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Public Safety and Fiscal Responsibility

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Mental Health Treatment in California Prisons

STATE NOT CAPABLE OF MAINTIANING HEALTH CARE GAINS

Judge Lawrence Karlton refuses bid to return health care control to CDCR

Governor Jerry Brown's loud and boisterous bid to retake control of mental health care for prisoners was dealt a major blow recently when federal Judge Lawrence Karlton gave the state's request a vigorous and unequivocal smack down declaring the level of mental health care provided for the more than 40,000 mentally ill inmates in California prisons still suffers from "ongoing constitutional violations" and cannot be left in care of the state. Although the Governor, through a CDCR spokesman, promised to appeal the denial all the way to the US Supreme Court Karlton cited several specific "ongoing constitutional violations," including continuing systemic failures, an increased suicide rate among inmates and the failure of the state to hire and keep sufficient staff and provide timely care.

Karlton's adamant refusal to return responsibility for mental health care to the state and his openly expressed anger at what he termed "profound ethical violation" when state investigators interviewed prison inmates regarding their mental health without knowledge or presence of the prisoners' attorneys may well also impact the Governor's request to extricate California from the federally imposed prison population cap. "Further, based on defendants' conduct to date, the court cannot rely on their averments of good faith as a basis for granting termination. There is overwhelming evidence

in the record that much of defendants' progress to date is due to the pressure of this and other litigation," he wrote.

Karlton did acknowledge the state had made gains in mental health treatment since the inception of the suit in 1991. But those improvements, the judge decided, would be undone if the CDCR once again became solely responsible for that care. So for now oversight of prisoner mental health care will remain under the federally appointed receiver.

The state had attempted to bolster its request to terminate the receivership by presenting a pile of 'expert testimony' declarations, derived from interviews the state's hired 'experts' conducted in various prisons. These interviews, with mentally ill inmates, were done secretly, according to inmate attorneys, in spite of the legal requirement that the lawyers be present for every interaction between people working for the state and seriously mentally ill patients who have counsel. "They didn't really explain to the mentally ill clients what the purpose of the interviews were, so the inmates had no idea who they were speaking to," said Don Specter of the Prison Law office. "They (the state) interviewed our mentally ill clients without our knowledge about the case and then they used the evidence (obtained in the interviews to support the claim that conditions in the prisons have improved)," he continued.

As part of this ruling Karlton threw out all the 'expert declarations' that were the product of the controversial interviews, interviews he characterized as "tainted" and took the department and the state government to task for their actions. "The court thus believes that it is entirely proper to strike these expert reports and not consider them in connection with this motion." A few sentences later Karlton again showed the depth of his displeasure with the interview process, noting, "In sum, the court finds that defendants violated their professional duty and the plaintiffs were prejudiced thereby." Continuing to express his anger with the actions of the state's attorneys Karlton noted, "Given all the above, it is clear that plaintiffs were prejudiced. Defendants' assertion that this conduct was "harmless" is plainly belied by the expert reports themselves, which directly use these tainted interviews against the interviewees in this termination motion. However, the defense experts made no attempt to hide the fact of interviews – after they had occurred."

The judge's discussion of the controversial interviews ends with a footnote to his decision: "In the absence of unfair advantage, it may be that the 23 possible ethics violations here are best left to be dealt with by the California Bar. See Continental Ins. Co. v. Superior Court, 24 32 Cal. App. 4th 94, 111 n.5 (1995.) In addition, the Clerk is directed to deliver a copy of this order to the State Attorney General, to ensure that she is made aware of the conduct."

LEGISLATIVE BILL SUMMARY

The proposed pieces of legislation listed below are still pending before the Senate/Assembly and are just some of the bills LSA is monitoring. These bills have potential impact on lifers, their parole and conditions and conditions of confinement.

AB 2 (Morrell, R-Rancho Cucamonga) would send those required to register as sex offenders and who fail to do so while on parole or post release back to state prison for that violation.

AB 222 (Cooley, D-Rancho Cordova) would return prisoners convicted of certain classes of crimes to state prison rather than community correctional facilities. This bill would apply to those with a sentence enhancement for selling, possessing or transporting excessive quantities (more than one kilogram or 30 liters) of cocaine, heroin or methamphetamine.

