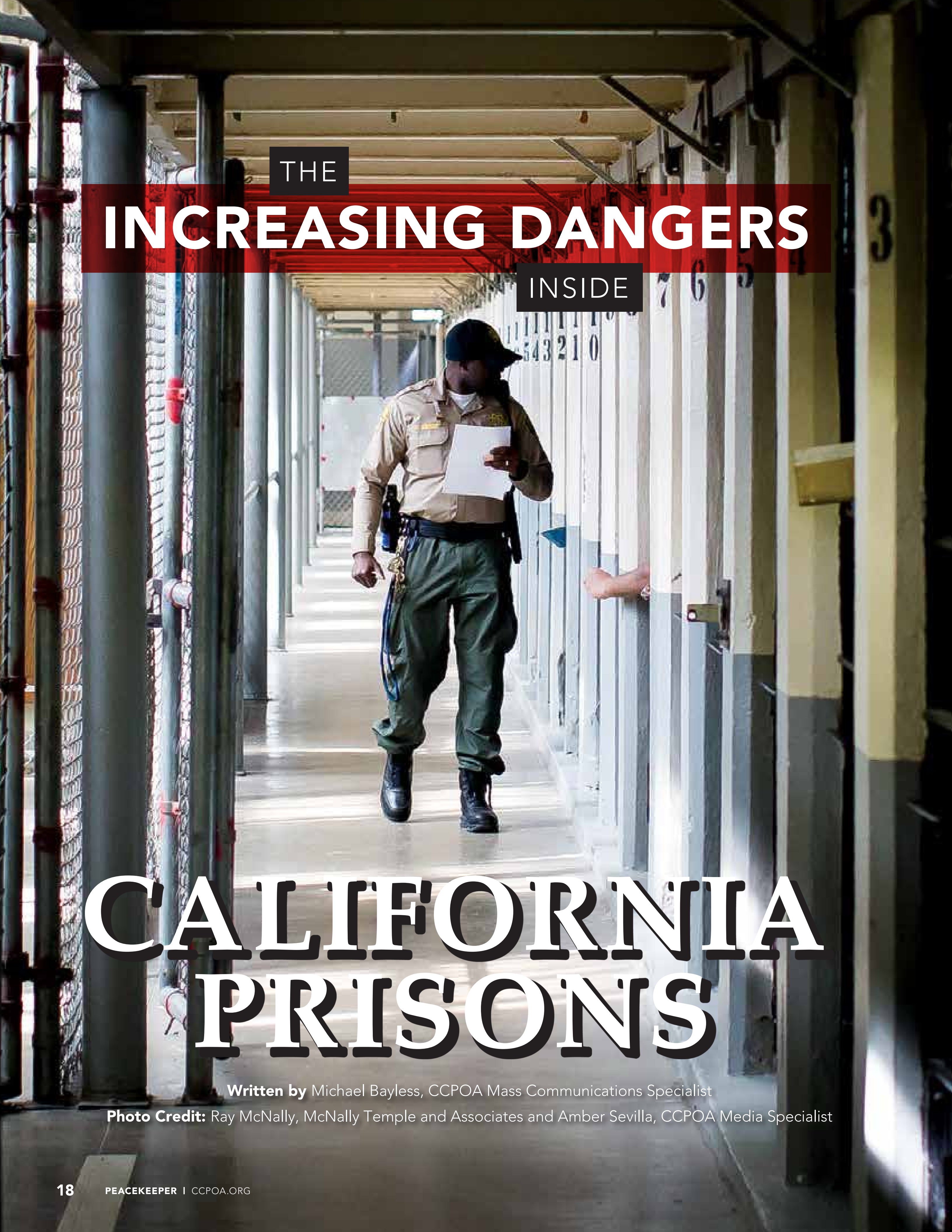

THE INCREASING DANGERS INSIDE CALIFORNIA PRISONS

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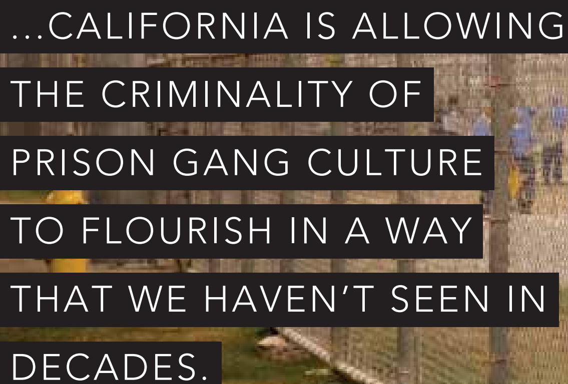
Photo Credit: Ray McNally, McNally Temple and Associates and Amber Sevilla, CCPOA Media Specialist



POLITICS ARE CYCLICAL. *The political pendulum is always swinging. At present, California corrections is in the middle of a cycle which has brought rehabilitation and treatment (mental and physical) to the political forefront. This decade-plus period started with the introduction of a federal 'Receiver' to oversee the issue of prison health care in California and is still ongoing with various legislative steps occurring with the goal of reducing the prison population statewide. While this environment mirrors a political narrative throughout much of California, the speed with which it has occurred (and is occurring) is leading to considerable safety issues within California prisons for the correctional peace officers as well as the inmates they are tasked with overseeing. In the effort to expedite the release of prisoners, California is allowing the criminality of prison gang culture to flourish in a way that we haven't seen in decades.*

In 2006, a three-judge panel was convened stemming from two lawsuits, *Plata v. Schwarzenegger* (physical) and *Coleman v. Schwarzenegger* (mental) which claimed that overcrowded prison conditions were creating "cruel and unusual punishment" conditions at odds with the 8th Amendment. This created the imperative to reduce California's prison population. In 2009, the three-judge panel ordered that California cap its state prison population at 137.5% of designed bed capacity within two years. This figure necessitated the release of approximately 30 – 40 thousand inmates. The ensuing years (up until the present time) have seen various delays and compromises as the State of California has attempted to meet the conditions of the Federal Receiver. Despite numerous efforts to change the mandated number, the State of California has been held to the 137.5% figure and currently appears to be hovering at approximately that level. During the period after 2009 there were several legislative events which have contributed to the current environment. **The following is a brief timeline of pertinent legislation/actions:**

October 1, 2011: Assembly Bill 109, California's Public Safety Realignment Act of 2011.

