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Public Safety and Fiscal Responsibility

JUNE 2013 *LIFER-LINE* VOL. 4 ISSUE 6

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Justice, opening prison doors—at last?

JUDGES TELL BROWN: START "TODAY"

"Today, we order defendants to immediately take all steps necessary to implement the measures in the Amended Plan, notwithstanding any state or local laws or regulations to the contrary, and, in any event, to reduce the prison population to 137.5% design capacity by December 31, 2013, through the specific measures contained in that plan, through the release of prisoners from the Low-Risk List, or through the substitution of prisoners due to other measures approved by this Court. Failure to take such steps or to report on such steps every two weeks shall constitute an act of contempt."

So ends a 51 page court order issued June 20 by the three federal judges who have, for years now, been engaging in a frustrating run-and-faint play game with California's feisty and obstinate governor on reducing the number of prisoners in California prisons. From beginning to end it is clear from both the language and tone of this directive that the judges have run out of patience with the Governor's delaying tactics and public defiance and intend to get the ball rolling on real population reduction measures, now, not later. Their primary concern, they reiterated, was to ensure reduction of the prison population "to eliminate the deprivation of constitutional liberties in the California prison system."

The most talked about part of any plan for population reduction, the so-called early release, may in fact be a step closer to becoming real, as the judges addressed it head on. Sec. of Corrections Jeff Beard, they noted, "acknowledged in his May 3 press conference that defendants are making some progress in developing a list of low-risk prisoners to release ("the Low-Risk List"), if necessary or desirable." The judges indicated this was not only desirable, but required.

"We now order defendants to use the Low-Risk List to remedy any deficiency in the number of prisoners to be released in order to meet the 137.5% population ceiling by December 31, 2013, if for any reason defendants do not reach that goal under the Amended Plan as implemented. This Court wishes to make it perfectly clear what this means: *Defendants have no excuse for failing to meet the 137.5% requirement on December 31, 2013.* No matter what implementation challenges defendants face, no matter what unexpected misfortunes arise, defendants shall reduce the prison population to 137.5% by December 31, 2013, even if that is achieved solely through the release of prisoners from the Low-Risk List." (Emphasis added.)

The most talked about part of any plan for population reduction, the so-called early release, may in fact be a step closer to becoming real, as the judges addressed it head on. Sec. of Corrections Jeff Beard, they noted, "acknowledged in his May 3 press conference that defendants are making some progress in developing a list of low-risk prisoners to release ("the Low-Risk List"), if necessary or desirable." The judged indicated this was not only desirable, but required.

It is important to note here: no lifers are included on the "Low Risk List." Even if the state begins to implement releases via this list, no lifers will go home as a direct result of any early release.

With Brown's second appeal to the US Supreme Court to lift the 3 judges' authority already filed, the trio themselves carefully and in a very detailed manner showed that they have and continue to go the extra mile to allow the Governor to try and say he did it his way. While still laying out clearly the eventual destination of this journey the judges have made provision for the state to take alternative paths to that destination. "To this end, this Court offers defendants three ways in which they can amend the Amended Plan.

"First, defendants may, if they prefer, revise the expanded good time credit program, so long as defendants' revision results in the release of at least the same number of prisoners as does the expanded measure. This Court will not specify the changes defendants must make in order to meet this requirement. Defendants must inform this Court in a timely manner, however, of their decision to make such changes.

"**Second**, defendants may at their discretion substitute for prisoners covered by any measure or measures in the Amended Plan an equivalent number of prisoners by using the "system to identify prisoners who are unlikely to reoffend or who might otherwise be candidates for early release" (the "Low Risk List"). Brown v. Plata, 131 S. Ct. 1910, 1947 (2011). Although defendants need not obtain prior approval for this substitution, they must inform this Court that they intend to make such substitution.

"**Third**, defendants may, with the prior approval of this Court, substitute any measure or measures on the List for any measure or measures in the Amended Plan, as long as the number of prisoners to be substituted equals or exceeds the number of prisoners to be substituted for and defendants provide this court with incontestable evidence that the substitution of prisoners to be released will be completed by December 31, 2013. The filing or pendency of any such request, or of any appeal from any order of this Court, shall not relieve defendants of their continuing obligation to take forthwith all

steps ordered herein or necessary for the purpose of achieving compliance with this Order and the Amended Plan."

