

SUBCOMMITTEE NO. 5

Agenda

Senator Nancy Skinner, Chair
Senator Joel Anderson
Senator Jim Beall



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State Capitol - Room 113

Consultant: Julie Salley

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ITEMS TO BE HEARD

5225 DEPARTMENT OF CORRECTIONS AND REHABILITATION (CDCR)

Issue 1: CDCR Overview

Governor's Budget. The budget proposes total funding of \$12 billion (\$11.7 billion General Fund and \$313 million other funds) for CDCR in 2018-19. This is an increase of approximately \$1 billion over 2016-17 actual expenditures. The following table shows CDCR's total operational expenditures and positions for 2016-17 through 2018-19.

**CDCR – Total Operational Expenditures and Positions
(Dollars in thousands)**

Funding	2016-17	2017-18	2018-19
General Fund	\$10,575,577	\$11,520,105	\$11,641,364
General Fund, Prop 98	16,567	20,004	20,017
Other Funds	3,315	4,196	4,202
Reimbursements	233,832	236,442	236,504
Inmate Welfare Fund	60,954	69,552	73,459
SCC Performance Incentive Fund	-1,000	-1,000	-1,000
Total	\$10,889,245	\$11,849,299	\$11,974,546
Positions	55,081	56,452	57,001

Background. Effective July 1, 2005, the California Department of Corrections and Rehabilitation (CDCR) was created pursuant to the Governor's Reorganization Plan No. 1 of 2005 and SB 737 (Romero), Chapter 10, Statutes of 2005. All departments that previously reported to the Youth and Adult Correctional Agency (YACA) were consolidated into CDCR and include the California Department of Corrections, Youth Authority (now the Division of Juvenile Justice), Board of Corrections (now the Board of State and Community Corrections (BSCC)), Board of Prison Terms, and the Commission on Correctional Peace Officers' Standards and Training (CPOST).

The mission of CDCR is to enhance public safety through safe and secure incarceration of offenders, effective parole supervision, and rehabilitative strategies to successfully reintegrate offenders into our communities.

CDCR is organized into the following programs:

- Corrections and Rehabilitation Administration
- Juvenile: Operations and Offender Programs, Academic and Vocational Education, Health Care Services

- Adult Corrections and Rehabilitation Operations: Security, Inmate Support, Contracted Facilities, Institution Administration
- Parole Operations: Adult Supervision, Adult Community-Based Programs, Administration
- Board of Parole Hearings: Adult Hearings, Administration
- Adult Rehabilitation Programming: Education, Vocational, and Offender Programs, Education, Substance Abuse Programs, Inmate Activities, Administration
- Adult Health Care Services

The 2017 budget act assumed that the average daily adult prison population in 2017-18 would be 127,693. However, the proposed budget assumes an average population of 130,317 for 2017-18. This is a difference of over 2,600 people. (*The prison population will be discussed in detail in the next agenda item.*) The proposed budget assumes that the population will drop by 2.2 percent or 2,905 people in 2018-19.

As of February 21, 2018, CDCR is responsible for overseeing 182,725 people. Most of those people are in custody (129,431) and the remainder are on parole (46,563) or not currently under CDCR's jurisdiction while they are confined in another state or out to court, for example. The institution population on February 21st was 113,902, which constitutes 133.9 percent of prison capacity. The most overcrowded prison is Valley State Prison in Chowchilla, which is currently at 178.4 percent of its capacity. For female inmates, Central California Women's Facility in Chowchilla is currently the most overcrowded at 147.6 percent of its capacity.

Three Judge Panel and Population Reduction. In 2009, a federal three-judge panel declared that overcrowding in the state's prison system was the primary reason that CDCR was unable to provide inmates with constitutionally adequate health care. The court ruled that in order for CDCR to provide such care, overcrowding would have to be reduced. Specifically, the court ruled that by June 2013 the state must reduce the inmate population to no more than 137.5 percent of the design capacity in the 33 prisons operated by CDCR at the time. Design capacity generally refers to the number of beds CDCR would operate if it housed only one inmate per cell and did not use temporary beds, such as housing inmates in gyms. Inmates housed in contract facilities, fire camps, or community reentry facilities are not counted toward the overcrowding limit. In May 2011, the U.S. Supreme Court upheld the three-judge panel's ruling. Under the population cap imposed by the federal court, the state was required to reduce the number of inmates housed in its 33 state prisons by about 34,000 inmates relative to the prison population at the time of the ruling.

As a result of the court ruling and the requirement that the state maintain a prison population that remain under a 137.5 percent capacity cap, significant policy changes designed to reduce the number of people in prison have been implemented over the last eight years. The following are among the most significant changes:

Public Safety Realignment. In 2011, the Legislature approved a broad realignment of public safety, health, and human services programs from state to local responsibility. Included in this realignment were sentencing law changes requiring that certain lower-level felons be managed by counties in jails

and under community supervision rather than sent to state prison. Generally, only felony offenders who have a current or prior offense for a violent, serious, or sex offense are sentenced to serve time in a state prison. Conversely, under realignment, lower-level felons convicted of non-violent, non-serious, and non-sex-related crimes (colloquially referred to as “non-non-nons”) serve time in local jails. In addition, of those felons released from state prison, generally only those with a current violent or serious offense are supervised in the community by state parole agents, with other offenders supervised by county probation departments. Responsibility for housing state parole violators was also shifted from state prisons to county jails.

