

September 4, 2013

Addressing the Federal Court Prison Population Cap

LEGISLATIVE ANALYST'S OFFICE

Presented to:
Senate Budget and Fiscal Review Committee
Hon. Mark Leno, Chair





Status of Federal Court Prison Population Cap Orders

- Federal Court Caps State Prison Population.*** In August 2009, a federal three-judge panel ordered the state to reduce its prison population to 137.5 percent of its design capacity. This order was designed to remedy what the court found to be an unconstitutional level of inmate health care resulting from prison overcrowding. The court's ruling was upheld by the United States Supreme Court in May 2011.

- State Implements Realignment of Lower-Level Offenders.*** In 2011, the state enacted "realignment," which shifted responsibility for housing and supervising certain lower-level offenders from the state to counties. Realignment was projected to reduce the prison population by about 40,000 inmates upon full implementation.

- Court Orders State to Release Inmates.*** In May 2012, the administration notified the federal court that the prison population would not be down to the court-imposed cap. In June 2013, the court ordered the administration to take measures to meet the population cap by December 31, 2013. These measures include (1) expanding by 1,250 the number of inmates housed in fire camps (which are not subject to the court's population cap), (2) maintaining about 3,600 contract beds in out-of-state private prisons, and (3) releasing about 6,000 inmates early.



Governor's Plan to Meet December 2013 Deadline

- Contracts for Additional Beds.** To meet the prison population cap without releasing inmates early, the Governor proposes to expand capacity by 12,500 beds by December, primarily through additional contract beds. This includes the (1) expansion of out-of-state beds, (2) reactivation of two in-state private facilities, and (3) lease of a private facility in California City to be staffed with state employees.
- Requests \$315 Million Increase for 2013-14.** The administration requests \$315 million to implement its plan in 2013-14. The administration has not identified the plan's cost for 2014-15.
- Waives State Laws and Regulations.** The Governor proposes to waive all state laws and regulations related to entering into new contracts for beds in non-state facilities.
- Suspends Closure of California Rehabilitation Center (CRC).** The Governor proposes to suspend the deactivation of CRC (Norco), which was scheduled to be closed in December 2016.
- Includes Long-Term Plan.** The administration proposes to submit a plan to the Legislature by January 2015 related to balanced solutions to address ongoing prison capacity problems.
- Authority Expires January 2017.** The provisions in the Governor's proposal expire January 1, 2017. According to the administration, however, its current plan is only to enter into these contracts through June 2015.



Governor's Plan Addresses Short-Term, But Not Long-Term Problem

	12/31/2013	6/30/2014	6/30/2015	6/30/2016
Projected prison population	122,924	123,424	124,224	125,624
Inmates moved to contract beds ^a	12,500	12,500	12,500	—
Prison population under Governor's plan	110,424	110,924	111,724	125,624
Court ordered population limit ^b	112,032	113,590	113,590	116,857
Surplus/(deficit) of prison capacity	1,608	2,666	1,866	(8,767)

^a Assumes state maintains 4,596 out-of-state contract beds currently included in 2013-14 budget.
^b Assumes planned construction of additional in-fill capacity and that the California Rehabilitation Center in Norco will not be closed in 2015-16.

- Governor's Plan Likely Results in Compliance in the Short-Term...*** If successfully implemented, the Governor's plan would result in compliance with the court's order to meet the population cap by December 2013.
- ...But State Would Need Additional Solutions by 2015-16.*** The administration's plan to purchase additional bed capacity only through 2014-15 would mean that the state is about 8,800 inmates above the court ordered limit in 2015-16.
- Plan For Long-Term Solutions May Not Be Soon Enough.*** The administration's proposal to submit a plan for long-term solutions in January 2015 would leave little time for the Legislature to consider and implement any proposals before the contracts proposed by the administration would expire after June 2015.



Costs of Governor's Plan Raise Several Concerns

- Cost of Contracting Could Be Higher Than Estimated.*** The Governor's plan assumes that the state will be able to contract for beds at rates similar to those it has negotiated in the past. However, this is uncertain primarily because the administration is only contracting for a short period of time—a factor that generally increases contract costs.
- Out-Year Costs Not Provided.*** The administration has not provided the Legislature with the costs of the plan beyond the first year. Based on our estimates, the cost of the plan in 2014-15 could be around \$400 million.
- Offsetting Savings Not Included in Cost Estimate.*** Because the administration's plan will involve moving thousands of inmates out of the state's 34 prisons, the cost to operate those prisons should decline by tens of millions of dollars annually. However, the administration's proposal does not account for these savings.
- Unclear Whether All Funds Will Be Used for Requested Purposes.*** The administration's plan does not include a mechanism to ensure that the requested funds will be used only for the intended purposes, such as language that would revert any unused funds to the General Fund. As such, the department might be able to shift unexpended funds for other purposes unrelated to the plan.
- California City Correctional Center Is Extremely Costly.*** The administration's plan to lease the California City Correctional Center and staff it with state employees is much more expensive than simply contracting for the beds. We estimate that the proposed approach for California City results in a cost-per-bed that is about double the typical contract bed cost.



