

COUNCIL ON MENTALLY ILL OFFENDERS
SECOND ANNUAL REPORT TO THE LEGISLATURE

December 31, 2003

History and Purpose of the Council

On October 12, 2001, former Governor Gray Davis signed Senate Bill No. 1059 (Perata) creating the Council on Mentally Ill Offenders (Council). The bill is codified as Penal Code Section 6044.

The Council is comprised of 11 members. The legislation designates as permanent members the Secretary of the Youth and Adult Correctional Agency and the Director of the Department of Mental Health, with the Agency Secretary serving as the chair. The other members are appointed as follows: three by the Governor, at least one of whom shall represent mental health; two each by the Senate Rules Committee and the Speaker of the Assembly, each appointing one representative of law enforcement and one representative of mental health; one by the Attorney General; and one superior court judge appointed by the Chief Justice.

The Legislature identified several related purposes of the Council. Its primary purpose is to “investigate and promote cost-effective approaches to meeting the long-term needs of adults and juveniles with mental disorders who are likely to become offenders or who have a history of offending.” In pursuit of that goal the Council is to:

- 1) Identify strategies for preventing adults and juveniles with mental health needs from becoming offenders.
- 2) Identify strategies for improving the cost effectiveness of services for adults and juveniles with mental health needs who have a history of offending.

- 3) Identify incentives to encourage state and local criminal justice, juvenile justice, and mental health programs to adopt cost effective approaches for serving adults and juveniles who are likely to offend or who have a history of offending.

The Council shall consider strategies that:

- 1) Improve service coordination among state and local mental health, criminal justice, and juvenile justice programs.
- 2) Improve the ability of adult and juvenile offenders with mental health needs to transition successfully between corrections-based, juvenile-based, and community-based treatment programs.

The Council is authorized to apply for funds from the “federal government or other sources to further the purpose of this article.” In addition, in signing the legislation the Governor directed “the affected state agencies to identify existing funds that can be used to support this program.”

Finally, the Council is required to “file with the Legislature, not later than December 31 of each year, a report that shall provide details of the Council’s activities during the preceding year. The report shall include recommendations for improving the cost-effectiveness of mental health and criminal justice programs.”

Composition of the Council

Chairperson: Roderick Q. Hickman, Agency Secretary, Youth and Adult Correctional Agency

Vice-Chairperson: Stephen Mayberg, Ph.D., Director, California Department of Mental Health

Members:

- Lynne Deutch, Founding Board Member, National Mental Health Awareness Campaign, a mental health advocate
- Andrew Hall, Chief of Police, City of Westminster
- Honorable Fred Fujioka, Judge of the Superior Court, Los Angeles County
- Paula Kamena, District Attorney, Marin County
- Duane E. McWaine, M.D., Medical Director, Didi Hirsch Community Mental Health Center, Los Angeles
- David Meyer, Professor, Institute of Psychiatry, Law and Behavioral Science, Keck School of Medicine, USC, and former Chief Deputy Director, Los Angeles County Department of Mental Health
- Jo Robinson, Program Director, San Francisco Jail Psychiatric Services
- James Sweeney, President, Impact, Limited Liability Company

Activities of the Council in December 2002

The Council reconvened on December 11, 2002, at the facilities of the Los Angeles County Jail.

Newly appointed Council Members Lynne Deutch and Duane E. McWaine, M.D., were introduced.

The status of the grant applications to the California Endowment and the California Wellness Foundation seeking funds to support the Council's administrative costs were reviewed, and the Council agreed that further efforts to obtain funding should be pursued.

Council Member David Meyer continued his presentation (from October 2002) on forensic commitments, covering capacity to consent and right to refuse treatment

(medication); the outpatient forensic Conditional Release Program criteria/supervision; the Mentally Disordered Offender criteria, parole, and involuntary civil commitment extension once parole has ended; the Sexually Violent Predator civil commitment criteria, proceedings, and commitment; the Lanterman Petris Short Act (LPS) behavioral criteria, short-term and long-term involuntary treatment, and LSP patient rights and protections; prison mental health treatment; parole; jail mental health services; and collaborative keys to success.

The Members then toured the Los Angeles County Twin Towers Correctional Facility.

The Council identified the following issues to address in the future: conservatorships; contact the group who authored "Criminal Justice/Mental Health Consensus Project" and work with them on mutual ideas; and develop new ideas that would improve the flow of information between mental health agencies.

Activities of the Council in 2003

First Meeting of 2003

The Council reconvened on February 21, 2003, at Metropolitan State Hospital, Norwalk, California.

Dr. Fred Osher and Michael Thompson from the Council of State Governments gave an overview of The Mental Health Consensus Project, covering existing costs; evaluating what works; identifying obstacles at the federal, state, and local levels; sources of revenue; and prioritizing at the state and local levels.

Funding sources to support the Council's administrative costs were discussed.

Second Meeting of 2003

The Council reconvened on April 25, 2003, at the San Rafael City Council Chambers, San Rafael, California.