AB 494 (M. Perez, D-El Centro) addresses inmate literacy programs that are designed by the CDCR's education plans to reach their literacy goals for inmates. It would require the department to offer academic programming throughout the individual's period of incarceration to increase reading ability and general education requirements.

AB 601 (Eggman, D-Stockton) this bill would authorize courts, upon petition, to revoke parole and return to state prison for a period not to exceed one year persons convicted of specified felonies and would require the Legislative Analyst's Office, to produce a report by Jan 1, 2015 evaluating the criminal justice realignment.

AB 999 (Bonta, D-Oakland), the "Prisoner Protections for Family and Community Health Act," notes that under existing law sodomy in prisons is a criminal act and would require the CDCR to develop a 5-year plan to extend the availability of condoms in all California prisons. Starting on January 1, 2015, no less than 5 prisons each year would be incorporated into the program and would require the comprehensive plan to include every prison in the state by the final year.

AB 1019 (Ammiano, D-San Francisco) would require goals for vocational career technical education to establish factors that are required to be taken into account when establishing a career technical education program, including the demand for the skills being trained and the availability of employment in those fields. The bill would require the department to develop standards and criteria for evaluating the effectiveness of career technical education programs with review by the California Rehabilitation Oversight Board.

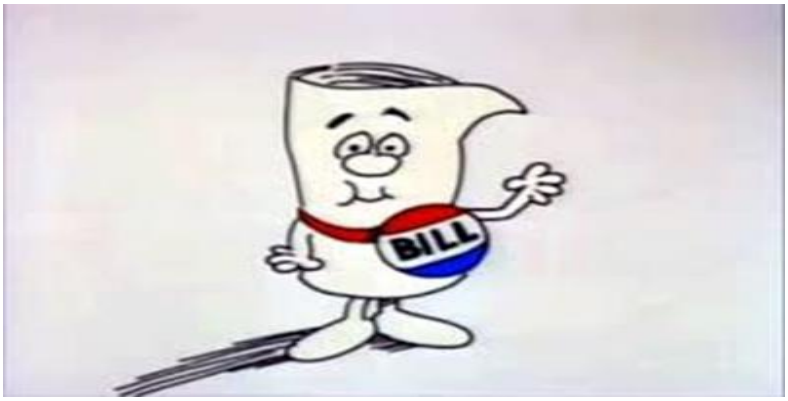
AB 1119 (Hagman, R-Chino Hills) would require CDCR to establish a 3-year post release reentry pilot program, using an existing Sacramento area-based parole reentry program as a model, in 3 additional counties to provide comprehensive, structured reentry services for offenders released from state prison. The Counties of San Bernardino, San Joaquin, and San Mateo would participate in the pilot program, and would provide the participants. The pilot program would end on Jan. 1, 2018.

SB 57 (Lieu, D-Redondo Beach) would require those sex offenders required to wear a GPS device and who have removed or disabled that device to be returned to state prison for terms of 16 months, 2 or 3 years. Because this bill increases the punishments or penalties provided in Proposition 83, this bill would require a majority vote.

SB 260 (Hancock, D-Oakland) would require a court to review the sentence of a person who was under 18 years of age at the time of an offense and was prosecuted as an adult after the person has served 10 years in prison for possible suspension or stay of all or a portion of the sentence, reduce the sentence to any sentence that could lawfully have been ordered at the time of the original judgment, or both reduce and suspend or stay all or a portion of the sentence. The bill would not apply to a person sentenced under specified provisions or LWOP.

SB 710 (Nielsen, R-Rocklin) would require all persons released from prison on or after January 1, 2014, to be subject to parole supervision by the CDCR and BPH for a minimum period of 3 years and states that these entities would have the exclusive jurisdiction over the supervision and revocation of parole. For crimes committed on or after January 1, 2014, the bill would set a minimum of 3 years

and maximum of 5 years parole for all life crimes other than 187 PC convictions, and a minimum of 3 and maximum of 4 years for all other crimes. The bill would also require 12 consecutive months of parole supervision without violation before discharge could be approved and the development of 3 violator adjustment centers.



