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June 29, 2009

Honorable Arnold Schwarzenegger
State Capitol Building
Sacramento, CA 95814

RE: NO RELEASE ON PAROLE

Dear Governor Schwarzenegger:

We, the undersigned members of Orange County law enforcement, are writing to express our concerns over a recent proposal for the release of convicted "low risk" felons on "no parole." It needs to be noted that parole as "constructive custody" has operated as a protection of society against those who have historically exhibited an inability to comply with the law or respect the rights of others. Doing away with parole without a reasonably certain assurance that those released will comply with the law on their own subjects the law abiding public to an avoidable risk of harm. The safety of the law abiding public is the first and foremost obligation of government. The proposal as presently written will seriously compromise the efforts of local police, sheriff's and district attorneys to control crime in their communities and protect the public from the harm it entails.

The public has a right to expect that the government will provide some degree of supervision to ensure that those previously convicted of crimes, incarcerated and then released back into society will lead productive lives and not continue to victimize the innocent. In our view, failure to do so is contrary to the very purpose of the criminal justice system, to protect the public. Local law enforcement undertakes great expense and effort to protect the communities from those who commit crimes, and we are concerned that this proposal will not only increase their burdens, but undermine these continuing efforts by failing to provide the needed tools.

Mislabeling of Non-Serious/Non-Violent, “Low Risk Felons

We are aware of claims that this program will only be available for “non serious,” “non-violent,” “low risk” felons. We remain troubled, however, by how these factors are determined. First, there has not been a clear definition of “non-violent” or “non serious” felons. Second, these terms only refer to the most recent conviction for which the felon is serving a sentence instead of the entire record of that felon. This will result in mislabeling of dangerous felons as “low risk.” The Orange County District Attorney recently did an extensive statistical analysis on three strikes prosecutions in Orange County undertaken since the enactment of the three strikes law in 1994 to study how this law was being applied in actual practice. This analysis showed that three strike felons sentenced to life sentences had similarly dangerous records, whether their most recent conviction was, or was not, for a serious or violent felony. Even those convicted and sentenced to life upon a third strike conviction for a “non serious” or “non-violent” felony, as defined in the Penal Code, exhibited serious or violent records, indicating that they were anything but “low risk.”

Arbitrariness of Numerical Risk Assessment

We are also concerned about the so-called numerical code “compass,” proposed to be utilized to determine the “risk” posed by felons subject to potential release. The “compass” seems to be a remake of a similar tool previously called a “matrix,” recently proposed by the California Department of Corrections and Rehabilitation (CDCR). Our experience indicates that these tools in many cases understate the risks posed by those felons recommended for early release. CDCR’s matrix that we viewed exhibited a point system that was heavily weighted in favor of “good” marks, while giving inadequate weight to the higher risk factors. For example, it assigned a maximum limit of two points for multiple serious or violent felony convictions, no matter how many more there were above that limit. This means that whether a parolee had two or ten convictions, for say robbery or rape, they received the same two points. Moreover, only those convictions received in separate trials or proceedings were counted as “separate” convictions. This means if a serial robber was caught after committing 21 robberies but was convicted in a single consolidated case, he would receive less points than someone convicted of two robberies in two separate cases. Felons convicted of multiple serious or violent felonies in a single trial were counted as having a single conviction. This completely understates the actual risk posed by such a felon.

Last year at the invitation of CDCR, law enforcement personnel from Orange County were invited to observe the “first test run” of felons proposed for early release as evaluated by the “matrix.” Of the 25 felons proposed for release, participating personnel including those from CDCR, agreed that only one posed a low enough risk warranting early release. In other words only four percent of the “low risk” felons calculated by the “matrix” were deemed “low risk” when reviewed by “human” law enforcement personnel. This represents a poor record to inspire confidence if the currently proposed “compass” bears any similarity to the previously proposed “matrix.”

Shuffling of Societal Costs Without Actual Benefits

This proposal merely shifts substantial cost burdens from the State to local communities in a time of declining public revenues. Local law enforcement will have to compensate for the lack of any parole supervision in order to ensure that the public safety of local communities is adequately protected. Given the current recidivism rate of over 70 percent by parolees, we can expect a significant increase in the costs and burdens imposed on local policing, prosecution courts, probation and incarceration. Moreover, there are 32 county jails in California that are under court order or have self imposed population caps. This means that local jails are unable to provide bed space for the offenders covered by this proposal, resulting in the release of dangerous offenders. Finally, there will be the difficult-to-determine costs of victimization and the decline in the quality of life. Given these additional costs, any monetary burden which the proposal claims to save, in fact, is merely shifted to local governments. Californians will not see any reduction in the costs to society.

Loss of Law Enforcement’s Ability to Search Dangerous Felons

The proposal may make the “search and seizure” provision illegal for released felons not subject to parole. Such a term can lawfully be used by local law enforcement *only if* it is known to them. There is no provision to inform or identify to local law enforcement those felons released into their communities, and there is no enforceable requirement that the early release felon acknowledges the existence of such a term if contacted by local law enforcement. Without law enforcement’s knowledge of its existence, the “search and seizure” term as a practical matter is useless. In addition, the cases that have approved the existence of “search and seizure” terms have done so on the basis of “constructive custody” associated with parole. Courts may not uphold a “no parole” “search and seizure” term.

