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Public Safety and Fiscal Responsibility

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BROWN SIGNS REFORM OF JUVENILE LWOP

In a real nail-biter, a years-long effort by Sen. Leland Yee (D-San Francisco) to bring relief and real hope to some 300 California prisoners sentenced to Life With Out Parole while they were still minors came to a successful conclusion when SB 9, Fair Sentencing for Youth, was signed into law by Gov. Jerry Brown. Brown signed SB 9 on September 30, the last day possible for dealing with legislation passed in the recently ended session.

SB 9 will allow those sentenced to LWOP as juveniles to request the courts review the case after 15 years and possibly receive a new minimum sentence of 25 years to life. The bill would require the offender to show remorse and be working towa rehabilitation in order to submit a petition for consideration of the new sentence.

Yee, who has authored various versions of SB 9 for several legislative sessions, has been stalwart and determined in his efforts to bring compassion, empirical evidence and fiscal responsibility to juvenile LWOP cases. There can be little doubt Yee's case was helped this session when the US Supreme Court issued a decision banning mandatory LWOP for juveniles, citing a several factors also mentioned by Yee. Although the Supreme Court ruling will have little direct effect on California, as it addressed only mandatory LWOP terms and in California the LWOP sentence is at the discretion of prosecutors and judges, the ruling nonetheless brought considerable attention to the characteristics of juvenile offenders and LWOP sentencing.

"SB 9 is not a get-out-of-jail-free card; it is an incredibly modest proposal that respects victims, international law, and the fact that children have a greater capacity for rehabilitation than adults," said Yee. "The neuroscience is clear – brain maturation continues well through adolescence and thus impulse control, planning, and critical thinking skills are not yet fully developed. SB 9 reflects that science and provides the opportunity for compassion and rehabilitation that we should exercise with minors."

"SB 9 becoming law speaks volumes for who we are as a society – that we value our children," said Yee. The Senator, child psychologist by profession, added, "I commend Governor Brown for having the courage, understanding, and leadership to sign SB 9. The Governor's signature of SB 9 is emotional for both the supporters and the opposition, but I am proud that today California said we believe all kids, even those we had given up on in the past, are deserving of a second chance."

Backed by a wide array of groups and individuals, from Human Rights Watch, to San Francisco DA George Gascon to former Republican Presidential candidate Newt Gingrich, SB 9 was one bill LSA backed early and staunchly, calling on our members several times during the legislative process to voice their support for the bill. Just 6 days before the Governor signed the bill our members once again filled the Governor's email, phone log, FAX machine and mail box with support letters, in response to victims' rights groups mounting a campaign to convince Brown to veto the bill.

Yee was also able to call into question to fairness of juvenile LWOP, noting that in California African American youths are eighteen times more likely to be sentenced to LWOP than white youths and the rate for Latino youths is five times higher. And in a time of budgetary concerns Yee noted continuing to incarcerate the current population of youth offenders already sentenced to life without parole until their deaths in prison will cost the state close to $700 million. As the details and procedures for those wishing to request a review of their juvenile LWOP sentence are formulated and released Lifer-Line will apprise our readers of that information.

IWF NOW MAY REALLY BENEFIT INMATES

SB 542 signed by Governor

For the first time since its inception the Inmate Welfare Fund (IWF) may now begin to actually provide some noticeable benefit to inmates. Under provisions of SB 542 (Price, D-Los Angeles) MAC/WAC councils, Inmate Family Councils (IFC) or other advocacy groups will be consulted by prison administrations in how IWF monies should be spent at each institution.

Governor Brown signed SB 542 into law on September 30, the last day available for bills to be 'chaptered,' or incorporated into state law by virtue of the governor's signature. SB 542 had a rocky launch, when Sen. Price originally proposed using the IWF as a source of funding for reentry programs aimed at inmates released back to county oversight. Opposition to that prospect was swift and unanimous, with Life Support Alliance one of the first groups to say no.

