



## **FAD: THE FIX IS IN**

In a process that has had more twists and turns than a Halloween cornfield maze, the latest but not the last chapter of the Board of Parole Hearings' (BPH) battle to legalize the Forensic Assessment Division (FAD) played last week when the Office of Administrative Law (OAL) issued a notice of approval of changes to Title 15.

Although the particulars of the decision have yet to be made available, late on Oct. 27 the OAL posted the notice of approval on their website. Although Life Support Alliance (LSA) finds this event both disappointing and highly specious, it is not surprising, following our September discovery of a furtive and questionable agreement by the OAL to allow the BPH more time to respond.

Once again, a brief timeline of the life and times of the FAD:

2008; BPH forms the FAD to deal with backlog of lifer psychological evaluations. The FAD begins using a series of four highly questionable tests for this purpose.

October, 2010; LSA issues the first results of a survey of lifers, reporting approximately a 30% increase in categorizations of lifers as "high risk" since the implementation of the FAD and their quartet of tests.

November, 2010: the FAD and psychological evaluations is deemed an underground regulation by the OAL following a challenge by prisoner Michael Brodhiem.

December 2010: the BPH offers up the first version of changes to Title 15 that would allegedly make the use of the FAD legal.

January, 2011; the BPH holds a public hearing on the proposed change, as demanded by LSA and other stakeholders. Over 130 objections to the change were submitted; there were no submissions in support.

May, 2011; the OAL once again finds the FAD to be an underground regulation, rejecting the board's proposed changes.

July 1, 2011; the BPH re-issues their restated rationalizations for the FAD, using as a scientific basis an alleged "consensus" of opinion by a panel of psychologists in 2006. The BPH maintains this one day meeting agreed not only with the creation of the FAD but also that the tests used were appropriate and useful for evaluating lifers.

July 15, 2011; LSA responds to the latest effort with a 20 page objection to the FAD, providing the OAL with proof that the alleged consensus of the 2006 meeting was a lie. Over 90 other objections to the change to Title 15 are received by the deadline, including two from members of the 2006 meeting, who object to the board's misrepresentation of their participation and conclusions from that meeting. More than 20 other objections, mostly from prisoners, are submitted after the July 15 deadline.

July 18, 2011; the BPH requests the OAL to approve an extension of time for their response to be submitted, citing "hardship" on the department to respond by the Sept. 2 deadline, but cites no specifics of why a nearly 6 week window is insufficient time for the department to craft a response. The request is granted several days later, but is not announced or made public. LSA discovers this sweetheart deal on Sept. 15 and files an objection and complaint with the OAL.

September 20, 2011; the BPH submits its latest response to objections to the Title 15 change but fails to address any of the complaints, dismissing them unilaterally as either not specific to the change or of no consequence. The Board fails in any way to address the proof of their lie regarding the results of the 2006 meeting.

Which brings us to this week, when the OAL quietly made a decision to overlook the blatant lies presented as fact by the BPH and approve the changes to Title 15. How the OAL, which is supposed to be the protector of the legal process, yet this abomination was approved with no explanation or discussion of objections and lies pointed out by the many who filed objections.

According to the approval notification the FAD will become legal in late November. LSA is delving into the process of the OAL's extension grant and approval. We are also investigating the possibility of challenging not only the OAL decision but the constitutionality and validity of the FAD through litigation.

For nearly two years LSA has been visiting the offices of state legislators, bringing the voice of lifers and their plight to their attention. As part of this educational effort (it's always surprising how little some elected officials know about lifers and the parole process) we have exposed the inequities and improprieties of the FAD. Nothing happens quickly in Sacramento, either in the capitol or at CDCR. However, things do sometimes happen.

LSA recently learned the Senate Office of Research, the investigative arm of the Senate, has embarked on an in-depth look at the tests presently in use by the FAD, the training of the FAD psychs and, hopefully, the FAD itself. Needless to say, the results of LSA's extensive research into the creation of the FAD, the propriety of the tests for use on lifers and the backgrounds and training of the psychs is being made available to the Senate researchers.

## **AVENAL 5 YARD MAKES OUR DAY**

Huge thanks and appreciation to the men on 5 Yard at Avenal State Prison. Their efforts and generosity have so far produced nearly 200 stamps and several monetary donations to LSA.

Although we greatly appreciate all donations to LSA, those from prisoners are especially meaningful to us, given the limited resources available to most men and women inside. At present LSA mails monthly newsletters to nearly 300 prisoners throughout the state, with nearly 300 more newsletters emailed to friends and family of prisoners, who then print and mail them.