In adopting this realignment the Legislature had multiple goals, including reducing the prison population to meet the federal court-ordered cap, reducing state correctional costs, and reserving state prison for the most violent and serious offenders. Another goal of realignment was to improve public safety outcomes by keeping lower-level offenders in local communities where treatment services exist and where local criminal justice agencies can coordinate efforts to ensure that offenders get the appropriate combination of incarceration, community supervision, and treatment. For many, realignment was based on confidence that coordinated local efforts are better suited for assembling resources and implementing effective strategies for managing these offenders and reducing recidivism. This was rooted partly in California's successful realignment reform of its juvenile justice over the last 20 years and the success of SB 678 (Leno), Chapter 608, Statutes of 2009, which incentivized evidence-based practices for felony probationers through a formula that split state prison savings resulting from improved outcomes among this offender population.

Passage of Proposition 36. The passage of Proposition 36 in 2012 resulted in reduced prison sentences served under the Three Strikes law for certain third strikers whose current offenses were non-serious, non-violent felonies. The measure also allowed resentencing of certain third strikers who were serving life sentences for specified non-serious, non-violent felonies. The measure, however, provides for some exceptions to these shorter sentences. Specifically, the measure required that if the offender has committed certain new or prior offenses, including some drug-, sex-, and gun-related felonies, he or she would still be subject to a life sentence under the three strikes law.¹

February 2014 Court Order. On February 10, 2014, the federal court ordered the state to implement several population reduction measures to comply with the court-ordered population cap and appointed a compliance officer with the authority to order the immediate release of inmates should the state fail to maintain the final benchmark. The court reaffirmed that CDCR would remain under the jurisdiction of the court for as long as necessary to continue compliance with the final benchmark of 137.5 percent of design capacity and establish a durable solution.

The February 10, 2014, order required the CDCR to:

- Increase prospective credit earnings for non-violent second-strike inmates as well as minimum custody inmates.
- Allow non-violent second-strike inmates who have reached 50 percent of their total sentence to be referred to the Board of Parole Hearings for parole consideration.

¹ Legislative Analyst's Office, “Proposition 36: Three Strikes Law. Sentencing for Repeat Felony Offenders. Initiative Statute.” July 18, 2012.

- Release inmates who have been granted parole by the Board of Parole Hearings but have future parole dates.
- Expand CDCR's medical parole program.
- Allow inmates age 60 and over who have served at least 25 years of incarceration to be considered for parole (the "elderly parole" program).
- Increase its use of reentry services and alternative custody programs.

SB 260 and 261. In 2013, SB 260 (Hancock), Chapter 312, Statutes of 2013, created a youthful offender parole process. Under this bill, individuals who committed their crimes under the age of 18 would be eligible for parole, even if serving a life sentence. Specifically, the legislation established a youth offender parole hearing which is a hearing by the Board of Parole Hearings (BPH) for the purpose of reviewing the parole suitability of any prisoner who was under 18 years of age at the time of his or her controlling offense. The bill created the following parole mechanism for a person who was convicted of a controlling offense that was committed before the person had attained 18 years of age:

- If the controlling offense was a determinate sentence the person is be eligible for release after 15 years.
- If the controlling offense was a life-term of less than 25 years then the person is eligible for release after 20 years.
- If the controlling offense was a life-term of 25 years to life then the person is eligible for release after 25 years.

In addition, SB 260 required that BPH in reviewing a youthful offender's suitability for parole must give great weight to the diminished culpability of juveniles as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the person.

In 2015, SB 261 (Hancock), Chapter 471, Statutes of 2015, expanded the youthful parole process to include people who were convicted of committing a crime prior to attaining the age of 23.

Passage of Proposition 47. In November 2014, the voters approved Proposition 47, the Reduced Penalties for Some Crimes Initiative, which requires misdemeanor rather than felony sentencing for certain property and drug crimes and permits inmates previously sentenced for these reclassified crimes to petition for resentencing.

Proposition 47 requires that state savings resulting from the proposition be transferred into a new fund, the Safe Neighborhoods and Schools Fund. The new fund will be used to reduce truancy and support drop-out prevention programs in K-12 schools (25 percent of fund revenue), increase funding for trauma recovery centers (10 percent of fund revenue), and support mental health and substance use disorder treatment services and diversion programs for people in the criminal justice system (65

percent of fund revenue). The Director of Finance is required on or before July 31 of each fiscal year to calculate the state savings for the previous fiscal year compared to 2013-14.²

In the proposed budget, the Administration estimates that the 2017-18 savings associated with Proposition 47, will be \$64.4 million in 2017-18, an increase of \$18.8 million in savings over 2016-17. Ongoing savings are estimated to be approximately \$69 million.

Passage of Proposition 57. Approved by voters in November 2016, Proposition 57, the California Parole for Non-Violent Criminal and Juvenile Court Trial Requirements Initiative, brought three major changes to sentencing:

- Allowed individuals convicted of nonviolent felonies to be considered for parole after completing the sentence for their primary offense.
- Allowed CDCR to award additional sentence reduction credits for rehabilitation, good behavior or educational achievements.
- Required a judge's approval before most juvenile defendants can be tried in an adult court.

