

# PAROLE MATTERS.

Summer 2007 Introductory Issue

This introductory issue is a hard-hitting first in what will be an on-going effort to educate California prisoners and "lifer" inmates in parole and prison



## Parole Matters.

**This publication has one goal in mind: Educate and empower life inmates in going home as soon as possible.**

The lessons and resources of Parole Matters come from many hard fought lessons in life and law. This publication cuts through the jargon and distortions to bring life inmates the truth about parole and the law. Whether dealing with the Board, the courts or CDCR, Parole Matters will help. California's life inmates are not alone. There is much to learn about navigating through the parole process. And you will find it here. Read on.

Parole Matters is published by Charles Carbone, Esq.  
Charles is a parole and prisoner rights attorney for California prisoners.

# HOW TO WIN BEFORE THE PAROLE BOARD.

While many inmates serving life sentences are familiar with the law surrounding parole issues, far too many are unaware of the political dimensions of the Board of Parole Hearings' consideration of a finding of parole suitability.

First off, let's deal with the legal landscape for a moment because it bears upon the reasoning of the Board of Parole Hearings. Undoubtedly, the California Supreme Court decision of Dannenberg ((2005) 34 Cal.4th 1061) is having a nightmarish effect on parole hearings. First, Dannenberg ruled that the Board does not have to engage in a "proportionality" test when reviewing whether a murder was committed with "callous disregard." The Board had been for years characterizing every murder before it as being committed with "callous disregard" in order to avoid the statutory mandate that the Board "shall normally" release any prisoner who is suitable and has done sufficient time under the sentencing matrix of 15 CCR §2282 et seq. Now, under Dannenberg, the Board does not have to characterize every crime as being committed with "callous disregard" to permit the Board's disregard for the mandate of Penal Code § 3041. The Board can use the label "callous disregard" without having to compare the crime with a similar murder. Basically, the Board can slap the "callous disregard" label on the crime without reference to any other crime. Second, the Board doesn't need this label to establish an exception to applying the sentencing matrix because Dannenberg now permits the Board to rely on the commitment offense alone to conclude that the crime demonstrates that the lifer continues to pose an unreasonable risk to society. In translation, Dannenberg gives the Board a "blank check" to rely on every lifer's crime of murder (or attempt or kidnapping) to conclude that the lifer will always pose an unreasonable risk for future violence, and accordingly never reach a finding of a suitability.

Now that lifers understand that the Board is empowered by Dannenberg (we should call it jet fuel) to have nearly unfettered discretion to deny parole, let's turn to what a lifer can actually do to best prepare themselves for a chance at parole.

There are unwritten rules and considerations of the panel that lifer's should know. Some are obvious while others are not. Here they are in no particular order: (1) Every time a lifer gets a 115, s/he basically adds five years to any possibility of getting a date out of the Board. Incurring a 115 can be a serious set back in getting a date, perhaps the biggest one. (2) Of particular importance to SHU inmates, the Board has an unwritten rule that it will not parole a lifer from the SHU. In fact, the panel and Governor Schwarzenegger may even require former SHU inmates debrief as a condition of a getting a parole date despite being deemed inactive for over a decade in several cases. (3) A lifer must express consistent and sincere remorse for their offense and priors despite, in many instances, the lifer being innocent or not as involved in the crime as deemed by the trial court. Basically, a lifer has to throw themselves into the pit of self-deprecation and express serious remorse despite their role in the crime. (4) One vocation is not enough for lifers. The Board often times requires several -- as in 3 or 4 -- vocations as a condition of parole. This is especially troubling given that many prisons have stopped offering these programs. (5) Lifers must have several stable residences available to

## If done well, going before the Board is an empowering experience with results

them upon release. (6) Lifers must have no less than 2 firm job offers awaiting them, preferably in the trade or vocation in which they are trained. (7) A lifer must have a GED at bare minimum. It is preferred that the lifer has an AA degree or BA/BS degree. (8) The lifer must be forthcoming, articulate, and perhaps even poignant, at their appearance before the panel. (9) The lifer must not have the victim's family interested in opposing their release, or worse, have the victim's family appear at the hearing. (10) The District Attorney's office should not oppose the lifer's release. Remember these are the "perfect world" conditions that may or may not be available.

