



NOVEMBER BALLOT ISSUES COULD BRING MAJOR CHANGE

California voters will face a trio of important prison-related initiatives on the November ballot, which could, if passed, mean major changes in prison time for more than 3,000 inmates, remove the threat of state-sponsored murder from nearly 800 others and stiffen penalties for human trafficking and child abuse offenses.

Most far reaching in potential impact is Proposition 36, a proposal to change the Three Strikes sentencing structure. Drafted by attorneys from the NAACP Legal Defense Fund and Stanford Law School, the Three Strikes Reform Act would, according to proponents, restore the original intent of the 3 strikes legislation and make the punishment fit the crime, while saving taxpayers in California up to \$100 million a year. Modification of the definition of who would qualify for a life term on a third strike conviction would mean that only those convicted of a violent/serious third strike could face a life sentence, as opposed to the current structure, wherein virtually any third felony conviction can be enough to send an individual away for a life term.

In addition to narrowing the scope of life terms for a third strike going forward, Prop. 36 would allow those presently serving a third strike life term for non-violent third offenses to petition the court for a recall of sentence, changing their indeterminate life sentence to a determinate term. This recall of sentence provision would affect about 3,000 of the nearly 9,000 prisoners currently serving life under original, 1994 version of Three Strikes. To be sure, the recall of sentence would not be automatic or easy, as prisoners would have to request the court in their county of commitment to review their sentence in light of the (proposed) changes and decide if they qualify for such a sentence modification

The prisoner would have to meet several suitability factors, including a review of the types of crimes involved in any of the three strikes, disciplinary history and record of rehabilitation while in prison and “[A]ny other evidence the court within its discretion, determines to be relevant in deciding whether a new sentence would result in an unreasonable risk of danger to public safety.” All of this sounds much like *deja vu* all over again, a parole hearing by any other name, but this one conducted by a court judge instead of commissioners.

Those serving life for a third, non-violent strike but whose second strike conviction was for rape, murder or child molestation, would not be eligible to petition for recall of sentence.

Early indications are that Prop. 36 currently enjoys slightly favorable prospects among voters, including endorsements by such un-likely prisoner-friendly individuals as the DAs of Los Angeles and Santa Monica counties, who say the proposed changes would rectify excessive punishment meted out under the rather loose wording of the original initiative and make the punishment more equitable. The initiative needs only a simple majority to pass.

Opponents are trotting out the usual fear mantras, saying all third strikers have at least two serious/violent convictions and that current incarnation of Three Strikes has been responsible for a decrease in crime. They offer, however, no statistics or studies to support their conclusions.



Another major shift in California penology would occur should Proposition 34, repeal of the death penalty pass. The somewhat oddly titled “Savings, Accountability and Full Enforcement for California Act” or “SAFE California Act,” would replace the death penalty with a life without the possibility of parole and would apply retroactively.

Jeanne Woodford, former warden of San Quentin, and ardent death penalty foe, signed the proposition’s application letter to the Secretary of State. The preamble to the legalese notes 10 reasons the death penalty should be revoked, ranging from best application of resources (financial and personnel) to the number of innocent people wrongfully executed, the possibility of exacting financial restitution for victims from LWOP-sentenced prisoners.

Because death sentences automatically involve often decades of appeals and court actions, the SAFE California Act maintains an LWOP sentence is swifter justice, “California’s death penalty is an empty promise. Death penalty cases drag on for decades. A sentence of life in prison without the possibility of parole provides faster resolution for grieving families and is a more certain punishment.”

The proposition would remove the word “death” from the statute and repeal Section 190.1 and 190.3 of the Penal Code which lays out the system for death penalty convictions and speaks to special circumstances of a murder conviction as well as large portions of Penal Code Section 190.4 speaking to death penalty trials and adds a paragraph to Section 190 noting:

(f) Every person found guilty of murder and sentenced pursuant to this section shall be required to work within a high security prison as many hours of faithful labor in each day and every day during his or her term of imprisonment as shall be prescribed by the rules and regulations of the Department of Corrections and Rehabilitation, pursuant to section 2700 of the Penal Code. In any case where the prisoner owes a restitution fine or restitution order, the Secretary of the Department of Corrections and Rehabilitation shall deduct money from the wages and trust account deposits of the prisoner and shall transfer those funds to the California Victim Compensation and Government Claims Board according to the rules and regulations of the Department of Corrections and Rehabilitation, pursuant to sections 2085.5 and 2717.8 of the Penal Code.