CDCR Regulations. In November 2017 the Administration filed final regulations with the Office of Administrative Law. Those regulations, which were similar to the March 2017 emergency regulations, provide the following parameters for implementing the proposition:

Expand Sentencing Credits. The Administration increased the number of credits inmates earn for good behavior and participation in rehabilitation programs. The changes to good conduct credits went into effect on May 1, 2017 under the emergency regulations. The regulations allowing inmates to earn credits for participation in rehabilitation programs, such as modifications to milestone credits, went into effect on August 1, 2017. Specifically, the regulations made the following changes:

Good Conduct Credit

- The regulations simplified the existing categories around which inmates can receive credit for good behavior and how much they can receive.
 - Condemned inmates and inmates serving life without the possibility of parole (LWOP) are not allowed to receive credit, which is the same as the previous policy.
 - Violent felons could previously receive a reduction between zero and 15 percent of their sentence for good behavior. Under the regulations, all violent felons receive a reduction of up to 20 percent of their sentence for good behavior.
 - Nonviolent third strike inmates are able to receive a reduction of up to 33.3 percent of their time.

² 2015-16 Governor's Budget Summary

- Inmates in minimum custody facilities receive up to half of their time off for good behavior.
- Inmates who are working in fire camps earn up to 66.6 percent of their time off for good behavior if they are in for a nonviolent offense. Those in for a violent offense earn a reduction of 50 percent of their time.

Milestone Completion Credits

- Previously, only people serving terms for non-violent crimes were eligible for milestone credits. The Proposition 57 regulations extended eligibility for milestone credits to all inmates, with the exception of those who are condemned or serving LWOP sentences.
- Expanded the amount of milestone credits an inmate can earn from six weeks per year to 12 weeks.
- Programs eligible for milestone credits include academic programs, substance use disorder treatment, social life skills programs, career technical education, cognitive behavioral treatment, enhanced outpatient programs, or other approved programs with demonstrated rehabilitative qualities.
- The milestone credits were not applied retroactively.

Rehabilitation Achievement Credits

- These credits constitute a new type of credit earning. Under the regulations, inmates participating in volunteer programs are now eligible to earn credits toward their sentences for participation.
- As with milestone credits, all inmates regardless of their offense, with the exception of condemned and LWOP inmates are eligible for achievement credit earnings.
- Under the regulations, an inmate can earn one week of credit for every 52 hours of participation in a volunteer activity – with a maximum of four weeks per year.
- As with the milestone credits, these credits were not applied retroactively.
- Wardens at each institution are responsible for creating an eligible list of volunteer programs for their prison.

Educational Merit Credit

- As with the rehabilitation achievement credits, this is a new credit under Proposition 57. Inmates now receive credit for extraordinary educational achievements.
 - Inmates completing their GED or high school diploma receive three months of credit.

- Inmates completing an AA, BA, or other college degree receive six months of credit.
- Inmates completing their offender mentor certificate program receive six months of credit.
- Unlike the previous credits, this credit is retroactive and will be cumulative for those inmates receiving more than one degree or certificate.
- In order to receive the credit, the inmate needs to have done at least 50 percent of the work toward the degree or certificate in prison.

Heroic Acts Statute

- Under current law, an inmate can be awarded up to 12 months credit for a heroic act. Proposition 57 did not change that credit earning.

New Nonviolent Offender Parole Consideration Process. On July 1, 2017, the Administration began the parole consideration process for nonviolent offenders. Under the proposition inmates are eligible for parole consideration upon the completion of the sentence for their primary offense. Prior to Proposition 57, any enhancements included in the sentence were included in establishing an eligible parole date. The changes brought by Proposition 57 are similar to the changes implemented by CDCR several years ago for second strike offenders. CDCR is viewing Proposition 57 as an expansion of that existing paper review parole process. The proposition gave the CDCR secretary a significant amount of latitude in terms of implementation. As part of that latitude, CDCR's regulations limited the impact of the proposition on three groups of people: youthful offenders, people serving time for a non-violent third strike, and people who are required to register as sex offenders upon their release.

Impact of Proposition 57 on Youthful Offenders. For youthful offenders, the credit earnings created under proposition 57 apply to their original eligibility parole date and not to their youthful offender parole eligibility date. However, youthful offenders are included in the new formula that calculates eligibility for parole based upon their primary offense and not on the enhancements to their sentences.

Impact of Proposition 57 on Non-Violent Third Strikers. Under the regulations put in place by CDCR, "nonviolent offenders" are defined in such a way as to exclude people who are in prison for a third-strike offense, even if that third strike is a nonviolent offense.

Impact of Proposition 57 on Sex Offenders. Similar to people serving time for a third strike, the regulations also exclude anyone who is required to register as a sex offender under Penal Code 290, the Sex Offender Registration Act, whether or not their current offense is a sex offense.

Prison Population Decline. Thanks in large part to efforts over the last eight years, California's prison population, which peaked at 173,000 in 2007, has declined to 113,912 adult inmates in the state's prisons as of February 21, 2018. Those reductions seem to have stalled over the last year, however, despite the implementation of Proposition 57. Currently, the state's prisons are at 133.9 percent of their

design capacity, which is roughly the same as February 2017. As these sentencing changes continue to be implemented the Administration expects the population to continue its decline. (*The projected prison population estimate will be discussed in detail in the next item.*)

2017 Legislation. In addition to the changes mentioned above, a number of bills were passed by the Legislature and signed by the Governor that should ultimately reduce the prison population by reducing sentences. Among those bills are:

- ***SB 180 (Mitchell and Lara) Chapter 677, Statutes of 2017***, repeals the three year sentencing enhancement for people convicted of a prior minor drug crime.
- ***SB 394 (Lara and Mitchell) Chapter 68, Statutes of 2017***, conforms state law to recent U.S. Supreme Court decisions banning mandatory life sentences for those under 18 convicted of murder by automatically giving the youthful offenders a chance at parole after serving 25 years of their sentence.
- ***SB 620 (Bradford) Chapter 682, Statutes of 2017***, gives judges discretion over whether or not to impose additional years in prison on people who use guns when committing crimes, no longer making the sentence enhancement automatic.
- ***AB 1308 (Stone) Chapter 675, Statutes of 2017***, extends the youthful offender parole process created by SB 260 and 261 (discussed above) to people up through the age of 25.

