

An Update on the California Prison Crisis and Other Developments in State Corrections Policy

INTRODUCTION

Over the past several years, the California prison system has been the target of major reform efforts. The State Legislature took what was billed as a significant step towards reducing overcrowding when it passed Assembly Bill 900 in April 2007.¹ The courts intervened and placed the prison healthcare system under the control of a Federal Receivership. And, in 2008, the California Department of Corrections and Rehabilitation (“CDCR”) began to integrate the state’s prisons, which for years have been plagued by gang and racial conflict.

This paper provides an update on the most important developments in the California prison system in 2008.² It proceeds in three parts. The first examines the state’s attempt to relieve prison overcrowding and implement the reforms authorized by Assembly Bill 900. The next section focuses on the successes – and the struggles – of the Receiver in bringing prison medical care up to constitutional standards. The last part focuses on CDCR’s new integrated housing plan, and discusses some of its implications with regard to inmate culture, rehabilitation, and institutional security.

I. PROGRESS REPORT ON ASSEMBLY BILL 900 AND THE OVERCROWDING PROBLEM

A. *Background on the Legislation*

Assembly Bill 900’s two main goals were to ease the state’s massive prison overcrowding problem and to overhaul inmate rehabilitation programs.³

1. Assemb. B. 900, 2007-08 Leg., Reg. Sess. (Cal. 2007). For a more detailed analysis of the bill, see generally Warren Ko, Summary, *2007 California Criminal Legislation: Meaningful Change, or Preserving the Status Quo?*, 13 BERKELEY J. CRIM. L. 97 (2008).

2. For a description of the major developments in California’s prisons in 2007, see Katherine Bromberg, *California Corrections: Confronting Institutional Crisis, Lethal Injection, and Sentencing Reform in 2007*, 13 BERKELEY J. CRIM. L. 117 (2008).

3. See Press Release, Cal. Dep’t of Corr. & Rehab., Gov. Signs Historic Prison Reform Agreement (May 3, 2007) [hereinafter CDCR Press Release, May 3, 2007], available at

The bill authorized a total of \$7.7 billion in lease revenue bonds to build 53,000 new prison, reentry and local jail beds.⁴ The money will be distributed in two phases.

Phase I provides \$3.6 billion in bonds to create 12,000 so-called infill beds, which are beds on the grounds of existing state prisons that will replace “bad beds” – the temporary housing in gymnasiums, dayrooms, classrooms and hallways of the prison.⁵ This includes 6000 new reentry beds for inmates who have less than a year of their sentence remaining, and 6000 new medical beds to improve prison healthcare.⁶

In Phase II, Assembly Bill 900 provides an additional \$2.5 billion in lease revenue bonds for up to 16,000 new infill, medical and reentry beds.⁷ However, this Phase II funding is contingent on CDCR meeting certain rehabilitation and construction goals during Phase I.⁸ There are thirteen benchmarks that must be met in order to trigger Phase II funding.⁹ Among the most significant are the requirements that 4000 new beds be under construction, 2000 of the original reentry beds be under construction or have an identified site, and that half of the substance abuse treatment beds be in operation with

http://www.cdcr.ca.gov/News/2007_Press_Releases/Press20070503.html.

4. *See id.*

5. *See id.*; LEGISLATIVE ANALYST’S OFFICE, IMPLEMENTING ASSEMBLY BILL 900’S INFILL BED PLAN: PROGRESS AND CONCERNS, ANALYSIS OF THE 2008-09 BUDGET BILL: JUDICIAL CRIMINAL JUSTICE, *available at* http://www.lao.ca.gov/analysis_2008/crim_justice/cj_anl08012.aspx (last visited Mar. 19, 2009).

6. *Id.* For discussion of efforts to improve the prison medical system, see Part III *infra* pp. 161-170.

7. CDCR Press Release, May 3, 2007, *supra* note 3.

8. *See id.*

9. (1) At least 4000 beds authorized in Assembly Bill 900 are under construction; (2) First 4000 beds authorized by Assembly Bill 900 include space and provide opportunities for rehabilitation services for inmates; (3) At least 2000 of the original reentry beds are under construction or sited; (4) 2000 of 4000 Substance Abuse Treatment (SAT) slots are established with aftercare in the community; (5) Prison institutional drug treatment slots average at least seventy-five percent participation over the previous six months; (6) CDCR implements an inmate assessment at reception centers to assign inmates to rehabilitation programs for at least six consecutive months; (7) CDCR develops an Inmate Treatment and Prison-to-Employment Plan; (8) At least 300 parolees are being served in day treatment or crisis care services; (9) California Rehabilitation Oversight Board, created pursuant to Assembly Bill 900, is in operation for at least one year and reviewing CDCR’s programs; (10) CDCR develops and implements by January 15, 2008 a plan to address management deficiencies within the department, and a minimum of seventy-five percent of managerial positions are filled for at least six months; (11) CDCR increases full-time participation in inmate academic and vocation programs by ten percent from the levels of participation on April 1, 2007; (12) CDCR develops and implements a plan to obtain additional rehabilitation services pursuant to Assembly Bill 900, and the vacancy rate for positions dedicated to rehabilitation and treatment services in prisons and parole offices (excluding medical, dental and mental health) are no greater than the statewide vacancy rate for all state prisons; (13) CDCR reviews existing parole procedures. CAL. DEP’T OF CORR. & REHAB, PRISON REFORMS: ACHIEVING RESULTS 12 (2008) [hereinafter CDCR’s Assembly Bill 900 Benchmarks], *available at* http://www.cdcr.ca.gov/news/docs/AB900_Achievements_040908.pdf. Some of these benchmarks have already been met. *See id.*

continued treatment available upon release from prison.¹⁰ During Phase I, the Department also must implement a new inmate assessment tool at its reception centers and have it operational for six months.¹¹ There is no specific date by which these benchmarks must be completed in order to activate Phase II funding.

Another key component of Assembly Bill 900 is the \$1.2 billion allotted to create 13,000 new beds in the local county jails.¹² However, in order for counties to receive funding for new jails in Phase I, they must agree to provide sites for reentry facilities.¹³ These state-run “mini-prisons,” which house up to 500 inmates each, would provide more intensive rehabilitation programming for inmates who will soon be released on parole.¹⁴ Aside from the major prison expansion plans, Assembly Bill 900 also authorizes CDCR to transfer inmates to out-of-state facilities over the next four years.¹⁵

B. Overcrowding Update – The Raw Numbers

The total number of CDCR inmates stayed fairly constant over the past year. As of October 2008, the prison population was 172,445,¹⁶ down just 0.2% from 172,910 at the same time the previous year.¹⁷ However, California’s prisons have become slightly less crowded than these figures indicate on their face – the number of inmates in institutions actually located in California fell 2.4%.¹⁸ This decline is due to the fact that there are over three times as many CDCR inmates in out-of-state facilities as there were in 2007.¹⁹

10. *Id.*

11. *Id.*

12. See CDCR Press Release, May 3, 2007, *supra* note 3. The local jails have also suffered from immense overcrowding and some have been forced to release inmates early. See Andy Furillo, *Jails Fill Up, Inmates Pour Out: Hands are Tied, Sheriffs Say*, SAC. BEE, Sept. 7, 2008, at A1.

13. *Id.*

14. *Id.*

15. See CDCR Press Release, May 3, 2007, *supra* note 3.

16. CAL. DEP’T OF CORR. & REHAB., ADULT OPERATIONS—WEEKLY REPORT OF OFFENDER POPULATION AS OF OCT. 8, 2008 [hereinafter CDCR Population Report, Oct. 2008], available at http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/WeeklyWed/TPOP1A/TPOP1Ad081008.pdf.

17. CAL. DEP’T OF CORR. & REHAB., ADULT OPERATIONS—WEEKLY REPORT OF OFFENDER POPULATION AS OF OCT. 10, 2007 [hereinafter CDCR Population Report, Oct. 2007], available at http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/WeeklyWed/TPOP1A/TPOP1Ad071010.pdf.

18. CDCR Population Report, Oct. 2008, *supra* note 16.

19. See *id.* In an effort to reduce prison overcrowding, California Governor Arnold Schwarzenegger signed an Executive Order in October 2006, authorizing CDCR to transfer inmates out of state. Assembly Bill 900, signed by the Governor in May 2007, also gave the Legislature statutory authority to voluntarily and involuntarily transfer inmates out of state for the next four years. See CDCR Press Release, May 3, 2007, *supra* note 3. CDCR inmates are currently serving sentences in facilities in Arizona, Mississippi, Oklahoma and Tennessee. See CDCR Population Report, Oct. 2008, *supra* note 16.

The number of inmates serving their sentences out-of-state jumped from roughly 1500 in October 2007,²⁰ to 5800 in November 2008.²¹ The transfers also have reduced the number of inmates living in bad beds by 27% over the past year.²² Since August 2007, CDCR was able to remove inmate beds from seventeen gymnasiums and six dayrooms.²³ While the out-of-state transfer policy has put a small dent in the overcrowding problem, California prisons were still operating at 196% capacity²⁴ as of October 8, 2008, down slightly from 204% one year earlier.²⁵

C. Progress Report on Assembly Bill 900 Construction Projects

Since Assembly Bill 900 passed in April 2007, CDCR has not been able to add a single new bed to the system.²⁶ Moreover, while CDCR's goal was to begin construction of at least 4000 new infill beds by December 2008, this goal will not be met.²⁷

The delays stem from modifications to prison construction plans made after Assembly Bill 900 passed. While Assembly Bill 900 authorized construction of up to 16,000 infill beds, CDCR now says it will only be able to build up to 8600 beds with the money authorized.²⁸ The downsizing is due to higher-than-expected construction costs, revised plans calling for more cells instead of dorms, a failure in the initial plan to include ample space for rehabilitation programs and medical care, as well as infrastructure problems that precluded the expansion of some of the existing prisons.²⁹ CDCR also has revised the number of reentry beds it plans to build with Assembly Bill 900 funding. The legislation initially approved the construction of 16,000 beds, but

20. See CDCR Population Report, Oct. 2007, *supra* note 17.

21. Telephone Interview with Seth Unger, Press Secretary, Cal. Dep't of Corr. & Rehab., in Oakland, Cal. (Nov. 26, 2008) [hereinafter Unger Interview].

