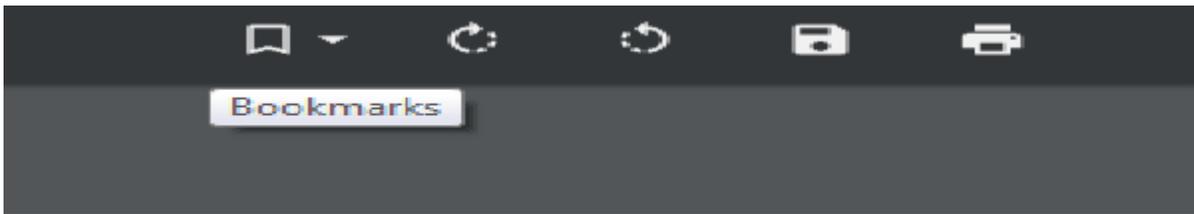


Senate Budget and Fiscal Review

The 2015 Agendas for Subcommittee No. 5 on Corrections, Public Safety and the Judiciary are archived below. To access an agenda or outcomes by a specific date, please refer to “Bookmarks” icon on the screen. Depending on your web browser the bookmarks menu will look different. Below are instructions to help you find the “Bookmarks” icon in Internet Explorer 11, Mozilla Firefox, or Chrome.

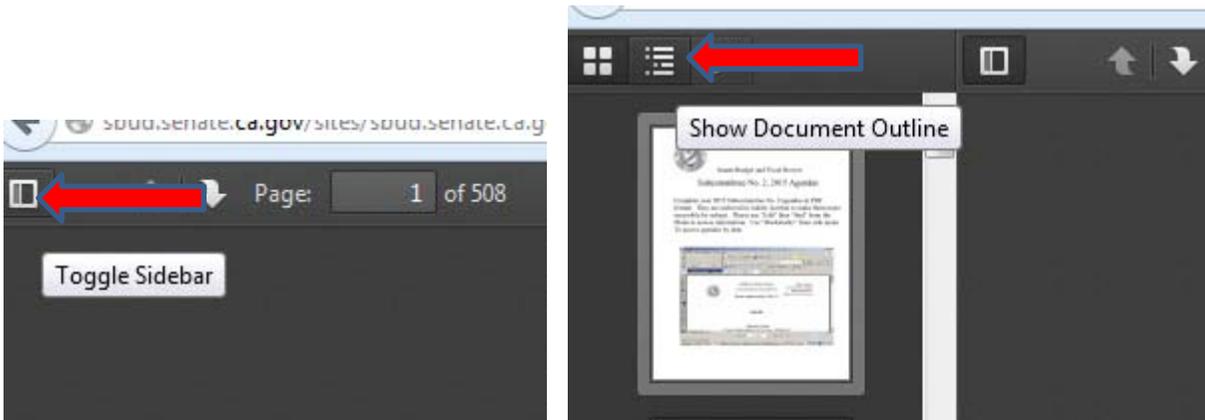
Chrome has access to Acrobat bookmark located in the upper right hand corner



Internet Explorer 11 selects Acrobat from box



Mozilla Firefox on upper left, click toggle sidebar, and then document outline.



SUBCOMMITTEE NO. 5

Agenda

Senator Loni Hancock, Chair
Senator Joel Anderson
Senator Jim Beall



Thursday, March 5, 2015
9:30 a.m. or Upon Adjournment of Session
State Capitol - Room 113

Consultant: Julie Salley-Gray

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ITEMS TO BE HEARD

5225 Department of Corrections and Rehabilitation

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.

The 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: Education, Vocational, and Offender Programs, Education, Substance Abuse Programs, Inmate Activities, Administration
- Adult Health Care Services

The 2014 budget act projected an adult inmate average daily population of 136,530 in the current year. The current year adult inmate population is now projected to decrease by 633 inmates, a 0.5 percent decrease, for a total population of 135,897. The budget year adult inmate population is projected to be 137,002, a 0.8 percent increase of 1,105 inmates over the current year. The current projections also reflect an increase in the parolee population of 1,360 in the current year, compared to budget act projections, for

a total average daily population of 43,226. The parolee population is projected to be 40,467 in 2015-16, a decrease of 2,759 over the current year. These projections do not include the impact of the passage of Proposition 47, which reduced various felonies to misdemeanors.

As of February 18, 2015, the total in-custody adult population was 131,469. The institution population was 116,556, which constitutes 136.3 percent of prison capacity. The most overcrowded prison is the Central California Women's Facility in Chowchilla, which is currently at 167.3 percent of its capacity. For male inmates, Mule Creek State Prison is currently the most overcrowded at 165.9 percent of its capacity.

The Governor's budget proposes total funding of \$10.2 billion (\$9.9 billion General Fund and \$300 million other funds) in 2015-16. This is an increase of approximately \$1 billion (\$833 million General Fund) over 2013-14 expenditures. The following table shows CDCR's total operational expenditures and positions for 2013-14 through 2015-16.

(dollars in thousands)

Funding	2013-14	2014-15	2015-16
General Fund	\$9,156,505	\$9,827,940	\$9,989,790
General Fund, Prop 98	16,530	18,385	18,635
Other Funds	56,080	67,250	62,329
Reimbursements	167,644	185,074	185,064
Recidivism Reduction Fund	-103,199	25,968	28,227
SCC Performance Incentive Fund	-1,000	-1,000	-1,000
Total	\$9,292,560	\$10,123,617	\$10,283,0451
Positions	52,260	60,812	61,579

Issue 1: Department Overview Presentation

Governor's Budget Proposals. The specific details of the Administration's proposals will be heard in future subcommittee hearings.

Proposition 47 – Provides data, as of December 10, 2014, showing that 132 of the eligible inmate population has been resentenced or released from prison pursuant to the passage of Proposition 47. The Administration estimates that the proposition will reduce the prison population by roughly 1,900 inmates.

Recidivism Reduction Fund – The Recidivism Reduction Fund, established by AB 105 (Steinberg and Huff), Chapter 310, Statutes of 2013, results from savings associated with an extension from the federal court allowing the state until February 2016 to reduce its prison population to 137.5 percent of capacity. The Governor's budget assumes that \$16 million of the \$42 million provided to CDCR in the Budget Act of 2014 will be unspent due to delayed implementation of various recidivism reduction efforts. In addition, it assumes an additional \$12.2 million in revenue above the original projections. The budget reflects total revenue of \$28.2 million (General Fund) in the Recidivism Reduction Fund. The budget proposes using the funds toward recidivism reduction efforts, as follows:

- \$12.6 million for community reentry facilities.
- \$15.6 million to expand substance use treatment at non-reentry hub institutions.

Coleman v. Brown – On April 10, 2014 and June 19, 2014, the federal court ordered CDCR to make various changes concerning their treatment of certain inmates who are mentally ill.

- Proposes \$13 million (General Fund) in the current year, and \$42 million (General Fund) annually beginning in 2015-16, for court-ordered changes to CDCR's use of force and segregated housing policies.
- The court ordered CDCR to develop a plan to improve the vacancy rate for psychologists, licensed clinical social workers, and psychiatrists. The budget does not include any additional funding or efforts to address this issue. However, it does note that CDCR and the Department of State Hospitals (DSH) are currently considering shifting responsibility for 1,086 inpatient mental health treatment beds from DSH to CDCR. The proposed budget includes \$244 million (General Fund) for the three psychiatric programs for prisoners overseen by DSH.

Prison Infill Projects – Includes \$35.6 million (\$35.5 General Fund and \$90,000 Inmate Welfare Fund) to activate three new infill facilities at existing prisons. These

activations will add 2,376 new beds to the state's prison capacity by February 2016 and 1,266 new educational and vocational training slots.

Prison Infrastructure – Proposes \$20.4 million (General Fund) in 2015-16 to address critical infrastructure, fire and safety needs, including \$18.1 million for the construction of a new boiler facility at San Quentin State Prison. In addition, the budget proposes providing \$15 million to CDCR to address critical deferred maintenance infrastructure needs.

The Administration should be prepared to provide updates on the following topics during their overview:

1. An update on the total number of inmates in state institutions released to date due to the implementation of Proposition 47 and the number awaiting resentencing, if any.
2. The status of women's institutions and the plan to reduce overcrowding, including the impact of Proposition 47 on the female inmate population.
3. The current plan to establish a sensitive needs yard for female inmates.
4. Alternative Custody Program expansion and vacancies.
5. Expanded parole.
6. The expansion in last year's budget of the Correctional Officers Training Academy and the impact on correctional officer vacancy rates and overtime expenditures.

Issue 2: Population Reduction and the Impact of Recent Policy Changes

Background. Over the last several years, significant policy changes have affected people convicted of crimes and the number of individuals serving their sentences in the state's prison system. Among the most significant changes are the following:

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 the 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 15 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.

According to the Governor's budget, it is estimated that approximately 2,800 inmates will be eligible for resentencing under Proposition 36. The most recent Three-Judge Panel status report on the reduction of the prison population shows that as of January 8, 2015, 1,975 of those eligible have been resentenced and released from prison.

Passage of Proposition 47. In November 2014, the voters approved Proposition 47, 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. The most recent Three-Judge Panel status report on the reduction of the prison population shows that, as of January 14, 2015, 1,436 people had been resentenced and released from prison due to the changes brought by Proposition 47. The Governor's budget estimates that the 2015-16 average daily state prison population will be reduced by approximately 1,900 inmates as a result of resentencing and avoided new admissions.

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, 2016, and on or before July 31 of each fiscal year thereafter, to calculate the state savings for the previous fiscal year compared to 2013-14. Actual data or best estimates are to be used and the calculation is final and must be certified by the State Controller's Office no later than August 1 of each fiscal year. The first transfer of state savings to the Safe Neighborhoods and Schools Fund will occur in 2016-17, after the Department of Finance (DOF) calculates savings pursuant to the proposition. Consequently, the budget does not reflect estimated 2015-16 savings related to Proposition 47.

These three changes, along with increased investment in rehabilitation funding have allowed the state to meet its court-ordered population cap a year before the deadline.

Recidivism Reduction Fund – SB 105. 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 appropriated \$315 million General Fund for the CDCR to contract for additional capacity to meet the court-ordered prison population cap of 137.5 percent of design capacity. The legislation also specified that if the state received an extension to comply with the court's order, the first \$75 million in savings, and 50 percent of any additional savings, was to be transferred to the Recidivism Reduction Fund. Based on spring expenditure projections, the 2014 budget act included \$91 million Recidivism Reduction Fund for various departments to implement new programs and services aimed at

reducing recidivism rates for state and local offenders. Specifically, the Department received \$42 million for various activities aimed at reducing recidivism for inmates and parolees. Due to delays in implementation, the Department currently projects Recidivism Reduction Fund savings of \$16 million in 2014-15, of which \$12.6 million is attributable to community reentry facilities. There is also additional savings of \$12.2 million above the 2014 Budget Act estimates from the original SB 105 appropriation. Overall, the 2015-16 amount available for expenditure from the Recidivism Reduction Fund therefore is \$28.2 million.

In addition to establishing the Recidivism Reduction Fund, SB 105 required the Administration to provide a report to the Legislature on April 1, 2014 and again on January 10, 2015, on the state of the prison system, including capacity needs, population, recidivism rates, and factors affecting crime levels, in an attempt to develop long-term solutions to continue to reduce the state's prison population.

Questions for the Administration. The Administration should be prepared to address the following questions:

1. Now that the population target has been reached:
 - a. How does the Administration's long-term plan for staying at or below the cap without continuing to just increase bed capacity?
 - b. What is the transition plan and timeline for returning control of prison healthcare to the state?
2. The LAO Proposition 47 report notes that the state could achieve greater savings by reducing the number of contract beds. Does the Administration have a plan for shifting the inmate population out of contract institutions and back into the existing state institutions?
3. Generally, the department releases a 5-year population projection twice a year. This year, you have not. Can you please let the committee know the status of those projections and explain how the Administration and the Legislature can do long-term, durable solution planning without those projections?

Issue 3: SB 105 – Recidivism Reduction Report

Background. 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.

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4440 Department of State Hospitals

The Department of State Hospitals (DSH) is the lead agency overseeing and managing the state's system of mental hospitals. The DSH seeks to ensure the availability and accessibility of effective, efficient, and culturally-competent services. DSH activities and functions include advocacy, education, innovation, outreach, oversight, monitoring, quality improvement, and the provision of direct services.

The Governor's 2011 May Revision first proposed the elimination of the former Department of Mental Health (DMH), the creation of the new DSH, and the transfer of Medi-Cal mental health services and other community mental health programs to the Department of Health Care Services (DHCS). The 2011 budget act approved of just the transfer of Medi-Cal mental health programs from the DMH to the DHCS. In 2012, the Governor proposed, and the Legislature adopted, the full elimination of the DMH and the creation of the DSH. All of the community mental health programs remaining at the DMH were transferred to other state departments as part of the 2012 budget package. The budget package also created the new DSH which has the singular focus of providing improved oversight, safety, and accountability to the state's mental hospitals and psychiatric facilities.

California's State Hospital System

California has five state hospitals and three psychiatric programs located on the grounds of the prisons operated by the California Department of Corrections and Rehabilitation (CDCR). Approximately 92 percent of the state hospitals' population is considered "forensic," in that they have been committed to a hospital through the criminal justice system. The five state hospitals provide treatment to approximately 6,000 patients. The psychiatric facilities at state prisons currently treat approximately 1,000 inmates.

Atascadero State Hospital. This facility, located on the Central Coast, houses a largely forensic population, including a large number of incompetent to stand trial patients and mentally disordered offenders. As of December 2014, it housed more than 1,000 patients.

Coalinga State Hospital. This facility is located in the city of Coalinga and is California's newest state hospital. The hospital houses only forensic patients, most of whom are sexually violent predators. As of December 2014, it housed more than 1,100 patients.

Metropolitan State Hospital. Located in the city of Norwalk, this hospital's population is approximately 65 percent forensic. Metropolitan State Hospital does not accept individuals who have a history of escape from a detention center, a charge or conviction of a sex crime, or a conviction of murder. As of December 2014, it housed about 700 patients.

Napa State Hospital. This facility is located in the city of Napa and has a mix of civil and forensic commitments. Napa State Hospital limits the number of forensic patients to 80 percent of the patient population. As of December 2014, it housed nearly 1,200 patients.

Patton State Hospital. This facility is located in San Bernardino County and primarily treats forensic patients. As of December 2014, it housed 1,500 patients.

Salinas Valley Psychiatric Program. This program is located on the grounds of Salinas Valley State Prison in Soledad and provides treatment to state prison inmates. As of December 2014, it had a population of more than 200 patients.

Stockton Psychiatric Program. This program is located on the grounds of the California Health Care Facility in Stockton and is the state's newest psychiatric program. The program provides treatment to state prison inmates. As of December 2014, it had a population of about 400 patients.

Vacaville Psychiatric Program. This program is located on the grounds of the California Medical Facility in Vacaville and provides treatment to state prison inmates. As of December 2014, it had a population of about 350 patients.

The following are the primary Penal Code categories of patients who are either committed or referred to DSH for care and treatment:

Committed Directly From Superior Courts:

- *Not Guilty by Reason of Insanity* – Determination by court that the defendant committed a crime and was insane at the time the crime was committed.
- *Incompetent to Stand Trial (IST)* – Determination by court that the defendant cannot participate in trial because the defendant is not able to understand the nature of the criminal proceedings or assist counsel in the conduct of a defense. This includes individuals whose incompetence is due to a developmental disability.

Referred From The California Department of Corrections and Rehabilitation (CDCR):

- *Sexually Violent Predators (SVP)* – Hold established on inmate by court when it is believed probable cause exists that the inmate may be a SVP. Includes 45-day hold on inmates by the Board of Prison Terms.
- *Mentally Disordered Offenders (MDO)* – Certain CDCR inmates for required treatment as a condition of parole, and beyond parole under specified circumstances.

- *Prisoner Regular/Urgent Inmate-Patients (Coleman Referrals)* – Inmates who are found to be mentally ill while in prison, including some in need of urgent treatment.

State Hospitals & Psychiatric Programs Caseload Projections

	2014-15	2015-16
Population by Hospital*		
Atascadero	N/A	N/A
Coalinga	N/A	N/A
Metropolitan	N/A	N/A
Napa	N/A	N/A
Patton	N/A	N/A
Subtotal	5,817	6,137
Population by Psych Program		
Vacaville	366	366
Salinas	244	244
Stockton	480	480
Subtotal	1,086	1,086
Population Total	6,892	6,953
Population by Commitment Type		
Incompetent to Stand Trial (IST)	1,485	1,430
Not Guilty By Reason of Insanity (NGI)	1,379	1,377
Mentally Disordered Offender (MDO)	1,210	1,220
Sexually Violent Predator (SVP)	967	953
Lanterman-Petris-Short Act – Civil Commitments	556	556
<i>Coleman</i> Referral – Hospitals	258	258
<i>Coleman</i> Referral – Psych Programs	1,090	1,090
Department of Juvenile Justice	8	8

* DSH is no longer able to identify the number of budgeted beds at their hospitals.

State Hospitals Budget

The Governor's proposed budget includes \$1.7 billion for DSH in 2015-16 (\$1.6 billion General Fund). This represents a \$15 million increase over 2014-15 funding. The proposed budget year position authority for DSH is 11,398 positions, an increase of 164 positions from the current year. The department's budget includes increased funding for several proposals; including plans to operate 105 more Incompetent to Stand Trial (IST) beds than were budgeted in 2014-15 and establishes an involuntary medication policy for patients who are Not Guilty by Reason of Insanity (NGI).

(dollars in thousands)

Funding	2013-14 Actual	2014-15 Projected	2015-16 Proposed
General Fund (GF)	\$1,440,792	\$1,538,796	\$1,551,830
Reimbursements	126,384	127,560	129,764
CA Lottery Education Fund	153	25	25
Total	\$1,567,329	\$1,666,381	\$1,681,619
Positions	10,360	11,234	11,398

Cost Over-Runs. Over the past several years, state hospital costs had been rising at an alarming rate, and substantial current year deficiencies had become the norm and even expected from year to year. For example, in the 2010-11 fiscal year, the deficiency rose from \$50 million to \$120 million and the then-DMH staff could not explain why. In general, the department lacked any clear understanding of what the major cost drivers were and how to curb or stabilize costs in the system. In 2011, DMH leadership facilitated and oversaw an in-depth exploration and analysis of state hospital costs, resulting in a lengthy report that is available on the department's website. The research team identified the following system-wide problems/cost drivers: increased patient aggression and violence; increased operational treatment models; and redundant staff work.

Based on the report described above, in 2012, the Administration proposed a comprehensive list of reforms, to reverse the rising cost trend, which addressed three stated goals: 1) improve mental health outcomes; 2) increase worker and patient safety; and, 3) increase fiscal transparency and accountability. Perhaps the most significant of these proposed reforms was the reduction of 600 positions throughout the state hospital system. Of these 600 positions, 230 were vacant. In addition to the reduction in positions, the 2012 budget package included key changes in the following areas:

1. Reduced layers of management and streamlined documentation.
2. Flexible staffing ratios, focusing on front-line staff, and redirecting staff to direct patient care.
3. New models for contracting, purchasing, and reducing operational expenses.
4. Elimination of adult education.

Issue 4: Overview of Programs and Budget

Governor's Budget Proposals. The specific details of the Administration's proposals will be heard in future subcommittee hearings.

Incompetent to Stand Trial (IST) Patients – Proposes an increase of \$17.3 million (General Fund) to add an additional 105 beds to treat people who have been determined to be incompetent to stand trial. The Administration reports that the current IST waiting list is 400 people.

Involuntary Medications – Proposes \$3.2 million (General Fund) to establish an involuntary medication process for individuals who have been deemed not guilty by reason of insanity.

State Hospital Infrastructure – Proposes \$167.4 million for DSH for 11 projects at four state hospitals over the next five years. Includes \$11.5 million in 2015-16 for Enhanced Treatment Units at Atascadero, Napa, Coalinga and Patton state hospitals.

The Administration should be prepared to provide updates on the following topics during their overview:

1. The level of violence in hospitals and steps DSH is taking to reduce that violence in order to ensure a safe environment for both patients and staff.
2. Improvements made as a result of the Coleman Special Master's findings on the inadequacy of care provided to inmate-patients in the correctional psychiatric programs and two state hospitals.

Questions for the Department. DSH should be prepared to address the following question:

1. As noted in the department overview above, you were unable to provide the Legislature with the number of budgeted beds for any of the five state hospitals, either for the current year budget or the budget year estimates. How does your department determine the appropriate funding and staffing levels for each of the five hospitals without estimating the caseload or funded beds by hospital?

Issue 5: LAO: Improved Budgeting for DSH

Executive Summary. The state provides about \$1.6 billion in funding to the Department of State Hospitals (DSH) to provide inpatient treatment to mental health patients in the eight DSH facilities. This includes funding for both clinical and nonclinical staff, as well as non-staff costs (such as food and clothing). In determining how much funding to request for the upcoming fiscal year, DSH uses the amount of funding it received in the state budget for the current year as a base budget or starting point. The department then requests adjustments to the base budget to account for projected increases or decreases in the patient population during the budget year.

DSH's Budgeting Process Has Several Shortcomings. Based on the review, the LAO finds the current DSH budgeting process has several shortcomings. Specifically, the LAO found that (1) the department has a large amount of funded beds that are not used; (2) the level of staff needed to operate DSH facilities is unclear; (3) the budgeting methodology used by the department creates poor incentives for it to operate efficiently; and (4) other state departments have more transparent, updated, and efficient budgeting processes than DSH.

Redesigning DSH's Budgeting Process. In view of the above findings, the LAO makes several recommendations to improve the DSH budgeting process. First, the Legislature should require the department to establish or update several key components used to develop its budget to ensure that they are accurate and adequate. Second, the Legislature should direct DSH to use the updated information to develop its budget and staffing requests based on expected changes in the number and acuity (or level of care) of its patient population, as well as make adjustments to its budget if the actual population differs from its projections. Given the resources and time necessary to implement these recommendations, it is also recommend that the Legislature require DSH to provide additional justification for its budget requests during the development and implementation of the new budgeting process. The recommendations will (1) ensure that DSH receives the appropriate amount of funding to account for changes in its patient population and the services it provides, (2) improve incentives for the department to operate efficiently, and (3) allow the Legislature to provide increased oversight of DSH's budget and operations.

Questions for the LAO. The LAO should be prepared to present the findings from the report and address the following questions:

1. The department suggests that the vacancy estimates in the report are significantly overstated, in part because the report includes the correctional psychiatric programs in that vacancy rate. They further assert that the actual vacancies at the end of the fiscal year were much smaller than the 450 beds mentioned in the report. Will you please explain your methodology to the committee and the reason you used this particular method in your report?

2. Despite the differences in methodology for calculating vacancy rates, please be prepared to articulate for the committee the specific challenges presented due to the lack of transparency involved in the developing of the DSH budget (as an example, the inability to know how many budgeted beds are at each facility and the appropriate staffing level for those beds/patients).
3. Given that mental health acuity is very different from physical health acuity and that mental health acuity can change from day to day, or even moment by moment for people with mental illnesses, can you please provide some detail as to how an acuity staffing model would work for the state hospitals? In addition, please discuss the experiences of other states or systems that use a mental health staffing acuity model successfully?

Questions for the Department. DSH should be prepared to address the concerns raised by the LAO and provide information on how they are incorporating any of the LAO recommendations or why they do not feel the recommendations are appropriate. In addition, the department should be prepared to address the following questions:

1. How many vacant beds does DSH currently have throughout the state hospital system, where are they located, and what types of beds are they (IST, NGI, MDO, SVP, Coleman, etc.)?
2. One of the reasons provided, during last year's budget hearings, for the on-going bed vacancy rate, despite the existence of waiting lists for those beds, was that in some areas you have difficulty recruiting staff to fill positions. Can you please provide an update on your staff vacancy rate and how you have addressed the vacancy problems raised during last year's budget hearings?
3. How much funding did DSH revert to the General Fund at the end of 2013-14? Please provide specific detail on which areas of the budget were overfunded and which new programs had a delayed implementation that caused funding to go unspent.

ITEMS TO BE HEARD

5225 Department of Corrections and Rehabilitation

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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.

The CDCR is organized into the following programs:

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- Juvenile: Operations and Offender Programs, Academic and Vocational Education, Health Care Services
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The 2014 budget act projected an adult inmate average daily population of 136,530 in the current year. The current year adult inmate population is now projected to decrease by 633 inmates, a 0.5 percent decrease, for a total population of 135,897. The budget year adult inmate population is projected to be 137,002, a 0.8 percent increase of 1,105 inmates over the current year. The current projections also reflect an increase in the parolee population of 1,360 in the current year compared to budget act projections, for a total average daily population of 43,226. The parolee population is projected to be

40,467 in 2015-16, a decrease of 2,759 over the current year. These projections do not include the impact of the passage of Proposition 47, which reduced various felonies to misdemeanors.

As of February 18, 2015, the total in-custody adult population was 131,469. The institution population was 116,556 which constitutes 136.3 percent of prison capacity. The most overcrowded prison is the Central California Women's Facility in Chowchilla which is currently at 167.3 percent of its capacity. For male inmates, Mule Creek State Prison is currently the most overcrowded at 165.9 percent of its capacity.

The Governor's budget proposes total funding of \$10.2 billion (\$9.9 billion General Fund and \$300 million other funds) in 2015-16. This is an increase of approximately \$1 billion (\$833 million General Fund) over 2013-14 expenditures. The following table shows CDCR's total operational expenditures and positions for 2013-14 through 2015-16.

(dollars in thousands)

Funding	2013-14	2014-15	2015-16
General Fund	\$9,156,505	\$9,827,940	\$9,989,790
General Fund, Prop 98	16,530	18,385	18,635
Other Funds	56,080	67,250	62,329
Reimbursements	167,644	185,074	185,064
Recidivism Reduction Fund	-103,199	25,968	28,227
SCC Performance Incentive Fund	-1,000	-1,000	-1,000
Total	\$9,292,560	\$10,123,617	\$10,283,0451
Positions	52,260	60,812	61,579

California Correctional Health Care Services (CCHCS)

The CCHCS receivership was established as a result of a class action lawsuit (*Plata v. Brown*) brought against the State of California over the quality of medical care in the state's 33 adult prisons. In its ruling, the federal court found that the care was in violation of the Eighth Amendment of the U.S. Constitution which forbids cruel and unusual punishment. The state settled the lawsuit and entered into a stipulated settlement in 2002, agreeing to a range of remedies that would bring prison medical care in line with constitutional standards. The state failed to comply with the stipulated settlement and on February 14, 2006, the federal court appointed a receiver to manage medical care operations in the prison system. The current receiver was appointed in January of 2008. The receivership continues to be unprecedented in size and scope nationwide.

The receiver is tasked with the responsibility of bringing the level of medical care in California's prisons to a standard which no longer violates the U.S. Constitution. The receiver oversees over 11,000 prison health care employees, including doctors, nurses,

pharmacists, psychiatric technicians and administrative staff. Over the last ten years, healthcare costs have risen significantly. The estimated per inmate health care cost for 2015-16 is almost two and a half times the cost for 2005-06. The state spent \$1.2 billion in 2005-06 to provide health care to 162,408 inmates. The state estimates that it will be spending over \$2.4 billion in 2015-16 for 117,217 inmates.

CDCR Historical Health Care Costs Per Inmate

Type of Care	2005-6	2007-08	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16
Medical	\$5,803	\$9,721	\$10,957	\$10,439	\$12,525	\$12,280	\$13,585	\$13,845	\$14,288
Mental Health	\$1,463	\$2,802	\$2,420	\$3,168	\$2,621	\$2,596	\$3,214	\$3,304	\$3,190
Dental	\$313	\$916	\$1,066	\$1,088	\$1,127	\$1,163	\$1,248	\$1,266	\$1,229
Total	\$7,580	\$13,349	\$14,443	\$14,695	\$16,273	\$16,039	\$18,048	\$18,415	\$18,707

Issue 1: Update on Inmate Medical Care and the Transition Plan

Background. On June 30, 2005, the United States District Court ruled in the case of *Marciano Plata, et al v. Arnold Schwarzenegger, et al*, that it would establish a receivership and take control of the delivery of medical services to all California prisoners confined by CDCR. In a follow-up written ruling dated October 30, 2005, the court noted:

By all accounts, the California prison medical care system is broken beyond repair. The harm already done in this case to California's prison inmate population could not be more grave, and the threat of future injury and death is virtually guaranteed in the absence of drastic action. The Court has given defendants every reasonable opportunity to bring its prison medical system up to constitutional standards, and it is beyond reasonable dispute that the State has failed. Indeed, it is an uncontested fact that, on average, an inmate in one of California's prisons needlessly dies every six to seven days due to constitutional deficiencies in the CDCR's medical delivery system. This statistic, awful as it is, barely provides a window into the waste of human life occurring behind California's prison walls due to the gross failures of the medical delivery system.

As discussed earlier, since the appointment of the receivership, spending on inmate health care has almost tripled. A new prison hospital has been built, new systems are being created for maintaining medical records and scheduling appointments, and new procedures are being created that are intended to improve health outcomes for inmates. According to the CCHCS, over 400,000 inmates per month have medical appointments and the rate of preventable deaths has dropped 46 percent since 2006.

Chief Executive Officers for Health Care. Each of California's 33 prisons has a chief executive officer (CEO) for health care who reports to the receiver. The CEO is the highest-ranking health care authority within a CDCR adult institution. A CEO is responsible for all aspects of delivering health care at their respective institution(s) and reports directly to the receiver's office.

The CEO is also responsible for planning, organizing, and coordinating health care programs at one or two institutions and delivering a health care system that features a range of medical, dental, mental health, specialized care, pharmacy and medication management, and clinic services.

Serving as the receiver's advisor for institution-specific health care policies and procedures, the CEO manages the institution's health care needs by ensuring that appropriate resources are requested to support health care functions, including adequate clinical staff, administrative support, procurement, staffing, and information systems support.

Regional CEOs. As part of transition activities, the receivership has been in discussions with CDCR regarding what would be the appropriate organizational model for oversight of institutional health care. Under CDCR, both dental and mental health had previously adopted, and had in place, a geographical, “regional” model for organizational oversight of their activities. As part of the movement toward transitioning medical care back to the state, the receiver felt that creation of cohesive, interdisciplinary regions that included medical leadership would lead to a more sustainable model for the future. As a result, the receiver took steps to hire four regional CEOs and worked with CDCR to align each region geographically so that medical, mental health, and dental consistently oversee the same institutions on a regional basis. The four regions are as follows:

1. Region I: Pelican Bay State Prison, High Desert State Prison, California Correctional Center, Folsom State Prison, California State Prison Sacramento, Mule Creek State Prison, California State Prison San Quentin, California Medical Facility, and California State Prison Solano.
2. Region II: California Health Care Facility, Stockton, Sierra Conservation Center, Deuel Vocational Institution, Central California Women’s Facility, Valley State Prison, Correctional Training Facility, Salinas Valley State Prison, and California Men’s Colony.
3. Region III: Pleasant Valley State Prison, Avenal State Prison, California State Prison Corcoran, Substance Abuse Treatment Facility, Kern Valley State Prison, North Kern State Prison, Wasco State Prison, California Correctional Institution, California State Prison Los Angeles County, and California City Prison.
4. Region IV: California Institution for Men, California Institution for Women, California Rehabilitation Center, Ironwood State Prison, Chuckawalla Valley State Prison, Calipatria State Prison, Centinela State Prison, and RJ Donovan Correctional Facility.

Each region consists of a regional health care executive, one staff services analyst/associate governmental program analyst, one office technician, and one health program specialist I. The cost for each of the regional offices is \$565,000 per year, with a total budget for regional CEOs of almost \$2.25 million per year. The funding and positions were created within CCHCS using existing resources.

Health Care Evaluations. In September 2012, the federal court requested that the court’s medical experts conduct evaluations at each CDCR prison to determine whether an institution is in substantial compliance. The order defined substantial compliance and constitutional adequacy as receiving an overall OIG score of at least 75 percent and an evaluation from at least two of the three court experts that the institution is providing adequate care.

In conducting the reviews, the medical experts evaluated essential components to an adequate health care system. These include organizational structure, health care infrastructure (e.g., clinical space, equipment, etc.), health care processes, and the quality of care.

To date, the medical experts have evaluated ten institutions. Of those ten, six were found to be providing inadequate medical care and the remaining four had specific procedural problems that needed to be addressed in order for their care to be deemed adequate.

Office of Inspector General (OIG) – Enhanced Medical Inspections. In 2007, the federal receiver, approached the Inspector General about developing an inspection and monitoring function for prison medical care. The receiver’s goal was to have the OIG’s inspection process provide a systematic approach to evaluating medical care. Using a court-approved medical inspection compliance-based tool, the OIG’s Medical Inspection Unit (MIU) was established and conducted three cycles of medical inspections at CDCR’s 33 adult institutions and issued periodic reports of their findings from 2008 through 2013.

In 2013, court-appointed medical experts began conducting follow-up evaluations of prisons scoring 85 percent or higher in the OIG’s third cycle of medical inspections. (Those evaluations are discussed in more detail in a later item.) The expert panel found that six of the ten institutions evaluated had an inadequate level of medical care, despite scoring relatively high overall ratings in the OIG’s evaluations. The difference between the two types of evaluations resulted in very different findings. The OIG’s evaluations focused on the institutions’ compliance with CDCR’s written policies and procedures for medical care. The court experts, however, focused on an in-depth analysis of individual patients’ medical treatment to determine the quality of care at each prison. After meeting with the receiver’s office and the court medical experts, the Inspector General decided that his inspections should be modified to include the methodologies used by the medical experts in order to determine the quality of care being provided.

In the 2014 Budget Act, the OIG received a \$1.262 million (General Fund) augmentation to establish four permanent positions in the Medical Inspections Unit of the OIG to evaluate medical care provided to inmates in state prison. In addition, the budget reduced the California Correctional Health Care Services (CCHCS) budget by \$645,000 (General Fund) and two positions. The net cost of the proposal was \$617,000.

The four positions consist of three physicians and one nurse who will provide medical expertise for the OIG to add clinical case reviews to the existing compliance-based monitoring system that is in place. The Inspector General will be providing a detailed update of his medical inspections at a subcommittee hearing later in the spring.

Transition Planning. On September 9, 2012, the federal court entered an order entitled *Receivership Transition Plan and Expert Evaluations*. As part of the transition from the receivership, the court required the receiver to provide CDCR with an opportunity to

demonstrate their ability to maintain a constitutionally adequate system of inmate medical care. The receiver was instructed to work with CDCR to determine a timeline for when CDCR would assume the responsibility for particular tasks.

As a result of the court's order, the receiver and CDCR began discussions in order to identify, negotiate, and implement the transition of specific areas of authority for specific operational aspects of the receiver's current responsibility—a practice that had already been used in the past (construction had previously been delegated to the state in September 2009). On October 26, 2012, the receiver and the state reached agreement and signed the first two revocable delegations of authority:

Health Care Access Units are dedicated, institution-based units, comprised of correctional officers, which have responsibility for insuring that inmates are transported to medical appointments and treatment, both on prison grounds and off prison grounds. Each institution's success at insuring that inmates are transported to their medical appointments/treatment is tracked and published in monthly reports.

The Activation Unit is responsible for all of the activities related to activating new facilities, such as the California Health Care Facility at Stockton and the DeWitt Annex. Activation staff act as the managers for CDCR and coordinate activities such as the hiring of staff for the facility, insuring that the facility is ready for licensure, overseeing the ordering, delivery, and installation of all equipment necessary for the new facility, as well as a myriad of other activities. Activation activities, again, are tracked on monthly reports provided to the receiver's office.

In addition to the two delegations that have been executed and signed by the receiver and CDCR, the receiver has produced draft delegations of authority for other operational aspects of its responsibility which have been provided to the state. These operational aspects include:

- Quality Management
- Medical Services
- Healthcare Invoice, Data, and Provider Services
- Information Technology Services
- Legal Services
- Allied Health Services
- Nursing Services
- Fiscal Management
- Policy and Risk Management
- Medical Contracts
- Business Services
- Human Resources

March 10, 2015 Order Modifying Receivership Transition Plan. Earlier this week, the federal court issued an order describing a process for ending the federal receivership.

The order employs the OIG medication inspection reports to determine which institutions are providing a constitutional level of care. Once it is determined by the OIG and the receiver that an inspection shows that an institution is suitable for return to CDCR control, the authority for the healthcare at that institution will be delegated back to the state. Once the institution is returned to the state, the receiver will monitor the state's oversight for one year and at that time, if the quality of care is maintained, the institution will be removed from receivership. Finally, once healthcare in all 34 institutions has been returned to the state and the final year of monitoring is completed, the plaintiffs will have 120 days to file a motion with the court if they do not believe a constitutional level of care is being provided. In the absence of such a motion, the parties are ordered to promptly file a stipulation and proposed order terminating the receivership and the *Plata v. Brown* lawsuit.

It remains unknown, however, how long it will take to transition the responsibility for healthcare for all 34 prisons to the state.

Special Report from the Receiver. Along with the court order issued on March 10, the receiver issued a special report detailing the improvements that have been made over the last decade in the quality of healthcare provided to inmates. In the report, the receiver notes that significant improvement has been made in the quality and delivery of medical care. However, there also remains significant variation in the quality of care at the institution level.

The report found that competent and experienced leadership and staff are now in place at headquarters, in four regional offices, and in all of the institutions. The organizational structure that has been created provides a direct line of authority from headquarters to the individual Chief Executive Officers for Healthcare at the institutions.

The report further found that the state consistently meets, or is within five percent of meeting, statewide process implementation goals such as access to care, population health management, and medication management. The report also notes that there have been significant improvements in recruiting board-certified and appropriately credentialed medical providers.

However, despite progress, the report notes that there is remaining work to be done in for system-wide areas:

- Implementation of an electronic healthcare record that allows for information transferability and access to a patients complete medical history.
- Improvements in scheduling so that primary care physicians' are not overloaded, creating backlogs and delays.
- Addressing remaining shortcomings in chronic care, infection control, information management, and continuity of care.
- Continuing the facility improvements required under the Health Care Facility Improvement Plan (HCFIP).

In addition to system-wide improvements, the report notes that there are roughly three levels of institutions: early adopters that have made substantial improvements and maintain a higher quality of care, institutions that are following behind the early adopters and learning from their implementation and adopting best practices, and a third group that is lagging significantly behind in medical care improvements. The greatest remaining challenge will be improving the care at those lagging institutions.

The report speaks generally of these three categories of institutions but does not specify the number of institutions or which institutions fall into each category. The primary reason the report does not provide specific details is that it lays out a general framework for the transition and does not presume to predetermine what the Inspector General's inspections will find concerning the quality of care provided at each of the 34 state prisons. The Inspector General has scheduled the first 12 inspections:

1. Folsom State Prison (12/8/15)
2. Correctional Training Facility (1/5/15)
3. California Rehabilitation Center (1/26/15)
4. California Correctional Center (2/16/15)
5. North Kern State Prison (3/9/15)
6. Chuckawalla Valley State Prison (3/30/15)
7. California State Prison - Solano (4/13/15)
8. Kern Valley State Prison (6/29/15)
9. California Correctional Institution (7/13/15)
10. Pelican Bay State Prison (8/3/15)
11. Valley State Prison (8/24/15)
12. Centinela State Prison (9/7/15)

These prisons were chosen by the receiver's office because their indicators suggest that they are among those institutions that will likely be determined to be early adopters and provide the highest level of care. This does not mean, however, that the receiver has presupposed what the Inspector General's medical inspections will find in terms of the constitutional level of care.

Questions for the Healthcare Receiver. The receiver should be prepared to address the following questions:

1. Please provide a detailed overview of the recent court order and your special report.
2. Please provide an update on the delegation of any additional responsibility from the receiver to CDCR since last spring.
3. How are you training both the medical and custodial staff to ensure the provision of adequate medical care and that the staff understand what adequate care entails?

4. What procedures have you put in place throughout the system to ensure that adequate care continues once the receivership ends?
5. It has been an on-going concern of the Legislature that there is a problem between the custody staff and medical staff in terms of proper procedures that should be followed when someone is in medical danger. In several incidents, the custody staff's concerns appear to have outweighed the medical staff's. What has the receiver's office done to develop a formal procedure for each institution that clarifies what should happen in such emergencies when the medical staff requires that someone be removed from a cell and the custody staff refuses? What type of training has been provided to both the custody staff and the medical staff in this area?
6. Please provide an update on improvements that have been made as a result of the court-appointed medical experts' inspections. In that update, please provide information on the specific improvements that have been made at the Central California Women's Facility.
7. Given that the CCWF medical evaluation found that overcrowding and understaffing is contributing to the failure to provide adequate medical care, what steps is the receiver's office taking to ensure that both of those situations are corrected?

Questions for the Department. The Administration should be prepared to address the following questions:

1. Please respond to the receiver's assessment of the current medical situation in the adult institutions.
2. What types of specialized training and written policies are provided to CDCR custody staff prior to allowing them to work in a medical unit or with inmate-patients?

Issue 2: California Health Care Facility Staffing

Governor's Proposal. The Governor's budget proposes a General Fund augmentation of \$76.4 million, and 714.7 additional clinical positions in 2015-16, to ensure adequate staffing upon full activation of the California Health Care Facility (CHCF) in Stockton, including primary care, nursing, and support staff. (The receiver is also seeking a supplemental appropriation to cover the partial-year cost of the proposed staffing increase in 2014-15.) If the proposed augmentation to CHCF staffing is approved, total clinical staffing costs would increase from about \$82 million annually to about \$158 million, annually, and staffing levels would increase from 810 positions to 1,525 positions.

Background. CHCF was designed and constructed to be a state-of-the-art medical facility that would provide care to inmates with high medical and mental health care needs. The construction of CHCF was completed in July 2013 and the receiver and CDCR began shifting inmates to the new hospital facility. The facility provides about 1,800 total beds including about 1,000 beds for inpatient medical treatment, about 600 beds for inpatient mental health treatment, and 100 general population beds. The CHCF cost close to \$1 billion to construct and has an annual operating budget of almost \$300 million.

Almost immediately after activation began, serious problems started to emerge. It was reported that there was a shortage of latex gloves, catheters, soap, clothing, and shoes for the prisoners. In addition, over a six-month period, CHCF went through nearly 40,000 towels and washcloths for a prison that was housing approximately 1,300 men. Investigations by officials at the facility found that the linens were being thrown away, rather than laundered and sanitized. In addition, the prison kitchen did not pass the initial health inspections, resulting in the requirement that prepared meals be shipped in from outside the institution. The problems were further compounded by staffing shortages and a lack of training. In addition, early this year, the prison suffered from an outbreak of scabies which the receiver's office attributes to the unsanitary conditions at the hospital.

Despite being aware of serious problems at the facility as early as September of 2013, it was not until February of 2014, that the receiver closed down intake at the facility and stopped admitting new prisoners. In addition, the receiver delayed the activation of the neighboring DeWitt-Nelson facility, which is designed to house inmate labor for CHCF, mentally ill prisoners, and prisoners with chronic medical conditions who need on-going care. The CHCF resumed admissions in July 2014, and currently houses about 1,900 inmates.

Legislative Analyst's Office. Given the deficiencies in care identified at CHCF, the LAO recommends the Legislature approve the additional clinical staffing and funding requested. However, they recommend that only a portion of the staff be approved on an ongoing basis and the remainder on a limited-term basis. Specifically, the LAO recommends that the Legislature approve the staffing recommended by the CPS HR

staffing analysis—excluding those staff the receiver found to be unnecessary—on an ongoing basis. This amounts to about \$52 million and 515 permanent positions. For the remaining positions not recommended by CPS HR Consulting, they recommend that the Legislature approve them on a one-year, limited-term basis because it is unclear whether all of these positions are necessary. This amounts to about \$24 million and 200 limited-term positions.

In order to assess whether the above limited-term positions are necessary on an ongoing basis and whether care can be delivered in a more efficient manner than proposed by the receiver, the LAO recommends that the Legislature require the receiver to contract for an updated staffing analysis for CHCF. This staffing analysis, which would likely cost less than \$100,000, should include (1) a review of all positions not recommended by the CPS HR analysis, and (2) whether adequate care can be delivered with fewer positions. As this analysis would be carried out after CHCF is fully activated, it would provide better information on what the ongoing staffing needs of CHCF are than the other reviews conducted to-date. The results of the analysis should be provided to the Legislature in time for its consideration of the 2016-17 budget.

Questions for the Healthcare Receiver. The receiver should be prepared to address the following questions:

1. The budget proposal requests approximately 150 more positions than the CPS staffing analysis calls for (583 in the analysis and 714.7 in the budget proposal). Please explain the reason for the disparity and why the scope of the analysis did not include a comprehensive assessment of staffing needs for CHCF.

Issue 3: Workforce Development – Clinician Recruitment and Retention

Governor’s Proposal. The Governor’s budget proposes \$872,000 from the General Fund, and 8 positions, to build an internal recruitment and retention program designed to recruit and retain clinicians and other medical personnel.

Background. In 2007, the Plata Workforce Development Unit was created in response to a court order requiring the receiver to develop a detailed plan designed to improve prison medical care. The unit consisted of 40 positions dedicated to the recruitment and retention of positions within the medical program deemed critical to providing a constitutional level of medical care. The goal was met in 2010 and the positions were shifted to other healthcare improvement priorities.

A subsequent federal court order on March 27, 2014, requires CHCS to report on recruitment and retention in their tri-annual reports in order to ensure that healthcare facilities do not dip below a 10 percent vacancy rate. The latest recruitment and retention report submitted in January 2015, show that 18 prisons currently have a vacancy rate of less than 10 percent, including remote prisons such as Pelican Bay in Crescent City and Ironwood and Chuckawalla Valley prisons in Blythe. Another 13 prisons have a vacancy rate for physicians between 10 and 30 percent. Finally, two prisons, North Kern Valley and Salinas Valley, have a physician vacancy rate in excess of 30 percent. Given the vacancy patterns and the fact that in several instances, there is a disparity in the ability to recruit and retain adequate staff between prisons that are in very close proximity. For example, North Kern State Prison has at least a 30 percent vacancy rate for physicians, while neighboring Wasco State Prison has a physician vacancy rate of less than 10 percent. Similar examples can be seen throughout the report. This would suggest that geography or remoteness of institutions is not the reason for high turnover or high vacancies, rather something in the working conditions, culture or the running of the institution itself may be causing the difficulties in recruiting or retaining clinicians.

Legislative Analyst’s Office. The LAO does not have a recommendation pertaining to this budget proposal.

Questions for the Healthcare Receiver. The Receiver should be prepared to address the following questions:

1. What can you tell us about the disparity in vacancy rates and retention, given that the patterns would suggest that the problem is not geographical remoteness?
2. Do conditions in some prison lead to a high rate of turnover or medical personnel being unwilling to work in certain institutions? How do you envision your recruitment and retention staff solving this problem?

3. What authority will they have to improve working conditions in institutions?
4. What is your proposed timeline for showing improvements in recruitment and retention, especially at those facilities with vacancy rates higher than 30 percent?
5. The Legislature hears regularly from psychiatric technicians who appear to be understaffed and are being required to work a significant amount of mandatory overtime. Can you please address the concerns raised by psychiatric technicians and update the committee on efforts that have been put in place to investigate these concerns and ensure that there is adequate psychiatric technician staffing in all facilities?

Questions for the Department. The Administration should be prepared to address the following questions:

1. Committee staff have been told that in December of last year five psychiatric technicians were hired to work in the administrative segregation unit at Avenal State Prison. Less than 60 days later, the unit staff received a notice that the segregation unit would be shut down in 45 days. Can you please explain why positions were filled in a unit that was scheduled to be shut down and what procedures you and the receiver have in place to make sure you are not working at cross purposes in filling vacancies?

Issue 4: Quality Management Proposal

Governor's Proposal. The Governor's budget proposes \$4.9 million from the General Fund, and 30 positions, to expand the receiver's quality management efforts in 2015-16. Of the additional staff being requested, 20 positions are to develop quality management programs in the receiver's new regional offices. Regional staff would be responsible for overseeing prisons located within their geographic area of responsibility. Similar to existing quality management staff, these requested staff would be responsible for tracking prison performance, identifying areas where medical care is deficient, developing performance improvement plans, and sharing best practices across prisons.

Background. In June 2008, the federal court approved the receiver's "Turnaround Plan of Action" to achieve a sustainable constitutional level of medical care. The plan identified six major goals for the state's inmate medical care program, including specific objectives and actions for each goal. One of the identified goals was to implement a quality assurance and continuous improvement program to (1) track prison performance on a variety of measures (such as access to care), (2) provide some training and remedial planning (for example, developing a plan to improve access to care at a prison that is struggling to meet that goal), and (3) share best practices across prisons, among other tasks.

Currently, the quality management section within the receiver's office has 32 positions and a budget of \$3.9 million. In addition, there are also 170 staff statewide (5 positions at each prison) who are involved in quality management activities. These staff include psychologists, managers, and program specialists who perform quality management functions as well as other responsibilities. According to CHCS, about 90 percent of their time is devoted to quality management activities.

Legislative Analyst's Office. In 2012, the receiver contracted with Health Management Associates (HMA) for a review of the structure of the receiver's office. In February 2013, HMA released its analysis and recommendations. The analysis recommended several changes to the receiver's quality management section, including reassigning many of the staff to other activities. According to HMA, the size of the quality management section in the receiver's office far exceeded that in any other prison or health care system of a similar scale. At the time HMA found the quality management section to be overstaffed, it had 24 staff. Under the Governor's proposal, the section would have 62 staff. This does not include the 170 additional staff that spend a majority of their time on quality management activities at the state's 34 prisons.

Private health insurance plans generally spend about 0.7 percent of their budget on quality management activities. Currently, the receiver's office spends about 0.25 percent of their budget on the headquarters quality management section. However, including the prison-level quality management staff, the receiver's office currently spends about 1.3 percent of their budget on quality management—more than double the spending of private health plans. If the Governor's proposal was approved, the receiver's office would spend about 1.6 percent of its budget on quality management.

Given that the receiver's quality management section was found to be unnecessarily large in an independent assessment and is already larger than the community standard, the LAO finds no compelling reason at this time to expand the receiver's quality management staff. Thus, they recommend the Legislature reject the Governor's proposal.

Questions for the Healthcare Receiver. The Receiver should be prepared to address the following questions:

1. Please respond to the LAO's concerns about the size of your quality management staff in light of the findings of your own HMA-contracted study released in 2013.

Issue 5: Valley Fever Testing

Governor's Proposal. The Receiver spent \$5.4 million on sufficient supplies to test 90,000 inmates for Valley Fever. On January 12, 2015, the tests were administered to roughly 30,000 consenting inmates. The Receiver is seeking a supplemental appropriation in the current year to cover the costs of the medical supplies already purchased. In the future, the Receiver will administer Valley Fever skin tests to all new inmates entering the prison system who are eligible for placement at ASP and PVSP. The Receiver anticipates that savings from not treating Valley Fever in the future would offset future testing costs.

Background. Between 2008 and the early months of 2015, 734 inmates housed in the state's prisons were diagnosed with Valley Fever (also known as cocci). Of that number, almost 50 died as a result. Valley Fever is considered hyperendemic at eight of the 33 adult institutions:

- Avenal State Prison
- Pleasant Valley State Prison
- Corcoran State Prison
- Substance Abuse Treatment Facility
- California Correctional Institution
- Wasco State Prison
- Kern Valley State Prison
- Northern Kern State Prison

The highest rates of Valley Fever are at Avenal State Prison and Pleasant Valley State Prison. However, all eight institutions make up the CDCR Valley Fever Exclusion Area.

CDCR first identified significant increases in the number of inmates contracting valley fever at Avenal and Pleasant Valley in 2005. At the receiver's request, the California Department of Public Health (CDPH) conducted an investigation at Pleasant Valley. In January of 2007, CDPH made final recommendations that included inmate and staff education, environmental controls and the relocation of the highest risk groups to other prisons. CDPH further noted that the exclusion of high-risk inmates would be the most effective method of decreasing the risk. While CDCR provided additional educational materials and transferred inmates with a high risk due to pulmonary conditions, they did not transfer inmates with diabetes, or African American and Filipino inmates out of the institutions. In addition, they also failed to implement any of the recommendations concerning ground cover and soil sealant. In the years between the 2007 report and the June 2013 court order, it appeared that not much progress had been made toward mitigating the impact of valley fever on inmates in the hyperendemic area, especially at the two most affected institutions, Avenal and Pleasant Valley.

Valley Fever is a disease caused by inhaling fungal spores found in the soil in many areas of California. Most people who get Valley Fever have few or no symptoms, but some individuals can experience severe symptoms similar to flu or pneumonia or even die. Once an individual has Valley Fever he or she cannot get it again. The fungal spores that can cause Valley Fever are particularly common in the areas surrounding Pleasant Valley State Prison (PVSP) in Coalinga and Avenal State Prison (ASP). During the 2013-14 fiscal year, 942 inmates were diagnosed with Valley Fever.

What is Valley Fever? Coccidioidomycosis, more commonly referred to as cocci or valley fever, is an infection caused by the coccidioides fungus spores, which are prevalent in the dry soil of the West and Southwest. These spores are found in the soil in certain areas (called endemic), and get into the air when the soil is disturbed. This can happen with construction, gardening, farming, windy weather, dirt biking, or driving all-terrain vehicles (ATV's) in these areas. Coccidioidomycosis cannot be passed from person-to-person. The most common states for people to be infected with coccidioidomycosis are Arizona and California, followed by Nevada, New Mexico, Texas, and Utah.

Symptoms include fever, chills or in more severe cases chronic pneumonia or meningitis. Generally, patients develop symptoms within one to three weeks after exposure. The flu-like symptoms beyond those mentioned above can include headaches, rash, muscle aches, extreme tiredness, and weakness. The symptoms typically last a few weeks to months.

According to the Centers for Disease Control and Prevention, approximately 40 percent of those infected require hospitalization, and the disease can be fatal.

In April 2013, the Receiver requested assistance from the federal Centers for Disease Control and Prevention (CDC) in reducing the number of Valley Fever cases. In July 2014, the CDC recommended several options for the Receiver to consider. For example, the CDC recommended excluding from placement at ASP and PVSP inmates who do not have Valley Fever. Under this policy, inmates who test negative for Valley Fever would be excluded from placement at ASP or PVSP, while inmates who test positive would be eligible to be housed at ASP or PVSP. The rationale is that excluding inmates who test negative from placement at ASP or PVSP could eventually reduce Valley Fever cases by about 60 percent, as such exclusion would reduce their likelihood of obtaining Valley Fever. The testing protocol will replace the current protocol that excludes inmates with certain respiratory conditions, inmates of African American and Filipino descent, and inmates with diabetes from being housed at both ASP and PVSP.

Court Order. In June of 2013, the federal judge overseeing the *Plata* decision ordered CDCR to transfer all inmates who are classified as high-risk for valley fever under the American Thoracic Society definition from Avenal State Prison and Pleasant Valley State Prison within 90 days of the court order. The American Thoracic Society criteria for increased risk includes patients with impaired cellular immunity, such as those with organ transplants, those with HIV infection, and those with chronic obstructive

pulmonary disease, chronic renal failure, congestive heart failure, diabetes; patients receiving certain inhibitors (medications used in the treatment of arthritis); Filipino and African-American men; and pregnant women in the second or third trimester.

Legislative Analyst's Office. According to the receiver, the potential reduction in the number of inmates with Valley Fever will likely generate some medical care-related savings in 2015–16 and thereafter. However, the Governor's budget does not reflect any potential savings. Given that the receiver spends \$23 million on Valley Fever treatment each year and the CDC estimates that its recommendations could decrease Valley Fever cases by 60 percent, the receiver could eventually see a reduction in treatment costs of around \$14 million annually within a few years. Though the proposal indicates that savings could be used to fund ongoing testing, such testing is only estimated to cost a couple million dollars annually. In addition, the receiver used only about one-third of testing supplies it purchased. According to the receiver's office, they will use those tests for their ongoing testing, which would reduce the ongoing costs associated with Valley Fever in the budget year. Despite these considerations, the administration has not provided information on how any additional savings would be used.

We do not have concerns with the receiver having tested inmates for Valley Fever in January of this year. However, the LAO is concerned that the Governor's proposal does not account for all the savings associated with implementing an ongoing Valley Fever testing process. Accordingly, they recommend that the Legislature request that the receiver report at budget hearings this spring on (1) the amount of annual savings from reductions in the number of inmates with Valley Fever and (2) how he plans to account for these savings in the budget year and on an ongoing basis. This would ensure the Legislature has sufficient oversight of the receiver's budget, and that any savings as a result of Valley Fever testing are spent in a way that is consistent with the Legislature's priorities.

Questions for the Receiver's Office. The receiver should be prepared to address the following questions:

1. Please provide an update on the testing process including the number of inmates tested, the results of those tests, and the accuracy of the test.
2. The subcommittee had extension conversations with your office last year on Valley Fever. At no point was broader testing mentioned. When did you decide to take this step to test every prisoner and why did you wait until January to inform the administration and the Legislature?
3. Please address the concerns raised by the LAO analysis, particularly, why your proposed budget does not assume any reduced health care costs as a result of the widespread testing.

4. Have you seen an overall reduction in the number of valley fever cases? Please provide us with the most recent data since the court ordered changes have been in place.
5. Have you been able to determine why the incidents of valley fever were higher at Avenal and Pleasant Valley than in their surrounding communities?
6. Will this testing change the number of inmates who are being redirected to prisons outside of the exclusion area?
7. The exclusion area encompasses eight prisons. However, the deficiency request only mentions two of the eight prisons. Have you changed the exclusion area to only include Avenal State Prison and Pleasant Valley State Prison?

SUBCOMMITTEE NO. 5

Agenda

Senator Loni Hancock, Chair
Senator Joel Anderson
Senator Jim Beall



**Thursday, March 19, 2015
9:30 a.m. or Upon Adjournment of Session
State Capitol - Room 113**

Consultant: Julie Salley-Gray

ITEMS PROPOSED FOR DISCUSSION

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Pursuant to the Americans with Disabilities Act, individuals who, because of a disability, need special assistance to attend or participate in a Senate Committee hearing, or in connection with other Senate services, may request assistance at the Senate Rules Committee, 1020 N Street, Suite 255 or by calling 916-651-1505. Requests should be made one week in advance whenever possible.

0540 HEALTH AND HUMAN SERVICES AGENCY**Issue 1: Health and Human Services Agency: Office of Law Enforcement Support**

Background. The 2014 budget act provided \$787,000 and six permanent positions for the establishment of the Office of Law Enforcement Support (OLES) within CHHSA to provide uniform training, policies and protocols for the peace officers employed by the state hospitals and developmental centers. In addition, the Legislature approved \$600,000 in one-time reimbursements for a contract with the California Highway Patrol that will assist with the development of the policies. Finally, the Legislature adopted trailer bill language requiring the California Health and Human Services Agency (CHHS) to work with system stakeholders to improve the quality and stability of law enforcement practices and develop uniform procedures. CHHS was required to report to the Legislature on the new procedures by January 10, 2015.

In early March 2015, CHHS provided the report to the Legislature, as required in 2014 budget trailer bill, on the creation of the OLES. The report entitled, *Office of Law Enforcement Support Plan To Improve Law Enforcement In California's State Hospitals and Developmental Centers*, is required to contain specific and detailed recommendations on improving law enforcement functions in a meaningful and sustainable way that assures safety and accountability in the State Hospitals and Developmental Center systems. The report contains a review and evaluation of best practices and strategies, including on independent oversight, for effectively and sustainably addressing the employee discipline process, criminal and major incident investigations, and the use of force within state hospitals and psychiatric programs.

The proposed creation of the OLES in last year's budget came about in response to underperformance by the Office of Protective Services (OPS) within each developmental center and state hospital. CHHS conducted an in-depth analysis of OPS operations within DSH which revealed the following critical deficiencies: (NOTE: A discussion on the components of the report related to the developmental centers will occur at an upcoming hearing of subcommittee No. 3 on Health and Human Services.)

- Inability to recruit, hire, and retain qualified personnel
- Inconsistent and outdated policies and procedures
- Inadequate supervision and management oversight
- Inconsistent and inadequate training
- Inconsistent and deficient disciplinary processes
- Lack of independent oversight, review, and analysis of investigations

- Inadequate headquarters-level infrastructure
- Lack of experienced law enforcement oversight

The report states that inefficiencies in hiring practices and pay disparity led to fewer and less qualified employees, which resulted in more than 270,000 hours of overtime, at a cost of \$10.1 million in 2013.

OLES was established in 2014 to change the OPS culture and provide oversight, and be directly involved in all OPS operations. Eventually the OLES will be organized as follows:

Organizational Development Section

- Training and Policy Development Unit
- Selections and Standards Unit

Professional Standards Section

- Serious Misconduct Review Team
- Use-of-Force Monitoring

The report includes the following recommendations for next steps:

1. Establish a Professional Standards Section's Special Investigations Unit to monitor critical incidents, such as those involving sexual assault or other major assaults, and assist with complex investigations involving employee misconduct at state hospitals and developmental centers.
2. Establish a Professional Standards Section's Investigations Analysis Unit to provide quality control and analyses of administrative cases.
3. Hire Vertical Advocates who will ensure that investigations into allegations of employee misconduct are conducted with the thoroughness required for prosecution.
4. Conduct independent, comprehensive staffing studies of law enforcement duties and needs at the state hospitals and developmental centers.

Questions for the Administration. The agency should be prepared to present the proposal and to respond to any questions posed by members of the subcommittee.

Issue 2: Inspector General Assessment of Plan and Need for Independent Oversight

Background. During last year's budget process, the Legislature discussed the importance of independent oversight for the state hospitals and psychiatric programs. While the hospitals are therapeutic, treatment settings and not prisons, there remains a great deal of similarity between the patients in state hospitals and inmates in state prisons. Over 90 percent of patients in the state hospital system come into the hospitals through the criminal justice system. In addition, like the state's prisons, the state hospitals are closed institutions that house people 24 hours a day and are not generally open to the public. Therefore, without independent oversight, such as an inspector general, who is given full access to the hospitals, the Legislature and the public are unable to determine the quality of care provided and the safety of the institutions for both patients and staff.

As a possible interim step toward either expanding the scope of the current Inspector General's mission to include state hospitals and psychiatric programs or establishing a separate inspector general, budget committees in both houses of the Legislature:

- Approved \$200,000 General Fund for the Office of the Inspector General.
- Adopted placeholder trailer bill language directing the Office of the Inspector General to prepare a recommendation for presentation to the appropriate Senate and Assembly committees to address oversight and transparency of the employee discipline process and use of force within the Department of State Hospitals. The recommendation is to include requirements for reporting of employee misconduct, and how the office of internal affairs within that department is organized, conducts investigations and reports. The recommendation is also to include a review of how the department presents employee misconduct and discipline cases to the State Personnel Board and any changes that should be made. Finally, the recommendation is to include the feasibility and cost of either bringing the state hospitals under the Inspector General's jurisdiction or creating a separate Inspector General's Office for the state hospital system.
- Adopted placeholder trailer bill language directing the California Health And Human Services Agency to cooperate with the Office of the Inspector General and provide unfettered access to all requested documents and personnel.

However, the final budget compromise that was reached by the Legislature and the Administration resulted in the plan presented in the previous item.

Questions for the Inspector General. The subcommittee asks that the Inspector General address the following questions and issues:

1. Please provide your assessment of the plan presented by the Health and Human Services (HHS) Agency.

2. Please describe your office's role in the development of the plan.
3. As noted above, one of the concerns raised by the Legislature last year was that the structure of the proposal put forward by the Administration during the May Revise process was very similar to the structure in place at the California Department of Corrections and Rehabilitation (CDCR), which ultimately led to the *Madrid v. Gomez* case in 1995. Does the HHS plan before the committee address that concern?
4. Please provide your assessment of whether or not the five state hospitals and three psychiatric programs run by DSH would benefit from independent oversight.

4440 DEPARTMENT OF STATE HOSPITALS

The Department of State Hospitals (DSH) is the lead agency overseeing and managing the state's system of mental health hospitals. The DSH seeks to ensure the availability and accessibility of effective, efficient, and culturally-competent services. DSH activities and functions include advocacy, education, innovation, outreach, oversight, monitoring, quality improvement, and the provision of direct services.

The Governor's 2011 May Revision first proposed the elimination of the former Department of Mental Health (DMH), the creation of the new DSH, and the transfer of Medi-Cal mental health services and other community mental health programs to the Department of Health Care Services (DHCS). The 2011 budget act approved of just the transfer of Medi-Cal mental health programs from the DMH to the DHCS. In 2012, the Governor proposed, and the Legislature adopted, the full elimination of the DMH and the creation of the DSH. All of the community mental health programs remaining at the DMH were transferred to other state departments as part of the 2012 budget package. The budget package also created the new DSH which has the singular focus of providing improved oversight, safety, and accountability to the state's mental hospitals and psychiatric facilities.

California's State Hospital System

California has five state hospitals and three psychiatric programs located on the grounds of the prisons operated by the California Department of Corrections and Rehabilitation (CDCR). Approximately 92 percent of the state hospitals' population is considered "forensic," in that they have been committed to a hospital through the criminal justice system. The five state hospitals provide treatment to approximately 6,000 patients. The psychiatric facilities at state prisons currently treat approximately 1,000 inmates.

Atascadero State Hospital. This facility, located on the Central Coast, houses a largely forensic population, including a large number of incompetent to stand trial patients and mentally disordered offenders. As of December 2014, it housed more than 1,000 patients.

Coalinga State Hospital. This facility is located in the city of Coalinga and is California's newest state hospital. The hospital houses only forensic patients, most of whom are sexually violent predators. As of December 2014, it housed more than 1,100 patients.

Metropolitan State Hospital. Located in the city of Norwalk, this hospital's population is approximately 65 percent forensic. Metropolitan State Hospital does not accept individuals who have a history of escape from a detention center, a charge or conviction of a sex crime, or a conviction of murder. As of December 2014, it housed about 700 patients.

Napa State Hospital. This facility is located in the city of Napa and has a mix of civil and forensic commitments. Napa State Hospital limits the number of forensic patients to 80 percent of the patient population. As of December 2014, it housed nearly 1,200 patients.

Patton State Hospital. This facility is located in San Bernardino County and primarily treats forensic patients. As of December 2014, it housed 1,500 patients.

Salinas Valley Psychiatric Program. This program is located on the grounds of Salinas Valley State Prison in Soledad and provides treatment to state prison inmates. As of December 2014, it had a population of more than 200 patients.

Stockton Psychiatric Program. This program is located on the grounds of the California Health Care Facility in Stockton and is the state's newest psychiatric program. The program provides treatment to state prison inmates. As of December 2014, it had a population of about 400 patients.

Vacaville Psychiatric Program. This program is located on the grounds of the California Medical Facility in Vacaville and provides treatment to state prison inmates. As of December 2014, it had a population of about 350 patients.

The following are the primary Penal Code categories of patients who are either committed or referred to DSH for care and treatment:

Committed Directly From Superior Courts:

- *Not Guilty by Reason of Insanity* – Determination by court that the defendant committed a crime and was insane at the time the crime was committed.
- *Incompetent to Stand Trial (IST)* – Determination by court that the defendant cannot participate in trial because the defendant is not able to understand the nature of the criminal proceedings or assist counsel in the conduct of a defense. This includes individuals whose incompetence is due to a developmental disability.

Referred From The California Department of Corrections and Rehabilitation (CDCR):

- *Sexually Violent Predators (SVP)* – Hold established on inmate by court when it is believed probable cause exists that the inmate may be a SVP. Includes 45-day hold on inmates by the Board of Prison Terms.
- *Mentally Disordered Offenders (MDO)* – Certain CDCR inmates for required treatment as a condition of parole, and beyond parole under specified circumstances.
- *Prisoner Regular/Urgent Inmate-Patients (Coleman Referrals)* – Inmates who are found to be mentally ill while in prison, including some in need of urgent treatment.

**State Hospitals & Psychiatric Programs
Caseload Projections**

	2014-15	2015-16
Population by Hospital*		
Atascadero	N/A	N/A
Coalinga	N/A	N/A
Metropolitan	N/A	N/A
Napa	N/A	N/A
Patton	N/A	N/A
Subtotal	5,802	5,863
Population by Psych Program		
Vacaville	366	366
Salinas	244	244
Stockton	480	480
Subtotal	1,090	1,090
Population Total	6,892	6,953
Population by Commitment Type		
Incompetent to Stand Trial (IST)	1,430	1,485
Not Guilty By Reason of Insanity (NGI)	1,377	1,379
Mentally Disordered Offender (MDO)	1,220	1,210
Sexually Violent Predator (SVP)	953	967
Lanterman-Petris-Short Act – Civil Commitments	556	556
<i>Coleman</i> Referral – Hospitals	258	258
<i>Coleman</i> Referral – Psych Programs	1,090	1,090
Department of Juvenile Justice	8	8

* DSH is no longer able to identify the number of budgeted beds at their hospitals.

State Hospitals Budget

The Governor's proposed budget includes \$1.7 billion for DSH in 2015-16 (\$1.6 billion General Fund). This represents a \$15 million increase over 2014-15 funding. The proposed budget year position authority for DSH is 11,398 positions, an increase of 164 positions from the current year. The department's budget includes increased funding for several proposals; including plans to operate 105 more Incompetent to Stand Trial (IST) beds than were budgeted in 2014-15, and establishes an involuntary medication policy for patients who are Not Guilty by Reason of Insanity (NGI).

(dollars in thousands)

Funding	2013-14 Actual	2014-15 Projected	2015-16 Proposed
General Fund (GF)	\$1,440,792	\$1,538,796	\$1,551,830
Reimbursements	126,384	127,560	129,764
CA Lottery Education Fund	153	25	25
Total	\$1,567,329	\$1,666,381	\$1,681,619
Positions	10,360	11,234	11,398

Cost Over-Runs. Over the past several years, state hospital costs had been rising at an alarming rate, and substantial current year deficiencies had become the norm, and even expected, from year to year. For example, in the 2010-11 fiscal year, the deficiency rose from \$50 million to \$120 million and the then-DMH staff could not explain why. In general, the department lacked any clear understanding of what the major cost drivers were and how to curb or stabilize costs in the system. In 2011, DMH leadership facilitated and oversaw an in-depth exploration and analysis of state hospital costs, resulting in a lengthy report that is available on the department's website. The research team identified the following system wide problems/cost drivers: increased patient aggression and violence; increased operational treatment models; and redundant staff work.

Based on the report described above, in 2012, the Administration proposed a comprehensive list of reforms, to reverse the rising cost trend, which addressed three stated goals: 1) improve mental health outcomes; 2) increase worker and patient safety; and, 3) increase fiscal transparency and accountability. Perhaps the most significant of these proposed reforms was the reduction of 600 positions throughout the state hospital system. Of these 600 positions, 230 were vacant. In addition to the reduction in positions, the 2012 budget package included key changes in the following areas:

1. Reduced layers of management and streamlined documentation.
2. Flexible staffing ratios, focusing on front-line staff, and redirecting staff to direct patient care.
3. New models for contracting, purchasing, and reducing operational expenses.
4. Elimination of adult education.

Issue 3: Incompetent to Stand Trial Population

Background. When a judge deems a defendant to be incompetent to stand trial, the defendant is referred to the state hospital system to undergo treatment for the purpose of restoring competency. Once the individual's competency has been restored, the county is required to take the individual back into the criminal justice system to stand trial, and counties are required to do this within ten days of competency being restored.

For a portion of this population, the state hospital system finds that restoring competency is not possible. There is no statutory deadline for the county to retrieve these individuals, and therefore they often linger in the state hospitals for years. The state pays the costs of their care while in the state hospitals; whereas their costs become the counties' responsibility once they take them out of the state hospitals. This funding model creates a disincentive for counties to retrieve patients once it is determined that competency restoration is not possible.

Over the past several years, the state hospitals have seen a growing waiting list of forensic patients. The largest waiting lists are for IST and Coleman inmate-patient commitments from CDCR. As of February 23, 2015, the waitlist for all commitment types was 484, including 328 specifically IST. DSH has undertaken several efforts to address the growing IST waitlist including: 1) increasing budgeted bed capacity by activating new units and converting other units; 2) establishing a statewide patient management unit; 3) promoting expansion of jail-based IST programs; 4) standardizing competency treatment programs; 5) seeking community placements; 6) improving referral tracking systems; and 7) participating in an IST workgroup that includes county sheriffs, the Judicial Council, public defenders, district attorneys, patients' rights advocates, and the Administration.

DSH acknowledges that, despite these efforts, IST referrals have continued to increase. When queried about the potential causes of the growing number of referrals from judges and CDCR, the Administration describes a very complex puzzle of criminal, social, cultural, and health variables that together are leading to increasing criminal and violent behavior by individuals with mental illness.

Services for IST Patients. Under state and federal law, all individuals who face criminal charges must be mentally competent to help in their defense. By definition, an individual who is IST lacks the mental competency required to participate in legal proceedings. Individuals who are IST and face a felony charge are eligible for DSH-provided restoration services. At any given time, between 15 percent and 20 percent of the population in DSH facilities are committed as IST.

Long Waitlist for IST Treatment. As indicated above, as of February 2015, the department had 328 IST patients waiting to be placed in a DSH facility. Individuals on the waitlist are typically held in county jail until space becomes available in a DSH facility. The waitlists are problematic because they could result in increased court costs and higher risk of DSH being found in contempt of court orders to admit patients. This is because DSH is

required to admit patients within certain time frames and can be required to appear in court or be held in contempt, when it fails to do so.

2014 Budget Act. The 2014-15 budget included \$7.87 million General Fund for 2013-14 and \$27.8 million General Fund for 2014-15, to increase bed capacity by 105 beds to address the waiting list specific to IST patients.

Specifically, the funding allowed for three new units with 35 beds each, anticipating activation of the first unit in March 2014, the second in May 2014, and the third in July 2014.

Governor's Budget. The Governor's budget for 2015-16 includes proposals to expand treatment capacity in DSH for IST patients. Specifically, the budget proposes to activate existing beds at two state hospitals.

The budget proposes \$17.3 million in additional General Fund support for the activation of 105 beds for IST patients in 2015-16. This amount includes:

- \$8.6 million and 75.1 positions to activate 55 beds at DSH-Atascadero. (The Administration proposes to redirect \$104,000 in savings in the current year for minor retrofitting of the facility.)
- \$8.7 million and 74.6 positions to activate 50 beds at DSH-Coalinga. (The Administration proposes to redirect \$2.9 million in savings and establish 25 positions in the current year to begin the activation process.) According to the department, these beds would be filled with MDO patients transferred from DSH-Atascadero. The beds made available from this transfer would then be filled with IST patients.

Legislative Analysts' Office. The LAO recommends that the Legislature not approve the Governor's proposal to expand IST capacity at DSH-Atascadero and DSH-Coalinga until the department provides the following additional justification:

- Additional Budget Information. LAO recommends the DSH provide (1) the number of budgeted and filled beds (particularly those authorized in the 2014-15 budget), and any justification for why the number of budgeted beds differs from the number of filled beds; and (2) detailed information about how its request for additional positions to activate the new IST capacity ties to its staffing ratios, along with justification for any staff in excess of those ratios.
- ROC Delays and Potential for ROC Expansion. LAO recommends the department report on why there has been a delay in activating the additional ROC beds authorized in the 2014-15 budget and on the potential for the ROC program to serve additional IST patients in the future.

- Impacts of Proposition 47. LAO recommends DSH report what changes it has seen in the IST patient population and waitlists since the passage of Proposition 47, as well as estimates on the long-term impacts of the proposition on the IST population (such as by reviewing a sample of IST patient data to determine the proportion of IST patients who were committed for Proposition 47 eligible offenses). To the extent that DSH identifies reductions in the patient population as a result of Proposition 47, the Legislature should require the department to submit updated population budget proposals.

Questions for the Administration. The Administration should be prepared to present the proposal and to address the following questions:

1. It appears that the waiting list has been going down in recent weeks, possibly due to the impact of Proposition 47. How does your budget proposal account for the reduced number of eligible IST patients due Proposition 47?
2. Does the length of the waiting list vary from month-to-month? If so, please provide the subcommittee with data on the last 12 to 24 months.
3. How many ISTs are left by counties at state hospitals after their competency is restored and what is the average length of stay for this population that is left lingering in the hospitals?
4. Is this only a problem with certain counties? If so, which ones?
5. Has the Administration considered charging a per-day rate for those patients who should have been retrieved by the county responsible for their commitment?
6. Has the Administration done an inventory and analysis to determine whether the state has the appropriate mix of types of treatment beds throughout the system to meet the needs of its current population?
7. How flexible are the bed types within the system? For example, can vacant SVP beds be used to serve MDOs or IST patients?

Issue 4: Restoration of Competency (ROC) Programs**Panelists**

Captain Jon Pacewicz, and **Health Administrator Terry Fillman**, San Bernardino County Sheriff's Department

Background. The 2007 Budget Act included \$4.3 million for a pilot program to test a more efficient and less costly process to restore competency for IST defendants by providing competency restoration services in county jails, in lieu of providing them within state hospitals. This pilot operated in San Bernardino County, via a contract between the former Department of Mental Health, San Bernardino County, and Liberty Healthcare Corporation. Liberty provides intensive psychiatric treatment, acute stabilization services, and other court-mandated services. The state pays Liberty a daily rate of \$278 per bed, well below the approximately \$450 per bed cost of a state hospital bed. The county covers the costs of food, housing, medications, and security through its county jail. The results of the pilot have been very positive, including: 1) treatment begins more quickly than in state hospitals; 2) treatment gets completed more quickly; 3) treatment has been effective as measured by the number of patients restored to competency but then returned to IST status; and, 4) the county has seen a reduction in the number of IST referrals. San Bernardino County reports that it has been able to achieve savings of more than \$5,000 per IST defendant, and therefore total savings of about \$200,000. The LAO estimated that the state achieved approximately \$1.2 million in savings from the San Bernardino County pilot project.

The LAO produced a report titled, *An Alternative Approach: Treating the Incompetent to Stand Trial*, in January 2012. Given the savings realized for both the state and the county, as well as the other indicators of success in the form of shortened treatment times and a deterrent effect reducing the number of defendants seeking IST commitments, the LAO recommends that the pilot program be expanded.

In 2012, budget trailer bill authorized the state to continue the pilot on an ongoing basis, and the DSH is in the process of actively encouraging expansion to other counties. The DSH reports that they have had significant discussions with 14 counties and that they are close to signing contracts with Sacramento and Los Angeles counties. A ROC program in Los Angeles County could have a very significant impact on the IST waiting list given that an estimated 1/3 of the individuals on the waiting list are in Los Angeles County.

2014 Budget Act. The 2014-15 budget included an increase of \$3.9 million GF to expand the restoration of competency program (ROC) by 45 to 55 beds. In addition, trailer bill language was adopted expanding the ROC program to secured community treatment facilities. Finally, the budget required that any unspent funds revert to the General Fund. The budget did not include an increase in state staffing positions related to the expansion of ROC. To date, DSH has not expanded the ROC program.

Staff Comments. Expanding this program, which allows people who have been deemed incompetent to stand trial (IST) by reason of insanity to receive mental health services in the county jail, rather than being transferred to a state hospital, should help to reduce the IST waiting list for those who are waiting for space to open up in a state hospital.

In addition, expanding the program to more counties allows county jails to properly assess and treat inmates who have been found incompetent and are waiting in county jails for a bed in the state hospital system. By treating those individuals who are easy to restore either in a community mental health facility or in the jails, counties should be able to reduce the pressure on their jail systems and more quickly move individuals with serious mental illnesses through the court system and either into long-term treatment or, if found guilty, to begin serving their jail or prison terms.

Currently, two counties, Riverside and San Bernardino, have a restoration of competency program. The proposed augmentation would expand the ROC program to Los Angeles and Alameda counties. Currently, the ROC program is only available in a county jail setting and not in community mental health facilities. As noted earlier, last year's budget included funding to expand the program. However, DSH appears to be struggling in its ability to contract with counties to provide community restoration. This difficulty comes despite significant interest on the part of the county sheriffs to find ways to treat and restore people on the IST waiting list.

The annual cost of the ROC program is approximately \$78,000 per bed, as opposed to an IST bed in a state hospital that costs approximately \$250,000 per year. Given the significant general fund savings associated with the ROC program, the Legislature may wish to explore ways of more quickly and efficiently expanding the number of ROC beds. DSH, to date, does not appear to be equipped with the expertise to significantly expand the program, despite the pressures they face due to the IST waiting list.

Issue 5: Recruitment and Retention Report

DSH Staffing Issues. Similar to challenges faced by the California Department of Corrections and Rehabilitation, which this committee discussed on March 12, it has been challenging for State Hospitals to fill positions and maintain reasonably-low staff vacancy rates. DSH cites several causes for the difficulty in hiring staff, including:

- Undesirable locations.
- Lower pay than CDCR for very similar work.
- Insufficient number of qualified mental health professionals, in California and nationally.
- Increasing competition from the private health care market in response to the move toward mental health parity.

2014 Budget Act. The 2014 budget contained supplemental reporting language that required DSH to prepare a report on recruitment and retention of staff at the state hospitals and psychiatric programs. Specifically, the language stated:

On or before January 10, 2015, Department of State Hospital (DSH) shall submit to the relevant fiscal committees a report assessing the department's salary and benefits for clinical staff and supervisors. The report shall include the following information:

- a) A detailed accounting of the minimum, maximum, and average salaries for all DSH clinical staff and supervisors, including medical and behavioral health care providers.*
- b) A detailed accounting of the minimum, maximum, and average full compensation packages (including salary, benefits, and any other forms of compensation such as bonuses or loan forgiveness) for all DSH clinical staff and supervisors, including medical and behavioral health care providers.*
- c) A comparison of the average salaries and full compensation packages for clinical providers at DSH, California Department of Corrections and Rehabilitation (CDCR), and a comparable private provider.*
- d) The average annual vacancy rates for all DSH clinical staff, by classification and location in 2013-14.*

Questions for the Administration. The Administration should be prepared to present the findings from the report and address the following question:

1. According to the prison healthcare receiver's office, they no longer use a higher pay scale than that allowed by the state. Given that assessment, have you determined why there continues to be a difference in pay between CDCR and DSH?
2. One of the findings in the receiver's recruitment and retention report was that there were no significant disparities due to geography. There were, however, problems with the reputation of individual prisons or the culture of those facilities, that led to high turn-over or higher vacancy rates. Have you determined whether or not the same problems are occurring within the state hospitals and psychiatric programs?
3. Please provide a detailed description of your recruitment and retention efforts including:
 - a. The number of staff dedicated to recruitment and retention.
 - b. The total budget for your office of recruitment and retention.
 - c. The specific efforts they are undertaking to improve retention.
 - d. Strategies the department has put in place since the release of the *Coleman v. Brown* special master report which found that inadequate treatment, if any, was being provided to patients in state hospitals and psychiatric programs who were part of the Coleman class, largely due to a shortage of mental health clinicians.

Issue 6: Not Guilty By Reason of Insanity – Involuntary Medication

Governor's Proposal. The Governor's budget proposes \$3.2 million from the General Fund and 14.4 positions in 2015-16 for DSH to establish and implement an involuntary medication (IM) process for NGI patients that includes trial court review. These positions include clinical staff positions to provide patients with information and testimony in court, as well as legal positions to represent DSH during initial court hearings and annual review hearings. According to the Administration, the NGI involuntary medication process will be based on the existing involuntary medication process for other DSH patient types.

Background. DSH currently has a hearing process in place to protect patient rights for the three other populations for which IM is used, including Incompetent to Stand Trial, Mentally Disordered Offenders, and Sexually Violent Predators. The IM hearing process enables the state hospitals to provide psychotropic medications to patients refusing consent and believed to be unable to provide adequate consent due to one or more of the following:

- The patient is unaware of his situation and/or does not acknowledge his current condition.
- The patient is unable to understand the benefits and risks of the treatment.
- The patient is unable to understand and knowingly, intelligently, and rationally evaluate and participate in the treatment decision.
- The patient poses a risk to himself or others (determined by attempts or demonstrations of dangerous behaviors intended to inflict harm).

DSH currently does not have an IM hearing process for NGI patients, reflecting court decisions that concluded that NGI patients already have undergone due process determining that the individuals were suffering from a mental illness and that the designation of NGI identifies them as a potential danger to others; therefore, the courts concluded, NGIs are not entitled to a hearing to determine incompetence. However, a more recent Appellate Court decision, *In Re Greenshields* (2014) 227 Cal. App. 4th 1284, ruled otherwise, indicating that DSH cannot administer IM to NGI individuals without a proper authorization process.

Workload. The NGI population makes up approximately 21 percent of DSH's patient population, with an average daily census of 1,345 for recent months. An IM hearing process would require all of DSH's current NGI patients to either provide consent for their medications or the hospitals must seek authorization through the hearing process. The requested increase in staff is needed to address this new workload associated with the required hearing process.

DSH proposes to model the hearing process after the process used for other DSH populations, called the "Qawi and Calhoun" process, which requires two in-hospital panel hearings. The first hearing authorizes initial use of IM for a patient. The second hearing provides authorization to continue use of IM until a superior court hearing is scheduled. A superior court hearing must be scheduled within 180 days of the second in-hospital hearing. An annual authorization renewal hearing is also held in the superior court in the county of treatment. The in-hospital hearings are staffed either by two psychiatrists and one psychologist or by three psychiatrists, none of which can be the treating psychiatrist. The treating psychiatrist must present to the panel why it is believed that the patient is in need of IM.

The workload resulting from these hearings includes: 1) coordinating the hearings; 2) serving documentation to the patient; 3) completing all required reports and documentation; 4) filing documentation with the courts; 5) scheduling the hearing with the panelists; 6) coordinating scheduling of panelists; and 7) preparing for the hearing.

Legislative Analyst's Office Concerns. While it is reasonable for DSH to establish an involuntary medication process for NGI patients in response to the *In re Greenshields* decision, the department has not provided adequate justification for the level of resources that is being requested. Specifically, the department's proposal lacks data justifying the assumed workload increase in 2015-16 and does not account for the reduction in workload that will occur in the future.

Lack of Data Justifying Workload in 2015-16. The department does not know how many of the roughly 1,350 NGI patients statewide currently receive medications involuntarily. In addition, DSH does not know what percentage of NGI patients might refuse their medications under the new process. Thus, it is very difficult to assess the amount of workload and the number of positions required to obtain involuntary medication orders for NGI patients in the near term.

Future Reduction in Workload Not Taken Into Account. The establishment of an involuntary medication process for NGI patients could require significant workload in 2015-16, given the large number of NGI patients statewide and the potential need for a hearing for every patient that refuses medication. However, in future years, the workload associated with involuntary medication will likely decrease for two reasons. First, ongoing medication renewal orders require about 50 percent less staff time than new orders. Thus, the LAO would expect workload associated with the current patient population to decline once all the initial orders for this population are completed. Second, once the workload associated with establishing new orders for the portion of the 1,350 current NGI patients that refuse medication is completed, the department will only need to develop new orders for the portion of the 180 new NGI patients committed to DSH each year that refuse medication. Despite these factors, the Administration's plan does not reflect a reduction in funding or positions in future years.

Legislative Analysts' Office Recommendation. The LAO recommends that the Legislature direct DSH to provide a revised request for funding and staff for 2015-16 based on an analysis of the number of NGI patients expected to refuse medication. LAO also recommends that the Legislature only provide funding and staff positions on a one-year, limited-term basis and that it direct the department to submit a proposal for future funding as part of the 2016-17 budget. At that time, the department may have a better estimate of the ongoing workload related to the involuntary medication process.

Questions for the Administration. The Administration should be prepared to present their proposal and address the following questions:

1. Please provide the subcommittee with data on the number and percentage of NGI patients who currently refuse medication. In addition, please provide the number and percentage of patients who currently refuse medication, especially IST patients.
2. Why would the proportion of NGI patients refusing meds be so much higher than IST patients and other types of patients who do so?