Presentations were made by Bruce Gurganus, Marriage and Family Therapist, Marin County Community Mental Health, Joel Fay, Psy.D., Mental Health Liaison Officer, San Rafael Police Department, and Carl McCosker, Mental Health Liaison Officer, Marin County Sheriff's Department, on the Critical Incident Training (CIT) and how Restorative Policing is used to address the needs of mentally ill arrestees.

Bill Crout, Deputy Director, Facilities Standards & Operations Division, Board of Corrections, gave a presentation on the Mentally Ill Offender Crime Reduction Grant program which provides grant money to counties to provide treatment for mentally ill inmates. The current grant program will terminate in June 2004. Mr. Crout reported that many counties plan to continue their collaborative efforts because they were so successful.

Jeanne Woodford, Warden, San Quentin State Prison, provided information about the inmate population requiring mental health treatment; the frustration experienced when inmates are evaluated, provided therapy and medication, but then refuse medications; and that certain criteria must be reached in order to involuntarily medicate the inmates (Keyhea v. Rushen), only to have them parole, stop taking their medications, deteriorate, and are then rearrested and returned to prison as parole violators, where the process starts all over. Involuntary medication procedures under the Keyhea process apply only to prison inmates, not to parolees.

R. D. Ponath, M.D., Chief Psychiatrist, San Quentin State Prison, noted that prisons have turned into the first choice for receiving mental health treatment due to the cutbacks in managed care. Mentally ill inmates typically have co-occurring substance abuse problems, but drug programs do not treat mental illness, and mental health treatment programs do not treat substance abuse. Dr. Ponath stated that there is no

linkage to other providers and services, such as psychiatric hospitals, halfway houses, etc. Dr. Ponath also noted that authority to medicate parolees is needed.

Jane Woehl, Manger, Department of Mental Health, Conditional Release Program (CONREP), described the community-based services for specified forensic patients. These are contracted private providers or county programs, with a patient to staff ratio of 1 to 10. The re-arrest rate for CONREP participants within five years of admission is 4.4%; the overall re-arrest rate for individuals discharged by the courts anytime within the first five years is 14.2%.

Dave Meyer, Council Member, and Kit Wall, Local Government Relations, Eli Lilly and Company Pharmaceuticals, discussed the June 18, 2003 conference of the California Association of Counties and the National Association of County Governments which will address the needs of mentally ill individuals for county sheriffs, county executives, county supervisors, and county mental health directors and workers.

Rick Mandella, Board of Prison Terms, updated the Council Members on the efforts to obtain grant funding to support the Council.

Third Meeting of 2003

The Council reconvened on June 19, 2003, at the offices of the Board of Prison Terms, Sacramento, California.

Dee Kifowit, Director, Texas Council on Offenders with Mental Impairments, presented the Texas program dealing with offenders diagnosed with Schizophrenia, Bi-Polar Disorder, and major depression, including the program component that teams specially trained probation officers with mental health professionals, and the ability to share mental health information between agencies without the need for a signed release.

James Sweeney, Council Member, gave a presentation on the positive impact non-profit community agencies can have in addressing the needs of the mentally ill offender, and urged the Council to consider emphasizing the use of non-profits on a larger scale.

Millicent Gomes, Health Administrator, Department of Corrections, noted that a county-by-county resources directory listing available community agencies and services available to the mentally ill is being developed.

Dave Meyer, Council Member, presented the issues in the U. S. Supreme Court decision Sell v. United States, which held that individuals committed as Incompetent to Stand Trial cannot be forced to take psychotropic medications without meeting certain criteria. The Council members moved to draft statutory language to submit as a legislative proposal to implement the Court's decision.

Rick Mandella, Board of Prison Terms, noted that the expected grant money from the California Wellness Foundation did not materialize, and the Council moved to continue efforts to seek funding.

The Council moved to shift its focus from gathering information to addressing specific issues in order to meet its mandates as set forth in SB 1059. Specifically, the Council will focus on the issue of confidentiality of mental health information, and determine ways in which that information can be shared among those providing mental health services to offenders, so as to reduce costs and provide for continuity of care, while maintaining confidentiality of mental health information to protect client interests.

In conjunction with the June 19, 2003 meeting, the Council served on the Host Committee at the June 18, 2003 Mental Health Summit for County Law Enforcement. The theme of the Summit was "Maximizing Resources with Minimal Funds," and was geared towards members of county law enforcement agencies, county supervisors and

managers, and others involved in county government. A number of presenters from various law enforcement agencies, courts, state agencies, and associations participated in the day-long event.

Fourth Meeting of 2003

The Council reconvened on September 19, 2003, at the Oakland Independence Support Center, Inc., Oakland, California.

Bruce Slavin, General Council, Youth and Adult Correctional Agency, proposed that the Council appoint an Executive Officer to handle the administrative functions related to the Council. The position would initially be a borrowed, unfunded position, until funding was obtained by the Council. Mr. Slavin recommended Rick Mandella fill the Executive Officer position temporarily until funding could provide for a paid position. The Council unanimously approved Rick Mandella as the Executive Officer to the Council.