22. Press Release, Cal. Dep't of Corr. & Rehab., Out-of-State Transfers of Inmates Surpass 5,000; Allow CDCR to Reduce "Bad Beds" by 27% (Sept. 29, 2008), available at http://www.cdcr.ca.gov/News/2008_Press_Releases/Sept_29.html.

23. *Id.*

24. See CDCR Population Report, Oct. 2008, *supra* note 16.

25. See CDCR Population Report, Oct. 2007, *supra* note 17.

26. See Unger Interview, *supra* note 21. The Department has started architectural programming, environmental review, community outreach, building code revisions and site assessment for infill construction of 4,800 beds spread over four institutions. See CALIFORNIA REHABILITATION OVERSIGHT BOARD, OFFICE OF THE INSPECTOR GENERAL, BIENNIAL REPORT 25 (Jul. 15, 2008) [hereinafter C-ROB Report], available at http://www.cdcr.ca.gov/Divisions_Boards/Adult_Programs/docs/CROB_07-15-08_biannual_report.pdf.

27. See Unger Interview, *supra* note 21; CDCR's Assembly Bill 900 Benchmarks, *supra* note 9, at 12.

28. CAL. DEP'T OF CORR. & REHAB., INTEGRATED STRATEGY TO ADDRESS OVERCROWDING IN CDCR'S ADULT INSTITUTIONS 3 (Jun. 18, 2008) [hereinafter CDCR's Overcrowding Strategy], available at http://www.cdcr.ca.gov/News/docs/2008_06_18_REDUCE_overcrowding_Docs.pdf.

29. See Andy Furillo, *6,900 Beds Cut in Prison Plan: Lawmakers Critical of \$222,000 Cost For Each New Bunk*, SAC. BEE, Feb. 20, 2008, at A3.

prison officials now say they cannot build more than 11,000 beds with the money allocated.³⁰

The revisions to the number of planned new beds have caused delays in construction.³¹ The State Attorney General's Office has said that it cannot issue a clean bond opinion without incorporating the changes into a clean-up bill.³² At the end of the 2008 legislative session, Democrats incorporated the technical fixes into a budget trailer bill, which would have allowed the state to issue \$7 billion in bonds to finance the plan.³³ But due to partisan bickering over other aspects of the bill, including a provision relating to good-time credits, it never came up for a vote.³⁴ This left the state unable to pay for county jail, reentry or infill bed construction projects.³⁵ "[State lawmakers] just seem to be paralyzed," said Donald Specter, an attorney who represents California inmates.³⁶

D. Update on Reentry Facilities

Even if CDCR is able to secure funding for planned construction projects, another problem may interfere with the establishment of the reentry facilities, one of the touchstones of Assembly Bill 900's rehabilitation efforts. The legislation contained \$1.2 billion to build local jails,³⁷ but counties must allow the state to build a reentry facility within their borders in order to qualify for the \$750 million available in first round funding.³⁸ Thus far, none of that money has been distributed, and fewer than half the counties in the state have applied for it.³⁹

Several counties say they are opposed to having reentry facilities on their

30. CDCR's Overcrowding Strategy, *supra* note 28, at 4.

31. Andy Furillo, *Deal Stalls on California Prisons*, SAC. BEE, Sept. 25, 2008, at A4.

32. *See id.* The Attorney General must determine that the bonds are legally valid before the Public Works Board, the agency that issues lease-revenue bonds authorized by the Legislature, can proceed with the issuance on the bonds. *See* CALIFORNIA DEPARTMENT OF GENERAL SERVICES, STATE ADMINISTRATIVE MANUAL § 6873 (2008), available at <http://sam.dgs.ca.gov/TOC/6000/6873.htm> (last visited Mar. 19, 2009).

33. Hudson Sangree, *Billions For Building Jails May Not Materialize*, SAC. BEE, Oct. 2, 2008, at 2B.

34. *See id.*

35. *See* Press Release, Cal. Dep't of Corr. & Rehab., Statement from CDCR Secretary Matthew Cate on Lack of Public Safety Trailer Bill in Budget Package (Sept. 17, 2008), available at http://www.cdcr.ca.gov/News/2008_Press_Releases/Sept_17.html.

36. *See id.*

37. *See* CDCR Press Release, May 3, 2007, *supra* note 3.

38. *See* Press Release, Cal. Dep't of Corr. & Rehab., Preliminary County Jail Funding Rankings Released, Contingent on Reentry Siting and Final Approval (May 8, 2008) [hereinafter CDCR Press Release, May 8, 2008], available at http://www.cdcr.ca.gov/News/2008_Press_Releases/May_8.html.

39. Furillo, *supra* note 12. Twenty-four of the state's fifty-eight counties initially applied for the Assembly Bill 900 jail bond funds. Of those twenty-four, nineteen took steps toward siting the reentry facilities. *See* CDCR Press Release, May 8, 2008, *supra* note 38.

land.⁴⁰ Some local officials also say that the state-run facilities would pay its correctional officers significantly higher salaries than the county pays its jail officers, hampering the county's ability to recruit and retain quality jail employees.⁴¹ In Yolo County, for example, plans to build a reentry facility prompted a lawsuit.⁴² The Yolo County Farm Bureau claims the plan violates state laws that protect farmland and the environment.⁴³ Other counties plan to wait until Phase II to apply for jail funding, when the reentry strings are no longer attached.⁴⁴

Despite this opposition, CDCR has issued tentative local jail funds to fifteen counties that have agreed to build reentry facilities.⁴⁵ The next step is for CDCR to evaluate further the viability of the sites the counties have selected.⁴⁶

E. Update on Other Assembly Bill 900 Initiatives

Although prison officials have been unable to begin construction on any of the infill or reentry beds, they have made progress on other Assembly 900 reforms.⁴⁷ For example, in September 2008, CDCR launched a first-of-its-kind substance abuse program for up to 200 female inmates at Leo Chesney Community Correctional Facility in Live Oak.⁴⁸ Although the goal was to have 2000 slots available in the substance abuse programs by the end of 2008, CDCR now expects that will not be completed until the end of 2009.⁴⁹

Prison officials were also hoping to have a new inmate assessment tool – used in part to assign inmates to appropriate rehabilitation programs – operational in the reception centers for at least six consecutive months by the end of 2008.⁵⁰ This goal has not been met, though CDCR has been piloting the new COMPAS (Correctional Offender Management Profiling Alternative Sanctions) instrument at the reception center at Duell Vocational Center since

40. See Furillo, *supra* note 12.

41. Tim Moran, *Prison Re-Entry Facility Refused: County Board Vote is Likely to Mean Loss of State Funds*, MODESTO BEE, Oct. 29, 2008, at B1.

42. Hudson Sangree, *Suit Says County Violated State Law*, SAC. BEE, Oct. 17, 2008, at B3.

43. *Id.*

44. See Furillo, *supra* note 12.

45. See Press Release, Cal. Dep't of Corr. & Rehab., CSA Board Moves Forward To Authorize County Jail Funds and Approve Local Reentry Sites (Sept. 16, 2008), available at http://www.cdcr.ca.gov/News/2008_Press_Releases/Sept_18_CSA_Resources.html.

46. See *id.*; Unger Interview, *supra* note 21.

47. The need for a legislative fix to the language of Assembly Bill 900 is only affecting funds for the infill and reentry beds, not other rehabilitative reforms. See Unger Interview, *supra* note 21.

48. See Press Release, Cal. Dep't of Corr. & Rehab., CDCR Launches First-of-its-Kind Substance Abuse Treatment Program for Female Offenders (Sept. 30, 2008), available at www.cdcr.ca.gov/News/2008_Press_Releases/Sept_30.html.

49. See Unger Interview, *supra* note 21.

50. See CDCR's Assembly Bill 900 Benchmarks, *supra* note 9, at 6.

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The California Rehabilitation Oversight Board (“C-ROB”), which was created pursuant to Assembly Bill 900 to evaluate CDCR’s rehabilitation programs, said in a July 2008 report that the Department has made “extraordinary progress” in laying the groundwork for reform by developing the Master Work Plan for Rehabilitative Programming.⁵² The Plan organizes and lists in detail the steps that the Department will have to take before CDCR is able to implement fundamental rehabilitative reform.⁵³ The Report said that CDCR is still primarily in the planning stages of reform, and that it needs to move more into the implementation phase in order to demonstrate true progress.⁵⁴ C-ROB also cautioned that “the road to effective rehabilitation programming in California’s correctional system will be long and arduous.”⁵⁵ C-ROB stressed the need for the Governor and the Legislature to work together to secure the funding required to continue implementing these reforms, noting that this will require “substantial investment and many years of committed leadership and political will.”⁵⁶

II. UPDATE ON FEDERAL RECEIVERSHIP CREATED BY *PLATA* TO ADDRESS INADEQUACIES IN PRISON HEALTHCARE

A. Background on *Plata*

Severe prison overcrowding and inadequate inmate healthcare have prompted several class action lawsuits and court-ordered reforms over the last several years.⁵⁷ The most significant of these is *Plata v. Schwarzenegger*.⁵⁸ As a result of this case, U.S. District Judge Thelton Henderson placed California’s prison healthcare system under the control of a federal Receivership.⁵⁹ The plaintiffs filed this class action in the Northern District of

51. See *id.*; Unger Interview, *supra* note 21.

52. See C-ROB Report, *supra* note 26, at 1, 3.

53. *Id.* at 1.

54. *Id.* at 2.

55. *Id.* at 31.

56. *Id.* at 1.

57. See, e.g., *Plata v. Schwarzenegger*, No. C01-1351 TEH, 2005 WL 2932253 (N.D. Cal. Oct. 3, 2005) (order placing California’s prison medical system under federal receivership); *Coleman v. Wilson*, 912 F. Supp. 1282 (E.D. Cal. 1995) (appointing a special master to comply with order to improve prison mental healthcare); Amended Stipulation and Order, *Perez v. Tilton*, No. C05-5241 (N.D. Cal. Aug. 21, 2006) (appointing court experts to comply with the order to bring prison dental care up to constitutional standards), available at <http://clearinghouse.wustl.edu/chDocs/public/PC-CA-0033-0002.pdf> (last visited Mar. 29, 2009). In January 2007, the judges in these three cases issued a joint order instructing the *Plata* Receiver, the *Coleman* Special Master and the *Perez* Court Representatives to coordinate their healthcare improvement efforts through monthly meetings. See California Prison Health Care Receivership Corp., FAQs, <http://www.cpri.nc.org/faq.aspx> (last visited Mar. 29, 2009).