SUBCOMMITTEE NO. 5

Agenda

Senator Loni Hancock, Chair
Senator Joel Anderson
Senator Jim Beall



OUTCOMES

Thursday, March 19, 2015
9:30 a.m. or Upon Adjournment of Session
State Capitol - Room 113

Consultant: Julie Salley-Gray

ITEMS PROPOSED FOR DISCUSSION

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Pursuant to the Americans with Disabilities Act, individuals who, because of a disability, need special assistance to attend or participate in a Senate Committee hearing, or in connection with other Senate services, may request assistance at the Senate Rules Committee, 1020 N Street, Suite 255 or by calling 916-651-1505. Requests should be made one week in advance whenever possible.

0540 HEALTH AND HUMAN SERVICES AGENCY**Issue 1: Health and Human Services Agency: Office of Law Enforcement Support**

Background. The 2014 budget act provided \$787,000 and six permanent positions for the establishment of the Office of Law Enforcement Support (OLES) within CHHSA to provide uniform training, policies and protocols for the peace officers employed by the state hospitals and developmental centers. In addition, the Legislature approved \$600,000 in one-time reimbursements for a contract with the California Highway Patrol that will assist with the development of the policies. Finally, the Legislature adopted trailer bill language requiring the California Health and Human Services Agency (CHHS) to work with system stakeholders to improve the quality and stability of law enforcement practices and develop uniform procedures. CHHS was required to report to the Legislature on the new procedures by January 10, 2015.

In early March 2015, CHHS provided the report to the Legislature, as required in 2014 budget trailer bill, on the creation of the OLES. The report entitled, *Office of Law Enforcement Support Plan To Improve Law Enforcement In California's State Hospitals and Developmental Centers*, is required to contain specific and detailed recommendations on improving law enforcement functions in a meaningful and sustainable way that assures safety and accountability in the State Hospitals and Developmental Center systems. The report contains a review and evaluation of best practices and strategies, including on independent oversight, for effectively and sustainably addressing the employee discipline process, criminal and major incident investigations, and the use of force within state hospitals and psychiatric programs.

The proposed creation of the OLES in last year's budget came about in response to underperformance by the Office of Protective Services (OPS) within each developmental center and state hospital. CHHS conducted an in-depth analysis of OPS operations within DSH which revealed the following critical deficiencies: (NOTE: A discussion on the components of the report related to the developmental centers will occur at an upcoming hearing of subcommittee No. 3 on Health and Human Services.)

- Inability to recruit, hire, and retain qualified personnel
- Inconsistent and outdated policies and procedures
- Inadequate supervision and management oversight
- Inconsistent and inadequate training
- Inconsistent and deficient disciplinary processes
- Lack of independent oversight, review, and analysis of investigations

- Inadequate headquarters-level infrastructure
- Lack of experienced law enforcement oversight

The report states that inefficiencies in hiring practices and pay disparity led to fewer and less qualified employees, which resulted in more than 270,000 hours of overtime, at a cost of \$10.1 million in 2013.

OLES was established in 2014 to change the OPS culture and provide oversight, and be directly involved in all OPS operations. Eventually the OLES will be organized as follows:

Organizational Development Section

- Training and Policy Development Unit
- Selections and Standards Unit

Professional Standards Section

- Serious Misconduct Review Team
- Use-of-Force Monitoring

The report includes the following recommendations for next steps:

1. Establish a Professional Standards Section's Special Investigations Unit to monitor critical incidents, such as those involving sexual assault or other major assaults, and assist with complex investigations involving employee misconduct at state hospitals and developmental centers.
2. Establish a Professional Standards Section's Investigations Analysis Unit to provide quality control and analyses of administrative cases.
3. Hire Vertical Advocates who will ensure that investigations into allegations of employee misconduct are conducted with the thoroughness required for prosecution.
4. Conduct independent, comprehensive staffing studies of law enforcement duties and needs at the state hospitals and developmental centers.

Questions for the Administration. The agency should be prepared to present the proposal and to respond to any questions posed by members of the subcommittee.

Issue 2: Inspector General Assessment of Plan and Need for Independent Oversight

Background. During last year's budget process, the Legislature discussed the importance of independent oversight for the state hospitals and psychiatric programs. While the hospitals are therapeutic, treatment settings and not prisons, there remains a great deal of similarity between the patients in state hospitals and inmates in state prisons. Over 90 percent of patients in the state hospital system come into the hospitals through the criminal justice system. In addition, like the state's prisons, the state hospitals are closed institutions that house people 24 hours a day and are not generally open to the public. Therefore, without independent oversight, such as an inspector general, who is given full access to the hospitals, the Legislature and the public are unable to determine the quality of care provided and the safety of the institutions for both patients and staff.

As a possible interim step toward either expanding the scope of the current Inspector General's mission to include state hospitals and psychiatric programs or establishing a separate inspector general, budget committees in both houses of the Legislature:

- Approved \$200,000 General Fund for the Office of the Inspector General.
- Adopted placeholder trailer bill language directing the Office of the Inspector General to prepare a recommendation for presentation to the appropriate Senate and Assembly committees to address oversight and transparency of the employee discipline process and use of force within the Department of State Hospitals. The recommendation is to include requirements for reporting of employee misconduct, and how the office of internal affairs within that department is organized, conducts investigations and reports. The recommendation is also to include a review of how the department presents employee misconduct and discipline cases to the State Personnel Board and any changes that should be made. Finally, the recommendation is to include the feasibility and cost of either bringing the state hospitals under the Inspector General's jurisdiction or creating a separate Inspector General's Office for the state hospital system.
- Adopted placeholder trailer bill language directing the California Health And Human Services Agency to cooperate with the Office of the Inspector General and provide unfettered access to all requested documents and personnel.

However, the final budget compromise that was reached by the Legislature and the Administration resulted in the plan presented in the previous item.

Questions for the Inspector General. The subcommittee asks that the Inspector General address the following questions and issues:

1. Please provide your assessment of the plan presented by the Health and Human Services (HHS) Agency.

2. Please describe your office's role in the development of the plan.
3. As noted above, one of the concerns raised by the Legislature last year was that the structure of the proposal put forward by the Administration during the May Revise process was very similar to the structure in place at the California Department of Corrections and Rehabilitation (CDCR), which ultimately led to the *Madrid v. Gomez* case in 1995. Does the HHS plan before the committee address that concern?
4. Please provide your assessment of whether or not the five state hospitals and three psychiatric programs run by DSH would benefit from independent oversight.

ACTION: No vote was taken but the chair directed LAO to work with budget staff to develop the necessary language for expanding the authority of the OIG to include state hospitals and psychiatric programs.

4440 DEPARTMENT OF STATE HOSPITALS

The Department of State Hospitals (DSH) is the lead agency overseeing and managing the state's system of mental health hospitals. The DSH seeks to ensure the availability and accessibility of effective, efficient, and culturally-competent services. DSH activities and functions include advocacy, education, innovation, outreach, oversight, monitoring, quality improvement, and the provision of direct services.

The Governor's 2011 May Revision first proposed the elimination of the former Department of Mental Health (DMH), the creation of the new DSH, and the transfer of Medi-Cal mental health services and other community mental health programs to the Department of Health Care Services (DHCS). The 2011 budget act approved of just the transfer of Medi-Cal mental health programs from the DMH to the DHCS. In 2012, the Governor proposed, and the Legislature adopted, the full elimination of the DMH and the creation of the DSH. All of the community mental health programs remaining at the DMH were transferred to other state departments as part of the 2012 budget package. The budget package also created the new DSH which has the singular focus of providing improved oversight, safety, and accountability to the state's mental hospitals and psychiatric facilities.

California's State Hospital System

California has five state hospitals and three psychiatric programs located on the grounds of the prisons operated by the California Department of Corrections and Rehabilitation (CDCR). Approximately 92 percent of the state hospitals' population is considered "forensic," in that they have been committed to a hospital through the criminal justice system. The five state hospitals provide treatment to approximately 6,000 patients. The psychiatric facilities at state prisons currently treat approximately 1,000 inmates.

Atascadero State Hospital. This facility, located on the Central Coast, houses a largely forensic population, including a large number of incompetent to stand trial patients and mentally disordered offenders. As of December 2014, it housed more than 1,000 patients.

Coalinga State Hospital. This facility is located in the city of Coalinga and is California's newest state hospital. The hospital houses only forensic patients, most of whom are sexually violent predators. As of December 2014, it housed more than 1,100 patients.

Metropolitan State Hospital. Located in the city of Norwalk, this hospital's population is approximately 65 percent forensic. Metropolitan State Hospital does not accept individuals who have a history of escape from a detention center, a charge or conviction of a sex crime, or a conviction of murder. As of December 2014, it housed about 700 patients.

Napa State Hospital. This facility is located in the city of Napa and has a mix of civil and forensic commitments. Napa State Hospital limits the number of forensic patients to 80 percent of the patient population. As of December 2014, it housed nearly 1,200 patients.

Patton State Hospital. This facility is located in San Bernardino County and primarily treats forensic patients. As of December 2014, it housed 1,500 patients.

Salinas Valley Psychiatric Program. This program is located on the grounds of Salinas Valley State Prison in Soledad and provides treatment to state prison inmates. As of December 2014, it had a population of more than 200 patients.

Stockton Psychiatric Program. This program is located on the grounds of the California Health Care Facility in Stockton and is the state's newest psychiatric program. The program provides treatment to state prison inmates. As of December 2014, it had a population of about 400 patients.

Vacaville Psychiatric Program. This program is located on the grounds of the California Medical Facility in Vacaville and provides treatment to state prison inmates. As of December 2014, it had a population of about 350 patients.

The following are the primary Penal Code categories of patients who are either committed or referred to DSH for care and treatment:

Committed Directly From Superior Courts:

- *Not Guilty by Reason of Insanity* – Determination by court that the defendant committed a crime and was insane at the time the crime was committed.
- *Incompetent to Stand Trial (IST)* – Determination by court that the defendant cannot participate in trial because the defendant is not able to understand the nature of the criminal proceedings or assist counsel in the conduct of a defense. This includes individuals whose incompetence is due to a developmental disability.

Referred From The California Department of Corrections and Rehabilitation (CDCR):

- *Sexually Violent Predators (SVP)* – Hold established on inmate by court when it is believed probable cause exists that the inmate may be a SVP. Includes 45-day hold on inmates by the Board of Prison Terms.
- *Mentally Disordered Offenders (MDO)* – Certain CDCR inmates for required treatment as a condition of parole, and beyond parole under specified circumstances.
- *Prisoner Regular/Urgent Inmate-Patients (Coleman Referrals)* – Inmates who are found to be mentally ill while in prison, including some in need of urgent treatment.

**State Hospitals & Psychiatric Programs
Caseload Projections**

	2014-15	2015-16
Population by Hospital*		
Atascadero	N/A	N/A
Coalinga	N/A	N/A
Metropolitan	N/A	N/A
Napa	N/A	N/A
Patton	N/A	N/A
Subtotal	5,802	5,863
Population by Psych Program		
Vacaville	366	366
Salinas	244	244
Stockton	480	480
Subtotal	1,090	1,090
Population Total	6,892	6,953
Population by Commitment Type		
Incompetent to Stand Trial (IST)	1,430	1,485
Not Guilty By Reason of Insanity (NGI)	1,377	1,379
Mentally Disordered Offender (MDO)	1,220	1,210
Sexually Violent Predator (SVP)	953	967
Lanterman-Petris-Short Act – Civil Commitments	556	556
<i>Coleman</i> Referral – Hospitals	258	258
<i>Coleman</i> Referral – Psych Programs	1,090	1,090
Department of Juvenile Justice	8	8

* DSH is no longer able to identify the number of budgeted beds at their hospitals.

State Hospitals Budget

The Governor's proposed budget includes \$1.7 billion for DSH in 2015-16 (\$1.6 billion General Fund). This represents a \$15 million increase over 2014-15 funding. The proposed budget year position authority for DSH is 11,398 positions, an increase of 164 positions from the current year. The department's budget includes increased funding for several proposals; including plans to operate 105 more Incompetent to Stand Trial (IST) beds than were budgeted in 2014-15, and establishes an involuntary medication policy for patients who are Not Guilty by Reason of Insanity (NGI).

(dollars in thousands)

Funding	2013-14 Actual	2014-15 Projected	2015-16 Proposed
General Fund (GF)	\$1,440,792	\$1,538,796	\$1,551,830
Reimbursements	126,384	127,560	129,764
CA Lottery Education Fund	153	25	25
Total	\$1,567,329	\$1,666,381	\$1,681,619
Positions	10,360	11,234	11,398

Cost Over-Runs. Over the past several years, state hospital costs had been rising at an alarming rate, and substantial current year deficiencies had become the norm, and even expected, from year to year. For example, in the 2010-11 fiscal year, the deficiency rose from \$50 million to \$120 million and the then-DMH staff could not explain why. In general, the department lacked any clear understanding of what the major cost drivers were and how to curb or stabilize costs in the system. In 2011, DMH leadership facilitated and oversaw an in-depth exploration and analysis of state hospital costs, resulting in a lengthy report that is available on the department's website. The research team identified the following system wide problems/cost drivers: increased patient aggression and violence; increased operational treatment models; and redundant staff work.

Based on the report described above, in 2012, the Administration proposed a comprehensive list of reforms, to reverse the rising cost trend, which addressed three stated goals: 1) improve mental health outcomes; 2) increase worker and patient safety; and, 3) increase fiscal transparency and accountability. Perhaps the most significant of these proposed reforms was the reduction of 600 positions throughout the state hospital system. Of these 600 positions, 230 were vacant. In addition to the reduction in positions, the 2012 budget package included key changes in the following areas:

1. Reduced layers of management and streamlined documentation.
2. Flexible staffing ratios, focusing on front-line staff, and redirecting staff to direct patient care.
3. New models for contracting, purchasing, and reducing operational expenses.
4. Elimination of adult education.

Issue 3: Incompetent to Stand Trial Population

Background. When a judge deems a defendant to be incompetent to stand trial, the defendant is referred to the state hospital system to undergo treatment for the purpose of restoring competency. Once the individual's competency has been restored, the county is required to take the individual back into the criminal justice system to stand trial, and counties are required to do this within ten days of competency being restored.

For a portion of this population, the state hospital system finds that restoring competency is not possible. There is no statutory deadline for the county to retrieve these individuals, and therefore they often linger in the state hospitals for years. The state pays the costs of their care while in the state hospitals; whereas their costs become the counties' responsibility once they take them out of the state hospitals. This funding model creates a disincentive for counties to retrieve patients once it is determined that competency restoration is not possible.

Over the past several years, the state hospitals have seen a growing waiting list of forensic patients. The largest waiting lists are for IST and Coleman inmate-patient commitments from CDCR. As of February 23, 2015, the waitlist for all commitment types was 484, including 328 specifically IST. DSH has undertaken several efforts to address the growing IST waitlist including: 1) increasing budgeted bed capacity by activating new units and converting other units; 2) establishing a statewide patient management unit; 3) promoting expansion of jail-based IST programs; 4) standardizing competency treatment programs; 5) seeking community placements; 6) improving referral tracking systems; and 7) participating in an IST workgroup that includes county sheriffs, the Judicial Council, public defenders, district attorneys, patients' rights advocates, and the Administration.

DSH acknowledges that, despite these efforts, IST referrals have continued to increase. When queried about the potential causes of the growing number of referrals from judges and CDCR, the Administration describes a very complex puzzle of criminal, social, cultural, and health variables that together are leading to increasing criminal and violent behavior by individuals with mental illness.

Services for IST Patients. Under state and federal law, all individuals who face criminal charges must be mentally competent to help in their defense. By definition, an individual who is IST lacks the mental competency required to participate in legal proceedings. Individuals who are IST and face a felony charge are eligible for DSH-provided restoration services. At any given time, between 15 percent and 20 percent of the population in DSH facilities are committed as IST.

Long Waitlist for IST Treatment. As indicated above, as of February 2015, the department had 328 IST patients waiting to be placed in a DSH facility. Individuals on the waitlist are typically held in county jail until space becomes available in a DSH facility. The waitlists are problematic because they could result in increased court costs and higher risk of DSH being found in contempt of court orders to admit patients. This is because DSH is

required to admit patients within certain time frames and can be required to appear in court or be held in contempt, when it fails to do so.

2014 Budget Act. The 2014-15 budget included \$7.87 million General Fund for 2013-14 and \$27.8 million General Fund for 2014-15, to increase bed capacity by 105 beds to address the waiting list specific to IST patients.

Specifically, the funding allowed for three new units with 35 beds each, anticipating activation of the first unit in March 2014, the second in May 2014, and the third in July 2014.

Governor's Budget. The Governor's budget for 2015-16 includes proposals to expand treatment capacity in DSH for IST patients. Specifically, the budget proposes to activate existing beds at two state hospitals.

The budget proposes \$17.3 million in additional General Fund support for the activation of 105 beds for IST patients in 2015-16. This amount includes:

- \$8.6 million and 75.1 positions to activate 55 beds at DSH-Atascadero. (The Administration proposes to redirect \$104,000 in savings in the current year for minor retrofitting of the facility.)
- \$8.7 million and 74.6 positions to activate 50 beds at DSH-Coalinga. (The Administration proposes to redirect \$2.9 million in savings and establish 25 positions in the current year to begin the activation process.) According to the department, these beds would be filled with MDO patients transferred from DSH-Atascadero. The beds made available from this transfer would then be filled with IST patients.

Legislative Analysts' Office. The LAO recommends that the Legislature not approve the Governor's proposal to expand IST capacity at DSH-Atascadero and DSH-Coalinga until the department provides the following additional justification:

- **Additional Budget Information.** LAO recommends the DSH provide (1) the number of budgeted and filled beds (particularly those authorized in the 2014-15 budget), and any justification for why the number of budgeted beds differs from the number of filled beds; and (2) detailed information about how its request for additional positions to activate the new IST capacity ties to its staffing ratios, along with justification for any staff in excess of those ratios.
- **ROC Delays and Potential for ROC Expansion.** LAO recommends the department report on why there has been a delay in activating the additional ROC beds authorized in the 2014-15 budget and on the potential for the ROC program to serve additional IST patients in the future.

- Impacts of Proposition 47. LAO recommends DSH report what changes it has seen in the IST patient population and waitlists since the passage of Proposition 47, as well as estimates on the long-term impacts of the proposition on the IST population (such as by reviewing a sample of IST patient data to determine the proportion of IST patients who were committed for Proposition 47 eligible offenses). To the extent that DSH identifies reductions in the patient population as a result of Proposition 47, the Legislature should require the department to submit updated population budget proposals.

Questions for the Administration. The Administration should be prepared to present the proposal and to address the following questions:

1. It appears that the waiting list has been going down in recent weeks, possibly due to the impact of Proposition 47. How does your budget proposal account for the reduced number of eligible IST patients due Proposition 47?
2. Does the length of the waiting list vary from month-to-month? If so, please provide the subcommittee with data on the last 12 to 24 months.
3. How many ISTs are left by counties at state hospitals after their competency is restored and what is the average length of stay for this population that is left lingering in the hospitals?
4. Is this only a problem with certain counties? If so, which ones?
5. Has the Administration considered charging a per-day rate for those patients who should have been retrieved by the county responsible for their commitment?
6. Has the Administration done an inventory and analysis to determine whether the state has the appropriate mix of types of treatment beds throughout the system to meet the needs of its current population?
7. How flexible are the bed types within the system? For example, can vacant SVP beds be used to serve MDOs or IST patients?

ACTION: Reject the budget proposal without prejudice. (2-0, Senator Beall Absent)

Issue 4: Restoration of Competency (ROC) Programs**Panelists**

Captain Jon Pacewicz, and **Health Administrator Terry Fillman**, San Bernardino County Sheriff's Department

Background. The 2007 Budget Act included \$4.3 million for a pilot program to test a more efficient and less costly process to restore competency for IST defendants by providing competency restoration services in county jails, in lieu of providing them within state hospitals. This pilot operated in San Bernardino County, via a contract between the former Department of Mental Health, San Bernardino County, and Liberty Healthcare Corporation. Liberty provides intensive psychiatric treatment, acute stabilization services, and other court-mandated services. The state pays Liberty a daily rate of \$278 per bed, well below the approximately \$450 per bed cost of a state hospital bed. The county covers the costs of food, housing, medications, and security through its county jail. The results of the pilot have been very positive, including: 1) treatment begins more quickly than in state hospitals; 2) treatment gets completed more quickly; 3) treatment has been effective as measured by the number of patients restored to competency but then returned to IST status; and, 4) the county has seen a reduction in the number of IST referrals. San Bernardino County reports that it has been able to achieve savings of more than \$5,000 per IST defendant, and therefore total savings of about \$200,000. The LAO estimated that the state achieved approximately \$1.2 million in savings from the San Bernardino County pilot project.

The LAO produced a report titled, *An Alternative Approach: Treating the Incompetent to Stand Trial*, in January 2012. Given the savings realized for both the state and the county, as well as the other indicators of success in the form of shortened treatment times and a deterrent effect reducing the number of defendants seeking IST commitments, the LAO recommends that the pilot program be expanded.

In 2012, budget trailer bill authorized the state to continue the pilot on an ongoing basis, and the DSH is in the process of actively encouraging expansion to other counties. The DSH reports that they have had significant discussions with 14 counties and that they are close to signing contracts with Sacramento and Los Angeles counties. A ROC program in Los Angeles County could have a very significant impact on the IST waiting list given that an estimated 1/3 of the individuals on the waiting list are in Los Angeles County.

2014 Budget Act. The 2014-15 budget included an increase of \$3.9 million GF to expand the restoration of competency program (ROC) by 45 to 55 beds. In addition, trailer bill language was adopted expanding the ROC program to secured community treatment facilities. Finally, the budget required that any unspent funds revert to the General Fund. The budget did not include an increase in state staffing positions related to the expansion of ROC. To date, DSH has not expanded the ROC program.

Staff Comments. Expanding this program, which allows people who have been deemed incompetent to stand trial (IST) by reason of insanity to receive mental health services in the county jail, rather than being transferred to a state hospital, should help to reduce the IST waiting list for those who are waiting for space to open up in a state hospital.

In addition, expanding the program to more counties allows county jails to properly assess and treat inmates who have been found incompetent and are waiting in county jails for a bed in the state hospital system. By treating those individuals who are easy to restore either in a community mental health facility or in the jails, counties should be able to reduce the pressure on their jail systems and more quickly move individuals with serious mental illnesses through the court system and either into long-term treatment or, if found guilty, to begin serving their jail or prison terms.

Currently, two counties, Riverside and San Bernardino, have a restoration of competency program. The proposed augmentation would expand the ROC program to Los Angeles and Alameda counties. Currently, the ROC program is only available in a county jail setting and not in community mental health facilities. As noted earlier, last year's budget included funding to expand the program. However, DSH appears to be struggling in its ability to contract with counties to provide community restoration. This difficulty comes despite significant interest on the part of the county sheriffs to find ways to treat and restore people on the IST waiting list.

The annual cost of the ROC program is approximately \$78,000 per bed, as opposed to an IST bed in a state hospital that costs approximately \$250,000 per year. Given the significant general fund savings associated with the ROC program, the Legislature may wish to explore ways of more quickly and efficiently expanding the number of ROC beds. DSH, to date, does not appear to be equipped with the expertise to significantly expand the program, despite the pressures they face due to the IST waiting list.

Issue 5: Recruitment and Retention Report

DSH Staffing Issues. Similar to challenges faced by the California Department of Corrections and Rehabilitation, which this committee discussed on March 12, it has been challenging for State Hospitals to fill positions and maintain reasonably-low staff vacancy rates. DSH cites several causes for the difficulty in hiring staff, including:

- Undesirable locations.
- Lower pay than CDCR for very similar work.
- Insufficient number of qualified mental health professionals, in California and nationally.
- Increasing competition from the private health care market in response to the move toward mental health parity.

2014 Budget Act. The 2014 budget contained supplemental reporting language that required DSH to prepare a report on recruitment and retention of staff at the state hospitals and psychiatric programs. Specifically, the language stated:

On or before January 10, 2015, Department of State Hospital (DSH) shall submit to the relevant fiscal committees a report assessing the department's salary and benefits for clinical staff and supervisors. The report shall include the following information:

- a) A detailed accounting of the minimum, maximum, and average salaries for all DSH clinical staff and supervisors, including medical and behavioral health care providers.*
- b) A detailed accounting of the minimum, maximum, and average full compensation packages (including salary, benefits, and any other forms of compensation such as bonuses or loan forgiveness) for all DSH clinical staff and supervisors, including medical and behavioral health care providers.*
- c) A comparison of the average salaries and full compensation packages for clinical providers at DSH, California Department of Corrections and Rehabilitation (CDCR), and a comparable private provider.*
- d) The average annual vacancy rates for all DSH clinical staff, by classification and location in 2013-14.*

Questions for the Administration. The Administration should be prepared to present the findings from the report and address the following question:

1. According to the prison healthcare receiver's office, they no longer use a higher pay scale than that allowed by the state. Given that assessment, have you determined why there continues to be a difference in pay between CDCR and DSH?
2. One of the findings in the receiver's recruitment and retention report was that there were no significant disparities due to geography. There were, however, problems with the reputation of individual prisons or the culture of those facilities, that led to high turn-over or higher vacancy rates. Have you determined whether or not the same problems are occurring within the state hospitals and psychiatric programs?
3. Please provide a detailed description of your recruitment and retention efforts including:
 - a. The number of staff dedicated to recruitment and retention.
 - b. The total budget for your office of recruitment and retention.
 - c. The specific efforts they are undertaking to improve retention.
 - d. Strategies the department has put in place since the release of the *Coleman v. Brown* special master report which found that inadequate treatment, if any, was being provided to patients in state hospitals and psychiatric programs who were part of the Coleman class, largely due to a shortage of mental health clinicians.

Issue 6: Not Guilty By Reason of Insanity – Involuntary Medication

Governor's Proposal. The Governor's budget proposes \$3.2 million from the General Fund and 14.4 positions in 2015-16 for DSH to establish and implement an involuntary medication (IM) process for NGI patients that includes trial court review. These positions include clinical staff positions to provide patients with information and testimony in court, as well as legal positions to represent DSH during initial court hearings and annual review hearings. According to the Administration, the NGI involuntary medication process will be based on the existing involuntary medication process for other DSH patient types.

Background. DSH currently has a hearing process in place to protect patient rights for the three other populations for which IM is used, including Incompetent to Stand Trial, Mentally Disordered Offenders, and Sexually Violent Predators. The IM hearing process enables the state hospitals to provide psychotropic medications to patients refusing consent and believed to be unable to provide adequate consent due to one or more of the following:

- The patient is unaware of his situation and/or does not acknowledge his current condition.
- The patient is unable to understand the benefits and risks of the treatment.
- The patient is unable to understand and knowingly, intelligently, and rationally evaluate and participate in the treatment decision.
- The patient poses a risk to himself or others (determined by attempts or demonstrations of dangerous behaviors intended to inflict harm).

DSH currently does not have an IM hearing process for NGI patients, reflecting court decisions that concluded that NGI patients already have undergone due process determining that the individuals were suffering from a mental illness and that the designation of NGI identifies them as a potential danger to others; therefore, the courts concluded, NGIs are not entitled to a hearing to determine incompetence. However, a more recent Appellate Court decision, *In Re Greenshields* (2014) 227 Cal. App. 4th 1284, ruled otherwise, indicating that DSH cannot administer IM to NGI individuals without a proper authorization process.

Workload. The NGI population makes up approximately 21 percent of DSH's patient population, with an average daily census of 1,345 for recent months. An IM hearing process would require all of DSH's current NGI patients to either provide consent for their medications or the hospitals must seek authorization through the hearing process. The requested increase in staff is needed to address this new workload associated with the required hearing process.

DSH proposes to model the hearing process after the process used for other DSH populations, called the "Qawi and Calhoun" process, which requires two in-hospital panel hearings. The first hearing authorizes initial use of IM for a patient. The second hearing provides authorization to continue use of IM until a superior court hearing is scheduled. A superior court hearing must be scheduled within 180 days of the second in-hospital hearing. An annual authorization renewal hearing is also held in the superior court in the county of treatment. The in-hospital hearings are staffed either by two psychiatrists and one psychologist or by three psychiatrists, none of which can be the treating psychiatrist. The treating psychiatrist must present to the panel why it is believed that the patient is in need of IM.

The workload resulting from these hearings includes: 1) coordinating the hearings; 2) serving documentation to the patient; 3) completing all required reports and documentation; 4) filing documentation with the courts; 5) scheduling the hearing with the panelists; 6) coordinating scheduling of panelists; and 7) preparing for the hearing.

Legislative Analyst's Office Concerns. While it is reasonable for DSH to establish an involuntary medication process for NGI patients in response to the *In re Greenshields* decision, the department has not provided adequate justification for the level of resources that is being requested. Specifically, the department's proposal lacks data justifying the assumed workload increase in 2015-16 and does not account for the reduction in workload that will occur in the future.

Lack of Data Justifying Workload in 2015-16. The department does not know how many of the roughly 1,350 NGI patients statewide currently receive medications involuntarily. In addition, DSH does not know what percentage of NGI patients might refuse their medications under the new process. Thus, it is very difficult to assess the amount of workload and the number of positions required to obtain involuntary medication orders for NGI patients in the near term.

Future Reduction in Workload Not Taken Into Account. The establishment of an involuntary medication process for NGI patients could require significant workload in 2015-16, given the large number of NGI patients statewide and the potential need for a hearing for every patient that refuses medication. However, in future years, the workload associated with involuntary medication will likely decrease for two reasons. First, ongoing medication renewal orders require about 50 percent less staff time than new orders. Thus, the LAO would expect workload associated with the current patient population to decline once all the initial orders for this population are completed. Second, once the workload associated with establishing new orders for the portion of the 1,350 current NGI patients that refuse medication is completed, the department will only need to develop new orders for the portion of the 180 new NGI patients committed to DSH each year that refuse medication. Despite these factors, the Administration's plan does not reflect a reduction in funding or positions in future years.

Legislative Analysts' Office Recommendation. The LAO recommends that the Legislature direct DSH to provide a revised request for funding and staff for 2015-16 based on an analysis of the number of NGI patients expected to refuse medication. LAO also recommends that the Legislature only provide funding and staff positions on a one-year, limited-term basis and that it direct the department to submit a proposal for future funding as part of the 2016-17 budget. At that time, the department may have a better estimate of the ongoing workload related to the involuntary medication process.

Questions for the Administration. The Administration should be prepared to present their proposal and address the following questions:

1. Please provide the subcommittee with data on the number and percentage of NGI patients who currently refuse medication. In addition, please provide the number and percentage of patients who currently refuse medication, especially IST patients.
2. Why would the proportion of NGI patients refusing meds be so much higher than IST patients and other types of patients who do so?

ACTION: Reject the budget proposal without prejudice. (2-0, Senator Beall Absent)

ITEMS TO BE HEARD

0250 Judicial Branch

Background. The judicial branch is responsible for the interpretation of law, the protection of individual rights, the orderly settlement of all legal disputes, and the adjudication of accusations of legal violations. The branch consists of statewide courts (the Supreme Court and Courts of Appeal), trial courts in each of the state's 58 counties, and statewide entities of the branch (the Judicial Council, Judicial Branch Facility Program, and the Habeas Corpus Resource Center). The branch receives revenue from several funding sources, including the state General Fund, civil filing fees, criminal penalties and fines, county maintenance-of-effort payments, and federal grants.

Due to the state's fiscal situation, the judicial branch, like most areas of state and local government, received a series of General Fund reductions from 2008-09 through 2012-13. Many of these General Fund reductions were offset by increased funding from alternative sources, such as special fund transfers and fee increases. A number of these offsets were one-time solutions, such as the use of trial court reserves and for the most part, those options have been exhausted. In addition, trial courts partially accommodated their ongoing reductions by implementing operational actions, such as leaving vacancies open, closing courtrooms and courthouses, and reducing clerk office hours. Some of these operational actions resulted in reduced access to court services, longer wait times, and increased backlogs in court workload.

Key Legislation

AB 233 (Escutia and Pringle), Chapter 850, Statutes of 1997, enacted the Lockyer-Isenberg Trial Court Funding Act of 1997, to provide a stable and consistent funding source for the trial courts. Beginning in 1997-98, consolidation of the costs of operation of the trial courts was implemented at the state level, with the exception of facility, revenue collection, and local judicial benefit costs. This implementation capped the counties' general purpose revenue contributions to trial court costs at a revised 1994-95 level. The county contributions become part of the Trial Court Trust Fund, which supports all trial court operations. Fine and penalty revenue collected by each county is retained or distributed in accordance with statute.

AB 1732 (Escutia), Chapter 1082, Statutes of 2002, enacted the Trial Court Facilities Act of 2002, which provided a process for transferring the responsibility for court facilities from the counties to the state, by July 1, 2007. It also established several new revenue sources, which went into effect on January 1, 2003. These revenues are deposited into the State Court Facilities Construction Fund (SCFCF) for the purpose of funding the construction and maintenance of court facilities throughout the state. As facilities were transferred to the state, counties began to contribute revenues for operation and maintenance of court facilities, based upon historical expenditures.

SB 1407 (Perata), Chapter 311, Statutes of 2008, authorized various fees, penalties and assessments, which were to be deposited into the Immediate and Critical Needs Account (ICNA) to support the construction, renovation, and operation of court facilities.

SB 1021 (Committee on Budget and Fiscal Review), Chapter 41, Statutes of 2012, altered the administration of trial court reserves by limiting the amount of the reserves individual courts could carry from year to year to one percent of their funding and establishing a statewide reserve for trial courts, which is limited to two percent of total trial court funding.

In enacting these changes, the Legislature sought to create a trial court system that was more uniform in terms of standards, procedures, and performance. The Legislature also wanted to maintain a more efficient trial court system through the implementation of cost management and control systems.

Budget Overview. The Governor's proposed budget includes \$3.5 billion (\$1.6 billion General Fund and \$1.9 billion in other funds) in 2015-16 for the judicial branch. Of that amount, \$2.7 billion is provided to support trial court operations. The following table displays three-year expenditures and positions for the judicial branch; as presented in the Governor's budget.

(dollars in thousands)

Program	2013-14	2014-15	2015-16
Supreme Court	\$43,440	\$45,973	\$46,095
Courts of Appeal	205,544	216,212	216,626
Judicial Council	132,966	139,869	134,678
Judicial Branch Facilities Program	236,110	338,528	360,704
State Trial Court Funding	2,437,488	2,538,117	2,701,598
Habeas Corpus Resource Center	12,588	14,233	14,242
Total	\$3,067,136	\$3,292,932	\$3,473,943
Positions	1,693.9	1,962.8	1,962.3

Issue 1: Proposition 47

Governor's Budget. The Governor's budget proposal includes \$26.9 million General Fund in 2015-16 and \$7.6 million in 2016-17 to support workload increases associated with the passage of Proposition 47 (The Safe Neighborhoods and Schools Act) by voters in 2014.

Background. In November 2014, the voters approved Proposition 47, 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. The most recent three-judge panel status report on the reduction of the prison population shows that, as of January 14, 2015, 1,436 people had been resentenced and released from prison due to the changes brought by Proposition 47. The Governor's budget estimates that the 2015-16 average daily state prison population will be reduced by approximately 1,900 inmates; as a result of resentencing and avoided new admissions. The chart on the following page provides detailed information on which crimes became misdemeanors following passage of the proposition.

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, 2016, and on or before July 31 of each fiscal year thereafter, to calculate the state savings for the previous fiscal year compared to 2013-14. Actual data or best estimates are to be used and the calculation is final and must be certified by the State Controller's Office no later than August 1 of each fiscal year. The first transfer of state savings to the Safe Neighborhoods and Schools Fund will occur in 2016-17 after the Department of Finance (DOF) calculates savings pursuant to the proposition. Consequently, the budget does not reflect estimated 2015-16 savings related to Proposition 47.¹

Reduction in Existing Penalties Under Proposition 47

Crime	Description
Drug Possession	Prior to the passage of Proposition 47, possession for personal use of most illegal drugs (such as cocaine or heroin) was a misdemeanor, a wobbler, ² or a felony—depending on the amount and type of drug. Under current law, such crimes are now misdemeanors. The measure would not change the penalty for possession of marijuana, which was already either an infraction or a misdemeanor.

¹ 2015-16 Governor's Budget Summary

² "A wobbler" refers to a crime that can either be charged as a misdemeanor or a felony.

Grand Theft	Prior to the passage of Proposition 47, theft of property worth \$950 or less was often charged as petty theft, which is a misdemeanor or an infraction. However, such crimes could sometimes be charged as grand theft, which is generally a wobbler. For example, a wobbler charge can occur if the crime involves the theft of certain property (such as cars) or if the offender has previously committed certain theft-related crimes. Proposition 47 limited when theft of property of \$950 or less could be charged as grand theft. Specifically, such crimes can no longer be charged as grand theft solely because of the type of property involved or because the defendant had previously committed certain theft-related crimes.
Shoplifting	Prior to the passage of Proposition 47, shoplifting property worth \$950 or less (a type of petty theft) was often a misdemeanor. However, such crimes could also be charged as burglary, which is a wobbler. Under the new law, shoplifting property worth \$950 or less will always be a misdemeanor and cannot be charged as burglary.
Receiving Stolen Property	Prior to the passage of Proposition 47, individuals found with stolen property could be charged with receiving stolen property, which was a wobbler crime. Under current law, receiving stolen property worth \$950 or less would always be a misdemeanor.
Writing Bad Checks	Prior to the passage of Proposition 47, writing a bad check was generally a misdemeanor. However, if the check was worth more than \$450, or if the offender had previously committed a crime related to forgery, it was a wobbler crime. Under the new law, it is a misdemeanor to write a bad check unless the check is worth more than \$950 or the offender had previously committed three forgery-related crimes, in which case they would remain wobbler crimes.
Check Forgery	Prior to the passage of Proposition 47, it was a wobbler crime to forge a check of any amount. Under the new law, forging a check worth \$950 or less is always a misdemeanor, except that it remains a wobbler crime if the offender commits identity theft in connection with forging a check.

Source: Legislative Analyst's Office, "Proposition 47 – Criminal Sentences. Misdemeanor Penalties. Initiative Statute." November 4, 2014.

Questions for the Administration and the Judicial Council. Please be prepared to address the following questions:

1. Please provide an update on the implementation of Proposition 47 in the courts, including the following information:
 - a. How many people have been resentenced to date?
 - b. How many more do the courts anticipate will need resentencing?
 - c. What is the status of resentencing requests in the counties?
 - d. Are there backlogs in some counties and not in others? If so, why? And, how does the Judicial Council plan to address those counties that are moving more slowly?
2. How many people, to date, have been released from jail or prison as a result of Proposition 47?

3. Has Finance begun developing a methodology for measure the state savings as a result of the proposition?
4. Does the Administration plan to include the impact of Proposition 47 on state hospitals in its savings calculation? Particularly, to the extent that there are fewer people who have been deemed to be Incompetent to Stand Trial and are eligible to receive treatment at a state hospital or people who are currently members of the *Coleman v. Brown* class who are receiving treatment in state hospitals or psychiatric programs, but who now have their crimes reduced to misdemeanors, will those savings should be included in the calculation?
5. Does the Administration plan to include the impact of the proposition on the state parole population in the savings calculation?

Questions for the Legislative Analyst's Office. Please be prepared to address the following question:

1. How much discretion is provided to the Legislature in determining how the state savings are distributed to the counties?

Staff Comments.

Reframe the conversation. The passage of Proposition 47 requires shifting the state's treatment of people using illegal drugs away from a criminal justice approach toward a public health/treatment approach. Similar to countries like Portugal, who have decriminalized illegal drug use, California now has the opportunity to focus on providing treatment, rather than punishment, for Californians using illegal drugs.

Proposition 47 State Savings. Under Proposition 47, the DOF is tasked with calculating the state savings associated with the sentencing changes. The Legislature was not given a role in overseeing how that calculation is determined. However, the Legislature may want to consider working closely with the Administration to ensure that all of the state savings are captured, including savings for prisons, state parole, and, if appropriate, from the Community Corrections Performance Incentives funding.

Distribution of Proposition 47 Savings. Proposition 47 does provide some discretion to the Legislature to determine how the savings are distributed. The law requires that 65 percent of the savings be given to the Board of State and Community Corrections to administer a grant program to public agencies aimed at supporting mental health treatment, substance abuse treatment, and diversion programs for the criminal justice system. The grants must emphasize programs that reduce recidivism of people convicted of less serious crimes. Beyond this general direction, there are no parameters set for how the grant program should be structured. Among other options, the Legislature could consider awarding grants to counties that have already begun using

innovative programs to improve outcomes and reduce recidivism. The Legislature could also consider requiring that grants be limited to counties that have instituted risk-assessments for their pre-trial populations or any other efforts that they deem are critical to improving the outcomes envisioned by public safety realignment. The savings will not be distributed until the 2016-17 budget. Therefore, the Legislature has time to determine exactly how the grant program should be structured.

Most Savings Realized at the County Level. Early estimates suggest that the savings at the state level will likely be between \$200 and \$300 million. However, it is important for the Legislature to remember that the bulk of the savings will be realized at the local level because, under realignment, most of the people charged with felonies that are now misdemeanors have been housed in county jails. Therefore, this savings should greatly relieve the pressure on counties who have been concerned about the funding level under realignment. Realignment funding is a constitutionally-protected revenue stream and does not go down when the number of people serving time for non-violent felonies is reduced. Ideally, counties will reinvest a portion of their savings in increasing access to community-based substance abuse treatment.

Focus on Providing Quality Treatment and Rehabilitation for People Remaining in State Prison. With the movement of low-level, non-violent offenders out of state prison and into county jails, the state is now faced with providing adequate treatment, support, and services for those serious and violent inmates who remain. No longer will there be a large population of non-violent offenders who work in fire camps, fill in-prison jobs, or attend training and education. The Legislature should consider working closely with the California Department of Corrections and Rehabilitation (CDCR) to ensure that programming is changed appropriately to address the complex needs of all of the people who remain in prison. Rehabilitation efforts can no longer focus primarily on those individuals who are easy to rehabilitate. As with the innovative grant program the Legislature created in last year's budget, the Legislature may wish to either expand or redirect programming funds to provide on-going support for organizations currently working in state prisons that provide treatment, and programs focusing on restorative justice and offender responsibility. The vast majority of people who are currently serving time in prison will eventually be released. It will benefit the state to provide the treatment and programs necessary to ensure a successful return to society for people leaving prison.

Consider Further Reforms. The Legislature may wish to take advantage of the current trends in sentencing to look further into sentencing enhancements and mandatory minimum sentences to see if there are other reforms that would be appropriate. For example, county sheriffs' have been concerned about realigned felons serving long sentences in county jails and the fact that they are not equipped to properly house and provide programming for people serving long terms. Given that the realigned population is made up of people who have been convicted of non-serious, non-violent, and non-sex-related crimes, the Legislature may wish to look at remaining sentencing laws that result in those types of people receiving sentences that extend ten, twenty, or thirty

years. There may continue to be areas of the penal code where the sentences continue outweigh the severity of the crimes committed.

Issue 2: Trial Court Funding

Governor's Budget. The Governor's budget proposes \$3.5 billion from all state funds to support the judicial branch in 2015-16, an increase of \$181 million, or 5.5 percent, above the revised amount for 2014-15. (These totals do not include expenditures from local revenues or trial court reserves.) Of the total budget proposed for the judicial branch in 2015-16, about \$1.6 billion is from the General Fund—43 percent of the total judicial branch budget. This is a net increase of \$141 million, or 9.7 percent, from the 2014-15 amount.

Trailer Bill Proposal. The Governor's budget proposes the adoption of trailer bill language that removes the sunset date for certain fines and fees. The fee increases included in the proposed trailer bill were initially intended to be temporary and are scheduled to sunset on July 1, 2015. In addition, the proposed language clarifies that Native American Day, which was designated as a state holiday, does not constitute a court holiday.

Legislative Analyst's Office (LAO) Recommendations

The Governor's budget includes no constraints for the use of the proposed General Fund augmentation for trial court operations. There is also no requirement for trial courts to report on how they will use the funds. As a result, the Legislature has no assurance that the proposed funds will be used in a manner consistent with its priorities—particularly given that the funds will impact individual trial courts differently. To help increase legislative oversight, the LAO recommends that the Legislature (1) provide courts with its priorities for how the funds from the augmentation should be spent, and (2) take steps towards establishing a comprehensive trial court assessment program.

Define Legislative Funding Priorities for Use of Funds. The LAO recommends that the Legislature (1) establish priorities for the use of the increased funding (such as for restoring access to court services) and (2) require that courts report on the expected use of the funds prior to allocation and on the actual use of the funds near the end of 2015–16. Such information would allow the Legislature to conduct oversight to ensure that the additional funds provided are used to meet legislative priorities.

Establish Comprehensive Trial Court Assessment Program. Currently, there is insufficient information to assess whether trial courts are using the funding provided in the annual budget effectively. This makes it difficult for the Legislature to ensure that (1) certain levels of access to court services are provided, (2) trial courts use their funding in an effective manner, and (3) funding is allocated and used consistent with legislative priorities. Thus, the LAO recommends that the Legislature take steps towards establishing a comprehensive trial court assessment program for the trial courts. While the judicial branch collects some statewide information related to certain measures of trial court performance (such as the time it takes a court to process its caseload), it

currently lacks a comprehensive set of measurements for which data is collected consistently on a statewide basis.

Questions for the Judicial Council and the Administration. The Judicial and the Administration should be prepared to address the following questions:

1. Please address the concerns raised by the LAO.
2. To the extent the Legislature wishes to augment the trial courts' budget in order to reopen court rooms or expand the hours for self-help offices, for example, how can we be sure the funding is directed toward those priorities?
3. Please describe the fines and fees included in the trailer bill and why the Administration is proposing to remove the sunset, rather than just extending the sunset on the increases?

Issue 3: Dependency Counsel Caseloads

Dependency Court and the Child Welfare System. Every year, approximately 500,000 children and their parents come into contact with the child welfare system due to allegations of abuse and neglect. Of those complaints filed on behalf of children, approximately 84,000 are substantiated and, roughly, 32,000 enter the foster care system. For children and families involved in the child welfare system, almost every significant decision is overseen by a judge, including the child's placement, involvement of family members, education, and health and mental health services. Every interested party in dependency court is represented by their own lawyer. The county child welfare department has its counsel, the parents have either one or two attorneys, depending on whether they are being represented together or separately, and children are represented by their own counsel.

The Role of Dependency Counsel. Given the impact of the decisions being made by the court on the child's behalf, the child's attorney plays a key role. The attorney has the primary responsibility of advocating for that child's protection, safety, and physical and emotional well-being. Serving dually as Guardian Ad Litem (pursuant to the Child Abuse Prevention and Treatment Act) and attorney, the duties of a child's attorney often go beyond the courtroom. The attorney ascertains and advocates for the needs of the minor both inside the courtroom and outside of the legal proceedings.

The attorney is tasked with advocating in court for needed resources and/or working outside of court to access appropriate placements and intervention services. Similarly, when youth in the child welfare system have unmet special education needs, are denied essential benefits or become involved with the juvenile justice system, their dependency attorneys are available to provide the court or necessary agency with any historical information or other relevant information.

A 2008 study from Chapin Hall Center for Children found that children with effective counsel were moved to permanency at about twice the rate of unrepresented children. A 2010 study found better court outcomes for Los Angeles County "crossover youth" (those who are dually involved in the Dependency and Delinquency Courts) when the youth had the involvement of their own attorneys.

As part of advocating for their client, a dependency lawyer is required to do certain things under state law. The attorney must:

- Advocate generally for the protection, safety, and physical and emotional well-being of the child.
- Advocate for the child's interests.
- Investigate to ascertain the facts, including the interviewing of witnesses such as parents, relatives, foster parents, teachers, school administrators.
- Make recommendations to the court concerning the child's welfare.
- Interview children older than four years old in such a way so as to be able to determine the child's wishes.

- Assess the child's well-being.
- Advise the court of the child's wishes.
- Not advocate for the return of the child to his or her parents if, to the best of his or her knowledge, return of the child conflicts with the protection and safety of the child.
- Investigate the interests of the child beyond the scope of the juvenile proceeding, and report to the court other interests of the child that may need to be protected by the institution of other administrative or judicial proceedings.

According to children's attorneys, these specific tasks are mandated against the backdrop of a lawyer's general ethical duty to represent a client zealously and diligently. If a lawyer does not do the things required of him or her by law, or if a lawyer more generally fails to represent a client zealously or diligently, the lawyer is subject to discipline, including disbarment.

“Dependency Counsel Caseload Standards” Report. SB 2160 (Schiff), Chapter 450, Statutes of 2000 required that: (1) counsel be appointed for children in almost all dependency cases; (2) appointed counsel have caseloads and training that ensure adequate representation; and, (3) the Judicial Council promulgate rules establishing caseload standards, training requirements, and guidelines for appointment of counsel for children. In 2001, the Judicial Council adopted a rule that mandated the appointment of counsel for children subject to dependency proceedings in all but the rarest of circumstances, and the council directed staff to undertake a study to identify caseload standards for attorneys representing both parents and children. The findings of that study were released to the Legislature in April 2008.³ The study recommended that a maximum caseload of 141 clients per full-time dependency attorney be the base-level standard of performance and a maximum of 77 clients was identified as necessary for an optimal standard of performance. To date, the Judicial Council has not adopted a rule of court establishing caseload standards.

Other Caseload Standards. According to the National Association of Counsel for Children, a full-time child's attorney should represent no more than 100 clients at one time. This is the same standard recommended by the U.S. Department of Health and Human Services, as well as the American Bar Association. In 2008, the Dependency Counsel Caseload Standards report, discussed above, concluded that the basic caseload standard, where the attorney is supported by a social work investigator, is a maximum of 188 child clients, while the optimal standard is 77. In 2006, a federal court in Atlanta ruled that high caseloads violated children's constitutional right to zealous and effective legal representation. In response, the average caseloads for children's attorneys in Atlanta were reduced from 500 to 90. Several states, including Massachusetts, New York, Arkansas and Wyoming also have strict caseload standards.

³ Judicial Council of California, “Dependency Counsel Caseload Standards: A Report to the California Legislature.” April 2008.

Dependency Counsel Caseloads and Budget. The Judicial Council currently allocates \$103.7 million annually for dependency council. With court-appointed counsel providing representation to approximately 142,500 parents and children, the current level of funding is sufficient to provide representation at a rate of one attorney for approximately 250 clients. The Judicial Council does not collect the data necessary to determine the dependency counsel caseloads by county. However, they have provided an estimate, based on the number of child clients and the funding allocations. Below is a breakdown of the estimated caseloads for the largest counties in the state.

**Estimated 2014-15 Attorney:Child/Parent
Caseloads**

County	Attorney:Client Caseload
Alameda	156
Contra Costa	164
Fresno	187
Kern	289
Los Angeles	328
Orange	173
Riverside	461
Sacramento	155
San Bernardino	418
San Diego	148
San Francisco	142
San Joaquin	155
Santa Clara	134
Tulare	456
Ventura	500
Statewide Average	248
Minimum Standard	188

Source: Judicial Council

Dependency Counsel Funding. The Administration commits to working with the Judicial Council to develop a caseload-based allocation methodology and explore ways to reduce the current caseloads for dependency counsel.

Staff Comments.

Should funding for dependency counsel assigned to children be augmented?

Given the role that children's attorneys play in determining their futures while they are in the child welfare system, the Legislature may want to consider whether or not the existing funding for dependency counsel is sufficient.

Should the trial court allocation formula be revised? The estimated caseloads provided by the Judicial Council show a substantial difference in funding levels and caseload ratios across counties. Even among the largest counties, the ratio varies from 500-to-1 in Ventura County to 134-to-1 in Santa Clara County. While the Governor has committed to working with the Judicial Council to develop a caseload driven allocation methodology, the Legislature may want to consider directing staff and LAO to work with the Administration and Judicial Council on that effort. Alternatively, the Legislature may want to consider requiring the Administration and the Judicial Council to report on their progress during budget subcommittee hearings this spring.

Should there be statutorily required caseload caps for children's attorneys? As noted above, SB 2160 (Schiff), Chapter 450, Statutes of 2000, required the adoption of a rule of court establishing appropriate caseload standards. That rule has not been adopted in the last 15 years. Given the failure of the Judiciary to act on that statutory requirement, the Legislature may want to consider placing the appropriate caseload standards in statute.

Questions for the Judicial Council. The Judicial Council should be prepared to address the following questions:

1. Several months ago, budget committee staff asked for data on each county's dependency counsel caseload. Do you have that data available for the committee?
2. The committee has received information suggesting that in some counties the attorneys for the parents have smaller caseloads than the attorneys assigned as counsel for the children. Can you please provide any data you may have that shows the dependency counsel caseload broken out by attorney cases per parent and attorney cases per child?
3. Please explain to the committee why trial courts may be choosing to direct more funding toward parents' attorneys than toward children's attorneys?
4. Please describe the Judicial Council's efforts to address the caseload/funding discrepancies among counties.
5. As noted in the agenda, 15 years have passed since legislation was passed that required the Judicial Council to adopt a rule of court establishing caseload standards for dependency counsel. Please explain to the committee why the council has failed to adopt any such standard?

Issue 4: Recidivism and Reduction Fund – Collaborative Courts

Background. The 2014 budget included \$15 million in Recidivism Reduction Fund money for the Judicial Council to establish a competitive grant program with the trial courts designed to provide funding for the operation of programs and practices known to reduce offender recidivism. These programs and practices can include risk and needs assessments, evidence-based practices, and programs specifically designed to address the needs of mentally ill and drug addicted offenders (i.e. collaborative courts such as mental health courts and drug courts).

Governor's Budget. The Governor's budget includes clean-up budget bill language for the 2014 budget act clarifying that funding for the competitive grant program must be encumbered by June 30, 2017.

Questions for the Judicial Council. DSH should be prepared to provide an update on the grant program and address the following questions:

1. How many courts expressed interest in the grant program and how much total funding was requested?
2. Have you determined which grants will be awarded? If so, how many counties will receive grants and how will they be using the funding?

9285 Trial Court Security

Issue 5: Trial Court Security Funding

Governor's Budget. The Governor's budget requests an additional \$1 million for an ongoing General Fund investment of \$2 million per year.

Background. As part of public safety realignment in 2011, trial court security and a constitutionally-protected revenue stream to fund those security costs were shifted to the county sheriffs. The Governor's January budget assumes that there will be \$535.1 million in realigned revenue available for trial court security in 2015-16. In addition to that base amount, the budget assumes that there will be an additional \$15.2 million in growth funding. That constitutes a \$32.5 million increase over the 2013-14 funding level.

The 2014 Budget. The 2014 budget included an increase of \$1 million General Fund to address potential increased court security costs associated with new courthouse construction. In order to receive additional funding, counties are required to demonstrate that they have an increased need for security staff.

Trailer Bill Language. In addition to the \$1 million in funding, the budget included statutory language limiting eligible courts that have an occupancy date on or after October 9, 2011. Based on the current list of construction projects, there are potentially 39 courthouses that may be able to argue the need for a General Fund augmentation for trial court security. The language further outlined a process the courts would need to go through in order to establish that they had increased trial court security costs as a result of construction.

Legislative Analyst's Office (LAO). The LAO recommended rejecting the initial proposal during the May Revision process last year. They acknowledged that some courts may be experiencing an increased trial court security need; they were unable to determine whether there was a statewide net increase in the cost of court security. For example, they note that a number of trial courts closed courtrooms and/or courthouses to address their ongoing budget reductions—thereby reducing the level of service required and generating cost savings that could be redirected to courts with increased costs. In addition, the 2011 realignment legislation did not envision the state providing each county funding based on its actual court security costs. As such, they argued, the proposal is not consistent with the original intent of the legislation.

Questions for the Administration. The Department of Finance should be prepared to address the following question:

1. How many courthouses do you think the state will ultimately be augmenting with General Fund?

2. Do you anticipate increasing the funding for each individual county each year or is it a fixed sum?
3. How do you propose ensuring that the money is not used to supplant realignment revenue that is designated for this purpose?
4. Please provide the committee with a list of counties that have requested a general fund augmentation, the amount of each request, the trial court security revenue each county receives and is scheduled to receive in 2015-16, and the amount of growth funding each county receives and is projected to receive in 2015-16.

5227 Board of State and Community Corrections

Originally, the Board of Corrections (BOC) was established in 1944 as part of the state prison system. Effective July 1, 2005, as part of the corrections agency consolidation, the Corrections Standards Authority (CSA) was created within the California Department of Corrections and Rehabilitation (CDCR) by bringing together the BOC and the Correctional Peace Officers Standards and Training (CPOST) Commission. The reorganization consolidated the duties and functions of the BOC and CPOST and entrusted the CSA with new responsibilities.

Legislation associated with the 2011 budget act abolished the CSA and established the Board of State and Community Corrections (BSCC or board) as an independent entity, effective July 1, 2012. The BSCC absorbed the previous functions of the CSA as well as other public safety programs previously administered by the California Emergency Management Agency (CalEMA). Specific statutory changes included:

- Abolishing the CSA within CDCR and established the BSCC as an independent entity.
- Transferring the powers and duties of the CSA to the BSCC.
- Transferring certain powers and duties from the California Emergency Management Agency (CalEMA) to the BSCC.
- Eliminating the California Council on Criminal Justice and assigning its powers and duties to the board.

Assuming the responsibilities of the CSA, the BSCC works in partnership with city and county officials to develop and maintain standards for the construction and operation of local jails and juvenile detention facilities and for the employment and training of local corrections and probation personnel. The BSCC also inspects local adult and juvenile detention facilities, administers funding programs for local facility construction, administers grant programs that address crime and delinquency, and conducts special studies relative to the public safety of California's communities.

As part of the 2011 budget act legislation, the BSCC was tasked with providing statewide leadership, coordination, and technical assistance to promote effective state and local efforts and partnerships in California's adult and juvenile criminal justice system. Particularly, the BSCC coordinates with, and assists local governments, as they implement the realignment of many adult offenders to local government jurisdictions that began in 2011. The intent is for the BSCC to guide statewide public safety policies and ensure that all available resources are maximized and directed to programs that are proven to reduce crime and recidivism among all offenders.

The BSCC is an entity independent from CDCR. However, although a local law enforcement representative chairs the BSCC, the Secretary of the CDCR serves as its vice chair. The BSCC consists of 13 members, streamlined from both its immediate predecessor (CSA), which had 19 members, and its former predecessor (BOC), which had 15 members. Members reflect state, local, judicial, and public stakeholders. The current members of the BSCC are:

Linda Penner	Chair
Jeffrey Beard	Secretary of CDCR
Daniel Stone	Director of Adult Parole Operations, CDCR
Dean Growdon	Sheriff of Lassen County
Geoff Dean	Sheriff of Ventura County
Susan Mauriello	County Administrative Officer, Santa Cruz County
Michelle Brown	Chief Probation Officer, San Bernardino County
Michael Ertola	Chief Probation Officer, Nevada County
William R. Pounders	Retired Judge, Los Angeles County
David L. Maggard Jr.	Chief of Police, City of Irvine
Scott Budnick	Founder of the Anti-Recidivism Coalition
David Steinhart	Director of Juvenile Justice Program Commonweal
Mimi H. Silbert	Chief Executive Officer and President of Delancey Street Foundation

The Governor's Budget proposes total funding of \$171.1 million (\$80.7 million General Fund) and 88.8 positions for the BSCC.

(dollars in millions)

	Funding	Positions
Administration, Research and Program Support	\$ 4.8	26.0
Corrections Planning and Grant Programs	139.6	28.8
Local Facilities Standards, Operations, and Construction	3.9	21.0
Standards and Training for Local Corrections	22.9	13.0
BSCC Total	\$171.1	88.8

Issue 6: Post Release Community Supervision Funding

Governor's Budget. The Governor's budget proposes to provide county probation departments with a \$16 million General Fund increase to address the temporary increase in the average daily population of offenders on Post Release Community Supervision (PRCS).

Background. Pursuant to the 2011 Realignment, CDCR inmates with non-violent and non-serious offenses are released from state prison into PRCS under the jurisdiction of counties. While the initial intent was to retain these offenders on parole until they otherwise would have been released, law enforcement concurs that it is in the best interest of public safety for these offenders to be under the supervision of one jurisdiction for the length of their supervision term. Therefore, offenders eligible for PRCS immediately begin their supervision under the jurisdiction of county probation.

The requested \$16 million General Fund for county probation departments would support the temporary increase in the average daily population of offenders on PRCS as a result of the two additional population reduction measures ordered by the Three Judge Panel, and implemented on January 1, 2015. This proposal would augment the existing \$6.7 million appropriation for increased credit earning for non-violent, non-sex registrant second-strike offenders from 20 percent to 33.3 percent (which began on February 10, 2014). The proposed augmentation would increase total temporary funding to \$22.7 million.

Listed below are the two new population reduction measures, the proposed funding for implementing those measures, and the assumed population increases in 2015-16.

1. New parole determination process for eligible non-violent, non-sex registrant second-strike offenders who have completed 50 percent of their sentence (Effective January 1, 2015):
 - \$13.4 million
 - 1,068 ADP
2. Two-for-one credits for minimum custody inmates currently earning day-for-day credits (Effective January 1, 2015):
 - \$2.7 million
 - 225 ADP

Questions for the Administration. The Administration should be prepared to address the following questions:

1. Has Proposition 47 impacted PRCS populations and, if so, how?

2. This funding is being requested to address a temporary increase in the average daily population of offenders on PRCS. When is the temporary increase projected to subside?

Issue 7: City Law Enforcement Grants

Governor's budget. The Governor's budget includes a request for \$40 million General Fund to continue the three-year City Law Enforcement Grants program for a fourth year.

Background. As part of the 2012–13 budget, the Governor proposed and the Legislature approved a three-year grant program (from 2012-13 through 2014-15) to provide state General Fund support to city law enforcement, primarily police. At the time the funding was proposed, the Administration indicated that the intent was to partially offset budget reductions that city law enforcement departments were facing due to the recession.

The funds were initially approved at \$24 million each year, and then were increased to \$27.5 million in 2013-14, and again to \$40 million in 2014-15. The Legislature approved the increased 2014-15 grant amount based on the understanding with the Administration that 2014-15 would be the final year for this grant program.

Legislative Analyst's Office (LAO).

Proposal Lacks Sufficient Justification. The Governor's proposal to provide \$40 million to extend the police grants for an additional year lacks justification for the following reasons:

- ***Need To Address Recession–Era Cuts Unclear.*** The Legislature authorized a three-year program as a stopgap measure to help city law enforcement address budget cuts resulting from the recession. However, the recession ended five years ago and, in that time, local revenues appear to have recovered to pre-recession levels. It is unclear how many additional years past the end of the recession the Governor thinks such funding is appropriate.
- ***Funds Unlikely to Make Significant Impact.*** The funding proposed is only a small fraction of total city police budgets and is unlikely to have a significant effect on the level of service provided by city law enforcement.

LAO Recommendation. In view of the above, the LAO recommends that the Legislature reject the Governor's proposal to provide \$40 million in city law enforcement grants in 2015-16.

Questions for the Administration. The Administration should be prepared to address the following question:

1. Please provide additional justification for continuing this grant program for an additional year.
2. Do you anticipate that this will become an on-going General Fund commitment?

3. Please provide the committee with a breakdown of which police departments received funding each year, how much they received, and how that funding was used.

Issue 8: Jail Construction Financing

Governor's Budget. The Governor's proposed budget included a request for \$298,000 General Fund and 2.0 positions to perform the state's workload related to administering financing programs for local criminal justice facility construction projects.

Trailer Bill. The proposed budget also includes placeholder trailer bill language allowing the BSCC to shift unused funding from the AB 900 phase one projects to AB 900 phase two projects and SB 1022 projects.

Background. Since 2007, the Legislature has approved three measures authorizing a total of \$2.2 billion in lease-revenue bonds to fund the construction and modification of county jails. Assembly Bill 900 (Solorio), Chapter 7, Statutes of 2007, provided \$1.2 billion to help counties address jail overcrowding. SB 1022 (Committee on Budget and Fiscal Review), Chapter 42, Statutes of 2012, authorized an additional \$500 million to help counties construct and modify jails to accommodate longer-term inmates who would be shifted to county responsibility under the 2011 realignment of lower-level offenders. Finally, in 2014, SB 863 (Committee on Budget and Fiscal Review), Chapter 37, Statutes of 2014, provided \$500 million to help counties fund construction projects designed to improve housing with an emphasis on expanding program and treatment space to manage the adult offender population under its jurisdiction.

The Board of State and Community Corrections (BSCC) is responsible for managing the jail construction funding program authorized by these measures, which includes developing requests for proposals, rating applications, awarding and administering funds, and overseeing compliance with the conditions of the awards. The State Public Works Board (SPWB) is tasked with issuing the bonds, as well as approving and overseeing the scope and cost of approved projects.

Lease-Revenue Bond Financing. Bond financing is a type of long-term borrowing that state and local governments frequently use to raise money, primarily for long-lived infrastructure assets. They obtain this money by selling bonds to investors. In exchange, they promise to repay this money, with interest, according to specified schedules. The interest the state has to pay investors on the bonds it issues for public infrastructure is exempt from their federal and state income taxes, which makes the state's interest costs on the bonds less than it otherwise would be. Unlike general obligation bonds backed by the full faith and credit of the state, lease-revenue bonds are not, and they may be authorized by law without voter-approval.

AB 900 (Solorio), Chapter 7, Statutes of 2007. AB 900, as amended by subsequent legislation, authorized funding in two phases. Under the first phase, AB 900 required counties applying for a grant to fund at least 25 percent of the construction project's costs. In deciding which counties would be awarded funding under the first phase, the bill required the state to give preference to those counties that agreed to help site a state reentry facility or provide mental health treatment to former parolees. (The

Legislature later eliminated funding for the construction of state reentry facilities, and counties who received awards were not required to fulfill this requirement.) Counties receiving funds under the second phase of AB 900 must provide a 10 percent match, and preference for awards was given to counties who committed the most inmates to state prison in 2010. Under both AB 900 and SB 1022 (discussed below), counties with populations of less than 200,000 can request an exemption from the statutorily-required match.

The BSCC has approved 20 jail construction projects under the first two phases of AB 900. The BSCC estimates suggest that these construction projects will result in a total of about 10,000 jail beds, as well as make improvements at existing jails. Some of the 10,000 beds will be replacements for existing beds and do not result in additional capacity.

SB 1022 (Committee on Budget and Fiscal Review), Chapter 42, Statutes of 2012.

SB 1022 authorized an additional \$500 million in lease-revenue bonds to fund the construction of local jail facilities. As with AB 900, this legislation required BSCC to administer the program, and consideration was given to counties that are seeking to replace existing compacted, outdated, or unsafe housing capacity or seeking to renovate existing buildings or build new facilities that provide adequate space for the provision of treatment and rehabilitation services, including mental health treatment. In addition, the legislation specified that a participating county could only add capacity using this authority if it clearly documented an existing housing capacity deficiency and does not lease housing capacity to any other public or private entity for 10 years. As with AB 900, counties applying for jail construction funding under SB 1022 will have to provide a 10 percent match, and awards will be given to counties who are determined by BSCC to be the most prepared to successfully proceed with their projects in a timely manner.

Thirty-six counties applied for construction funding through SB 1022, asking for a total of \$1.3 billion in funding. Of those proposals, 15 counties were awarded funding on January 16, 2014.

SB 863 (Committee on Budget and Fiscal Review), Chapter 37, Statutes of 2014.

This legislation authorized \$500 million for lease-revenue bond financing for county jail construction projects designed to improve correctional housing, with an emphasis on expanding program and treatment space to manage the adult offender population under its jurisdiction. Under this grant program, counties seeking financing are required to provide a description of the county's current risk-assessment-based pretrial release program. In addition, counties are prohibited from using funding to significantly increase jail capacity. Funding consideration is required to be given to counties that are seeking to replace compacted, outdated, or unsafe housing capacity or are seeking to renovate existing or build new facilities that provide adequate space for the provision of treatment and rehabilitation services, including mental health treatment.

Questions for the BSCC. BSCC should be prepared to provide an update on all three construction programs and address the following question:

1. How many counties do you anticipate will be applying for funding?
2. Has the BSCC done an evaluation of existing county jail facilities to determine the total number of jail beds in the state and the level of need for renovating, updating, or replacing existing jail facilities?
3. Do you have an estimate of how much funding you plan on shifting from the phase one AB 900 projects to the phase two projects and the SB 1022 projects? Please describe why the funds were not expended in phase one.
4. How many staff do you currently have dedicated to managing the current projects? Please describe their on-going role in the projects and their workload. Why do you believe two more permanent positions are necessary?

8120 Commission on Peace Officer Standards and Training (POST)

The Commission on Peace Officer Standards and Training (POST) was established by the Legislature in 1959 to set minimum selection and training standards for California law enforcement. The POST organization has more than 130 staff members and functions under the direction of an executive director appointed by the commission.

POST funding comes from the Peace Officers' Training Fund (POTF). The POTF receives money from the State Penalty Assessment Fund, which in turn receives money from penalty assessments on criminal and traffic fines. Therefore, the POST program is funded primarily by persons who violate the laws that peace officers are trained to enforce. With the exception of a \$3.2 million General Fund augmentation last year, generally no tax dollars are used to fund the POST Program.

The POST program is voluntary and incentive-based. Participating agencies agree to abide by the standards established by POST. More than 600 agencies participate in the POST program and are eligible to receive the commission's services and benefits, which include:

- job-related assessment tools
- research into improved officer selection standards
- management counseling services
- the development of new training courses
- reimbursement for training, and
- quality leadership training programs

POST also awards professional certificates to recognize peace officer achievement and proficiency.

POST at a Glance:

- POST services 58 County Sheriffs' Departments; 350 municipalities; 605 law enforcement agencies; 80,000 sworn officers, 5,000 reserve officers, and 8,000 dispatchers.
- POST ensures any mandated training enacted by the Legislature meets the needs of ALL California law enforcement (from small to large agencies).
- Post provides timely reimbursement funding to agencies enabling peace officers and public safety dispatchers to receive training.
- Provides course certification, essential training workshops.

POST is responsible for raising the competence level of law enforcement officers in California by establishing minimum selection and training standards, improving management practices, and providing financial assistance to local agencies relating to the training of law enforcement officers.

The Governor's 2015-16 budget proposes funding of \$57.2 million (special funds) for POST operations in 2015-16. The proposal also includes authority for 86.1 positions, reducing the 2014-15 level of staffing by approximately one-third.

(dollars in thousands)

Funding	2013-14	2014-15	2015-16
General Fund	\$ -	\$3,200	\$ -
Peace Officers' Training Fund	53,632	53,730	55,199
Other Funds	396	2,459	1,959
Total	\$54,028	\$59,389	\$57,158
Positions	117.5	123	86.1

Issue 9: POST Training Update**Background**

POST regulations requires that every peace officer, unless exempt, complete the regular basic training course before being assigned duties which include the exercise of peace officer powers.

In addition, POST regulations requires continuous professional training (CPT) for certain peace officer and dispatcher personnel who are employed by POST participating departments. The purpose of CPT is to maintain, update, expand, and/or enhance an individual's knowledge and/or skills. Officers must complete 24 hours of CPT every two years.

Of those 24 hours, 12 hours must be in what POST refers to as perishable skills training; four hours of arrest and control, four hours of driver training/awareness or driver simulator, and four hours of tactical firearms or force option simulator. POST also requires two hours of tactical or interpersonal communication. The remaining 10 hours of training topics are at the discretion of the agencies.

Mental Health and Developmental Disability Specific Training. According to POST, they have long recognized the importance of law enforcement training in the area of mental illness and developmental disability issues.

In July 1990, in response to the legislative mandate of Penal Code Section 13519.2, POST developed training for in-service law enforcement on interaction with persons with developmental disabilities or mental illness.

POST also developed *Learning Domain 37: People with Disabilities* and added it as mandated content in all basic courses. That training is required for all academy recruits, and they must show proficiency in differentiating between behavior indicative of a mental health issue, or an unseen disability, as a condition of course completion. This is done through evaluated role play scenarios.

In February 2002, POST developed the course *Police Response to People with Mental Illness or Developmental Disability*. This course was made available to law enforcement instructional teams throughout California. With this course POST made available student handbooks and ready reference material for officers to carry with them in the field.

Since 2002, POST has produced and distributed seven training videos pertaining to mental health and developmental disabilities issues. The most recent was released in August 2013.

This month, POST started production on a video to meet the Penal Code 13515.30 mandate for interaction with persons with mental illness and developmental disabilities living in state mental hospitals or state developmental centers. This video will be released in fall of 2014.

Finally, POST has reviewed and certified 36 courses on this topic that are currently presented by various law enforcement agencies and private presenters throughout the state.

In-Service Training. For in-service training, a majority of agencies develop their own courses and submit them to POST for review and certification. If the course is developed to fulfill a legislative mandate, POST establishes the minimum content requirement. All courses certified must contain that minimum content.

In response to a critical identified training need, or legislative directive, POST staff will develop training in-house. To accomplish this, POST brings together subject matter experts who represent all disciplines related to the topic. This includes law enforcement, academia, community advocates, ombudsmen, legal, medical, and any other identified association or person(s) who are identified as critical to create relevant and effective training.

The agencies assume the responsibility to provide the training to their employees that meet legislative and regulatory requirements.

Questions for the Administration. The commission should be prepared to address the following questions:

1. How much of the POST training is done online or through video, rather than in-person, particularly in terms of CPT training?
2. How does POST evaluate the effectiveness of its training? Particularly, how do you evaluate on-line or video training to determine whether or not it is effective?
3. Does POST keep track of incidents throughout the state, primarily in terms of the treatment of individuals with mental illness and developmental disabilities, and evaluate whether or not additional training needs to be conducted in those specific areas?
4. How often do you review your training requirements to determine whether or not they are effective or the correct types of training to adequately prepare new peace officers for their jobs?
5. Does POST provide any conflict resolution training in order to assist officers in defusing potentially dangerous and violent situations?

6. Communities throughout the nation are using crisis intervention team models as a more effective means of dealing with individuals with mental illness. These teams are comprised of specially trained officers. In particular, the Los Angeles Police Department has a specialized mental evaluation unit that is partially staffed by mental health clinicians. Does POST provide any specialized training for police departments that may be interested in using this approach?

7. Does POST provide any training in unconscious biases, community policing, or other training that is designed to reduce the number of incidents that result in unarmed people (primarily people of color) either being injured or killed by local police officers?

Issue 10: Peace Officer Training Fund (POTF) Insolvency

Governor's Budget Proposals. The Governor proposes reducing the Commission on Peace Officer Standards and Training's administration budget by \$5.2 million and 36.9 positions (a 30 percent staffing reduction). The administration has not provided details on the types of positions that would be eliminated or the associated impacts to the services provided by POST. According to the administration, such details will be provided to the Legislature later in the budget process.

In addition, the Governor proposes a debt amnesty program for individuals with past-due, court-ordered debt from fines associated with traffic infractions and specified misdemeanors. The Governor's budget assumes \$12 million in additional revenue will be available due to the amnesty program. The 18-month amnesty program would be administered by courts and counties and would provide a 50 percent discount for debt that was due prior to January 1, 2013.

Despite the ongoing shortfall in the POTF, the Governor proposes an \$8.6 million increase in POST expenditures on local law enforcement training from the POTF in 2015-16. This increase would restore reductions made previously to training provided by contractors, certain reimbursements, and some workshops. The reduction in POST's administrative budget and the increase in training expenditures would result in a net increase of expenditures from the POTF in 2015-16. Under the Administration's plan, total expenditures from the POTF would exceed revenues by \$3.5 million in 2015-16, despite the assumed \$9.9 million increase in revenues associated with the traffic amnesty. Under the Governor's plan, this shortfall would be addressed by further reducing the balance of the POTF.

Finally, to address the steady decline in revenue deposited into the State Penalty Fund (SPF), the Governor's budget proposes to zero-base budget all expenditures from the SPF—including expenditures on POST and BSCC programs. This analysis would examine how the programs are using their share of SPF revenue. The Administration has not indicated when this analysis would be complete or how it proposes using the results of the analysis.

Interaction Between the State and Local Law Enforcement. The state works closely with local public safety agencies in several ways to create a cohesive criminal justice system. First, the state establishes the body of laws that define crimes and specify punishments for such crimes. Local governments are generally responsible for enforcing these state laws. For example, cities and counties fund the police and sheriff departments that arrest individuals for violating state law. In addition, state and local agencies each have certain responsibilities for managing the population of offenders who violate the law and enter the correctional system.

While the state has historically had a significant role in managing the correctional population, the state's role in policing communities is more limited. The majority of funding for local police activities comes from the local level. Accordingly, most decisions

about how to administer police services are also made at the local level. The state's role in local police activities has generally been to establish standards for the selection and training of peace officers. Specifically, the Commission on Peace Officer Standards and Training (POST) sets minimum selection and training standards for California law enforcement, develops and runs training programs, and reimburses local law enforcement for training. In addition, the Board of State and Community Corrections (BSCC) operates the Standards and Training for Local Corrections Program, which includes developing minimum standards for local correctional officer selection and training, certifying training courses for correctional staff, and reimbursing local correctional agencies for certain costs associated with the training and standards. The state also provides grant funding for various purposes and a limited amount of operational assistance.

Legislative Analyst's Office (LAO) Concerns

Governor's Budget Raises Questions About the State Role in Funding Local Law Enforcement. The Governor's budget includes a couple of proposals related to local law enforcement that raise questions about what the state's role should be in funding these activities. The budget proposes to reduce the number of state staff at POST. At the same time, the budget proposes to increase state payments made directly to local law enforcement agencies, primarily city police. Given the limited amount of funding the state provides to local law enforcement—particularly relative to the total spent on local law enforcement from all fund sources—the Legislature may want to consider whether the state should consider focusing its limited dollars on state-level priorities and responsibilities. For example, the Legislature might determine that the state's primary role in local law enforcement should be to provide standards and training to ensure that peace officers receive consistent and high-quality training.

LAO Recommendations

Reject Proposed Traffic Amnesty Program. The LAO finds that the Administration's revenue estimates appear too high, will not address the long-term insolvency of the POTF and may negatively impact the collection of court-ordered debt in the future. Thus, the LAO recommends the Legislature reject the Governor's proposed traffic amnesty program.

Consider Comprehensive Evaluation of Funds Receiving Court-Ordered Debt Revenue. The Governor's proposal raises a much larger issue regarding the decline in court-ordered debt in recent years and its impact on various state and local funds that benefit from such revenue. Accordingly, the Legislature may want to consider a more comprehensive evaluation of how court-ordered debt revenue should be used and distributed. For example, the Legislature may decide that certain state or local programs have greater need than others or that certain programs or specific program activities should no longer be funded.

Restructure Court-Ordered Debt Collection Process. Given the decline in fine and fee revenue deposited in various state and local funds and the large outstanding balance of court-ordered debt, the LAO recommends that the Legislature restructure the existing court-ordered debt collection process.

Restructure Proposed Changes to POTF Expenditures. The LAO recommends that the Legislature restructure the Governor's proposal to reduce expenditures from the POTF by taking a more balanced approach, as follows:

Reject Proposed Expenditure Increase. The LAO recommends rejecting the proposed \$8.6 million increase in POTF expenditures. This would result in POST continuing to suspend certain training reimbursements (such as for overtime and travel), limiting the number of training courses provide through contracts, and postponing some workshops.

Make Targeted Reductions. The LAO recommends rejecting the proposed 30 percent staffing reduction to POST. Specifically, the LAO recommend further reducing the number of training courses provided through contracts and to reevaluate the training reimbursement structure. Due to the lower level of workload POST will have as a result of these reductions, the LAO also recommends that POST make targeted administrative reductions. For example, the Legislature could eliminate the 10 positions that are currently vacant as well as any positions that would no longer be needed following a reduction in the training expenditures described above. The LAO recommends that POST provide the Legislature with an updated expenditure reduction plan as part of the Governor's May Revision.

Direct POST to Consider Fees. Finally, the LAO recommends directing POST to evaluate whether it would make sense to charge fees for some of its services and provide a report to the Legislature no later than January 10, 2016, on its findings. Charging fees for some services would provide additional revenue to stabilize funding for POST and mitigate the need for greater reductions in future years in the event that POTF revenues continue to decline.

Approve Proposal to Zero-Base Programs Supported by the SPF. Given the declining revenues available to programs supported by the SPF, it is in the state's best interest to determine whether each program funded by the SPF is using its limited resources cost-effectively and aligned with state priorities. As such, the LAO recommends the Legislature approve the Governor's proposal to zero-base budget the programs supported by the SPF. They also recommend that the Legislature require that the Administration submit a report of its analysis with the Governor's January budget proposal for 2016-17, in order to allow for meaningful discussions during the next budget process. This analysis would help the Legislature ensure that SPF resources are used to support those programs or program activities it deems to be most important. In its examination of various program expenditures, the analysis could also help identify

whether additional funds supported by the SPF will be facing insolvency in the near future.

Questions for the Administration. The Administration should be prepared to address the following questions:

1. Have you identified which positions will be reduced and which functions POST will no longer perform under this proposal?
2. When can the Legislature expect a more detailed proposal from the Administration?

SUBCOMMITTEE NO. 5

Agenda

Senator Loni Hancock, Chair
Senator Joel Anderson
Senator Jim Beall



Thursday, April 9, 2015
9:30 a.m. or upon adjournment - State Capitol Room 113

Consultants: Farra Bracht and Anita Lee

Presentation

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Eric Stern, Department of Finance
Nick Schroeder, Legislative Analyst’s Office

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Pursuant to the Americans with Disabilities Act, individuals who, because of a disability, need special assistance to attend or participate in a Senate Committee hearing, or in connection with other Senate services, may request assistance at the Senate Rules Committee, 1020 N Street, Suite 255 or by calling 916-651-1505. Requests should be made one week in advance whenever possible.

INFORMATIONAL ONLY ITEM

Governor's Proposals for Employee and Retiree Health Care

Presentation by Department of Finance, Eric Stern
 Commentary by Legislative Analyst's Office

6645	CSU Health Benefits for Retired Annuitants
7900	Public Employee's Retirement System
9650	Health and Dental Benefits for Annuitants
9651	Prefunding Health and Dental Benefits for Annuitants

Governor's Budget Proposal. The Governor's budget includes proposals related to employee and retiree health care (except for employees of the University of California) in three general areas: 1) paying off the existing \$72 billion unfunded liability for retiree health; 2) prefunding retiree health care benefits; and 3) reducing the cost of health care benefits. Affected employees include active and retired state workers, California State University (CSU), employees of the legislature, and the statewide entities of the Judicial branch of government.

Background and Details. The Governor's proposals are discussed in more detail below.

Paying Off the Existing Liability of \$72 Billion for Retiree Health Care Benefits

The state's pay-as-you-go system for retiree health care benefits has resulted in an unfunded liability of \$72 billion that will grow to \$100 billion by 2020 and \$300 billion by 2047-48 absent any action. A pay-as-you-go system means that state and employees do not set aside funds during an employee's working years to pay for future benefits. As a result, funds are not invested and there are no investment returns to help pay the future costs for retirees.

Prefunding Retiree Health Care Benefits

The Administration proposes that the state and its employees share equally in prefunding the normal costs of retiree health care benefits, similar to the new pension-funding standard. Normal costs represent the actuarially determined value of retiree health care benefits that are earned by the employee during a current year.

The Administration seeks to phase in this approach through cost-sharing agreements as labor contracts come up for renewal. Under this plan, investment returns will help pay for future benefits, just as with the state pension plans, to eventually eliminate the unfunded liability by 2044-45. Once fully implemented, this plan will increase state costs by approximately \$600 million annually, but ultimately decrease the retiree health care liability, savings billions in the future.

The Administration proposes to eliminate the stand alone Budget Item 9651 as the budgetary mechanism for prefunding retiree health care and instead add Control Section 3.61. Through this mechanism, the prefunding dollars will be built into department budgets and captured

through State Controller's Office payroll processes, similar to CS 3.60 for pension contributions.

The state has already established at least partial prefunding agreements with three of its labor unions (Bargaining Unit 5: Highway Patrol, Bargaining Unit 12: Craft and Maintenance, and Bargaining Unit 16: Physicians, Dentists, and Podiatrists). Under the Governor's proposals, agreements would be established with all the unions through the collective bargaining process and phased in as existing MOUs expire. The proposal does not specify how the new contribution requirement would be established for CSU employees excluded from collective bargaining, legislative staff, and judicial employees.

Reducing the Cost of Health Care Benefits

Health care benefits are one of the fastest growing areas of state government, and outpace population and inflation growth. The state is projected to spend \$4.8 billion in 2015-16 on health care benefits for more than 800,000 state employees, retirees, and their family members. The Governor is proposing a plan to make health care costs more affordable to the state. This could be important as the level of coverage the state makes available to employees is vulnerable to the pending federal "Cadillac Tax". The federal Patient Protection and Affordable Care Act (PPACA, as amended by the Health Care and Education Reconciliation Act of 2010), imposes an annual 40 percent excise tax on plans with annual premiums exceeding \$10,200 for individuals or \$27,500 for a family starting in 2018, to be paid by insurers (in this case, the State of California). The tax is not imposed on the total cost of the plan, but on the costs exceeding the aforementioned values, which, after 2018, will adjust to inflation annually. The key cost containment proposals of the Governor's plan are described below.

Offer High Deductible Health Plans and Health Savings Accounts. To help reduce costs, the Governor proposes to require the California Public Employees' Retirement System (CalPERS) to offer a High Deductible Health Plan (HDHP), and the Administration will provide contributions to an employee's Health Savings Account (HSA) to defray out-of-pocket expenses for employees who choose the lower-cost plan. The Governor proposes to pursue changes to lower the state's premium subsidy, currently based on a formula using the average premiums of the four highest enrolled plans, to encourage employees to select lower-cost health plans. The Governor's proposals to add high deductible health plans and health savings accounts to the Public Employees' Medical and Hospital Care Act were the subject of a joint hearing of the Senate Public Employment and Retirement and Assembly Public Employees, Retirement, and Social Security committees on March 18, 2015.

Adjust Premiums for Health Promotion and Disease Prevention. The Administration also calls for encouraging healthy behavior of employees and retirees to reduce costs. AB 2142 (Furutani), Chapter 445, Statutes of 2012, authorized CalPERS to pursue premium credits and penalties related to health promotion and disease prevention.

Increase Time to Vest. The Governor also proposes that, rather than state employees working 10-20 years to receive state subsidies for retiree health care, newly hired employees would only receive this benefit if they work 15-25 years and they would not receive a higher subsidy for premiums in retirement than they received while working.

Limit Coverage to Eligible Members. Under the Governor's proposal, additional dependent tiers for insurance coverage and surcharges for spouses who could obtain coverage from their employer would be put in place. Finally, the Governor proposes ongoing monitoring to ensure only eligible family members receive health care coverage and to ensure that seniors enroll in federally subsidized Medicare plans, rather than remaining on expensive state-paid plans.

The budget also proposes several measures to increase the amount of information shared by CalPERS.

Both budget bill language (BBL) and trailer bill language (TBL) are proposed to implement the changes described above:

The BBL changes are as follows:

- **Control Section 3.61.** Newly created control section will expand other post-employment benefit (OPEB) prefunding mechanics.
- **Control Section 4.20.** Amended to clarify that state Public Employees' Contingency Reserve Funds will be exclusively used for state healthcare benefit administration costs.
- **0840-001-0001, Provision 9.** Expands OPEB valuation reporting to include additional normal cost break-outs by Bargaining Unit and pending changes to Government Accounting Standards Board requirements.
- **7900-001-0950, provisional language.** Adds a new Medicare supplement policy report detailing efforts to convert age 65 retirees from Basic plans to Medicare plans, and related costs/benefits of improving those conversion efforts.
- **7900-015-0822, provisional language.** Modifies an existing report to include a more detailed reconciliation of premium changes when the CalPERS Board adopts new health rates.

The two proposed trailer bills include the following key changes:

Health Benefit Administration

Section 1: California Department of Human Resources authority for Health Savings Accounts (HSAs).

- Establishes legal authority for CalHR to administer a HSA program.
- HSAs are federally tax-advantaged accounts designed to facilitate savings for health care spending and must be tied to a qualified High Deductible Health Plan (HDHP).

Section 2: Dependent eligibility and enrollment for state healthcare benefits.

- The recent Dependent Eligibility Verification project revealed a significant number of inappropriately enrolled former spouses and uncertified parent-child relationships. This section clarifies former spouses or former domestic partners are not eligible for benefits.

Section 3: Prefunding normal cost-sharing for Other Post-Employment Benefits.

