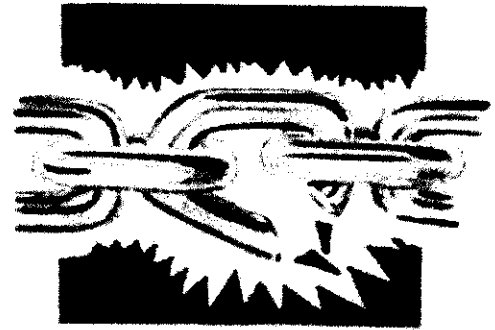




Voices.Con

Term-to-Life Prisoners Converse



Vol. 13, No. 3

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FALL 2015

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There would appear to be a growing multitude of reasons for renewed hope among those sentenced to lengthy terms of incarceration. Responding to the not so fleeting disdain over the use of mass incarceration in this nation, many state legislatures and federal courts are now a bit more open to the evidence-based alternatives.

In California, the term-to-life prisoner population has had a decades-long vigil for even a modicum of meaningful change from the state's legislative branch. With the passage of 2012's SB 9, 2013's SB 260, and now 2015's SB 261, (introduced by Senator Loni Hancock) the long-term prisoners serving an indeterminate or determinate sentence for an offense committed prior to age 23, will have an enhanced consideration for early release. In CA, this equates to approximately 10% of the current prison population. SB 261 requires the Board of Parole Hearings (BPH) to "give great weight to the diminished culpability of juveniles as compared to adults, the hallmark features of youth," when considering such prisoners for parole.

It's not clear what the exact percentage of those serving a term-to-life sentence committed their offense prior to age 23, but it's expected that they will represent a sizeable chunk of that 10% referred to above.

Page 1

There are several court cases of particular interest, two of which are soon to reach some form of resolution. The first would be the Johnson v. Shaffer Class Action Settlement (#2:12-cv-1059). All CA prisoners serving a term-to-life sentence are class members to the Johnson case. On October 2, 2015, an Amended Stipulated Settlement was filed. The court has not yet issued an order approving this proposed settlement, and class members were permitted to file any objections/comments no later than November 13, 2015.

This settlement will require the BPH-hired psychologists to prepare a new Comprehensive Risk Assessment (CRA) every three years, as opposed to every five years. The settlement also requires that "all future CRA's will clarify that the Overall Risk Rating is relative to other life prisoners." And the settlement also requires the BPH to "formalize a process for prisoners to lodge timely written objections asserting factual errors in a CRA before their parole hearing occurs." Keith Wattleby of UnCommon Law, Attorneys for Plaintiff Sam Johnson and the Plaintiff Class, have ably litigated this case since it was filed in April of 2012.

Another case currently pending in the Ninth Circuit Court of Appeals, Gilman v.

parole ELIGIBLE POPULATION, cont'd

Brown Jr., (#CIV-S-05-830 LKK/CKD) was decided in favor of the Plaintiff Class (CA's term-to-life prisoners) back in February of 2014. The State Attorney General's Office has appealed this case to the Ninth Circuit where it is now pending. The Gilman case was orally argued and submitted in the Ninth Circuit Court on June 17, 2015. The Trial Court in Gilman declared that California's Prop. 9 (Marsy's Law) and Prop. 89 violates the ex post facto rights of the class members. Prop. 9 was the 2008 law permitting subsequent parole hearings to be deferred for up to 15 years. Prop. 89 was a 1988 law which permitted the governor to reverse parole board decisions. In the best case scenario where this case survives each of the state's appeals and remains affirmed by the Courts, it is likely to be several more years before the case concludes, and the "Stay" currently placed upon it is lifted. -But what a great victory! The Gilman case has been ably litigated by Attorney Carter C. White of the King Hall Civil Rights Clinic in Davis, California, and Monica Knox, Office of the Federal Defender.

There has been a lot of attention paid to the 6,000 prisoners soon to be released by the federal government. This appears to be at the urging of President Obama, responding to a climate of change toward rehabilitation, rather than mass incarceration. About 2,000 of these released federal prisoners will be deported upon release. The prisoner release is being done by the Bureau of Prisons (Federal Government) in response to an action by the U.S. Sentencing Commission. No state prisoners in California, or any other state, will be released under this action.