58. See *Plata*, 2005 WL 2932253.

59. See *id.* at *1.

California in 2001, alleging that state prisons were providing constitutionally inadequate medical care.⁶⁰ The state entered into a consent decree in 2002, agreeing to implement a variety of new medical care policies and procedures.⁶¹ By 2005, the state had failed to bring its system up to Constitutional standards. As Judge Henderson said, “It is clear . . . that this unconscionable degree of suffering and death is sure to continue if the system is not dramatically overhauled.”⁶² Therefore, Henderson imposed what he called the “drastic but necessary remedy” of imposing a Receivership.⁶³

B. *The Receivership Changes Hands*

In February 2006, Henderson appointed Robert Sillen to the Receiver post.⁶⁴ In January 2008, Henderson fired Sillen and turned over control to J. Clark Kelso, a law professor and veteran of state government.⁶⁵ In removing Sillen, Henderson noted that he had failed to meet his initial deadline for a plan of action and that he had provided inadequate timelines and metrics for the Receivership’s progress.⁶⁶ Although Henderson praised some aspects of Sillen’s performance, he also implicitly criticized his confrontational manner, noting that the new Receiver must embrace a style of “collaborative leadership.”⁶⁷

60. *See id.*

61. *See id.*

62. *Id.*

63. *Id.* The plaintiffs in *Plata* and *Coleman*, the class action challenging prison mental healthcare, also claim that overcrowding is hampering efforts to implement medical and mental healthcare reforms. In November 2006, they filed a motion to convene a three-judge panel to limit California’s prison population. In July 2007, both the *Plata* court and the *Coleman* court issued orders to convene a three-judge panel in order to decide the population cap issue. Only one panel was convened to hear both cases. The panel consists of Judge Stephen Reinhardt, U.S. Circuit Judge for the Ninth Circuit, and Judges Lawrence Karlton (*Coleman*) and Thelton E. Henderson (*Plata*), both of the U.S. District Court for the Northern District of California. *See* CALIFORNIA STATE SENATE REPUBLICAN CAUCUS, BRIEFING REPORT: PRISON OVERCROWDING – WHAT HAPPENS WITH THE THREE-JUDGE PANEL (Aug. 22, 2007) available at <http://cssrc.us/publications.aspx?id=2993&AspxAutoDetectCookieSupport=1>. Although the population cap lawsuit is not the subject of this Article, it is discussed briefly in the Conclusion, *infra* at pp. 170-172.

64. *See* Order Appointing Receiver, *Plata*, No. C01-1351 TEH, at *2 (N.D. Cal. Feb. 14, 2006), available at <http://www.cprinc.org/docs/court/PlataOrderAppointingReceiver0206.pdf>.

65. *See* Order Appointing New Receiver, *Plata*, No. C01-1351 TEH, at 5 (N.D. Cal. Jan. 23, 2008), available at <http://www.cprinc.org/docs/court/OrderAppointingNewReceiver012308.pdf>. Kelso has significant experience improving state programs and operations. He worked to unify the state trial court system; temporarily took over the California Department of Insurance after the Commissioner resigned amid corruption allegations; and served as the State’s Chief Information Officer, restoring the state’s troubled information technology program. *See id.* at 7.

66. *See id.* at 3.

67. *See id.* at 4-5. Others voiced their displeasure with Sillen more explicitly. Assemblyman Todd Spitzer (R-Orange), who chairs the committee on prisons, said Sillen had “alienated every single party that was necessary to solve this crisis . . . Despite needing the Legislature to deal with prison healthcare, he alienated both sides of the aisle with his arrogance and disdainful approach.” Sillen also had difficulty with the lawyers for the *Plata* plaintiffs; at one point he asked Judge Henderson to forbid them from inspecting his work, but the judge

While Kelso has been able to establish and obtain judicial approval of a plan of action during his first year as Receiver,⁶⁸ he, too, faced challenges with some of the other players involved in *Plata*.

C. *The Receiver's Turnaround Plan of Action*

1. *Program Goals/Overview*

Kelso's "Turnaround Plan of Action" outlines six strategic goals and over two dozen projects, programs, and initiatives aimed at bringing California's prison healthcare up to constitutional standards.⁶⁹ Before releasing the final version of the Turnaround Plan, Kelso received commentary and feedback from an advisory group comprised of medical and legal experts, as well as individuals with significant state government experience.⁷⁰ Notably, counsel for both parties in *Plata*, as well as one representative each from CDCR and the Office of the Inspector General, participated in the advisory group's second and final planning meeting.⁷¹

The Turnaround Plan addresses some of the major inadequacies in the current system including untimely access to medical care, inadequate and often-incompetent medical personnel, lack of adequate housing for elderly and disabled inmates, frequent unavailability of and inaccuracies in patient records, dilapidated medical facilities that often lack basic medical equipment, and recurrent unavailability of medications.⁷² The following six goals were designed to address these problems in a three-to-five year period: 1) Ensure timely access to health care services; 2) Improve the medical program; 3) Strengthen the healthcare workforce; 4) Implement a quality assurance and continuous improvement program; 5) Establish medical support infrastructure; 6) Provide healthcare and healthcare-related facilities.⁷³ Each goal lists several objectives and action items necessary to accomplish each improvement within a specified timeframe.⁷⁴

refused. Donald Specter, the lawyer for the plaintiffs in *Plata*, called the firing of Sillen and the appointment of Kelso a "wise decision." See Michael Rothfeld, *State Prison Healthcare Czar is Fired*, L.A. TIMES, Jan. 24, 2008, at B1.

68. See Order Approving Receiver's Turnaround Plan of Action, *Plata*, No. C01-1351 TEH (N.D. Cal. Jun. 16, 2008), available at http://www.cprinc.org/docs/court/OrderTurnaroundPOA_061608.pdf.

69. See *id.* at 3.

70. See *id.* at 1-3.

71. *Id.* at 3.

72. CAL. PRISON HEALTH CARE SERVICES, FEDERAL RECEIVER'S TURNAROUND PLAN OF ACTION iii (June 6, 2008) [hereinafter Turnaround Plan], available at http://www.cprinc.org/docs/court/ReceiverTurnaroundPlan_060608.pdf.

73. *Id.* at 4.

74. *Id.* For example, the first objective of Goal 1 is to "Redesign and Standardize Screening and Assessment Processes at Reception/Receiving and Release." Under this objective, there are two action items – to develop standardized reception screening processes and begin pilot

2. Highlights of the Turnaround Plan Projects

a. New Healthcare Facilities

Kelso has said the current prison medical facilities, “when they exist at all, are in an abysmal state of disrepair,” and that “[a]dequate housing for the disabled and aged does not exist.”⁷⁵ He has made remedying this situation one of his top priorities. The most significant – and most expensive – aspect of the Turnaround Plan is the Healthcare Improvement and Healthcare Facility Expansion.⁷⁶ Kelso estimated that the one-time capital cost of this project will be \$7 billion, financed through lease revenue bonds over a twenty-five year period.⁷⁷ Of the \$7 billion, \$1 million will go to improvements to the existing clinical space and clinical support space at each of CDCR’s thirty-three prisons.⁷⁸ The goal is to complete these upgrades by January 2012.⁷⁹ Kelso plans to spend \$6 billion to create seven new healthcare facilities to serve up to six percent of CDCR’s inmates who have long-term medical conditions and who therefore require separate housing.⁸⁰ In total, these new facilities will provide 10,000 additional beds for inmates with medical and/or mental health needs.⁸¹ Kelso believes that consolidating CDCR’s sickest inmates in these new long-term care centers will greatly reduce the high cost of transporting sick inmates to off-site health facilities.⁸² The 10,000 new healthcare beds will also help ease overcrowding by freeing up the same number of beds in existing prisons, thereby making effective rehabilitation and vocational training more feasible.⁸³

Two of these new long-term care centers, each housing up to 1500 patients, will be specifically designed to serve the unique health needs of

implementation by January 2009, and to implement new processes at each of the major reception center prisons by January 2010. *Id.* at 5.

75. *Id.* at iii.

76. *See id.* at 30.

77. *Id.* This estimate has increased to \$8 million because the courts have asked the Receiver to remedy issues in another prison class action lawsuit regarding dental care. *See* J. Clark Kelso, Op-Ed., *State Must Invest in Prison Health-Care Facilities*, S.F. CHRON, Aug. 28, 2008, at B9; *Perez v. Tilton*, No. C05-05241 JSW, 2006 WL 2433240 (N.D. Cal. 2006) (order granting motion for final approval of settlement).

78. *See* Turnaround Plan, *supra* note 72, at 25, 33.

79. *Id.* at 26.

80. *Id.* at 27, 33. This \$6 billion figure did not include the cost of operating these long-term care centers. *See id.* at 30. However, a draft CDCR report obtained by the Sacramento Bee indicated that annual operating costs of these new facilities would be \$2.3 billion per year, mostly due to staffing increases. CDCR declined to comment about the report and Kelso expressed disappointment with the leak. *See* Andy Furillo, *Costs for New Prison Health Program Called Staggering*, SAC. BEE., Nov. 1, 2008, at A10.

81. *See* Turnaround Plan, *supra* note 72, at 27.

