ACLU
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August 28, 2013

The Honorable Nancy Skinner, Chair
Assembly Committee on Budget
California State Capitol, Room 6026
Sacramento, California 95814

Re: SB 105 (Committee on Budget) – Oppose

Dear Chairwoman Skinner:

The ACLU of California is opposed to SB 105 (Committee on Budget) which, *inter alia,* allocates three hundred fifteen ($315) million dollars in the first year for expanded prison capacity at both in and out of state facilities, and authorizes for the involuntary transfer of more inmates out of state.

Provisions of SB 105 authorize the Secretary of the California Department of Corrections and Rehabilitation (hereinafter "CDCR") to negotiate contracts deemed "necessary and appropriate" to house up to 12,000 inmates at both in and out of state facilities – while waiving all state oversight and regulations. Not only could this result in contracts that include very unfavorable and costly terms for the State, it could also include the hiring of new staff resulting in long term expenditures required by any new state hire, such as medical insurance and pension contribution. In reality, SB 105 may cost more than one ($1) billion dollars over the next several years.[1]

Spending our modest, short-lived reserves on the expansion of inmate beds, both in and out of state, will do nothing to effectively reduce population in compliance with the Three Judge Panel Court Order issued on June 20, 2013.[2] SB 105 does not demonstrate sustained population reduction, and will guarantee California's prisons remain in federal receivership for years to come. Resolution of litigation will only come when the State is able to demonstrate a sustained reduction in population beyond just the short term.

Despite the assumption of the Governor and the Legislature that the passage of AB 109 (Committee on Budget) in 2011, would resolve our prison overcrowding crisis, California is once again pouring more money into a broken criminal justice system – rather than implementing cost- effective solutions that will protect our communities, and end this crisis once and for all. Although the passage of the Criminal Justice Realignment Act reduced population in the first six months, inmate population has steadily risen over the past year,

[1] LA NOW: Live, "How the Governor Plans to Ease Overcrowding," Los Angeles Times, August 28, 2013; "Governor, Fellow Democrats Spar Over Plans to Reduce Inmate Population," Washington Post, August 28, 2013.

[2] Opinion and Order Requiring Defendants to implement Amended Plan, *Coleman/Plata et al. v. Brown*, No. 01-1351 (E.D. Cal. Jun. 20, 2013)

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and shows no signs of slowing.[3] Hence, it appears that we took one step forward, only to take two steps back.

Additionally, transferring inmates out of state without their consent is dangerous and takes those inmates further away from their families and from the communities where they will inevitably return. Forcing inmates to effectively break ties with their families and communities is not just harmful to the inmate, but to the family, as well – including the children of incarcerated people. This is the antithesis of any stated goal to reduce recidivism and ensure the successful reentry of formerly incarcerated people.

The ACLU of California has previously prepared and disseminated a letter to this Committee outlining proposed alternatives that we believe will result in significant cost savings, and sustained inmate reduction, at no risk to public safety. While we maintain that those recommendations are well-researched and common sense solutions, we need not re-state those alternatives in this opposition letter. However, we strongly argue that the Plan advanced by the Administration in its August 15, 2013 status update to the Three Judge Panel was found as a matter of law to present no risk to public safety, and would result in a sustained reduction in inmates. This means that allocation of more than a billion dollars over several years is unnecessary, and a waste of valuable state resources.

Moreover, despite the Administration's request for funding sufficient to create up to 12,000 new beds, the State is not now required to reduce inmate population by 10,000 inmates. In reality, the State has already reduced inmate population by approximately 4, 819 inmates by expanding fire camps and delaying the return of out of state inmates.[4] Hence, it is of great concern that the proposed legislation may result in approximately 7,000 more beds than the Administration claims are needed to meet the population cap.

Specifically, in the State's most recent status update to the Three Judge Panel, the CDCR claimed it was in the process of implementing the following: (1) Expanded use of fire camps; (2) Increased application of inmate credits; (3) Expanded use of medical parole; (4) Establishing a new parole process for low risk elderly inmates; and (5) Slowing the return of out-of-state inmates.[5]

This plan will result in a reduction of approximately 10,604 inmates.[6] In order to reach the required 137.5 percent, the State need only reduce the population by 9,636 inmates, meaning the Plan filed with the Court will effectively comply with the Court's order by December 31, 2013.[7] This means that the State has already reduced population by 4,819 inmates;

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[3] See Weekly Population Report, CDCR (August 21, 2013), available at http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/WeeklyWed/TPOP1A/TPOP1Ad130821.pdf.

[4] Opinion and Order Requiring Defendants to implement Amended Plan, *Coleman/Plata et al. v. Brown*, No. 01-1351 (E.D. Cal. Jun. 20, 2013) at 26.