So, Governor, while you may have a menu to choose from, you will, by end of this year, clean your plate.

The court will also require stricter reporting intervals from the state, increasing the number of progress reports required from monthly to every other week in order for the judges to keep close watch on the state's progress in implementing all available remedies to overcrowding and the resulting impact. And the panel took away the Governor's excuse that he must wait for the legislature to act on his proposals.

The judges took note that legislators, led by Senate Pro-Tem Darrell Steinberg (D-Sacramento) have already, according to Steinberg, declared the Governor's plans "dead on arrival." "This court," said the judges, "will not accept such a needless delay."

Brown's excuse that he cannot act due a series of state laws that require the legislature to enact bills giving him authority was offed in a sentence, the judges declaring "We also waive—to the extent necessary to implement the Amended Plan—the State's Administrative Procedures Act and any and all state and local laws and regulations regarding the housing of California prisoners in other states….To the extent that any other state or local laws impede the immediate implementation of the Amended Plan, we waive those as well."

So Brown will no longer be able to hide behind his proclaimed inability to act because of legal restraints…the judges have removed all those excuses. What this means to the contract allowing California to house prisoners out of state, reportedly slated to end at the end of this year, remains to be seen. In fact, much of how this order will be carried out remains to be seen.

Predictably, Brown immediately said he would ask for a stay of the order. But barring that stay, the 3 judges appear to have the last word for now, "Failure to take such steps or to report on such steps every two weeks shall constitute an act of contempt," the judges said.

CDCR HEAD CONFIRMED BUT NO LOVE FEST

Sen. Steinberg 'suggests' Dr. Beard meet with LSA on prison issues

Senate Rules Committee confirmation hearings for gubernatorial appointees, such as recently held for CDCR Secretary Dr. Jeffrey Beard, often feature enough mutual patting on the back to make everyone's arms sore. Senators, who often go to the hearings pretty well knowing how they will vote, sometimes toss soft-ball, for-the-sake-of appearances questions to the confirmee, then hold a unanimous vote. Not so the mid-June confirmation hearing for Beard, appointed last December by Brown to oversee CDCR's realignment rollout Blueprint for the future plan.

While the Secretary was confirmed, by a 3-1-1 vote, with the three Democrats voting to confirm, one Republican voting no and one Republican abstaining, all 5 Senate Rules members asked some real questions of Beard and managed to extract a statement of his goals for CDCR. In addition to facing specific queries from the Senators Beard was also challenged by an array of prison advocates, including Life Support Alliance (LSA), on both his actions (or lack thereof) so far on California prison issues and his plans for specifics in the future. LSA, which had tried for several weeks to meet with

the Secretary-designate on his vision for California corrections, noted in our remarks in opposition to Beard's confirmation that the Secretary had been less-than inclusive and transparent to stakeholders.

Senate Pro-Tem Darrell Steinberg, (D-Sacramento), chairman of the Rules Committee engaged Dr. Beard then and there, securing a commitment from him to meet with LSA in the very near future regarding stakeholder concerns and specific. Sen. Steinberg noted that LSA, through Director and Co-founder Vanessa Nelson-Sloane, is a constant presence and contributor at Senate Hearings, with well researched and documented information. We expect to settle on a meeting date with the Secretary in the next few weeks.

Prior to the hearing LSA, as part of Citizens United for Responsible Budget (CURB), a coalition of several prison reform advocates, submitted to the Senators a list of questions we hoped Beard would answer and situations we hoped he would comment on. As individual Senators were afforded the opportunity to speak with the Secretary on the record, many asked questions that appeared to have been gleaned from our list. It was encouraging to find the Senators engaging Beard in specifics, asking question on such issues as Valley Fever, why all allocated funds for rehabilitation programs have not yet been spent, and how he will measure the success of his tenure at CDCR.