82. Kelso, *supra* note 77.

83. *Id.*

female inmates.⁸⁴ Approximately half of all the new housing and facilities will be for medical services, of which three-quarters will consist of open-space dormitories for inmates with functional impairments and chronic conditions requiring immediate access to healthcare services.⁸⁵ These centers will also offer assisted-living and nursing-home-quality housing for inmate-patients requiring more regularized, and in the latter case, daily, nursing attention.⁸⁶ The other half of new housing and facilities will be devoted to mental health services.⁸⁷ The mental health facilities will also consist mainly of open-space dormitories, though some of the beds will be reserved for high-custody inmates and those with more serious mental illnesses.⁸⁸ The Plan originally called for beginning construction at the first site no later than February 2009 and completing construction of all seven facilities by July 2013.⁸⁹

The Receiver plans to perform a sweep of the current medical beds to identify those patients whose needs are not being met in their current location, and who need to be placed in a long-term care facility.⁹⁰ He also aims to build a pilot long-term care unit at one facility that would house these inmate-patients pending construction of the permanent chronic care facilities.⁹¹

i. Funding Obstacles for the Receiver's Capital Projects

The future of the Receiver's 10,000-bed project is currently in jeopardy. In 2008, Judge Henderson approved Kelso's Turnaround Plan, which included the \$7 billion construction plan described above.⁹² Since then, however, the Receiver has been unable to secure funding for the Plan, and many of the projects are facing delays as a result. For example, the pilot long-term care center at the California Medical Facility did not open by January 2009 as planned.⁹³ Moreover, according to Kelso, groundbreaking on the first permanent long-term care facility – originally planned for February 2009 – will also be delayed.⁹⁴

The Receiver ran into his first financial roadblock in May 2008 when

84. See Turnaround Plan, *supra* note 72, at 27.

85. *Id.*

86. *See id.*

87. *Id.*

88. *See id.*

89. *Id.* at 28.

90. *Id.* at 7.

91. *See id.*

92. See Press Release, Cal. Prison Health Care Receivership Corp., Federal Judge Approves Receiver's Plan of Action (Jun. 16, 2008), available at http://www.cprinc.org/docs/presshttp/PRESS_20080616_Press_Release.pdf.

93. See CAL. PRISON HEALTH CARE SERVICES, NINTH QUARTERLY REPORT OF THE FEDERAL RECEIVER'S TURNAROUND PLAN OF ACTION 12 (Sept. 15, 2008) [hereinafter Ninth Quarterly Report], available at http://www.cprinc.org/docs/court/Q9_A1_20080915_QuarterlyReport.pdf.

94. Bob Egelko, *Governor Gets Reprieve to Delay Upgrade of Prison Health Care*, S.F. CHRON, Nov. 8, 2008, at B3.

California Senate Republicans rejected a bill that would have funded his plan.⁹⁵ Senate Bill 1665 would have authorized \$6.9 billion in revenue bonds and appropriated an additional \$100 million from the general fund.⁹⁶ Notably, Republican Governor Arnold Schwarzenegger supported the bill.⁹⁷ But, Senate Republicans were wary of the high price tag and said they wanted to ensure that other pending prison reform efforts, such as the construction of new prison beds authorized by Assembly Bill 900 would be coordinated.⁹⁸ A re-vote on Senate Bill 1665 two days later also failed to pass.⁹⁹

After suffering defeat in the Legislature, Kelso turned to the Governor and State Controller John Chiang.¹⁰⁰ As we will see, however, despite prior support for Kelso's construction plan, the Schwarzenegger administration has since refused to fund it.

Under the terms laid out in the Court's Order Appointing Receiver ("OAR"), the state is responsible for bearing all costs associated with the Receiver's mandate to bring prison healthcare up to constitutional standards.¹⁰¹ The OAR also provides that the state shall fully cooperate with the Receiver in carrying out his duties.¹⁰² The state, however, maintains that the OAR does not authorize the Receiver's construction plan:

[T]he Receiver's office was conceived of as implementing policy and personnel changes, not to undertake a massive prison construction

95. See Michael Rothfeld, *Prison Medical Buildup Rejected; State Senate Republicans Block a \$7-billion Plan to Upgrade Inmates' Substandard Care*, L.A. Times, May 28, 2008, at A1.

96. See *id.*

97. See *id.* "The receiver's plan is necessary to bringing our prisons' healthcare up to constitutional levels, as required by the federal courts," Schwarzenegger's office said in a statement. *Id.*

98. See *id.* CDCR is taking steps to coordinate reform efforts. In June 2008, it released a report called "Integrated Strategy to Address Overcrowding in CDCR's Adult Institutions." See *supra* note 28. It described some of the considerations the Department must take into account in addressing the overcrowding problem. Specifically, the strategy accounts for expanded capacity through implementation of Assembly Bill 900; construction of the Receiver's healthcare facilities; the Schwarzenegger Administration's proposed budget and policy reforms; analysis of short and long-term population trends; and, the Three-Judge Panel Proceedings, described *infra* pp. 170-172. Despite CDCR's efforts to coordinate its efforts with the Receiver regarding the construction of new inmate beds, the California Rehabilitation Oversight Board "remains concerned about the department's coordination with the receiver's office on a variety of other issues where there may be competing interests, such as the need for programming space, additional staff, and resources." See C-ROB Report, *supra* note 26.

99. See Press Release, Cal. Prison Health Care Servs., Fed. Receiver to Make Major Announcement (Aug. 13, 2008), available at http://www.cprinc.org/docs/press/PRESS_20080813_Media_Advisory.pdf; SB 1665 Senate Bill History, http://www.leginfo.ca.gov/pub/07-08/bill/sen/sb_1651-1700/sb_1665_bill_20080529_history.html (last visited Dec. 2, 2008).

100. See Press Release, Cal. Prison Health Care Servs., Receiver Seeks \$8 Billion Court Order for Construction (Aug. 13, 2008), available at http://www.cprinc.org/docs/press/PRESS_20080813_Press_Release.pdf (last visited Apr. 3, 2009).

101. See Order Appointing Receiver, *supra* note 64, at 7 ("All costs incurred in the implementation of the policies, plans, and decisions of the Receiver relating to the fulfillment of his duties under this order shall be borne by Defendants.").

102. *Id.* at 8.

program. Accordingly, neither the provision governing the powers of the Receiver nor the provision that the State pay for the Receiver's expenses can be stretched so far as to cover an \$8 billion construction program.¹⁰³

Still without funds in August 2008, Kelso filed a motion asking Judge Henderson to order the state to provide the \$8 billion to finance his 10,000 healthcare beds, and to hold Schwarzenegger and Chiang in contempt of court for failing to provide funding.¹⁰⁴ Kelso said that he needed the money immediately in order to begin construction at the first medical facility in February 2009, and the second facility three months later.¹⁰⁵ But administration officials maintained that they could not set aside bond funds without approval from state lawmakers.¹⁰⁶ They also claimed that the Receiver's planned facilities include "numerous amenities that go well beyond any constitutional requirements."¹⁰⁷ However, at a hearing on the motion in October 2008, Henderson said it was too late for that argument, noting that administration officials took part in the discussions of the construction plans, and voiced no objections when he approved the Turnaround Plan in June.¹⁰⁸

After two hearings on Kelso's motion in October 2008, Henderson ordered the state to transfer a first installment of \$250 million to the Receiver by November 5th or face a contempt hearing a week later.¹⁰⁹ Although the Judge acknowledged that this was a "federalism dispute of the very highest order," he said the needless death of inmates due to substandard medical care outweighs the federal law at issue.¹¹⁰

Following Henderson's order, the state motioned for a stay, and concurrently filed an appeal in the Ninth Circuit Court of Appeals.¹¹¹ The state argued that the Prison Litigation Reform Act prohibits the court from ordering prison construction without the state's consent.¹¹² It also claimed that the

103. See Def.'s Notice of Mot. and Mot. to Stay Dist. Court's October 27, 2008 Order Pending Appeal, *Plata*, No. C01-1351 TEH, at 7 (N.D. Cal. Oct. 31, 2008) (on file with author) [hereinafter Defendant's Motion to Stay].

104. Matthew Yi, *Prison Overseer: \$8 Billion for Med Facilities*, S.F. CHRON., Aug. 14, 2008, at A1.

105. *Id.*

106. *Id.*

107. Defendant's Motion to Stay, *supra* note 103, at 2.

108. Bob Egelko, *Prison Health care Ruling likely Against State*, S.F. CHRON., Oct. 7, 2008, at B2.

109. See Bob Egelko, *State Ready to Defy Judge on Prison Hospitals*, S.F. CHRON., Oct. 28, 2008, at B2. Kelso argued that the \$250 million installment had already been appropriated by Assembly Bill 900. See Order for Further Proceedings Re: Receiver's Motion for Contempt, *Plata*, No. C01-1351 TEH, at 1, (N.D. Cal. Oct. 8, 2008), available at http://www.cprinc.org/docs/court/doc1549_20081008_Order.pdf.

110. Don Thompson, *Calif. Prison Case to Test State Sovereignty*, AP ALERT - CAL, Oct. 2, 2008, available at 10/28/08 APALERTCA 01:05:09, Westlaw.

111. Defendant's Motion to Stay, *supra* note 103, at 3.

112. *Id.* at 6, (citing 18 U.S.C. §3626(a)(1)(C)).

court's order for payment violated the state's Eleventh Amendment immunity, and that the Court's Order Appointing the Receiver did not authorize the funding for Kelso's capital projects.¹¹³

Kelso's attorneys maintain that the state gave up its right to raise a state sovereignty argument when it decided to cooperate with the Receiver and approve his construction plan.¹¹⁴ Kelso, however, noted that the legislature failed four times to enact legislation to finance his plan,¹¹⁵ and said that "in the face of these repeated failures to enact enabling legislation, Defendants cannot credibly argue that the Receiver should simply wait for the legislature to act. After all, the obligation to pay all costs to implement the Receiver's remedial plan rests on the *Defendants*, not on the legislature."¹¹⁶ These arguments were apparently not persuasive; the Ninth Circuit granted the state's motion to stay the payment order.¹¹⁷

Attorney General Jerry Brown, who represents Schwarzenegger and Chiang, was pleased with the appellate court's intervention.¹¹⁸ He said the public has no way of knowing whether Kelso's "secret plan" is necessary, especially in a time of state budget shortages.¹¹⁹ "He's operating a parallel government with no accountability," Brown said. "I find it an outrage."¹²⁰ Kelso, for his part, said Brown's involvement in this matter has been "problematic."¹²¹

While Kelso initially opposed the stay, he now appears ready to work more collaboratively with the other parties in the litigation. After the Ninth Circuit granted the stay request, he said it was time to retreat from the latest

113. Defendant's Motion to Stay, *supra* note 103, at 7-10.

114. See Thompson, *supra* note 110.

115. Lawmakers twice failed to pass Senate Bill 1665, which would have authorized bond financing for the Receiver's capital projects. A similar bill, Assembly Bill 1819, was to be included as part of a budget package enacted by the legislature, but on two separate occasions, it failed to come up for a vote. See Supp. Decl. of Receiver in Support of Mot. for Order Judging Defs. in Contempt, *Plata*, No. C01-1351 TEH, at 6 (N.D. Cal. Sept. 22, 2008), available at http://www.cprinc.org/docs/court/doc1506_20080922_Kelso_decl.pdf. See also notes 31-34 and accompanying text (explaining that state republicans resolved not to fund Kelso's plan unless lawmakers approved the technical fixes to Assembly Bill 900 in a budget trailer bill. Lawmakers voted down the Assembly Bill 900 trailer bill, and the Receiver's plan never came up for a vote).

