

EXHIBIT B

OFFICE OF LEGAL AFFAIRS

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December 14, 2020

Paul Mello

Hanson Bridgett

1676 N. California Boulevard, Suite 620

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Dear Mr. Mello:

Attached please find the California Department of Corrections and Rehabilitation's December 2020 Status Update for the Three-Judge Court proceeding.

Sincerely,

A handwritten signature in cursive script that reads "Jennifer Neill".

JENNIFER NEILL

General Counsel, Office of Legal Affairs

California Department of Corrections and Rehabilitation



December 15, 2020 UPDATE TO THE THREE-JUDGE COURT

On February 10, 2014, the Three-Judge Court extended the deadline to achieve the court-ordered reduction in the in-state adult institution population to 137.5% of design capacity to February 28, 2016. (ECF Nos. 2766/5060 & 2767/5061.) This report is CDCR's 81st report submitted since the Court issued its population-reduction order, and the 69th report submitted since February 2015, when Defendants informed the Court that the population was below the court-ordered reduction. (ECF No. 2838/5278, filed February 17, 2015.) It has now been over five years since Defendants have been in full compliance with the population-reduction order. As of December 9, 2020, the State's prison population is 108.0% of design capacity.

A. Update on durability:

As previously reported, Proposition 57, the State's durable remedy that enacts many of the Court-ordered reforms as well as expands credit-earning opportunities, was approved by voters in November 2016.

On May 1, 2018, regulations for Proposition 57 were approved and made permanent. Information about these regulations can be found at: <https://www.cdcr.ca.gov/proposition57/>.

Later, in December 2018, the Office of Administrative Law approved two emergency regulation packages which: (1) amend the nonviolent offender parole process to distinguish between determinately and indeterminately sentenced offenders and implement a parole consideration process for indeterminately sentenced, nonviolent offenders ("Nonviolent Offender Package"); and (2) expands credit earning opportunities ("Credit Earning Package") for inmates who achieve a High School diploma or its equivalent or who complete 52 hours of programming under the Rehabilitative Achievement Credit program. The Credit Earning Package also reduces the minimum amount of time an inmate must serve until released following a sudden award of substantial credit. The Credit Earning Package went into effect on January 9, 2019.

The Nonviolent Offender Package went into effect on January 1, 2019. Following the Court of Appeal's decision *In re McGhee*, effective July 9, 2019, CDCR no longer applies the previously mandated public safety screening criteria to eligible nonviolent offenders. All eligible (determinately and indeterminately sentenced) nonviolent offenders are now referred to the Board of Parole Hearings for consideration, regardless of their in-prison behavior. On September 10, 2019, the Office of Administrative Law approved the emergency regulations repealing the public safety screening criteria for determinately sentenced, nonviolent offenders. On March 26, 2020, the Office of Administrative Law made the emergency regulations permanent. The notices of approval and publication can be found here: <https://www.cdcr.ca.gov/regulations/wp-content/uploads/sites/171/2020/04/Adopted-NCR-19-06.pdf?label=Adopted%20Regulations%20for%20Supplemental%20Reforms%20to%20Parole%20Consideration%20for%20Determinately->

[Sentenced%20Nonviolent%20Offenders&from=https://www.cdcr.ca.gov/regulations/cdcr-regulations/new-rules-page/](https://www.cdcr.ca.gov/regulations/cdcr-regulations/new-rules-page/).

In addition, in response to the COVID-19 pandemic, pursuant to Governor Newsom's March 24, 2020 Executive Order N-36-20 and CDCR's Secretary Ralph Diaz's independent authority under California Government Code § 8658, CDCR reduced the inmate population at CDCR's institutions.

The impact of the above-described regulations include:

1. Increased credit earning opportunities for all inmates except the condemned and those serving life without parole.

987 inmates released in November earned credit authorized by Proposition 57 towards their advanced release date. These inmates earned an estimated average of 172.6 days of additional credit.¹

2. Determinately Sentenced Nonviolent Offender Parole Process.

CDCR began referring inmates to the Board for this process on July 1, 2017, pursuant to the emergency regulations promulgated on April 13, 2017. From July 1, 2017 through November 30, 2020, 23,820 referrals were made to the Board. As of November 30, 2020, 20,624 referrals have been reviewed on the merits, with 3,825 inmates approved for release and 16,799 denied. Additionally, 20,44 referrals have been closed because the Board's jurisdictional review of the inmates' criminal history and central file revealed they were not eligible for parole consideration. The remaining referrals are pending review, including the 30-day period for written input from inmates, victims, and prosecutors.

3. Indeterminately Sentenced Nonviolent Offender Parole Process.

CDCR began screening indeterminately-sentenced, nonviolent offenders for eligibility in January 2019. As of November 30, 2020, 2,415 inmates have been referred to the Board for a parole consideration hearing, of which 52 were closed because the Board's jurisdictional review of the inmates' criminal history and central file revealed they were not eligible for parole consideration. The Board conducted 728 hearings for indeterminately sentenced nonviolent offenders. The hearings resulted in 212 grants, 462 denials, and 54 stipulations to unsuitability. An additional 687 hearings were scheduled but were postponed, waived, continued, or cancelled. The remaining referrals are pending parole suitability hearings.

¹ This number does not include inmates released from fire camps.

