



CDCR UNDERSECRETARY McDONALD HEADING TO LA

Terri McDonald, CDCR Undersecretary of Operations since 2011, is heading to Los Angeles County to fill the newly created Assistant Sheriff for Custody in the Los Angeles County jail system. As Undersecretary McDonald reports directly to the Secretary of Corrections and oversees eight departments dealing with custody and prison operations. As Undersheriff McDonald will report directly to LA County Sheriff Lee Baca and will oversee the custody arm of the Sheriff's office, responsible for, among other things, operation of LA County's massive jail system.

The new position with LA County was created on the recommendation of the Los Angeles Citizen's Commission on Jail Violence, following a report on violence in the LA County jail system. The report held Baca and Undersheriff Paul Tanaka responsible for what it termed a "persistent pattern of unreasonable force" in deputy-on-inmate violence. It will be McDonald's job to "professionalize" the actions of custody staff and change what many have called a culture of sanctioned violence and code of silence within the department. The LA County jail system holds about 22,000 prisoners.

Baca is reported to be "very pleased" that McDonald, a graduate of the University of San Francisco and possessing considerable corrections experience, has agreed to take the \$223,000 per year position. McDonald's departure leaves a considerable gap in the hierarchy of CDCR. She began her career with CDCR 24 years ago as a Correctional Officer. During her years at CDCR she has held a variety of positions in the musical chairs performance that is Sacramento headquarters, including Chief of Out of State Facilities and Associate Director of Reception Centers.

Presently her office is responsible for Operations of Correctional Safety, the Office of the Ombudsman, Office of Victims Services, Parole Operations, Rehabilitative Programs and Juvenile Justice. McDonald herself has as yet made no comment on the upcoming change. Although no date has been set for McDonald to leave it is expected her position will be approved by the LA County Board of Supervisors by mid-month.

TWO NEW SLANTS ON LIFERS AND PAROLE

Two recently revealed documents offer a bit of 'insight,' for lack of a better word, on the relative dangerousness of paroled lifers and both prove, once again, that lifers are not the 'worst of the worst,' but actually the safest of the safe. And although one of the documents confirming this fact comes from CDCR itself, what use the department will make of the information remains to be seen.

In late January CDCR released the first in what it says will be a series of reports offering "an in depth recidivism analysis of lifer parolees" from the department's Office of Research. . The "Lifer Parolee Recidivism Report," while offering not much in the way of new information on the conduct of paroled lifers, is interesting on two levels; the re-defining of recidivism and the inescapable fact that lifers, no matter the definition, simply don't recidivate at the level of the average parolee.

Recidivism is usually defined as the actions of a former prisoner which result in re-imprisonment for a new crime within 3 years of release. The new report, offering the caveat that there is no one definition of recidivism, now also includes as recidivism those who were not convicted of a new crime in court but were none the less returned to prison, such as for technical violations or those actions that are not, in the general public, considered a crime but for a parolee are forbidden behavior. Although the report gives no reason for this double-barreled definition of recidivism when applied to lifers the new 'measurement obviously gives the appearance of a higher than past recidivism rate for lifers.

The short report (9 pages total) was prepared using a limited sample size, looking at lifers released in 2006-2007 fiscal year and followed until 2010. In fiscal year 2006-2007 only 83 lifers were released against some 112,590 determinant sentenced prisoners released on parole, or about .07% of the entire parolee population. The report lists 4 former lifers as being re-incarcerated for a new crime, but fails to mention the level of the crime and an additional 8 more for technical violations of parole. Even if statisticians use the 12 total of 83 lifers paroled as true 'recidivists,' lifers still, in the words of the report, "lifers recidivate at markedly lower rates' than those paroled after a determinant sentence.

While laying out no time frame for future reports on lifers on parole the CDCR none the less promises, "[F]uture reports will be forthcoming as additional data becomes available, more time elapses to expand the parole follow-up period, and interest is expressed regarding particular aspects of lifer parole."

The second report drawing attention to lifers vis a vie parole, filed in conjunction with the Coleman lawsuit against the state was the Declaration of James Austin in Support of Plaintiff's Statement in Response to the October 11, 2012 Order Regarding Population Reduction. Dr. James Austin, nationally renowned expert consultant on corrections issues, in a sworn declaration to the court, delineated additional actions he maintains the state could take to reach the population cap set by the 3 judge federal panel. The declaration makes two important points; the department plans on using it's much ballyhooed, scientifically validated risk assessment instrument (California Static Risk Assessment or CSRA) to identify low-risk prisoners who could be safely released if the state is forced

into 'early release' mode and to quote from Dr. Austin's statement, "There are some 9,000 Lifers with the possibility of parole who are low risk and are past their Minimum Eligible Parole Date (MEPD)."