The proposition would also create a special fund, "SAFE California Fund," to fund investigations into unsolved rapes and murders. The funding appropriation calls for transfer of \$10,000,000 from the state General Fund to the newly created SAFE fund for this fiscal year and each of the next three years, for a total of \$40,000,000. Monies from this fund would be used to increase staffing in homicide and sex offense units and to increase forensic capabilities.

Passage of SAFE California would apply retroactively, with death sentences converted automatically to LWOP and provides the "The state of California shall not carry out any execution following the effective date of this Act," which will be the day following the election.

The third of the November ballot measures, "Californians Against Sexual Exploration," or CASE Act, redefines victims of human trafficking, even if they have been involved in commercial sexual acts, as victims rather than offenders. The proposed initiative amends the evidence code to note:

1161. (a) Evidence that a victim of human trafficking, as defined in Section 236.1 of the Penal Code, has engaged in any commercial sexual act as a result of being a victim of human trafficking is inadmissible to prove the victim's criminal liability for any conduct related to that activity.

(b) Evidence of any sexual history or history of commercial sexual act of a victim of human trafficking, as defined in Section 236.1 of the Penal Code, is inadmissible to attack the credibility or impeach the character of the victim in any civil or criminal proceeding.

Punishment for those convicted of human trafficking is set at 8, 14 or 20 years in prison and fines of up to \$500,000. It also delineates the signs indicated by victims of human trafficking and requires anyone convicted of being a human trafficker to register as a sex offender. The case act aims to remove the stigma of sexual crime convictions from those who are actually victims of sexual predators and human trafficking.

REMINDER

New mailing address for Life Support Alliance and California Lifer News: PO Box 277, Rancho Cordova, Ca. 95741. All mail, subscriptions and donations, questions, comments should be addressed here. When you write us please remember to include your complete contact information, including housing assignment, in the body of your letter as envelopes sometimes become separated from contents. Please note whether you are writing regarding CLN or *Lifer-Line* newsletter.

BPH LOOSES COMMISSIONER, GAINS LEGAL COUNSEL

Just as three new faces appeared in parole commissioner seats last month, which, for an instant, brought the board up to full 12 member compliment, one recently confirmed commissioner swapped sides of the dais, accepting appointment to BPH staff.

Commissioner Howard Moseley, confirmed in June to fulfill the remaining 2 years of his 3 year term at a salary of nearly \$112,000 per year, accepted Governor Brown's appointment to serve as Chief Legal Counsel to the BPH. In doing so, Moseley vacates his commissioner seat behind the board table for a seat to the side, providing legal advice and insight to the entire board. He also gets a bump in salary, to just over \$124,000 per year and a bit more security, as the job of Chief Legal Counsel does not require re-appointment every three years and does not require approval by the Senate.

Moseley, regarded by many as one of the most promising commissioners, previously served at the Office of the Inspector General from 2004 to 2011, and as deputy attorney general at the California Department of Justice from 1996 to 2004. He was an adjunct professor at the University of the Pacific, McGeorge School of Law from 2006 to 2010 and in the U.S. Army from 1989 to 1995.

In performance of his duties as parole commissioner Moseley proved well-grounded in actual law and consideration of court directive. In the long run these same traits may serve well in his new position. Many have long questioned the tone, attitude and advice emanating from the BPH legal division, which often seemed reluctant to embrace court directives and so advise the board. If Moseley can make progress in this regard it will be a step forward for all concerned.

There is no doubt that the face of the parole board has changed over the last 18 months since Brown became governor. Though no one could reasonably accuse the board, individually or as a body, of being soft on crime, liberal or even excessively kind-hearted, it is apparent that the current board is less dominated by retired cops than boards of the recent past. Prisoner advocates have long decried the board's use as a well-paid retirement venue for former sheriffs, police officers and prison guards.

To be sure, today's BPH board still has more than its fair share of these backgrounds (5 of the current 11 members are former sheriff, police, CHP or CCPOA members and four were employed in custody-related fields), but past boards have been 90 to 100% former custodial officers. When Moseley was a sitting commissioner three of the group were attorneys by training.

On the whole, while we regret the loss of Moseley as a commissioner, the potential for his understanding, appreciation and respect for the law may serve lifers and the state well in coming years. Moseley's change of job means one commissioner chair remains open.

THE CHANGING FACE OF THE PAROLE BOARD

While the face behind the bars of California prisons has changed over the years, the face of the parole board has morphed as well. Long a bastion of retirement-age white men of law enforcement background, the present board exhibits substantially more diversity, at least terms of ethnicity and gender, and is even beginning to show signs of allowing other than law ex-law enforcement into the ranks.