However, to Sen. Price's credit, his office invited a cross section of stakeholders to attend a series of meeting to discuss the purpose and operation of the IWF. Sen. Price also visited San Quentin and Folsom Prison and there engaged inmates to get their thoughts on the issue. As the Senator himself later noted, the prisoners were very knowledgeable not only about the workings and failures of the IWF but about their needs as well.

These meetings lead the Senator to revamp SB 542, to call for IWF funds to be used in a broader definition of inmate welfare and to tap into the resource of the inmates and their advocates as to what would best benefit the prisoners at each institution. Although the bill prevents the CDCR from co-opting IWF funds to pay for programming already required by state law, some advocacy groups felt there was still too much danger of IWF monies being diverted to programs the department wanted to fund.

LSA remained a supporter of SB 542, believing prisoners who were involved enough to become members of peer advisory councils, coupled with friends, family and other advocates who were savvy and interested enough to become involved in IFC and other groups, would be vigilant monitors of where the IWF monies were spent. At Senator Price's invitation LSA testified in support of SB 542 in both the Senate and the Assembly and called upon our members several times to voice their support for the bill to the governor.

PRISON GANGS: NEW POLICIES OR JUST NAME CHANGE?

CDCR has announced plans to immediately begin implementing what it calls a new plan for handling members of prison gangs and "security threat groups." These new plans, according to the department, include changed criteria for validating gang members and methods for allowing alleged gang associates to remove themselves from Security Housing Units, or SHU confinement.

That, at least, is the public position of CDC. Some prisoner advocates, however, are unconvinced that the new policies are new in anything other than semantics. Under policies that have been in place for decades prisoners were automatically placed in SHU housing once they were identified as being associated with one of seven known prison gangs. Because the criteria for being 'validated' were so broad, and the process for shedding that validation so difficult and fraught with danger, many California prisoners have been in virtual solitary confinement for decades in SHU units located in Pelican Bay, Corcoran, Tehachapi and new Folsom prisons.

There are, however, clearly two new aspects to the new "Security Threat Group Prevention, Identification and Management Strategy" policy, the first being what the department now qualifies a threat. Perhaps bowing to a more politically sensitive outlook the department no longer concerns itself only with prison gangs, but now says it is on the alert for inmates who may align themselves with 'security threat groups' (STG). This more general term seems to expand the scope of those groups from the familiar seven identified prison gangs to what the department now considers any group posing a threat to the security of a prison, including street gangs and those groups termed "extremist groups," collectively referred to as STGs.

At a recent Board of Parole Hearings Executive Meeting a member of the department's gang task force presented a power point presentation to the BPH commissioners on the new guidelines, a presentation that included photos of several individuals the department now considers a threat group, many so identified by Islamic-themed tattoos. In a memo to members of the CCPOA the department maintains the new policy will allow "previously unavailable flexibility in the recognition and certification of STGs that do not have their origins in prisons."

The second readily identifiable difference is the jettisoning of the old 'de-briefing' procedure, wherein an inmate wanting to divest himself of gang affiliation had to reveal to the gang task force all he knew of the inner workings of the gang, thus putting him in considerable jeopardy. In place of debriefing the department will now offer a 'step-down' program worked over a period four years, each step successfully completed allowing the prisoner more privileges and the possibility of eventually leaving SHU confinement without the necessity to "de-brief."

But the primary problem, and the one prisoner advocates see little change in, is the method of identifying or 'validating' those associated with a gang, or now STG. Under the latest version of the new guidelines the criteria used to tie an inmate to an STG include:

- Security threat group-related tattoos and/or body markings
- Clothing worn "with the intent to intimidate, promote membership or depict affiliation in a security threat group"
- The leading or incitement of a disturbance, riot or strike

- Possession of artwork showing security threat group symbols
- Use of hand signs, gestures, handshakes and slogans that specifically relate to a security threat group

Perhaps the most controversial of these is the use of tattoos or artwork as a validation tool. Under the department's new policy, inmates who are not actively engaged in current gang activities should not remain in SHU units; yet the continued use of a perhaps decades-old tattoo could keep many prisoners SHU-bound virtually without end. Defending the use of tattoos as a validation marker CDCR Undersecretary of Operations Terri McDonald said "When you put a gang tattoo on your body, you are saying to the inmate community, 'I'm a member of this gang; I represent the values of this gang.'"

