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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 REGARDING PRISON OVERCROWDING AND
THE RECENT FEDERAL COURT ORDERS IN
*PLATA V. SCHWARZENEGGER AND COLEMAN V. SCHWARZENEGGER.***

(Updated 2/10/2009)

We are sending you this letter because you have asked for information about the recent federal court decisions concerning overcrowding in California's prisons. 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.

Through two class-action lawsuits on behalf of California prisoners, 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 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.

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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).)

On July 23, 2007, the judges in the *Plata* and *Coleman* cases took an important step toward addressing overcrowding. Both judges realized that they had repeatedly ordered remedies, but that medical and mental health care in the prisons was still far below Eighth Amendment standards. The judges also found that California prison officials had been given a reasonable amount of time to comply with the previous remedial orders. The judges did not have confidence that steps taken by the Governor and Legislature to reduce overcrowding (such as authorizing money to build more prison beds and moving prisoners to out-of-state facilities) would solve the problems. After making these findings, the judges ordered that a three-judge court be convened to consider placing limits on California's prison population. 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 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. Trial on the matter started in November 2008.

On February 9, 2009, the three-judge court issued a tentative ruling which, if made final, will require the state of California to reduce its prison population. The court found that overcrowding is the primary cause of unconstitutional conditions in California's prisons. The court also found compelling evidence that reducing the prison population is the only way to address the problems. The court announced that it expects to order the state to reduce the population to 120% to 145% of the prison system's design capacity (currently the prisons are operating at close to 200% of design capacity) within a period of two to three years. The judges put the burden on the state to propose specific means and timelines for carrying out the population reduction.

The February 9, 2009 ruling is tentative; the final outcome of the three-judge court's decision may be different. Even if the final ruling is the same, the state might appeal the court's ruling. Further, even if the courts do order the CDCR to reduce overcrowding, it has not yet been determined how that order will be carried out or whether any current prisoners will be released early. The courts and the CDCR might find various ways to solve the overcrowding problem; such methods might include, for example, adopting new prison credit policies or reducing the number of parolees who are returned to prison for technical parole violations. Any changes might affect some prisoners but not others. We will attempt to update this letter when there are further major developments on this issue.