

COUNCIL ON MENTALLY ILL OFFENDERS
FOURTH ANNUAL REPORT TO THE LEGISLATURE

December 31, 2005

History and Purpose of the Council

On October 12, 2001, former Governor Gray Davis signed Senate Bill No. 1059 (Chapter 860, Statutes of 2001) (Perata) creating the Council on Mentally Ill Offenders (Council). The bill is codified as Penal Code (PC) Section 6044.

The Council is comprised of 11 members. The legislation designates as permanent members the Secretary of the Youth and Adult Correctional Agency (now Secretary, Department of Corrections and Rehabilitation) and the Director of the Department of Mental Health, with the 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, Secretary, Department of Corrections and Rehabilitation (CDCR).

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

Members:

- Andrew Hall, Chief of Police, City of Westminster
- 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, J.D., Professor, National Fair Housing Training Academy (HUD); President, IMPACT (Improving Mental Preparation and Action of Community Tenants), a Limited Liability Company
- Wendy Lindley, Judge, Orange County Superior Court

Members appointed in 2005:

- David Lehman, Chief Probation Officer, Humboldt County, and member of the Board of Corrections (retired).

Support Staff:**Legal Counsel**

Bruce Slavin, General Counsel, CDCR, provides legal guidance to the Council.

Executive Officer

Rick Mandella, Chief, Offender Screening Section, Board of Parole Hearings (Board), serves as the Council's Executive Officer.

Activities of the Council in 2005

First Meeting of 2005

The Council reconvened on January 20, 2005, at the offices of the Board of Parole Hearings, Sacramento, California.

The Members discussed the organizational placement of the Council in view of the Little Hoover Commission recommendation that state government be reorganized.

Executive Officer Rick Mandella advised the Members that he will be leaving his position as Executive Officer in the near future, and that plans should commence to find a replacement knowledgeable about mental health issues, custody issues, and the legislative process. Secretary Hickman noted that in the course of the anticipated reorganization, he expected that CDCR will fund a position to serve as the Executive Officer. The Executive Officer and support staff positions for the Council will be an ongoing subject until resolved.

Members were advised that letters were sent early in January to Chiefs of Police Departments, County Sheriffs, and Chief Probation Officers, urging their involvement in the planning for Proposition 63 funding in their communities, per the Council's earlier motion.

Discussion took place on several legislative proposals:

PC 3068: amend the statute to delete the requirement of a hearing before the Board to impose a special condition of parole requiring parolees to be placed in residential facilities. Efforts to schedule these hearings before the Board are onerous and result in very few placements.

Not Guilty by Reason of Insanity (NGRI) evaluations: amend the statute to include specific information to be included by clinicians in court-order evaluations to

determine if defendants were insane at the time of the crime. A study by U. C. Davis of evaluations done on NGRI patients at Napa State Hospital reflects numerous errors, omissions, and incorrect application of the NGRI criteria, resulting in NGRI commitments to state mental hospitals for persons who, in fact, do not meet the NGRI criteria.

Keyhea v. Rushen and Washington v. Harper: A workgroup of Members was formed to research how the state standard set forth in Keyhea v. Rushen that allows for use of involuntary psychotropic medications on prison inmates might be revised by adoption of the standards set forth in the federal case Washington v. Harper.

Remedial Sanctions: The process in the Valdivia settlement was reviewed, and it was determined a Valdivia-type process was needed for mentally ill parolees, but with a view towards treatment instead of a return to custody just because they are mentally ill. Instead, alternatives such as enhanced community services would be imposed. A CDCR task force is working to draft Valdivia-type regulations dealing with mentally ill parolees.

A presentation was made on the federal DeWine legislation providing \$50 million nationwide for offender mental health treatment. The bill, however, does not actually appropriate the funds. Instead, the bill provides for planning grants. The eventual appropriation amount is unknown at this time.

Second Meeting of 2005

The Council reconvened on March 16, 2005, at the Seaside, California.

This meeting was held in conjunction with the annual Forensic Mental Health Association Conference.

Executive Officer Rick Mandella was presented with a Senate Resolution and gift from the Council Members, thanking him for his commitment, enthusiasm, and expertise in his service to the Council.

The Council acted on several motions addressing the issue of persons substituting for Members at meetings.

Legislation: The legislative proposals discussed at the January meeting were submitted too late to be considered in the 2005 legislative session and will be re-introduced for the 2006 session.

