

# ASSEMBLY HEARING, Sacramento-Tom Ammiano, Public Safety Committee Aug. 23, 2011

This is the transcript of the August 23rd hearing with the Public Safety Committee regarding the policies of CDCR SHU.

## Part 3 Final Panel

**Editor's note: The first 2 panels of this hearing can be found in the September and October issues. For those who have not read the previous issues, this is a brief INTRODUCTION TO ASSEMBLY HEARING**

### ASSEMBLY HEARING, Sacramento Tom Ammiano, Public Safety Committee Aug. 23, 2011

Policy review of CDCR SHU. Purpose is to help educate us as assembly members on the issues surrounding SHU. Recent events brought these units to the forefront and we want to ensure these units are administered in such a way as to maximize security (prison, public)

We will hear from former inmate from Corcoran, relative from PB SHU, series of academic speakers who will present on effects of isolation, reps from CDCR inform and update updates on current SHU policies, and any changes to those policies. updates and questions. For a lot of us it is a highly emotional issue.

We all have the same goal, to ensure the best outcomes of the safety of the public. This is a very small first step, we want as much transparency as possible what is happening particularly as to conditions in the SHU and this won't be the only hearing. Future/progress, commitments that have been kept, a report back hearing.

Steve Knight, the only Assemblyman who appeared (others did later, 4 of 6)

#### #3-FINAL PANEL – CDCR

Scott KERNAN, undersecretary of Operations, CDCR

Anthony Childs, Chief of Operational Safety (he didn't talk)

Assemblyman CURT HAGMAN, district 60, Chino Hills, R

#### Scott Kernan, Undersecretary of Operations, CDCR.

CDCR: facts need to be illustrated. SHU created in response to serious security threat of gangs in our system. Way to protect inmates, staff, public from tangible threats from gangs – murder, extortion, rape, drugs, are examples of criminal activity that require the department to do something. About 3000 inmates in SHU in total pop of 165,000 inmates in our system, "very small number." 8000 assaults or stabbings the department has each year, gangs would be primary cause. Millions of taxpayer dollars wasted each year, gangs would be identified as primary problem.

People not show up because afraid of gang retaliation.

During HS we did prevent the media coming into PB during course of it but right after HS was dismissed, we invited members of media to come in and tour our SHU. We simply don't allow media to talk to individual inmates for fear of them sensationalizing their crimes, like Charles Manson or Scott Peterson having media inquiries all day.

Segregation is critical to protect inmates who want to program. [Segregated: only] 3000 out of 165K. SHU has been heavily litigated. Courts have upheld validation in due process and conditions. Admittedly there are harsh conditions but not unconstitutional and not torture or human rights violations. What might be a violation is the violence the gangs perpetuate. That is, [a prisoner] must stab a member of a rival gang or be in fear of retaliation. We have duty to protect all the rest of the inmates in our system. CDC agrees we can and should make some changes in policy, in fact as a result of the HS we are in discussions with advocates and inmates, we can make some positive policy changes and still allow us to protect our charges.

CDC in 2007 contracted national experts to review policies and make recommendations on best national practices. Many were related to validation and debriefing process. A lot of it involves stepping down process where by virtue of behavior [prisoners] can be placed elsewhere and show by behavior where they can program without violence. Overcrowding has been a problem, we just have not had the space. The 3 judge panel, the reductions, the government realignment program will provide for the first time in many decades additional space for the department to make some of those positive changes.

Realignment panel has given impetus for some quality decisions on program on SHU and still maintain safety: behavior-based system with due process, incorporate best process and incorporates safety; not another study but substantive changes that can occur in short term. We must be careful how we make these changes; what's [hangs] in balance is safety of inmates and staff in our system. 1000 [inmate-on-inmate] assaults last year, and same number of inmate-on-staff assaults; we cannot permit policy changes to perpetuate violence, people's lives are at stake.

