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NOTE: *When putting this material together, we did our best to give you useful and accurate information because we know that people often have trouble getting legal information and our office is too small for us to give specific advice to all individuals 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, please make sure 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. Please also note that this letter is not intended to be legal advice about the facts in your case, but it will give you more information about your rights and what you can do to help yourself.*

PUBLIC BENEFITS FOR PEOPLE WITH PHYSICAL DISABILITIES BEING RELEASED FROM PRISON OR JAIL IN CALIFORNIA (Last Updated September 2017)

If you are preparing to parole and you have a physical impairment, there are a number of steps CDCR is required to take to assist you in applying for disability-related services and benefits as you re-enter society.

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Please let us know if you would like additional information on parole and non-disability-related benefits available to you.

If you let us know which county you will be paroling to we can also send you a list of county-specific parole resources.

Thank you for writing to us. Best of luck on your re-entry process and congratulations on your upcoming release!

Sincerely yours,
Prison Law Office

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I. Social Security and SSI Benefits

You may qualify for federal Social Security benefits if you are:

1. A retiree age 62 or older¹;
2. A disabled individual;
3. A spouse or dependent of an eligible individual; or
4. A survivor of an eligible individual.²

There are different types of Social Security benefits: some are for people who are 62 or older, but there are also types of benefits known as “SSI” and “SSDI”. SSDI is for people of any age who have a disability that impacts their ability to sustain work activities. SSI is for people who have disabilities or are over 65 and also have limited income and resources.

Social Security

Generally, you cannot get Social Security benefits while you are in prison or jail for more than thirty days.³ This includes being in Atascadero State Hospital, Patton State Hospital, or any other clinical institution as a result of being classified as a Sexually

¹ Generally, you must have worked and paid Social Security taxes for 10 years to be eligible. An individual who is 65 or older and has not worked for 10 years may qualify for SSI.

² 42 U.S.C. §§ 401-403. Detailed information, application forms, contact information for local offices, and answers to frequently asked questions are available on the Social Security Administration website at www.ssa.gov. Legal Services for Prisoners with Children also publishes a “Manual on SSI/SSDI for Prisoners and Their Advocates,” available for free at www.prisonerswithchildren.org/pubs/ssi.pdf.

³ 42 U.S.C. § 402(x)(1)(A)(i). There is, however, a distinction between SSI and SSDI here. You can continue to receive SSDI benefits while in jail if pending trial. Benefits are only suspended once you have been incarcerated for 30 days after conviction. SSI, on the other hand, is suspended after 30 consecutive days of incarceration regardless of conviction.

Violent Predator (SVP) or a Mentally Disordered Offender (MDO). You also cannot receive “back payments” for time spent in prison or jail.⁴

Although you cannot receive monthly Social Security benefits while you are incarcerated following a conviction, benefits to your spouse or children will continue as long as they remain eligible.⁵

Once you are released, you can request to have your benefits reinstated. You will need to contact the Social Security Administration (“SSA”) and provide a copy of your release documents to initiate the process.⁶

SSI

The rules for SSI are different. If you are receiving SSI, your payments will be suspended while you are in prison. Your payments can be reinstated in the month you are released. You will need to contact the SSA and provide a copy of your release documents before they can act on your request.⁷

However, if your confinement lasts for 12 consecutive months or longer (meaning your benefits are therefore suspended for 12 months or longer), your eligibility for SSI benefits will be terminated and you must file a new application for benefits and be found to be aged, blind, or disabled in order to qualify again.⁸ The same applies to individuals who are released after less than 12 months of incarceration (eg. released after 10 months) but fail to request reinstatement of their benefits within the 12 months.

⁴ 42 U.S.C. § 1382. In addition, under the Social Security Administration’s “fleeing felon” regulations, you cannot collect Social Security benefits if you are considered to be fleeing to avoid prosecution or custody of any court because of a felony conviction or warrant or a condition of probation or parole. Also, if you incurred a disability during the commission of a felony, you will be ineligible for Social Security benefits. 42 U.S.C. § 423(d)(6)(A). If you have been denied benefits or assessed an overpayment because of the “fleeing felon” regulations, you should seek legal assistance from a legal aid organization as soon as possible to see whether you have grounds to appeal under these often complex rules.

