

March 1, 2006

Honorable Kevin Murray  
State Capitol, Room 5050  
Sacramento, CA 95814

Dear Senator Murray:

The Senate Committee on Public Safety has conducted an extensive informational hearing on the Governor's public safety bond proposal as reflected in AB 1833 (Arambula). Together with the comprehensive policy analysis prepared by Committee staff, the hearing has allowed the Committee to thoroughly review the Governor's proposal. This letter summarizes our assessment for your deliberations as chair of the conference committee considering the Governor's proposed infrastructure bond package.

At our February 14<sup>th</sup> hearing, the Committee took testimony from Legislative Analyst Elizabeth Hill; the administration represented by Undersecretary (now Acting Secretary) of the Department of Corrections and Rehabilitation ("CDCR") Jeanne S. Woodford, the Governor's Public Safety Liaison Les Weidman, and Jim Tilton from the Department of Finance; Dr. Barry Krisberg, President of the National Council on Crime and Delinquency; Professor Franklin Zimring of the University of California Boalt Hall School of Law; Sheriff Lee Baca of Los Angeles; Sheriff Robert Doyle of Marin County; Lt. Ron Cottingham, President of the Peace Officers Research Association of California; Lance Corcoran, Chief of Governmental Affairs for the California Correctional Peace Officers Association; Steve Krull, President of the California Police Chiefs Association; Prison Law Office Director Don Specter; ACLU Southern California Jails Project Coordinator Jody Kent; Dr. Diana Sylvestre, Assistant Clinical Professor of Medicine at U.C. San Francisco and addiction medicine specialist; Judy Greenspan of California Prison Focus; and Rose Braz, Director of Critical Resistance and member of the Coalition for Effective Public Safety. Each of these panelists provided a knowledgeable and unique perspective on the prison and jail inmate population management problems facing California.

With the exception of the administration representatives, there was a surprising consistency of opinion among witnesses that the Governor's proposal is flawed for a variety of reasons. These deficiencies are reviewed below, after the following summary of the proposal's provisions, and a brief background on the general issue of incarceration trends and problems in California.

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## The Proposal

The Governor proposes a public safety general obligation bond commitment of \$6.8 billion over 10 years, divided into two 5-year periods:

- First Five Years – 2006 Total General Obligation Bond: \$2.6 billion
- Second Five Years – 2010 Total General Obligation Bond: \$4.2 billion

With respect to jails, this proposal contemplates state general obligation funds "continuously appropriated" to the Department of Corrections and Rehabilitation ("CDCR"), which would make grants to local governments for increasing county jail capacities, including jail capacity for state prison inmates. Counties would be required to equally match any funds received from the state, allowing up to half of their match to be in-kind, unless exempted from the match (i.e., small counties). All of the state bond monies and corresponding county matches would be for *county* inmates. However, participating counties also would be required to construct additional bed space equal to the amount of their grant award for specified *state* prison inmates who are either within the last 90 days of their sentence or are sentenced on a parole revocation. While the bill is silent on how local governments would fund these additional designated beds, it is presumed funding would be acquired through local lease revenue bonds. This proposal would require the state to reimburse counties for the "actual costs" of detaining state inmates, including capital costs.

This proposal also contains provisions for additional expenditures:

### **First Five Years – 2006**

General Obligation bond for appropriation by the Legislature: \$610 million

- \$215 million for the replacement or relocation of facilities for emergency fire response
- \$200 million to the Department of Justice for a new DNA laboratory
- \$170 million to the Department of Corrections and Rehabilitation for the acquisition, construction, renovation, or remodeling of adult and youth facilities
- \$25 million for state military facilities

### **Second Five Years – 2010**

- (1) Funding is the same as the 2006 plan with \$2 billion coming from a general obligation bond for jails, subject to the local matches and additional requirements described above.