All this printing and mailing requires about 4 printer cartridges and a couple of reams of paper each month, to say nothing of the time put into the printing and addressing. Much as we would like to farm this process out to professional printers, it is more economical to print the newsletters ourselves, and since the only thing we have less of than time is money, we will continue to print and mail each newsletter.

We also owe a big thanks to our faithful mail tree participants, who have adopted up to 10 prisoners each, to whom these dedicated partners mail newsletters each month, and to some generous supporters who have each month provided a modest contribution toward our efforts. Every contribution is a great help toward off meeting expenses.

We have been asked if LSA will go away, once "our" lifers are paroled. The short answer, No Way.

This battle is not about only "our" lifers, or only those we know, it is on behalf of all lifers now in the system and those who will eventually enter the gulag. The CDC and BPH may set the rules, but it's our task to be sure those same agencies play by those rules themselves and the rules are fairly drawn and enforced. We've also taken on the task of making lifers a visible presence to the rest of society, giving them and their families a voice and a face.

So again, our heartfelt thanks to the men on Avenal 5 Yard for their support and assistance. You guys are great! You're the reason we keep working.

## THE NUMBERS GAME

“Realignment,” the CDCR’s spin on the ruling by the Supreme Court ordering California to substantially reduce the number of prisoners in its 33 institutions, officially went into effect October 1, amid much rhetoric, confusion and rumor. Fear mongers continue to shriek about release of prisoners, conservative politicians rant about blood running in the streets and the public enjoys total confusion about what is going on, what to expect and how the Supreme Court order will be implemented.

At the October Board of Parole Hearings Executive Board meeting commissioners were treated to a report from the CDCR’s Population Management Unit, laying out for the board how the coming population reduction will be implemented and how the numbers game will affect prisons. Amid reports of closing prisons and population shifts this presentation was the first concrete report publically released regarding how the state’s plans for population reduction will affect the housing of prisoners.

In October, 2006 California’s prison population peaked at about 160,000 prisoners housed in the state’s 33 prisons; nearly 14,000 more were in camps or other facilities not classified as prisons. Since the state’s penal facilities were designed to hold just under 80,000 individuals, the prisons were at 200% of capacity. At its height, the inmate housing facilities included about 19,000 “ugly beds,” placed, often three-high, in areas (such as gymnasiums) that were never intended to continually house inmates. The CDC estimates the absolute maximum number of inmates it was capable of housing in the last resort “ugly beds” was 23,000; thus California was rapidly reaching total saturation for prisoner housing.

Two years later, August, 2010, the United States Supreme Court ruled California’s prison system was unconstitutionally overcrowded and directed the state to reduce the inmate population, in incremental steps, to a maximum of 137.5% of design capacity, or roughly 109,500 inmates by the end of 2013. The population cap from the court does not include inmates housed in camps, contract beds or facilities, if any, yet to be built.

According to Correctional Administrator Ross Meier the CDC will not meet the court-set goal of reducing the prison population to 133,000 by Dec. 27, 2010 and has already notified the court of this expectation. However, Meier said the state expects to be back on track with reductions by June, 2012 when the inmate population is expected to be 123,400, about 155% of capacity.

In presenting the population report Meier reported to the Board that as of the October meeting the prison population was now below 160,000 inmates, with a reduction of 11,000 achieved in the previous week alone. He reported the department expects a 50% reduction in reception center intakes, from 22,000 to 11,000, between October, 2010 and March, 2011. Because of the large number of parole violators, or “churners,” heretofore being returned to state custody for relatively short periods of time, the average reception center entrant remained in the prison system an average of 3.8 months, many never leaving the reception centers. The months from November, 2010 through February, 2011 will see the biggest changes and reductions in population, according to Meier.

The number of prisons housing reception centers will decrease and every county in the state, with the exception of Los Angeles, will be assigned a specific prison reception center where its prisoners will be received. Because of the numbers of prisoners committed to state custody from Los Angeles County no one prison could adequately process all intakes, so prisoners from LA will be distributed over the state.

The prisoner cohort expected to be impacted the most by these changes is the female prisoner population, which Meier said the CDC expects to see drop by about 30%, over 2,800 prisoners by June, 2012. Meier noted that while an average of 971 women prisoners were received into the state system in the months leading up to realignment, the CDC expects only 177 new female intakes each month by January 2012. As population reductions play out over the coming months the department expects to see a significant reduction in the numbers of Level I and II prisoners as well. By June, 2012 projections are for 4,700 less Level I inmates and nearly 4,000 less Level II prisoners. Reductions in the populations of Levels III, IV and SHU housing are expected to be more limited.