116. Receiver's Reply Mem. in Support of Mot. for Order Judging Defs. in Contempt, *Plata*, No. C01-1351 TEH, at 1 (N.D. Cal. Sept. 22, 2008), available at http://www.cprinc.org/docs/court/doc1505_20080922_Reply.pdf.

117. Bob Egelko, *Governor Gets Reprieve to Delay Upgrade of Prison Health Care*, S.F. CHRON, Nov. 8, 2008, at B3. In March 2009, however, the Ninth Circuit rejected the state's attempts to block Judge Henderson from holding hearings to determine whether Governor Schwarzenegger can be held in contempt for refusing to turn over the \$250 down payment that Kelso requested for prison improvements. See Don Thompson, *Appeals Court OKs Schwarzenegger Contempt Hearing*, S.F. CHRON, Mar. 25, 2009, available at <http://www.sfgate.com/cgi-bin/article.cgi?f=/n/a/2009/03/24/state/n163329D03.DTL&hw=kelso&sn=003&sc=478>.

118. Egelko, *supra* note 117.

119. *Id.*

120. *Id.*

121. *Id.*

court battle and to try to reach an agreement with administration officials and state legislators.¹²² He noted, however, that delays caused by the lack of funding have consequences for the inmates who are chronically sick and mentally ill and need to be placed in the long-term care facilities.¹²³ But Kelso acknowledged that the construction plans would proceed more smoothly if all parties were able to agree.¹²⁴

b. Recruitment of a Quality Clinical Staff

Over the years, CDCR has had great difficulty recruiting, training and retaining its healthcare workforce.¹²⁵ One goal identified in the Turnaround Plan is to fill ninety percent of the state's established clinical positions by January 2009.¹²⁶

The Receivership is currently on schedule to meet this goal.¹²⁷ As of July 30, 2008, approximately eighty-five and eighty-eight percent of the physician and nurses positions were filled, respectively.¹²⁸ Between August 1, 2007 and July 31, 2008, the Receiver's office hired 172 new board-certified doctors, and over 1000 new nurses.¹²⁹

The Receiver says the successful recruitment of clinical staff is the principal reason the inmate mortality has fallen.¹³⁰ Since the Receiver's office took control of prison medical care in February 2006, the death rate of inmates has dropped twenty-nine percent.¹³¹ The number of deaths fell from 73 per 100,000 in the first quarter of 2006 to 51 deaths per 100,000 inmates in the second quarter of 2008.¹³² The total number of inmate deaths decreased from

122. *Id.*

123. *Id.*

124. Egelko, *supra* note 117. As of this writing, the parties had not been able to reach an agreement. Kelso offered in February to scale back in prison construction plan from 10,000 to 5,000 beds, a move which would reduce the \$8 billion price tag by about half. Despite Kelso's attempt to negotiate, litigation intensified in the early part of 2009. The state filed a motion to remove the Receiver and regain control of prison healthcare. But, Judge Henderson denied the motion, ruling that the Receiver is still necessary to return prison medical care to adequate levels. See Bob Egelko, *Judge Rejects Returning Prison Care to State*, S.F. Chron, Mar. 25, 2009, at B3.

125. See Turnaround Plan, *supra* note 72, at 12.

126. *Id.* The Plan also calls for establishing a professional training program, as well as creating and staffing a healthcare leadership and management structure. *Id.*

127. See Ninth Quarterly report, *supra* note 93, at 25, 29.

128. See *id.*

129. Press Release, Calif. Prison Health Care Servs., Receiver to Court: Prisoner Deaths Down Significantly (Sept. 15, 2008) [hereinafter Receiver's Press Release, Sept. 15, 2008], available at http://www.cprinc.org/docs/press/PRESS_20080915_Press_Release.pdf. Since mid-2005, shortly before the Receivership took control of the prison system, the Receiver's office has also fired sixty-five prison doctors and placed restrictions on thirty-three others, pending the completion of an investigation. See Michael Rothfeld, *Death Rate of Inmates Down 29%*, L.A. TIMES, Sept. 16, 2008 at B3.

130. Receiver's Press Release, Sept. 15, 2008, *supra* note 129.

131. Rothfeld, *supra* note 129.

132. *Id.*

428 in 2006 to 397 in 2007.¹³³ While Kelso said the drop indicates his office is making progress in reducing the number of preventable inmate deaths due to inadequate medical care, others question that explanation for the lower mortality rate.¹³⁴ Donald Specter, the plaintiffs' lawyer in *Plata*, discounted the figures, pointing out that they do not indicate whether the deaths were related to medical care or to other causes such as inmate age.¹³⁵ Prison expert Joan Petersilia said that a number of factors may have played a role in the decline; the fact that mentally ill inmates are receiving their medications more regularly could have been one of them, but increased segregation of gang members and more frequent lockdowns could also have decreased the number of deaths due to violence.¹³⁶ The numbers do not provide a clear explanation.

c. Establishment of a New Pharmacy Program

The Turnaround Plan also calls for major improvements to secondary medical services such as the prison pharmacy.¹³⁷ Before the Receiver took over the pharmacy system, drugs were unaccounted for,¹³⁸ there were no inventory or purchasing controls, and oversight was lax.¹³⁹ All of these factors increased the likelihood of medical error.¹⁴⁰ The poor management of CDCR's pharmacy program and the failure to establish a formulary – a list of medications that a drug plan will pay for – resulted in a huge waste of taxpayer money; some of the most expensive drugs were prescribed even when less expensive and equally effective alternatives were available.¹⁴¹

To correct this problem, the Receiver contracted Maxor, a nationally-known provider of pharmacy services, to help create and implement a more effective and standardized pharmacy program.¹⁴² Maxor will help establish a drug formulary¹⁴³ and implement a new software program that will make medication profile information available at all institutions in real time.¹⁴⁴ This will enable CDCR medical staff to access a patient's medication information

133. *Id.*

134. *Id.*

135. *See id.*

136. *See id.*

137. *See* Turnaround Plan, *supra* note 72, at 20.

138. There were large discrepancies between the number of drugs purchased and the numbers recorded as dispensed. MAXOR NATIONAL PHARMACY SERVICES CO., AN ANALYSIS OF THE CRISIS IN THE CALIFORNIA PRISON PHARMACY SYSTEM INCLUDING A ROAD MAP FROM DESPAIR TO EXCELLENCE 5 (June 2006), available at http://www.cprinc.org/docs/projects/MaxorFinal_CD_CR_Report_June_2006.pdf.

139. Cal. Prison Health Care Servs., FAQ's, <http://www.cprinc.org/faq.aspx> (last visited Nov. 30, 2008).

140. *Id.*

141. Turnaround Plan, *supra* note 72, at 20.

142. *Id.*

143. *Id.*

144. CAL. PRISON HEALTH CARE SERVICES, THE TURNAROUND LIFELINE 4, VOL. 1, ISSUE 3 (Oct. 6, 2008), available at http://www.cprinc.org/docs/newsletter/newsletter_v1i3_20081006.pdf.

and history immediately when inmate-patients move between institutions.¹⁴⁵ The Receiver's plan also calls for building a central-fill pharmacy from which nearly all drugs will be acquired.¹⁴⁶ This will allow CDCR officials to more effectively control and manage the prison system's drug inventory.¹⁴⁷

A large component of the pharmacy plan has fallen behind schedule. The Receiver's Office hoped to have launched the new pharmacy system at all institutions by June 2009.¹⁴⁸ As of September 2008, however, the new software program was only operational at fifteen out of CDCR's thirty-three institutions.¹⁴⁹ Officials now estimate that rollout will not be complete until the end of 2009.¹⁵⁰ The need for more training time, as well as significant infrastructure challenges in installing this system, are contributing to the delay.¹⁵¹

Due to a holdup in selecting and acquiring a site for the central-fill pharmacy, this project is unlikely to be complete until mid-year 2009.¹⁵² The target date was February 2009.¹⁵³ Despite these setbacks, the overhaul of the prison pharmacy system has made some concrete progress. Maxor has established an interim drug formulary,¹⁵⁴ and based on a review of the first eight months of the new system, it projects a cost avoidance of \$33 million in 2008, compared to prior drug cost trends.¹⁵⁵

d. Improving Healthcare Technology

While the capital projects have received the most media attention, other aspects of the Turnaround Plan also represent significant change. Kelso, who has said that "CDCR's information technology systems are a shambles," is planning several technology upgrades that will improve the delivery of care to inmate-patients.¹⁵⁶ The following highlights some of the most noteworthy projects.

New information technology will allow clinicians to have immediate access to patient-inmate medical records, as well as radiology and lab

145. *Id.*

146. Turnaround Plan, *supra* note 72, at 20, 22.

147. *Id.* at 22

148. *See id.* at 21.

149. MAXOR NATIONAL PHARMACY SERVICES CO., MONTHLY SUMMARY REPORT TO THE CAL. PRISON HEALTH CARE RECEIVERSHIP CORP. 6 (Sept. 2008) [hereinafter Maxor Pharmacy Report], available at http://www.cprinc.org/docs/projects/MaxorReport_200809.pdf.

150. *Id.* at 8

151. Ninth Quarterly Report, *supra* note 93, at 55.

152. *See* Maxor Pharmacy Report, *supra* note 149, at 8.