Council Executive Officer: The continuing need for a paid Executive Officer position was discussed.

MediCal: A presentation was made on the MediCal program and how funds are impacted for mentally ill inmates in custody and out of custody.

In re Qawi: A presentation was made on the court decision In re Qawi, regarding administering involuntary medications to civilly committed Mentally Disordered Offenders (MDOs). Under this decision MDOs have the right to refuse medication, but medication can be involuntarily administered if certain criteria are met.

Proposition 63 funds: Vice Chairman Mayberg presented an update on Proposition 63. Counties are currently making needs assessments, and those reports should be submitted by November 2005. Funds are expected to flow in January 2006.

Lynda Frost from the Board of Corrections presented an overview of the Mentally Ill Offender Crime Reduction Grant program's final report.

Judge Steven Manley, Santa Clara County Superior Court, discussed the mental health/drug court process and successes in Santa Clara County.

Third Meeting of 2005

The Council reconvened on May 12, 2005, at Atascadero State Hospital, Atascadero, California.

A presentation was made by David Fennell, M.D., Medical Director, Atascadero State Hospital, on the impact of the Qawi court decision. Because MDO patients are

allowed to refuse medication, the number of injuries to patients and staff are increasing, and many of the psychologists and psychiatrists are being pulled away from their treatment duties at the hospital in order to respond to subpoenas for their testimony in court cases throughout the state. Dr. Fennell also discussed hospital issues relating to MDOs, the need for a change to the Washington v. Harper standards for involuntary medication, and the DMH Conditional Release Program (CONREP) and how CONREP standards differ from the hospital standards for outpatient readiness.

Carl Weaver, M.D., Chief Psychiatrist, California Men's Colony (CMC), gave the prison mental health population statistics, discussed the number of evaluations done in the MDO program, and talked about the unwillingness of CONREP to accept parolee patients into their community programs. Dr. Weaver also discussed the addition of Pedophilia as a qualifying MDO severe mental disorder, and what problems have arisen with the inclusion of this diagnosis in the MDO statute. Dr. Weaver also made recommendations to change the standards for "dangerousness" and "grave disability" in custody settings sufficient to meet criteria for involuntary treatment.

Member Lehman recommended that the recently issued letters to Chiefs of Police, County Sheriffs and Chief Probation Officers urging involvement in Proposition 63 planning also be sent to the Judicial Council to urge superior court judges to also become involved in Proposition 63 planning.

Member Sweeney urged Council support for mental health courts for dually diagnosed adults and juveniles (those with severe mental disorders and substance abuse problems).

Fourth Meeting of 2005

The Council reconvened on July 14, 2005, at Didi Hirsch Community Mental Health Center, Culver City, California.

Members discussed the organizational placement of the Council in light of the correctional reorganization within state government. The Members agreed that placement within the Corrections Standard Authority would be appropriate, but a final decision has not been made to conclude this outstanding issue. The outstanding issue of a paid Executive Officer position was also discussed.

Member Hall suggested soliciting information on best practices from every County Sheriff and every jail facility for diverting mentally ill individuals into treatment programs and out of jail facilities. Hearing may be held in the future to bring the information into the public awareness.

Council Members discussed conducting research on how Parole Outpatient Clinics might be reworked to better serve mentally ill parolees.

Council Members viewed Dan Weisburd's presentation of his DVD/CD ROM training video, "On Your Watch: The Challenge of Jail Suicide." Mr. Weisburd is working on a new DVD/CD ROM training video, "The Blurred Line," which will present examples of impulse control problems, and will target juvenile justice, parents, counselors, etc. The Council will support Mr. Weisburd's application to funding agencies to provide financing to produce this training video.

Fifth Meeting of 2005

The Council reconvened on September 22, 2005, at the offices of the Board of Parole Hearings, Sacramento, California.

Legislative proposals that were submitted too late for the 2005 legislative session were reviewed for submission for the 2006 session:

Council on Mentally Ill Offenders (PC 6044): The Council recommends that the sunset date be eliminated, and that staggered terms be established for Members, the terms to be established by the appointing authority.

Hearing required by the Board to impose special condition of parole requiring placement in a residential facility (PC 3068): The Council recommends elimination of the hearing required by the Board to impose a special condition of parole requiring parolees to participate in residential treatment, making this option more user friendly for parole agents.