Even when each of these conditions are met, there is absolutely no guarantee that the lifer will get a date given the often ill-reasoned opinions of the panel. At times, the logic of panel decisions is incomprehensible. The panel will take dates previously given without a change in a lifer's status. And the panel will give dates to lifers who are seriously less-deserving than others.

Given these issues, here are a few recommendations for lifers to bear in mind when they are up for parole consideration. (1) The parole board is not a confessional booth. You are not required to admit anything. If you didn't do the crime, or didn't do the crime as described, don't admit to it. Be consistent. Don't change your story. Go with the truth from the first to the last appearance. (2) Remember that the Board asks two types of questions - ones in which they just want the bare bones facts and don't want you to ramble on; and two, more open ended questions where you are permitted and encouraged to reveal more about yourself and where you should feel free to give longer responses. (3) Seriously consider not going with the BPH appointed attorney. Appointed attorneys, even if they care, are grossly underpaid, and accordingly can give your case very limited attention. If possible, consider hiring a private attorney who is well-versed in parole matters. This can make a big difference. (4) Make certain you are free of 115's. (5) Obtain laudable chronos from correctional staff without becoming a "chronos chaser." (6) Get a GED or higher degree even if you have to do it from a correspondence course. (7) Get a vocation -- make it several. (8) Try to have regular contact with your family even if it's via letters to prove "stable" and "healthy" social relationships. Family also can be critical in finding housing and job offers. (9) Attempt to secure support for release from the victim's family without waking a "sleeping giant" if the family hasn't appeared at past hearings. A letter of apology sent to the family via the District Attorney can be effective. (10) Have friends and family lobby the DA to back-off on opposition to your parole. (11) Bear in mind that you may have to lobby the Governor too should the Board give you a date. (12) Show initiative by pursuing your own "rehabilitation" through book reports, classes, or self-study despite the lack of programs offered at your prison. And (13) Be realistic. You are not going to get a date the first few times you appear before the panel especially if you have recent 115s.

The Board Commissioners receive little or no training on relevant court decisions. This is true. So it is incumbent upon you and your attorney to educate the panel members without alienating them.

# FILING A WRIT

**By Charles Carbone, Esq.**

It still amazes me how few prisoners are aware of the process involved in filing a state petition of writ of habeas corpus. This lawsuit can be used to advance claims concerning a parole denial or a condition of an inmate's imprisonment. Here are some legal pointers to follow: (1) You must use a MC-275 form. This form can be downloaded by a family member at [www.courtinfo.ca.gov/forms/](http://www.courtinfo.ca.gov/forms/). Using this form will assure that your Writ will be accepted by the court's clerk office. (2) Most superior courts only require that you file one copy of the Writ, even though it's always a good idea to also send the court a "Conform Copy" that the court can file stamp as proof of your Writ being filed. The court will mail the Conform Copy back to you in a SASE that you include. (3) Your basic requirement in filing a Writ is to state a "prima facia" claim. This means that you must prove that your claim has a 51% chance of success. Prisoners' two biggest mistakes include: (a) throwing in any and every conceivable claim. This "kitchen sink" approach usually fails. Judges will conclude that you are masking the fact that your case is weak by including too many claims. And (b) prisoners try to mimic a lawyer's language by relying on legalese rather than writing in plain English. Don't try to sound like a third rate lawyer by using words like "arguendo" or "notwithstanding." This wordy legalese turns off judges who know that prisoners are not lawyers. State your claim in simple, straight-forward language.

If you are broke or have little money, strongly consider filing with your Writ a Request for Appointment of Counsel and Declaration of Indigency. This document should include a request for a lawyer should you receive an "Order to Show Cause" -- meaning that the court will hear your case. Cite California Rules of Court Rule 4.551(c)(2) which will clue the judge into the fact that you are asking for the court to appoint you a lawyer free-of-charge if the court will hear your case. This will ensure that you get a lawyer on your case. And finally, remember that unless you are facing a truly life-threatening situation, you must exhaust your administrative remedies before you file a Writ.