Will work with all parties, many of the panelists today we have worked with as a result of the HS, anticipate the CDC will evaluate our policies in matter of months, not years, to come up with a policy that meets the target. We will involve all state, law enforcement, CCPOA, labor unions, legislature itself, national experts. (heard you, Mr. Chair, that you would like to have continued hearings, so you can get full bearing of extent of problem). We have gathered SHU policies, our lockup policies, for 28 states, developed a warden's advisory group to evaluate and develop the policy, once the Secretary approves that, then the stakeholder review, then regulatory process. We do believe process that

gives inmates [incentive for] disciplinary-free behavior is appropriate...[??] targets 6 prison gangs needs to be modified, and need to ID security threat groups. I do admit our policies just target prison gangs today and not capturing those inmates who should be segregated.

Process would allow inmates to earn way out of system by behavior and require the department to document when we feel not the case. Weighted system, not process permit us to just ID an inmate as having associated with a member and therefore must remain in SHU; will require us to document that behavior and stand the test of due process. Step down process is a critical part: have to show while in SHU have to be involved in programs with other gangs and races and to not participate in violent behavior and they can earn their way out.

The CDC gang policy: With 3000 of 165K inmates is intended to protect inmates we are charged with, and staff, policy has been litigated and court tested and upheld. Dept is committed to making changes, please rest assured we are going to do it with this in mind, to protect inmates we're charged with.

**AMMIANO:** CCPOA was invited here..., we DO want a balanced ... there was no malevolent gesture to exclude anybody ... We've been going now for an hour and a half, will have quite a bit of public comment, how to handle the rest of this, with time constraints follow template, and will be scheduling another hearing. [seems very committed]

**AMMIANO:** it's 2011, any ideas about why recommendations made in 2007 haven't happened?

**KERNAN:** Worst economic times since Great Depression. A lot of this requires resources; the CDC is challenged with realignment, biggest change in history;

**AMMIANO:** I want to work with you so it happens—and [before] 2015!

**AMMIANO:** Are you making changes to debriefing program? That comes up a lot.

**KERNAN:** Inmates have a choice to come out of the system. We will always use all intelligence that we get in making our determinations. If you talk to inmates who went through debriefing process, 99% say, 'You got it right. When you validated me as a gang member, you got it right.' So for them not to have a voice in this as well would not make any sense. We will continue to have a debriefing process. That will not dissuade someone who by their behavior wants to get out of the gangs.

**AMMIANO:** What about point that debriefing can place prisoner at serious risk for their lives and the lives of their family?

**KERNAN:** people making conscious choice of their own to dissociate from gangs; we should be encouraging that. That's one way to get out of SHU. The Department does wonderful job documenting using numbers of sources of information, I think that we got it right. The 3000 inmates in SHUs are the ones (Cont'd Page 8)

# Peering at Prisons from a Different Lense

By **Dortell Williams**  
CSP-LAC

If it's not bullets, blood or gore, it winds up on the cutting room floor; if it's not celebrity based, it has no place; if it's not bad news, it isn't news.

Those seems to be some of the phrases that echo behind the scenes in newsrooms across the land.

So when it comes to prisons, it isn't surprising that you hear of the occasional riot, the rare hostage situation or escape.

It's almost always the negative; the sensational; the crimson headline grabbers. Very seldom are the public airwaves graced with any positive prison stories, despite the alluring ring to that phrase.

Therefore you didn't get to hear about the Virginia prisoners who regularly volunteered to aid physically challenged children through the Information Center for Handicapped children. How their Inmate teaching Program came to be a national model for instructing so-called disabled children, until it was axed in 2006.

More than 100 prisoners furloughed to the center to walk, talk to and attend to special

children. "It was good for the [prisoners] too," said Yetta Caliber, founder of the center. Only two returned to prison out of 100.

Likewise are you kept in the dark about the generous charity work of prisoners. For instance, in the devastating aftermath of Hurricane Katrina, prisoners at the InnerChange Freedom Initiative® in Texas, a pre-release program developed by Prison Fellowship, collected \$300 worth of commissary food and hygiene products to donate to Katrina victims.

Utah State Penitentiary prisoners also culled more than \$500 to give to victims. That's a lot of dough for people limited to earning between .40 to \$1.00 per hour in prison. Still, prisoners from Clark County Ohio gave up over \$350 to the American Red Cross.

