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10 IN THE UNITED STATES DISTRICT COURTS
11 FOR THE EASTERN DISTRICT OF CALIFORNIA
12 AND THE NORTHERN DISTRICT OF CALIFORNIA
13 UNITED STATES DISTRICT COURT COMPOSED OF THREE JUDGES
14 PURSUANT TO SECTION 2284, TITLE 28 UNITED STATES CODE

15 **RALPH COLEMAN, et al.,**
16 Plaintiffs,
17 v.
18 **EDMUND G. BROWN JR., et al.,**
19 Defendants.
20

2:90-cv-00520 KJM-DB
THREE-JUDGE COURT

21 **MARCIANO PLATA, et al.,**
22 Plaintiffs,
23 v.
24 **EDMUND G. BROWN JR., et al.,**
25 Defendants.
26

C01-1351 JST
THREE-JUDGE COURT
**DEFENDANTS' AUGUST 2017 STATUS
REPORT IN RESPONSE TO FEBRUARY
10, 2014 ORDER**

1 The State submits this status report on the current in-state and out-of-state adult prison
 2 populations and the measures being taken to comply with the Court's February 10, 2014 Order
 3 Granting in Part and Denying in Part Defendants' Request for Extension of December 31, 2013
 4 Deadline (February 10, 2014 Order). Exhibit A sets forth the current design bed capacity,
 5 population, and population as a percentage of design bed capacity for each state prison and for all
 6 state prisons combined. Exhibit B sets forth the status of the measures Defendants have
 7 implemented as required by the February 10, 2014 Order. (ECF 2766/5060 at ¶¶ 4-5.)

8 In 2016, CDCR activated 2,376 infill beds and corresponding administrative and health
 9 care support facilities at Mule Creek State Prison and Richard J. Donovan Correctional Facility.
 10 (See Ex. B.) The parties are currently engaged in the Court-ordered meet-and-confer process to
 11 reach an agreement on how such capacity should be counted for purposes of determining
 12 compliance with the Court's population reduction order. (*Id.*) As of August 9, 2017, 115,229
 13 inmates were housed in the State's 34 adult institutions and 4,390 inmates were housed in out-of-
 14 state facilities.¹ (Ex. A.) The State's prison population is approximately 135.4% of design
 15 capacity if the 2,376 infill beds are counted at 137.5%, and approximately 136.4% of design
 16 capacity if the 2,376 infill beds are counted at 100%. (Ex. A.)

17
 18 Dated: August 15, 2017

XAVIER BECERRA
 Attorney General of California

19
 20 By: /s/ *Maneesh Sharma*
 MANEESH SHARMA
 Deputy Attorney General
 Attorneys for Defendants

21
 22 Dated: August 15, 2017

HANSON BRIDGETT LLP

23
 24 By: /s/ *Paul B. Mello*
 PAUL B. MELLO
 Attorneys for Defendants

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¹ The data in Exhibit A is taken from CDCR's August 9, 2017 weekly population report, available on CDCR's Web site at http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/Population_Reports.html.

EXHIBIT A

Exhibit A

Population as of August 9, 2017

Institution	Design Capacity*	Actual Population	Population as % of design capacity*
Total housed in adult institutions ¹	85,083	115,229	135.4%
Total housed in camps		3,738	
Total housed out of state		4,390	
Individual CDCR Institutions - Men			
Avenal State Prison	2,920	3,771	129.1%
California State Prison, Calipatria	2,308	3,755	162.7%
California Correctional Center**	3,883	4,098	105.5%
California Correctional Institution	2,783	3,819	137.2%
California State Prison, Centinela	2,308	3,392	147.0%
California Health Care Facility, Stockton	2,951	2,385	80.8%
California Institution for Men	2,976	3,575	120.1%
California Men's Colony	3,838	4,159	108.4%
California Medical Facility	2,361	2,531	107.2%
California State Prison, Corcoran	3,116	3,227	103.6%
California Rehabilitation Center	2,491	2,649	106.3%
Correctional Training Facility	3,312	5,123	154.7%
Chuckawalla Valley State Prison	1,738	2,802	161.2%
Deuel Vocational Institution	1,681	2,482	147.7%
Folsom State Prison	2,066	2,592	125.5%
High Desert State Prison	2,324	3,559	153.1%
Ironwood State Prison	2,200	3,145	143.0%
Kern Valley State Prison	2,448	3,662	149.6%
California State Prison, Los Angeles	2,300	3,380	147.0%
Mule Creek State Prison	3,284	3,619	110.2%
North Kern State Prison	2,694	4,647	172.5%
Pelican Bay State Prison	2,380	2,127	89.4%
Pleasant Valley State Prison	2,308	2,947	127.7%
RJ Donovan Correctional Facility	2,992	3,812	127.4%
California State Prison, Sacramento	1,828	2,271	124.2%
California Substance Abuse Treatment Facility, Corcoran	3,424	5,710	166.8%
Sierra Conservation Center**	3,936	4,241	107.7%
California State Prison, Solano	2,610	3,786	145.1%
California State Prison, San Quentin	3,082	4,084	132.5%
Salinas Valley State Prison	2,452	3,543	144.5%
Valley State Prison	1,980	3,474	175.5%
Wasco State Prison	2,984	5,327	178.5%
Individual CDCR Institutions - Women			
Central California Women's Facility	2,004	2,994	149.4%
California Institution for Women**	1,398	1,861	133.1%
Folsom Women's Facility	403	418	103.7%