⁵ Social Security Administration, *What Prisoners Need To Know* (July 2017) at p. 2, available at <https://www.ssa.gov/pubs/EN-05-10133.pdf>

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Ibid.*

Applying for Social Security and SSI / SSDI Benefits

Individuals who are unable to work because of a serious medical condition that is expected to last at least a year or result in death may be able to receive SSI or SSDI benefits.

If you were not receiving Social Security or SSI / SSDI benefits before you went to prison, or your benefits were terminated, you will need to file a new application for benefits if you think you may be eligible.

You should try to start the application process for any form of benefits before your release. It can take the SSA months to process your application, most taking between 90 to 120 days to be processed. To apply for benefits, individuals must complete application forms which may only be submitted online at the Social Security Administration website (www.ssa.gov) or in person.

How do I apply for Social Security or SSI Benefits? I am incarcerated and do not have access to the Internet.

CDCR has a contract with the Transitional Case Management Program (“TCMP”), which provides case workers to assist incarcerated people in completing their benefits applications.

A TCMP worker should meet with you between 120 to 90 days before your parole date to determine if you are eligible for benefits and begin the application process. If you believe you are entitled to Social Security or SSI Benefits, have not seen the TCMP worker, and you are paroling in 90 days or less, you should submit a Form 22 or Form 1824 (the yellow “Reasonable Accommodation” form) to ask for help applying. Once you are released, you will need to go to your nearest Social Security Office to complete the application process, if approved, to begin to receive benefits. It is important that you remember to bring your release forms when you visit your local Social Security Office. This will help the SSA get your benefits started more quickly.

The Social Security Administration will not accept applications earlier than 90 days before someone paroles, but to maximize the chances of having benefits as soon as you are released, CDCR’s contract with the TCMP requires them to submit the applications 90 days before your scheduled release date. If your social security application is submitted after this date, it may not matter much if you are just having benefits reinstated, as the process to reinstate benefits is quicker than the process for new applications. However, if you are submitting an application for new benefits and the application not completed and submitted by TCMP until significantly later than this 90 day time frame, please let us know.

What if I am paroling soon and have not been able to meet with a TCMP worker?

Unfortunately, it is not uncommon for people to be within weeks of their release date without ever having met with a TCMP worker. You should submit a Form 22 and Form 1824 as soon as possible prior to your release date and ask to be seen by a TCMP worker to apply for benefits. You should also write to our co-counsel, who monitor disability-related parole issues:

**Rosen Bien Galvan & Grunfeld
ATTN: Mr. Tom Nolan, Attorney
P.O. Box 390
San Francisco, CA 94104**

If you are unable to submit an application before being released, you may do so by calling the SSA toll-free at 1-800-772-1213 (TTY: 1-800-325-0778) to schedule an appointment with your local Social Security Office as soon as you are released.

Make sure you write down the name of the person you talk to and the date. If you apply within 60 days of the date of your first phone call to request the application materials, the SSA will treat the first phone call as the date of your application. You can also get information and forms from your local Social Security office. If you are in immediate need of benefits, you should ask for the expedited application process.

If you need help understanding or filling out the forms and cannot find someone to help you, ask for help from the SSA itself. The SSA is required to help when you need help because of a disability.⁹

Do all disabled individuals receive the same amount of benefits?

No. In general, the amount of SSDI or retirement assistance you receive is determined by the amount of money you earned and paid to SSA. The SSI rate varies by state and living situation. Money you are getting from other sources, or in-kind support (for instance, free or reduced cost housing or food) may also reduce the amount of your SSI benefits.

⁹ Section 504 of the Rehabilitation Act.

What if I am denied benefits?

If you are denied benefits, it is important to file an appeal within 60 days (plus 5 days for mailing) of the date of the denial letter. To find a local attorney who will help, contact your local legal aid office, call the State Bar of California Lawyer Referral Services Program at 1-866-442-2529, or visit www.lawhelpcalifornia.org.