It doesn’t take a mathematician to figure out that as these changes play out the lifer cohort, now about 20% of total prisoners, will eventually constitute a larger share of the prison population. The eventual percentage of prisoners lifers will constitute depends on many variables, not the least of which is the number of lifers found suitable and released on parole.

All this shifting has necessitated a change in the “mission” assignments of various prisons, determining the security level of the inmates they will house. Following is a simplified list of the changes in mission and housing level CDC now expects to make. In all prisons listed the reception center facilities operated at those prisons will be closed

Already underway, the conversion of CIM East to a Level III SNY

In November

- DVI will convert to a Level III GP
- RJD Facility 2 will become a Level III SNY; one building in Facility 4 will be a Level III PWC
- San Quentin will no longer house a reception center and will become a Level II GP with significant numbers of lifers transferring from Solano

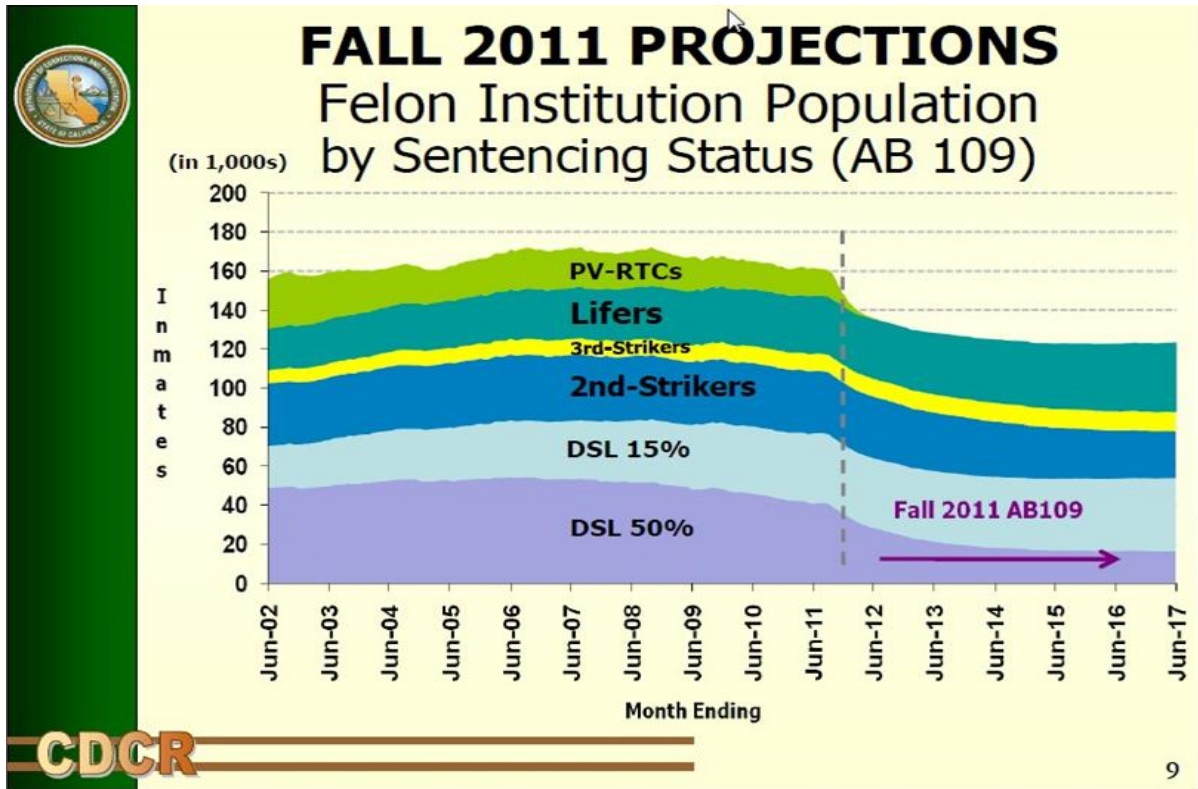
In December: Facilities A at High Desert, North Kern and Wasco will become Level III GP

In January, 2012: CIW and VSPW will deactivate their reception centers, all female intakes will be at CCWF

In February, 2012

- o The female SHU will move from VSPW to CIW
- o LAC B yard will become a Level IV GP, with more opportunities available for Honor Yard programming
- o LAC D will convert to Level IV, though final determination if this will be SNY or GP not yet made
- o CCI Facility 3 will convert to a Level III SNY

One final caveat: as with all things CDCR, every decision is subject to change at the last minute. The above information represents CDC's plan as of October 15, 2011.