If I were a betting man I'd rest confident you didn't hear about that.

Clad in bright orange jumpsuits, armies of brave prisoners go out to battle California's wild fires every year there's a flare up. Yet you hardly hear of it. If it doesn't bleed, it doesn't lead.

Nor do you hear of the \$50,000-plus prisoners at California's State Prison in Los Angeles County have raised for local charities.

Their elaborate, colorful paintings and detailed wooden toys have helped scores of leukemia and AIDS patients, along with needy children.

These are just a few snapshots of what the media doesn't tell you; the compassion; selflessness and altruism that some prisoners -- people incarcerated -- can possess within.

When it comes to 50/50 journalism; media jargon for the refrain: "there's two sides to every story," they come up pathetically short.

Thank goodness for prisonradio.org, where taxpayers and other concerned citizens can regularly check in on what goes on within this \$60 billion web of concrete and steel.

Until the media is truly neutral, it's the journalists from the inside who can be society's best witness.

*This piece was a promotion of prisonradio.org, which airs radio commentaries about prison, humanizing the good that prisoners do. Among his many publications, Mr. Williams has been published in Christian Science Monitor, San Francisco Bay View and Berkeley's Slingshot newspapers. He has published his first book, "Looking in on Lockdown: A Private Diary for the Public," in November 2010. Distributed through Buy Books on the Web: www.bbotw.com*

## The SAFE California Act Title and Summary

Repeals death penalty as maximum punishment for persons found guilty of murder and replaces it with life imprisonment without possibility of parole. Applies retroactively to persons already sentenced to death. Requires persons found guilty of murder to work while in prison, with their wages to be applied to any victim restitution fines or orders against them. Creates \$100 million fund to be distributed to law enforcement agencies to help solve more homicide and rape cases. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local government: **Net savings to the state and counties that could amount to the high tens of millions of dollars annually on a statewide basis due to the elimination of the death penalty. One-time state costs totaling \$100 million from 2012-13 through 2015-16 to provide funding to local law enforcement agencies. (11-0035) (Full Text)**

[http://ag.ca.gov/cms\\_attachments/initiatives/pdfs/i978\\_11-0035\\_\(repeal\\_the\\_death\\_penalty\).pdf](http://ag.ca.gov/cms_attachments/initiatives/pdfs/i978_11-0035_(repeal_the_death_penalty).pdf)

Proponent: *Jeanne Woodford*  
c/o James C. Harrison  
(510) 346-6200

Ms. Woodford is now the Executive Director of Death Penalty Focus, formerly serving

as director of CDCR and warden of San Quentin. As reported in the L.A. Times, May 12, 2011, Ms. Woodford says, "I never was in favor of the death penalty, but my experience at San Quentin allowed me to see it from all points of view. I had a duty to carry out, and I tried to do it with professionalism." "The death penalty serves no one. It doesn't serve the victims. It doesn't serve prevention. It's truly all about retribution."

### Pope Urges End to the Death Penalty

Pope Benedict XVI encouraged organizers from around the world to continue their work to end the death penalty. He spoke to participants, including a delegation from Illinois, who were attending a conference sponsored by the lay movement Community of Sant'Egidio:

"I express my hope that your deliberations will encourage the political and legislative initiatives being promoted in a growing number of countries to eliminate the death penalty," said His Holiness, "and to continue the substantive progress made in conforming penal law both to the human dignity of prisoners and the effective maintenance of public order."

For more information, contact Steve Pehanich, [spehanich@cacatholic.org](mailto:spehanich@cacatholic.org).

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(Founder of the Prison Law Office, former Director of the Prisoners Rights Union, 35 years experience representing men and women in prison.)

## ASSEMBLY HEARING, Aug. 23, 2011

(Cont'd from Page 6)

perpetuating the gangs, are the generals, disciplining inmates who don't stab staff on sight.

**AMMIANO:** under new model will you address due process concerns?

**KERNAN:** any inmate who doesn't want to be in gangs there will be a way out. There will be a hope for them. One of problems with the Department has been, these inmates, the (See Page 10) desperation, these are people who are involved in gang activities every day, so they will be able to by own behavior work their way out of the SHU.