Staff Comments

Proposition 57. Critics have argued that prohibiting non-violent third strikers and certain sex offender registrants from consideration in the nonviolent parole process constitutes a violation of the intent of the proposition, which states that all people convicted of a nonviolent felony offense shall be eligible for parole consideration after completing the term of their primary offense. The primary offense is defined as the longest term imposed excluding any additional terms added to an offender's sentence, such as any sentencing enhancements.

This past February, Sacramento County Superior Court Judge Allen Sumner affirmed the position of the critics and has preliminarily ordered prison officials to rewrite part of the regulations for Proposition 57. Specifically, he stated that in regard to people who have committed a sex offense, the scope of exclusions should be narrowed to only those now serving time for a violent sex offense, thus allowing sex offender registrants who are currently in prison for a nonviolent offense to participate in the parole consideration process.

In addition, critics have urged the state to use the youthful offender parole date when calculating the impact of credit earnings, rather than the date of their original parole date. Using the youthful offender parole date could conceivably affect the parole dates of a significant portion of 17,825 youthful offenders who are currently in prison.

Given the exclusion of these three populations in the regulations, the Senate may wish to consider statutory language expanding the nonviolent parole process to include nonviolent third strikers, nonviolent sex registrants, and to require that the parole consideration date for youthful offenders be the calculated based on either their original sentence or their youthful offender date, whichever is earlier. Allowing these groups of inmates to come before the parole board does not automatically make them eligible for release. It simply grants them a parole hearing and leaves it to the parole board to

decide whether or not the individuals are suitable for parole. Therefore, this expansion should not have an impact on public safety.

Staff Recommendation. This is an overview item designed to provide an update on the correctional system prior to the subcommittee beginning its in-depth review of the proposed CDCR budget. No action is necessary at this time.

Issue 2: Adult Prison Population Estimates

Governor's Budget. The budget proposes total funding of \$12 billion (\$11.7 billion General Fund and \$313 million other funds) for the California Department of Corrections and Rehabilitation (CDCR) in 2018-19. This is an increase of approximately \$1 billion over 2016-17 actual expenditures. This increase reflects higher costs related to (1) over \$350 million in annual employee benefit increases, (2) \$131 million for roof replacements and mold remediation, and (3) increased payments for debt service related to previous infrastructure lease revenue bonds. The proposed budget reflects a per inmate annual cost of \$79,701 in 2017-18, growing to \$80,729 in 2018-19. Both years represent an increase over the actual 2016-17 per inmate cost of \$73,694.

Adult Institution Population. The adult inmate average daily population is projected to decline from 130,317 in 2017-18 to 127,412 in 2018-19, a decrease of 2,905 inmates. This population projection constitutes a significant increase from the 2017 Budget Act's 2017-18 projection. The 2017 Budget Act assumed that the average daily prison population in 2017-18 would be 127,693. However, the proposed budget increases that number and assumes an average population of 130,317 for 2017-18. This is a difference of over 2,600 people.

Mental Health Program Caseload. The population of inmates requiring mental health treatment is projected to be 36,854 in 2017-18 and 35,826 in 2018-19. This is an increase of 922 people in 2017-18 and a decrease of 107 people in 2018-19 over the projected population in the 2017 Budget Act. According to CDCR's most recent Offender Data Points report, approximately 30 percent of the people in prison have a mental health diagnosis. (*Budget proposals related to the treatment, housing and programs for people with a mental health diagnosis who are in prison will be discussed during the March 15 subcommittee hearing.*)

Background. Despite the policy changes designed to reduce the prison population discussed in the previous agenda item, the number of people in prison remains very close to the court ordered cap. As noted above, the current year population projections were off by almost an entire prison's worth of people, over 2,600. At one point this last fall, the state came within approximately 300 people of the court-ordered population cap, which is significantly smaller than CDCR's preferred population buffer of roughly 2,000 people.

In fact, the current prison population is approximately the same as it was one year ago, despite the implementation of Proposition 57 over six months ago and increased investments in community reentry facilities. On February 22, 2017, the prison population was 114,056 (134.1 percent of capacity) and on February 21, 2018, the prison population was 113,912 (133.9 percent of capacity), a difference of 144 people. The static prison population is not the result of returning more people from out-of-state prison facilities. This time last year, the state was housing 4,536 people out of state. Currently, the state is housing 4,238 people in private prisons in Mississippi and Arizona. In addition, in the last 12 months the state has increased the number of people who are housed in alternative custody and community reentry settings, outside of the prisons. Last year, 892 people were in alternative custody placements, currently there are 1,112 people in those placements. Finally, roughly the same number of inmates are currently in fire camps throughout the state as there were last year at this time. Overall, in February 2017, there were 129,356 people in custody, including community placements, fire camps and prisons. Currently, there are 129,431 people in the state's custody, an increase of 75 people.

Legislative Analyst's Office (LAO). Traditionally, the LAO withholds their recommendation on the Administration's adult population funding request pending updates in the May Revision. However, they do agree with the Administration that CDCR is likely to experience a decline of roughly 5,000 inmates over the next few years.