Predictions from CDCR on the sentencing profile of prison population following Realignment; the percentage of lifers within the total population will rise.

## A SIGN OF CHANGE

As mentioned elsewhere, things change slowly in Sacramento, especially when the CDCR is involved. For 20 years or more stakeholders in the lifer parole process have sought clearance to attend parole hearings as observers. And, for that same number of years, that permission was denied.

Attorneys, commissioners and deputy commissioners in training, legislative staffers and, on occasion, news media representatives as well as victims' next of kin were all allowed to attend hearings as (with the exception of the victims' family) non-participating observers. But anyone not falling into one of those categories was routinely refused permission to attend hearings.

Things change slowly, but sometimes they do change.

For the past three months Life Support Alliance has quietly and unobtrusively been attending parole hearings as a non-participating observer. While the law, specifically Title 15, has always contained a provision for the attendance of observers, permission has never been given, until now.

As reported in a previous issue of *Lifer-Line* (July 2011), LSA met with then newly-appointed BPH Executive Director Jennifer Shaffer, discussing a wide range of topics on parole issues, including observing parole hearings. Ms. Shaffer made the decision to allow LSA to observe hearings in an effort to promote understanding of both the process and the methodology of the commissioners. There are a few conditions on our attendance; we are there to observe only, making no comments or contributions to the hearing process, and for now, we only attend hearings for prisoners with whom we are not personally acquainted.

While we have been attending hearings since August, we have been guarded in announcing this development. We understand fully we are the "trial run" in this process. However, as we appear at more hearings, word is filtering out through the ever-present and interconnected prison grapevine that "someone" from the advocacy community is attending hearings. So, in the interest of both full disclosure and ending idle and incorrect speculation, we feel this is the time to present the facts.

Our presence at parole hearings is that of observer only; we cannot represent or advocate for any inmate, offer comments or specific support, either verbal or written. We observe the proceedings, make note of findings and actions, arguments and criteria used in denial or granting of a date. This is substantive information on which we can base future legislative and confirmation hearing positions.

We hope to continue to attend hearings throughout the state. To date we have been in attendance at about a dozen scheduled hearings at Mule Creek, Folsom, Solano and CSP Sacramento. As time and travel expenses allow we intend to expand our reach, hoping to observe hearings at as many prisons and of as many commissioners as possible. While the BPH has not limited our access to hearings or selected those we can observe (we request a date and location) we cannot attend hearings by request of an inmate.

It is worth noting, once again, that the actions of the new Executive Director are a significant and welcome change in the attitude of the BPH from past years. We hope this development in transparency is yet another step in increased communication between stakeholders and the BPH.

## **...AND MORE CHANGE**

The Board of Parole Hearings, has, for several months now, been short one member. Former Chairman Robert Doyle failed to achieve confirmation to his position by the full Senate before the required deadline and has not, as of this date, been replaced.

Gov. Jerry Brown in the last six months has appointed six new parole commissioners, re-appointed three hold overs from the Schwarzenegger administration, and a new Executive Director for the BPH. Now it appears Gov. Brown will have one more seat to fill.

New Commissioner Juliet Macaulay, appointed in late June, has tendered her resignation, effective at the end of October. Macaulay, who will return to her previous duties as a Deputy Commissioner, apparently found the extensive travel schedule for commissioners untenable.

These commissioners are newly appointed and have yet to be confirmed: Dan Figueroa, Cynthia Fritz, Howard Mosley, Terri Turner, and Gilbert Robles. Commissioner s Jack Garner, John Peck and Michael Prizmich were recently re-appointed and will also sit for confirmation hearings, as will BPH Executive Director Jennifer Shaffer.

At present indications are those confirmations hearings will be held by the Senate Rules Committee in April. LSA will submit written positions on all those up for confirmation prior to the hearings and expect to speak either in favor or opposition to the candidates at the hearings.

## **WE NEED YOUR STORIES**

Life Support Alliance continues to seek information from prisoners who have undergone psychological evaluations by members of the Forensic Assessment Division. While individual prisoners may have inept and unethical experiences with some psychologists associated with the FAD, it is only when these individual experiences can be collected and presented as a pattern that the best use can be made of the FAD's improprieties. We also would like reports from lifers regarding their parole hearings before various commissioners, especially those appointed in the last six months who have not yet been confirmed by the Senate.