## Appealing Your Conviction WHAT IS "STAY AND ABEY" AND HOW TO USE IT TO CHALLENGE YOUR CONVIC- TION

**By Charles Carbone, Esq.**

All too often, prisoners are caught in the cross-hairs of filing a federal Writ that includes "unexhausted" claims. Remember that prisoners must first present any claim they wish to have heard in federal court in the California Supreme Court in accord with the Anti-terrorism and Effective Death Penalty Act or AEDPA. Due to this law, prisoners often file a federal Writ that includes claims that were not ruled on and denied by the California Supreme Court. When this happens, invariably, the Attorney General will seek a complete dismissal of a Writ that includes exhausted and unexhausted claims which is often called a "mixed" petition. If a mixed petition is filed, prisoners will face a Motion to Dismiss by the state's Attorney General who will try to get the federal criminal appeal thrown out of court. To prevent this, you'll need to file a motion for a "Stay and Abey." This motion includes a legal argument under -- Rhines v. Weber (2005) 544 U.S. 269 -- that you be permitted to go back to the California Supreme Court to have your unexhausted claims heard while your present federal Petition is stayed or temporarily paused while the state court rules on the unexhausted claims. Once the California Supreme Court denies those claims, you must file notice with the federal court of this; amend your federal Petition to include the now exhausted claims and proceed in litigating your federal Petition. Some things to look out for include efforts by the Attorney General to argue that there is "insufficient cause" for the Stay & Abey. Look at Rhines for the arguments and criteria which apply on whether you have sufficient cause.

Being smart before the Board means knowing when to talk alot and when to give just the bare facts. Knowing this difference is crucial.

The Board is not a confessional booth. It is a legal forum that needs to be addressed in a strategic way which emphasizes your points of suitability. You can and should turn your supposed weaknesses into strengths. The best way to do this is to admit those mistakes and discuss what specifically you have learned from them, and how your life has subsequently changed.

## RECENT PAROLE CASES YOU MUST KNOW ABOUT.

By Charles Carbone, Esq.

Here's a brief discussion of the major parole cases and regulations that have shaped the legal landscape in recent term for life inmates. Bear in mind before digging too deep into these cases or regulations that the law is only one half of the equation. The other half is the facts. Judges and lawyers create the law while you create the facts. Given this dynamic, don't underestimate the importance of good facts. If you are a life inmate, there's only going to be so much that any lawyer can do with the facts you present. Hence, the law is only going to help you so far as good facts – like remaining disciplinary free, etc. – can be applied.

With that said, here's the relevant law for life inmates with plain English explanations. California Penal Code § 3041 states in relevant part that (a) One year prior to the inmate's minimum eligible parole release date a panel of two or more commissioners or deputy commissioners shall again meet with the inmate and *shall normally set a parole release date* as provided in Section 3041.5 . . . . The release date shall be set in a manner that will provide uniform terms for offenses of similar gravity and magnitude in respect to their threat to the public, and that will comply with the sentencing rules that the Judicial Council may issue and any sentencing information relevant to the setting of parole release dates. The board shall establish criteria for the setting of parole release dates and in doing so shall consider the number of victims of the crime for which the inmate was sentenced and other factors in mitigation or aggravation of the crime. . . .(b) *The panel* or the board, sitting en banc, *shall set a release date unless it determines that the gravity of the current convicted offense or offenses, or the timing and gravity of current or past convicted offense or offenses, is such that con-*

*sideration of the public safety requires a more lengthy period of incarceration for this individual, and that a parole date, therefore, cannot be fixed at this meeting. . . .* (Cal. Penal Code § 3041 [emphasis added].) Federal and state courts alike have long held that the mandatory language of Section 3041 gives rise to a cognizable liberty interest in parole. *In re DeLuna* (2005) 126 Cal.App.4th 585, 591, 24 Cal.Rptr.3d 643; *In re Rosenkrantz* (2002) 29 Cal.4th 616, 655, 128 Cal.Rptr.2d 104, 138-39, 59 P.3d 174; *McQuillion v. Duncan* (9th Cir. 2002) 306 F.3d 895, 901-902. At a parole hearing, regulations dictate that:

All relevant, reliable information available to the panel shall be considered in determining suitability for parole. Such information shall include the circumstances of the prisoner's social history; past and present mental state; past criminal history, including involvement in other criminal misconduct which is reliably documented; the base and other commitment offenses, including behavior before, during and after the crime; past and present attitude toward the crime; any conditions of treatment or control, including the use of special conditions under which the prisoner may safely be released to the community; and any other information which bears on the prisoner's suitability for release. Circumstances which taken alone may not firmly establish unsuitability for parole may contribute to a pattern which results in a finding of unsuitability. (Cal. Code Regs., tit. 15, § 2402(b).) The relative importance of any of these factors "is left to the judgment of the panel." (Cal. Code Regs., tit. 15, §§ 2402(c),(d).) For factors of **suitability**, Cal. Code Regs., tit. 15, §§ 2402(d) are set forth in the following criteria: [t]he following circumstances each tend to show that the prisoner **is suitable** for release. . . . (1) No Juvenile Record. The prisoner does not have a record of assaulting others as a juvenile or committing crimes with a potential of personal harm to victims. (2) Stable Social History. The

