The Insider presents:

The Insider Outreach

Voices of California's Civil Detainees, Coalinga State Hospital

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Ex-Napa Hospital Chief Found Guilty of Sex Abuse

William Hester, Editor (includes excerpts from the Associated Press report by Gillian Flaccus)

A former California state mental hospital director was found guilty of multiple counts of sexually abusing his adopted son I what prosecutors contend was a pattern of preying on young boys that spanned four decades.

A Superior Court jury convicted the 63-year-old Foulk of 31 of 35 counts of sex crimes, including lewd and lascivious acts on a child and sodomy by use of force.

Prosecutors say another 11 men came forward to claim that Foulk molested them as children dating back to 1965, but only the son's case could be prosecuted because of the statute of limitations.

Foulk is facing two hundred plus years in prison and will never see freedom again in this lifetime.

One of Foulk's two adopted sons is quoted as saying, "My heart was beating so fast right before she read it (the verdict).

He'll rot in jail for the rest of his life and that makes me feel so good."

Foulk watched the testimony with a blank stare and took the stand to deny the allegations.

The prosecutor, Danette Gomez argued that Foulk used the foster care system to acquire boys to meet his insatiable sexual appetite, knowing they had no parents to turn to. She added that the years of abuse had led the boys to turn to alcohol and drugs and caused them to have trouble forming lasting relationships.

Foulk's attorney, Richard Pollard, claimed that Foulk's son had a history of lying and that there was no physical evidence to back up his claims.

The investigation into Foulk was sparked when someone reported the sexual abuse after learning that Foulk was the head of Napa State Hospital.

Inside this issue:

Sex Offender Agency Faults Megan's Law Drawbacks

By John Simerman of the Contra Costa Times Updated: 02/17/2010 07:12:34 AM PST

SACRAMENTO — California's free-swinging approach to laws aimed at sex offenders has made thousands of them homeless, bloated the parolee database and spawned costly programs with little evidence they make residents safer, according to members of a state board that recommended several changes Tuesday.

Those laws also failed to help nab Phillip Garrido, the paroled rapist accused of abducting Jaycee Dugard, said lawmakers at a Capitol hearing Tuesday.

Just what they figure to do about it remains uncertain. A handful of state lawmakers at the hearing openly mulled the political risks of a "soft on crime" tag.

Homelessness has spread among the parolees, said Matthew Cate, secretary of corrections and rehabilitation. More than a quarter of the 8,750 offenders on parole are transient, and another 900 are at large, he said.

Before Jessica's Law, which barred sex offenders from living within 2,000 feet of a school or park where children regularly gather, fewer than 100 were homeless.

In San Francisco, which is blanketed with the 2,000-foot zones, 84 percent of paroled sex offenders are homeless, he said.

The state Sex Offender Management Board, which issued the report, cites studies showing that kind of instability increases the risk of another sex offense.

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Notice re: DMH Evaluator Assessments (Rights of Patients)

Submitted By: Cory Hoch

Only a Licensed Psychiatrist can make A Psychiatric Diagnosis! (California Business & Professions Code §§ 2038, 2052 and 2053.5; Title 16 CCR §§ 1300-1397.71)

The Clinical Diagnosis must meet the "Medical Necessity Criteria" (9 CCR §§ 1774 and 1820.205; for definition of "Medical Necessity," see **Hunter v. Chiles** (S.D.Fla. 1996) 944 F.Supp. 914, 921-922 ("Medically necessary" or "medical necessity" means that the medical or allied care, goods, or services furnished or ordered must: [¶] (a) meet the following conditions: [¶] (1) be necessary to protect life, to prevent significant illness or significant disability, or to alleviate severe pain; [¶] (2) Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs; [¶] (3) Be consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational; [¶] (4) Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide; and [¶] (5) Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider."); **Neurological Resources, P.C. v. Anthem Ins. Companies** (S.D.Ind. 1999) 61 F.Supp.2d 840, 853 ("Medically Necessary or Medical Necessity means services or supplies provided by a provider facility or a provider individual, which are required for treatment of illness, injury, diseased condition or impairment and are: [¶] (1) Consistent with your diagnosis or symptoms; [¶] (2) Appropriate treatment according to generally accepted standards of medical practice; [¶] (3) Not provided only as a convenience to you or the provider; [¶] (4) Not experimental or unproven; and [¶] (5) Not excessive in scope, duration or intensity to provide safe, adequate and appropriate treatment to you. Any service or supply provided at a provider facility will not be considered Medically Necessary if your symptoms or condition indicate that it would be safe to provide the service or supply in a less comprehensive setting."))

You have the right to have your evaluation tape-recorded. (Code of Civil Procedure § 2032.530(a) (the examiner and examinee shall have the right to record a mental examination by audio technology)

You have the right to have an attorney present during the mental examination (either by agreement or court order). (Code of Civil Procedure § 2032.530(b) (nothing in this title shall be construed to alter, amend, or affect existing case law with respect to the presence of the attorney for the examinee or other persons during the examination by agreement or court order)

Upon completion of a mental examination, you have the right to obtain a copy of the report of such examination within 30 days after service of the demand, or within 15 days of trial, whichever is earlier. (Code of Civil Procedure § 2032.610 (a)-(b) (upon written demand that the party at whose instance the examination was made deliver both of the following to the demanding party: (1) a copy of a detailed written report setting out the history, examinations, findings, including the results of all tests made, diagnoses, prognoses, and conclusions of the examiner and (2) a copy of the reports of all earlier examinations of the same condition of the examinee made by that or any other examiner, and that if the option of making a written demand is exercised, a copy of the requested reports shall be delivered within 30 days after service of the demand, or within 15 days of trial, whichever is earlier)