- Updates the "prefunding" definition to clarify Other Post-Employment Benefits (OPEB) prefunding can include normal costs, unfunded liabilities, or both. Previously, the definition only included unfunded liabilities.

Section 4: Dependent eligibility and enrollment for state healthcare benefits.

- This section establishes that the employer must verify dependent eligibility prior to their enrollment, maintain records, and verify eligibility every three years.

Section 5: Medicare eligibility.

- Tightens requirements for 65-year-old retirees to convert to Medicare plans, and ensures CalPERS does not grant additional exemptions through regulations.

Section 6: High Deductible Health Plans.

- Requires CalPERS to offer a HDHP and a low-cost Medicare Supplemental Plan, beginning with the 2016 calendar year. HSAs must be tied to a HDHP in order to be offered. Exempts these plans from risk-adjustment procedures in order to promote their affordability.

Section 7: Data information sharing.

- Authorizes Department of Finance to review CalPERS medical trend data from providers.

Section 8: Notification of benefit and premium changes report.

- Updates existing notification statute so that the Administration and the Legislature are aware of and can better respond to upcoming changes by CalPERS to health care benefits and premiums that will result in increased employer/employee costs.

Section 9: CalPERS annual health benefits program report.

- Modifies existing statute to create a comprehensive annual report describing the health benefits program.

Section 10: Contingency Reserve Fund (CRF) administrative fees.

- Currently, the administration fees for CalPERS health benefits program are paid by the local governments/public agencies at the same rate to the CRF as the state's administration fee. This has resulted in the state paying a larger share of the administrative costs. This amendment clarifies that CalPERS can establish separate rates for local contract agencies.

Section 11: Health Care Fund (HCF) authority.

- The HCF is comprised of health premiums for disbursement to the CalPERS self-funded (Preferred Provider Organization) plans. A portion of these premiums and their respective investment earnings provide the funding to administer the program.
- The HCF trust fund was established for the exclusive benefit of members and retirees. Several years ago, an amendment added the fund administrator (CalPERS) as an exclusive beneficiary. This amendment removes CalPERS from the list.

Section 12: Prefunding normal cost-sharing for OPEB.

- Prevents OPEB benefit payments using investment income from the trust fund until the earlier of: 1. Bargaining unit subaccount reaches 100% funded ratio, 2. July 1, 2046—the date the actuarial calculation of the accumulated assets of the Governor's plan are expected to reach a funded ratio of 100%.

Section 13: Prefunding normal cost-sharing for OPEB.

- Intent language signaling the Administration's strategy of prefunding normal cost-sharing for OPEB: 50-50 normal cost-sharing to be pursued through collective bargaining.

Retiree Health Care**Section 1: State retiree subsidy—pre-Medicare-age retirees.**

- Sets a ceiling for the employer contribution that should not exceed the active employee formula for most state employees (80-80 or 85-80). The contribution formula continues to use the average premiums of the four highest enrolled Basic plans.
- Effective for new employees hired after January 1, 2016. Applies to all state entities, including CSU, legislative, and judicial branches.

Section 2: State retiree subsidy—Medicare-age retirees.

- Sets a ceiling for the employer contribution to the Medicare supplemental plan premiums that should not exceed the active employee formula for most state employees (80-80 or 85-80). A new contribution formula will use the average premiums of the four highest enrolled Medicare supplemental plans.
- The state contribution for retirees who are 65 years old will be tied to the Medicare supplemental plan contribution.
- Effective for new employees hired after January 1, 2016. Applies to all state entities, including CSU, legislative, and judicial branches.

Section 3: OPEB vesting schedule for new employees.

- Modifies graduated vesting for retiree healthcare benefits for new employees from 10-20 years to 15-25 years.
- Effective for new employees hired after January 1, 2016. Applies to all state entities, including CSU, legislative, and judicial branches.

Section 4: Medicare Part B premiums.

- The federal government requires all Medicare enrollees to pay a Part B premium (about \$110/month). Currently, the state reimburses retirees and their dependents for their Medicare Part B premium payment, on top of the state's contribution to Medicare supplemental plans. California is one of three remaining states that continue to provide this additional subsidy. Local agencies that contract with CalPERS for retiree health also do not provide this additional subsidy.
- This amendment would remove the Part B reimbursement for future retirees who began working for the state after January 1, 2016. Applies to all state entities, including CSU, legislative, and judicial branches.

LAO Comments: The LAO recommends the Legislature give this issue at least the same level of review as it gave the development of plans to address the CalPERS and CalSTRS retirement liabilities. Therefore, the LAO recommends the policy committees of the Legislature hold hearings to discuss the Governor's proposal—as well as other options to address retiree health liabilities—with actuaries, employee groups, policy experts, and the public. The LAO further recommends that the Legislature not approve a funding plan until it has had an opportunity to review the plan and a written evaluative report of it prepared by a professional actuary.

The LAO acknowledges that subjecting the Governor's proposal to deliberation could delay the plan's implementation—possibly by as much as a year. However, it is more important to get the plan right than to rush into a prefunding plan just to have it in place in 2015–16.

Staff Comments: The Governor's budget proposes to make changes to prefund retiree health care costs for state employees and to make significant policy changes through the budget process. The Administration has not provided an estimate of the fiscal impact of these changes on the state budget. At this time, there are a lot of unknowns regarding these proposals, including what happens through the collective bargaining process.

Questions:

The LAO raises some key questions to consider for the Legislature:

1. Should California change its benefit package for future employees?
2. Does the proposal fund normal costs and reduce unfunded liabilities?
3. Will the proposal cause pressure to increase compensation?
4. Are all funding sources considered?
5. Will the proposal reduce the state's long-term fiscal flexibility?
6. Would the plan affect employee recruitment and retention?
7. Should employees make contributions to prefund retiree health benefits?
8. Would a more traditional amortization schedule reduce future budgetary pressure?

Staff Recommendation: Hold open

ITEMS PROPOSED FOR VOTE ONLY**7501 Department of Human Resources****Issue 1 Assembly Bill 1397 - Veteran Opportunity in the Workforce and State**

Description. The Governor's Budget requests one two-year limited term position and \$135,000 and \$135,000 (\$77,000 in General Fund and \$58,000 in Central Service Recovery Fund) in 2015-16, and \$133,000 (\$76,000 in General Fund and \$57,000 in Central Service Cost Recovery Fund) in 2016-17, and \$20,000 (\$11,000 in General Fund and \$9,000 in Central Service Cost Recovery Fund) for on-going costs.

Background. Assembly Bill 1397 Committee on Veterans Affairs, Chapter 645, Statutes of 2014, requires CalHR to collect statistical information on veterans seeking civil service employment, veterans in the state civil service system, and veterans separating from state civil service. It also requires CalHR to maintain a tracking system to provide data for the analysis of veteran utilization within the state civil service.

The proposal is requesting a limited term programmer to assist in the performance of enhancements and upgrades to the existing system and will be responsible for analyzing, coding, testing and installing production approved modification to the reporting system. Currently, CalHR only has one programmer that works on mainframe applications, and the current maintenance and reporting workload limits the time available for the programmer to work on other projects.

Staff Recommendation. Approve as budgeted.

7920 California Teachers' Retirement System

Issue 1	CalSTRS Budget Proposals
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Governor's Budget Proposal. The following four CalSTRS budget proposals are recommended for vote only:

- **Investment Portfolio Complexity.** CalSTRS requests a permanent funding augmentation of \$2.7 million and 10 permanent positions to address an increase in internal management and growing complexity of the investment portfolio. All ten positions will be assigned to the Investment Branch to help increase the likelihood of earning the 7.5 percent actuarial assumed rate and to reduce the overall risk of the investment portfolio.
- **Member Service Center Development and Operations.** CalSTRS requests a funding augmentation of \$3.3 million (\$2.7 million one-time funding and \$590,740 permanent funding) and eight full-time positions for 2015-16. Also, CalSTRS requests a permanent augmentation of \$1.0 million for 2016-17 and beyond. This proposal is to establish and staff the San Diego Member Service Center and to provide for increasing operational costs of the previously established member service centers.
- **Technology Infrastructure and Licenses.** CalSTRS requests a permanent augmentation of \$3.8 million in operating expenses and equipment. Of this amount, \$1.6 million is for software licenses and support and \$2.2 million to cover the refresh costs of CalSTRS technology infrastructure. The augmentation will provide ongoing licenses and support for the CA Clarity Project Portfolio Management, JAMA Requirements Management tools, and SAP (Systems, Applications, Products in Data Processing) Managed Services and software licensing costs to support CalSTRS Business Direct system implemented in January 2013.
- **Enterprise Information Management.** CalSTRS requests a permanent funding augmentation of \$435,859 and four permanent full-time positions to establish and sustain an Enterprise Information Management (EIM) program. The EIM is intended to provide governance over all enterprise wide data in the long term, although its initial focus is on data for the Pension Solution.

Staff Comment. Staff has no concerns with these proposals.

Staff Recommendation. Approve as proposed.

ITEMS PROPOSED FOR DISCUSSION

7100 Employment Development Department

The Employment Development Department (EDD) is designated to enhance California's economic growth and prosperity by collaboratively delivering valuable and innovative services to meet the evolving needs of employers, workers, and job seekers. The EDD connects employers with job seekers, administers the Unemployment Insurance, Disability Insurance, and Paid Family Leave programs, and provides employment and training programs under the federal Workforce Innovation and Opportunity Act. Additionally, the EDD collects various employment payroll taxes including the personal income tax, and collects and provides comprehensive economic, occupational, and socio-demographic labor market information concerning California's workforce.

3-YR EXPENDITURES AND POSITIONS

	Positions			Expenditures		
	2013-14	2014-15	2015-16	2013-14*	2014-15*	2015-16*
5900 Employment and Employment Related Services	1,062.1	1,329.7	1,329.7	\$164,303	\$185,720	\$184,506
5910 Tax Collections & Benefit Payments	5,850.3	5,765.3	-	14,601,564	13,206,240	-
5915 California Unemployment Insurance Appeals Board	587.0	575.3	480.4	74,756	82,469	74,750
5920 Unemployment Insurance Program	-	-	2,937.2	-	-	6,832,894
5925 Disability Insurance Program	-	-	1,299.7	-	-	6,255,148
5930 Tax Program	-	-	1,564.8	-	-	204,675
5935 Employment Training Panel	78.1	85.1	85.1	55,576	72,289	73,416
5940 Workforce Innovation and Opportunity Act	128.3	144.2	144.2	398,206	393,049	409,299
5945 National Dislocated Worker Grants	1.8	1.5	1.5	1,895	45,000	45,000
9900100 Administration	631.2	701.0	701.0	53,387	53,369	86,495
9900200 Administration - Distributed	-	-	-	-48,906	-50,983	-86,095
TOTALS, POSITIONS AND EXPENDITURES (All Programs)	8,338.8	8,602.1	8,543.6	\$15,300,781	\$13,987,153	\$14,080,088

Issue 1 Unemployment Insurance Program Administration

Description. The Governor's budget proposes \$39.7 million General Fund (\$18 million in new funds and \$21.7 shifted from the current year to the budget year) and \$8.2 million Contingent Fund to support 594 positions equivalents (PEs) (344 new temporary help PEs and 250 existing PEs) for 2015-16 to continue to support Unemployment Insurance Program service levels.

Background. The UI Program is a federal-state program that provides weekly payments to eligible workers who lose their jobs through no fault of their own. Benefits range from \$40 to \$450 per week depending on earnings in a 12-month base period. To be eligible, an applicant must have received enough wages during the base period to establish a claim, be totally or partially unemployed, be unemployed through no fault of their own, be physically able to work, be seeking work, be immediately available to accept work, and meet eligibility requirements for each week of benefits claimed.

UI program benefits are financed by employers who pay state unemployment taxes, ranging between 1.5 and 6.2 percent, on the first \$7,000 in wages paid to each employee in a calendar year. Employers responsible for a high number of unemployment claims pay the highest tax rate.

Beginning in January 2009, the state's UI Fund was exhausted due to an imbalance between benefit payments and annual employer contributions. To continue to make UI benefit payments without interruption, EDD began borrowing funds from the Federal Unemployment Account. While the unemployment rate has been slowly decreasing, the UI Fund deficit is still projected to be \$7.4 billion at the end of 2015.

The Governor's budget for 2015-16 includes \$184.4 million General Fund to make an interest payment on funds borrowed from the federal government to pay California's Unemployment Insurance benefits without interruption.

The administration of the base UI program is intended to be fully reimbursed through a federal cost recovery model, which allocates funding based on states' workload counts, processing times, and actual cost rates. However, the federal appropriation for UI administrative funding has been set at a level below what is needed nationwide to fully support this program. As a consequence, California continues to recover less funding than it would otherwise be entitled. This has resulted in EDD utilizing other state funds and unspent federal carryover funds from prior years to bridge this gap.

To address this issue, the Department of Finance, EDD, and the Labor and Workforce Development Agency undertook a detailed budget analysis of UI program functions, devising process improvements and identifying cost saving measures. The 2014 budget included a package of \$49 million of efficiencies and a one-time increase of \$46.6 million General Fund to provide additional resources for the administration of the UI Program.

Thee efficiencies efforts included:

- **Extending the Grace Period for Continued Claim Forms Arriving Late from 14 days to 21 days:** Eligibility for UI benefits is determined on a weekly basis. Previously, claimants were required to complete and return their continued claim form within 14 days of the date noted on the form. Extending this timeframe to 21 days will reduce the amount of follow-up work done by the EDD staff to determine if the claimant had good cause for returning the forms late. This will allow more staff to focus on providing other necessary services to claimants, while avoiding delays in paying benefits to claimants.
- **Streamline Identity Verification System:** Currently, if the EDD is unable to verify a claimant's identity, the claimant receives a request to provide additional verifying information so that EDD can ensure benefits are paid appropriately. The EDD is working to streamline this process, resulting in greater efficiency and more staff being available to provide other necessary services to claimants.
- **Shorten Initial Phone Message When Calling EDD:** When customers call the toll-free number for the UI program, they hear a lengthy recorded message providing

general information. By shortening the length of this message, callers will spend less time in the phone system, at a reduced cost to the UI program, and will be able to get to their desired selection more quickly. This was implemented in late 2013 and will save an estimated \$900,000.

- **Eliminate Certain Requirements for those Enrolled in School:** Currently, a claimant who indicates they are attending school or training is scheduled for an eligibility interview, even if they also indicate they are still available for work and able to work. However, with the use of alternate school schedules such as night classes and online schooling increasing, claimants are increasingly able to attend school or training and also be able and available for work. Eliminating eligibility interviews in these cases will reduce unnecessary workload and assign additional staff to provide other services to claimants, while avoiding delays in payment of benefits to claimants. This was partially implemented in December 2013, and fully implemented in January 2014, saving an estimated \$500,000.
- **Review and Reduce Operational Costs:** The EDD conducted a thorough review of the operational costs of the UI program and has made changes resulting in savings in mailing, facility, administrative, hiring, and other overhead costs. In addition, the California Unemployment Insurance Appeals Board, which is the appellate body for the UI program and works closely with the EDD, is making process improvements and identifying additional efficiencies. These cost savings help close a budget gap without reducing staff that provide direct services to claimants. For example, the estimate savings from consolidating facilities (\$3.5 million) and implementing a hiring freeze of administrative staff (\$6.8 million) will result in saving an estimated \$10.3 million.

Additionally, during the recent economic recession, EDD struggled to pay unemployment benefits or answer phone calls from the public in a timely manner. During the fall of 2013, problems with the Continued Claim Redesign (CCR), a new system to handle UI transactions through self-service phone and internet interactions, temporarily exacerbated the department's customer service problems. This resulted in increased processing times and workload, as it required manual data entry into EDD's internal UI benefit payment, also known as California Unemployment Benefit Services (CUBS) and EDD's old data base.

As a result, the 2014-15 Budget Act included a \$67.6 million augmentation to support UI Program service levels. Specifically, these resources were used to increase the number of calls answered, reduce call demands by processing paper and internet claims, and scheduling eligibility determinations interviews more timely.

Additionally, a portion of the increased workload will be offset when customers are able to submit information on their own through UI Online, which is slated to roll-out this month. Additionally, EDD expects that as more customers adopt UI online and paperless options, greater efficiencies will occur and the number of staff needed to process work in the system will decrease.

Staff Comments.

In the past few years, EDD has faced many challenges in administering the UI program. Many of these challenges have received significant attention, including: 1) the September 2013 problems with the rollout of the first phase of the CCR, which delayed unemployment checks to approximately 150,000 recipients; 2) a Los Angeles Times report that, from October 2013 to January 2014, phone calls were answered by a live human only 10 percent to 17 percent of the time and, even then, some people had to call 40 times to reach an agent; and, 3) recent reports that at least half of EDD's denials of benefits are reversed on appeal. In addition to these issues with administration of the UI program, a recent audit by the California State Auditor found that EDD failed to participate in a federal program that would have allowed the state to collect hundreds of millions of dollars.

Primarily, the EDD attributes most of the challenges the department has faced in carrying out its UI program responsibilities to the lack of appropriate resources provided by the federal government. As such, it is encouraging that the Administration and department are aggressively pursuing efforts that enhance resources available to the EDD to administer the program. Additionally, while California's economy has shown steady improvement over the past year and UI workload is decreasing, the UI workload continues to exceed the pre-recessionary levels prior to 2007. The EDD has taken numerous steps to meet ongoing needs and the initiatives have already dramatically improved UI service and performance levels.

The EDD is requesting additional state funding to continue its efforts to meet the four service levels goals:

- Answer more than 50,000 calls per week.
- Process 100 percent of initial claims within three days of receipt.
- Process 100 percent of online inquiries within five days of receipt.
- Schedule timely at least 95 percent or greater eligibility determination appointments requested weekly.

The EDD has recently reported that significant gains are being made. Following are examples of improvements recently cited by EDD:

- The average amount of calls answered grew from 43,924 in March 2014, to an average amount of 48,133 calls answered in January 2015.
- Increased the percentage of calls answered from a low of 11 percent in late November 2013 to 77 percent in mid-February 2015.
- From April 2014 to October 2014, EDD met the goal to process 100 percent of initial claims in three days and responding to 100 percent of online inquiries within five days.
- The average percentage of determination appointments scheduled timely was 86 percent from April 2014 to the week ending February 14, 2015. This is a substantial increase compared to November 2013 through January 2014, when only 13 percent were timely scheduled.
- Reduced the average number of times a person has to dial to access the call center from an average number of redials decreased of 30.9 in March 2013 to 4.3 in March 28, 2015.

- The weekly average wait time for March 2015 is just under two and a half minutes compared to November through December 2013 where the weekly average wait time was about seven minutes.

Additionally, the EDD has made several other program and customer service enhancements, such as:

- Virtual hold: Provides callers the option of an automated call back when contacting EDD call centers, or schedule a call back at a later, more convenient time. Additionally, the Voice Call Back project has been designed to accept call backs in English, Spanish, Vietnamese, Cantonese and Mandarin.
- Outbound Notification: Provides UI claimants with a reminder call of their scheduled eligibility determination interview or notification of cancelled appointment, to help decrease the number of missed appointments, which can delay the EDD from issuing a timely determination and paying or denying the claimants promptly.
- As of February 2015, a total of 18 UI forms have been posted or are in the process of being translated and posted to the UI website. All forms will be made available to the following languages: Armenian, Chinese/ Cantonese, Chinese/ Mandarin, Hmong, Korean, Laotian, Punjabi, Russian, Tagalog, Vietnamese and Spanish.

Staff recommendation: Approve as budgeted.

Issue 2 Capital Outlay

Description. The Governor's budget requests the authority to exercise the lease-purchase option to acquire the building at 5401 Crenshaw Blvd. in Los Angeles. Capital outlay acquisition authority is required to exercise this lease-purchase option because EDD will be acquiring real property on behalf of the state. The cost of the total acquisition is \$1,000.

Background. Since February 1996, the EDD has occupied 5401 Crenshaw Blvd under the terms of the current lease agreement. EDD has paid the owner over \$19 million in rent. Although the state would assume estimated monthly operating costs of \$19,750 for this building, those costs would be offset by no longer paying monthly rent of \$96,345. By exercising the purchase option for the building for \$1.00 (one dollar), it will allow EDD to save over \$900,000 a year in month rent costs. Additionally, the associated federal dollars could be redirected back into the benefiting programs. This option can be pursued based on the purchase option in EDD's current lease agreement.

Additionally, two EDD programs, the Tax Collections program and the Workforce Investment Act (WIA) program, will benefit by remaining in the building.

Staff Recommendation. Approve as budgeted.

7350	Department of Industrial Relations
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The Department of Industrial Relations (DIR) is responsible for protecting the workforce in California, improving working conditions, and advancing opportunities for profitable employment. The department is responsible for enforcing workers' compensation insurance laws, adjudicating workers' compensation claims, and working to prevent industrial injuries and deaths. The department also promulgates regulations and enforces laws relating to wages, hours, and conditions of employment, promotes apprenticeship and other on-the-job training, and analyzes and disseminates statistics which measure the condition of labor in the state. The following Governor's budget display shows the proposed funding and positions for DIR.

3-YR EXPENDITURES AND POSITIONS

	Positions			Expenditures		
	2013-14	2014-15	2015-16	2013-14*	2014-15*	2015-16*
6080 Self-Insurance Plans	20.7	27.1	27.1	\$4,379	\$6,336	\$6,256
6090 Division of Workers' Compensation	940.8	1,070.8	1,070.8	175,786	201,827	201,535
6095 Commission on Health and Safety and Workers' Compensation	6.0	8.1	8.1	2,407	3,464	3,482
6100 Division of Occupational Safety and Health	650.8	727.9	779.9	113,766	130,871	141,668
6105 Division of Labor Standards Enforcement	432.9	512.4	514.4	84,057	73,634	74,426
6110 Division of Apprenticeship Standards	51.6	55.3	55.3	10,076	10,754	10,612
6120 Claims, Wages, and Contingencies	-	-	-	58,766	181,182	181,712
9900100 Administration	340.6	387.0	390.0	52,855	51,652	51,865
9900200 Administration - Distributed	-	-	-	-52,877	-51,654	-51,865
TOTALS, POSITIONS AND EXPENDITURES (All Programs)	2,443.4	2,788.6	2,845.6	\$429,215	\$608,066	\$619,691

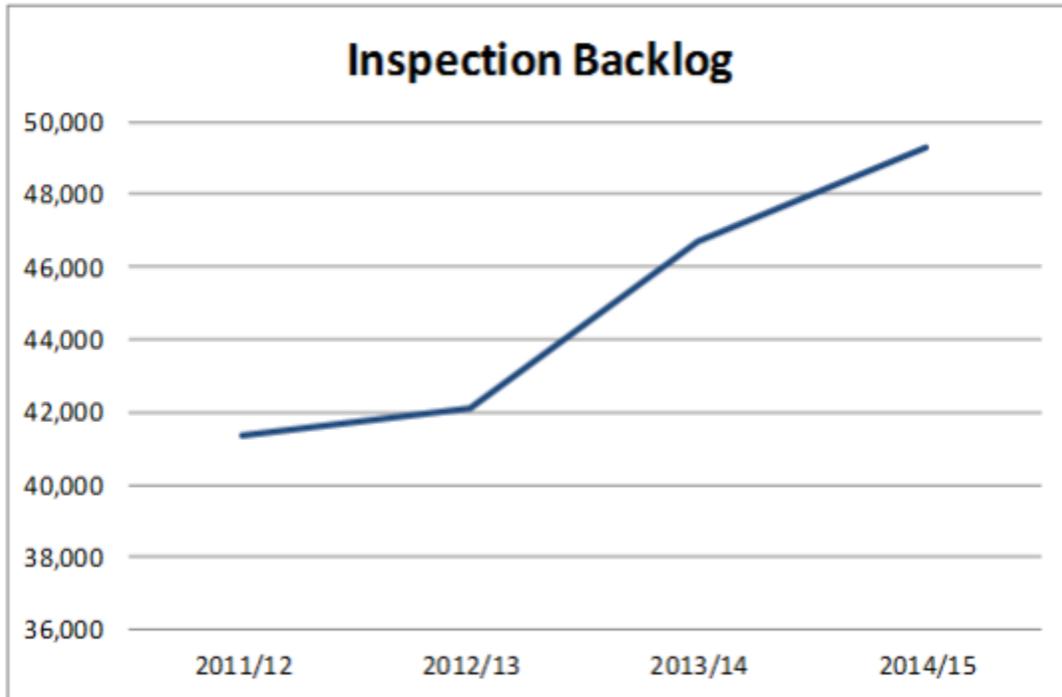
Issue 1	Elevator Public Safety Unit
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Description. The Governor's budget requests an increase in authority of \$4.4 million (Elevator Safety Account) for Division of Occupational Safety and Health (DOSH) and 27.5 positions in 2015-16, and on-going costs of \$4.1 million to reduce inspection backlogs and help the division meet permitting mandates.

Trailer bill language also proposes to suspend the fee for annual inspection of elevators for 2015-16, and provides the director of the Industrial Relations, upon concurrence with the Department of Finance, the authority to suspend or reduce the fee for annual inspection in future years, as needed, to reduce surplus fund balance of Elevator Safety Account.

Background. Existing law requires that every elevator in California may only be operated when a valid permit is properly issued and displayed. Existing law also states that each elevator shall be permitted and inspected annually in order to meet the minimum safety standard and be able to be operated lawfully. Additionally, existing law states that plans to construct or modify elevators must be reviewed and approved before new elevators can be constructed and placed into service.

There are currently 107,660 elevators that require permitting within California. With the improving economy and increased construction activity, the increase in new units is expected to continue to grow annually for the next five years. New construction inspections totaled 2,613 in the 2013-14 fiscal year. Compared to this growth in the number of units, staff resources have remained relatively static over time, and the backlog has ranged from 41,000 units to 49,000. This backlog has existed for over a decade. The chart below shows the annual number of conveyances over the last four years which were not inspected.



During the four year time period above, the number of units which were not inspected by their required annual due date increased by 19 percent, from 41,354 to 49,285 units.

Surplus Fund Balance

It is projected that the Elevator Safety Account will have a surplus balance of \$37 million in 2015-16. According to the Department of Finance, a prudent balance for a fund similar to the Elevator Safety Account would be a two to three month balance. This balance would hover about \$4.5 million versus the projected \$37 million for the budget year.

To address the surplus balance, the Governor’s trailer bill language proposes to suspend the fee for annual inspections in 2015-16, and to allow for the fee for the annual inspections to be suspended in future years, if necessary, to reduce any surplus fund balance.

Staff Comments: Staff has no concerns with the proposal. The proposed budget change proposal will help address and reduce the backlog of inspections over time. It will also help maintain a reasonable balance of the Elevator safety account in current and future years.

Staff Recommendation: Approve as budgeted.

**Issue 2 Division of Occupational Safety and Health (DOSH):
Health and Safety Inspections**

Description. The Governor's budget proposes a total of 44 positions and \$4.6 million in 2015-16 and \$7.1 million ongoing from the Occupational Safety and Health Fund, for the Department of Industrial Relations (DIR) and DOSH to increase enforcement inspections in high hazard industries, improve performance in meeting state and federal mandates and inspecting high-risk worksites, and bring California's total rate of enforcement inspections in line with the national average.

The proposal also includes trailer bill language to prioritize investigations of serious accidents over complaints received for non-serious hazards, as well as costs to defend and negotiate claims filed against Cal/OSHA related to adequacy enforcement of the heat illness prevention regulation.

Background. In 1973, California received initial approval as a state to assume responsibility for developing and enforcing occupational safety and health laws in lieu of federal OSHA performing those functions in California. Continued approval and funding of California's State Plan by the federal OSHA is contingent on California performing in a manner that is at least as effective as the federal program.

Federal OSHA has long criticized low staffing levels in DOSH. In a recent evaluation report, federal OSHA found that California is delayed in responding to complaints and in issuing citations after workplace has been inspected; understanding was cited as a case of both problems. While California has one of the lowest rates of workplace deaths, ranking 6th in the nation, its rates of non-fatal on-the-job injuries and illnesses are above the national average. Overall, California had higher rates of injuries and illnesses in 20 of the 28 major industries (covering 99 percent of the workforce).

As a part of the 2014-15 budget, the Legislature approved two proposals that provided an additional 11 positions to Cal/OSHA's process safety management unit (discussed below), which oversees enforcement of occupational safety and health standards at refineries and other facilities that store large quantities of toxic, flammable, and explosive chemicals, to help implement the recommendations of the Governor's Interagency Working Group on Refinery Safety. Concurrently, a new fee on the refinery industry was put in place to support additional staff dedicated to refineries. The second proposal increased Cal/OSHA's expenditure authority by \$3.3 million from the Occupational Safety Fund to support 26 positions that had previously been unfunded.

Governor's Budget Proposal.

The budget requests a total of 44 positions and \$4.6 million in 2015-16 and \$7.1 million ongoing for the following positions:

- 16 Assistant District Managers
- 18 Associate Safety Engineers
- 4 Attorneys (IRC II)
- 2 Legal Secretaries
- 4 Administrative Staff
- Upgrade Office Technicians to Administrative Assistant II

These positions are proposed to be phased in beginning in the fall of 2015-16 and continuing in 2016-17. The additional resources will be used to address the following:

Increase enforcement inspections: Current law requires DOSH to establish procedures for ensuring the highest hazardous employers are inspected on a priority basis and employ sufficient personnel to meet minimum federal inspection standards. However, these mandates do not provide specific metrics to establish the current number of annual program inspections. Existing law does not require DOSH to conduct a minimum number of program inspections in high hazard industries, and no time limit is specified for responding to accidents resulting in death or serious industry.

In the absence of a formal complaint or a serious injury or illness, a California employer in a high hazard industry can expect to be visited by a DOSH inspector once every 83 years. It is anticipated that the Governor's budget proposal for 14 additional inspectors will result in an additional 630 inspections each year of employers of high hazard industries.

Improve performance in meeting state and federal mandates and inspecting high-risk worksites:

- Improve response times for formal and non-formal complaints;
- Lowering the California citation lapse time, which is currently 72.5 work days for safety inspections and 76 days for health inspections, which is above the three year national average of 43 days and 57 days, respectively;
- Addressing re-inspection, which in 2013 DOSH only conducted 49 re-inspections of workplaces that had previously been found to have serious violations. State law requires re-inspection of at least 20 percent, therefore DOSH should have conducted 231 re-inspections;
- Inspections of projects involving high-risk activities;
- Investigation of non-formal complaints of serious violation; and
- Additional resources and restricting of enforcement staffing;

Bring California's total rate of enforcement inspections in line with the national average. Currently, the national ratio of inspectors to workers is one to 59,000; in California this ratio is one to 69,000. In 2012, the average number of annual inspections conducted by the inspectors in all state plan states was nearly 50 the average for California inspectors was 43. Of the total 44 position requests, 34 will have inspection

responsibilities, this would help bring California's rate of total enforcement inspections in line with the national average.

Prioritize inspections of serious accidents over non-serious complaints. Trailer bill language would prioritize the inspections of serious accidents over complaints received regarding non-serious hazards.

The Administration states that this proposal will increase the annual number of inspections by 1,400. This includes 630 inspections of employers in high hazard industries, 210 re-inspections of employers cited for serious violations, 90 inspections of permitted projects or projects involving possible exposure to carcinogens, and 480 inspections involving non-formal complaints.

Legislative Analyst's Office (LAO) Comments and Recommendations

The LAO recommends the Legislature approve the requested staffing levels with some modifications. LAO states that the Governor's proposal will likely allow Cal/OSHA to meet requirements in state law, and improve worker safety and health outcomes through increase planned inspections. LAO recommends the following modifications:

- Require DIR to testify on the benefits and costs of extending the assistant district manager concept to high-hazard unit. LAO believes that it is unclear why the assistant district manager classification is needed for general Cal/OSHA enforcement activities, but not for planned inspections in high-hazard industries.
- Require DIR to testify on effectiveness of high-hazard targeting and evaluation methodologies.
- Establish formal reporting process on proposal outcomes. Specifically, LAO recommends the Legislature to require DIR to report on the extent Cal/OSHA has improved compliance with the requirements in state law and federal expectations; outcomes of its enforcement activities, including the impact of positions approved as a part of the 2015-16 budget package; rate of serious violations from different type of inspections and how the rate of serious violations from planned inspections compares to the federal OSHA benchmarks, among others.

Staff Comments.

The department reports that this proposal will help bring California's inspections in line with the national average and help OSHA to meet the requirements in state law. However, it is not clear what the appropriate level of additional inspections is and if this proposal will fully close these program gaps. The subcommittee may wish to consider what the appropriate standards for safety enforcement should be and what level is necessary to achieve that level of performance.

The subcommittee may wish to consider adopting the LAO's recommendation to establish a formal reporting process on outcomes in order to continue to look at the needs of this department and monitor outcomes of its enforcement activities, including the impact of additional positions.

Staff Recommendation: Hold open, and direct staff and DIR to work with LAO on reporting requirements.

Issue 3 Implementation of New Statutory Requirements

Description. The Governor's budget proposes nine positions and \$1 million for 2015-16, and \$940,000 ongoing non-General Fund to implement four legislative bills: SB 1299 (Padilla), Chapter 842, Statutes of 2014), SB 1300 (Hancock), Chapter 519, Statutes of 2014, AB 1522 (Gonzalez), Chapter 317, Statutes of 2014, and AB 2272 (Gray), Chapter 900 Statutes of 2014.

Background. This proposal will allow the Department of Industrial Relations (DIR) to carry-out new statutory requirements pursuant to recent legislation. Specifically:

SB 1299 (Padilla), Chapter 842, Statutes of 2014. DIR requests one position and \$156,000 in 2015-16, and one position and \$148,000 ongoing, to support the Division of Occupational Safety and Health (DOSH) in meeting the requirements of SB 1299. SB 1299 requires the Occupational Safety and Health Standards Board (OSHSB) to adopt standards developed by the DOSH requiring certain hospitals to adopt a workplace violence prevention plan as part of the hospital's Injury and Illness Prevention Plan (IIPP) by July 1, 2016. The Division is also required to post an annual report, by January 1, 2017, on its website containing information regarding violent incidents at hospitals. The additional staff will enable OSHSB to adopt standards developed by the DOSH.

SB 1300 (Hancock), Chapter 519, Statutes of 2014. DIR requests two support staff and an augmentation of \$151,000 in 2015-16, and \$136,000 ongoing, to support the new DOSH mandate evaluating the turnaround information provided by refineries on a short time line (at 60 and 30 days prior to on-site inspection) in order to identify expected hazardous work processes to be done at the targeted site and plan an effective and comprehensive inspection. SB 1300 implements some of the safety recommendation made in the Governor's Interagency Refinery Task Force February 2014 report and will enhance not only worker safety, but the safety of the communities surrounding the refineries. Due to the short timeframes to evaluate and process the documentation, DOSH is requesting two management services technicians to ensure documentation is received, processed, and reviewed and to allow the Process Safety Management Unit to further analyze the data and prioritize turnaround inspections.

AB 1522 (Gonzalez), Chapter 317, Statutes of 2014. DIR requests five positions and an augmentation of \$590,000 (Labor Enforcement and Compliance Fund) in 2015-16, and \$551,000 ongoing, to support the Division of Labor Standards Enforcement's (DLSE) legislative mandates related to AB 1522. AB 1522 enacts the Healthy Workplaces, Healthy Families Act of 2014, and provides that an employee who works in California for 30 or more days within a year from the commencement of employment is entitled to paid sick leave to be accrued at a rate of no less than one hour for every 30 hours worked. An employer is prohibited from discriminating or retaliating against an employee who requests paid sick days.

The proposal requests three deputy labor commissioner I, and two deputy labor commissioner II positions, to support additional workload created by AB 1522. This request will help ensure DLSE has sufficient staffing to assist the public with filing claims, hold wage

claim conferences, hold investigatory hearings, make appropriate decisions on violations of labor laws, enforce order, decision or awards, and investigate retaliation complaints.

AB 2272 (Gray, Chapter 900 Statutes of 2014). DIR requests one position and \$114,000 (State Public Works Enforcement Fund) in 2015-16, and \$105,000 ongoing, to support DSLE in efforts to comply with AB 2272. AB 2272 extends coverage under the California Prevailing Wage Law (CPWL) to require that all projects funded by the California Advanced Services Fund (CASF) pay the appropriate prevailing wage to all workers performing labor on these specific projects. AB 2272 extends the reach of the CPWL to include infrastructure projects funded by grants from CASF by including such projects with the definition of public works. The Senate Labor and Industrial Relations Committee cited that as of December 2013, CASF had committed to funding 56 projects. Each project can have a range of 10-20 contractors. Based on this, DLSE estimates the potential for about 700 new cases for which there could be a complaint. If DLSE receives actual complaints on only 15 percent of these potential cases, there would be 105 additional investigations. DLSE's Public Works Investigation Unit requires an additional one deputy labor commissioner to handle the increased workload.

Staff comments: Staff has no concerns with the positions requested to implement the legislation above.

Staff recommendation: Approve as budgeted.

Issue 4 Process Safety Management (Informational)

Background. The Process Safety Management (PSM) Unit within the Division of Occupational Health (DOSHS) enforces process safety management procedures for potentially hazardous processes that exist in a wide variety of industries, including oil refineries. The PSM Unit was established after the 1999 fire at the Tosco refinery in Martinez that killed four workers.

California is the only state to have a dedicated unit for this function, which has 25 staff and one vacancy to inspect 15 refineries and over 1,600 other facilities that use, process, or store large quantities of toxic, flammable, or explosive chemicals. On average, from 2001-2012, this unit inspects 27 refineries as well as 112 other facilities per year.

The 2014-15 budget approved \$2.4 million from the Occupational Safety and Health Fund, and 11 positions to expand the PSM Unit to implement recommendations of the Governor's Interagency Working Group on Refinery Safety for the enforcement of workplace health and safety regulations in 15 refineries and over 1,800 other chemical facilities. These positions are funded by a new fee on the refinery industry, which is based on the amount of crude oil being processed at each refinery as a percentage of the state's total.

In addition, budget bill language required the department to report by February 1, 2015 on the status of PSM efforts. Specifically, budget bill language required the department to report on:

- The status of the Process Safety Management and Risk Management Program regulatory changes;
- The status of all efforts the department is making to implement recommendations of the final report from the Governor's Interagency Working Group on Refinery Safety;
- The status of the department's annual workload evaluation of the staffing needed to meet the enforcement requirements of Section 7870 of the Labor Code, for both refinery facilities and non-refinery facilities that meet the threshold for Cal-OSHA Process Safety Management regulatory oversight, and the aggregate fees needed to support the function;
- The department's process or plan for categorizing non-refinery facilities that meet the threshold for Cal-OSHA Process Safety Management regulatory oversight by type of facility, risk level, and inspection cycles;
- The number of staffing vacancies, by classification, within the Process Safety Management Unit, and
- The number of inspections performed, to date, during the current fiscal year, by both type of facility and type of inspection.

Status Report: PSM Regulatory Oversight

The report discussed above was released last week. DIR reports that Cal / OSHA will continue monitoring workload and inspection/ enforcement needs to ensure staffing levels and fee amounts are sufficient to support enforcement of existing law.

In the 2014 calendar year, the PSM Unit conducted 37 refinery inspections, two of which were planned Program Quality Verification (PQV) inspections. A PQV inspection is a multi-point inspection covered by PSM regulation, which is more thorough than any other

inspection performed by the division and entails comprehensive evaluation of the establishment’s program, the quality of the establishments procedures compared and verification of the effectiveness of the establishment’s program implementation. Below is a chart of the PQV Refinery inspections in 2014.

Case	Facility	Opening Date	Inspection hours
1	Exxon Mobile	5/30/2014	2,096
2	Chevron Richmond Refinery	7/14/2014	1,413

Additionally in the 2014 Calendar Year, the PSM conducted 39 non-refinery inspections and 37 refinery inspections.

	Contractors Inspections	Unplanned/ Unprogrammed Inspections	Program Quality Verification Inspections	Total Inspections
Non-Refinery Inspections	2	12	25	39
Refinery Inspections	14	21	2	37

Additionally, new regulations are also in progress to address PSM for refineries. Draft regulations were released on October 31, 2014. DIR is working with the California Environmental Protection Agency (CalEPA) to incorporate elements of process safety management that experts have learned over the last two decades.

Staff Comments. While the Legislature approved additional staff in previous budget years to enhance PSM Unit resources in response to the Chevron refinery explosion, it is unclear how much more support DIR needs to reform its PSM responsibilities at both refinery and non-refinery facilities. The PSM Unit plays a critical role in protecting workers and the communities in which the facilities operate. Recent incidents demonstrate the need for this important state function. At Tesoro Corp.’s Golden Eagle refinery just outside of Martinez, in which four workers suffered first- and second-degree burns when they were splashed with acid from a broken pipe. More recently, the Exxon Mobile refinery in Torrance suffered an explosion on February 18th, resulting in minor injuries to four workers. These incidents remind us of the critical need to ensure appropriate safety measures are in place.

The PSM Units inspections of non-refinery facilities are no less important, as highlighted by the Central Texas fertilizer plant explosion that killed 14 people and injured approximately 200, and the incident in which chemicals used to clean coal leaked into the Elk River in Charleston, West Virginia, contaminating drinking water of some 300,000 residents.

The subcommittee may wish to ask the following questions:

1. What are the highest risk non-refinery PSM facilities? Have those facilities been inspected?
2. What is the appropriate staffing level for non-refinery and refinery inspections? What type of analysis has been done?
3. When will the Interagency Enforcement Group identify refineries that need to be targeted for inspections?
4. Where is the DIR in addressing the recommendations of the Governor's report?

7501 Department of Human Resources

The Department of Human Resources (CalHR) is responsible for managing the state's personnel functions and represents the Governor as the "employer" in all matters concerning state employer-employee relations. CalHR is responsible for issues related to recruitment, selection, salaries, benefits, and position classification, as well as provides a variety of training and consultation services to state departments and local agencies.

Issue 1 Additional Appointments

Description. An additional appointment is a term used when a state civil service employee is appointed to more than one position in state service. Existing law requires CalHR to propose legislation to establish the state's policy regarding the use of additional appointments. The proposed trailer bill language will establish CalHR's authority to set policies directing appropriate use of additional appointments.

Background. In 2013, the Legislature directed CalHR to review the state's policy concerning additional appointments. In particular, the Legislature was concerned about reported instances of managers with a fixed salary also assuming a secondary rank-and-file position within the same department.

CalHR promulgates policies on matters involving employee salaries and benefits, job classifications, training, exams, recruitment and retention, among others through Policy Memoranda. On January 30, 2013, CalHR issued Policy Memo 2013-007 to prohibit departments from making any new additional appointments without CalHR authorization. CalHR then began the process of reviewing relevant laws, rules, and prior procedures that had been applied to additional appointments to date. On April 25, 2013, CalHR issued Policy Memo 213-015 to prohibit departments from making any additional appointments for managers and supervisors.

Section 19210 (b) of the Government Code requires CalHR to propose legislation to establish the state's policy regarding the use of additional appointments. The proposed trailer bill language satisfies this requirement and establishes CalHR's authority to set policy regarding the state's use of additional appointments.

Trailer Bill Language.

"Additional appointment" is the term used when a state civil service employee is appointment to more than one position in state service. An additional appointment shall comply with state civil service law and rules. Consistent with board rules, the Department of Human Resources shall adopt policies to advise state agencies regarding the procedures and appropriate use of additional appointments.

Staff Comments. Staff does not have any concerns about the trailer bill language for additional appointments. This is consistent with the direction the Legislature provided CalHR. The language provides clear direction that CalHR sets the policy for additional appointments.

Staff Recommendation: Approve as budgeted.

Issue 2 Affordable Care Act Mandates – Policy and Compliance

Description. The Governor's budget proposes two permanent positions and \$426,000 in reimbursement authority for 2015-16 and \$408,000 for 2016-17 to comply with the provisions of the Affordable Care Act (ACA) and address related health policy issues, including addressing the state's unfunded liabilities for Other Post-Employment Benefits (OPEB).

Background. The ACA was enacted on March 23, 2010, to ensure access to quality and affordable health care. Over the next few years, CalHR will implement several employer-administered provisions of the ACA to ensure the state's compliance with federal mandates. Implementation will require significant departmental resources to provide ongoing monitoring and analysis of health care reform and health policies, such as cost-management strategies to reduce the state's OPEB liability exposure.

CalHR, as the state employer, has the primary responsibility for implementing several employer-administered provisions, such as Employer Shared Responsibility provisions, automatic enrollment and excise tax on high-cost benefits, known as the Cadillac Tax. CalHR is responsible for overseeing statewide implementation efforts to ensure that the state's human resources practices and process align with the ACA as penalties for non-compliance are significant.

The Employer Shared Responsibility provisions will take effect in 2015 and the automatic and enrollment of new hires and implementation of the 40 percent excise tax on high-cost benefits are set to take effect over the next few years.

The Employer Shared Responsibility

- The provisions of the ACA mandates large employers to offer health coverage of at least 95 percent of its full-time employees (70 percent in 2015), as defined with those with 130 or more hours of service per month.
- Requires health coverage to be affordable, and not exceed 9.5 percent of employee's monthly salary or wage, for the calendar year.
- Beginning in January 2016, the state will be required to file annual reports, via the State's Controller's Office (SCO), with the Internal Revenue Service (IRS) to demonstrate compliance and help determine premium tax credits and penalties. The state will be required to report a number of data elements that are currently not captured by the SCO, such as the offer of health coverage. Over the past year, Cal HR has been working with the SCO to implement processes to capture the data onto comply with reporting requirements and to ensure timely reporting. Additionally, the will need to develop a joint audit and compliance program to monitor departments' compliance efforts to minimize the state's risk of penalties.

Automatic Enrollment

- The ACA requires employers with more than 200 full-time employees to automatically enroll new full-time employees in health coverage, unless the employee makes an affirmative election to opt out. Regulations for this have yet to be promulgated.

However federal authorities are expected to mandate this following the implementation of the Employer Shared Responsibility provisions.

- Automatic enrollment requires additional changes to how departments administer health benefits for state employees.
- CalHR will be required to develop new business processes and procedures to conform with the law to identify a health plan to auto-enroll newly eligible employees. These changes will be subject to collective bargaining.

Excise Tax on High Cost Plans

- Beginning in 2018, the ACA imposes a 40 percent excise tax on the cost of coverage for health plans that exceed a certain threshold: \$10,200 for individual coverage, and \$27,500 for family coverage. This tax will impact an employer's retiree health valuations as it will be included in the value of retiree benefits.
- Makes employers responsible for calculating the excise tax on the cost of an employee's health coverage and reporting the taxable excess benefits to the health plan and the IRS.
- The excise tax does not take effect for another three years, however CalHR should begin implementation activities during 2015-16, as CalHR expects it to be as complex as implementing the Employer Shared Responsibility has proven to be.

Other Post-Employment Benefit Liability

- As of June 30, 2014, the state's estimated unfunded liability for future retiree health care costs was \$71.8 billion. Over the next year, CalHR will need to coordinate with staff from CalPERS, SCO and DOF on the development of strategies to reduce OPEB liability exposure
- The Administration's' request states that CalHR will need to access to consulting actuary in mid-2015 and begin discussions with various stakeholders on potential strategies to reduce the state's OPEB liabilities for possible adoption in 2016.

Positions requested. The Administration is requesting two positions: a staff personnel program analyst and personal program analysts to perform the following:

- Ongoing monitoring of departments' compliance with health care reform;
- Providing research and analysis on health care reform and policy issues;
- Providing guidance, consultation and training to departments on new ACA policies;
- Coordinating statewide implementation activities;
- Developing audit and compliance program with the SCO;
- Consulting with legal and labor staff and experts, including actuaries, on health policies, such as reducing the state's OPEB liabilities;
- Monitoring where the state stands in offering health coverage to 95 percent of its full-time employees.
- Coordinate with the SCO to ensure timely reporting; and
- Consulting with legal staff and labor organizations on impacts of health care reform.

Additionally, the Governor's budget requests additional \$200,000 for ongoing legal consultation and analysis of the impact on health care reform to the state, and external actuarial analysis of prefunding strategies to reduce the state's exposure to OPEB liabilities.

The funding for the actual consulting costs is consisting with consulting costs incurred by SCO, DOF and CalPERS. These funds would only be expended if services are required.

Staff Comments

The state needs to ensure that personnel policies and business practices are developed to conform with the ACA provisions, that they are consistently applied, and that the state captures the required data on its full-time employees to report to the IRS beginning in early 2016. It is critical that CalHR has the infrastructure in place to monitor health reform and develop procedures and processes that minimize the state's compliance risks and exposure to penalties. The resources requested in this proposal will help CalHR meet the demand of the new ACA requirements.

Staff Recommendation. Approve as budgeted.

Issue 3 Long-term Delegation Monitoring Compliance

Description. The Governor's budget proposes five additional permanent positions and \$540,000 (\$308,000 General Fund and \$232,000 Central Service Cost Recovery Fund) in 2015-16 and ongoing to address workload resulting from Goal 1 of CalHR 2014-18 Strategic Plan, which incorporates the Governor's Reorganization Plan Number One of 2011 (GRP1), to provide more delegated decision-making to line agencies under a system of unified oversight, transparency, and accountability.

Background. On July 2, 2012, the human resources management functions performed by the State Personnel Board (SPB) and the Department of Personnel Administration (DPA) were consolidated into CalHR as a result of GRP1.

The Personnel Management Division (PMD), within CalHR, was created by merging responsibilities from former DPA Classification and Compensation Division with the SPB Career Executive Assignment (CEA) and Appointments Compensation Unit. PMD has responsibility for providing policy direction and oversight regarding numerous personnel management issues, such as classification plan, auditing, and civil service merit principles for 150 line departments statewide, ultimately impacting 230,000 state employees.

In 2012, PMD analyzed its responsibilities for functional areas that could be delegated to line departments, as a result, CalHR proposed to delegate three human resources functions to departments:

- **Career executive assignment (CEA) leveling and salaries:** CEAs are state employees in high-level managerial positions. CEAs develop and implement policy and may serve in a department Director's cabinet or form a department's executive staff. CEAs serve at the top levels in a department. Departments who have signed the CEA Delegation Agreement will have the authority to determine appropriate levels for CEAs and set salaries within an established cap.
- **Classification and/or certification action requests for historically misallocated higher level management positions and exceptional allocations:** misallocated positions are positions that do not follow the "like pay for like work" requirement. When CalHR delegates this authority, departments will need to ensure that allocation of every position to the appropriate class.
- **Unlawful appointment investigations:** Unlawful appointments occur when the hiring of an individual does not comply with applicable civil service laws and regulations, examples include an appointment of an individual with no civil service appointment eligibility or an individual who does not meet the minimum qualifications of the classification. These appointments may result from administrative mistakes or misinformation, improperly clearing the employment list, or in rare cases, attempts to circumvent the state's civil service system.

In 2013-14, PMD received budget approval for 8.5 two-year limited term positions to develop and implement the Delegation Project, which gradually delegates these three programs through six waves between January 2014, and March 2016. With each wave, CalHR and

selected departments sign Delegation Agreements under which departments agree to uphold the state's Personnel Classification Plan, comply with CalHR's reporting requirements, submit to audits of delegate programs on a regular basis, and adhere to training sessions.

Using the 8.5 limited term positions, PMD has 1) designed a phased in delegation system with built-in process to track accountability, 2) begun implementation of that system to the first 85 departments, and 3) is on track to accomplish initial delegation to the remaining eligible line departments. However, on July 1, 2015, when the limited term positions expire, many departments will still be within the middle of their first year of delegation,

Staff Comments

Ongoing compliance monitoring, auditing and training work will help annual renewal will help ensure successful delegation of departments.

Staff recommendation: Approve as budgeted.

7920	California Teachers' Retirement System
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The California State Teachers' Retirement System (CalSTRS) administers retirement benefits for 868,493 (as of June 30, 2013) active and retired educators in public schools from pre-kindergarten through the community college system in California. Benefits include retirement, disability, and survivor's retirement benefits.

CalSTRS is governed by the Teachers' Retirement Board. The California Constitution provides that the Teachers' Retirement Board has authority over the administration of the retirement system; therefore, while the budget is subject to a budget act appropriation, the proposed appropriations are not reviewed or approved by the Governor. The following Governor's budget display shows the proposed funding and positions for CalSTRS.

The budget proposes:

3-YR EXPENDITURES AND POSITIONS

	Positions			Expenditures		
	2013-14	2014-15	2015-16	2013-14*	2014-15*	2015-16*
6450 Service to Members and Employers	681.5	868.3	907.3	\$81,515	\$185,165	\$525,970
6455 Corporate Governance	9.2	9.1	9.1	2,062	42,457	44,499
6460 Administration	252.6	265.6	269.6	274,543	247,508	-
6465 Benefit Payments	-	-	-	12,076,393	12,324,479	12,888,650
TOTALS, POSITIONS AND EXPENDITURES (All Programs)	943.3	1,143.0	1,186.0	\$12,434,513	\$12,799,609	\$13,459,119
FUNDING				2013-14*	2014-15*	2015-16*
0835 Teachers Retirement Fund				\$12,393,399	\$12,756,981	\$13,416,445
0995 Reimbursements				22	339	339
8001 Teachers Health Benefits Fund				32,932	33,408	33,433
8005 Teachers Replacement Benefits Program Fund				7,314	7,661	7,600
8041 Teachers Deferred Compensation Fund				846	1,220	1,302
TOTALS, EXPENDITURES, ALL FUNDS				\$12,434,513	\$12,799,609	\$13,459,119

Issue 1	Update on CalSTRS Funding– Information Only Item
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CalSTRS will provide an update on the implementation of the \$74 billion CalSTRS funding plan enacted in AB 1469 (Bonta), Chapter 47, Statutes of 2014 as part of the 2014 Budget Act.

Background. AB 1469 establishes a plan to address the CalSTRS Defined Benefit Program's unfunded liability, which is approximately \$74 billion, by increasing contribution rates, beginning July 1, 2014, of teachers, employers, and the state. AB 1469 discussed a shared solution with increased contributions from teachers (over three years), schools (over seven years), and the state (over three years).

Consistent with this strategy, the budget includes \$1.9 billion General Fund in 2015-16 for CalSTRS. The funding strategy is intended to eliminate the unfunded liability in about 30 years. Based on a model of shared responsibility, the state, school districts, and teachers all

have increased their contributions to the system beginning in 2014-15. Specifically, contributions to the system in 2015-16 will increase to 4.9 percent for the state, 9.2 percent for most teachers, and 10.7 percent for school districts, as shown in the Figure below. The state also makes an additional contribution of 2.5 percent of teacher compensation to CalSTRS for the Supplemental Benefits Maintenance Account.

CalSTRS Funding Plan – Updated 1-10-15
 3-Year Ramp Up for State and Teachers
 7-Year Ramp Up for Schools

Share of Unfunded Liability	<u>STATE</u> \$20 billion	<u>TEACHERS</u> \$8 billion		<u>SCHOOLS</u> \$47 billion	<u>TOTAL</u> \$74 billion
Total Contribution Rate	<u>STATE</u>	<u>TEACHERS</u>		<u>SCHOOLS</u>	<u>TOTAL</u>
		Classic	PEPRA		
2013-14	3.04%	8.00%	8.00%	8.25%	19.29%
2014-15	3.45%	8.15%	8.15%	8.88%	20.48%
2015-16	4.89%	9.20%	8.56%	10.73%	24.82%
2016-17	6.33%	10.25%	9.205%	12.58%	29.16%
2017-18	6.33%	10.25%	9.205%	14.43%	31.01%
2018-19	6.33%	10.25%	9.205%	16.28%	32.86%
2019-20	6.33%	10.25%	9.205%	18.13%	34.71%
2020-21 – 2045-46	6.33%	10.25%	9.205%	19.10%	35.68%
Incremental Increase Over 2013-14 Contribution Rate					
2014-15	\$59 million	\$42 million		\$175 million	\$276 million
2015-16	\$371 Million	\$329 million		\$714 million	\$1.414 billion
Total Lifetime Payments					
2014-15 – 2045-46	\$42.4 billion	\$25.4 billion		\$169.9 billion	\$237.7 billion

Notes:

- "Teachers" and "Schools" columns refer to all CalSTRS members and CalSTRS employers (K-12 and community colleges).
- PEPRA members would contribute a total of 9.205% of pay.

Staff Recommendation. Information only item. No action necessary.

SUBCOMMITTEE NO. 5

Agenda

Senator Loni Hancock, Chair
Senator Joel Anderson
Senator Jim Beall



Thursday, April 9, 2015
9:30 a.m. or upon adjournment - State Capitol Room 113

Consultants: Farra Bracht and Anita Lee

OUTCOMES

Presentation

Governor's Proposal for Employee and Retiree Health Care

Eric Stern, Department of Finance
Nick Schroeder, Legislative Analyst's Office

Items Proposed for Vote-Only

<u>Issue</u>	<u>Department</u>
7501	Department of Human Resources

Issue 1 Assembly Bill 1397 - Veteran Opportunity in the Workforce and State

Approve one two-year limited term position and \$135,000 and \$135,000 (\$77,000 in General Fund and \$58,000 in Central Service Recovery Fund) in 2015-16, and \$133,000 (\$76,000 in General Fund and \$57,000 in Central Service Cost Recovery Fund) in 2016-17, and \$20,000 (\$11,000 in General Fund and \$9,000 in Central Service Cost Recovery Fund) for on-going costs.

Vote: 3-0

7920 California Teachers' Retirement System

Issue 1 CalSTRS Budget Proposals

Approve four CalSTRS budget proposals regarding: Investment Portfolio Complexity, Member Service Center Development and Operations, Technology Infrastructure Licenses, and Enterprise Information Management.

Vote: 3-0

Items Proposed for Discussion

Issue Department **7100 Employment Development Department**

Issue 1 Unemployment Insurance Program Administration

Approve the proposed \$39.7 million General Fund (\$18 million in new funds and \$21.7 shifted from the current year to the budget year) and \$8.2 million Contingent Fund to support 594 positions equivalents (PEs) (344 new temporary help PEs and 250 existing PEs) for 2015-16 to continue to support Unemployment Insurance Program service levels.

Vote: 2-0 (Beall absent)

Issue 2 Capital Outlay

Approve the proposed authority to exercise the lease-purchase option to acquire the building at 5401 Crenshaw Blvd. in Los Angeles. Capital outlay acquisition authority is required to exercise this lease-purchase option because EDD will be acquiring real property on behalf of the state. The cost of the total acquisition is \$1,000.

Vote: 2-0 (Beall absent)

7350 Department of Industrial Relations

Issue 1 Elevator Public Safety Unit

Approve the proposed increase in authority of \$4.4 million (Elevator Safety Account) for Division of Occupational Safety and Health (DOSH) and 27.5 positions in 2015-16, and on-going costs of \$4.1 million to reduce inspection backlogs and help the division meet permitting mandates.

Approve the proposed trailer bill language to suspend the fee for annual inspection of elevators for 2015-16, and provides the director of the Industrial Relations the authority to suspend or reduce the fee for annual inspection in future years, as needed, to reduce surplus fund balance of Elevator Safety Account.

Vote: 2-0 (Beall absent)

Issue 2 Division of Occupational Safety and Health: Health and Safety Inspections

Held open and directs staff to work with the Legislative Analyst's Office on reporting language.

Issue 3 Implementation of New Statutory Requirements

Approve two support staff and an augmentation of \$151,000 in 2015-16, and \$136,000 ongoing, to support implementation of SB 1300.

Vote: 2-0 (Beall Absent)

SB 1299 (Padilla), Chapter 842, Statutes of 2014), AB 1522 (Gonzalez), Chapter 317, Statutes of 2014, and AB 2272 (Gray), Chapter 900 Statutes of 2014.

Held Open

Issue 4 Process Safety Management (Informational Only Item)

7501 Department of Human Resources

Issue 1 Additional Appointments

Approve proposed trailer bill language will establish CalHR's authority to set policies directing appropriate use of additional appointments.

Vote: 2-0 (Beall absent)

Issue 2 Affordable Care Act Mandates

Approve proposed two permanent positions and \$426,000 in reimbursement authority for 2015-16 and \$408,000 for 2016-17 to comply with the provisions of the Affordable Care Act (ACA) and address related health policy issues, including addressing the state's unfunded liabilities for Other Post-Employment Benefits (OPEB).

Vote: 2-0 (Beall absent)

Issue 3 Long-term Delegation Monitoring Compliance

Approve proposed five additional permanent positions and \$540,000 (\$308,000 General Fund and \$232,000 Central Service Cost Recovery Fund) in 2015-16 and ongoing to address workload resulting from Goal 1 of CalHR 2014-18 Strategic Plan.

Vote: 2-0 (Beall absent)

7920 State Teachers' Retirement System

Issue 1 Update on CalSTRS Funding (Information Only Item)

PROPOSED FOR VOTE ONLY**California Correctional Healthcare Services**

1. **Clinician Recruitment and Retention (Issue heard on March 12th).** The Governor's budget proposes \$872,000 from the General Fund, and eight positions, to build an internal recruitment and retention program designed to recruit and retain clinicians and other medical personnel.

ITEMS TO BE HEARD

5225 Department of Corrections and Rehabilitation

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 local communities.

The 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: Education, Vocational, and Offender Programs, Education, Substance Abuse Programs, Inmate Activities, Administration
- Adult Health Care Services

The 2014 budget act projected an adult inmate average daily population of 136,530 in the current year. The current year adult inmate population is now projected to decrease by 633 inmates, a 0.5 percent decrease, for a total population of 135,897. The budget year adult inmate population is projected to be 137,002, a 0.8 percent increase of 1,105 inmates over the current year. The current projections also reflect an increase in the parolee population of 1,360 in the current year, compared to budget act projections, for a total average daily population of 43,226. The parolee population is projected to be 40,467 in 2015-16, a decrease of 2,759 over the current year. These projections do not

include the impact of the passage of Proposition 47, which reduced various felonies to misdemeanors.

As of February 18, 2015, the total in-custody adult population was 131,469. The institution population was 116,556, which constitutes 136.3 percent of prison capacity. The most overcrowded prison is the Central California Women's Facility in Chowchilla, which is currently at 167.3 percent of its capacity. For male inmates, Mule Creek State Prison is currently the most overcrowded at 165.9 percent of its capacity.

The Governor's budget proposes total funding of \$10.2 billion (\$9.9 billion General Fund and \$300 million other funds) in 2015-16. This is an increase of approximately \$1 billion (\$833 million General Fund) over 2013-14 expenditures. The following table shows CDCR's total operational expenditures and positions for 2013-14 through 2015-16.

(dollars in thousands)

Funding	2013-14	2014-15	2015-16
General Fund	\$9,156,505	\$9,827,940	\$9,989,790
General Fund, Prop 98	16,530	18,385	18,635
Other Funds	56,080	67,250	62,329
Reimbursements	167,644	185,074	185,064
Recidivism Reduction Fund	-103,199	25,968	28,227
SCC Performance Incentive Fund	-1,000	-1,000	-1,000
Total	\$9,292,560	\$10,123,617	\$10,283,0451
Positions	52,260	60,812	61,579

Issue 1: Recidivism Reduction Fund Update

Governor's Budget. The Recidivism Reduction Fund (RRF), established by AB 105 (Steinberg and Huff), Chapter 310, Statutes of 2013, results from savings associated with an extension from the federal court allowing the state, until February 2016, to reduce its prison population to 137.5 percent of capacity. The Governor's budget assumes that \$16 million of the \$42 million provided to CDCR in the Budget Act of 2014 will be unspent due to delayed implementation of various recidivism reduction efforts. In addition, it assumes an additional \$12.2 million in revenue above the original projections. The budget reflects total revenue of \$28.2 million General Fund in the Recidivism Reduction Fund. The budget proposes using the funds toward recidivism reduction efforts, as follows:

- \$12.6 million for community reentry facilities.
- \$15.6 million to offset the General Fund cost of expanding substance use treatment at non-reentry hub institutions.

Background. The 2014 budget act authorized \$91 million RRF and \$4.2 million Inmate Welfare Fund (IWF) for to reduce recidivism and improve rehabilitation programming. As noted above, \$42 million in RRF and the \$4.2 million IWF was provided to CDCR:

- Community reentry programs targeting mentally ill offenders who are within six to twelve months of release - \$20 million.
- California Leadership Academy strategic planning - \$865,000.
- Expansion of substance abuse treatment programs and peer counseling certification training - \$11.8 million.
- Cognitive behavioral treatment at in-state contracted facilities - \$3.8 million.
- Evaluation of the Integrated Services for Mentally Ill Parolees program - \$500,000.
- Intensive case management for high risk parolees - \$2.5 million.
- Expansion of the Cal-ID project which ensures that adults leaving prison have proper identification - \$2.2 million.
- Innovative programming grants for underserved prisons - \$2.5 million.
- Increased funding for community college courses in prison - \$2 million.

As of January, CDCR anticipated spending the following in 2014-15:

(amounts in millions)

Program	Budgeted for 2014-15	Projected Expenditures 2014-15
California Leadership Academy	0.865	0.865
Community Reentry	20	7.4
Substance Abuse Treatment	11.836	11.2
Cognitive Behavioral Treatment	3.794	2.2
Evaluation of ISMIP	0.5	0.5
Case Managers at Outpatient Clinics	2.487	1.3
Cal-ID Expansion	2.175	1.3
Innovative Programing Grants	2.5	2.5
Community College Grants	2	2
Total	46.157	29.265

Legislative Analyst's Office (LAO). The LAO did not raise any concerns with this proposal in their analysis of the Governor's budget.

Questions for the Administration. The Administration should be prepared to address the following questions:

1. Please provide an update on all of the CDCR-related recidivism reduction efforts funded through last year's budget.
2. How many community reentry beds will be created with the \$7.4 million? How much of that funding is for contracts and how much will be spent within CDCR?
3. Have you made the final determinations for the innovative programing grants? If so, please provide a list of programs, institutions, and award amounts to the committee.
4. How many new substance abuse treatment slots have been made available and are they consistently filled?
5. Do you maintain a waiting list for inmates who need substance abuse treatment but are unable to access it?
6. How many peer counselors have been trained through the expanded substance abuse treatment programs?

Issue 2: Drug Interdiction and Treatment

Governor's Budget. As noted above, the proposed budget requests \$15.6 million in Recidivism Reduction Fund (RRF) money to offset the General Fund cost of expanding substance use treatment at non-reentry hub institutions.

Background. Data provided by CDCR indicate that drug use is prevalent in prison. For example, in June 2013, 23 percent of randomly selected inmates tested positive for drug use. In addition, another 30 percent refused to submit to testing, which suggests that the actual percentage of inmates using drugs is likely considerable.

Drug use in prison is problematic for several reasons. For example, according to the department, the prison drug trade strengthens prison gangs and leads to disputes among inmates that can escalate into violence. Such violence often leads to security lock-downs which interfere with rehabilitation by restricting inmate access to programming. In addition, the presence of drugs in prison allows inmates to continue using them, thereby reducing the effectiveness of drug treatment programs.

In recent years, the department has supplemented its base funding of \$3 million for drug and contraband (such as cell phones) interdiction with one-time funds from asset forfeitures. According to CDCR, its current interdiction efforts have been hampered by a lack of sufficient permanent funding.

2014 Budget. The 2014 budget act provided \$5.2 million General Fund for increased contraband and drug interdiction efforts. In addition, the Legislature adopted trailer bill language requiring that any drug and contraband interdiction efforts on the part of CDCR be applied to all individuals in a facility including inmates, department staff, volunteers, and contract employees and that CDCR establish methods to ensure that the searches shall be done randomly and without advance notice.

In addition, the budget act provided \$11.8 million from the Recidivism Reduction Fund and 44 positions to contract with substance abuse treatment providers and administer the program at 10 institutions that do not have a reentry hub. In 2015-16, CDCR requests a total of 91 positions and \$23.9 million General Fund to further expand substance abuse treatment programs to the 11 remaining institutions that do not house reentry hubs.

Finally, the 2014 budget included trailer bill language outlining the requirements and parameters for the enhanced drug interdiction efforts. For example, the language requires that the drug interdiction efforts be applied to all individuals, including staff and vendors, and that the searches be random and unpredictable and that CDCR use methods to ensure that profiling is not practiced. In addition, the language requires that all individuals who have a positive alert be informed of their options, including, but not limited to, unclothed body searches.

The CDCR Secretary has expressed his wish to not use unclothed body searches on visitors or others who have a positive alert. However, the inclusion of the language in statute requires that those with a positive alert be presented this as an option.

On October 17, 2014, CDCR introduced the following narrative as a part of a regulation change package:

The California Department of Corrections and Rehabilitation (CDCR) proposes to amend Section 3173.2, Searches and Inspections, and adopt Section 3410.1, Searches of Employees, of the California Code of Regulations (CCR), Title 15, Division 3, by implementing the use of Electronic Drug Detection Equipment (EDDE) and other available technology to search all persons who come onto institutional grounds.

Persons entering and exiting CDCR institutions sometimes employ extraordinary means to try and smuggle drugs and contraband into and out of prisons. These methods include secreting drugs and contraband in hidden pockets in clothing or in body cavities.

An ION Mobility Spectrometry (ION Scanner) unit is a trace detecting device that measures the deflection of particles after they are exposed to an electric field. Samples are collected by wiping an object and then placing the swipe into the unit. The results of the swipe are displayed within six seconds. ION Scanners can be employed as a non-intrusive search tool for inmates, staff, and visitors, as well as for incoming mail and parcels.

Recognizing the ongoing problem with drug use and trafficking within the institutions, CDCR must focus on undertaking a comprehensive approach to prevent the introduction of drugs and contraband into the institutions. Importing, trafficking, and drug use causes many problems in a prison setting including an increase in assaults, power struggles within the inmate population, establishment of an underground economy, and staff corruption.

There were over 4000 documented incidents recorded in 2013 related to drugs in California prisons. Of these 4000 drug related incidents in CDCR prisons, there were 382 arrests of non-inmates attempting to introduce drugs into an institution. Of the 382 arrests there were 10 staff, 320 visitor, and 52 non-visitor arrests. Tragically, from January 2012 to February 2014 there were a reported 29 inmate deaths attributed to illegal drug overdose.

In June 2013 the CDCR conducted blind baseline urine testing of 25 percent of the inmate population. The results confirmed that nearly 23 percent of the inmates who voluntarily participated tested positive for one or more illicit drugs. Approximately 30 percent of inmates randomly selected to voluntarily test declined to do so even though there were no disciplinary actions taken against inmates testing positive.

Based on the 2013 drug related incidents and test results, the Department must do more to reduce the availability of and use of drugs in the prison system. Therefore, the

Department seeks to implement various drug interdiction strategies, which includes the use of ION Scanners and other available technology.

ION Scanners coupled with other drug and contraband interdiction strategies, such as increased sanctions will act as a deterrent to the use of illicit drugs.

Questions for the Department. The Administration should be prepared to present the findings from the report and address the following question:

1. Please provide a brief history on the department's drug interdiction funding, including the current total funding amount used for drug interdiction efforts.
2. Of the 23 percent of inmates who tested positive in your 2013 study, how many of them tested positive because of legitimate prescription medications?
3. Have you developed an effective process for ensuring that inmates who test positive due to prescription medications are not punished for having drugs in their systems?
4. Please provide updated data on the number of individuals, including inmates, with positive scans, whether or not contraband was retrieved from them, and the number of inmates with positive scans or tests who have subsequently started receiving treatment.
5. The Secretary committed to removing unclothed body searches as an option for visitors who have a positive scan and indicated in our earlier hearing that he was open to an independent evaluation of the enhanced interdiction efforts. What progress has the department made in those two areas?

Issue 3: Youth Offender Security Placement (AB 1276)

Governor's Budget. The proposed budget requests \$1.181 million General Fund, of which \$93,000 is onetime, and eight positions to implement the requirements of AB 1276 (Bloom), Chapter 590, Statutes of 2014.

Background. AB 1276 required CDCR to conduct a youth offender Institutional Classification Committee (ICC) review at reception to provide special classification consideration for every youth offender. Among other provisions, the bill stated that the purpose of the legislation was to establish a mechanism by which CDCR would make individual assessments of persons under 22 years of age who are entering prison, and classify these individuals at lower custody level facilities whenever possible. In addition, the bill required that a youth offender who is denied a lower security level and is placed in the highest security is eligible to have his or her placement reconsidered at his or her annual review until age 25.

Legislative Analyst's Office (LAO). The LAO did not raise any concerns with this proposal in their analysis of the Governor's budget.

Questions for the Administration. The Administration should be prepared to address the following question:

1. Please provide an update on the classification of youthful offenders, including the number of inmates who have been through the classification process, whether or not there is a backlog, and the anticipated on-going annual caseload.

Issue 4: Parole Calculation Correction

Governor's Budget. The proposed budget requests \$14.6 million General Fund and 92.6 positions in 2015-16 and on-going to correct a caseload calculation error that led to the elimination of previously approved positions related to the conversion of certain specialists to supervisory positions and a corresponding caseload reduction.

Background. This proposal corrects an error in the calculation of parole agents needed to supervise the parole population. The additional agents will provide the department with the correct number of authorized parole agents to supervise parolees at the levels authorized by the Legislature.

Legislative Analyst's Office (LAO). The LAO did not raise any concerns with this proposal in their analysis of the Governor's budget.

Issue 5: Increase in Religious Diets

Governor's Budget. The proposed budget requests \$1.943 million General Fund to address the increase in the number of religious diet requests since 2012-13.

Background. State and federal law requires CDCR to accommodate inmates that require a special diet due to their religion. Therefore, CDCR provides both regular meals and religious meals to adult inmates. There are three distinct options for religious meals: vegetarian, Kosher, and Halal (religious meat alternative). In order to participate, an inmate must be approved by the appropriate prison chaplain.

According to the Administration, from 2012-13 to 2013-14, participation in the religious diet program increased by 47 percent, from 6,972 participants to 13,180 participants. However, the budget for religious meals has not increased.

Legislative Analyst's Office (LAO). The LAO did not raise any concerns with this proposal in their analysis of the Governor's budget.

Questions for the Administration. The Administration should be prepared to address the following questions:

1. Please describe how the overall inmate food budget is developed and provide information on the regular per meal cost and the religious meal cost. Is the food budget adjusted regularly to reflect the changing cost of food?
2. Given the significant decrease in the prison population over the last few years, why isn't the existing food budget sufficient to cover the cost of more religious meals, since the institutions are providing less meals overall?
3. Do you anticipate that this will be an on-going cost or will the cost be reduced in future years to reflect declines in the prison population?

Issue 6: Ventura Fire Camp for Adult Offenders

Governor's Budget. The proposed budget requests \$929,627 General Fund, of which \$268,304 is one-time, and 5.3 positions in fiscal year 2014-15 and \$1.136 million General Fund and 9.0 positions beginning 2015-16 to create capacity for inmates at the Ventura Conservation Camp. This expansion would provide 100 additional fire camp beds.

Background. In September of 2014, the Administration requested funding for the current year to allow for the reopening of the Ventura Fire Camp to deal with the growing number of wildfires in the state. Primarily, the Ventura Camp services the southern central coastal region.

The camp is adjacent to the Ventura Youth Correctional Facility and previously served as a juvenile fire camp until it was closed in December 2011 due to the declining juvenile ward population. The camp is intended to house approximately 110 inmates which equates to five additional fire crews.

Legislative Analyst's Office (LAO). The LAO did not raise any concerns with this proposal in their analysis of the Governor's budget.

Questions for the Administration. The Administration should be prepared to address the following question:

1. In the last few years, concerns have been raised around whether or not there are enough inmates in the post-realignment and, now, post-Prop 47 prison population to continue to fill fire camps to capacity, fill prison jobs, and fully utilize training and work programs, such as CalPIA. Can you please provide an update on your ability to find inmates who are eligible to participate in these types of programs?

Issue 7: CalPIA Career Technical Education

Governor's Budget. The proposed budget requests \$2.6 million in General Fund to fund a contract between CDCR's Division of Rehabilitative Programs and the California Prison Industry Authority (CalPIA) to provide Career Technical Education (CTE) programming for 342 inmates (228 women and 114 men).

Background. CalPIA is a state-operated agency that provides work assignments for approximately 7,000 offenders assigned to 5,399 positions annually in California's adult correctional institutions. CalPIA operates 57 manufacturing, service, and consumable factories in 24 CDCR institutions throughout California. CalPIA is self-supporting from the sale of its products and services and does not receive an annual appropriation from the Legislature. In fact, CalPIA is statutorily required to be self-sufficient and generate funding through the sales of the products it produces.

The CalPIA CTE program started in 2006 by partnering with trade unions to provide training to inmates. Essentially, the program uses journeyman trade specialists to train offenders to perform various construction, ironworking, computer-aided design, and other career training activities. Upon parole, participants become apprentices with trade unions that provided their training.

To be eligible, participants must be within 12 to 18 months of release and have either obtained, or are working toward, a high school diploma or general education development certificate.

CDCR funded the program from 2007-08 to 2009-10, when funding was eliminated. From 2010-11 to 2012-13, CalPIA used its own funding, appropriated by the Prison Industry Board, to operate the program. In 2013-14, however, CDCR provided some unspent rehabilitation funding to CalPIA on a one-time basis to assist with the cost of the program. CDCR has agreed to reimburse CalPIA for the current year costs.

Legislative Analyst's Office (LAO). The LAO did not raise any concerns with this proposal in their analysis of the Governor's budget.

Questions for the Administration. The Administration should be prepared to address the following questions:

1. Please describe which CTE programs are being provided by CalPIA and at which institutions.
2. Since CDCR has responsibility for the rehabilitation of inmates, why is CalPIA providing this training instead of CDCR?
3. Is CDCR capable of taking over these training programs?

PROPOSED FOR VOTE ONLY**California Correctional Healthcare Services**

1. **Clinician Recruitment and Retention (Issue heard on March 12th)**. The Governor's budget proposes \$872,000 from the General Fund, and eight positions, to build an internal recruitment and retention program designed to recruit and retain clinicians and other medical personnel.

Action: Approved as budgeted. Vote: 3-0

ITEMS TO BE HEARD

5225 Department of Corrections and Rehabilitation

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Positions	52,260	60,812	61,579

Issue 1: Recidivism Reduction Fund Update

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- California Leadership Academy strategic planning - \$865,000.
- Expansion of substance abuse treatment programs and peer counseling certification training - \$11.8 million.
- Cognitive behavioral treatment at in-state contracted facilities - \$3.8 million.
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- Intensive case management for high risk parolees - \$2.5 million.
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- Innovative programming grants for underserved prisons - \$2.5 million.
- Increased funding for community college courses in prison - \$2 million.

As of January, CDCR anticipated spending the following in 2014-15:

(amounts in millions)

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Cognitive Behavioral Treatment	3.794	2.2
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Cal-ID Expansion	2.175	1.3
Innovative Programing Grants	2.5	2.5
Community College Grants	2	2
Total	46.157	29.265

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Questions for the Administration. The Administration should be prepared to address the following questions:

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2. How many community reentry beds will be created with the \$7.4 million? How much of that funding is for contracts and how much will be spent within CDCR?
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4. How many new substance abuse treatment slots have been made available and are they consistently filled?
5. Do you maintain a waiting list for inmates who need substance abuse treatment but are unable to access it?
6. How many peer counselors have been trained through the expanded substance abuse treatment programs?

Action: Rejected the proposal to use \$15.6 million in RRF funding to offset the ongoing General Fund costs associated with expanding substance abuse treatment to all 35 state prisons.

Held open the remainder of the RRF proposal pending an updated fund condition statement provided during the May Revision.

Vote: 3 – 0

Issue 2: Drug Interdiction and Treatment

Governor's Budget. As noted above, the proposed budget requests \$15.6 million in Recidivism Reduction Fund (RRF) money to offset the General Fund cost of expanding substance use treatment at non-reentry hub institutions.

Background. Data provided by CDCR indicate that drug use is prevalent in prison. For example, in June 2013, 23 percent of randomly selected inmates tested positive for drug use. In addition, another 30 percent refused to submit to testing, which suggests that the actual percentage of inmates using drugs is likely considerable.

Drug use in prison is problematic for several reasons. For example, according to the department, the prison drug trade strengthens prison gangs and leads to disputes among inmates that can escalate into violence. Such violence often leads to security lock-downs which interfere with rehabilitation by restricting inmate access to programming. In addition, the presence of drugs in prison allows inmates to continue using them, thereby reducing the effectiveness of drug treatment programs.

In recent years, the department has supplemented its base funding of \$3 million for drug and contraband (such as cell phones) interdiction with one-time funds from asset forfeitures. According to CDCR, its current interdiction efforts have been hampered by a lack of sufficient permanent funding.

2014 Budget. The 2014 budget act provided \$5.2 million General Fund for increased contraband and drug interdiction efforts. In addition, the Legislature adopted trailer bill language requiring that any drug and contraband interdiction efforts on the part of CDCR be applied to all individuals in a facility including inmates, department staff, volunteers, and contract employees and that CDCR establish methods to ensure that the searches shall be done randomly and without advance notice.

In addition, the budget act provided \$11.8 million from the Recidivism Reduction Fund and 44 positions to contract with substance abuse treatment providers and administer the program at 10 institutions that do not have a reentry hub. In 2015-16, CDCR requests a total of 91 positions and \$23.9 million General Fund to further expand substance abuse treatment programs to the 11 remaining institutions that do not house reentry hubs.

Finally, the 2014 budget included trailer bill language outlining the requirements and parameters for the enhanced drug interdiction efforts. For example, the language requires that the drug interdiction efforts be applied to all individuals, including staff and vendors, and that the searches be random and unpredictable and that CDCR use methods to ensure that profiling is not practiced. In addition, the language requires that all individuals who have a positive alert be informed of their options, including, but not limited to, unclothed body searches.

The CDCR Secretary has expressed his wish to not use unclothed body searches on visitors or others who have a positive alert. However, the inclusion of the language in statute requires that those with a positive alert be presented this as an option.

On October 17, 2014, CDCR introduced the following narrative as a part of a regulation change package:

The California Department of Corrections and Rehabilitation (CDCR) proposes to amend Section 3173.2, Searches and Inspections, and adopt Section 3410.1, Searches of Employees, of the California Code of Regulations (CCR), Title 15, Division 3, by implementing the use of Electronic Drug Detection Equipment (EDDE) and other available technology to search all persons who come onto institutional grounds.

Persons entering and exiting CDCR institutions sometimes employ extraordinary means to try and smuggle drugs and contraband into and out of prisons. These methods include secreting drugs and contraband in hidden pockets in clothing or in body cavities.

An ION Mobility Spectrometry (ION Scanner) unit is a trace detecting device that measures the deflection of particles after they are exposed to an electric field. Samples are collected by wiping an object and then placing the swipe into the unit. The results of the swipe are displayed within six seconds. ION Scanners can be employed as a non-intrusive search tool for inmates, staff, and visitors, as well as for incoming mail and parcels.

Recognizing the ongoing problem with drug use and trafficking within the institutions, CDCR must focus on undertaking a comprehensive approach to prevent the introduction of drugs and contraband into the institutions. Importing, trafficking, and drug use causes many problems in a prison setting including an increase in assaults, power struggles within the inmate population, establishment of an underground economy, and staff corruption.

There were over 4000 documented incidents recorded in 2013 related to drugs in California prisons. Of these 4000 drug related incidents in CDCR prisons, there were 382 arrests of non-inmates attempting to introduce drugs into an institution. Of the 382 arrests there were 10 staff, 320 visitor, and 52 non-visitor arrests. Tragically, from January 2012 to February 2014 there were a reported 29 inmate deaths attributed to illegal drug overdose.

In June 2013 the CDCR conducted blind baseline urine testing of 25 percent of the inmate population. The results confirmed that nearly 23 percent of the inmates who voluntarily participated tested positive for one or more illicit drugs. Approximately 30 percent of inmates randomly selected to voluntarily test declined to do so even though there were no disciplinary actions taken against inmates testing positive.

Based on the 2013 drug related incidents and test results, the Department must do more to reduce the availability of and use of drugs in the prison system. Therefore, the

Department seeks to implement various drug interdiction strategies, which includes the use of ION Scanners and other available technology.

ION Scanners coupled with other drug and contraband interdiction strategies, such as increased sanctions will act as a deterrent to the use of illicit drugs.

Questions for the Department. The Administration should be prepared to present the findings from the report and address the following question:

1. Please provide a brief history on the department's drug interdiction funding, including the current total funding amount used for drug interdiction efforts.
2. Of the 23 percent of inmates who tested positive in your 2013 study, how many of them tested positive because of legitimate prescription medications?
3. Have you developed an effective process for ensuring that inmates who test positive due to prescription medications are not punished for having drugs in their systems?
4. Please provide updated data on the number of individuals, including inmates, with positive scans, whether or not contraband was retrieved from them, and the number of inmates with positive scans or tests who have subsequently started receiving treatment.
5. The Secretary committed to removing unclothed body searches as an option for visitors who have a positive scan and indicated in our earlier hearing that he was open to an independent evaluation of the enhanced interdiction efforts. What progress has the department made in those two areas?

Action: Oversight item. No action necessary.

Issue 3: Youth Offender Security Placement (AB 1276)

Governor's Budget. The proposed budget requests \$1.181 million General Fund, of which \$93,000 is onetime, and eight positions to implement the requirements of AB 1276 (Bloom), Chapter 590, Statutes of 2014.

Background. AB 1276 required CDCR to conduct a youth offender Institutional Classification Committee (ICC) review at reception to provide special classification consideration for every youth offender. Among other provisions, the bill stated that the purpose of the legislation was to establish a mechanism by which CDCR would make individual assessments of persons under 22 years of age who are entering prison, and classify these individuals at lower custody level facilities whenever possible. In addition, the bill required that a youth offender who is denied a lower security level and is placed in the highest security is eligible to have his or her placement reconsidered at his or her annual review until age 25.

Legislative Analyst's Office (LAO). The LAO did not raise any concerns with this proposal in their analysis of the Governor's budget.

Questions for the Administration. The Administration should be prepared to address the following question:

1. Please provide an update on the classification of youthful offenders, including the number of inmates who have been through the classification process, whether or not there is a backlog, and the anticipated on-going annual caseload.

Action: Approved as budgeted. Vote: 2-1 (Anderson "no")

Issue 4: Parole Calculation Correction

Governor's Budget. The proposed budget requests \$14.6 million General Fund and 92.6 positions in 2015-16 and on-going to correct a caseload calculation error that led to the elimination of previously approved positions related to the conversion of certain specialists to supervisory positions and a corresponding caseload reduction.

Background. This proposal corrects an error in the calculation of parole agents needed to supervise the parole population. The additional agents will provide the department with the correct number of authorized parole agents to supervise parolees at the levels authorized by the Legislature.

Legislative Analyst's Office (LAO). The LAO did not raise any concerns with this proposal in their analysis of the Governor's budget.

Action: Approved as budgeted. Vote: 3-0

Issue 5: Increase in Religious Diets

Governor's Budget. The proposed budget requests \$1.943 million General Fund to address the increase in the number of religious diet requests since 2012-13.

Background. State and federal law requires CDCR to accommodate inmates that require a special diet due to their religion. Therefore, CDCR provides both regular meals and religious meals to adult inmates. There are three distinct options for religious meals: vegetarian, Kosher, and Halal (religious meat alternative). In order to participate, an inmate must be approved by the appropriate prison chaplain.

According to the Administration, from 2012-13 to 2013-14, participation in the religious diet program increased by 47 percent, from 6,972 participants to 13,180 participants. However, the budget for religious meals has not increased.

Legislative Analyst's Office (LAO). The LAO did not raise any concerns with this proposal in their analysis of the Governor's budget.

Questions for the Administration. The Administration should be prepared to address the following questions:

1. Please describe how the overall inmate food budget is developed and provide information on the regular per meal cost and the religious meal cost. Is the food budget adjusted regularly to reflect the changing cost of food?
2. Given the significant decrease in the prison population over the last few years, why isn't the existing food budget sufficient to cover the cost of more religious meals, since the institutions are providing less meals overall?
3. Do you anticipate that this will be an on-going cost or will the cost be reduced in future years to reflect declines in the prison population?

Action: Approved as budgeted. Vote: 3-0

Issue 6: Ventura Fire Camp for Adult Offenders

Governor's Budget. The proposed budget requests \$929,627 General Fund, of which \$268,304 is one-time, and 5.3 positions in fiscal year 2014-15 and \$1.136 million General Fund and 9.0 positions beginning 2015-16 to create capacity for inmates at the Ventura Conservation Camp. This expansion would provide 100 additional fire camp beds.