Mr. Slavin discussed the United States Supreme Court decision Sell v. United States, wherein the Court set forth the criteria for imposing involuntary medication on a defendant found Incompetent to Stand Trial. The Council moved to continue to develop statutory language to implement the Sell decision in California, and present the proposed language to the California Association of District Attorneys for their review and comment.

Rick Mandella, Executive Officer, presented the federal Health Insurance Portability and Accountability Act (HIPAA) which addresses the confidentiality of medical records. There is an exception to confidentiality in California Welfare and Institutions Code Section 5328.02 that provides that records made confidential under Section 5328 shall be provided to the Youth Authority or Adult Correctional Agency, or any component thereof. That section, however, does not provide that those records can then be

disseminated to other agencies, including local detention facilities. HIPAA does not override the exception under Section 5328.02. Since the issue of confidentiality of mental health information is one area on which the Council has decided to focus, the Council moved to propose amendments to Section 5328.02. Those proposed amendments will be reviewed by the Council in early 2004.

Jo Robinson, Council Member, and Mr. Slavin commented on the drug courts currently in operation throughout the country, and proposed that information about California's drug courts could be utilized in establishing mental health courts. The Council moved to gather that information.

Jo Robinson, Council Member, stated that there is a need for regulatory provisions establishing the ratio of staff to mentally ill inmates in jail facilities. The Board of Corrections could be involved in establishing these regulations.

Presentations were made by Mr. Rusty Selix, California Council of Community Mental Health Agencies, on the initiative process regarding the Mental Health Services Act; Kip Lowe, Ph.D., California Youth Authority (CYA), on the mental health treatment provided to CYA wards and parolees; and Alan Mobley from "A Premium International" on technology-based caseload management for probation officers, parole agents, etc., using Kiosk-based, chip-card units.

Fifth Meeting of 2003

The Council reconvened on November 20, 2003, at the Community Services Building of the Westminster Police Department, Westminster, California.

Sgt. Mike Chapman of the Westminster Police Department gave a presentation on the obstacles and issues encountered in working with mentally ill offenders from a patrol officer's perspective.

Paula Kamena and Dave Meyer, Council Members, and Bruce Slavin discussed the Sell v. United States court decision and the progress in drafting proposed legislation to implement the court decision.

Executive Officer Rick Mandella presented information on the contract between the Department of Alcohol and Drug Programs and the University of California, San Diego, which will provide recommendations to the Council concerning integration of mental health and substance abuse treatment services for offenders with co-occurring disorders. The Council moved that savings be provided in the contract to fund Council operating costs, staffing, research and demonstration projects. The Council also moved that an administrative services function be established through a state agency to monitor revenues and expenditures of the Council once funding was acquired.

The Council was presented with information regarding a study from 1994 involving the treatment of a limited number of California Youth Authority wards with vitamin supplements in an attempt to establish a link between inappropriate levels of essential nutrients (vitamins) and assaultive behavior. The presenters urged the Council to support legislation that would allow similar testing and treatment in the future.

The Council members discussed proposing an amendment to Penal Code Section 6044 relating to the Council. It was moved that the amendment delete the January 1, 2007 sunset date, provide that current terms of appointment would expire December 31, 2006, and that future Council appointees serve staggered terms. The Council is preparing a legislative proposal to implement this change.

The Council also scheduled the following meeting dates and locations for 2004: January 15, in Sacramento; March 18, in Marin County; May 20, at Patton State Hospital, San Bernardino County; July 15, in Sacramento; September 16, in the Bay Area; and November 18, in Southern California.

Future Council Actions

- Pursue information relating to the already established drug courts, and propose similar provisions to establish mental health courts in California.
- Continue to pursue efforts to fund the Council's administrative costs and activities by applying for grants from private and governmental sources.

Legislative Recommendations

As indicated in the Council's First Annual Report to the Legislature, pursuant to Penal Code 6044(h)(1), the Council makes the following recommendations:

- Propose legislative language to implement the U. S. Supreme Court decision Sell v. United States relating to the criteria that must be met to force individuals committed as Incompetent to Stand Trial to take psychotropic medications so that competency can be restored and the individual can assist in his/her own defense.
- Propose legislative amendments to Welfare and Institutions Code Section 5328.02, to expand the ability to share the otherwise confidential mental health information between mental health agencies and law enforcement for purposes of administration of justice and continuity of care of mentally ill offenders, so as to reduce duplicative efforts and costs of evaluating mentally ill offenders in determining the most effective services and treatments needed, and avoid unnecessary arrest and incarceration of mentally ill persons.
- Propose legislative amendments to Penal Code Section 6044 relating to the Council on Mentally Ill Offenders to delete the sunset date of January 1, 2007, specify that current Council Members shall serve through December 31, 2006, and that future Council appointees shall serve staggered terms.