This, however, begs the question how an inmate who received a gang tattoo 21 years ago and has been imprisoned for 20 years could have had that incriminating tattoo removed. As Don Specter of the Prison Law Office observed, "The department's approach continues to be guilt by association."

Nevertheless, CDC is reportedly rolling out this new STG policy as a pilot program, beginning with the review of the files of every inmate in Pelican Bay's SHU unit, some 1,100 individuals. McDonald indicated those inmates who have been confined to the SHU the longest would be among the first to be evaluated under the new criteria. Some 500 at PBSP have been in SHU confinement for more than a decade.

Currently some 3,000 inmates whom the CDC classifies as gang affiliated or involved are housed in SHU units in four prisons. How the implementation of the new policies for validation and step-down of gang and the re-housing of some inmates will affect the legal action filed in May by the Center for Constitutional Rights on behalf of Pelican Bay inmates held in the SHU for over a decade remains to be seen. A management conference on the suit is slated for December before a federal judge.

RESEARCH IN PROGRESS

One of the significant events of the past several months was the removal from the Board of Parole Hearings of former Commissioners Michael Prizmich and Gilbert Robles. LSA believes we had a significant impact these decisions by the Senate Rules Committee. And it was accomplished quietly, with research, reports and, above all, facts.

Toward that end, we are seeking input on several prison and parole related issues from those who know the situations best: prisoners. Below are several issues LSA is currently researching. Please send us your experiences or information on these issues, in as much detail as possible. To simply say that you feel your hearing was not impartial or the commissioners or psychologists were unfair is of little help.

What is required are specifics, including names of the officials involved and the date of the hearing. We are very sensitive to the use of inmate names, but we cannot verify allegations of improper conduct or events without the ability to check those facts.
The issues:

- Victims' participation in parole hearings and interaction with the governor after a parole is granted
- Treatment, or lack thereof, for Valley Fever
- Use of confidential information in denial of parole
- Problems encountered in visiting
- Psychological evaluations by the BPH's Forensic Assessment Division
- Ineffective or representation problems with state appointed attorneys. We also want to know if your appointed attorney was especially helpful and enthusatic.in representing you
- Difficulty in accessing self-help and reentry programs for lifers.

Please send your information on these and other issues to LSA, PO Box 277, Rancho Cordova, Ca. 95741. And again, please include as much detail as possible.

UPDATE ON FAD LAWSUIT

Attorney Keith Wattley filed in suit in April, 2011 against CDCR and BPH seeking "declaratory and injunctive relief under constitutional, statutory and regulatory law against officials of the California Department of Corrections and Rehabilitation (CDCR) and its Board of Parole Hearings (BPH) for applying unlawful procedures to consider his [sic] suitability to for parole."

Wattley is challenging the BPH's Forensic Assessment Division (FAD) and its thoroughly flawed emulations in the name of inmate Sam Johnson in particular, but on behalf of all lifers in general. Life Support Alliance has been a staunch adversary of the FAD and gives full support and all assistance possible to Wattley in this effort. Below is an update from Wattley, relating the present position of the action.

The Board filed a motion to dismiss the action on the grounds that all the defendants have immunity from being sued (they don't) and that the Board's psych policies don't violate any federal constitutional rights (which they do). Our opposition to their motion to dismiss is due on September 20, and then the hearing on the motion is in Department 9 of the United States District Court, Sacramento, on October 4 at 10:00 am. ***We absolutely still need input from prisoners!*** *We really need prisoners and their attorneys to give us information on how the Board has responded (or not) to their written challenges to the contents of psychological evaluations, especially those containing substantial errors.*

Send any information you may have relevant to this legal action to Wattley, in care of UnCommon Law, 220 4thSt., Suite 201, Oakland, Ca. 94607.

