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RANDY VOEPEL

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LOCAL GOVERNMENT
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SUBCOMMITTEES
BUDGET SUBCOMMITTEE NO. 2 ON
EDUCATION FINANCE

July 25, 2017

California Department of Corrections and Rehabilitation
Regulation and Policy Management Branch
P.O. Box 942883
Sacramento, CA 94283-0001

RE: OAL Matter Number: 2017-0324-01

To whom it may concern:

I am writing today to express my significant concern regarding the draft Proposition 57 regulations put forward by your Department. I believe these regulations exceed the scope of Proposition 57 and would establish a criminal justice framework contrary to what was approved by California voters.

Specifically, I believe these regulations are severely problematic for the following reasons:

- The proposed language would have the effect of classifying those convicted of violent crimes as “non-violent” offenders, consequently allowing for their early release.
- The proposed language would effectively remove important victim’s rights established by Marcy’s law.

“Non-violent offenders”

The language within Proposition 57 states that parole eligibility is granted only to “Any person convicted of a nonviolent felony offense.” The regulations submitted by the Department contradict that language.

The proposed regulation¹ establishes the definition of a “non-violent” offender as any inmate who has “completed a determinate or indeterminate term of incarceration and is currently serving a determinate term for a nonviolent in-prison offense.” As proposed, the definition of a “non-violent” offender is internally self-contradicting; any inmate who has completed an “indeterminate term of incarceration” is by definition, a *violent* offender pursuant to Penal Code Section 667.5. This language also neglects to clarify that the “completed” term must have been for a non-violent crime, creating the possibility that an inmate convicted of a violent crime is eligible for early release.

¹ Section 2249.1 (b)(1)

Additionally, the Department also stipulates that “inmates who have *completed a violent offense term* but remain incarcerated for offenses that do not qualify as a violent felony will be eligible for parole consideration, in accordance with court decisions.” This is an overbroad and erroneous reading of those decisions, which only had to do with the ability to obtain credits, **not** parole eligibility. The proposed definitions contradict Section 32, Article I of the California Constitution, as enacted by Proposition 57, which limits early parole eligibility to “a person convicted of a non-violent offense.”

When the Department states that “the Public Safety and Rehabilitation Act of 2016 (the “Act”) was overwhelmingly approved by California voters,” it neglects to add the most important condition on which that approval was based. They voted to support language that allowed parole consideration only to those “convicted of a nonviolent felony offense.” To implement contrary regulatory language is a troubling overreach by the executive branch.

Marcy’s Law

The proposed regulations would also severely dilute the rights of victims as stipulated by the California Constitution¹, which states that a victim should receive “reasonable notice of all public proceedings, including delinquency proceedings, upon request, at which the defendant and the prosecutor are entitled to be present and of all parole or other post-conviction release proceedings, and to be present at all such proceedings.”

The constitution also states² that a victim has the right to “be heard, upon request, at any proceeding, including any delinquency proceeding, involving a post-arrest release decision, plea, sentencing, post-conviction release decision, or any proceeding in which a right of the victim is at issue.”

Unfortunately, as currently put forward, the language³ of the proposed regulations would diminish these rights and provide the victim only with “an opportunity to submit a written statement.” Subsequent language requiring that “responses to the board must be in writing” further diminishes the Constitutional right of victims to be heard in accordance with the constitution.

Conclusion

The language within Proposition 57 – and now within the California Constitution – states that the Department should adopt regulations “in furtherance” of Proposition 57. However, the regulations put forward by the Department do no such thing. By seeking to redefine a “non-violent offender” to include those convicted of violent crimes, and by diluting victim’s rights

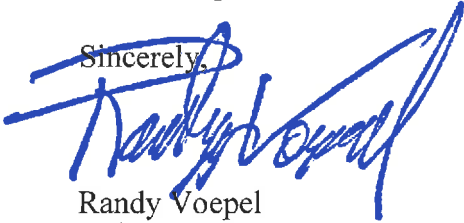
¹ Article 1, section (b)(7)

² Article 1, section (b)(8)

³ Sections 2249.2-5

While I personally did not support Proposition 57, the voters of California did. I regard their will as sacrosanct. I urge the department to revise these regulations to conform to the provisions within Proposition 57.

Sincerely,

A handwritten signature in blue ink, appearing to read "Randy Voepel", written over the word "Sincerely,".

Randy Voepel
71st Assembly District