(26)

CITY OF SACRAMENTO

DEPARTMENT OF LAW
812 TENTH STREET
SUITE 201
SACRAMENTO, CA 95814
TELEPHONE (916) 449-5346

JAMES P. JACKSON
City Attorney
THEODORE H. KOBEY, JR.
Assistant City Attorney
LELIAND J. SAVAGE
SAMUEL L. JACKSON
WILLIAM P. CARNAZZO
DIANE B. BALTER
CHRISTINA PRIM
Deputy City Attorneys

January 6, 1983

Hon. City Council
City Hall
Sacramento, CA 95814

Re: RECOMMENDED LEGISLATIVE CHANGES IN PAROLE DESTINATION LAW

Members in Session:

SUMMARY

This report proposes three specific changes to existing Penal Code sections dealing with release of parolees or work furlough inmates into the local area, and recommends that the City Council support these changes.

BACKGROUND

On December 8, 1982, a meeting was held at Assemblyman Lloyd Connelly's office to discuss the City's concerns regarding local release of parolees by the Department of Corrections. The meeting was attended by Chief Kearns and Captain Hogan of the Police Department, City Attorney James P. Jackson, and Deputy City Attorney William Carnazzo.

Three potential statutory changes were addressed:

1. A technical change to Penal Code Section 3058.5. The background demonstrating the need for this change is set forth in item 4 beginning on page 4 of Attachment A, which is the City Attorney's opinion dated December 6, 1982.

2. An additional change to Penal Code Section 3058.5 which would require the Department of Corrections to furnish actual glossy photographs of parolees (or work furlough inmates) instead of the xerox copies now being received.

3. A change to Penal Code Section 3003, which deals with the circumstances which would allow the Department of Corrections to release a parolee to a county other than the county of commitment.

LER

The present statute differs from the Department's regulations. A brief outline of those differences is set out in Attachment B. The recommended changes conform the statute to the regulations.

Recommended Changes

While Legislative Counsel drafts all actual changes to existing statutes, the following recommended language changes address the three issues pointed out above. Assemblyman Connelly has indicated he will carry the bill.

1. Penal Code Section 3058.5

Penal Code Section 3058.5 now reads as follows:

§3058.5 Furnishing information concerning parolees to local authorities

The Department of Corrections shall provide, within 10 days, upon request to the chief of police of a city or the sheriff of a county information available to the department, including photographs, concerning persons then on parole who are or may be residing or temporarily domiciled in that city or county.

It is recommended that the statute be amended to read as follows:

The Department of Corrections shall provide, within 10 days upon request, to the chief of police of a city or the sheriff of a county information available to the department, including actual, glossy photographs no smaller than 4 x 5 inches in size and fingerprints concerning all persons transferred to or placed in a community correctional center in that city or county and all persons then on parole who are or may be residing or temporarily domiciled in that city or county.

2. Penal Code Section 3003

Penal Code Section 3003 now reads as follows:

§3003 (a) An inmate who is released on parole shall be returned to the county from which he or she was committed.

(b) Notwithstanding subdivision (a), an inmate may be returned to another county in a case where that would be in the best interests of the public and of the parolee. If the authority setting the conditions of parole decides

26

on a return to another county, it shall place its reasons in writing in the parolee's permanent record. In making its decision, the authority may consider, among others, the following factors:

(1) The need to protect the life or safety of a victim, the parolee, a witness or any other person.

(2) Public concern that would reduce the chance that the inmate's parole would be successfully completed.

(3) The verified existence of a work offer, or an educational or vocational training program.

(4) The last legal residence of the inmate having been in another county.

(5) The existence of family in another county with whom the inmate has maintained strong ties and whose support would increase the chance that the inmate's parole would be successfully completed.

(c) An inmate may be paroled to another state pursuant to any other provision of law.

It is recommended that this section be amended so that it conforms to the Department's regulations and reads as follows:

§3003 (a) An inmate who is released on parole shall be returned to the county from which he or she was committed.