Realignment transferred the jurisdiction and funding for low-level offenders from the State to the counties. Some offenders now serve felony sentences in county jail as opposed to state prison. Realignment also changed parole. Most offenders on parole can no longer be returned to prison for a parole violation but can only return to prison as the result of a new conviction. County probation departments now decide what to do with violations. Ninety-nine percent of new commitments to state prison are now the result of a new conviction not a parole violation.

AB 109 started a vacuum effect by which the lower-level institutions and yards began to release inmates and eventually force the Department to house higher-level offenders in the vacant beds created with the goal of reducing overcrowding. The loss of inmates also led to layoffs under "standardized staffing," which set staffing levels that were geared to the conditions at the institution. The problem is that the staffing needs have changed as the type of inmate has changed on low-level yards.

The shift of many offenders to county supervision created overcrowding at the local level. This has pushed low-level community offenders who would have previously gone to jail back into their communities.

November 6, 2012: Proposition 36, Changes in the "Three Strikes" Law.

Proposition 36 changed criteria for third strike convictions. The overall impact of this change was that approximately 3,000 third strike felons, whose third strike conviction was for a non-violent crime, became eligible to petition the court for a reduced sentence. Some of these 3,000 felons were released where they had previously been sentenced to life terms.

November 4, 2014: Proposition 47, Reduced Penalties for Some Crimes Initiative.

Proposition 47 reduced the classification of most "non-serious and nonviolent" property and drug crimes from felonies to misdemeanors. This was not allowed if defendants had prior convictions for murder, rape, certain sex offenses or certain gun crimes. Prop. 47 allowed re-sentencing for inmates with effected offenses – thousands of inmates were eligible for re-sentencing after undergoing a thorough review assuring that the inmates posed no risk to the public. Multiple offenses with a dollar value less than $950 were reclassified as misdemeanors as was the personal use of most illegal drugs.

