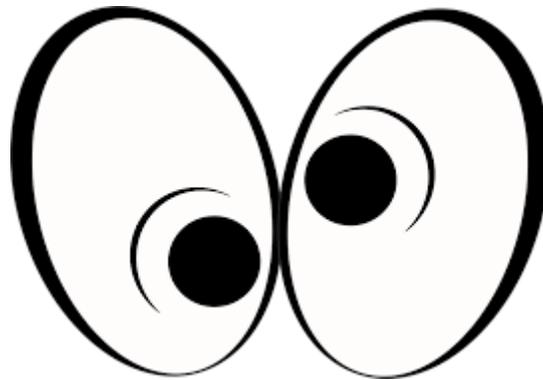


...AND ANOTHER ONE BITES THE DUST

Even with parole commissioner numbers increased to a hefty 15 individuals (hefty numbers-wise, not hefty individuals), Governor Brown is having a hard time keeping those seats filled. Last month we reported on the departure of Commissioner Fritz, replaced by quickly-appointed Dianne Dobbs. And now comes confirmation that another sitting commissioner has left, and, once again, been swiftly replaced.

Troy Taira, a full commissioner for barely a year, resigned in early January, again apparently due to the extensive travel requirements for the position. That was, reportedly, also a major factor in Fritz' resignation, as well as that of former Commissioner Ali Zarrinam a couple of years ago.

To fill Taira's recently vacated seat, Brown tapped David Long, of Tehachapi, Long vice president of prison engagement at Defy Ventures since 2017. Long was also warden at California City Correctional Facility and at Ironwood State Prison from 2008 to 2014 and He was associate warden at Mule Creek State Prison and also served at Chuckawalla Valley State Prison from 1989 to 1995.



CONFUSION STILL REIGNS

In the course of presenting programs to various self-help groups in several prisons over the last few months (Connecting the Dots and The Amends Project), we've noticed there still seems to be considerable confusion on a few issues. There are the most Frequently Asked Questions we've heard over the past 4 months.

SCR 48—was a Senate Concurring Resolution (hence the SCR), which basically articulated the intent of the state Senate and Assembly to do something about convictions under the felony murder rule. Quoting from the language of the resolution, “This measure would recognize the need for statutory changes to more equitably sentence offenders in accordance with their involvement in the crime.... 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”.

Yes, this means the legislature acknowledges change is needed in this sentencing practice, but no, it does not mean that the felony murder rule has changed. After the above statement of concern, and some two dozen ‘whereas’ later, the authors finally get to the point, blunt though it may be: “.... the Legislature recognizes the need for statutory changes to more equitably sentence offenders in accordance with their involvement in the crime.” So, the need for modification of the felony murder law has been officially recognized, and intent to do so expressed—but as yet, no such bill has been introduced.

The net result of SCR 48; we may see a bill amending the felony murder rule this session. Or we may not. But for now, the current sentencing process stands.

AB 1448--Elderly Parole: passed last legislative session and signed into law by the Governor, AB 1448 codified the elderly parole process of the Board of Parole Hearings. However, the language in the bill exempts third strikers from being considered for this process. And to make matters more confusing, because the current BPH elderly parole hearings, promulgated under the state's agreement with the three federal judge panel (3JP), does include third strikers.

In legal matters, federal laws superseded state laws, meaning that so long as the 3JP agreement is in effect, third strikers WILL be included in the elderly parole process. All parties agree, federal oversight of the CDCR seems likely to be in place for some considerable future. Currently the BPH is scheduling elderly parole hearings for third strikers.

Consultation hearings--not so much as hearing as an interview or conversation, these meetings are held roughly six hours before a prisoner's initial parole hearings. Formerly called 'Documentation Hearings,' these consultations, conducted by a Deputy Commissioner, are to give prisoners a first hint as to where they are in their quest for suitability.

Unfortunately, it appears that often other personnel in CDCR, including counselors, don't totally understand the difference between a consultation 'hearing' and a suitability hearing. Perhaps some of this confusion could be alleviated if consultation 'hearings' were called by another name, say simply consultations, or interviews, or conversations. Anything but hearings, because hearings they are not.