(b) Notwithstanding subdivision (a), an inmate may be returned to another county in a case wherein the criteria set forth in this subsection are met. If the authority setting the conditions of parole decides on a return to another county, it shall place its reasons in writing in the parolee's permanent record. In making its decision, the authority must specify the circumstances meeting one or more of the following criteria:

(1) The need to protect the life or safety of a victim, the parolee, a witness or any other person.

(2) Public concern that would reduce the chance that the inmate's parole would be successfully completed.

(3) The verified existence of an unusual or unique work offer, or an educational or vocational training program that cannot be duplicated or equaled in the county of commitment.

(4) The last legal residence of the inmate having been in another county.

(5) The existence of family in another county with whom the inmate has maintained strong ties and whose support would increase the chance that the inmate's parole would be successfully completed.

(c) An inmate may be paroled to another state pursuant to any other provision of law.

CONCLUSION AND RECOMMENDATION

It is recommended that the City Council by resolution support the statutory changes specified in this report.

Very truly yours,

JAMES P. JACKSON
City Attorney

By _____
WILLIAM P. CARNAZZO
Deputy City Attorney

WPC/p

Attachments

Recommendation approved:

Walter J. Slipe
WALTER J. SLIPE
City Manager

CITY OF SACRAMENTO

DEPARTMENT OF LAW
812 TENTH STREET
SUITE 201
SACRAMENTO, CA 95814
TELEPHONE (916) 449-5346

JAMES P. JACKSON
City Attorney
THEODORE H. KOBEY, JR.
Assistant City Attorney
LELIAND J. SAVAGE
SAMUEL L. JACKSON
WILLIAM P. CARNAZZO
DIANE B. BALTER
CHRISTINA PRIM
Deputy City Attorneys

December 6, 1982

Honorable City Council
City of Sacramento
City Hall
Sacramento, California

In re: ISSUES PERTAINING TO SOJOURNER HOUSE

Members in Session:

Issues

There are five broad issues which have been raised with respect to existence of the Sojourner House. These are:

1. What is the scope of the City's zoning authority, if any, over privately-operated "community correctional centers"?

2. If City zoning regulations apply, what restrictions exist as to this type of facility?

3. Must the State notify the City of its intent to establish a community correctional center? If so, what are the notification requirements?

4. Must the State notify the City Police Department as to the identity and background of those individuals placed in community correctional centers?

5. What limitations are there as to the type of individuals who can be placed in community correctional centers?

Answers

1. Where a private operator is operating a State facility, the State's exemption from local zoning regulation does not apply. Thus, applicable City zoning regulations may be enforced.

2. The closest facility designation under the City's zoning ordinance would be "residential care facility." When Sojourner House was established in 1976 or 1977, no special use permit was required in C-2 zones which was the applicable zoning designation.

ATTACHMENT A

A special use permit was required under the 1980 revision, but that new requirement would not apply to an existing nonconforming use. However, to the extent that the number and composition of inmates has increased over that prior use, a change has occurred which would require a special use permit.

3. The State is required to give 60 days' notice to the City of intent to establish a community correctional center, in default of which the City can "cancel" the contract for the facility. This provision does not give the City the right to approve or disapprove the establishment of a center.

4. The State's duty to notify the City Police Department of the identity of the inmates at a community correctional facility depends on whether the individual is a parolee or not. Inmates housed at Sojourner House are still "serving time," and technically no duty exists to give the notice called for by Penal Code Section 3058.5.

5. There are statutory restrictions on the types of individuals who can be placed in facilities such as Sojourner House. It appears that the State may have violated these restrictions as to some of the individuals housed there.

Background

Information received from Howard Yee of the Planning Department indicates that the Sojourner House was established as a community correctional center in 1976 or 1977; the corresponding City zoning ordinance facility designation was "residential care facility." No special permit was required at that time in a C-2 zone which applied to the property in question.

Effective June 12, 1980, the City zoning ordinance was amended so that a special permit is required in a C-2 zone for such a facility. As of that date the Sojourner House use became nonconforming. The historical extent of the use was apparently six persons, all female. Sometime in 1982 the number of persons was increased to nine, and the facility became "coed."