Governor's Plan Is Subject to Various Risks



Early Releases Still Possible Despite Plan

- There are various logistical difficulties associated with the administration's plan to meet the court order by this December, such as transferring a large number of inmates and modifying in-state contract facilities to house higher-security inmates.
- To the extent the administration is not able to move a sufficient number of inmates into contract facilities by the deadline, the court may order that the state release inmates early. Similarly, if the inmate population is sufficiently higher than currently projected, the state may be ordered to release inmates early.



Plan Could Result in Unnecessary Expenditures

- To the extent that fewer contract beds have been occupied than proposed (such as if the population is significantly lower than expected), the state could be required to pay for contract beds it no longer needs.
- To prevent such unnecessary expenditures, the Legislature should direct the administration to negotiate contracts that maximize the state's ability to pay only for beds it actually occupies.



State Could Be Held in Contempt

- The current court order requires the administration to consult with the court prior to making significant modifications to the population reduction plan.
- Because the administration has not sought court approval for its plan to comply with the court order, it is possible that the state could be held in contempt. This could result in the state being fined by the federal court.



Other Issues for Legislative Consideration



Waiver of State Laws and Regulations Raises Questions

- The administration's plan broadly waives any statutes or regulations that would delay its implementation. While it is likely that this is necessary to expedite the plan, the administration has not indicated which laws and regulations must be suspended.
- Thus, it is not clear how much control and oversight the Legislature is ceding to the administration. To address this concern, we recommend that the Legislature direct the administration to cite the specific laws and regulations it is proposing to waive.



Suspension of Closure of Prison Potentially Unnecessary

- The CRC in Norco is not scheduled to close until December 2016—three years after the court ordered deadline. It is unclear why the administration is proposing to suspend its closure now rather than waiting until it submits its plan for long-term solutions.
- As such, the Legislature may not want to suspend the closure of CRC now, especially since the facility is dilapidated and expensive to run according to the administration.



Key Aspects of the Senate President Pro Tempore's Plan

- Seeks Settlement With Plaintiffs' Attorneys.*** The plan proposes a three-year extension of the deadline to meet the population cap—from December 31, 2013 to December 31, 2016. The plan also proposes a five-person panel to establish a new population cap.

- Establishes Grant Program to Incentivize Counties to Reduce Prison Commitments.*** The plan proposes a program modeled after SB 678, which incentivized counties to reduce probation revocations to state prison. Funds would be awarded to county Boards of Supervisors and could be used to support local programs and practices demonstrated to reduce crime (such as mental health and substance abuse treatment and collaborative courts). Funds would be awarded in two phases: (1) initial seed grants intended to help counties to develop program capacity, and (2) annual ongoing incentive payments tied to county performance, as measured by reduced admissions to state prison.

- Creates an Advisory Commission on Public Safety.*** The plan proposes to establish a new commission made up of 18 members that would advise the Legislature and Governor on strategies to stay within the population cap, including sentencing changes and utilizing evidence-based programs. Recommendations would be prepared for legislative consideration in 2015.



Plan Relies on Potential Settlement to Achieve Short-Term Compliance

- ☑ ***Plan Would Not Meet Current Population Cap by Deadline.*** As proposed, the Senate President Pro Tempore's plan would not meet the court-ordered population reduction by December. It is also unlikely to achieve a large population reduction in 2013-14 because it would take several months to distribute seed grant funds and for counties to ramp up program capacity.

- ☑ ***Settlement Could Extend Deadline.*** However, the plan could avoid violating the federal court order in the short term if the plaintiffs and the administration were able to reach a settlement that extended the deadline for meeting the population cap.



Plan's Ability to Achieve Long-Term Compliance Is Unclear



Success Depends on Various Factors

- Whether the Senate President Pro Tempore's plan would result in long-term compliance with the population cap is subject to significant uncertainty and would depend on a couple of key factors: (1) what, if any, modifications are made to the current population cap and deadline as part of a potential settlement agreement and (2) how many prison admissions are avoided through the proposed local grant program.



Long-Term Population Impacts Uncertain

- The degree to which the plan is able to reduce the prison population is subject to significant uncertainty and could vary significantly depending primarily on (1) the amount of the grant provided to counties per avoided prison admission (the size of the incentive) and (2) how counties invest the funding (effectiveness of the program).
- In order to reach the level of the current population cap by December 31, 2016, we estimate that the program would need to result in approximately 7,000 avoided prison admissions annually (or about one-fifth of total admissions) beginning in 2014-15.



Plan Would Take Years to Achieve Its Full Impact

- The proposed grant program could take five years or longer to achieve its full effect on the prison population when accounting for the time for counties to ramp up program capacity, as well as the current length of stay of inmates.