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prisoner has experienced reasonably stable relationships with others. (3) Signs of

Remorse. The prisoner performed acts which tend to indicate the presence of remorse, such as attempting to repair the damage, seeking help for or relieving suffering of the victim, or indicating that he understands the nature and magnitude of the offense.

(4) Motivation for Crime. The prisoner committed his crime as the result of significant stress in his life, especially if the stress has built over a long period of time.

(5) Battered Woman Syndrome. At the time of the commission of the crime, the prisoner suffered from Battered Woman Syndrome, as defined in section 2000(b), and it appears the criminal behavior was the result of that victimization. (6) Lack of Criminal History. The prisoner lacks any significant history of violent crime. (7) Age. The prisoner's present age reduces the probability of recidivism.

(8) Understanding and Plans for Future. The prisoner has made realistic plans for release or has developed marketable skills that can be put to use upon release.

(9) Institutional Behavior. Institutional activities indicate an enhanced ability to function within the law upon release. Conversely, regulations set forth the factors of **unsuitability**: Pursuant to Section 2402(c), [t]he following circumstances each tend to indicate unsuitability for release. . . .

(1) Commitment Offense. The prisoner committed the offense in an especially heinous, atrocious or cruel manner. (2) Previous Record of Violence. The prisoner on previous occasions inflicted or attempted to inflict serious injury on a victim, particularly if the prisoner demonstrated serious assaultive behavior at an early age. (3) Unstable Social History. The prisoner has a history of unstable or tumultuous relationships with others. (4) Sadistic Sexual Of-

fenses. The prisoner has previously sexually assaulted another in a manner calculated to inflict unusual pain or fear upon the victim.(5) Psychological Factors. The prisoner has a lengthy history of severe mental problems related to the offense.(6) Institutional Behavior. The prisoner has engaged in serious misconduct in prison or jail. (Cal. Code Regs., tit. 15, § 2402(c).) Now that you have read the pertinent regulations, here are a few of the more recent developments in federal and state case law:

In re Andrade, (2006) 46 Cal. Rptr. 3d 317. This is a bad case which holds that a prisoner who served 23 years on a PC 187 (second degree murder) with a sentence of 15 to life, plus 2 years, does not have a due process violation after serving in excess of his sentence. This case also held that an inmate is not required to have two parole plans for USA and Mexico.

Hydrick v. Hunter (2006) 449 F. 3d 978. This case is a good case which holds that prisoners, detainees and parolees all possess a liberty interest in avoiding the unwanted administration of antipsychotic drugs.

Woods v. Marshall, (2006) 2006 WL 1569931 (CA District Court). This is a bad case which ruled that extensive statistical evidence of a decline in parole dates did not negate individualized consideration of a parole denial.

Martin v. Marshall (2006) 431 F. Supp. 2d 1038. This is a good case holding that due process violations occur when an inmate has been denied a constitutionally protected liberty interest and the inmate was denied sufficient procedural protections. These protections include: right to be heard by impartial panel, right to be given reasons underlying the decision, and whether “some evidence” supports parole denial. Also critical in this case was the finding that the Governor’s no parole policy violated the inmate’s right to an im-

partial decision-maker.

Cass v. Woodford (2006) 2006 WL 1304953. This is a good case holding that the inmate has a right to speak and receive reasons for a parole denial which are have bearing to some indicia of reliability.

Quinteros v. Woodford (2006) 419 F. Supp.2d 1209. This is a so-so decision which affirms that inmates have due process rights in the parole scheme and the some evidence standard.

Gambino v. U.S. Parole Com’n (2006) 167 Fed. Appx. 659. This is a bad case which rules that the U.S. Parole Commission can withhold documents from the inmate despite relying upon these documents to deny parole.