153. Ninth Quarterly Report, *supra* note 93, at 56.

154. *See* CDCR Correctional Formulary, http://www.cprinc.org/docs/projects/CDCR_Formulary_200808.pdf. (last visited Nov. 30, 2008)

155. Receiver's Press Release, Sept. 15, 2008, *supra* note 129.

156. Turnaround Plan, *supra* note 72, at 23.

results.¹⁵⁷ The Receiver aims to have this clinical data repository available to all institutions by July 2009.¹⁵⁸ IBM is taking the lead in the design and implementation of this new program and has been working in conjunction with the Receiver and CDCR clinical staff to ensure that it is user-friendly.¹⁵⁹ The Receiver hopes to pilot the initial release of the system in April 2009.¹⁶⁰ This project is currently on schedule.¹⁶¹

In an effort to provide inmates with more timely access to healthcare services and to identify high-risk patients, the Receiver is also planning to overhaul and standardize the health screening and assessment processes that takes place during reception and intake.¹⁶² This is on track to be implemented by January 2010.¹⁶³ CDCR will also establish additional staff positions at each institution. Their primary job will be to ensure access to medical care both inside and outside the prison walls.¹⁶⁴

In addition, the Receiver plans to implement a healthcare scheduling and patient-inmate tracking system.¹⁶⁵ This new technology will track inmate medical appointments, in lieu of paper files.¹⁶⁶ CDCR already has received funding from the Legislature to develop the Strategic Offender Management System (“SOMS”).¹⁶⁷ SOMS is currently in the vendor evaluation and selection stage, and the first phase of implementation is scheduled for early 2010.¹⁶⁸ The Receiver’s office is working with CDCR to accelerate the development of SOMS and incorporate the Receiver’s inmate-patient scheduling and tracking system.¹⁶⁹ This project is moving forward as scheduled.¹⁷⁰

Other efforts to digitize and modernize the prison healthcare system include expanding the use of telemedicine –treating patients remotely using a combination of medical equipment and telecommunications¹⁷¹ – and improving CDCR’s telemedicine technologies, which currently lag far behind other prison healthcare systems across the country.¹⁷²

157. *See id.*

158. *Id.*

159. Ninth Quarterly Report, *supra* note 93, at 60.

160. *Id.*

161. *Id.*

162. *See* Turnaround Plan, *supra* note 72, at 5.

163. Ninth Quarterly Report, *supra* note 93, at 8-9

164. *See* Turnaround Plan, *supra* note 72, at 6.

165. *Id.*

166. *Id.* at 7.

167. *Id.*

168. Ninth Quarterly Report, *supra* note 93, at 11.

169. *Id.*

170. *Id.* at 12.

171. *See* Lynn Cook, *Health Care: House Call From Afar*, HOUS. CHRON., Mar. 6, 2009, available at <http://www.chron.com/disp/story.mpl/headline/biz/6296711.html>.

172. *See* Turnaround Plan, *supra* note 72, at 23-24.

III. PRISON INTEGRATION

The Assembly Bill 900 construction plan and the Receiver's efforts in the healthcare realm have both received a considerable amount of media attention. One area of reform that has not made many headlines, but nonetheless represents a significant development, is the racial integration of California prisons. For years, CDCR made inmate housing assignments on the basis of race. In 2008, CDCR began a racial integration program; incoming inmates will no longer be automatically housed with a person of the same race.

A. Historical Background

For twenty-five years, California prisons segregated new inmates arriving at the state's reception centers to prevent racialized gang violence.¹⁷³ Under CDCR's unwritten policy, race was the primary criterion in assigning inmates entering the reception centers to double-cells, which house most inmates during their first sixty days in custody.¹⁷⁴ CDCR officials admitted that under this policy, the chances of an inmate being assigned a cellmate of another race are "pretty close" to zero.¹⁷⁵ They maintained that "[p]rison gang politics dictate social protocols that must be honored," and said that they were forced to make housing classifications, job and programming assignments and custody decisions with the sole purpose of keeping gangs autonomous and isolated.¹⁷⁶ Because California's prison gangs are mostly organized along racial lines,¹⁷⁷ CDCR found it necessary to take protective measures based on race.¹⁷⁸

In 1995, a California inmate challenged the legality of this segregation policy.¹⁷⁹ Garrison Johnson, a black inmate who had always been housed with

173. Reception centers serve as entry points into the state prison system for new offenders and former inmates returning to prison. They are also transfer centers for inmates being moved from one prison to another. Their central function is to receive, hold, process and transfer inmates to other facilities. See OFFICE OF THE INSPECTOR GEN. FOR THE STATE OF CAL., SPECIAL REVIEW: IMPROPER HOUSING OF MAXIMUM CUSTODY INMATES AT CALIFORNIA STATE PRISON RECEPTION CENTERS REPORT 4 (March 2006), available at <http://www.oig.ca.gov/pages/reports/bai-reviews.php>.

174. *Johnson v. California*, 543 U.S. 499, 502 (2005)

175. *Id.*

176. Brief for the Respondents at 5, *Johnson*, No. 03-636 (9th Cir. Aug. 6, 2004), available at 2004 WL 1790881.

177. Prison gangs include the Aryan Brotherhood, the Black Guerilla Family, and La Nuestra Familia. See T.A. Frank, *Inmates and Integration*, L.A. TIMES, Jul. 27, 2008, at M4. For a history of California prison gangs, see generally, Geoffrey Hunt et al., *Changes in Prison Culture: Prison Gangs and the Case of the "Pepsi Generation"*, 40 SOC. PROBS., 398, 399 (1993).

178. Brief for the Respondents at 5, *Johnson*, No. 03-636. Notably, virtually all other state prisons, and the Federal Government, manage their prisons without relying on racial segregation. As the Supreme Court has recognized, by forcing inmates to live with others of the same race, "it is possible that prison officials will breed further hostility among prisoners and reinforce racial and ethnic divisions. By perpetuating the notion that race matters most, racial segregation of inmates 'may exacerbate the very patterns of [violence that it is] said to counteract.'" *Johnson*, 543 U.S. at 507-08 (quoting *Shaw v. Reno*, 509 U.S. 630, 648 (1993)).

179. *Johnson*, 543 U.S. at 503.

other black inmates, filed a lawsuit alleging that CDCR's policy violated his equal protection rights under the Fourteenth Amendment by assigning him cellmates based on his race.¹⁸⁰ Johnson's case eventually made it to the United States Supreme Court. In 2005, the Court reversed the Ninth Circuit and held that racial classifications in the prisons are subject to strict scrutiny.¹⁸¹ The Justices did not rule on the constitutionality of CDCR's classification methods, nor did they say that racial classifications in prison are *per se* unconstitutional. They acknowledged that "prisons are dangerous places, and the special circumstances they present may justify racial classifications in some contexts."¹⁸²

Less than a year after the *Johnson* decision, CDCR and Johnson reached a settlement agreement.¹⁸³ Under the deal, CDCR agreed to stop using race as the sole determining factor in housing assignments at the reception centers and in the prisons.¹⁸⁴

B. Details of the Integrated Housing Policy

In developing an integration policy, CDCR sought advice from experts in custody operations, inmate discipline and the classification process.¹⁸⁵ California officials also consulted with other state corrections departments, including that of Texas, which successfully implemented an integrated housing program.¹⁸⁶

The prisons will integrate new arrivals, transfers, and those returning to custody, but it will not place current inmates into integrated housing.¹⁸⁷ Under the new plan, instead of relying primarily on race, prison officials will make inmate housing assignments on the basis of available documentation, individual case factors and objective criteria.¹⁸⁸ Case factors will include age, height and weight, reasons for incarceration, and prison gang affiliation.¹⁸⁹ Prison officials will interview each inmate who arrives at the reception centers and assess his compatibility with people of other races by considering factors like commitment offense; criminal history; tattoos; current and prior incarceration history; and verbal and written statements.¹⁹⁰ They will also determine

180. *Id.*

181. *See id.* at 515.

182. *Id.*

183. *See* Settlement and Release Agreement, *Johnson v. California* (9th Cir. Dec. 12, 2005), available at <http://clearinghouse.wustl.edu/chDocs/public/PC-CA-0041-0001.pdf>.

184. *Id.* at 3.

185. CDCR Integrated Housing Instructor Text, at 4, May 2007 (on file with author) [hereinafter Integrated Housing Training Manual]

186. *Id.* For a discussion of the implementation of Texas' integrated housing plan, see *infra* Section III(E).

187. Integrated Housing Training Manual, *supra* note 185.

188. *Id.* at 5.

189. *Id.* at 14

190. *Id.* at 8.

whether the inmate has been involved in any racially motivated incidents or crimes.¹⁹¹

By evaluating these criteria, prison officials will assign each inmate an Integrated Housing Code to show whether he is eligible to live with inmates of any race, only inmates of certain races, or only with inmates of his own race.¹⁹² Refusing to accept an integrated housing assignment will potentially result in disciplinary action, including placement in more restrictive housing, such as an Administrative Segregation Unit (“Ad-Seg”), or a Security Housing Unit (“SHU”).¹⁹³ CDCR expects all inmates to be eligible for integrated housing, unless specific case factors dictate otherwise.¹⁹⁴

After prison staff has evaluated inmates, they will house them in the first available and appropriate bed.¹⁹⁵ Notably, there is not a specific integration goal – no target number of cells that must be integrated – and the Integrated Housing Policy does not supersede existing safety and security measures, procedures or policy.¹⁹⁶ There is also a provision in the new policy that allows prison officials to temporarily suspend the integrated housing plan in the event of gang- or race-related riots.¹⁹⁷

CDCR has been educating inmates about the upcoming changes to prison housing. For the past three years, prison staff has been distributing a pamphlet to all inmates in the reception centers that informs them that prison housing soon will be integrated.¹⁹⁸ The pamphlet describes some of the goals behind the new plan, and explicitly states CDCR’s expectation that all inmates comply with the new program – or face sanctions.¹⁹⁹

C. Implementing the Integration Plan

CDCR is implementing the Integrated Housing Policy in three phases. During Phase I, which started in February 2007 and is now complete, prison staff began assigning an Integrated Housing Code to all inmates upon their

191. *Id.* at 6.

192. *See Id.* at 11-12.

193. Integrated Housing Training Manual, *supra* note 185, at 11.

194. *See id.* at 15. For example, an inmate who has been a victim and/or perpetrator of a racially-motivated crime will not be eligible to live with inmates outside of his own race. *See id.* at 11.

195. Cal. Dep’t of Corr. & Rehab., Pub. Info. on Inmate Integrated Housing in Cells and Dorms, http://www.cdcr.ca.gov/News/Integrated_Housing/index.html (last visited Nov. 30, 2008) [hereinafter CDCR Info on Integration].