A series of letters and memoranda between the State Department of Corrections and the Police Department fully detail the remaining applicable facts and the history of the current dispute. These various documents are attached in chronological order so that the issues discussed here are placed in proper perspective.

Analysis

Question No. 1. The scope of the City's zoning regulatory authority.

Where the State operates the community correctional center itself, whether on State-owned property or property leased from a private owner, the City's zoning authority is preempted because the doctrine of sovereign immunity shields the State acting in its governmental capacity from local regulation. City of Orange v. Valenti (1974), 37 CA 3d 240.

However, where a community correctional center is operated for the State by a private contractor, on privately-owned land, there is a strong probability that local zoning regulations may be enforced. See Board of Trustees v. City of Los Angeles (1975), 49 CA 3d 45 (Regents cannot transfer their sovereign immunity from local regulation to private circus operator operating on property owned by the Regents), and City of Los Angeles v. AEC Los Angeles (1973), 33 CA 3d 933 (private independent contractor performing work for the State not shielded by State's immunity from local taxation). In this case, since Sojourner House is a privately-operated facility on the nature of an independent contractor, the State's zoning regulation immunity would probably not apply.

Question No. 2. The applicable zoning regulations.

The community correctional center would be a residential care facility under the City zoning ordinance. If the present use was identical with the use when it became nonconforming in 1980, no special use permit could be required. However, the use has changed both in number and in character. The Chief of Police has indicated that the change to "coed" from all female poses increases hazard to the community. It appears appropriate, therefore, to require Sojourner House to revert to the 1980 population number and composition, and to obtain a special permit for the altered use pursuant to Sections 2-B-8 and 22-A-46 of the City's zoning ordinance.

Question No. 3. Notice requirements when facility established.

As of January 1, 1983, Penal Code Section 6250 will read as follows:

> The Director of Corrections may establish and operate facilities to be known as community correctional centers. No later than 60 days prior to award of a contract for the establishment of such a center, the director shall notify the county board of supervisors or city council in whose jurisdiction the center will be

> located of the pending contract. The notice may be delivered by hand or sent by any form of mail requiring a return receipt. Failure to provide the notice shall be grounds for extinguishing the contract upon motion of the board of supervisors or city council.

It does not appear that the intent of this new provision is to give a city council or a county board the opportunity to approve or disapprove the location of a community correctional center within its jurisdiction. The purpose of the notice is informational only. Failure to give the notice would permit the council or board to demand cancellation of the facility's contract, but the contract could be reinstated at any time upon the giving of the required 60 days' notice.

Question No. 4. Duty to notify City police regarding identity of inmates housed at Sojourner House.

The attached memoranda detail the clear need for notification. However, the statute as written presents some difficulty. Section 3058.5 of the Penal Code provides:

> The Department of Corrections shall provide, within ten days, upon request to the chief of police of a city or the sheriff of a county, information available to the department, including photographs, concerning persons then on parole who are or may be residing or temporarily domiciled in that city or county.

The Sacramento Police Department interprets this section to require that the Department of Corrections provide the specified information as to each individual assigned by the Director of Corrections to a community correctional center pursuant to Penal Code Section 6253.

However, the Department of Corrections appears to contend that two different categories of individuals are housed in community correctional centers:

(1) Inmates whose terms of imprisonment have been fixed; and

(2) Parolees;

and that the information specified in Section 3058.5 need be provided only with regard to the second category--parolees--and not as to the first category--inmates.

As a practical matter, the distinction made by the Department of Corrections is meaningless. Both the inmates and the parolees in a community correctional center have access to the community

and potentially create law enforcement problems. Section 3058.5 was surely intended to encourage the Department of Corrections to inform local law enforcement agencies about all felons released into the community, regardless of their technical categorization as "inmates" or "parolees." It is certainly understandable that the Police Department feels it needs information about both categories of residents in order to be fully informed about convicted felons domiciled in our city. Even more understandable is the police frustration when, after their inquiry about an individual suspected of a local crime has yielded a response, "incarcerated," they learn he is indeed incarcerated, but in a community correctional center in our community.