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(2) General Obligation for appropriation by the Legislature:

- \$1.1 billion for the acquisition, construction, renovation, or remodeling of state adult and youth facilities
- \$1.1 billion for the development, renovation, repair, relocation, or restoration of public safety related buildings

## Background

For the past 25 years California has followed a nationwide trend of increased incarceration, both in overall numbers and as a percentage of the population. According to the California Department of Justice, in 1980 California had a total of 27,916 inmates in state prison, or 176.9 per 100,000 of its citizens. In 1990 the state prison inmate population was 99,145, or 495 per 100,000. By 2000, the state prison inmate population had risen to 161,000 or 725.3 per 100,000. In 2004, there were 164,169 state prison inmates, which amounted to 686.7 per 100,000.<sup>1</sup>

Since 1984, California has built 22 new state prisons, with a design capacity of 47,100 new prison beds. Despite this considerable prison construction program, rates of incarceration have outpaced prison capacity, resulting in a crisis of overcrowding. Similarly, an overcrowding crisis at the county jail level has resulted in 24 out of 62 jurisdictions with county jail facilities in California operating under court-ordered population caps.

The causes of prison and jail overcrowding in California have been examined by a number of commissions and panels over the past several years. The Blue Ribbon Commission on Inmate Population Management in 1990, the Little Hoover Commission in 2005 as well as earlier reports, and the Corrections Independent Review Panel ("IRP") assembled by Governor Schwarzenegger and chaired by former Governor George Deukmejian have all examined the issue of burgeoning inmate populations. Importantly, none of these groups recommended new jail or prison construction as the answer to the problem of overcrowding. Instead, these panels generally focused on enhancing the performance, rather than the size, of California's correctional system. Most recently, the IRP identified the three major factors that influence inmate population as: (1) the average length of time served in prison; (2) the number of new admissions; and (3) the number of parole violators returning to the prison system.

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<sup>1</sup> "Crime in California 2004," California Department of Justice.  
<http://caag.state.ca.us/cjsc/publications/candd/cd04/Data%20Tables.pdf>

Past County Correctional Facility Bond Measures:<sup>2</sup>

The following chart summarizes correctional facility bond acts in California since 1981:

Previous County Correctional Facility Bond Acts	Key Provisions
County Jail Capital Expenditure Bond Act of 1981 - \$500 million	<ul style="list-style-type: none"> <li>•25 Percent local match. Subject to legislative appropriation. Cites fiscal constraints of Proposition 13.</li> </ul>
County Jail Capital Expenditure Bond Act of 1984 - \$250 million	<ul style="list-style-type: none"> <li>•No match specified. Moneys made available subject to criteria adopted by the Legislature. cites fiscal constraints of Proposition 13.</li> </ul>
County Correctional Facility Capital Expenditure Bond Act of 1986 – \$495 million	<ul style="list-style-type: none"> <li>•25 percent local match, which the Legislature may modify or waive. Subject to legislative appropriation. Cites fiscal constraints of Proposition 13.</li> <li>•Provision related to mentally ill inmates, alternatives to incarceration, and joint-use facilities.</li> </ul>
County Correctional Facility Capital Expenditure and Youth Facility Bond Act of 1988 - \$500 million	<ul style="list-style-type: none"> <li>•25 percent local match. Subject to legislative appropriation. Cites fiscal constraints of Proposition 13.</li> <li>•Provision related to mentally ill inmates, alternatives to incarceration. Provided that a participating county could not exceed a specified incarceration rate.</li> <li>•Made statutory allocations by county.</li> </ul>
County Correctional Facility Capital Expenditure and Youth Facility Bond Act of 1990 - \$450 million	<ul style="list-style-type: none"> <li>•Rejected by the voters in general election</li> </ul>
Youthful and Adult Offender Local Facilities Bond Act of 1996 - \$700 million	<ul style="list-style-type: none"> <li>•Rejected by the voters in general election</li> </ul>

### Concerns

The Proposed Facilities are Not Policy-Based: The Legislative Analyst testified that this bond proposal would result in facility decisions driving state correctional policy, "namely the expanded state use of local jail facilities, for approximately 20 to 30 years." The Analyst recommends that legislative policy and program decisions should drive facility decisions, not the other way around.

<sup>2</sup> Table from LAO, "An Overview: Governor's Public Safety Bond Proposal" (February 2006).