In re Scott (2005) 34 Cal. Rptr. 3d 905. This is a good case which holds that reliance on the crime alone without any inference that the crime was more aggravated or violent than minimally necessary to convict may be due process violation.\_

Sass v. Calif. Bd of Prison Terms (2005) 376 F. Supp. 2d 975. This is a good case which holds that the mandatory language in state law gives rise to a federally protected liberty interest under the Due Process Clause of the Fourteenth Amendment.

In re Lowe (2005) 31 Cal. Rptr. 3d 1. This is a bad case which holds that prisoner who pled to second degree murder prior to a grant of executive review by the Governor was not denied due process by grant of an additional layer of parole review. There is, however, one good aspect to this case that requires the Board’s decision to have a “basis in fact” rather than mis-stating the record.

In re DeLuna (2005) 24 Cal. Rptr. 3d 643. This is a good case holding that the Board’s discretion is not without limits.

In re Dannenberg (2005) 104 P.3d 783. This is a bad case holding that there is no liberty interest or requirement to provide a “uniform” parole date and that the gravity of the offense alone is sufficient to deny parole.

Carr v. Perez (2007) 20007 WL 528720. This is a bad case that holds that only 2 commissioners are required to hear a parole matter and that the board can rely on the version of the crime in the counselor’s report.

Milan v. Duncan (2006) 207 Fed. Appx. 876. This is a bad case stating that a recent serious rules violation can justify revocation of a parole grant.

In re Weider (2006) 52 Cal. Rptr. 3d 147. This is a mixed case which holds that that the court can’t re-weigh the evidence of suitability versus unsuitability while also ruling that a crime shouldn’t be characterized as callous when it is not, and that the Board can’t require substance abuse counseling when the inmate has no history of such.

Lewis v. Solis (2005) 2005 WL 3454137. This is a good case which affirmed the liberty interest in parole.

Irons v. CSP-Solano (2005) 358 F. Supp. 2d 936. This is a good case holding that on-going reliance on the crime as the sole reason to deny parole is arbitrary.

Masoner v. State (2004) 2004 WL 1080177. This is a good case ruling that the Board can’t rely on the crime alone as a reason to deny parole.

In re Lawrence (2007) 150 Cal. App. 4th 1511. This is a good case ruling that the crime was not exceptional

because the facts were not beyond that which was required to secure a second degree murder conviction.

In re Honesto (2005) 130 Cal. App. 4th 81. This is a bad case that concluded the crime was severe and exceptional enough to warrant a parole denial on that sole basis.

Irons v. Carey (2007) 979 F. 3d 658. This is a bad case because it affirmed a parole denial based solely on the severity of the crime which the Board characterized as being committed with exceptional callous disregard for human suffering.

In re Roberts (2005) 36 Cal. 4th 575. This is a critical California Supreme Court case which now requires that all parole appeals be filed in the county of commitment (where the crime occurred) instead of where the inmate is located.

In re Burns (2006) 136 Cal. App. 4th 1318. This is a bad case which affirmed the Board's five year denial based on the severity of the murder where there was an "absolute disregard" for the victim.

In re Lozano (2007) 2007 WL 117709. This is a fairly good case which holds that a two year denial was wrong when the inmate could fix his lack of remorse in one year's time.

Sanchez v. Kane (2006) 215 Fed. Appx. 698. This is a good case requiring reversal of the Governor when he relied on facts outside of the record before the Board.

Williams v. Bartlett (2006) 201 Fed. Appx. 501. This is a bad case which held that an unsupportive psyche evaluation is enough to deny parole.

Some times the best strategy is to simply fight it out in the courts. Filing a powerhouse appeal can be an inmate's best chance of going home sooner rather than later.

The overall thrust of these cases tends to show several trends emerging in parole law. (1) The Board and the governor have to get the basic facts right -- at least as those facts are spelled out in the record before the Board. (2) The Board has to draw conclusions based upon factual evidence before them. In other words, if the Board concludes that an inmate has a drug problem or recommends A.A. when the inmate has never shown to have such a problem, this scenario can create an issue on appeal. (3) The Board can not issue multi-year denials when the reason for the denial can be fixed in less than one year. (4) The liberty interest an inmate has in his or her parole is fairly indisputable at this point. (5) If the Board relies solely upon the crime and nothing else to deny an inmate, the crime must have been committed with exceptional callous disregard for human suffering and the Board must be able to articulate why this atypical characterization should apply. (6) An inmate is only required to have one set of parole plans. (7) Truly callous and exceptional crimes can justify a parole denial for seemingly forever. These trends in the law seem to paint a mixed picture of the success of any parole appeal. To maximize one's potential for success on appeal, one should squarely fall within one of these trends.