Re-sentencing accelerated inmates through the system. This also served to reduce the number of lower-level offenders in California institutions creating vacancies to be filled by higher custody inmates.

January 1, 2015: Non-Violent Second Striker, Early Prison Release.

The three-judge panel pushed the Department of Corrections and Rehabilitation (CDCR) to begin a new parole determination process evaluating "non-violent second-strikers" for early parole. If early release is granted, those affected are paroled after serving only 50% of their sentence as opposed to the 80% required under previous law. Inmates who qualify are given a reduced potential release date but this date isn't an automatic release. An Administrative Law Judge from the Board of Prison Hearings decides based on the inmate's behavior and rehabilitative progress while incarcerated.

Shortens sentences and accelerates release.

September 1, 2015: Ashker v. Brown Settlement.

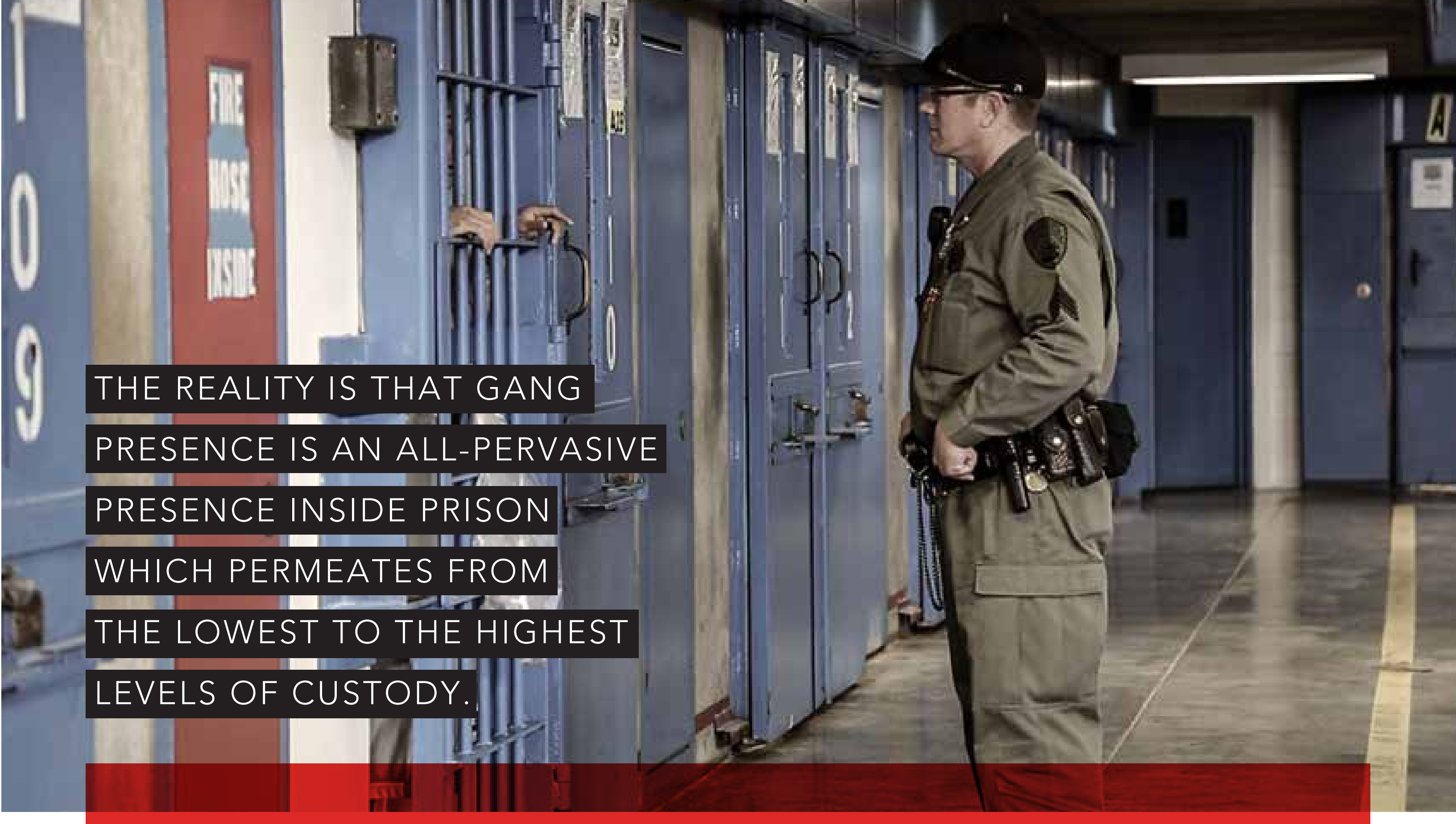
This settlement ended indeterminate Security Housing Unit (SHU) terms and released thousands of inmates into the prison general population, whom prior to the settlement, were deemed a threat to the safety and security of the institutions.