TWO NOXIOUS BILLS DEAD—FOR NOW

Two egregious and mean-spirited bills introduced this legislative session by freshmen assembly members have been withdrawn, at least for now, in part as the result of outcry organized and carried to the bills' authors by Life Support Alliance. One would have mandated restitution withholds be increased to a usury level and the other would continue to wreck vengeance on terminally ill prisoners.

Assembly member Norma Torres, (D-Chino) introduced AB 423, which would have mandated the CDCR to usurp 80% of an inmate's wages or trust account if that prisoner had unpaid restitution. The bill's sponsor (the organization who asked for the bill and in all probability actually wrote the language) was Crime Victims United. Perhaps the most vindictive piece of legislation proposed in a few years, Torres' bill also proposed to remove the exemption that allowed monies in an inmate's account earmarked for family visit provisions from being subjected restitution holds.

LSA met in mid-March with Torres' staff and a representative of the bill's sponsor, and were told that while Torres' and the sponsor were willing to make minor changes to make the bill more palatable to us (and hopefully win, if not our support, at least convince us not to oppose the bill), the sponsor's constituents had originally wanted to seize 100% of inmate funds. In their rush to make crime victims "whole" by collecting fines assessed against prisoners the author and sponsor of AB 423 said forthrightly they were not concerned that such usury confiscation of prisoner funds might necessitate family members to choose between supporting their loved one in prison with occasional deposits on trust funds and obligations to the family remaining at home. Should these choices cause family splintering Torres et al were clearly not only unconcerned, they felt it was just another form of deserved punishment.

Fortunately, our supporters and members responded to our call and inundated Torres' office with calls, letters, emails and FAXs all in opposition to the bill. And for good measure, we included all members of the Assembly Public Safety committee, the bill's first stop for consideration. Within the week Torres' office announced the bill had been pulled from the legislative calendar.

Another nasty piece of proposed legislation came from another freshman, first term Assemblywoman Cheryl Brown, D-San Bernardino. Brown's bill, brought to her by law enforcement agencies, would

have prevented anyone convicted of the killing of a police officer from being considered for medical parole, no matter how dire their medical condition or how costly their care to the state.

The purpose of medical parole, enacted in 2010, was to save the state millions of dollars by allowing those inmates suffering from a terminal illness and only a few months to live and/or those permanently incapacitated to be released from official custody. This 'parole,' of course, had no effect on their dire medical conditions but would allow that the medical costs could now be spread across several agencies, not just the CDCR and secondly would end the need for around the clock armed guards at whatever medical or long-term care facility the prisoner/patient was housed.

The introduction of AB 353, which would have prevented those prisoners from ever being considered for this parole, thereby assuring that, should any of them develop a terminal or incapacitating illness, the soaring costs of their care and 24-hour chaperoning by CCPOA members, would be borne entirely by the state of California. So it would appear that this bill is less about what is good for public safety and the state budget than additional, continual punishment and vengeance.

In our talks with the staff LSA expressed our concerns and opposition to the bill, laying out not only the inhumane and vengeful nature of the proposal, but the unnecessary costs it would put on the state. A few days later Brown's office advised LSA that the bill had been withdrawn, indicating the hoped to make it 'a two year bill,' meaning they may introduce the legislation again next session. We will be ready.

LONG TERM PAROLE DENIALS CAN IMPEDE REHABILITATION

Likening parole to the carrot and imprisonment to the stick, a report from professors at Simon Fraser University notes "if we make the carrot smaller by telling prisoners with long sentences that we're also lengthening the time of their parole eligibility, then we destroy their incentive to reform. Long sentences combined with long waits for parole eligibility can cause inmates' to conclude that rehabilitation is not worthwhile." In the Journal of Law, Economics and Organization, a report entitled "Rehabilitated or Not: An Informational Theory of Parole Decisions," by a trio of economics professors puts forth the premise that long denials of parole could in fact work against rehabilitative efforts for prisoners.