## WAITING TOO LONG FOR A TRANSCRIPT ??

Delays in obtaining a hearing transcript are rampant by the Board.

Although the Board is required to produce a transcript in a timely manner, nearly every lifer knows that the Board takes its sweet time in producing one. This can be a frustrating experience for inmates who are waiting for the transcript to file an appeal. Having a family member or lawyer contact the Board can speed this process up considerably. I recommend family members call the Board at 916-445-4072 to demand a timely transcript. Or have your lawyer contact the Board to do the same. You'll save months this way.

## WHAT IS THE BOARD'S CURRENT FASCINATION WITH "BOOK REPORTS"?

Many life inmates have told been told by the Board lately to starting doing "book reports" on self-help studies. What gives?

With the further loss of rehabilitative programs in CDCR, the Board is asking inmates to pick up the slack by doing their own rehabilitative work. This means book reports. Read a book -- presumably on a self-help topic -- and write a one page report on what you read and how it applies to your life. Do several (10-20) of these reports. Present these reports at your hearing or to your counselor. And be prepared to talk about what you read. It may sound foolish but it will improve your parole chances.

# MAKING SENSE OF YOUR FIXED SENTENCE.

By Charles Carbone, Esq.

This article will help inmates and their families make sense of the inherently complicated law of sentencing. Here we dissect and explain in plain English the law of how judges and CDCR (California's prisons) set the length of time a prisoner is required to serve. Like I said, it's needlessly complicated, so buckle your seat belt, and let's go.

This labyrinth begins at California Penal Code Sec. 1170 which deals with fixed or **determinate** sentences which require a convicted person to serve a specific length of time. Of course, after a person has served a **determinate** sentence, they still must serve 3-5 years on parole (depending on their sentence), but let's first deal with how a judge calculates the **determinate** sentence.

First, the judge sets the **base** term. The judge is required to calculate a term of a lower, middle, or upper length of time on the most serious of offenses for which the person was convicted. All felonies have a range of sentence lengths such as 2, 4, or 6 years that a convicted person must serve.

When a person enters a plea agreement, the judge selects the **base** term depending on the agreed upon length established in the plea agreement. If the case was decided by a jury, the judge used to set the **base** term by considering whether there were aggravating (meaning facts which made the crime more serious) or mitigating (facts making the crime less serious) circumstances which would incline the judge to favor a lower term. In fact, the judge was required to set the term at the middle tier unless he or she found aggravating or mitigating circumstances warranting an upward or downward departure. In the past such circumstances could include the severity of the crime, the defendant's criminal record, and his or her remorse, among other factors. See Cal. Rules of Court, Rules 4.421, 4.423.)

In early 2007, the U.S. Supreme Court ruled in a case called People v. Cunningham that this sentencing scheme which allowed judges, rather than juries, to set the **base** term was unconstitutional. Because this case is quite new, it is too early to tell the reach of its impact. But we know that many prisoners' cases -- especially those whose **base** term was given an upper term by the judge -- will be subject to re-sentencing and shorter prison

sentences.

Next, comes the **principal** term. This is the **base** sentence plus any enhancements which accompany the conviction. An **enhancement** is extra time added to a sentence due to the nature of the criminal act, such as being armed with a firearm, using a weapon during the crime, or stealing money over a specified amount. **Enhancements** also can be added due to the person having a prior prison record. See CA Penal Code Sec. 667(a).

But prior **enhancements** are treated slightly differently because they apply only once to the conviction (one per crime) instead of to each count of a particular conviction. Plus if there are several applicable **enhancements**, only the one with the longest sentence imposed will apply. There is a small exception to this in situations when a count is enhanced due to use of a firearm and infliction of great bodily harm. In these cases, both **enhancements** will apply.

So, stay with us. Remember, a **Principle Term = Base term + Enhancements**. For example, a second degree robbery can have its **base** term set at the upper term of 5 years, plus an **enhancement** of 1 year for use of a firearm, resulting in a **principle** term of 6 years.