Releasing inmates from SHU exacerbated the overcrowding issue on the state's Level IV facilities, forcing the department to seek ways to use the classification system to get Level IV offenders to lower-level facilities. It placed dangerous offenders directly from the SHU to lower-level facilities based on a classification system which had never been designed for the release of many of these SHU inmates. This settlement has and will continue to elevate violence in prison and in the public as the leaders and associates of prison gangs which had been housed in SHU now have much more access to their criminal enterprises.

July 5, 2016: Memorandum titled: Utilization of Administrative Determinants Based upon Positive and Negative Inmate Behavior and Increased Access to Rehabilitative Programs.

This policy allows for an inmate classification to be 'overridden' to a lower level, regardless of his placement score, so long as he doesn't meet certain exclusionary criteria.

This change in policy opened a pipeline for Level IV inmates to be transferred to Level III facilities despite their classification score. Currently an inmate with 60 or more points is housed on Level IV facilities. Inmates can now be eligible for Level III placement with classification scores in the hundreds. This policy completely bypasses decades of classification safeguards and will impact the safety of staff as well as inmates on lower-level facilities.



February 20, 2017: Emergency Title 15 Regulation Changes.

There were several regulation changes but the biggest effects involved the changes that eliminated what used to be the highest custody level in the Department (Close A) and allowed inmates access to areas of an institution they had never been allowed (Vocations, PIA, etc.). Inmates sentenced to life without the possibility of parole were now allowed to be housed on Level II facilities. Classification points could no longer be given to inmates found guilty of being under the influence of a controlled substance. These regulations were implemented in large part to address the department's problem of having too many low-level vacancies with overcrowding at the higher levels.

As inmates who are serving life or extensive sentences are now being allowed access to areas in the institution they were otherwise prohibited from, an escalation of violence in vocations areas and an increase of escape attempts is a concern.

May 1, 2017 and Ongoing: Proposition 57, Public Safety and Rehabilitation Act

The measure was designed to make individuals convicted of nonviolent felony crimes, who served full sentences for their primary offense and passed screening for public security, eligible for parole. That made about 7,000 inmates immediately eligible, according to the Associated Press. Proposition 57 allowed inmates to earn credits for good behavior and educational or rehabilitative achievements. The measure provided inmates credits to reduce time spent in prison. The proposition replaced the Second Striker policy (outlined above) and expanded the eligibility for release or reduced sentences to an estimated 25,000 offenders. While regarded as a change for non-violent offenders, this proposition also includes an expansion of credit earning ability to violent offenders also.