Feeling this aspect of rehabilitation and human nature is an important consideration. Life Support Alliance brought this report to the attention of the Board of Parole Hearings recently at their monthly Executive Meeting, telling the board that as a far-distant date approaches and seems more real, those who have felt parole was too far distant to be real will begin to engage in rehabilitative efforts, which may or may not reach adequate fruition by their hearing date. If not yet adequate, should they be severely penalized for their late start? To do so, this report suggests, would be to further stunt and discourage those efforts, a result surely no one wants. The severe penalties which can quash rehabilitative fervor could easily come in the form of a 10 or 15 year denial of parole.

Steeve Mongrain, a professor of Economics at Simon Fraser University, noted "[M]ost people in prison are there precisely because of their lack of impulse control. So very long sentences combined with long waits for parole eligibility can cause impatient inmates to conclude that rehabilitation is not worthwhile. Studies show recidivism is directly tied to prisoners' completion of addiction recovery and skills-building programs. If they're not motivated to take them then recidivism goes up."

The most important application of the study's findings, according to Mongrain, is the application of the results in a legislative context. Changes to laws governing parole eligibility should be evaluated in terms of the impact on prisoners' motivation to seek rehabilitation and whether changes in those laws will have a negative impact on that motivation.

LSA's hope and purpose in bringing these reports to the board's notice is that the commissioners would consider the information contained therein when determining length of parole denials. Long term denials may, in fact, not serve the cause of public safety or fiscal responsibility and life term inmates are not sentenced to death, either by state sanctioned execution, or abandonment.

VICTIMS REMAIN #1 TRIGGER FOR GOVERNOR REVERSALS

Late last year Life Support Alliance (LSA) compiled and published an analysis of those factors of a crime that appear to trigger Gov. Jerry Brown to reverse a grant of parole given in 2011. Though the reasons stated in each reversal are relatively predictable and will be discussed further, what factors appear to peak the indignation, ire and animosity of the governor may be more predictive of whether an individual grant of parole is reversed than the reasons stated.

Analysis of the Governor's parole reversals for 2012 reveal not much has changed. Victim morphology, or the characteristics of the victim(s) appear to be the number one factor in Brown's decision to reverse. Last calendar year Brown reversed 91 grants of parole and modified two others, or about 20% of all grants issued.

Keep in mind, however, the governor cannot unilaterally reverse every parole grant made by the Board of Parole Hearings. By state law, the governor is allowed to reverse a parole board grant for any prisoner convicted of first or second degree murder. Other crimes netting life sentences may be referred by the governor to an en banc review of the entire parole board, but only 187 PC violations can be reversed by Brown.

Once again the Governor held his highest reversal rate for those inmates who had been convicted of killing a vulnerable or at risk victim: female, disabled, elderly, or a child. Those whose crimes included multiple victims and/or when children were present at the time of the crime, whether they sustained any physical harm or not, were also singled out. More than half the parole grants reversed

by Brown involved a crime where the victim(s) fell into one of the above categories. In many cases the Governor seems particularly incensed that the crimes occurred in the victims' homes, locations where he opined the victims should reasonably have expected to be safe.

Gang involvement, either at the time of the crime or in prison-related gangs, also was a predicative factor in reversals. Even when a prisoner had renounced gang involvement more than 20 years ago Brown found any such participation while in prison reason enough to say no. Crimes in which victims were tortured or suffered mutilation before or after death also brought sharp comments and reversals of grants. And, as might be suspected, in those cases where victims' relatives peppered the Governor with what he characterized as "heartfelt letters" of opposition Brown often found reason to kill the parole date.

Theoretically, of course, any governor must have valid reasons for reversing the work of his own Board of Parole Hearings, and Brown and his legal staff made the effort to articulate his reasons. But in what is beginning to sound like a re-run of board decisions from the recent past, the governor seems to be relying heavily on such nebulous and undefined "reasons" as "unsupportive psychological evaluation," non-credible explanations of events and that old favorite, lack of insight, or as Brown refines, it, lack of "optional insight." The governor also throws in some curves of his own making, suggesting in several cases that since the prisoner was involved in the ("horrific") life crime at a young age (juvenile) he might somehow be more likely to commit another offense. Even after 20-30 years. Insufficiently treated or addressed mental issues, in Brown's opinion, are another cause to be leery of granting parole. The Governor cites several times his concern that these mental issues have not been properly addressed or treated, but offers no suggestions as to how the lifer is to obtain any more/better mental health treatment. Except of course, that Brown wants to remove prison mental care from oversight of the federal government.