While Beard attempted to answer all questions some responses were more successful than others, and he was honest enough to say, in at least a few cases, he does not yet have the answers. Sen. Steinberg, probing for what he termed "benchmarks" to signal the success of both realignment and the department's Blueprint, extracted a promise for the Secretary for a follow-up hearing or report to the Senate sometime in January to discuss such topics as whether all newly-opened education slots for prisoners (some 8,500) and vocational programs (41 new programs) are fully up and running, if all staff positions are filled and how the Secretary is progressing in attiring his four core principles for CDCR that he outlined for the Senators.

Those principles:

1. Make prisons safer and more orderly by eliminating contraband such as drugs and cell phones
2. Improve programming, especially rehabilitation and substance abuse curriculum,
3. Eliminate federal court oversight of the California system
4. Support realignment as it continues to move forward.

Although the Secretary set out these goals, he gave few specifics on how to meet then, other than his first concern, eliminating contraband drugs and cell phones inside the institutions. Toward that end, Beard noted the recently begun program of random drug testing of prisoners, to establish what he considers a 'base line' of the size of the problems still within the prisons. Among Beard's plans to impact the introduction of such contraband include the use of dogs trained to detect drugs and cell phones, as well as technological aids to detect drugs.

At LSA's coming meeting with the Secretary we will have a phalanx of questions for him regarding lifer-specific issues, hopefully to be reported in the next issue of Lifer-Line.

VALLEY FEVER MOVES ADD TO CONFUSION

Whether it will be 600 or over 8,000, some number of inmates will be leaving two Central Valley prisons due to growing concerns of the numbers of inmates at risk for and even dying from the effects of Valley Fever. While there are calls by some factions to completely shut down both Avenal State Prison and Pleasant Valley State Prison the CDCR maintains only those inmates with a high risk factor for contracting the fungal disease should be transferred by August.

Recent court arguments in San Francisco once again pitted advocates against the state and expert against expert in just how many inmates should be moved and what should be done to cut down on the spread of the airborne fungus. Federal medical receiver J. Clark Kelso said the problem is "severe" and suggested up to 3,200 of the over 8,000 prisoners in the two facilities, located a few miles apart in the state's Central Valley, should be moved to other facilities. Prisoner advocates, including Warren George of the Prison Law office, cited 18 deaths from Valley Fever in just over a year, called for the closure of the two institutions.

Kelso, who called the state's response to the medical concerns "anemic," and demonstrative of the fact that California was not yet ready to resume control of prison health issues, ordered the transfer of the at-risk inmate population "immediately." This complicates an already complex prisoner-housing situation for the Brown administration, locked in a battle with a 3 Judge Federal Panel to implement ways to reach the federally mandated population cap on schedule.

CDCR officials acknowledged the state has known about the medical crisis since 2005 but maintains the problem can be controlled by moving that prisoner cohort known to be especially susceptible to Valley Fever (Filipino, Black and medically at risk or immune suppressed individuals) to other locations, about 600 by August. Officials want to hold off on the transfer of more prisoners from the two locations while they explore ways to prevent the spread of the fungal spores which are present in the soil and become airborne in dust. The possible remedies being considered include dust reduction, preventing dust from entering prison buildings and issuing surgical masks to staff and inmates who request them.

In the meantime, workers from the Federal CDC, (Centers for Disease Control) in Atlanta, Ga. have arrived to study the problem and issue a report. CDCR representatives urged the court to wait until the study is complete and results released before ruling on Kelso's request. In 2008 the state managed to prevent a similar study by the federal CDC. This time, according to statements by CDCR Secretary, Jeffrey Beard at his recent confirmation hearing, the state was 'blindsided' by the federal health agency coming in.

In 2007 the state refused to make recommended modifications at one prison because of the $750,000 price tag. However, the state spends more than $23 million annually to treat inmates hospitalized with valley fever. While Judge Thelton Henderson, one member of the Three Judge Panel which imposed the population cap and last week ordered the Brown Administration to begin implementing population reduction measures, did not immediately rule on the Valley Fever issue, experts expect a ruling before August.

RESTITUTION BILL BACK, BUT DE-FANGED

We reported earlier this year on a bill introduced by then-Assemblywoman Norma Torres (D-Pomona) that would have increased the amount of an inmates' funds withheld for restitution payments from 50% to 80%. That bill was withdrawn, after vehement objections by LSA and other groups. So imagine our surprise to find the bill, AB 423, had been quietly re-introduced and run through the Assembly almost before we could get our track shoes on.