Background. In September of 2014, the Administration requested funding for the current year to allow for the reopening of the Ventura Fire Camp to deal with the growing number of wildfires in the state. Primarily, the Ventura Camp services the southern central coastal region.

The camp is adjacent to the Ventura Youth Correctional Facility and previously served as a juvenile fire camp until it was closed in December 2011 due to the declining juvenile ward population. The camp is intended to house approximately 110 inmates which equates to five additional fire crews.

Legislative Analyst's Office (LAO). The LAO did not raise any concerns with this proposal in their analysis of the Governor's budget.

Questions for the Administration. The Administration should be prepared to address the following question:

1. In the last few years, concerns have been raised around whether or not there are enough inmates in the post-realignment and, now, post-Prop 47 prison population to continue to fill fire camps to capacity, fill prison jobs, and fully utilize training and work programs, such as CalPIA. Can you please provide an update on your ability to find inmates who are eligible to participate in these types of programs?

Action: Approved as budgeted. Vote: 3-0

Issue 7: CalPIA Career Technical Education

Governor's Budget. The proposed budget requests \$2.6 million in General Fund to fund a contract between CDCR's Division of Rehabilitative Programs and the California Prison Industry Authority (CalPIA) to provide Career Technical Education (CTE) programming for 342 inmates (228 women and 114 men).

Background. CalPIA is a state-operated agency that provides work assignments for approximately 7,000 offenders assigned to 5,399 positions annually in California's adult correctional institutions. CalPIA operates 57 manufacturing, service, and consumable factories in 24 CDCR institutions throughout California. CalPIA is self-supporting from the sale of its products and services and does not receive an annual appropriation from the Legislature. In fact, CalPIA is statutorily required to be self-sufficient and generate funding through the sales of the products it produces.

The CalPIA CTE program started in 2006 by partnering with trade unions to provide training to inmates. Essentially, the program uses journeyman trade specialists to train offenders to perform various construction, ironworking, computer-aided design, and other career training activities. Upon parole, participants become apprentices with trade unions that provided their training.

To be eligible, participants must be within 12 to 18 months of release and have either obtained, or are working toward, a high school diploma or general education development certificate.

CDCR funded the program from 2007-08 to 2009-10, when funding was eliminated. From 2010-11 to 2012-13, CalPIA used its own funding, appropriated by the Prison Industry Board, to operate the program. In 2013-14, however, CDCR provided some unspent rehabilitation funding to CalPIA on a one-time basis to assist with the cost of the program. CDCR has agreed to reimburse CalPIA for the current year costs.

Legislative Analyst's Office (LAO). The LAO did not raise any concerns with this proposal in their analysis of the Governor's budget.

Questions for the Administration. The Administration should be prepared to address the following questions:

1. Please describe which CTE programs are being provided by CalPIA and at which institutions.
2. Since CDCR has responsibility for the rehabilitation of inmates, why is CalPIA providing this training instead of CDCR?
3. Is CDCR capable of taking over these training programs?

Action: Approved as budgeted. Vote: 3-0

PROPOSED FOR VOTE ONLY**California Correctional Healthcare Services**

1. **Santa Fe Springs Community Reentry.** The Governor's budget requests 6.0 positions and no additional funding to staff the Santa Fe Springs Custody to Community Transitional Re-entry Program (CCTRP) for women, beginning in 2015-16.
2. **CDCR Technical Adjustments.** In both the January budget and the recent Spring Finance Letter, the Administration has asked to permanently realign resources for a number of programs and divisions. These realignments result in a net zero change and are largely technical in nature.

ITEMS TO BE HEARD

4440 Department of State Hospitals

The Department of State Hospitals (DSH) is the lead agency overseeing and managing the state's system of mental health hospitals. The DSH seeks to ensure the availability and accessibility of effective, efficient, and culturally-competent services. DSH activities and functions include advocacy, education, innovation, outreach, oversight, monitoring, quality improvement, and the provision of direct services.

The Governor's 2011 May Revision first proposed the elimination of the former Department of Mental Health (DMH), the creation of the new DSH, and the transfer of Medi-Cal mental health services and other community mental health programs to the Department of Health Care Services (DHCS). The 2011 budget act approved of just the transfer of Medi-Cal mental health programs from the DMH to the DHCS. In 2012, the Governor proposed, and the Legislature adopted, the full elimination of the DMH and the creation of the DSH. All of the community mental health programs remaining at the DMH were transferred to other state departments as part of the 2012 budget package. The budget package also created the new DSH which has the singular focus of providing improved oversight, safety, and accountability to the state's mental hospitals and psychiatric facilities.

California's State Hospital System

California has five state hospitals and three psychiatric programs located on the grounds of the prisons operated by the California Department of Corrections and Rehabilitation (CDCR). Approximately 92 percent of the state hospitals' population is considered "forensic," in that they have been committed to a hospital through the criminal justice system. The five state hospitals provide treatment to approximately 6,000 patients. The psychiatric facilities at state prisons currently treat approximately 1,000 inmates.

Atascadero State Hospital. This facility, located on the Central Coast, houses a largely forensic population, including a large number of incompetent to stand trial patients and mentally disordered offenders. As of December 2014, it housed more than 1,000 patients.

Coalinga State Hospital. This facility is located in the city of Coalinga and is California's newest state hospital. The hospital houses only forensic patients, most of whom are sexually violent predators. As of December 2014, it housed more than 1,100 patients.

Metropolitan State Hospital. Located in the city of Norwalk, this hospital's population is approximately 65 percent forensic. Metropolitan State Hospital does not accept individuals who have a history of escape from a detention center, a charge or conviction of a sex crime, or a conviction of murder. As of December 2014, it housed about 700 patients.

Napa State Hospital. This facility is located in the city of Napa and has a mix of civil and forensic commitments. Napa State Hospital limits the number of forensic patients to 80 percent of the patient population. As of December 2014, it housed nearly 1,200 patients.

Patton State Hospital. This facility is located in San Bernardino County and primarily treats forensic patients. As of December 2014, it housed 1,500 patients.

Salinas Valley Psychiatric Program. This program is located on the grounds of Salinas Valley State Prison in Soledad and provides treatment to state prison inmates. As of December 2014, it had a population of more than 200 patients.

Stockton Psychiatric Program. This program is located on the grounds of the California Health Care Facility in Stockton and is the state's newest psychiatric program. The program provides treatment to state prison inmates. As of December 2014, it had a population of about 400 patients.

Vacaville Psychiatric Program. This program is located on the grounds of the California Medical Facility in Vacaville and provides treatment to state prison inmates. As of December 2014, it had a population of about 350 patients.

The following are the primary Penal Code categories of patients who are either committed or referred to DSH for care and treatment:

Committed Directly From Superior Courts:

- *Not Guilty by Reason of Insanity* – Determination by court that the defendant committed a crime and was insane at the time the crime was committed.
- *Incompetent to Stand Trial (IST)* – Determination by court that the defendant cannot participate in trial because the defendant is not able to understand the nature of the criminal proceedings or assist counsel in the conduct of a defense. This includes individuals whose incompetence is due to a developmental disability.

Referred From The California Department of Corrections and Rehabilitation (CDCR):

- *Sexually Violent Predators (SVP)* – Hold established on inmate by court when it is believed probable cause exists that the inmate may be a SVP. Includes 45-day hold on inmates by the Board of Prison Terms.
- *Mentally Disordered Offenders (MDO)* – Certain CDCR inmates for required treatment as a condition of parole, and beyond parole under specified circumstances.
- *Prisoner Regular/Urgent Inmate-Patients (Coleman Referrals)* – Inmates who are found to be mentally ill while in prison, including some in need of urgent treatment.

**State Hospitals & Psychiatric Programs
Caseload Projections**

	2014-15	2015-16
Population by Hospital*		
Atascadero	N/A	N/A
Coalinga	N/A	N/A
Metropolitan	N/A	N/A
Napa	N/A	N/A
Patton	N/A	N/A
Subtotal	5,802	5,863
Population by Psych Program		
Vacaville	366	366
Salinas	244	244
Stockton	480	480
Subtotal	1,090	1,090
Population Total	6,892	6,953
Population by Commitment Type		
Incompetent to Stand Trial (IST)	1,430	1,485
Not Guilty By Reason of Insanity (NGI)	1,377	1,379
Mentally Disordered Offender (MDO)	1,220	1,210
Sexually Violent Predator (SVP)	953	967
Lanterman-Petris-Short Act – Civil Commitments	556	556
<i>Coleman</i> Referral – Hospitals	258	258
<i>Coleman</i> Referral – Psych Programs	1,090	1,090
Department of Juvenile Justice	8	8

* DSH is no longer able to identify the number of budgeted beds at their hospitals.

State Hospitals Budget

The Governor's proposed budget includes \$1.7 billion for DSH in 2015-16 (\$1.6 billion General Fund). This represents a \$15 million increase over 2014-15 funding. The proposed budget year position authority for DSH is 11,398 positions, an increase of 164 positions from the current year. The department's budget includes increased funding for several proposals: including plans to operate 105 more Incompetent to Stand Trial (IST) beds than were budgeted in 2014-15, and establishes an involuntary medication policy for patients who are Not Guilty by Reason of Insanity (NGI).

(dollars in thousands)

Funding	2013-14 Actual	2014-15 Projected	2015-16 Proposed
General Fund (GF)	\$1,440,792	\$1,538,796	\$1,551,830
Reimbursements	126,384	127,560	129,764
CA Lottery Education Fund	153	25	25
Total	\$1,567,329	\$1,666,381	\$1,681,619
Positions	10,360	11,234	11,398

Cost Over-Runs. Over the past several years, state hospital costs had been rising at an alarming rate, and substantial current year deficiencies had become the norm, even expected, from year to year. For example, in the 2010-11 fiscal year, the deficiency rose from \$50 million to \$120 million and the then-DMH staff could not explain why. In general, the department lacked any clear understanding of what the major cost drivers were and how to curb or stabilize costs in the system. In 2011, DMH leadership facilitated and oversaw an in-depth exploration and analysis of state hospital costs, resulting in a lengthy report that is available on the department's website. The research team identified the following system wide problems/cost drivers: increased patient aggression and violence; increased operational treatment models; and redundant staff work.

Based on the report described above, in 2012, the Administration proposed a comprehensive list of reforms, to reverse the rising cost trend, which addressed three stated goals: 1) improve mental health outcomes; 2) increase worker and patient safety; and, 3) increase fiscal transparency and accountability. Perhaps the most significant of these proposed reforms was the reduction of 600 positions throughout the state hospital system. Of these 600 positions, 230 were vacant. In addition to the reduction in positions, the 2012 budget package included key changes in the following areas:

1. Reduced layers of management and streamlined documentation.
2. Flexible staffing ratios, focusing on front-line staff, and redirecting staff to direct patient care.
3. New models for contracting, purchasing, and reducing operational expenses.
4. Elimination of adult education.

Issue 1: Sex Offender Evaluations – Audit Report

Governor’s Budget. The Department of State Hospitals (DSH) budget currently contains \$16.3 million for the staff to conduct evaluations of sexually violent predators. \$8.9 million funds 33 state civil service positions and the remaining \$7.4 million is funding for contracts. Since January 1, 2015, DSH has conducted 413 pre-commitment evaluations and 62 recommitment evaluations of SVPs. The number of evaluations has varied over the last few years, from a high of almost 3,000 in calendar year 2013 to just over 2,000 in calendar year 2014. It’s unclear whether the evaluation budget is tied to the actual number of evaluations.

Background. Because they may present a continuing threat to society, sexually violent predators (SVPs), a small subset of sex offenders, may be committed to a treatment facility after serving their prison terms, rather than being released back into their communities. State law calls for two evaluators from the Department of State Hospitals (DSH) to independently evaluate whether these offenders, referred to DSH by the California Department of Corrections and Rehabilitation (CDCR), meet the SVP criteria set forth in law. If they are determined to meet the criteria, CDCR asks the courts to make a determination that the individual is an SVP and asks that they be committed to a secure DSH facility, generally Coalinga State Hospital, for an indeterminate time period.

State Audit Results. At the request of the Joint Legislative Audit Committee, the California State Auditor undertook an audit of the DSH Sex Offender Commitment Program. As noted above, the program targets a small subset of sexually violent offenders who may present a continuing threat to society because their diagnosed mental disorders predispose them to engage in sexually violent criminal behavior. DSH evaluates these offenders to determine whether they meet criteria to be considered sexually violent predators (SVPs) and whether courts should consider committing such offenders to a state hospital. The State Auditor released her audit report last month.

The report concluded that DSH’s evaluations of potential SVPs were inconsistent. Although state law requires that evaluators consider a number of factors about offenders, such as their criminal and psychosexual histories, the auditors found instances in which evaluators did not consider all relevant information. They also noted that gaps in policies, supervision, and training may have contributed to the inconsistent evaluations. Specifically, DSH’s standardized assessment protocol for conducting evaluations of potential SVPs lacks adequate detail and direction for SVP evaluators on how to perform evaluations. Further, DSH’s headquarters lacks a process of supervisory review of evaluators’ work from a clinical perspective. They also found that DSH has not consistently offered training to its evaluators, and did not provide SVP evaluators with any training between August 2012 and May 2014. Also, DSH could not demonstrate that its evaluators had training on a specific type of instrument used when assessing whether an individual would commit another sexual offense until it began offering such training at the end of 2014.

The audit report also noted additional areas in which DSH could improve its evaluation process. Specifically, DSH has not documented its efforts to verify that its evaluators met the experience portion of the minimum qualifications for their positions. In addition, in March 2013, DSH developed a process for assigning and tracking the workload of its evaluators and recently revised it in January 2015. Although the revised process addresses some concerns about workload assignments, it omits other elements and DSH has not established a formal process for periodically reviewing its workload assignment process. Finally, DSH needs to address its backlog of annual evaluations of currently committed SVPs at Coalinga State Hospital. When Coalinga fails to promptly perform these evaluations, it is not fulfilling one of its critical statutory obligations, leaving the state unable to report on whether the SVPs continue to pose risks to the public and whether unconditional release or release to a less restrictive environment might be an appropriate alternative.

Detailed Findings. During the review of DSH's Sex Offender Commitment Program the auditors noted the following:

- Based on the review of 23 evaluations, they found that DSH's evaluations of current and potential SVP's are inconsistent and evaluators did not demonstrate that they considered all relevant information, which increases the risk of incorrectly concluding whether offenders meet SVP criteria.
 - Four did not indicate that the evaluator considered the psychosexual history of the offenders as required by law and eight did not indicate they considered a report from CDCR that identifies communication barriers or disabilities the offender may have.
 - In one instance, the evaluator listed reviewing certain mental health records and noted that the offender experienced suicidal thoughts, while the other evaluator stated that the offender did not have mental health issues based on other records.
 - Some evaluators stopped an evaluation once they determined that the offender did not meet one of the SVP criteria and other evaluators completed the evaluation of all criteria even though failure to meet one of the SVP criteria would prevent commitment as an SVP.
- The standardized assessment protocol that DSH established does not provide evaluators with adequate detail and direction in performing evaluations.
- DSH's headquarters currently lacks the supervisory structure necessary to perform clinical reviews of evaluations—45 employees report to the chief psychologist, who holds the only supervisory position.
- DSH has not analyzed court outcomes to identify areas where it could strengthen its evaluations. It had not tracked the disposition of its court cases or determined the frequency with which courts agree or disagree with evaluators.

- For nearly two years, DSH did not provide any training to its SVP evaluators and has not fully implemented the comprehensive training plans it began almost a year ago.
- Coalinga has a significant backlog of annual SVP evaluations it has not completed—it had 261 that were due to courts as of December 2014.

Key Recommendations. The auditor recommended that the Legislature allow DSH the flexibility to stop an evaluation once it has determined that the offender does not meet one of the SVP criteria. To improve the consistency of its evaluations, the auditor made recommendations to DSH including the following:

- Create a written policy requiring evaluators to include details describing the documents reviewed in their evaluations.
- Update its assessment protocol to include specific instructions on conducting evaluations.
- Develop a plan for formal supervisory reviews of evaluations from a clinical perspective.
- Use information on the outcomes of past trials to identify training and supervision needs and develop training programs to ensure evaluators conduct evaluations effectively and consistently.

Questions for the Administration. The Administration should be prepared to address the following questions:

1. Please provide an update on how the department is addressing the auditor's findings, including the timeline for the development of a written policy to ensure uniformity in the evaluation process.
2. Is there any quality control system in place to ensure that evaluators are properly trained and are considering all of the relevant factors in each case?
3. It appears from the data provided by DSH that the number of evaluations each year can vary significantly. How do you determine the budget for this workload each year and is it adjusted based on the previous years' actual number of evaluations?

Coleman, et al v. Brown

Background. Over the past few decades, state prisons have increasingly become mental health treatment facilities. Data suggests that the number of people with mentally illness in prison has almost doubled in the last 15 years. Currently, 45 percent of inmates have been treated within the last year for a severe mental illness.

How Did Prisons Become Mental Health Service Providers? Prior to 1957, mental health services were delivered to some persons with serious mental illness by a state-operated and funded institutional system, which included state hospitals for persons with mental illness and two state hospitals serving persons with mental illness and/or a developmental disability.

In 1957, the California legislature passed the Short-Doyle Act in response to the growing number of people with mental illness being confined in public hospitals, many of whom were institutionalized inappropriately or subject to abuse while residing in a state facility. The act, which provided state funds to local mental health service delivery programs, was developed to address concerns that some individuals with mental illness were better served by local, outpatient services rather than 24-hour hospital care. Lawmakers believed that local programs would allow people with mental illnesses to remain in their communities, maintain family ties, and enjoy greater autonomy. When first enacted, the Short-Doyle Act provided state funding for 50 percent of the cost to establish and develop locally administered-and controlled community mental health programs.

In 1968, the Legislature passed the Lanterman-Petris-Short Act (LPS), which further reduced the population of state mental health hospitals by requiring a judicial hearing prior to any involuntary hospitalization. The LPS also initiated increased financial incentives for local communities to take on the provision of mental health services. As a result of this long-term transfer of state operation and oversight to a decentralized, community-based mental health care delivery model, the state mental health hospital population declined from 36,319 in 1956 to 8,198 in 1971. Three public mental hospitals closed during this time period. The Legislature intended for savings from these closures to be distributed to community programs. However, in 1972 and 1973 then-Governor Ronald Reagan vetoed the transfer of these funds.¹

Throughout the 1970s and 1980s counties contended that the state was not providing adequate funds for community mental health programs. In addition, several counties were receiving less funds on a population basis than other counties. This disparity was addressed, with varying levels of success, in both the 1970s and the 1980s with the allocation of “equity funds” to certain counties. Realignment of mental health programs, enacted in 1991, has made new revenues available to local governments for mental health programs but, according to local mental health administrators, funding continued to lag behind demand.²

¹Historical background from The Stanford Law School Three Strikes Project, “When Did Prisons Become Acceptable Mental Healthcare Facilities?”

² Legislative Analyst’s Office “Major Milestones: 43 Years of Care and Treatment of the Mentally Ill”, March 2, 2000.

In the past decade, California has made a significant investment in community mental health treatment funding. In November 2004, California voters approved Proposition 63, also known as the Mental Health Services Act. Proposition 63 provides state funding for certain new or expanded mental health programs through a personal income tax surcharge of one percent on the portion of a taxpayer's taxable income in excess of \$1 million. Revenues generated by the surcharge are dedicated to the support of specified mental health programs and, with some exceptions, are not appropriated by the Legislature through the annual budget act. Full-year annual Proposition 63 revenues to date have ranged from about \$900 million to \$1.5 billion, and could vary significantly in the future. Between 2004-05 and 2013-14, the fund has collected over \$11 billion for local mental health services.³

Proposition 63 funding is generally provided for five major purposes: (1) expanding community services, (2) providing workforce education and training, (3) building capital facilities and addressing technological needs, (4) expanding prevention and early intervention programs, and (5) establishing innovative programs.

In 2013, the federal Patient Protection and Affordable Care Act (ACA) (health care reform) significantly increased access to private and public health care coverage including mental health services. Included in this healthcare expansion was the expansion of Medi-Cal coverage to adults with incomes up to 138 percent of the federal poverty level (FPL). Generally, these are childless adults who are nonelderly and nondisabled. Under the ACA, the federal government will pay for 100 percent of the costs for this population for the first three years (2014-2016) with funding gradually decreasing to 90 percent in 2020. Allowing single, childless adults to receive Medi-Cal should significantly increase access to mental health services for those adults who would otherwise only have access through public county services or the criminal justice system.

The Legislature also passed the Investment in Mental Health Wellness Act (SB 82 (Senate Budget and Fiscal Review Committee), Chapter 34, Statutes of 2013). The bill authorized the California Health Facilities Financing Authority (CHFFA) to administer a competitive selection process for capital capacity and program expansion to increase capacity for mobile crisis support, crisis intervention, crisis stabilization services, crisis residential treatment, and specified personnel resources. The budget provided \$142 million General Fund for these grants. In addition, the bill implemented a process by which the Mental Health Services Oversight and Accountability Commission (MHSOAC) allocates funding for triage personnel to assist individuals in gaining access to needed services, including medical, mental health, substance use disorder assistance and other community services. The 2013-14 budget provided \$54 million (\$32 million MHSOAC State Administrative Funds and \$22 federal funds) in on-going funding for this purpose.

Currently, due to the expansion of Medi-Cal eligibility, the state has greatly increased its efforts to assure that anyone leaving prison or county jail is enrolled in Medi-Cal and has access to necessary health care services, including mental health treatment.

Ralph Coleman, et al. v. Edmund G. Brown Jr, et al. Primarily because the prison system was severely overcrowded and the provision of mental health treatment was significantly

³ Mental Health Service Act (MHSOAC) – Revenue Summary, January 2015

lacking for inmates in need, a class action suit was filed in the United States District Court in 1991 arguing that prisoners with mental illness were subjected to cruel and unusual punishment, a violation of the inmates eighth amendment protections.

In order to find in favor of the plaintiffs, the court needed to determine that the violations were both objective and subjective in nature. In order to meet the objective standard, the court must find that the deprivations were sufficiently serious to constitute the unnecessary and wanton infliction of pain. For the subjective standard, the courts must find that the treatment constituted deliberate indifference, was wanton and showed a pattern of being malicious and sadistic.

In 1995, following a 39-day trial, District Court Judge Lawrence Karlton found that current treatment for mentally ill inmates violated those inmates' eighth amendment protections against cruel and unusual punishment. Judge Karlton found "overwhelming evidence of the systematic failure to deliver necessary care to mentally ill inmates" who, among other illnesses, "suffer from severe hallucinations, [and] decompensate into catatonic states." Although a special master was appointed by the court to oversee implementation of a remedial plan, the situation continued to deteriorate, according to periodic reports from the special master.⁴ 25 years after the federal suit was filed, the state remains under the control of the federal court in *Coleman v. Brown* and is under regular review and oversight by the special master.

In the original ruling, the court identified six areas in which CDCR needed to make improvements: mental health screening, treatment programs, staffing, accurate and complete records, medication distribution and suicide prevention. In subsequent rulings, the courts expanded the areas of concern to include use of force and segregation policies. In addition, the courts also required that condemned inmates in San Quentin State Prison have access to inpatient, acute-care treatment.

On the following page is a detailed timeline of the major events related to *Coleman v. Brown* over the last 25 years.

⁴ Stanford Law School Three Strikes Project, "When Did Prisons Become Acceptable Mental Healthcare Facilities?"

Major Milestones in the *Coleman v. Brown* case

Year	Event
1991	The Coleman class-action lawsuit was filed in U.S. District Court, Eastern District, alleging that mental health care in state prisons violated the Eighth Amendment's ban of cruel and unusual punishment.
1995	The Coleman court found that the State was deliberately indifferent to the mental health needs of inmates in violation of the Eighth Amendment. A special master was appointed.
1997	The Coleman court approved a plan to address the inadequacies in mental health care.
2006	Plaintiffs in the Plata and Coleman cases requested the convening of a Three-Judge Panel to review whether overcrowding was the primary cause of the failure to provide adequate medical and mental health care.
2008	The Three-Judge Panel trial took place.
2010	The Three-Judge Panel ordered the State to reduce its adult institution population to 137.5 percent of design capacity within two years and according to a schedule of four benchmarks at six-month intervals. The State appealed to the U.S. Supreme Court.
2011	In April, Public Safety Realignment (AB 109 (Committee on Budget) Chapter 15, Statutes of 2011), designed to bring about a significant reduction in the prison population, was enacted. It eventually reduced the adult institution population by 25,000.
2011	In May, the U.S. Supreme Court affirmed the Three-Judge Panel's order.
2013	In January, Governor Brown filed a motion to terminate the Coleman lawsuit and to end the requirement to reduce the prison population to 137.5 percent of design capacity. The Coleman court denied this motion.
2013	In May, the plaintiffs filed a motion in court alleging the unconstitutional use of force and an inadequate discipline process against the Coleman class members.
2013	In July, the court ordered the special master to monitor the psychiatric programs run by the Department of State Hospitals, particularly in regards to the adequacy of staffing and the use of handcuffs at all times for patients who are out of their cells.
2013	In December, the court ordered the state to develop a long-term solution for providing inpatient care for condemned inmates currently housed on California's death row.
2014	In April, the Coleman court ruled that California's use of force and segregation of mentally ill inmates violated the inmate's 8th amendment rights.
2014	In May, the Special Master released his report on the adequacy of inpatient mental health care, including the psychiatric programs run by DSH. The special master also filed an assessment of the San Quentin plan to provide inpatient care for condemned inmates and the court provided additional reporting orders.
2014	In August, the court issued further orders regarding segregation and use of force.
2015	In January, the Governor's budget proposal included a request related to complying with the 2014 court orders. In addition, the Special Master released his report on suicide prevention practices.

Source: Events through April 2013 are from CDCR's May 2013 "Timeline in the Plata (medical care), Coleman (mental health care) and Three-Judge Panel (prison crowding) cases"

State Prison Population. The California Department of Corrections and Rehabilitation (CDCR) is responsible for the incarceration of the most serious and violent adult felons, including the provision of training, education, and health care services. As of January 21, 2015, CDCR housed about 133,000 adult inmates in the state's 34 prisons and 42 fire camps. Almost 114,000 of those inmates are in state prisons, which results in those institutions currently being at 137.5 percent of their design capacity. Approximately 9,000 inmates are housed in out-of-state contracted prisons, 6,000 are housed in in-state contracted facilities, and 6,000 are housed in fire camps. CDCR also supervises and treats about 43,000 adult parolees. Approximately 45 percent of those inmates have been treated for severe mental illnesses within the last year.

The Coleman Class. As of January 19, 2015, there are currently 37,829 inmates in the Coleman class (35,472 men and 2,357 women). According to a December 24, 1998 court ruling on the definition of the class, the plaintiffs' class consists of all inmates with serious mental disorders who are now, or who will in the future be, confined within CDCR. A "serious mental disorder" is defined as anyone who is receiving care through CDCR's Mental Health Services Delivery System (MHSDS).

MHSDS provides four levels of care, which depend on the severity of the mental illness. The first level, the Correctional Clinical Case Management System (CCCMS), provides mental health services to inmates with serious mental illness with "stable functioning in the general population, an administrative segregation unit (ASU) or a security housing unit (SHU)" whose mental health symptoms are under control or in "partial remission as a result of treatment." As of January 19, 2015, 30,065 mentally ill inmates were at the CCCMS level-of-care.

The remaining three levels of mental health care are for inmates who are seriously mental ill and who, due to their mental illness, are unable to function in the general prison population. The Enhanced Outpatient Program (EOP) is for inmates with "acute onset or significant decompensation of a serious mental disorder." EOP programs are located in designated living units at "hub institution[s]." As of January 19, 2014, 6,044 inmates with mental illness were receiving EOP services and treatment.

Mental health crisis beds (MHCBs) are for inmates with mental illness in psychiatric crisis or in need of stabilization pending transfer either to an inpatient hospital setting or a lower level-of-care. MHCBs are generally licensed inpatient units in correctional treatment centers or other licensed facilities. Stays in MHCBs are limited to not more than ten days. Currently, there are 389 inmates receiving this level-of-care.

Finally, several inpatient hospital programs are available for class members who require longer-term, acute care. These programs are primarily operated by the Department of State Hospitals (DSH), with the exceptions of in-patient care provided to condemned inmates and to female inmates. There are three inpatient psychiatric programs for male inmates run by DSH that are on the grounds of state prisons. Those programs are DSH-Stockton, on the grounds of the Correctional Healthcare Facility; DSH-Vacaville, on the grounds of Vacaville State Prison; and DSH-Salinas Valley, on the grounds of Salinas Valley State Prison. There are currently approximately 1,000 patients in those facilities and the DSH budget for those

inmates is approximately \$245 million General Fund per year. As of January 19, 1,331 inmates were receiving inpatient care, 47 of those patients were women and 34 were condemned inmates housed at San Quentin State Prison.

In addition to the patients in the prison-based psychiatric programs, approximately 250 Coleman class inmates are receiving care at Atascadero State Hospital and Coalinga State Hospital. The DSH budget for those patients is \$52 million General Fund per year.

Recent Special Master Report Highlights. As part of the ongoing court oversight, the special master has issued three key reports in the last year: (1) a report to the court on the adequacy of mental health care for CDCR inmates housed in inpatient, long-term, acute care beds; (2) an assessment of CDCR's plan to create long-term, acute care beds for inmates housed on death row at San Quentin; and, (3) an audit of suicide prevention practices within the state prisons.

Adequacy of Inpatient Mental Health Care. This report found it difficult to assess the overall quality of care provided to inmates in programs run by DSH because the six inpatient programs varied widely in their policies, practices and operations in nearly every aspect of inpatient mental health care administration and delivery. This criticism is not unlike other criticisms raised about the five state hospitals run by DSH. Each appears to function largely autonomously, without consistent policies and practices across the state hospital system.

The report noted, "from facility to facility, the special master found difference with seemingly no discernable semblance of coordination and consistency among any of the DSH programs." At five of the six facilities, the report found that staffing was inadequate, especially the staffing of psychiatrists. The only program found to be adequately staffed was the facility for female inmate-patients at the California Institution for Women (CIW), which is run solely by CDCR.

Given the staffing problems, it was not surprising that the special master also found that inadequate treatment was being provided to patients and that individual therapy was often non-existent. The report noted that, as of March 2014, DSH-Vacaville was providing between 1.4 and 4.7 hours per month in out-of-cell and clinical treatment activities. Further, the special master found that even non-therapeutic activities were being credited as an hour of out-of-cell treatment. In addition, at Vacaville, patients complained that they had no one to talk to when they were having problems and that if they asked for individual counseling or therapy sessions, the response was often to provide them with more medication. At DSH-Stockton, patients reported that the facility was considerably more restrictive than the prisons they were transferred from because, similar to a maximum security environment, where they are required to be confined to their rooms 21 to 22 hours per day.

In contrast, CIW provided all of the necessary care for patients in the program including group, individual, and unit activities. The report noted that in January 2014, the patients were offered an average of 15 hours per week of group activities and that nearly all scheduled individual treatment was completed. However, the special master did find that it was difficult to distinguish between intermediate levels-of-care and acute care because the enhanced care required for acute care patients did not appear to be provided. However, compared to

the five programs run by DSH for male inmate-patients, the program run by CDCR for female inmate-patients offered significantly more treatment and therapeutic programs.

Inpatient Care for Condemned Inmates at San Quentin State Prison. In this report, the special master's findings were largely favorable. He found that the assessment of condemned inmates who are mentally ill had been successful and that 37 inmates had been found in need of inpatient care. While work remains on the physical plant changes necessary to activate the facility at San Quentin, the special master commended CDCR for the work that has been achieved so far and urged them to continue along an expedited time-line so that the patients could be appropriately placed in the new facility.

Audit of Suicide Prevention Practices in State Prison. The audit found that the provisions of the *Coleman Program Guide* on suicide prevention provided reasonable and comprehensive guidelines. However, while the guidelines were deemed to be adequate, the audit found that the suicide prevention practices within the prisons did not follow the guidelines. Despite the guidelines, the number of suicides within the prisons has remained virtually unchanged since 2010 and the rate of suicide is substantially higher than other prison systems throughout the United States. The report noted that the most surprising finding in the audit was that, despite the implementation of monitoring practices, comprehensive reviews of each inmate suicide, and other quality improvement practices, many of the deficiencies found by the audits had not been identified in any of the quality improvement activities. For example, correctional officers at various prisons were observed not conducting their required 30-minute rounds in administrative segregation units in a timely manner. In addition, medical staffs responsible for conducting observations of inmates in several MHC units were observed to be not conducting the rounds at required intervals and then falsifying documentation. While the deficiencies were not found at all 34 prisons, the report notes that to varying degrees, the deficiency were found at most of the prisons. Given the results of the audit, it is possible that the court will be issuing additional orders related to suicide prevention.

Recent Coleman Court Orders. On April 14, 2014, Judge Karlton ruled that California continued to violate the constitutional safeguards against cruel and unusual punishment by subjecting inmates with mental illness to excessive use of pepper spray and isolation. He gave the state 60 days to work with the special master to revise their excessive force policies and segregation policies, and to stop the practice of holding inmates with mental illness in the segregation units simply because there is no room for them in more appropriate housing. He also ordered the state to revise its policy for strip-searching inmates with mental illness as they enter and leave housing units. The 60-day deadline for some of the requirements was subsequently extended until August 29, 2014.

The department submitted a revised use of force policy to the courts that limits the use of pepper spray on inmate-patients and revises their cell management strategy. On August 11, 2014, the court accepted the new policies. Among other changes to the policy, correction staff is required to consider an inmate's mental health prior to using any controlled use of force. That consideration must include the inmate's demeanor, bizarre behavior status, mental health status, medical concerns and their ability to comply with orders. In addition, a mental health clinician must evaluate an inmate's ability to understand the orders, whether

they are a Coleman class inmate or not. They must also evaluate whether the use of force could lead to a decompensation of the person's mental health.

On August 29, 2014, the state submitted a plan to comply with the remainder of the April 14 court order and the court accepted the plan. Under this court order, CDCR is required to create specialty housing units for inmates with mental illness who are removed from the general population. These specialized units must include additional out-of-cell activities and increased treatment. Under this plan, male inmates in short-term restricted housing will receive 20 hours of out-of-cell time each week, which is twice the amount of time offered to CCCMS inmates in the existing segregation units. Female inmates in short-term housing, however, will only receive 15 hours of out-of-cell time each week, which is 50 percent more than the current ten hours. In the longer-term restricted housing, male and female inmates will be allowed 15 hours a week in out-of-cell time.

The plan also requires that CDCR conduct a case-by-case review of all Coleman class inmates with lengthy segregation terms, in an attempt to decrease the length of stay for inmates in segregated environments. Additionally, the plan establishes a case review for all inmates being released from DSH or CDCR psychiatric inpatient beds who are facing disciplinary terms in segregation to ensure that the inmate is returned to appropriate housing and not to segregation.

In several areas, the plan presented by CDCR extended beyond the court order and included additional training and collaboration between mental health staff and custody staff. The plan also requires custody staff to make security checks on all inmates in specialized restricted housing twice every hour and requires that licensed psychiatric technicians conduct daily rounds to check on every inmate's current mental health status. The increased checks are designed to reduce suicides and suicide attempts among this population, which have been an ongoing concern of the court. Finally, the plan increases the amount of property allowed for inmates in short-term restricted units. For example, inmates will now be allowed one electrical appliance if their cell allows for it. If it does not, they will be provided with a radio.

Issue 2: *Coleman v. Brown* May 2014 Special Master Report

Governor's Budget. The Governor's budget notes that the Administration is currently considering shifting responsibility for 1,086 inpatient mental health treatment beds from DSH to CDCR. The proposed budget includes \$244 million (General Fund) for the three psychiatric programs for prisoners overseen by DSH.

Background. As described above, last year the Coleman special master released a report on the quality of treatment provided to Coleman class inmates being treated in DSH's psychiatric treatment programs and state hospitals. The investigation found significant lapses in the treatment being provided to inmate-patients.

The special master noted that individual therapy was rarely offered, even to those patients who were not ready for group therapy or for whom group therapy was contraindicated. At Coleman State Hospital (one of the two state hospitals that houses CDCR inmate-patients), patients reported that their only individual contact with clinicians occurred on the hallways of the unit. Further, even when individual clinical interventions were indicated for a patient in a treatment team meeting, they were not included in the patient's treatment plan.

The report also noted that at Salinas Valley Psychiatric Program (SVPP), it was the default practice to have two medical technical assistants (MTA) in the treatment room based on institutional cultural perceptions of patient dangerousness rather than on an individualized assessment of the actual potential danger to clinicians and the need to have MTAs present. Similarly, Vacaville Psychiatric Program (VPP) required two escorts for any patient movement, regardless of the patients' custody status, classification, or behavior. In some instances activities were cancelled due to the unavailability of MTAs to escort the patients. According to both clinical and administrative staff, this was the primary reason for limiting out-of-cell activities.

Condemned patients who require an acute level of treatment are currently treated at VPP. According to the investigation, these patients received far less treatment than other acute level patients and no access to group activities or an outdoor yard. In addition, they were only allowed one hour in the day room per week. Reportedly, these patients had weekly contact with a psychiatrist or psychologist. But that contact either happened through the doors of their cells or in a non-confidential setting.

Finally, patients at the Stockton State Hospital (on the grounds of the Correctional Health Care Facility) reported that it was considerable more restrictive than the prisons from which they were referred, stating that it was like being in a maximum security environment, spending 21 to 22 hours per day in their rooms.

Another prevalent theme throughout the report was the lack of uniform policies and procedures throughout all aspects of the program. The report notes that all six of the inpatient programs used their own distinct systems of orientation, cuffing, and restrictions for newly admitted patients, steps/stages through which patients had to progress in order to fully access treatment, and the imposition of restrictions on patients following behavioral problems

or disciplinary infractions. In addition, the six program varied widely in terms of the amount and severity of restrictions on patients' movements, contact with others, and eligibility to receive treatment.

The special master also found that placement of new patients in extremely restrictive conditions was often based on the individual program's established procedures rather than on the severity of the individual patients' mental illness, their propensity for aggressive or self-harming behavior, or their readiness for treatment.

The report found that there was a need for the development of a consistent, more therapeutically-oriented and less punitively-oriented system that could be applied across all six of the programs. More importantly, the report notes, the emphasis throughout needs to be redirected toward greater individualization of any necessary restrictions and staging of patients based on their unique needs and away from an automatic presumption of violent behavior, anti-therapeutic withholding of interaction with others, and deferral of much needed treatment.

Questions for the Administration. The Administration should be prepared to address the following questions:

1. Throughout the report, the special master notes how little time inmate-patients spent out of their cells and how little contact the patients had with other people, other than through their cell doors. Given what we know about how inmates in segregated housing often have their mental health deteriorate, how does this constitute a therapeutic setting that is designed to treat mental illnesses?
2. Multiple concerns have been raised about the general lack of uniform policies and procedures throughout the state hospital system (including those discussed in the previous item). What steps is the department taking to rectify the problem that appears to be endemic?
3. Please provide an update on the discussions between DSH and CDCR on the possible shifting of the psychiatric programs to CDCR.
4. Please provide a detailed description of the changes the department has made over the last year to address the special master's concerns.

Staff Comment. The state Inspector General (IG) provides independent oversight over the state prison system. Among other duties, the IG investigates complaints of mistreatment, provides oversight for CDCR's internal investigations and employee discipline process, conducts medical inspections to review the delivery of medical care to inmates, evaluates the qualifications of all wardens and superintendents, and conducts special reviews at the request of the Speaker of the Assembly or the Senate Rules Committee. However, the jurisdiction of the IG does not include psychiatric programs run by DSH for inmates or any state hospitals.

Given the critical Coleman report on the treatment of patients in the psychiatric programs and the \$300 million General Fund spent annually on inmate-patients housed in facilities run by DSH, the Legislature may wish to consider expanding the scope of the IG's duties to include oversight of over the psychiatric programs or create a similar independent oversight entity with the necessary expertise in the provision of mental health diagnosis and treatment. Expanded and independent oversight would provide the Legislature and the Administration with additional on-going information concerning the quality and type of treatment provided. In turn, the Legislature and Administration would be able to take steps to improve treatment and outcomes, ensure a better use of the taxpayers' money, and optimally, see an end to federal court oversight.

In last year's budget, in lieu of expanding the role of the current IG or creating a new IG, the Legislature adopted the following report requirement:

The Secretary of the Health and Human Services Agency shall provide, no later than January 10, 2015, a report, together with specific and detailed recommendations, to the fiscal and appropriate policy committees of the Legislature, reviewing and evaluating the best practices and strategies, including independent oversight, for effectively and sustainably addressing the employee discipline process, criminal and major incident investigations, and the use of force within the Department of State Hospitals. The secretary may consult with the California Highway Patrol, the Department of Corrections and Rehabilitation, the Office of the Inspector General and any other resource identified by the Secretary as valuable to this analysis. It is the intent of the Legislature that this report and set of recommendations reflect a critical and pragmatic analysis of the department's current practices and policies, and include a set of meaningful recommendations describing how current practices and policies should be revised and reformed to assure safety and accountability in the state hospital system.

This requirement was intended to further the conversation concerning the need for on-going, independent oversight and the adoption of uniform policies and practices throughout the state hospital system. This report was discussed during the March 19 hearing and the Legislature may wish to include funding in the budget and adopt trailer bill language expanding the IG's jurisdiction.

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Issue 3: *Coleman v. Brown* Budget Proposal

Governor's Budget. As outlined above, in the past year, the federal court ordered CDCR to make various changes concerning their treatment of certain inmates who are mentally ill. The revised policies in the budget proposal include the following:

- An increase in clinical involvement for controlled use of force incidents.
- Positive intervention strategies to address inmates with certain behavioral restrictions.
- Additional monitoring and reporting activities.

The new policies will provide more clinical involvement in certain activities and restrictions that previously included only custodial involvement. In addition, the new policies establish monthly reporting on certain segregated housing units for mentally ill inmates and, if found out of compliance with requirements for a consecutive two month period, the CDCR will not be allowed to house mentally ill inmates in those units.

The new policies also require CDCR to separately house Correctional Clinical Case Management System (CCCMS) inmates (the lowest level of care in CDCR's mental health system) and general population inmates in segregated housing units. In the new CCCMS housing units, inmates will be provided additional out of cell time and clinical interaction. CDCR will also transfer mentally ill inmates housed in segregated housing units for non-behavior related issues to permanent housing more quickly. In cases where a permanent housing option cannot be quickly identified, CDCR has established a short term housing unit for these inmates.

The court orders and CDCR's revised policies are intended to improve prison mental health care and reduce suicide incidents in prison. In addition to the efforts outlined above, CDCR plans to perform welfare checks on inmates in condemned and security housing units. CDCR will also expand and improve mental health related training, which includes training specifically targeted at educating staff about preventive measures and to improve their use of existing tools to reduce inmate suicides.

The budget requests \$20 million General Fund and 104.8 permanent positions in the current year, and \$42 million General Fund and 290.4 permanent positions annually, beginning in 2015-16, for the court-ordered changes to CDCR's use of force and segregated housing policies. The money is budgeted as follows:

**2014-15 Proposed Coleman Positions and Costs
(Amounts in Millions)**

	Positions	Total Funding
Use of Force and Cell Management Status	6.0	\$ 1.6
Short and Long Term Housing Units	26.4	\$ 5.6
Non-Disciplinary Segregation	12.5	\$ 1.7
Inmate-Patient Welfare Check System	47.4	\$ 5.7
Monitoring and Oversight	8.5	\$ 1.2
Specialized Mental Health Training	4.0	\$ 3.8
Total	104.8	\$ 19.6

**2015-16 Proposed Coleman Positions and Costs
(Amounts in Millions)**

	Positions	Total Funding
Use of Force and Cell Management Status	12.0	\$ 2.7
Short and Long Term Housing Units	162.4	\$ 24
Non-Disciplinary Segregation	20.0	\$ 2.4
Inmate-Patient Welfare Check System	64.0	\$ 7.0
Monitoring and Oversight	20.0	\$ 3.0
Specialized Mental Health Training	12.0	\$ 2.2
Total	290.4	\$ 42

Legislative Analyst's Office (LAO). The LAO did not raise any concerns with this proposal in their analysis of the Governor's budget.

Questions for the Administration. The Administration should be prepared to address the following questions:

1. Please provide a detailed description of each component of the proposal.
2. The proposal includes funding for mental health training. How many hours of training will be provided? Who will receive the additional training? Is this one-time or on-going training?
3. Please elaborate on the infrastructure constraints that prevent the department from providing additional out-of-cell time to females and reception center CCCMS ASU units. Has the court and/or the special master approved the plan to provide 15 rather than 20 hours of out-of-cell time for the above populations?
4. Did the court order a specific amount of out-of-cell time for the CCCMS ASU units or was that amount determined by CDCR? If the latter, how did CDCR determine the appropriate amount of time?

5. Will all of the prisons which house CCCMS inmates have a CCCMS ASU unit? If not will CCCMS inmates at prisons without CCCMS ASU units be transferred to prisons with such units?
6. How did the department determine which prisons will have a CCCMS ASU unit?

Issue 4: San Quentin Condemned Inmates

Governor's Budget. The Governor's budget includes two proposals related to condemned inmates serving their sentences at San Quentin State Prison.

1. ***San Quentin Condemned Inmate Housing.*** The Governor's budget requests \$3.213 million General Fund, of which \$325,000 is onetime and 24.3 positions to convert two tiers of an existing housing unit at San Quentin to accommodate inmates who have been sentenced to death. This conversion will provide 97 extra cells to accommodate the current population.
2. ***San Quentin Psychiatric Inpatient Program (PIP).*** The Governor's proposed budget includes 99.8 positions and \$11 million General Fund for both CDCR and California Correctional Health Care Services (CCHCS) to provide clinical support, custody staff, equipment and training to operate a 40-bed acute level of care psychiatric facility to provide treatment for condemned inmates with mental illnesses severe enough to require inpatient care. \$4.3 million General Fund is for CDCR and \$6.7 is for CCHCS. CDCR intends to convert 17 existing mental health crisis beds and 23 medical beds to psychiatric inpatient beds.

Background. All inmates sentenced to death in California are sent to San Quentin to fulfill their sentence. Currently, 729 inmates have been sentenced to death in California; however, San Quentin currently has appropriate housing and security for 690 condemned inmates. Every inmate condemned to death is required by law to be housed in individual cells.

Questions for the Administration. The Administration should be prepared to address the following questions:

1. The budget proposal for the PIP notes that because this is a sensitive and complex project, the department intends to have the program operate as a modified stand-alone facility and that it report directly to the deputy director over mental health. Please explain why it is such a complex and sensitive project, other than the fact that the services are being provided to condemned inmates.
2. The PIP proposal also notes that this new program will be modeled after the existing program at the California Institution for Women. Please describe that model and how it differs from other PIPs.
3. Please explain CDCR's and CCHC's separate responsibilities for the new treatment program.

Issue 5: Inspector General Update – Sensitive Needs Yards

Background. Sensitive needs yards (SNY) in the men's prisons are yards designed specifically for those inmates who may not be safe in the general population. Generally, SNYs contain inmates who are ex-gang members, sex offenders, or others in need of protective custody.

March 2015 Semi-Annual Report. In its last semi-annual report, the OIG raised the issue of increasing violence in sensitive needs yards (SNY). More than half of the in-custody homicides involved SNY inmates even though these yards house only 27 percent of the inmate population and were originally created to prevent violence to those inmates requiring protection from the rest of the population for various reasons. In addition to the listed homicides, there were three in-cell great bodily injury incidents against inmates classified as SNY, but that did not result in death.

OIG Recommendations. According to the OIG there are steps the department can take to lessen such risks. Given the current nature of the population on sensitive needs yards, which comprises sex offenders as well as gang dropouts and other general population inmates, the OIG recommended the department consider some additional preventative steps. These included re-examining its double-cell policy for sensitive needs yards, requiring completion of compatibility forms to help ensure that inmates are properly placed with compatible cellmates, and giving potential cellmates the opportunity to document their agreement to house together. Inmates with prior violence toward cellmates should not be double celled, even on an SNY, until each inmate's propensity for violence is considered. Additionally, the OIG recommended the department review the process for transitioning inmates from single-cell designation to double-cell status.

Questions for the Administration. The Administration should be prepared to address the following questions:

1. Please respond to the findings in the semi-annual report and address the steps the department is taking to reduce the violence in sensitive needs yards.

Issue 6: Inspector General Update – Segregated Housing Units

Background. The Department of Corrections and Rehabilitation (CDCR) currently confines approximately 3,200 inmates in segregated housing unit (SHU) facilities. Of these, over 2,000 inmates are serving indeterminate terms; many of the 3,200 are serving SHU terms of several years or even decades.

Psychological research has found that a lack of social interaction can lead SHU inmates to suffer from a variety of psychological and psychiatric illnesses. These can include chronic insomnia, panic attacks, and symptoms of psychosis (including hallucinations).

On October 9, 2013, the Assembly and Senate Public Safety committees held an informational hearing on California's prison segregation policies. The committees heard from representatives of CDCR and the OIG, experts, advocates and even individuals who had been housed in the SHU. Among the experts was Margaret Winter, the head of the ACLU prison project, she:

[T]old lawmakers the tide is turning nationally when it comes to use of isolation in prisons.

“Every reputable study has found negative effects,” Winter said, noting that when she helped the Mississippi Department of Corrections reduce its use of isolation, prison violence actually went down.

Asked for alternative methods for dealing with inmates who pose a danger to other inmates or staff, Winter said segregation can be an effective short-term tool, if paired with incentives to change behavior. Most prison systems simply let inmates languish in isolation without even determining if they're still a threat, Winter said.

On February 11, 2014, another joint informational hearing was held to discuss CDCR's new Security Threat Group Policy and the impact that the policy has had on the SHU population. Committee members heard from CDCR representatives, experts and attorneys who represent SHU inmates. Hope Metcalf, Associate Research Scholar in Law, Director of Arthur Liman Program, and Lecturer in Law, Yale Law School, stated in the hearing:

[T]he basic bottom line is that staff and inmates must feel safe and prisons do need tools to shape behavior. I don't think that there's much dispute about that. And in fact, some forms of short-term segregation may be necessary and there may indeed be some portions of the population for whom placement in the general population is not appropriate. However, that does not translate in any sense to the fact that long-term isolation of the ilk that we see at Pelican Bay is in fact serving sound, public policy.

So given the overreliance on isolation, many prisons are at best delaying problems, and, in fact, may be aggravating them. So I do not wish to say that most people released from long-term isolation are dangerous. I have many, many clients who have left isolation and they have gone on to do well. However, I do think that if we're talking about public safety, thinking about outcomes, including recidivism is important. Equally important of course in terms of outcomes is not just whether or not someone is violent, but whether they are able to flourish and become independent once they leave. So the fear is—one fear I've had—is even where outcomes don't show for example violence, is that person able to hold a job or are they now so debilitated that they are reduced to relying on state support once they leave prison?

These hearings highlighted the fact that, while short term segregation is an important tool, long term segregation can have a detrimental impact, on not only the inmates, but also on public safety.

Hunger Strikes in California State Prisons and CDCR's new Security Threat Group Policy. On July 1, 2011, inmates in the Pelican Bay State Prison's Security Housing Unit initiated a hunger strike. Approximately 5,300 inmates began refusing state-issued meals. The number of inmates peaked at more than 6,500 two days later and then gradually decreased until the strike concluded on July 20, 2011.

In September 2011, a second hunger strike began. After three days, 4,252 inmates had missed nine consecutive meals.⁵ By October 13, 2011, the number of inmates participating had dropped to 580. CDCR officials in Sacramento were contacted by Pelican Bay State Prison inmates by letter and agreed to meet with inmate representatives to discuss CDCR's ongoing review of and revisions to its SHU policies. All inmates had resumed eating by Sunday, October 16, 2011.

A third hunger strike began on July 8, 2013, when more than 30,000 inmates refused to eat state-issued food until the SHU policies were changed. By July 11, 2013, 12,421 inmates had missed nine consecutive meals. By September 4, 2013, there were 100 inmates on a hunger strike; 40 of them had been on a hunger strike continuously since July 8. All inmates resumed eating on September 5, 2013.

According to CDCR:

In May 2011, prior to two hunger strikes that year, the California Department of Corrections and Rehabilitation (CDCR) began revising its gang validation and Security Housing Unit (SHU) confinement policies and procedures. This effort resulted in the "Security Threat Group Prevention, Identification and Management Strategy," approved and certified by the Office of Administrative Law on October 18, 2012 and filed with the Secretary of State.

⁵ CDCR considers an inmate to be on hunger strike if he or she misses nine consecutive meals.

The Security Threat Group (STG) policy addresses the concerns inmates raised during two hunger strikes in 2011. The STG program provides individual accountability of offenders; is behavior-based; incorporates additional elements of due process to the validation system; and provides a Step-Down Program as an alternative for inmates to demonstrate their willingness to refrain from criminal gang behavior.

CDCR has updated their regulations to include the policies that were utilized in in the pilot program. These policies include, in part:

Security Threat Groups

- The new policy replaces the word “gang” with the more nationally accepted term “security threat group.” The Security Threat Group (STG) program does not take a “one size fits all approach,” but better identifies, assesses and prioritizes security threat groups (prison gangs, street gangs, disruptive groups) based on behavior and on the level of threat the group and its affiliates present to the safety and security of prisons and the public.
- CDCR categorizes criminal gangs into STGs based on a threat assessment conducted by the department’s Office of Correctional Safety. STG behavior is defined as documented behavior that promotes, furthers or assists a security threat group.
- An STG-I designation is used for criminal gangs that pose a greater threat. It includes traditional prison gangs and disruptive groups with a history of violence or influence over subservient groups. These STG groups include, but may not be limited to, traditional prison gangs like the Aryan Brotherhood, the Black Guerilla Family, the Mexican Mafia, the Nazi Low Riders, the Northern Structure, and the Nuestra Familia. An STG-I designation may also include a gang with a history and propensity for violence and/or influence over subservient STGs. CDCR will review STG-I designations at least every two years.
- An STG-II designation may be used for traditional disruptive groups and street gangs. These can include the Crips, the Bloods, the 2-5s, the Northern Riders, MS 13, the Norteños, the Sureños, Florencia 13 and white supremacist groups.

Validation

- The validation process is a strategy for identifying and documenting criminal gang member, associates and suspects.
- STG associates – the majority of inmates housed in SHUs – are no longer placed in a SHU based solely upon their validation to an STG unless there is a nexus to confirmed gang activity.

- CDCR added an objective point-based component in the offender validation process and enhanced considerations of due process. Each source item is now given a weighted point value between two and seven points, and individual validation must include three independent sources with a cumulative total of 10 points or more.
- Unsubstantiated confidential information from a single source will not establish a foundation for confirming the existence of STG-related behavior.

Step-Down Program

- The Step-Down Program enables an inmate serving an indeterminate SHU term to ultimately earn his way back to a general population or sensitive needs yard. The revised policy reduces the six-year inactive review policy for release to a general population to a four-year program. Additionally, inmates demonstrating positive behavior and participation may have their length of participation further reduced to three years.
- The Step-Down Program is an incentive-based, multi-step process for STG offenders who choose to discontinue criminal and/or gang activity. Offenders can always choose to drop out of a gang; however, in the Step-Down Program, inmates are not required to drop out of their gang.
- The five-step program supports, educates and increases privileges for SHU inmates who refrain from gang behavior and are disciplinary-free. Each step is progressive and requires the willingness of the inmate to participate. Each offender is responsible for demonstrating he can be released to a less restrictive environment while abstaining from criminal behavior.
- In the fifth step, inmates are observed and monitored in a general population facility.

The Office of the Inspector General recently reviewed CDCR's Step-Down Program for their *Fifth Report on CDCR's Progress Implementing its Future of California Corrections Blueprint*:

The new gang management policy requires an offender in step 1 through 4 to participate in inmate programming or journaling before progressing to the next step. Inmates placed in steps 1 and 2 are to have program assessments initiated, such as TABE (Test of Adult Basic Education) and COMPAS assessments. Inmates placed in step 3 can participate in self-directed journals that are intended to develop a system of values and strategies leading to responsible thinking and behavior. Step 4 inmates may have programming that includes education, violence prevention programs, and gang diversion programs. If an inmate refuses to participate in the SDP, including inmate programming or journaling, the inmate will return to a previous step or regress further.

The OIG's fieldwork reviewed the current status of 65 inmates who were assigned to the SDP (steps 1 through 4) for at least 12 months to identify the result of the ICC review. As

summarized on the next page, the OIG found that 31 of the 65 inmates (48 percent) successfully progressed to the next step; 27 inmates (41 percent) were retained in their current step; and 7 inmates (11 percent) had regressed to a prior step.

The percentage of inmates who progressed (48 percent) based on active participation in the SDP remained stable; it decreased by only 1 percent since the last OIG report. The inmates retained in their current step increased by 14 percent, while the inmates who regressed decreased by 11 percent from the last OIG report. As shown in the preceding diagram, the OIG found that 27 of the 34 inmates (79 percent) from the “retain” and “regress” categories refused to participate in the SDP. For the inmates who were unable to progress, it was due to “refusing to participate” (27 inmates), “other reasons” (four inmates), and “will not participate in journaling” (three inmates, one each from steps 1, 2, and 3). The “other reasons” typically involved inmates who were indecisive on choosing to participate, which caused more assessment time before an ICC decision was made. . .

The OIG’s fieldwork noted an increasing percentage of inmates progressing (or transitioning) to the next step as they move closer to being released to general population (step 5). The OIG found seven of the eight inmates reviewed were initially assigned to step 4 at California Correctional Institution and all progressed to the next step. Also, over half (54 percent) of the inmates assigned to step 3 were able to progress to step 4. Each inmate in the SDP is assigned ratings in various categories during the annual program review or ICC reviews (at 90 or 180 days). Most inmates who progressed received the highest rating of “exceptional” in the following categories: “attitude toward staff,” “attitude toward fellow inmates and workers,” and “teamwork and participation.” This confirms that inmates demonstrating a willingness and commitment to discontinue gang activity may progress through the SDP to their eventual release from the SHU.

OIG Comments. The department has conducted 1,070 case-by-case reviews in the 27 months since its gang management pilot began in October 2012. This represents 40 percent of its total STG population (2,692 inmates) who were validated prior to March 1, 2013. This is an increase of 132 case-by-case reviews identified in the OIG’s prior report. The OIG estimates at its current rate, the department will not complete all reviews until February 2019. Although there were no benchmarks identified in the blueprint or STG pilot program to complete a specific number or percentage of case-by-case reviews, a more rapid pace of reviews may have been expected by the Legislature and stakeholders.

Security Threat Group Update. Updated information from CDCR shows that the STG review teams have currently completed 1,172 case-by-case reviews. The current budget for the STG program is \$1.1 million General Fund and seven correctional counselor specialist positions.

SHU Conditions at the Women’s Prisons. The department houses the majority of its female offender population in two institutions, the Central California Women’s Facility and the California Institution for Women. To a smaller degree, the department also houses female offenders at the Folsom Women’s Facility (approximately 500 inmates) and in fire camps and specialized female offender programs (fewer than 100 inmates). When inmates engage in violent or dangerous behavior, staff members are obligated to remove them from the general

population to protect the safety of the prison. Behavior such as rioting, assaults, and gang participation can cause an inmate to be sent to the administrative segregation unit while staff members evaluate the nature and level of threat the inmate presents to the prison. Also, some inmates who become victimized by other inmates and need protection are placed in the administrative segregation unit until the staff can find appropriate housing for them. In the case of some female inmates, no such housing exists except for a SHU placement.

Inmates placed in ASUs are entitled to due process rights. Because administrative segregation unit inmates lose more of their freedoms than inmates in the general population, prison officials must provide them with due process protections to ensure they receive a fair hearing to dispute their ASU placement. Therefore, the department has established comprehensive policies and procedures designed to protect inmates' due process rights and ensure the consistent and appropriate use of ASUs statewide.

On October 31, 2013, the Senate Committee on Rules requested the Office of the Inspector General examine SHU conditions specifically related to female inmates serving security housing unit terms.

The OIG evaluated the terms and conditions of confinement for the 160 inmates who were serving SHU terms between October 9, 2013 and October 31, 2013 in the California Institution for Women (CIW) security housing unit, the CIW psychiatric services unit (PSU), and the administrative segregation unit (ASU) at the Central California Women's Facility (CCWF).

During this review, the OIG conducted site inspections of the CIW security housing unit and psychiatric services unit, including the cells, recreational exercise yards, visiting areas, clinic space, and law libraries; and the CCWF administrative segregation unit, including the cells, recreational exercise yards, visiting areas, and law libraries. OIG staff interviewed staff and inmates at both prisons. OIG staff reviewed applicable laws and case law, and departmental rules and regulations. Finally, the OIG reviewed the central files for 160 inmates, including the disciplinary rules violation reports (RVRs), ASU placement orders, SHU term assessment forms, committee actions, appeals, and segregation logs.

The OIG's review found that 52 of the 160 inmates were serving SHU terms for the charges of Refusal to Accept Assigned Housing or Enemy/Safety Concerns, both nonviolent offenses. Eighteen of these inmates have served SHU terms in excess of one year. Subsequently, many suffer negative consequences as a result of this housing when considered for parole. By addressing this issue, the department could potentially reduce the female SHU population by one-third.

Because there is only one security housing unit (with a limited number of beds) for female inmates, many female inmates serve their entire SHU term in the administrative segregation unit at CCWF, where they are not afforded some of the programs and privileges entitled to SHU inmates.

OIG Recommendations. Among the recommendations in the OIG's report are the following:

- As long as it is unable to provide alternative housing (such as the men's sensitive needs yards), the department should discontinue imposing SHU terms on female inmates for the charge of Refusal to Accept Assigned Housing.
- CDCR should develop alternative housing options for those female inmates with enemy/safety concerns. This would also alleviate the possible negative impact to life-term inmates appearing before the Board of Parole Hearings for parole consideration who have received RVRs and SHU terms for these offenses.
- The department should develop a process to ensure that the safety concerns raised by inmates who refuse to accept their assigned housing are thoroughly investigated.
- The department should ensure that female inmates serving SHU terms are allowed to possess all of the items on the departments expanded property matrix.
- To assist the transition from long-term segregation back into the community, the department should provide pre-release services to inmates who will be released from prison directly from a security housing unit.
- In addition to the recommendations above, if the department is going to continue housing SHU inmates at CCWF, it should do the following:
 - Ensure the SHU inmates housed in the CCWF administrative segregation unit receive the same property and privileges as the SHU inmates housed in security housing units.
 - Address the physical plant and custody coverage issues that are hindering CCWF from offering at least ten hours of outside exercise time to inmates housed in the ASU.
 - Ensure that inmates are offered at least ten hours of outside exercise time per week and document it appropriately an inmate's records.
 - Develop a process for offering rehabilitation programs, such as literacy, GED preparation, and college courses, to SHU inmates housed 90 days or more in ASU.

Questions for the Administration. The Administration should be prepared to address the following questions:

1. The OIG estimates that your STG case-by-case reviews will take approximately four years to complete, at your current pace. Has the Administration considered redirecting more staff to that effort to increase the pace?
2. Please provide an update on the status of the OIG's recommendations for female SHU inmates.

Issue 7: Population Budget Proposal

Governor's Budget. For the CDCR's 2015-16 budget, the Governor proposes total funding of \$10.283 billion (\$10 billion General Fund and \$275 million other funds). This amount is \$160 million, or two percent, above the amount budgeted in 2014-15. The primary driver of CDCR's costs is inmate population and the associated healthcare, facilities, and guarding costs. To the extent that California wishes to redirect more of its limited resources from incarceration to other priorities, the state must continue the current trend of finding effective alternatives to incarceration.

Background. The mission of the California Department of Corrections and Rehabilitation (CDCR) is to enhance public safety through safe and secure incarceration of the most serious and violent offenders, effective parole supervision, and rehabilitative strategies to successfully reintegrate offenders into our communities.

As one of the largest departments in state government, CDCR operates 37 youth and adult correctional facilities and 43 youth and adult camps. CDCR also contracts for multiple adult parolee service centers and community correctional facilities. CDCR operates an adult prisoner/mother facility, adult parole units and sub-units, parole outpatient clinics, licensed general acute care hospitals, regional parole headquarters, licensed correctional treatment centers, hemodialysis clinics, outpatient housing units, a correctional training center, a licensed skilled nursing facility, and a hospice program for the terminally ill. CDCR has six regional accounting offices and leases approximately two million square feet of office space. CDCR's infrastructure includes more than 42 million square feet of building space on more than 24,000 acres of land (37 square miles) statewide.

The table immediately below reflects the CDCR's most recent population figures.

Housing Category	2014-15	2015-16
CDCR Facilities	118,972	116,647
California City	2,331	2,381
Community Correctional Facilities	4,193	4,523
Out of State Correctional Facilities	8,922	8,988
Department of State Hospitals	308	308
Elderly Parole	26	26
Medical Parole	27	27
Female Rehabilitative County Corr. Center	52	52
Non Violent 2nd Striker 50%	248	1,556
Prisoner Mother Program	22	24
Reentry Bed Expansion	186	186
SB 260 (sentence review for youth after 15yrs)	89	89
Proposition 47	470	1,915
2 for 1 credits for min. custody	51	280
Total Adult Inmate Population	135,897	137,002

Subsequent to the release of the above population data, CDCR announced its success in meeting the federal Court's order to reduce the state's prison population to 137.5 percent of design capacity. This announcement comes roughly a year ahead of the deadline set by the federal court. Presumably, this change is heavily attributable to an underestimation of the impact Proposition 47 (2014) would have on California's prison population.

Contract Bed Capacity. As of March 31, 2015, there are 5,883 inmates housed in in-state contract facilities. The state has seven community correctional facilities, some of which are private facilities and some are public. 3,922 inmates are currently housed at these in-state contract facilities. In addition, the state currently leases California City Correctional Facility (CCCF) which houses almost 2,000 inmates.

8,622 inmates were housed in out of state contract facilities in Arizona, Mississippi, and Oklahoma as for March 31st.

In 2012, the Administration proposed a comprehensive, long-term plan, *The Future of California Corrections* to improve the effectiveness of the state's prison system. The Legislature adopted the plan, based on the understanding that, over time, it would significantly reduce CDCR's budget and the prison population, and it approved the associated funding and statutory changes. As part of that blueprint, the Administration committed to ending all out-of-state contracts by 2015-16. The blueprint projected that by 2014-15, there would be 1,864 inmates remaining in out-of-state contract beds. Returning out-of-state inmates to in-state facilities was expected to save the state \$318 million annually.

What Changes Have Enabled California To Reduce Its Prison Population? In recent years, California's public safety system, along with the role state government plays in it, has evolved at a rapid pace. Although there have been numerous changes to state law in the public safety realm, none are projected to have as much system-wide impact as AB 109 (The Public Safety Realignment of 2011), Proposition 36 (Three Strikes Reform), and Proposition 47 (Sentencing and Penalty Reform).

AB 109 (The Public Safety Realignment of 2011). This piece of legislation has been instrumental in helping California close the revolving door of low-level inmates cycling in and out of state prisons. This piece of legislation also serves as the cornerstone of California's solution for reducing the number of inmates in the state's 33 prisons to 137.5 percent of system-wide design capacity by 2016, as ordered by the U.S. Supreme Court. Contrary to some media reports, no inmates were transferred from state prison to county jails or released early. AB 109 can be divided into two components, custody and community supervision.

- **Custody.** Effective October 11, 2011, the Public Safety Realignment shifted funding and responsibility for housing non-violent, non-sexual, and non-serious offenders and parole violators from the state to county jurisdictions.
- **Community Supervision.** Effective October 2011, county-level agencies assumed supervisory responsibilities for new non-violent (irrespective of prior convictions), non-serious (irrespective of prior convictions), and some sex offenders upon release from state prison. The California Department of Corrections and Rehabilitation (CDCR) continues to have jurisdiction over all current parolees who were released on state parole prior to October 2011. For state prison inmates released after October 2011, county-level supervision responsibilities do not include the following offender populations as they continue to be supervised by the CDCR:
 - Inmates paroled from life terms to include third-strike offenders:
 - Offenders whose current commitment offense is violent or serious, as defined by California's Penal Code §§ 667.5(c) and 1192.7(c).
 - High-risk sex offenders, as defined by the CDCR.
 - Mentally Disordered Offenders.

Proposition 36 (Three Strikes Reform). Proposition 36, passed by the voters in November 2012, offers an opportunity for eligible California prison inmates sentenced under California's prior three strikes law for non-serious, non-violent crimes to seek a sentence reduction from their sentencing courts.

- Revises the three strikes law to impose life sentence only when the new felony conviction is "serious or violent."
- Authorizes re-sentencing for offenders currently serving life sentences if their third strike conviction was not serious or violent and if the judge determines that the re-sentence does not pose unreasonable risk to public safety.

- Continues to impose a life sentence penalty if the third strike conviction was for "certain non-serious, non-violent sex or drug offenses or involved firearm possession."
- Maintains the life sentence penalty for felons with "non-serious, non-violent third strike if prior convictions were for rape, murder, or child molestation."

As of December 10, 2014, 1,939 of those eligible have been resentenced and released from prison.

Proposition 47 (Sentencing and Penalty Reform). On November 4, 2014, California voters passed Proposition 47, which requires misdemeanor rather than felony sentencing for certain property and drug crimes. Proposition 47 also permits inmates previously sentenced for these reclassified crimes to petition for resentencing.

As of December 4, 2014, 132 inmates had been resentenced and released from prison. Under Proposition 47, it is estimated that the 2015-16 institution average daily population will be reduced by approximately 1,900 inmates as a result of resentencing and avoided new admissions.

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, increase victim services grants, and support mental health and substance use disorder treatment services. The Director of Finance is required, on or before July 31, 2016, and on or before July 31 of each fiscal year thereafter, to calculate the state savings for the previous fiscal year compared to 2013-14. Actual data or best estimates are to be used and the calculation is final and must be certified to the State Controller's Office no later than August 1 of each fiscal year. The first transfer of state savings to the Safe Neighborhoods and Schools Fund will occur in 2016-17 after the Department of Finance calculates savings pursuant to the proposition.

Legislative Analyst's Office (LAO) Recommendation

Withhold Action Pending Additional Justification. We find that the Legislature could reduce the Governor's proposed contract bed funding level by at least \$20 million by directing CDCR to move inmates from contract beds into state prisons. We note, however, that the amount of savings could exceed our preliminary estimate depending on (1) the timing of the activation of the infill beds, (2) how the court counts the infill capacity, and (3) how the actual inmate population level compares to the administration's projections. As such, we recommend that the Legislature not approve the proposed contract bed funding until the department can provide additional information demonstrating what level is necessary to meet the court-ordered population cap. Specifically, we recommend the Legislature direct the CDCR to report at budget hearings on (1) how the administration's population projections for the current year compare with actual population levels, (2) whether the infill facilities are on track to be activated on schedule, and (3) the status of negotiations with plaintiffs related to how the court will count the additional capacity resulting from the activation of the infill facilities. Based on this information, the Legislature would be able to assess

the amount of contract bed funding needed and adjust the budget for 2015-16 accordingly.

Direct CDCR to Provide Long-Term Population Projections. In addition, we recommend that the Legislature direct CDCR to resume its historical practice of providing long-term population projections biannually. This information would allow the Legislature to better assess and plan for the long-term implications of Proposition 47, as well as court-ordered population reduction measures, and determine how best to adjust the state's prison funding and capacity accordingly.

Issue 8: Infill Activation

Governor's Budget. The budget proposal requests 252.3 positions and \$35.6 million (\$35.5 million General Fund and \$90,000 Inmate Welfare Fund) in 2015-16 and 518.2 positions and \$67.8 million (\$67.6 million General Fund and \$209,000 Inmate Welfare Fund) for the custody, clinical, and support personnel and operating and equipment expenses associated with activating 1,584 new beds at Mule Creek State Prison (NCSP) and 792 beds at Richard J. Donovan State Prison (RJD).

Background. 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 will be located adjacent to Mule Creek State Prison in Lone, and the third will be located adjacent to Richard J. Donovan Correctional Facility in San Diego. The budget proposal before the Legislature assumes activation will begin in February of 2016.

At the time the Legislature approved the infill projects it was assumed that the cost of operating the facilities would be offset by the closure of the California Rehabilitation Center (CRC) in Norco. That closure would have saved the state approximately \$160 million in General Fund per year. However, after the three-judge panel ordering the state to reduce the prison population to 137.5 percent of capacity by February 28, 2016, the Administration decided part of the population reduction strategy would require keeping CRC open.

Questions for the Administration. The Administration should be prepared to address the following questions:

1. What is the justification for growing the institutional buffer from approximately 2,000 to over 4,000?
2. What is the Administration's current plan for the closure of CRC and the return of prisoners from out-of-state contract facilities?

Issue 9: CIW Walker Unit Activation
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Governor's Budget. The proposed budget requests \$1.069 million General Fund and 9.1 positions in 2015-16, and \$1.602 million General Fund and 13.6 positions beginning in 2016-17, to reopen a closed 20-bed unit at the California Institution for Women (CIW).

The proposal notes that the new unit is scheduled to open in December of 2015 or January of 2016. The unit is intended to provide space for inmates who need to be separated from the general population for safety or other reasons. As noted in issue 5 above, women in this situation are currently confined to indeterminate placement in the CIW Segregated Housing Unit.

Background. On March 31, 2015, CDCR's female population was 5,519. The Governor's budget projects that CDCR's female population will be 6,180 by June 30, 2015, and will decrease slightly to 6,144 by June 30, 2016.

CDCR currently houses female offenders at three institutions; California Institute for Women in Corona, Central California Women's Facility in Chowchilla, and Folsom Women's Facility at Folsom State Prison near Sacramento. The following is the population in each facility as of March 31, 2015.

Prison	Population	Capacity	Percent of Capacity
California Institute for Women	1,771	1,398	126.7%
Central California Women's Facility	3,244	2,004	161.9%
Folsom Women's Facility	504	403	125.1%
Total	5,519	3,805	145%

Recidivism. Women are considerably less likely than men to return to prison after they are released. A 2011 study from CDCR found that women have a 55 percent chance of returning to prison. On the other hand, 66 percent of men return to prison within three years of their release. This constitutes an 11 percent difference. First time offenders have a lower recidivism rate than repeat offenders. 47 percent of women return to prison after serving their first sentence while 58 percent of men return. Further, inmates designated as serious or violent offenders recidivate at a lower rate than those who are not. Finally, inmates participating in mental health programs return at a rate that is 6 percent to 11 percent higher than other inmates.

Questions for the Administration. The Administration should be prepared to address the following questions:

1. Will 20 beds in a restricted yard be enough to resolve the concerns raised by the OIG regarding the placement of women in segregated housing for long time periods due to a lack of appropriate housing for women with safety concerns?
2. One of the concerns raised by advocates for women inmates housed at CCWF is that the option for those inmates with safety concerns is to either remain in segregated housing or to be housed with inmates with significant mental health issues. Will this unit also be a similar combination?

Issue 10: CCWF Enhanced Outpatient Program

Governor's Budget. The proposed budget requests 2.5 correctional officers and \$300,000 for the operation of a new Mental Health Services Delivery System (MHSDS) Enhanced Outpatient Program (EOP) at the Central California Women's Facility (CCWF) in Chowchilla. CDCR estimates that the construction will be complete by July 1, 2015.

Background. As noted earlier in the agenda, CDCR is mandated to provide a constitutional level of health care to all inmates. Under that mandate, CDCR operates an MHSDS, which provides clinical services and therapeutic services to inmates with serious mental illnesses through both inpatient and outpatient treatment.

EOP constitutes the most intensive level of outpatient mental health care provided by CDCR. These patient-inmates have difficulty in the general population environment and are placed in housing, programs, and services settings that provide both clinical and custodial support and limit their contact with inmates in the general population. The objective of the EOP is to evaluate and treat the patient-inmates' mental health conditions so that they are able to operate in the least restrictive environment possible.

The new CCWF EOP building will include group counseling space, recreation therapy space, and individual counseling space. The program will treat women classified as EOP patients who are housed both in administrative segregation and the EOP general population beds.

Legislative Analyst's Office (LAO). The LAO did not raise any concerns with this proposal in their analysis of the Governor's budget.

Issue 11: Registered Nursing Coverage for Contract Facilities

Governor's Budget. The budget proposal requests \$2.707 million General Fund for 2014-15, and \$3.248 million General Fund for 2015-16, for 24-hour registered nurse (RN) coverage for inmates housed in the six modified community correctional facilities (MCCFs) and one female community reentry facility. The 24-hour coverage has been required by CCHCS, under the direction of the health care receiver, in order to provide 24 hour/7 day per week nursing coverage to inmates housed in contract facilities. This is the same level of coverage currently provided to inmates in the 35 state-run facilities.

Background. As discussed in the previous item, the state currently contracts with six public and private facilities to house approximately 3,800 of the state's male inmate population. Those facilities are Shafter, Delano, Taft, Golden State, Central Valley, and Desert View.

Legislative Analyst's Office (LAO). The LAO did not raise any concerns with this proposal in their analysis of the Governor's budget.

SUBCOMMITTEE NO. 5

Agenda

Senator Loni Hancock, Chair
Senator Joel Anderson
Senator Jim Beall



OUTCOMES

Thursday, April 23, 2015
9:30 a.m. or Upon Adjournment of Session
State Capitol - Room 113

Consultant: Julie Salley-Gray

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Pursuant to the Americans with Disabilities Act, individuals who, because of a disability, need special assistance to attend or participate in a Senate Committee hearing, or in connection with other Senate services, may request assistance at the Senate Rules Committee, 1020 N Street, Suite 255 or by calling 916-651-1505. Requests should be made one week in advance whenever possible.

PROPOSED FOR VOTE ONLY**California Correctional Healthcare Services**

1. **Santa Fe Springs Community Reentry.** The Governor's budget requests 6.0 positions and no additional funding to staff the Santa Fe Springs Custody to Community Transitional Re-entry Program (CCTRP) for women, beginning in 2015-16.

Action: Approved as budgeted. Vote: 3-0

2. **CDCR Technical Adjustments.** In both the January budget and the recent Spring Finance Letter, the Administration has asked to permanently realign resources for a number of programs and divisions. These realignments result in a net zero change and are largely technical in nature.

Action: Approved as budgeted. Vote: 3-0

ITEMS TO BE HEARD

4440 Department of State Hospitals

The Department of State Hospitals (DSH) is the lead agency overseeing and managing the state's system of mental health hospitals. The DSH seeks to ensure the availability and accessibility of effective, efficient, and culturally-competent services. DSH activities and functions include advocacy, education, innovation, outreach, oversight, monitoring, quality improvement, and the provision of direct services.

The Governor's 2011 May Revision first proposed the elimination of the former Department of Mental Health (DMH), the creation of the new DSH, and the transfer of Medi-Cal mental health services and other community mental health programs to the Department of Health Care Services (DHCS). The 2011 budget act approved of just the transfer of Medi-Cal mental health programs from the DMH to the DHCS. In 2012, the Governor proposed, and the Legislature adopted, the full elimination of the DMH and the creation of the DSH. All of the community mental health programs remaining at the DMH were transferred to other state departments as part of the 2012 budget package. The budget package also created the new DSH which has the singular focus of providing improved oversight, safety, and accountability to the state's mental hospitals and psychiatric facilities.

California's State Hospital System

California has five state hospitals and three psychiatric programs located on the grounds of the prisons operated by the California Department of Corrections and Rehabilitation (CDCR). Approximately 92 percent of the state hospitals' population is considered "forensic," in that they have been committed to a hospital through the criminal justice system. The five state hospitals provide treatment to approximately 6,000 patients. The psychiatric facilities at state prisons currently treat approximately 1,000 inmates.

Atascadero State Hospital. This facility, located on the Central Coast, houses a largely forensic population, including a large number of incompetent to stand trial patients and mentally disordered offenders. As of December 2014, it housed more than 1,000 patients.

Coalinga State Hospital. This facility is located in the city of Coalinga and is California's newest state hospital. The hospital houses only forensic patients, most of whom are sexually violent predators. As of December 2014, it housed more than 1,100 patients.

Metropolitan State Hospital. Located in the city of Norwalk, this hospital's population is approximately 65 percent forensic. Metropolitan State Hospital does not accept individuals who have a history of escape from a detention center, a charge or conviction of a sex crime, or a conviction of murder. As of December 2014, it housed about 700 patients.

Napa State Hospital. This facility is located in the city of Napa and has a mix of civil and forensic commitments. Napa State Hospital limits the number of forensic patients to 80 percent of the patient population. As of December 2014, it housed nearly 1,200 patients.

Patton State Hospital. This facility is located in San Bernardino County and primarily treats forensic patients. As of December 2014, it housed 1,500 patients.

Salinas Valley Psychiatric Program. This program is located on the grounds of Salinas Valley State Prison in Soledad and provides treatment to state prison inmates. As of December 2014, it had a population of more than 200 patients.

Stockton Psychiatric Program. This program is located on the grounds of the California Health Care Facility in Stockton and is the state's newest psychiatric program. The program provides treatment to state prison inmates. As of December 2014, it had a population of about 400 patients.

Vacaville Psychiatric Program. This program is located on the grounds of the California Medical Facility in Vacaville and provides treatment to state prison inmates. As of December 2014, it had a population of about 350 patients.

The following are the primary Penal Code categories of patients who are either committed or referred to DSH for care and treatment:

Committed Directly From Superior Courts:

- *Not Guilty by Reason of Insanity* – Determination by court that the defendant committed a crime and was insane at the time the crime was committed.
- *Incompetent to Stand Trial (IST)* – Determination by court that the defendant cannot participate in trial because the defendant is not able to understand the nature of the criminal proceedings or assist counsel in the conduct of a defense. This includes individuals whose incompetence is due to a developmental disability.

Referred From The California Department of Corrections and Rehabilitation (CDCR):

- *Sexually Violent Predators (SVP)* – Hold established on inmate by court when it is believed probable cause exists that the inmate may be a SVP. Includes 45-day hold on inmates by the Board of Prison Terms.
- *Mentally Disordered Offenders (MDO)* – Certain CDCR inmates for required treatment as a condition of parole, and beyond parole under specified circumstances.
- *Prisoner Regular/Urgent Inmate-Patients (Coleman Referrals)* – Inmates who are found to be mentally ill while in prison, including some in need of urgent treatment.

**State Hospitals & Psychiatric Programs
Caseload Projections**

	2014-15	2015-16
Population by Hospital*		
Atascadero	N/A	N/A
Coalinga	N/A	N/A
Metropolitan	N/A	N/A
Napa	N/A	N/A
Patton	N/A	N/A
Subtotal	5,802	5,863
Population by Psych Program		
Vacaville	366	366
Salinas	244	244
Stockton	480	480
Subtotal	1,090	1,090
Population Total	6,892	6,953
Population by Commitment Type		
Incompetent to Stand Trial (IST)	1,430	1,485
Not Guilty By Reason of Insanity (NGI)	1,377	1,379
Mentally Disordered Offender (MDO)	1,220	1,210
Sexually Violent Predator (SVP)	953	967
Lanterman-Petris-Short Act – Civil Commitments	556	556
<i>Coleman</i> Referral – Hospitals	258	258
<i>Coleman</i> Referral – Psych Programs	1,090	1,090
Department of Juvenile Justice	8	8

* DSH is no longer able to identify the number of budgeted beds at their hospitals.

State Hospitals Budget

The Governor's proposed budget includes \$1.7 billion for DSH in 2015-16 (\$1.6 billion General Fund). This represents a \$15 million increase over 2014-15 funding. The proposed budget year position authority for DSH is 11,398 positions, an increase of 164 positions from the current year. The department's budget includes increased funding for several proposals: including plans to operate 105 more Incompetent to Stand Trial (IST) beds than were budgeted in 2014-15, and establishes an involuntary medication policy for patients who are Not Guilty by Reason of Insanity (NGI).

(dollars in thousands)

Funding	2013-14 Actual	2014-15 Projected	2015-16 Proposed
General Fund (GF)	\$1,440,792	\$1,538,796	\$1,551,830
Reimbursements	126,384	127,560	129,764
CA Lottery Education Fund	153	25	25
Total	\$1,567,329	\$1,666,381	\$1,681,619
Positions	10,360	11,234	11,398

Cost Over-Runs. Over the past several years, state hospital costs had been rising at an alarming rate, and substantial current year deficiencies had become the norm, even expected, from year to year. For example, in the 2010-11 fiscal year, the deficiency rose from \$50 million to \$120 million and the then-DMH staff could not explain why. In general, the department lacked any clear understanding of what the major cost drivers were and how to curb or stabilize costs in the system. In 2011, DMH leadership facilitated and oversaw an in-depth exploration and analysis of state hospital costs, resulting in a lengthy report that is available on the department's website. The research team identified the following system wide problems/cost drivers: increased patient aggression and violence; increased operational treatment models; and redundant staff work.

Based on the report described above, in 2012, the Administration proposed a comprehensive list of reforms, to reverse the rising cost trend, which addressed three stated goals: 1) improve mental health outcomes; 2) increase worker and patient safety; and, 3) increase fiscal transparency and accountability. Perhaps the most significant of these proposed reforms was the reduction of 600 positions throughout the state hospital system. Of these 600 positions, 230 were vacant. In addition to the reduction in positions, the 2012 budget package included key changes in the following areas:

1. Reduced layers of management and streamlined documentation.
2. Flexible staffing ratios, focusing on front-line staff, and redirecting staff to direct patient care.
3. New models for contracting, purchasing, and reducing operational expenses.
4. Elimination of adult education.

Issue 1: Sex Offender Evaluations – Audit Report

Governor’s Budget. The Department of State Hospitals (DSH) budget currently contains \$16.3 million for the staff to conduct evaluations of sexually violent predators. \$8.9 million funds 33 state civil service positions and the remaining \$7.4 million is funding for contracts. Since January 1, 2015, DSH has conducted 413 pre-commitment evaluations and 62 recommitment evaluations of SVPs. The number of evaluations has varied over the last few years, from a high of almost 3,000 in calendar year 2013 to just over 2,000 in calendar year 2014. It’s unclear whether the evaluation budget is tied to the actual number of evaluations.

Background. Because they may present a continuing threat to society, sexually violent predators (SVPs), a small subset of sex offenders, may be committed to a treatment facility after serving their prison terms, rather than being released back into their communities. State law calls for two evaluators from the Department of State Hospitals (DSH) to independently evaluate whether these offenders, referred to DSH by the California Department of Corrections and Rehabilitation (CDCR), meet the SVP criteria set forth in law. If they are determined to meet the criteria, CDCR asks the courts to make a determination that the individual is an SVP and asks that they be committed to a secure DSH facility, generally Coalinga State Hospital, for an indeterminate time period.

State Audit Results. At the request of the Joint Legislative Audit Committee, the California State Auditor undertook an audit of the DSH Sex Offender Commitment Program. As noted above, the program targets a small subset of sexually violent offenders who may present a continuing threat to society because their diagnosed mental disorders predispose them to engage in sexually violent criminal behavior. DSH evaluates these offenders to determine whether they meet criteria to be considered sexually violent predators (SVPs) and whether courts should consider committing such offenders to a state hospital. The State Auditor released her audit report last month.

The report concluded that DSH’s evaluations of potential SVPs were inconsistent. Although state law requires that evaluators consider a number of factors about offenders, such as their criminal and psychosexual histories, the auditors found instances in which evaluators did not consider all relevant information. They also noted that gaps in policies, supervision, and training may have contributed to the inconsistent evaluations. Specifically, DSH’s standardized assessment protocol for conducting evaluations of potential SVPs lacks adequate detail and direction for SVP evaluators on how to perform evaluations. Further, DSH’s headquarters lacks a process of supervisory review of evaluators’ work from a clinical perspective. They also found that DSH has not consistently offered training to its evaluators, and did not provide SVP evaluators with any training between August 2012 and May 2014. Also, DSH could not demonstrate that its evaluators had training on a specific type of instrument used when assessing whether an individual would commit another sexual offense until it began offering such training at the end of 2014.