Dr. Austin prefaces his remarks and suggestions by making it quite clear that all figures quoted in his report were supplied not by his own research, but by the CDCR itself. According to Austin's statement the CDCR has at least begun thinking about what any cohort of prisoners released under any "early release" programs would look like, including using the CSRA as one method of identifying likely early release candidates. Austin states publicly what many have been quietly saying for several months; the impact of Gov. Brown's realignment program on reducing the prison population has largely reached its peak and no more substantial reductions can be expected simply from realignment.

Austin offers several suggestions to CDCR on actions it could take to further reduce the population. These include:

- Diversion of drug possession cases. CDCR is already considering this, moving forward. Austin suggests the same criteria be applied retroactively to the current inmate population, which he estimates could reduce the population by about 2,000.
- 2nd strikers would experience a change in good time credits from 20% to 34% of sentence, requiring recalculation of release dates for some 30,000 prisoners.
- Violent offence non-strikers would see a reset of good time rate from 15% to 34%, both retroactive and sustained in the future. This would could reduce the population by as many as 6,000 inmates.
- Enhance program credits for activities that would reduce risk of recidivism.
- ICE transfers that would move to federal immigration custody all those prisoners with an ICE hold who are within 6 months of their release from state prison, a possible reduction of about 1,000 prisoners.
- Restrict readmission to state prison for parole violations to those who commit new felonies. Technical violators would not be sent back to state custody.
- Expedite the implementation of Prop. 36 to eligible 3rd strikers, a possible reduction of 2,200 inmates.

However, it is Dr. Austin's last recommendation that will undoubtedly cause the most discussion. From figures obtained from CDCR Dr. Austin estimates between 3,900 and 4,900 lifers who are both low-risk and past their MEPD who could be released on parole with no impact on public safety and a savings to the state of some \$742,271,700 in costs, even accounting for increased parole costs to monitor them. From Dr. Austin's statement:

"Release low risk lifers past their minimum parole eligibility date. There are some 9,000 Lifers with the possibility of parole who are low risk and are past their Minimum Eligible Parole Date (MEPD). This class of inmates by far poses the lowest risk to public safety based on recidivism

studies completed by the CDCR. Based on the CDCR data there are approximately 9,315 prisoners who are past their MEPD. Virtually all of them (96%) are low risk."

It is important to note: the recommendation that lifers be included in consideration for early release is a recommendation from Dr. Austin and is not currently under consideration by CDCR. CDCR has not officially identified any group of prisoners or criteria as under consideration for early release and the state is, in fact, challenging the population cap.

While the information regarding lifers contained in both these reports is more verification of what Life Support Alliance and other advocates, experts and clinicians have known and been saying for years, what the department plans to do with these facts remains to be seen. We are awaiting the next report on lifers and recidivism and the administration's reaction to Dr. Austin's suggestions with great interest.



WOMEN'S PRISONS GO FROM 3 TO 2 TO 3

In the space of a few months the CDCR transformed California's 3 overcrowded women's prisons into 2 super-overcrowded prisons and back to 3 women's institutions, one overcrowded, one super-overcrowded and one not yet at capacity. And as a by-product of all this change, the state now boasts yet another prison, the 34th, and one existing facility has undergone a sex change.

In October the transformation of Valley State Prison for Women (VSPW) into Valley State Prison (VSP), a male facility, began with the exporting of women prisoners to the two remaining women's facilities. At the same time the department began importing male prisoners into VSP, so that for a brief period VSP(W) was the state's only co-ed correctional facility. But as the women prisoners were removed from VSP they were jam-packed into CCWF and CIW, with CCWF posting an egregious 187% of capacity level. The California Coalition for Women Prisoners (CCWP) called conditions within CCWF "inhumane and insufferable conditions."

As of Jan. 16 CDCR reported over 3,700 women were housed in CCWF alone, the highest level of overcrowding of any prison, male or female; on average, overcrowding now is at about 150% of capacity. "Even where it is now we're not seeing the kind of condition that the advocates are describing," said department spokesperson Dana Sims. CCWP organized a protest rally at CCWF recently of about 400 protesters to bring attention to what the coalition has called 'gender bias.'