There has been a cascade effect to all this movement. The policies outlined above have all contributed to an aggregate where low-level inmates are released and the vacancies created are replaced with what had recently been higher-level inmates. While much of the policy and legislation in the past decade has served to move the department toward releasing inmates sooner, the security issues seriously accelerated with the combination of behavioral overrides and the Ashker Settlement (both covered above). Ashker ended the use of indeterminate SHU terms which were stints in a Segregated Housing Unit which had no specific end date. An inmate could conceivably spend the entirety of their incarceration in SHU. SHU has always been the realm of the most dangerous inmates in California. SHU is basically the prison within a prison. It is typically the place where the 'shot-callers' or 'heavies' of prison gangs were kept. One of the primary reasons for this was that it made communication difficult between incarcerated gang leadership and gang members inside and outside of prison. The attempt to create a barrier between gang leadership and gang membership should not be taken lightly. Most laypeople do not understand the extent, sophistication or danger that prison gangs and their associated culture bring to corrections. The reality is that gang presence is an all-pervasive presence inside prison which permeates from the lowest to the highest levels of custody (Level I – Level IV, ASU, SHU). Very little happens within an institution which is not sanctioned behavior passed down by a gang leadership directive.

The Ashker settlement led to the release of all inmates serving indeterminate SHU sentences. Determinate SHU sentencing still exists, but it has a prescriptive end date and there is policy to get inmates out of SHU as soon as possible. This outflow of SHU inmates began the cascade of dangerous individuals down through ever-decreasing levels of security - levels which were never designed to accommodate them. Just as 'source' points were generated for the purpose of determining eligibility for SHU, classification (placement) points exist which determine at what level an inmate should be housed. The prior intent was that sentencing for many high-level inmates was such that in many instances, be it SHU or Level IV classification, the inmate was never going to fall below the minimum number of points designated for those classifications - it was part of the original sentencing. For this reason, there were entire years where the correctional peace officers who worked those high-level prison yards did not write-up inmate violations (115 or RVR - Rules Violation Report) which would have added points to an inmate's classification score. What was the point? They were never getting off a Level IV yard. Unfortunately, the narrative in the state became, "Why are these guys such threats if their classification scores aren't higher?" It looked to a layperson like the inmate was staying out of trouble when (in reality) there was an internal practice of not writing them up. Inmates weren't necessarily behaving themselves, it was just that the classification number for Level IV inmates wasn't an accurate figure for assessing them any longer.

Points are still generated from bad behavior and the total number of points will determine what level of custody an inmate requires (behavioral overrides can reduce this level by one despite the inmate's points.) In 2016 behavioral overrides created a vehicle whereby a Level IV inmate could have a classification score in the hundreds but if he behaved himself for six months he could get a behavioral override to a Level III yard. In addition, the Inmate Classification Score System itself changed in 2012. Prior to the new scoring system, an inmate would go to a Level IV yard if his classification score was 52+ points. After the change that figure was 60+ points. In effect, after 2016 when behavioral overrides became policy, you had inmates who were comfortably over the minimum classification points qualifying them as Level IV in 2012, now not only qualifying for Level III under the new 2012 scoring, but also being overridden due to 2016 policy to Level II. The timeframe for inmates to reclassify to a lower level of custody is just accelerating. Under Prop. 57 an inmate can reduce his classification score by as many as 12 points per year where prior to that it had been as many as eight points per year.

In addition, the SHU release is not a benefit for controlling street crime. The department has always attempted to locate inmates in the institution of their choice (if feasible) with the idea that they are better served being close to their family and support structure. The actual effect of this policy is that inmates from Pelican Bay's SHU have been released to general population under Ashker and (if they qualify) sent to other prisons with Level IV yards nearer to their previous (and current) criminal enterprises. This ability has always been the department's policy but now it is being exploited by the 'harder' SHU inmate (previously isolated from the general population). Their criminal interests are more accessible.

Correctional peace officers see the real effects of these policies every day. The gang activity is increasing at every level of yard. While gang activity has always been a reality, the lack of gang leadership on general population yards slowed violence down, especially on lower-level yards. The following events are just a few examples of what has happened in the past year. Incidents such as these are increasing and are becoming more violent as well as taking an increasingly large show of force to quell.