**AMMIANO:** will you continue relying on anonymous informants?

**KERNAN:** yes, use confidential informants as a source, not the only source. weighted system, we have to use that, every law enforcement in the country uses confidential information sir.

**AMMIANO:** any process for prisoner to confront or appeal an anonymous witness?

**KERNAN:** no, it's one piece of weighted system

**AMMIANO:** were you ever require, do you see this on the horizon, corroboration of a debriefer statement, considering alleged to be coerced and therefore reliability questioned?

**KERNAN:** we corroborate all evidence, so yes.

**AMMIANO:** Who judges if prisoner guilty of committing such behavior and, what protections ...? (We want to do something fair and impartial)

You are in the trenches, you have your perspective you have a lot of experience but there's still something wrong. We need to know how to make this more fair, I'm not saying you'd like the suggestions, but we're trying to come up with something impartial and would meet some of the reasons as I see it for that HS.

**KERNAN:** we're going to continue to make our policy with stakeholders as fair as we possibly can, I told you that all along, many issues raised by the panelists have been litigated by the courts. There is a safeguard for those processes. We are going to make the decision as the people responsible for the prison system. And of course there will be external review of the offender.

**AMMIANO:** legislature has a role in this: I did like some of the suggestions for legislation.

**MORE TO COME.**

**NANCY SKINNER:** my intention is not to have any kind of conflict in our discussion today but I am /... the data we heard in the panels and also the data I've seen through press reports and other materials indicates once a prisoner is in PB SHU it is very infrequent for them to be moved out. So I'm concerned, rather I see a bit of a disconnect, between your answer and at least the data I've seen.

**KERNAN:** average stay at PBSP SHU is 6.8 years. Certainly there are offenders been there much longer. I can give you those statistics. But average stay is 6.8 years.

**SKINNER:** given your remarks earlier, doesn't that seem rather a long average stay if our policy is to be able to move them? it seems contradictory to the comments you had made earlier.

**KERNAN:** the 6.8 years that an offender in SHU is an average of the total. The offenders in SHU with mountains of documentation of illegal

criminal activities both out on the streets and public in prison is vast. Not information that we because of its sensitivity would necessarily share with public, clearly these are the generals and are involved in terrible assaults on other inmates and on staff. The SHU serves a purpose to separate those inmates from those that want to program safely in our prison system. I agree CA has a unique gang problem and I agree with the panelists it's not curtailed and may have even increased. Separating these offenders has in my opinion led to a decrease, it should be much higher if we let these .. run prison gangs.

**HAGMAN:** from notes, we talk about current and future policies: right now, you have SHUs in existence since the 80s, can you outline what gets you into a SHU, and current policy what gets you out?

**KERNAN:** system based on points: offender has to have 3 points to be validated as a member (tattoos, stabbing, self-admission, any number of criteria), generally have to have 3 pieces of evidence to support their placement as a validated member in indeterminate SHU. System Contemplating much to the 2007 report would weight those systems; confidential informant piece of information might be worth 2 pts. for example and not enough; but that plus tattoo plus gang paraphernalia in house might be sufficient. That's what other states are doing. What experts say.

**HAGMAN:** so prior to prison system can be ID'd or do have to do particular acts while sentenced to go to that level?

**KERNAN:** one point of the 3 points of validation can be given to us from outside law enforcement agents; all this is documented in personnel file;

**HAGMAN:** To be released out of that area into different populations you have a protocol, particular outline for behavior?

**KERNAN:** inmate who has for 6 years no information, has come forward involved in that activity; they can be placed on inactive status and out of SHU, that's the current process.

**HAGMAN:** Some of the reasons for solitary, communication with other inmates; panelist talked about being on their own, no human contact, can you explain security side of that reasoning?

**KERNAN:** One of primary things do in SHU does in segregating offenders is inhibit ability to communicate and call orders to other inmates or hits to other inmates. The inmates can write family members, number of other activities the inmate can. One result of HS we're evaluating is creature comforts (we don't allow holographs or colored pencils because had instances of passing on gang information; maybe we could permit hobby craft items). Privileges we're evaluating.