So, if you are called for your consultation 'hearing,' don't have an attorney, a parole plan, all your ducks in a row, don't panic. The Deputy Commissioner will review your file, let you know where you need to concentrate your efforts and provide you with suggestions on how to increase your suitability chances. That's it.

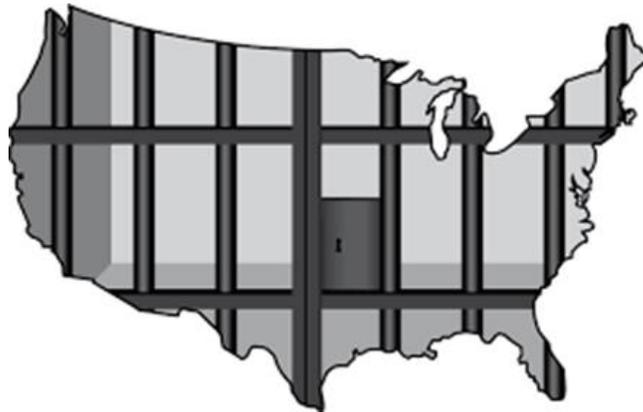
SB 620—which allows judges to waive the firearm enhancement sentencing requirements on specific crimes. However, this bill, passed and signed into law and effective as of January 1, 2018, is not retroactive, applying only to those who are still awaiting sentencing, or resentencing.

Therefore, it will not impact those currently serving prison time, unless individuals are, in some fashion, brought back to court for resentencing. And the passage of this new law is not, in itself, cause for resentencing.

FACTOIDS

According to CDCR stats, the cost to house the average inmate in a state prison for the 2016-2017 fiscal year was \$70,836. Roughly ten years ago, the cost per 'average' inmate was just over \$51,000. And although no definition was ever provided, then or now, for what constitutes an 'average' inmate, CDCR does note as prisoners age, the cost of incarceration increases due to health and medical concerns.

CDCR also notes the official parole grant rate for 2017 was about 17%. This figure is derived from the number of hearings scheduled in relation to the number of grants given.



CALIFORNIA NOW RANKS 18TH IN STATE INCARCERATION RATES

Recently released statistics from the federal Bureau of Justice Statistics show California, despite still being under federal supervision to be sure the prison population remains below a judicially set level, ranks 18th for incarceration rates by state. In 2016 California's incarceration rate, per 100,000 residents was 331, compared with 137 per 100,000 population for Maine (the lowest) and 760 per 100,000 population for Louisiana, the top jailer in the nation.

Overall, the United States still is the prime incarcerator of its citizens in the world, but the Bureau of Justice Statistics reports overall incarceration rates in the country decreased by about 1% in 2016. But in California, the total incarceration numbers went up slightly in 2017, from a total of 127, 291 at the end of January 2016, to 129,092 at the same time in 2017.

In a more recent comparison, CDCR's reports by the Division of Internal Oversight and Research, reported that as of the end of January 2018, the number of total incarcerations persons was 129, 623, an increase over last year of .4%. However, experts note, the incarceration rates published do not reflect those individuals held in custody awaiting sentencing, nor those not in formal custody, but on parole or probation.

The reported figures break down further to a total of 125, 342 housed in institutions within the state, and some 4,821 California inmates housed in Mississippi and Arizona. By gender, some 5,816 women were incarcerated at the end of January, 2018, along with 119, 526.

Currently the facilities housing the most prisoners are SATF, with 5, 637 prisoners; CTF topping out at 5,130 and Wasco, housing 4,974 men. Top of the population list for female institutions was CCWF, where 2,941 women are housed.

And while the federal oversight agreement sets the overall population cap at 137.5% of design capacity, it appears the department reaches that level only by averaging all institutions, as the three most populated prisons named above come it at 164.6%, 154.9% and 166.7% respectively. CCWF stands at 146.8% of capacity.