Staff Comments. As noted above, despite a myriad of policies designed to reduce the prison population, the number of people in prison remains very close to the court ordered cap. As a result of the unexpected population increase, the Administration has proposed delaying their efforts to close the state's out-of-state prison facilities (*discussed in more detail in the next agenda item*). According to the department, the error in the population projection is not the result of faulty assumptions in their estimates surrounding the impact of Proposition 57 on the prison population, which, based on their 2017 Budget Act estimates means that approximately 2,700 people will be released from prison in this year due to the proposition. Therefore, eight months into the fiscal year, almost 1,800 inmates should have been released. Given this fact, it is unclear what factors are driving the persistently high population, whether it is more people being sent to prison or fewer people being released from prison. Likely it is a combination of both factors.

Crime Rates. According to the Attorney General's 2016 *Crime in California* report, crime rates continue to be far lower than they were in the 1990s. However, between 2015 and 2016, the violent crime rate did increase by 4.1 percent. However, property crimes decreased by 2.9 percent. Between 2015 and 2016, the arrest rate also decreased by four percent. Specifically, the adult arrest rate decreased by 3.1 percent and the juvenile rate decreased by 15.2 percent. In addition, the felony arrest-rate decreased by 2.6 percent and the violent offence rate decreased by 1.5 percent. 66.4 percent of the adult felony arrests resulted in a conviction, with most of those convictions resulting in a sentence of jail and probation. However, the rate of convictions resulting in a prison sentence has increased from 14.8 percent of all convictions in 2014 to 18.5 percent in 2016.

County of Commitment. Over the years, there has been a persistent question around whether or not counties are finding ways to send more people to state prison in a post-realignment environment by increasing the type and severity of criminal charges. Not surprisingly, the majority of people in prison as of December 2017 originally came from Los Angeles County (42,689). When comparing the proportion of adults in prison from each county with the county's proportion of the population, overwhelmingly most counties are home, generally speaking, to a proportional number of inmates. For example, San Joaquin County contains 1.9 percent of the state's population and is the county of commitment for 2.15 percent of the state's prison population. However, a handful of the state's counties appear to be sending a disproportionate number of people to the state prison. Primarily, roughly 26 percent of the state's population lives in Los Angeles, but approximately 33 percent of the prison population is from Los Angeles County. Less dramatically, Sacramento is responsible for over five percent of the prison population and houses approximately four percent of Californians. Similarly, Riverside County is home to six percent of Californians but accounts for almost eight percent of the prison population. Conversely, there are counties that send less people to prison than their population would suggest. For example, Orange County is home to over eight percent of Californians, but only five percent of people in prison came from Orange County. Similarly, Alameda, Contra Costa, San Diego, San Francisco, San Mateo and Santa Clara counties all send proportionally less people to prison.

There may be many reasons why a higher proportion of the population is sent to prison in some counties over others. Differences in crime rates could have an impact, for example. In looking at the violent crime rates among the ten largest counties, the rate in Los Angeles County is roughly equal to the proportion of people sent to prison (32.26 percent of violent crimes committed in 2016 were committed in Los Angeles). However, when looking at Riverside County, the same does not appear to be true. As noted above, Riverside has six percent of the state's population and accounts for almost eight percent of the prison population. However, Riverside County only accounts for just over four percent of violent crimes committed in 2016. Alameda County, on the other hand, which is responsible for fewer than three percent of the prison population, was the location of almost six percent of the state's violent crimes in 2016.

Declining Recidivism Rate. The state defines recidivism as “conviction of a new felony or misdemeanor committed within three years of release from custody or committed within three years of placement on supervision for a previous criminal conviction.”³ The definition also allows for supplemental measures of recidivism including: new arrests, returns to custody, criminal filings, or supervision violations.

CDCR produces an annual *Outcome Evaluation Report* that provides data on the recidivism rate for people who have been released from prison. The 2016 report shows that of those inmates released in 2011-12, 25 percent had returned to prison three years later. In 2017, the three-year recidivism rate had improved with 22.2 percent of inmates released in 2012-13 having returned to prison, a 2.8 percent decrease. Similarly, of those same two cohorts, in 2016, 32.4 percent of people released three years earlier had a new felony criminal conviction and in 2017 that figure had decreased to 27.2 percent. Of note, however, is that the overall conviction rate for people with a mental health diagnosis in both cohorts remains over 50 percent and, as would be expected, those individuals with a more serious diagnosis recidivate at a higher rate than those in the Correctional Clinical Case Management System caseload (the classification for those people who are stable and able to function in the general prison population).

The continuing decline in the recidivism rate suggests that recidivism or a failure in the rehabilitation and parole/community supervision process is not contributing to an increase in the prison population.

Increasing Numbers of People Released on Parole. Since 2007, the number of parole hearings has decreased from 6,177 that year to 5,344 in 2017. However, despite the decline in hearings, the number of people released on parole has increased significantly. In 2007, 119 (two percent) of the over 6,000 were granted parole. In 2017, that number had grown to 915 (17 percent) of the 5,300 people who were granted a hearing. This marks the highest number of people granted parole over the last 20 years. Data going back to 1999 shows that in that year only 13 people were granted parole out of the approximately 160,000 people in CDCR's institutions. The number of people granted parole has been consistently high over the last four years. In 2013, 592 people were granted parole. By 2014, that number was up to 905. In the next three years, that number was 906, 817, and 915 respectively.

Staff Recommendation. Hold open pending May Revise updates.

³ Section 3027 of California Penal Code required the Board of State and Community Corrections to develop a state-wide definition of recidivism.