Not Guilty by Reason of Insanity (NGRI) court-ordered evaluations (PC 1027): The Council recommends language be included in statute listing the specific information and facts to be covered, and sources to be consulted, when conducting an evaluation to determine whether a defendant was sane or insane at the time of the crime. This proposal addresses the frequency with which incorrect evaluations are being submitted to courts to determine defendant sanity.

Keyhea v. Rushen and Washington v. Harper (PC 2600) change in standards for involuntarily medicating prison inmates: The Council recommends that the standards set forth in the federal case Washington v. Harper be utilized instead of the standards set forth in the California decision Keyhea v. Rushen. This proposal better addresses the issue of “grave disability” as it applies to incarcerated persons. The Keyhea standard for “grave disability” is adopted from the Lanterman-Petris-Short Act which applies “grave disability” to the person on the street.

Mentally Disordered Offender program (PC 2960 et seq.): The Council recommends further information be collected and presented to the Council to determine whether outpatient treatment should be mandated as a treatment component of the MDO special condition of parole. The outpatient treatment provided through the Department of Mental Health’s CONREP program results in a low reoffense rate of between five and eight percent, as opposed to the Parole Outpatient Clinic program

operated by CDCR's parole division, where reoffense rates are 94%. Currently, only about one-third of MDOs are accepted into the CONREP program.

The Council also recommends the following:

Corrections Standards Authority: The Council recommends that the Corrections Standards Authority conduct an audit of existing program space in adult and juvenile detention facilities, and thereafter recommend standards for space needed for treatment programs (individual counseling, group therapy sessions, etc.).

Council Executive Officer: Efforts will be made to arrange for an Interim Executive Officer to oversee the next two meetings of the Council (November 9, 2005, and the first meeting in 2006). Information shall be requested from other state mentally ill offender groups to determine specific duties, responsibilities, etc., and thereafter, it is anticipated that Executive Officer candidates can be interviewed by several Council Members, and a new Executive Officer named, so that the Council can continue to pursue its legislative mandate.

The Council was presented with information regarding the SSI Representative Payee Program and CDCR's Transitional Case Management Program. These programs are instrumental in assisting mentally ill inmates who are about to be released to parole to apply for, and receive, SSI benefits.

Sixth Meeting of 2005

The Council reconvened on November 9, 2005, at the offices of the Westminster Police Department, Westminster, California.

Council Members discussed the ongoing issue of replacing Executive Officer Rick Mandella with an individual knowledgeable about issues pertaining to mental health, corrections, and the legislative process, to assist the Council in its legislative mandate 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 addition, clerical support will also need to be retained, since this meeting was the last meeting to be attended by Carol Covington who has provided clerical support for several years. Members agreed that a full-time Executive Officer position is needed, and that a part-time person is required for staff support. Bruce Slavin will follow up with Chairman Hickman, and Bob Garcia, substituting for Vice Chairman Mayberg, will follow up with Dr. Mayberg on the possibility of retaining a retired annuitant(s) to serve as Executive Officer.

The organizational placement of the Council as also discussed, and since it will not be placed within the Corrections Standards Authority, Mr. Slavin suggested the Council might be placed within the CDCR’s Division of Community Partnership, a division currently being staffed. The Division of Community Partnership is not part of the paroles division, but is a service provider to parolees.

Council Members voted to amend PC section 6044 to designate four year staggered terms in the proposed amendment submitted to the CDCR legislative office. The sunset date will also be deleted.

Council Members were advised that the legislative proposals submitted regarding PC 3068 (elimination of hearing required by Board of Parole Hearings to place a parolee in a residential facility); PC 1027 (addition of specific criteria to be addressed in evaluations ordered pursuant to a not guilty by reason of insanity plea); and the proposal to substitute the Keyhea involuntary medication procedures with the Washington v. Harper standard were either deferred or were referred to the Health and Human Services Agency for consideration.

Council Members discussed the possibility of conducting a survey rather than soliciting information on best practices from counties regarding their efforts to divert jail

inmates from jail into mental health programs. Counties would be required to present their findings to the Council at public meetings, and the survey would be the basis for future Council projects.

The Council voted to ask the Corrections Standard Authority to look at current space requirements in jails and juvenile hall facilities, and recommend staffing and space patterns for treatment programs.