The audit report also noted additional areas in which DSH could improve its evaluation process. Specifically, DSH has not documented its efforts to verify that its evaluators met the experience portion of the minimum qualifications for their positions. In addition, in March 2013, DSH developed a process for assigning and tracking the workload of its evaluators and recently revised it in January 2015. Although the revised process addresses some concerns about workload assignments, it omits other elements and DSH has not established a formal process for periodically reviewing its workload assignment process. Finally, DSH needs to address its backlog of annual evaluations of currently committed SVPs at Coalinga State Hospital. When Coalinga fails to promptly perform these evaluations, it is not fulfilling one of its critical statutory obligations, leaving the state unable to report on whether the SVPs continue to pose risks to the public and whether unconditional release or release to a less restrictive environment might be an appropriate alternative.

Detailed Findings. During the review of DSH's Sex Offender Commitment Program the auditors noted the following:

- Based on the review of 23 evaluations, they found that DSH's evaluations of current and potential SVP's are inconsistent and evaluators did not demonstrate that they considered all relevant information, which increases the risk of incorrectly concluding whether offenders meet SVP criteria.
 - Four did not indicate that the evaluator considered the psychosexual history of the offenders as required by law and eight did not indicate they considered a report from CDCR that identifies communication barriers or disabilities the offender may have.
 - In one instance, the evaluator listed reviewing certain mental health records and noted that the offender experienced suicidal thoughts, while the other evaluator stated that the offender did not have mental health issues based on other records.
 - Some evaluators stopped an evaluation once they determined that the offender did not meet one of the SVP criteria and other evaluators completed the evaluation of all criteria even though failure to meet one of the SVP criteria would prevent commitment as an SVP.
- The standardized assessment protocol that DSH established does not provide evaluators with adequate detail and direction in performing evaluations.
- DSH's headquarters currently lacks the supervisory structure necessary to perform clinical reviews of evaluations—45 employees report to the chief psychologist, who holds the only supervisory position.
- DSH has not analyzed court outcomes to identify areas where it could strengthen its evaluations. It had not tracked the disposition of its court cases or determined the frequency with which courts agree or disagree with evaluators.

- For nearly two years, DSH did not provide any training to its SVP evaluators and has not fully implemented the comprehensive training plans it began almost a year ago.
- Coalinga has a significant backlog of annual SVP evaluations it has not completed—it had 261 that were due to courts as of December 2014.

Key Recommendations. The auditor recommended that the Legislature allow DSH the flexibility to stop an evaluation once it has determined that the offender does not meet one of the SVP criteria. To improve the consistency of its evaluations, the auditor made recommendations to DSH including the following:

- Create a written policy requiring evaluators to include details describing the documents reviewed in their evaluations.
- Update its assessment protocol to include specific instructions on conducting evaluations.
- Develop a plan for formal supervisory reviews of evaluations from a clinical perspective.
- Use information on the outcomes of past trials to identify training and supervision needs and develop training programs to ensure evaluators conduct evaluations effectively and consistently.

Questions for the Administration. The Administration should be prepared to address the following questions:

1. Please provide an update on how the department is addressing the auditor's findings, including the timeline for the development of a written policy to ensure uniformity in the evaluation process.
2. Is there any quality control system in place to ensure that evaluators are properly trained and are considering all of the relevant factors in each case?
3. It appears from the data provided by DSH that the number of evaluations each year can vary significantly. How do you determine the budget for this workload each year and is it adjusted based on the previous years' actual number of evaluations?

Coleman, et al v. Brown

Background. Over the past few decades, state prisons have increasingly become mental health treatment facilities. Data suggests that the number of people with mentally illness in prison has almost doubled in the last 15 years. Currently, 45 percent of inmates have been treated within the last year for a severe mental illness.

How Did Prisons Become Mental Health Service Providers? Prior to 1957, mental health services were delivered to some persons with serious mental illness by a state-operated and funded institutional system, which included state hospitals for persons with mental illness and two state hospitals serving persons with mental illness and/or a developmental disability.

In 1957, the California legislature passed the Short-Doyle Act in response to the growing number of people with mental illness being confined in public hospitals, many of whom were institutionalized inappropriately or subject to abuse while residing in a state facility. The act, which provided state funds to local mental health service delivery programs, was developed to address concerns that some individuals with mental illness were better served by local, outpatient services rather than 24-hour hospital care. Lawmakers believed that local programs would allow people with mental illnesses to remain in their communities, maintain family ties, and enjoy greater autonomy. When first enacted, the Short-Doyle Act provided state funding for 50 percent of the cost to establish and develop locally administered-and controlled community mental health programs.

In 1968, the Legislature passed the Lanterman-Petris-Short Act (LPS), which further reduced the population of state mental health hospitals by requiring a judicial hearing prior to any involuntary hospitalization. The LPS also initiated increased financial incentives for local communities to take on the provision of mental health services. As a result of this long-term transfer of state operation and oversight to a decentralized, community-based mental health care delivery model, the state mental health hospital population declined from 36,319 in 1956 to 8,198 in 1971. Three public mental hospitals closed during this time period. The Legislature intended for savings from these closures to be distributed to community programs. However, in 1972 and 1973 then-Governor Ronald Reagan vetoed the transfer of these funds.¹

Throughout the 1970s and 1980s counties contended that the state was not providing adequate funds for community mental health programs. In addition, several counties were receiving less funds on a population basis than other counties. This disparity was addressed, with varying levels of success, in both the 1970s and the 1980s with the allocation of “equity funds” to certain counties. Realignment of mental health programs, enacted in 1991, has made new revenues available to local governments for mental health programs but, according to local mental health administrators, funding continued to lag behind demand.²

¹Historical background from The Stanford Law School Three Strikes Project, “When Did Prisons Become Acceptable Mental Healthcare Facilities?”

² Legislative Analyst’s Office “Major Milestones: 43 Years of Care and Treatment of the Mentally Ill”, March 2, 2000.

In the past decade, California has made a significant investment in community mental health treatment funding. In November 2004, California voters approved Proposition 63, also known as the Mental Health Services Act. Proposition 63 provides state funding for certain new or expanded mental health programs through a personal income tax surcharge of one percent on the portion of a taxpayer's taxable income in excess of \$1 million. Revenues generated by the surcharge are dedicated to the support of specified mental health programs and, with some exceptions, are not appropriated by the Legislature through the annual budget act. Full-year annual Proposition 63 revenues to date have ranged from about \$900 million to \$1.5 billion, and could vary significantly in the future. Between 2004-05 and 2013-14, the fund has collected over \$11 billion for local mental health services.³

Proposition 63 funding is generally provided for five major purposes: (1) expanding community services, (2) providing workforce education and training, (3) building capital facilities and addressing technological needs, (4) expanding prevention and early intervention programs, and (5) establishing innovative programs.

In 2013, the federal Patient Protection and Affordable Care Act (ACA) (health care reform) significantly increased access to private and public health care coverage including mental health services. Included in this healthcare expansion was the expansion of Medi-Cal coverage to adults with incomes up to 138 percent of the federal poverty level (FPL). Generally, these are childless adults who are nonelderly and nondisabled. Under the ACA, the federal government will pay for 100 percent of the costs for this population for the first three years (2014-2016) with funding gradually decreasing to 90 percent in 2020. Allowing single, childless adults to receive Medi-Cal should significantly increase access to mental health services for those adults who would otherwise only have access through public county services or the criminal justice system.

The Legislature also passed the Investment in Mental Health Wellness Act (SB 82 (Senate Budget and Fiscal Review Committee), Chapter 34, Statutes of 2013). The bill authorized the California Health Facilities Financing Authority (CHFFA) to administer a competitive selection process for capital capacity and program expansion to increase capacity for mobile crisis support, crisis intervention, crisis stabilization services, crisis residential treatment, and specified personnel resources. The budget provided \$142 million General Fund for these grants. In addition, the bill implemented a process by which the Mental Health Services Oversight and Accountability Commission (MHSOAC) allocates funding for triage personnel to assist individuals in gaining access to needed services, including medical, mental health, substance use disorder assistance and other community services. The 2013-14 budget provided \$54 million (\$32 million MHSOAC State Administrative Funds and \$22 federal funds) in on-going funding for this purpose.

Currently, due to the expansion of Medi-Cal eligibility, the state has greatly increased its efforts to assure that anyone leaving prison or county jail is enrolled in Medi-Cal and has access to necessary health care services, including mental health treatment.

Ralph Coleman, et al. v. Edmund G. Brown Jr, et al. Primarily because the prison system was severely overcrowded and the provision of mental health treatment was significantly

³ Mental Health Service Act (MHSOAC) – Revenue Summary, January 2015

lacking for inmates in need, a class action suit was filed in the United States District Court in 1991 arguing that prisoners with mental illness were subjected to cruel and unusual punishment, a violation of the inmates eighth amendment protections.

In order to find in favor of the plaintiffs, the court needed to determine that the violations were both objective and subjective in nature. In order to meet the objective standard, the court must find that the deprivations were sufficiently serious to constitute the unnecessary and wanton infliction of pain. For the subjective standard, the courts must find that the treatment constituted deliberate indifference, was wanton and showed a pattern of being malicious and sadistic.

In 1995, following a 39-day trial, District Court Judge Lawrence Karlton found that current treatment for mentally ill inmates violated those inmates' eighth amendment protections against cruel and unusual punishment. Judge Karlton found "overwhelming evidence of the systematic failure to deliver necessary care to mentally ill inmates" who, among other illnesses, "suffer from severe hallucinations, [and] decompensate into catatonic states." Although a special master was appointed by the court to oversee implementation of a remedial plan, the situation continued to deteriorate, according to periodic reports from the special master.⁴ 25 years after the federal suit was filed, the state remains under the control of the federal court in *Coleman v. Brown* and is under regular review and oversight by the special master.

In the original ruling, the court identified six areas in which CDCR needed to make improvements: mental health screening, treatment programs, staffing, accurate and complete records, medication distribution and suicide prevention. In subsequent rulings, the courts expanded the areas of concern to include use of force and segregation policies. In addition, the courts also required that condemned inmates in San Quentin State Prison have access to inpatient, acute-care treatment.

On the following page is a detailed timeline of the major events related to *Coleman v. Brown* over the last 25 years.

⁴ Stanford Law School Three Strikes Project, "When Did Prisons Become Acceptable Mental Healthcare Facilities?"

Major Milestones in the *Coleman v. Brown* case

Year	Event
1991	The Coleman class-action lawsuit was filed in U.S. District Court, Eastern District, alleging that mental health care in state prisons violated the Eighth Amendment's ban of cruel and unusual punishment.
1995	The Coleman court found that the State was deliberately indifferent to the mental health needs of inmates in violation of the Eighth Amendment. A special master was appointed.
1997	The Coleman court approved a plan to address the inadequacies in mental health care.
2006	Plaintiffs in the Plata and Coleman cases requested the convening of a Three-Judge Panel to review whether overcrowding was the primary cause of the failure to provide adequate medical and mental health care.
2008	The Three-Judge Panel trial took place.
2010	The Three-Judge Panel ordered the State to reduce its adult institution population to 137.5 percent of design capacity within two years and according to a schedule of four benchmarks at six-month intervals. The State appealed to the U.S. Supreme Court.
2011	In April, Public Safety Realignment (AB 109 (Committee on Budget) Chapter 15, Statutes of 2011), designed to bring about a significant reduction in the prison population, was enacted. It eventually reduced the adult institution population by 25,000.
2011	In May, the U.S. Supreme Court affirmed the Three-Judge Panel's order.
2013	In January, Governor Brown filed a motion to terminate the Coleman lawsuit and to end the requirement to reduce the prison population to 137.5 percent of design capacity. The Coleman court denied this motion.
2013	In May, the plaintiffs filed a motion in court alleging the unconstitutional use of force and an inadequate discipline process against the Coleman class members.
2013	In July, the court ordered the special master to monitor the psychiatric programs run by the Department of State Hospitals, particularly in regards to the adequacy of staffing and the use of handcuffs at all times for patients who are out of their cells.
2013	In December, the court ordered the state to develop a long-term solution for providing inpatient care for condemned inmates currently housed on California's death row.
2014	In April, the Coleman court ruled that California's use of force and segregation of mentally ill inmates violated the inmate's 8th amendment rights.
2014	In May, the Special Master released his report on the adequacy of inpatient mental health care, including the psychiatric programs run by DSH. The special master also filed an assessment of the San Quentin plan to provide inpatient care for condemned inmates and the court provided additional reporting orders.
2014	In August, the court issued further orders regarding segregation and use of force.
2015	In January, the Governor's budget proposal included a request related to complying with the 2014 court orders. In addition, the Special Master released his report on suicide prevention practices.

Source: Events through April 2013 are from CDCR's May 2013 "Timeline in the Plata (medical care), Coleman (mental health care) and Three-Judge Panel (prison crowding) cases"

State Prison Population. The California Department of Corrections and Rehabilitation (CDCR) is responsible for the incarceration of the most serious and violent adult felons, including the provision of training, education, and health care services. As of January 21, 2015, CDCR housed about 133,000 adult inmates in the state's 34 prisons and 42 fire camps. Almost 114,000 of those inmates are in state prisons, which results in those institutions currently being at 137.5 percent of their design capacity. Approximately 9,000 inmates are housed in out-of-state contracted prisons, 6,000 are housed in in-state contracted facilities, and 6,000 are housed in fire camps. CDCR also supervises and treats about 43,000 adult parolees. Approximately 45 percent of those inmates have been treated for severe mental illnesses within the last year.

The Coleman Class. As of January 19, 2015, there are currently 37,829 inmates in the Coleman class (35,472 men and 2,357 women). According to a December 24, 1998 court ruling on the definition of the class, the plaintiffs' class consists of all inmates with serious mental disorders who are now, or who will in the future be, confined within CDCR. A "serious mental disorder" is defined as anyone who is receiving care through CDCR's Mental Health Services Delivery System (MHSDS).

MHSDS provides four levels of care, which depend on the severity of the mental illness. The first level, the Correctional Clinical Case Management System (CCCMS), provides mental health services to inmates with serious mental illness with "stable functioning in the general population, an administrative segregation unit (ASU) or a security housing unit (SHU)" whose mental health symptoms are under control or in "partial remission as a result of treatment." As of January 19, 2015, 30,065 mentally ill inmates were at the CCCMS level-of-care.

The remaining three levels of mental health care are for inmates who are seriously mental ill and who, due to their mental illness, are unable to function in the general prison population. The Enhanced Outpatient Program (EOP) is for inmates with "acute onset or significant decompensation of a serious mental disorder." EOP programs are located in designated living units at "hub institution[s]." As of January 19, 2014, 6,044 inmates with mental illness were receiving EOP services and treatment.

Mental health crisis beds (MHCBs) are for inmates with mental illness in psychiatric crisis or in need of stabilization pending transfer either to an inpatient hospital setting or a lower level-of-care. MHCBs are generally licensed inpatient units in correctional treatment centers or other licensed facilities. Stays in MHCBs are limited to not more than ten days. Currently, there are 389 inmates receiving this level-of-care.

Finally, several inpatient hospital programs are available for class members who require longer-term, acute care. These programs are primarily operated by the Department of State Hospitals (DSH), with the exceptions of in-patient care provided to condemned inmates and to female inmates. There are three inpatient psychiatric programs for male inmates run by DSH that are on the grounds of state prisons. Those programs are DSH-Stockton, on the grounds of the Correctional Healthcare Facility; DSH-Vacaville, on the grounds of Vacaville State Prison; and DSH-Salinas Valley, on the grounds of Salinas Valley State Prison. There are currently approximately 1,000 patients in those facilities and the DSH budget for those

inmates is approximately \$245 million General Fund per year. As of January 19, 1,331 inmates were receiving inpatient care, 47 of those patients were women and 34 were condemned inmates housed at San Quentin State Prison.

In addition to the patients in the prison-based psychiatric programs, approximately 250 Coleman class inmates are receiving care at Atascadero State Hospital and Coalinga State Hospital. The DSH budget for those patients is \$52 million General Fund per year.

Recent Special Master Report Highlights. As part of the ongoing court oversight, the special master has issued three key reports in the last year: (1) a report to the court on the adequacy of mental health care for CDCR inmates housed in inpatient, long-term, acute care beds; (2) an assessment of CDCR's plan to create long-term, acute care beds for inmates housed on death row at San Quentin; and, (3) an audit of suicide prevention practices within the state prisons.

Adequacy of Inpatient Mental Health Care. This report found it difficult to assess the overall quality of care provided to inmates in programs run by DSH because the six inpatient programs varied widely in their policies, practices and operations in nearly every aspect of inpatient mental health care administration and delivery. This criticism is not unlike other criticisms raised about the five state hospitals run by DSH. Each appears to function largely autonomously, without consistent policies and practices across the state hospital system.

The report noted, "from facility to facility, the special master found difference with seemingly no discernable semblance of coordination and consistency among any of the DSH programs." At five of the six facilities, the report found that staffing was inadequate, especially the staffing of psychiatrists. The only program found to be adequately staffed was the facility for female inmate-patients at the California Institution for Women (CIW), which is run solely by CDCR.

Given the staffing problems, it was not surprising that the special master also found that inadequate treatment was being provided to patients and that individual therapy was often non-existent. The report noted that, as of March 2014, DSH-Vacaville was providing between 1.4 and 4.7 hours per month in out-of-cell and clinical treatment activities. Further, the special master found that even non-therapeutic activities were being credited as an hour of out-of-cell treatment. In addition, at Vacaville, patients complained that they had no one to talk to when they were having problems and that if they asked for individual counseling or therapy sessions, the response was often to provide them with more medication. At DSH-Stockton, patients reported that the facility was considerably more restrictive than the prisons they were transferred from because, similar to a maximum security environment, where they are required to be confined to their rooms 21 to 22 hours per day.

In contrast, CIW provided all of the necessary care for patients in the program including group, individual, and unit activities. The report noted that in January 2014, the patients were offered an average of 15 hours per week of group activities and that nearly all scheduled individual treatment was completed. However, the special master did find that it was difficult to distinguish between intermediate levels-of-care and acute care because the enhanced care required for acute care patients did not appear to be provided. However, compared to

the five programs run by DSH for male inmate-patients, the program run by CDCR for female inmate-patients offered significantly more treatment and therapeutic programs.

Inpatient Care for Condemned Inmates at San Quentin State Prison. In this report, the special master's findings were largely favorable. He found that the assessment of condemned inmates who are mentally ill had been successful and that 37 inmates had been found in need of inpatient care. While work remains on the physical plant changes necessary to activate the facility at San Quentin, the special master commended CDCR for the work that has been achieved so far and urged them to continue along an expedited time-line so that the patients could be appropriately placed in the new facility.

Audit of Suicide Prevention Practices in State Prison. The audit found that the provisions of the *Coleman Program Guide* on suicide prevention provided reasonable and comprehensive guidelines. However, while the guidelines were deemed to be adequate, the audit found that the suicide prevention practices within the prisons did not follow the guidelines. Despite the guidelines, the number of suicides within the prisons has remained virtually unchanged since 2010 and the rate of suicide is substantially higher than other prison systems throughout the United States. The report noted that the most surprising finding in the audit was that, despite the implementation of monitoring practices, comprehensive reviews of each inmate suicide, and other quality improvement practices, many of the deficiencies found by the audits had not been identified in any of the quality improvement activities. For example, correctional officers at various prisons were observed not conducting their required 30-minute rounds in administrative segregation units in a timely manner. In addition, medical staffs responsible for conducting observations of inmates in several MHC units were observed to be not conducting the rounds at required intervals and then falsifying documentation. While the deficiencies were not found at all 34 prisons, the report notes that to varying degrees, the deficiency were found at most of the prisons. Given the results of the audit, it is possible that the court will be issuing additional orders related to suicide prevention.

Recent Coleman Court Orders. On April 14, 2014, Judge Karlton ruled that California continued to violate the constitutional safeguards against cruel and unusual punishment by subjecting inmates with mental illness to excessive use of pepper spray and isolation. He gave the state 60 days to work with the special master to revise their excessive force policies and segregation policies, and to stop the practice of holding inmates with mental illness in the segregation units simply because there is no room for them in more appropriate housing. He also ordered the state to revise its policy for strip-searching inmates with mental illness as they enter and leave housing units. The 60-day deadline for some of the requirements was subsequently extended until August 29, 2014.

The department submitted a revised use of force policy to the courts that limits the use of pepper spray on inmate-patients and revises their cell management strategy. On August 11, 2014, the court accepted the new policies. Among other changes to the policy, correction staff is required to consider an inmate's mental health prior to using any controlled use of force. That consideration must include the inmate's demeanor, bizarre behavior status, mental health status, medical concerns and their ability to comply with orders. In addition, a mental health clinician must evaluate an inmate's ability to understand the orders, whether

they are a Coleman class inmate or not. They must also evaluate whether the use of force could lead to a decompensation of the person's mental health.

On August 29, 2014, the state submitted a plan to comply with the remainder of the April 14 court order and the court accepted the plan. Under this court order, CDCR is required to create specialty housing units for inmates with mental illness who are removed from the general population. These specialized units must include additional out-of-cell activities and increased treatment. Under this plan, male inmates in short-term restricted housing will receive 20 hours of out-of-cell time each week, which is twice the amount of time offered to CCCMS inmates in the existing segregation units. Female inmates in short-term housing, however, will only receive 15 hours of out-of-cell time each week, which is 50 percent more than the current ten hours. In the longer-term restricted housing, male and female inmates will be allowed 15 hours a week in out-of-cell time.

The plan also requires that CDCR conduct a case-by-case review of all Coleman class inmates with lengthy segregation terms, in an attempt to decrease the length of stay for inmates in segregated environments. Additionally, the plan establishes a case review for all inmates being released from DSH or CDCR psychiatric inpatient beds who are facing disciplinary terms in segregation to ensure that the inmate is returned to appropriate housing and not to segregation.

In several areas, the plan presented by CDCR extended beyond the court order and included additional training and collaboration between mental health staff and custody staff. The plan also requires custody staff to make security checks on all inmates in specialized restricted housing twice every hour and requires that licensed psychiatric technicians conduct daily rounds to check on every inmate's current mental health status. The increased checks are designed to reduce suicides and suicide attempts among this population, which have been an ongoing concern of the court. Finally, the plan increases the amount of property allowed for inmates in short-term restricted units. For example, inmates will now be allowed one electrical appliance if their cell allows for it. If it does not, they will be provided with a radio.

Issue 2: *Coleman v. Brown* May 2014 Special Master Report

Governor's Budget. The Governor's budget notes that the Administration is currently considering shifting responsibility for 1,086 inpatient mental health treatment beds from DSH to CDCR. The proposed budget includes \$244 million (General Fund) for the three psychiatric programs for prisoners overseen by DSH.

Background. As described above, last year the Coleman special master released a report on the quality of treatment provided to Coleman class inmates being treated in DSH's psychiatric treatment programs and state hospitals. The investigation found significant lapses in the treatment being provided to inmate-patients.

The special master noted that individual therapy was rarely offered, even to those patients who were not ready for group therapy or for whom group therapy was contraindicated. At Coleman State Hospital (one of the two state hospitals that houses CDCR inmate-patients), patients reported that their only individual contact with clinicians occurred on the hallways of the unit. Further, even when individual clinical interventions were indicated for a patient in a treatment team meeting, they were not included in the patient's treatment plan.

The report also noted that at Salinas Valley Psychiatric Program (SVPP), it was the default practice to have two medical technical assistants (MTA) in the treatment room based on institutional cultural perceptions of patient dangerousness rather than on an individualized assessment of the actual potential danger to clinicians and the need to have MTAs present. Similarly, Vacaville Psychiatric Program (VPP) required two escorts for any patient movement, regardless of the patients' custody status, classification, or behavior. In some instances activities were cancelled due to the unavailability of MTAs to escort the patients. According to both clinical and administrative staff, this was the primary reason for limiting out-of-cell activities.

Condemned patients who require an acute level of treatment are currently treated at VPP. According to the investigation, these patients received far less treatment than other acute level patients and no access to group activities or an outdoor yard. In addition, they were only allowed one hour in the day room per week. Reportedly, these patients had weekly contact with a psychiatrist or psychologist. But that contact either happened through the doors of their cells or in a non-confidential setting.

Finally, patients at the Stockton State Hospital (on the grounds of the Correctional Health Care Facility) reported that it was considerable more restrictive than the prisons from which they were referred, stating that it was like being in a maximum security environment, spending 21 to 22 hours per day in their rooms.

Another prevalent theme throughout the report was the lack of uniform policies and procedures throughout all aspects of the program. The report notes that all six of the inpatient programs used their own distinct systems of orientation, cuffing, and restrictions for newly admitted patients, steps/stages through which patients had to progress in order to fully access treatment, and the imposition of restrictions on patients following behavioral problems

or disciplinary infractions. In addition, the six program varied widely in terms of the amount and severity of restrictions on patients' movements, contact with others, and eligibility to receive treatment.

The special master also found that placement of new patients in extremely restrictive conditions was often based on the individual program's established procedures rather than on the severity of the individual patients' mental illness, their propensity for aggressive or self-harming behavior, or their readiness for treatment.

The report found that there was a need for the development of a consistent, more therapeutically-oriented and less punitively-oriented system that could be applied across all six of the programs. More importantly, the report notes, the emphasis throughout needs to be redirected toward greater individualization of any necessary restrictions and staging of patients based on their unique needs and away from an automatic presumption of violent behavior, anti-therapeutic withholding of interaction with others, and deferral of much needed treatment.

Questions for the Administration. The Administration should be prepared to address the following questions:

1. Throughout the report, the special master notes how little time inmate-patients spent out of their cells and how little contact the patients had with other people, other than through their cell doors. Given what we know about how inmates in segregated housing often have their mental health deteriorate, how does this constitute a therapeutic setting that is designed to treat mental illnesses?
2. Multiple concerns have been raised about the general lack of uniform policies and procedures throughout the state hospital system (including those discussed in the previous item). What steps is the department taking to rectify the problem that appears to be endemic?
3. Please provide an update on the discussions between DSH and CDCR on the possible shifting of the psychiatric programs to CDCR.
4. Please provide a detailed description of the changes the department has made over the last year to address the special master's concerns.

Staff Comment. The state Inspector General (IG) provides independent oversight over the state prison system. Among other duties, the IG investigates complaints of mistreatment, provides oversight for CDCR's internal investigations and employee discipline process, conducts medical inspections to review the delivery of medical care to inmates, evaluates the qualifications of all wardens and superintendents, and conducts special reviews at the request of the Speaker of the Assembly or the Senate Rules Committee. However, the jurisdiction of the IG does not include psychiatric programs run by DSH for inmates or any state hospitals.

Given the critical Coleman report on the treatment of patients in the psychiatric programs and the \$300 million General Fund spent annually on inmate-patients housed in facilities run by DSH, the Legislature may wish to consider expanding the scope of the IG's duties to include oversight of over the psychiatric programs or create a similar independent oversight entity with the necessary expertise in the provision of mental health diagnosis and treatment. Expanded and independent oversight would provide the Legislature and the Administration with additional on-going information concerning the quality and type of treatment provided. In turn, the Legislature and Administration would be able to take steps to improve treatment and outcomes, ensure a better use of the taxpayers' money, and optimally, see an end to federal court oversight.

In last year's budget, in lieu of expanding the role of the current IG or creating a new IG, the Legislature adopted the following report requirement:

The Secretary of the Health and Human Services Agency shall provide, no later than January 10, 2015, a report, together with specific and detailed recommendations, to the fiscal and appropriate policy committees of the Legislature, reviewing and evaluating the best practices and strategies, including independent oversight, for effectively and sustainably addressing the employee discipline process, criminal and major incident investigations, and the use of force within the Department of State Hospitals. The secretary may consult with the California Highway Patrol, the Department of Corrections and Rehabilitation, the Office of the Inspector General and any other resource identified by the Secretary as valuable to this analysis. It is the intent of the Legislature that this report and set of recommendations reflect a critical and pragmatic analysis of the department's current practices and policies, and include a set of meaningful recommendations describing how current practices and policies should be revised and reformed to assure safety and accountability in the state hospital system.

This requirement was intended to further the conversation concerning the need for on-going, independent oversight and the adoption of uniform policies and practices throughout the state hospital system. This report was discussed during the March 19 hearing and the Legislature may wish to include funding in the budget and adopt trailer bill language expanding the IG's jurisdiction.

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Issue 3: *Coleman v. Brown* Budget Proposal

Governor's Budget. As outlined above, in the past year, the federal court ordered CDCR to make various changes concerning their treatment of certain inmates who are mentally ill. The revised policies in the budget proposal include the following:

- An increase in clinical involvement for controlled use of force incidents.
- Positive intervention strategies to address inmates with certain behavioral restrictions.
- Additional monitoring and reporting activities.

The new policies will provide more clinical involvement in certain activities and restrictions that previously included only custodial involvement. In addition, the new policies establish monthly reporting on certain segregated housing units for mentally ill inmates and, if found out of compliance with requirements for a consecutive two month period, the CDCR will not be allowed to house mentally ill inmates in those units.

The new policies also require CDCR to separately house Correctional Clinical Case Management System (CCCMS) inmates (the lowest level of care in CDCR's mental health system) and general population inmates in segregated housing units. In the new CCCMS housing units, inmates will be provided additional out of cell time and clinical interaction. CDCR will also transfer mentally ill inmates housed in segregated housing units for non-behavior related issues to permanent housing more quickly. In cases where a permanent housing option cannot be quickly identified, CDCR has established a short term housing unit for these inmates.

The court orders and CDCR's revised policies are intended to improve prison mental health care and reduce suicide incidents in prison. In addition to the efforts outlined above, CDCR plans to perform welfare checks on inmates in condemned and security housing units. CDCR will also expand and improve mental health related training, which includes training specifically targeted at educating staff about preventive measures and to improve their use of existing tools to reduce inmate suicides.

The budget requests \$13 million General Fund and 56.9 permanent positions in the current year, and \$42 million General Fund and 290.4 permanent positions annually, beginning in 2015-16, for the court-ordered changes to CDCR's use of force and segregated housing policies. The remaining 2014-15 \$6.6 million and 47.9 positions displayed on the following page are being absorbed within existing resources. The money is budgeted as follows:

**2014-15 Coleman Positions and Costs
(Amounts in Millions)**

	Positions	Total Funding
Use of Force and Cell Management Status	6.0	\$ 1.6
Short and Long Term Housing Units	26.4	\$ 5.6
Non-Disciplinary Segregation	12.5	\$ 1.7
Inmate-Patient Welfare Check System	47.4	\$ 5.7
Monitoring and Oversight	8.5	\$ 1.2
Specialized Mental Health Training	4.0	\$ 3.8
Total	104.8	\$ 19.6

**2015-16 Proposed Coleman Positions and Costs
(Amounts in Millions)**

	Positions	Total Funding
Use of Force and Cell Management Status	12.0	\$ 2.7
Short and Long Term Housing Units	162.4	\$ 24
Non-Disciplinary Segregation	20.0	\$ 2.4
Inmate-Patient Welfare Check System	64.0	\$ 7.0
Monitoring and Oversight	20.0	\$ 3.0
Specialized Mental Health Training	12.0	\$ 2.2
Total	290.4	\$ 42

Legislative Analyst's Office (LAO). The LAO did not raise any concerns with this proposal in their analysis of the Governor's budget.

Questions for the Administration. The Administration should be prepared to address the following questions:

1. Please provide a detailed description of each component of the proposal.
2. The proposal includes funding for mental health training. How many hours of training will be provided? Who will receive the additional training? Is this one-time or on-going training?
3. Please elaborate on the infrastructure constraints that prevent the department from providing additional out-of-cell time to females and reception center CCCMS ASU units. Has the court and/or the special master approved the plan to provide 15 rather than 20 hours of out-of-cell time for the above populations?
4. Did the court order a specific amount of out-of-cell time for the CCCMS ASU units or was that amount determined by CDCR? If the latter, how did CDCR determine the appropriate amount of time?

5. Will all of the prisons which house CCCMS inmates have a CCCMS ASU unit? If not will CCCMS inmates at prisons without CCCMS ASU units be transferred to prisons with such units?
6. How did the department determine which prisons will have a CCCMS ASU unit?

Action: Held Open

Issue 4: San Quentin Condemned Inmates

Governor's Budget. The Governor's budget includes two proposals related to condemned inmates serving their sentences at San Quentin State Prison.

1. **San Quentin Condemned Inmate Housing.** The Governor's budget requests \$3.213 million General Fund, of which \$325,000 is onetime and 24.3 positions to convert two tiers of an existing housing unit at San Quentin to accommodate inmates who have been sentenced to death. This conversion will provide 97 extra cells to accommodate the current population.
2. **San Quentin Psychiatric Inpatient Program (PIP).** The Governor's proposed budget includes 99.8 positions and \$11 million General Fund for both CDCR and California Correctional Health Care Services (CCHCS) to provide clinical support, custody staff, equipment and training to operate a 40-bed acute level of care psychiatric facility to provide treatment for condemned inmates with mental illnesses severe enough to require inpatient care. \$4.3 million General Fund is for CDCR and \$6.7 is for CCHCS. CDCR intends to convert 17 existing mental health crisis beds and 23 medical beds to psychiatric inpatient beds.

Background. All inmates sentenced to death in California are sent to San Quentin to fulfill their sentence. Currently, 729 inmates have been sentenced to death in California; however, San Quentin currently has appropriate housing and security for 690 condemned inmates. Every inmate condemned to death is required by law to be housed in individual cells.

Questions for the Administration. The Administration should be prepared to address the following questions:

1. The budget proposal for the PIP notes that because this is a sensitive and complex project, the department intends to have the program operate as a modified stand-alone facility and that it report directly to the deputy director over mental health. Please explain why it is such a complex and sensitive project, other than the fact that the services are being provided to condemned inmates.
2. The PIP proposal also notes that this new program will be modeled after the existing program at the California Institution for Women. Please describe that model and how it differs from other PIPs.
3. Please explain CDCR's and CCHC's separate responsibilities for the new treatment program.

Action: Approved as budgeted. Vote: 3-0

Issue 5: Inspector General Update – Sensitive Needs Yards

Background. Sensitive needs yards (SNY) in the men's prisons are yards designed specifically for those inmates who may not be safe in the general population. Generally, SNYs contain inmates who are ex-gang members, sex offenders, or others in need of protective custody.

March 2015 Semi-Annual Report. In its last semi-annual report, the OIG raised the issue of increasing violence in sensitive needs yards (SNY). More than half of the in-custody homicides involved SNY inmates even though these yards house only 27 percent of the inmate population and were originally created to prevent violence to those inmates requiring protection from the rest of the population for various reasons. In addition to the listed homicides, there were three in-cell great bodily injury incidents against inmates classified as SNY, but that did not result in death.

OIG Recommendations. According to the OIG there are steps the department can take to lessen such risks. Given the current nature of the population on sensitive needs yards, which comprises sex offenders as well as gang dropouts and other general population inmates, the OIG recommended the department consider some additional preventative steps. These included re-examining its double-cell policy for sensitive needs yards, requiring completion of compatibility forms to help ensure that inmates are properly placed with compatible cellmates, and giving potential cellmates the opportunity to document their agreement to house together. Inmates with prior violence toward cellmates should not be double celled, even on an SNY, until each inmate's propensity for violence is considered. Additionally, the OIG recommended the department review the process for transitioning inmates from single-cell designation to double-cell status.

Questions for the Administration. The Administration should be prepared to address the following questions:

1. Please respond to the findings in the semi-annual report and address the steps the department is taking to reduce the violence in sensitive needs yards.

Issue 6: Inspector General Update – Segregated Housing Units

Background. The Department of Corrections and Rehabilitation (CDCR) currently confines approximately 3,200 inmates in segregated housing unit (SHU) facilities. Of these, over 2,000 inmates are serving indeterminate terms; many of the 3,200 are serving SHU terms of several years or even decades.

Psychological research has found that a lack of social interaction can lead SHU inmates to suffer from a variety of psychological and psychiatric illnesses. These can include chronic insomnia, panic attacks, and symptoms of psychosis (including hallucinations).

On October 9, 2013, the Assembly and Senate Public Safety committees held an informational hearing on California's prison segregation policies. The committees heard from representatives of CDCR and the OIG, experts, advocates and even individuals who had been housed in the SHU. Among the experts was Margaret Winter, the head of the ACLU prison project, she:

[T]old lawmakers the tide is turning nationally when it comes to use of isolation in prisons.

“Every reputable study has found negative effects,” Winter said, noting that when she helped the Mississippi Department of Corrections reduce its use of isolation, prison violence actually went down.

Asked for alternative methods for dealing with inmates who pose a danger to other inmates or staff, Winter said segregation can be an effective short-term tool, if paired with incentives to change behavior. Most prison systems simply let inmates languish in isolation without even determining if they're still a threat, Winter said.

On February 11, 2014, another joint informational hearing was held to discuss CDCR's new Security Threat Group Policy and the impact that the policy has had on the SHU population. Committee members heard from CDCR representatives, experts and attorneys who represent SHU inmates. Hope Metcalf, Associate Research Scholar in Law, Director of Arthur Liman Program, and Lecturer in Law, Yale Law School, stated in the hearing:

[T]he basic bottom line is that staff and inmates must feel safe and prisons do need tools to shape behavior. I don't think that there's much dispute about that. And in fact, some forms of short-term segregation may be necessary and there may indeed be some portions of the population for whom placement in the general population is not appropriate. However, that does not translate in any sense to the fact that long-term isolation of the ilk that we see at Pelican Bay is in fact serving sound, public policy.

So given the overreliance on isolation, many prisons are at best delaying problems, and, in fact, may be aggravating them. So I do not wish to say that most people released from long-term isolation are dangerous. I have many, many clients who have left isolation and they have gone on to do well. However, I do think that if we're talking about public safety, thinking about outcomes, including recidivism is important. Equally important of course in terms of outcomes is not just whether or not someone is violent, but whether they are able to flourish and become independent once they leave. So the fear is—one fear I've had—is even where outcomes don't show for example violence, is that person able to hold a job or are they now so debilitated that they are reduced to relying on state support once they leave prison?

These hearings highlighted the fact that, while short term segregation is an important tool, long term segregation can have a detrimental impact, on not only the inmates, but also on public safety.

Hunger Strikes in California State Prisons and CDCR's new Security Threat Group Policy. On July 1, 2011, inmates in the Pelican Bay State Prison's Security Housing Unit initiated a hunger strike. Approximately 5,300 inmates began refusing state-issued meals. The number of inmates peaked at more than 6,500 two days later and then gradually decreased until the strike concluded on July 20, 2011.

In September 2011, a second hunger strike began. After three days, 4,252 inmates had missed nine consecutive meals.⁵ By October 13, 2011, the number of inmates participating had dropped to 580. CDCR officials in Sacramento were contacted by Pelican Bay State Prison inmates by letter and agreed to meet with inmate representatives to discuss CDCR's ongoing review of and revisions to its SHU policies. All inmates had resumed eating by Sunday, October 16, 2011.

A third hunger strike began on July 8, 2013, when more than 30,000 inmates refused to eat state-issued food until the SHU policies were changed. By July 11, 2013, 12,421 inmates had missed nine consecutive meals. By September 4, 2013, there were 100 inmates on a hunger strike; 40 of them had been on a hunger strike continuously since July 8. All inmates resumed eating on September 5, 2013.

According to CDCR:

In May 2011, prior to two hunger strikes that year, the California Department of Corrections and Rehabilitation (CDCR) began revising its gang validation and Security Housing Unit (SHU) confinement policies and procedures. This effort resulted in the "Security Threat Group Prevention, Identification and Management Strategy," approved and certified by the Office of Administrative Law on October 18, 2012 and filed with the Secretary of State.

⁵ CDCR considers an inmate to be on hunger strike if he or she misses nine consecutive meals.

The Security Threat Group (STG) policy addresses the concerns inmates raised during two hunger strikes in 2011. The STG program provides individual accountability of offenders; is behavior-based; incorporates additional elements of due process to the validation system; and provides a Step-Down Program as an alternative for inmates to demonstrate their willingness to refrain from criminal gang behavior.

CDCR has updated their regulations to include the policies that were utilized in in the pilot program. These policies include, in part:

Security Threat Groups

- The new policy replaces the word “gang” with the more nationally accepted term “security threat group.” The Security Threat Group (STG) program does not take a “one size fits all approach,” but better identifies, assesses and prioritizes security threat groups (prison gangs, street gangs, disruptive groups) based on behavior and on the level of threat the group and its affiliates present to the safety and security of prisons and the public.
- CDCR categorizes criminal gangs into STGs based on a threat assessment conducted by the department’s Office of Correctional Safety. STG behavior is defined as documented behavior that promotes, furthers or assists a security threat group.
- An STG-I designation is used for criminal gangs that pose a greater threat. It includes traditional prison gangs and disruptive groups with a history of violence or influence over subservient groups. These STG groups include, but may not be limited to, traditional prison gangs like the Aryan Brotherhood, the Black Guerilla Family, the Mexican Mafia, the Nazi Low Riders, the Northern Structure, and the Nuestra Familia. An STG-I designation may also include a gang with a history and propensity for violence and/or influence over subservient STGs. CDCR will review STG-I designations at least every two years.
- An STG-II designation may be used for traditional disruptive groups and street gangs. These can include the Crips, the Bloods, the 2-5s, the Northern Riders, MS 13, the Norteños, the Sureños, Florencia 13 and white supremacist groups.

Validation

- The validation process is a strategy for identifying and documenting criminal gang member, associates and suspects.
- STG associates – the majority of inmates housed in SHUs – are no longer placed in a SHU based solely upon their validation to an STG unless there is a nexus to confirmed gang activity.

- CDCR added an objective point-based component in the offender validation process and enhanced considerations of due process. Each source item is now given a weighted point value between two and seven points, and individual validation must include three independent sources with a cumulative total of 10 points or more.
- Unsubstantiated confidential information from a single source will not establish a foundation for confirming the existence of STG-related behavior.

Step-Down Program

- The Step-Down Program enables an inmate serving an indeterminate SHU term to ultimately earn his way back to a general population or sensitive needs yard. The revised policy reduces the six-year inactive review policy for release to a general population to a four-year program. Additionally, inmates demonstrating positive behavior and participation may have their length of participation further reduced to three years.
- The Step-Down Program is an incentive-based, multi-step process for STG offenders who choose to discontinue criminal and/or gang activity. Offenders can always choose to drop out of a gang; however, in the Step-Down Program, inmates are not required to drop out of their gang.
- The five-step program supports, educates and increases privileges for SHU inmates who refrain from gang behavior and are disciplinary-free. Each step is progressive and requires the willingness of the inmate to participate. Each offender is responsible for demonstrating he can be released to a less restrictive environment while abstaining from criminal behavior.
- In the fifth step, inmates are observed and monitored in a general population facility.

The Office of the Inspector General recently reviewed CDCR's Step-Down Program for their *Fifth Report on CDCR's Progress Implementing its Future of California Corrections Blueprint*:

The new gang management policy requires an offender in step 1 through 4 to participate in inmate programming or journaling before progressing to the next step. Inmates placed in steps 1 and 2 are to have program assessments initiated, such as TABE (Test of Adult Basic Education) and COMPAS assessments. Inmates placed in step 3 can participate in self-directed journals that are intended to develop a system of values and strategies leading to responsible thinking and behavior. Step 4 inmates may have programming that includes education, violence prevention programs, and gang diversion programs. If an inmate refuses to participate in the SDP, including inmate programming or journaling, the inmate will return to a previous step or regress further.

The OIG's fieldwork reviewed the current status of 65 inmates who were assigned to the SDP (steps 1 through 4) for at least 12 months to identify the result of the ICC review. As

summarized on the next page, the OIG found that 31 of the 65 inmates (48 percent) successfully progressed to the next step; 27 inmates (41 percent) were retained in their current step; and 7 inmates (11 percent) had regressed to a prior step.

The percentage of inmates who progressed (48 percent) based on active participation in the SDP remained stable; it decreased by only 1 percent since the last OIG report. The inmates retained in their current step increased by 14 percent, while the inmates who regressed decreased by 11 percent from the last OIG report. As shown in the preceding diagram, the OIG found that 27 of the 34 inmates (79 percent) from the “retain” and “regress” categories refused to participate in the SDP. For the inmates who were unable to progress, it was due to “refusing to participate” (27 inmates), “other reasons” (four inmates), and “will not participate in journaling” (three inmates, one each from steps 1, 2, and 3). The “other reasons” typically involved inmates who were indecisive on choosing to participate, which caused more assessment time before an ICC decision was made. . .

The OIG’s fieldwork noted an increasing percentage of inmates progressing (or transitioning) to the next step as they move closer to being released to general population (step 5). The OIG found seven of the eight inmates reviewed were initially assigned to step 4 at California Correctional Institution and all progressed to the next step. Also, over half (54 percent) of the inmates assigned to step 3 were able to progress to step 4. Each inmate in the SDP is assigned ratings in various categories during the annual program review or ICC reviews (at 90 or 180 days). Most inmates who progressed received the highest rating of “exceptional” in the following categories: “attitude toward staff,” “attitude toward fellow inmates and workers,” and “teamwork and participation.” This confirms that inmates demonstrating a willingness and commitment to discontinue gang activity may progress through the SDP to their eventual release from the SHU.

OIG Comments. The department has conducted 1,070 case-by-case reviews in the 27 months since its gang management pilot began in October 2012. This represents 40 percent of its total STG population (2,692 inmates) who were validated prior to March 1, 2013. This is an increase of 132 case-by-case reviews identified in the OIG’s prior report. The OIG estimates at its current rate, the department will not complete all reviews until February 2019. Although there were no benchmarks identified in the blueprint or STG pilot program to complete a specific number or percentage of case-by-case reviews, a more rapid pace of reviews may have been expected by the Legislature and stakeholders.

Security Threat Group Update. Updated information from CDCR shows that the STG review teams have currently completed 1,172 case-by-case reviews. The current budget for the STG program is \$1.1 million General Fund and seven correctional counselor specialist positions.

SHU Conditions at the Women’s Prisons. The department houses the majority of its female offender population in two institutions, the Central California Women’s Facility and the California Institution for Women. To a smaller degree, the department also houses female offenders at the Folsom Women’s Facility (approximately 500 inmates) and in fire camps and specialized female offender programs (fewer than 100 inmates). When inmates engage in violent or dangerous behavior, staff members are obligated to remove them from the general

population to protect the safety of the prison. Behavior such as rioting, assaults, and gang participation can cause an inmate to be sent to the administrative segregation unit while staff members evaluate the nature and level of threat the inmate presents to the prison. Also, some inmates who become victimized by other inmates and need protection are placed in the administrative segregation unit until the staff can find appropriate housing for them. In the case of some female inmates, no such housing exists except for a SHU placement.

Inmates placed in ASUs are entitled to due process rights. Because administrative segregation unit inmates lose more of their freedoms than inmates in the general population, prison officials must provide them with due process protections to ensure they receive a fair hearing to dispute their ASU placement. Therefore, the department has established comprehensive policies and procedures designed to protect inmates' due process rights and ensure the consistent and appropriate use of ASUs statewide.

On October 31, 2013, the Senate Committee on Rules requested the Office of the Inspector General examine SHU conditions specifically related to female inmates serving security housing unit terms.

The OIG evaluated the terms and conditions of confinement for the 160 inmates who were serving SHU terms between October 9, 2013 and October 31, 2013 in the California Institution for Women (CIW) security housing unit, the CIW psychiatric services unit (PSU), and the administrative segregation unit (ASU) at the Central California Women's Facility (CCWF).

During this review, the OIG conducted site inspections of the CIW security housing unit and psychiatric services unit, including the cells, recreational exercise yards, visiting areas, clinic space, and law libraries; and the CCWF administrative segregation unit, including the cells, recreational exercise yards, visiting areas, and law libraries. OIG staff interviewed staff and inmates at both prisons. OIG staff reviewed applicable laws and case law, and departmental rules and regulations. Finally, the OIG reviewed the central files for 160 inmates, including the disciplinary rules violation reports (RVRs), ASU placement orders, SHU term assessment forms, committee actions, appeals, and segregation logs.

The OIG's review found that 52 of the 160 inmates were serving SHU terms for the charges of Refusal to Accept Assigned Housing or Enemy/Safety Concerns, both nonviolent offenses. Eighteen of these inmates have served SHU terms in excess of one year. Subsequently, many suffer negative consequences as a result of this housing when considered for parole. By addressing this issue, the department could potentially reduce the female SHU population by one-third.

Because there is only one security housing unit (with a limited number of beds) for female inmates, many female inmates serve their entire SHU term in the administrative segregation unit at CCWF, where they are not afforded some of the programs and privileges entitled to SHU inmates.

OIG Recommendations. Among the recommendations in the OIG's report are the following:

- As long as it is unable to provide alternative housing (such as the men's sensitive needs yards), the department should discontinue imposing SHU terms on female inmates for the charge of Refusal to Accept Assigned Housing.
- CDCR should develop alternative housing options for those female inmates with enemy/safety concerns. This would also alleviate the possible negative impact to life-term inmates appearing before the Board of Parole Hearings for parole consideration who have received RVRs and SHU terms for these offenses.
- The department should develop a process to ensure that the safety concerns raised by inmates who refuse to accept their assigned housing are thoroughly investigated.
- The department should ensure that female inmates serving SHU terms are allowed to possess all of the items on the departments expanded property matrix.
- To assist the transition from long-term segregation back into the community, the department should provide pre-release services to inmates who will be released from prison directly from a security housing unit.
- In addition to the recommendations above, if the department is going to continue housing SHU inmates at CCWF, it should do the following:
 - Ensure the SHU inmates housed in the CCWF administrative segregation unit receive the same property and privileges as the SHU inmates housed in security housing units.
 - Address the physical plant and custody coverage issues that are hindering CCWF from offering at least ten hours of outside exercise time to inmates housed in the ASU.
 - Ensure that inmates are offered at least ten hours of outside exercise time per week and document it appropriately an inmate's records.
 - Develop a process for offering rehabilitation programs, such as literacy, GED preparation, and college courses, to SHU inmates housed 90 days or more in ASU.

Questions for the Administration. The Administration should be prepared to address the following questions:

1. The OIG estimates that your STG case-by-case reviews will take approximately four years to complete, at your current pace. Has the Administration considered redirecting more staff to that effort to increase the pace?
2. Please provide an update on the status of the OIG's recommendations for female SHU inmates.

Issue 7: Population Budget Proposal

Governor's Budget. For the CDCR's 2015-16 budget, the Governor proposes total funding of \$10.283 billion (\$10 billion General Fund and \$275 million other funds). This amount is \$160 million, or two percent, above the amount budgeted in 2014-15. The primary driver of CDCR's costs is inmate population and the associated healthcare, facilities, and guarding costs. To the extent that California wishes to redirect more of its limited resources from incarceration to other priorities, the state must continue the current trend of finding effective alternatives to incarceration.

Background. The mission of the California Department of Corrections and Rehabilitation (CDCR) is to enhance public safety through safe and secure incarceration of the most serious and violent offenders, effective parole supervision, and rehabilitative strategies to successfully reintegrate offenders into our communities.

As one of the largest departments in state government, CDCR operates 37 youth and adult correctional facilities and 43 youth and adult camps. CDCR also contracts for multiple adult parolee service centers and community correctional facilities. CDCR operates an adult prisoner/mother facility, adult parole units and sub-units, parole outpatient clinics, licensed general acute care hospitals, regional parole headquarters, licensed correctional treatment centers, hemodialysis clinics, outpatient housing units, a correctional training center, a licensed skilled nursing facility, and a hospice program for the terminally ill. CDCR has six regional accounting offices and leases approximately two million square feet of office space. CDCR's infrastructure includes more than 42 million square feet of building space on more than 24,000 acres of land (37 square miles) statewide.

The table immediately below reflects the CDCR's most recent population figures.

Housing Category	2014-15	2015-16
CDCR Facilities	118,972	116,647
California City	2,331	2,381
Community Correctional Facilities	4,193	4,523
Out of State Correctional Facilities	8,922	8,988
Department of State Hospitals	308	308
Elderly Parole	26	26
Medical Parole	27	27
Female Rehabilitative County Corr. Center	52	52
Non Violent 2nd Striker 50%	248	1,556
Prisoner Mother Program	22	24
Reentry Bed Expansion	186	186
SB 260 (sentence review for youth after 15yrs)	89	89
Proposition 47	470	1,915
2 for 1 credits for min. custody	51	280
Total Adult Inmate Population	135,897	137,002

Subsequent to the release of the above population data, CDCR announced its success in meeting the federal Court's order to reduce the state's prison population to 137.5 percent of design capacity. This announcement comes roughly a year ahead of the deadline set by the federal court. Presumably, this change is heavily attributable to an underestimation of the impact Proposition 47 (2014) would have on California's prison population.

Contract Bed Capacity. As of March 31, 2015, there are 5,883 inmates housed in in-state contract facilities. The state has seven community correctional facilities, some of which are private facilities and some are public. 3,922 inmates are currently housed at these in-state contract facilities. In addition, the state currently leases California City Correctional Facility (CCCF) which houses almost 2,000 inmates.

8,622 inmates were housed in out of state contract facilities in Arizona, Mississippi, and Oklahoma as for March 31st.

In 2012, the Administration proposed a comprehensive, long-term plan, *The Future of California Corrections* to improve the effectiveness of the state's prison system. The Legislature adopted the plan, based on the understanding that, over time, it would significantly reduce CDCR's budget and the prison population, and it approved the associated funding and statutory changes. As part of that blueprint, the Administration committed to ending all out-of-state contracts by 2015-16. The blueprint projected that by 2014-15, there would be 1,864 inmates remaining in out-of-state contract beds. Returning out-of-state inmates to in-state facilities was expected to save the state \$318 million annually.

What Changes Have Enabled California To Reduce Its Prison Population? In recent years, California's public safety system, along with the role state government plays in it, has evolved at a rapid pace. Although there have been numerous changes to state law in the public safety realm, none are projected to have as much system-wide impact as AB 109 (The Public Safety Realignment of 2011), Proposition 36 (Three Strikes Reform), and Proposition 47 (Sentencing and Penalty Reform).

AB 109 (The Public Safety Realignment of 2011). This piece of legislation has been instrumental in helping California close the revolving door of low-level inmates cycling in and out of state prisons. This piece of legislation also serves as the cornerstone of California's solution for reducing the number of inmates in the state's 33 prisons to 137.5 percent of system-wide design capacity by 2016, as ordered by the U.S. Supreme Court. Contrary to some media reports, no inmates were transferred from state prison to county jails or released early. AB 109 can be divided into two components, custody and community supervision.

- **Custody.** Effective October 11, 2011, the Public Safety Realignment shifted funding and responsibility for housing non-violent, non-sexual, and non-serious offenders and parole violators from the state to county jurisdictions.
- **Community Supervision.** Effective October 2011, county-level agencies assumed supervisory responsibilities for new non-violent (irrespective of prior convictions), non-serious (irrespective of prior convictions), and some sex offenders upon release from state prison. The California Department of Corrections and Rehabilitation (CDCR) continues to have jurisdiction over all current parolees who were released on state parole prior to October 2011. For state prison inmates released after October 2011, county-level supervision responsibilities do not include the following offender populations as they continue to be supervised by the CDCR:
 - Inmates paroled from life terms to include third-strike offenders:
 - Offenders whose current commitment offense is violent or serious, as defined by California's Penal Code §§ 667.5(c) and 1192.7(c).
 - High-risk sex offenders, as defined by the CDCR.
 - Mentally Disordered Offenders.

Proposition 36 (Three Strikes Reform). Proposition 36, passed by the voters in November 2012, offers an opportunity for eligible California prison inmates sentenced under California's prior three strikes law for non-serious, non-violent crimes to seek a sentence reduction from their sentencing courts.

- Revises the three strikes law to impose life sentence only when the new felony conviction is "serious or violent."
- Authorizes re-sentencing for offenders currently serving life sentences if their third strike conviction was not serious or violent and if the judge determines that the re-sentence does not pose unreasonable risk to public safety.

- Continues to impose a life sentence penalty if the third strike conviction was for "certain non-serious, non-violent sex or drug offenses or involved firearm possession."
- Maintains the life sentence penalty for felons with "non-serious, non-violent third strike if prior convictions were for rape, murder, or child molestation."

As of December 10, 2014, 1,939 of those eligible have been resentenced and released from prison.

Proposition 47 (Sentencing and Penalty Reform). On November 4, 2014, California voters passed Proposition 47, which requires misdemeanor rather than felony sentencing for certain property and drug crimes. Proposition 47 also permits inmates previously sentenced for these reclassified crimes to petition for resentencing.

As of December 4, 2014, 132 inmates had been resentenced and released from prison. Under Proposition 47, it is estimated that the 2015-16 institution average daily population will be reduced by approximately 1,900 inmates as a result of resentencing and avoided new admissions.

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, increase victim services grants, and support mental health and substance use disorder treatment services. The Director of Finance is required, on or before July 31, 2016, and on or before July 31 of each fiscal year thereafter, to calculate the state savings for the previous fiscal year compared to 2013-14. Actual data or best estimates are to be used and the calculation is final and must be certified to the State Controller's Office no later than August 1 of each fiscal year. The first transfer of state savings to the Safe Neighborhoods and Schools Fund will occur in 2016-17 after the Department of Finance calculates savings pursuant to the proposition.

Legislative Analyst's Office (LAO) Recommendation

Withhold Action Pending Additional Justification. We find that the Legislature could reduce the Governor's proposed contract bed funding level by at least \$20 million by directing CDCR to move inmates from contract beds into state prisons. We note, however, that the amount of savings could exceed our preliminary estimate depending on (1) the timing of the activation of the infill beds, (2) how the court counts the infill capacity, and (3) how the actual inmate population level compares to the administration's projections. As such, we recommend that the Legislature not approve the proposed contract bed funding until the department can provide additional information demonstrating what level is necessary to meet the court-ordered population cap. Specifically, we recommend the Legislature direct the CDCR to report at budget hearings on (1) how the administration's population projections for the current year compare with actual population levels, (2) whether the infill facilities are on track to be activated on schedule, and (3) the status of negotiations with plaintiffs related to how the court will count the additional capacity resulting from the activation of the infill facilities. Based on this information, the Legislature would be able to assess

the amount of contract bed funding needed and adjust the budget for 2015-16 accordingly.

Direct CDCR to Provide Long-Term Population Projections. In addition, we recommend that the Legislature direct CDCR to resume its historical practice of providing long-term population projections biannually. This information would allow the Legislature to better assess and plan for the long-term implications of Proposition 47, as well as court-ordered population reduction measures, and determine how best to adjust the state's prison funding and capacity accordingly.

Action: Held Open

Issue 8: Infill Activation

Governor's Budget. The budget proposal requests 252.3 positions and \$35.6 million (\$35.5 million General Fund and \$90,000 Inmate Welfare Fund) in 2015-16 and 518.2 positions and \$67.8 million (\$67.6 million General Fund and \$209,000 Inmate Welfare Fund) for the custody, clinical, and support personnel and operating and equipment expenses associated with activating 1,584 new beds at Mule Creek State Prison (NCSP) and 792 beds at Richard J. Donovan State Prison (RJD).

Background. 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 will be located adjacent to Mule Creek State Prison in Lone, and the third will be located adjacent to Richard J. Donovan Correctional Facility in San Diego. The budget proposal before the Legislature assumes activation will begin in February of 2016.

At the time the Legislature approved the infill projects it was assumed that the cost of operating the facilities would be offset by the closure of the California Rehabilitation Center (CRC) in Norco. That closure would have saved the state approximately \$160 million in General Fund per year. However, after the three-judge panel ordering the state to reduce the prison population to 137.5 percent of capacity by February 28, 2016, the Administration decided part of the population reduction strategy would require keeping CRC open.

Questions for the Administration. The Administration should be prepared to address the following questions:

1. What is the justification for growing the institutional buffer from approximately 2,000 to over 4,000?
2. What is the Administration's current plan for the closure of CRC and the return of prisoners from out-of-state contract facilities?

Action: Held Open

Issue 9: CIW Walker Unit Activation
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Governor's Budget. The proposed budget requests \$1.069 million General Fund and 9.1 positions in 2015-16, and \$1.602 million General Fund and 13.6 positions beginning in 2016-17, to reopen a closed 20-bed unit at the California Institution for Women (CIW).

The proposal notes that the new unit is scheduled to open in December of 2015 or January of 2016. The unit is intended to provide space for inmates who need to be separated from the general population for safety or other reasons. As noted in issue 5 above, women in this situation are currently confined to indeterminate placement in the CIW Segregated Housing Unit.

Background. On March 31, 2015, CDCR's female population was 5,519. The Governor's budget projects that CDCR's female population will be 6,180 by June 30, 2015, and will decrease slightly to 6,144 by June 30, 2016.

CDCR currently houses female offenders at three institutions; California Institute for Women in Corona, Central California Women's Facility in Chowchilla, and Folsom Women's Facility at Folsom State Prison near Sacramento. The following is the population in each facility as of March 31, 2015.

Prison	Population	Capacity	Percent of Capacity
California Institute for Women	1,771	1,398	126.7%
Central California Women's Facility	3,244	2,004	161.9%
Folsom Women's Facility	504	403	125.1%
Total	5,519	3,805	145%

Recidivism. Women are considerably less likely than men to return to prison after they are released. A 2011 study from CDCR found that women have a 55 percent chance of returning to prison. On the other hand, 66 percent of men return to prison within three years of their release. This constitutes an 11 percent difference. First time offenders have a lower recidivism rate than repeat offenders. 47 percent of women return to prison after serving their first sentence while 58 percent of men return. Further, inmates designated as serious or violent offenders recidivate at a lower rate than those who are not. Finally, inmates participating in mental health programs return at a rate that is 6 percent to 11 percent higher than other inmates.

Questions for the Administration. The Administration should be prepared to address the following questions:

1. Will 20 beds in a restricted yard be enough to resolve the concerns raised by the OIG regarding the placement of women in segregated housing for long time periods due to a lack of appropriate housing for women with safety concerns?
2. One of the concerns raised by advocates for women inmates housed at CCWF is that the option for those inmates with safety concerns is to either remain in segregated housing or to be housed with inmates with significant mental health issues. Will this unit also be a similar combination?

Action: Approved as budgeted. Vote: 3-0

Issue 10: CCWF Enhanced Outpatient Program

Governor's Budget. The proposed budget requests 2.5 correctional officers and \$300,000 for the operation of a new Mental health Services Delivery System (MHSDS) Enhanced Outpatient Program (EOP) at the Central California Women's Facility (CCWF) in Chowchilla. CDCR estimates that the construction will be complete by July 1, 2015.

Background. As noted earlier in the agenda, CDCR is mandated to provide a constitutional level of health care to all inmates. Under that mandate, CDCR operates an MHSDS, which provides clinical services and therapeutic services to inmates with serious mental illnesses through both inpatient and outpatient treatment.

EOP constitutes the most intensive level of outpatient mental health care provided by CDCR. These patient-inmates have difficulty in the general population environment and are placed in housing, programs, and services settings that provide both clinical and custodial support and limit their contact with inmates in the general population. The objective of the EOP is to evaluate and treat the patient-inmates' mental health conditions so that they are able to operate in the least restrictive environment possible.

The new CCWF EOP building will include group counseling space, recreation therapy space, and individual counseling space. The program will treat women classified as EOP patients who are housed both in administrative segregation and the EOP general population beds.

Legislative Analyst's Office (LAO). The LAO did not raise any concerns with this proposal in their analysis of the Governor's budget.

Action: Approved as budgeted. Vote: 3-0

Issue 11: Registered Nursing Coverage for Contract Facilities

Governor's Budget. The budget proposal requests \$2.707 million General Fund for 2014-15, and \$3.248 million General Fund for 2015-16, for 24-hour registered nurse (RN) coverage for inmates housed in the six modified community correctional facilities (MCCFs) and one female community reentry facility. The 24-hour coverage has been required by CCHCS, under the direction of the health care receiver, in order to provide 24 hour/7 day per week nursing coverage to inmates housed in contract facilities. This is the same level of coverage currently provided to inmates in the 35 state-run facilities.

Background. As discussed in the previous item, the state currently contracts with six public and private facilities to house approximately 3,800 of the state's male inmate population. Those facilities are Shafter, Delano, Taft, Golden State, Central Valley, and Desert View.

Legislative Analyst's Office (LAO). The LAO did not raise any concerns with this proposal in their analysis of the Governor's budget.

Action: Approved as budgeted. Vote: 3-0

SUBCOMMITTEE NO. 5

Agenda

Senator Loni Hancock, Chair
Senator Joel Anderson
Senator Jim Beall



PART A

Thursday, April 30, 2015
9:30 a.m. or Upon Adjournment of Session
State Capitol - Room 113

Consultant: Julie Salley-Gray

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<u>Items Proposed for Vote-Only</u>		
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Issue 3	Trial Counsel.....	2
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Issue 4	Equine Medication Monitoring.....	2
<u>Items Proposed for Discussion</u>		
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Issue 1	Capital Outlay Proposals	5
Issue 2	Finance Letter: Telecommunications Network	10

Pursuant to the Americans with Disabilities Act, individuals who, because of a disability, need special assistance to attend or participate in a Senate Committee hearing, or in connection with other Senate services, may request assistance at the Senate Rules Committee, 1020 N Street, Suite 255 or by calling 916-651-1505. Requests should be made one week in advance whenever possible.

PROPOSED FOR VOTE ONLY**0250 Trial Courts**

1. **State Judiciary Rent Increase.** The Governor's budget proposal includes \$934,000 (General Fund) to support rent increases at the Supreme Court (\$115,000), the Court of Appeal (\$377,000), the Judicial Council (\$319,000), and other judicial branch facilities (\$123,000).

In addition, the proposal requests that any funding for future rent increases be included as workload in the annual budget process for all state judiciary entities.

2. **Technical Adjustments for Cost Changes.** The Administration submitted a spring finance letter proposing a \$3.4 million reduction to the judicial branch's budget. The proposal consists of the following:
 - a) A \$3.9 million reduction to the \$42.7 million included in the January budget for trial court health benefit and retirement rate cost adjustments. The proposed reduction is based on updated cost estimates.
 - b) A \$540,000 increase to correctly reflect the augmentation to support trial court operations included in the January Governor's budget proposal.

0280 Commission on Judicial Performance

3. **Trial Court Counsel.** The Governor's budget requests one trial counsel position for the commission, to be funded within their existing budget.

1750 Horse Racing Board

4. **Equine Drug Testing.** The Governor's budget requests a \$1.2 million augmentation from the Horse Racing Fund due to the increased costs associated with the equine drug testing program. The cost increase is primarily due to an increase in services provided by the Equine Analytical Chemistry Laboratory located at the University of California, Davis.

ITEMS TO BE HEARD

0250 Judicial Branch

Background. The judicial branch is responsible for the interpretation of law, the protection of individual rights, the orderly settlement of all legal disputes, and the adjudication of accusations of legal violations. The branch consists of statewide courts (the Supreme Court and Courts of Appeal), trial courts in each of the state's 58 counties, and statewide entities of the branch (the Judicial Council, Judicial Branch Facility Program, and the Habeas Corpus Resource Center). The branch receives revenue from several funding sources, including the state General Fund, civil filing fees, criminal penalties and fines, county maintenance-of-effort payments, and federal grants.

Due to the state's fiscal situation, the judicial branch, like most areas of state and local government, received a series of General Fund reductions from 2008-09 through 2012-13. Many of these General Fund reductions were offset by increased funding from alternative sources, such as special fund transfers and fee increases. A number of these offsets were one-time solutions, such as the use of trial court reserves and for the most part, those options have been exhausted. In addition, trial courts partially accommodated their ongoing reductions by implementing operational actions, such as leaving vacancies open, closing courtrooms and courthouses, and reducing clerk office hours. Some of these operational actions resulted in reduced access to court services, longer wait times, and increased backlogs in court workload.

Key Legislation

AB 233 (Escutia and Pringle), Chapter 850, Statutes of 1997, enacted the Lockyer-Isenberg Trial Court Funding Act of 1997, to provide a stable and consistent funding source for the trial courts. Beginning in 1997-98, consolidation of the costs of operation of the trial courts was implemented at the state level, with the exception of facility, revenue collection, and local judicial benefit costs. This implementation capped the counties' general purpose revenue contributions to trial court costs at a revised 1994-95 level. The county contributions become part of the Trial Court Trust Fund, which supports all trial court operations. Fine and penalty revenue collected by each county is retained or distributed in accordance with statute.

AB 1732 (Escutia), Chapter 1082, Statutes of 2002, enacted the Trial Court Facilities Act of 2002, which provided a process for transferring the responsibility for court facilities from the counties to the state, by July 1, 2007. It also established several new revenue sources, which went into effect on January 1, 2003. These revenues are deposited into the State Court Facilities Construction Fund (SCFCF) for the purpose of funding the construction and maintenance of court facilities throughout the state. As facilities were transferred to the state, counties began to contribute revenues for operation and maintenance of court facilities, based upon historical expenditures.

SB 1407 (Perata), Chapter 311, Statutes of 2008, authorized various fees, penalties and assessments, which were to be deposited into the Immediate and Critical Needs

Account (ICNA) to support the construction, renovation, and operation of court facilities. In addition, the bill authorized the issuance of up to \$5 billion in lease-revenue bonds.

SB 1021 (Committee on Budget and Fiscal Review), Chapter 41, Statutes of 2012, altered the administration of trial court reserves by limiting the amount of the reserves individual courts could carry from year to year to one percent of their funding and establishing a statewide reserve for trial courts, which is limited to two percent of total trial court funding.

In enacting these changes, the Legislature sought to create a trial court system that was more uniform in terms of standards, procedures, and performance. The Legislature also wanted to maintain a more efficient trial court system through the implementation of cost management and control systems.

Budget Overview. The Governor's proposed budget includes \$3.5 billion (\$1.6 billion General Fund and \$1.9 billion in other funds) in 2015-16 for the judicial branch. Of that amount, \$2.7 billion is provided to support trial court operations. The following table displays three-year expenditures and positions for the judicial branch; as presented in the Governor's budget.

(dollars in thousands)

Program	2013-14	2014-15	2015-16
Supreme Court	\$43,440	\$45,973	\$46,095
Courts of Appeal	205,544	216,212	216,626
Judicial Council	132,966	139,869	134,678
Judicial Branch Facilities Program	236,110	338,528	360,704
State Trial Court Funding	2,437,488	2,538,117	2,701,598
Habeas Corpus Resource Center	12,588	14,233	14,242
Total	\$3,068,136	\$3,292,932	\$3,473,943
Positions	1,693.9	1,962.8	1,962.3

Issue 1: Capital Outlay Proposals

Background. California's courthouses are managed at the state level. The Judicial Council serves trial and appellate courts statewide by managing maintenance, renovations, new court construction, and real estate.

Two staff offices under the Judicial Council share responsibility for supporting the court facilities of California's Supreme Court, Courts of Appeal, and trial courts:

- The Capital Program office leads strategic planning for capital outlay and funding, and manages new courthouse design and construction.
- The Real Estate & Facilities Management office manages court real estate, environmental compliance and sustainability, and facilities maintenance and modifications.

The Judicial Council is also the policymaking body of the California courts, and its two advisory groups - the Court Facilities Advisory Committee and the Trial Court Facility Modification Advisory Committee, provide ongoing oversight and governance of both offices.

The process of building a new courthouse is complex, involving local communities, state and local government agencies, justice partners, and contractors. Each judicial branch courthouse project managed by the staff of the Judicial Council follows a standard procedure, from funding and site selection through occupancy and evaluation. Even before the process begins, there are several required steps:

- The Judicial Council approves the project.
- A project feasibility report and budget proposal are completed and submitted for executive branch and legislative approvals.
- A local project advisory group is formed.
- Judicial Council staff solicit site offers.

The steps in funding a new courthouse are as follows:

1. Site Selection and Acquisition
2. Design
3. Construction

Status of Judicial Branch Courthouse Construction Program
December 31, 2014

County	Capital Project Name	Capital Project Status
1 Alameda	New East County Courthouse	Construction began in August 2014 and is scheduled to end in first quarter of 2017
2 Butte	New North Butte County Courthouse	Construction began in May 2013 and is scheduled to end in first quarter of 2015
3 El Dorado	New Placerville Courthouse	In site acquisition; reappropriate site acquisition and preliminary plans in FY 2015–2016
4 Glenn	Renovate and Addition to Willows Courthouse	In working drawings; construction to start in FY 2014–2015 and is scheduled to end in fourth quarter of 2016
5 Imperial	New El Centro Courthouse	In design; proceed with working drawings in FY 2014–2015 and into FY 2015–2016
6 Inyo	New Inyo County Courthouse	In site acquisition; reappropriate site acquisition and preliminary plans in FY 2015–2016
7 Kings	New Hanford Courthouse	Construction began in August 2013 and is scheduled to end in fourth quarter of 2015
8 Lake	New Lakeport Courthouse	In working drawings; start construction in FY 2015–2016
9 Los Angeles	New Eastlake Juvenile Courthouse	In site acquisition; reappropriate site acquisition in FY 2015–2016
10 Los Angeles	New Hollywood Courthouse Modernization	In design; construction to start in FY 2015–2016 and is scheduled to end in second quarter of 2017
11 Mendocino	New Ukiah Courthouse	In site acquisition; proceed with design in FY 2014–2015; start working drawings in FY 2015–2016
12 Merced	New Los Banos Courthouse	Bidding in process; construction to start in FY 2014–2015 and is scheduled to end in second quarter of 2016
13 Riverside	New Indio Juvenile and Family Courthouse	In design; proceed with working drawings in FY 2014–2015 and into FY 2015–2016
14 Riverside	New Mid-County Civil Courthouse	In site acquisition; reappropriate site acquisition and preliminary plans in FY 2015–2016
15 Sacramento	New Sacramento Criminal Courthouse	In design; proceed with preliminary plans and working drawings using one-time funds authorized by AB 1476
16 San Diego	New Central San Diego Courthouse	Construction began in December 2013 and is scheduled to end in fourth quarter of 2016
17 San Joaquin	Renovate Juvenile Justice Center	Construction began in June 2014 and is scheduled to end in second quarter of 2015
18 Santa Barbara	New Santa Barbara Criminal Courthouse	In design; proceed with working drawings and demolition of existing structures on new courthouse site (using construction-phase funding of \$0.400 million) in FY 2015–2016
19 Santa Clara	New Santa Clara Family Justice Center	Construction began in August 2013 and is scheduled to end in first quarter of 2016
20 Shasta	New Redding Courthouse	In design; proceed with working drawings and demolition of existing structures on new courthouse site (using construction-phase funding of \$0.174 million) in FY 2015–2016
21 Siskiyou	New Yreka Courthouse	In working drawings; construction bidding in FY 2015–2016
22 Sonoma	New Santa Rosa Criminal Courthouse	In design; proceed with working drawings in FY 2015–2016
23 Stanislaus	New Modesto Courthouse	In design; proceed with working drawings in FY 2015–2016
24 Sutter	New Yuba City Courthouse	Construction began in August 2013 and is scheduled to end in second quarter of 2015
25 Tehama	New Red Bluff Courthouse	Construction began in December 2014 and is scheduled to end in third quarter of 2016
26 Tuolumne	New Sonora Courthouse	In design; proceed with working drawings in FY 2015–2016
27 Yolo	New Woodland Courthouse	Construction began in May 2013 and is scheduled to end in second quarter of 2015
County	Capital Project Name	Indefinitely-Delayed Capital Project Status
28 Fresno	Renovate Fresno County Courthouse	Indefinitely delayed as of Judicial Council meetings on October 26, 2012, and January 17, 2013
29 Kern	New Delano Courthouse	
30 Kern	New Mojave Courthouse	
31 Los Angeles	New Glendale Courthouse	
32 Los Angeles	New Santa Clarita Courthouse	
33 Los Angeles	New Southeast Los Angeles Courthouse	
34 Monterey	New South Monterey County Courthouse	
35 Nevada	New Nevada City Courthouse	
36 Placer	New Tahoe Area Courthouse	
37 Plumas	New Quincy Courthouse	

Proceed – Projects will move forward as indicated above.

Indefinitely Delayed – Projects are indefinitely delayed until funds become available in the future. No work to proceed on site acquisition or design, unless specified above.

Note: In October 2012, the Judicial Council referred one project, a renovation of the Lancaster (McCourtney Juvenile) Courthouse in Los Angeles County, to its Trial Court Facility Modification Advisory Committee for consideration of funding as a facility modification. The scope of this project is currently being developed with the Los Angeles Superior Court.

Governor's Budget. The proposed budget included the following court construction proposals:

Lake County: New Lakeport Courthouse - \$40.8 million from the Public Building Construction Fund (0668) for the construction phase of a new four-courtroom courthouse of approximately 45,300 square feet in the city of Lake. Total project costs of \$50 million funded pursuant to SB 1407.

Siskiyou County: New Yreka Courthouse - \$57 million from the Public Building Construction Fund (0668) for the construction phase of a new five-courtroom courthouse of approximately 67,500 square feet in the city of Yreka. Total project costs of \$66 million funded pursuant to SB 1407.

Mendocino County: New Ukiah Courthouse - \$6.1 million from the Immediate and Critical Needs Account (3138) for the working drawings phase of a new eight-courtroom courthouse of approximately 90,200 square feet in the city of Ukiah. Total project costs of \$94.4 million funded pursuant to SB 1407.

Santa Barbara County: New Santa Barbara Criminal Courthouse - \$6.3 million from the Immediate and Critical Needs Account (3138) for the working drawings (\$5.9 million) and demolition (\$400,000) phases of a new eight-courtroom courthouse of approximately 92,300 square feet in the city of Santa Barbara. Total project costs of \$94.4 million funded pursuant to SB 1407.

Shasta County: New Redding Courthouse - \$8.9 million from the Immediate and Critical Needs Account (3138) for the working drawings (\$8.7 million) and demolition (\$174,000) phases of a new 14-courtroom courthouse of approximately 165,300 square feet in the city of Redding. Total project costs of \$159.3 million funded pursuant to SB 1407.

Sonoma County: New Santa Rosa Criminal Courthouse - \$11.3 million from the Immediate and Critical Needs Account (3138) for the working drawings phase of a new 15-courtroom courthouse of approximately 169,300 square feet in the city of Santa Rosa. Total project costs of \$175.4 million funded pursuant to SB 1407.

Stanislaus County: New Modesto Courthouse - \$15.3 million from the Immediate and Critical Needs Account (3138) for the working drawings phase of a new 26-courtroom courthouse of approximately 301,500 square feet in the city of Modesto. Total project costs of \$265.9 million funded pursuant to SB 1407.

Tuolumne County: New Sonora Courthouse - \$4.1 million from the Immediate and Critical Needs Account (3138) for the working drawings phase of a new five-courtroom courthouse of approximately 61,500 square feet in the city of Sonora. Total project costs of \$65.4 million funded pursuant to SB 1407.

El Dorado County: New Placerville Courthouse - Reappropriate \$4.8 million from the Immediate and Critical Needs Account in support of the acquisition (\$1.1 million, previously budgeted in 2012) and preliminary plans (\$3.6 million, previously budgeted in 2014) phases of a new six-courtroom courthouse of approximately 77,600 square feet in the city of Placerville. Total project costs of \$77.7 million funded pursuant to SB 1407.

Inyo County: New Inyo County Courthouse - Reappropriate \$1.9 million from the Immediate and Critical Needs Account in support of the acquisition (\$700,000, previously budgeted in 2012) and preliminary plans (\$1.2 million, previously budgeted in 2014) phases of a new six-courtroom courthouse of approximately 21,000 square feet in the city of Bishop. Total project costs of \$24.2 million funded pursuant to SB 1407.

Los Angeles County: New Eastlake Juvenile Courthouse - Reappropriate \$13.8 million from the Immediate and Critical Needs Account in support of the acquisition (previously budgeted in 2012) phase of a new five-courtroom courthouse of approximately 57,800 square feet in the county of Los Angeles. Total project costs of \$89.1 million funded pursuant to SB 1407.

Riverside County: New Mid-County Civil Courthouse - Reappropriate \$4.7 million from the Immediate and Critical Needs Account in support of the acquisition (\$414,000 previously budgeted in 2012) and preliminary plans (\$4.3 million previously budgeted in 2014) for a new nine-courtroom courthouse of approximately 89,690 square feet in the Hemet area. Total project costs of \$92.5 million funded pursuant to SB 1407.

Spring Finance Letter. The Judicial Branch and the Administration requested authority to reappropriate previously budgeted funds in support of the following courthouse projects as follows:

Mendocino County: New Ukiah Courthouse - Reappropriate \$8 million from the Immediate and Critical Needs Account in support of the acquisition (\$1.1 million, previously budgeted in 2012) and preliminary plans (\$4.6 million, previously budgeted in 2014) phases of a new eight-courtroom courthouse of approximately 90,200 square feet in the city of Ukiah. Total project costs of \$95.4 million funded pursuant to SB 1407.

Glenn County: Renovation and addition to the Willows Courthouse - Reappropriate \$34.8 million in bond funds (previously budgeted in 2012) and \$1.6 million from the Immediate and Critical Needs Account (previously budgeted in 2014) in support of the construction phase of the renovation and addition to Willows courthouse. The renovated courthouse will contain three-courtrooms totaling approximately 42,000 square feet in the city of Willows. Total project costs of \$41 million funded pursuant to SB 1407.

General Fund Risk. As discussed during the March 26 subcommittee hearing, as part of public safety realignment in 2011, trial court security and a constitutionally-protected revenue stream to fund those security costs, were shifted to the county sheriffs. The Governor's January budget assumes that there will be \$535.1 million in realigned revenue available for trial court security in 2015-16. In addition to that base amount, the budget assumes that there will be an additional \$15.2 million in growth funding. That constitutes a \$32.5 million increase over the 2013-14 funding level.

The 2014 budget included an increase of \$1 million General Fund to address potential increased court security costs associated with new courthouse construction. In order to receive additional funding, counties are required to demonstrate that they have an increased need for security staff.

In addition to the \$1 million in funding, the budget included trailer bill language (Government Code 69927) limiting eligible courts that have an occupancy date on or after October 9, 2011. Based on the current list of construction projects, there are potentially 39 courthouses that may qualify for a General Fund augmentation for trial court security. The 2014 trailer bill language further outlined a process the courts would need to go through in order to establish that they had increased trial court security costs as a result of construction.

All of the projects being considered today could ultimately be eligible for a General Fund augmentation related to increased trial court security.

Legislative Analyst's Office (LAO). The LAO did not raise any concerns with this proposal in their analysis of the Governor's budget.

Questions for the Administration. The Administration should be prepared to address the following questions:

1. Has the Administration assessed whether or not these projects would lead to increased efficiencies, both in terms of security and otherwise, for the trial courts and the state?
2. Of the requests presented in both the January budget and the spring finance letter, which projects involve closing multiple court locations and consolidating court services in one building?

Issue 2: Finance Letter: Telecommunications Network

Spring Finance Letter. The Administration submitted a spring finance letter requesting \$5.5 million to fund telecommunication improvements for all 58 superior courts. The requested funding would be used to support hardware refresh, training, and the maintenance and security of the judicial branch network.

Specifically, the Administration is requesting an ongoing \$5.5 million General Fund augmentation to the judicial branch's Improvement and Modernization Fund (IMF) to expand the Local Area Network/Wide Area Network (LAN/WAN) telecommunications network infrastructure program. The proposal would expand the program to include the four remaining trial courts that do not currently participate. The expansion would provide these courts with a statewide integrated network that supports core operational systems.

Legislative Analyst's Office (LAO). The LAO finds that the proposal merits consideration. However, given the potential lack of state General Fund dollars available to augment non-education programs, as well as the insolvency of the IMF, the LAO recommends that the Legislature consider two options for modifying the proposal:

1. Given the insolvency of the IMF, the Legislature could provide the augmentation on a one-time basis, while it works with the judicial branch to address the insolvency of the fund. The LAO had previously recommended that the Legislature identify its priorities for use of the IMF in statute, in order to provide guidance to the Judicial Council for restructuring future expenditures. In developing such priorities, the LAO recommended that the Legislature consider the purpose of the IMF, as well as whether the IMF should fund projects with ongoing expenditures. As part of this process, the Legislature could determine whether the ongoing cost of the LAN/WAN expansion would be supported from the IMF. This option would provide the judicial branch with funds to address immediate LAN/WAN needs, while the branch addresses the insolvency of the IMF.
2. Alternatively, the Legislature could choose to direct the judicial branch to absorb the cost of the expansion in the budget year, while it addresses the insolvency of the IMF. The cost could be absorbed by further reducing expenditures in the IMF or by redirecting a portion of the General Fund augmentation to the trial courts in the budget year. This option would not require the additional General Fund augmentation to the judicial branch, but would likely impact other trial court programs or services.

SUBCOMMITTEE NO. 5

Agenda

Senator Loni Hancock, Chair
Senator Joel Anderson
Senator Jim Beall



PART A OUTCOMES

Thursday, April 30, 2015
9:30 a.m. or Upon Adjournment of Session
State Capitol - Room 113

Consultant: Julie Salley-Gray

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PROPOSED FOR VOTE ONLY**0250 Trial Courts**

1. **State Judiciary Rent Increase.** The Governor's budget proposal includes \$934,000 (General Fund) to support rent increases at the Supreme Court (\$115,000), the Court of Appeal (\$377,000), the Judicial Council (\$319,000), and other judicial branch facilities (\$123,000).

In addition, the proposal requests that any funding for future rent increases be included as workload in the annual budget process for all state judiciary entities.

Action: Approved as budgeted and rejected the proposal to include future rent increases as workload adjustments in the annual budget.

Vote: 2 – 0, Beall absent

2. **Technical Adjustments for Cost Changes.** The Administration submitted a spring finance letter proposing a \$3.4 million reduction to the judicial branch's budget. The proposal consists of the following:

- a) A \$3.9 million reduction to the \$42.7 million included in the January budget for trial court health benefit and retirement rate cost adjustments. The proposed reduction is based on updated cost estimates.
- b) A \$540,000 increase to correctly reflect the augmentation to support trial court operations included in the January Governor's budget proposal.

Action: Approved as budgeted.

Vote: 2 – 0, Beall absent

0280 Commission on Judicial Performance

3. **Trial Court Counsel.** The Governor's budget requests one trial counsel position for the commission, to be funded within their existing budget.

Action: Approved as budgeted.

Vote: 2 – 0, Beall absent

1750 Horse Racing Board

4. **Equine Drug Testing.** The Governor's budget requests a \$1.2 million augmentation from the Horse Racing Fund due to the increased costs associated with the equine drug testing program. The cost increase is primarily due to an increase in services provided by the Equine Analytical Chemistry Laboratory located at the University of California, Davis.

Action: Approved as budgeted.

Vote: 2 – 0, Beall absent

ITEMS TO BE HEARD

0250 Judicial Branch

Background. The judicial branch is responsible for the interpretation of law, the protection of individual rights, the orderly settlement of all legal disputes, and the adjudication of accusations of legal violations. The branch consists of statewide courts (the Supreme Court and Courts of Appeal), trial courts in each of the state's 58 counties, and statewide entities of the branch (the Judicial Council, Judicial Branch Facility Program, and the Habeas Corpus Resource Center). The branch receives revenue from several funding sources, including the state General Fund, civil filing fees, criminal penalties and fines, county maintenance-of-effort payments, and federal grants.

Due to the state's fiscal situation, the judicial branch, like most areas of state and local government, received a series of General Fund reductions from 2008-09 through 2012-13. Many of these General Fund reductions were offset by increased funding from alternative sources, such as special fund transfers and fee increases. A number of these offsets were one-time solutions, such as the use of trial court reserves and for the most part, those options have been exhausted. In addition, trial courts partially accommodated their ongoing reductions by implementing operational actions, such as leaving vacancies open, closing courtrooms and courthouses, and reducing clerk office hours. Some of these operational actions resulted in reduced access to court services, longer wait times, and increased backlogs in court workload.

Key Legislation

AB 233 (Escutia and Pringle), Chapter 850, Statutes of 1997, enacted the Lockyer-Ishenberg Trial Court Funding Act of 1997, to provide a stable and consistent funding source for the trial courts. Beginning in 1997-98, consolidation of the costs of operation of the trial courts was implemented at the state level, with the exception of facility, revenue collection, and local judicial benefit costs. This implementation capped the counties' general purpose revenue contributions to trial court costs at a revised 1994-95 level. The county contributions become part of the Trial Court Trust Fund, which supports all trial court operations. Fine and penalty revenue collected by each county is retained or distributed in accordance with statute.