Continued expressions of innocence brook no quarter from the Governor, who labels these as 'non-credible' explanations of how a crime took place. Brown may also need a remedial course in semantics, pointing out several instances where psych evaluations have indicated a moderate or medium risk of recidivism, levels the governor calls "elevated." He also seems to be heeding a new trend in BPH hearings, citing information contained in an inmates' confidential files as reasons to reverse grants.

Indeed, in one instance Brown was so agitated about alleged gang and drug involvement speculated in the inmate's confidential file he not only reversed the parole grant, but ordered prison officials to conduct a complete investigation into the confidential allegations and make a complete report to him prior to the inmate's next parole hearing date. The Governor, however, is a bit more forthcoming on the nature of such confidential information than the parole panels, who often blind-side prisoners and their attorneys with the use of confidential information absent prior disclosure as reasons to deny parole.

The Governor plays no favorites when it comes to taking away parole dates. Women comprise about 5% of the state's prisoners and nearly 6% of the 2012 parole reversals. And proving wrong the adage about lightning not striking twice, in 2012 Brown snatched freedom from two prisoners for the second time.

In two instances, however, Brown acknowledged the outstanding efforts of inmates who received grants of parole but for whom term calculations put release dates far in the future. In both cases Brown modified those dates, cutting 5 years each off the calculated term, allowing for one to be released in 2014 and the second in 2017.

VICTIM SERVICES NO LONGER ACCEPTING APOLOGY LETTERS

Until recently lifers, as part of their rehabilitation efforts and in line with making amends, were encouraged by the Board of Parole Hearings to write a letter of apology to their victims' family members. Since it is never a good idea for a prisoner to attempt to contact the victims' family, lifers were directed to send their apology letters to the Office of Victims' Services (OVS) in Sacramento. The OVS would, in turn, send a letter of acknowledgement to the lifer which he/she could include in his/her parole packet. This letter was proof for the board that the lifer had made an attempt to make amends, all the while protecting both prisoner and victims' family from unwanted and ill-advised direct contact. The apology letters themselves were forwarded to victims only if they were registered with OVS and had indicated they would be receptive to receiving such communication.

Now, however, due to budget cuts, this avenue has been closed. LSA spoke with an OVS representative recently after hearing reports that lifers were no longer getting the acknowledgement letters. As reported to us, OVS had been using 6 student interns to process the apology and acknowledgement letters. Due to recent budget cuts all those intern positions were eliminated, leaving OVS with only 3 non-paid interns who have remained working on a volunteer basis.

That trio of volunteers is now spending their time returning apology letters from lifers to the senders, with a letter stating the service is no longer available. Reportedly, the letter also suggests the lifer include the letter in their parole packet to the board.

Our suggestion is to be wary of doing so and consult your legal counsel. Apology letters that have come into the hands of the participating DAs and/or parole panel have often been used against the prisoner, with opposing parties criticizing the language, statements and content of such letters. Whatever the individual's decision regarding including apology letters in the packet, please be aware the acknowledgement process is no longer available to lifers.

NEW POSITION SOUGHT TO SAFEGAURD HEALTHCARE

A report from a team of experts hired by the federal receiver in charge of health care for California inmates calls for the creation of a new post within CDCR, 'Undersecretary of Health Care,' in order to protect the gains in the quality and delivery of medical care for prisoners made under federal oversight. The suggested new post would be equal in stature to the two current Undersecretary posts, for prison operations and custody matters. Creation of the new Undersecretary post would prevent "the return of pre-receivership conditions, under which health care matters often went unaddressed for long periods," according to the draft report.

The report also includes a recommendation for the increased use of tele-medicine, wherein health care providers use video links to "see" patients in remote prisons, while relying on medical assistants for routine care. The consultants also concluded the quality of nursing in the prisons is inconsistent, most notably when trying to coordinate the care of patients with complex conditions as they are transferred between prisons and determined that the federal receiver's office employs too many physicians in managerial roles.

The recommendation for creation of an Undersecretary of Health Care and suggestions on expanding tele-medicine are among more than 100 suggestions in the report now under consideration.