

LEGISLATOR INTERVENORS' POSITION STATEMENT
RE: DRAFT SETTLEMENT REFEREE PROPOSAL, DATED JUNE 2, 2009

I. Introduction

The Legislator Intervenors intervened in this action in order to oppose issuance by the Federal Three-Judge Court of an order calling for early release of prisoners or the imposition of an arbitrary cap on the population of California prisons. Such early release and population limitations are contrary to public safety and unnecessary to achieve the goal of providing constitutional levels of medical and mental healthcare to California prisoners.

The Federal Three-Judge Court has yet to determine: (1) whether prison overcrowding is the primary cause of inadequate inmate medical and mental healthcare; and (2) in the event that overcrowding is determined to be the primary cause, whether there is any less intrusive remedy than early release of inmates or the imposition of an inmate population cap to improve inmate medical and mental healthcare.

Following several months of work with the parties to the litigation, Settlement Referee Justice Elwood Lui (ret.) and Settlement Consultant Justice Peter Siggins have presented the parties with a Proposed Settlement, dated June 2, 2008, and made public by order of the Federal Three-Judge Court. While the Legislator Intervenors cannot agree to the Proposed Settlement in its current form, we appreciate having the opportunity to share concerns and proposed solutions.

II. Concerns of the Legislator Intervenors

First, the Proposed Settlement unnecessarily and prematurely calls for institution of a prison population cap. This is contrary to public safety and unacceptable. California's prison population is directly tied to the fact that California is the most populous state in the nation, and its incarceration rates are typical, if not lower, than the majority of the states. The solution to any overcrowding in California prisons must be addressed head-on, through construction and rehabilitation efforts, rather than by imposing an arbitrary cap on the population at a risk to the public.

Second, the Proposed Settlement does not directly address the fundamental issue in the pending litigation which is achieving a constitutional level of medical and mental healthcare in the California prison system. Specifically, the Proposed Settlement fails to take into account the efforts of Receiver Kelso and his proposed program for bringing medical care to constitutional levels. Instead, the Proposed Settlement, in its current form, focuses exclusively on reducing the current prison population. Judge Henderson states directly in his May 22, 2008 correspondence to Senator Michael J. Machado that, "Without more, a reduction in prison overcrowding will not ensure that the delivery of

medical care to California inmates will reach constitutional standards.” Accordingly, there can be no assurance that the Court would even accept the Proposed Settlement.

Third, the Proposed Settlement is apparently proposed in addition to (a) the implementation of Assembly Bill 900; and (b) the current request of Receiver Kelso for over \$7 billion in funding for implementation of his program to achieve constitutional levels of care. These efforts must be integrated and implemented in a consistent and cost effective manner. Combined, AB 900 and the Receiver’s program call for over \$14 billion in new spending on prisons. The Receiver’s efforts aim to address the healthcare and housing concerns underlying the *Plata* and *Coleman* actions, as well as the disability and dental care concerns involved in the *Armstrong* and *Perez* actions. Not only has the Court approved the Receiver’s program, Judge Henderson’s May 22, 2008 correspondences states, “I believe strongly that the program – particularly in the phased fashion in which it will be undertaken – represents an appropriate, cost-effective plan that will address the major treatment and housing concerns in all four federal class action.” The statements in Judge Henderson’s correspondence seem to indicate that he not only believes funding of the Receiver’s program is necessary to achieve constitutional levels of healthcare, but also that the Proposed Settlement is not necessary to achieve such levels of care if the Receiver’s program is funded and implemented.

Fourth, the Proposed Settlement includes provisions that unduly jeopardize public safety. For example, the Proposed Settlement explicitly provides for the possibility of implementing summary parole as a means of prison population reduction and budget savings. This is unacceptable. The Legislator Intervenors are opposed to summary parole, which eliminates supervision of paroled felons and in so doing endangers public safety. Additionally, the Proposed Settlement calls for a new diversionary alternatives regime that compromises public safety by stripping away the consequences and accompanying deterrent value of incarceration for numerous crimes. The diversionary alternatives proposal is also contrary to public safety because it threatens to overburden city and county governments. The diversionary alternatives proposal saddles local governments with the primary responsibility for enacting a new, extensive regime for handling a range of offenders that are currently the responsibility of the State and the Department of Corrections and Rehabilitation.^[1]

III. Suggested Alternatives

The Legislator Intervenors believe that a less intrusive remedy does exist and can be achieved through a combination of the following measures:

- Issuance of the prison construction bond authorized previously by AB 900 with flexibility for high-level beds and design-build provisions consistent with Receiver Kelso's proposal;
- Facilitation of funding for the inmate medical facilities as proposed by Receiver Kelso;
- Facilitation of the recruitment of additional medical personnel as proposed by Receiver Kelso;

- Further reduction of short-term population levels through authorization of GPS-monitored house arrest for low-risk, non-violent parole violators;
- Authorization of a comprehensive census of inmates to determine the current illegal alien population of the California prisons -- currently estimated at approximately 30,000 inmates -- and negotiation of full federal funding for the costs associated with housing these inmates.

IV. Conclusion

The goal of the Legislator Intervenors is to achieve constitutional levels of healthcare in an efficient, integrated and coordinated manner that does not compromise public safety. We believe this goal can be met through implementation of a combination of the solutions set forth above.

^[1] As a critical procedural matter, the Proposed Settlement does not provide the Legislator Intervenors with sufficient means to participate in the implementation and monitoring of the settlement. Rather, the Proposed Settlement calls for the Legislator Intervenors' dismissal from the current litigation notwithstanding the fact that the Court would maintain continuing jurisdiction.