AB 1732 (Escutia), Chapter 1082, Statutes of 2002, enacted the Trial Court Facilities Act of 2002, which provided a process for transferring the responsibility for court facilities from the counties to the state, by July 1, 2007. It also established several new revenue sources, which went into effect on January 1, 2003. These revenues are deposited into the State Court Facilities Construction Fund (SCFCF) for the purpose of funding the construction and maintenance of court facilities throughout the state. As facilities were transferred to the state, counties began to contribute revenues for operation and maintenance of court facilities, based upon historical expenditures.

SB 1407 (Perata), Chapter 311, Statutes of 2008, authorized various fees, penalties and assessments, which were to be deposited into the Immediate and Critical Needs

Account (ICNA) to support the construction, renovation, and operation of court facilities. In addition, the bill authorized the issuance of up to \$5 billion in lease-revenue bonds.

SB 1021 (Committee on Budget and Fiscal Review), Chapter 41, Statutes of 2012, altered the administration of trial court reserves by limiting the amount of the reserves individual courts could carry from year to year to one percent of their funding and establishing a statewide reserve for trial courts, which is limited to two percent of total trial court funding.

In enacting these changes, the Legislature sought to create a trial court system that was more uniform in terms of standards, procedures, and performance. The Legislature also wanted to maintain a more efficient trial court system through the implementation of cost management and control systems.

Budget Overview. The Governor's proposed budget includes \$3.5 billion (\$1.6 billion General Fund and \$1.9 billion in other funds) in 2015-16 for the judicial branch. Of that amount, \$2.7 billion is provided to support trial court operations. The following table displays three-year expenditures and positions for the judicial branch; as presented in the Governor's budget.

(dollars in thousands)

Program	2013-14	2014-15	2015-16
Supreme Court	\$43,440	\$45,973	\$46,095
Courts of Appeal	205,544	216,212	216,626
Judicial Council	132,966	139,869	134,678
Judicial Branch Facilities Program	236,110	338,528	360,704
State Trial Court Funding	2,437,488	2,538,117	2,701,598
Habeas Corpus Resource Center	12,588	14,233	14,242
Total	\$3,068,136	\$3,292,932	\$3,473,943
Positions	1,693.9	1,962.8	1,962.3

Issue 1: Capital Outlay Proposals

Background. California's courthouses are managed at the state level. The Judicial Council serves trial and appellate courts statewide by managing maintenance, renovations, new court construction, and real estate.

Two staff offices under the Judicial Council share responsibility for supporting the court facilities of California's Supreme Court, Courts of Appeal, and trial courts:

- The Capital Program office leads strategic planning for capital outlay and funding, and manages new courthouse design and construction.
- The Real Estate & Facilities Management office manages court real estate, environmental compliance and sustainability, and facilities maintenance and modifications.

The Judicial Council is also the policymaking body of the California courts, and its two advisory groups - the Court Facilities Advisory Committee and the Trial Court Facility Modification Advisory Committee, provide ongoing oversight and governance of both offices.

The process of building a new courthouse is complex, involving local communities, state and local government agencies, justice partners, and contractors. Each judicial branch courthouse project managed by the staff of the Judicial Council follows a standard procedure, from funding and site selection through occupancy and evaluation. Even before the process begins, there are several required steps:

- The Judicial Council approves the project.
- A project feasibility report and budget proposal are completed and submitted for executive branch and legislative approvals.
- A local project advisory group is formed.
- Judicial Council staff solicit site offers.

The steps in funding a new courthouse are as follows:

1. Site Selection and Acquisition
2. Design
3. Construction

Status of Judicial Branch Courthouse Construction Program
December 31, 2014

County	Capital Project Name	Capital Project Status
1 Alameda	New East County Courthouse	Construction began in August 2014 and is scheduled to end in first quarter of 2017
2 Butte	New North Butte County Courthouse	Construction began in May 2013 and is scheduled to end in first quarter of 2015
3 El Dorado	New Placerville Courthouse	In site acquisition; reappropriate site acquisition and preliminary plans in FY 2015–2016
4 Glenn	Renovate and Addition to Willows Courthouse	In working drawings; construction to start in FY 2014–2015 and is scheduled to end in fourth quarter of 2016
5 Imperial	New El Centro Courthouse	In design; proceed with working drawings in FY 2014–2015 and into FY 2015–2016
6 Inyo	New Inyo County Courthouse	In site acquisition; reappropriate site acquisition and preliminary plans in FY 2015–2016
7 Kings	New Hanford Courthouse	Construction began in August 2013 and is scheduled to end in fourth quarter of 2015
8 Lake	New Lakeport Courthouse	In working drawings; start construction in FY 2015–2016
9 Los Angeles	New Eastlake Juvenile Courthouse	In site acquisition; reappropriate site acquisition in FY 2015–2016
10 Los Angeles	New Hollywood Courthouse Modernization	In design; construction to start in FY 2015–2016 and is scheduled to end in second quarter of 2017
11 Mendocino	New Ukiah Courthouse	In site acquisition; proceed with design in FY 2014–2015; start working drawings in FY 2015–2016
12 Merced	New Los Banos Courthouse	Bidding in process; construction to start in FY 2014–2015 and is scheduled to end in second quarter of 2016
13 Riverside	New Indio Juvenile and Family Courthouse	In design; proceed with working drawings in FY 2014–2015 and into FY 2015–2016
14 Riverside	New Mid-County Civil Courthouse	In site acquisition; reappropriate site acquisition and preliminary plans in FY 2015–2016
15 Sacramento	New Sacramento Criminal Courthouse	In design; proceed with preliminary plans and working drawings using one-time funds authorized by AB 1476
16 San Diego	New Central San Diego Courthouse	Construction began in December 2013 and is scheduled to end in fourth quarter of 2016
17 San Joaquin	Renovate Juvenile Justice Center	Construction began in June 2014 and is scheduled to end in second quarter of 2015
18 Santa Barbara	New Santa Barbara Criminal Courthouse	In design; proceed with working drawings and demolition of existing structures on new courthouse site (using construction-phase funding of \$0.400 million) in FY 2015–2016
19 Santa Clara	New Santa Clara Family Justice Center	Construction began in August 2013 and is scheduled to end in first quarter of 2016
20 Shasta	New Redding Courthouse	In design; proceed with working drawings and demolition of existing structures on new courthouse site (using construction-phase funding of \$0.174 million) in FY 2015–2016
21 Siskiyou	New Yreka Courthouse	In working drawings; construction bidding in FY 2015–2016
22 Sonoma	New Santa Rosa Criminal Courthouse	In design; proceed with working drawings in FY 2015–2016
23 Stanislaus	New Modesto Courthouse	In design; proceed with working drawings in FY 2015–2016
24 Sutter	New Yuba City Courthouse	Construction began in August 2013 and is scheduled to end in second quarter of 2015
25 Tehama	New Red Bluff Courthouse	Construction began in December 2014 and is scheduled to end in third quarter of 2016
26 Tuolumne	New Sonora Courthouse	In design; proceed with working drawings in FY 2015–2016
27 Yolo	New Woodland Courthouse	Construction began in May 2013 and is scheduled to end in second quarter of 2015
County	Capital Project Name	Indefinitely-Delayed Capital Project Status
28 Fresno	Renovate Fresno County Courthouse	Indefinitely delayed as of Judicial Council meetings on October 26, 2012, and January 17, 2013
29 Kern	New Delano Courthouse	
30 Kern	New Mojave Courthouse	
31 Los Angeles	New Glendale Courthouse	
32 Los Angeles	New Santa Clarita Courthouse	
33 Los Angeles	New Southeast Los Angeles Courthouse	
34 Monterey	New South Monterey County Courthouse	
35 Nevada	New Nevada City Courthouse	
36 Placer	New Tahoe Area Courthouse	
37 Plumas	New Quincy Courthouse	

Proceed – Projects will move forward as indicated above.

Indefinitely Delayed – Projects are indefinitely delayed until funds become available in the future. No work to proceed on site acquisition or design, unless specified above.

Note: In October 2012, the Judicial Council referred one project, a renovation of the Lancaster (McCourtney Juvenile) Courthouse in Los Angeles County, to its Trial Court Facility Modification Advisory Committee for consideration of funding as a facility modification. The scope of this project is currently being developed with the Los Angeles Superior Court.

Governor's Budget. The proposed budget included the following court construction proposals:

Lake County: New Lakeport Courthouse - \$40.8 million from the Public Building Construction Fund (0668) for the construction phase of a new four-courtroom courthouse of approximately 45,300 square feet in the city of Lake. Total project costs of \$50 million funded pursuant to SB 1407.

Siskiyou County: New Yreka Courthouse - \$57 million from the Public Building Construction Fund (0668) for the construction phase of a new five-courtroom courthouse of approximately 67,500 square feet in the city of Yreka. Total project costs of \$66 million funded pursuant to SB 1407.

Mendocino County: New Ukiah Courthouse - \$6.1 million from the Immediate and Critical Needs Account (3138) for the working drawings phase of a new eight-courtroom courthouse of approximately 90,200 square feet in the city of Ukiah. Total project costs of \$94.4 million funded pursuant to SB 1407.

Santa Barbara County: New Santa Barbara Criminal Courthouse - \$6.3 million from the Immediate and Critical Needs Account (3138) for the working drawings (\$5.9 million) and demolition (\$400,000) phases of a new eight-courtroom courthouse of approximately 92,300 square feet in the city of Santa Barbara. Total project costs of \$94.4 million funded pursuant to SB 1407.

Shasta County: New Redding Courthouse - \$8.9 million from the Immediate and Critical Needs Account (3138) for the working drawings (\$8.7 million) and demolition (\$174,000) phases of a new 14-courtroom courthouse of approximately 165,300 square feet in the city of Redding. Total project costs of \$159.3 million funded pursuant to SB 1407.

Sonoma County: New Santa Rosa Criminal Courthouse - \$11.3 million from the Immediate and Critical Needs Account (3138) for the working drawings phase of a new 15-courtroom courthouse of approximately 169,300 square feet in the city of Santa Rosa. Total project costs of \$175.4 million funded pursuant to SB 1407.

Stanislaus County: New Modesto Courthouse - \$15.3 million from the Immediate and Critical Needs Account (3138) for the working drawings phase of a new 26-courtroom courthouse of approximately 301,500 square feet in the city of Modesto. Total project costs of \$265.9 million funded pursuant to SB 1407.

Tuolumne County: New Sonora Courthouse - \$4.1 million from the Immediate and Critical Needs Account (3138) for the working drawings phase of a new five-courtroom courthouse of approximately 61,500 square feet in the city of Sonora. Total project costs of \$65.4 million funded pursuant to SB 1407.

El Dorado County: New Placerville Courthouse - Reappropriate \$4.8 million from the Immediate and Critical Needs Account in support of the acquisition (\$1.1 million, previously budgeted in 2012) and preliminary plans (\$3.6 million, previously budgeted in 2014) phases of a new six-courtroom courthouse of approximately 77,600 square feet in the city of Placerville. Total project costs of \$77.7 million funded pursuant to SB 1407.

Inyo County: New Inyo County Courthouse - Reappropriate \$1.9 million from the Immediate and Critical Needs Account in support of the acquisition (\$700,000, previously budgeted in 2012) and preliminary plans (\$1.2 million, previously budgeted in 2014) phases of a new six-courtroom courthouse of approximately 21,000 square feet in the city of Bishop. Total project costs of \$24.2 million funded pursuant to SB 1407.

Los Angeles County: New Eastlake Juvenile Courthouse - Reappropriate \$13.8 million from the Immediate and Critical Needs Account in support of the acquisition (previously budgeted in 2012) phase of a new five-courtroom courthouse of approximately 57,800 square feet in the county of Los Angeles. Total project costs of \$89.1 million funded pursuant to SB 1407.

Riverside County: New Mid-County Civil Courthouse - Reappropriate \$4.7 million from the Immediate and Critical Needs Account in support of the acquisition (\$414,000 previously budgeted in 2012) and preliminary plans (\$4.3 million previously budgeted in 2014) for a new nine-courtroom courthouse of approximately 89,690 square feet in the Hemet area. Total project costs of \$92.5 million funded pursuant to SB 1407.

Spring Finance Letter. The Judicial Branch and the Administration requested authority to reappropriate previously budgeted funds in support of the following courthouse projects as follows:

Mendocino County: New Ukiah Courthouse - Reappropriate \$8 million from the Immediate and Critical Needs Account in support of the acquisition (\$1.1 million, previously budgeted in 2012) and preliminary plans (\$4.6 million, previously budgeted in 2014) phases of a new eight-courtroom courthouse of approximately 90,200 square feet in the city of Ukiah. Total project costs of \$95.4 million funded pursuant to SB 1407.

Glenn County: Renovation and addition to the Willows Courthouse - Reappropriate \$34.8 million in bond funds (previously budgeted in 2012) and \$1.6 million from the Immediate and Critical Needs Account (previously budgeted in 2014) in support of the construction phase of the renovation and addition to Willows courthouse. The renovated courthouse will contain three-courtrooms totaling approximately 42,000 square feet in the city of Willows. Total project costs of \$41 million funded pursuant to SB 1407.

General Fund Risk. As discussed during the March 26 subcommittee hearing, as part of public safety realignment in 2011, trial court security and a constitutionally-protected revenue stream to fund those security costs, were shifted to the county sheriffs. The Governor's January budget assumes that there will be \$535.1 million in realigned revenue available for trial court security in 2015-16. In addition to that base amount, the budget assumes that there will be an additional \$15.2 million in growth funding. That constitutes a \$32.5 million increase over the 2013-14 funding level.

The 2014 budget included an increase of \$1 million General Fund to address potential increased court security costs associated with new courthouse construction. In order to receive additional funding, counties are required to demonstrate that they have an increased need for security staff.

In addition to the \$1 million in funding, the budget included trailer bill language (Government Code 69927) limiting eligible courts that have an occupancy date on or after October 9, 2011. Based on the current list of construction projects, there are potentially 39 courthouses that may qualify for a General Fund augmentation for trial court security. The 2014 trailer bill language further outlined a process the courts would need to go through in order to establish that they had increased trial court security costs as a result of construction.

All of the projects being considered today could ultimately be eligible for a General Fund augmentation related to increased trial court security.

Legislative Analyst's Office (LAO). The LAO did not raise any concerns with this proposal in their analysis of the Governor's budget.

Questions for the Administration. The Administration should be prepared to address the following questions:

1. Has the Administration assessed whether or not these projects would lead to increased efficiencies, both in terms of security and otherwise, for the trial courts and the state?
2. Of the requests presented in both the January budget and the spring finance letter, which projects involve closing multiple court locations and consolidating court services in one building?

Action. Held open and directed staff, the LAO, and DOF to develop proposed trailer bill language that would limit the General Fund risk associated with increased trial court security costs.

Issue 2: Finance Letter: Telecommunications Network

Spring Finance Letter. The Administration submitted a spring finance letter requesting \$5.5 million to fund telecommunication improvements for all 58 superior courts. The requested funding would be used to support hardware refresh, training, and the maintenance and security of the judicial branch network.

Specifically, the Administration is requesting an ongoing \$5.5 million General Fund augmentation to the judicial branch's Improvement and Modernization Fund (IMF) to expand the Local Area Network/Wide Area Network (LAN/WAN) telecommunications network infrastructure program. The proposal would expand the program to include the four remaining trial courts that do not currently participate. The expansion would provide these courts with a statewide integrated network that supports core operational systems.

Legislative Analyst's Office (LAO). The LAO finds that the proposal merits consideration. However, given the potential lack of state General Fund dollars available to augment non-education programs, as well as the insolvency of the IMF, the LAO recommends that the Legislature consider two options for modifying the proposal:

1. Given the insolvency of the IMF, the Legislature could provide the augmentation on a one-time basis, while it works with the judicial branch to address the insolvency of the fund. The LAO had previously recommended that the Legislature identify its priorities for use of the IMF in statute, in order to provide guidance to the Judicial Council for restructuring future expenditures. In developing such priorities, the LAO recommended that the Legislature consider the purpose of the IMF, as well as whether the IMF should fund projects with ongoing expenditures. As part of this process, the Legislature could determine whether the ongoing cost of the LAN/WAN expansion would be supported from the IMF. This option would provide the judicial branch with funds to address immediate LAN/WAN needs, while the branch addresses the insolvency of the IMF.
2. Alternatively, the Legislature could choose to direct the judicial branch to absorb the cost of the expansion in the budget year, while it addresses the insolvency of the IMF. The cost could be absorbed by further reducing expenditures in the IMF or by redirecting a portion of the General Fund augmentation to the trial courts in the budget year. This option would not require the additional General Fund augmentation to the judicial branch, but would likely impact other trial court programs or services.

Action. Held open pending an update on the IMF fund condition in the May Revision.

SUBCOMMITTEE NO. 5

Agenda

Senator Loni Hancock, Chair
Senator Joel Anderson
Senator Jim Beall



PART B

Thursday, April 30, 2015
9:30 a.m. or Upon Adjournment of Session
State Capitol - Room 113

Consultant: Brady Van Engelen

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CALIFORNIA DEPARTMENT OF JUSTICE (0820)

Departmental Overview. The Attorney General, as chief law officer of the state, has the responsibility to ensure that the laws of California are uniformly and adequately enforced. This responsibility is fulfilled through the diverse programs of the Department of Justice (DOJ).

The DOJ is responsible for providing skillful and efficient legal services on behalf of the people of California. The Attorney General represents the people in all matters before the Appellate and Supreme Courts of California and the United States; serves as legal counsel to state officers, boards, commissioners and departments; represents the people in actions to protect the environment and to enforce consumer, antitrust, and civil laws; and assist district attorneys in the administration of justice. The DOJ also provides oversight, enforcement, education and regulation of California's firearms/dangerous weapons laws; provides evaluation and analysis of physical evidence; regulates legal gambling activities in California; supports the telecommunications and data processing needs of the California criminal justice community; and pursues projects designed to protect the people of California from fraudulent, unfair, and illegal activities.

Budget Overview. The Governor's 2015-16 budget proposes \$793.02 million (\$200.99 million General Fund) and 4,852.9 personnel years.

Expenditures

Program	2013-14	2014-15	2015-16
Directorate and Administration	\$86,175	\$98,530	\$100,324
Legal Services	\$367,640	\$411,930	\$413,225
Law Enforcement	\$174,203	\$209,384	\$211,057
California Justice Information Services	\$159,226	\$171,996	\$168,740
Totals	\$701,069	\$793,310	\$793,022
Personnel Years	4,155.8	4,802.9	4,852.3

Issue 1 – Legal Services

Governor’s Budget Request. The 2015-16 budget includes a request for a permanent increase of twenty-nine positions and an increase of \$5.787 million in reimbursement authority (Legal Services Revolving Fund) in order to meet the increasing legal demands from various client departments.

Background. The DOJ’s Legal Services Division (division) supports the Attorney General’s mission of serving as the state’s chief legal officer. The division is divided into three elements: (1) civil law, (2) criminal law, and (3) public rights.

The twenty-nine positions are to be located within the civil law division, which represents the state, its officers, agencies, departments, boards, commissions, and employers in civil matters. The positions are requested to support four sections within the Legal Services Division’s civil law element.

The Licensing Section requests nine (9.0) deputy attorney general (DAG) positions, and six (6.0) legal secretaries to support the increased enforcement-related workload to support the 35 boards and bureaus within the Department of Consumer Affairs. In order to support the requested positions, the Licensing Section’s reimbursement authority will need to increase by \$2.765 million.

The Correctional Law Section requests five (5.0) DAG positions, and one (1.0) legal secretary to support the state and its officials in civil-rights litigation arising out of the California Department of Corrections and Rehabilitation (CDCR) operations. The requested positions will require a \$1.35 million increase in reimbursement authority for the Correctional Law Section. The Correctional Law Section currently has 80 DAG positions, 16 supervisors, and 17 paralegal staff.

The Health Quality Enforcement section requests 3.0 DAG positions with 2.0 legal secretaries. The Health Quality Enforcement Section’s largest client, the Medical Board of California, added additional enforcement staff as part of the 2014 budget. Due to new procedures in place, the DOJ anticipates an additional 240 cases per year that will need to be managed by the Health Quality Enforcement section.

The Health, Education and Welfare (HEW) Section is requesting 3.0 DAG positions. The HEW section is responsible for representing the Governor’s Office, the Departments of Health Care Services, Social Services, Public Health, State Hospitals, Education, Developmental Services, Superintendent of Public Instruction, the State Board of Education, and the Commission on Teacher Credentialing (COTC). The major purpose of the COTC is to serve as a state standards board for educator preparation for the public schools of California, the licensing and credentialing of professional educators in the state, the enforcement of professional practices of educators, and the discipline of credential holders in the State of California. COTC cases are initially handled administratively and then through the courts for judicial review.

Historically, the COTC has referred an average of 40 to 50 cases per year. Recently, there has been a significant increase in referrals to the DOJ from the COTC; increasing from 38 cases in fiscal year 2011-12 to 107 cases in fiscal year 2013-14. The COTC has requested that the HEW section prosecute cases within certain timeframes, ranging from 30 days for emergency cases to ten months for low priority cases.

Staff Comment: The requested funding and resources reflect an adjustment in reimbursement authority. A commensurate increase in expenditure authority has been made by each department included in this request as part of the Budget Act of 2014. The requested increase in reimbursement authority will allow the DOJ to bill the respective departments for legal resources that have been requested.

Staff Recommendation: Approve as budgeted.

Issue 2 – Cardroom Licensing

Governor’s Budget Request. The 2015-16 budget includes a request to augment the Department of Justice’s Bureau of Gambling Control (BGC) budget by \$1.559 million (Gambling Control Fund) and twelve three-year limited-term positions in fiscal year 2015-16, and, \$1.423 million (Gambling Control Fund) in fiscal year 2016-17 and 2017-18 to address the current backlog related to initial and renewal finding of license suitability background investigations for the California Cardroom and Third-Party Providers of Proposition Player Services license applicants.

Background. The BGC, which was created in 1998, is the state’s law enforcement authority with special jurisdiction over gambling activities and provides the Gambling Control Commission (commission) with background investigations on gaming license and work permit applications. The investigations, which can be fairly lengthy and exhaustive, provide the commission the information to make administrative actions, and determinations related to the regulation of gambling.

A significant backlog, totaling 2,221 applications now exists within the licensing section. According to the DOJ, the backlog is due to a combination of additional responsibilities being assumed by the BGC, a more complex investigation process, and an increase in the number of applicants.

Staff Comment: According to the DOJ, the BGC worked 412 hours in overtime to address the backlog associated with cardroom licensing. According to DOJ’s analysis, it does not appear that existing staff levels can support efforts to reduce the current backlog and process incoming workload in a timely fashion.

Staff Recommendation: Approve as budgeted.

Issue 3 – Initiatives Workload

Governor’s Budget Request. The 2015-16 budget includes a request to augment the Department of Justice’s budget by \$720,000 (General Fund) and four positions to implement the provisions of SB 1253 (Steinberg), Chapter 697, Statutes of 2014.

Background. The California Constitution authorizes individuals to place measures to amend statute or the Constitution before the voters after collecting and submitting a specified number of qualified signatures to the Secretary of State. Prior to the circulation of a measure for signatures, the Attorney General is required to prepare a title and summary for the proposed measure, which is a description of the major changes proposed and the estimated fiscal impact that the measure will have on state and local governments. State law specifies the process by which the title and summary must be prepared. Prior to January 2015, the Legislative Analyst Office (LAO) and the Department of Finance (DOF) were required to prepare the fiscal estimate within 25 working days from the day the final version of a proposed initiative was received by the Attorney General. The Attorney General would then have 15 days, upon receipt of the fiscal estimate, to submit the completed title and summary to the Secretary of State. Any substantive changes to the proposed measure by its authors would restart the statutorily mandated time frames. This could result in the LAO and DOF creating an additional fiscal estimate and the Attorney General creating an additional title and summary for the amended measure.

SB 1253, (Steinberg) Chapter 697, Statutes of 2014, made various changes to the above process that went into effect January 2015. Specifically, the legislation:

- Requires the LAO and DOF to prepare the fiscal estimate within 50 days (rather than 25 working days) from the day the proposed initiative is first received by the Attorney General. (The Attorney General still has 15 days from receipt of the fiscal estimate to submit the title and summary to the Secretary of State.)
- Requires the Attorney General to initiate a 30–day public comment period once the authors of the measure request a title and summary. Public comments are submitted through the Attorney General’s website and provided to the authors, but are not publicly displayed during the review period. However, these comments are deemed to be public records, eligible to be viewed upon request under the process outlined in the California Public Records Act.
- Permits the authors of the measure to submit germane amendments to their measure within 35 days of filing the measure without having the statutorily mandated time frames restarted.

LAO Recommendation. LAO's review of this proposal notes that they concur that there will be a need for additional resources to address the modified public comment process in accordance with SB 1253. However, it is unclear to what extent SB 1253 will impact DOJ's workload. The LAO recommends that the Legislature approve \$114,000 from the General Fund and the AGPA position to support DOJ's new responsibilities related to public comment. The LAO notes that the DOJ should be able to manage within its existing resources until the impacts of SB 1253 become clearer.

Staff Comment. Staff concurs with the LAO that the requested funding and positions may be premature. If there is an increase in workload in the future, the DOJ can submit a budget request for additional resources.

Staff Recommendation: Approve LAO's recommendation.

Vote.

Issue 4 – Registry of Charitable Trusts Enforcement Program

Governor's Budget Request. The 2015-16 budget includes a request for 13.0 positions (9.0 permanent and 4.0 limited-term) and increased expenditure authority of \$2.126 million (Registry of Charitable Trusts Fund) in 2015-16, \$2.051 million (Registry of Charitable Trusts Fund) in 2016-17, and \$1.650 million (Registry of Charitable Trusts Fund) in 2017-18 and ongoing to implement the provisions of AB 2077 (Allen), Chapter 465, Statutes of 2014.

Background. Current statute requires that charitable corporations, unincorporated associations, trustees, and other legal entities, which hold or solicit property for charitable purposes, are required to file a registration statement, articles of incorporation, and an annual financial report with the Attorney General's (AG) Public Rights Division. Statute provides the AG's office with broad supervisory and responsibilities over charitable organizations that are subject to the enforcement of charitable trusts.

AB 2077, among other things, allows for the funds that are deposited in the Registry of Charitable Trusts to be used, upon appropriation by the Legislature, for the purposes of maintaining and operating the registry of charitable trusts, enforce the regulations established by the Supervision of Trustees and Fundraisers for Charitable Purposes Act (Act), and to provide public access of reports filed with the AG via the internet. Prior to the passage of AB 2077 the AG's office was not authorized to use funds deposited in the Registry of Charitable Trusts to enforce registration and reporting requirements associated with the Act.

The AG's automated mailing system has identified over 50,000 charitable organizations that are delinquent, but have registered with the AG's office. The AG's office notes that the automated system in use does have the capacity to distribute notices to delinquent organizations; it does not have the staffing capacity to address workload associated with follow up, which can include phone calls, emails, and follow up letters.

The AG has also noted that the automated system has the capacity to automatically generate notices to the estimated 130,000 entities in the state that are unregistered. The AG's office has reached the 130,000 unregistered charitable organizations by information received from the Secretary of State's office, which transmits information related to newly formed California non-profit public benefits corporations to the AG's office each month. The AG's office estimates that approximately 41,500 of the 130,000 unregistered charitable organizations are active in California, and have noted that they will direct their resources initially towards the active organizations that are operating in the state. Similar to the delinquent notification process, the AG's office has noted that they do not have capacity to conduct workload associated with the follow up of notices distributed to unregistered charitable organizations.

Staff Comment: Staff does not have any issues or concerns with this request.

Staff Recommendation: Approve as budgeted.

Vote.

Issue 5 – Controlled Substance Utilization Review and Evaluation System (CURES)

Background. The Department of Justice maintains the Controlled Substance Utilization and Review System (CURES), an electronic database of prescription drugs issued by doctors. In 1996, the Legislature initiated the development of the CURES system in an attempt to identify solutions addressed while utilizing an antiquated system of triplicate copying.

The implementation of CURES represented a significant improvement over the state's prior utilization of a triplicate copying system, however, it did not address the need for providing healthcare practitioners and pharmacists with access to timely information to proactively diminish and deter the use of controlled substances. To address this issue with CURES the DOJ initiated the Prescription Drug Monitoring Program (PDMP), which allows prescribers and dispensers to access data at the point of care. The PDMP system is utilized by the DOJ to collect and store data on the prescription of controlled substances (Schedule II through Schedule IV). State law mandates that the DOJ assist law enforcement and regulatory agencies with the diversion and resultant abuse of controlled substances.

The California Budget Act of 2011 eliminated all General Fund support of CURES/PDMP, which included funding for system support, staff support and related operating expenses. To perform the minimum critical functions and to avoid shutting

down the program, the department opted to assign five staff to perform temporary dual job assignments on a part-time basis.

In accordance with Health and Safety Code §11165(a), the Department of Justice is under contract with five healing arts boards; Nursing Board, Dental Board, Medical Board, Pharmacy Board, and the Osteopathic Medical Board. The 2012-13 budget provided the DOJ with \$296,000 to manage the CURES program. Funding to support the program is derived from fees assessed on the boards which support the operation and maintenance costs of the CURES program at the DOJ. The DOJ also has approximately \$550,000 in grant funds that can be used for CURES. However, similar to the funding derived from the healing arts boards, the funding can only be used to support the operation and maintenance of the program. DOJ has expressed an interest in utilizing the \$550,000 in grant funds currently available to modernize the Prescription Drug Monitoring Program, which may offset the overall cost of any upgrades.

The 2013-14 budget included authority for the DOJ to work with the partners (governmental and non-governmental) to update California's CURES system. The working title of the new system is CURES 2.0. The CURES 2.0 system proposes to:

- Integrate with health information systems.
- Provide a scalable environment capable of accommodating large increases in usage.
- Provide a method to collaborate and share sensitive communications among DOJ users, medical community users, and law enforcement users.
- Maintain and make available a directory of all system users to enable collaboration.
- Provide law enforcement investigators and prosecutors with a directory of criminal justice system users, DOJ program staff, prescribers, and dispensers.
- Provide a highly secure, responsive, scalable, and reliable system. CURES 2.0
- Provide geospatial and data analytics.
- Streamline PDMP registration process.
- Integrate with health information systems.
- Align data model with national standards.

- Share PDMP data across state boundaries.
- Enable collaboration among PDMP users.
- Employ advanced privacy and security standards.
- Provide prescribers and dispensers with a directory of prescribers and dispensers and DOJ staff.
- Facilitate the secure sharing of reports and other files among law enforcement and prosecutorial officials, and among law enforcement/prosecutorial officials and DOJ staff.
- Allow for interstate information sharing through the Prescription Monitoring Information Exchange (PMIX).

Staff Comment: The most recent Independent Project Oversight Report (IPOR), which was issued in December 2014, notes that the dates provided in the Project Management Plan and the Feasibility Study Report (FSR) provided to CalTech did not align. For example, the project had not completed the Systems Requirement Specification (SRS) deliverable, which the FSR noted would be complete by June 30, 2014. This represents at least a six month delay in approving that particular milestone. DOJ has noted that they have re-baselined the project, and full implementation is expected by October 2015, which represents a four month variation from the approved FSR. The IPOR notes that the project is lacking a detailed project schedule.

While the DOJ has submitted a high-level plan and defined some vendor deliverables, this may be a concern. A detailed project schedule enables the project team to assess various project efforts and ensure projects are sequenced, detailed, and completed on track. Furthermore, the project management plan submitted by DOJ does not address many of the risks that have been identified by the vendor, nor does it incorporate identified risks into the overall risk management process.

Like many Information Technology (IT) projects, CURES 2.0 project team is required to submit regular status reports to CalTech. The Project Status Reports (PSR), which are published on the CalTech website, are designed to provide the minimum amount of reportable information to project participants and interested parties, such as Legislative staff. The CURES 2.0 project team has not submitted a PSR since December 2014. Staff would encourage DOJ to submit the PSR's in accordance with CalTech guidelines.

Questions for the Department of Justice:

1. *Please provide the subcommittee with an update on the progress of CURES 2.0.*

2. *Describe efforts made by DOJ to ensure that the healing arts community is prepared to utilize CURES 2.0.*

Staff Recommendation: Oversight item, no action necessary.

Issue 6 – Bureau of Children’s Justice

Background. In 2011, the State Auditor released a report that found that many of California’s child welfare services could be more attentive and responsive to child abuse and neglect, and that county agencies must more consistently inform oversight or licensing entities of child abuse and neglect. Additionally, a report issued in 2013 by the Stuart Foundation, which surveyed the educational, employment, health, and criminal justice outcomes for foster youth in California found there is significant room for improvement. The report noted that students in foster care are older for their grade level than other students; drop out at a higher rate than other at-risk student groups; only 50 percent pass the California high school exit exam in grade 10; about 33 percent change schools at least once during the school year, which is four times the rate of low-socioeconomic status or general populations; and 20 percent are classified with a disability, who have a significantly higher rate of emotional disturbance as well. The report noted that emancipated foster youth are also much more likely to become homeless and to become involved in the criminal justice system as well.

To address many of the disparities noted above, the Department of Justice (DOJ) announced the creation of the Bureau of Children’s Justice (BCJ) in February 2015. When Attorney General Kamala Harris announced the creation of the BCJ, she noted that the mission of the BCJ would be “to protect the rights of children and focus attention and resources of law enforcement and policymakers on the importance of safeguarding every child so that they can meet their full potential”. Attorney General Harris noted the DOJ’s background in issues impacting children’s legal protection, including civil rights, education, consumer protection, nonprofit charities, child welfare, privacy and identity theft, and fraud. The BCJ is staffed with both civil rights and criminal prosecutors, focusing enforcement efforts on several particular areas including:

- California’s foster care, adoption, and juvenile justice systems.
- Discrimination and inequities in education.
- California’s elementary school truancy problem.
- Human trafficking of vulnerable youth.
- Childhood trauma and exposure to violence.

Staff Comment: According to the DOJ, resources to support the Bureau of Children’s Justice have been redirected from other activities. At this time, DOJ is not requesting any additional resources to support the newly created bureau.

Questions for the Department of Justice:

1. *Please identify where resources are being redirected from to support this effort?*
2. *What role will this effort play in preventing overmedication in the state’s youth foster care system?*

Staff Recommendation: Oversight item, no action necessary.

Issue 7 – Armed Prohibited Person System (APPS)

Background. Beginning in 1999, the California Department of Justice (DOJ)—Bureau of Firearms began to study some of California’s high-profile shootings in an effort to determine if there were remedial measures that could be enacted to curtail instances of gang violence and other similar violent events. The study found that many of the offending individuals were law-abiding citizens when they purchased the firearms, and were subsequently prohibited from gun ownership due to a variety of reasons specified out in California’s Penal Code. Persons prohibited from gun ownership (‘prohibited persons’) are designated as such for various reasons, including for a criminal conviction, juvenile adjudication, addiction to narcotics, defined mental health conditions, restraining or other court orders, or specified terms or conditions related to probation.

At the time of the study, the DOJ lacked the capacity to determine whether or not an individual who had legally purchased a firearm, and subsequently became prohibited from such ownership, was still in possession of a firearm. In addition, even if such a determination could have been made, the DOJ lacked the authority to retrieve that weapon from the prohibited person. SB 950 (Brulte), Chapter 944, Statutes of 2001, provided the DOJ with the authority to cross-reference their database of individuals who own handguns with their database listing of prohibited individuals. The 2002 Budget Act included General Fund support of \$1.0 million for DOJ to develop the Armed Prohibited Persons System (APPS). The database was complete in November 2006, with continued funding to support the program provided from the General Fund. Further legislation, SB 819 (Leno), Chapter 743, Statutes of 2011, allowed the department to utilize funds within the Dealers Record of Sale Account (DROS) for firearm enforcement and regulatory activities related to APPS.

According to the DOJ, there are on average 4,500 newly-identified armed and prohibited persons included in the system on an annual basis. Additionally, it is

estimated that there are approximately 3,900 names that are purged annually because of court dispositions, death, orders that reinstate firearms, or prohibition expiration dates. The DOJ's Bureau of Firearms workload history is provided below.

**Armed Prohibited Persons
Workload History**

Fiscal Year	Armed and Prohibited Persons Identified	APPS Investigations Processed
2007-08	8,044	1,620
2008-09	11,997	1,590
2009-10	15,812	1,763
2010-11	17,606	1,700
2011-12	18,668	1,716
2012-13	21,252	2,772
2013-14	22,780	4,156
2014-15	17,479	7,573

In 2013, the Legislature, in coordination with the DOJ, determined that there was a significant workload resource gap. At that time, it was estimated that approximately 2,600 offenders were added to the APPS list annually, creating a significant backlog in the number of investigations. According to the DOJ, each special agent is capable of conducting 100 APPS investigations over a one year period. During fiscal year 2012-13, the Bureau of Firearms (bureau) had authority for twenty-one agents. Therefore, the bureau was capable of conducting roughly 2,100 investigations on an annual basis with the special agent authority of twenty-one agents, which would add 500 possible armed and prohibited persons to the backlog each year.

To address the workload resources required to both reduce the growing backlog, and actively investigate incoming cases in a timely fashion, the Legislature passed SB 140, (Leno), Chapter 2, Statutes of 2013. SB 140 provided DOJ with \$24.0 million (Dealer's Record of Sale Account) in order to increase regulatory and enforcement capacity within DOJ's Bureau of Firearms. The resources provided in SB 140 were provided on a three-year limited-term basis, which, according to the DOJ, was adequate time to reduce the overall number of Armed and Prohibited Persons. Ongoing cases could be managed with resources within DOJ's Bureau of Firearms.

Additionally, the measure included reporting requirements due annually to the Joint Legislative Budget Committee. From those reporting requirements the Legislature has learned that some progress has been made. At the beginning of 2014 there were 21,249 names in the APPS database; by December 2014 there were 17,479 names in the APPS database, a net reduction of 3,770 names. As of December 31, 2014 the DOJ has hired 18.0 agents for the enforcement of the APPS program. The report also notes that the DOJ has recovered a significant portion of firearms due to APPS enforcement;

recovering over 3,000 firearms, 275,000 rounds of ammunition, 300 high-capacity magazines, and made over 135 arrests. Additionally, the DOJ has collaborated with over 65 local law enforcement agencies to further reduce the APPS backlog.

Staff Comment: While progress reducing the number of individuals currently on the Armed and Prohibited Persons list has been made, there is certainly room for improvement. As noted in a letter by Senate Republican Leader Bob Huff to Senate President Pro Tem Kevin de León “In the six-year period prior to SB 140, DOJ confiscated an average of 1,672 firearms per year. In 2014, after an additional \$24 million was provided, DOJ confiscated 3,288 guns, a net increase of only 1,616 firearms seized out of over 40,000 thought to be illegally held”. Additional concerns raised by Senator Huff, and other Legislators, include expenditures exceeding 40 percent of the funds while also not hiring sufficient staff to end the backlog; devising an expenditure plan to eliminate the backlog; and including the breakdown of why each individual in APPS is prohibited from possessing a firearm in future reports.

In addition to concerns raised by Senator Huff and his colleagues, this subcommittee may wish to seek clarity on the retention and recruitment of agents by the DOJ’s Bureau of Firearms to address the APPS backlog. According to the AG’s most recent APPS report, there were 18.0 agents hired. However, the Brady Campaign submitted a Public Records Act request, and has learned that between July 2013 and December 2014 there have been approximately 45.0 agents hired, many of whom may have transferred within the DOJ to other departments, where the agent would not be subject to a limited-term position.

Questions for the Department of Justice:

- 1. Does the Department of Justice have a long-term expenditure plan to reduce the APPS backlog? If yes, please describe.*
- 2. In the annual report issued to the Legislature, the DOJ notes that “recruitment shortcomings will be mitigated with the Department of Justice Special Agent Academy scheduled for Spring 2015”. Please provide some detail as to how many special agents are anticipated to join the Bureau of Firearms.*
- 3. Beyond recruitment and retention shortcomings, are there additional hurdles that have limited the investigative capacity of the Bureau of Firearms?*
- 4. Please describe what actions are taken by the Bureau of Firearms, subsequent to an individual demanding a warrant be issued prior to DOJ entry? Are local authorities notified about the investigation and that a warrant has been demanded by the individual?*

Staff Recommendation: Oversight item, no action necessary.

SUBCOMMITTEE NO. 5

Agenda

Senator Loni Hancock, Chair
Senator Joel Anderson
Senator Jim Beall



PART B

Thursday, April 30, 2015
9:30 a.m. or Upon Adjournment of Session
State Capitol - Room 113

Consultant: Brady Van Engelen

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SUBCOMMITTEE NO. 5

Agenda

Senator Loni Hancock, Chair
Senator Joel Anderson
Senator Jim Beall



Thursday, May 7, 2015
9:30 a.m. or Upon Adjournment of Session
State Capitol - Room 113

Consultant: Julie Salley-Gray

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PROPOSED FOR VOTE ONLY**4440 Department of State Hospitals**

1. **April Finance Letter: Patton State Hospital Fence.** The Governor requests the reversion of \$14.5 million General Fund provided in the 2014 budget act for the upgrade of security fencing around Patton State Hospital.

5225 Department of Corrections and Rehabilitation

2. **Statewide Advanced Planning.** The Governor's 2015-16 budget proposal includes \$500,000 (General Obligation Bond Funds) to support workload associated with planning capital outlay projects at youth and adult correctional facilities. This workload consists of site assessments, environmental reviews, and the development of scope, cost, and schedule projections.

5227 Board of State and Community Corrections

3. **April Finance Letter: Technical Correction and Recidivism Reduction Fund Reappropriation.** The Governor requests a decrease of the BSCC budget by \$410,000. The funding was included in the budget for 2014-15 and was intended to be one time. It was inadvertently also included in the 2015-16 Governor's budget.

The Governor requests the reappropriation of unspent Mentally Ill Offender Crime Reduction Grant funding, including the funding provided for state operations.

ITEMS TO BE HEARD

4440 Department of State Hospitals

The Department of State Hospitals (DSH) is the lead agency overseeing and managing the state's system of mental health hospitals. The DSH seeks to ensure the availability and accessibility of effective, efficient, and culturally-competent services. DSH activities and functions include advocacy, education, innovation, outreach, oversight, monitoring, quality improvement, and the provision of direct services.

The Governor's 2011 May Revision first proposed the elimination of the former Department of Mental Health (DMH), the creation of the new DSH, and the transfer of Medi-Cal mental health services and other community mental health programs to the Department of Health Care Services (DHCS). The 2011 budget act approved of just the transfer of Medi-Cal mental health programs from the DMH to the DHCS. In 2012, the Governor proposed, and the Legislature adopted, the full elimination of the DMH and the creation of the DSH. All of the community mental health programs remaining at the DMH were transferred to other state departments as part of the 2012 budget package. The budget package also created the new DSH which has the singular focus of providing improved oversight, safety, and accountability to the state's mental hospitals and psychiatric facilities.

California's State Hospital System

California has five state hospitals and three psychiatric programs located on the grounds of the prisons operated by the California Department of Corrections and Rehabilitation (CDCR). Approximately 92 percent of the state hospitals' population is considered "forensic," in that they have been committed to a hospital through the criminal justice system. The five state hospitals provide treatment to approximately 6,000 patients. The psychiatric facilities at state prisons currently treat approximately 1,000 inmates.

Atascadero State Hospital. This facility, located on the Central Coast, houses a largely forensic population, including a large number of incompetent to stand trial patients and mentally disordered offenders. As of December 2014, it housed more than 1,000 patients.

Coalinga State Hospital. This facility is located in the city of Coalinga and is California's newest state hospital. The hospital houses only forensic patients, most of whom are sexually violent predators. As of December 2014, it housed more than 1,100 patients.

Metropolitan State Hospital. Located in the city of Norwalk, this hospital's population is approximately 65 percent forensic. Metropolitan State Hospital does not accept individuals who have a history of escape from a detention center, a charge or conviction

of a sex crime, or a conviction of murder. As of December 2014, it housed about 700 patients.

Napa State Hospital. This facility is located in the city of Napa and has a mix of civil and forensic commitments. Napa State Hospital limits the number of forensic patients to 80 percent of the patient population. As of December 2014, it housed nearly 1,200 patients.

Patton State Hospital. This facility is located in San Bernardino County and primarily treats forensic patients. As of December 2014, it housed 1,500 patients.

Salinas Valley Psychiatric Program. This program is located on the grounds of Salinas Valley State Prison in Soledad and provides treatment to state prison inmates. As of December 2014, it had a population of more than 200 patients.

Stockton Psychiatric Program. This program is located on the grounds of the California Health Care Facility in Stockton and is the state's newest psychiatric program. The program provides treatment to state prison inmates. As of December 2014, it had a population of about 400 patients.

Vacaville Psychiatric Program. This program is located on the grounds of the California Medical Facility in Vacaville and provides treatment to state prison inmates. As of December 2014, it had a population of about 350 patients.

The following are the primary Penal Code categories of patients who are either committed or referred to DSH for care and treatment:

Committed Directly From Superior Courts:

- *Not Guilty by Reason of Insanity* – Determination by court that the defendant committed a crime and was insane at the time the crime was committed.
- *Incompetent to Stand Trial (IST)* – Determination by court that the defendant cannot participate in trial because the defendant is not able to understand the nature of the criminal proceedings or assist counsel in the conduct of a defense. This includes individuals whose incompetence is due to a developmental disability.

Referred From The California Department of Corrections and Rehabilitation (CDCR):

- *Sexually Violent Predators (SVP)* – Hold established on inmate by court when it is believed probable cause exists that the inmate may be a SVP. Includes 45-day hold on inmates by the Board of Prison Terms.

- *Mentally Disordered Offenders (MDO)* – Certain CDCR inmates for required treatment as a condition of parole, and beyond parole under specified circumstances.
- *Prisoner Regular/Urgent Inmate-Patients (Coleman Referrals)* – Inmates who are found to be mentally ill while in prison, including some in need of urgent treatment.

State Hospitals & Psychiatric Programs Caseload Projections

	2014-15	2015-16
Population by Hospital*		
Atascadero	N/A	N/A
Coalinga	N/A	N/A
Metropolitan	N/A	N/A
Napa	N/A	N/A
Patton	N/A	N/A
Subtotal	5,802	5,863
Population by Psych Program		
Vacaville	366	366
Salinas	244	244
Stockton	480	480
Subtotal	1,090	1,090
Population Total	6,892	6,953
Population by Commitment Type		
Incompetent to Stand Trial (IST)	1,430	1,485
Not Guilty By Reason of Insanity (NGI)	1,377	1,379
Mentally Disordered Offender (MDO)	1,220	1,210
Sexually Violent Predator (SVP)	953	967
Lanterman-Petris-Short Act – Civil Commitments	556	556
<i>Coleman</i> Referral – Hospitals	258	258
<i>Coleman</i> Referral – Psych Programs	1,090	1,090
Department of Juvenile Justice	8	8

* DSH is no longer able to identify the number of budgeted beds at their hospitals.

State Hospitals Budget

The Governor's proposed budget includes \$1.7 billion for DSH in 2015-16 (\$1.6 billion General Fund). This represents a \$15 million increase over 2014-15 funding. The proposed budget year position authority for DSH is 11,398 positions, an increase of 164 positions from the current year. The department's budget includes increased funding for several proposals; including plans to operate 105 more Incompetent to Stand Trial (IST)

beds than were budgeted in 2014-15, and establishes an involuntary medication policy for patients who are Not Guilty by Reason of Insanity (NGI).

(dollars in thousands)

Funding	2013-14 Actual	2014-15 Projected	2015-16 Proposed
General Fund (GF)	\$1,440,792	\$1,538,796	\$1,551,830
Reimbursements	126,384	127,560	129,764
CA Lottery Education Fund	153	25	25
Total	\$1,567,329	\$1,666,381	\$1,681,619
Positions	10,360	11,234	11,398

Cost Over-Runs. Over the past several years, state hospital costs had been rising at an alarming rate, and substantial current year deficiencies had become the norm, and even expected, from year to year. For example, in the 2010-11 fiscal year, the deficiency rose from \$50 million to \$120 million and the then-DMH staff could not explain why. In general, the department lacked any clear understanding of what the major cost drivers were and how to curb or stabilize costs in the system. In 2011, DMH leadership facilitated and oversaw an in-depth exploration and analysis of state hospital costs, resulting in a lengthy report that is available on the department's website. The research team identified the following system wide problems/cost drivers: increased patient aggression and violence; increased operational treatment models; and redundant staff work.

Based on the report described above, in 2012, the Administration proposed a comprehensive list of reforms, to reverse the rising cost trend, which addressed three stated goals: 1) improve mental health outcomes; 2) increase worker and patient safety; and, 3) increase fiscal transparency and accountability. Perhaps the most significant of these proposed reforms was the reduction of 600 positions throughout the state hospital system. Of these 600 positions, 230 were vacant. In addition to the reduction in positions, the 2012 budget package included key changes in the following areas:

1. Reduced layers of management and streamlined documentation.
2. Flexible staffing ratios, focusing on front-line staff, and redirecting staff to direct patient care.
3. New models for contracting, purchasing, and reducing operational expenses.
4. Elimination of adult education.

Issue 1: Metropolitan Bed Capacity and Perimeter Fence

Governor's Budget. The budget proposes \$1.9 million General Fund to develop preliminary plans to increase secure treatment capacity at DSH–Metropolitan, located in Norwalk, by 505 beds. This expansion includes (1) 232 new beds and (2) 273 existing beds currently activated but not considered secure capacity because they are not enclosed by secure fencing. The beds would be prioritized for Incompetent to Stand Trial (IST) patients. The project is estimated to cost \$35.5 million in total and would be completed in 2019. The staffing costs for the 232 new beds are estimated to be \$48 million annually.

If these new secure beds at Metropolitan were activated, along with the proposed IST beds at DSH–Atascadero and DSH–Coalinga, the department would have a total of 337 additional beds for IST patients, at an annual cost of \$65 million.

April Finance Letter. The Governor requests an additional \$1.7 million for the working drawings phase of the project. This addition increases the total funding request for 2015-16 to \$3.6 million General Fund for both preliminary plans and working drawings.

Previous Subcommittee Action. On March 16, this subcommittee rejected the Governor's request for 105 additional IST beds at Atascadero and Coalinga due to a lack of adequate data to determine the need for the additional funding to activate more state hospital beds and a failure to expand the Restoration of Competency (ROC) program, which allows people who are mentally ill to be returned to competency either in their communities or in their local county jails.

Background. When a judge deems a defendant to be incompetent to stand trial, the defendant is referred to the state hospital system to undergo treatment for the purpose of restoring competency. Once the individual's competency has been restored, the county is required to take the individual back into the criminal justice system to stand trial, and counties are required to do this within ten days of competency being restored.

For a portion of this population, the state hospital system finds that restoring competency is not possible. There is no statutory deadline for the county to retrieve these individuals, and therefore they often linger in the state hospitals for years. The state pays the costs of their care while in the state hospitals; whereas their costs become the counties' responsibility once they take them out of the state hospitals. This funding model creates a disincentive for counties to retrieve patients once it is determined that competency restoration is not possible.

Over the past several years, the state hospitals have seen a growing waiting list of forensic patients. The longest waiting lists are for IST and Coleman inmate-patient commitments from CDCR. As of February 23, 2015, the waitlist for all commitment types was 484, including 328 specifically IST. DSH has undertaken several efforts to address the growing IST waitlist, including: 1) increasing budgeted bed capacity by

activating new units and converting other units; 2) establishing a statewide patient management unit; 3) promoting expansion of jail-based IST programs; 4) standardizing competency treatment programs; 5) seeking community placements; 6) improving referral tracking systems; and 7) participating in an IST workgroup that includes county sheriffs, the Judicial Council, public defenders, district attorneys, patients' rights advocates, and the Administration.

DSH acknowledges that, despite these efforts, IST referrals have continued to increase. When queried about the potential causes of the growing number of referrals from judges and CDCR, the Administration describes a very complex puzzle of criminal, social, cultural, and health variables that together are leading to increasing criminal and violent behavior by individuals with mental illness.

Services for IST Patients. Under state and federal law, all individuals who face criminal charges must be mentally competent to help in their defense. By definition, an individual who is IST lacks the mental competency required to participate in legal proceedings. Individuals who are IST and face a felony charge are eligible for DSH-provided restoration services. At any given time, between 15 percent and 20 percent of the population in DSH facilities are committed as IST.

Waiting List for IST Treatment. As indicated during the March 16th hearing on the IST expansion, there is an on-going waiting list for individuals in need of mental health treatment in order to be restored to competency to stand trial for a crime they are accused of committing. Individuals on the waitlist are typically held in county jail until space becomes available in a DSH facility. The waitlists are problematic because they could result in increased court costs and higher risk of DSH being found in contempt of court orders to admit patients. This is because DSH is required to admit patients within certain time frames and can be required to appear in court or be held in contempt, when it fails to do so. The waiting list has remained around 300 individuals for the last several weeks.

Legislative Analyst's Office (LAO). It is uncertain whether the plan to modify DSH–Metropolitan would provide usable capacity for IST patients. This is because there are limits on the type of patients that DSH can place in the facility. The DSH–Metropolitan has an agreement with the City of Norwalk and the Norwalk station of the Los Angeles County Sheriff's Department to only admit patients who have no history of attempted or successful escape from a locked facility and no charges or convictions for murder or a sex crime. According to the department, it does not anticipate having difficulty finding IST patients who fit those criteria. However, the department does not track the number of patients in its facilities or on its waitlist, who are eligible for placement at DSH–Metropolitan. As a result, it is difficult to assess whether the department would be able to fully utilize the additional 232 secure treatment beds proposed for IST patients at DSH–Metropolitan, once completed.

LAO Recommendation. As discussed earlier, the Governor's proposal to expand secure treatment at DSH–Metropolitan is estimated to cost \$35.5 million to complete,

and \$48 million to operate annually. Given such costs relative to more cost-effective options for expanding capacity, the LAO recommends that the Legislature reject the proposed expansion at DSH–Metropolitan at this time. There is significant uncertainty about the department’s need for the additional capacity, and, even if such a need existed, the department may be unable to utilize the proposed capacity at DSH–Metropolitan.

Questions for the Administration. The Administration should be prepared to address the following questions:

1. Please provide updated data on the IST waiting list.
2. In the last hearing, the committee asked you to analyze the effect of Proposition 47 on the IST waiting list. Have you conducted that analysis yet?
3. Please provide the committee with the average length of time a person is on the IST waiting list.
4. During the March 19th hearing, the committee rejected the proposal for increased IST beds and directed the department to provide the committee with additional data justifying the need for an increase. Please provide that data and/or an update on your efforts to gather the required information.
5. Also during the March 19th hearing, you provided an overview of the department’s efforts to expand the restoration of competency (ROC) program in county jails. The committee expressed frustration at the lack of progress the department has made. Please provide an update on your current efforts and explain what changes, if any, you have made to reduce the time it takes to establish ROC programs in the counties.
6. The LAO notes that you do not collect data on the number of people on waiting lists or in your facilities who would be eligible for DSH- Metro. How has the department determined that there are enough eligible forensic patients in the system to fill the 500 secure treatment area beds that would be made available through this proposal?

Issue 2: Enhanced Treatment Units

Governor's Budget. The governor's budget requests \$11.5 million in General Fund for the Department of State Hospitals (DSH) to retrofit rooms at the following hospitals to create enhanced treatment units (ETUs):

- 12 rooms at Atascadero
- 12 rooms at Napa
- 12 rooms at Patton
- 8 rooms at Coalinga

The 2014 budget act. The 2014 budget included \$1.5 million General fund for DHS and the Department of General Services (DGS) to prepare an analysis, estimate, and infrastructure design for the development of 44 locked ETUs in the five state hospitals. The budget also included language requiring the enactment of legislation authorizing the ETUs in order for the construction phase of the project to proceed.

Background. The state hospitals were initially designed to accommodate a population that did not exhibit the same level of violence that the hospitals face today. Currently, 92 percent of the population has been referred to the state hospitals by the criminal justice system. Consequently, evidence reveals an increasing rate of aggression and violent incidents at state hospitals.

The Administration argues that, in spite of this significant change in the state hospitals' patient population, there is currently no legal, regulatory, or physical infrastructure in place for DSH to effectively and safely treat patients who have demonstrated severe psychiatric instability or extremely aggressive behavior. As a result, often the only option available to a state hospital dealing with an extremely violent patient is the use of emergency seclusion and restraints, which is short term and more extreme response. Subsequent to the use of seclusion and restraint, a violent patient must be placed in one-on-one or two-on-one observation, which DSH states is labor intensive and does not necessarily improve safety.

DSH requests funding to retrofit existing facilities to establish enhanced treatment units (ETUs) to provide a secure, locked environment to treat patients that become psychiatrically unstable, resulting in highly aggressive and violent behavior toward themselves, other patients, or staff. Candidates for an ETU would exhibit a level of physical violence that is not containable using other interventions or protocols currently available in the state hospitals. DSH argues that the existing physical facilities are outdated and designed for a less violent population, therefore it is not possible to provide more security within existing facilities.

DSH has operated an ETU at Atascadero State Hospital since 2011. This proposal is distinguished from the existing enhanced treatment program in that it allows DSH to lock individual patients in their rooms. Under the current enhanced treatment program, patients are not in locked rooms.

Violence in DSH. DSH has experienced a decrease in the number of violent incidents between 2010 and 2013. DSH reports that violence predominantly comes from repeat aggressors, reporting that 2 percent of patients are responsible for 35% of DSH violence. The state hospitals have utilized programming, which the department attributes to the overall reduction in the numbers of both patient-aggressors and patient-victims.

According to DSH, in 2013, there were a total of 3,344 patient-on-patient assaults and 2,586 patient-on-staff assaults at state hospitals. Of the total patient population, 62 percent are non-violent, 36 percent committed 10 or fewer violent acts, and 2 percent committed 10 or more violent acts. Of all the violent acts committed, 65 percent are committed by those with 10 or fewer violent acts, and 35 percent are committed by those with 10 or more violent acts. A small subset of the population, 116 people, commits the majority of aggressive acts. Assaults for the previous years are as follows: 3,803 patient-on-patient and 3,026 patient-on-staff in 2012; 4,022 patient-on-patient and 2,814 patient-on-staff in 2011; and 4,627 patient-on-patient and 2,703 patient-on-staff in 2010.

The Division of Occupational Safety and Health, known as Cal/OSHA, within the California Department of Industrial Relations, has had significant and ongoing involvement with DSH as a result of insufficient protections for staff. According to a Los Angeles Times article from March 2, 2012, Cal/OSHA has issued nearly \$100,000 in fines against Patton and Atascadero, alleging that they have failed to protect staff and have deficient alarm systems. These citations are similar to citations levied in 2011 against Napa and Metropolitan. Cal/OSHA found an average of 20 patient-caused staff injuries per month at Patton from 2006 through 2011 and eight per month at Atascadero from 2007 through 2011, including severe head trauma, fractures, contusions, lacerations, and bites.

Enhanced Treatment Unit Pilot Project at Atascadero State Hospital. DSH issued a report in May 2013, *Enhanced Treatment Unit: Annual Outcome Report*, on the pilot project at Atascadero, which has operated since December 2011, but does not allow for locked doors. The goal of the ETU is to decrease psychiatric symptoms of some of the most violent patients in order to enable DSH to simultaneously assist the patients in their recovery, and increase safety in the facility. Patients must meet certain criteria, based on the patient's mental illness and psychiatric symptoms, before being admitted to the ETU. DSH reviews patient referrals to determine if patients meet the following entrance criteria:

- The patient engages in pathology-driven behaviors.
- The patient engages in recurrent aggressive behaviors that have been unresponsive to mainstream therapeutic interventions.
- The patient commits a serious assaultive act that results in serious injury.

The report concludes that the ETU has been successful in decreasing aggressive incidents and that the program as a whole is likely effective. Some of the contributing factors cited include staff with expertise in treating difficult patients and decreased staff-to-patient ratios; the presence of the Department of Police Services (Atascadero state hospital law enforcement); and the “calm milieu” of the ETU, which is attributed to the added staff with greater expertise in treating difficult and violent patients, i.e., the staff reacts to an incident in a manner that does not escalate the situation that may otherwise result in a violent act. While successful, DSH states that the Atascadero ETU accepts only those with Axis 1 diagnoses, such as schizophrenia, major depression, bipolar, and schizoaffective disorder. The Atascadero ETU intentionally avoids patients with Axis 2 diagnoses, which are various types of personality disorders that are often present in the patients involved in predatory violence. Patients with Axis 2 diagnoses have been involved in three recent murders of staff and patients, and are the patients the ETPs will treat.

AB 1340 (Achadjian; Statutes of 2014, Chapter 718). This legislation permitted the DSH to establish and administer a pilot enhanced treatment program (ETP) at each state hospital, for the duration of five calendar years, for testing the effectiveness of treatment for patients who are at high risk of the most dangerous behavior. In addition, it authorized ETPs to be licensed under the same requirements as acute psychiatric hospital and makes significant changes to current requirements and procedures related to the admission of patients and the administration of care. This legislation provides the necessary policy guidance for the development and running of potentially locked ETUs in the state hospitals.

Use of Solitary Confinement. There are a variety of treatment options to address aggressive patient behavior within the state hospitals. While levels of security (ie. strong boundaries, a highly structured environment, and a lack of access to dangerous materials) are essential in addressing violence, experts caution against the use of solitary confinement as it may contribute to a patient’s mental distress and may seem punitive. Experts therefore suggest avoiding seclusion, physical restraint, and sedation whenever possible. If necessary, enhanced treatment units (ETUs) should only be used if the patient remains unresponsive to all other therapeutic interventions available in a standard treatment setting.

In fact, it is widely accepted that solitary confinement of people with mental health disorders can cause those illnesses to worsen. Psychological research has found that a lack of social interaction can lead segregated housing unit inmates in prison to suffer from a variety of psychological and psychiatric illnesses. These can include chronic insomnia, panic attacks, and symptoms of psychosis (including hallucinations).

As discussed below, the *Coleman v. Brown* special master’s investigation of programs for mentally ill inmates run by DSH found that patient-inmates at the Stockton State Hospital complained of being confined to their cells 21 to 22 hours per day and received very little human interaction or treatment, despite the damaging effects of confinement for people who are mentally ill. However, this report involved inmates who are in prison

and being treated for a mental illness and the ETUs are designed for state hospital patients who are not inmates. Presumably, DSH will develop regulations and protocols that will prevent patients in an ETU from being confined to their room without human interaction for an extended period of time. However, the department does not have those written policies available at this time.

Coleman Special Master's Report. Last year the *Coleman v. Brown* special master released a report on the quality of treatment provided to Coleman class inmates being treated in DSH's psychiatric treatment programs and state hospitals. The investigation found significant lapses in the treatment being provided to inmate-patients.

The special master noted that individual therapy was rarely offered, even to those patients who were not ready for group therapy or for who group therapy was contraindicated. At Coalinga State Hospital (one of the two state hospitals that houses CDCR inmate-patients), patients reported that their only individual contact with clinicians occurred on the hallways of the unit. Further, even when individual clinical interventions were indicated for a patient in a treatment team meeting, they were not included in the patient's treatment plan.

The report also noted that at Salinas Valley Psychiatric Program (SVPP), it was the default practice to have two medical technical assistants (MTA) in the treatment room, based on institutional cultural perceptions of patient dangerousness rather than on an individualized assessment of the actual potential danger to clinicians and the need to have MTAs present. Similarly, Vacaville Psychiatric Program (VPP) required two escorts for any patient movement, regardless of the patients' custody status, classification, or behavior. In some instances activities were cancelled due to the unavailability of MTAs to escort the patients. According to both clinical and administrative staff, this was the primary reason for limiting out-of-cell activities.

Condemned patients who require an acute level of treatment are currently treated at VPP. According to the investigation, these patients received far less treatment than other acute level patients and no access to group activities or an outdoor yard. In addition, they were only allowed one hour in the day room per week. Reportedly, these patients had weekly contact with a psychiatrist or psychologist. But that contact either happened through the doors of their cells or in a non-confidential setting.

Finally, patients at the Stockton State Hospital (on the grounds of the Correctional Health Care Facility) reported that it was considerable more restrictive than the prisons from which they were referred, stating that it was like being in a maximum security environment, spending 21 to 22 hours per day in their rooms.

Another prevalent theme throughout the report was the lack of uniform policies and procedures throughout all aspects of the program. The report notes that all six of the inpatient programs used their own distinct systems of orientation, cuffing, and restrictions for newly admitted patients, steps/stages through which patients had to progress in order to fully access treatment, and the imposition of restrictions on patients

following behavioral problems or disciplinary infractions. In addition, the six program varied widely in terms of the amount and severity of restrictions on patients' movements, contact with others, and eligibility to receive treatment.

The special master also found that placement of new patients in extremely restrictive conditions was often based on the individual program's established procedures rather than on the severity of the individual patients' mental illness, their propensity for aggressive or self-harming behavior, or their readiness for treatment.

The report found that there was a need for the development of a consistent, more therapeutically-oriented; and less punitively-oriented system that could be applied across all six of the programs. More importantly, the report notes, the emphasis throughout needs to be redirected toward greater individualization of any necessary restrictions and staging of patients based on their unique needs and away from an automatic presumption of violent behavior, anti-therapeutic withholding of interaction with others, and deferral of much needed treatment.

While this report was only focused on the treatment of Coleman patient-inmates being treated by DSH, it is one of the only independent evaluations available to the state hospital system. Absent some type of evaluation of the quality of treatment for other patients being treated by DSH, it is unknown whether the level of treatment being provided to non-Coleman patients is any more robust than the treatment provided to the Coleman class patients. In light of that fact, it may be that patients moved into a locked ETU setting will receive a similar level of treatment, or lack of treatment as the Coleman class patient-inmates.

Legislative Analyst's Office (LAO). The LAO did not raise any concerns with this proposal in their analysis of the Governor's budget.

Questions for the Administration. The Administration should be prepared to address the following questions:

1. The budget proposal notes that there have been three murders and "thousands of acts of aggression" in state hospitals since 2008. Please provide updated data on the number of incidents of serious aggression in the last three years of the level that would likely lead a patient to being placed in an ETU.
2. How do other states handle the increasing levels of violence in their mental health institutions?
3. Is seclusion in an ETU an appropriate action for patients who have not been convicted?
4. Please provide the committee with your current written policies and procedures surrounding staff and patient concerns about possible violence from other patients.

5. How many complaints did you receive from staff and patients in the last year regarding concerns about their safety? How many of those complaints resulted in attacks upon the individuals who expressed concern?
6. Please provide data on the number of patients in the last year who have had to be restrained due to violent behavior toward other patients or staff.
7. Please provide the department policies and procedures regarding the use of restraint.
8. Is there sufficient oversight to ensure that best practices will be implemented in using the ETUs?
9. Please provide the committee with any preliminary written policies or guidelines surrounding the use of locked individual rooms for patients housed in an ETU.
10. Using the widely publicized killing of a patient by his roommate at Atascadero State Hospital last May as an example, please describe how an ETU with locked rooms that are only to be used for therapeutic purposes would have better protected the patients and staff who came into contact with that individual. Also, was that individual being treated in the existing ETU at Atascadero?
11. Please describe how staff is trained to appropriately handle patient violence. Is this on-going training or one time? Is the training provided to staff at all of your hospitals and psychiatric programs? How many hours of training do they receive?
12. The California Department of Corrections and Rehabilitations has established use of force policies and use of force training for custodial staff who are required to restrain violent or non-cooperative inmates. Does DSH have a written use of force policy that outlines the appropriate level of force that can be used to restrain a patient? Do you have use of force training for DSH staff? If so, which job classifications receive this training?
13. Presumably, the licensed mental health experts employed by DSH are well trained in techniques surrounding the de-escalation of situations involving patients at risk of becoming violent. Is that type of training provided to all DSH employees? If so, is it updated annually or is it one-time training?

Issue 3: State Hospitals Capital Outlay Proposals

Governor's Budget. The Administration proposes the following capital outlay projects:

1. \$7,634,000 General Fund to upgrade the fire alarm system at Metropolitan.
2. \$731,000 General Fund to upgrade the fire alarm system at Patton.
3. \$2,029,000 General Fund for courtyard gates and security fencing at Napa.
4. \$442,000 General Fund for seismic upgrades at Atascadero.
5. \$219,000 General Fund for courtyard expansion at Coalinga.

Background. This issue covers the following five proposed capital outlay projects:

Fire Alarm Upgrade at Metropolitan (\$7,634,000). This proposal is to completely upgrade the existing Notifier Fire Alarm Systems in patient housing and to provide a new central monitoring system located at Hospital Police Dispatch. According to the proposal, the existing system is not code compliant and does not provide serviceability and/or expandability. The 2014 request for \$712,000 was for the working drawings phase of the project. Development of preliminary plans was funded in the prior fiscal year at \$633,000, and construction is proposed to be funded in 2015-16 for \$7,634,000. The total cost of the project is estimated to be \$9 million General Fund.

Fire Alarm Upgrade at Patton (\$731,000). This project proposes to upgrade the existing Simplex Grinnell Fire Alarm Systems in psychiatric patient housing and provide a new central monitoring system located at Hospital Police Dispatch. The proposal states that the existing system is not compatible with the manufacturer's software and hardware, is not code compliant, and does not allow for serviceability and/or expandability. This is the first phase of this project. The total cost of the project is estimated to be \$9.8 million General Fund.

Courtyard Gates & Security Fencing at Napa (\$2,029,000). This project is to improve security in the courtyards in the patient housing buildings, including: replacement of gates and fabricating and installing extensions to raise the height of security fencing in specified buildings. This is the final phase of this project. The 2014 cost to develop working drawings was \$191,000. The total cost of the project is estimated to be \$2.3 million General Fund.

Seismic Upgrades at Atascadero (\$442,000). This project is to perform a seismic retrofit at the main East-West corridor at Atascadero State Hospital. The retrofit will include construction of steel framed lateral frames in the upper third portion of the corridor. Construction also will include a security sally port and temporary access doors. It is anticipated that this project will reduce the Risk Level of the corridor from the current Level V to a Level III. The \$442,000 requested is for the development of working

drawings. This project received \$325,000 in 2014 for the development of preliminary plans and Department of Finance expects that there will be a follow-up request next year for actual construction. The total cost of the project is estimated to be \$6.2 million General Fund.

Courtyard Expansion at Coalinga (\$219,000). This proposal is for resources to design and construct a secure treatment courtyard at Coalinga, in addition to the current Main Courtyard area, to include a walking/running track and open air space to accommodate the full capacity of the facility (1,500 individuals). The Main Courtyard is undersized and does not provide the needed space for group exercise, social interactions, and other outdoor activities. This is the first phase of this project. The total cost of the project is estimated to be \$3.6 million General Fund.

Legislative Analyst's Office (LAO). The LAO did not raise any concerns with these proposals in their analysis of the Governor's budget.

Questions for the Administration. The Administration should be prepared to address the following questions:

1. Please present these proposals and explain in which phase of the full project each proposal falls.
2. Please provide the business case for these three projects.
3. Please provide the subcommittee with information on alternative solutions explored by the department (for each project).
4. Please provide any on-going operating costs associated with these projects. For example, are there additional staffing costs associated with the courtyard expansion at Coalinga?

5225 Department of Corrections and Rehabilitation

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 local communities.

The 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: Education, Vocational, and Offender Programs, Education, Substance Abuse Programs, Inmate Activities, Administration
- Adult Health Care Services

The 2014 budget act projected an adult inmate average daily population of 136,530 in the current year. The current year adult inmate population is now projected to decrease by 633 inmates, a 0.5 percent decrease, for a total population of 135,897. The budget year adult inmate population is projected to be 137,002, a 0.8 percent increase of 1,105 inmates over the current year. The current projections also reflect an increase in the parolee population of 1,360 in the current year, compared to budget act projections, for a total average daily population of 43,226. The parolee population is projected to be 40,467 in 2015-16, a decrease of 2,759 over the current year. These projections do not include the impact of the passage of Proposition 47, which reduced various felonies to misdemeanors.

As of February 18, 2015, the total in-custody adult population was 131,469. The institution population was 116,556, which constitutes 136.3 percent of prison capacity. The most overcrowded prison is the Central California Women's Facility in Chowchilla, which is currently at 167.3 percent of its capacity. For male inmates, Mule Creek State Prison is currently the most overcrowded at 165.9 percent of its capacity.

The Governor's budget proposes total funding of \$10.2 billion (\$9.9 billion General Fund and \$300 million other funds) in 2015-16. This is an increase of approximately \$1 billion (\$833 million General Fund) over 2013-14 expenditures. The following table shows CDCR's total operational expenditures and positions for 2013-14 through 2015-16.

(dollars in thousands)

Funding	2013-14	2014-15	2015-16
General Fund	\$9,156,505	\$9,827,940	\$9,989,790
General Fund, Prop 98	16,530	18,385	18,635
Other Funds	56,080	67,250	62,329
Reimbursements	167,644	185,074	185,064
Recidivism Reduction Fund	-103,199	25,968	28,227
SCC Performance Incentive Fund	-1,000	-1,000	-1,000
Total	\$9,292,560	\$10,123,617	\$10,283,0451
Positions	52,260	60,812	61,579

Issue 4: April Finance Letter: Board of Parole Hearings

Spring Finance Letter. The Governor requests seven permanent positions, two two-year limited term positions, and a six-month extension of one limited-term position to accommodate increased workload due to the new parole process for second-strike offenders and youthful offenders. The Governor notes that these additional positions will allow the board to complete comprehensive risk assessments every three years and promulgate regulations surrounding the new petition to advance a parole suitability hearing and administrative review process related to recent federal court rulings.

There is no funding included in the request. The Board of Parole Hearings (BPH) will absorb the cost within its existing budget.

2014 Budget. The 2014 budget act included \$3.1 million dollars General Fund and 23.8 positions for the workload associated with expanded medical parole, implementing an elderly parole program, and establishing a parole process for non-violent, non-sex related second strikers that have served 50 percent of their sentence, and to reduce the hearing preparation timeline.

In addition, the 2014 budget included \$1.586 million General Fund and 3.5 positions on a one-year limited-term basis (decreasing to approximately \$315,000 and 1.5 positions in 2015-16, to conduct the additional youthful offender parole hearings required by SB 260 (Hancock; Chapter 312, Statutes of 2013). Of the \$1.586 million, \$1.298 million and 3.5 positions were BPH and the remaining \$288,235 was for CDCR's Case Records Unit.

Legislative Analyst's Office (LAO) Recommendation. The LAO originally raised a concern that CDCR had not provided a full accounting of the savings in BPH's budget that the department proposes to redirect to support the requested positions. However, the department has provided additional information regarding those savings and the LAO no longer has concerns with the proposal.

Issue 5: Armstrong Accessibility

Governor’s Budget. The Governor’s budget proposal requests \$38 million from the General Fund—\$19 million in 2015-16 and \$19 million in 2016-17—to construct Americans with Disabilities Act (ADA) improvements at 14 prisons.

April 1st Finance Letter. The Governor requests a \$6.3 million reduction to the 2015-16 Governor’s budget request, and a \$6.5 million General Fund reduction to the 2016-17 estimate, to reflect a revised plan to spend \$12.7 million in 2015-16 and \$12.5 million in 2016-17 on the construction costs associated with making ADA improvements at a total of 13 prisons.

The Governor’s April 1st finance letter provided the following list of prisons that will be undergoing ADA updates if funding is approved:

2015-16	2016-17
Central California Women’s Facility	CSP – Corcoran
CSP – Los Angeles County	Ca. Substance Abuse Treatment Facility
CSP – Sacramento	Deuel Vocational Institution
Salinas Valley State Prison	High Desert State Prison
San Quentin State Prison	Kern Valley State Prison
Wasco State Prison	North Kern State Prison
	Pleasant Valley State Prison

Background. In response to a federal class action lawsuit (Armstrong), the CDCR created the Disability Placement Program (DPP) in the mid 1990’s. The DPP is CDCR’s set of plans, policies, and procedures to assure nondiscrimination against inmates with disabilities. One component of this plan was the selection of designated DPP prisons for individuals with mobility, hearing, visual and speech impairments. Limited physical plant upgrades to accommodate the needs of these inmates were performed; the scope of these upgrades was not intended to make the prison fully compliant with the ADA. The purpose of designating specific DPP prisons was to enable CDCR to best serve the housing, programming, and/or service needs of the inmates with disabilities in a cost effective manner, while maintaining the integrity of the security classification system and without compromising legitimate penological interests such as safety and security.

Prior to 2014-15, the Legislature provided two one-time appropriations for construction of ADA accessibility improvements. Assembly Bill 986 (Chapter 28, Statutes of 1998) appropriated \$6.6 million GF for construction of initial ADA modifications related to the establishment of the DPP. An additional \$3.7 million GF was appropriated in the 2008 Budget Act for construction of a specified list of ADA modifications. The 2008 budget

act also contained an ongoing support appropriation of \$1.9 million GF annually, intended for maintenance and repair of existing accessibility features.

During the 15 years since the DPP prisons were designated, the ability to find appropriate housing for DPP inmates has become increasingly complex. In addition to an inmate's security level, various factors to be considered include general population or sensitive needs yards, medical and mental health needs, and susceptibility to illnesses caused by environmental factors. Reception centers must provide housing and services for inmates newly committed to CDCR that require accessible accommodations, and high security housing, such as for condemned inmates and Security Housing Units, must be able to accommodate inmates requiring accessible housing. This requires a broader range of disabled accessible housing (as well as services and path of travel) than presently exist at the DPP prisons.

In addition to these concerns, the Armstrong plaintiffs are contending that existing DPP prisons are non-compliant with ADA accessibility guidelines. The plaintiffs sent a consultant to several prisons to develop a list of accessibility deficiencies. The list developed by this consultant would have resulted in construction costs of between \$10 million and \$15 million per prison. CDCR was concerned that this report would potentially form the basis of an expensive court order, and that the consultant's report may require a greater degree of modifications than CDCR would agree was required.

To forestall a potential challenge in court, the Armstrong plaintiffs agreed to allow CDCR to conduct surveys to determine the post-realignment housing needs for inmates with disabilities requiring accessibility, and use this to determine the most appropriate prisons for designation as DPP facilities, along with assessing each prison's physical plant to determine the scope of accessibility upgrades that would be required at the DPP facilities. Different types of accessibility upgrades are required at each prison; the types of upgrades include, but are not limited to, the following: cell modifications, housing unit modifications including bathrooms and accessible tables; path of travel sidewalk improvements from housing unit to programs and services; accessible chairs and tables at visiting; access ramps meeting grade requirements; and accessible gym and yard exercise equipment.

The 2014-15 budget act appropriated \$17.5 million GF to CDCR to begin implementing the results of these surveys. Of this funding, \$13.5 million was for construction of improvements at four prisons that had completed design plans, and \$4 million was to complete design activities at 15 prisons. The modifications at these prisons will be necessary to provide CDCR with the variety of housing and programs necessary to appropriately house inmates requiring accessibility accommodations. The conceptual construction cost for improvements to these additional prisons is approximately \$38 million GF.

Legislative Analyst's Office (LAO). Unlike when funding was requested for ADA improvements for 2014-15, the Administration's proposal for 2015-16 currently lacks sufficient information for the Legislature to evaluate it. While the Administration indicates

that the proposed \$19 million would support projects at 14 prisons, it has not indicated (1) which prisons will receive modifications, (2) what specific problems exist at those prisons, (3) what specific projects will be undertaken at each prison to address the associated problem, and (4) the cost of each project and potential alternatives. Moreover, according to CDCR, the department has been working with Armstrong plaintiffs to achieve compliance. Based on those discussions, the department will identify the specific projects that would be funded from this proposal. The department stated that a list of accessibility improvements is not currently available. Without this information, the Legislature cannot assess whether the planned projects are the most cost-effective method of achieving ADA and Armstrong compliance.

LAO Recommendation. Information provided in the April 1st finance letter addressed the concerns raised by the LAO in their analysis of the January budget proposal.

Questions for the Administration. The Administration should be prepared to address the following questions:

1. Please provide an update on your on-going discussions with the plaintiffs. Have they indicated that this approach will address their concerns about compliance?

Issue 6: Kitchen Activation – California Medical Facility

Governor’s Budget. The Governor’s budget requests \$580,000 General Fund (\$150,000 of which is one-time), and 3.5 positions, to upgrade and activate an existing kitchen currently not in use, in order to feed Disability Placement Wheelchair inmates from ADA converted dormitory housing units at the California Medical Facility in Vacaville.

Legislative Analyst’s Office (LAO). The LAO did not raise any concerns with this proposal in their analysis of the Governor’s budget.

Issue 7: Capital Outlay Projects

Governor's Budget. The Administration proposes the following capital outlay projects:

1. \$18,071,000 General Fund to replace the boiler facilities at San Quentin.
2. \$792,000 General Fund to replace the cell fronts at Deuel Vocational Institution.
3. \$997,000 General Fund to replace the kitchen and dining facilities at the California Correctional Center.

Background. This issue covers the following three proposed capital outlay projects:

New Boiler Facility – San Quentin. \$18.071 million General Fund to support the construction phase for a new high pressure boiler at San Quentin State Prison. The proposed boiler replacement is required for compliance with the Bay Area Air Quality Management District (BAAQMD) regulations for gas-fired boiler emission. Failure to move toward compliance with BAAQMD regulations could result in the CDCR being assessed upwards of \$5 million in fines and \$2.2 million in fines each year, until compliance is met. The overall cost of this project is estimated to be \$18.671 million.

Solid Cell Fronts – Deuel Vocational Institution. \$792,000 (General Fund) to support the working drawings phase for the replacement of the barred cell fronts in the Administrative Segregation Unit (ASU) at Deuel Vocational Institution (DVI) with solid cell fronts. This project will also address heating/ventilation issues, electrical system issues, asbestos issues, lead paint concerns, and the addition of a fire/smoke detection system. The ASU at DVI contains 144 cells and six showers that do not currently have solid cell fronts. The proposed modifications would also address suicide risk concerns raised in the *Coleman v. Brown* court case. The overall cost of this project is estimated to be \$9.4 million.

Kitchen and Dining Building Replacements – California Correctional Center. \$997,000 General Fund to support the working drawings phase for the replacement of two existing kitchen/dining buildings at the California Correctional Center, Susanville. The proposed projects would address identified need at the California Correctional Center, Susanville on the Arnold Unit and Antelope Camp living units (both built in the 1980's). The kitchens on these living units have surpassed their expected useful lifespan by 20 years and have exceeded the point of economical repair. CDCR contends that these buildings also present a health and safety risk to inmates and staff. The overall cost of these two pre-engineered metal kitchen/dining buildings, along with a loading dock and related paving, is projected to be \$16.2 million. The 2014-15 budget included \$1 million General Fund to support phase one of this project (the planning phase). The Governor's budget request would fund phase two of the project.

SUBCOMMITTEE NO. 5

Agenda

Senator Loni Hancock, Chair
Senator Joel Anderson
Senator Jim Beall



Thursday, May 7, 2015
9:30 a.m. or Upon Adjournment of Session
State Capitol - Room 113
Outcomes
Consultant: Julie Salley-Gray

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Pursuant to the Americans with Disabilities Act, individuals who, because of a disability, need special assistance to attend or participate in a Senate Committee hearing, or in connection with other Senate services, may request assistance at the Senate Rules Committee, 1020 N Street, Suite 255 or by calling 916-651-1505. Requests should be made one week in advance whenever possible.

PROPOSED FOR VOTE ONLY**4440 Department of State Hospitals**

1. **April Finance Letter: Patton State Hospital Fence.** The Governor requests the reversion of \$14.5 million General Fund provided in the 2014 budget act for the upgrade of security fencing around Patton State Hospital.

5225 Department of Corrections and Rehabilitation

2. **Statewide Advanced Planning.** The Governor's 2015-16 budget proposal includes \$500,000 (General Obligation Bond Funds) to support workload associated with planning capital outlay projects at youth and adult correctional facilities. This workload consists of site assessments, environmental reviews, and the development of scope, cost, and schedule projections.

5227 Board of State and Community Corrections

3. **April Finance Letter: Technical Correction and Recidivism Reduction Fund Reappropriation.** The Governor requests a decrease of the BSCC budget by \$410,000. The funding was included in the budget for 2014-15 and was intended to be one time. It was inadvertently also included in the 2015-16 Governor's budget.

The Governor requests the reappropriation of Mentally Ill Offender Crime Reduction Grant funding, including the funding provided for state operations.

Action: Approved all three vote-only items as budgeted.

Vote: 3 – 0

ITEMS TO BE HEARD

4440 Department of State Hospitals

The Department of State Hospitals (DSH) is the lead agency overseeing and managing the state's system of mental health hospitals. The DSH seeks to ensure the availability and accessibility of effective, efficient, and culturally-competent services. DSH activities and functions include advocacy, education, innovation, outreach, oversight, monitoring, quality improvement, and the provision of direct services.

The Governor's 2011 May Revision first proposed the elimination of the former Department of Mental Health (DMH), the creation of the new DSH, and the transfer of Medi-Cal mental health services and other community mental health programs to the Department of Health Care Services (DHCS). The 2011 budget act approved of just the transfer of Medi-Cal mental health programs from the DMH to the DHCS. In 2012, the Governor proposed, and the Legislature adopted, the full elimination of the DMH and the creation of the DSH. All of the community mental health programs remaining at the DMH were transferred to other state departments as part of the 2012 budget package. The budget package also created the new DSH which has the singular focus of providing improved oversight, safety, and accountability to the state's mental hospitals and psychiatric facilities.

California's State Hospital System

California has five state hospitals and three psychiatric programs located on the grounds of the prisons operated by the California Department of Corrections and Rehabilitation (CDCR). Approximately 92 percent of the state hospitals' population is considered "forensic," in that they have been committed to a hospital through the criminal justice system. The five state hospitals provide treatment to approximately 6,000 patients. The psychiatric facilities at state prisons currently treat approximately 1,000 inmates.

Atascadero State Hospital. This facility, located on the Central Coast, houses a largely forensic population, including a large number of incompetent to stand trial patients and mentally disordered offenders. As of December 2014, it housed more than 1,000 patients.

Coalinga State Hospital. This facility is located in the city of Coalinga and is California's newest state hospital. The hospital houses only forensic patients, most of whom are sexually violent predators. As of December 2014, it housed more than 1,100 patients.

Metropolitan State Hospital. Located in the city of Norwalk, this hospital's population is approximately 65 percent forensic. Metropolitan State Hospital does not accept individuals who have a history of escape from a detention center, a charge or conviction

of a sex crime, or a conviction of murder. As of December 2014, it housed about 700 patients.

Napa State Hospital. This facility is located in the city of Napa and has a mix of civil and forensic commitments. Napa State Hospital limits the number of forensic patients to 80 percent of the patient population. As of December 2014, it housed nearly 1,200 patients.

Patton State Hospital. This facility is located in San Bernardino County and primarily treats forensic patients. As of December 2014, it housed 1,500 patients.

Salinas Valley Psychiatric Program. This program is located on the grounds of Salinas Valley State Prison in Soledad and provides treatment to state prison inmates. As of December 2014, it had a population of more than 200 patients.

Stockton Psychiatric Program. This program is located on the grounds of the California Health Care Facility in Stockton and is the state's newest psychiatric program. The program provides treatment to state prison inmates. As of December 2014, it had a population of about 400 patients.

Vacaville Psychiatric Program. This program is located on the grounds of the California Medical Facility in Vacaville and provides treatment to state prison inmates. As of December 2014, it had a population of about 350 patients.

The following are the primary Penal Code categories of patients who are either committed or referred to DSH for care and treatment:

Committed Directly From Superior Courts:

- *Not Guilty by Reason of Insanity* – Determination by court that the defendant committed a crime and was insane at the time the crime was committed.
- *Incompetent to Stand Trial (IST)* – Determination by court that the defendant cannot participate in trial because the defendant is not able to understand the nature of the criminal proceedings or assist counsel in the conduct of a defense. This includes individuals whose incompetence is due to a developmental disability.

Referred From The California Department of Corrections and Rehabilitation (CDCR):

- *Sexually Violent Predators (SVP)* – Hold established on inmate by court when it is believed probable cause exists that the inmate may be a SVP. Includes 45-day hold on inmates by the Board of Prison Terms.