196. Integrated Housing Training Manual, *supra* note 185, at 19.

197. *See id.*

198. Telephone Interview with Rick Grenz, Associate Warden, Special Projects, Division of Adult Operations, CDCR in Oakland, Cal. (Nov. 20, 2007). Grenz, has played a key role in the Integrated Housing Policy.

199. CAL. DEP’T OF CORR. & REHAB., OFFENDER BROCHURE, *available at* http://www.cdcr.ca.gov/News/Integrated_Housing/Offender_Brochure_ENG.pdf.

arrival at the reception centers.²⁰⁰ In this phase, however, prison officials did not yet place new inmates in integrated cells.

In Phase II, which started in October 2008, actual integration began as a pilot project at two prisons.²⁰¹ Thus far, the results have been mixed. Officials say the transition to racially integrated two-person cells in a higher-security, Level III unit at Sierra Conservation Center has gone surprisingly well.²⁰² In fact, some inmates are praising the new policy. “I was a skinhead for years,” said Bryon Fields, 42, who now lives with Jorge Luis Gonzalez, a 39-year-old Latino. “I never could’ve lived with somebody like this before, and at first I had issues with it. But after three weeks of living with this guy, right here, he’s taught me a lot, and I’ve taught him a lot . . . This guy is probably one of the best guys I’ve ever lived with.”²⁰³ The results have been positive in part because Sierra’s Level III Unit is a Sensitive Needs Yard (“SNY”), a facility for inmates who seek out special housing away from the general population.²⁰⁴ These inmates tend to be more obedient than other Level III inmates because disciplinary infractions can cause them to lose their protective housing.²⁰⁵ Yet, even by SNY standards, racial integration has gone smoothly.

It has been a different story in Sierra’s Level I and II units. In these units, thirty-six men of all races share one room that was built to hold sixteen.²⁰⁶ While the rooms themselves have always been integrated, one of the unwritten rules has been that inmates of different races can sleep in adjacent beds, but they cannot sleep in the same bunk.²⁰⁷ When Sierra officials announced plans to begin integrating the bunks, 1800 inmates voiced their disapproval by refusing to work or eat in the dining hall for three days.²⁰⁸ Many whites and Latinos refused to bunk with inmates of different races.²⁰⁹ One white inmate who participated in the work stoppage said that he was not worried about the black or Latino gang members attacking him in the integrated bunks – he feared a fellow white inmate would punish him if he “let” an inmate of another race sleep in the same bunk.²¹⁰

Sierra temporarily stopped halted integration efforts in the wake of the

200. Integrated Housing Training Manual, *supra* note 185, at 3.

201. See CDCR Info on Integration, *supra* note 195.

202. Frank, *supra* note 177. Integration of Sierra’s Level III unit actually began in July 2007. *See id.*

203. *Id.*

204. *Id.*

205. *Id.*

206. *See id.*

207. *See id.*

208. Scott Smith, *Prison Tries to Integrate Housing Again*, STOCKTON RECORD, Nov. 12, 2008, available at 2008 WLNR 21608637.

209. See Adam Ashton, *Integrating Inmates: Jamestown Prison to Start Program Today*, MODESTO BEE, Oct. 23, 2008, at B1.

210. *Id.*

protest, but resumed the program a few weeks later.²¹¹ But, approximately half of the arriving inmates refused to integrate.²¹² Prison officials issued rule-violation reports to the noncompliant inmates and housed them in dorms with inmates of their own race.²¹³

One reason inmates in the dorms may be more resistant to integration than those in the two-man cells is that they are surrounded by at least thirty other people, many of whom are urging them to defy the integration policy.²¹⁴ Inmates sharing a two-person cell are more insulated from such social pressures.²¹⁵

Over the course of Phase II, CDCR officials will gradually expand integrated housing to minimum-security general population housing and other sensitive needs yards.²¹⁶ The prisons will continue integrating through attrition.²¹⁷ During Phase III, the medium and maximum security prisons will also begin to implement integrated housing.²¹⁸ No date has been set for the start of Phase III.²¹⁹ “We’re going to be very thoughtful, very deliberate,” CDCR spokeswoman Terry Thornton said of the implementation plan. “We want to do it safely.”²²⁰ CDCR Press Secretary Seth Unger emphasized that implementation will be done in a way that provides for the safety of inmates and correctional staff.²²¹ He also said that prison officials will examine problems they encounter and use these experiences to “adopt best practices to minimize the likelihood that there will be any instances of violence.”²²²

D. The Challenges Ahead

CDCR administrators say they hope the integrated housing plan will reduce racial tension, promote tolerance of others, break down prejudicial barriers, perceptions and attitudes, and better reflect community norms.²²³ They also are hopeful that the new plan will chip away at the control the gangs exert over the institutions. “Ninety percent of the gang members don’t want to be in a gang but they can’t get out,” said Rudy Luna, assistant to the warden at San Quentin. “But now we are giving them a way out. It will be an excuse for a white to be with a black and a black to be with a white.”²²⁴

211. See Smith, *supra* note 208.

212. *Id.*

213. *Id.*

214. See Frank, *supra* note 177.

215. *Id.*

216. See CDCR Info on Integration, *supra* note 183.

217. See *id.*

218. See *id.*

219. See Unger Interview, *supra* note 21.

220. Smith, *supra* note 208.

221. See Unger Interview, *supra* note 21.

222. *Id.*

223. Integrated Housing Training Manual, *supra* note 185, at 5.

224. Tanya Schevitz, *Prisons Prepare to Integrate Cellmates*, S.F. CHRON., May 27, 2008, at

Many inmates, however, are skeptical. Joshua Engelhart, a white man who spent over four years at San Quentin, said “prison is an undeniably racist place, and court rulings aren’t going to stop it.”²²⁵ He said race consciousness pervades prison culture, and that there are unwritten rules and taboos, many of which involve race.²²⁶ As he explained, “If a black inmate attacks a white inmate in prison, it is considered the responsibility of other white inmates to respond.”²²⁷

Other inmates agree, and contend that gangs will not tolerate CDCR’s new Integrated Housing Policy. Hermino Portelles, a Latino inmate who identifies with a Southern California gang, said the new plan could lead to the kind of violence that typically lands inmates in the Ad-Seg, also known as “the hole,” a single-man cell with restricted privileges.²²⁸ “This whole prison is going to be the hole,” he said. “It’ll be on lockdown.”²²⁹

Portelles explained, “I don’t want a black guy in my cell. I don’t want a white guy. It’s South Side or it’s a single-man cell.”²³⁰ Portelles did not explain exactly what he would do to oppose the integration plan, but he said correctional officers would be forced to come into the cells and remove dead bodies.²³¹

Prison officials are aware that inmates might attempt to obstruct their integration efforts. Brian Parry, who heads CDCR’s Gang Intelligence Unit, says he has spoken with a number of influential gang leaders at several maximum and minimum facilities about the integration plan.²³² According to Parry, who has over thirty-five years of experience in corrections, the gang leaders say they will not be forced to share cells with inmates of other races, and are going to order their members not to comply and to use violence so that they will not have to be in integrated cells.²³³

Parry believes the gang leaders, and fears that the integration plan will result in a spike in violence.²³⁴ He also says he will not be surprised if some people – be they inmates or correctional officers – are killed as a result of it.²³⁵ Parry pointed out that Arkansas now has an integrated prison system, but that it

A1.

225. Joshua Engelhart, Op-Ed., *Why Prisons Can’t Integrate*, L.A. TIMES, Mar. 11, 2005, at 13.

226. *Id.*

227. *Id.*

228. Adam Ashton, *Stirring Up a Bloodbath?: California Moves Cautiously Toward Integrating Races in Prison Cells*, MODESTO BEE, Apr. 9, 2006, at B1.

229. *Id.*

230. *Id.*

231. *Id.*

232. Telephone Interview with Brian Parry, Assistant Director, CDCR, in Berkeley, Cal. (Nov. 14, 2007) [hereinafter Parry Interview].

233. *Id.*

234. *Id.*

235. *Id.*

took nearly ten years and several surges in violence to achieve that result.²³⁶

The problem, Parry explained, is that the inmates with life sentences, who are often the ones issuing gang directives, have no incentive to comply with the Integrated Housing Policy.²³⁷ They are in prison for life and many are already in the most restrictive housing. Thus, they have nothing to lose by non-compliance. Parry hopes, however, that the threat of sanctions, loss of good-time credit, and placement in restricted housing, including the SHU, will provide incentives for non-lifers to comply.²³⁸ “If we didn’t have the influence of gangs, this [integration] would be easier to do,” said Parry “But, gangs drive race problems, so they have tremendous influence and they don’t want this to occur. If they wanted this to occur, it would be a lot easier to do.”²³⁹

Scott Kernan, Deputy Secretary of Adult Operations at CDCR, acknowledges that there will be opposition to this plan, but has a more optimistic outlook. “Even though we anticipate problems, if we run our operations expecting the gangs to resist, then we have lost control of the operations and this new plan will not work.”²⁴⁰

Kernan analogized the possibility of inmate backlash against integrated housing to other rule changes – taking away weights and instituting grooming standards – that CDCR has implemented despite threats of non-compliance. He says that if prison officials approach integration in a slow, methodical fashion, as they did when implementing these prior policy changes, they will achieve better results.²⁴¹ Kernan stressed the importance of educating the inmates about the new policy, and sending a message that the prison staff, and not the gangs, are in control.²⁴² Jeanne Woodford, former Warden of San Quentin and former director of CDCR, agreed. “If inmates knew we were in control, they wouldn’t have a problem with integration.”²⁴³

E. Cause for Optimism: The Success Story in Texas

While many fear that integrated housing will put too many California inmates and correctional officers in danger, supporters of the new policy say there is no evidence to supports that contention. Proponents of inmate

236. *Id.*

237. *Id.*

238. See CDCR’s Proposed Regulations, To be Codified as Cal. Cod. Reg., Tit 15, §3315(f)(5)(M(1-2) (Violating or refusing to participate in the Integrated Housing Program shall result in loss of canteen, appliances, vendor packages, telephone privileges, and personal property); Tit 15, §3341.5(c)(9)(L-M) (inmates who attempt to commit any violent crimes against other inmates will receive time in the SHU) (on file with author).