II. Transportation Upon and After Release

CDCR is supposed to arrange for people's transportation upon release unless a third party (such as a family member, friend, or other loved one) has arranged to provide transportation and CDCR has approved of this alternate transportation.¹⁰ CDCR staff should meet with you before your release date to arrange transportation. CDCR is required to ensure that people with severe mobility impairments, for example, those who use wheelchairs, are provided wheelchair accessible transportation. However, this sometimes requires the parole staff at your prison coordinating with Amtrak (train) or Greyhound (bus) to ensure that you will be on a vehicle that is accessible. The prison also may arrange a courtesy transfer, which means that a few days prior to your release date, you will be moved to a different CDCR facility that is closer to your final destination. If you are a wheelchair-user, or someone who cannot navigate stairs, and are nearing your release date, you should file a yellow 1824 request for accommodation asking to meet with the staff who arrange transportation upon release.

With respect to transporting individuals *while* on parole, if the Division of Adult Parole Operations ("DAPO") requires that a person attend classes or meetings as a condition of parole, CDCR must help people obtain accessible transportation to participate in those programs. This may mean they help you use the local mass transit or bus services, or it may mean they help you obtain transportation from a local paratransit provider. This requirement to provide assistance accessing transportation does not apply to personal appointments (for example, CDCR is not required to provide wheelchair-accessible transportation for you to visit your family, or a doctor's appointment).

III. Transitional Housing for People on Parole

CDCR's Parole Services Associates are supposed to meet with people with upcoming parole dates in order to assist them with finding programs (including housing if

¹⁰ Cal. Code Regs., Title 15, § 3075.2(e)(1).

needed) that will best aid their re-entry. The Parole Services Associate should begin to meet with people within 120 days of their release date, or even earlier, to review the individuals' eligibility for placement into various programs (some programs are CDCR-funded while others are not). CDCR-funded programs that provide transitional housing include the Specialized Treatment for Optimized Programming (STOP), Parolee Service Center (PSC), Residential Multi-Service Center (RMSC), and the Female Offender Treatment and Employment Program (FOTEP) for women. Additionally, some "non-residential" programs such as Community Based Coalition (CBC) and Day Reporting Centers (DRC) have limited transitional housing available.

If you need assistance locating housing and are eligible for placement into a DAPO- or CDCR-funded program that provides housing, the Parole Services Associate will offer you placement in a program. Typically, this is done through a program called the "STOP" Referral Program, which manages placements into CDCR-funded programs for parolees. Many of these programs are transitional housing programs for individuals with substance abuse histories, but some of them are not. If a STOP program is available and you accept this offer, the Parole Services Associate will initiate a "Direct Placement" referral.

Typically, all paroling individuals must return to the county of their last legal residence prior to their incarceration "unless another county would be in the public's best interests."¹¹

If an accessible program is not available in your county of last legal residence, the Parole Services Associate may make a "Pre-Parole Transfer Investigation Request" to a different county. After a direct placement referral is made, the program will respond whether bed space is available. The Parole Services Associate will then let you know whether you have been accepted into the program and provide you with the name and location of the program.

It is important to note that CDCR-funded programs may not discriminate against people and must accommodate individuals with physical and mental disabilities. If you learn that you have been excluded from a CDCR-funded parole program because of your disability (for instance, lack of wheelchair accessible beds, inability to provide ASL services to deaf prisoners, inability to accommodate blind individuals, etc.), please write to our co-counsel at RBGG immediately.

¹¹ Cal. Pen. Code § 3003.

IV. Disability-Related Problems While On Parole

If you are currently on parole and are experiencing disability-related issues (for example, you are in a wheelchair and are not living in wheelchair accessible transitional housing or you are having difficulty getting dialysis), our co-counsel at Rosen Bien Galvan & Grunfeld (RBGG) may be able to assist you. Please call them collect at:

(415) 433-6830

You can also send a letter to:

**Rosen Bien Galvan & Grunfeld
ATTN: Mr. Tom Nolan, Attorney
P.O. Box 390
San Francisco, CA 94104**