The Proposal is Not Based on a Long-Term Needs Assessment: The Legislative Analyst also testified that the proposal is unsupported by assessments of the state's long-term infrastructure needs with respect to correctional custodial facilities. In the absence of such an assessment, any critical evaluation of how this proposal would address the state's overall needs in the short of long term is difficult.

The Proposal Promotes Capacity Building and Ignores Other Inmate Population Management Strategies: Successive panels, most recently the Governor's own IRP, have studied jail and prison overcrowding in California and found that the most appropriate and effective policies should focus on population reduction. None of these panels recommended further jail and prison construction. This plan fails to incorporate any of the recommendations of the IRP to reduce prison populations; instead, it focuses solely on jail and prison expansion.

Lack of Legislative Oversight: This proposal does not provide for adequate legislative oversight of how the bond funds would be spent. Nearly two-thirds – \$4 billion of the proposed \$6.8 billion – would be continuously appropriated to CDCR under this proposal. The administration argues that oversight nevertheless would be achieved because the "actual costs" of operating these facilities would be required to be annually appropriated by the Legislature. However, because the state's obligation for these costs would be contractual, it appears the Legislature would be presented with an appropriation request for which the state already would be contractually obligated to pay.

This lack of oversight has major policy as well as fiscal implications:

- The Legislature would cede to CDCR all decision-making regarding the number and type of facilities that would be built as well as the level of programming, if any, that would be provided to inmates at the to-be-built facilities.
- Although the contracts between CDCR and the counties contemplated under this proposal would obligate the state to pay the operating costs related to the state inmates housed in the "dedicated beds," there are no cost-containment measures specified in the bill in relation to those costs.
- The measure requires any program costs for prison inmates housed in local beds to be paid by the state through the new "actual costs" calculation, but the "actual cost" reimbursement rate, total number of local beds, needed number and level of prison beds to be constructed by locals and lease terms for CDCR of the local prison beds are not specified.
- There is nothing in this proposal that caps a local government's grant amount or prevents a small number of jurisdictions from being awarded a disproportionate share of funds. Further, this proposal does not require that local governments with the greatest demonstrated need will receive special consideration during the competitive grant process.

- There are no reporting requirements placed on local governments or the department to inform the Legislature of the regulatory process, approval process or ongoing spending.

Unreliability of CDCR Inmate Population Projections: A September 2005 report of the California State Auditor found CDCR's inmate population projections so inaccurate as to be "useless" for purposes of planning future prison construction. "(T)he projections tend to overestimate future populations, which could result in the department building facilities that are not needed if it relies solely on the projections."

The State Would Own None of the Facilities Funded Under This Proposal. Under this proposal, after the contracts between CDCR and the counties expire; the state would not own any of the facilities it helped finance.

Juvenile Justice: This proposal would provide that \$170 million be available to CDCR from the 2006 bond for acquisition, construction, renovation or remodeling of state adult and youth facilities and that \$1.1 billion from the 2010 bond be "available for appropriation by the Legislature for the acquisition, construction, renovation, or remodeling of state adult and youth correctional facilities" in 2010. This is the bond's only reference to youth correctional facilities.

The Division of Juvenile Justice ("DJJ", formerly the California Youth Authority) is under intense scrutiny and criticism because of violence in its institutions, ward suicides, and its general failure to provide mandated education and treatment to wards, most of whom have significant mental health problems. The physical condition of the state's current juvenile facilities is regarded by most experts as unsuitable for the rehabilitative mission of the division and the purposes of the juvenile court. This proposal fails to assure any bond funds for improved state juvenile facilities, and contains no provisions for strengthening *local* juvenile detention placements and facilities.

2006 Bond – \$25 million to Department of the Military: The bill does not specify the facilities to be developed with bond funds and does not require federal matching funds.

2006 Bond – \$215 million to Department of Forestry and Fire Protection: The measure does not specify that these funds will be available for facilities that *directly* support emergency fire response activities.

I hope you find this summary of the Governor's public safety bond proposal useful as you address the Governor's infrastructure bond proposal as a whole.

Sincerely,

CAROLE MIGDEN