We have survey forms for both lifer parole experiences and psychological evaluations available, or just write us with your experiences, please include as much detail as possible, including names of parole commissioners and psychologists involved. We are also hearing reports of lifers being confined in cages while participating in the psychological evaluations and being held in restraints during parole hearings; if this is the case at any institution, please let us know when and where. The BPH has been taken to task on previous occasions for these behaviors and if it is continuing we would like that information.

Requests for survey forms or information on parole hearings and psychological evaluations should be sent to LSA, PO Box 3103, Rancho Cordova, Ca. 95741, or families may email same to: [lifesupportalliance@gmail.com](mailto:lifesupportalliance@gmail.com).

## HUNGER STRIKE SCUTTLEBUTT

News of developments on the hunger strike by SHU inmates has suddenly been hard to come by. The following information was culled from various sources, all pretty reliable, probably none privy to all the facts, but none prone to perpetuation of wild rumors.

Reportedly under consideration now at CDCR headquarters is a new plan to address one of the main issues prompting the hunger strike, the gang validation process leading to SHU terms and the length of those terms before review and reassessment. A review after six years is the figure being bandied about. A final draft is expected within about two months, at which time it will be available for review and comment by what CDCR calls "outside stakeholders," which can include advocacy groups as well as DA organizations and CCPOA.

Once a policy agreeable to all factions is developed the process of amending the law will begin, a process that could easily take a year from start to finish. While pretty fast for the CDCR, is still miserably slow for those trapped in the gulag, especially inmates such as the one contacting LSA last week, reporting he had been in SHU-level custody for nearly 40 years.

As to whether the strike is still on or not, that information is also difficult to come by. Reportedly, strikers at Pelican Bay have suspended the action, based on assurances from CDCR and the good faith of negotiation attorneys and subject to developments and the progress they see. A few weeks ago the CDC and receiver reportedly considered about 3000 California prisoners in Arizona, Mississippi and Oklahoma to be participating in the hunger strike. After 3 days of reporting these figures, suddenly, zero prisoners were reported on strike.

What the advocates think is going on is that these out-of-state prisoners were being threatened with 115s, or equivalent, if they continued. Prisoners were classified as hunger strikers if they missed more than 9 meals, so the prisoners, wanting to make a statement in support but not wanting to risk jeopardizing their release chances, went on strike for 3 days, 9 meals, and then went off. But the point was made.

There are unconfirmed reports of an on-going hunger strike action at Salanis Valley State Prison but prisoner advocates and those involved in the hunger strike negotiations at Pelican Bay have no contact with SVSP and have been unable to extract information from CDC about the situation at SVSP. This is a recap of the most reliable information available; LSA and others involved in the battle to abolish torturous and inhumane conditions in California prisons welcome any reliable information, from prisoners or families.

## ON THE WRONG SIDE OF COMMON SENSE AND GOOD JUDGMENT

We report the following incidents without comment. Well, almost without comment. Because they need no additional comment.

The State of California, through the CDCR, will pay \$295,000 in damages to a man the department barred from becoming a prison guard because he refused to compromise his Sikh religion by shaving his beard. The state maintained the man's beard would prevent a gas mask from properly fitting his face, thus placing him and possibly, according to the state, other employees in jeopardy in the event of an "incident" in a prison.

Although the state has not changed its rules regarding beards for guards, it is settling the 6 year legal wrangle by agreeing to the payout and providing the former guard with a \$50,000 per year job as a manager in corrections. The state agreed to the settlement in the face (no pun intended) of a suit on grounds of religious discrimination.

In an unrelated, but similarly interesting, report the Police Department of Twin Rivers, a small community near Sacramento, is under scrutiny and fire for T-shirts sold to benefit the local Police Association. Selling for \$12 each the shirts featured the Twin Rivers Police Association logo on the front. On the back is a rendering of a toddler behind bars, surrounded by the legend, "You Raise 'em, we cage 'em." Charming.

Ed Howard, Senior Counsel for the University of San Diego's Children's Advocacy Institute, said "There is nowhere on the planet where it is OK to wear a shirt like this," after viewing an image of the garment. Twin Rivers police union president Arlin Kocher commented, "I don't think this will be well received by the public." Kocher wins the award for understatement of the month.

The shirts are no longer on sale, though most of the 30 or so originally ordered were sold before the sale was halted, and Kocher was reported to be still selling the shirts a few months ago on his Facebook page. Perhaps law enforcement agencies should be less concerned about inmate Facebook pages than about egregious postings on their own members' pages.