Of the present 11 sitting commissioners (three as yet unconfirmed by the Senate and one seat unfilled), three are women, two are attorneys by training and registered Democrats (5) out-number—barely—registered Republicans (4), with two members registering their party affiliation as Decline to State. Two members are under 50 years of age, with only three hitting the 60+ year category. The board also exhibits some ethnic diversity.

In all, the present board, in appearance, comes closer to the hoped-for and statutorily required 'cross section' of the populace than most past boards. Where the panel fails to measure up to the cross-section standard is in background. Currently four are former law enforcement members and an additional five worked previously in law-enforcement related positions, including posts with the CDCR and as parole officers. Five commissioners also served as civil service Deputy Commissioners prior to being appointed as full commissioners.

Not only is the face of the BPH changing, it can do so rapidly. In just the past two-plus years that Life Support Alliance has been monitoring the board, at least 20 individuals have been appointed and served, some albeit briefly, as commissioners. Five have resigned prior to their confirmation hearings (although one, Commissioner Peter LaBahn, was reappointed several months after his resignation), four have failed to win confirmation from either the Senate Rules Committee or full Senate and most recently former Commissioner Howard Moseley, shortly after his confirmation, resigned to accept another position with the BPH.

Additionally, just over a year ago Governor Brown appointed another attorney by training, Jennifer Shaffer, to serve as the BPH Executive Director. Ms. Shaffer has instituted several shifts in practice and policy, which seem to have resonated with most commissioners and has brought considerably more transparency and accountability, and civility, to the BPH. At her confirmation hearing several months ago Ms. Shaffer indicated her interest in remaining in her position to see the fruition of some of her efforts.

REALIGNMENT+RECLASSIFICATION=CONVERSION&CLOSURE

The combined effects of realignment, reducing the numbers of low level offenders headed to state prisons, and the recently implemented reclassification system, enabling many inmates to be housed in lower security level prisons, is causing CDCR's carefully balanced spinning top of prison to prison transfer of inmates to wobble. In order to restore balance and make room for the rapidly increasing numbers of inmates able to be housed in Level II facilities the department has announced a series of yard conversions, prison mission changes and even the closure of aging California Rehabilitation Center at Norco.

In August the first reception center conversions will take place with Facility D at Donovan becoming a Level III SNY yard and Facility F at SATF swapping to a Level II EOP (Extended Out Patient). High Desert reception center yard Facility A convert to a Level III general population in October.

In one of the two big changes Valley State Prison for Women in Chowchilla will do a total 360 in October, becoming an as yet unnamed men's facility, probably a Level II SNY facility. Most of the women prisoners now at VSPW are expected to transfer across the road to California Correctional Women's Facility, also located in Chowchilla. The conversion is expected to be gradual, with the prison holding both men and women for a brief time, the men housed exclusively most likely on A

Facility. The complete conversion is expected to take up to two months, barring unexpected complications.

California Medical Facility in Vacaville, now a Level III, will become Level II security in October and CDCR apparently will use the remaining two months of 2012 to stabilize and finalize these changes, as no other yard changes are slated until the beginning of 2013. In January, 2013 Old Folsom, now a Level III, is expected to become a Level II general population and California Training Facility-North will also drop from Level III SNYs to Level II in February, with Ironwood changing its Level IV SNY Facility A to a Level III SNY in March.

In April Centinela will move Level IV GP Facility C to a Level II GP and Deuel Vocational Institute in Tracy will convert four yards now designated Level III GP to Level II and the remaining three yards, now reception centers, will become Level II GP yards. And in May Alpine Section at San Quentin will move from reception center to Level II general population. It is also reported are that some institutions, including California Men’s Colony in San Luis Obispo and CIM at Chino will be designated as facilities for those prisoners with chronic, but not acute, medical issues with resulting transfer of prisoners from many facilities.

The closure of California Rehabilitation Center (Norco) will be completed by Fiscal Year 2015/16 for an estimated saving of \$160 million annually in operations and an additional savings of more than \$200 million in repairs that won’t be needed to the aging and expensive to repair wooden housing units, many not ADA (American Disability Act) accessible.



CDC TO ‘FACILITATE’ & ‘ENHANCE’ VISITING. SERIOUSLY?