And of course, we would be remiss if we failed to consider the quickly approaching final benchmark in Plata v. Brown Jr., (#2:90-cv-00520 KJM/DAD) where CA must reduce its state prison population down to 137.5% of design capacity by February 28, 2016. This case has no direct bearing on the term-to-life prisoner population with regards to release on parole, but certainly speaks to the space and availability of critical programs, not to mention living conditions, in the coming years. According to the state's recent Status Report (10/15/15) filed in the case, CA's current prison population is at 112,195 (135.7%). This is already about 2% lower than what the Court required the state to reach by February 2016. However, the previous two monthly Status Reports filed in the case reflect a steady increase in population. So, given how close the numbers currently are, the reported population count

should prove interesting come the final benchmark in February of 2016.

It is true that over the past several years, rhetoric about mass incarceration as a cure for crime has faded in the face of its evidence-based results. Perhaps it is now that we enter an era in which the injustices so gleefully perpetuated in the past may be reversed by the very same judicial and legislative agencies that created them.

Sources: SB 261 Legislative Counsel's Digest/2-18-15, Johnson v. Shaffer "Amended Stipulated Settlement"/10-2-15, Gilman v. Brown Jr. "Order"/2-28-14, MSN-Report By Sari Horwitz/10-10-15, Plata Report/10-15-15.

LIBERAL KNOWLEDGE

It is the education which gives
a man a clear conscious view of his own
opinions and judgments,
a truth in developing them,
an eloquence in expressing them,
and a force in urging them.
It teaches him to see things as they are,
to go right to the point,
to disentangle a skein of thought,
to detect what is sophistical,
and to discard what is irrelevant.
It prepares him to fill any post with credit,
and to master any subject with facility.
It shows him how to accommodate himself
to others, how to throw himself
into their state of mind,
how to come to an understanding with them,
how to bear with them.
He is at home in any society,
he has common ground with every class;
he knows when to speak and when to be silent;
he is able to converse, he is able to listen;
he can ask a question pertinently,
and gain a lesson seasonably,
when he has nothing to impart himself;
he is ever ready, yet never in the way;
he is a pleasant companion,
and a comrade you can depend upon;
he knows when to be serious
and when to trifle, and he has sure tact
which enables him to trifle with
gracefulness and to be serious with effect.
He has the repose of a mind which lives
in the world, and which has resources for
its happiness at home
when it cannot go abroad.

JOHN HENRY NEWMAN (1852)

ACTING ON IMPULSE

In the process of change there is a period, which varies in length, and sometimes feels like holding water in our hands. This period begins with confusion, doubt, and discomfort. And it ends with confidence, insight, and faith. We're talking about the process of changing our beliefs, values, and principles. Our filter for all of these things is our conscience, where our morals are considered, and our decisions and behavior become the results. When we are at the end of this process of change, we gain the ability to trust our instincts, our impulses, and our conscience. We are at peace.

In our pasts, there are many instances where being impulsive landed us in trouble. Whether we were unable to control our emotions, or we simply had anti-social beliefs and principles, or our values were out of whack. Either way, we were "working with a faulty deck" meaning we had an inferior basis with which to start from. So, really it was inevitable that our impulses resulted in negative consequences. There should not be any surprise, and yet, we were still surprised, confused, and possibly depressed each and every time. During this period, it is tough to understand what we were doing wrong, or why we kept on doing the wrong thing over and over again.

As we begin to change, and to try some new things, we probably felt strange and uncomfortable, until we gained some confidence and familiarity with our change. As we looked at our beliefs and determined whether they were healthy or unhealthy, we learned to identify where we developed those beliefs, and why we carried them with us. As we inspected our values to see if we valued the "right things" in our lives, and whether our priorities were straight. And as we looked at the principles we followed, and determined whether they represented our true selves, or not. As we changed who we were and became our new self, we also learned how to control our impulses, and to avoid negative consequences. We did this as an act of self-preservation mostly, because we were still changing.

In the end though, after we are who we desire to be; healthy and pro-social in our thoughts and beliefs, we still sometimes feel like we are holding on, resisting temptation and impulse, remembering consequences and goals to continue to make good decisions. Then there is a period beyond this, where we again learn to trust

ourselves, to rely on instinct and where it's okay to be impulsive, because our impulses don't hurt others or cause negative consequences for ourselves. It's about living life and being spontaneous sometimes. It's about having the confidence to take chances and to know that they are based in morality and pro-social thinking. It's about trusting ourselves and who we have become.