**HAGMAN:** does CDC have studies does it act as deterrents from activities happening?

**KERNAN:** difficult position dept. is in, only place in segregation, could only anecdotally what might have been prevented ...

**HAGMAN:** you testified 8000 stabbings in general population and you're trying to pull out the worst offenders and isolate them from the gangs ... it's easy to look at one side, I'm trying to get bigger picture, future legislation, does these

things work as deterrent, do they work as rehabilitation, what data can we gather from that, compare to similar people with similar types of crimes in GP.

**KERNAN:** we know that inmates who elect to debrief come back and tell us about SHU; ID leadership of gangs are and criminal activities. So not anecdotal, information comes to us of individuals retained in SHU of their current activity in criminal enterprise. So a future panel, balanced, Panel of law enforcement experts in state, many of our gang xxx are involved in .. RICCO, cases, running other systems, gang activities across the nation.

**HAGMAN:** any kind of independent advocate in your organization among inmates? Fair car to listen to today if feel unrightly charged with something, authority to go look at some of the confidential information without compromising security, to give a third party position? Do you have someone like that Advocate general, internal affairs law enforcement, can look at them independently and say validated, give more peace of mind systems are being followed, with a particular inmate not weighted, but fair process.

**KERNAN:** we are most audited and reviewed DEPT in state government. Office of inspector general has independent oversight and May have been doing review of SHU cases and asked DEPT for information BSA. We have internal affairs, if allegations of excessive force or inappropriate valid, we have an appeal process, if all of that doesn't get the inmate, they can go to the courts.

**HAGMAN:** There are things now where inmates can go to internal affairs or court if feel unrightly being treated or classified.

**KERNAN:** we have internal ombudsman offices, just spent 15 years with Madrid class action settlement a master attorney that spent a lot of time in PB SHUS evaluating our policies and our issues, just got that class action resolved. And they're gone now.

**HOLLY J. MITCHELL:** To follow up [on question of Assemblyman] Hagman, current rules that govern SHU system: according to our notes, 5 yr. term murder of a guard, 3 yr. term for murder of other prisoner; so I'm curious, as you move into your new system, will it amount to less time than 6.8 years?

**KERNAN:** now segment if offender breaks the rules have determinate SHU;

**MITCHELL:** if gang affiliated is indeterminate, will that be the consistent policy going into the new system?

**KERNAN:** I believe it will but we are evaluating now; will it protect public safety that dept. believes needs to be protected.

**MITCHELL:** I'm curious. And just to give us a context, going back to the determinate sentences, non-gang affiliated; how many guards have been harmed or murdered in last 10 years?

**KERNAN:** I can tell you there's been a number of staff that have been harmed, both inmate on inmate and inmate on staff: I don't have that information but can say [there are a] number of staff who've been harmed. [I can provide that info]

**MITCHELL:** I was cautiously optimistic about hearing your presentation, (Cont'd Page 10)

## THREE PBSP HUNGER STRIKERS COMMIT SUICIDE

### Prisoner Hunger Strike Solidarity

Posted on November 17, 2011

[http://](http://prisonerhungerstrikesolidarity.wordpress.com/)

[prisonerhungerstrikesolidarity.wordpress.com/](http://prisonerhungerstrikesolidarity.wordpress.com/)

In the month since the second phase of a massive prisoner hunger strike in California ended on September 22nd, three prisoners who had been on strike have committed suicide. Johnny Owens Vick and another prisoner were both confined in the Pelican Bay Security Housing Unit. Hozel Alanzo Blanchard was confined in the Calipatria Administrative Segregation Unit (ASU).

According to reports from prisoners who were housed in surrounding cells and who witnessed the deaths, guards did not come to the assistance of one of the prisoners at Pelican Bay or to Blanchard, and in the case of the Pelican Bay prisoner (whose name is being withheld for the moment), apparently guards deliberately ignored his cries for help for several hours before finally going to his cell, at which point he was already dead. "It is completely despicable that prison officials would willfully allow someone to take their own life," said Dorsey Nunn, Executive Director of Legal Services for Prisoners with Children, "These guys were calling for help, their fellow prisoners were calling for help, and guards literally stood by and watched it happen."