Issue 3: Out-of-State Correctional Facilities

Governor's Budget. The proposed budget requests an increase of \$28 million General Fund and 18.3 positions in the current year due to a delay in the removal of inmates housed in out-of-state prisons. In the budget year, the Administration projects a \$40 million General Fund savings and a reduction of 33.1 positions. Specifically, the budget projects an average daily population of 4,067 people in out of state prisons in 2017-18, which is an increase of 1,049 over the 2017 Budget Act. However, in 2018-19 the budget assumes that on average 1,548 people will be housed in out of state prisons. The Governor proposes removing inmates from the contract facility in Mississippi by June 2018 and from the Arizona facility by fall 2019.

Background. In the 1970s and 80s, the war on drugs and harsher sentencing policies, including mandatory minimum sentences, fueled a rapid expansion in the nation's prison population. The resulting burden on the public sector led private companies to step in during the 1970s to operate halfway houses. They extended their reach in the 1980s by contracting with the Immigration and Naturalization Service (INS) to detain undocumented immigrants. These forms of privatization were followed by the appearance of for-profit, private prisons.

There are two private, for-profit companies providing the majority of private housing and rehabilitation services to inmates in the United States: 1) Corrections Corporation of America (now CoreCivic), established in 1983; and 2) Wackenhut Corrections Corporation (now the GEO Group, Inc.), established in 1984. Today, CoreCivic and GEO Group collectively manage the majority of the contracts in the United States, which resulted in combined revenues exceeding \$3.2 billion in 2015. CoreCivic, as the largest private prison company, manages more than 89,000 inmates and detainees in 77 facilities. GEO Group, as CoreCivic's closest competitor, operates slightly fewer, with 64 facilities and 74,000 beds. Smaller companies, including Management & Training Corporation, LCS Correctional Services, and Emerald Corrections also hold multiple prison contracts throughout the United States.

As of 2014, over eight percent of U.S. prisoners were held in privately-owned prisons. In 2014, seven states housed at least 20 percent of their inmate populations in private prisons. A total of 131,300 inmates were housed in private facilities between those states and the federal bureau of prisons. This figure represents a decrease of 2,100 prisoners from 2013. According to the federal Bureau of Justice Statistics, since 1999, the size of the private prison population grew 90 percent, from 69,000 inmates in 1999 to 131,000 in 2014. The use of private prisons was at its peak in 2012, when 137,000 inmates (almost nine percent of the total prison population) were housed in private facilities.

In addition to federal prisoners, the United States detains approximately 400,000 immigrants per year. As of 2016, the Detention Watch Network (DWN) reports that 73 percent of detained immigrants were held in private, for profit prisons. That percentage equates to almost 300,000 individuals held in private, for-profit immigration detention facilities throughout the United States, including in California.

Concerns about the use of for-profit contractors in state and federal prisons have grown in recent years. Reports detailing physical and sexual abuse, contraband, excessive use of force, inadequate safety measures, lack of adequate healthcare, and lack of programming have surfaced in many states, including federal facilities in California.

In 2010, the American Civil Liberties Union (ACLU) filed a suit against CoreCivic related to their running of the Idaho Correctional Center (ICC) in Boise, Idaho. The suit came about after reports began to surface about violence in ICC. The ACLU's complaint detailed more than 30 assaults that they argued might have been prevented had CoreCivic operated ICC in a responsible manner. In addition, in 2010, the Governor of Kentucky ordered the removal of over 400 female inmates from a CoreCivic run facility after over a dozen women complained of being sexually assaulted by male correctional officers.

CoreCivic, however, is far from alone in complaints about the conditions in their institutions and the treatment of inmates. In 2012, the New York Times published a series of investigative articles related to the treatment and oversight of inmates at the Albert M. "Bo" Robinson Assessment and Treatment Center in New Jersey run by Community Education Centers (CEC). The complaints ranged from the sexual assault of inmates by CEC staff to a lack of security that led to inmates assaulting and robbing each other during the night when only one or two staff were assigned to overseeing housing units of 170 inmates. According to the New York Times' findings, inmates regularly asked to be returned to a state-run prison where they felt safer.

In Mississippi, a prison run by Management and Training Corporation (MTC) was deemed by one federal judge to be so corrupt that it was "effectively run by gangs in collusion with corrupt prison guards." In 2012, federal judge Carlton Reeves wrote in a settlement order that it "paints a picture of such horror as should be unrealized anywhere in the civilized world." That prison was shut down in September of 2016.

GEO Corporation has also faced its share of issues over the years. Of particular note are reports on the treatment of immigrants being detained in GEO's detention facility in Adelanto, California. The ACLU, DWN, and Community Initiatives for Visiting Immigrants in Confinement (CIVIC) have all detailed abuses related to the Adelanto facility. In an October 2015 report, CIVIC and DWN outline complaints of medical abuse and neglect relating to at least one preventable death and four instances of physical abuse by GEO staff.

In addition, GEO's Walnut Grove Youth Correctional Facility in Mississippi was under federal investigation in 2012 after receiving hundreds of brutality complaints. The facility was also the subject of a federal lawsuit claiming that inmates "live in unconstitutional and inhumane conditions and endure great risks to their safety and security" due to understaffing, violence, corruption, and a lack of proper medical care.

Generally, complaints about the private prison industry have been focused on the fact that facilities contain too few staff and that they are both underpaid and undertrained for their jobs. Thus as a result of inadequate staffing, inmates in private prisons are subject to more violence and sexual assault, higher rates of contraband, inadequate food, and inadequate medical care.