When our conscience is listened to, and can be trusted, we become confident, insightful, and successful. We develop self-efficacy and faith in ourselves to overcome and to succeed. We are truly at peace, because while we are still able to fail, we are unable to ever return to our old selves. Our core values, beliefs, and principles are all in alignment with our morals, and our conscience guides us. Our instincts, impulses, and drive all move us in a direction which is also guided by our conscience. We no longer have to "hold on" when faced with difficult situations. We can relax in the confidence that our impulses will be pro-social and reflect our true selves. We can let go of the fear of betraying our inner thoughts and shame of past mistakes. We are at peace with ourselves, and our lives are full and satisfying again.

PUBLIC POLICY REPORT

The California Institute on Public Policy released a report on September 28, 2015. The report found that CA's SB 109, Governor Brown's prison realignment program, after 4 years since its implementation, has failed to reduce the rate at which released prisoners are returned to prison due to having committed a new offense. —The recidivism rate still remains at about 65% despite the state's Department of Corrections (CDCR) "claims" to have an increased focus on rehabilitation.

The study also found that the increased number of released prisoners has not caused an overall increase in the state's crime rate, contrary to the espoused predictions of the many Sheriff and District Attorney Associations, and various other conservative right-wing special interest groups.

OUR BEST WISHES

FOR A WONDERFUL HOLIDAY SEASON!

—Voices.Con

CA's YOUTHFUL OFFENDER HEARINGS

On October 3, 2015, Gov. Brown signed SB 261 into law. This bill expands the Youthful Offender Parole Hearings to those who committed their crimes prior to age 23, and have already served at least 15 to 25 years of their sentence.

SB 261 creates a Youth Offender Parole process that requires parole board commissioners to give great weight to the fact that someone was very young at the time of their crime and cannot be held to the same level of responsibility as an adult.

SB 260, which was passed into law in 2013, created these same Youthful Offender Hearings for those who committed their crimes prior to age 18. Since that law went into effect in 2014, nearly 300 such offenders have been paroled. Of those paroled, not one has been returned to prison for violation of parole or committed a new crime. That is pretty remarkable considering California's current recidivism rate for parolees in general is about 65%.

We wish to extend our deepest heartfelt appreciation and gratitude to Senator Loni Hancock for the introduction of this bill, to Elizabeth Calvin of Human Rights Watch, for her immeasurable efforts to make this bill happen, and to the many advocates and researchers at the Fair Sentencing for Youth Coalition, FCLCA, Human Rights Watch, Post Conviction Justice Project of USC School of Law, Prison Law Office, Three Strikes Clinic at Stanford Law School, UnCommon Law, Youth Law Center, and anyone else we may have missed here. —We thank you, and our many loved ones thank you.

For more information about SB 261, please write: Elizabeth Calvin; Human Rights Watch; 11500 W. Olympic Blvd., Suite 540; Los Angeles, CA 90064. The Prison Law Office has also prepared a free handout that explains the new Youthful Offender Parole Hearing process. Write them at: Prison Law Office; General Delivery; San Quentin, CA 94964. You can also have your friends and family read or print this new law at: www.fairsentencingforyouth.org.

THE THING ABOUT ISOLATION

At some point during our prison stay, most term-to-life prisoners have experience with isolation. In the California prison system, isolation can come from several situations: a Security Housing Unit (SHU) term/placement, Administrative Segregation (Ad-Seg), or from long periods of lockdown (now referred to as "Modified Program"), or even the possible

**** RETROACTIVE APPLICATION ****

D R A W Y E D E T N E M E L P M I
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|------------------|---------------------|
| 1) After | 13) Improper |
| 2) Backward | 14) Influencing |
| 3) Cruel | 15) Insensible |
| 4) Earlier | 16) Past |
| 5) Effects | 17) Post |
| 6) Enactment | 18) Preceding |
| 7) Excessive | 19) Previous |
| 8) Ex post facto | 20) Retrospectively |
| 9) Foregoing | 21) Subsequently |
| 10) Hardhearted | 22) Transitory |
| 11) Impact | 23) Unexpected |
| 12) Implemented | 24) Unpredicted |

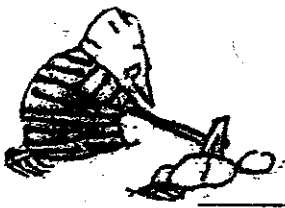
seclusion caused by health problems. We are an aging population.

