

COUNCIL ON MENTALLY ILL OFFENDERS
THIRD ANNUAL REPORT TO THE LEGISLATURE

December 31, 2004

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 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 (YACA).

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 2004:

- Paul Kim, Commander, Training Group, Los Angeles Police Department
- Wendy Lindley, Judge, Orange County Superior Court

Members resigning in 2004:

- Paula Freschi Kamena, District Attorney, Marin County
- Lynne Deutch, Founding Board Member, National Mental Health Awareness Campaign, a mental health advocate
- The Honorable Fred Fujioka, Judge of the Superior Court, Los Angeles County
- Paul Kim, Commander, Training Group, Los Angeles Police Department

Support Staff:**Legal Counsel**

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

Executive Officer

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

Activities of the Council in 2004

First Meeting of 2004

The Council reconvened on January 15, 2004, at the Board of Prison Terms, Sacramento, California.

Members discussed the potential problems that would be encountered if persons substituting for absent Members were not eligible to submit proxy votes on motions made by the Council. Bruce Slavin, General Counsel, YACA, will provide input to the Members on the subject of the rights of persons substituting for absent Members at a subsequent meeting.

Members Paula Kamena and Dave Meyer presented the legislative language developed to implement the U. S. Supreme Court decision in Sell v. U.S. which sets forth the legal requirements for administering involuntary psychotropic medication to incompetent to stand trial (IST) patients. (This legislation was passed as Chapter 486, Statutes of 2004 (SB 1794) on September 10, 2004.)

Executive Officer Rick Mandella presented statistical reports on holds imposed under the Lanterman-Petris-Short Act for the years 1990-2000, and on the Little Hoover Commission report on parole policies.

Mr. Mandella also proposed a legislative amendment to the statutory section on confidentiality of mental health information under Welfare & Institutions Code section 5328.02, an exception to the federal confidentiality statute (Health Information Portability

and Accountability Act, or HIPAA), to allow access to mental health information by only identified agencies and treatment providers for the purpose of the administration of justice and continuity of care and treatment.

In addition, Mr. Mandella presented a proposed legislative amendment to PC 6044 regarding the make-up of the Council. The proposal suggests staggered terms of the appointed Members.

Bruce Slavin and Rick Mandella made a presentation on the administration of involuntary psychiatric medications under the court decisions Keyhea v. Rushen, a California Appellate Court decision from 1986, and Washington v. Harper, a U. S. Supreme Court decision from 1990.

Mr. Mandella updated the Members on the attempts to acquire funding for the Council through grants. That effort is ongoing, but to date has been unsuccessful.

Mr. Mandella noted that the State Assembly appointed Los Angeles Police Department Commander Paul Kim to the Council, but due to the pressures of his new appointment as Commander of the Training Group, and his inability to travel to the Council's meetings, Commander Kim declined his appointment. Members made several suggestions for possible appointments to the Council. Mr. Mandella will follow up with the Assembly Speaker's Office relative to filling the vacancy.

Second Meeting of 2004

The Council reconvened on March 18, 2004, at the San Rafael City Council Chambers, San Rafael, California.

Presentations were made by Paul Woodward, Psy.D., California Youth Authority (CYA), on the December 2003 Report of Findings of Mental Health and Substance Abuse Treatment Services in California Youth Authority Facilities; Sue Burrell, Youth Law Center, on the status of lawsuits brought on behalf of CYA wards calling for special

education services in CYA, and proposed changes to the delivery of mental health services within CYA; Keith Wattlely, Prison Law Office, on the Coleman federal court case which found Department of Corrections (CDC) in violation of the 8th Amendment, and that their policies and practices in dealing with the mental health issues of CDC inmates were severely lacking in some areas; and Norm Black, Legal Counsel, DMH, discussed the proposed legislation addressing the issues in the Sell case, as well as the case In re Qawi (mentally disordered offenders' ability to refused antipsychotic medication).

Member Kamena spoke of the problems encountered with court-ordered gag orders that prevent DMH from notifying sheriff's offices that a Sexually Violent Predator is to be released in the community, and urged that future gag orders be appealed.

Third Meeting of 2004

The Council reconvened on May 20, 2004, at Patton State Hospital, San Bernardino, California.

Diane Harrison and Camelia Mesrobian, Deputy District Attorneys, San Bernardino County District Attorney's Office, made a presentation on the problems encountered in court proceedings involving Mentally Disordered Offenders (MDOs) and individuals found incompetent to stand trial (IST). They commented on the diverging application of the MDO criteria by CDC and DMH, and the problems encountered in superior court when MDOs appeal their status.