Likely State Costs in Short Term, But Potential for Savings in Long Term

- ☑ ***Hundreds of Millions of Dollars in Up-Front Costs for Seed Money.*** The Senate President Pro Tempore's plan proposes providing seed money to counties totaling \$200 million in 2013-14 and an additional \$200 million in 2014-15. The plan assumes annual expenditures of up to \$300 million in incentive payments for reduced prison admissions thereafter.

- ☑ ***Expenditures Could Result in Offsetting Savings.*** To the extent that the county grants achieve the intended goal of reducing state prison admissions, the state would realize reduced costs from incarcerating inmates and supervising parolees.

- ☑ ***Long-Term Net Effect Uncertain but Potential for Savings.*** The long-term fiscal effects of the plan are unknown and would depend on a couple of factors. The net effect would be savings to the extent that the amount of the grant per reduced prison admission is less than the full cost to house and supervise an offender in state prison and parole for the full period under the jurisdiction of the state. The higher the grant amount, the lower the net savings. If the grant amount was greater than state prison and parole costs, there would be net costs. Therefore, the magnitude of net state savings or costs in the long term would depend on (1) how many prison admissions were avoided and (2) how much funding was provided to counties per avoided prison admission.



Plan Is Subject to Various Risks

- Unclear if Settlement Can Be Reached.*** If the administration and the plaintiffs are unable to reach a settlement agreement that extends the deadline to meet the population cap, the Legislature would need to consider other options (such as contracting out or early releases) to achieve short-term compliance with the court order.

- Plan May Not Achieve a Sufficient Population Reduction.*** Even if the deadline is extended, it is possible that the plan may not achieve a sufficient population reduction by the deadline. The Legislature could mitigate this risk by implementing other policies to reduce the prison population (such as sentencing changes) or by developing a contingency plan if the deadline is not met (such as contracting out or early releases).

- Plan Currently Lacks Some Key Details.*** At this time, some details of the plan still need to be developed, including:
 - How much funding would be provided to counties per reduced admission.
 - How a baseline would be established for purposes of measuring county performance in reducing prison admissions.
 - How the program would interact with the state's preexisting SB 678 grant program to incentivize reduced felony probation revocations to state prison.



Other Issues for Legislative Consideration



Potential Impacts on Public Safety

- The Senate President Pro Tempore's plan could have various impacts on public safety. To the extent that more offenders are supervised in the community rather than incarcerated in state prison, there could be additional crimes committed. On the other hand, to the extent that counties invest grant funds to effectively implement programs that have been demonstrated to reduce crime and recidivism, the proposed grant program could have a significant positive impact on public safety.
- The net effect on public safety would depend in large part on which offenders are diverted from prison due to the program, as well as how the local criminal justice system manages these offenders.



Likely Increase in County Caseloads

- To the extent that counties act to reduce prison admissions by diverting offenders to local supervision or incarceration, it is likely that counties would see an increase in their jail and probation supervision populations.
- The costs of any potential caseload increases would be offset by state incentive grant funding.



Legislature's Approach Should Promote Long-Term Compliance

- Short-Term Options Limited.** There are now only a few months until the December 2013 court-imposed deadline. Therefore, options to bring the prison population to within 137.5 percent of design capacity are generally limited to (1) additional contracting for capacity, (2) implementing policies that would result in current inmates being released earlier than under current law, or (3) some combination of these.
- Meeting Population Cap Not Sufficient to End Court Oversight.** Meeting the court-ordered population cap would not release the state from federal oversight of its prison medical and mental health programs. The federal courts continue to require additional improvements in prison operations and facilities.
- Plan Should Also Promote Long-Term Compliance With Prison Cap.** The federal courts are unlikely to consider ending oversight of state prisons until they are convinced that the state can maintain constitutional levels of medical and mental health care in the prisons. This will likely include maintaining what it believes are reasonable levels of prison overcrowding.
- Greater Range of Options for Long-Term Compliance.** There are a number of options the Legislature could consider to help the state achieve a durable reduction in prison crowding.

 - **Reduce Prison Admissions.** This could include (1) investing in programs that reduce crime or recidivism, (2) incentivizing the more frequent use of alternatives to prison, and (3) further limiting the circumstances in which an offender is eligible to be sent to state prison.
 - **Reduce Length of Time in Prison.** This might include (1) reducing the length of sentences or enhancements, (2) giving judges more flexibility in setting sentence length, (3) expanding sentence credits for certain offenders, or (4) expanding the use of furlough or alternative custody programs for state inmates.



Legislature's Approach Should Promote Long-Term Compliance *(Continued)*

- ***Reduce Parolee Recidivism.*** This could include (1) improving or expanding current rehabilitation programs, (2) developing alternative sanctions for technical violations, or (3) better matching of programs and parolees.
- ***Increase Use of Contract Beds.*** The state could expand its use of longer-term contract facilities within and outside California.
- ***Increase Permanent Prison Capacity.*** The Legislature could approve additional prison construction in order to increase the design capacity of the prison system.