In the most recent of studies shown, the prison systems themselves must acknowledge that reform needs to come to the policies applied to SHU prisoners. In California prisons, and likely in all other prison systems worldwide, the number of prisoners who are confined in the above-listed situations make up the highest percentage of suicides and attempted suicides. Make no mistake, it is the isolation that is the root driving dynamic, and isolation is the factor common to all the listed situations.

It is now a well-known fact that newborn babies will die if not touched and given regular contact stimuli by human hands. Objects will not serve as a substitute, it must be the power of touch. The phenomenon is called "Failure to Thrive," and that is a good, descriptive label. Failure to Thrive is what happens to adults who are isolated.

A PBS program recently reported that in the recent past, prisoners of any kind in Soviet Russia were never beaten, tor-

(Cont'd on page 6)



LITTLE KNOWN REASONS TO PAY ATTENTION



The following information was taken from California's "Status Report" filed over the previous four months, in the Plata case. This is the case where California was ordered to reduce its prison population down to below 137.5% of design capacity by February 28, 2016.

- * As of 10/15/15, the State's 34 adult prisons confined a total population of 112,195 (135.7%) prisoners. This population count has increased by about 550 prisoners since last month's Status Report.
- * As reported in each of the four previous monthly Status Reports, California's prisoner population has experienced a consistent INCREASE in population. In July/2015, the population was reported at 111,168. In August/2015, the population was reported at 111,485, an increase of about 350 prisoners. In Sept/2015, the population was reported at 111,656, an increase of about 200 prisoners. And most significant, in Oct/2015, the population was reported at 112,195, an increase of about 550 prisoners. Considering the steadily elevating increases in population each month, two things have become clear. First, it appears that Governor Brown's Prison Realignment Act, even combined with the thousands of prisoners released under Prop. 47 and Prop. 36, and a handful of early paroles, the Realignment Act has plateaued (4 months ago) and we are back on the road to a steadily rising population with an unchanged recidivism rate of 65%. Secondly, it is now highly questionable whether California will meet the 137.5% by February/2016, as mandated in the Plata case.
- * California prisoners being confined in out-of-state private prisons is currently: 5,907.
- * As of 10/15/15, the total number of prisoners released under Prop. 47 was 4,463.
- * As of 10/15/15, the total number of prisoners released under Prop. 36 was 2,144.
- * Between Feb/2014 to Oct/2015, the BPH has conducted 948 parole hearings for elderly prisoners over the age of 60 years. Of these hearings, 259 paroles were granted. (Up only 4 grants over the previous 4 months.)
- * As a result of SB 230 (Enacted Oct. 3, 2015) term-to-life prisoners found suitable for parole will be released upon their Minimum Eligible Parole Date (MEPD), or upon the expiration of the 150 day review period if the MEPD has already passed. The BPH has announced that it will no longer set future parole dates beyond these limits.
- * Between Jan/2014 to Sept/2015, the BPH conducted 836 Youthful Offender Parole Hearings (SB 260). Of these hearings, 230 paroles have been granted. (Up only 6 grants since last month's Plata report.)
- * Prisoners who become eligible for a Youthful Offender Parole Hearing under SB 261 (effective Jan/2016) will receive a hearing date by January 1, 2018, if you are currently serving an indeterminate sentence. If you are a prisoner serving a determinate sentence, you will receive a hearing date by December 31, 2021.

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In California, Oklahoma and Maryland, the Governor is permitted by law to reverse the parole board's decision to grant parole. No other States permit their Governor to have such a power. Considering the parole process is already implicitly fraught with politics, it is particularly egregious how the many victim groups have taken advantage of these state's electorate to pass such horridly abusive laws.

about ISOLATION, cont'd

tured or threatened. They were routinely isolated, because the Soviets found that it works almost 100% of the time. The prisoner is broken, and eventually gives the incarcerating authorities what they want.