California's Private Prison Facilities. Private, contract prison facilities have been an important tool for California in reducing overcrowding in its prisons in recent years. In September 2013, the Legislature passed, and the Governor signed, SB 105 (Steinberg and Huff), Chapter 310, Statutes of 2013, to address the federal three-judge panel order requiring the state to reduce the prison population to no more than 137.5 percent of design capacity by December 31, 2013. SB 105 provided CDCR with

an additional \$315 million in General Fund support in 2013-14 and authorized the department to enter into contracts to secure a sufficient amount of inmate housing to meet the court order and to avoid the early release of inmates, which might otherwise be necessary to comply with the order. The contracts were intended to be short-term in nature and were entered into in lieu of building additional prisons throughout the state. In 2014, the state housed approximately 9,000 inmates in out-of-state, private prisons. Since that time, the state has considerably reduced its reliance on out of state, private prisons and now houses approximately half of the 2014 number of inmates out of state. CoreCivic runs both out-of-state prisons used by California to house 4,238 inmates, 3,147 in Arizona and 1,091 in Mississippi.⁴

In California, GEO and CoreCivic currently operate eight state facilities, including a contract with CoreCivic for a 120-bed community reentry facility in San Diego. The 2018-19 proposed budget assumes the state will house 6,467 California inmates in private prisons (4,067 in out-of-state prisons and 2,400 in in-state prisons) in 2017-18. These totals do not include the estimated 2,381 inmates who will be housed in California City, a prison owned by CoreCivic and run by the state. In addition to prison facilities, the state currently contracts with both GEO and CoreCivic to provide reentry services, parole services, substance use disorder treatment, and cognitive behavioral therapy.

Monitoring of Private Facilities. California does not seem to have encountered the same problems with private facilities as other states and the federal government. One reason for that may be the policies put in place to closely monitor and oversee the running of the private facilities. For example, all inmates housed in private facilities must be supervised in the same manner and under the same rules as the state-run prisons. These rules include an appeals process that all complaints filed by inmates be handled in the same manner as in the state-run prisons. In addition, CDCR has an appeals coordinator and two analysts who monitor the appeals process for all of the contracted facilities. These appeals are also tracked using the state's Inmate Appeals Tracking Systems.

In addition to CDCR's monitoring of contract facilities, the state's Inspector General has the same oversight and authority over private facilities as he does over the state-run prisons. For example, the Office of the Inspector General (OIG) monitors all use-of-force complaints, Prison Rape Elimination Act (PREA) complaints, and surveys rehabilitation programming. In addition, notices are required to be posted throughout the prison providing the information necessary for inmates to contact the OIG directly with complaints and concerns. The OIG, however, does not monitor healthcare in the contract facilities.

Under the state's current healthcare structure, California Correctional Healthcare Services, under the leadership of the federally appointed receiver, monitors medical care at all contract facilities. The receiver's office notes that they audit all of the facilities at least once a year and then post those audits online for the public to access. According to the introduction for the audit reports, the standardized audit tool is designed to evaluate the effectiveness, efficiency and compliance of the health care processes implemented at each contracted facility. The audit instrument is intended to measure the facility's compliance with various elements of inmate-patient access to health care and to assess the quality of health care services provided to the inmate-patient population housed in these facilities. The

⁴ Out-of-state population based on CDCR's weekly population report for the week ending February 21, 2018.

audits include both a review of relevant paperwork and interviews with staff and inmates in the facilities.⁵

Legislative Analyst’s Office (LAO). In order to accommodate the anticipated decline in the inmate population due to Proposition 57, the LAO recommends that the Legislature consider directing CDCR to close the California Rehabilitation Center (CRC) in Norco and remove inmates from the contract facility in Mississippi—rather than closing all out-of-state contract facilities as proposed by the Governor. If the Legislature decides to close CRC, they recommend directing CDCR to provide a detailed plan on the closure. If the Legislature decides not to close CRC, CDCR should provide it with a plan for making the necessary infrastructure improvements at the prison.

Staff Comments

California does not appear to have the same oversight and monitoring problems as the federal government and other states, except in the area of healthcare. As noted previously, in general, a system of oversight and monitoring has been put in place that helps to insure that inmates in private prisons are receiving the same supervision and care and have the same protections as those in the state-run prisons. The one area that may warrant closer oversight, and that has been of concern nationally, is the healthcare provided in the private facilities. As noted previously, all but one of the contract facilities is providing inadequate healthcare to inmates.

Currently, the OIG is responsible for monitoring the medical care for inmates in all of the state facilities. However, that monitoring does not extend to the contract facilities. The Inspector General notes that the reason they do not do medical inspections is because anyone with a serious health condition cannot be housed in a contract facility. However, given the generally poor quality of medical care found by the receiver at out-of-state facilities, the Legislature may wish to expand OIG medical oversight to include private facilities. If the Legislature decides not to have the OIG monitor healthcare at private facilities while the receivership is in place, they may wish to shift the monitoring from the receiver to the OIG once the receivership ends. Absent placing the audit responsibility with the OIG, it is likely those monitoring functions would be transferred to CDCR when the receivership ends.

Ending private contracts or closing a prison. The 2012 Budget Act included an additional \$810 million of lease-revenue bond financing authority for the design and construction of three new level II dormitory housing facilities at existing prisons. Two of these new dormitory housing facilities are located adjacent to Mule Creek State Prison in Ione, and the third is located adjacent to Richard J. Donovan Correctional Facility in San Diego. All three infill projects have been completed and activated. At the time the Legislature approved the infill projects, the understanding was that the cost of operating the facilities would be offset by the closure of CRC in Norco. CRC is one of the state’s most dilapidated prisons and it is in need of several hundred million dollars in repairs. Therefore, the new infill projects were intended to replace the prison beds at CRC. That closure would have saved the state approximately \$160 million in General Fund per year.