Proposed Alternatives

We respectfully suggest that consideration be given to alternatives to this dangerous and flawed proposal. An example would be to amend existing law to give the Secretary of Corrections and Rehabilitation the authority to place inmates on home electronic monitoring devices (or other similar systems). Under current law, county sheriffs have the authority, upon approval of the County Board of Supervisors, to use alternative incarceration as a way to control jail overcrowding. This includes the use of home electronic monitoring. In many counties, this has been very successful. There is even legislation this year, AB 1369 (Davis), to expand the sheriff's authority and enlarge the pool of eligible inmates. Under current law, the state can use electronic monitoring as a term and condition of parole, but not as an alternative incarceration tool.

Another alternative would be to release felons on unsupervised parole rather than no parole. This would remove the legal uncertainty of the "no parole" "search and seizure" term. The unsupervised parolee should also be required to register with local law enforcement (as discussed in more detail below) and to identify himself/herself and acknowledge the search and seizure condition when contacted by law enforcement personnel. If they violate parole in less serious ways, or so-called "technical" violations, the parolee could be returned to supervised parole.

While not as good an option, the Legislature should first enact laws making failure or refusal to comply with these requirements a separate prosecutable offense if there is a "no return" to prison rule for "technical" violations. Otherwise, there will be no means to enforce the requirements placed on a parolee.

I. Proposed Mitigation Measures

In the event that the state proposes to move forward with the implementation of the early release with the no parole proposal, we respectfully urge that the following mitigations be enacted.

1. CDCR will allow meaningful input in the planning process, such as timely prior notification of scheduled meetings and a seat at the table for local law enforcement.
2. CDCR will consider *all* previous criminal conduct when categorizing prisoners as "non-violent."
3. CDCR will provide a 60-day notice to the local district attorney for those prisoners under consideration for early release, so as to provide adequate time to respond with concerns.

4. In the event that local law enforcement objects to the release of a particular prisoner, there should be some hearing mechanism in place with CDCR where local law enforcement concerns may be heard and addressed.
5. CDCR will release all pertinent data to local law enforcement regarding the identity, criminal history and proposed release address and date *for each felon released on "no parole."*
6. Felons released on "no parole" would be entered into the CLETS Supervised Release File.
7. GPS trackers could be required on a case-by-case basis and/or for the first six months or year following release.
8. Previous convictions under Penal Code § 667.5(c) (strike) or any conviction under §186.22 (gang crimes) would be a disqualifier for early release.
9. Illegal immigration status would be a disqualifier; if not, then there should be a provision that if they are deported and return to California, they may be re-incarcerated to serve the remainder of their un-served term.
10. Additional terms of release should include the following:
 - a) The early release felon must identify himself/herself and acknowledge his "search and seizure" term as if on supervised parole when contacted by local law enforcement.
 - b) Felons released on "no parole" will be required to: 1) register at the local police agency or sheriff's department within the jurisdiction in which they are released or where they will reside; 2) submit to being photographed and fingerprinted by that department; 3) provide a DNA sample to that department, and 4) meet with a member of that agency, where he/she would be briefed on the expectations of a law abiding citizen and given community support information.
 - c) These requirements will be enforceable through the enactment of a new Penal Code provision making failure or refusal to comply with these requirements a separate prosecutable violation of law. This new provision should provide for either local jail or prison as punishment. (i.e. It should be a "wobbler.")
11. **Wobblers - County Jail Time** - For prisoners with variable sentencing options (i.e. "wobblers") who can serve their sentences in State prison or county jail, sentences would be converted to county jail time.

We understand that these are difficult times and that government at every level must strive to enact substantial cost savings wherever appropriate. We are desirous to cooperate with any reasonable proposals that do so. The present proposal does

not save costs, however, it merely shifts them to local communities and risks public safety at the same time. The alternatives or suggested mitigations, while better, still do not entirely abate these cost shifts or increased risk to the public. Local law enforcement and communities will still be required to assume additional costs and risks.

We are concerned that in the well-intentioned effort to cut costs, public safety will be unacceptably jeopardized. We believe that there are ways to mitigate cost saving measures in a way that lessens adverse impacts on the peace and security of law abiding members of our community. We feel that the concerns and proposals outlined in this letter reasonably reconcile the needs of public safety and cost reduction. We hope that you will give strong consideration to the matters we have raised in this letter and look forward to working with you and others in government to constructively address them.



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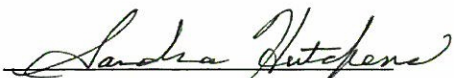
Michael Major, Acting Chief
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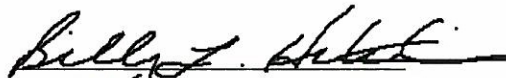
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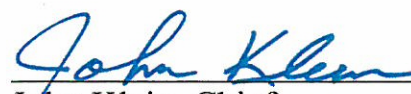
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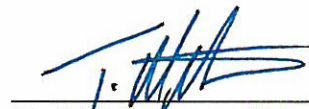



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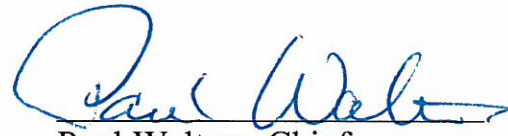

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