HOUSKEEPING

California Lifer Newsletter (CLN) and LSA share the same address: PO Box 277, Rancho Cordova, Ca. 95741. All correspondence should go to this address, but please indicate if your comments or inquiries are for CLN or for an issue involving LSA. This is most important for change of address notifications.

CLN is a paid subscription publication. Rates and subscription forms are available on request. CLN is not available on-line. LSA's newsletter, *Lifer-Line*, is a monthly, free publication. If you have a friend or family member who can receive *Lifer-Line* via email to print and send to you, that is our preferred method of delivery, as a cost saving measure. However, if that is not an option for you we will add you to our mailing list. Donations of stamps for *Lifer-Line* are appreciated, but not required. Please do not send SASE.

We endeavor to answer all question sent to us, but those involving a specific prisoner or issue related to an individual or requiring extensive research will be returned with a letter explaining we lack the resources, financial or time, to handle these requests.

When writing to us please include your name and address information in the body of your letter, as envelopes can become separated from letters. And please include your housing assignment in the address, as this, CDC promises us, will help speed your mail to you. Yes, we laughed too.

WE AGREE

People do make mistakes and I think they should be punished. But they should be forgiven and given the opportunity for a second chance. We are human beings (David Millar)

RUMOR CONTROL

As the graphic above illustrates, people often speak from an empty mind. Such is often the case with rumors running through the prison grapevine. Here are some of the most common, and least accurate, currently making the rounds:

Lifers with more than 20 years in/over 55 years old/non-murder convictions/10 years past MEPD (pick your qualifier) will be going home under realignment/early release. Reality: don't pack yet. Realignment does not apply to those convicted of 'serious, violent 'crimes, which lifers, by virtue of their convictions are, and early release follows the same guidelines. No one has gone home 'early' under either of these and that isn't going to change. By law lifers can only get out through parole, pardon or court action on their individual cases.

If Prop. 36 passes all third strikers will go home. Nope. Read the specifics of the bill—even if this passes in the November election third strikers will still have an uphill battle, but at least a chance to lose the life sentence. But only a chance.

Marsy's Law has been overturned. Not yet, it's still in the court process, but we're hopeful and impatiently waiting. Until the court speaks, Marsy's stands.

The Feds are coming to take over CDC. We wish, but that will be a last-ditch, Hail Mary effort and we aren't there yet. Don't expect the Marines anytime soon.

TEMPORAIRLY DOWN BUT NOT OUT

We've received many inquires in the last few weeks regarding Donald "Doc" Miller, former lifer, paralegal, founder of California Lifer Newsletter and consummate champion of lifers and the cause of parole reform. Here is what we can report: Don was severely injured in late August in an auto accident near his home in Southern California. His injuries required immediate surgery and he unfortunately suffered some complications as a result of the surgery and additional difficulties due to extended hospitalization. But as anyone who knows "Doc" would expect he's not out of the picture.

He is recovering at a treatment facility and making progress. Due to his injuries and other complications his recovery may be a slow process, but he is certainly eager to get back in the fray. However, visits, calls and other communication, including email are being limited, to allow Doc the rest needed to facilitate his recovery. While Doc's co-workers are busy taking care of pressing matters at Miller Consulting, his paralegal firm, forbearance is needed from everyone until the Captain returns to the helm of his ship.

One of Doc's noteworthy accomplishments, California Lifer Newsletter (CLN) continues uninterrupted, due to LSA assuming publication duties for CLN in June. We're confident Don is happy with the knowledge that lifers won't miss an issue of CLN while he recovers. In Don's absence noted former lifer John Dannenberg will be writing the legal case analysis.

Everyone in the prison reform and lifer communities is keeping Doc in our thoughts, hoping for his speedy recovery. We'll keep our readers informed of his progress.