Pelican Bay Riot

On May 24, 2017, two inmates were involved in a physical altercation which didn't appear to be a typical fistfight. There were approximately 450 inmates on the yard at the time (Level IV). As the inmates grappled, responding correctional officers used pepper spray and blast grenades in the attempt to stop the incident. When those weren't effective the officers used their batons. Once the batons were used, scores of inmates ran over and began beating the initial two officers. As other officers responded the brawl escalated. One hundred thirty-seven inmates involved themselves in the fracas. Fourteen rounds were discharged during the escalating riot from various gunner positions. As one group of inmates would get down in response to the shots, another group would jump up and keep attacking officers - by now seven COs were on the yard. Inmates were attempting to get involved from the adjacent yard. By the time all was said and done, six inmates were shot. Those six inmates and eight staff went to the hospital. The department maintained that the incident was isolated and not part of a broader gang-related mandate. This claim appears somewhat dubious as the only inmates involved in the attack were southern Mexican inmates who were not the only group on the yard at the time.

At Pelican Bay violence has always been the norm. It has had a reputation in California as the institution with the 'hardest' inmates. That said, officers working there say that the frequency and intensity of the violence is increasing. It is believed that the Ashker Settlement has had a very dangerous effect. The SHU inmates are now among the Level IV general population. The transfer of information has accelerated gang mandates considerably. Where once it took (something like) an encrypted note or message of some kind passed over time from someone within SHU to someone outside of the SHU unit and back again (this took even longer if the message involved something outside of prison) - having the shot callers on a GP yard can make a simple head nod the directive. What once took days, weeks or months can now take a moment. Threats on staff have increased. The gang shot-callers are also letting more violence go because big blows-ups involving lots of people give the leaders some plausible deniability.

Prior to Ashker, the only way an inmate might get out of an indeterminate SHU sentence would be to 'debrief.' Debriefing is when an inmate reveals useful information in return for some benefit from CDCR. This often involves information about the gang with which the inmate has affiliated. Oftentimes an inmate who had debriefed would go to a SNY yard at some suitable institution (SNY - Sensitive Needs Yard). In prison culture SNY can have a very negative connotation as it houses 'snitches' or other inmates who are viewed as 'problems.' At Pelican Bay there is a RCGP facility (Restricted Custody General Population) for those inmates who are no longer in SHU but are unable to go to a GP yard because they either can't assimilate or are unwilling to debrief. Many of the Ashker inmates are here and despite the reasonably small size of the yard, there has been a high number of intense incidents already. This is basically SHU with less security. The distressing reality is that Pelican Bay has always been an institution with a very high level of custody. As we move toward prisons with different missions and lower custody levels, the effects are even more noticeable.

California Men's Colony Riot:

On September 24, 2017, approximately 125 inmates were involved in an incident which began over some disagreement regarding the workout equipment on the yard. The incident involved a black inmate striking a Mexican inmate. Once that happened, the immediate response was that all the Mexicans on the yard jumped the black inmate which led to the black inmates responding in kind. Several inmates were stabbed in the violence which led to one inmate death and another inmate beat into a month-long coma. No correctional staff were injured but some non-lethal rounds were fired and 17 inmates went to the hospital. This event was the result of the aforementioned legislation/policies. These inmates had been released from various SHU yards due primarily to behavioral overrides - the memorandum dated June 5, 2016, as outlined above. These inmates transferred to CMC because of these policies and immediately started enacting gang-type of behavior on the Level III yard. This kind of behavior had previously been rare or non-existent on lower-level yards around the state. This is a type of inmate that CMC didn't receive in the past. The bulk of these inmates also didn't go through a proper "step-down" process which would have screened them more carefully and slowed their movement to a Level III institution such as CMC. Behavioral overrides allowed inmates with Level IV classification scores to be dropped one level in classification.

In the recent past CMC housed inmates which were not SNY inmates but had personal/criminal histories which would endanger them at most other general population (GP) yards around the state. CMC has housed many EOP (Enhanced Outpatient Program) and DD (Developmentally Disabled) inmates as part of their institutional mission. It is important to realize that California's prisons were all designed with a kind of inmate in mind. The prisons all have different missions. In the case of CMC, it was never designed to house a Level IV inmate. One tragic side-effect of this downward push in classification is that it 'disincentivizes' good inmate behavior. In the past motivated inmates would behave and program so that they could transfer to a less dangerous prison such as CMC. Certain prisons were known as good places to do your time. As gang leaders and gang culture come to these prisons, the inmates need to "act right" if they don't want to get in trouble with the shot-callers. (They DON'T want to be in this kind of trouble.) One of the correctional officers who was present at the riot said that he hadn't witnessed anything like it in his 24 years at CMC. Where inmates used to interact (an important positive action when we speak of race relations in prison) on the yard, they tend to segregate by race now - just as you would see at a Level IV institution.

