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July 9, 2024

Linda Penner, Chair
Board of State and Community Corrections
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Sacramento, CA 95833
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Via email only

**Re: Corrective Action Plan Submission, Review, and Approval Process
(July 11, 2024 Board Meeting Agenda Item IV. G.)**

Dear Chair Penner and Members of the Board:

We write to request that the Board refrain from voting on the proposed *Corrective Action Plan Submission, Review, and Approval Process* (“CAP Process”) and instead send the proposed CAP Process back to staff for amendments to be voted on at a future meeting. We also request that the Board directs the Board’s General Counsel to meet and confer with the Peace and Justice Law Center and other advocates regarding the drafting of these amendments before a Board vote. At a minimum, the Board’s General Counsel should be directed to make the following four amendments described below.

First, the CAP Process should be amended to allow for no more than 90 days from the Initial Inspection Report until the CAP is completed and the areas of noncompliance remedied. The proposed CAP Process allows for both 60 days to submit and approve a CAP and then an additional 90 days to implement the CAP. To grant departments these extra months, the proposed CAP Process erroneously interprets Welfare and Institutions Code section 209 subdivision (d) as if it stated, “The corrective action plan shall outline how the juvenile hall, special purpose juvenile hall, law enforcement facility, or jail plans to correct the issue of noncompliance and give a reasonable timeframe, not to exceed 90 days [*from the approval of a CAP*], for resolution, that the board shall either approve or deny.” But that is not what the statute says. When the time between BSCC meetings and the 60 days before a facility must close is added to these statutory deadlines, the proposed CAP Process will allow for youth to be incarcerated in unsuitable conditions for as many as ten months. It cannot be the legislature’s intent that youth should be incarcerated in unsuitable conditions for nearly a year after those conditions are discovered. For that reason, Welfare and Institutions Code section 209 (d) should be read as requiring the remedy of noncompliance within 90 days of the Initial Inspection Report, not within 90 days of the approval of a CAP.

Second, the CAP Process should be amended to include a process for youth, their parents and advocates, and probation boards to challenge a BSCC staff finding that noncompliance has been remedied. Under the proposed CAP Process, a finding of continued noncompliance at the CAP resolution date will result in a Board vote where the department can argue against the staff's findings. In contrast, if BSCC staff finds that noncompliance has been remedied, the process simply ends. As we saw with the Board's recent vote on the unsuitability of Los Angeles' Los Padrinos Juvenile Hall, BSCC staff found that the facility compliant with regulations regarding programming at the same time advocates continued to find the facility noncompliant with those same regulations.¹

For this reason, the unsuitability of all facilities subject to this process should be routinely added to the agenda of the next BSCC meeting after the CAP's resolution, regardless of a finding of compliance or noncompliance. In most cases, findings of compliance can be added to the Board's consent items. However, when there is significant disagreement over staff findings, the Board should resolve that dispute. Relatedly, the BSCC staff conducting inspections should be required to consider public input and engage with the members of the public who provide input.

Third, the CAP Process section 5.b. should be expanded to provide more generally for amendments to a CAP after its approval.

Fourth, several parts of the CAP Process should be made clearer. Specifically, (1) it should be made clearer that it is only in unusual circumstances that departments should write CAPs that use the entire time available, (2) that an Initial Inspection Report must issue immediately upon the discovery of any noncompliance with minimum standards, (3) that a department may submit a revised CAP if one is rejected before the 60th day after the Initial Inspection Report, and (4) that a department that chooses not to submit a CAP because the department believes it has remedied noncompliance risks immediate unsuitability by operation of law if BSCC staff or the Board disagrees.

Lastly, we note that the proposed CAP Process does not address the process for a Board vote on unsuitability. While we thank the Board and its counsel for this proposed CAP Process, we also recognize there remains much work to do before the Board has a complete policy for implementing Welfare and Institutions Code section 209.

Sincerely

A handwritten signature in black ink, appearing to read 'Sean Garcia-Leys', with a long horizontal line extending to the right.

Sean Garcia-Leys
Co-Executive Director

¹ <https://www.bscc.ca.gov/wp-content/uploads/2024/04/2024-4-9-lettter-to-BSCC-re-Los-Angeles-Unsuitability.pdf>