Now, if a prisoner is convicted of several crimes. The other, lesser offenses are called **subordinate** terms. With the exception of some sex crimes and Three Strikes offenses, the judge can impose the **subordinate** terms on a consecutive term (meaning that the prisoner must serve the sentences one after the other) or on a concurrent basis (meaning that all the sentences can be served at the same time). In deciding whether to impose multiple sentences on a consecutive or concurrent basis, the judge takes into consideration whether the crimes were distinct, or any mitigating circumstances. The general rule for **subordinate** terms is that when they run concurrent they are of no concern. When they run consecutive, they will be served at one-third of their usual middle term. Plus any enhancements attached to the **subordinate** terms is that they too are served at one-third of their normal length.

Once you add up the **base** term + **enhancements** + any **subordinate** terms + any **enhancements** (for the subordinate terms) this all equals = the **Aggregate** term. Simply, the **aggregate** is the sum total of all the sentences imposed.

Here's the overall formula:

**Aggregate term = base term + enhancements + subordinate terms (only if served consecutive) + enhancements on the subordinates.**

With all this in mind, there are a few final considerations to bear in mind. One, inmates receive **time credits** for their time served in prison. As a general rule, prisoners who have no conduct issues in prison serve 50% percent of their **aggregate** term. This is true except for those crimes called a "violent felony" in California Penal Code Sec. 667.5(c) and those sentenced under "Three Strikes." For these crimes, prisoners must serve 85% of their **aggregate** term. Prisoners serving time for violent felonies also must serve 85% of their **subordinate** terms.

The prisoner also gets time credit for any time spent in jail before and during their trial at a rate of one-third time off their sentence. For violent felonies, again inmates only get 15% percent of this jail time awaiting or during trial.

For those serving a life sentence, such prisoners must first serve their **aggregate** determinate (fixed) sentence *before* beginning their life sentence. See California Penal Code Sec. 669.

Ok, so now you are either more confused, or hopefully, you have a basic understanding to when a prisoner and loved one is coming home. Making sense of this maze is especially important for those prisoners serving the absurdly long multiple sentences handed out in California. As the old saying goes, knowledge is power. Use it.

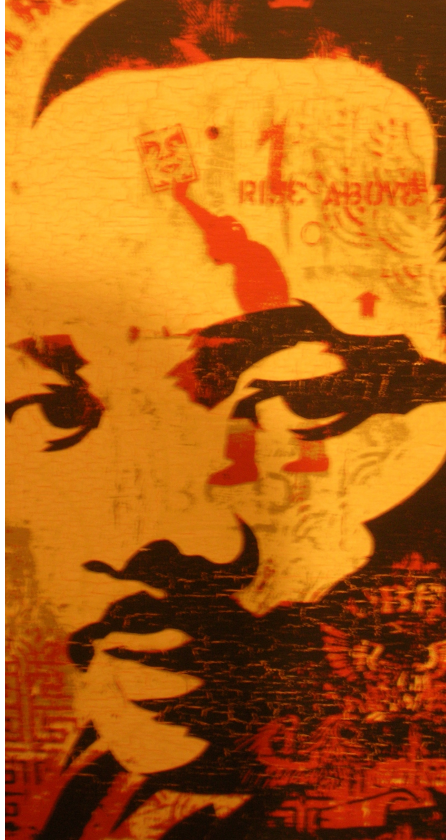
Your probation officer's report that was used at the time of sentencing is a critical document you will want review before going to Board. Plus any comments your judge made at the time of sentencing also may prove to be quite helpful to re-read.

## HOW TO CONTACT A TRUE PRISONER RIGHTS LAWYER

Finding a thoughtful, skilled, and knowledgeable parole lawyer is no easy task. All too often prisoners can get “burned” because of inferior and quite frankly lying attorneys who victimize prisoners and their families. Here are some basic suggestions on what to ask a prospective lawyer:

- + How many parole cases have you handled?
- + What is your record of success?
- + Can I have the names and phone numbers of any past clients?
- + What is your record, if applicable, with parole appeals in the courts?
- + What will be your strategy before the Board?
- + How is your rate calculated?
- + How many attorney client meetings will we have? For how long shall we meet?
- + Will you give my family and me a retainer agreement?

It is also a good idea to have a family member check with the state bar at [www.calbar.org](http://www.calbar.org) to see the attorney’s record of public discipline. These simple steps and questions can save you from some big headaches, and can help ensure that you hire someone worthy.



**Choosing a good parole lawyer is one of the most important decisions a life inmate can make.**

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