Michael Nash, Presiding Judge, Los Angeles County Juvenile Court, gave an overview of the juvenile justice system, and spoke of the impact of mental illness on juvenile defendants. Judge Nash urged the Council to propose legislation calling for mandatory training for judicial officers in the delinquency system, with special focus on domestic violence, mental health, education, and training especially geared for those

working with families and children. The court is the entity that approves psychotropic medications for juveniles, and the court receives input from the county mental health department before ruling on medication issues. Judge Nash called for better pre-disposition services to be available in juvenile halls, and institutional services need to do better in creating reintegration plans to ensure a continuum of community patient treatment.

Bruce Slavin reported briefly on the status of the CYA remedial plan settlement negotiations.

Carlos Luna, Executive Director, Patton State Hospital, gave an overview of the treatment population, ethnic make-up of the hospital population, and the history of the hospital itself. Mr. Luna discussed the hospital's implementation of the Sell decision, and commented that the hospital has not seen the expected problem of refusal of medications by their civilly committed MDO patients. In administering involuntary medications in emergency situations, the hospitals now use the Washington v. Harper guidelines. The application of the Qawi decision is only applied to the civilly committed MDO patients, and has not been applied to the MDO parolees.

Dr. Nirbhay Singh, Psychiatrist, talked about the new recovery model being integrated into the treatment plan for patients. The recovery model provides options and choices to the patient who can select aspects of treatment they are able to incorporate into their specific situations, thus providing more patient involvement and less recidivism. The new model addresses symptom recovery, as well as consequences of mental illness, functional recovery, and can teach patients to make better decisions. Member Robinson noted a need for cooperation and coordinated treatment between state hospitals and jails, and proposed a meeting with Department of Mental Health, state hospitals, jail psychiatric services, and the Board of Corrections.

Munir Sewani, Ph.D., San Bernardino Department of Behavioral Health and Forensic Coordinator for San Bernardino and Riverside Counties, described the community treatment programs provided through the DMH Conditional Release Program, providing services to individuals found Not Guilty by Reason of Insanity (NGI), Mentally Disordered Offenders (MDO), civilly committed MDOs, Mentally Disordered Sex Offenders (MDSO), and Sexually Violent Predators (SVP). Dr. Sewani provided statistical information on the different populations, and the varying diagnoses encountered, as well as the re-hospitalization and re-offense numbers.

Dr. Jon Stern, CDC, made a presentation on the Going Home Los Angeles Grant awarded to Walden House, a CDC Parole & Community Services Division community treatment center.

Fourth Meeting of 2004

The Council reconvened on July 22, 2004, at the office of the Board of Prison Terms, Sacramento, California.

Executive Officer Rick Mandella reported briefly on the recently issued California Independent Review Panel (IRP) report.

Sally Knornschild, MDO Program Manager, Board of Prison Terms, made a presentation on the MDO statutory structure, commented on the diverging application of the MDO criteria between CDC and DMH, and the resulting problems and costs incurred by the Board. Mr. Mandella noted that the IRP report recommends that the CDC be restructured into the Department of Correctional Services (DCS), and that the University of California (UC) be the contract entity to provide mental health services to prison inmates, or that DMH oversee mental health services in the institutions. Better coordination of mental health delivery to youth and adult parolees would also be needed.

The Council Members should consider what interrelationship the Council will have with the proposed DCS, and what recommendations the Council should make.

Carmen Delgado, Assistant Deputy Director, Program Operations Division, Department of Alcohol and Drug Programs, presented the March 2, 2004, Co-Occurring Disorders Workgroup Final Report. The Report was prepared by Department of Alcohol and Drug Programs and DMH. The Report recommended formal linkage between Alcohol and Drug Programs, DMH, CDC, Health Services, and Social Services, along with linkage to county alcohol and drug, and mental health agencies.

Patricia Judd, Ph.D., University of California, San Diego, presented the UCSD Co-Occurring Disorders Research Project. The study was funded through a contract with Alcohol and Drug Programs and the University of California, San Diego, and the Council was the recipient of the report. The study demonstrated the differences in demographics and retention between mandated and voluntary co-occurring disorders clients, treatment differences between the two groups, and numbers, benefits, and outcomes of the drug court programs when compared to incarceration.