*In 2016, CDCR activated 2,376 infill beds and corresponding administrative and health care support facilities at Mule Creek State Prison and RJ Donovan Correctional Facility. The parties are currently engaged in the Court-ordered meet-and-confer process to reach an agreement on how such capacity should be counted for purposes of determining compliance with the Court's population reduction order. "Population as a % of design capacity" is calculated including the 2,376 beds as part of systemwide design capacity. If the 2,376 infill beds are counted at 100% for the compliance calculation, the prison population is approximately 136.4% of systemwide design capacity.

** The individual Design Capacity and Actual Population figures for California Correctional Center, Sierra Conservation Center and California Institute for Women include persons housed in camps. This population is excluded from the "Total housed in adult institutions" included on Exhibit A.

¹ The "Actual Population" includes inmates housed in medical and mental health inpatient beds located within Correctional Treatment Centers, General Acute Care Hospitals, Outpatient Housing Units, and Skilled Nursing Facilities at the State's 34 institutions. Many of those beds are not captured in "Design Capacity".

Source - August 9, 2017 Weekly Population Report, available at:

http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/Population_Reports.html.

EXHIBIT B

OFFICE OF LEGAL AFFAIRS

Patrick R. McKinney II
General Counsel
P.O. Box 942883
Sacramento, CA 94283-0001



August 15, 2017

Paul Mello
Hanson Bridgett
1676 N. California Blvd., Suite 620
Walnut Creek, CA 94596

Dear Mr. Mello:

Attached, please find California Department of Corrections and Rehabilitation's August 2017 Status Update for Three-Judge Court proceeding.

Sincerely,

A handwritten signature in blue ink, appearing to read "PR McKinney II", is written over a faint, larger version of the same signature.

Patrick R. McKinney II
General Counsel, Office of Legal Affairs
California Department of Corrections and Rehabilitation

Attachments



AUGUST 15, 2017 UPDATE TO THE THREE-JUDGE COURT

This report reflects CDCR's efforts as of August 15, 2017 to develop and implement measures to comply with the Three-Judge Court's population reduction order. Because this is an evolving process, CDCR reserves the right to modify or amend its plans as circumstances change.

In February and March 2016, CDCR activated 1,584 infill beds and corresponding administrative and health care support facilities at Mule Creek State Prison. In December 2016, CDCR activated an additional 792 infill beds and corresponding administrative and health care support facilities at Richard J. Donovan Correctional Facility. The parties are currently engaged in the Court-ordered meet-and-confer process to reach an agreement on how such capacity should be counted for purposes of determining compliance with the Court's population reduction order. As of August 9, 2017, the State's prison population is approximately 135.4% of design capacity if the 2,376 infill beds are counted at 137.5% for the compliance calculation. If the 2,376 infill beds are counted at 100% for the compliance calculation, the prison population is approximately 136.4% of design capacity.

1. **Contracting for additional in-state capacity in county jails, community correctional facilities, private prison(s), and reduction of out-of-state beds:**

Defendants have reduced the population in CDCR's 34 institutions by transferring inmates to in-state facilities.

a. Private Prison (California City):

The current population of California City is approximately 2,457 inmates.

b. Community correctional facilities (CCFs) and modified community correctional facilities (MCCFs):

The State currently has contracted for 4,218 MCCF beds that are in various stages of activation and transfer.

c. County jails:

The State continues to evaluate the need for additional in-state jail bed contracts to house CDCR inmates.

d. Reduction of inmates housed out-of-state:

On February 10, 2014, the Court ordered Defendants to "explore ways to attempt to reduce the number of inmates housed in out-of-state facilities to the extent feasible." Since that time, the State has reduced the out-of-state inmate population to 4,390 and has closed the Oklahoma out-of-state facility.