On the other hand, we do agree with the Department of Corrections that Section 6253 describes two distinct categories of community correctional center inhabitants, while Section 3058.5 requires that information be provided to us in relation to only one category--the parolees. Thus, the Department's failure to provide information about "inmates whose terms of imprisonment have been fixed" living in community correctional centers, while it may violate the intention of Penal Code Section 3058.5, does not violate its literal terms.

We therefore conclude that the Department of Corrections is in technical compliance with Penal Code Section 3058.5 and that currently there are no grounds for suit by the City.

As an alternative to suit, it is recommended that a clarifying amendment to Section 3058.5 be sought which would require the Department of Corrections to provide information "concerning all persons transferred to or placed in a community correctional center in that city or county and all persons then on parole who are or may be residing or temporarily domiciled in that city or county."

As can be seen from the attachments, an informal accommodation has been worked out between the Police Department and the State. This understanding is not, however, legally enforceable.

Question No. 5. Restrictions on the types of offenders who can be housed at Sojourner House.

We have been informed of the criminal histories of some of the persons housed at Sojourner House, and the Police Department's legitimate frustration over the State's apparent disregard of the law. Penal Code Section 6263 reads as follows:

§6263. [Placement of inmates in program]

(a) The Department of Corrections shall deny placement in a reentry work furlough program if it determines that an inmate would pose an unreasonable risk to the public, or if any one of the following factors exist, except in unusual circumstances, including, but not limited to, the remoteness in time of the commission of the offense:

(1) Conviction of a crime involving sex or arson;

(2) History of forced escape, or of drug use, sales or addiction;

(3) Parole program or employment outside the area served by the facility;

(4) History of serious institutional misconduct;

(5) Prior placement in a protective housing unit within a correctional institution, except a person placed there while assisting a public entity in a civil or criminal matter;

(6) More than one conviction of a crime of violence.

(b) Nothing in this section shall be interpreted to limit the discretion of the Department of Corrections to deny placement when the provisions of subdivision (a) do not apply.

The criminal histories indicate that certain of the inmates housed at Sojourner House have been involved in drug-related crimes and crimes of violence, both of which disqualify the individual unless "unusual circumstances" exist.

Since Section 6263 is designed to protect the public, it appears entirely appropriate to request that the State justify to the Police Department the placement of each individual whose record contains a disqualifying crime or crimes. If the State refused to cooperate, mandate proceedings under Code of Civil Procedure Section 1085 may be the appropriate remedy.

Conclusions

1. Where a private operator is operating a State facility, the State's exemption from local zoning regulation does not apply. Thus, applicable City zoning regulations may be enforced.

2. The closest facility designation under the City's zoning ordinance would be "residential care facility." When Sojourner House was established in 1976 or 1977, no special use permit was required in C-2 zones which was the applicable zoning designation. A special use permit was required under the 1980 revision, but that new requirement would not apply to an existing nonconforming use. However, to the extent that the number and composition of inmates has increased over that prior use, a change has occurred which would require a special use permit.

3. The State is required to give 60 days' notice to the City of intent to establish a community correctional center, in default of which the City can "cancel" the contract for the facility. This provision does not give the City the right to approve or disapprove the establishment of a center.

4. The State's duty to notify the City Police Department of the identity of the inmates at a community correctional facility depends on whether the individual is a parolee or not. Inmates housed at Sojourner House are still "serving time," and technically no duty exists to give the notice called for by Penal Code Section 3058.5.

5. There are statutory restrictions on the types of individuals who can be placed in facilities such as Sojourner House. It appears that the State may have violated these restrictions as to some of the individuals housed there.

WILLIAM P. CARRAZZO
Deputy City Attorney

WPC/p

Attachments

CITY OF SACRAMENTO

DEPARTMENT OF LAW
812 TENTH STREET
SUITE 201
SACRAMENTO, CA 95814
TELEPHONE (916) 449-5346

JAMES P. JACKSON
City Attorney
THEODORE H. KOBEY, JR.
Assistant City Attorney
LELIAND J. SAVAGE
SAMUEL L. JACKSON
WILLIAM P. CARNAZZO
DIANE B. BALTER
CHRISTINA PRIM
Deputy City Attorneys

26

December 15, 1982

Hon. Lloyd G. Connelly
Assemblyman, 6th District
State Capitol, Room 5159
Sacramento, CA 95814

Dear Lloyd:

You asked for a comparison between the new parole destination statute (AB 2564, Chapter 1407) Penal Code Section 3003, and the Department of Corrections administrative regulations.