Sierra Conservation Center Riot:

On August 17, 2017, a dispute over inmate phones broke out. The fight started between a black inmate and a Mexican inmate. When the two inmates began to fight, the entire yard of 400 - 500 inmates immediately exploded between the blacks and southern Mexicans. By the time all was said and done approximately 350 inmates were involved and multiple shots were fired. Helicopters came out. The riot lasted for approximately five minutes. No staff were injured. Seven inmates went to local hospitals. It is known that there existed a standing order among the southern Mexicans that if one jumps - they all jump. That mandate appeared to have 100% compliance. Perhaps the most disturbing element to this is that the riot took place on the Level II Facility B main exercise yard. The scope of this riot is strange for this yard.

There is the belief among officers that SCC inmates are increasingly aware that there are no real penalties or repercussions for this type of action anymore. One officer present stated, "The inmates really stopped when they wanted to but it wasn't so much about the custodial response." This year SCC started running the entire yard out (a yard has several housing units) where in the past it had only run half of the yard. There have been riots on the yard in the past but not with the size of the yard and not with 'lifers' on the yard. SCC is one of the two fire camp hubs in the state. In the past this yard was used as incentive for inmates who wanted to go to fire camps not for inmates who may have been Level IV-type inmates in the not-so-distant past. In addition, standardized staffing was set in 2013 and at that time the staffing was set for a type of inmate who was not as problematic as the inmates housed there now. "Get off our yard," is now what officers hear inmates say.

While gang influence has always been a pervasive reality within California's prisons, there were usually minimal gang politics present on Level I and II prison yards. Prior to the past few years the combination of true "low-level" inmates and the absence of gang 'heavies' on these yards made them distinguishable from higher security yards. There is a term for inmate behavior in the presence of gang leadership – act right. To 'act right' is to behave in a manner consistent with the directives of gang leadership. What officers are seeing on the

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lower-level yards around the state is that inmates are 'acting right.' This is how a small act of disrespect can now be the initiation of a riot. As gang culture is the norm, often these issues revolve around race. In lower-level yards you used to see inmates of various races casually interact (talk, play sports, etc.) but that has mostly disappeared due to 'acting right.' This is creating a culture distinctly at odds with the rehabilitative portion of the department's mission.

It wasn't long ago that an LWOP (Life Without Parole) inmates were not able to be housed on less than a Level III yard. LWOP inmates are now eligible to be housed on Level II yards. A decade ago this would have seemed ludicrous and if you ask most correctional peace officers about this issue, they feel that way today. The political pendulum has created this reality, just as it has created the cascade which has been discussed in this article. When issues regarding the declassification of inmates arise as they have for the past decade, the argument from the State of California tends to be some variation of: There is no current evidence suggesting that LWOP inmates on Level II yards are creating a more dangerous circumstance for correctional peace officers. The problem with that line of reasoning is that there is no history from which to draw conclusions. LWOP inmates have never been allowed on Level II yards. Using the same logical extension, the state can rationalize cutting correctional staff until an event happens which definitively proves an increase in danger.

In corrections, no correctional peace officer gets paid for what happens when things are going well. The paycheck is truly earned for what happens when normal instantly changes to mayhem. The same principle applies to an institution as a whole – staffing and regulations aren't created for activity which is solely predictable and safe but for situations that spin out of control with no warning. The current direction of California corrections is making mayhem and out-of-control far too common.

NOBODY WANTS TO SEE PROOF OF POOR DECISION-MAKING PROVIDED IN THE FORM OF A DEAD CORRECTIONAL PEACE OFFICER.