2. Newly-enacted legislation/update on durability:

In response to the Court's March 4, 2016 Order, Defendants will continue to report on enacted and pending legislation, policies, and construction that will ensure that compliance with the Court-ordered population cap is durable.

The State continues to implement Senate Bill 260 (2013) and Senate Bill 261 (2015), which allows inmates whose crimes were committed before the age of 23 to appear before the Board of Parole Hearings (the Board) to demonstrate their suitability for release after serving at least fifteen years of their sentence. From January 1, 2014 through July 31, 2017, the Board held 3,310 youth offender hearings, resulting in 854 grants, 2,021 denials, 435 stipulations to unsuitability, and there are currently no split votes that require referral to the full Board for further consideration. An additional 1,844 hearings were scheduled during this time period, but were waived, postponed, continued, or cancelled.

On October 3, 2015, the State also enacted Senate Bill 230, which provides that life inmates who are granted parole will be eligible for release, subject to applicable review periods, upon reaching their minimum eligible parole date. Life inmates will no longer be granted parole with future parole dates.

Proposition 36, passed by the voters in November 2012, revised the State's three-strikes law to permit resentencing for qualifying third-strike inmates whose third strike was not serious or violent. As of July 31, 2017, approximately 2,282 third-strike inmates have been released.

On November 4, 2014, the voters passed Proposition 47, which requires misdemeanor rather than felony sentencing for certain property and drug crimes and permits inmates previously sentenced for these reclassified crimes to petition for resentencing. As of July 31, 2017, approximately 4,686 inmates have been released under Proposition 47.

On December 16, 2016, the California Secretary of State certified that The Public Safety and Rehabilitation Act of 2016 (the "Act") was passed by the voters.¹ The Act will serve as a durable remedy and gives the State authority to implement many of the court-ordered reforms through regulations. The Act reforms California's juvenile and adult criminal justice systems by: (1) establishing a parole consideration process for convicted non-violent felons upon completion of the full term for their primary offense; (2) expanding current and creating new credit earning programs that authorize CDCR to award credits earned for good behavior and approved rehabilitative or educational achievements, and (3) requiring hearings in juvenile court for all juvenile offenders before they may be transferred to adult court. Initial estimates are that, as a result of the Act, the average daily adult inmate population will be reduced by approximately 2,000 inmates in Fiscal Year 2017-2018, growing to an inmate reduction of approximately 9,500 by Fiscal Year 2020-2021. It is projected that these anticipated reductions will enable the return of all 4,900 inmates from out-of-state facilities by 2020.

On March 24, 2017, CDCR submitted emergency regulations implementing the parole and credit changes set forth in the Act to the Office of Administrative Law. The Office of

¹ Statement of Vote November 8, 2016 General Election (<http://elections.cdn.sos.ca.gov/sov/2016-general/sov/2016-complete-sov.pdf>)

Administrative Law approved the regulations on April 13, 2017. On May 1, 2017, Defendants implemented Good Conduct Credits that are awarded to eligible inmates who comply with all prison rules and perform duties as assigned on a regular basis. These regulations codify the court-ordered credit earning increases for non-violent second strike offenders and minimum custody inmates, as well as increase credit earning opportunities all other inmates except the condemned and those serving life without parole. Full details about the expanded credits can be found on CDCR's website at <http://www.cdcr.ca.gov/proposition57/>. Defendants implemented the Act's remaining credit processes—Milestone Completion, Rehabilitative Achievement, and Educational Merit credits—on August 1, 2017.

Defendants implemented the Act's non-violent parole process on July 1, 2017. As required by the Court's June 20, 2017 Order, Defendants will provide updates on the status of the measure in future reports as data becomes available, including the number of inmates referred to the Board, the number of inmates approved for release, and any substantive changes resulting from regulatory or other State proceedings.

Additionally, CDCR has added 2,376 beds with corresponding administrative and health care support facilities at Mule Creek State Prison and Richard J. Donovan Correctional Facility. CDCR continues to expand community reentry bed usage and is exploring options for increasing reentry bed use, including modifying statutory requirements to enable CDCR to place inmates in reentry facilities up to six months before their release dates, two months earlier than is currently permitted.

As of July 1, 2016, the State is expanding reentry services programming to each of the Department's institutions.² This new statewide reentry model will eliminate the need to transfer inmates to designated hub-institutions and allow any inmate with an assessed need for reentry services to access programming at their current institution. CDCR is currently in the process of contracting for services at all institutions.