However, the "new" AB 423 is a pale shadow of its nasty self, and poses little additional threat to inmates' trust funds. Torres (now a member of the state Senate, having won a special election in her district in mid-May), watered down the bill considerably. Now, it only calls for the CDCR to electronically track the amount of money assessed as restitution, the amount paid, and the amount still owed by each inmate. The CDCR will use the SOMS computer system or any successor to SOMS to store records of restitution funds and payments. While this language was contained in the original bill, it was by far the least of the bill's original intent.

The original bill would have mandated that 80% of any monies an inmate might earn or receive would be snatched away if he/she owed restitution. We and other groups objected to the bill on many levels, not the least of which was its usury seizure of money, the debilitating and demoralizing effect on prisoners, and the possible negative ramifications of such a move on such inmate dependent activities as canteen and Inmate Welfare Fund. The original bill's 'sponsor,' or the agency that wanted and wrote the bill, was, not surprisingly, a victims' group.

Passage of this new incarnation saves face, to a certain extent, for Torres, who can still placate the victims groups by getting 'their' bill passed. By changing the language, she does not face the

opposition of those organizations, including LSA, who felt commandeering 80% of inmates' funds, which often come from their families, was unnecessary, unfair, and unwise.

No one originally involved in the bill would admit that vengeance might motivate them. The official argument given in support of this bill was the alleged financial woes of the Office of Victims and Survivors Rights and Services (OVSRS). However, at the May Executive Meeting of the Board of Parole Hearings, information was presented that the OVSRS was in pretty good financial health. In fact, over the past year, the office was able to double the stipend paid to victims and representatives to attend hearings! So much for financial woes.

MEDICAL NOTIFICATION FORMS MUST BE UP TO DATE

Life Support Alliance has received many calls in the last few weeks from family members of prisoners seeking help in obtaining information on the health and welfare of their prisoner. And we are happy to help in the few ways we can.

We can provide contact information and suggested actions to families, help them negotiate the labyrinth of CDCR. We cannot make the calls and gain information for them, because we lack legal standing with prisoners and are not listed on any inmate's CDCR Form 7385, Authorization For Release of Information. And therein lies the problem.

While we can put families and friends in contact with the correct authorities and departments to find out about the physical condition of their prisoner and if appropriate treatment is being given, often those same authorities and departments cannot release any substantive information. This is important: no matter how close the relationship, unless that friend or family member is listed on the above referenced form, CDCR or medical personnel cannot legally release any information. For once, CDCR is standing totally in line with the law.

The Health Insurance Portability and Accountability Act (HIPAA) places strict constraints on how and to whom medical information can be released, all with an eye toward protecting the privacy of individuals. Even prisoners. The way this information and privacy is protected is to restrict the dissemination of that information to only those individuals specifically listed by name. This means that a description like "my mom," "my girlfriend," or "my cousin" would be insufficient. Names, contact information, and the scope of information to be released (you can limit it to medical care, mental care or other areas) must be clearly stated.

Recent conundrums involved family members seeking information on prisoners' health and discovering that the authorized "person to receive information" was often no longer in the picture. One family discovered that the designated person was the deceased parent of a long-lost friend of the prisoner, while another found that the authorized person was the ex-wife of a prisoner who had since remarried. The prisoner, in this case, had simply forgotten to change the form to exclude the former spouse and authorize his current wife.

Oops.

So here is our plea to both prisoners and family members. Please update these important medical forms! We can't help you get that important medical information if the wrong person, or worse yet, no one, is listed on the medical release form.

Prisoners, ask your counselor for the form, make sure it is up to date and, while you're at it, send a copy to your contact person. Family and friends, talk to your prisoner about this issue and make sure the appropriate persons are on the form—and if you're that person, get a copy of the form. In spite of being listed form 7385, which is supposed to be in every prisoner's file, sometimes things get 'misplaced.'