Jasmine A. Tehrani, Ph.D., Clinical Assistant Professor of Psychiatry, USC Keck School of Medicine, gave an overview of Major Research Findings and Best Practices of the various Judicial Commitment Outcomes (NGI, IST, SVP, and involuntary outpatient commitments), and compared the re-offense/re-arrest rates in various states.

Fifth Meeting of 2004

The Council reconvened on September 16, 2004, at the Milton Marks Conference Center, San Francisco, California.

Michael Hennessey, Sheriff, San Francisco County, welcomed the Members and gave a brief summary of the recent efforts to address issues regarding the mentally ill individuals in the local jail facilities. Sheriff Hennessey urged the Council to find funding

for community programs in order to better serve the mentally ill in the community rather than placing them in the local jails.

Brenda Epperly, Health Care Liaison to the CDC Director's Office, presented the findings of the California IRP recommendations regarding the proposed DCS and the contracting out for mental health, dental health, and medical care services. The report proposed that the UC system be the contracting entity. Laboratory and pharmaceutical services would also be contracted. A pilot project will be considered once DCS is established, using DMH in the interim. Ms Epperly explained it was not the intention to put all mentally ill inmates in a state hospital setting. She noted that currently Salinas Valley State Prison is matching mentally ill prisoners with DMH hospitals, and that DMH's budget should be augmented up front as their responsibility for mentally ill inmates increases.

Mr. Mandella commented that there is a disagreement between those making referrals and those receiving referrals under the PC 2684 process, and that some revision is needed within CDC to enhance mental health programs. Ms. Epperly suggested an "EOP (Enhanced Outpatient) Plus" level of care for the chronically mentally ill that may not be participating in treatment. Ms. Epperly also commented that Dr. Drake of UC is hesitant to go forward, and that CDC needs to build a relationship with the UC system, as Texas did prior to incorporating the mental health services of inmates into the university system. Ms. Epperly also noted that if contracts are not entered into with another treatment source, "Centers of Excellence" will be developed within the CDC system to move mentally ill inmates into certain institutions.

Time limit for the IRP implementation was determined to be over a ten-year period; however, in making the IRP recommendations, the IRP panel did not have to determine how changes would be implemented.

Charles Scott, M.D., Chief, Forensic Psychiatry Division, UC Davis Medical Center, Department of Psychiatry, spoke on the UC psychiatry program, and described a study of the Not Guilty by Reason of Insanity evaluations prepared for the courts. That study revealed a number of problems with the quality of the evaluations. Dr. Scott also discussed violence risk assessments in the MDO commitment.

Mr. Mandella discussed the concerns of the Board with the clinical evaluations provided by CDC psychologists for use by the Board at parole consideration hearings for life term inmates eligible for parole, and of the MDO evaluation process and the diverging application of the criteria by CDC and DMH. The IRP recommended that UC become involved in providing these clinical assessments. Mr. Mandella noted that the Council could consider a proposal to the Administration and the Legislature for contracting for clinical evaluations of lifers and MDOs. A contractor such as UC would eliminate the diverging application of the MDO criteria currently being experienced between CDC and DMH.

Mr. Mandella also discussed the position of the Council in relation to the proposed DCS, noting that the IRP diagram of the new department did not include the Council.

Sixth Meeting of 2004

The Council reconvened on November 18, 2004, at the Didi Hirsch Community Mental Health Center, Culver City, California.

Member McWaine's staff at the Didi Hirsch Community Mental Health Center made a presentation on the Center's AB 2034 program. The AB 2034 program provides funding through local grants to establish service standards relating to mental health programs, as well as coordinates access to housing assistance, vocational rehabilitation, and veterans' services. The presentation included a client of the program who spoke

about his personal struggle, and his continuing recovery and participation through the AB 2034 program.

Members conducted an open discussion on how to move the Council forward in its mission to address the mental health issues of adult and juvenile offenders, the lack of a full component of Council Members, and ways in which appointing authorities could be urged to make their statutory appointments. The Members also discussed the availability of Proposition 63 money for the Council, as well as money from federal grants through the Mentally Ill Offender Treatment and Crime Reduction Act of 2004, and different ways in which paid, support positions could be established for the Council.

Seventh Meeting of 2004

The Council reconvened on December 17, 2004, at the Board of Prison Terms, Offender Screening Section, Sacramento, California.

The following topics were discussed:

Keyhea v. Rushen Involuntary Psychotropic Medications.