Family members of the deceased as well as advocates are having difficult time getting information about the three men and the circumstances of their deaths. The California Department of Corrections and Rehabilitation (CDCR) is required to do an autopsy in cases of suspicious deaths and according to the Plata case, is required to do an annual report on every death in the system.

Family members have said that their loved ones, as well as many other prisoners who participated in the hunger strike, were being severely retaliated against with disciplinary actions and threats. Blanchard's family has said that he felt that his life was threatened and had two emergency appeals pending with the California Supreme Court at the time of his death. "It is a testament to the dire conditions under which prisoners live in solitary confinement that three people would commit suicide in the last month," said Laura Magnani, Regional Director of the American Friends Service Committee, "It also points to the severe toll that the hunger strike has taken on these men, despite some apparent victories." Prisoners in California's SHUs and other forms of solitary confinement have a much higher rate of suicide than those in general population.

The hunger strike, which at one time involved the participation of at least 12,000 prisoners in at least 13 state prisons was organized around five core demands relating to ending the practices of group punishment, long-term solitary confinement, and gang validation and debriefing. The CDCR has promised changes

to the gang validation as soon as early next year and were due to have a draft of the new for review this November, although it's not known whether that process is on schedule. "If the public and legislators don't continue to push CDCR, they could easily sweep all of this under the rug," said Emily Harris, statewide coordinator Californians United for a Responsible Budget, "These deaths are evidence that the idea of accountability is completely lost on California's prison officials."

### CDCR TODAY

Thursday, November 17, 2011

#### Condemned Inmate

#### Brandon Wilson Dies of Suicide

SAN QUENTIN – Condemned inmate Brandon Wilson, 33, who was on death row for the murder of a 9-year-old boy, was found hanging in his cell this morning at San Quentin State Prison. Wilson was pronounced dead at 6:47 a.m. He was single-celled.

Wilson was sentenced to death by a San Diego County jury on November 4, 1999, for the November 14, 1998, murder of Matthew Cecchi in an Oceanside park restroom.

Wilson was received onto California's death row on November 9, 1999, with a death sentence for first-degree murder with special circumstances. On February 22, 2000, Wilson also began serving a life sentence from Los Angeles County for attempted first-degree murder.

Since 1978 when California reinstated capital punishment, 54 condemned inmates have died from natural causes, 19 committed suicide, 13 were executed in California, one was executed in Missouri and six died from other causes. As of November 17, 2011, there are 719 offenders on California's death row.

###

#### Contact:

Terry Thornton, (916) 445-4950

Sgt. Gabe Walters, (415) 455-5008

POSTED BY CDCR\_STAR AT 3:08 PM

### CDCR TODAY

Wednesday, November 16, 2011

#### Medical parolee returned to custody pending hearing

The Board of Parole Hearings (BPH) has ordered a medical examination for Peter Post, who was released to medical parole on November 3, to determine whether his condition has improved to the extent that he no longer qualifies for medical parole. The Board conducted

## Hozel Blanchard Present! Open Funeral Service in Oakland, CA

By [prisonerhungerstrikesolidarity](http://prisonerhungerstrikesolidarity)

A Funeral Service will be held Tuesday, Nov. 22, 11 a.m., at the Miraculous Word Christian Center, 2723 San Pablo Ave., Oakland for Hozel Blanchard.

Blanchard, who was imprisoned in the Administrative Segregation Unit (ASU) at Calipatria State Prison, died on November 9th.

The California Department of Corrections & Rehabilitation (CDCR) claims Blanchard's death, as well as the recent deaths of two other prisoners at Pelican Bay, was a suicide and have closed investigations.

Blanchard's family however have more questions & are skeptical of Blanchard's death, as they were aware Blanchard feared for his life. Blanchard's brother is currently seeking "any information or advice you can provide for us to get justice for my brother. Any information would be greatly appreciated, to get to the bottom of this tragedy." If you know of information that may be helpful to the family, email them at [hozelblanchard@gmail.com](mailto:hozelblanchard@gmail.com)

The family also welcomes all hunger strike supporters and family and community members of prisoners to join them at the service tomorrow.