The Council established their 2006 meeting dates and locations, as follows:

February 9, 2006	Orange County Superior Court, Santa Ana
March 15, 2006	Seaside (in conjunction with the Forensic Mental Health Assn. conference)
May 25, 2006	Board of Parole Hearings, Sacramento
July 20, 2006	Napa State Hospital, Napa
September 21, 2006	Milton Marks Conference Center, San Francisco
November 16, 2006	Westminster Police Department, Westminster

A meeting in April, 2006, might be added to the schedule in conjunction with the California State Sheriffs' Association meeting.

Comments were made regarding the GAINS/TAPA programs. TAPA is a funded program from GAINS interested in jail diversion. Staff with GAINS sees the Council as a model for other states.

The 2005 Annual Report was discussed and will be submitted to Members for final review following the November 9 meeting.

Member Sweeney noted that Berkeley Unified School District received a grant of \$367,007 from the U. S. Department of Education, Office of Safe and Drug-Free Schools for the integration of schools and the mental health system.

Members discussed the issue of parole agents "dumping" mentally ill parolees into community mental health treatment facilities. The issue of PC 2974 admissions to

state hospitals for mentally ill parolees is an ongoing battle between county mental health facilities and the Department of Corrections and Rehabilitation.

Future Council Actions

Establish a paid, full-time Executive Officer position to research, investigate and pursue Council-generated ideas and programs consistent with the legislative mandate as specified in PC 6044.

Assist others in efforts to address statutory changes regarding the involuntary medication of inmates, both within the Department of Corrections and in local jail facilities.

Provide support for the improvement of the evaluations ordered by courts considering not guilty by reason of insanity pleas of defendants to ensure required criteria are correctly addressed.

Investigate the possible expansion of mental health courts and drug courts in California counties who have yet to take advantage of these successful programs in order to address the issues presented by dually diagnosed individuals (mentally ill with substance abuse problems).

Explore the possible expansion of the CDCR's Parole Outpatient Clinic to the staffing and resource level enjoyed by the Department of Mental Health's Conditional Release Program to better serve mentally ill parolees, review the functioning of the Mentally Disordered Offender program overall, and explore the possible mandate for CONREP treatment for every Mentally Disordered Offender.

Determine how Parole Outpatient Clinics might be reorganized to better serve mentally ill parolees, thus reducing the threat to members of the public and reduce recidivism rates.

Work with the GAINS program to determine the ways the Council might assist in the positive impact of jail diversion programs in communities throughout California.

Legislative Recommendations

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

PC 3068: Delete the requirement of a hearing before the Board of Parole Hearings to impose special condition of parole requiring placement in a residential facility. Residential facilities are unlocked, so there is no liberty interest at issue in imposing this condition. The CDCR parole agents will utilize this authority at a greater frequency when there is no requirement of a hearing before the Board. (This proposal was deferred for additional revision.)

PC 1027: A study of the court-ordered evaluations conducted for NGRI patients found significant errors, omissions, and incorrect application of the NGRI criteria, resulting in many court-ordered commitments to state mental hospitals that, in fact, do not meet the commitment criteria. The Council recommends language be included in statute listing the specific information and facts to be covered, and sources to be consulted, when preparing an NGRI evaluation. (This proposal will be forwarded to Health and Human Services Agency for consideration.)

PC 2600: The Council recommends a change in the standards for involuntarily medicating prison inmates by adopting the standards set forth in the federal case Washington v. Harper. This case better addresses the issue of "grave disability" as it applies to incarcerated persons. The current standard in the Keyhea v. Rushen decision utilizes the definition for "grave disability" applied to a person in the community. (This proposal was deferred for additional consideration.)

PC 2960 et seq.: The Council recommends study of the issue to determine whether outpatient treatment should be mandated as a treatment component of the MDO special condition of parole, since MDOs treated through the Department of Mental Health's CONREP program have a reoffense rate of between five and eight percent, as opposed to the Parole Outpatient Clinic program operated by CDCR's parole division, where reoffense rates are 94%. Currently, only about one-third of MDOs are accepted into the CONREP program. (This proposal was withdrawn prior to presentation to CDCR's legislation office.)

PC 6044: The Council proposes to eliminate the sunset date and provide staggered terms for members, said terms to be established by the appointing authority, in order to allow the Council to continue its legislative mandates. (This proposal was amended to include staggered four-year terms and continues through the legislative process.)