We know you'll all find this amazing, but CDCR is often unorganized, unresponsive and just plain obstinate. So having a copy of the form is crucial. If you're trying to get medical information and are told there is no form 7385 on file it helps to be able to tell that recalcitrant staffer (sweetly) "Fine, I'll send you a copy of my copy. What's your FAX number?" Smile.

And one more tip. If family/friend is deeply concerned about the medical or mental condition of a prisoner, if there are reports of injury or serious illness or if there is concern about appropriate medical treatment being received for chronic health issues the first place to call is the "Hot Line" for the medical receiver's office.

That number is 916-691-1404. When you call, you'll get a recording. This is normal. Leave your contact information and information about the prisoner, including: name, CDC number, prison, and a brief description of the problem. Staff at the medical receiver's office will check on the issue and get back to the caller within 24 hours with a report.

What information that the medical staff is able to provide depends entirely on whether Form 7385 has been completed. Need we say more?

SHORT TAKES ON BPH BUSINESS

In another positive and much-needed move, Board of Parole Hearings (BPH) officials announced last month they have begun reviews of denials of parole decisions with an eye toward whether or not these denials comported with the law. At present, the denial decisions that are being reviewed by BPH are selected at random. If any of the reviewed decisions appear to have been made on improper legal grounds, the decisions are being forwarded to the entire parole board for en banc review.

Four of these denial reviews were considered by the entire committee at the June BPH Executive Committee meeting. In three of these cases, the denial was vacated and a new parole hearing was ordered on the next available calendar date. In the last case, the decision was deferred to the next Executive meeting in July. To cut to the chase: this means that three prisoners who were denied parole will get another shot at getting a date because a legal error was made at some point in their hearing. We will continue to report the particulars of this process as soon as we receive more information.

The Board of Parole Hearings has announced it will begin examining the performance of state appointed lifer parole hearing attorneys with an eye to making the attorneys more accountable for their performances and actions. Several months ago, Life Support Alliance (LSA) brought the board a list of four state appointed attorneys that we judged, based on survey results from prisoners, to be among the worst performing. After receiving our list, the board acknowledged that they receive many complaints from inmates regarding problems with state appointed attorneys, including those who fail

to meet with their clients prior to the hearing, fail to show up for the parole hearing, and appear late, among other issues.

The BPH will form a work group to study the problem with an eye to possible referral of repeat "offenders" to the State Bar Association for the most serious of failures, such as failure to appear for the hearing, or "abandonment of client." The State Bar Association may address any possible disciplinary actions, handle appointment of counsel, and ensure the transparency of the process. As a footnote, LSA continues to survey the performance of state attorneys.

No process is yet in place for inmates to formalize complaints. However, as the BPH continues with this project, we will provide information and forms as they become available.

Final settlement of *Gilman v Brown* will not be through summary judgment but through a trial scheduled to begin in late in Sacramento. The trial will purportedly include testimony from parole commissioners and other BPH personnel. A decision is expected by the end of summer.

The BPH has announced that it will soon begin distributing a new form 1045A (Petition to Advance Parole Hearing) to all institutions. The form will also be available on the CDCR website. While the old form gave instructions on what to do in short bursts, usually prefaced with the command "Your (inmate)," the language of the new form appears to be a bit more user-friendly. It is more instructional and less commanding in tone. The BPH hastens to add, however, that the old form will continue to be honored. Most Petitions of Advance are reviewed and decisions reached by BPH commissioners.

DON'T MAIL THOSE TRANSCRIPTS

A reminder to all who are seeking help either from LSA or the Prison Law Office (PLO): please do not send unsolicited transcripts or other documents to us. Our friends all tell us they have the same problem we experience.

Many prisoners, seeking assistance for their situations will send not only letters outlining the problem and details and the transcripts from either their parole hearing or, sometimes, court cases. Please, don't do so.

LSA is not a law firm and cannot offer legal advice. PLO, while a legal firm, does not accept cases based on review of unsolicited transcripts. In both cases, LSA and PLO, are able to request and receive hearing transcripts via email if we require information therein.

Hold onto your documents, some of which are often irreplaceable, and your postage costs. If we need information from you, we'll give you specifics. Not only will this save you money and worry over the whereabouts of your important papers, you'll help us by not adding to the stacks of paper in our offices.