[prisonerhungerstrikesolidarity](http://prisonerhungerstrikesolidarity) |  
November 21, 2011 at 3:52 pm |

Post's medical parole hearing on October 21.

On November 8, California Department of Corrections and Rehabilitation (CDCR) parole agents advised BPH of possible improvement of Post's condition after the parolee allegedly made indecent gestures to female nurses at a San Diego area long-term care facility.

On November 10, parole agents transferred Post from his long-term care facility to a secure medical facility in San Diego County.

Pursuant to the California Code of Regulations and a special condition of medical parole requiring Post to undergo an examination to assess his condition, the Board has ordered an examination by a physician to assess his current medical condition. The BPH will use the report to determine if Post's medical condition has improved to the extent that he no longer qualifies for medical parole. A hearing will be scheduled after the report is received by BPH.

Post, 33, began serving a 31-year sentence for first-degree burglary from Sacramento County on November 21, 2002. He has prior burglary commitments from 1992 and 2000.

Senate Bill 1399, signed (Cont'd Page 10)

## ASSEMBLY HEARING

(Cont'd from Page 8)

given what we've read and heard. and I have to say Mr. Kernan, I'm concerned, frankly I'm disappointed because my sense is based on your comments that you're feeling or belief is the status quo is appropriate, as you talked about the numerous lawsuits that have been settled, the current SHU policies meet constitutional, standards and expectations. My concern is your leadership in the transition into a new system would be compromised in that you feel [it] is appropriate for the kind of inmates currently being serviced. My sense (See Page 12) is that constitutional guidelines are the *floor*. I fully appreciate the challenges you experience in terms of the amount of crime that takes place in CDCR institutions today. I get that. My point, as a legislator with oversight responsibility my goal and expectation, that recently [CDC(R)] added R back to your name, is that constitutional guidelines not be our goal, but that our goal be to really look at *human rights* policy, in terms of how we deal in very tense crime ridden environment that poses to public safety to inmates and CO's.

As we hear about research that suggests that rather mean-spirited arcane tactics that we're using in SHU don't work in preventing ongoing violence, that a transition may not be successful. **KERNAN:** real public safety that I see every day in our systems, and the violence that occurs every day, so I go into it not with status quo at all, we want to evaluate and make good policy that gives due process and is fair to the inmates we're charged with, but not lose focus of real public safety threat perpetuated by gangs in our system. We're gonna ask for input from all involved and hope what comes out of the system is fair more due process system. whether that will reduce terms I don't know that, what pops out with national experts and best practices I don't know but it is not status quo. Policies have been in place for well over a decade. So now Today we're embarked on looking at system with a real eye to making changes to system.

**MITCHELL:** it's going back – and thanks for the clarification of gang validation – and the new system that really won't incorporate any changes in terms of the sense ... Who makes the decision in terms of how long a gang validated inmate stays in SHU? (I am hypersensitive to this issue) Clearly if I am in the SHU, I am gang-validated, which I could be based on the 3 points you identified ...

**KERNAN:** [??] based on your threat to public safety ...

**MITCHELL:** What's check & balance? One individual decides I am a threat to society and I should stay there for 30 years plus?

**KERNAN:** prison staff development process, comes up through a process including our chief of safety who reviews and makes sure meets that standard, so not just the CO staff at the prison but it is not just ... dept. makes the decision, don't envision there will be a change with this policy.

**MITCHELL:** Those individuals have greater powers than those on the bench, this body, and yet we have this administrative only process that decides how long someone can stay in the SHU.