239. Parry Interview, *supra* note 232.

240. Telephone Interview with Scott Kernan, Deputy Director of Adult Operations, CDCR, in Oakland, Cal. (Nov. 20, 2007).

241. *Id.*

242. *Id.*

243. Telephone Interview with Jeanne Woodford, Chief Adult Probation Officer, City of San Francisco, in Oakland, Cal. (Nov. 8, 2007).

integration often point to a study (“Trulson and Marquart Study”) of inmate-on-inmate violence in the Texas prison system in the wake of a federal court order that required desegregation of two-person cells.²⁴⁴ As mentioned above, California is modeling its integration plan on the one used by Texas to integrate its prisons in the 1990s.

The Trulson and Marquart Study compared rates of violence between inmates in segregated double cells and those in integrated cells over a ten year period.²⁴⁵ During that time, desegregation²⁴⁶ increased from 266 per 1000 double cells in 1991 to 621 per 1000 double cells in 1999 – a 133% increase.²⁴⁷ The data showed that desegregation did not result in more violence compared to violence among inmates who were segregated.²⁴⁸ Moreover, the rate of racially-motivated assaults among integrated cell partners decreased as integration increased.²⁴⁹ This research suggests that interracial contact through desegregation does not result in increased violence among cell partners or in the general prison population, thus refuting CDCR’s chief assumption and justification for its old policy.

Trulson and Marquart acknowledged that prison integration might not work elsewhere like it did in Texas and recommended that other states take into account the peculiarities of their own prison populations.²⁵⁰ “Issues such as political and economic support of the prison system, history of race relations on the outside, inmate racial compositions, staff racial compositions, history of institutional litigation, and population growth trends are all important considerations in generalizing to all prison systems.”²⁵¹

Despite differences between the California and Texas prison systems, there are many similarities. First, both have massive inmate populations.²⁵²

244. Chad Trulson & James W. Marquart, *The Caged Melting Pot: Toward an Understanding of the Consequences of Desegregation in Prisons*, 36 Law & Soc’y Rev. 743 (2002).

245. *See id.* at 753.

246. Trulson and Marquart do not explicitly distinguish between “desegregation” and “integration,” and appear to use the terms interchangeably. Others have noted that the terms do not have identical meanings. *See, e.g.,* Michelle Adams, *Shifting Sands: The Jurisprudence of Integration Past, Present and Future*, 47 How. L.J. 795, 797 (2004) (interpreting integration as “the bringing together of racial or ethnic groups for the purpose of fostering and facilitating equality,” and desegregation as “the active disestablishment of a segregated hierarchy, structure, or entity”); MARTIN LUTHER KING, JR., *The Ethical Demands for Integration*, in A TESTAMENT OF HOPE: THE ESSENTIAL WRITINGS OF MARTIN LUTHER KING, JR., 117, 118 (James Melvin Washington ed., 1991) (explaining that desegregation is the elimination of legal and social prohibitions that “den[y] Negroes equal access to schools, parks, restaurants and the like...[i]ntegration is the positive acceptance of desegregation and the welcomed participation of Negroes in the total range of human activities”).

247. Trulson & Marquart, *supra* note 244., at 762.

248. *Id.* at 769.

249. *Id.*

250. *Id.* at 774-75.

251. *Id.* at 774.

252. Brief of Former State Corrections Officials as Amici Curiae in Support of Pet’r, Johnson v. California, No. 03-636 at 11 (9th Cir. Jun. 4, 2004) [hereinafter Brief of Former State

Second, both states' prison populations are very diverse, with Blacks, Hispanics and Whites represented in significant numbers in both states' systems.²⁵³

CDCR discredited the Trulson and Marquart Study. In its brief in *Johnson*, CDCR claimed it does not apply to California because Texas did not have to desegregate its reception centers, and therefore prison personnel had an opportunity to perform initial screening and background checks before putting two inmates of different races into double cells.²⁵⁴

According to CDCR, staff in the California reception centers have no such opportunity to prescreen inmates before they arrive.²⁵⁵ Therefore, it maintained that integration in California's reception centers is more dangerous and will likely lead to more interracial violence than occurred when Texas integrated its prisons.²⁵⁶

Yet others involved with the California prison system disagree with CDCR's prediction that integrating cells will produce more violence. A group of former California correctional officers filed an amicus brief in support of the petitioner in *Johnson*, arguing that "racial integration of cells tends to diffuse racial tensions and thus diminish racial violence. Accordingly, in [our] professional judgment . . . a blanket policy of racial segregation of inmates is contrary to sound prison management."²⁵⁷ These former correctional officers also noted that at a recent meeting of state and federal corrections officials, the vast majority expressed the view that racial integration in the prisons would both improve prison order and safety, and reduce the likelihood of increased hateful acts and attitudes.²⁵⁸

As mentioned above, nearly all other state prison systems, as well as the Federal Bureau of Prisons (BOP), house inmates without relying on racial segregation.²⁵⁹ In fact, the BOP expressly prohibits racial segregation, and in its amicus brief in *Johnson* contended that racial integration "leads to less violence in BOP's institutions and better prepares inmates for re-entry into society."²⁶⁰

Corrections Officials]. The prison population in California was 172,445 in October 2008. See CDCR POPULATION REPORT, OCT. 2008, *supra* note 16. As of August 2008, there were 139,134 inmates in the Texas prison system. TEXAS DEPT. OF CRIMINAL JUSTICE, STATISTICAL REPORT FISCAL YEAR 2008 I (2008), available at <http://www.tdcj.state.tx.us/publications/executive/FY08%20Stat%20Report.pdf>.

253. Brief Of Former State Corrections Officials, *supra* note 252, at 11.

254. Brief for Respondents at 41, *Johnson*, No. 03-636 (9th Cir. Jun. 4, 2004).

255. *Id.* at 43.

256. *See id.* at 42-43.

257. Brief Of Former State Corrections Officials, *supra* note 252, at 19.

258. *Id.* at 18 (citing Larry Meachum, *Prisons: Breeding Grounds for Hate?*, CORRECTIONS TODAY 132 (December 2000)).

259. *Johnson*, 543 U.S. at 508.

260. Brief for the United States as Amicus Curiae Supporting Petitioner at 25, *Johnson v. California*, No. 03-636 (Jun. 4, 2004), available at 2004 WL 1261255.

It appears that the majority of prison wardens around the country agree with the BOP that racial integration does not cause violence. In fact, in a recent national survey of wardens at maximum security facilities, fifty-four percent said that integration would have no effect on the level of violence within the institution, and more than half reported that they had no racial conflict between inmates in racially integrated cells.²⁶¹ Furthermore, eighty percent of wardens noted that the conflict level is about the same for inmates who live with cellmates of the same race, and inmates who live in integrated cells.²⁶²

CONCLUSION

Although there was progress on some of the reform efforts in 2008, the California prison system faced numerous hurdles in implementing planned improvements. Many of these struggles are likely to continue in 2009.

While it remains to be seen how much the new integrated housing policy will blur the color line in prisons so dominated by race-based gangs, the plan represents a sea change in CDCR policy. Despite the uncertainty of the program's success, corrections officials have been able to move ahead with the planned changes and are implementing the new policy in a methodical fashion. In the next year, CDCR likely will be integrating more prisons, and it will be interesting to see how these other inmate populations respond.

As we have seen over the past year, other prison improvement efforts have been plagued by delays, mostly due to an inability to procure funding. The state's budget woes and the national financial crisis are only compounding the struggle to finance these construction plans. While there are significant plans underway to alleviate the overcrowding and to raise the standard of medical care, progress has been slow. Overcrowding has eased slightly due to the transfer of a growing number of inmates out-of-state. Nonetheless, prison officials have not been able to build a single new bed since Assembly Bill 900 passed in April 2007. Moreover, construction of the Receiver's new healthcare facilities has reached a stalemate. In the year ahead, one of the biggest question will be whether these projects actually receive funding.

Arguably the most significant development to watch for in the coming year is the possible early release of California inmates.²⁶³ The Three-Judge Panel issued a tentative ruling in February 2009, saying that the state needs to release tens of thousands of inmates over the next two or three years because the overcrowding is hampering efforts to provide inmates with adequate healthcare.²⁶⁴ The Panel, which found that the overcrowding was the primary

261. Martha L Henderson, et al., *Race, Rights and Order in Prison: A National Survey of Wardens on the Racial Integration of Prison Cells*, THE PRISON JOURNAL (2000), 295, 306.

262. *Id.*

263. For background on the class action lawsuit that triggered the possible early release of California inmates, see *supra* note 67 and accompanying text.

264. Bob Egelko & Wyatt Buchanan, *Judge Tells State to Free Thousands of Inmates*, S.F.

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cause of the substandard healthcare, said a population cap was the only relief that would remedy the unconstitutional prison conditions.²⁶⁵ The judges said they were prepared to order the release of up to 58,000 inmates.²⁶⁶ Although the release order is not final, the Panel effectively told the state that it would have to make dramatic changes to its prisons unless it could settle with the inmates' lawyers who brought the class action.²⁶⁷ CDCR Secretary Matthew Cate, said that the order would pose "a significant threat to public safety" by putting thousands of inmates back on the street.²⁶⁸ But, inmates' lawyer Don Specter said that early release has been accomplished safely in other states without having any impact on public safety.²⁶⁹

The Schwarzenegger administration immediately said it would appeal the ruling to the U.S. Supreme Court.²⁷⁰ If the Supreme Court decides to hear the appeal, it will be fascinating to see whether it affirms the early release order, and if so, what restrictions or conditions it imposes upon its implementation.

In any case, litigation over California prison conditions is likely to continue on many fronts through 2009 and beyond. In addition to tracking developments in the various legal battles over overcrowding and healthcare, it will be important to monitor whether or not prison officials are able to improve the situation on the ground for California inmates by taking some of the planned steps to reform healthcare and relieve the congested prisons by building new beds. This will be a monumental challenge.

CHRON, Feb. 10, 2009, at A1.

265. *See id.*

266. *See id.*

267. *See* Michael Rothfeld, *Judges Back a One-Third Reduction in State Prison Population*, L.A. Times, Feb. 10, 2009, at 1.

268. *Id.*

269. *See id.*

270. *See id.*

