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Your Responsibility When Using the Information Provided Below:

When putting this material together, we did our best to give you useful and accurate information because we know that prisoners often have trouble getting legal information and we cannot give specific advice to all prisoners who ask for it. The laws change often and can be looked at in different ways. We do not always have the resources to make changes to this material every time the law changes. If you want legal advice backed by a guarantee, try to hire a lawyer to address your specific problem. If you use this pamphlet, it is your responsibility to make sure that the law has not changed and still applies to your situation. Most of the materials you need should be available in your institution's law library.

INFORMATION ABOUT PRISON OVERCROWDING: SENATE BILL xxx 18 AND THE FEDERAL COURT ORDERS IN PLATA V. SCHWARZENEGGER AND COLEMAN V. SCHWARZENEGGER.

(Updated January 20, 2010)

We are sending you this letter because you have asked for information about the recent federal court decision concerning overcrowding in California's prisons, and/or recent legislation passed by the State to reduce the prison population. Because we receive a large volume of mail, we are unable to provide individualized responses to all the prisoners and parolees who write to us. In this letter, we will attempt to answer the most common questions about these issues. We first provide a short summary, followed by a detailed explanation.

SUMMARY

A federal three-judge court has ordered California to reduce its prison overcrowding by about 40,000 prisoners over a two-year period. The court gave the State the right to choose the population reduction methods it will use. However, the State is appealing the population reduction order to the U.S. Supreme Court, and the three-judge court has stayed the order so that it will not take effect until the U.S. Supreme Court decides the case. Therefore, we do not expect the State to reduce the prison population based on the court order for many months, and then only if the Supreme Court affirms (rules in favor of) the lower court's order.

Meanwhile, California recently passed a law called "SB xxx18," which is designed to reduce the prison population by giving more good time credits, and diverting certain parole violators and probation violators away from prison. This law will go into effect at the end of this month.

We cannot advise you on whether the new legislation or the court order, if implemented, will affect your particular release date.

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DETAILED EXPLANATION

THE FEDERAL THREE-JUDGE COURT ORDER IN THE PLATA/COLEMAN CASES

On August 4, 2009, a federal three-judge court issued a decision finding that overcrowding is the main cause of unconstitutional conditions in California's prisons. The court wrote that "California's prison are bursting at the seams and are impossible to manage." The court found that the state of California must reduce its prison population by about 40,000 prisoners over the next two years. Such a reduction would bring the prison population down to 137.5 percent of design capacity (the prison system currently houses almost twice as many prisoners as the facilities are designed to hold). The court ordered the State to submit a plan to reduce its prison population.

On September 18, 2009, the State filed a population reduction plan with the federal three-judge court. On October 21, 2009, the court rejected the State's plan because it did not comply with the August 4 order, and ordered the State to submit a new plan. On November 12, 2009, the State submitted a revised plan that would reduce overcrowding by approximately 40,000 prisoners within two years.

On January 12, 2010, the federal three-judge court ordered the State to reduce its prison population according to the schedule set forth in the November 12, 2009 plan. However, the court "stayed" the order, meaning that it will not take effect, until the U.S. Supreme Court decides any State appeal in the case.¹ The State, which does not have to file a petition for certiorari in order to take the case to the U.S. Supreme Court, has announced that it will file an appeal by the end of January 2010. It is unlikely the U.S. Supreme Court will hear the case before late 2010 or early 2011. We will update this letter when there are further major developments on this issue.

At this time we are unable to identify which prisoners would be affected if the State were to implement its November 12, 2009 plan. That plan does not include "early releases" of any current prisoners, but proposes other means of reducing the prison population and expanding the prison capacity, including: (1) building more California state-operated prison beds on the grounds of existing CDCR prisons or recently-closed juvenile facilities, (2) opening new re-entry and community-based facilities, (3) transferring more prisoners to out-of-state facilities, and (4) housing some prisoners in privately-operated prisons within California. The plan also proposes reducing the prison population by (5) redefining some property crimes so that they are misdemeanors rather than felonies, (6) housing some incoming low-risk felons in jails for their entire terms, (7) placing some prisoners on monitored home detention, (8) implementing reforms to reduce the number of people sent to prison on probation or parole revocations, (9) increasing the good conduct and work credits that can be earned by some prisoners, and (10) commuting sentences for certain non-citizens who will be deported or transferred to federal custody. On December 7, 2009, the prisoners' attorneys agreed that the State's plan met the requirements of the court's August 4, 2009 order.

¹ The state initially tried to appeal from the three-judge court's August 4, 2009 Order. On January 19, 2010, the U.S. Supreme Court dismissed that appeal as being premature and said it would await the State's expected appeal from the three-judge court's January 12, 2010 order.