B. Update on Other Measures Defendants Continue to Implement:

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 2,054 inmates.

b. Community correctional facilities (CCFs), modified community correctional facilities (MCCFs), and Female Community Reentry Facility (FCRFs):

The State currently has contracted for 600 MCCF and FCRF 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 zero.² The last inmates in out-of-state contract beds returned to California at the end of June 2019.

2. 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 December 9, 2020, the Board has held 267 medical parole hearings under the revised procedures, resulting in 167 approvals and 100 denials. An additional 57 were scheduled, but were postponed, continued, or cancelled.

3. Parole process for elderly inmates:

As discussed in prior reports, the State enacted Assembly Bill 1448 on October 11, 2017, authorizing an elderly parole program for inmates age 60 or older who have served at least 25 years of incarceration. Governor Gavin Newsom signed AB 3234 this fall,

² This statistic only concerns inmates in out-of-state contract beds and does not include inmates housed in other states under interstate compact agreements.

lowering the age to 50 and the years served to 20 for this program. This will result in 373 newly eligible inmates immediately available for review based on that change.

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 November 30, 2020, the Board held 4,983 hearings for inmates eligible for elderly parole, resulting in 1,421 grants, 3,101 denials, 461 stipulations to unsuitability, and there currently are no-split votes that require further review by the full Board. An additional 2,614 hearings were scheduled during this period but were waived, postponed, continued, or cancelled.

4. Male Community Reentry Programs:

Contracts for the San Diego County, Los Angeles County, Kern County, and Butte County Male Community Reentry Programs are in place. The State continues to review and refer eligible inmates for placement consideration. As of December 9, 2020, 361 inmates are housed in Male Community Reentry Program facilities.

5. Expanded alternative custody program:

The State's expanded alternative custody program for females, Custody to Community Treatment 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, Bakersfield, Stockton, and Sacramento. As of December 9, 2020, 270 female inmates are participating in the CCTRP.

6. Reduction of inmate population in response to COVID-19 pandemic:

On March 24, 2020, Governor Newsom issued an Executive Order N-36-20 suspending the intake of new inmates into CDCR facilities for 30 days. Secretary Diaz extended the suspension of intake. For the period from March 24 through August 24, 2020, intake was mostly suspended, with only very limited intake occurring in May and June 2020. On an intermittent and limited basis, CDCR resumed intake the week of August 24, 2020. In response to the recent increase of COVID-19 cases in the community and consistent with public health and health care guidance, CDCR suspended intake from county jails effective November 26, 2020, through at least December 27, 2020. CDCR will continue to evaluate when, to what extent, and under what conditions it is safe to resume intake from county jails.

Further to these efforts to reduce the population, in March 2020, Secretary Diaz exercised his independent authority under California Government Code § 8658 to transition inmates for whom CDCR staff determined that public safety risk does not preclude release to early parole or Post Release Community Supervision. Inmates with 60 days or less remaining on their sentence (as of March 30, 2020) who were not serving a current term for a violent felony, or for a domestic violence offense, and were not required to register as a sex offender had their release to parole or Post Release Community

Supervision accelerated under Secretary Diaz's direction. As of April 14, 2020, a total of 3,585 inmates were released as a result of the Secretary's directive and other natural attrition.

In addition, at the end of June 2020, CDCR implemented a new plan—consisting of several discretionary measures—to further safely reduce the prison population under California Government Code section 8658. On July 10, 2020, CDCR formally announced this new plan. Further details can be found at

<https://www.cdcr.ca.gov/news/2020/07/10/cdcr-announces-additional-actions-to-reduce-population-and-maximize-space-systemwide-to-address-covid-19/>.

The first measure under this plan releases inmates within 180 days of their release date on a rolling basis if they meet certain criteria. This measure is ongoing. As of December 9, 2020, 6,506 inmates have been released from CDCR's 35 institutions under this measure. The second measure under the plan released inmates with less than a year to serve who resided in particular prisons and who met certain criteria. As a result of this measure, 549 qualifying inmates were released early. The third measure under the plan released high-risk medical inmates who met certain criteria and were individually approved by the Secretary. As a result of this measure, 51 people who were not otherwise eligible for release through the first two programs have been released early. This early-release program was suspended on October 31, 2020. But CDCR has resumed individual reviews of medically high-risk patients to determine their eligibility to be released early. Eligible patients are those with COVID-19 weighted risk scores of three or more, and who have either served the base term of their sentence or are within one year of release. Determinately-sentenced patients who have the highest risk for morbidity or mortality should they contract COVID-19—those with COVID-19-weighted risk scores of six or more—and who are not required to register as a sex offender under Penal Code section 290 are being reviewed first. Among these people, those who pose a low risk for violent recidivism will be approved for release or referred to the courts for expedited consideration for recall of sentence and resentencing, depending on how much time remains on their sentences.

Under the California Code of Regulations, Title 15, section 3043.6, an additional measure under the plan announced on July 10, 2020 awarded twelve weeks of positive programming credits to inmates who met certain criteria. This effort was undertaken to make up for limited access to programs and credit-earning opportunities during the COVID-19 pandemic. Additional information regarding this measure can be found at <https://www.cdcr.ca.gov/covid19/positive-programming-credit-faqs/>, and the Secretary's letter to the incarcerated population regarding these credits can be found at <https://www.cdcr.ca.gov/covid19/letter-to-all-incarcerated-people/>.

As of December 9, 2020, 91,852 incarcerated people were housed in the State's 34 adult institutions and no inmates were housed in out-of-state facilities. The State's prison population is approximately 108.0 % of design capacity, down from 117,342 since the beginning of March 2020.