- *Mentally Disordered Offenders (MDO)* – Certain CDCR inmates for required treatment as a condition of parole, and beyond parole under specified circumstances.
- *Prisoner Regular/Urgent Inmate-Patients (Coleman Referrals)* – Inmates who are found to be mentally ill while in prison, including some in need of urgent treatment.

State Hospitals & Psychiatric Programs Caseload Projections

	2014-15	2015-16
Population by Hospital*		
Atascadero	N/A	N/A
Coalinga	N/A	N/A
Metropolitan	N/A	N/A
Napa	N/A	N/A
Patton	N/A	N/A
Subtotal	5,802	5,863
Population by Psych Program		
Vacaville	366	366
Salinas	244	244
Stockton	480	480
Subtotal	1,090	1,090
Population Total	6,892	6,953
Population by Commitment Type		
Incompetent to Stand Trial (IST)	1,430	1,485
Not Guilty By Reason of Insanity (NGI)	1,377	1,379
Mentally Disordered Offender (MDO)	1,220	1,210
Sexually Violent Predator (SVP)	953	967
Lanterman-Petris-Short Act – Civil Commitments	556	556
<i>Coleman</i> Referral – Hospitals	258	258
<i>Coleman</i> Referral – Psych Programs	1,090	1,090
Department of Juvenile Justice	8	8

* DSH is no longer able to identify the number of budgeted beds at their hospitals.

State Hospitals Budget

The Governor's proposed budget includes \$1.7 billion for DSH in 2015-16 (\$1.6 billion General Fund). This represents a \$15 million increase over 2014-15 funding. The proposed budget year position authority for DSH is 11,398 positions, an increase of 164 positions from the current year. The department's budget includes increased funding for several proposals; including plans to operate 105 more Incompetent to Stand Trial (IST)

beds than were budgeted in 2014-15, and establishes an involuntary medication policy for patients who are Not Guilty by Reason of Insanity (NGI).

(dollars in thousands)

Funding	2013-14 Actual	2014-15 Projected	2015-16 Proposed
General Fund (GF)	\$1,440,792	\$1,538,796	\$1,551,830
Reimbursements	126,384	127,560	129,764
CA Lottery Education Fund	153	25	25
Total	\$1,567,329	\$1,666,381	\$1,681,619
Positions	10,360	11,234	11,398

Cost Over-Runs. Over the past several years, state hospital costs had been rising at an alarming rate, and substantial current year deficiencies had become the norm, and even expected, from year to year. For example, in the 2010-11 fiscal year, the deficiency rose from \$50 million to \$120 million and the then-DMH staff could not explain why. In general, the department lacked any clear understanding of what the major cost drivers were and how to curb or stabilize costs in the system. In 2011, DMH leadership facilitated and oversaw an in-depth exploration and analysis of state hospital costs, resulting in a lengthy report that is available on the department's website. The research team identified the following system wide problems/cost drivers: increased patient aggression and violence; increased operational treatment models; and redundant staff work.

Based on the report described above, in 2012, the Administration proposed a comprehensive list of reforms, to reverse the rising cost trend, which addressed three stated goals: 1) improve mental health outcomes; 2) increase worker and patient safety; and, 3) increase fiscal transparency and accountability. Perhaps the most significant of these proposed reforms was the reduction of 600 positions throughout the state hospital system. Of these 600 positions, 230 were vacant. In addition to the reduction in positions, the 2012 budget package included key changes in the following areas:

1. Reduced layers of management and streamlined documentation.
2. Flexible staffing ratios, focusing on front-line staff, and redirecting staff to direct patient care.
3. New models for contracting, purchasing, and reducing operational expenses.
4. Elimination of adult education.

Issue 1: Metropolitan Bed Capacity and Perimeter Fence

Governor's Budget. The budget proposes \$1.9 million General Fund to develop preliminary plans to increase secure treatment capacity at DSH–Metropolitan, located in Norwalk, by 505 beds. This expansion includes (1) 232 new beds and (2) 273 existing beds currently activated but not considered secure capacity because they are not enclosed by secure fencing. The beds would be prioritized for Incompetent to Stand Trial (IST) patients. The project is estimated to cost \$35.5 million in total and would be completed in 2019. The staffing costs for the 232 new beds are estimated to be \$48 million annually.

If these new secure beds at Metropolitan were activated, along with the proposed IST beds at DSH–Atascadero and DSH–Coalinga, the department would have a total of 337 additional beds for IST patients, at an annual cost of \$65 million.

April Finance Letter. The Governor requests an additional \$1.7 million for the working drawings phase of the project. This addition increases the total funding request for 2015-16 to \$3.6 million General Fund for both preliminary plans and working drawings.

Previous Subcommittee Action. On March 16, this subcommittee rejected the Governor's request for 105 additional IST beds at Atascadero and Coalinga due to a lack of adequate data to determine the need for the additional funding to activate more state hospital beds and a failure to expand the Restoration of Competency (ROC) program, which allows people who are mentally ill to be returned to competency either in their communities or in their local county jails.

Background. When a judge deems a defendant to be incompetent to stand trial, the defendant is referred to the state hospital system to undergo treatment for the purpose of restoring competency. Once the individual's competency has been restored, the county is required to take the individual back into the criminal justice system to stand trial, and counties are required to do this within ten days of competency being restored.

For a portion of this population, the state hospital system finds that restoring competency is not possible. There is no statutory deadline for the county to retrieve these individuals, and therefore they often linger in the state hospitals for years. The state pays the costs of their care while in the state hospitals; whereas their costs become the counties' responsibility once they take them out of the state hospitals. This funding model creates a disincentive for counties to retrieve patients once it is determined that competency restoration is not possible.

Over the past several years, the state hospitals have seen a growing waiting list of forensic patients. The longest waiting lists are for IST and Coleman inmate-patient commitments from CDCR. As of February 23, 2015, the waitlist for all commitment types was 484, including 328 specifically IST. DSH has undertaken several efforts to address the growing IST waitlist, including: 1) increasing budgeted bed capacity by

activating new units and converting other units; 2) establishing a statewide patient management unit; 3) promoting expansion of jail-based IST programs; 4) standardizing competency treatment programs; 5) seeking community placements; 6) improving referral tracking systems; and 7) participating in an IST workgroup that includes county sheriffs, the Judicial Council, public defenders, district attorneys, patients' rights advocates, and the Administration.

DSH acknowledges that, despite these efforts, IST referrals have continued to increase. When queried about the potential causes of the growing number of referrals from judges and CDCR, the Administration describes a very complex puzzle of criminal, social, cultural, and health variables that together are leading to increasing criminal and violent behavior by individuals with mental illness.

Services for IST Patients. Under state and federal law, all individuals who face criminal charges must be mentally competent to help in their defense. By definition, an individual who is IST lacks the mental competency required to participate in legal proceedings. Individuals who are IST and face a felony charge are eligible for DSH-provided restoration services. At any given time, between 15 percent and 20 percent of the population in DSH facilities are committed as IST.

Waiting List for IST Treatment. As indicated during the March 16th hearing on the IST expansion, there is an on-going waiting list for individuals in need of mental health treatment in order to be restored to competency to stand trial for a crime they are accused of committing. Individuals on the waitlist are typically held in county jail until space becomes available in a DSH facility. The waitlists are problematic because they could result in increased court costs and higher risk of DSH being found in contempt of court orders to admit patients. This is because DSH is required to admit patients within certain time frames and can be required to appear in court or be held in contempt, when it fails to do so. The waiting list has remained around 300 individuals for the last several weeks.

Legislative Analyst's Office (LAO). It is uncertain whether the plan to modify DSH–Metropolitan would provide usable capacity for IST patients. This is because there are limits on the type of patients that DSH can place in the facility. The DSH–Metropolitan has an agreement with the City of Norwalk and the Norwalk station of the Los Angeles County Sheriff's Department to only admit patients who have no history of attempted or successful escape from a locked facility and no charges or convictions for murder or a sex crime. According to the department, it does not anticipate having difficulty finding IST patients who fit those criteria. However, the department does not track the number of patients in its facilities or on its waitlist, who are eligible for placement at DSH–Metropolitan. As a result, it is difficult to assess whether the department would be able to fully utilize the additional 232 secure treatment beds proposed for IST patients at DSH–Metropolitan, once completed.

LAO Recommendation. As discussed earlier, the Governor's proposal to expand secure treatment at DSH–Metropolitan is estimated to cost \$35.5 million to complete,

and \$48 million to operate annually. Given such costs relative to more cost-effective options for expanding capacity, the LAO recommends that the Legislature reject the proposed expansion at DSH–Metropolitan at this time. There is significant uncertainty about the department’s need for the additional capacity, and, even if such a need existed, the department may be unable to utilize the proposed capacity at DSH–Metropolitan.

Questions for the Administration. The Administration should be prepared to address the following questions:

1. Please provide updated data on the IST waiting list.
2. In the last hearing, the committee asked you to analyze the effect of Proposition 47 on the IST waiting list. Have you conducted that analysis yet?
3. Please provide the committee with the average length of time a person is on the IST waiting list.
4. During the March 19th hearing, the committee rejected the proposal for increased IST beds and directed the department to provide the committee with additional data justifying the need for an increase. Please provide that data and/or an update on your efforts to gather the required information.
5. Also during the March 19th hearing, you provided an overview of the department’s efforts to expand the restoration of competency (ROC) program in county jails. The committee expressed frustration at the lack of progress the department has made. Please provide an update on your current efforts and explain what changes, if any, you have made to reduce the time it takes to establish ROC programs in the counties.
6. The LAO notes that you do not collect data on the number of people on waiting lists or in your facilities who would be eligible for DSH- Metro. How has the department determined that there are enough eligible forensic patients in the system to fill the 500 secure treatment area beds that would be made available through this proposal?

Action. Held open. The Administration is encouraged to put together a comprehensive plan for the expansion of the restoration of competency programs in the jails that includes entering into an inter-agency agreement with the Board of State and Community Corrections to work with county boards of supervisors and county sheriffs to expand the program to those counties that have an interest in either in-jail restoration of competency or restoration in community treatment facilities.

Issue 2: Enhanced Treatment Units

Governor's Budget. The governor's budget requests \$11.5 million in General Fund for the Department of State Hospitals (DSH) to retrofit rooms at the following hospitals to create enhanced treatment units (ETUs):

- 12 rooms at Atascadero
- 12 rooms at Napa
- 12 rooms at Patton
- 8 rooms at Coalinga

The 2014 budget act. The 2014 budget included \$1.5 million General fund for DHS and the Department of General Services (DGS) to prepare an analysis, estimate, and infrastructure design for the development of 44 locked ETUs in the five state hospitals. The budget also included language requiring the enactment of legislation authorizing the ETUs in order for the construction phase of the project to proceed.

Background. The state hospitals were initially designed to accommodate a population that did not exhibit the same level of violence that the hospitals face today. Currently, 92 percent of the population has been referred to the state hospitals by the criminal justice system. Consequently, evidence reveals an increasing rate of aggression and violent incidents at state hospitals.

The Administration argues that, in spite of this significant change in the state hospitals' patient population, there is currently no legal, regulatory, or physical infrastructure in place for DSH to effectively and safely treat patients who have demonstrated severe psychiatric instability or extremely aggressive behavior. As a result, often the only option available to a state hospital dealing with an extremely violent patient is the use of emergency seclusion and restraints, which is short term and more extreme response. Subsequent to the use of seclusion and restraint, a violent patient must be placed in one-on-one or two-on-one observation, which DSH states is labor intensive and does not necessarily improve safety.

DSH requests funding to retrofit existing facilities to establish enhanced treatment units (ETUs) to provide a secure, locked environment to treat patients that become psychiatrically unstable, resulting in highly aggressive and violent behavior toward themselves, other patients, or staff. Candidates for an ETU would exhibit a level of physical violence that is not containable using other interventions or protocols currently available in the state hospitals. DSH argues that the existing physical facilities are outdated and designed for a less violent population, therefore it is not possible to provide more security within existing facilities.

DSH has operated an ETU at Atascadero State Hospital since 2011. This proposal is distinguished from the existing enhanced treatment program in that it allows DSH to lock individual patients in their rooms. Under the current enhanced treatment program, patients are not in locked rooms.

Violence in DSH. DSH has experienced a decrease in the number of violent incidents between 2010 and 2013. DSH reports that violence predominantly comes from repeat aggressors, reporting that 2 percent of patients are responsible for 35% of DSH violence. The state hospitals have utilized programming, which the department attributes to the overall reduction in the numbers of both patient-aggressors and patient-victims.

According to DSH, in 2013, there were a total of 3,344 patient-on-patient assaults and 2,586 patient-on-staff assaults at state hospitals. Of the total patient population, 62 percent are non-violent, 36 percent committed 10 or fewer violent acts, and 2 percent committed 10 or more violent acts. Of all the violent acts committed, 65 percent are committed by those with 10 or fewer violent acts, and 35 percent are committed by those with 10 or more violent acts. A small subset of the population, 116 people, commits the majority of aggressive acts. Assaults for the previous years are as follows: 3,803 patient-on-patient and 3,026 patient-on-staff in 2012; 4,022 patient-on-patient and 2,814 patient-on-staff in 2011; and 4,627 patient-on-patient and 2,703 patient-on-staff in 2010.

The Division of Occupational Safety and Health, known as Cal/OSHA, within the California Department of Industrial Relations, has had significant and ongoing involvement with DSH as a result of insufficient protections for staff. According to a Los Angeles Times article from March 2, 2012, Cal/OSHA has issued nearly \$100,000 in fines against Patton and Atascadero, alleging that they have failed to protect staff and have deficient alarm systems. These citations are similar to citations levied in 2011 against Napa and Metropolitan. Cal/OSHA found an average of 20 patient-caused staff injuries per month at Patton from 2006 through 2011 and eight per month at Atascadero from 2007 through 2011, including severe head trauma, fractures, contusions, lacerations, and bites.

Enhanced Treatment Unit Pilot Project at Atascadero State Hospital. DSH issued a report in May 2013, *Enhanced Treatment Unit: Annual Outcome Report*, on the pilot project at Atascadero, which has operated since December 2011, but does not allow for locked doors. The goal of the ETU is to decrease psychiatric symptoms of some of the most violent patients in order to enable DSH to simultaneously assist the patients in their recovery, and increase safety in the facility. Patients must meet certain criteria, based on the patient's mental illness and psychiatric symptoms, before being admitted to the ETU. DSH reviews patient referrals to determine if patients meet the following entrance criteria:

- The patient engages in pathology-driven behaviors.
- The patient engages in recurrent aggressive behaviors that have been unresponsive to mainstream therapeutic interventions.
- The patient commits a serious assaultive act that results in serious injury.

The report concludes that the ETU has been successful in decreasing aggressive incidents and that the program as a whole is likely effective. Some of the contributing factors cited include staff with expertise in treating difficult patients and decreased staff-to-patient ratios; the presence of the Department of Police Services (Atascadero state hospital law enforcement); and the “calm milieu” of the ETU, which is attributed to the added staff with greater expertise in treating difficult and violent patients, i.e., the staff reacts to an incident in a manner that does not escalate the situation that may otherwise result in a violent act. While successful, DSH states that the Atascadero ETU accepts only those with Axis 1 diagnoses, such as schizophrenia, major depression, bipolar, and schizoaffective disorder. The Atascadero ETU intentionally avoids patients with Axis 2 diagnoses, which are various types of personality disorders that are often present in the patients involved in predatory violence. Patients with Axis 2 diagnoses have been involved in three recent murders of staff and patients, and are the patients the ETPs will treat.

AB 1340 (Achadjian; Statutes of 2014, Chapter 718). This legislation permitted the DSH to establish and administer a pilot enhanced treatment program (ETP) at each state hospital, for the duration of five calendar years, for testing the effectiveness of treatment for patients who are at high risk of the most dangerous behavior. In addition, it authorized ETPs to be licensed under the same requirements as acute psychiatric hospital and makes significant changes to current requirements and procedures related to the admission of patients and the administration of care. This legislation provides the necessary policy guidance for the development and running of potentially locked ETUs in the state hospitals.

Use of Solitary Confinement. There are a variety of treatment options to address aggressive patient behavior within the state hospitals. While levels of security (ie. strong boundaries, a highly structured environment, and a lack of access to dangerous materials) are essential in addressing violence, experts caution against the use of solitary confinement as it may contribute to a patient’s mental distress and may seem punitive. Experts therefore suggest avoiding seclusion, physical restraint, and sedation whenever possible. If necessary, enhanced treatment units (ETUs) should only be used if the patient remains unresponsive to all other therapeutic interventions available in a standard treatment setting.

In fact, it is widely accepted that solitary confinement of people with mental health disorders can cause those illnesses to worsen. Psychological research has found that a lack of social interaction can lead segregated housing unit inmates in prison to suffer from a variety of psychological and psychiatric illnesses. These can include chronic insomnia, panic attacks, and symptoms of psychosis (including hallucinations).

As discussed below, the *Coleman v. Brown* special master’s investigation of programs for mentally ill inmates run by DSH found that patient-inmates at the Stockton State Hospital complained of being confined to their cells 21 to 22 hours per day and received very little human interaction or treatment, despite the damaging effects of confinement for people who are mentally ill. However, this report involved inmates who are in prison

and being treated for a mental illness and the ETUs are designed for state hospital patients who are not inmates. Presumably, DSH will develop regulations and protocols that will prevent patients in an ETU from being confined to their room without human interaction for an extended period of time. However, the department does not have those written policies available at this time.

Coleman Special Master's Report. Last year the *Coleman v. Brown* special master released a report on the quality of treatment provided to Coleman class inmates being treated in DSH's psychiatric treatment programs and state hospitals. The investigation found significant lapses in the treatment being provided to inmate-patients.

The special master noted that individual therapy was rarely offered, even to those patients who were not ready for group therapy or for who group therapy was contraindicated. At Coalinga State Hospital (one of the two state hospitals that houses CDCR inmate-patients), patients reported that their only individual contact with clinicians occurred on the hallways of the unit. Further, even when individual clinical interventions were indicated for a patient in a treatment team meeting, they were not included in the patient's treatment plan.

The report also noted that at Salinas Valley Psychiatric Program (SVPP), it was the default practice to have two medical technical assistants (MTA) in the treatment room, based on institutional cultural perceptions of patient dangerousness rather than on an individualized assessment of the actual potential danger to clinicians and the need to have MTAs present. Similarly, Vacaville Psychiatric Program (VPP) required two escorts for any patient movement, regardless of the patients' custody status, classification, or behavior. In some instances activities were cancelled due to the unavailability of MTAs to escort the patients. According to both clinical and administrative staff, this was the primary reason for limiting out-of-cell activities.

Condemned patients who require an acute level of treatment are currently treated at VPP. According to the investigation, these patients received far less treatment than other acute level patients and no access to group activities or an outdoor yard. In addition, they were only allowed one hour in the day room per week. Reportedly, these patients had weekly contact with a psychiatrist or psychologist. But that contact either happened through the doors of their cells or in a non-confidential setting.

Finally, patients at the Stockton State Hospital (on the grounds of the Correctional Health Care Facility) reported that it was considerable more restrictive than the prisons from which they were referred, stating that it was like being in a maximum security environment, spending 21 to 22 hours per day in their rooms.

Another prevalent theme throughout the report was the lack of uniform policies and procedures throughout all aspects of the program. The report notes that all six of the inpatient programs used their own distinct systems of orientation, cuffing, and restrictions for newly admitted patients, steps/stages through which patients had to progress in order to fully access treatment, and the imposition of restrictions on patients

following behavioral problems or disciplinary infractions. In addition, the six program varied widely in terms of the amount and severity of restrictions on patients' movements, contact with others, and eligibility to receive treatment.

The special master also found that placement of new patients in extremely restrictive conditions was often based on the individual program's established procedures rather than on the severity of the individual patients' mental illness, their propensity for aggressive or self-harming behavior, or their readiness for treatment.

The report found that there was a need for the development of a consistent, more therapeutically-oriented; and less punitively-oriented system that could be applied across all six of the programs. More importantly, the report notes, the emphasis throughout needs to be redirected toward greater individualization of any necessary restrictions and staging of patients based on their unique needs and away from an automatic presumption of violent behavior, anti-therapeutic withholding of interaction with others, and deferral of much needed treatment.

While this report was only focused on the treatment of Coleman patient-inmates being treated by DSH, it is one of the only independent evaluations available to the state hospital system. Absent some type of evaluation of the quality of treatment for other patients being treated by DSH, it is unknown whether the level of treatment being provided to non-Coleman patients is any more robust than the treatment provided to the Coleman class patients. In light of that fact, it may be that patients moved into a locked ETU setting will receive a similar level of treatment, or lack of treatment as the Coleman class patient-inmates.

Legislative Analyst's Office (LAO). The LAO did not raise any concerns with this proposal in their analysis of the Governor's budget.

Questions for the Administration. The Administration should be prepared to address the following questions:

1. The budget proposal notes that there have been three murders and "thousands of acts of aggression" in state hospitals since 2008. Please provide updated data on the number of incidents of serious aggression in the last three years of the level that would likely lead a patient to being placed in an ETU.
2. How do other states handle the increasing levels of violence in their mental health institutions?
3. Is seclusion in an ETU an appropriate action for patients who have not been convicted?
4. Please provide the committee with your current written policies and procedures surrounding staff and patient concerns about possible violence from other patients.

5. How many complaints did you receive from staff and patients in the last year regarding concerns about their safety? How many of those complaints resulted in attacks upon the individuals who expressed concern?
6. Please provide data on the number of patients in the last year who have had to be restrained due to violent behavior toward other patients or staff.
7. Please provide the department policies and procedures regarding the use of restraint.
8. Is there sufficient oversight to ensure that best practices will be implemented in using the ETUs?
9. Please provide the committee with any preliminary written policies or guidelines surrounding the use of locked individual rooms for patients housed in an ETU.
10. Using the widely publicized killing of a patient by his roommate at Atascadero State Hospital last May as an example, please describe how an ETU with locked rooms that are only to be used for therapeutic purposes would have better protected the patients and staff who came into contact with that individual. Also, was that individual being treated in the existing ETU at Atascadero?
11. Please describe how staff is trained to appropriately handle patient violence. Is this on-going training or one time? Is the training provided to staff at all of your hospitals and psychiatric programs? How many hours of training do they receive?
12. The California Department of Corrections and Rehabilitations has established use of force policies and use of force training for custodial staff who are required to restrain violent or non-cooperative inmates. Does DSH have a written use of force policy that outlines the appropriate level of force that can be used to restrain a patient? Do you have use of force training for DSH staff? If so, which job classifications receive this training?
13. Presumably, the licensed mental health experts employed by DSH are well trained in techniques surrounding the de-escalation of situations involving patients at risk of becoming violent. Is that type of training provided to all DSH employees? If so, is it updated annually or is it one-time training?

Action. Held open. The Administration was strongly encouraged to expand the Inspector General's jurisdiction to include oversight of state hospitals and psychiatric programs in order to move forward with their ETU pilot project.

Issue 3: State Hospitals Capital Outlay Proposals

Governor's Budget. The Administration proposes the following capital outlay projects:

1. \$7,634,000 General Fund to upgrade the fire alarm system at Metropolitan.
2. \$731,000 General Fund to upgrade the fire alarm system at Patton.
3. \$2,029,000 General Fund for courtyard gates and security fencing at Napa.
4. \$442,000 General Fund for seismic upgrades at Atascadero.
5. \$219,000 General Fund for courtyard expansion at Coalinga.

Background. This issue covers the following five proposed capital outlay projects:

Fire Alarm Upgrade at Metropolitan (\$7,634,000). This proposal is to completely upgrade the existing Notifier Fire Alarm Systems in patient housing and to provide a new central monitoring system located at Hospital Police Dispatch. According to the proposal, the existing system is not code compliant and does not provide serviceability and/or expandability. The 2014 request for \$712,000 was for the working drawings phase of the project. Development of preliminary plans was funded in the prior fiscal year at \$633,000, and construction is proposed to be funded in 2015-16 for \$7,634,000. The total cost of the project is estimated to be \$9 million General Fund.

Fire Alarm Upgrade at Patton (\$731,000). This project proposes to upgrade the existing Simplex Grinnell Fire Alarm Systems in psychiatric patient housing and provide a new central monitoring system located at Hospital Police Dispatch. The proposal states that the existing system is not compatible with the manufacturer's software and hardware, is not code compliant, and does not allow for serviceability and/or expandability. This is the first phase of this project. The total cost of the project is estimated to be \$9.8 million General Fund.

Courtyard Gates & Security Fencing at Napa (\$2,029,000). This project is to improve security in the courtyards in the patient housing buildings, including: replacement of gates and fabricating and installing extensions to raise the height of security fencing in specified buildings. This is the final phase of this project. The 2014 cost to develop working drawings was \$191,000. The total cost of the project is estimated to be \$2.3 million General Fund.

Seismic Upgrades at Atascadero (\$442,000). This project is to perform a seismic retrofit at the main East-West corridor at Atascadero State Hospital. The retrofit will include construction of steel framed lateral frames in the upper third portion of the corridor. Construction also will include a security sally port and temporary access doors. It is anticipated that this project will reduce the Risk Level of the corridor from the current Level V to a Level III. The \$442,000 requested is for the development of working

drawings. This project received \$325,000 in 2014 for the development of preliminary plans and Department of Finance expects that there will be a follow-up request next year for actual construction. The total cost of the project is estimated to be \$6.2 million General Fund.

Courtyard Expansion at Coalinga (\$219,000). This proposal is for resources to design and construct a secure treatment courtyard at Coalinga, in addition to the current Main Courtyard area, to include a walking/running track and open air space to accommodate the full capacity of the facility (1,500 individuals). The Main Courtyard is undersized and does not provide the needed space for group exercise, social interactions, and other outdoor activities. This is the first phase of this project. The total cost of the project is estimated to be \$3.6 million General Fund.

Legislative Analyst's Office (LAO). The LAO did not raise any concerns with these proposals in their analysis of the Governor's budget.

Questions for the Administration. The Administration should be prepared to address the following questions:

1. Please present these proposals and explain in which phase of the full project each proposal falls.
2. Please provide the business case for these three projects.
3. Please provide the subcommittee with information on alternative solutions explored by the department (for each project).
4. Please provide any on-going operating costs associated with these projects. For example, are there additional staffing costs associated with the courtyard expansion at Coalinga?

Action: Approved as budgeted.

Vote: 3 – 0

5225 Department of Corrections and Rehabilitation

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 local communities.

The 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: Education, Vocational, and Offender Programs, Education, Substance Abuse Programs, Inmate Activities, Administration
- Adult Health Care Services

The 2014 budget act projected an adult inmate average daily population of 136,530 in the current year. The current year adult inmate population is now projected to decrease by 633 inmates, a 0.5 percent decrease, for a total population of 135,897. The budget year adult inmate population is projected to be 137,002, a 0.8 percent increase of 1,105 inmates over the current year. The current projections also reflect an increase in the parolee population of 1,360 in the current year, compared to budget act projections, for a total average daily population of 43,226. The parolee population is projected to be 40,467 in 2015-16, a decrease of 2,759 over the current year. These projections do not include the impact of the passage of Proposition 47, which reduced various felonies to misdemeanors.

As of February 18, 2015, the total in-custody adult population was 131,469. The institution population was 116,556, which constitutes 136.3 percent of prison capacity. The most overcrowded prison is the Central California Women's Facility in Chowchilla, which is currently at 167.3 percent of its capacity. For male inmates, Mule Creek State Prison is currently the most overcrowded at 165.9 percent of its capacity.

The Governor's budget proposes total funding of \$10.2 billion (\$9.9 billion General Fund and \$300 million other funds) in 2015-16. This is an increase of approximately \$1 billion (\$833 million General Fund) over 2013-14 expenditures. The following table shows CDCR's total operational expenditures and positions for 2013-14 through 2015-16.

(dollars in thousands)

Funding	2013-14	2014-15	2015-16
General Fund	\$9,156,505	\$9,827,940	\$9,989,790
General Fund, Prop 98	16,530	18,385	18,635
Other Funds	56,080	67,250	62,329
Reimbursements	167,644	185,074	185,064
Recidivism Reduction Fund	-103,199	25,968	28,227
SCC Performance Incentive Fund	-1,000	-1,000	-1,000
Total	\$9,292,560	\$10,123,617	\$10,283,0451
Positions	52,260	60,812	61,579

Issue 4: April Finance Letter: Board of Parole Hearings

Spring Finance Letter. The Governor requests seven permanent positions, two two-year limited term positions, and a six-month extension of one limited-term position to accommodate increased workload due to the new parole process for second-strike offenders and youthful offenders. The Governor notes that these additional positions will allow the board to complete comprehensive risk assessments every three years and promulgate regulations surrounding the new petition to advance a parole suitability hearing and administrative review process related to recent federal court rulings.

There is no funding included in the request. The Board of Parole Hearings (BPH) will absorb the cost within its existing budget.

2014 Budget. The 2014 budget act included \$3.1 million dollars General Fund and 23.8 positions for the workload associated with expanded medical parole, implementing an elderly parole program, and establishing a parole process for non-violent, non-sex related second strikers that have served 50 percent of their sentence, and to reduce the hearing preparation timeline.

In addition, the 2014 budget included \$1.586 million General Fund and 3.5 positions on a one-year limited-term basis (decreasing to approximately \$315,000 and 1.5 positions in 2015-16, to conduct the additional youthful offender parole hearings required by SB 260 (Hancock; Chapter 312, Statutes of 2013). Of the \$1.586 million, \$1.298 million and 3.5 positions were BPH and the remaining \$288,235 was for CDCR's Case Records Unit.

Legislative Analyst's Office (LAO) Recommendation. The LAO originally raised a concern that CDCR had not provided a full accounting of the savings in BPH's budget that the department proposes to redirect to support the requested positions. However, the department has provided additional information regarding those savings and the LAO no longer has concerns with the proposal.

Action: Approved the spring finance letter.

Vote: 3 – 0

Issue 5: Armstrong Accessibility

Governor’s Budget. The Governor’s budget proposal requests \$38 million from the General Fund—\$19 million in 2015-16 and \$19 million in 2016-17—to construct Americans with Disabilities Act (ADA) improvements at 14 prisons.

April 1st Finance Letter. The Governor requests a \$6.3 million reduction to the 2015-16 Governor’s budget request, and a \$6.5 million General Fund reduction to the 2016-17 estimate, to reflect a revised plan to spend \$12.7 million in 2015-16 and \$12.5 million in 2016-17 on the construction costs associated with making ADA improvements at a total of 13 prisons.

The Governor’s April 1st finance letter provided the following list of prisons that will be undergoing ADA updates if funding is approved:

2015-16	2016-17
Central California Women’s Facility	CSP – Corcoran
CSP – Los Angeles County	Ca. Substance Abuse Treatment Facility
CSP – Sacramento	Deuel Vocational Institution
Salinas Valley State Prison	High Desert State Prison
San Quentin State Prison	Kern Valley State Prison
Wasco State Prison	North Kern State Prison
	Pleasant Valley State Prison

Background. In response to a federal class action lawsuit (Armstrong), the CDCR created the Disability Placement Program (DPP) in the mid 1990’s. The DPP is CDCR’s set of plans, policies, and procedures to assure nondiscrimination against inmates with disabilities. One component of this plan was the selection of designated DPP prisons for individuals with mobility, hearing, visual and speech impairments. Limited physical plant upgrades to accommodate the needs of these inmates were performed; the scope of these upgrades was not intended to make the prison fully compliant with the ADA. The purpose of designating specific DPP prisons was to enable CDCR to best serve the housing, programming, and/or service needs of the inmates with disabilities in a cost effective manner, while maintaining the integrity of the security classification system and without compromising legitimate penological interests such as safety and security.

Prior to 2014-15, the Legislature provided two one-time appropriations for construction of ADA accessibility improvements. Assembly Bill 986 (Chapter 28, Statutes of 1998) appropriated \$6.6 million GF for construction of initial ADA modifications related to the establishment of the DPP. An additional \$3.7 million GF was appropriated in the 2008 Budget Act for construction of a specified list of ADA modifications. The 2008 budget

act also contained an ongoing support appropriation of \$1.9 million GF annually, intended for maintenance and repair of existing accessibility features.

During the 15 years since the DPP prisons were designated, the ability to find appropriate housing for DPP inmates has become increasingly complex. In addition to an inmate's security level, various factors to be considered include general population or sensitive needs yards, medical and mental health needs, and susceptibility to illnesses caused by environmental factors. Reception centers must provide housing and services for inmates newly committed to CDCR that require accessible accommodations, and high security housing, such as for condemned inmates and Security Housing Units, must be able to accommodate inmates requiring accessible housing. This requires a broader range of disabled accessible housing (as well as services and path of travel) than presently exist at the DPP prisons.

In addition to these concerns, the Armstrong plaintiffs are contending that existing DPP prisons are non-compliant with ADA accessibility guidelines. The plaintiffs sent a consultant to several prisons to develop a list of accessibility deficiencies. The list developed by this consultant would have resulted in construction costs of between \$10 million and \$15 million per prison. CDCR was concerned that this report would potentially form the basis of an expensive court order, and that the consultant's report may require a greater degree of modifications than CDCR would agree was required.

To forestall a potential challenge in court, the Armstrong plaintiffs agreed to allow CDCR to conduct surveys to determine the post-realignment housing needs for inmates with disabilities requiring accessibility, and use this to determine the most appropriate prisons for designation as DPP facilities, along with assessing each prison's physical plant to determine the scope of accessibility upgrades that would be required at the DPP facilities. Different types of accessibility upgrades are required at each prison; the types of upgrades include, but are not limited to, the following: cell modifications, housing unit modifications including bathrooms and accessible tables; path of travel sidewalk improvements from housing unit to programs and services; accessible chairs and tables at visiting; access ramps meeting grade requirements; and accessible gym and yard exercise equipment.

The 2014-15 budget act appropriated \$17.5 million GF to CDCR to begin implementing the results of these surveys. Of this funding, \$13.5 million was for construction of improvements at four prisons that had completed design plans, and \$4 million was to complete design activities at 15 prisons. The modifications at these prisons will be necessary to provide CDCR with the variety of housing and programs necessary to appropriately house inmates requiring accessibility accommodations. The conceptual construction cost for improvements to these additional prisons is approximately \$38 million GF.

Legislative Analyst's Office (LAO). Unlike when funding was requested for ADA improvements for 2014-15, the Administration's proposal for 2015-16 currently lacks sufficient information for the Legislature to evaluate it. While the Administration indicates

that the proposed \$19 million would support projects at 14 prisons, it has not indicated (1) which prisons will receive modifications, (2) what specific problems exist at those prisons, (3) what specific projects will be undertaken at each prison to address the associated problem, and (4) the cost of each project and potential alternatives. Moreover, according to CDCR, the department has been working with Armstrong plaintiffs to achieve compliance. Based on those discussions, the department will identify the specific projects that would be funded from this proposal. The department stated that a list of accessibility improvements is not currently available. Without this information, the Legislature cannot assess whether the planned projects are the most cost-effective method of achieving ADA and Armstrong compliance.

LAO Recommendation. Information provided in the April 1st finance letter addressed the concerns raised by the LAO in their analysis of the January budget proposal.

Questions for the Administration. The Administration should be prepared to address the following questions:

1. Please provide an update on your on-going discussions with the plaintiffs. Have they indicated that this approach will address their concerns about compliance?

Action: Approved the modified spring finance letter.

Vote: 3 – 0

Issue 6: Kitchen Activation – California Medical Facility

Governor’s Budget. The Governor’s budget requests \$580,000 General Fund (\$150,000 of which is one-time), and 3.5 positions, to upgrade and activate an existing kitchen currently not in use, in order to feed Disability Placement Wheelchair inmates from ADA converted dormitory housing units at the California Medical Facility in Vacaville.

Legislative Analyst’s Office (LAO). The LAO did not raise any concerns with this proposal in their analysis of the Governor’s budget.

Action: Approved as budgeted.

Vote: 3 – 0

Issue 7: Capital Outlay Projects

Governor's Budget. The Administration proposes the following capital outlay projects:

1. \$18,071,000 General Fund to replace the boiler facilities at San Quentin.
2. \$792,000 General Fund to replace the cell fronts at Deuel Vocational Institution.
3. \$997,000 General Fund to replace the kitchen and dining facilities at the California Correctional Center.

Background. This issue covers the following three proposed capital outlay projects:

New Boiler Facility – San Quentin. \$18.071 million General Fund to support the construction phase for a new high pressure boiler at San Quentin State Prison. The proposed boiler replacement is required for compliance with the Bay Area Air Quality Management District (BAAQMD) regulations for gas-fired boiler emission. Failure to move toward compliance with BAAQMD regulations could result in the CDCR being assessed upwards of \$5 million in fines and \$2.2 million in fines each year, until compliance is met. The overall cost of this project is estimated to be \$18.671 million.

Solid Cell Fronts – Deuel Vocational Institution. \$792,000 (General Fund) to support the working drawings phase for the replacement of the barred cell fronts in the Administrative Segregation Unit (ASU) at Deuel Vocational Institution (DVI) with solid cell fronts. This project will also address heating/ventilation issues, electrical system issues, asbestos issues, lead paint concerns, and the addition of a fire/smoke detection system. The ASU at DVI contains 144 cells and six showers that do not currently have solid cell fronts. The proposed modifications would also address suicide risk concerns raised in the *Coleman v. Brown* court case. The overall cost of this project is estimated to be \$9.4 million.

Kitchen and Dining Building Replacements – California Correctional Center. \$997,000 General Fund to support the working drawings phase for the replacement of two existing kitchen/dining buildings at the California Correctional Center, Susanville. The proposed projects would address identified need at the California Correctional Center, Susanville on the Arnold Unit and Antelope Camp living units (both built in the 1980's). The kitchens on these living units have surpassed their expected useful lifespan by 20 years and have exceeded the point of economical repair. CDCR contends that these buildings also present a health and safety risk to inmates and staff. The overall cost of these two pre-engineered metal kitchen/dining buildings, along with a loading dock and related paving, is projected to be \$16.2 million. The 2014-15 budget included \$1 million General Fund to support phase one of this project (the planning phase). The Governor's budget request would fund phase two of the project.

Action: Approved as budgeted. **Vote:** 3 – 0

SUBCOMMITTEE NO. 5

Agenda

Senator Loni Hancock, Chair
Senator Joel Anderson
Senator Jim Beall



Tuesday, May 19, 2015, 10:00 a.m.
State Capitol - Room 113

Consultant: Julie Salley-Gray

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PROPOSED FOR VOTE ONLY**0250 Judicial Branch**

1. **Trial Court Funding and Trial Court Trust Fund Revenue Shortfall.** The Governor's May Revision requests an additional \$15.5 million General Fund to cover the revenue shortfall in the trial court budget. This brings the total General Fund transfer for the shortfall to \$66.2 million. *Overall trial court funding was heard in this subcommittee on March 26, 2015. This is a technical adjustment to the Governor's January proposal based upon updated revenue estimates.*

2. **Dependency Counsel Funding.** The Judicial Council currently allocates \$103.7 million annually for dependency council. With court-appointed counsel providing representation to approximately 142,500 parents and children, the current level of funding is sufficient to provide representation at a rate of one attorney for approximately 250 clients. *This issue was discussed in this subcommittee on March 26, 2015.*

3. **Extension of Fee Increases.** The Governor's budget proposes the adoption of trailer bill language that removes the sunset date for certain fines and fees. The fee increases included in the proposed trailer bill were initially intended to be temporary and are scheduled to sunset on July 1, 2015. *This issue was discussed in this subcommittee on March 26, 2015.*

4. **Finance Letter: Telecommunications Network.** The Administration submitted a spring finance letter requesting \$5.5 million to fund telecommunication improvements for all 58 superior courts. The requested funding would be used to support hardware refresh, training, and the maintenance and security of the judicial branch network. *This issue was discussed in this subcommittee on April 30, 2015.*

5. **Capital Outlay.** The Governor's budget and subsequent April 1st finance letters request 130.9 million for Immediate and Critical Needs Account, \$86.6 million from the Public Buildings Construction Fund, and \$68 million in reappropriations for local trial court capital outlay projects. *This issue was discussed in this subcommittee on April 30, 2015.*

5196 Public Safety Realignment

1. **Enhancing Law Enforcement Activities Growth Special Account.** The Governor's budget proposed trailer bill language deleting the requirement that funds in the Enhancing Law Enforcement Activities Growth Special Account be distributed on August 25th of each fiscal year. Additionally, the proposal amends language to specify that each growth allocation from the Enhancing Law Enforcement Activities Growth Special Account shall utilize the same allocation schedules calculated for the base allocations from the same fiscal year to which the growth is attributed.

5225 California Department of Corrections and Rehabilitation

2. **Juvenile Population Adjustment.** The May Revision includes a decrease of \$494,000 General Fund in 2014-15 and \$2 million General Fund in 2015-16 for costs related to adult inmate and parole population changes. The revised average daily population projections for juvenile wards are 683 in 2014-15 (a decrease of two wards below the Governor's January budget) and 677 in 2015-16 (a decrease of 32 wards below the Governor's January budget). *CDCR's population projections were discussed in this subcommittee on April 23, 2015.*
3. **Psychiatric Technician Staffing Model Adjustment.** The May Revision includes a decrease of \$975,000 General Fund and 10.6 positions to implement the revised staffing model for Psychiatric Technicians.
4. **Coleman v. Brown Technical Adjustment.** The May Revision includes a decrease of \$3.45 million General Fund and 30.1 positions to reflect updated costs for the Governor's January budget proposal. *This issue was discussed in this subcommittee on April 23, 2015.*
5. **Lease Revenue Debt Service Adjustment.** The May Revision includes a decrease of \$10.95 million General Fund to make technical corrections to the amount budgeted for debt service as a result of three bond refundings this spring, which result in lower debt service costs and the issuing of fewer bonds than anticipated.
6. **Janitorial Services Augmentation.** The May Revision includes an increase of \$600,000 General Fund and 13.9 positions to complete the roll-out of the CalPIA janitorial services programs to all institutions, with the exception of the California

Health Care Facility in Stockton. *The CalPIA Janitorial Services Program was approved in the 2014 budget.*

7. **California Men's Colony: Central Kitchen Replacement.** The Administration submitted a May 1st spring finance letter requesting the reappropriation of construction funds appropriated for the working drawings and construction of a new kitchen at CMC. Construction is expected to be in early 2015-16.
8. **Drug Interdiction.** The 2014 budget act provided \$5.2 million General Fund for increased contraband and drug interdiction efforts. In addition, the Legislature adopted trailer bill language requiring that any drug and contraband interdiction efforts on the part of CDCR be applied to all individuals in a facility including inmates, department staff, volunteers, and contract employees and that CDCR establish methods to ensure that the searches shall be done randomly and without advance notice. *This issue was discussed in a joint Public Safety/Budget Subcommittee 5 hearing on March 3, 2015, and again in this subcommittee on April 16, 2015.*

8120 Commission on Peace Officer Standards and Training (POST)

9. **POST Reduction Plan.** Rather than eliminating 32 POST positions, as proposed in the Governor's January budget, the May Revision requests a \$5.2 million reduction as follows:
 - a. Reducing administrative costs by \$800,000.
 - b. Increasing the reduction of contracted, non-mandated training courses \$1.9 million sustained in the current year.
 - c. Continuing the suspension of reimbursements for local law enforcement to backfill behind officers participating in training for a savings of \$2.5 million.

The proposed reduction is a continuation of existing reductions and should not further impact the current training services offered to local law enforcement. *This issue was discussed in this subcommittee on March 26, 2015.*

ITEMS TO BE HEARD

5225 Department of Corrections and Rehabilitation

Issue 1: Population Update Overview

May Revision Proposal. The May Revision includes a decrease of \$21.3 million General Fund in 2014-15 and \$108.5 million General Fund in budget year for costs related to adult inmate and parole population changes. The revised average daily population projections for adult inmates are 133,451 in 2014-15 (a decrease of 1,535 inmates below the Governor's January budget) and 127,990 in 2015-16 (a decrease of 5,119 inmates below the Governor's January budget). The revised average daily parolee population projection is 44,073 in 2014-15 (an increase of 847 parolees above the Governor's January budget) and 44,570 in the budget year (an increase of 4,103 parolees above the Governor's January budget).

Issue 2: Housing Unit Conversion/Standardized Staffing

May Revision Proposal. The May Revision requests a reduction of \$9.7 million General Fund and 76.5 positions to reflect staffing changes, consistent with standardized staffing models, resulting from housing or mission changes to institutions.

The Future of California Corrections Blueprint. In 2012, the Administration proposed a comprehensive, long-term plan, *The Future of California Corrections* — the blueprint — to improve the effectiveness of the state's prison system. The Legislature adopted the plan, based on the understanding that over time, it would significantly reduce CDCR's budget and the prison population, and it approved the necessary funding and statutory changes.

In April 2012, CDCR released the blueprint detailing the Administration's plan to reorganize various aspects of CDCR operations, facilities, and budgets in response to the effects of the 2011 realignment of adult offenders, as well as to meet federal court requirements. The blueprint was intended to build upon realignment, create a comprehensive plan for CDCR to significantly reduce the state's investment in prisons, satisfy the Supreme Court's ruling to reduce overcrowding in the prisons, and get the department out from under federal court oversight.

One component of the blueprint was the implementation of standardized staffing levels. Realignment's downsizing left the department with uneven, ratio-driven staffing levels throughout the system. The blueprint proposed adopting a standardized staffing model for each prison, based on factors such as the prison's population, physical design, and missions. For the most part, prison staffing levels would remain fixed unless there were significant enough changes in the inmate population to justify opening or closing new

housing units. In contrast, historically, prison staffing levels were adjusted to reflect changes in the inmate population regardless of the magnitude of those changes.

As a key assumption for this May Revision proposal, CDCR notes:

CDCR is entering the third year of the five-year Blueprint plan. Included in the Blueprint was the implementation of standardized staffing which replaced the outdated-ration driven staffing model and was based on each facility's physical plant design, inmate classification levels, perimeter security, inmate programming opportunities and daily operational timeliness (feeding, medication distribution, education) while taking into account specialized missions.

During the development of the blueprint, CDCR experts reviewed all custody and non-custody positions in each prison and then developed a standardized staffing model based upon the needs described above.

Issue 3: Out-of-State Contract Beds

May Revision Proposal. The May Revision includes a decrease of \$73.3 million to reflect a 4,000 bed reduction in the out-of-state contract facilities by June 2016. The reduction assumes vacating two out-of-state facilities and reducing the use of the remaining out-of-state facilities.

The Future of California Corrections Blueprint. As noted above in the discussion of standardized staffing levels, CDCR is in the third year of implementing their five-year Blueprint. As part of the Blueprint, the Administration committed to returning all inmates from out-of-state facilities.

The department began sending inmates out-of-state when overcrowding was at its highest level in 2007. At the time of the blueprint, there were more than 9,500 inmates housed outside of California. The blueprint committed to ending all out-of-state contracts by 2015-16. The blueprint projected that by 2014-15 there would be 1,864 inmates remaining in out-of-state contract beds. Returning out-of-state inmates to in-state facilities was expected to save the state \$318 million annually.

The return of out-of-state inmates was subsequently delayed by the passage of SB 105 (Steinberg and Huff), Chapter 310, Statutes of 2013, which authorized CDCR to increase its level of contracted beds both in state and out of state in order to meet the court ordered population cap of 137.5 percent of prison capacity.

With the passage of Proposition 47, the prison population is now well below the court ordered cap. The May Revision proposes returning to the blueprint commitment by returning 4,000 out-of-state inmates to in-state facilities by June 2016.

Issue 4: Activation of Infill Projects

May Revision Proposal. The May Revision includes a request for an additional \$1.8 million General Fund and 14.7 positions in 2015-16 and \$5.9 million General Fund and 49.6 positions in 2016-17 for the activation of the Enhanced Outpatient Program facilities at Mule Creek State Prison (MCSP) and Richard J. Donovan State Prison (RJD). This brings the total request to \$37.4 million General Fund and 267 positions in 2015-16, growing to \$73.7 million General Fund and 567.8 positions in 2016-17 and on-going.

Governor's Budget Proposal. The budget proposal requests 252.3 positions and \$35.6 million (\$35.5 million General Fund and \$90,000 Inmate Welfare Fund) in 2015-16, and 518.2 positions and \$67.8 million (\$67.6 million General Fund and \$209,000 Inmate Welfare Fund) in 2016-17 for the custody, clinical, and support personnel and operating and equipment expenses associated with activating 1,584 new beds at MCSP and 792 beds at RJD.

The Future of California Corrections Blueprint. As part of the blueprint, the Administration requested funding to build three new infill facilities which would then allow for the closure of the decaying California Rehabilitation Center (CRC). As discussed below, the closure was subsequently delayed due to the federal court ruling. However, much like the return of out-of-state inmates discussed above, the passage of Proposition 47, and significant reduction in inmates, now allows the state to return to that commitment to close CRC six months after the activation of the infill projects. While the January budget proposal and the May Revision request funding to activate the infill projects, the Administration has not put forward a plan to close CRC.

Background. 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 will be located adjacent to Mule Creek State Prison in Lone, and the third will be located adjacent to Richard J. Donovan Correctional Facility in San Diego. The budget proposal before the Legislature assumes activation will begin in February of 2016.

At the time the Legislature approved the infill projects, it was assumed that the cost of operating the facilities would be offset by the closure of the California Rehabilitation Center (CRC) in Norco. That closure would have saved the state approximately \$160 million in General Fund per year.

After the three-judge panel ordered the state to reduce the prison population to 137.5 percent of capacity by February 28, 2016, the Administration decided part of the population reduction strategy would require keeping CRC open. However, with the passage of Proposition 47, that crisis point has passed and the population is significantly under the court-ordered cap. The May 1, 2015, monthly population report shows that the population is currently at 134.8 prior to the activation of the additional beds included in this proposal.

Issue 5: Receivership Transition Plan

May Revision Proposals. The May Revision includes a request for \$1.9 million General Fund and 16 positions, in addition to the \$4.9 million and 30 positions requested in the January budget, to address the workload associated with the March 10, 2015, federal court order modifying the federal health care receivership transition plan.

Governor's January Budget Proposal. The Governor's budget proposed \$4.9 million from the General Fund, and 30 positions, to expand the receiver's quality management efforts in 2015-16. Of the additional staff being requested, 20 positions are to develop quality management programs in the receiver's new regional offices. Regional staff would be responsible for overseeing prisons located within their geographic area of responsibility. Similar to existing quality management staff, these requested staff would be responsible for tracking prison performance, identifying areas where medical care is deficient, developing performance improvement plans, and sharing best practices across prisons.

Prior Subcommittee Action. This item was held open pending an update in the May Revision.

Justification. On March 10, 2015, the federal court issued an order describing a process for ending the federal receivership. These additional positions will assist in the transition by allowing the federal receiver's office to review policies and procedures to create regulations, provide analytical assistance in determining which institutions will be removed from the receivership and to continue to monitor those institutions once their health care has been return to CDCR responsibility. In addition, these positions, along with the 30 positions requested in the January proposal, will allow the receiver to quickly implement the Quality Management program.

Background. In June 2008, the federal court approved the receiver's "Turnaround Plan of Action" to achieve a sustainable constitutional level of medical care. The plan identified six major goals for the state's inmate medical care program, including specific objectives and actions for each goal. One of the identified goals was to implement a quality assurance and continuous improvement program to (1) track prison performance on a variety of measures (such as access to care), (2) provide some training and remedial planning (for example, developing a plan to improve access to care at a prison that is struggling to meet that goal), and (3) share best practices across prisons, among other tasks.

Currently, the quality management section within the receiver's office has 32 positions and a budget of \$3.9 million. In addition, there are also 170 staff statewide (five positions at each prison) who are involved in quality management activities. These staff include psychologists, managers, and program specialists who perform quality

management functions as well as other responsibilities. According to CHCS, about 90 percent of their time is devoted to quality management activities.

Issue 6: Hepatitis C Treatment

May Revision Proposals. The May Revision includes a General Fund increase of \$51.8 million in 2014-15 and \$60.6 million in 2015-16 for the cost of providing inmates with new Hepatitis C treatments. The Governor's January budget proposal included this funding in the statewide set-aside for high cost medications. The funding is now proposed to be shifted to the CDCR budget.

The Governor's Budget. The January budget proposal reserved \$300 million General Fund (\$100 million in 2014-15 and \$200 million in 2015-16) for the costs associated with several new Hepatitis C drugs for inmates in state prisons, patients in state hospitals, and participants in Medi-Cal and the AIDS Drug Assistance Program who are infected with Hepatitis C. The Administration also indicates it will convene a workgroup of affected entities, including sheriffs and the receiver, to address the state's approach regarding high-cost drug utilization policies and payment structures.

Issue 7: Pharmaceutical Funding

May Revision Proposals. The May Revision requests a one-time General Fund augmentation of \$18.4 million in 2014-15 for unanticipated increases in the pharmaceutical budget.

Justification. While the number of patients has decreased, the receiver's office reports a significant increase in the cost of medications. For example, between 2013-14 and 2014-15, the cost per unit of over 110 different medications has more than doubled. For five of those medications, the per unit cost has increased more than 20 fold.

Issue 8: Correctional Officer Selection and Employee Development

May Revision Proposals. The May Revision includes a proposal to reduce the Correctional Officer Training Academy from 16 weeks to 12 weeks, remove the requirement that correctional officers receive an additional four weeks of institutional field training, and re-establish the Commission on Correctional Peace Officer Standards and Training (CPOST).

Legislative Analyst's Office. The May Revision proposes to redirect \$1.1 million in savings resulting from the reduction in the length of the correctional officer training academy from 16 to 12 weeks to re-establish the CPOST. Under the proposal, CPOST would be responsible for developing and monitoring standards for the selection and training of correctional officers and would be governed by six members (three from CDCR management and three from the correctional officers' union) appointed by the administration. The LAO finds that this proposal has merit but could be improved. Specifically, the LAO recommends that the Legislature modify the proposal to (1) increase the CPOST board from six to seven members and (2) require that the additional member be a nationally recognized expert on correctional officer training appointed by the Legislature. This would increase legislative oversight over correctional officer training and help ensure that the standards set by the board are consistent with national best practices.

Issue 9: Recidivism Reduction Fund

May Revision Proposals. The May Revision requests an additional \$3,296,000 and 20 positions to offset the General Fund costs associated with providing substance use disorder treatment to inmates who are in prisons that do not have reentry-hubs. In addition, the May Revision requests the reappropriation of additional 2014-15 community reentry facility savings of \$5,585,000 to allow CDCR to continue to expand community reentry facility beds.

The Governor's Budget. The Recidivism Reduction Fund (RRF), established by AB 105 (Steinberg and Huff), Chapter 310, Statutes of 2013, results from savings associated with an extension from the federal court allowing the state, until February 2016, to reduce its prison population to 137.5 percent of capacity. The Governor's budget assumes that \$16 million of the \$42 million provided to CDCR in the Budget Act of 2014 will be unspent due to delayed implementation of various recidivism reduction efforts. In addition, it assumes an additional \$12.2 million in revenue above the original projections. The budget reflects total revenue of \$28.2 million General Fund in the Recidivism Reduction Fund. The budget proposes using the funds toward recidivism reduction efforts, as follows:

- \$12.6 million for community reentry facilities.

- \$15.6 million to offset the General Fund cost of expanding substance use treatment at non-reentry hub institutions.

Previous Subcommittee Action. The subcommittee approved the reappropriation of \$12.6 million for community reentry facilities and rejected using the RRF to offset the General Fund costs associated with providing substance abuse treatment.

Issue 10: Renewing Communities Initiative

May Revision Proposals. The May Revision includes the following proposed budget bill language:

It is the intent of the Legislature that the Chancellor identify, one, or multiple, community college districts that would be willing to utilize up to a total of \$5.0 million of their combined funding for the purpose of providing adult inmate education. These funds shall be utilized to receive a 1 to 3 match of state and private funds that could be available for the purpose of providing adult inmate education. Any private funds received would be allocated to the identified community colleges based on their proportion of the combined funding match.

Background. *Renewing Communities* is the California component of the Ford Foundation's national *Pathways from Prison to Postsecondary Education Project*. Pathways, which follows a public-private partnership funding model, has been embraced by the Governors and Legislatures of North Carolina, Michigan and New Jersey, and the Ford Foundation is being courted by Texas. In all states including California, private funding is contingent on the state dedicating funding to the Initiative.

Renewing Communities envisions a statewide network of high-quality developmental education, career technical education, and traditional academic education inside county jails and state prisons, combined with on-ramps to colleges in the community, mentoring support programs for formerly incarcerated students on college campuses, and links to reentry services for those students' success.

In California, at least ten California-based and national private foundations are prepared to launch *Renewing Communities* with a \$15 million investment over three years. This private funding could be withdrawn if the state does not match the funding with a \$15 million contribution over three years. The public and private funds would be used for both the statewide and local components of *Renewing Communities*. Statewide – up to \$5 million of the total -- the funding would build a learning community, ensure high quality for college programs in prisons or jails, provide technical assistance, and evaluate success. Locally – the remainder of the total – the funding would be distributed in a competitive Request for Proposals (RFP) process to foster innovation and build new programs. RFP funding would be available to California's public educational institutions and to 501(c)(3) organizations.

Issue 11: Arts in Corrections Funding

May Revision Proposals. The May Revision requests \$2 million General Fund for funding the Arts in Corrections program.

Background. The proposed budget for CDCR's rehabilitation programming is \$345 million General Fund. Approving the May Revision request would increase the budget to \$347 million General Fund.

Legislative Analyst's Office. The May Revision includes \$2 million General Fund for the Arts in Corrections Program that seeks to reduce recidivism by providing inmates with training in the arts. While such training could have some benefits, based on the LAO's review of existing research, they find little evidence to suggest that it is the most cost-effective approach to reducing recidivism. As such, the LAO recommends that the Legislature instead allocate these funds to support the expansion of existing programs that have been demonstrated through research to be cost-effective at reducing recidivism, such as cognitive behavioral therapy or correctional education programs.

5227 Board of State and Community Corrections/Local Corrections

Issue 12: Community Corrections Incentive Grants

May Revision Proposals. The May Revision includes an increase of \$1.1 million in Community Corrections Performance Incentive Grants funding due to an update in the formula used for measuring county performance. The May Revision proposes modifying the SB 678 grant formula in several ways, including: (1) removing payments to counties for offenders diverted from jail, (2) changing the baseline against which the county performance is measured, (3) basing payments on the types of offenders diverted from prison, and (4) basing a portion of each county's allocation on its past payments under SB 678 (Leno), Chapter 608, Statutes of 2009.

Legislative Analyst's Office. The LAO finds that many aspects of the Governor's proposal have merit. For example, it makes sense to remove avoided admissions to county jail from the SB 678 formula because there is no need to incentivize counties to reduce the costs they incur when felony probations fail and are sent to county jail. In addition, it is appropriate to set a new baseline against which to measure county performance because the current baseline does not reflect significant changes in the felony probation population that have occurred following the 2011 realignment.

However, the LAO has two concerns with the Governor's proposal. First, the Administration's proposal to permanently set the new baseline using data from 2013 and 2014 would not reflect the significant changes resulting from Proposition 47. Second, permanently setting a portion of county payments based on past SB 678 payments does nothing to incentivize counties to improve future performance. However, given the complexity of these issues, it would be difficult for the Legislature to devote an appropriate amount of time to resolving them as part of its final budget deliberations. As such, the LAO recommends that the Legislature approve the proposed changes but adopt trailer bill language making the changes effective for only 2015-16. This would give the Legislature the opportunity to thoughtfully consider further refinements to the formula and make appropriate changes as part of the 2016-17 budget process.

Issue 13: Post Release Community Supervision

May Revision Proposals. The May Revision requests that the original Governor's budget proposal be reduced by \$4,141,000 to reflect a revised estimate of the temporary increase in the average daily population of offenders who have been placed on Post Release Community Supervision as a result of the new parole determination process for eligible non-violent, non-sex registrant second-strike offenders who have completed 50 percent of their sentence as ordered by the Three-Judge Panel and implemented on January 1, 2015.

Governor's Budget. The Governor's budget proposes to provide county probation departments with a \$16 million General Fund increase to address the temporary increase in the average daily population of offenders on Post Release Community Supervision (PRCS).

Prior Subcommittee Action. Approved the proposed funding.

Issue 14: City Law Enforcement Grants

Governor's budget. The Governor's budget includes a request for \$40 million General Fund to continue the three-year City Law Enforcement Grants program for a fourth year.

Prior Subcommittee Action. This item was heard in this subcommittee on March 26, 2015. No action was taken at that time.

Background. As part of the 2012–13 budget, the Governor proposed, and the Legislature approved, a three-year grant program (from 2012-13 through 2014-15) to provide state General Fund support to city law enforcement, primarily police. At the time the funding was proposed, the Administration indicated that the intent was to partially offset budget reductions that city law enforcement departments were facing due to the recession.

The funds were initially approved at \$24 million each year, and then were increased to \$27.5 million in 2013-14, and again to \$40 million in 2014-15. The Legislature approved the increased 2014-15 grant amount based on the understanding with the Administration that 2014-15 would be the final year for this grant program.

Legislative Analyst's Office (LAO).

Proposal Lacks Sufficient Justification. The Governor's proposal to provide \$40 million to extend the police grants for an additional year lacks justification for the following reasons:

- ***Need To Address Recession–Era Cuts Unclear.*** The Legislature authorized a three–year program as a stopgap measure to help city law enforcement address budget cuts resulting from the recession. However, the recession ended five years ago and, in that time, local revenues appear to have recovered to pre–recession levels. It is unclear how many additional years past the end of the recession the Governor thinks such funding is appropriate.
- ***Funds Unlikely to Make Significant Impact.*** The funding proposed is only a small fraction of total city police budgets and is unlikely to have a significant effect on the level of service provided by city law enforcement.

LAO Recommendation. In view of the above, the LAO recommends that the Legislature reject the Governor’s proposal to provide \$40 million in city law enforcement grants in 2015-16.

Issue 15: Removal of Enhancing Law Enforcement Activities Subaccount Reversion Trailer Bill Language

May Revision Proposals. The May Revise proposed trailer bill language that would sunset the requirement that unspent local Citizens' Option for Public Safety and the Juvenile Justice Crime Prevention Act funds revert to the county Enhancing Law Enforcement Activities Subaccount. This provision ensures that 2011 Realignment funds are continuously appropriated to local agencies. This proposed trailer bill would sunset this provision as of July 1, 2015

0250 Judicial Branch

Issue 16: Debt Amnesty Program

May Revision Proposals. The May Revision updates the Governor's proposed 18-month amnesty program, which allows individuals with past-due court-ordered debt to receive a reduction in the amount owed if they meet certain eligibility criteria. The May Revision expands the proposed program to allow drivers with suspended licenses to reinstate their licenses as part of the amnesty program.

Governor's January Budget. The January budget proposed a debt amnesty program for individuals with past-due, court-ordered debt from fines associated with traffic infractions and specified misdemeanors. The 18-month amnesty program would be administered by courts and counties and would provide a 50 percent discount for debt that was due prior to January 1, 2013.

Legislative Analyst's Office. The LAO will be providing a handout summarizing their recommendations in this area.

0552 Office of the Inspector General

Issue 17: Medical Inspections

May Revision Proposal. The May Revision requests \$3.85 million and 19 positions to allow the Office of the Inspector General (OIG) to evaluate medical care provided to inmates in all of the California Department of Corrections and Rehabilitation (CDCR) adult institutions on an annual basis.

Justification. On March 10, 2015, the federal court issued an order describing a process for ending the federal receivership. The order employs the OIG medication inspection reports to determine which institutions are providing a constitutional level of care. Once it is determined by the OIG and the receiver that an inspection shows that an institution is suitable for return to CDCR control, the authority for the healthcare at that institution will be delegated back to the state. Once the institution is returned to the state, the receiver will monitor the state's oversight for one year and at that time, if the quality of care is maintained, the institution will be removed from receivership. Finally, once healthcare in all 34 institutions has been returned to the state, and the final year of monitoring is completed, the plaintiffs will have 120 days to file a motion with the court if they do not believe a constitutional level of care is being provided. In the absence of such a motion, the parties are ordered to promptly file a stipulation and proposed order terminating the receivership and the Plata v. Brown lawsuit.

Background. In the 2014 Budget Act, the OIG received a \$1.262 million (General Fund) augmentation to establish four permanent positions in the Medical Inspections Unit of the OIG to evaluate medical care provided to inmates in state prison. In addition, the budget reduced the California Correctional Health Care Services (CCHCS) budget by \$645,000 (General Fund) and two positions. The net cost of the proposal was \$617,000.

The four positions consist of three physicians and one nurse who will provide medical expertise for the OIG to add clinical case reviews to the existing compliance-based monitoring system that is in place.

4440 Department of State Hospitals

Issue 18: Coleman Unit Activation

May Revision Proposal. The May Revision includes an increase of 38.2 positions and \$4.6 million General Fund in 2015-15, growing to an ongoing \$5 million General Fund from 2016-17 onward, to activate 30 beds at the California Medical Facility in Vacaville to treat inmates with acute mental illnesses.

Justification. CDCR's preliminary population projections for Coleman inmate-patients indicate that there will be a growing number of inmates with acute mental illnesses who will need to be housed and treated in a psychiatric program. The projection suggests that based upon the current psychiatric program capacity, the Department of State Hospitals (DSH) will need an additional 91 beds by the end of 2016 to accommodate the growing population. The request before the Legislature is for 30 additional beds to assist in closing that gap.

Issue 19: Napa State Hospital Earthquake Repairs

May Revision Proposals. The May Revision includes two requests related to the damage at Napa State Hospital as a result of the August 2014 earthquake.

1. Requests \$5.7 million in General Fund and \$17 million in federal funds to repair damage sustained in the earthquake. In addition the Administration requests provisional language to authorize a General Fund loan pending the federal reimbursements.
2. Requests \$1 million in General Fund and \$3 million in federal funds for preliminary plans, working drawings, and construction for the seismic retrofitting of the plant operations building, which was originally built in 1916.

Justification. In August 2014, the city of Napa and surrounding area sustained considerable damage due to a 6.0 earthquake. As a result of the damage, President Obama declared a federal disaster. Napa State Hospital is located in the Presidentially Declared Federal Disaster area. As such, the state is eligible for federal funding to pay for 75 percent of the cost of repairs.

Issue 20: Lanterman-Petris-Short Unit Activation at Metropolitan State Hospital

May Revision Proposals. The May Revision requests \$8.3 million in reimbursement authority and 67.1 positions to activate a 40-bed unit at Metropolitan State Hospital in the city of Norwalk for Lanterman-Petris-Short patients.

Justification. Data from July 2014 through March 2015 demonstrate an increasing need for LPS patient beds. The average pending placement for July 2014 was 10 people. As of March 2015, 42 people were waiting for placement in a state hospital.

Background. The State Hospitals provide treatment to approximately 5,400 patients, who fall into one of two categories: 1) civil commitments (referrals from counties); or 2) forensic commitments (committed by the courts). Civil commitments (known as Lanterman-Petris-Short (LPS) patients) comprise approximately eight percent of the total population while forensic commitments approximately 92 percent.

Funding for the LPS patients come from counties that use the DSH system. Therefore, there is no General Fund associated with this request.

Issue 21: NGI Involuntary Medication Authorization

May Revision Proposals. The May Revision proposes reducing the Governor's budget request to nine positions and \$1.2 million from the General Fund. Under the proposal, DSH would institute a legal process for each patient who was found not guilty by reason of insanity (NGI) that refuses medication in order to obtain the necessary legal authority to compel the patient to take his or her medication.

Governor's Budget Proposal. The Governor's budget proposed \$3.2 million from the General Fund and 14.4 positions in 2015-16 for DSH to establish and implement an involuntary medication (IM) process for NGI patients that includes trial court review. These positions include clinical staff positions to provide patients with information and testimony in court, as well as legal positions to represent DSH during initial court hearings and annual review hearings. According to the Administration, the NGI involuntary medication process will be based on the existing involuntary medication process for other DSH patient types.

Previous Subcommittee Action. The subcommittee rejected the Governor's budget proposal because funding and staffing was based on the assumption that every NGI patient would refuse medication.

Legislative Analyst's Office. The Governor's January budget included \$3.2 million from the General Fund and 14.4 positions in 2015-16 for the Department of State

Hospitals (DSH) to establish and implement an involuntary medication process for patients found not guilty by reason of insanity (NGI). According to the department, the May Revision proposal includes enough resources to conduct this legal process for about 20 patients per month. However, once DSH has obtained the authority for all of its current NGI patients that refuse medication, it will generally only need enough resources to conduct the legal process for the portion of the roughly 15 NGIs admitted each month that refuse medication. This ongoing workload will likely be a fraction of the amount assumed in the proposal. Accordingly, the LAO recommends that the Legislature approve this funding on a one-year basis and direct DSH to present a revised proposal in January that is adjusted to reflect the potentially significant future reduction in workload.

Issue 22: Hepatitis C Treatment

May Revision Proposals. The May Revision includes a General Fund increase of \$6.3 million in 2015-16 for the cost of providing inmates with new Hepatitis C treatments. In the current year, DSH intends to absorb the \$5.4 million cost of providing the treatments. The Governor's January budget proposal included this funding in the statewide set-aside for high cost medications. The funding is now proposed to be shifted to the DSH budget.

The Governor's Budget. The January budget proposal reserved \$300 million General Fund (\$100 million in 2014-15 and \$200 million in 2015-16) for the costs associated with several new Hepatitis C drugs for inmates in state prisons, patients in state hospitals, and participants in Medi-Cal and the AIDS Drug Assistance Program who are infected with Hepatitis C. The Administration also indicates it will convene a workgroup of affected entities, including sheriffs and the Receiver, to address the state's approach regarding high-cost drug utilization policies and payment structures.

SUBCOMMITTEE NO. 5

Agenda

Senator Loni Hancock, Chair
Senator Joel Anderson
Senator Jim Beall



OUTCOMES

Tuesday, May 19, 2015, 10:00 a.m.
State Capitol - Room 113

Consultant: Julie Salley-Gray

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PROPOSED FOR VOTE ONLY**0250 Judicial Branch**

1. **Trial Court Funding and Trial Court Trust Fund Revenue Shortfall.** The Governor's May Revision requests an additional \$15.5 million General Fund to cover the revenue shortfall in the trial court budget. This brings the total General Fund transfer for the shortfall to \$66.2 million. *Overall trial court funding was heard in this subcommittee on March 26, 2015. This is a technical adjustment to the Governor's January proposal based upon updated revenue estimates.*

Action – Approved the \$15.5 million General Fund requested by the Administration and an additional \$10 million General Fund to fund six additional trial court judge positions.

Vote: 3 – 0

2. **Dependency Counsel Funding.** The Judicial Council currently allocates \$103.7 million annually for dependency council. With court-appointed counsel providing representation to approximately 142,500 parents and children, the current level of funding is sufficient to provide representation at a rate of one attorney for approximately 250 clients. *This issue was discussed in this subcommittee on March 26, 2015.*

Action – Increased dependency counsel funding by \$33.1 million General Fund. Shifted all dependency counsel funding (\$136.8 million GF) to a newly created budget item (such as 0250-101-0933). Adopted placeholder trailer bill language establishing maximum client caseloads of 1 attorney to 188 clients for those attorneys who use social workers as support, and 1 attorney to 77 clients, for those that do not.

Vote: 3 – 0

3. **Extension of Fee Increases.** The Governor's budget proposes the adoption of trailer bill language that removes the sunset date for certain fines and fees. The fee increases included in the proposed trailer bill were initially intended to be temporary and are scheduled to sunset on July 1, 2015. *This issue was discussed in this subcommittee on March 26, 2015.*

Action – Adopted as placeholder, draft trailer bill language extending the sunset to July 1, 2018.

Vote: 2 – 1 (Anderson no)

4. **Finance Letter: Telecommunications Network.** The Administration submitted a spring finance letter requesting \$5.5 million to fund telecommunication improvements for all 58 superior courts. The requested funding would be used to support hardware refresh, training, and the maintenance and security of the judicial branch network. *This issue was discussed in this subcommittee on April 30, 2015.*

Action – Approved the Governor’s spring finance letter request.

Vote: 3 – 0

5. **Capital Outlay.** The Governor’s budget and subsequent April 1st finance letters request 130.9 million for Immediate and Critical Needs Account, \$86.6 million from the Public Buildings Construction Fund, and \$68 million in reappropriations for local trial court capital outlay projects. *This issue was discussed in this subcommittee on April 30, 2015.*

Action – Approved the Governor’s January budget and spring finance letter requests.

Vote: 3 – 0

5196 Public Safety Realignment

1. **Enhancing Law Enforcement Activities Growth Special Account.** The Governor’s budget proposed trailer bill language deleting the requirement that funds in the Enhancing Law Enforcement Activities Growth Special Account be distributed on August 25th of each fiscal year. Additionally, the proposal amends language to specify that each growth allocation from the Enhancing Law Enforcement Activities Growth Special Account shall utilize the same allocation schedules calculated for the base allocations from the same fiscal year to which the growth is attributed.

Action – Approved the Governor’s placeholder trailer bill language.

Vote: 3 – 0

5225 California Department of Corrections and Rehabilitation

6. **Juvenile Population Adjustment.** The May Revision includes a decrease of \$494,000 General Fund in 2014-15 and \$2 million General Fund in 2015-16 for costs related to adult inmate and parole population changes. The revised average daily population projections for juvenile wards are 683 in 2014-15 (a decrease of two wards below the Governor’s January budget) and 677 in 2015-16 (a decrease of 32 wards below the Governor’s January budget). *CDCR’s population projections were discussed in this subcommittee on April 23, 2015.*

Action – Approved the May Revision request.

Vote: 3 – 0

7. **Psychiatric Technician Staffing Model Adjustment.** The May Revision includes a decrease of \$975,000 General Fund and 10.6 positions to implement the revised staffing model for Psychiatric Technicians.

Action – Approved the May Revision request.

Vote: 3 – 0

8. ***Coleman v. Brown* Technical Adjustment.** The May Revision includes a decrease of \$3.45 million General Fund and 30.1 positions to reflect updated costs for the Governor's January budget proposal. *This issue was discussed in this subcommittee on April 23, 2015.*

Action – Approved the May Revision request.

Vote: 3 – 0

9. **Lease Revenue Debt Service Adjustment.** The May Revision includes a decrease of \$10.95 million General Fund to make technical corrections to the amount budgeted for debt service as a result of three bond refundings this spring, which result in lower debt service costs and the issuing of fewer bonds than anticipated.

Action – Approved the May Revision request.

Vote: 3 – 0

10. **Janitorial Services Augmentation.** The May Revision includes an increase of \$600,000 General Fund and 13.9 positions to complete the roll-out of the CalPIA janitorial services programs to all institutions, with the exception of the California Health Care Facility in Stockton. *The CalPIA Janitorial Services Program was approved in the 2014 budget.*

Action – Approved the May Revision request.

Vote: 3 – 0

11. **California Men's Colony: Central Kitchen Replacement.** The Administration submitted a May 1st spring finance letter requesting the reappropriation of construction funds appropriated for the working drawings and construction of a new kitchen at CMC. Construction is expected to begin in early 2015-16.

Action – Approved the May Revision request.

Vote: 3 – 0

12. **Drug Interdiction.** The 2014 budget act provided \$5.2 million General Fund for increased contraband and drug interdiction efforts. In addition, the Legislature adopted trailer bill language requiring that any drug and contraband interdiction efforts on the part of CDCR be applied to all individuals in a facility including inmates, department staff, volunteers, and contract employees and that CDCR establish methods to ensure that the searches shall be done randomly and without advance notice. *This issue was discussed in a joint Public Safety/Budget Subcommittee 5 hearing on March 3, 2015, and again in this subcommittee on April 16, 2015.*

Action – Adopted placeholder trailer bill requiring an independent evaluation of the effectiveness of CDCR's drug interdiction efforts and removing the strip search requirement from statute.

Vote: 2 – 1 (Anderson no)

8120 Commission on Peace Officer Standards and Training (POST)

13. **POST Reduction Plan.** Rather than eliminating 32 POST positions, as proposed in the Governor's January budget, the May Revision requests a \$5.2 million reduction as follows:

- a. Reducing administrative costs by \$800,000.
- b. Increasing the reduction of contracted, non-mandated training courses \$1.9 million sustained in the current year.
- c. Continuing the suspension of reimbursements for local law enforcement to backfill behind officers participating in training for a savings of \$2.5 million.

The proposed reduction is a continuation of existing reductions and should not further impact the current training services offered to local law enforcement. *This issue was discussed in this subcommittee on March 26, 2015.*

Action – Approved the May Revision request.

Vote: 2 – 0 (Beall not voting)

ITEMS TO BE HEARD

5225 Department of Corrections and Rehabilitation

Issue 1: Population Update Overview

May Revision Proposal. The May Revision includes a decrease of \$21.3 million General Fund in 2014-15 and \$108.5 million General Fund in budget year for costs related to adult inmate and parole population changes. The revised average daily population projections for adult inmates are 133,451 in 2014-15 (a decrease of 1,535 inmates below the Governor's January budget) and 127,990 in 2015-16 (a decrease of 5,119 inmates below the Governor's January budget). The revised average daily parolee population projection is 44,073 in 2014-15 (an increase of 847 parolees above the Governor's January budget) and 44,570 in the budget year (an increase of 4,103 parolees above the Governor's January budget).

Action – Approved the May Revision request.

Vote: 3 – 0

Issue 2: Housing Unit Conversion/Standardized Staffing

May Revision Proposal. The May Revision requests a reduction of \$9.7 million General Fund and 76.5 positions to reflect staffing changes, consistent with standardized staffing models, resulting from housing or mission changes to institutions.

The Future of California Corrections Blueprint. In 2012, the Administration proposed a comprehensive, long-term plan, *The Future of California Corrections* — the blueprint — to improve the effectiveness of the state's prison system. The Legislature adopted the plan, based on the understanding that over time, it would significantly reduce CDCR's budget and the prison population, and it approved the necessary funding and statutory changes.

In April 2012, CDCR released the blueprint detailing the Administration's plan to reorganize various aspects of CDCR operations, facilities, and budgets in response to the effects of the 2011 realignment of adult offenders, as well as to meet federal court requirements. The blueprint was intended to build upon realignment, create a comprehensive plan for CDCR to significantly reduce the state's investment in prisons, satisfy the Supreme Court's ruling to reduce overcrowding in the prisons, and get the department out from under federal court oversight.

One component of the blueprint was the implementation of standardized staffing levels. Realignment's downsizing left the department with uneven, ratio-driven staffing levels throughout the system. The blueprint proposed adopting a standardized staffing model for each prison, based on factors such as the prison's population, physical design, and

missions. For the most part, prison staffing levels would remain fixed unless there were significant enough changes in the inmate population to justify opening or closing new housing units. In contrast, historically, prison staffing levels were adjusted to reflect changes in the inmate population regardless of the magnitude of those changes.

As a key assumption for this May Revision proposal, CDCR notes:

CDCR is entering the third year of the five-year Blueprint plan. Included in the Blueprint was the implementation of standardized staffing which replaced the outdated-ration driven staffing model and was based on each facility's physical plant design, inmate classification levels, perimeter security, inmate programming opportunities and daily operational timeliness (feeding, medication distribution, education) while taking into account specialized missions.

During the development of the blueprint, CDCR experts reviewed all custody and non-custody positions in each prison and then developed a standardized staffing model based upon the needs described above.

Action – Approved the May Revision request.

Vote: 3 – 0

Issue 3: Out-of-State Contract Beds

May Revision Proposal. The May Revision includes a decrease of \$73.3 million to reflect a 4,000 bed reduction in the out-of-state contract facilities by June 2016. The reduction assumes vacating two out-of-state facilities and reducing the use of the remaining out-of-state facilities.

The Future of California Corrections Blueprint. As noted above in the discussion of standardized staffing levels, CDCR is in the third year of implementing their five-year Blueprint. As part of the Blueprint, the Administration committed to returning all inmates from out-of-state facilities.

The department began sending inmates out-of-state when overcrowding was at its highest level in 2007. At the time of the blueprint, there were more than 9,500 inmates housed outside of California. The blueprint committed to ending all out-of-state contracts by 2015-16. The blueprint projected that by 2014-15 there would be 1,864 inmates remaining in out-of-state contract beds. Returning out-of-state inmates to in-state facilities was expected to save the state \$318 million annually.

The return of out-of-state inmates was subsequently delayed by the passage of SB 105 (Steinberg and Huff), Chapter 310, Statutes of 2013, which authorized CDCR to increase its level of contracted beds both in state and out of state in order to meet the court ordered population cap of 137.5 percent of prison capacity.

With the passage of Proposition 47, the prison population is now well below the court ordered cap. The May Revision proposes returning to the blueprint commitment by returning 4,000 out-of-state inmates to in-state facilities by June 2016.

Action – Approved the May Revision request.

Vote: 3 – 0

Issue 4: Activation of Infill Projects

May Revision Proposal. The May Revision includes a request for an additional \$1.8 million General Fund and 14.7 positions in 2015-16 and \$5.9 million General Fund and 49.6 positions in 2016-17 for the activation of the Enhanced Outpatient Program facilities at Mule Creek State Prison (MCSP) and Richard J. Donovan State Prison (RJD). This brings the total request to \$37.4 million General Fund and 267 positions in 2015-16, growing to \$73.7 million General Fund and 567.8 positions in 2016-17 and on-going.

Governor's Budget Proposal. The budget proposal requests 252.3 positions and \$35.6 million (\$35.5 million General Fund and \$90,000 Inmate Welfare Fund) in 2015-16, and 518.2 positions and \$67.8 million (\$67.6 million General Fund and \$209,000 Inmate Welfare Fund) in 2016-17 for the custody, clinical, and support personnel and operating and equipment expenses associated with activating 1,584 new beds at MCSP and 792 beds at RJD.

The Future of California Corrections Blueprint. As part of the blueprint, the Administration requested funding to build three new infill facilities which would then allow for the closure of the decaying California Rehabilitation Center (CRC). As discussed below, the closure was subsequently delayed due to the federal court ruling. However, much like the return of out-of-state inmates discussed above, the passage of Proposition 47, and significant reduction in inmates, now allows the state to return to that commitment to close CRC six months after the activation of the infill projects. While the January budget proposal and the May Revision request funding to activate the infill projects, the Administration has not put forward a plan to close CRC.

Background. 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 will be located adjacent to Mule Creek State Prison in Lone, and the third will be located adjacent to Richard J. Donovan Correctional Facility in San Diego. The budget proposal before the Legislature assumes activation will begin in February of 2016.

At the time the Legislature approved the infill projects, it was assumed that the cost of operating the facilities would be offset by the closure of the California Rehabilitation Center (CRC) in Norco. That closure would have saved the state approximately \$160 million in General Fund per year.

After the three-judge panel ordered the state to reduce the prison population to 137.5 percent of capacity by February 28, 2016, the Administration decided part of the population reduction strategy would require keeping CRC open. However, with the passage of Proposition 47, that crisis point has passed and the population is significantly under the court-ordered cap. The May 1, 2015, monthly population report shows that the population is currently at 134.8 prior to the activation of the additional beds included in this proposal.

Action 1 – Approved the May Revision request.

Vote: 3 – 0

Action 2 – Adopted placeholder trailer bill language reinstating the commitment to close CRC six months after the activation of the beds at MCSP and RJD.

Vote: 2 – 1 (Anderson no)

Issue 5: Receivership Transition Plan

May Revision Proposals. The May Revision includes a request for \$1.9 million General Fund and 16 positions, in addition to the \$4.9 million and 30 positions requested in the January budget, to address the workload associated with the March 10, 2015, federal court order modifying the federal health care receivership transition plan.

Governor’s January Budget Proposal. The Governor’s budget proposed \$4.9 million from the General Fund, and 30 positions, to expand the receiver’s quality management efforts in 2015-16. Of the additional staff being requested, 20 positions are to develop quality management programs in the receiver’s new regional offices. Regional staff would be responsible for overseeing prisons located within their geographic area of responsibility. Similar to existing quality management staff, these requested staff would be responsible for tracking prison performance, identifying areas where medical care is deficient, developing performance improvement plans, and sharing best practices across prisons.

Prior Subcommittee Action. This item was held open pending an update in the May Revision.

Justification. On March 10, 2015, the federal court issued an order describing a process for ending the federal receivership. These additional positions will assist in the transition by allowing the federal receiver’s office to review policies and procedures to create regulations, provide analytical assistance in determining which institutions will be removed from the receivership and to continue to monitor those institutions once their

health care has been return to CDCR responsibility. In addition, these positions, along with the 30 positions requested in the January proposal, will allow the receiver to quickly implement the Quality Management program.

Background. In June 2008, the federal court approved the receiver’s “Turnaround Plan of Action” to achieve a sustainable constitutional level of medical care. The plan identified six major goals for the state’s inmate medical care program, including specific objectives and actions for each goal. One of the identified goals was to implement a quality assurance and continuous improvement program to (1) track prison performance on a variety of measures (such as access to care), (2) provide some training and remedial planning (for example, developing a plan to improve access to care at a prison that is struggling to meet that goal), and (3) share best practices across prisons, among other tasks.

Currently, the quality management section within the receiver’s office has 32 positions and a budget of \$3.9 million. In addition, there are also 170 staff statewide (five positions at each prison) who are involved in quality management activities. These staff include psychologists, managers, and program specialists who perform quality management functions as well as other responsibilities. According to CHCS, about 90 percent of their time is devoted to quality management activities.

Action – Approved the May Revision request.

Vote: 3 – 0

Issue 6: Hepatitis C Treatment

May Revision Proposals. The May Revision includes a General Fund increase of \$51.8 million in 2014-15 and \$60.6 million in 2015-16 for the cost of providing inmates with new Hepatitis C treatments. The Governor’s January budget proposal included this funding in the statewide set-aside for high cost medications. The funding is now proposed to be shifted to the CDCR budget.

The Governor’s Budget. The January budget proposal reserved \$300 million General Fund (\$100 million in 2014-15 and \$200 million in 2015-16) for the costs associated with several new Hepatitis C drugs for inmates in state prisons, patients in state hospitals, and participants in Medi-Cal and the AIDS Drug Assistance Program who are infected with Hepatitis C. The Administration also indicates it will convene a workgroup of affected entities, including sheriffs and the receiver, to address the state’s approach regarding high-cost drug utilization policies and payment structures.

Action – Approved the May Revision request.

Vote: 3 – 0

Issue 7: Pharmaceutical Funding

May Revision Proposals. The May Revision requests a one-time General Fund augmentation of \$18.4 million in 2014-15 for unanticipated increases in the pharmaceutical budget.

Justification. While the number of patients has decreased, the receiver's office reports a significant increase in the cost of medications. For example, between 2013-14 and 2014-15, the cost per unit of over 110 different medications has more than doubled. For five of those medications, the per unit cost has increased more than 20 fold.

Action – Approved the May Revision request.

Vote: 3 – 0

Issue 8: Correctional Officer Selection and Employee Development

May Revision Proposals. The May Revision includes a proposal to reduce the Correctional Officer Training Academy from 16 weeks to 12 weeks, remove the requirement that correctional officers receive an additional four weeks of institutional field training, and re-establish the Commission on Correctional Peace Officer Standards and Training (CPOST).

Legislative Analyst's Office. The May Revision proposes to redirect \$1.1 million in savings resulting from the reduction in the length of the correctional officer training academy from 16 to 12 weeks to re-establish the CPOST. Under the proposal, CPOST would be responsible for developing and monitoring standards for the selection and training of correctional officers and would be governed by six members (three from CDCR management and three from the correctional officers' union) appointed by the administration. The LAO finds that this proposal has merit but could be improved. Specifically, the LAO recommends that the Legislature modify the proposal to (1) increase the CPOST board from six to seven members and (2) require that the additional member be a nationally recognized expert on correctional officer training appointed by the Legislature. This would increase legislative oversight over correctional officer training and help ensure that the standards set by the board are consistent with national best practices.

Action – Approved the May Revision proposal with the modifications recommended by the LAO.

Vote: 3 – 0

Issue 9: Recidivism Reduction Fund

May Revision Proposals. The May Revision requests an additional \$3,296,000 and 20 positions to offset the General Fund costs associated with providing substance use disorder treatment to inmates who are in prisons that do not have reentry-hubs. In addition, the May Revision requests the reappropriation of additional 2014-15 community reentry facility savings of \$5,585,000 to allow CDCR to continue to expand community reentry facility beds.