3. Prospective credit-earning increase for non-violent, non-sex registrant second-strike offenders and minimum custody inmates:

Effective from the date of the Court's February 10, 2014 Order, non-violent, non-sex second-striker offenders are earning credits at the rate of 33.3% (increased from the previous rate of 20%) and are also eligible to earn milestone credits for rehabilitative programs. The State's automated systems have been modified and the court-ordered credits are being automatically applied, including milestone credits. In July, 472 inmates were released as a result of the court-ordered credit increases.³ These inmates earned an estimated average of 165.9 days of additional credit. Of the 472 inmates released in July, 339 earned milestone completion credits toward their advanced release date. Since April 2014, approximately 8,859 inmates who have been released as a result of this credit measure earned milestone credits toward their advanced release date.

As of January 1, 2015, Defendants expanded 2-for-1 credit earnings for all inmates designated Minimum Custody A or B pursuant to California Code of Regulations Title 15

² As a result of the expansion of statewide reentry services, the State has eliminated the reentry hub section of this report.

³ Of the 472 inmates, 332 were released to Post Release Community Supervision and 140 were released to parole.

Section 3377.1 who are currently eligible to earn day-for-day (50%) credits. As of May 1, 2017, this credit earning measure has been codified as part of the Act's Good Conduct Credits. These credits are being applied prospectively to the 3,645 inmates who are currently eligible under this program. Since January 1, 2015, 20,378 total inmates have been released receiving expanded 2-for-1 earnings.⁴

4. New parole determination process whereby non-violent second-strikers will be eligible for parole consideration by the Board once having served 50% of their sentence:

As authorized by the Court's June 20, 2017 Order, Defendants stopped referring inmates to the Board for this parole process on June 30, 2017. From January 1, 2015 through June 30, 2017, 12,677 non-violent second-strike inmates were referred to the Board for review for parole. From January 1, 2015 through July 31, 2017, the Board approved 4,336 inmates for release and denied release to 5,043 inmates. Some cases are pending review because the 30-day period for written input from inmates, victims, and prosecutors did not elapse until July 30, 2017. Others are pending review until the inmate is within 60 days of his or her 50 percent time-served date.

5. Parole determination process for certain inmates with indeterminate sentences granted parole with future parole dates:

As mentioned above, on October 3, 2015, the State enacted Senate Bill 230, which provides that life inmates who are granted parole will be eligible for release, subject to applicable review periods, upon reaching their minimum eligible parole date.

6. Parole process for medically incapacitated inmates:

The State continues to work closely with the Receiver's Office to implement this measure. The Receiver's Office is continuing to review inmates and is sending completed recommendations to CDCR. Recommendations received from the Receiver's office are reviewed by DAI and referred to the Board for a hearing. As of August 9, 2017, the Board has held 107 medical parole hearings under the revised procedures. An additional 28 were scheduled, but were postponed, continued, or cancelled.

7. Parole process for inmates 60 years of age or older having served at least 25 years:

The Board continues to schedule eligible inmates for hearings who were not already in the Board's hearing cycle, including inmates sentenced to determinate terms. From February 11, 2014 through June 30, 2017, the Board has held 2,101 hearings for inmates eligible for elderly parole, resulting in 528 grants, 1,406 denials, 167 stipulations to unsuitability, and there currently are no split votes that require further review by the full Board. An additional 958 hearings were scheduled during this time period but were waived, postponed, continued, or cancelled.

Assembly Bill 1448 (Weber) would enact an elderly parole program for inmates age 60 or older who have served at least 25 years of incarceration. The bill recently passed the Assembly and is pending a hearing before the Senate Appropriations Committee.

⁴ As of the May 2017 reporting period, CDCR re-coded the program used for reporting offenders released and prospectively eligible for expanded 2-for-1 credit earning. This change did not affect offenders' eligibility to earn the additional credits; rather, the updated reporting methodology more accurately captures the offenders who actually earned credit.

Details concerning AB 1448 can be found at the following link:

https://leginfo.legislature.ca.gov/faces/billStatusClient.xhtml?bill_id=201720180AB1448.

8. Reentry programs:

Contracts for the San Diego, San Francisco, Los Angeles, Kern County, and Butte County reentry programs are in place. The State continues to review and refer eligible inmates for placement consideration. As of August 9, 2017, 499 inmates are housed in reentry facilities.

9. Expanded alternative custody program:

The State's expanded alternative custody program for females, Custody to Community Transitional Reentry Program (CCTRP), provides female inmates with a range of rehabilitative services that assist with alcohol and drug recovery, employment, education, housing, family reunification, and social support. Female inmates in the CCTRP are housed at facilities located in San Diego, Santa Fe Springs (LA), Bakersfield, and Stockton. As of August 9, 2017, 307 female inmates are participating in the CCTRP.