Consider an amendment to the statute regarding use of involuntary medications on CDC inmates by changing from the Keyhea standard to the standard in Washington v. Harper. Address the possible application of involuntary medication standards to parolees. Inmates receiving medication in prison will likely discontinue medications upon parole, decompensate, engage in criminal behavior, and then returned to prison, where medications are reinitiated. Determine if Keyhea standards can be applied to the jail psychiatric population. The county responsibility for the PC 1370.01 misdemeanants, and authority to medicate this population while in jail should also be reviewed.

Meta Statute.

The Council discussed the different categories of forensic commitments (Mentally Disordered Offender, Not Guilty by Reason of Insanity, and possibly the PC 2684

patients) and how they differ in treatment requirement. Consider development of a more generalized category of severely mentally ill felons/misdemeanants, and authorize treatment based upon an individual's dangerousness to others due to a severe mental disorder.

Revenue Enhancement

Investigate access to federal funds for medically necessary treatment, and consider billing of the case management function where federal funding cannot be accessed. Determine if Medical is a potential funding source for some services. Assistance from Board of Corrections, CDC, and YA could be solicited.

Medication Costs

Initiate a dialogue with representatives of pharmaceutical companies to explore possible reductions in the costs of medications.

PC 2974

Review the functioning of the PC 2974 which authorizes involuntary treatment of mentally ill state correctional parolees. Clarification of the statute may be needed to specify fiscal responsibility or facilitate its use.

Remedial Sanctions

In conjunction with the Valdivia settlement, consider statutory amendments that would provide for continued community treatment at enhanced levels for mentally disordered, developmentally disabled, and chemically dependent parolees, if their parole violations/criminality was a result of their mental disorder, developmental disability, or chemical dependency, rather than returning them to prison as a parole violator.

Confidentiality

Determine if W&I Code section 5328.02 is an exception to the federal Health Insurance Portability and Accountability Act (HIPAA), and determine the ability to access information by local governments.

Mentally Ill Jail Inmates/Prop. 63

The COMIO should consider providing a forum for county sheriffs and representatives of the county boards of supervisors to report problems pertaining to mentally ill in local jails. The COMIO should also participate in the implementation of Prop. 63.

Violent/Non-Violent Distinction

The COMIO should address the distinction between non-violent mentally ill and those mentally ill offenders who pose a significant risk of serious bodily harm to others. Violent mentally ill are routinely excluded from county mental health programs because of a lack of willingness to provide services to adult and juvenile offenders. Delineation of responsibilities could be established, placing those who pose a significant risk of violence with the state, and the non-violent with the counties.

Not Guilty by Reason of Insanity

The advantages and disadvantages of a psychiatric security review board should be investigated in other states. A board would replace judicial review after a defendant is found by the criminal courts to be Not Guilty by Reason of Insanity. This board might also take over the due process hearings conducted under the Mentally Disordered Offender statute by the Board of Prison Terms.

Training for Not Guilty by Reason of Insanity

The COMIO, in consultation from the University of California, should propose standards and content for court-ordered clinical evaluations under the Not Guilty by

Reason of Insanity determination, to avoid erroneous commitments to the state mental hospitals of person not meeting NGRI criteria.

Future Council Actions

- Participate in the annual Forensic Mental Health Association Conference in March 2005.
- Continue to pursue efforts to fund the Council's administrative costs and activities, including civil service support positions.
- Initiate dialogue with representatives of major pharmaceutical companies to explore possible reductions in the cost of medications.
- Initiate discussions to provide a forum for county sheriffs and representatives of local county boards of supervisors to report problems pertaining to mentally ill in local jails, and encourage dialogue concerning the implementation of Proposition 63.
- Consult with the University of California and report to the Legislature any available findings concerning the process by which criminal defendants are clinically evaluated for possible commitment as Not Guilty by Reason of Insanity, and consider legislative action to develop a required report format and guidelines for performing these evaluations.

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:

Amend PC section 3068 by deleting the requirement of a Board of Prison Terms hearing to place a mentally ill parolee into a live-in program as a special condition of parole.

Amend the appropriate Penal Code section to require that specific information be included in court-ordered clinical evaluations required in Not Guilty by Reason of Insanity plea cases.

Amend the parole statute to include remedial sanctions for developmentally disabled and mentally ill parolees who, rather than being returned to prison custody for parole violations related to their developmental disability or mental disorder, are referred for enhanced community treatment and regional center services, consistent with recommendations by those community treatment providers and regional centers provided during the parole revocation process.