The general statutory and administrative rule requires return to the county of commitment, absent some stated exception. The exceptions embodied in the statute appear to be more liberal to the parolee than the corresponding administrative exception. The following comparison demonstrates this difference:

Statute	Regulations
(1) General exception language:	
"...in the best interests of the public and of the parolee."	"...may be permitted in very unusual cases."
"...the authority may consider the following factors."	"...must meet the criteria below and be justified in writing."
(2) Specific exception factors (where different):	
(a) "The need to protect the life or safety of a victim, the parolee, a witness or any other person."	(a) "The expressed and substantiated fear of a victim or victim's relatives because of injuries or threats inflicted by the parolee during commission of the commitment offense or who during subsequent imprisonment has threatened the victim or the victim's relatives."

ATTACHMENT B

(b) "The verified existence of a work offer, or an educational or vocational training program."	(b) "The verified existence of an unusual or unique work offer or training/educational program that cannot be duplicated or equaled in the county of commitment."

Of the five corresponding exception factors contained in both the statute and the regulations, the two contrasted above contain significant differences and the remaining three are substantially similar. Significantly, the two differing criteria are also the most critical of the five. As can be seen from the contrast, the parolee is favored on both critical points.

If you have any questions, please call. A copy of the chaptered bill and the regulations are attached.

Very truly yours,

JAMES P. JACKSON
City Attorney

By
WILLIAM P. CARNAZZO
Deputy City Attorney

WPC/p

Attachments

cc: John Kearns, Chief of Police
Captain Harry Hogan

Assembly Bill No. 2564

CHAPTER 1407

An act to add Section 3003 to the Penal Code, relating to parole.

[Approved by Governor September 24, 1982. Filed with Secretary of State September 27, 1982.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2564, Moorhead. Parole.

Existing law requires the Board of Prison Terms to release any eligible prisoner on parole or to waive parole and sets forth the conditions and length of parole. The board is required to consider the inmate's request concerning the length and conditions of his or her parole.

This bill would require the board, when releasing an inmate on parole, to return the inmate to the county from which he or she was committed unless, after consideration including various specified factors, the board determines it is in the best interests of the public and of the parolee that he or she be returned to another county and places its reasons in writing. The bill would expressly provide that an inmate may be paroled to another state pursuant to any other provision of law.

The people of the State of California do enact as follows:

SECTION 1. Section 3003 is added to the Penal Code, to read:

3003. (a) An inmate who is released on parole shall be returned to the county from which he or she was committed.

(b) Notwithstanding subdivision (a), an inmate may be returned to another county in a case where that would be in the best interests of the public and of the parolee. If the authority setting the conditions of parole decides on a return to another county, it shall place its reasons in writing in the parolee's permanent record. In making its decision, the authority may consider, among others, the following factors:

(1) The need to protect the life or safety of a victim, the parolee, a witness or any other person.

(2) Public concern that would reduce the chance that the inmate's parole would be successfully completed.

(3) The verified existence of a work offer, or an educational or vocational training program.

(4) The last legal residence of the inmate having been in another county.

(5) The existence of family in another county with whom the inmate has maintained strong ties and whose support would increase the chance that the inmate's parole would be successfully completed.

(c) An inmate may be paroled to another state pursuant to any other provision of law.

o

RESOLUTION NO.

Adopted by The Sacramento City Council on date of

January 11, 1983

A RESOLUTION SUPPORTING LEGISLATIVE CHANGES TO PAROLEE DESTINATION STATUTES, PENAL CODE SECTIONS 3003 AND 3058.5

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SACRAMENTO that the City Council approves the report of the City Attorney dated January 6, 1983, recommending changes to Penal Code Sections 3003 and 3058.5.

_____

MAYOR

ATTEST:

_____

CITY CLERK