⁵ <http://www.cphcs.ca.gov/ContractPrisonFacilities.aspx>

However, in budget discussions over the last two years, the Administration has successfully argued that CRC needed to be kept open in the short-term in order to insure that the state would stay safely below the federal population cap of 137.5 percent of the state's prison capacity.

While it may be prudent to get rid of the state's contract facilities as quickly as possible, it is unlikely the state would be able to end the contracts *and* close a prison in the near future. Therefore, if the contracts are terminated prior to a closure of one of the state's prisons, it is unlikely that a prison will be closed. It is more likely that the state will need to invest in the repair and rebuilding of CRC.

If the ultimate goal of the Legislature continues to be achieving long-term savings through the closure of one of the state's prisons, they may need to prioritize that over ending the use of private contract facilities. In the long-term, that strategy will achieve greater General Fund savings. Not only will the state save a minimum of \$160 million per year by reducing the number of prisons, but the state can also save over time as the number of contract beds are reduced. Unlike the budget for the state prisons, where the number of security staff is based upon the design of the facility rather than the number of inmates, the state pays for contract beds on a per-inmate basis.

Staff Recommendation. Hold open pending May Revise updates.

Issue 4: Institution Staffing Needs

Governor's Budget. The budget proposes \$4.4 million General Fund and 31.6 positions ongoing to augment custody positions in the prisons. The requests includes an increase in coverage for identified security issues, Health Care Facility Improvement Project modifications, and to increase coverage for third-watch rehabilitative programs.

CDCR notes that they are currently paying staff to work overtime to provide the necessary security coverage and that the funding for that workload is coming from vacancies in administrative and operational support positions and that this is a short-term solution that is not sustainable for the long run. The department notes that they are actively engaged in attempting to fill those critical operational support vacancies.

Background. In the 2012 blueprint, CDCR established a standardized staffing model at the adult institutions to achieve budgetary savings and improve efficiency in operations. Prior to standardized staffing, the department's budget was adjusted on a 6:1 inmate-to-staff ratio based on changes in the inmate population. For every six inmates, the department received or reduced the equivalent of one position. These staffing adjustments occurred even with minor fluctuations in population and resulted in staffing inconsistencies among adult institutions. The prior staffing model allowed local institutions to have more autonomy in how budgeted staffing changes were made. The standardized staffing model provides consistent staffing across institutions with similar physical plant/design and inmate populations. The model also clearly delineates correctional staff that provides access to other important activities, such as rehabilitative programs and inmate health care. The concept that an institution could reduce correctional staff for marginal changes in the inmate population was not valid without further detriment to an institution's operations. Therefore, the standardized staffing model was established to maintain the staff needed for a functional prison system.

According to the Administration, given the significant population reductions as a result of realignment, using the CDCR's ratio-based adjustment would have resulted in a shortage of staff and prison operations would have been disrupted. The Administration has argued that a standardized methodology for budgeting and staffing the prison system was necessary to provide a staffing model that could respond to fluctuations in the population and allow for the safe and secure operation of housing units at each prison regardless of minor population changes.

Legislative Analyst's Office (LAO). The LAO did not raise any concerns with this proposal.

Staff Recommendation. Hold open pending May Revise updates.

Issue 5: Housing Unit Conversions

Governor's Budget. The proposed budget contains 24 separate housing unit conversions throughout the prison system. As a result of those conversions, the budget projects a savings of \$8.6 million General Fund and reduction of 61.2 positions in the current year and a cost of \$14.5 million General Fund and increase of 104.7 positions in 2018-19.

Background. As part of CDCR's annual population projections and estimates, they adjust the types of housing units they will need to meet the housing needs of the prison population in the coming year. For example, the adjustments in the proposed budget includes an increase in the number of mental health beds that are needed in the Short Term Restricted Housing units. In addition, for example, the adjustment includes a reduction in 143 beds due to the closure of the administrative segregation unit at Deuel Vocational Institution.

Legislative Analyst's Office (LAO). The LAO did not raise any concerns with this proposal.

Staff Recommendation. Hold open pending May Revise updates.

Issue 6: Office of Research Resources

Governor’s Budget. The proposed budget requests \$755,000 General Fund and six positions ongoing for CDCR’s Office of Research.

Background. The Office of Research is responsible for publishing a variety of reports ranging from statistical summaries of CDCR's adult and juvenile offender populations to evaluations of innovative rehabilitative treatment programs. In addition, the office is responsible for producing the population projections twice a year upon which the CDCR budget is built.

The Office of Research also carries out short-term and long-term evaluations for programs within CDCR, conducts research projects to enhance the classification of offenders according to their treatment needs and risks, conducts research designed to assess facility program needs, and provides research-based information to CDCR administrators, staff, and facilitates external research requests to others (Governor, legislators, press, etc.).

According to data provided by CDCR, the workload in the Office of Research has increased significantly as a result of the large number of criminal justice reforms carried out in the last eight years. Specifically, the department notes that in the last two years they have seen an increase of approximately 60 percent in the number of specialized data requests from external stakeholders. Since 2012-13, the number of specialized data requests has grown from 480 a year to 960 in 2017-18. These specialized requests equate to approximately 40 percent of the office’s workload.

Legislative Analyst’s Office (LAO). The LAO did not raise any concerns with this proposal.

Staff Recommendation. Hold open.