SENATE BILL xxx 18

Some of the State's population reduction plan is based on recently-passed law known as "SB xxx18." SB xxx 18 goes into effect in January 2010 regardless of what happens with the federal court case. The new law will keep some new offenders out of prison by raising the threshold for determining whether some specific theft and property crimes are misdemeanors or felonies. The new law also provides increased funding for probation, and give incentives to local probation departments to avoid sending probation violators to prison.

SB xxx 18 law also has some provisions that may affect current prisoners and parolees: These include the following:

1. Increases in credit-earning for some prisoners, including:
 - 1) granting one day of conduct credit for every day served in jail prior to sentencing and after sentencing and prior to reception in the CDCR ("day-for-day" or "half-time" credits); this does not apply to prisoners who are required to register as sex offenders or who have convictions for serious or violent felonies (new Pen. Code § 4019; new Pen. Code § 2933(f));
 - 2) granting day-for-day credits for all eligible prisoners who are discipline-free, regardless of whether they are on waiting lists for assignments or undergoing reception center processing. This also applies to parole violators returned to custody who are otherwise eligible for credits (new Pen. Code § 2933(a)-(c)).
 - 3) granting two days of credit for every one day served for those prisoners endorsed to transfer to a fire camp, even if they have not yet been transferred, and providing the same credits to prisoner fire-fighters who are assigned to an institution rather than to a camp, applicable only to inmates who are eligible after 7/1/09 (new Pen. Code § 2933.3(b)); and
 - 4) granting good behavior credits of up to six additional weeks per year for completion of approved programs; the details of what programs will be approved and how such credit awards will be made are supposed to be set forth in new CDCR regulations (new Pen. Code § 2933.05);

We do not know exactly when or how the CDCR will implement these new credit laws. SB xxx 18 gives CDCR a "reasonable time" to determine which prisoners will get additional credits. The new law also says that prisoners cannot sue for damages if there is a delay in granting any extra credits. However, credit for any excess time served in prison is supposed to be applied to the prisoner's parole term. (SB xxx 18, § 59.)

2. Summary parole: parole without supervision for low-risk parolees who meet certain criteria. Those on summary parole will not be returned to prison for violating their parole terms. (New Pen. Code § 3000.03.)

3. Standardize penalties for parole violations by implementing the Parole Violation Decision Making Instrument. (New Pen. Code § 3015(a)-(c).)
4. Parole Reentry Courts: provide intensive monitoring in the community for certain parole violators with drug and mental health needs, rather than returning them to prison. (New Pen. Code § 3015(d)-(e).)
5. In addition to the changes enacted in SB xxx 18, the CDCR has implemented a policy to discharge from parole those parolees who have already been deported to other countries.

BACKGROUND TO THREE JUDGE COURT ORDER

The court order requiring the State to reduce the prison population is the result of legal proceedings in two class-action lawsuits on behalf of California prisoners. In those lawsuits, the Prison Law Office and our co-counsel law firms have proven that the medical and mental health care in California's prisons is so inadequate that it violates the federal constitution's Eighth Amendment ban on cruel and unusual punishment. The lawsuit on medical care is *Plata v. Schwarzenegger* (N.D. Cal) No. C01-1351 TEH and the lawsuit on mental health care is *Coleman v. Schwarzenegger* (E.D. Cal.) No. S90-0520 LKK JFM P. As a result of these lawsuits, the prison medical and mental health care systems have been monitored by the courts for years. In 2005, the judge overseeing the *Plata* case even took the drastic step of ordering that control of the prison medical care system be removed from the California Department of Corrections and Rehabilitation (the CDCR) and placed in the hands of a court-appointed receiver.

Unfortunately, improvements in prison medical and mental health care have been slow and inconsistent, at best. Severe overcrowding in the prisons makes it impossible to correct the violations. Starting in the Fall of 2006, we asked the federal courts to step in to address the overcrowding crisis. However, the Prison Litigation Reform Act requires that any court order that reduces or limits the prison population must be made by panel of three judges. (18 U.S.C. § 3636(a)(3) and (g)(4).)

In July 2007, the judges in the *Plata* and *Coleman* cases asked that a three-judge court be convened to consider placing limits on California's prison population. The Chief Judge of the Ninth Circuit Court of Appeals agreed and issued an order appointing a panel. Governor Schwarzenegger tried to appeal the orders, but the Ninth Circuit Court of Appeals dismissed the appeal. (*Coleman/Plata v. Schwarzenegger* (9th Cir.) No 07-16361, Order dated Sept. 11, 2007.) The judges on the three-judge panel who conducted the trial and issued the orders of August 4, 2009 and January 12, 2010 are the Hon. Thelton Henderson and the Hon. Lawrence Karlton (the judges who oversee the *Plata* and *Coleman* cases), along with the Hon. Stephen Reinhardt of the Ninth Circuit Court of Appeals.