

## California

With regards to its sentencing structure, California imposes life sentences on murder convictions, beginning with 25 to life and adding up with enhancements, such as life without parole or the death penalty, depending on the details of the conviction. Other convictions that might earn a life sentence include felony murder and violent crimes. At present, the felony murder rule presents many challenges for prisoners and activists in California, as this law permits the state to charge accomplices with felony murder, even if the individual had no direct role in the loss of life. Much of the organizing our attendees are working on in California revolves around eliminating the felony murder rule and ending life without parole sentences.

California currently has a 15-member parole board, appointed by the governor and approved by the state senate, that skews heavily toward former law enforcement officers. For those individuals eligible for parole, there is a lengthy process of hearings and waiting. First, the individual has a consultation with a parole board commissioner (an appointed position) and a deputy commissioner (not an appointed position). This consultation often occurs years before a formal parole hearing and is meant to serve the function of informing parole-eligible individuals about what they should do to prepare for the parole-hearing process and what they might expect. Then, individuals seeking parole must undergo a psychiatric evaluation administered by the forensic psychology department of the parole board; the scientific validity of this evaluation remains in question. Afterward, the board is presented with a “comprehensive risk assessment,” meant to separate potential parolees into “low,” “medium,” and “high” risk candidates, and the board relies heavily on the “comprehensive risk assessment” score when making their parole decisions. The score and report also draws on a release packet, assembled by the person seeking parole, including programming they have completed while incarcerated and their plans for release, and the individual’s central file from corrections, which includes their conduct in prison. The parole process also includes a hearing between the incarcerated individual and two members of the board, which incarcerated people often describe as a hostile experience. Overall, the parole file and its accompanying score is an official criminalizing narrative using key state documents.

Statutorily, title XV lays out the factors and documents the parole board must consider when making their decision. These factors include the individual’s plans for parole, programming they completed while incarcerated, and the individual’s “insight into the crime.” Here, the board is looking for the individual to demonstrate reflection about their own accountability for the crime they were convicted of. In practice, “lack of insight” is the top reasons individuals are denied parole. Because board members are able to choose how to weigh each of the mandated factors, “insight” is often weighted quite heavily. The requirement to demonstrate “insight into the crime” represents a trap for those incarcerated individuals that maintain their innocence, which is classified as an automatic lack of insight. Accordingly, attorneys will oftentimes try to push their clients into taking responsibility for the crime in order to have a chance at release. Additional factors that would be labeled as a lack of insight by the board include providing

contextual information relating to the crime, such as taking responsibility but also noting intimate partner violence or abusive relationships one was being influenced by at the time of the crime.

In California, as in other states, the governor retains significant power over the criminal punishment system. Governors may choose to uphold the moratorium on the death penalty, but because capital punishment is still legal in California, the governor may also employ it if they wish. Further, given that California sentences individuals to life without parole, the state condemns incarcerated people to death frequently; there is no moratorium on life without the possibility of parole sentences. Appointments to the parole board are highly political, and parole rates vary wildly based on who is governor. Because parole rates rose during former Governor Brown's tenure, individuals are hopeful that rates will continue to rise now that Governor Brown's lieutenant, Gavin Newsom, is in office. Finally, each governor has their own clemency application, which they are able to redesign as they see fit. While the board of parole oversees clemency applications and interviews, ultimately the decision of whether or not to grant clemency is at the full discretion of the governor. Activists in California have questioned whether the parole board should be responsible for overseeing the clemency process, given some of the conflicts that may arise because of this arrangement. For example, if an individual has been applied for parole and maintained their innocence, and therefore has repeatedly been denied parole by the board, then the board may be biased against said individual's clemency application.

Historically, clemency has been a very limited avenue of release, as governors tend to wait until the end of their time in office--or particular religious holidays--to grant clemency. Governor Brown, however, commuted 283 sentences during his last two years in office, 147 of which were life without parole sentences--a completely unprecedented exercise of the power of executive clemency. Thus, activists are hopeful that Governor Newsom will follow suit.

In terms of strategies, our California attendees work hard to put pressure on the governor and legislature to make change around such issues as elimination of the felony murder rule, the end of life without parole sentences, and executive clemency--each of which has the potential to yield significant decarceration in the state. Organizations represented at the convening include the California Coalition for Women's Prisoners, the Felony Murder Elimination Project, FUEL (Families United to End LWOP)

Colby Lenz, of the CCWP, shared some of their strategies. Colby has found it critical to amplify the voices of incarcerated individuals whenever possible. During a Drop LWOP rally at the capitol, the CCWP shared materials created by incarcerated individuals with Governor Brown's office--such as thank you cards and motivational posters--and it later became clear that the governor and his staff remembered these materials with clarity and specificity, indicating that personal touches can also matter a great deal. They have also organized public letter-to-the-governor campaigns and have found that being in coalition with other groups is important at this stage, because the more constituent groups that can be represented by a letter or proposal, the more likely the governor is to see how widespread the concern surrounding the

issue is. In terms of working with incarcerated individuals, the CCWP helps people prepare for their parole hearings, including offering assistance with the parole packet and by bringing in materials as much as possible from the outside to help people inside get organized and trained to support each other in preparing for parole. This might take the form of incarcerated individuals running groups or doing one-on-one intensive support with others when their parole hearings are coming up. Colby, along with the Trans Advocacy Group, has also organized a training for parole board commissioners on trans issues, including presentations from formerly incarcerated trans individuals and role-play using transcripts of actual parole hearings in California, with the goal of educating the board about some of the problems with their current practices.

Joanne Scheer, of the Felony Murder Elimination Project, advocated for making legislative visits at the capitol--meeting either with legislators or their public safety aides. These meetings are useful as a tool of education, teaching legislators what the felony murder rule is, how it is applied, and why they should be invested in repealing it. Scheer also suggests working with like-minded groups in coalition, in order to build a strong supporter base and diversify the experiences and stories an organization has in the mix.

Candace Chavez Wilson, of California, would like fellow attendees to know about a DROP LWOP strategy session in Los Angeles on September 14th and 15th, which she is helping to organize. She will also be co-facilitating a webinar with Asian Americans Advancing Justice and CCWP, scheduled for 10:00 am-12:00 pm on July 15th on commutations, including "how to" and best practices. Please contact her at [ccjay4ever@gmail.com](mailto:ccjay4ever@gmail.com) for more information.

### **Sources**

Chavez Wilson, Candace. Personal Interview. 3 Jun. 2019.

Lenz, Colby. Personal Interview. 16 May 2019.

Scheer, Joanne. Personal Interview. 22 May 2019.