[5] Defendants' Status Report in Response to June 30, 2011, April 11, 2013, and June 20, 2013 Orders, *Coleman/Plata et al. v. Brown*, No. 01-1351 (E.D. Cal. Aug. 15, 2013).

[6] Opinion and Order Requiring Defendants to implement Amended Plan, *Coleman/Plata et al. v. Brown*, No. 01-1351 (E.D. Cal. Jun. 20, 2013) at 28, 37.

[7] June 20 Order, *supra* note 6 at 26.

approximately half of the reduction needed to meet the Court's order.[8] The State need only demonstrate a reduction of 4,817 more inmates, not 10,000 inmates.

Also, as noted above, the plan recommended by the State and ordered by the Court on June 20, 2013, does not provide for the "early release" of inmates. The application of additional credits will be limited to those who have demonstrated successful completion of specified programming or otherwise earned credits through their behavior in prison, and are deemed to be low risk. All of these inmates will have earned the credits awarded, through their behavior, and the Governor's plan contemplates a careful review process. Moreover, many of the elderly inmates being considered for parole are years – even decades – past their minimum parole eligibility date.

Granting parole to specified elderly inmates could not possibly be considered early release, when release should have been granted long ago. A more accurate description of the plan filed by the State on August 15, 2013 is "earned release" not "early release."

As alluded to above, the proposals proffered by the Administration in its August 15, 2013 status update were fully vetted at trial and demonstrated to have no negative impact on public safety.[9] On June 20, 2013, the Court ordered the State to apply a program of credit changes, both prospectively and retroactively, that will result in a reduction of 5,385 prisoners by December 31, 2013 – more than adequate, along with other court-ordered measures, to achieve 137.5 percent capacity by the end of the year.[10] In fact, this single measure is sufficient to remedy the 4,170 prisoner deficiency in the state's previously submitted plan.[11] The Court also rejected the State's contention that applying credits retroactively would threaten public safety.[12] Instead, the court held that the State's assertions were "contrary to the express factual findings that this Court had already made and that have been affirmed by the Supreme Court."[13]

The Court heard extensive testimony at trial in 2009, from leading national experts, all of whom – including now CDCR Secretary Dr. Jeffrey Beard – testified that expanding good time credits could be done safely, both prospectively and retroactively.[14] Moreover, even the defendants' expert agreed that there was no relationship between earned release resulting from good time credits and recidivism.[15] Thus, the Court concluded that retroactive application of expanded credits would not threaten public safety.[16] This determination was also affirmed by the United States Supreme Court.[17]

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[8] Declaration of Jeffrey Beard in Support of Defendants' Status Report in Response to June 30, 2011, April 11, 2013, and June 20, 2013 Orders, *Coleman/Plata et al. v. Brown*, No. 01-1351 (E.D. Cal. Jul. 18, 2013) at 2 (CDCR has extended the use of out-of-state contracts for an additional three years).

[9] *See* Status Report, *supra* note 5; *see, e.g.*, June 20 Order, *supra* note 6 at 37-39.

[10] *See* June 20 Order, *supra* note 6 at 37.

[11] *Id.*

[12] *Id.* at 37-38.

[13] *Id.* at 37.

[14] *Id.*; *see also* About CDCR, Secretary Dr. Jeffrey Beard, CDCR (2013), http://www.cdcr.ca.gov/About_CDCR/Secretary.html.

[15] *See* June 20 Order, *supra* note 6 at 37.

[16] *Id.* ("We therefore concluded that the expansion of good time credits is fully consistent with public safety, and the Supreme Court affirmed this determination.").

[17] *Brown v. Plata*, 131 S.Ct. 1910, 1947 (May 23, 2011)

Notably, the three-judge court made clear that it was possible for the State to expand credits to meet the December 31, 2013 benchmark of 137.5 percent without the release of inmates serving time for violent offenses.[17] In fact, a number of other states, as well as counties in California, have safely used the expansion of good time credits to reduce their prison populations in the past.[18] Hence, there is no evidence that the Plan submitted to the Court will result in the "early release of dangerous offenders."

Finally, the ACLU of California is heartened by the recognition of the Senate Democratic Caucus that California must begin to address its over-incarceration problem if our State's long spiral downward is to ever end. Although we believe that the Senate's proposal is only a small step, it is – unlike SB 105 – a step in the right direction.

For these reasons, we must oppose. Please do not hesitate to contact us should you have any questions or concerns.

Sincerely,

Francisco Lobaco
Legislative Director

Kimberly A. Horiuchi
Criminal Justice & Drug Policy Advocate

cc: Members, Assembly Committee on Budget; Marvin Deon, Consultant

[17] *See* June 20 Order, *supra* note 5 at 40-41.
[18] *Id.*, at 40 n. 26.