The down-side is that the prisoner comes out of the isolation a broken human being, forever changed, the way a computer file is changed when saved over. The earlier iteration is wiped out, never to be recovered. This process of causing permanent psychic damage to prisoners through the psychological torture of isolation is inhuman, barbaric, and unconstitutionally cruel and unusual. It has no redeemable value, and is far more severe and widespread than we will ever be able to gauge.

The effects of isolation manifest much like any disease, but are most closely related to substance abuse in that it is progressive. This means that no matter how long it's been since the last isolation, the sickness will pick up where it left off at the end of the last period of isolation. It never fully heals.

Is this somehow supposed to be believable as rehabilitative? Do we really send people to prison so that they can be tortured psychologically, given a progressive psychological disease, and to be made into people who are far more damaged and deeply scared emotionally than before incarceration?

As a society, we should care much more about our incarcerated. They are not worthless slugs, they are simply confused human beings.

Something like 96% of the prison population will one day be released on parole. We must begin to move beyond consideration and do something about the reality that we must pay forward our investment in what we want our prisoners to be when they do parole. We must come to the point of being willing to bring equity, humanity, dignity, respect, and healing into the lives of prisoners. We have become sensitive to victims, but that movement is in danger of being a hate-monger mill, and it needs to be tempered with Restorative Justice. The Restorative Justice model has a future in this area because it includes healing for both victim and offender.

Communities need to form Restorative Justice groups and begin the process of real healing -not warehousing and psychic wounding to attempt to control people. This is the time. If not now, when? Stop the isolation. Reach out to a prisoner today. We all need the human touch. If not you, than who is going to step up? We all have our respective parts to play, and we all share the responsibility of the results that may come from our collective indifference.

DEBBIE M. PAGE, ESQ

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*Law Office of Debbie M. Page
2892 N. Bellflower Boulevard, Suite 402
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Newsletter address:

Voices.Con
P.O. Box 361
King City, CA 93930

Website address: www.VoicesDotCon.org

E-mail: Janet@VoicesDotCon.org

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ABOUT VOICES.CON

Voices.Con is an excellent source of nuts and bolts information relating to parole preparation, parole related politics, understanding parole law and current rulings and the importance of retaining the proper counsel and psychologists for parole hearings. This information is provided exclusively by long-term prisoners who have been there and are currently experiencing the ups and downs of the parole process. We are sorry to say that we do not have the resources to hire staff lawyers or provide legal documents of any kind. **We do maintain a mailing list for paid monthly newsletter subscriptions (\$11 annually.)** The Voices.Con newsletter and all past editions, may be downloaded at no cost by any friend or family member at the VoicesDotCon.org website. On occasion, we may have a current or past edition that can be mailed to a prisoner who has nobody else to download it for free. However, this remains completely contingent on the number of donations received at our mailing address. **Please include a Self Addressed Stamped Envelope in any correspondence requiring a response.**

A FEW FACTS TO REMEMBER

- ⇒ Today, more prisoners in U.S. prisons are serving life terms than ever before. With a U.S. prison population of 2.3 million people, 159,520 are serving life terms.
- ⇒ California's prison system peaked at 173,000 prisoners in 2007, making it the largest prison system in the nation. With 35,759 prisoners serving life terms, it also has the most lifers.
- ⇒ In Florida, California, New York, Texas, Georgia and Ohio, at least 85,800 prisoners are now serving some type of life term.

SUGGESTED GUIDELINES FOR SUBMISSIONS

1. We have only one agenda; advocating on behalf of the term-to-life prisoner and distributing information that will further this cause, enabling the term-to-life prisoner to effectively advocate on his or her own behalf.
2. You may write an essay/article on any related subject or issue of concern to the term-to-life prisoner population.
3. We prefer that all submissions be between 250 and 500 words. Please clearly print or type all submitted material.
4. We also accept and encourage all submissions of topical artwork. Please include a Self Addressed Stamped Envelope with any submissions of artwork or written material where a return has been requested.

OTHER AVAILABLE MATERIAL PUBLISHED AT VOICES.CON WEBSITE:

- * Preview or download our Prisoner Support Directory specifically designed for the needs of the term-to-life prisoners—Free
- * Preview or download a complete Newsletter Descriptions List of all previous editions of Voices.Con—Free
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