In the meantime CDCR has opened the replacement for VSPW, Folsom Women's Facility (FWF), a 400+ bed revamped former substance abuse facility for male prisoners adjacent to Folsom State Prison and CSP-Sacramento (old and new Folsom, respectively), that will now house low-risk women prisoners. The construction/renovation of FWF was budgeted at over \$2.8 million and reportedly includes facilities for health care and programming. According to a CDCR press release FWF will "offer rehabilitative and educational programming to help female inmates avoid the revolving door of incarceration. Programs include adult basic education, anger management, family reunification, substance abuse and computer literacy."

CDCR Undersecretary Terri McDonald (more on McDonald elsewhere in this issue) said. "This demonstrates CDCR's commitment to rehabilitate while making efficient use of existing facilities." Women prisoners began arriving at FWF a few weeks ago, with full capacity expected to be reached by mid-summer.



WHO'S INSIDE

A snapshot of the 'average' California prisoner is this: A Hispanic man, 35 years of age, from Los Angeles County and imprisoned for a violent crime. And while this is the snapshot of the average prisoner, this simple description fails to give a complete and accurate picture of the prison population.

Though the largest ethnic group incarcerated is Hispanic, African-Americans, who make up about 7% of the general population of the state, account for about 30% of the prison population, making them the most likely to be imprisoned demographic. The prison population is also aging. From 1990 to 2010 the percentage of prisoners over the age of 50 years grew from 4% to 19%, the result of a combination of overall aging of the state's population, prisoners serving longer sentences and more new admissions of older individuals.

Women prisoners, who constitute only about 5% of the overall inmate population, are confined to 3 of the state's 34 prisons and are somewhat less likely to be in prison for a violent crime than male prisoners (45% women, 64% men). LA County contributes a whopping over 50,000 individuals to the state's prison population (about 34% of the overall prisoner number) but the poorer, rural counties in the state's central area have a higher overall incarceration rate, with Kings County (home of 3 state prisons) sending a full 1% of the county population into state custody. Overall, about 595 per 100,000 Californians, or 0.6% of the population are in state prison (this number does not include those in city or county jails or federal custody).

THANK YOU, AVENAL

Thanks once again to the men of 5 yard at Avenal State Prison for their recently received contributions to our efforts. This is not the first time we have received donations from this yard, and while we greatly appreciate all donations to help us fund our work, those coming from inmates hold special meaning for us. We know well the limited nature of inmate resources and the sharing of those resources with us is deeply appreciated. We have also received contributions from individual prisoners and we thank you for those as well. You help make it possible for us to continue our work and rekindle our resolve.

Thanks also for the many Christmas and Holiday cards sent to us from many prisoners in various prisons this season. Your thoughtfulness in remembering us in your holiday wishes is very gratifying. In the New Year there will be new challenges, and some old ones remain. Know that we remain committed to working for lifers and their families in whatever ways we can.

3RD STRIKERS-USE CARE IN FILING PETITIONS

Following passage of 3 strikes reform in November many prisoners serving a life term for a third strike petition are preparing to file petitions asking for recall of the life sentence. The word from all sides, defenders, DAs, courts and advocates, is the same: proceed with caution, don't rush your chances. Petitions can be filed until Nov. 6, 2015.

Public Defenders, inmate attorneys and prisoner advocacy groups are warning inmates pushing forward by filing pro per that they may be sabotaging their chances by submitting premature and poorly constructed petitions that will be easy denials for some jurisdictions. Various counties seem to be handling the cases differently and there have even been credible reports of pro per petitions denied in chambers, absent any meaningful review of circumstances and based solely on procedural factors.

A variety of county Public Defender offices are also indicating they are gearing up to provide assistance to 3 strikers. At the same time there seems to be considerable variance in the attitude and plans of county DAs, some indicating they will actively oppose the petitions, others saying they are working to identify a list of inmates who, if they do request sentence recall, the DA would not oppose.

At present the consensus among attorneys, public defenders and advocates is that those third strike lifers who wish to be evaluated for possible recall of sentence petition should contact either an attorney familiar with lifer issues or the Public Defender's Office in their county of commitment and inquire if the county has yet developed procedures for the petition. Several university law schools are also preparing to join the effort.

For now, proceed without haste and with due consideration. If you would like a list of credible lifer attorneys, most of whom are now handling 3 strikes petitions, and selected law schools with prisoner programs, please write for that information to LSA, PO Box 277, Rancho Cordova, Ca. 95741.

As more information becomes available, including reports of successful petitions, we will report on those issues.