The Governor's Budget. The Recidivism Reduction Fund (RRF), established by AB 105 (Steinberg and Huff), Chapter 310, Statutes of 2013, results from savings associated with an extension from the federal court allowing the state, until February 2016, to reduce its prison population to 137.5 percent of capacity. The Governor's budget assumes that \$16 million of the \$42 million provided to CDCR in the Budget Act of 2014 will be unspent due to delayed implementation of various recidivism reduction efforts. In addition, it assumes an additional \$12.2 million in revenue above the original projections. The budget reflects total revenue of \$28.2 million General Fund in the Recidivism Reduction Fund. The budget proposes using the funds toward recidivism reduction efforts, as follows:

- \$12.6 million for community reentry facilities.
- \$15.6 million to offset the General Fund cost of expanding substance use treatment at non-reentry hub institutions.

Previous Subcommittee Action. The subcommittee approved the reappropriation of \$12.6 million for community reentry facilities and rejected using the RRF to offset the General Fund costs associated with providing substance abuse treatment.

Action – Rejected the May Revision request to supplant an additional \$3.3 million General Fund with Recidivism Reduction Fund money. Approved the proposal to reappropriate unspent funding for community reentry facilities. In addition, approved the following:

1. \$3 million RRF to CDCR to award additional in-prison innovative program grants.
2. \$2 million the Board of State and Community Corrections and placeholder trailer bill language to create a Law Enforcement Assisted Diversion (LEAD) pilot program to address low-level drug and prostitution crimes. The pilot will be designed to divert low-level drug offenders and prostitution offenders into community-based treatment and support services – including housing, healthcare, job training, treatment and mental health support – instead of processing them through traditional criminal justice system avenues.
3. \$1.3 million RRF and budget bill language for the Judicial Council to award additional collaborative courts grants.

4. \$300,000 RRF to CDCR for an independent evaluation of appropriateness and effectiveness of CDCR's career technical education (CTE) programs and budget bill language requiring the report to be provided to both budget committees and both public safety policy committees by April 1, 2016.
5. \$3 million RRF to the Board of State and Community Corrections for the Mentally Ill Offender Crime Reduction (MIOCR) grant program.
6. \$8 million RRF for additional community recidivism reduction grants.
7. \$1.5 million RRF for the Supervised Population Workforce Training Grant Program.

Vote: 3 – 0 with the exception of #2 which was 2 – 1 (Anderson no).

Issue 10: Renewing Communities Initiative

May Revision Proposals. The May Revision includes the following proposed budget bill language:

It is the intent of the Legislature that the Chancellor identify, one, or multiple, community college districts that would be willing to utilize up to a total of \$5.0 million of their combined funding for the purpose of providing adult inmate education. These funds shall be utilized to receive a 1 to 3 match of state and private funds that could be available for the purpose of providing adult inmate education. Any private funds received would be allocated to the identified community colleges based on their proportion of the combined funding match.

Background. *Renewing Communities* is the California component of the Ford Foundation's national *Pathways from Prison to Postsecondary Education Project*. Pathways, which follows a public-private partnership funding model, has been embraced by the Governors and Legislatures of North Carolina, Michigan and New Jersey, and the Ford Foundation is being courted by Texas. In all states including California, private funding is contingent on the state dedicating funding to the Initiative.

Renewing Communities envisions a statewide network of high-quality developmental education, career technical education, and traditional academic education inside county jails and state prisons, combined with on-ramps to colleges in the community, mentoring support programs for formerly incarcerated students on college campuses, and links to reentry services for those students' success.

In California, at least ten California-based and national private foundations are prepared to launch *Renewing Communities* with a \$15 million investment over three years. This private funding could be withdrawn if the state does not match the funding with a \$15 million contribution over three years. The public and private funds would be used for both the statewide and local components of *Renewing Communities*. Statewide – up to \$5 million of the total -- the funding would build a learning community, ensure high quality for college programs in prisons or jails, provide technical assistance, and

evaluate success. Locally – the remainder of the total -- the funding would be distributed in a competitive Request for Proposals (RFP) process to foster innovation and build new programs. RFP funding would be available to California's public educational institutions and to 501(c)(3) organizations.

Staff Comment. Ten foundations have currently committed to providing a \$15 million match for a three-year initiative. The foundations have been very clear that they need a dedicated amount of money in the community college budget in order to ensure that the match requirement will be met. The intent language proposed by the Administration does not provide the appropriate level of assurance.

Action – Conformed to the Senate Budget and Fiscal Review Subcommittee #1 on Education action, dedicating \$15 million in one-time Proposition 98 funding to the *Renewing Communities* project.

Vote: 3 – 0

Issue 11: Arts in Corrections Funding

May Revision Proposals. The May Revision requests \$2 million General Fund for funding the Arts in Corrections program.

Background. The proposed budget for CDCR's rehabilitation programming is \$345 million General Fund. Approving the May Revision request would increase the budget to \$347 million General Fund.

Legislative Analyst's Office. The May Revision includes \$2 million General Fund for the Arts in Corrections Program that seeks to reduce recidivism by providing inmates with training in the arts. While such training could have some benefits, based on the LAO's review of existing research, they find little evidence to suggest that it is the most cost-effective approach to reducing recidivism. As such, the LAO recommends that the Legislature instead allocate these funds to support the expansion of existing programs that have been demonstrated through research to be cost-effective at reducing recidivism, such as cognitive behavioral therapy or correctional education programs.

Action – Approved the May Revision request.

Vote: 2 – 1 (Anderson no)

5227 Board of State and Community Corrections/Local Corrections

Issue 12: Community Corrections Incentive Grants

May Revision Proposals. The May Revision includes an increase of \$1.1 million in Community Corrections Performance Incentive Grants funding due to an update in the formula used for measuring county performance. The May Revision proposes modifying the SB 678 grant formula in several ways, including: (1) removing payments to counties for offenders diverted from jail, (2) changing the baseline against which the county performance is measured, (3) basing payments on the types of offenders diverted from prison, and (4) basing a portion of each county's allocation on its past payments under SB 678 (Leno), Chapter 608, Statutes of 2009.

Legislative Analyst's Office. The LAO finds that many aspects of the Governor's proposal have merit. For example, it makes sense to remove avoided admissions to county jail from the SB 678 formula because there is no need to incentivize counties to reduce the costs they incur when felony probations fail and are sent to county jail. In addition, it is appropriate to set a new baseline against which to measure county performance because the current baseline does not reflect significant changes in the felony probation population that have occurred following the 2011 realignment.

However, the LAO has two concerns with the Governor's proposal. First, the Administration's proposal to permanently set the new baseline using data from 2013 and 2014 would not reflect the significant changes resulting from Proposition 47. Second, permanently setting a portion of county payments based on past SB 678 payments does nothing to incentivize counties to improve future performance. However, given the complexity of these issues, it would be difficult for the Legislature to devote an appropriate amount of time to resolving them as part of its final budget deliberations. As such, the LAO recommends that the Legislature approve the proposed changes but adopt trailer bill language making the changes effective for only 2015-16. This would give the Legislature the opportunity to thoughtfully consider further refinements to the formula and make appropriate changes as part of the 2016-17 budget process.

Action – Approved the additional funding proposed in the May Revision.

Vote: 3 – 0

Action – Adopted draft placeholder trailer bill language that does not include the Administration's proposal to permanently establish new baseline data or to permanently set a portion of county payments based upon past SB 678 payments.

Vote: 2 – 1 (Anderson no)

Issue 13: Post Release Community Supervision

May Revision Proposals. The May Revision requests that the original Governor's budget proposal be reduced by \$4,141,000 to reflect a revised estimate of the temporary increase in the average daily population of offenders who have been placed on Post Release Community Supervision as a result of the new parole determination process for eligible non-violent, non-sex registrant second-strike offenders who have completed 50 percent of their sentence as ordered by the Three-Judge Panel and implemented on January 1, 2015.

Governor's Budget. The Governor's budget proposes to provide county probation departments with a \$16 million General Fund increase to address the temporary increase in the average daily population of offenders on Post Release Community Supervision (PRCS).

Prior Subcommittee Action. Approved the proposed funding.

Action – Approved the May Revision request.

Vote: 3 – 0

Issue 14: City Law Enforcement Grants

Governor's budget. The Governor's budget includes a request for \$40 million General Fund to continue the three-year City Law Enforcement Grants program for a fourth year.

Prior Subcommittee Action. This item was heard in this subcommittee on March 26, 2015. No action was taken at that time.

Background. As part of the 2012–13 budget, the Governor proposed, and the Legislature approved, a three-year grant program (from 2012-13 through 2014-15) to provide state General Fund support to city law enforcement, primarily police. At the time the funding was proposed, the Administration indicated that the intent was to partially offset budget reductions that city law enforcement departments were facing due to the recession.

The funds were initially approved at \$24 million each year, and then were increased to \$27.5 million in 2013-14, and again to \$40 million in 2014-15. The Legislature approved the increased 2014-15 grant amount based on the understanding with the Administration that 2014-15 would be the final year for this grant program.

Legislative Analyst's Office (LAO).

Proposal Lacks Sufficient Justification. The Governor's proposal to provide \$40 million to extend the police grants for an additional year lacks justification for the following reasons:

- ***Need To Address Recession–Era Cuts Unclear.*** The Legislature authorized a three–year program as a stopgap measure to help city law enforcement address budget cuts resulting from the recession. However, the recession ended five years ago and, in that time, local revenues appear to have recovered to pre–recession levels. It is unclear how many additional years past the end of the recession the Governor thinks such funding is appropriate.
- ***Funds Unlikely to Make Significant Impact.*** The funding proposed is only a small fraction of total city police budgets and is unlikely to have a significant effect on the level of service provided by city law enforcement.

LAO Recommendation. In view of the above, the LAO recommends that the Legislature reject the Governor's proposal to provide \$40 million in city law enforcement grants in 2015-16.

Action – Rejected the Governor's proposal to continue the \$40 million City Law Enforcement Grants. Instead approved the following General Fund expenditures to support front line law enforcement:

1. **\$30 million General fund for the Board of State and Community Corrections to provide grants to local law enforcement for programs and initiatives intended to strengthen the relationship between law enforcement and the communities they serve, including but not limited to training for front-line peace officers on issues such as implicit bias; funding for research to examine how local policing services currently are being delivered, assess the state of law enforcement-community relations, compare the status quo with the best practices in the policing profession, and to receive recommendations for moving forward, including identifying policing models and operational options to improve policing; problem-oriented policing initiatives such as Operation Ceasefire; and restorative justice programs that address the needs of victims, offenders and the community.**
2. **\$10 million General Fund for the Commission on Peace Officer Standards and Training (POST) to assist in funding the initial cost of developing behavioral health training courses and requiring 20 hours of behavioral health training for peace officers in the academy and at least four hours of consecutive training every four years. In addition, to assist**

in funding a new requirement that field training officers have 40 hours of behavioral health training and the new requirement for 20 hours of field training be related to interactions with people who are mentally ill or with intellectual disabilities.

Vote: 3 – 0

Issue 15: Removal of Enhancing Law Enforcement Activities Subaccount Reversion Trailer Bill Language

May Revision Proposals. The May Revision proposed trailer bill language that would sunset the requirement that unspent local Citizens' Option for Public Safety and the Juvenile Justice Crime Prevention Act funds revert to the county Enhancing Law Enforcement Activities Subaccount. This provision ensures that 2011 Realignment funds are continuously appropriated to local agencies. This proposed trailer bill would sunset this provision as of July 1, 2015

Action – Approved the as placeholder trailer bill language.

Vote: 2 – 1 (Anderson no)

0250 Judicial Branch

Issue 16: Debt Amnesty Program

May Revision Proposals. The May Revision updates the Governor's proposed 18-month amnesty program, which allows individuals with past-due court-ordered debt to receive a reduction in the amount owed if they meet certain eligibility criteria. The May Revision expands the proposed program to allow drivers with suspended licenses to reinstate their licenses as part of the amnesty program.

Governor's January Budget. The January budget proposed a debt amnesty program for individuals with past-due, court-ordered debt from fines associated with traffic infractions and specified misdemeanors. The 18-month amnesty program would be administered by courts and counties and would provide a 50 percent discount for debt that was due prior to January 1, 2013.

Legislative Analyst's Office. The LAO will be providing a handout summarizing their recommendations in this area.

Action – Approved as placeholder trailer bill language.

Vote: 2 – 1 (Anderson no)

0552 Office of the Inspector General

Issue 17: Medical Inspections

May Revision Proposal. The May Revision requests \$3.85 million and 19 positions to allow the Office of the Inspector General (OIG) to evaluate medical care provided to inmates in all of the California Department of Corrections and Rehabilitation (CDCR) adult institutions on an annual basis.

Justification. On March 10, 2015, the federal court issued an order describing a process for ending the federal receivership. The order employs the OIG medication inspection reports to determine which institutions are providing a constitutional level of care. Once it is determined by the OIG and the receiver that an inspection shows that an institution is suitable for return to CDCR control, the authority for the healthcare at that institution will be delegated back to the state. Once the institution is returned to the state, the receiver will monitor the state's oversight for one year and at that time, if the quality of care is maintained, the institution will be removed from receivership. Finally, once healthcare in all 34 institutions has been returned to the state, and the final year of monitoring is completed, the plaintiffs will have 120 days to file a motion with the court if they do not believe a constitutional level of care is being provided. In the absence of such a motion, the parties are ordered to promptly file a stipulation and proposed order terminating the receivership and the Plata v. Brown lawsuit.

Background. In the 2014 Budget Act, the OIG received a \$1.262 million (General Fund) augmentation to establish four permanent positions in the Medical Inspections Unit of the OIG to evaluate medical care provided to inmates in state prison. In addition, the budget reduced the California Correctional Health Care Services (CCHCS) budget by \$645,000 (General Fund) and two positions. The net cost of the proposal was \$617,000.

The four positions consist of three physicians and one nurse who will provide medical expertise for the OIG to add clinical case reviews to the existing compliance-based monitoring system that is in place.

Staff Comments. The medical inspections conducted by the OIG do not currently include in-state contract facilities. The May Revision proposal would include California City Correctional Facility, but not the contracted community correctional facilities (CCFs). Concerns have been raised about the quality of medical care being provided at the CCFs. Therefore, the inspections should be expanded to include an annual inspection of those facilities as well to ensure that all inmates have access to adequate medical care.

Action –Approved the May Revision request and adopted the following as placeholder trailer bill requiring the OIG to include all in-state contract facilities in their annual medical inspections:

6126 (f) as amended:

(f) The Inspector General shall conduct an objective, clinically appropriate, and metric-oriented medical inspection program to periodically review delivery of medical care at each state prison *and in-state contract facility*.

Vote: 3 – 0

4440 Department of State Hospitals

Issue 18: Coleman Unit Activation

May Revision Proposal. The May Revision includes an increase of 38.2 positions and \$4.6 million General Fund in 2015-15, growing to an ongoing \$5 million General Fund from 2016-17 onward, to activate 30 beds at the California Medical Facility in Vacaville to treat inmates with acute mental illnesses.

Justification. CDCR's preliminary population projections for Coleman inmate-patients indicate that there will be a growing number of inmates with acute mental illnesses who will need to be housed and treated in a psychiatric program. The projection suggests that based upon the current psychiatric program capacity, the Department of State Hospitals (DSH) will need an additional 91 beds by the end of 2016 to accommodate the growing population. The request before the Legislature is for 30 additional beds to assist in closing that gap.

Action –

- 1. Approved the May Revision request.**
- 2. Adopted draft supplemental report language requiring the Administration to provide a report to the Legislature on January 10, 2016, detailing the steps they have taken to provide Coleman patients with treatment consistent with constitutional mandates. In addition, the report shall include an update on the Administrations discussions regarding shifting responsibility for the care and treatment of Coleman patients back to the California Department of Corrections and Rehabilitation.**

Vote: 3 – 0

Issue 19: Napa State Hospital Earthquake Repairs

May Revision Proposals. The May Revision includes two requests related to the damage at Napa State Hospital as a result of the August 2014 earthquake.

1. Requests \$5.7 million in General Fund and \$17 million in federal funds to repair damage sustained in the earthquake. In addition the Administration requests provisional language to authorize a General Fund loan pending the federal reimbursements.

2. Requests \$1 million in General Fund and \$3 million in federal funds for preliminary plans, working drawings, and construction for the seismic retrofitting of the plant operations building, which was originally built in 1916.

Justification. In August 2014, the city of Napa and surrounding area sustained considerable damage due to a 6.0 earthquake. As a result of the damage, President Obama declared a federal disaster. Napa State Hospital is located in the Presidentially Declared Federal Disaster area. As such, the state is eligible for federal funding to pay for 75 percent of the cost of repairs.

Action –

1. Approved the May Revision request.

2. Adopted supplemental reporting language requiring DSH to report to the Legislature by January 10, 2016 on the seismic safety of State Hospitals. This report shall include any information that is known about the level of seismic safety of all State Hospital buildings and structures, detail the need for further assessment of the level of safety of the structures, and a plan for addressing deficiencies in seismic safety at all of the state hospitals.

Vote: 3 – 0

Issue 20: Lanterman-Petris-Short Unit Activation at Metropolitan State Hospital
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May Revision Proposals. The May Revision requests \$8.3 million in reimbursement authority and 67.1 positions to activate a 40-bed unit at Metropolitan State Hospital in the city of Norwalk for Lanterman-Petris-Short patients.

Justification. Data from July 2014 through March 2015 demonstrate an increasing need for LPS patient beds. The average pending placement for July 2014 was 10 people. As of March 2015, 42 people were waiting for placement in a state hospital.

Background. The State Hospitals provide treatment to approximately 5,400 patients, who fall into one of two categories: 1) civil commitments (referrals from counties); or 2) forensic commitments (committed by the courts). Civil commitments (known as Lanterman-Petris-Short (LPS) patients) comprise approximately eight percent of the total population while forensic commitments approximately 92 percent.

Funding for the LPS patients come from counties that use the DSH system. Therefore, there is no General Fund associated with this request.

Action – Approved the May Revision request.

Vote: 3 – 0

Issue 21: NGI Involuntary Medication Authorization

May Revision Proposals. The May Revision proposes reducing the Governor's budget request to nine positions and \$1.2 million from the General Fund. Under the proposal, DSH would institute a legal process for each patient who was found not guilty by reason of insanity (NGI) that refuses medication in order to obtain the necessary legal authority to compel the patient to take his or her medication.

Governor's Budget Proposal. The Governor's budget proposed \$3.2 million from the General Fund and 14.4 positions in 2015-16 for DSH to establish and implement an involuntary medication (IM) process for NGI patients that includes trial court review. These positions include clinical staff positions to provide patients with information and testimony in court, as well as legal positions to represent DSH during initial court hearings and annual review hearings. According to the Administration, the NGI involuntary medication process will be based on the existing involuntary medication process for other DSH patient types.

Previous Subcommittee Action. The subcommittee rejected the Governor's budget proposal because funding and staffing was based on the assumption that every NGI patient would refuse medication.

Legislative Analyst's Office. The Governor's January budget included \$3.2 million from the General Fund and 14.4 positions in 2015-16 for the Department of State Hospitals (DSH) to establish and implement an involuntary medication process for patients found not guilty by reason of insanity (NGI). According to the department, the May Revision proposal includes enough resources to conduct this legal process for about 20 patients per month. However, once DSH has obtained the authority for all of its current NGI patients that refuse medication, it will generally only need enough resources to conduct the legal process for the portion of the roughly 15 NGIs admitted each month that refuse medication. This ongoing workload will likely be a fraction of the amount assumed in the proposal. Accordingly, the LAO recommends that the Legislature approve this funding on a one-year basis and direct DSH to present a revised proposal in January that is adjusted to reflect the potentially significant future reduction in workload.

Action – Approved the May Revision request and required the Administration to provide a report to the Legislature on the expenditures and workload on January 10, 2016.

Vote: 3 – 0

Issue 22: Hepatitis C Treatment

May Revision Proposals. The May Revision includes a General Fund increase of \$6.3 million in 2015-16 for the cost of providing inmates with new Hepatitis C treatments. In the current year, DSH intends to absorb the \$5.4 million cost of providing the treatments. The Governor's January budget proposal included this funding in the statewide set-aside for high cost medications. The funding is now proposed to be shifted to the DSH budget.

The Governor's Budget. The January budget proposal reserved \$300 million General Fund (\$100 million in 2014-15 and \$200 million in 2015-16) for the costs associated with several new Hepatitis C drugs for inmates in state prisons, patients in state hospitals, and participants in Medi-Cal and the AIDS Drug Assistance Program who are infected with Hepatitis C. The Administration also indicates it will convene a workgroup of affected entities, including sheriffs and the Receiver, to address the state's approach regarding high-cost drug utilization policies and payment structures.

Action – Approved the May Revision request.

Vote: 3 – 0

SUBCOMMITTEE NO. 5

Agenda

Senator Loni Hancock, Chair
Senator Joel Anderson
Senator Jim Beall



Wednesday, May 20, 2015

10:00 a.m. - State Capitol Room 4203

Consultants: Farra Bracht, Anita Lee, and Brady Van Engelen

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ITEMS PROPOSED FOR VOTE ONLY**0820 Department of Justice****Issue 1 Legal Division**

Governor's Budget Request. The 2015-16 budget includes a request for a permanent increase of twenty-nine positions and an increase of \$5.787 million in reimbursement authority (Legal Services Revolving Fund) in order to meet the increasing legal demands from various client departments.

Background. The DOJ's Legal Services Division (division) supports the Attorney General's mission of serving as the state's chief legal officer. The division is divided into three elements: (1) civil law, (2) criminal law, and (3) public rights.

The twenty-nine positions are to be located within the civil law division, which represents the state, its officers, agencies, departments, boards, commissions, and employers in civil matters. The positions are requested to support four sections within the Legal Services Division's civil law element.

The Licensing Section requests nine (9.0) deputy attorney general (DAG) positions, and six legal secretaries to support the increased enforcement-related workload to support the 35 boards and bureaus within the Department of Consumer Affairs. In order to support the requested positions, the Licensing Section's reimbursement authority will need to increase by \$2.765 million.

The Correctional Law Section requests five DAG positions, and one legal secretary to support the state and its officials in civil-rights litigation arising out of the California Department of Corrections and Rehabilitation (CDCR) operations. The requested positions will require a \$1.35 million increase in reimbursement authority for the Correctional Law Section. The Correctional Law Section currently has 80 DAG positions, 16 supervisors, and 17 paralegal staff.

The Health Quality Enforcement section requests three DAG positions with two legal secretaries. The Health Quality Enforcement Section's largest client, the Medical Board of California, added additional enforcement staff as part of the 2014 budget. Due to new procedures in place, the DOJ anticipates an additional 240 cases per year that will need to be managed by the Health Quality Enforcement section.

The Health, Education and Welfare (HEW) Section is requesting three DAG positions. The HEW section is responsible for representing the Governor's Office, the Departments of Health Care Services, Social Services, Public Health, State Hospitals, Education, Developmental Services, Superintendent of Public Instruction, the State Board of Education, and the Commission on Teacher Credentialing (COTC). The major purpose of the COTC is to serve as a state standards board for educator preparation for the public schools of California, the licensing and credentialing of professional educators in the state, the enforcement of professional practices of educators, and the discipline of credential holders in the State of

California. COTC cases are initially handled administratively and then through the courts for judicial review.

Historically, the COTC has referred an average of 40 to 50 cases per year. Recently, there has been a significant increase in referrals to the DOJ from the COTC, increasing from 38 cases in fiscal year 2011-12 to 107 cases in fiscal year 2013-14. The COTC has requested that the HEW section prosecute cases within certain timeframes, ranging from 30 days for emergency cases to ten months for low priority cases.

Staff Comment: This item was heard on April 30th and no concerns were raised with this request.

Staff Recommendation: Approve as budgeted.

Vote.

Issue 2 Cardroom Licensing

Governor's Budget Request. The 2015-16 budget includes a request to augment the Department of Justice's Bureau of Gambling Control (BGC) budget by \$1.559 million (Gambling Control Fund) and twelve three-year limited-term positions in fiscal year 2015-16, and \$1.423 million (Gambling Control Fund) in fiscal year 2016-17 and 2017-18, to address the current backlog related to initial and renewal finding of license suitability background investigations for the California Cardroom and Third-Party Providers of Proposition Player Services license applicants.

Background. The BGC, which was created in 1998, is the state's law enforcement authority with special jurisdiction over gambling activities and provides the Gambling Control Commission (commission) with background investigations on gaming license and work permit applications. The investigations, which can be fairly lengthy and exhaustive, provide the commission the information to take administrative actions, and determinations related to the regulation of gambling.

A significant backlog, totaling 2,221 applications, now exists within the licensing section. According to the DOJ, the backlog is due to a combination of additional responsibilities being assumed by the BGC, a more complex investigation process, and an increase in the number of applicants.

Staff Comment: This item was heard on April 30th and no concerns were raised with this request.

Staff Recommendation: Approve as budgeted.

Vote.

Issue 3 Initiatives Workload

Governor's Budget Request. The 2015-16 budget includes a request to augment the Department of Justice's budget by \$720,000 (General Fund) and four positions to implement the provisions of SB 1253 (Steinberg), Chapter 697, Statutes of 2014.

Background. The California Constitution authorizes individuals to place measures to amend statute or the Constitution before the voters after collecting and submitting a specified number of qualified signatures to the Secretary of State. Prior to the circulation of a measure for signatures, the Attorney General is required to prepare a title and summary for the proposed measure, which is a description of the major changes proposed and the estimated fiscal impact that the measure will have on state and local governments. State law specifies the process by which the title and summary must be prepared. Prior to January 2015, the Legislative Analyst Office (LAO) and the Department of Finance (DOF) were required to prepare the fiscal estimate within 25 working days from the day the final version of a proposed initiative was received by the Attorney General. The Attorney General would then have 15 days, upon receipt of the fiscal estimate, to submit the completed title and summary to the Secretary of State. Any substantive changes to the proposed measure by its authors would restart the statutorily mandated time frames. This could result in the LAO and DOF creating an additional fiscal estimate and the Attorney General creating an additional title and summary for the amended measure.

SB 1253, (Steinberg), Chapter 697, Statutes of 2014, made various changes to the above process that went into effect January 2015. Specifically, the legislation:

- Requires the LAO and DOF to prepare the fiscal estimate within 50 days (rather than 25 working days) from the day the proposed initiative is first received by the Attorney General. (The Attorney General still has 15 days from receipt of the fiscal estimate to submit the title and summary to the Secretary of State.)
- Requires the Attorney General to initiate a 30-day public comment period once the authors of the measure request a title and summary. Public comments are submitted through the Attorney General's website and provided to the authors, but are not publicly displayed during the review period. However, these comments are deemed to be public records, eligible to be viewed upon request under the process outlined in the California Public Records Act.
- Permits the authors of the measure to submit germane amendments to their measure within 35 days of filing the measure without having the statutorily mandated time frames restarted.

LAO Recommendation. LAO's review of this proposal notes that they concur that there will be a need for additional resources to address the modified public comment process in accordance with SB 1253. However, it is unclear to what extent SB 1253 will impact DOJ's workload. The LAO recommends that the Legislature approve \$114,000 from the General Fund and the AGPA position to support DOJ's new responsibilities related to public comment. The LAO notes that the DOJ should be able to manage within its existing resources until the impacts of SB 1253 become clearer.

Staff Comment. Staff concurs with the LAO that the requested funding and positions may be premature. If there is an increase in workload in the future, the DOJ can submit a budget request for additional resources.

Staff Recommendation: Approve LAO's recommendation.

Vote.

Issue 4 Registry of Charitable Trusts Enforcement Program

Governor's Budget Request. The 2015-16 budget includes a request for 13.0 positions (9.0 permanent and 4.0 limited-term) and increased expenditure authority of \$2.126 million (Registry of Charitable Trusts Fund) in 2015-16, \$2.051 million (Registry of Charitable Trusts Fund) in 2016-17, and \$1.650 million (Registry of Charitable Trusts Fund) in 2017-18 and ongoing to implement the provisions of AB 2077 (Allen), Chapter 465, Statutes of 2014.

Background. Current statute requires that charitable corporations, unincorporated associations, trustees, and other legal entities, which hold or solicit property for charitable purposes, are required to file a registration statement, articles of incorporation, and an annual financial report with the Attorney General's (AG) Public Rights Division. Statute provides the AG's office with broad supervisory and responsibilities over charitable organizations that are subject to the enforcement of charitable trusts.

AB 2077, among other things, allows for the funds that are deposited in the Registry of Charitable Trusts to be used, upon appropriation by the Legislature, for the purposes of maintaining and operating the registry of charitable trusts, enforce the regulations established by the Supervision of Trustees and Fundraisers for Charitable Purposes Act (Act), and to provide public access of reports filed with the AG via the internet. Prior to the passage of AB 2077, the AG's office was not authorized to use funds deposited in the Registry of Charitable Trusts to enforce registration and reporting requirements associated with the act.

The AG's automated mailing system has identified over 50,000 charitable organizations that are delinquent, but have registered with the AG's office. The AG's office notes that the automated system in use does not have the capacity to distribute notices to delinquent organizations; it does not have the staffing capacity to address workload associated with follow up, which can include phone calls, emails, and follow up letters.

The AG has also noted that the automated system has the capacity to automatically generate notices to the estimated 130,000 entities in the state that are unregistered. The AG's office has reached the 130,000 unregistered charitable organizations by information received from the Secretary of State's office, which transmits information related to newly formed California non-profit public benefits corporations to the AG's office each month. The AG's office estimates that approximately 41,500 of the 130,000 unregistered charitable organizations are active in California, and have noted that they will direct their resources initially towards the active organizations that are operating in the state. Similar to the delinquent notification process, the AG's office has noted that they do not have capacity to conduct workload associated with the follow up of notices distributed to unregistered charitable organizations.

Staff Comment: This item was heard on April 30th and no concerns were raised with this request.

Staff Recommendation: Approve as budgeted.

Vote.

Issue 5 Electronic Recording Authorization Fund

Governor's Budget Request. The 2015-16 budget includes a request for trailer bill language that would redesignate the Electronic Recording Authorization Account within the special deposit fund as the Electronic Recording Authorization Fund within the state treasury.

Background: Existing law authorizes a county to establish an electronic recording delivery system for the delivery of recording digital records. The recording system is subject to oversight, regulation, and system certification of the Attorney General. Under current law, counties are required to pay for the direct costs associated with the Attorney General's regulation and oversight, which counties are able to impose a fee that would cover those costs. Under current law, fees paid are directed to the Electronic Recording Authorization Account, which is in the Special Deposit Fund and is continuously appropriated. The proposed changes would redesignate the Electronic Recording Authorization Account in the Special Deposit Fund as the Electronic Recording Authorization Fund in the State Treasury.

Staff Comment: Redesignating the account as the Electronic Recording Authorization Fund would allow for a greater level of accountability of the funds. Also, given that this is an operating fund it is more appropriate redesignate the fund as the Electronic Authorization Fund rather than continue to use a special deposit fund that must be renewed every five years. Staff has no concerns with this request.

Staff Recommendation: Adopt proposed trailer bill language.

Vote.

7100 Employment Development Department**Issue 1 Employment Development Department and Department of Social Services
Trailer Bill Language**

Governor's Budget Proposal. The Administration proposes trailer bill language that authorizes the Employment Development Department (EDD) to share data with federal, state, or local government departments or agencies, or their contracted agencies, to support social services administration.

Background. Existing law authorizes the use of EDD data for verification and eligibility purposes. However, it does not address data sharing for evaluation, research, budget development, and forecasting purposes. EDD does have the discretion to share with other government entities, but would prefer the establishment of explicit statutory authority. The current three-year agreement between Department of Social Services (DSS) and EDD allows DSS to acquire confidential wage and Unemployment Insurance claim information files for current and/or previous public assistance and program recipients of CalWORKs, CalFresh, Medi-Cal, foster care, Supplemental Security Income, and In-Home Supportive Services Program. This agreement has been in place, and renewed, since 1996. Under this contract, DSS submits lists of Social Security numbers (SSNs) to match with EDD databases. This output data from EDD provides employer-reported quarterly earnings for nearly 95 percent of California employment. This data allows DSS to create analyses for internal research, budget development, performance monitoring, and program evaluation.

According to the DSS, most recently, San Francisco and Los Angeles counties have requested EDD data to conduct specific projects within their counties; however, EDD denied the requests, citing the inability for the DSS to re-disclose data to counties. EDD and DSS have been working collaboratively on the language to resolve this. Senate Budget Subcommittee No. 3 heard and took action to approve this item on May 7th.

Staff Recommendation: Conform with action taken in Senate Budget Subcommittee No. 3 to approve placeholder trailer bill language.

7350 Department of Industrial Relations

Issue 1 Occupational Safety and Health Staffing

The Governor’s budget proposes a total of 44 positions and \$4.6 million in 2015-16, and \$7.1 million ongoing, from the Occupational Safety and Health Fund, for the Department of Industrial Relations (DIR) and DOSH to increase enforcement inspections in high hazard industries, improve performance in meeting state and federal mandates and inspecting high-risk worksites, and bring California’s total rate of enforcement inspections in line with the national average.

The proposal also includes trailer bill language to prioritize investigations of serious accidents over complaints received for non-serious hazards, as well as costs to defend and negotiate claims filed against Cal/OSHA related to adequacy enforcement of the heat illness prevention regulation. This issue was heard at the subcommittee’s April 9th hearing.

Staff Recommendation: Approve as proposed.

Issue 2 Implementation of Statutory Requirements

Background. These items were heard at the Subcommittee’s April 9th hearing.

Item	
1	<p>SB 1299 (Padilla), Chapter 842, Statutes of 2014.</p> <p>DIR requests one position and \$156,000 in 2015-16, and one position and \$148,000 ongoing, to support the Division of Occupational Safety and Health (DOSH) in meeting the requirements of SB 1299. SB 1299 requires the Occupational Safety and Health Standards Board (OSHSB) to adopt standards developed by the DOSH requiring certain hospitals to adopt a workplace violence prevention plan as part of the hospital’s Injury and Illness Prevention Plan (IIPP) by July 1, 2016. The Division is also required to post an annual report, by January 1, 2017, on its website containing information regarding violent incidents at hospitals. The additional staff will enable OSHSB to adopt standards developed by the DOSH.</p>
2	<p>AB 1522 (Gonzalez), Chapter 317, Statutes of 2014.</p> <p>DIR requests five positions and an augmentation of \$590,000 (Labor Enforcement and Compliance Fund) in 2015-16, and \$551,000 ongoing, to support the Division of Labor Standards Enforcement’s (DLSE) legislative mandates related to AB 1522. AB 1522 enacts the Healthy Workplaces, Healthy Families Act of 2014, and provides that an employee who works in California for 30 or more days within a year from the commencement of employment is entitled to paid sick leave to be accrued at a rate of no less than one hour for every 30 hours worked. An employer is prohibited from discriminating or retaliating against an employee who requests paid sick days.</p> <p>The proposal requests three deputy labor commissioner I, and two deputy labor commissioner II positions, to support additional workload created by AB 1522. This request will help ensure DLSE has sufficient staffing to assist the public with filing claims, hold wage claim conferences, hold investigatory hearings, make appropriate decisions on violations of labor laws, enforce order, decision or awards, and investigate retaliation complaints.</p>

3	<p>AB 2272 (Gray, Chapter 900 Statutes of 2014).</p> <p>DIR requests one position and \$114,000 (State Public Works Enforcement Fund) in 2015-16, and \$105,000 ongoing, to support DSLE in efforts to comply with AB 2272. AB 2272 extends coverage under the California Prevailing Wage Law (CPWL) to require that all projects funded by the California Advanced Services Fund (CASF) pay the appropriate prevailing wage to all workers performing labor on these specific projects. AB 2272 extends the reach of the CPWL to include infrastructure projects funded by grants from CASF by including such projects with the definition of public works. The Senate Labor and Industrial Relations Committee cited that as of December 2013, CASF had committed to funding 56 projects. Each project can have a range of 10-20 contractors. Based on this, DLSE estimates the potential for about 700 new cases for which there could be a complaint. If DLSE receives actual complaints on only 15 percent of these potential cases, there would be 105 additional investigations. DLSE's Public Works Investigation Unit requires</p>
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Staff Recommendation: Approved as budgeted.

Issue 3 Elevator Safety Inspections Trailer Bill Language

Governor's Budget Proposal. Trailer bill language proposes to suspend the fee for annual inspection of elevators for 2015-16, and provides the director of the Industrial Relations, upon concurrence with the Department of Finance, the authority to suspend or reduce the fee for annual inspection in future years, as needed, to reduce surplus fund balance of Elevator Safety Account.

Background. The subcommittee has already taken action to approve the elevator inspection trailer bill at its April 9th hearing. Department of Finance has returned with some technical changes to the approved trailer bill.

(f) (1) For the 2015-16 fiscal year, the fees for annual and biennial inspection of conveyances required by Section 7304 are ~~is~~ suspended on a one-time basis.

(2) For the 2016-17 fiscal year, for and every fiscal year thereafter, the Director of Industrial Relations, upon concurrence of the Department of Finance, may suspend or reduce the fees for annual and biennial inspection of conveyances required by Section 7304 on a one-time basis for a period that does not exceed one year in order to reduce the amount of moneys in the Elevator Safety Account.

Staff Recommendation: Approve the revised trailer bill language, which reflects technical amendments.

7920 California State Teachers' Retirement System**Issue 1 Technology Project Reappropriation (April Finance Letter)**

Governor's Proposal. The Administration requests a reappropriation of \$179,200 from fiscal year 2013-14, and \$421,800 from 2014-15, for Provision (1) of the Information Technology Projects Fund to bring the total reappropriation request to \$26.5 million for 2015-16.

Background. The new pension solution system will replace the current legacy system to more efficiently and securely service members. In addition to the new system, there are related projects that are critical in supporting the success of the new system. In February 2015, the board accepted the recommendation for a vendor for the pension solution system. CalSTRS requires all available funding for the design, build, and implementation phases of the pension solution project in 2015-16. The updated reappropriation request includes consultant and support services still needed for IT projects, but not ready for encumbrance by the end of the current fiscal year, because expectations around timelines for procurement and pre-conversion project activities have shifted as the vendor selection process was completed.

Staff Comment. Staff has no concerns with this proposal. This request is a technical adjustment to provide more current estimates of amounts available for reappropriation.

Staff Recommendation. Approve as proposed.

Vote:**Issue 2 Support, CalSTRS Retirement System (May Revision)**

Governor's Proposal. The Administration requests an increase of \$6.8 million due to an increase in creditable compensation for fiscal year 2013-14, as reported by CalSTRS.

Background and Detail. The proposal represents existing statutory funding requirements and is as follows: the defined benefit payment will be increased by \$1,860,000, the pre-1990 defined benefit level payment will be increased by \$2,650,000, and the supplemental benefit maintenance account contribution will be increased by \$2,305,000.

Staff Comment. Staff has no concerns with this proposal.

Staff Recommendation. Approve as proposed.

Vote:

9650 Health and Dental Benefits for Annuitants**Issue 1 Medical and Dental Premium Adjustments (May Revision)**

Governor's Proposal. The Governor proposes a General Fund increase for medical premiums of \$20.8 million and \$723,000 for dental premium increases over projections made in the Governor's budget.

Background and Detail. The Governor's budget projected 2016 health and dental premiums to increase 5.5 percent over 2015 rates. The May Revision includes an updated estimate that medical premiums will increase eight percent and dental premiums will increase 6.8 percent. These rates may not be finalized until June 2015, and in that case, if the actual rates differ from the estimated rates, a technical correction to the budgeted amounts will be made.

Staff Comment: Staff has no concerns with this proposal.

Staff Recommendation: Approved as proposed.

Vote:**Control Section 3.60****Issue 1 Rate Adjustments (May Revision)**

Governor's Proposal. The Administration requests that Control Section 3.60 be amended to capture reductions in state retirement contribution rates adopted by the CalPERS Board on April 14, 2015.

Background and Detail: The reduction reflects the impact of the employees entering the system under the benefit formulas pursuant to the Public Employees' Pension Reform Act of 2013, stronger than expected investment performance, higher mortality rates, and greater than expected contributions to the system. The newly adopted state employer contribution rates result in total state costs of \$338.0 million and a decrease of \$110.0 million from the \$447.9 million included in the Governor's 2015-16 budget. Of the \$110.0 million, the General Fund amount is \$55.6 million, special funds are \$35.5 million and other nongovernmental cost funds are \$18.8 million. Additionally, it is requested that the CalPERS fourth quarter deferral be reduced by \$9.2 million General Fund from the Governor's budget to reflect the changes in retirement rates.

The net effect of these changes is a decrease of \$46.4 million General Fund in 2015-16 as compared to the Governor's budget.

Staff Comment: Staff has no concerns with this proposal.

Staff Recommendation: Approve as proposed.

Vote:

ITEMS PROPOSED FOR DISCUSSION AND VOTE**0820 Department of Justice****Issue 1 Armed Prohibited Person System (APPS)**

Background. Beginning in 1999, the California Department of Justice (DOJ)—Bureau of Firearms began to study some of California’s high-profile shootings in an effort to determine if there were remedial measures that could be enacted to curtail instances of gang violence and other similar violent events. The study found that many of the offending individuals were law-abiding citizens when they purchased the firearms, and were subsequently prohibited from gun ownership due to a variety of reasons specified in California’s Penal Code. Persons prohibited from gun ownership (‘prohibited persons’) are designated as such for various reasons, including for a criminal conviction, juvenile adjudication, addiction to narcotics, defined mental health conditions, restraining or other court orders, or specified terms or conditions related to probation.

At the time of the study, the DOJ lacked the capacity to determine whether or not an individual who had legally purchased a firearm, and subsequently became prohibited from such ownership, was still in possession of a firearm. In addition, even if such a determination could have been made, the DOJ lacked the authority to retrieve that weapon from the prohibited person. SB 950 (Brulte), Chapter 944, Statutes of 2001, provided the DOJ with the authority to cross-reference their database of individuals who own handguns with their database listing of prohibited individuals. The 2002 Budget Act included General Fund support of \$1.0 million for DOJ to develop the Armed Prohibited Persons System (APPS). The database was complete in November 2006, with continued funding to support the program provided from the General Fund. Further legislation, SB 819 (Leno), Chapter 743, Statutes of 2011, allowed the department to utilize funds within the Dealers Record of Sale Account (DROS) for firearm enforcement and regulatory activities related to APPS.

According to the DOJ, there are on average 4,500 newly-identified armed and prohibited persons included in the system on an annual basis. Additionally, it is estimated that there are approximately 3,900 names that are purged annually because of court dispositions, death, orders that reinstate firearms, or prohibition expiration dates. The DOJ’s Bureau of Firearms workload history is provided below.

**Armed Prohibited Persons
Workload History**

Fiscal Year	Armed and Prohibited Persons Identified	APPS Investigations Processed
2007-08	8,044	1,620
2008-09	11,997	1,590
2009-10	15,812	1,763
2010-11	17,606	1,700
2011-12	18,668	1,716
2012-13	21,252	2,772
2013-14	22,780	4,156
2014-15	17,479	7,573

In 2013, the Legislature, in coordination with the DOJ, determined that there was a significant workload resource gap. At that time, it was estimated that approximately 2,600 offenders were added to the APPS list annually, creating a significant backlog in the number of investigations. According to the DOJ, each special agent is capable of conducting 100 APPS investigations over a one-year period. During fiscal year 2012-13, the Bureau of Firearms (bureau) had authority for twenty-one agents. Therefore, the bureau was capable of conducting roughly 2,100 investigations on an annual basis with the special agent authority of twenty-one agents, which would add 500 possible armed and prohibited persons to the backlog each year.

To address the workload resources required to both reduce the growing backlog and actively investigate incoming cases in a timely fashion, the Legislature passed SB 140, (Leno), Chapter 2, Statutes of 2013. SB 140 provided DOJ with \$24.0 million (Dealer's Record of Sale Account) in order to increase regulatory and enforcement capacity within DOJ's Bureau of Firearms. The resources provided in SB 140 were provided on a three-year limited-term basis, which, according to the DOJ, was adequate time to reduce the overall number of Armed and Prohibited Persons. Ongoing cases could be managed with resources within DOJ's Bureau of Firearms.

Additionally, the measure included reporting requirements due annually to the Joint Legislative Budget Committee. From those reporting requirements, the Legislature has learned that some progress has been made. At the beginning of 2014 there were 21,249 names in the APPS database; by December 2014 there were 17,479 names in the APPS database, a net reduction of 3,770 names. As of December 31, 2014, the DOJ has hired 18.0 agents for the enforcement of the APPS program. The report also notes that the DOJ has recovered a significant portion of firearms due to APPS enforcement, recovering over 3,000 firearms, 275,000 rounds of ammunition, 300 high-capacity magazines, and made over 135 arrests. Additionally, the DOJ has collaborated with over 65 local law enforcement agencies to further reduce the APPS backlog.

DOJ Proposal: This item was first heard by this subcommittee on April 30th. At that time, the subcommittee directed the DOJ to return with a proposal that would better address the APPS backlog. The DOJ responded with a proposal that would, convert 22.0 limited-term positions within the DOJ's Bureau of Firearms to permanent, provide for a one-time local assistance appropriation of \$2.5 million from the DROS fund in order to incentive local law enforcement agencies to input existing seized weapons into the Automated Firearms System, revert the remaining available DROS funds (approximately \$12 million) that were included in SB 140 back to the DROS account, and, instead utilize funds available from the Firearms Safety and Enforcement Fund. The DOJ would need an augmentation of \$6 million from the Firearms Safety and Enforcement Fund in order to support the 22.0 proposed permanent positions. The DOJ has conveyed that there will be policy proposals that may address some of the concerns raised at the April 30th subcommittee hearing, as well.

Staff Comment: Staff concurs with the DOJ that there is a greater need for permanent positions within the Bureau of Firearms; however, given the late nature of this proposal, combined with the limited details supporting it, staff recommends a slight modification. Specifically, staff recommends converting the requested 22.0 positions from limited-term to permanent. As noted by the DOJ, this may allow the Bureau of Firearms to limit the number of staff losses suffered as staff seek permanent employment elsewhere. As noted by DOJ, there is approximately \$12 million remaining in the DROS account, while the DROS fund does not appear to be a viable long-term solution to fund the permanent positions, the DOJ does believe that the Firearms Safety and Enforcement Account could absorb the costs associated with the 22.0 permanent positions for seven years. Providing the 22.0 permanent positions now will provide the DOJ with enough time to thoughtfully craft a long-term approach to addressing the APPS backlog that could be proposed as part of DOJ's fiscal year 2016-17 budget package. Also, the requested \$2.5 million in local assistance seems unnecessary given this is a function that is already expected of local authorities. Staff recommends the committee not approve that expenditure.

This subcommittee may wish to explore providing the DOJ with funding to support an informational awareness campaign as well. Staff would recommend providing DOJ with an additional \$250,000 from DROS to support the Bureau of Firearms efforts to inform individuals of their non-compliance with current statute related to the possession of a firearm. Also, to underscore that this has been a priority of the Legislature, staff would recommend adopting placeholder trailer bill that would require that a minimum staffing level of sworn agents be filled within the Bureau of Firearms.

Staff Recommendation: Convert 22.0 limited-term positions within the Bureau of Firearms to permanent status. Funding for the permanent positions shall remain the DROS fund. Provide \$250,000 in DROS funds for the purposes of informing individuals of their noncompliance with state gun ownership regulations. Also, adopt trailer bill language establishing a minimum number of sworn agents required to be within the Bureau of Firearms.

Vote:

Issue 2	Controlled Substance Utilization Review and Evaluation System (CURES) Ongoing Funding
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May Revision Proposal: The Governor's May Revision includes a proposal to provide the Department of Justice (DOJ) with 5.0 permanent positions, and \$1.112 million in reimbursement authority for fiscal year 2015-16, and ongoing.

Background: DCA has contracted with DOJ on behalf of the Medical Board of California, the Dental Board of California, the California State Board of Pharmacy, the Veterinary Medical Board, the Board of Registered Nursing, the Physician Assistant Board, the Osteopathic Medical Board of California, the State Board of Optometry, the California Board of Podiatric Medicine, and the Naturopathic Medicine Committee to upgrade and maintain CURES for the purpose of regulating licensees.

The 2013 Budget Act appropriated a total of \$3.941 million from the ten special funds that support the healing arts boards noted above. The funds were used to reimburse DOJ for upgrades to CURES over two years. The upgrades allowed for integration with major health information systems to maximize physician and pharmacist participation, provided timely patient activity reports to prescribers and dispensers, and provided law enforcement agencies and DOJ with reporting and crime analytics.

SB 809 (DeSaulnier), Chapter 400, Statutes of 2013 created the CURES fund, with DCA acting as the administrator of the fund. Effective April 1, 2014, a fee of \$6.00 has been assessed on each renewed licensee that has the capacity to prescribe or dispense controlled substances within DCA's healing arts boards and bureaus. DOJ has estimated that total costs associated with the maintenance of the upgraded CURES platform will not exceed \$1.112 million. The requested appropriation against the CURES fund will facilitate the reimbursement.

Staff Comment: This proposal includes budget bill language that specifies the funding only be made available upon the Department of Technology's (CalTech) approval of DOJ's maintenance and operations plan. Staff does not have any issues with this proposal.

Staff Recommendation: Approve May Revision proposal.

Vote:

7100 Employment Development Department

Issue 1 Unemployment Insurance Program Administration

Governor’s Budget Proposal. The Governor’s budget proposes a decrease of \$8 million and 48.1 positions in the Unemployment Insurance program to reflect federal funding reductions and natural workload reductions due to an improving economy. This proposal includes a fund shift from the General Fund to two special funds to offset General Fund costs.

Additionally, the Governor’s May Revise includes various technical changes, including:

Item	
1	Unemployment Insurance Loan Interest Rate Reduction —Decrease of \$9.8 million to reflect reduced interest due to the federal government for borrowing that has occurred to provide unemployment benefits without interruption.
2	Unemployment Insurance Benefit Adjustments —Decrease of \$173 million to reflect projected decrease in UI benefit payments due to historical trends and benefit payment projections. Decrease current year UI Benefit Authority by \$536 million due to improvement in the economy.
3	Disability Insurance Benefit Adjustment —Decrease of \$115 million to reflected a projected decrease in benefit payments, as well as a decrease of \$9.7 million in current year authority.
4	School Employees Fund Adjustment —Decrease of \$10 million to reflect decrease projected benefit payments and decrease of \$17.2 million in current year benefit authority.

Additionally, it is requested that Item 7100-490 be eliminated to reflect the shift from the General Fund to BAF and CF, as follows:

~~7100-490—Reappropriation, Employment Development Department. The balances of the appropriations provided in the following citations are reappropriated for the purpose of supporting the administration of the Unemployment Insurance Program and shall be available for encumbrance or expenditure until June 30, 2016 upon approval of the Department of Finance:~~

~~0001—General Fund~~

~~(1) Item 7100-001-0001, Budget Act of 2014 (Ch. 25, Stats. 2014)~~

Staff Recommendation: Adopt as proposed.

Issue 2: Workforce Innovation Opportunity Act (WIOA) Discretionary Fund Adjustment

Governor's Budget Proposal. The May Revision requests an increase of \$17.7 million above the Governor's January \$105.5 million for the Workforce Innovation Opportunity Act, to reflect an increase in discretionary funds from 8.75 percent to 10 percent of the federal allotment.

The Governor's May Revision proposes to use this increase for administrative resources and a variety of programs including the continuation of key workforce activities:

SlingShot - \$6.0 million - Funds will be awarded to regional coalitions that develop and organizations that support the regional alignment of supply (job seeker) and demand (labor market/industry sectors) through innovative workforce development, training, and career education approaches.

Regional Workforce Accelerator Program - \$5.4 million - Funds will continue the existing Regional Workforce Accelerator Program by making competitive development grants available to workforce collaboratives. The funds will also be used to fund partnerships that bring together local Workforce Boards, health and human services agencies, employers and industry representatives, labor, and education and training institutions to help veterans, long-term unemployed, low-income job seekers, barriers to employment, at-risk/disadvantaged youth, disadvantaged and disconnected job seekers, CalWORKs participants and parolees/ex-offenders obtain education and employment.

Governor's Award for Veterans' Grants - \$2.7 million- This will expand existing projects that accelerate employment and re-employment strategies for California veterans. These funds will focus on the efforts to transition veterans into high-wage, high-demand occupations to include: healthcare; professional, scientific and technical services; construction; transportation; security; utility and energy sectors; and information technology.

Additionally, the Governor's May Revision also requests a decrease of \$29,463,000 for Items 7100-101-0869 and 7100-101-0890 to align budget authority with current federal allotments for local area activities.

Legislature's Proposal.

Senate Budget Subcommittee No. 4 took action to provide \$670,000 reimbursement authority to the Military Department in order to receive WIOA discretionary funds. Each year, over 30,000 troops complete their military service and return to California. Between the often difficult transition to civilian life and the still-recovering economy, these new veterans are facing an uncertain economic future. As of March 2015, the unemployment rate of veterans under the age of 35 was nearly double the state's overall unemployment rate of 6.9 percent.

To address this, the state has access to a number of programs that specifically assist veterans' reentry into the job market. Through its workforce services branch, the Employment Development Department (EDD) receives federal funding from the U.S. Department of Labor via the Workforce Investment Act of 1998 (WIA), the Wagner-Peyser Act of 1993, and the Jobs for Veterans State Grant, however many of these programs failed to meet program

goals. In fact, according to the U.S. Department of Labor, California is one of the lowest performing states in the nation.

There are other programs that are more directly controlled at the state level which benefit veterans seeking reentry to the job market. The California Military Department has created the Work for Warrior (WFW) program, which was established in 2012 pursuant an interagency agreement with the Assembly, which will expire on July 1st. Prior to its establishment, members of the California National Guard and Reserves suffered from high unemployment rates. In 2012, the unemployment rate for the California National Guard and Reserves was approximately 14 percent, significantly higher than the national unemployment rate and California's overall unemployment rate. In response to the higher than average unemployment rate among service members, the California Military Department partnered with hundreds of companies within the state to directly place service members and their spouses in 4,000 jobs throughout the state.

At the time, the Military Department was able to survey the California National Guard to determine the unemployment rate; however, the pool of eligibility for the WFW program has expanded substantially and now includes member of the Reserves and members of the active duty who are separating from the military. The eligibility pool has increased from 28,000 to over 65,000. Other states (South Carolina, Florida, and Michigan) have developed a model similar to the WFW, and the program has received recognition from the National Guard Bureau as a successful model for other states to follow.

Staff Recommendation. Approve May Revise proposals on WIOA with adjustments to conform with Subcommittee No. 4's actions.

7350 Department of Industrial Relations

Issue 1 Process Safety Management Unit– Legislature’s Proposal

Background. At its April 9th hearing, the subcommittee heard an update on the Process Safety Management (PSM) Unit within the Division of Occupational Health (DOSH). The PSM Unit enforces process safety management procedures for potentially hazardous processes that exist in a wide variety of industries, including oil refineries. The PSM Unit was established after the 1999 fire at the Tosco refinery in Martinez that killed four workers.

California is the only state to have a dedicated unit for this function, which has 25 staff and one vacancy to inspect 15 refineries and over 1,600 other facilities that use, process, or store large quantities of toxic, flammable, or explosive chemicals. On average, from 2001-2012, this unit inspects 27 refineries as well as 112 other facilities per year.

The 2014-15 budget approved \$2.4 million from the Occupational Safety and Health Fund, and 11 positions to expand the PSM Unit to implement recommendations of the Governor’s Interagency Working Group on Refinery Safety for the enforcement of workplace health and safety regulations in 15 refineries and over 1,800 other chemical facilities. These positions are funded by a new fee on the refinery industry, which is based on the amount of crude oil being processed at each refinery as a percentage of the state’s total.

Status Report on PSM Regulatory Oversight

DIR reports that Cal / OSHA will continue monitoring workload and inspection/ enforcement needs to ensure staffing levels and fee amounts are sufficient to support enforcement of existing law.

In the 2014 calendar year, the PSM Unit conducted 37 refinery inspections, two of which were planned Program Quality Verification (PQV) inspections. A PVQ inspection is a multi-point inspection covered by PSM regulation, which is more thorough than any other inspection performed by the division and entails comprehensive evaluation of the establishment’s program, the quality of the establishments procedures compared and verification of the effectiveness of the establishment’s program implementation.

Additionally in the 2014 Calendar Year, the PSM conducted 39 non-refinery inspections and 37 refinery inspections.

	Contractors Inspections	Unplanned/ Unprogrammed Inspections	Program Quality Verification Inspections	Total Inspections
Non-Refinery Inspections	2	12	25	39
Refinery Inspections	14	21	2	37

In the 2015 Calendar Year, PSM Unit plans to conduct 40 PQV inspections of non-refinery sites.

Staff Comments. While the Legislature approved additional staff in previous budget years to enhance PSM Unit resources in response to the Chevron refinery explosion, it is unclear how much more support DIR needs to reform its PSM responsibilities at both refinery and non-refinery facilities.

The PSM Units inspections of non-refinery facilities are important, as highlighted by the Central Texas fertilizer plant explosion that killed 14 people and injured approximately 200, and the incident in which chemicals used to clean coal leaked into the Elk River in Charleston, West Virginia, contaminating drinking water of some 300,000 residents. This year, DIR only plans to conduct a total of 39 inspection. Given that there are over 1500 non-refinery facilities that use, process, or store large quantities of toxic, flammable, or explosive chemicals, it is important to ensure that DIR has the adequate resources available to support non-refinery inspections.

Staff Recommendation. Adopt placeholder supplemental reporting language requiring DIR to report by March 31, 2016 on its methodology and criteria for assessing risk of non-refinery facilities, as well as additional staff or resources needed to support increased inspections.

7501 Department of Human Resources**Issue 1 Healthier U State Employee Workplace Wellness Program**

Governor's Proposal. The May Revision proposes one permanent position and \$122,000 reimbursement authority in 2015-16, and \$113,000 General Fund ongoing, to expand the existing Healthier U state employee workplace wellness program to additional worksites.

Background. In 2012, the State Controller's Office, State Treasurer, CalPERS, Service Employees Internal Union Local 1000, and CalHR partnererd to create a model workplace wellness and injury prevention program for state employees. Given the state budget constraints at the time, private funding was obtained for the pilot.

The California Department of Public Health (CDPH) and Department of Health Care Services (DHCS) East End Complex were selected as pilot sites. According to CalHR, the pilot has exceeded all participation goals and benchmarks for the health screenings and program interventions. The pilot has been extended for a third year for the purpose of obtaining additional data for health outcomes evaluation and to expand to additional state worksites.

The Governor's proposal is seeking to implement Healthier U at additional worksites to gain a better understanding of worksite implementation policy issues and needs. SEIU has committed to continue to implement the pilot program and its expansion. Under the CalPERS contract, Kaiser Permanente will continue to provide funding for core web-based intervention program until June 3, 2015, and has committed two personnel staff until December 2015. However, the onsite wellness pilot coordinator by the California Wellness Foundation via Sierra Health Foundation has ended, and there is a void in staffing.

The additional staff personnel program analyst will be responsible for identifying and implementing Healthier U at additional worksites and expand the pilot beyond the existing satellite offices at CDPH and DHCS, as well as develop and implement plan for statewide use, and providing technical assistance to all state workers.

Staff Recommendation. Approve as proposed.

Issue 2	Civil Service Improvement
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Governor’s Proposal. The May Revision proposes trailer bill language to make significant changes to the civil service and hiring process.

These changes include (1) expanding the pool of candidates eligible to be considered for a promotional position, including a career executive appointment and (2) eliminating three requirements that impose restrictions on hiring managers, outlined below.

	Statute	Description of Current Law	Proposal
1	Government Code 19057	<i>Rule of Three Names</i> -This statute limits departments to choose from only the top three individuals on promotional hiring lists.	Eliminate the code which imposes unnecessary hiring restrictions on departments.
2	Government Code 19057.2	<i>Managerial Six Ranks</i> -All managerial lists must include six ranks. When considering candidates for a managerial position, hiring managers generally may only consider applicants whose examination scores result in them being in one of the top three ranks.	Eliminate the code which imposes unnecessary hiring restrictions on departments.
3	Government Code 19057.4	<i>Rule of One Rank</i> -Departments are limited to choose from only the individuals within the first rank for supervisory classifications, with some exceptions.	Eliminate the code which imposes unnecessary hiring restrictions on departments.
4	Government Code 18546, 18990-18993, 19057.1, 19057.3, 19889.3	Individuals who have worked for the Legislature or held a nonelected exempt position for two or more consecutive years and have left state service for no more than one year may apply for a promotional position, including a career executive appointment.	Amend codes to expand the pool of possible candidates who can apply for promotional positions or career executive assignment examinations. (Specifically, these amendments allow individuals who have worked for the Legislature or held a nonelected exempt position to apply for a promotional position, even if they have not been in state service for more than one year.)

Background. California’s current system of state civil service employment dates back to the November 1934 election, when voters approved Proposition 7, adding what is now Article VII to the State Constitution. The Constitution requires that all appointments and promotions within the civil service be made under a general system based on merit determined by competitive examination. All state employees are in the civil service unless specifically exempted by the Constitution. As a result, practically all of the state’s non-higher education executive branch employees—outside of the very top ranks of management (such as department directors and deputy directors)—are in the civil service. In the more than 80 years since the voters first established the civil service, a variety of statutes, decisions, rules, practices, and case law have built upon the constitutional framework of a merit-based civil service system. Collectively, these civil service rules establish the state’s policies for hiring, promoting, disciplining, and terminating state civil service employees.

In 1995, the Legislative Analyst's Office issued a report, Reinventing the State Civil Service, in which they identified a number of issues that indicate that the civil service system does not operate in an optimal manner for either the state, its employees, or the public. In the two decades since LAO issued that report, many efforts by past administrations sought to improve the civil service—most recently, the HR-MOD project established by the prior administration. Most of these past efforts have resulted in minor improvements.

Staff Comment. While the subcommittee agrees that there is a need of improving the state's hiring process to recruit and retain qualified employees, however the Governor's proposal is a substantive policy change and overhaul of current practices that warrants thorough consideration by the Legislature. There is only a few weeks remaining before the Legislature must approve the budget, which raises concerns if this provides Legislature adequate time to review and understand the full implications of adopting such significant policy changes to the state's civil service system.

The subcommittee may wish to ask:

1. To what extent has the Administration engaged with appropriate stakeholders regarding this proposal? What feedback was provided and how did the Administration address their feedback?
2. Has the Administration conducted an analysis of how these changes will impact the state civil service process moving forward?
3. How will this proposal impact department's operating budget moving forward?

Staff Recommendation: Hold Open

Issue 3 Vacancy Positions Trailer Bill Proposal and Control Section 4.11

Governor's Proposal. The Governor's May Revision proposes to delete existing law that eliminates positions that have been vacant for six consecutive months or more and also proposes that the state change how the budget reflects departmental expenditures for personnel-related costs and costs related to operating expenses and equipment.

Background

A significant share of the state's budget pays salary and benefit costs for state employees. For example, in 2013-14, the state paid more than \$22 billion for non-higher education state employees' salaries and benefits—about half of this was paid from the General Fund. Requests for positions receive particularly high levels of scrutiny from both the Department of Finance (DOF) and the Legislature. The Legislature approves a department's position authority—the number of full-time equivalent employees departments may employ to administer state programs.

For many years, in instances when departments received budget cuts or have been expected to “absorb” rising operational costs, departments have implemented a number of strategies to keep what resources they have.

- **A Vacant Position Frees Up Funds.** Each year, departments' costs of doing business increase. These costs include (1) inflationary cost increases for operating expenses and equipment (rent, postage, fuel, etc.) and (2) merit salary adjustments that departments must provide to eligible employees every year. Departments generally do not receive augmentations to pay for these rising costs. Some departments have learned to hold positions vacant as a strategy to pay for rising operational costs. In such instances, departments redirect the funds associated with a vacant position to pay for these rising operational costs.
- The high degree of scrutiny given to position requests makes it difficult for departments to increase their position authority. Consequently, departments have learned to hold onto what position authority they possess—even if they have no intention of filling a position in the near future.

Section 12439 of the Government Code requires the State Controller's Office (SCO) to abolish certain authorized positions in departments that are vacant for six consecutive months. When vacant positions are eliminated under this law, departments lose position authority but generally do not lose the funds associated with the eliminated positions. Departments are prohibited from executing any personnel transactions for the purpose of circumventing the provisions of the law. Despite this prohibition, the Legislative Analyst's Office and Department of Finance indicates this law largely has been ineffective at eliminating chronically vacant positions.

Departments sometimes choose to keep positions vacant so that they have the flexibility to increase staffing levels in the future without the need to convince DOF or the Legislature to increase its position authority.

Governor's Proposal

As part of the 2015-16 May Revision, the Governor proposes to repeal Section 12439 of the Government Code.

Control Section 4.11. The Governor further proposes that the state change how the budget reflects departmental expenditures for personnel-related costs and costs related to operating expenses and equipment. Under the proposed budgeting system, a department's budget no longer would reflect its total position authority approved by the Legislature. Instead, the departments' budgets would reflect a three-year average of filled positions. The money appropriated for a department's personnel-related costs would be based on this average number of filled positions. The department's non-personnel budget would reflect actual costs for operating expenses and equipment. The Governor proposes that DOF would conduct a biennial review of departmental budgets to reconcile departmental costs related to personnel and operations to improve the accuracy of the information presented in the budget. This proposal would change how the budget is presented and would not immediately result in any department losing position authority or funding.

~~SEC. 4.11. All new positions approved in the 2015–16 fiscal year shall be established effective July 1, 2015, unless otherwise approved by the Department of Finance. Before the end of each month, the Controller shall provide to the Department of Finance a listing of each new position approved that will be abolished pursuant to Section 12439 of the Government Code as a result of the position being vacant for six consecutive pay periods at the end of the immediately preceding month. The report provided by the Controller shall include the department, division, position classification, position number, and the date the position was established.~~

To promote greater transparency in how departments develop their support budgets, which include personal service and operating expenses and equipment, as defined in Control Section 3.00, the Department of Finance shall develop a bi-annual process for reconciling department budgets as it concerns the aforementioned categories. This reconciliation process will begin in the 2015-16 budget year and the results used to help build departments' budgets baseline budgets in the 2016-17 Governor's Budget.

Finance shall set departments' funding levels for personal services on the average number of filled positions over the last three fiscal years. Departments maintain the authority to fill all their authorized positions; however, funding will be set based on this historic data. Funding for operating expenses and equipment will be based on actual expenditures for purchase of materials, supplies, equipment, services, departmental services, and all other proper expenses, as defined in Control Section 3.00, over the last three fiscal years.

Additionally, the Administration will no longer propose the use of limited-term positions to address short-term workload, instead the Administration will propose limited-term spending authority that will act as a control on the number of positions a department can fill.

Legislative Analyst's Comments.

The LAO agrees with the Governor's proposal to repeal Section 12439 of the Government Code and recommends that the Legislature should repeal the law.

LAO also notes that is not clear how the proposed process affects Legislative oversight. The Governor's proposal to change how the state budget presents its staffing levels and costs might be a good idea in certain respects. However, LAO is concerned that—in the few weeks remaining for the Legislature to consider the budget—the Legislature does not have

adequate time to determine how the proposed process would affect legislative oversight over the state workforce.

The proposal could give the executive branch significant authority to determine which of their authorized positions should be filled. This could allow the administration to determine what programs' staffing have a higher priority than others and could result in legislative priorities not receiving the staffing levels they need to be executed fully.

Determining the maximum number of full-time equivalent employees in the state workforce is a significant power of the Legislature. Under the Governor's proposal, a department's position authority in excess of its three-year average filled positions represents a position authority reserve. As long as a department can operate within its existing funding level, it would have significant authority to increase the number of filled positions within its existing position authority. The Legislature will want to determine if it is comfortable allowing departments to have position authority reserves, and, if so, the appropriate size of such a reserve.

Under the Governor's proposal, it seems that departments only would request position authority when their level of filled positions equals their position authority (no position authority reserve) and some sort of workload need is perceived to require staffing levels above the existing position authority. Presumably, budget proposals to increase position authority would be similar to the existing process. The Legislature will want to consider how the administration should communicate departmental decisions to increase the number of filled positions within their existing position authority.

The proposed budget bill language specifies that "funding for operating expenses and equipment will be based on actual expenditures." In order to do this, without a constant erosion of a department's personal services budget, it would seem the state would need to change its current practice of requiring departments to absorb most rising costs of doing business. Increasing departmental appropriations for these costs could reduce available funding for other parts of the budget.

Staff Recommendation: Hold Open.

0559 Labor and Workforce Agency**Issue 1 Labor and Workforce Agency**

Governor's Proposal. The May Revision proposes an increase of \$148,000 General Fund and one position in 2015-16 and 2016-17 to develop and implement a pilot program to prevent abuses in the recruitment of H-2A temporary workers and to improve the coordination and effectiveness of various entities under the agency.

Background. The U.S. Department of Labor's H-2A temporary agricultural worker program allows agricultural employers, who anticipate a shortage of domestic workers, to bring nonimmigrant foreign workers, typically from Mexico, to the U.S. For temporary or seasonal agricultural labor that lasts no longer than one year. Employers typically rely on recruitment agencies to find contract workers. Under the federal program, it is unlawful for recruiters or recruitment agencies to charge recruitment fees to h-2A workers. Despite these statutory and program requirements, it is common practice for recruiters to charge Mexican workers high fees in exchange for connecting them with employment, and to make false claims about employment conditions. Additionally, H-2A workers often do not receive the required reimbursement for travel, visa and recruitment costs, reducing the worker's wages to below the applicable minimum wage. In July 2014, the Governor signed a letter of intent to cooperate with Mexico's Secretary of Labor and Social Welfare to protect the rights of H-2A temporary workers in California.

Multiple programs within the agency currently serve farmworkers, including the Employment Development Department (EDD), Department of Industrial Relations (DIR), and the Agricultural Labor Relations Board (ALRB).

The agency requests one career executive assignment position who will be responsible for the development, implementation and oversight of a voluntary pilot program that will reduce exploitation and prevent labor violations among this vulnerable workforce by improving transparency and accountability in the recruitment of these workers.

The program will include the following key elements:

- The Mexican government and California will work in partnership to develop a list of certified recruitment agencies that are compliant with all statutory and H-2A program requirements.
- Encourage current H-2A growers to utilize only certified recruiters from the list of reputable recruiters.
- Monitor working conditions for H-2A workers and address violations of federal and state labor laws, including making referrals to federal and state enforcement agencies.
- Require licensed Farm Labor Contractors to report the names of the growers they contract with and the physical location of the H-2A workers' job sites.

This position will also coordinate outreach among agency entities at resource fairs, as well as develop materials, public service announcement and other communications media, to ensure that all outreach is consistent in terms of the services available and how workers can access them.

Staff Recommendation. Approve as proposed.

7900 California Public Employees' Retirement System (CalPERS)**Issue 1 Technical and Other Changes**

Proposals. 1) The Governor proposes various budget bill amendments to incorporate the CalPERS board approved budget into the budget act. These changes are as follows and are display items for informational purposes to reflect a corresponding change in CalPERS' continuous appropriation authority:

- Item 7900-003-0830 be decreased by \$83,367,000;
- Item 7900-015-0815 be increased by \$96,000;
- Item 7900-015-0820 be increased by \$110,000;
- Item 7900-015-0822 be increased by \$10,795,000;
- Item 7900-015-0830 be increased by \$16,173,000;
- Item 7900-015-0833 be increased by \$435,000;
- Item 7900-015-0849 be decreased by \$2,000;
- Item 7900-015-0884 be increased by \$428,000; and
- and an increase of 38 positions.

The budget approved by CalPERS reflects a net reduction of \$55,332,000 primarily driven by transitioning investment portfolio management activities from outside contractors to state employees.

2) In addition, the legislatively proposed trailer bill language would add two sections to the statutes that govern working after retirement in order to clarify that prior exemptions that have been in place for many years, remain.

Background and Detail. The first change relates to elected officials. CalPERS has always exempted elected officials from the rules limiting working after retirement. Therefore, a retired CalPERS member who is receiving a benefit may run for public office and be elected and continue receiving his or her retirement benefit while serving in public office and receiving a salary. He or she may not earn service credit while in the CalPERS-covered elected position unless he or she reinstates, at which point the retirement allowance would cease. The only restriction CalPERS imposes is this: any part of an elected official's pension that is based on service in the elected position (such as when a person serves on the city council, retires, and then is subsequently reelected) may not be included in the pension received while the retired individual is serving in the elected position.

The second change relates to disabled workers. For many years CalPERS has had a program that allows disabled workers to continue working in jobs that are substantially different from those from which the worker was industrially retired. Most of the participants are disabled safety workers. For example, a disabled firefighter works as an arson investigator, or a disabled peace officer works in a training academy.

Under the program, the disabled worker is paid the regular salary for the job being performed. The salary is augmented by some or all of the retirement benefit to increase the disabled worker's salary up to the amount he or she was earning prior to becoming disabled. While in this program, the disabled worker does not earn service credit or additional retirement benefits for the work performed. When he or she fully retires, the full disability pension resumes.

There are approximately 230 individuals in this program and about half of them are local retirees and half are state retirees. Almost all participants are disabled safety employees. This program does not create additional costs and can provide modest savings to the retirement system during the period of employment, to the extent that the disabled workers receive smaller benefits during that time. The proposed changes to statute would restore the program to allow disabled workers to work in public employment and receive a blended salary of compensation and retirement benefit up to the retiree's pre-retirement compensation.

Staff Comments. The proposed trailer bill language clarifies law to ensure that prior exemptions for retirees in public office and disabled workers remain. Retaining this exemption for retirees would help to ensure a strong pool of candidates from the public sector. Private sector employees serving in public office do not have to give up their retirement income. Retaining the disabled worker program does not create additional state costs, and allows these workers to continue in public service without reducing their standard of living while creating small savings to the retirement system.

Staff Recommendation. First, approve the Governor's incorporation of the board-approved CalPERS budget into the state budget. Second, adopt placeholder trailer bill language to clarify that prior exemptions for (1) retirees who are elected to public office and (2) disabled workers that have been in place for many years, remain.

Vote:

9800 Augmentation for Employee Compensation**Issue 1 Scheduled Employee Compensation Augmentation Increases
(May Revision)**

Governor's Budget Proposal: Budget Item 9800 allows for adjustments in departmental budgets to account for changes in employee compensation, including salaries, health and retirement benefits. This proposal would increase Item 9800-001-0001 by \$21,015,000, would increase Item 9800-001-0494 by \$9,023,000, and would increase Item 9800-001-0988 by \$4,445,000 to reflect changes discussed below.

Background: Item 9800 includes all augmentations in employee compensation. These reflect revised health and dental premium rates, increased enrollment in health and dental plans, updated employment information for salary increases previously provided in the Governor's budget, revised pay increases for Judges, updated information for salary increases for the California Highway Patrol (Bargaining Unit 5), and updated costs related to the California Department of Corrections and Rehabilitation On-Call and Call-Back addendum (Bargaining Unit 19).

These rates may not be finalized until later this year and, in that case, if the actual rates differ from the estimated rates, a technical correction to the budgeted amounts will be made.

Staff Comment: Staff has no concerns with this proposal.

Staff Recommendation: Approve as proposed.

Vote:

**Issue 2 Provisional Language for Memorandum of Understanding (MOU)
Addendum (May Revision)**

Governor's Proposal: The Governor proposes a modification to provisional language under Item 9800 relating to the existing Joint Legislative Budget Committee (JLBC) review process for side letters, appendices, or other addenda to a properly ratified MOU.

Background: SB 621 (Speier), Chapter 499, Statutes of 2005 established the legislative review process for any amendment to a legislatively ratified MOU. While this has resulted in increased oversight for the Legislature, there is agreement that the current review process is flawed. Specifically, when the Legislature is out of session, departments sometimes cannot lawfully implement program fixes/changes until the Legislature reconvenes, sometimes months later.

A workgroup including the Department of Finance, legislative staff, and the Legislative Analyst's Office has been meeting to reach agreement on a process to address MOU addendums in provisional language under Item 9800.

Under the Governor's proposed process, DOF would review addenda and CalHR would post them on their website. If DOF determined that an MOU addendum would have "no fiscal impacts," the Administration could implement it immediately. Even if DOF determined that the MOU addendum would have a fiscal impact, it could still request to implement the addendum without legislative approval if it met the following conditions: (1) it resulted in net costs of less than \$1 million in 2015-16, (2) costs could be absorbed within affected departments' existing budgetary authority, or (3) it does not include substantial policy changes relative to the legislatively ratified MOU. In such cases, the committee would have 30 days to review the Administration's determination that an addendum can be implemented without legislative approval. Agreements that do not meet the conditions listed above would need to be submitted to the Legislature for approval. Under the Administration's proposal, the Joint Legislative Budget Committee would not review MOU addenda determined by the DOF to have no fiscal impact.

LAO Comment: Given the extensive legislative review responsibilities, lack of clarity, and time delays inherent in the existing process, the LAO thinks changes to the current process are warranted. In general, the LAO thinks the Administration's proposal makes sense. However, the LAO finds that oversight could be improved under the proposed language and that the proposal misses an opportunity to address MOU addenda that are time-sensitive. Specifically, the May Revision language would allow the Administration to immediately implement any MOU addendum that it determined would have no fiscal impact. The language does not define "fiscal impacts." This is a concern because the Legislature and DOF might reasonably have a different interpretation of an agreement's fiscal impact. In addition, under its current practice, CalHR does not always include copies of documents referenced in the MOU addendum when it posts agreements on its website. When an agreement references an ancillary document as part of the agreement, that document also should be posted to ensure oversight and transparency. Finally, under the May Revision proposal, the soonest that any addendum could be implemented is 30 days after DOF has notified the JLBC. This may be too long for certain agreements.

The LAO recommends that the Legislature adopt the Governor's language, but with three modifications. Specifically, the LAO recommends that the Legislature (1) strike the sentence that refers to the subjective term of "fiscal impact" and (2) add language that allows the JLBC to expedite its review (this would allow time-sensitive agreements to be implemented earlier than 30 days after JLBC notification), and (3) specify that agreements in their entirety including attachments referenced in the agreement be posted online.

Staff Questions for LAO:

1. Please present your concerns with the Administration's proposal.

Staff Comment: Staff concurs with the LAO recommendation and recommends that the language proposed by the Administration and as modified below, be adopted.

Add Provisions 7 thru 10 to Item 9800-001-0001:

7. *Notwithstanding Sections 3517.6 and 3517.63 of the Government Code, the Department of Finance (Finance) shall provide written notification to the Joint Legislative Budget Committee (JLBC) regarding any expenditure of funds resulting from any side letter, appendix, or other addendum (collectively addendum) to a properly ratified memorandum of understanding (MOU). ~~Addendum determined by Finance to have no fiscal impacts do not require JLBC notification, however, these shall be posted on the Department of Human Resources' (CalHR) website pursuant to provision 10 of this section.~~*
8. *The notice shall include a copy of the addendum and a fiscal summary of any expenditure of funds resulting from the agreement in 2015-16 and future fiscal years. The notice shall indicate whether Finance determines that an agreement does or does not require legislative action to ratify the addendum before implementation, pursuant to paragraphs (A), (B), or (C) of this provision.*
 - (A) *An addendum to a properly ratified MOU may be implemented without legislative action not less than 30 calendar days after notice has been provided to the JLBC—or not sooner than whatever lesser time after that notification the chairperson of the JLBC, or his or her designee, may in each instance determine—if all the following apply: (1) the agreement results in total net costs of less than \$1,000,000 (all funds) during the 2015-16 fiscal year; (2) any cost resulting from the agreement can be absorbed within the 2015-16 appropriation authority of impacted departments; and (3) the addendum does not present substantial additions that are reasonably outside the parameters of the original MOU.*
 - (B) *An addendum to a properly ratified MOU that results in any expenditure of funds may be implemented not less than 30 calendar days after notice has been provided to the JLBC—or not sooner than whatever lesser time after that notification the chairperson of the JLBC, or his or her designee, may in each instance determine—if, during the legislative consideration of the 2015-16 Governor's Budget, Finance identified to the Legislature that (1) the administration anticipated that the addendum would be signed during 2015-16 and (2) any costs resulting from the addendum are included in the 2015-16 Governor's Budget or in another legislative vehicle.*
 - (C) *An addendum to a properly ratified MOU that results in any expenditure of funds requires legislative action prior to implementation if any of the following applies: (1) the agreement*

results in total net costs greater than \$1,000,000 (all funds) during the 2015-16 fiscal year; (2) the agreement results in costs that cannot be absorbed within the 2015-16 appropriation authority of impacted departments; or (3) the addendum presents substantial additions that are not reasonably within the parameters of the original MOU.

9. *Notwithstanding Sections 3517.6 and 3517.63 of the Government Code, any addendum to a properly ratified MOU that is implemented in 2015-16, pursuant to paragraph (A) of Provision (8) of this item, and requires the expenditure of funds beyond 2015-16 that was not approved as part of the 2015-16 Budget Act, must be approved by the Legislature as part of the 2016-17 Budget Act or through another legislative vehicle.*
10. *The Department of Human Resources ~~CalHR~~ shall promptly post on its public website all signed addendum. The addendum shall be posted in its entirety—including any attachments, schedules, or other documents included as part of the agreement—along with the fiscal summary documents of the agreement.*

Add Provisions 8 thru 11 to Items 9800-001-0494 and 9800-001-0988:

8. *Notwithstanding Sections 3517.6 and 3517.63 of the Government Code, the Department of Finance (Finance) shall provide written notification to the Joint Legislative Budget Committee (JLBC) regarding any expenditure of funds resulting from any side letter, appendix, or other addendum (collectively addendum) to a properly ratified memorandum of understanding (MOU). ~~Addendum determined by Finance to have no fiscal impacts do not require JLBC notification, however, these shall be posted on the Department of Human Resources' (CalHR) website pursuant to provision 11 of this section.~~*
9. *The notice shall include a copy of the addendum and a fiscal summary of any expenditure of funds resulting from the agreement in 2015-16 and future fiscal years. The notice shall indicate whether Finance determines that an agreement does or does not require legislative action to ratify the addendum before implementation, pursuant to paragraphs (A), (B), or (C) of this provision.*
 - (A) *An addendum to a properly ratified MOU may be implemented without legislative action not less than 30 calendar days after notice has been provided to the JLBC—or not sooner than whatever lesser time after that notification the chairperson of the JLBC, or his or her designee, may in each instance determine—if all the following apply: (1) the agreement results in total net costs of less than \$1,000,000 (all funds) during the 2015-16 fiscal year; (2) any cost resulting from the agreement can be absorbed within the 2015-16 appropriation authority of impacted departments; and (3) the addendum does not present substantial additions that are reasonably outside the parameters of the original MOU.*
 - (B) *An addendum to a properly ratified MOU that results in any expenditure of funds may be implemented not less than 30 calendar days after notice has been provided to the JLBC—or not sooner than whatever lesser time after that notification the chairperson of the JLBC, or his or her designee, may in each instance determine—if, during the legislative consideration of the 2015-16 Governor's Budget, Finance identified to the Legislature that (1) the administration anticipated that the addendum would be signed during 2015-16 and (2) any costs resulting from the addendum are included in the 2015-16 Governor's Budget or in another legislative vehicle.*

(C) An addendum to a properly ratified MOU that results in any expenditure of funds requires legislative action prior to implementation if any of the following applies: (1) the agreement results in total net costs greater than \$1,000,000 (all funds) during the 2015-16 fiscal year; (2) the agreement results in costs that cannot be absorbed within the 2015-16 appropriation authority of impacted departments; or (3) the addendum presents substantial additions that are not reasonably within the parameters of the original MOU.

10. *Notwithstanding Sections 3517.6 and 3517.63 of the Government Code, any addendum to a properly ratified MOU that is implemented in 2015-16, pursuant to paragraph (A) of Provision (9) of this item, and requires the expenditure of funds beyond 2015-16 that was not approved as part of the 2015-16 Budget Act, must be approved by the Legislature as part of the 2016-17 Budget Act or through another legislative vehicle.*
11. *The Department of Human Resources CalHR shall promptly post on its public website all signed addendum. The addendum shall be posted in its entirety—including any attachments, schedules, or other documents included as part of the agreement— along with the fiscal summary documents of the agreement.*

Staff Recommendation: Approve the Governor's proposal with modifications.

Vote:

Control Section 3.61**Issue 1 Amendment to Budget Bill Control Section 3.61 (May Revision)**

Governor’s Proposal. The Administration requests that Control Section 3.61 be amended for technical clarification. This control section replaces 9651.

Background and Detail: Pursuant to existing labor agreements, the state contributes money to prefund retiree health benefits for California Highway Patrol (CHP) officers. In 2015-16, the administration anticipates that the state will spend about \$54 million for this purpose. The administration proposes changing how the state appropriates this money. This proposal would affect how the state prefunds these benefits for CHP officers and any other employees for whom the state begins prefunding these benefits in the future.

In the past, the state has appropriated money to prefund retiree health benefits through a central budget item—Item 9651. Using Item 9651 for this purpose has been problematic as the state repeatedly has not appropriated sufficient funds in the Budget Act. As a result, mid-year augmentations have been necessary to avoid running a deficiency. The Department of Finance indicated that the state needed to appropriate an additional \$3 million to prevent the item from running a deficiency in both 2013-14 and 2014-15.

As part of his January Budget, the Governor proposed ending the use of Item 9651 to prefund retiree health benefits and instead create a control section—Control Section 3.61—that prefunds retiree health benefits through departmental budgets. The May Revision includes minor changes to the January proposal. This decentralized method is similar to how the state makes its contribution payments towards pension benefits for state employees. Paying these costs through departmental budgets provides greater certainty as to the state’s prefunding obligations. In addition, paying these costs through departmental budgets provides the state greater ability to pay for these costs using federal grants and other funding sources that departments use to pay for personnel expenditures.

LAO Comments: The LAO generally agrees with the Administration’s approach to establish a more decentralized process to pay for the state’s ongoing obligations to prefund retiree health benefits through departmental budgets. As written, however, the proposal would grant the Administration authority to adjust the amount of money the state pays to prefund retiree health benefits pursuant to (1) “approved memoranda of understanding” in the case of rank-and-file employees and (2) administrative actions for employees excluded from the collective bargaining process. This arguably could give the administration significant authority in certain circumstances to establish the state’s retiree health prefunding policy without prior legislative approval. Accordingly, to ensure that the significant decisions about retiree health prefunding remain under the control of the Legislature, the LAO recommends modifying paragraph (c) of the proposed language to read:

(c) The Director of Finance may adjust the percentage levels of the employers' contribution for prefunding other postemployment benefits listed in subdivision (a) in accordance with ~~approved memoranda of understanding or labor agreements approved by the Legislature or other legislation approved by the Legislature, for employees excluded from collective bargaining, in accordance with salary and benefit schedules established by the Department of Human Resources.~~ The Director of Finance shall notify the Controller by executive order of adjustments made pursuant to this subdivision. Within 30 days of making an adjustment pursuant to this subdivision, the Director of Finance shall report the adjustment in writing to the Chairperson of the Joint Legislative Budget Committee and the chairpersons of the committees in each house of the Legislature that consider appropriation.

Staff Comment: Staff agrees with the LAO comments and recommendation.

Staff Recommendation: Approve Control Section 3.61 with the LAO modifications as specified above.

Vote:

SUBCOMMITTEE NO. 5

Agenda

Senator Loni Hancock, Chair
Senator Joel Anderson
Senator Jim Beall



Wednesday, May 20, 2015

10:00 a.m. - State Capitol Room 4203

Consultants: Farra Bracht, Anita Lee, and Brady Van Engelen

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VOTE: 3-0 and a request to DOF present a comprehensive plan to the Legislature for prefunding retiree health.

Pursuant to the Americans with Disabilities Act, individuals who, because of a disability, need special assistance to attend or participate in a Senate Committee hearing, or in connection with other Senate services, may request assistance at the Senate Rules Committee, 1020 N Street, Suite 255 or by calling 916-651-1505. Requests should be made one week in advance whenever possible.