Evidence of Behavioral Episodes (Signs and Symptoms) of Sexual Behavior

Submitted By: Cory Hoch

For persons convicted of major felonies, like rape and child molestation, they just do the time that the State and the People have designated for them to do according to the offense and the gravity of the offense committed. However others have done their times, and have instead of release been subjected to a type of "deterrent detention" or "preventive detention". These types of detentions are unlawful and unconstitutional on their face. One of the indicators of such a type of preventive detention is the ability of the people evaluating the offender to look beyond a certain amount of years with the persons' past behaviors, whatever they may have been. As you will see, most offenders and especially mentally ill offenders, are only subject to a review of their past within a designated amount of time. However, for those currently held under the provisions of California's Welfare and Institutions Code §§ 6600 et seq., the Sexual Violent Predator Act, this is not the case. There is no provision currently that restricts state actors from viewing these persons' behaviors beyond a certain amount of time. This flies in the face of due process and equal protection as provided by both State and Federal Constitutions.

California Penal Code § 1370(a)(1)(F)(2)(B)(ii)(II) (mentally incompetent have their past behavior within a six year time frame used for assessment purposes)

California Penal Code § 2962 (d) (1) (mentally disordered offender prior behavior in last year considered for justification in denial of release)

California Welfare & Institutions Code § 5300.5(c) (imminently dangerous persons and mentally disordered persons presenting demonstrated danger have their past behavior within a six year time frame used for assessment purposes)

California Welfare & Institutions Code § 5346(a)(4)(B) (LPS patient in assisted outpatient treatment program has consideration made of past behavior in last 36-48 months as part of treatment decision)

Foley v. Foley (2nd Dist. 1963) 214 Cal.App.2d 802, 29 Cal.Rptr. 857, 861 (in child custody proceedings consideration of past behavior over span of five or six years occur)

Standing alone, the past infliction of harm does not establish the substantial risk of future harm, rather there must be some reason to believe the acts may continue in the future. (**In re Brison C.** (5th Dist. 2000) 81 Cal.App.4th 1373, 97 Cal.Rptr.2d 746, 750; see also, **In re J.N.** (6th Dist. 2010) 181 Cal.App.4th 1010, 104 Cal.Rptr.3d 478, 488)

** See also **Judulang v. Chertoff** (S.D.Cal. 2008) 562 F.Supp.2d 1119, 1127 which speaks of five years of behavioral episodes as need of evidence of dangerousness and also speaks on the issue of preventive detention for persons considered as dangerous **

Bill of Rights

Because the Constitution of the United States granted the federal government so much power, as compared with the earlier Articles of Confederation, several states demanded a list of amendments to guarantee individual rights against intrusion by the federal government. The first ten amendments, known as the Bill of Rights, embody libertarian ideas in the United States. The amendments protect such rights as freedom of speech (First Amendment), right against unlawful search and seizure (Fourth Amendment), and the right to a public criminal trial by jury (Sixth Amendment).

Just a reminder to everyone that it is still out there, even if it is often gotten around.

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Guidelines for Publication

All submissions to ***The Insider*** are subject to editing for proper grammar, punctuation, length, language, and clarity. They may not include hate-speech, inciting or inflammatory language, or unnecessary profanity. Any submissions may be returned to the individual author for revision or rejected outright.

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The Insider is dedicated to fair, unbiased and impartial reporting of information, current events, and news that is of interest to civil detainees and others who are interested in finding out about the real people here. Any questions and correspondence can be submitted by mail to:

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Sex Offender Agency Faults… CONTINUES FROM PAGE 1

GPS can help parole agents keep track, Cate said, but he admitted the state agency has struggled with the technology.

Garrido's parole agent ignored dozens of alarms that the parolee's GPS anklet failed to send a signal.

Cate said about 7,100 parolee sex offenders have GPS anklets, at a cost of more than $55 million a year.

Again expressing regret for the agency's handling of the Garrido case, Cate cited several changes made since, including more training for agents, a new level of parole management and closer scrutiny of GPS signals.

Some lawmakers asked whether some of the money would be better spent on treatment.

The state has largely ignored treatment, despite studies that show it significantly reduces recidivism, said Tom Tobin, a Contra Costa County psychologist and board member.

"Treatment is not coddling sex offenders. It's tough. Most sex offenders don't like it," he said. "It isn't a cure. It isn't magic. It doesn't have a positive outcome in all cases. But what does?"

Cate said the agency plans to spend $8 million on a pilot program for 800 high-risk offenders that includes treatment and other services to keep them from reoffending.

The 16-member board includes representatives of law enforcement, prosecutors, state corrections, victim advocates, county probation and treatment providers.

"How we untie this knot now, I can tell you, is not going to be easy,"

Their report recommends several changes to focus more attention on high-risk offenders.

Among them:

- Instead of barring all sex offenders from living within 2,000 feet of a school or park, as Jessica's Law does, apply it to only the most serious offenders, with loitering restrictions for all.

- Use GPS monitoring only with some form of community supervision.

- Create a routine treatment program for all sex offenders under supervision.

Deputy Attorney General Janet Neeley, who helped create the parolee database, said the state should distinguish risk levels among all sex offenders and, like most other states, limit the time low-risk offenders stayon the registry.

Now, they remain there for life.

That would shrink the parolee database and give residents more useful information, she said.

Part of the trouble, she said, is "stranger danger." High-profile abductions or murders often spawn expansive laws, when more than 90 percent of child sex abuse victims know their abusers.

Changes in Jessica's Law that could be seen as weakening it would need voter approval.

State Sen. Mark Leno, D-San Francisco, recalled being labeled "pure evil" by his own party when he balked at tough residency restrictions for sex offenders, before 70 percent of voters backed them in 2006.

"How we untie this knot now, I can tell you, is not going to be easy," he said.