**SKINNER:** Also the case in our DJJ [juvenile justice] system in that our CO's there have the ability to give our youth inmates the time add... so their sentences are indeterminate but they can serve far longer because the judicial system doesn't give a specific time but serve far longer than what the judge might have anticipated or envisioned due to the time adds. **BUT:** you made comment that prison in CA gang situation was unique. I haven't seen enough studies to indicate the accuracy or not of that, though am aware there are prison gang situations in many other states. NY IL TX. And that gangs (not a defense) are as an organization structure or unit are sort of a feature of many aspects of different human activity (not in any way supporting the existence of gangs...) but we see that type of organized activity in variety of situations and not so unique to CA. Trying to understand what makes ours so unique and is it possible that different structures we put into place, that perhaps ours are stronger just because of how we have dealt with them by comparison to other states?

**KERNAN:** One of major contributing factors is just size of Calif, with nearly 172,000, just the amount of offenders in our system makes us somewhat unique, so structures of gangs are very very embedded into the system. An inmate coming into the system from Sacramento, just by virtue of coming into system and not saying a thing but because of what he's wearing, can be stabbed, or because of race, where it's so violent a white would kill a black or vice versa just by virtue of color of skin. Most of experts I've looked at, and can provide additional data, Federal Bureau of Prisons (TX, FL) have unique problems with gangs in prisons.

**SKINNER:** just the number of people we incarcerate adds to it?

**KERNAN:** Population of our state, judges send inmates to us, our responsibly to incarcerate them. Size, overcrowding, all contributing factors; and now more than ever we have an opportunity as the population is declining to make some positive substantive changes to our policy.

**SKINNER:** important for us to look at what if any ways we are adding to this. Clearly we see, sad but true, the type of activity you're describing; just last week there was violence at candlestick park between 49ers and Raiders. One (sociologist) could come up with typical traits with way people identified with their ... and thus it evoked sadly they were prone to violence, one died ... there are human behaviors that are like this and we see the evidence in lots of different contexts, we in state and CDCR need to examine way we handle it and whether we are contributing to those incidents in our own contexts.

**KERNAN:** [hope 49s/Raiders ...] our system in itself may create the problem; from personal experience can only say, the victims of the gang violences in our system, an offender who wants to do his own time or rehab himself, he cannot. An offender that wants to rehabilitate himself he cannot, an inmate telling him to go stab somebody or HE will be killed. So that is the root of why we have a policy to separate those people who prey on the weaker, why those in SHU, my comments, why we have a SHU in the first place to separate them so those inmates can program.

**AMMIANO:** I appreciate the comments made by panel members. I do respect you [addressed to S.Kernan] getting up here, and feel you've been very candid in many ways. Like a lot of us, you would like improvement but sometimes we can't see the forest for the trees, I'd like to work with you on that. I think there is some basic concern here about human rights and in that case, sir, we wouldn't let cost get in the way. There's been some stonewalling, that's to be expected, but I think it's a new day here in the legislature, particularly with court rulings, changes in administration, etc. We are gonna pit-bull this issue. I know we will be seeing a lot more of each other.

**KERNAN:** I know that Sec. Cate will look forward to working with you in the future.

**AMMIANO:** we're *going to* have more hearings on more specific issues.

**Transcription Notes by:**

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**A full copy of the transcript, including Public Comments, are available at SJRA, POB 71, Olivehurst, CA 95961. Please send 8/44cent stamps to cover printing and postage.**

### Medical parolee returned to custody (Cont'd from Page 9)

into law in September 2010 and became effective January 1, 2011, allows CDCR to medi- (Cont'd Page 10)cally parole certain state prison inmates with physical incapacitating conditions. Under the law, BPH may approve medical parole if it determines that the conditions of release would not reasonably pose a threat to public safety.

To be eligible for medical parole consideration, an inmate must be medically incapacitated with a condition that renders him or her permanently unable to perform activities of basic daily living and results in the inmate requiring 24-hour care. The medical parolee would remain under the supervision of CDCR parole agents under specified terms and conditions. Because medical parole results in the inmate's status to be changed from inmate to medical parole, California taxpayers save costs related to custody.

Under the law, medical parolees could be returned to prison for violating the terms and conditions of medical parole or in the event their medical condition improves to the extent they are no longer eligible.

As of November 9, 2011, the Board of Parole Hearings has heard 27 requests for medical parole since the medical parole law took effect January 1, 2011. Of those heard, 24 requests were granted medical parole, and three have been denied.

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