

# CALIFORNIA CORRECTIONAL SUPERVISORS ORGANIZATION

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## *“Supervisors Representing Supervisors”*

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### **AUGUST 1, 2008 ~ WEEKLY UPDATE**

**Governor’s Executive Order:** CCSO Chapter Presidents have been given the Governor’s Executive Order and DPA’s PML addressing the budget cash crises. They can also be viewed on the Governor’s website which is <http://gov.ca.gov/press-release> with personnel questions answered on the DPA website which is <http://www.dpa.ca.gov/news/news/2008/20080731-01.htm> or simply go to the CCSO website and go to the resource page and then to the links page for both websites.

The Governor’s Executive order that was signed yesterday, July 31<sup>st</sup> negatively impacts all state workers. Highlights: stops overtime, terminates the services of retired annuitants, seasonal employees, temporary help workers, and student assistants. Permanent intermittent employees will not be separated, but their services will not be used until passage of the budget. The order implements the federal minimum wage of \$6.55 an hour to be paid to nonexempt FLSA employees who do not work any overtime.

Overtime that is critical and necessary will be exempted from this order, thereby, allowing employees who work overtime to receive their full pay with the overtime pay included.

**CCSO is asking its members to go to work and not call in sick.** This Organization has heard that some officers may be calling in sick. As supervisors and/or managers we ask that you do not follow suit. Instead, CCSO is recommending that all of our members go to work each day until this Budget is passed. Remember, any **overtime that management deems necessary, even if overtime is for a few hours in the pay period will allow that employee to be paid their full salary at their state current rate with their overtime pay included. It is to your benefit to go to work during this crisis.**

CCSO further asks that all members, contact their district legislators today, and express your opposition to this Executive Order as well as their failure to pass the budget on time. The Governor gave the Budget to legislators a month ago, and they still have not passed it. Legislators need to be told that they must compromise and work as a bipartisan team to pass this budget. There is no excuse for California legislators allowing this State to attempt to operate without a budget. Call your district legislator and let them know you will remember this farce when it is time to re-elect them.

#### **NOTE:**

State Controller John Chiang has stated that he will not follow the Executive Order regarding paying the federal minimum hourly rate. The Governor said he would sue the Controller if necessary if the order was not followed.

Health, dental, and vision benefits will continue to be covered regardless of paycheck status.

If mortgage/other loan payments are paid via paycheck deduction, talk directly with your lender.

Golden 1 Credit Union, Schools Credit Union, Bank of the West and Arrowhead Credit Union will offer special assistance. If you are not with one of these cited credit unions, contact your own financial institution.

#### **Questions Answered by DPA:**

<http://www.dpa.ca.gov/news/news/2008/20080731-01.htm>

**CCSO Opposes Solano Pilot Program:** Channel 3 KCRA reporter David Bienick contacted CCSO regarding our position on the sexual barrier device pilot program, which will be implemented September 1st at Solano. State Board Member Chris Gold was interviewed as the CCSO representative informing Mr. Benick that our Organization has taken no moral position but opposes this program based on safety issues. CCSO believes security problems will increase, as condoms are a good way to smuggle illegal drugs into prisons, as well as a device that could be made into weapons. Lt. Gold was professional, articulate, and a good spokesman for CCSO. Thank you Board Member Chris Gold.

**SVSP Chapter President Steps Down:** The SVSP Chapter President Lt. Shawn Hatton has stepped down from his elected position as the CCSO Chapter President for SVSP. He has appointed Lt. Joseph Celaya Jr. as the SVSP CCSO Chapter President. We welcome aboard Lt. Celaya and thank Lt. Hatton for his past service as Chapter President.

### **Update on CCSO and Chris Gold v. DPA (“3.125% retro pay” litigation) Reported by Attorney Gary Goyette:**

“On June 13, 2008 the Court granted DPA’s request (made via Demurrer) for abeyance (temporary suspension) of CCSO’s Complaint seeking the retroactive 3.125 % pay for supervisors. The Court concluded that conditions for abeyance exist under the theory of exclusive concurrent jurisdiction. In other words, the Court concluded that San Francisco County Superior Court has initial jurisdiction of CCPOA’s case involving similar matters, and concurrent jurisdiction over similar issues raised in CCSO’s case, and therefore abeyance is *mandatory*.

The Court expressly stated that CCSO's case is not dismissed and that upon completion of CCPOA's case CCSO and DPA will be able to raise their arguments as to why or why not CCSO's action should proceed. Post-Trial briefs in the CCPOA case were set to be filed on June 23, 2008. The San Francisco County Superior Court will issue a decision in that case (presumably) within 90 days of the filing of the briefs.

Appealing the Court’s grant of the abeyance of CCSO’s case was evaluated by our office and discussed with CCSO. Based on the fact that the Court’s decision on the CCPOA lawsuit should be issued relatively soon, however, and on the fact that the attempt to reverse the abeyance by appealing would take more time than the abeyance is likely to be in effect, it was decided that no appeal to the abeyance will be filed.

While the abeyance of CCSO’s lawsuit due to the CCPOA case has certainly interrupted the planned schedule for the litigation, the possible outcomes are mostly positive. If the CCPOA suit results in a verdict obtaining full 3.125% retro pay for CCPOA supervisors, the CCSO case is still necessary and will be used as the leverage behind a demand to DPA to provide the same recovery to CCSO members. A ‘res judicata’ or ‘collateral estoppel’ argument would fully support the idea that DPA must provide the same recovery to CCSO supervisors (remember, it is unlikely CCPOA or their attorneys would ask the Court to force DPA to provide the same recovery to CCSO members). If the CCPOA lawsuit results in a verdict obtaining less than full 3.125 % retro pay recovery, or no recovery at all, then CCSO’s lawsuit will proceed as planned with the abeyance no longer applicable. The only negative outcome is if the CCPOA lawsuit fails, and DPA effectively argues to apply the defeat to CCSO’s case. Such argument should fail, however, since CCSO’s pleading and case is far different than the pleading/ approach used by CCPOA (we specifically seek recovery of the 3.125% retro pay, and so under an individual wage right - class action approach, versus the CCPOA case which never even specifically pled the 3.125% retro pay as damages being sought).

Our office will, of course, provide an update the minute the verdict in the CCPOA case is rendered by the San Francisco County Superior Court.”