One segment of prison life that causes massive angst for both prisoners and family members is visiting and the plethora of issues that arise out of trying to negotiate the ever-changing, absurd and often seemingly nefarious ‘rules’ connected to trying to see your loved one. Now, in what CDC is billing as a move to “resolve the overcrowding issue” as well as help the institutions “facilitate efficient and speedy visitation processing,” the department is rolling out a new, on-line appointment system for visiting.

Visitor Processing Appointment Scheduling System (VPASS), is “the latest application being developed by CDCR. This online application will allow the department to offer tools to the public to enhance their visiting experience,” according to CDCR’s informational handout. This new, statewide

online appointment system will replace any and all online appointment processes now in place at many individual institutions (and often working well).

Although many institutions have implemented visiting appointment systems and several allow on-line appointment access, not every prison in the state has embraced visiting by appointment and many, especially those several prisons in the most remote, out-of-the-way locations, who do not experience the same numbers of visitors as other locations in only slightly-off-the-beaten-path spots, do not require appointments for mainline visiting at all. For those prisons with an existing on-line presence, the simple systems seem to work well.

VPASS, once operational, will be accessed not through email, but via the CDCR website. The department plans to include an "Institutional Banner Message" on the site, to provide up-to-date information on visiting status at the prison. Once on the VPASS page on the CDCR website visitor-hopefuls will be directed through a series of 7 pages or drop-down menus to (hopefully) make an appointment.

In a shameless bit of self-promotion, the handout claims that following a test at Old Folsom "the visiting public heaped praise upon Folsom State Prison for implementing this system." It also claims walk-ins to visiting were decreased "to almost zero in a matter of weeks." The new system will not be universally the same, ceding to individual institutions how far in advance appointments can be set, what times will be held for appointments and how many appointments will be set within each time slot. CDCR does note, however, "[w]hile we are encouraging visitors to use this new online appointment system, CDCR will continue to ensure the current phone appointments and walk-in systems are in place."

Originally slated to roll out at the end of May to coincide with the use of the SOMS computer program for visiting, VPASS was postponed and is now said to be ready to go live statewide in September. Stay tuned.

However, if CDCR is indeed seeking consistency in visiting, processing passes is should be the least of their worries. All visitors would appreciate consistency in such things as acceptable clothing policy, patio privileges, vending machine prices, fully stocked and cleaned restrooms and visitor processing during count time. And as for efficiency, well. CDC is still searching for efficiency at many levels.

SEEKING YOUR INPUT

Life Support Alliance is currently seeking information from inmates on the following issues:

- Performance, good or bad, of state appointed attorneys
- Diagnosis and treatment, or lack of, of Valley Fever
- Attendance at parole hearing of victims or relatives (see following page for survey form)
- Reports on performance of 3 newest commissioners, Montes, Roberts and Zarrinman

Please send your information, including as much detail as possible to LSA, PO Box 277, Rancho Cordova, Ca. 95741.

VNOK HEARING SURVEY

Life Support Alliance is beginning a new survey of lifers' experiences at parole hearings, this time aimed at gathering information on hearings at which victims or their representatives appeared.

Preliminary indications from several sources have produced contradictory findings as to whether or not VNOK (Victims Next of Kin) hearings result in greater rates of denials than hearings at which no victims appear. Since 2008 and the enactment of Marsy's Law victims have had increased prominence in parole hearings and subsequent gubernatorial actions regarding parole grants. While other organizations are looking into the raw numbers in this situation, LSA has another objective in mind. Toward that end we are asking lifers who been through a hearing where victims appeared to complete the survey below.

In the course of this research we may contact individual inmates for further information on their individual experiences. Please feel free to contact LSA with questions or comments and please provide as many details as possible in your responses. LSA, PO Box 277, Rancho Cordova, Ca. 95741

NAME _____ CDC NUMBER _____

HEARING DATE _____ COMMISSIONER _____

DENIED/GRANTED/STIPULATED INITIAL/SUBSEQUENT PRIVATE/STATE ATTORNEY

EVER FOUND SUITABLE/WHEN _____ IF SO, VNOK AT THAT HEARING? _____ REVERSED? _____

VNOK@ANY PREVIOUS HEARING? _____ NUMBER OF VNOK@THIS HEARING _____

ACTUAL RELATIVES OR 'REPRESENTATIVES?' _____

DID VNOK CONTACT GOVERNOR W/LETTERS, PETITIONS? _____

DID DA SIGNIFICANTLY INTERACT WITH VNOK? _____

PLEASE PROVIDE DETAILS OF VNOK AND DA, COMMISSIONER COMMENTS, DID VNOK ADDRESS BOARD OR INMATE, HOW LONG DID VNOK SPEAK?